

EAST AYRSHIRE COUNCIL

COUNCIL MEETING - 24 MARCH 2011

RECOMMENDATION OF SOUTHERN LOCAL PLANNING COMMITTEE HELD ON 25 FEBRUARY 2011 RELATING TO PLANNING APPLICATION NO 10/0548/PPP: APPLICATION TO CONSTRUCT ONE NURSING HOME (60 BEDS) AND ONE RETIREMENT FLAT COMPLEX (55 BEDS) WITH ASSOCIATED CAR PARKING AND LANDSCAPING AT PROPOSED RESIDENTIAL DEVELOPMENTS, CAPONACRE ROAD, CAPONACRE, CUMNOCK BY NEW CITY HOMES, C/O JAMES BARR LTD

Report by the Executive Director of Finance and Corporate Support

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to inform the Council meeting of the recommendations of the Southern Local Planning Committee held on 25 February 2011 regarding the above planning application, and to invite Council to determine the application for planning permission in terms of the Scheme of Delegation on the grounds that the application under consideration proposes a major development as defined by the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009, that is considered significantly contrary to the Development Plan.

2. BACKGROUND

- 2.1 East Ayrshire Council at its meeting held on 25 June 2009, agreed amendments to the Scheme of Delegation and Administration to meet the requirements associated with the Government's proposals to modernise the planning system in Scotland.

- 2.2 Key changes, effective from 3 August 2009, included:-

- Local Planning Committees would determine all applications for major developments with the exception of (i) national developments as defined in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009; and (ii) major developments that are significantly contrary to the Local Development Plan. However, where required to do so, Local Planning Committees will hold Hearings on these applications and make recommendations to the Council, but only the Council can make the decisions.

3. APPLICATION NO 10/0548/PPP: NEW CITY HOMES, C/O JAMES BARR LIMITED: PROPOSED RESIDENTIAL DEVELOPMENTS, CAPONACRE ROAD, CAPONACRE, CUMNOCK

- 3.1 The application is for planning permission for the proposed erection of a nursing home (60 bed spaces) and erection of a retirement flat complex (55 flats) with associated car parking and landscaping at Unit B1, Caponacre Industrial Estate, Cumnock, by New City Homes, c/o James Barr Limited.

3.2 Pre-Determination Hearing

3.2.1 A Pre-Determination Hearing was held by the Southern Local Planning Committee on 25 February 2011 to consider the report dated 15 February 2011 by the Head of Planning and Economic Development (**the report is attached as Appendix 1**).

3.2.2 Members of the Southern Local Planning Committee were advised that there were no objections to the application; one letter of support for the application had also been received from a care home operator expressing interest in operating the proposed nursing home element of the proposed development (details of the letter of support are summarised in the attached report); and of the recommendations of the Head of Planning and Economic Development as follows:-

- (i) that the Local Planning Committee endorses the view of the Head of Planning and Economic Development that the application should be refused for the reasons detailed in the attached report; and
- (ii) that the recommendation of the Local Planning Committee should be referred to the next appropriate Council meeting for consideration in the determination of the application.

3.2.3 The Committee heard Simon Heriot representing the applicant in support of the application. Members of the Committee asked questions of the applicant's representative.

3.2.4 The Committee then heard Bill Bain a supporter of the application. Members of the Committee asked questions of the supporter.

3.2.5 The applicant's representative then exercised their right of reply to points raised by the supporter.

3.2.6 Hugh Melvin, Principal Planning Officer, provided clarification on the following point raised during the Hearing:-

In response to the point made by the applicant's representative that the proposed development would result in the loss of only 0.5 hectare, representing 4% of the total safeguarded industrial land at Caponacre, the Principal Planning Officer advised members that the Caponacre Industrial Estate is a large estate that includes significant landscaped grounds. Furthermore, a number of industrial buildings within the estate had been demolished and further loss of industrial floorspace had occurred through the loss of existing industrial buildings to non-industrial uses including the building presently occupied by Ayr College (Cumnock Campus). For those reasons, the Principal Planning Officer advised that the loss of the present application site to a further non-industrial use was of more significance than the 4% loss expressed by the applicant's agent.

3.3 Recommendation by Southern Local Planning Committee

3.3.1 Having heard the Pre-Determination Hearing, the Southern Local Planning Committee agreed:-

- (i) to endorse the view of the Head of Planning and Economic Development that the application be refused for the reasons detailed in the report; and
- (ii) that the recommendation of the Local Planning Committee be notified to the Council for its consideration in the determination of the application.

4. FINANCIAL/POLICY/COMMUNITY PLANNING IMPLICATIONS - Nil.

5. LEGAL IMPLICATIONS

5.1 Prior to the Council determining the application, a Pre-Determination Hearing required to be heard by a Committee of the authority, in this case the Southern Local Planning Committee.

5.2 As a consequence, this planning application now requires to be determined by Council in terms of Section 56 of the Local Government (Scotland) Act 1973 (as amended), and in terms of the Council's Scheme of Delegation, given that it comprises a major development that is considered to be significantly contrary to the development plan.

6. RECOMMENDATIONS

6.1 It is recommended:-

- (i) that Council determine the planning application, giving consideration not only to the terms of the report by the Head of Planning and Economic Development referred to in Appendix 1; but also the recommendation by the Southern Local Planning Committee as detailed above; and
- (ii) to otherwise note the contents of the report.

Alex McPhee
Executive Director of Finance and Corporate Support

10 March 2011
JM/SR

LIST OF BACKGROUND PAPERS - NIL

Any person wishing further information on this report should contact Jennifer Morrison, Administrative Officer, on Tel No (01563) 576139.

Implementation Officer: Jennifer Morrison, Administrative Officer.

EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 25 FEBRUARY 2011

10/0548/PPP: PROPOSED ERECTION OF A NURSING HOME (60 BED SPACES) AND ERECTION OF A RETIREMENT FLAT COMPLEX (55 FLATS) WITH ASSOCIATED CAR PARKING AND LANDSCAPING AT UNIT B1, CAPONACRE INDUSTRIAL ESTATE, CUMNOCK

APPLICATION BY NEW CITY HOMES

Report by Head of Planning and Economic Development

Click for Application Details: <http://eplanning.east-ayrshire.gov.uk/online/caseFile.do?category=application&caseNo=10/0548/PP>

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Planning permission in principle is sought for the residential development of the site in the form of a retirement flat complex and also for a commercial development comprising a nursing home. The applicant has submitted indicative plans (layout, some elevations and floor plans) for the two proposed elements of the application which provides for the following:

(i) **Residential Retirement Flats:** The flats, which the applicant describes as being “managed”, number 55 in total within a building predominantly four stories in height. Due to the levels within the site, part of the building presents as three stories in height. Three flat types are proposed with 38 type R1 (one bedroom), 14 type R2 (one bedroom) and 3 type R3 (two bedrooms). One of the type R1 flats is to be used as a manager’s flat. Access to floors would be by communal stairwells and a central lift. Communal facilities would include a lounge area with a small kitchen, a separate laundry room and a manager’s office.

(ii) **Nursing Home:** The indicative plans show a three storey building that would accommodate 16 resident’s bedrooms on the ground floor and 22 on both the first and second floors of the building, providing a total of 60 bed space. Each bedroom has its own en-suite bathroom. Communal facilities on the ground floor comprise a dining hall / activities lounge, a quiet lounge, a hair / health/ beauty salon and a laundry room. Staff facilities include a staff room, a nurse’s office, a general office and a kitchen. Provision is also made on the ground floor for one overnight visitor’s room. On both the first and second floors, provision is made for a communal toilet facility, a quiet lounge and a nurse’s office.

(iii) **Ancillary Development:** The indicative layout for the development provides for the formation of landscaped parking courts in front of each of the two separate buildings and for private landscaped garden areas to the rear of the proposed buildings for communal use by residents of both buildings. The two existing accesses off the industrial estate road will be retained and used, one serving each building.

1.2 The indicative plans and elevations of both buildings show consistency in design, layout, scale and use of finishing materials.

1.3 As a major development, the application has been the subject of Pre-Application Consultation and in this regard a Public Meeting / Exhibition was undertaken by the applicant on 16 April 2010. The PAC Report records that the event was attended by 5 people, all of whom had responded to the public advert in the local newspaper. The PAC Report further indicates that 5 responses had been received in respect of the invitation to comment on the proposals and expressing the following points:

- All of the respondents supported the principle of the development;
- Three of the respondents specifically stated that the site was a suitable location for the development;
- All respondents felt that the development would create much needed employment in the town;
- Four respondents expressed the view that the site had become an attraction for anti-social behaviour and that the proposal would address this matter;
- Three respondents considered that the development would have a positive effect on the wider image of Cumnock;
- Two respondents considered it unlikely that the existing building would find a new occupier;
- One respondent confirmed an interest in being involved with the operation of the facility as he already owns and runs an existing care home;
- Two respondents considered the scale of development shown on the indicative plans to be suitable for the site; and
- The proximity of the site to the town centre, bus stops and ease of access were identified by one respondent as further factors in support of the scheme.

2. RECOMMENDATION

2.1 It is recommended Local Planning Committee endorses the view of the Head of Planning and Economic Development that planning permission in principle application 10/0548/PPP be refused for the reasons indicated on the attached sheet.

2.2 It is recommended that the recommendation of the Local Planning Committee be subsequently referred to the Council for consideration in the determination of this planning application.

3. CONCLUSIONS

3.1 As indicated in section 5 of the report, the application is considered to be significantly contrary to the development plan. Therefore, given the terms of Section 25 and Section 37(2) of the Town and Country Planning (Scotland) Act 1997, the application should be refused unless material considerations indicate otherwise. As is indicated at Section 6 of the report, there are material considerations relevant to this application but it is considered that they are not of sufficient weight to merit approval of the application contrary to the provisions of the recently adopted local plan which safeguards the site for industrial purposes.

3.2 The proposed development overall presents both potential benefits and disbenefits which can be summarised as follows:

Benefits

- (i) The proposed development has the potential to create up to 75 jobs both in staffing of the nursing home and in the supervision of the retirement flat complex. The construction programme would also provide short term employment opportunities. Overall, there could be significant long term socio-economic benefits accruing from the proposed development.
- (ii) The proposed development would result in the removal of an existing vacant industrial unit which is presently detracting from the overall amenity of the local area including the industrial estate itself. The premises have lain empty for some considerable period of time and, with ongoing vandalism and little prospect of re-use for industrial purposes in the present economic climate, the fabric of the building will continue to deteriorate.
- (iii) The proposed development would assist in meeting potential shortfalls in this type of accommodation given the continuing ageing population profile.

Disbenefits

- (iv) The proposed development will result in the loss of a substantial factory unit and land within a safeguarded industrial estate. This would lessen the ability of the Cumnock area to respond positively to potential industrial and business developers in locating within Cumnock.
- (v) The location of a nursing home and retirement flat complex within a safeguarded industrial estate is not considered to be in the interests of good planning. The outlook from the proposed development will essentially be one of an industrial landscape and the potential for noise

disturbance to such sensitive uses is considered to be high both now and in the future.

- (vi) There is a lack of any nearby facilities to support both the retirement flat complex and the nursing home.
- (vii) The proposal will fundamentally alter the character and amenity of an industrial site and if the application is approved it could set a precedent for further encroachment of non-industrial development onto this safeguarded site.
- (viii) The proposal, if implemented, would become a material consideration in the assessment of otherwise appropriate industrial development in the area and as such could limit industrial development.

