

EAST AYRSHIRE COUNCIL

SPECIAL COUNCIL MEETING – 26 AUGUST 2010

RECOMMENDATION OF SPECIAL NORTHERN LOCAL PLANNING COMMITTEE HELD ON 24 JUNE 2010 RELATING TO PLANNING APPLICATION NO 08/0374/FL: ERECTION OF FOOD STORE AND ASSOCIATED PARKING AREA AT LAND TO THE SOUTH OF THE A71, GALSTON BY TESCO STORES LTD/DAWN DEVELOPMENTS 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 Council of the recommendation of the Special Northern Local Planning Committee held on 24 June 2010 regarding the above planning application, and for Council to determine the application for planning permission in terms of the Scheme of Delegation on the ground 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 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 development 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 08/0374/FL: ERECTION OF FOODSTORE AND ASSOCIATED PARKING AREA AT LAND TO THE SOUTH OF THE A71, GALSTON BY TESCO STORES LTD/DAWN DEVELOPMENTS LTD

- 3.1** The application is for planning permission for the erection of a food store and associated parking area at land to the south of the A71, Galston. It is deemed that 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 considered significantly contrary to the Development Plan and as such it is for the Council to determine.

3.2 Pre-Determination Hearing

3.2.1 A special meeting of the Northern Local Planning Committee held a Pre-Determination Hearing on 24 June 2010 to consider the report dated 17 June 2010 by the Head of Planning and Economic Development (the report is attached as Appendix 1).

3.2.2 Members of the Northern Local Planning Committee were advised; (i) that the application was advertised in the Kilmarnock Standard on 23 August 2008 and six letters of objection and a petition of objection with 485 signatures had been received in connection with the application (summarised in the attached report); (ii) 24 letters of support were received but were received outwith the statutory time period for neighbour notification and were not included in the summary in the attached report for that reason; and (iii) of the recommendation of the Head of Planning and Economic Development as follows:

- (i) that the Local Planning Committee approves the recommendation of the Head of Planning and Economic Development that the application should be refused for the reasons detailed on the sheet attached to the report at Appendix 1;
- (ii) that the recommendation of the Local Planning Committee should be notified to the Council for consideration in their determination of the application;
- (iii) in the event that the Local Planning Committee did not approve the recommendation of the Head of Planning and Economic Development and recommended that the application should be approved, then in those circumstances, prior to the application being notified to the Council for determination, it was recommended that the application be delegated to the Head of Planning and Economic Development to provide a list of planning conditions to be attached to any subsequent approval; and
- (iv) that in the Council's determination of the application, they have regard to such conditions as are drafted by the Head of Planning and Economic Development should recommendation (iii) above apply.

3.2.3 The Committee heard Katherine Sneed the applicant's agent, and Paul O'Donnell representing the applicant in support of the application. Members of the Committee asked questions of the applicant's agent and the applicant's representative.

3.2.4 The Committee heard the following statutory consultees: Margo Dykes in respect of Galston Community Council, and John McRobert, East Ayrshire Council Roads and Transportation Flooding Section, in terms of their responses as contained in section 3 of the attached report. Members of the Committee asked questions of the statutory consultees.

3.2.5 The Committee then heard Linda Thompson in respect of her own objections and those of Gerard Thompson, and Catherine Knapp in support of her own objections all as contained in section 4 of the attached report. Members of the Committee asked questions of the objectors.

3.2.6 Alan Neish, Head of Planning and Economic Development; Karl Doroszenko, Development Planning and Regeneration Manager; and Gwen Findlay, Team Leader, Roads and Transportation Service provided clarification on points raised during the Hearing with regard to the creation of jobs; the effect on the nearby Co-op Store; the effect on the Irvine Valley; the investment by the Council into Galston; hours of operation of the proposed store; the discharge of sewerage; noise implications; the information provided by the applicant on the retail impact assessment; top up shopping; the scale of the development; the junction with the A71; the provision of traffic lights; and parking provision.

3.3 Recommendation by Special Northern Local Planning Committee

3.3.1 Having heard the Pre-Determination Hearing, the Special Northern Local Planning Committee noted by majority the terms of the proposed social and economical benefits of the application and felt that they attracted greater weight than the policy position contained within the Development Plan or, the Report on the examination of the Alteration of the East Ayrshire Local Plan Finalised Draft. As a consequence, the Local Planning Committee agreed by majority:

- (i) to recommend to Council that this application be approved and that it be remitted to the Head of Planning and Economic Development to provide a list of Planning Conditions to be attached to any subsequent approval (attached as Appendix 2) with particular regard to the following: flooding (mitigation measures); Scottish National Heritage conditions; satisfactory discharge of sewerage; traffic-light upgrade; no pharmacy; suitable delivery times; and opening hours;
- (ii) to recommend to Council that the decision notice should be withheld until the Solicitor to the Council has satisfactorily concluded a formal Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 with the applicants in respect of the matters contained in Section 7.1 of the attached report and the following additional matters, namely: support be provided by the applicants for business start-ups across the whole of the Irvine Valley; support be provided by the applicants to local schools regarding business start-ups as part of supporting the curriculum for excellence in these schools; and the above mentioned traffic-light upgrade was to be paid for by the applicants;
- (iii) that this recommendation of the Local Planning Committee be notified to the Council for its consideration in the determination of the application; and
- (iv) to note that the application if approved by Council required to be submitted to the Scottish Ministers in accordance with the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009.

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 Special Meeting of the Northern 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. RECOMMENDATION

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 Special Northern Local Planning Committee as detailed in Paragraph 3.3.1, above, and the list of Planning Conditions suggested by the Head of Planning and Economic Development attached as Appendix 2; and
- (ii) to otherwise note the contents of the report.

Alex McPhee
Executive Director of Finance and Corporate Support

18 August 2010
JM/KS

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

SPECIAL NORTHERN LOCAL PLANNING COMMITTEE: 24 JUNE 2010

08/0374/FL: ERECTION OF FOODSTORE AND ASSOCIATED PARKING AREA

AT: LAND TO THE SOUTH OF THE A71, GALSTON

BY TESCO STORES LTD / DAWN DEVELOPMENTS LTD

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 The application comprises the erection of an “eco foodstore” constructed on stilts, with associated car park and the formation of a bus shelter and lay by in Polwarth Street as follows:

- a 3,346 square metres (36,017 square feet) gross floor area supermarket
- 24 hour store opening
- formation of a bus shelter and bus lay by at Polwarth Street
- 255 car parking spaces
- Automated teller Machine
- Recycling area

The proposed store build concept includes a steel and concrete stilted plinth and above the plinth the store is constructed around a hybrid timber frame engineered to reduce the materials required to the minimum. The finished material of the north elevation of the proposed store is formed by a glazed curtain wall, the elevation facing onto Polwarth Street comprises a slitted louvre system, grey coloured composite cladding panels, sustainable wooden cladding (larch) and a glazed curtain wall to the upper section of the elevation. The south facing elevation is finished in a slitted louvres system, sustainable wooden cladding (larch) with metal louvres to the upper section. The east elevation is proposed to be finished in grey coloured composite cladding panels with a glazed curtain wall to the upper section of this elevation. Roof lights are incorporated into the store design and allow natural light onto the shop floor. Roof ventilators are proposed to enable warm air to escape naturally without mechanical means and allow cold air to naturally enter the building.

Accompanying documents submitted by the applicant include:

- Retail Impact Assessment (RIA)
- Transport Assessment (TA)

- Sustainability Statement (ST)
- Design Statement
- Flood Risk Assessment (FRA)
- Drainage Philosophy
- Planning Assessment
- EKOS – economic development report
- Applicant’s supporting letter.
- Galston – Contributing to Sustainable Regeneration (see part 6 of this report)

The above documents are summarised below:-

1.2 The applicant’s submitted Retail Impact Assessment (RIA) describes the main elements of shopping provision within the catchment area and an assessment is made of their vitality and viability. The RIA attempts to demonstrate the impact of the proposed superstore on the vitality and viability of Galston Town Centre and on Hurlford, Newmilns, Darvel and Kilmarnock. The RIA states that Galston and other towns within the Irvine Valley are only served by top-up supermarkets, the largest being the CO-OP. The proposal intends to provide a store of a size that provides a main food shopping alternative which will result in people shopping locally, allowing for expenditure to be kept in the Irvine Valley. The applicants state that these aspects are evidenced in an independent household survey where only 10.2% of respondents indicated that they undertook their main food shop at stores in the catchment area and an improvement in the range of goods available was a key requirement for Galston.

1.3 The RIA further assesses that there is both a quantitative and qualitative requirement for a new supermarket of the size proposed in the application. The applicants state that their retail assessment has shown that there is growth in both convenience and comparison goods sectors and that the proposal does not significantly impact upon any town centre, but will in fact complement the existing retailing provision in Galston.

1.4 Details regarding the size of the superstore have been submitted within the RIA. The gross floorspace will comprise 3,346 square metres with a net area of 2,272 square metres. The non food (comparison) goods range, which the new store is intending to sell, includes CD’s DVD/videos, stationery , health and beauty products, magazines, books and greeting cards/wrap. Other in-store facilities will include a delicatessen, bakery, fresh fish and hot chicken counter.

1.5 The Transport Assessment (TA) addresses the impact of the proposed development on the surrounding road network. Detailed consideration has been given by the applicants to existing sustainable forms of transport including walking, cycling and public transport. Vehicular access to the development would be from the access road to the CO-OP store utilising the existing junction onto the A71. A signalised pedestrian crossing facility exists on the A71, west of the access priority junction, which provides access to and from the bus stop on the north side of the A71.

1.6 The TA confirms that the development can be incorporated within the existing road network without adverse impact at any of the surrounding junctions and concludes that the proposed development will integrate well within the transport network and be consistent with policy requirements provided that mitigation measures are put in place.

1.7 The applicants have submitted a Sustainability Statement which assesses the renewable technology options for the site and opportunities to reduce the carbon footprint and operation of the proposed store and highlights the applicants' commitment to improve the sustainability of their developments.

1.8 The proposed "eco store" incorporates measures to enable the energy consumption of the store to be minimised in line with the recommendations of PAN 45. These include rooflights, dimmable lights and high efficiency lighting, reduction in night time lighting levels, better than standard U values for external walls, solar shading, heat recovery from air handling units, and good air permeability levels. The store also proposes to install a Biofuel CHP plant (combined heat and power) and heat recovery, which are classified as zero carbon technologies. The proposal also includes on site recycling facilities and the applicants assert that 71% of all waste from the store is to be recycled.

1.9 The Design Statement submitted with the application seeks to explain the design principles and concept which underpin the planning application for the store and explains why the design solution is the most suitable. The Design Statement explains and illustrates that design concept of the proposed layout, landscape, scale and mix, details and materials.

1.10 The Design Statement concludes that the store has been located and developed according to the relationships between the site and the surrounding area. The location of the site has challenged the use of a conventional store building due to the element of flood risk involved. The materials sit sympathetically within the context of the Galston Conservation Area without compromising the function of the building. The store is located in close proximity to the A71, the A719 and Galston Town Centre and has established links to the town centre.

1.11 The applicants have submitted a flood risk assessment and an addendum report which states that hydraulic modelling has shown that ground levels at the site lie within the medium to high risk flood area as defined by Scottish Planning Policy Flooding and Drainage. The proposed development has been designed specifically to address flood management and the store floor level and other critical infrastructure have been elevated above the predicted climate change flood level. Modifications to site levels have been proposed to ensure that the development does not adversely impact on the floodplain storage. The applicants' information states that hydraulic model results predict that there will be no significant adverse effects on nearby flood levels as a result of the proposed development. It is proposed to elevate the store on columns to avoid the need for land raising. Compensatory storage has been incorporated into the proposals to avoid any adverse effect on floodplain storage.

1.12 The applicants' flood management plan will include evacuation of the site when a flood warning is received. Safe access will be maintained above the 1:200 plus climate change flood level to the store from the Galston Bridge. The FRA states that flooding of the site is expected to be gradual and timely evacuation of the site should be possible even in a case of a failure of the Scottish Environment Protection Agency flood warning system.

1.13 The Drainage Philosophy submitted by the applicants concludes that surface water and foul water systems will be separated and will discharge into the River Irvine and the public combined sewer respectively. The need for a sustainable urban drainage system has been recognised by the applicants and will be incorporated into the design proposals, along with the additional storage required to negate the impact of the development on the current flood pattern.