3.3 The applicant's supporting statement makes reference to recent planning application approvals where residential development has been approved in close proximity of the site. Indeed part of the land associated with the present application site has been developed for 18 dwellings. The supporting statement suggests that the character of the industrial estate is already changing. Nonetheless, it is considered that the policy provisions of the adopted local plan are considered even more appropriate in such circumstances to prevent further loss of safeguarded industrial land. As indicated in section 6.3 above, the development of the 18 dwellings under application 06/0054/OL was essentially conditional on the basis that the existing factory and land associated with the present application site be retained in industrial use. Given the history of the application site in this regard, this remains a material consideration in the determination of the present application, although it is considered that greater weight should be afforded to the development and other material considerations relevant to the proposals.

3.4 Taking account of the provisions of the development plan and all relevant material considerations associated with this proposed development, it is considered that the provisions of the development plan carry greater weight than the material considerations of the application which are mainly supportive of it. It is considered that, notwithstanding the policy provisions which safeguard the use of the application site for Class 4, 5 and 6 industrial / business uses, the location of a retirement flat complex and particularly a nursing home within a long established industrial estate is not in the interests of good planning principles and would run counter to the spirit of integrating such uses within more central areas where service provision and facilities are more readily available.

3.5 There is no doubt that the proposed development would provide additional facilities for Cumnock and would marry in well with current economic regeneration and environmental initiatives in Cumnock. However, it is considered that for the reason stated above in this report, the development of these facilities on the present application site is incompatible with, and inappropriate to, the industrial designation of the area in which they are to be located. Indeed, the proposals may limit the extent of industrial regeneration in their vicinity.

Alan Neish
Head of Planning and Economic Development

Note: This document combines key sections of the associated report for quick reference and should not in itself be considered as having been the basis for recommendation preparation or decision making by the Planning Authority.

EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 25 FEBRUARY 2011

10/0548/PPP: PROPOSED ERECTION OF A NURSING HOME (60 BED SPACES) AND ERECTION OF A RETIREMENT FLAT COMPLEX (55 FLATS) WITH ASSOCIATED CAR PARKING AND LANDSCAPING AT UNIT B1, CAPONACRE INDUSTRIAL ESTATE, CUMNOCK

APPLICATION BY NEW CITY HOMES

Report by Head of Planning and Economic Development

1. PURPOSE OF REPORT

1.1 The purpose of this report is to present for determination a planning permission in principle application which is to be considered firstly by the Local Planning Committee. Under the scheme of delegation the proposed development represents a major application in terms of the Town and Country Planning (Hierarchy of Development) (Scotland) Regulations 2009 which is significantly contrary to the Development Plan and therefore determination of the application rests with the Council. The Local Planning Committee is required to consider all representations made as part of a pre-determination hearing procedure prior to making a formal recommendation on the application to a subsequent meeting of the Council.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site lies within Caponacre Industrial Estate off Glaisnock Road in Cumnock, and located on the south-western corner of the industrial estate immediately east of, and sharing a frontage with, Cairn Road. The private residential development site of Low Burnside lies immediately south-west of the application site, with the site otherwise being bounded by existing industrial premises within Caponacre. Opposite the Cairn Road frontage of the site lies the vacant site of the former Walkers Shoe factory, now demolished.

2.2 The application site extends to approximately 0.85 hectare and comprises the former Blackwood Brothers carpet yarn spinning factory and its curtilage. The factory has been unused for a period of approximately 10 years, is currently in a dilapidated condition and shows evidence of vandalism. Access to the site is currently taken from two points on the existing industrial estate road. In topographical terms the site falls gradually in level from north-west to south-east in parallel with the industrial estate road.

2.3 **Proposed Development:** Planning permission in principle is sought for the residential development of the site in the form of a retirement flat complex and also for a commercial development comprising a nursing home. The applicant has submitted indicative plans (layout, some elevations and floor plans) for the two proposed elements of the application which provides for the following:

(i) **Residential Retirement Flats:** The flats, which the applicant describes as being “managed”, number 55 in total within a building predominantly four stories in height. Due to the levels within the site, part of the building presents as three stories in height. Three flat types are proposed with 38 type R1 (one bedroom), 14 type R2 (one bedroom) and 3 type R3 (two bedrooms). One of the type R1 flats is to be used as a manager’s flat. Access to floors would be by communal stairwells and a central lift. Communal facilities would include a lounge area with a small kitchen, a separate laundry room and a manager’s office.

(ii) **Nursing Home:** The indicative plans show a three storey building that would accommodate 16 resident’s bedrooms on the ground floor and 22 on both the first and second floors of the building, providing a total of 60 bed space. Each bedroom has its own en-suite bathroom. Communal facilities on the ground floor comprise a dining hall / activities lounge, a quiet lounge, a hair / health/ beauty salon and a laundry room. Staff facilities include a staff room, a nurse’s office, a general office and a kitchen. Provision is also made on the ground floor for one overnight visitor’s room. On both the first and second floors, provision is made for a communal toilet facility, a quiet lounge and a nurse’s office.

(iii) **Ancillary Development:** The indicative layout for the development provides for the formation of landscaped parking courts in front of each of the two separate buildings and for private landscaped garden areas to the rear of the proposed buildings for communal use by residents of both buildings. The two existing accesses off the industrial estate road will be retained and used, one serving each building.

2.4 The indicative plans and elevations of both buildings show consistency in design, layout, scale and use of finishing materials.

2.5 As a major development, the application has been the subject of Pre-Application Consultation and in this regard a Public Meeting / Exhibition was undertaken by the applicant on 16 April 2010. The PAC Report records that the event was attended by 5 people, all of whom had responded to the public advert in the local newspaper. The PAC Report further indicates that 5 responses had been received in respect of the invitation to comment on the proposals and expressing the following points:

- All of the respondents supported the principle of the development;
- Three of the respondents specifically stated that the site was a suitable location for the development;

- All respondents felt that the development would create much needed employment in the town;
- Four respondents expressed the view that the site had become an attraction for anti-social behaviour and that the proposal would address this matter;
- Three respondents considered that the development would have a positive effect on the wider image of Cumnock;
- Two respondents considered it unlikely that the existing building would find a new occupier;
- One respondent confirmed an interest in being involved with the operation of the facility as he already owns and runs an existing care home;
- Two respondents considered the scale of development shown on the indicative plans to be suitable for the site; and
- The proximity of the site to the town centre, bus stops and ease of access were identified by one respondent as further factors in support of the scheme.

3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Roads and Transportation Service has no objections to the proposed development subject to conditions as follows:

- (i) Junction visibility splay areas of 2.5 metres by 35 metres will be required at each of the site accesses with no object greater than 1 metre in height allowed within the splay areas formed.
- (ii) No surface water must be allowed to discharge from the site onto the adjacent public road / footway.
- (iii) Residents and visitor parking must be provided in line with the Roads Development Guide 1996.
- (iv) The vehicular accesses will require to be hard paved for a minimum distance of 5 metres from the rear of the footway to avoid overcarry of loose material onto the public road / footway.
- (v) Any access gates must only be able to open inwards away from the public road.

Conditions can be attached to any consent granted for the proposed development to meet the requirements of the Roads and Transportation Service.

3.2 Cumnock Community Council has not responded to the consultation letter.

3.3 SP Energy Networks, Scottish Water and Scotia Gas Networks have no objections to the proposed development.

3.4 East Ayrshire Council's Environmental Health Service has no objections to the proposals but offers the following comments:

- (i) Noisy work on the site during construction should be restricted to 7am to 7pm Monday to Friday, 8am – 1pm on a Saturday, and no noisy work on a Sunday.
- (ii) Noise from the works during construction should at no time cause the underlying background noise level LA90(1hour) to rise by more than 3dB(A) at the nearest noise-sensitive location.
- (iii) All waste arising from the works should be disposed of to the satisfaction of the Waste Management Authority and otherwise than by burning.
- (iv) All drainage should be completed to the satisfaction of SEPA and/or Scottish Water.
- (v) The Contaminated Land Officer has not identified any specific area of concern but has suggested the inclusion of a general caveat on any conditions of approval to the effect that if any unsuspected contamination is encountered during the proposed works, the Council should be informed accordingly along with any required remedial measures formulated to address the risk of exposure to key receptors and subsequent confirmation of completion of works.

Conditions or advisory notes could be attached to any consent granted for the proposed development to meet the requirements of the Environmental Health Service.

3.5 The Scottish Environment Protection Agency has no objection to this planning application but provides the following advice:

- (i) **Site Drainage:** The applicant has indicated that if planning permission is granted for the site, all drainage (foul + surface) will be connected to the public sewerage system and in this respect they will require to deal directly with Scottish Water (SW). SEPA expects SW to ensure that the additional volume of drainage from the site(s) can be accommodated within the public sewer and will not cause or contribute to the premature operation of existing consented sewer overflows. SEPA would encourage the applicant to investigate the feasibility of disconnecting the surface water arising at the site from the combined public sewerage system and in this respect, it is noted from the site location plan that a tributary of the Glaisnock Water, namely the Horsecleugh burn, lies to the south east of the site. SEPA would encourage surface water runoff from all developments to be treated by SUDS in line with Scottish Planning Policy (Paragraph 209), PAN 61 Planning and Sustainable Urban Drainage Systems and PAN 79 Water and Drainage. SUDS help to protect water quality, reduce potential for flood risk and release capacity in the public sewerage network where the alternative is use of combined systems.

Discharges to combined sewers should be avoided to free up capacity for waste water discharges.

- (ii) **Space for Waste Management Provision within Site Layout:** In accordance with Scottish Planning Policy, space for collection, segregation, storage and possibly treatment of waste (e.g. individual and/or communal bin stores, composting facilities, and waste treatment facilities) should be allocated within the planning application site layout.

The applicant has been advised of the comments of SEPA, although it should be noted that the layout plan provided by the applicant is indicative only and would not form part of any consent. It is anticipated that should consent be granted for the proposed development, the comments of SEPA can be addressed at the detailed planning stage.

3.6 East Ayrshire Council Environmental Health Service has no objection in principle to this application and the contaminated land database has not identified any specific area of concern but, due to the sensitive nature of the development (residential housing and gardens) and the lack of detailed information on the site's history, it is recommended that prior to granting full planning permission, the developer should, as a minimum requirement, undertake an initial "Desk Study" to establish whether or not there is the potential for contaminants to be present in the soil which may pose an unacceptable risk to key receptors. A Desk Study report should contain the following information;

- Purpose and aims of study.
- Site location and layout plans appropriately scaled and annotated.
- Appraisal of site history.
- Appraisal of site walkover survey.
- Assessment of environmental setting, to include:
 - Geology, hydrogeology, hydrology
 - Information on coal workings (if appropriate)
 - Information from SEPA/East Ayrshire Council including, pollution incidents, water quality classification, landfill sites within 250m etc.
- Assessment of current / proposed site use and surrounding land uses.
- Review of any previous site contamination studies (desk based or intrusive) or remediation works.
- Preliminary (qualitative) assessment of risks, to include:
 - Appraisal of potential contaminant sources, pathways, and receptors (pollutant linkages).
- Conceptual site model.
- Recommendations for intrusive contamination investigation (if necessary) to include identification of target areas for more detailed investigation.

The Desk Study Report should be submitted with the Full Planning Application.

A condition can be attached to any consent granted for the proposed development to meet the requirements of the Environmental Health Service.