1.14 The applicants' submitted Planning Statement assesses the proposal against national planning policy, structure plan policy and the relevant East Ayrshire Local Plans. The statement concludes that the proposal meets an identified quantitative and qualitative food shopping requirement and is of a scale appropriate to the size of the town, and of the requirement to claw back trade currently being lost to Kilmarnock. The applicants' conclude that Structure Plan and Local Plan policy confirms that Galston is the most appropriate location for a new retail development within the Irvine Valley, with no sequentially preferable sites available.

1.15 The applicants have undertaken an economic impact appraisal for the proposed development which indicates that an investment of £13 million for the store would result in direct and indirect benefits to Galston. The proposed store is estimated to generate 16000 individual shopper transactions each week which the applicants consider will generate significant additional benefits to the existing retailers in Galston town centre.

1.16 In terms of employment the economic impact appraisal states that the total gross employment for direct on site jobs is 175 Full Time Equivalents (FTE). In addition to the employment benefits the applicants' economic impact assessment states that the development of a new Tesco superstore could generate a range of qualitative impacts and benefits for Galston, including:

- reducing retail leakage in terms of customers and spend by providing an attractive and competitive alternative to the existing retail offer of the town centre
- increasing the number of visitors to Galston by creating a destination retail product
- increasing town centre footfall through secondary retail trips;
- improving town centre vitality and viability through the spend generated through secondary retail trips
- making Galston a more attractive investment proposition by demonstrating the viability of Galston as an investment location
- reducing the vacancy rate of properties in the town centre by encouraging new investment and development. This creates a positive and virtuous cycle of improvement and change for Galston, making a considerable contribution

to the regeneration aspirations of a wide range of stakeholder partners, residents, businesses and public sector organizations.

1.17 The applicants have written directly to the Council stating that they believe that a new supermarket in Galston will stem a sizeable amount of retail leakage from the Irvine Valley. The applicants further state that since the A71 by passes Galston town centre there is little encouragement for shoppers to visit the town. This coupled with the current retail offer within the town centre means that many people choose to shop outwith Galston and the Irvine Valley. Consequently the applicants consider that a new Tesco will provide an anchor for shoppers in the Irvine Valley thereby encouraging linked shopping and spin off benefits to the regeneration of the town centre.

1.18 The applicants state that they are committed to helping to achieve the wider community regeneration objectives and will work as part of a wider team to deliver sustainable projects to Galston by contributing a range of expertise, management resources and mentoring to ensure sustainability in the development of the town and the local population. Tesco staff can offer a range of disciplines and expertise that could be readily utilized by the community including traders; this would be supplemented by Dawn Group management team who can help address specific development requirements of regeneration projects in the town.

1.19 In addition to the aforementioned proposed provision of management resources, the applicants have indicated that a developer contribution of £370,000 will be made available to be utilised in Galston for improvements to buildings and linked retail opportunities and towards the regeneration of Galston Town Centre.

2. RECOMMENDATION

2.1 It is recommended that the Local Planning Committee approves the recommendation of the Head of Planning and Economic Development that the application should be refused for the reasons indicated on the attached sheet.

2.2 It is recommended that the recommendation of the Local Planning Committee should be notified to the Council for consideration in their determination of this application.

2.3 In the event that the Local Planning Committee does not approve the recommendation of the Head of Planning and Economic Development and recommends that the application should be approved, then in those circumstances, prior to this application being notified to the Council for determination, it is recommended that the application be delegated to the Head of Planning and Economic Development to provide a list of planning conditions to be attached to any subsequent approval.

2.4 It is recommended that, in the Council's determination of the application, they have regard to such conditions as are drafted by the Head of

Planning and Economic Development should recommendation 9.2 above apply.

3. CONCLUSIONS

3.1 As is indicated in Section 5 of this report, the application is significantly contrary to a number of policies in the Ayrshire Joint Structure Plan and the East Ayrshire Local Plan. Under Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997, the application requires to be assessed against the provisions of the development plan which comprises these documents and should be refused if considered to be contrary to the development plan unless material considerations indicate otherwise.

3.2 As indicated at Section 6 of the report there are material considerations relevant to this application. The development of the site for retail purposes has been considered by the Scottish Government Reporter undertaking the Examination into the Alteration to the East Ayrshire Local Plan Finalised Draft. The Reporter has confirmed his concern about the scale of the potential supermarket and the lack of a close relationship with the town centre, his view that a precautionary approach is merited in terms of flooding and his decision that it is preferable to retain the policy position shown in the finalised local plan with the application site being shown within the settlement boundary as white land.

3.3 In addition the application is significantly contrary to policies RTC2, RTC8 and ENV21 of the Alteration to the East Ayrshire Local Plan and in particular the site specific designation indicates that retailing is not an acceptable use. Whilst the application has not generated a significant number of individual representations, a petition with 485 signatures has been received objecting to the application and this must be considered to amount to a substantial body of objection to the proposal.

3.4 SEPA has objected to the principle of the proposed development at this location as the proposal constitutes development in the floodplain. The site is at medium to high risk of flooding and is located entirely within the undeveloped / sparsely developed functional floodplain. Therefore, the proposal may place buildings and persons at flood risk contrary to the provisions of national planning policy guidance and advice, with particular regard to Scottish Planning Policy Flooding and Drainage and Planning Advice Note 69.

3.5 In relation to national retailing planning guidance (SPP retailing and town centres), whilst the proposal has met the sequential approach to site selection, the retail impact assessment is not sufficiently robust to determine the impact of the proposed store on the vitality and viability of Galston town centre. The applicants maintain that there is a quantitative and qualitative requirement for a supermarket of this size and scale. Although the proposal would address qualitative and quantitative deficiencies in shopping in the Irvine Valley it should be noted that the proposed store is significantly larger in size and scale than any other retail outlet in the Irvine Valley. The applicant maintains that a store of this scale would result in less leakage of retail trade from the Irvine Valley to other areas such as the larger stores in nearby

Kilmarnock. However, some leakage is inevitable in a hierarchical structure of shopping destinations and it is unrealistic to expect Galston as a service centre to be self sufficient.

3.6 In this particular case a material planning consideration in the determination of the application is the commitment by Tesco and Dawn Developments to the sustainable regeneration of Galston town centre. To this end the developer has submitted a detailed Memorandum of Understanding, including a substantial developer contribution, which outlines their commitment to work in partnership with East Ayrshire Council and the local community to facilitate the regeneration of Galston town centre. In this instance the applicants envisage that the developer contribution, through the implementation of a community trust, would enable match funding towards future projects to deliver the regeneration of Galston.

3.7 In addition to funding opportunities the applicants have committed to provide an appropriately qualified multi-disciplinary team providing regular professional advice and guidance to the community to attract new businesses to the town, encourage entrepreneurs, provide business planning advice to retailers and encourage local food producers to develop products and sell them in the store. The applicants maintain that approval of the application would result in substantial benefits for Galston as the applicants overarching aim as stated in their Memorandum of Understanding is to facilitate the regeneration of Galston town centre through the provision of the Tesco store.

3.8 Notwithstanding the significant social and economic benefits submitted by the applicant, the planning application under consideration is significantly contrary to the terms of the development plan and is subject to an objection from SEPA in terms of flooding. Furthermore the proposal does not satisfy all of the principles that Scottish Planning Policy considers a development that does not accord with the development plan ought to meet in order to accord with national policy. This is predominantly because the proposal is likely to have an unacceptable impact on the vitality and viability of Galston town centre and the other settlements in the Irvine Valley.

3.9 In conclusion, the proposal is significantly contrary to the development plan and in this instance the material considerations are not of sufficient weight to merit the approval of the application. Indeed, the Report on the Examination into the Alteration to the East Ayrshire Local Plan Finalised Draft clearly sets out that the proposal would be unacceptable. Consequently the proposal does not represent an acceptable departure from the Development Plan and cannot be justified in terms of Section 25 of the Town and Country Planning (Scotland) Act 1997.

CONTRARY DECISION NOTE

Should the Council agree that this application be approved contrary to the recommendation of the Head of Planning and Economic Development then:

1. The application requires to be submitted to the Scottish Ministers in accordance with the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009.

2. Should approval of the application be cleared by Scottish Ministers the issue of the decision notice should be withheld until the Solicitor to the Council has satisfactorily concluded a formal Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 with the applicants in respect of the matters detailed in Paragraph 7.1 of this report.

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

SPECIAL NORTHERN LOCAL PLANNING COMMITTEE: 24 JUNE 2010

08/0374/FL: ERECTION OF FOODSTORE AND ASSOCIATED PARKING AREA

AT: LAND TO THE SOUTH OF THE A71, GALSTON

BY TESCO STORES LTD / DAWN DEVELOPMENTS LTD

Report by Head of Planning and Economic Development

1. PURPOSE OF REPORT

1.1 The purpose of this report is to present for consideration an application for planning permission 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 Full 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 is generally level and comprises an area of vacant land located to the south of the A71 at Galston. The application site is bounded to the west by Polwarth Street, to the south by the River Irvine, to the east by the building housing a children's play area and to the north by the CO-OP supermarket building.

2.2. **Proposed Development:** The application comprises the erection of an "eco foodstore" constructed on stilts, with associated car park and the formation of a bus shelter and lay by in Polwarth Street as follows:

- a 3,346 square metres (36,017 square feet) gross floor area supermarket
- 24 hour store opening
- formation of a bus shelter and bus lay by at Polwarth Street
- 255 car parking spaces
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The proposed store build concept includes a steel and concrete stilted plinth and above the plinth the store is constructed around a hybrid timber frame engineered to reduce the materials required to the minimum. The finished material of the north elevation of the proposed store is formed by a glazed curtain wall, the elevation

facing onto Polwarth Street comprises a slitted louvre system, grey coloured composite cladding panels, sustainable wooden cladding (larch) and a glazed curtain wall to the upper section of the elevation. The south facing elevation is finished in a slitted louvres system, sustainable wooden cladding (larch) with metal louvres to the upper section. The east elevation is proposed to be finished in grey coloured composite cladding panels with a glazed curtain wall to the upper section of this elevation. Roof lights are incorporated into the store design and allow natural light onto the shop floor. Roof ventilators are proposed to enable warm air to escape naturally without mechanical means and allow cold air to naturally enter the building.

Accompanying documents submitted by the applicant include:

- Retail Impact Assessment (RIA)
- Transport Assessment (TA)
- Sustainability Statement (ST)
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- Galston – Contributing to Sustainable Regeneration (see part 6 of this report)

The above documents are summarised below:-

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2.5 Details regarding the size of the superstore have been submitted within the RIA. The gross floorspace will comprise 3,346 square metres with a net area of

2,272 square metres. The non food (comparison) goods range, which the new store is intending to sell, includes CD's DVD/videos, stationery , health and beauty products, magazines, books and greeting cards/wrap. Other in-store facilities will include a delicatessen, bakery, fresh fish and hot chicken counter.

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2.7 The TA confirms that the development can be incorporated within the existing road network without adverse impact at any of the surrounding junctions and concludes that the proposed development will integrate well within the transport network and be consistent with policy requirements provided that mitigation measures are put in place.

2.8 The applicants have submitted a Sustainability Statement which assesses the renewable technology options for the site and opportunities to reduce the carbon footprint and operation of the proposed store and highlights the applicants' commitment to improve the sustainability of their developments.

2.9 The proposed "eco store" incorporates measures to enable the energy consumption of the store to be minimised in line with the recommendations of PAN 45. These include rooflights, dimmable lights and high efficiency lighting, reduction in night time lighting levels, better than standard U values for external walls, solar shading, heat recovery from air handling units, and good air permeability levels. The store also proposes to install a Biofuel CHP plant (combined heat and power) and heat recovery, which are classified as zero carbon technologies. The proposal also includes on site recycling facilities and the applicants assert that 71% of all waste from the store is to be recycled.

2.10 The Design Statement submitted with the application seeks to explain the design principles and concept which underpin the planning application for the store and explains why the design solution is the most suitable. The Design Statement explains and illustrates that design concept of the proposed layout, landscape, scale and mix, details and materials.