3.7 Scottish Natural Heritage has not yet responded to the consultation letter.

3.8 East Ayrshire Council's Legal Service advises that the application site is the subject of a Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997 (as amended) where there is a burden on the title of the land to maintain use of the building and land for industrial use. This burden was imposed following the approval of a planning application for residential development on part of the factory site (see section 6.2 below). Should the proposed development under the present application be approved, this Section 75 Agreement would require to be formally discharged.

3.9 East Ayrshire Access Panel (South) has no specific comments to make at this planning permission in principle stage.

4. REPRESENTATIONS

4.1 There are no third party representations raising any objections to the proposed development. One letter of support has been received from a care home operator expressing interest in operating the proposed nursing home element of the proposed development. The operator feels that the development would be beneficial to the local area and would create much needed employment opportunities.

While recognising that the proposed residential nursing home element of the proposed development has the potential to create up to 75 jobs (from information provided by the applicant), the proposal remains significantly contrary to the policy provisions in the recently adopted East Ayrshire Local Plan, 2010.

Furthermore, the development of a nursing home, or indeed a retirement flat complex, within an active industrial estate is not considered to be in the interests of good planning, where existing and potential general industrial uses, with consequent potential disturbance through noise etc., would have a detrimental impact on the amenity of what would be considered as a 'sensitive' land uses.

5. ASSESSMENT AGAINST DEVELOPMENT PLAN

5.1 Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of this application the development plan comprises the Approved Ayrshire Joint Structure Plan (2007) and the Adopted East Ayrshire Local Plan (2010).

East Ayrshire Local Plan

5.2 The site lies within the Caponacre Industrial Estate in Cumnock and is primarily affected by Policy CUMNOCK 2 which states that the Council will safeguard stated sites for continuing industrial use and as preferred areas to which new industrial and business development will be directed. Caponacre Industrial Estate is identified as Development Opportunity Site 022B in the adopted local plan.

The proposal is located in a safeguarded industrial area within Cumnock, the purpose of which is to ensure there is an adequate supply of prime quality industrial land within the town for economic development purposes. The proposed development would result in the loss of a large part of the Caponacre Industrial Estate and consequently the proposal would not accord with the policy provisions of the adopted local plan.

5.3 Policy IND3 states that proposals for business, industry and storage and distribution uses of a local nature falling within Classes 4, 5 and 6 of the Use Classes Order will be directed towards those Business and Industry Development Opportunity Sites specifically identified in the plan and safeguarded for such purposes on the local plan maps.

The nursing home element of the proposed development falls within Class 8 of the Use Classes Order. The proposed “managed” retirement flats, dependent on the specific circumstances, may fall also within Class 8 or alternatively within a ‘Sui Generis’ class, (i.e. in a class of its own). Consequently the proposed development would be contrary to the provisions of Policy IND3 which seeks to safeguard Caponacre Industrial Estate for the stated business, industry and storage / distribution uses.

5.4 Policy SD2 states that the Council will positively encourage new developments throughout East Ayrshire which make the area more attractive to inward investment. The Council will also specifically encourage developments for improved or additional facilities and amenities which, in turn, help improve the quality of life for residents, particularly within the more disadvantaged parts of the

authority area and within those areas suffering from problems of economic and environmental decline.

There is no doubt that in general terms, the proposed development would result in improved facilities within Cumnock and provide significant inward investment in itself, with the added benefit of creating up to 75 jobs. The removal of a factory building in a poor state of repair that currently detracts from the visual amenity of the existing industrial estate, and in its current condition could act as a deterrent to inward investment, would also be of benefit.

In this regard, the proposed development would be consistent with the policy provisions of Policy SD2. However, in this case, the application site lies within a safeguarded industrial estate and the proposed development presents sensitive uses which are not considered to be compatible with the industrial use of the site. It is considered that the provisions of Policies CUMNOCK2 and IND3 carry more weight in the assessment of the proposed development. The proposed development should be directed to a more appropriate location outwith the safeguarded industrial site.

5.5 Policy RES29 relates to developer contributions and states:

“Where a development of 4 or more houses, either on its own, or in association with existing developments, will place additional demands on community facilities or infrastructure that would necessitate new facilities or exacerbate deficiencies in existing provision, the council will require the developer to meet or contribute to the cost of providing or improving such infrastructure or facilities. Contributions will relate to the development concerned, including in nature, scale and kind. Where these cannot be secured by planning conditions or other appropriate means, the council will expect developers to complete a section 75 or other legal agreement. Contributions sought under this policy will be waived or reduced only in exceptional circumstances – for example, where a developer demonstrates that a development would have exceptional development costs, would bring particular economic, social or other benefits, or is ‘enabling development’ as defined in the plan.”

The Supplementary Planning Guidance on developer contributions indicates that for this development, the developer contribution, in respect of the residential units associated with the proposed retirement flat complex, would be as follows:

Corridor wide contribution	£78 per unit
Cumnock contribution	£113 per unit
Administration Fee	£60 per unit
Total per unit	£251per unit

The applicant has indicated a willingness to enter into a Section 75 Agreement in respect of the Developer Contribution relating to the residential element of the proposed development.

5.6 Policy RES30 relates to community care housing and states that the Council will require the provision of community care housing for older people, people with a physical or learning disability etc. on the site identified and specifically safeguarded for such developments on the local plan maps. Community care housing provision on other sites within close proximity to a post office or range of shops and located on a public transport route will be acceptable to the Council subject to the following considerations:

- (i) impact on the surrounding environment and adjacent uses;

The application site is a safeguarded industrial site, not one identified for the provision of community care housing. In this regard it is considered that the introduction of a sensitive use into an established industrial estate could have a detrimental impact on the operation of the proposed use and indeed upon the operation of existing / future business and industrial activities in the estate.

- (ii) transportation and infrastructure implications; and
- (iii) loss of maintained open space.