2.11 The Design Statement concludes that the store has been located and developed according to the relationships between the site and the surrounding area. The location of the site has challenged the use of a conventional store building due to the element of flood risk involved. The materials sit sympathetically within the context of the Galston Conservation Area without compromising the function of the building. The store is located in close proximity to the A71, the A719 and Galston Town Centre and has established links to the town centre.

2.12 The applicants have submitted a flood risk assessment and an addendum report which states that hydraulic modelling has shown that ground levels at the site lie within the medium to high risk flood area as defined by Scottish Planning Policy Flooding and Drainage. The proposed development has been designed specifically to address flood management and the store floor level and other critical infrastructure have been elevated above the predicted climate change flood level. Modifications to site levels have been proposed to ensure that the development does not adversely impact on the floodplain storage. The applicants' information states that hydraulic model results predict that there will be no significant adverse effects on nearby flood levels as a result of the proposed development. It is proposed to elevate the store on columns to avoid the need for land raising. Compensatory storage has been incorporated into the proposals to avoid any adverse effect on floodplain storage.

2.13 The applicants' flood management plan will include evacuation of the site when a flood warning is received. Safe access will be maintained above the 1:200 plus climate change flood level to the store from the Galston Bridge. The FRA states that flooding of the site is expected to be gradual and timely evacuation of the site should be possible even in a case of a failure of the Scottish Environment Protection Agency flood warning system.

2.14 The Drainage Philosophy submitted by the applicants concludes that surface water and foul water systems will be separated and will discharge into the River Irvine and the public combined sewer respectively. The need for a sustainable urban drainage system has been recognised by the applicants and will be incorporated into the design proposals, along with the additional storage required to negate the impact of the development on the current flood pattern.

2.15 The applicants' submitted Planning Statement assesses the proposal against national planning policy, structure plan policy and the relevant East Ayrshire Local Plans. The statement concludes that the proposal meets an identified quantitative and qualitative food shopping requirement and is of a scale appropriate to the size of the town, and of the requirement to claw back trade currently being lost to Kilmarnock. The applicants' conclude that Structure Plan and Local Plan policy confirms that Galston is the most appropriate location for a new retail development within the Irvine Valley, with no sequentially preferable sites available.

2.16 The applicants have undertaken an economic impact appraisal for the proposed development which indicates that an investment of £13 million for the store would result in direct and indirect benefits to Galston. The proposed store is estimated to generate 16000 individual shopper transactions each week which the applicants consider will generate significant additional benefits to the existing retailers in Galston town centre.

2.17 In terms of employment the economic impact appraisal states that the total gross employment for direct on site jobs is 175 Full Time Equivalents (FTE). In addition to the employment benefits the applicants' economic impact assessment states that the development of a new Tesco superstore could generate a range of qualitative impacts and benefits for Galston, including:

- reducing retail leakage in terms of customers and spend by providing an attractive and competitive alternative to the existing retail offer of the town centre
- increasing the number of visitors to Galston by creating a destination retail product
- increasing town centre footfall through secondary retail trips;
- improving town centre vitality and viability through the spend generated through secondary retail trips
- making Galston a more attractive investment proposition by demonstrating the viability of Galston as an investment location
- reducing the vacancy rate of properties in the town centre by encouraging new investment and development. This creates a positive and virtuous cycle of improvement and change for Galston, making a considerable contribution to the regeneration aspirations of a wide range of stakeholder partners, residents, businesses and public sector organizations.

2.18 The applicants have written directly to the Council stating that they believe that a new supermarket in Galston will stem a sizeable amount of retail leakage from the Irvine Valley. The applicants further state that since the A71 by passes Galston town centre there is little encouragement for shoppers to visit the town. This coupled with the current retail offer within the town centre means that many people choose to shop outwith Galston and the Irvine Valley. Consequently the applicants consider that a new Tesco will provide an anchor for shoppers in the Irvine Valley thereby encouraging linked shopping and spin off benefits to the regeneration of the town centre.

2.19 The applicants state that they are committed to helping to achieve the wider community regeneration objectives and will work as part of a wider team to deliver sustainable projects to Galston by contributing a range of expertise, management resources and mentoring to ensure sustainability in the development of the town and the local population. Tesco staff can offer a range of disciplines and expertise that could be readily utilized by the community including traders; this would be supplemented by Dawn Group management team who can help address specific development requirements of regeneration projects in the town.

2.20 In addition to the aforementioned proposed provision of management resources, the applicants have indicated that a developer contribution of £370,000 will be made available to be utilised in Galston for improvements to buildings and linked retail opportunities and towards the regeneration of Galston Town Centre.

3. CONSULTATIONS AND ISSUES RAISED

3.1 Strathclyde Police have no objections to the proposal but state that it would appear that the access to the proposed store as outlined is via the existing entrance to the CO-OP store. If it is anticipated that the proposed development will see an increase in traffic, some congestion may result, particularly in respect of traffic turning right onto the A71. As a consequence we suggest that consideration be given

to a traffic light controlled junction or the erection of a no right turn signal this junction.

The Council's Roads and Transportation Service has considered the submitted Transport Assessment and has not objected to the proposal or suggested that there are any specific requirements necessary to address the issue raised by Strathclyde Police.

3.2 East Ayrshire Council Countryside Manager has indicated that there are no rights of way or core paths through the application site. Other comments are in relation to biodiversity. The stretch of the River Irvine within 1km of the site is known to be used by otters and is also a popular area for roosting and foraging of bats.

The applicants have submitted an otter presence survey which has been assessed by Scottish Natural Heritage who concluded that no occupied holts or significant lying up areas were located within the vicinity of the site. Consequently SNH is satisfied that the development is unlikely to have any significant long term impact on the local otter population. The applicants have also carried out an assessment of the potential within the site for bat roosts and this assessment concluded that there was no evidence of bats within the application site.

3.3 Scottish Power has no objections in principle to the proposal.

3.4 Ayrshire Rivers Trust has not objected to the application.

3.5 East Ayrshire Council Environmental Health Service has no objection to the proposal but has offered comments on issues of construction work, waste management, construction noise levels, construction hours of operation and possible contaminated land issues.

Appropriate conditions and advisory notes can be attached to any consent to address these issues should planning permission be granted for the proposed development.

3.6 Scottish Water has no objections to the application.

3.7 Galston Community Council has objected to the removal of one tree on Polwarth Street which requires to be removed to provide an area for the formation of the proposed bus shelter and lay by. However, generally, they support the application, the £13million investment that it represents in Galston and the 175 full time equivalent jobs that would be provided in the long term; notwithstanding the 100 construction jobs initially. The proposal is a huge bonus the town cannot afford to lose as it will generate new life in the town centre, draw in visitors to Galston and help local traders. Coupled with the Town Centre Regeneration, a town centre second to none could be provided that the residents of the valley would appreciate. There is in the fact concern about the delay in bringing the application before Committee.

It is acknowledged that the proposal includes the removal of one tree from Polwarth Street to enable provision of a bus shelter. Should planning permission be granted a condition could be attached to any consent requiring the developer to provide details of replacement tree planting to compensate for any loss of trees from the development site.

The comments in support of the application are also noted and consideration is given to the impact of the development in Section 5 of the report.

3.8 Scotia Gas Networks has not objected to the proposal but has indicated that there is sensitive plant within the vicinity of the site and that prior to any works starting on the site a site visit would be required with Scotia Gas Networks.

Should planning permission be granted an advisory note would be attached to any consent to address this issue.

3.9 Scotland Gas Networks have no objections to the proposal but indicate that they have apparatus in the vicinity of the site.

Should planning permission be granted an advisory note would be attached to any consent to address this issue.

3.10 West of Scotland Archaeology Service has not objected to the proposal but has indicated that an archaeological evaluation of the site should be undertaken prior to the development commencing on the site.

Should planning permission be granted a condition would be attached to any consent to address this issue.

3.11 The East Ayrshire Council Access Panel objected to the proposal but entered into discussions with the developer to revise the layout of the accessible parking bays to the west of the store. The applicant duly amended their parking proposals to accommodate the comments of the Access Panel.

Noted.

3.12 The Ayrshire Joint Planning Unit has offered the following comments on both the planning application, the retail assessment and the additional retail and socio economic information submitted by the applicant. The three main areas of interest in terms of the Approved Ayrshire Joint Structure Plan; "Growing A Sustainable Ayrshire"; are as follows:

Flooding

3.12.1 The threat of flooding at the coast and in river valleys due to climate change is recognised as a matter of impending and serious concern in the Approved Structure Plan. Policy ENV8 seeks to resist development proposals that would be at significant risk of flooding or which would increase the risk of flooding elsewhere.

The policy requires development proposals to be assessed in accordance with Scottish Planning Policy (SPP) Flooding and Drainage. In this regard it is noted that the site of the proposed supermarket lies within an area that is subject to medium to high risk of flooding. Within such areas, SPP advises against further development other than where it is essential for operational reasons to have development in such areas. It is not considered that there is any operational necessity for a supermarket in this location and the proposal is contrary to policy ENV8 of the Structure Plan.

Development Framework

3.12.2 The development framework contained within the Approved Ayrshire Joint Structure Plan sets the long term strategic land use framework for the next twenty years and recognises that all parts of Ayrshire have a vital contribution to make to the area's future prosperity and quality of life.

The framework comprises three inter-related elements:-

- Core Investment Area – principally comprising the three main towns of Ayr, Irvine and Kilmarnock and being the focus for future transport, population, economic activity, infrastructure and service proposals.
- Investment Corridors – focussed on the main transport routes and strengthening the strategic economic and service role of key towns in these corridors as Service Centres.
- Local Communities – promotion of communities located within and outwith the Core Investment Area and Investment Corridors to meet local needs.

3.12.3 Galston is identified as the Service Centre within the Irvine Valley Investment Corridor. The Development Framework seeks to promote these towns as the focus for new development within the investment corridors. By anchoring development opportunities in the Service Centres their potential for long term stability will be improved and development within the Investment Corridors can be stimulated by their growth. Whilst it would be appropriate to accommodate additional development provision in these communities, the scale of provision has to take account of their individual circumstances and characteristics. In terms of the Structure Plan however, a degree of positive encouragement for development is appropriate to maintain and broaden the economic base.

3.12.4 The provision of additional retail floorspace within Galston can in principle be seen as consistent with the aim of the Structure Plan Development Framework to promote Galston as a Service Centre as it would expand economic activity within the town. However, the Structure Plan is not prescriptive in regard to the range and extent of development that should be provided within the Service Centres and it is a matter for the local development plan to determine the manner in which such communities should develop, having regard to their individual circumstances and characteristics.

Impact on Galston Town Centre

3.12.5 The central area of Galston is designated as a Town Centre through the adopted Local Plan and policy COMM6 of the Approved Structure Plan is relevant. COMM6 seeks to promote the vitality and viability of town centres through the encouragement of a wide range of retail, commercial, business, entertainment and leisure and residential uses and promotes these areas as the preferred locations for retail investment. Developments which would threaten the vitality or viability of town centres will not generally accord with the Structure Plan.

3.12.6 It is noted that a revised retail assessment was submitted which concludes that there will be no significant adverse impact on the existing retail functions of the town centre. Whilst there is no disagreement with the broad approach taken to the assessment there is concern that the report lacks sensitivity testing of key variables. In particular, the extent of trade draw from existing retail outlets in Galston town centre is assessed as very low. Such a calculation is sensitive to even very modest variation in the key variables and a range of alternative scenarios should have been examined. It is understood that further assessment was requested but has not yet been submitted.

Further, there is no justification provided for the assumption at paragraph 6.31 of the applicant's retail statement that local top-up convenience shopping outlets serve a different retail market than that served by larger main food supermarket operators and therefore diversion of trade from these stores is unlikely. It is known from the results of the Ayrshire Household Shopping Survey 2003 that supermarkets in some circumstances do perform a top-up shopping role and the statement therefore requires justification.

In addition to the issues concerning the extent of trade draw, there is little consideration given to the implications of the residual turnover figures derived from the trade draw assumptions.

In conclusion it is considered that the retail assessment lacks sufficient detail and robustness to fully justify the conclusions drawn from it and that there therefore remains a question mark over the potential for adverse impact on the convenience outlets within the town centre which would merit further investigation.