It is considered that the proposed development, being located within an industrial estate, and peripheral to the town centre of Cumnock, and not within close proximity to shops or located on a public transport route, would be inconsistent with the spirit of Policy RES30.

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of the application are the consultation responses and the planning history of the site.

Consultations Responses

6.2 The consultation responses received do not indicate that the proposed development should be refused.

Planning History

6.3 The relevant planning history of the site is as follows:

- (i) 02/0598/FL: Proposed refurbishment of existing weaving shed and associated facilities, re-instatement of services and installation of cladding on façade of office block, Blackwood Brothers Factory, Caponacre Industrial Estate, Cumnock: Approved 11 September 2009.
- (ii) 04/0532/LD: Application for Certificate of Lawfulness for the process of disassembly of fridges and recovery of CFC gases at former Blackwood Brothers Factory, Caponacre Industrial Estate, Cumnock: Granted on 24 June 2004.
- (iii) 06/0054/OL: Proposed development of land for residential purposes on the rear yard area of former Blackwood Brothers factory at Caponacre Industrial Estate, Cumnock. This application was approved on 30 May 2006 by the former Development Services Committee, contrary to recommendation, on the grounds that the proposed development would represent an acceptable departure from the Development Plan since proceeds from the proposed sale of the application site for residential purposes would form part of the necessary funding package for development of the applicant's business to operate from the former Blackwood Brother factory site. The Committee considered that the proposed business use had the potential to provide significant economic and employment benefits within the local area. The approval of the residential development was the subject of a Section 75 Agreement which has the effect of ensuring that the use of the factory building (the subject of the present application) remains in industrial use. This Section 75 Agreement remains in force at this time

The Section 75 Agreement binds the use of the existing premises and land pertaining to the current application site to industrial use only. In this regard, the applicant would require to seek a legal discharge of this agreement to allow the proposed development to proceed, should consent be granted. This burden on the title of the application site is a legal matter and does not prevent consideration of the planning merits of the current application, albeit that it is a material consideration given the planning history of the application site.

It is noted that the proposed business "enabled" by the residential development approved has failed to establish itself within the factory unit.

- (iv) 07/0361/RM: Proposed erection of 18 dwellings at Cairn Road Cumnock: Approved on 08 August 2007.

Planning Advice Note 56: Planning for Noise

6.4 PAN 56 states that although the planning system cannot tackle existing noise problems directly, it has the task of guiding development to the most suitable locations and in regulating the layout and design of new development. The noise implications of development can be a material consideration in determining applications for planning permission. Activities that generate high levels of noise can be difficult to reconcile with noise sensitive land uses like housing, hospitals or schools. Planning authorities can do two things. Noise-sensitive developments can be separated from major noise sources or orientated and designed to minimise the impact of noise. New development can also be sited away from noise-sensitive land uses. PAN 56 considers that the juxtaposition of incompatible uses can cause problems for the occupiers of both the new and existing development. For example, where a residential development is proposed in the vicinity of existing industrial uses, the expectations of new residents may exceed the standards applied by the planning authority and which may give rise to local pressure to curtail the existing use. Planning authorities should, therefore, try as a matter of good practice to keep a suitable distance between noise sensitive development and established businesses that generate noise.

The proposed development promotes the construction of a nursing home and a retirement flat complex, which could be considered in planning terms as noise sensitive uses. The proposed development is located within Caponacre Industrial Estate and in close proximity to existing industrial premises. Albeit some of these premises are not in full use, that situation could change.

In determining applications for development that will be exposed to an existing noise source, planning authorities have to consider both the likely level of noise exposure at the time of the application and any increase that may reasonably be expected in the foreseeable future. Given the nature of the proposed development and the potential for noise disturbance now and in the future, from the industrial use of existing premises that may lie outwith the control of the planning authority, it is considered that it would be contrary to good planning principles to allow potential noise sensitive development within an industrial estate specifically safeguarded for such industrial uses.

The Conservation (Natural Habitats, &c.) Regulations 1994

6.5 The application has been accompanied by a bat roost survey that explores the potential for bats roosting in the vacant building or within some of the trees within the application site. The report concludes that while there are bats foraging in the area, the survey indicates that bats are not roosting in the site. Nonetheless, the applicant has prepared a Bat Method Statement in the event that bats are encountered during any demolition works to the existing factory building.

With respect to bats, which are European Protected Species (EPS), it is considered that appropriate survey work has been undertaken and has demonstrated that there is low risk to bat species and that appropriate measures will be undertaken by the applicant to address such issues during demolition of the factory building, should consent be granted for the proposed development.

Consequently the Planning Authority has reasonably considered the general requirement established under Regulation 3(4) to have regard to the provisions of the Habitats Directive, and in particular to the provisions of Articles 12 and 13 of the Directive and Regulations 39 and 43 of the 1994 Regulations.

Supporting Planning Statement by the Applicant

6.6 The applicant has provided a comprehensive Planning Statement in support of the planning application. The statement recognises that the proposed development is contrary to the business and industrial land use designation and the associated safeguarding policies as defined within the Development Plan. The statement however also suggests that there is a general flexibility in the planning system and that the current Development Plan allows the positive consideration of technically contrary proposals, provided that material considerations exist to allow a deviation from planning policy.

6.7 The statement considers that there are numerous material considerations relevant to the proposed development that would allow approval of permission in this instance which, in summary, include:

- (i) There is currently no interest in either the site or the existing building for the allocated uses. It has lain empty for 10 years and a current marketing initiative has failed to generate any interest. Prospects for the short to medium term remain pessimistic given the current economic situation.
- (ii) The site has been subject to vandalism and anti-social behaviour which is a cause for concern for the site owners as well as the nearby residential properties.