Conclusion

3.12.7 The proposal requires to be considered in terms of the extent to which it will contribute towards the promotion of Galston as the Service Centre for the Irvine Valley Investment Corridor and whether the location, scale and form of the development are appropriate within the context of Galston. It is for the local planning authority to determine the location and extent of retail development that is appropriate to achieving the desired aim of promoting Galston's service centre role, having regard to the presumption in favour of protecting the vitality and viability of the existing town centre and the opportunities for promoting regeneration of the historic built environment of the town centre.

Notwithstanding consideration of the appropriateness of the proposal in terms of the Approved Structure Plan Development Framework and in terms of town centre policy, I would advise that for the reasons given above, the proposal to develop within the functional floodplain of the River Irvine is contrary to policy ENV8 of the Approved Structure Plan and Scottish Planning Policy Flooding and Drainage.

Noted.

3.12.8 In terms of the additional retail and socio economic information submitted by the applicant on 28 August 2009 the AJPU has stated that the information contained within the document titled "Addendum Report" is essentially a summary of information previously submitted in respect of the retail effects of the proposed supermarket. The AJPU has no further comments to add to those contained as above. The second report is an economic assessment prepared by Ekos Ltd. and the AJPU has no comments to make upon this report.

Noted.

3.13 East Ayrshire Council Roads and Transportation Service has not objected to the proposal or the transport assessment provided by the applicant subject to the developer providing, and incurring the costs of, an upgrade to the Polwarth Street/Bridge Street traffic signals.

Should planning permission be granted this issue can be dealt with by a legal agreement.

3.14 East Ayrshire Council Roads Flooding Section has not objected to the proposal but has offered the following comments:

1. That free and unimpeded access for the flood waters is maintained at all times and to this end, we require 'designed confirmation' that the proposed frontage to the North would not impede this flow (and also designed confirmation that the glass frontage could sustain the pressure of the waters anticipated), or this frontage be changed to incorporate louvers as the rest of the perimeter. We would suggest a minimum gap between the louvers of 150mm and confirmation of the maintenance scheme to be adopted to keep the louvers clear.
2. Establishment of the Seasonal Water table Levels is required to check that the proposed excavation under the store is even viable, as obviously if this fills with groundwater it becomes redundant, this same information is also required to ensure that the proposed SUDS system is viable.
3. The developer should liaise with the Fire Service to ensure that their proposals allow sufficient access/hydrants suitably positioned to serve the needs to fight fire especially in the 1:200 year event.

Should planning permission be granted, conditions and an advisory note could be attached to any consent to address the above issues.

3.15 The Scottish Environment Protection Agency (SEPA) has objected to the application. The applicant and SEPA have discussed the proposal at length and also the additional flood risk addendum submitted by the applicant.

SEPA has responded as follows:

Background

3.15.1 I refer to all of our previous correspondence at this site. Our position on this proposal and technical review of the FRA are detailed in our response of 1 August 2008. We have also commented on additional information provided by the applicant in our letters of 19 February 2009 and 2 April 2009. Our previous comments still apply and should be read in conjunction with this response. Moreover, I refer to our previous discussions with the applicant and Planning Authority regarding the main flood risk issues at this site and our objection in principle.

3.15.2 Recently, we have also commented on the Planning Authority's proposed modifications to the finalised draft local plan. Please note that we have objected to the Authority's proposal to include this site as a local plan allocation on flood risk grounds. We have received the applicant's Flood Risk Assessment addendum and would provide the following comments:

SEPA's position

3.15.3 Following review of the additional information, we are maintaining our objection in principle to the proposal. Our objection relates to the principle of the proposed development at this location. The site is at medium to high risk of flooding and is located entirely within the undeveloped / sparsely developed functional floodplain. Therefore, the proposal may place buildings and persons at flood risk contrary to the provisions of national planning policy guidance and advice, with particular regard to Scottish Planning Policy Flooding and Drainage and PAN 69.

3.15.4 The submitted addendum does not change our position on this proposal. We recommend that our previous comments at this site should be taken into consideration, together with this response, during the decision making process on this planning application. Our objection to the Planning Authority's proposal to include this site as a local plan allocation should also be taken into consideration during the determination process.

3.15.5 In the event that the planning authority proposes to grant planning permission contrary to our advice on flood risk the application must be notified to the Scottish Ministers as per The Town and Country Planning (Notification of Applications) (Scotland) Direction 2009.

Technical review

3.15.6 Our technical review of the addendum to the FRA is detailed below.

1. We have previously made detailed comments on this proposal and would recommend that this response is read in conjunction with our previous comments. In summary, we have both technical and statutory compliance issues with regards to the proposal and further information has now been provided. We would make the following comments on this revised submission.
2. It is acknowledged that further information has been provided on the Galston Flood Prevention Scheme (FPS) model from which the Tesco FRA is based. Sensitivity analysis has now been undertaken on channel roughness and, based on the results provided (Table 2), it appears that the model is relatively stable to changes in this parameter. It is also acknowledged that climate change has been considered with regard to design flows.
3. In terms of floodplain storage the FRA states that the proposal will lead to a net increase in storage volume (approximately 3%). However, it is noted that the additional storage volumes are during the initial stages of the flood hydrograph and from approximately 47mOD (Table 4) floodplain loss occurs. We would raise concern about effective loss of floodplain storage above this level where the flood hydrograph will be reaching its peak and when storage will be most critical. Various existing and proposed cross sections have been provided (Appendix B Figures 1-1 to 5-5) and based on the information provided it is thought that excavation within the functional floodplain is proposed. In some instances the area of excavation may already contain water prior to design levels and as such storage would be reduced. Therefore, it is not thought that appropriate compensatory storage has been provided. We would intuitively anticipate some effect on levels (existing against proposed) but the modelling shows a neutral effect on flood risk. This could potentially be attributed to general modelling uncertainty/sensitivity leading to the model not detecting change. Whilst the floodplain loss may well have a small impact we would also re-iterate concerns about cumulative impact of any loss and hence the avoidance principle should be adopted.
4. A stilt and louvre system is proposed to elevate the development above flood levels. We raised concern about how this would affect floodplain storage and conveyance, need for blockage consideration and problems with regard to long term maintenance. Firstly, it is thought that the proposal will also be combined with excavation and our concerns with regards to viability have been outlined in point 3. Louvres/grilles are proposed on all sides which the FRA states will potentially be at a residual risk of blockage which would require regular inspection and maintenance. The FRA also recommends some form of legal agreement to ensure maintenance and under-building levels are maintained in perpetuity. It also remains uncertain as to how the water within the stilted area will drain away.
5. We would re-iterate that new development should not add to the area of land

requiring flood protection and it is clear that the stilts proposal is additional protection. Furthermore, the stilts proposal is unlikely to be acceptable for watercourse or coastal flood risk, hence the proposed management solution does not comply with SPP. The stilted/louwer proposal also represents an increase in flood risk when compared to the existing situation.

6. It is stated that emergency site access/egress will be viable with emergency high level vehicular and pedestrian routes provided to enable evacuation. We would request that the Flood Prevention Authority (FPA) is satisfied that the emergency access/egress proposal is appropriate. A flood management plan is also proposed partly based on SEPA flood warning (we are currently unable to provide direct flood warning dissemination). However, this plan would only help manage the risk rather than avoid it altogether.
7. We are of the view that development within the undeveloped/sparsely developed functional floodplain should be avoided and, clearly, the current application does not achieve that. Loss of floodplain storage (from 47.0mOD to peak flood) does occur although it has been demonstrated that there will be no material increase in flood risk upstream or downstream as a result of the proposal. Based on this it is considered that development within the functional floodplain is contrary to the principals of SPP and so maintains its objection in principle to the proposed application on the grounds that it is contrary to the provisions of national planning policy guidance and advice, particularly SPP Flooding and Drainage and PAN 69.
8. Please note that we are reliant on the accuracy and completeness of any information supplied by the Applicant in undertaking its review, and can take no responsibility for incorrect data or interpretation made by the authors.

Should the Council be minded to approve the proposal the application will require to be notified to Scottish Ministers under the terms of the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009.

3.16 Scottish Natural Heritage has not objected to the proposal but required the developer to conduct an otter survey in the area. The applicants submitted an otter survey to SNH for their consideration. SNH has responded that no occupied holts or significant lying up areas were located. Consequently SNH is satisfied that the development is unlikely to have any significant long term impact on the local otter population. The otter presence survey indicates fifteen recommendations that SNH request be included as a condition of any planning permission.

A condition could be attached to any planning consent to address this issue.

4. REPRESENTATIONS

4.1 The application was advertised in the Kilmarnock Standard on 23 May 2008. Six letters of objection and a petition objecting to the proposal with 485 signatures were received in connection with the application. Whilst 24 letters of support were received in connection with the application these letters were received outwith the statutory time period for neighbour notification. The points of objection are as follows:

4.2 As an employee at the CO-OP store next to the development site my job will be at risk and that of my colleagues. If Tesco are granted permission to build a store it will not only be harmful to our store but to the remaining businesses in the area. I know that the CO-OP is considerate about their impact on nearby small businesses.

In terms of the current proposal the applicant states that 175 FTE jobs would be provided as a result of the proposed development. The applicants' supporting retail statement is not considered to provide sufficient clarification as to the impact of the proposed store on Galston Town Centre or any possibility of the loss of jobs elsewhere in the Irvine Valley.

4.3 In my opinion it is hard to justify a Tesco store in Galston given that there is a Tesco superstore nearby in Kilmarnock, the store in Galston is unnecessary. It implies to me that their goal is simply to demolish any competition; the CO-OP and other small businesses in the area. May I point out the impact on Auchinleck's main street when a Tesco store was built.

It is acknowledged that planning consent was granted for a Tesco store in Kilmarnock on 19 December 2007 and that this store is now operational. However, the applicants state that the current proposed store in Galston can be justified in that the proposed store would retain shoppers in the Irvine Valley and prevent people travelling to Kilmarnock to do their main shop.

4.4 The Irvine Valley does not need any further food retail outlets, if this application was to be approved it would have a serious detrimental effect on the already struggling businesses in this area. Small holders such as the butchers, bakers, iron mongers and chemist would struggle to survive and a considerable number of jobs would be lost.

It is acknowledged that the proposed store is likely to have an impact on retail outlets in Galston town centre and that the applicants' submitted retail assessment does not provide sufficient clarification on this issue.

4.5 A new supermarket sited there would put our children walking from Loudoun Academy at risk on what is an already very busy stretch of road. I do not believe that the roads infrastructure in this area was designed to support the extra volume of traffic a supermarket of this size would generate.

The applicants submitted a Transport Assessment as part of the planning application. It should be noted that the Council's Roads and Transportation Service has not offered any objection to this assessment or to the design of the road infrastructure for the proposal.

4.6 I am concerned about the environmental effect such a development would have on the area and in particular the riverbank and the loss of wildlife which inhabit the area.

The applicants have submitted an otter survey report which has been assessed by Scottish Natural Heritage and has identified that although evidence was found of otter presence in the locality, it was of limited extent. The report contains recommendations and SNH suggests that these recommendations should ideally be adopted as planning conditions. Should planning permission be granted conditions would be attached to any consent to address any relevant wildlife habitat issues.

4.7 The plans that we viewed in the planning office show that there is an easement of 5 metres into the river. We are gravely concerned about this matter. When we have heavy rainfall and the river is running in full spate it is very fierce. We feel that if the river is narrowed it will cause a severe problem with the flood prevention scheme.

The applicants have not indicated any proposal to narrow the River Irvine.

4.8 The escape walkway of the proposed store is shown at a level that will overlook our kitchen window and affect our privacy.

Given that the proposed walkway is situated some 70 metres distant from the objectors' property it is considered that the walkway is not likely to result in an adverse effect on the privacy of that property.

4.9 We object to the delivery area across the river as there will be heavy lorries loading and unloading goods daily. The recycling area is positioned right next to this. The CO-OP is further away and we can still hear when the bottle banks are being emptied.

Given that the proposed recycling centre and service yard are situated a maximum of 160 metres from the objectors' residential property it is considered that any adverse effect in terms of noise from the service yard and recycle area would be intermittent and not likely to be at a sufficient level to adversely affect the residential amenity of that dwellinghouse. It should also be noted that the Council's Environmental Health Service has not raised any concern regarding this issue.

4.10 The visual impact of the proposed building and the material finish is inconsistent with the old town and the existing brick Co-Op.

The applicants propose an “eco-store” designed to incorporate a material finish which enables a reduction in carbon emissions. Whilst the design is not a traditional style of build it is considered to be appropriate within the setting, adjacent to an existing supermarket and separated from the town centre by the River Irvine.

4.11 While the applicant’s retail and economic development information makes for good reading there is not a mention of the existing CO-OP store and what detrimental effect a Tesco store would have on it.

It is acknowledged that the Retail Impact Assessment submitted by the applicants does not specifically make reference to the impact on the existing CO-OP store.

4.12 The current sewerage system is totally inadequate and to put extra pressure on it could be disastrous.

It should be noted that Scottish Water has not objected to the application.

4.13 The proposal is contrary to Structure plan policies and Local Plan Policies STRAT 2a, 2d, COMM 1 and COMM 6 and to the site identification in the Local Plan.

The issue of compliance with Development Plan Policies is addressed at Section 5 of this report.

4.14 Flood risk by developing on a flood plain. If the flood plain is partially blocked by this development then if flood water backs upstream there is a possibility that the river may well flood over the A71 east of Newmilns as in July 2008.

It is acknowledged that the application site is located within the flood plain of the River Irvine. It should be noted that SEPA has objected to the application on the issue of the overall principle of development on the floodplain.

4.15 There is conclusive evidence to show that there is no capacity for the proposed store within the catchment; also no qualitative deficiency has been identified to suggest the need for such a store. It is therefore not legitimate to suggest that the proposal will have a positive effect on Galston Town centre.

Section 5 of this report will address this issue.

4.16 The Structure Plan indicates that there will be no surplus of convenience expenditure in East Ayrshire by 2012. Rather there is projected to be a deficit of expenditure in relation to turnover which translates into an oversupply of convenience floorspace. There is therefore no quantitative justification for this proposal and based on this principle the application should be refused.

Section 5 of this report will address this issue.

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 Ayrshire Joint Structure Plan (2007) and the East Ayrshire Local Plan (2003).

Ayrshire Joint Structure Plan

5.2 Through COMM1, the three Ayrshire Councils shall promote regeneration in three ways, one of which is pertinent to this application:

- A) give priority to proposals that regenerate existing communities including the Coalfield Communities Initiative and Kilmarnock Town Centre.

It is considered that due to the potential impact of the development on Galston town centre and the other town centres within the Irvine Valley, the proposed development will not act to regenerate the existing communities and will in fact be to the detriment of existing communities. (See more detailed response below)

5.3 COMM 6 states that the three Ayrshire Councils shall promote the viability and vitality of town centres in 6 different ways, 3 of which are relevant to this application. Proposals will be supported that:

- B) provide developments of a size and scale appropriate to the function of the centre as indicated in Schedule 3 and serve the needs of its catchment.

In terms of retail provision, Schedule 6 of the Structure Plan does not identify any spare capacity within East Ayrshire for convenience retailing and instead indicates that convenience retailing is over-provided for within East Ayrshire. It is therefore considered that any significant development of convenience floorspace will result in an even greater degree of over-supply, the outcome being that existing retailers, many of which are located in town centre locations, will find it increasingly difficult to continue trading.

Galston is identified in the Structure Plan as a Service Centre, which will act as a focus for appropriate future development. In the identified Service Centres, 'small scale additions to the current retail floorspace will be supported, particularly where there will be qualitative improvements in shopping facilities'. However, the proposed development is not considered to represent a 'small scale addition'. Instead it is considered that, the development would effectively swamp

the existing retail provision in Galston, and is not of a size or scale appropriate for the proposed location. Whilst it is accepted that the proposed store is not on the same huge scale as some current new supermarkets, including the consented Tesco in Kilmarnock, in relative terms given the size of Galston and the other Irvine Valley settlements, the proposal is considered to be of a large scale and one that will have a detrimental impact on the vitality and viability of the town centre.

The retail statement indicates that there is a large capacity for a supermarket within Galston, given the limited retail provision within the Irvine Valley at present. However, there are concerns over the assumptions made by the applicant with regard to the large capacity that is identified. The applicant states that 'within the catchment area as a whole, the store will achieve a market share of some 95% of available convenience goods expenditure'. The applicant considers this to be realistic given the lack of alternative large supermarket provision within the catchment. However it is considered that this is extremely unrealistic, as this implies that only 5% of Irvine Valley shoppers will continue to travel the relatively short distance to the far larger supermarkets in Kilmarnock i.e. Asda, Morrisons and the recently consented 95,000 sq ft Tesco. It is suggested that many people will continue to do their main shopping in Kilmarnock, whilst using the Galston store for additional top-up shopping, with the implication that the smaller town centre stores may not be required to the same extent for top-up shopping.

- D) adopt a sequential approach to the approval of retail and commercial leisure development with new investment directed first to town centres and then edge-of-centre locations;

The information submitted in the application identifies the proposed site as an edge of centre location. The applicant has submitted information, indicating that there are no suitable or available sites within the town centre or on edge of centre sites closer to the town centre.

However, in contrast to the applicants view, it is considered that the site constitutes an out-of-centre location rather than an edge of centre location. The site is not adjacent to the town centre boundary and is over 100m from the boundary. In a small settlement the size of Galston, this 100m represents a relatively large distance. The core of the small town centre is focused around Cross Street where the existing Key Store Co-Op and Local Office are located. This section of the town centre is yet further away from the proposed site for the Tesco superstore. In addition, the site is separated from the town centre by the river Irvine, which acts as a natural barrier between the town and the proposed site.

In light of this, in order to meet the requirements of the sequential test, all town centre and edge of centre issues need to be addressed. It is considered in a broad sense that the applicant has identified a number of sites, none of which are suitable, due primarily to their size. Whilst it is accepted that the current proposal in terms of the proposed floorspace could not be located within the town centre, it is considered that the town centre or an edge of centre location could accommodate a smaller, more imaginatively designed store that would be more appropriate for Galston and would benefit the town centre as a whole.

- E) restrict new retail floorspace at out of centre locations to the sale of Do-It-Yourself, furniture, carpets, electrical and gardening goods;

As the proposed site constitutes an out-of-centre location and comprises a supermarket selling both convenience and non-bulky comparison goods, the proposal is contrary to this policy criterion.

5.4 Policy ENV8 Flooding states that:

- A) In accordance with the policy in SPP Flooding and Drainage, development proposals which would be at significant risk of flooding or which would increase the probability of flooding elsewhere will not be permitted. Local plans will apply the policy in light of SEPA's flood risk maps. There will be a presumption against land raising except in exceptional circumstances and in situations where this would not increase the risk of flooding within the area.

The proposed site for the supermarket is within an area subject to medium to high risk of flooding. Given that there is no operational need for the supermarket to be located in this area, it is considered that the proposal is contrary to the provisions of policy ENV8 and SPP.

Adopted East Ayrshire Local Plan

5.5 Galston Development Opportunities – Galston 2: The proposed site for retail development is identified in the Local Plan as a Miscellaneous site (105M), on which the Council will support the development of an appropriate tourism or visitor related use or for recreational or amenity open space developments, all developments being sympathetic to the location of the site adjacent to Galston Outstanding Conservation Area. Use of the site for Caravan Site purposes will not be considered acceptable.

The use of the site for retail purposes does not comply with the identified use for the site and so is contrary to this Local Plan designation.

5.6 Policy RTC1 states that the Council will adopt a sequential approach in assessing development proposals for retail and other uses appropriate to town centres as described in Schedule 5 of the Plan. Applicants proposing such developments in out-of-town centre locations are required to demonstrate that no

suitable alternative site can be found or assembled within town centres and thereafter in an edge of centre location.

As indicated in response to Structure Plan policy COMM6, the applicant has stated that there are no suitable town centre or edge of centre sites for a development of this scale.

5.7 As stated in policy RTC2, the types of development detailed in Schedule 5 of the Local Plan will be considered acceptable, in principle, within town centres and on those development opportunity sites identified as being suitable for such purposes on the Local Plan maps.

As a Schedule 5 use, Class 1 retailing would be considered appropriate within town centres or on sites identified for such purposes in the local plan, neither of these criteria applies to this application. The application proposes a Class 1 use outwith a town centre and consequently does not comply with Policy RTC2.

5.8 Policy RTC3 states that all development proposals falling within the classes of development detailed in Schedule 5 of the Local Plan will be directed to:

- (i) Kilmarnock and Cumnock Town Centres if the proposed gross floorspace exceeds 1,500m²; and
- (ii) All town centres if the proposed gross floorspace is less than 1,500m².

The proposed superstore would provide for 3,346 m² gross floorspace. In line with this policy, a development of this size and scale should be directed to Kilmarnock or Cumnock town centre. Consequently the proposal does not comply with Policy RTC3 of the Adopted East Ayrshire Local Plan.

5.9 Policy RTC5 states that, in assessing all out-of-centre retail and other Schedule 5 development proposals, the Council will have regard to:

- (i) whether the applicants have adopted a sequential approach and can demonstrate that no suitable alternative sites are available within or on the edge of town centres;

See response to RTC1 above. The applicant has stated that a development of this scale cannot be located within Galston town centre or on any edge of centre site.

- (ii) whether the proposal would affect, either individually or cumulatively, the vitality and viability of town centres and whether the scale of the proposal is appropriate to its location;

Within the submitted planning statement, the applicant has attempted to demonstrate that the proposal will have no real impact on either Galston

town centre, or the other town centres within the Irvine Valley. The impact assessment carried out by the applicant estimates that the development will have an impact of 1.73% on convenience provision within Galston town centre and no impact on comparison provision. The applicant estimates the store will have no impact on Darvel and Newmilns town centre, with only a very small trade diversion from Hurlford town centre.

With regard to the trade diversion assumptions made by the applicant, it is considered that the potential impact on Galston town centre has been severely underestimated. By 2011, the applicant estimates that Galston will have a turnover of £1.75million which, following the opening of the Tesco store, will be reduced by only £59,000. It is considered this represents an impact of 3.4% over the 2008 Galston Town Centre turnover figures provided by the applicant. Considering that Tesco will form a large store selling a wide range of goods in a location that is very accessible to car users on the A71, it is considered that the relatively small selection of stores within Galston Town Centre will be affected. In terms of convenience goods, the town centre currently supports a Co-Op, 2 butchers, 1 bakers and 2 newsagents/confectioners. Considering that all these stores sell the kinds of goods to be sold in Tesco the impact felt by these stores will be far more substantial than has been represented within the planning statement.

The Tesco annual convenience turnover is estimated by the applicant to comprise £19.64 million, of which, as stated above, only £59,000 will be diverted from Galston town centre. This represents 0.3% of the Tesco convenience turnover. However, if the proportion of Tesco's turnover diverted from the town centre is increased, even slightly, the impact on Galston town centre can be seen to be hugely significant; for example:

- If 0.6% of Tesco's turnover (£117,840) is diverted from the town centre, this would result in an impact of nearly 7% on the town centre (based on the 2008 Galston Town Centre turnover figures provided).**
- If 1% of Tesco's turnover (£196,400) is diverted from the town centre, this would result in an impact of just over 11% on the town centre (based on the 2008 Galston Town Centre turnover figures provided).**
- If 2% of Tesco's turnover (£392,800) is diverted from the town centre, this would result in an impact of nearly 23% on the town centre (based on the 2008 Galston Town Centre turnover figures provided).**

Taking into account the location and size of the proposed store, it is considered that the 11% scenario is considered a realistic estimate. On top of this, it is also considered that the Tesco store will have some impact on the comparison goods retail units within the town. There are a number of small comparison goods shops in the town centre,

including a chemist and gift shops. It is considered that these stores sell the same types of goods as Tesco, albeit on a far smaller scale, therefore there is disagreement with the applicant's assumption that the Tesco store will have no impact whatsoever on the comparison retail offer within Galston.

There is also concern that the applicant identifies no impact on either Newmilns or Darvel and only a very small impact on Hurlford. Given the close proximity of the site to these settlements, it would be expected that these locations would experience at least some impact. As is the case with Galston, even a small diversion of trade from these settlements, could have a significant impact on their vitality and viability. Also, similar to Galston, these towns are currently in a fragile condition with regard retail provision, and any diversion of trade could have serious implications for the retail offer within the towns.