- (iii) There is more than sufficient supply of industrial land and premises within Cumnock to meet the demand (based on an analysis of take up since April 2000) even accounting for the loss of the application site from this land supply.
- (iv) The proposed development would generate up to 75 jobs associated with managing and operating the two facilities. This is not an insignificant level of new employment in an area with nearly double the national average unemployment rate (based on 2001 Census).
- (v) This part of Cumnock has undergone change in character with several recent residential completions and allocations within close proximity to the application site. The proposed uses would therefore, arguably, be more in keeping with the emerging character and amenity of the area than a Class 4, 5 or 6 business use would be.
- (vi) 100% of people who responded to the pre-application consultation event expressed support for the development, with several citing lack of such facilities in Cumnock as the reason for their support.

6.8 The statement suggests that these considerations are material to the application and sufficiently robust to warrant a recommendation for approval of permission in this instance, against the safeguarding policies of the Development Plan.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial implications for the Council in the determination of this application. Legal implications will arise in respect of the existing Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997, as amended) regarding a potential discharge of the obligation to maintain the building and land in industrial use should the committee be minded to recommend approval of the proposed development. Further legal implications will arise in securing mandatory Developer Contributions in terms of Policy RES 29 of the adopted East Ayrshire Local Plan 2010 as indicated in Section 5.5 above, again should the committee be minded to recommend approval of the application.

8. CONCLUSIONS

8.1 As indicated in section 5 of the report, the application is considered to be significantly contrary to the development plan. Therefore, given the terms of Section 25 and Section 37(2) of the Town and Country Planning (Scotland) Act 1997, the application should be refused unless material considerations indicate otherwise. As is indicated at Section 6 of the report, there are material considerations relevant to this application but it is considered that they are not of

sufficient weight to merit approval of the application contrary to the provisions of the recently adopted local plan which safeguards the site for industrial purposes.

8.2 The proposed development overall presents both potential benefits and disbenefits which can be summarised as follows:

Benefits

- (i) The proposed development has the potential to create up to 75 jobs both in staffing of the nursing home and in the supervision of the retirement flat complex. The construction programme would also provide short term employment opportunities. Overall, there could be significant long term socio-economic benefits accruing from the proposed development.
- (ii) The proposed development would result in the removal of an existing vacant industrial unit which is presently detracting from the overall amenity of the local area including the industrial estate itself. The premises have lain empty for some considerable period of time and, with ongoing vandalism and little prospect of re-use for industrial purposes in the present economic climate, the fabric of the building will continue to deteriorate.
- (iii) The proposed development would assist in meeting potential shortfalls in this type of accommodation given the continuing ageing population profile.

Disbenefits

- (iv) The proposed development will result in the loss of a substantial factory unit and land within a safeguarded industrial estate. This would lessen the ability of the Cumnock area to respond positively to potential industrial and business developers in locating within Cumnock.
- (v) The location of a nursing home and retirement flat complex within a safeguarded industrial estate is not considered to be in the interests of good planning. The outlook from the proposed development will essentially be one of an industrial landscape and the potential for noise disturbance to such sensitive uses is considered to be high both now and in the future.
- (vi) There is a lack of any nearby facilities to support both the retirement flat complex and the nursing home.
- (vii) The proposal will fundamentally alter the character and amenity of an industrial site and if the application is approved it could set a precedent for further encroachment of non-industrial development onto this safeguarded site.
- (viii) The proposal, if implemented, would become a material consideration in the assessment of otherwise appropriate industrial development in the area and as such could limit industrial development.

8.4 The applicant's supporting statement makes reference to recent planning application approvals where residential development has been approved in close proximity of the site. Indeed part of the land associated with the present application site has been developed for 18 dwellings. The supporting statement suggests that the character of the industrial estate is already changing. Nonetheless, it is considered that the policy provisions of the adopted local plan are considered even more appropriate in such circumstances to prevent further loss of safeguarded industrial land. As indicated in section 6.3 above, the development of the 18 dwellings under application 06/0054/OL was essentially conditional on the basis that the existing factory and land associated with the present application site be retained in industrial use. Given the history of the application site in this regard, this remains a material consideration in the determination of the present application, although it is considered that greater weight should be afforded to the development and other material considerations relevant to the proposals.

8.5 Taking account of the provisions of the development plan and all relevant material considerations associated with this proposed development, it is considered that the provisions of the development plan carry greater weight than the material considerations of the application which are mainly supportive of it. It is considered that, notwithstanding the policy provisions which safeguard the use of the application site for Class 4, 5 and 6 industrial / business uses, the location of a retirement flat complex and particularly a nursing home within a long established industrial estate is not in the interests of good planning principles and would run counter to the spirit of integrating such uses within more central areas where service provision and facilities are more readily available.

8.6 There is no doubt that the proposed development would provide additional facilities for Cumnock and would marry in well with current economic regeneration and environmental initiatives in Cumnock. However, it is considered that for the reason stated above in this report, the development of these facilities on the present application site is incompatible with, and inappropriate to, the industrial designation of the area in which they are to be located. Indeed, the proposals may limit the extent of industrial regeneration in their vicinity.

9. RECOMMENDATIONS

9.1 It is recommended Local Planning Committee endorses the view of the Head of Planning and Economic Development that planning permission in principle application 10/0548/PPP be refused for the reasons indicated on the attached sheet.

9.2 It is recommended that the recommendation of the Local Planning Committee be subsequently referred to the Council for consideration in the determination of this planning application.

Alan Neish
Head of Planning and Economic Development

HM/HM
FV/ DVM

15 February 2011

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
2. Statutory Notices and Certificates.
3. Consultation responses.
4. Letter of Support
5. Supporting Planning Statement.
6. Pre-Application Consultation Report.
7. Bats and Nesting Birds Report.
8. Bat Roost Survey.
9. Transport Statement.
10. Adopted East Ayrshire Local Plan (2010).
11. Approved Ayrshire Joint Structure Plan (2007).