The applicant places significant emphasis on the store clawing back expenditure that is currently lost from the Irvine Valley catchment, primarily to Kilmarnock. In this respect, the applicant estimates that the larger stores in Kilmarnock will feel the greatest impact of the proposed store, essentially Asda (18.5% impact), Aldi (11.10% impact) and Tesco (7.88% impact). However, no real evidence other than the residents survey (see comments below) has been presented to support these assumptions. It is considered that the applicants RIA overestimates the impact on these stores.

In order to identify a more accurate picture of the impact of the proposal on Galston town centre and indeed the other town centres within the Irvine Valley, it would be expected that the applicant would have carried out some kind of sensitivity analysis, indicating the kind of impact a change in the trade diversion assumptions would have on the impact on the other town centres. The applicant however has not done so. As shown by the brief calculations above for Galston Town Centre, it is considered that even a small change in the trade diversion assumptions will highlight a significant change to the anticipated impact on Galston town centre.

Evidence of a residents survey has also been submitted by the applicant, which indicates that 73.1% of respondents would support the development of a new supermarket. Based on the results, the applicant states that there is a qualitative need for a new foodstore as there is a deficiency in the provision of food retailing in the Irvine Valley.

However, the survey result does not give us any further real evidence as to the likely impact the development will have on Galston town centre, one of the key policy considerations. The results state that only 10.2% do their main shopping in the catchment area at present. However, the survey does not in anyway address the issue of 'top-up' or 'basket' shopping. Given the limited shopping provision in the catchment it is

not surprising that most people currently do their main shopping in Kilmarnock. This issue is not disputed. However, the key impact on Galston town centre and indeed the other town centres within the catchment is likely to come from the movement of people currently using the town centres for their top-up shopping who will likely start to use the Tesco store outwith the town centre for this purpose. Given the amount and choice of retail provision in nearby Kilmarnock, it is considered that it is primarily this 'top-up shopping' that the Council is anxious to see directed into the town centre.

- (iii) whether the proposal is accessible to a choice of means of transport;

The site of the proposed store is accessible to bus routes and private transport through the proximity to the A71.

- (iv) the effect of the proposal on travel patterns, infrastructure and road works:

The Council's Roads and Transportation Service has not objected to the application.

- (v) whether the proposal would be compatible with other uses in the surrounding area.

The site is directly adjacent to the existing Co-Op store. Other nearby uses comprise residential dwellings and an industrial unit. It is considered that a retail unit is generally in keeping with adjacent uses.

- (vi) whether the design of the proposed building would be acceptable;

The proposed eco store design incorporates the use of stilts to address the issue of potential flood risk at the site. Whilst the store design in itself is unusual, it is proposed to be located immediately adjacent to a more standard brick built supermarket building (the CO-OP) and a brick built children's play area. Given the siting of the proposed store and the design of the surrounding built environment the design of the proposed store is considered to be acceptable

- (vii) the effect of the proposal on the environmental quality, character and amenity of the area; and

The site represents a highly prominent site on the edge of Galston, which will be visible to traffic entering and exiting the town as well as passing traffic. It is considered that the proposed eco store and its associated principles of environmental sustainability will not be significantly detrimental to the environmental quality, character or amenity of the area.

Aside from some planting along the southern edge of the site which borders the River Irvine, the proposal involves very little landscaping or

planting, with the site layout comprising more or less the store itself and its car parking. However, should planning permission be granted a condition could be attached to any consent requiring a detailed landscaping scheme for the site.

5.10 As stated in Policy ENV4, the Council will seek to ensure that all development within or affecting the setting of a Conservation Area or affecting the appearance or setting of a Listed Building, is sympathetic to the area or building concerned in terms of its layout, size, scale, design, siting, materials and colour of finish. Wherever possible, all proposals should seek to preserve, enhance or incorporate features, which contribute positively to the character or appearance of the area and have due regard to the architectural and historic qualities of the area or building concerned.

It is acknowledged that the application site is located adjacent to Galston Outstanding Conservation Area. However it should be noted that the application site is separated from the Conservation Area by the River Irvine which provides a natural break in the landscape between the site and Galston Town Centre.

Whilst the proposed material finish of the eco store utilises more modern material finishes than those predominantly used in the Galston Outstanding Conservation Area it is considered that the proposed store is located adjacent to a standard brick built supermarket (the Co-Op) and a brick built children's play area and as such any adverse visual impact is mitigated by the immediate design and material finish of adjacent buildings.

In terms of size and scale it is acknowledged that the proposed supermarket is of a significantly larger scale (approximately twice the size) than the existing Co-Op supermarket and considerably larger in scale than any other surrounding buildings.

5.11 As stated in ENV17, in areas that have been known to have flooded in the past, a precautionary approach to development will be pursued. The Council will require any developer wishing to develop land which has been known to flood in the past to fully investigate the implications of flood risk on their proposals and on adjoining land and property. Appropriate flood prevention measures should be incorporated into the design of their proposals so as to remove or reduce to an acceptable minimum, any adverse effects from flooding that may be experienced. The Council will consult with SEPA on any development proposals in areas of known flood risk in terms of the SEPA/Planning Authority Protocol on Flooding Issues and will expect developers to enter into agreements with the Council under Section 75 of the Town and Country Planning (Scotland) Act 1997, to provide and finance any necessary flood prevention infrastructure that may be required in association with their proposed developments.

As stated in response to AJSP policy ENV8, the proposed site is located within the flood plain and in an area identified as medium to high risk of flooding. SEPA have been consulted and have registered their objection

in principle to the application as the proposal constitutes development in the floodplain. Should the Council be minded to approve the proposal the application would require to be notified to Scottish Ministers under the Town and Country Planning (Scotland) Notifications Direction 2009.

5.12 The current proposal has been assessed against the Ayrshire Joint Structure Plan as well as the Adopted Local Plan. The proposal is considered to be contrary to the provisions of the Joint Structure Plan, specifically policies COMM6 and ENV8.

5.13 The site is identified within both the adopted Local Plan and the Local Plan Alteration as a miscellaneous development site for non-retail uses. The proposed retail use is therefore contrary to the local plan designation. In addition, the proposal is considered to be contrary to Local Plan policies RTC2, RTC3 and RTC5 (ii).

5.14 In terms of the environmental policies, due to the proposed location on the flood plain the development requires to be assessed against policies ENV17 and ENV21 of the Adopted Local Plan and Alteration respectively. ENV17 states that SEPA should be consulted on the proposal whilst ENV21 indicates that as there is no operational need for the development to be located on the flood plain, the proposal should not be supported.

5.15 In conclusion, it is considered that the proposal is contrary to the Ayrshire Joint Structure Plan and the Adopted Local Plan. The proposal therefore cannot be supported from a planning policy perspective.

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The principal material considerations comprise the Report on the Examination into the Alteration to the East Ayrshire Local Plan Finalised Draft, the Alteration to the East Ayrshire Local Plan Finalised Draft with Modifications itself, representations, consultation responses, effect on amenity of surrounding area, the planning history, Scottish Planning Policy on Retailing and Flooding and Drainage and the applicants supporting document: Galston – Contributing to Sustainable Regeneration.

Report on the Examination into the Alteration to the East Ayrshire Local Plan Finalised Draft

6.2 The Reporter's report into the Council's Alteration to the Finalised Draft East Ayrshire Local Plan has recently been received and has yet to be presented to the Council. The next step would be for the Council, if it is content with the Reporter's modifications, to formally give notice by advertisement, which is challengeable, of its intention to adopt the plan. This report is an extensive document and there is within it a clear decision from the Reporter in relation to the application site and its future use. The Reporter recognises the Council's preference for the site being allocated as a miscellaneous development opportunity site restricting potential uses to those not involving built development. The Reporter acknowledges the submissions made by Tesco that the site be allocated for a foodstore.

6.3 The Reporter, however, is “not convinced that a supermarket would represent a small-scale development as contemplated by the structure plan” and shares the opinion of the Council that “the site is physically remote from the town centre and that the River Irvine provides a clear separating feature”. The reporter further acknowledges the submissions of SEPA and attaches significant weight to the advice of that agency that the site be utilised only for open space and informal recreation with no built development. This is because SEPA does not believe there to be a suitable technical solution which would accommodate built development and address the flood risk. All-in-all, the Reporter concludes that, in addition to his concerns about the scale of the potential supermarket and the lack of close relationship with the town centre, a precautionary approach is merited in terms of flooding.

6.4 The Reporter concludes by saying that “although the Council prefers to retain a modified policy to support and encourage a limited range of activities subject to no buildings being constructed, I believe such a policy would serve little purpose”. “It is preferable to retain the position shown in the finalised local plan with the location shown within the settlement boundary as white land”. The application is clearly inconsistent with the recent Reporter’s conclusions and this is a very significant material consideration in the determination of the application.

East Ayrshire Local Plan Finalised Version with Modifications

6.5 For clarity, whilst development proposals will continue to be assessed first and primarily against the Adopted Local Plan, the Council has now given authority for an appropriate and proportionate degree of weight to be given to the Alteration to the East Ayrshire Local Plan in the determination of planning applications. In this case, the Adopted Local Plan remains the primary policy document. Objections received in relation to the East Ayrshire Local Plan Finalised Version and any related but subsequent modifications have been considered by the Reporter and have informed his conclusions in respect of this site; (see 6.2 to 6.4 above). In addition however, it is important to consider the proposal against the East Ayrshire Local Plan Finalised Version with Modifications as follows.

6.6 The proposed site for retail development is identified as Miscellaneous site 105M, whereby the Council will encourage and support the development of the site for appropriate community facility, tourism or visitor related uses, for recreational or amenity open space developments or for an appropriate Class 4 business or industrial use. Other uses of the site will not be considered acceptable. The Council will not be supportive of any development on the site which, in terms of its size, scale and design is considered to be;

- (i) detrimental to the character and appearance of the adjacent Galston Outstanding Conservation Area or its attractive riverside setting; or
- (ii) unsympathetic to its highly visually prominent location at the principal access gateway to Galston from the A71 route.

Note: Use of the site for housing and retail purposes or for use as a caravan site is not considered acceptable or appropriate.

The above allocation for the site, clearly states that the Council will not be supportive of the use of the site for retailing purposes. Whilst the development of a large retail unit will have an impact on the adjacent Galston Outstanding Conservation Area, given the design and material finish of the immediately adjacent buildings, the resultant visual impact of the proposal on the Conservation Area would not be significant.

6.7 Through Policy RTC1, the Council will adopt a sequential approach in assessing development proposals for retail, commercial leisure developments and other uses appropriate to town centres as described in Schedule 6(i) of the Plan. Developers will be required to locate all such development firstly, in town centres as identified on the Local Plan maps; secondly, in edge of centre locations where no such town centre sites are available; and thirdly, in identified commercial centres as identified on the local plan maps, in preference to out of centre locations. Applicants proposing such developments in out of centre locations will be required to demonstrate to the satisfaction of the Council:

- (i) that no suitable alternative site can be found or assembled within town centres, in an edge of centre location or in an identified commercial centre:
and
- (ii) that the chosen location is, or can be made, easily accessible by a choice of modes of transport.

Note (i): With the exception of those particular types of out of centre retail developments considered acceptable in terms of policy RTC 7 below, the development of new retail floor space in out of centre locations (including identified commercial centres) will be restricted to the sale of bulky DIY, furniture, carpets, electrical and gardening goods.

The site is considered to represent an out of centre location, on the basis that:

- (i) it is not adjacent to the town centre boundary***
- (ii) it is some 100m from the town centre boundary and further still from the core of the town centre***
- (iii) it is separated from the town centre by the River Irvine***
- (iv) its access from the A71 does not promote integration with the town centre.***

In line with Note (i) described above, the development of new retail floorspace at out of centre locations will be restricted to the sale of bulky goods. The current proposal is therefore not in accordance with this policy.

6.8 Policy RTC2 states that subject to the provisions of all other retail and town centre policies, the Council will ensure that all development proposals for the classes of development detailed in Schedule 6(i) of the Local Plan are

commensurate with the size and function of the area or settlement within which they are proposed. In this regard:

- (i) all major retail and other Schedule 6(i) uses of East Ayrshire wide impact and importance are directed to the main town of Kilmarnock;
- (ii) all major retail and other Schedule 6(i) uses of significant importance to a range of local communities within the investment corridors are directed to the service centres of Cumnock, Auchinleck, Stewarton, Galston and Dalmellington;
- (iii) all retail and other Schedule 6(i) uses of local importance are directed to the particular service centres or local communities to be served by the development.

Galston is included as a service centre where retail proposals of significant importance to local communities should be directed. It is accepted that in this respect, a certain amount of retail development within the town would be considered appropriate and would be encouraged. However, it is considered that the size and scale of the current proposal is not commensurate with the size and function of Galston and therefore does not represent an acceptable form of retail development. Consequently the proposal does not comply with Policy RTC2.

6.9 As stated in Policy RTC8, the Council will not be supportive of applications for the development of new convenience and comparison retail floor space in out of centre locations, (including identified commercial centres) unless the application relates to a type of retail development detailed in Policy RTC 7 above or Policy RTC 9 below or to a bulky goods development relating to the sale of DIY, furniture, carpets, electrical and gardening goods. The Council will require applicants for bulky goods retail developments to demonstrate to the Council that their proposals meet 11 stated criteria.

The current proposal does not fall into the types of retail development detailed in either RTC7 or RTC9, nor does the proposal relate to a bulky goods development. As the proposal constitutes a development of new convenience floorspace in an out of centre location, the proposal is contrary to this policy.

6.10 As stated in policy ENV7, development and demolition within a conservation area or affecting its setting shall preserve or enhance its character and be consistent with any relevant Conservation Area appraisal or management plan that may have been prepared for the area.

The design, materials, scale and siting of any development shall be appropriate to the character of the Conservation Area and its setting. Trees which are considered by the planning authority to have amenity value shall be preserved. Given the importance of assessing design matters, outline applications will not normally be considered appropriate in Conservation Areas.

The Council will seek to ensure that all development within or affecting the setting of a Conservation Area or affecting the appearance or setting of a listed building complies with the Council's appropriate Design Guidance. In particular, the Council will not be supportive of any development that is unsympathetic to the area or building concerned in terms of its layout, size, scale, design, siting, materials and colour of finish. Wherever possible, all proposals should seek to preserve, enhance or incorporate features, which contribute positively to the character or appearance of the area and have due regard to the architectural and historic qualities of the area or building concerned.

It is acknowledged that a small section of the application site is located adjacent to Galston Outstanding Conservation Area. However it should be noted that the majority of the application site is predominantly separated from the Conservation Area by the River Irvine which provides a natural break in the landscape between the site and Galston Town Centre.

Whilst the proposed material finish of the eco store utilises more modern material finishes than those predominantly used in the Galston Outstanding Conservation Area it is considered that the proposed store is located adjacent to a standard brick built supermarket (the Co-Op) and a brick built children's play area and as such any adverse visual impact is mitigated by the immediate design and material finish of adjacent buildings.

In terms of size and scale it is acknowledged that the proposed supermarket is of a significantly larger scale (approximately twice the size) than the existing Co-Op supermarket and considerably larger in scale than any other surrounding buildings.

6.11 Through Policy ENV21, the Council will ensure that all new development proposals:

- (i) are free from significant flood risk from any source;
- (ii) do not themselves materially increase the probability of flooding elsewhere;
- (iii) do not add to the area of land which requires protection by flood prevention measures;
- (iv) do not take place on, or affect the ability of functional flood plains to attenuate the affects of flooding by storing flood water;
- (v) do not compromise major options for future river management;
- (vi) do not give rise, through the introduction of necessary flood prevention measures, to any deterioration in the ecological status of the particular watercourse or body affected by the development; and
- (vii) meet all of the relevant provisions of Scottish Planning Policy Flooding and Drainage, including the requirements of the Risk Framework detailed in the document.

Land raising, with compensatory storage, which permanently elevates a site above the functional flood plain of a water course, or elsewhere where flooding is an issue,

will not generally be considered appropriate. Developments which do not meet these requirements will not be supported by the Council. However, developments in the undeveloped functional flood plain could be considered acceptable in certain circumstances where a development location is essential for operational reasons and a lower risk location is not achievable, and for some recreational, sporting, amenity and nature conservation uses.

The current proposal is located within the flood plain and is in an area identified as medium to high risk of flooding. In relation to SPP Flooding and Drainage and given that the proposed site is not essential for operational reasons, the proposal is contrary to this policy. SEPA has been consulted and have registered their objection in principle to the application as the proposal constitutes development in the floodplain.

Should the Council be minded to approve the proposal, the application would require to be notified to Scottish Ministers under the Town and Country Planning (Scotland) Notifications Direction 2009.

6.12 The current proposal has been assessed against the Alteration to the East Ayrshire Local Plan and is considered to be contrary to policies RTC2, RTC 8 and ENV21. The site is identified within both the adopted Local Plan and the Local Plan Alteration as a miscellaneous development site for non-retail uses. The proposed retail use is therefore contrary to the local plan designation.

Representations

6.13 As stated at Section 4 of this report there have been 6 letters of objection with an attached petition of 485 signatures. The principle issues raised in the letters of objection relate to flooding at the site, the impact of the proposal on Galston town centre and the Irvine Valley and that the application does not accord with Structure or Local Plan policy. 24 letters in support of the proposal have been submitted but were received outwith the statutory time period.

Consultation responses

6.14 The consultation responses are detailed in Section 3 of this report. SEPA recommends that the application be refused and the Ayrshire Joint Planning Unit concludes that the application is contrary to the terms of the Structure Plan. Galston Community Council has objected to the removal of the protected tree which is required to facilitate the bus shelter and lay by on Polwarth Street; but that aside offer strong support for the development and the benefits it believes would arise for Galston and the Irvine Valley as a whole. The remaining consultees offered no objection to the proposed development subject to the imposition of appropriate planning conditions and a legal agreement relative to any planning consent.

Impact on the vitality of the area

6.15 With the submission of the original application, the applicants submitted a Retail Impact Assessment, which stated that the application would have only a 1.73% impact on Galston town centre. It is considered that these impact figures have not been fully justified, no sensitivity test has been carried out and that the impact on the town centre will be higher than estimated.

6.16 The applicants have continually maintained that as the proposed store will primarily be used for main shopping, the stores in the town centre will continue to be used for 'top up' shopping, with the large proportion of the trade draw coming from the Kilmarnock supermarkets. Given the results of the recent Ayrshire wide Household Shopping survey, which shows that the large proportion of Irvine Valley shoppers do their main shopping in Kilmarnock, it is considered that a significant proportion of Tesco's turnover will indeed come from clawing back expenditure currently lost to Kilmarnock. Nevertheless, concerns remain that the impact on the town centre shops, particularly in relation to their use for 'top-up' shopping has not been sufficiently addressed by the applicant.

6.17 Both the development plan comments at section 5 of this report and the Structure Plan Unit consultation response have expressed concern about the lack of sensitivity testing in relation to the trade draw from existing retail outlets in Galston and the Irvine Valley. It is Tesco's case that very little trade will be lost from the town centre. However, even a small increase in the trade draw from the shops in the town centre, could have a highly significant impact on their turnover and ability to continue trading. It is considered that this has not been fully explored in the retail impact assessment.

6.18 The applicants' case promotes that the proposed store would provide a main food shopping alternative which will result in people shopping locally and prevent further convenience shopping leakage from the catchment area. In practice, shopping catchments are rarely self contained. Some leakage is inevitable in any shopping hierarchy and it is perhaps unrealistic to expect a local centre such as Galston to be self sufficient.

6.19 The retail impact assessment submitted by the applicant, lacks sufficient detail and robustness to fully justify the conclusions. Consequently the potential for an adverse impact on convenience outlets in Galston town centre and the Irvine Valley has not been conclusively ruled out.

Planning History

6.17 The following planning history takes account of the area of land from the north side of the River Irvine to the A71:

(i) KL/E/OL/92/226A – Proposed supermarket and garden centre – approved with conditions 02/04/1993

- (ii) KL/E/FL/92/226B – Development of a supermarket – approved with conditions – 05/05/1993
- (iii) KL/E/OL/92/226C – Residential Development in outline – approved with conditions 01/12/1993
- (iv) KL/E/FL/92/226D – Addition of snack bar catering facility and associated parking to supermarket development - approved with conditions 01/12/1993
- (v) KL/E/FL/92/226E – Mounding erosion protection works along River Irvine – approved with conditions – 01/12/1993
- (vi) KL/E/FL/92/226F – additional retail space to supermarket under construction – approved with conditions – 19/01/1994
- (vii) KL/E/AD/92/226G – Illuminated signs, logos and totem sign boards – approved with conditions - 09/03/1994
- (viii) KL/E/AD/92/226H – illuminated box sign – approved with conditions – 07/06/1994
- (viii) KL/E/FL/92/226J – residential development for 322 plots – application withdrawn – 27/09/1995
- (ix) KL/E/FL/92/226K – fitting of roller shutters to windows – approved with conditions – 07/02/1995
- (x) KL/E/AD/92/226L – three x 48 sheet free standing poster panels – refuse – 24/08/1995
- (xi) KL/E/RM/92/226M – erection of 47 dwellinghouses – withdrawn – 28/11/1995
- (xii) 96/0503/FL – residential development for 46 houses - application withdrawn - 28/11/1995
- (xiii) 98/0058/FL – installation of new automatic teller machine – approved with conditions 03/03/1998
- (xiv) 01/0614/AD – proposed fascia signs, service menu board , totem sign and car park signs – approved with conditions – 19/04/2002
- (xv) 01/0687/AD – projecting sign and atm surround – approved with conditions – 26/10/2001
- (xvi) 01/0691/FL – installation of 24 hour ATM approved – 26/10/2001
- (xvii) 02/0790/FL – installation of one metre satellite dish - approved with conditions – 28/10/2002

- (xviii) 03/0337/AD – atm surround and projecting sign – approved – 19/05/2003
- (xix) 03/0338/FL – 264 hour atm – approved 19/05/2003
- (xx) 08/0197/AD – installation of 3 internally illuminated fascia signs, one freestanding internally illuminated totem sign, one freestanding sign and one non illuminated fascia sign – approved – 12/05/2008.
- (xxi) 09/0336/AD – 4 fascia signs and 2 car park signs. – approved 26/06/2009

Scottish Planning Policy

6.20 Scottish Planning Policy Town Centre and Retailing sets out the Scottish Government's policy for town centres and the key uses, particularly retailing, which contribute to their economic growth and enhancement. The key focus of SPP is town centres, how to plan for their development and how to respond to development proposals for town centre uses. However, SPP also establishes the methods for treating proposals for development outside of town centres.

6.21 The proposed store under consideration is located out of Galston town centre and as such SPP states that stand alone food stores should only be considered if it can be demonstrated that there will be no significant adverse effect on the vitality and viability of existing centres. In this instance, the applicants' supporting retail assessment and additional retail information has not conclusively evidenced that the effect of the proposed store on the existing retail outlets in Galston town centre and in the Irvine Valley would be minimal.

6.22 In terms of the size and scale of the proposal; 3,346 square metres gross floorspace constitutes a significant floorspace within Galston and the Irvine Valley Investment Corridor. SPP further states that development should be of an appropriate scale relative to the catchment area and that the range of goods and services should not have a significant detrimental impact on town centres identified within the network of centres in the development plan. In this instance the development plan indicates that Galston is identified as the Service Centre within the Irvine Valley Investment Corridor and whilst the development framework seeks to promote these towns for the focus of development, the scale of provision has to take account of the individual circumstances and characteristics of the area.

Given that the applicants' retail statement and additional retail information do not provide a robust justification of the impact of the proposal on existing retailing outlets in Galston town centre and on other settlements in the Irvine Valley, the proposal does not fully comply with the terms of SPP Retailing And Town Centres.

Scottish Planning Policy Flooding and Drainage

6.23 The central purpose of Scottish Planning Policy (SPP) Flooding and Drainage is to prevent further development which would have a significant probability of being affected by flooding or which would increase the probability of flooding elsewhere. Planning Authorities must take the probability of flooding from all sources and the risks involved into account in determining planning applications.