Anyone wishing to inspect the above background papers should contact Mr. Hugh Melvin on 01563 555481

Implementation Officer: Dave Morris

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

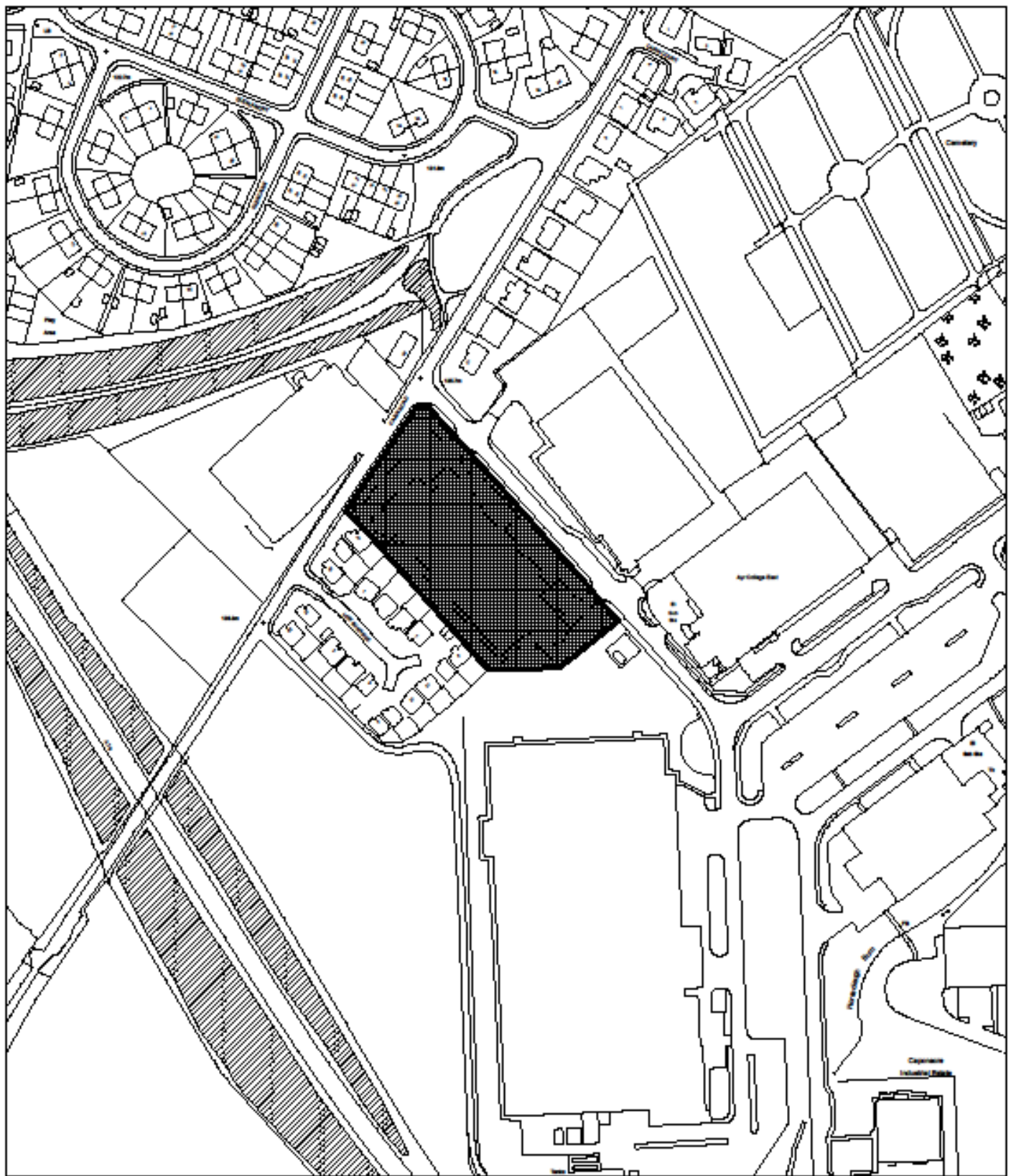
Application No: 10/0548/PPP

Location	Unit B1, Caponacre Industrial Estate Cumnock, KA18 1SH
Nature of Proposal:	Application to construct a Nursing Home (60 beds) and a retirement flat complex (55 flats) with associated car parking and landscaping.
Name and Address of Applicant:	New City Homes C/o Agent
Name and Address of Agent	Simon Herriot James Barr Limited 226 West George Street GLASGOW G2 2LN

PPO's Ref: Hugh Melvin

The above PLANNING PERMISSION IN PRINCIPLE application should be REFUSED for the following reasons:

1. The proposed development of a nursing home and retirement flat complex within an existing industrial estate, specifically safeguarded for business, industry and storage and distribution uses of a local nature falling within Classes 4, 5 and 6 of the Town and Country Planning (Use Classes) (Scotland) Order, 1997 is contrary to Policies CUMNOCK2 and IND3 of the adopted East Ayrshire Local Plan 2010.
2. The approval of a nursing home and retirement flat complex within an established industrial estate, and safeguarded for such purposes in terms of the adopted East Ayrshire Local Plan 2010, is not in the interests of good planning principles and would run counter to the spirit of integrating such uses within more central areas where service provision and facilities are more readily available.
3. The development of a nursing home and a retirement flat complex on the application site, being wholly within a safeguarded industrial estate, is incompatible with, and inappropriate to, the industrial designation of the area in which they are to be located. The amenity of the proposal would be adversely affected by adjacent industrial and business activity and, in turn, such activity could be constrained should the development be implemented.



Title/Location **Caponacre Road,
Cumnock,
Application No. 10/0548/PPP**

Key  **Application Site**

East Ayrshire Council
Department of Neighbourhood Services
Planning & Economic Development Service.
6 Croft Street
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Com Date: 25/2/2011