6.24 Part 203 of SPP states that new development on functional flood plain will not only be at risk itself but will add to the risk elsewhere. Cumulative effects will arise from proposals which individually may seem of little consequence. Built development should only take place on functional floodplains where it will not affect the ability of the flood plain to store and convey water, where the development will not be at risk of flooding and where the development will not increase the risk of flooding elsewhere. Piecemeal reduction of the floodplain must be avoided because of cumulative effects on storage capacity.

6.25 Part 206 of SPP states that a development which requires additional flood alleviation or prevention measures to address flood risk from any source is likely to be acceptable only outside or adjoining boundary of medium to high risk areas.

Given that the proposal under consideration includes a build design which incorporates stilts as a flood mitigation measure and is located in the functional floodplain in an area of medium to high risk of flooding and that SEPA have objected to the principle of the development in the floodplain, it is considered that the proposal does not accord with the terms of SPP Flooding and Drainage.

Planning Advice Note 69

6.26 This advice takes as a starting point the responsibilities of local authorities and developers in ensuring that future built development is not located in areas with a significant risk of flooding, including functional flood plains. However PAN 69 does indicate that design, forms of construction and materials can play a part in providing potential flood mitigation measures.

6.27 Part 38 states that planning authorities have a duty to take account of flooding issues where flooding is a material consideration in a planning decision and that planning applications can be refused on the grounds of flood risk.

In this case, as previously stated, the site for the proposed development is located within the functional floodplain on a site that is at significant risk of flooding and SEPA has objected to the principle of development in the floodplain. The applicant has provided flood mitigation measures for the development in the form of a building raised on stilts, however, the issue of flooding is a significant material consideration in the determination of this application and indeed the proposal does not comply with the flooding policies of the development plan.

Galston – Contributing to Sustainable Regeneration

6.28 The applicants have submitted a Memorandum of Understanding setting out the commitment by Tesco Stores Ltd and Dawn Developments towards the regeneration of Galston town centre. The applicants intend that the submitted Memorandum of Understanding be appended to any legal agreement thereby confirming Tesco and Dawn Development's commitment to community led regeneration. The Memorandum of Understanding is summarised in the following sections.

6.29 Both Tesco and Dawn Developments are keen to work in partnership with East Ayrshire Council, traders and the communities of the Irvine Valley to achieve the sustainable regeneration of the area through the following mechanisms:

1. A Community Based Delivery Agency – a community led organisation to promote:
 - Community involvement in and direction of the regeneration programme
 - Community ownership of assets
 - Sustainability through the use of community assets to generate income
 - Maximisation of funding opportunities

Tesco and Dawn Developments submit that working in conjunction with the Council would promote a vibrant economy within Galston.

2. Physical and Environmental Improvements – through an advisory role on the community trust, Tesco and Dawn Developments could assist in refurbishing the Provost Chambers and the former Portland Arms building into sustainable use by:
 - Facilitating community ownership of either of these buildings
 - Generating ideas, in partnership with East Ayrshire Council and the community for social enterprise to ensure the long term viability of the buildings e.g. niche shopping units, community space, offices and fledgling business units
 - Assisting the community through the development, design, planning and construction phases required to bring buildings back into use
 - Providing advice for community groups or fledgling businesses taking space in the developments to ensure sustainability

In order to achieve the above elements of the regeneration programme Dawn Developments will provide a suitably skilled and experienced multi-disciplinary team as an "in-kind" contribution to the project.

3. Attracting New Enterprises to the Area – Fundamental to the proposal is the need to create both inward investment and stimulate local people to proactively develop their business ideas. A strategic approach is suggested which will encompass a broad business base. New businesses such as hospitality and tourist related enterprises and professional advisers will be encouraged to take

premises in the town. Business start ups can be generated in many ways such as:

- Developing entrepreneurial skills by offering workshops to help young people formulate their business ideas
- Mentoring and shadowing programme to see fledgling businesses through their crucial first two years of trading
- Nomination agreements with higher educational institutions
- Consultation to establish the latent demands within the community that are currently being delivered by providers outwith it
- Incentivising new entrepreneurs who lease the refurbished premises in Galston's town centre.

As part of a community trust, Tesco and Dawn Developments would actively develop these and any other ideas generated as a result of community involvement.

4. Support to Retailers and Food Producers – In order to accelerate the economic benefits of the proposed Tesco store it is imperative that existing retailers are in a position to capitalise on the influx of new customers. Tesco will offer advice to:

- retailers wishing to refocus or augment their businesses
- new and existing retailers on maximising customer spend, attracting new customers and enhancing the image of their business
- any local suppliers and retailers wishing to develop their products and sell them to Tesco

Tesco will make available a "Community Champion" who will provide 18 hours per week of staff time dedicated to community initiatives. Under the direction of the store manager the "Community Champion" is able to draw on additional expertise from within Tesco to assist in the regeneration proposals for Galston.

5. Marketing and Creating an Identity – Tesco and Dawn Developments can through an advisory role with the community trust assist in this area which will result in

- businesses that complement and support existing shopping e.g. specialist food suppliers, restaurants, artisan and niche retailers, artists being attracted to the town centre
- marketing materials, such as brochures detailing existing businesses being produced and distributed
- all shoppers being directed to Galston town centre through signage within the store.
- electronic media being used as a means of generating user friendly communications open to the entire community

6. Town Centre Linkage Improvements – linked shopping trips play a vital role in ensuring the success of the retail element of Galston's town centre

regeneration. Taking this into account the suggestions to maximise linked shopping trips will begin in-store and continue into Galston as follows:

- promoting Galston in the Tesco store via a dedicated noticeboard within the store foyer
- “Welcome to Galston” sign close to the point where the pedestrian access from the store meets Polwarth Street
- directional signage to the town centre via Church Lane

7. Employment and Training - job creation and training opportunities are integral to any regeneration scheme. It is envisaged that the new Tesco store will create 175 Full Time Equivalent jobs. In terms of employment these include the potential through the community trust to:-

- Tailor training initiatives with the Construction Industry Training Board and other industry bodies to ensure youth and long term unemployment are addressed as a result of building refurbishment within the town
- implement a mentoring plan to promote entrepreneurial skills as detailed above to encourage young people into self employment
- provide training for community members of the Community Trust in; business planning and financial management, income generation and project management.

The applicants’ supporting document “Contributing to Sustainable Regeneration” provides significant and considerable details of proposals to facilitate the regeneration of Galston. It is acknowledged that the objectives of the document seek to promote the applicants, the local community and the Council working in partnership. The intent is to provide increased employment and economic activity, attract new businesses and entrepreneurs to the area, provide environmental improvements within the town centre, supply support to new and existing retailers in the town and to create a unique identity for the town and a positive impact on the local economy.

It is noted that the proposal includes the provision of 175 FTE jobs and that the applicants’ economic impact assessment estimates that an additional £4.68m will circulate in the Irvine Valley economy as a direct result of higher employment rates and the related increase in the net disposable income of the local population. It is also acknowledged that the applicants believe that the proposal could result in enduring economic advantages to the area, especially in terms of local employment and retailing.

The applicants indicate that fundamental to their proposal they will encourage local people to proactively develop their own business ideas and create inward investment to attract new business to the town by providing professional advice on developing entrepreneurial skills and to provide mentoring programmes for new businesses.

The creation of new businesses and support to existing businesses would if successful generate a more attractive, vital and viable economy within the town and the Irvine Valley, which could result in significant socio-economic regeneration benefits to the area.

Perhaps most significant of all of the applicant's proposals is their commitment to working in partnership with the local community (including traders) and the Council to deliver additional benefits to the regeneration of Galston. Fundamentally the applicants are proposing a partnership agreement with the Council based on community leadership and involvement to promote a sustainable and vibrant economy within Galston. The partnership goal would be to provide the community with opportunities to tackle a range of issues under the guidance of an experienced multi disciplinary team of professionals including retailing, business development and construction. The resultant benefits of such a partnership could promote Galston as a community led regeneration initiative to facilitate a viable and sustainable town.

Galston town centre is one of the Council's three key regeneration projects with a committed investment of £4.35m. In the case of this particular planning application the significant scale and detail of the applicants' regeneration proposals and importantly the applicant's commitment to regeneration through a legal agreement are a significant factor in the consideration of the proposal before the Council.

The applicants contend that their detailed and comprehensive partnership and community led regeneration demonstrates that substantial benefits could be derived for Galston which would result in a positive impact on employment, retail and business activity as well as the regeneration of the town.

In all of the above, the material considerations require to be weighed against the policies in 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 would arise should the Council agree to approve the application as this would necessitate the Council entering into a Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997 with the applicants to secure Heads of Terms as follows:

- A developer contribution to the sum of £370,000 for the upgrading and improvement of Galston town centre and the delivery of the wider regeneration of Galston.

- If Planning Permission:-

(a) expires without Commencement of Development having taken place; or

(b) is quashed, revoked or otherwise falls,

then the contribution, with all interest accrued thereon, shall be refunded to the party which paid the Contribution within 28 days of receipt of a written request for payment from either party. If the Contribution has been spent or partially spent so that the balance in the Account is insufficient to repay the Contribution, the Council shall repay the Contribution from its general funds.

If Development Commences and the Contribution is not utilised in full within 5 years of payment, the Contribution or the unused part, as appropriate, with all interest accrued thereon, shall be refunded to the party which paid the Contribution within 28 days of receipt of a written request for payment from either party.

- The developer providing and incurring the costs of an upgrade to the Polwarth Street/Bridge Street traffic signals.
- Developer provision of regeneration support for 24 hours per calendar month joint management time over a maximum of three year period, beginning on the commencement of the development to achieve the following aims:
 1. Setting up and advising a community delivery agency
 2. Development work to bring vacant buildings back into sustainable use
 3. Encouraging young entrepreneurs and attracting new businesses
 4. Providing business planning advice to existing and new retailers
 5. Supporting suppliers and food producers wishing to develop products and sell them through Tesco Stores
 6. Marketing and signage to ensure maximum linked shopping trips to Galston town centre.

7.2 Further legal implications would arise should the Council agree to approve the application as the Council is required to notify the Scottish Government under the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009. This occurs where the development has been subject to consultation with the Scottish Environment Protection Agency (SEPA) and where SEPA has advised against the granting of planning permission; as in this case. This is also required, as in this case, because planning authorities are obliged to submit to the Scottish Ministers an application where the development would be significantly contrary to the Development Plan and where the planning authority has a partnership interest.

8. CONCLUSIONS

8.1 As is indicated in Section 5 of this report, the application is significantly contrary to a number of policies in the Ayrshire Joint Structure Plan and the East

Ayrshire Local Plan. Under Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997, the application requires to be assessed against the provisions of the development plan which comprises these documents and should be refused if considered to be contrary to the development plan unless material considerations indicate otherwise.

8.2 As indicated at Section 6 of the report there are material considerations relevant to this application. The development of the site for retail purposes has been considered by the Scottish Government Reporter undertaking the Examination into the Alteration to the East Ayrshire Local Plan Finalised Draft. The Reporter has confirmed his concern about the scale of the potential supermarket and the lack of a close relationship with the town centre, his view that a precautionary approach is merited in terms of flooding and his decision that it is preferable to retain the policy position shown in the finalised local plan with the application site being shown within the settlement boundary as white land.

8.3 In addition the application is significantly contrary to policies RTC2, RTC8 and ENV21 of the Alteration to the East Ayrshire Local Plan and in particular the site specific designation indicates that retailing is not an acceptable use. Whilst the application has not generated a significant number of individual representations, a petition with 485 signatures has been received objecting to the application and this must be considered to amount to a substantial body of objection to the proposal.

8.4 SEPA has objected to the principle of the proposed development at this location as the proposal constitutes development in the floodplain. The site is at medium to high risk of flooding and is located entirely within the undeveloped / sparsely developed functional floodplain. Therefore, the proposal may place buildings and persons at flood risk contrary to the provisions of national planning policy guidance and advice, with particular regard to Scottish Planning Policy Flooding and Drainage and Planning Advice Note 69.

8.5 In relation to national retailing planning guidance (SPP retailing and town centres), whilst the proposal has met the sequential approach to site selection, the retail impact assessment is not sufficiently robust to determine the impact of the proposed store on the vitality and viability of Galston town centre. The applicants maintain that there is a quantitative and qualitative requirement for a supermarket of this size and scale. Although the proposal would address qualitative and quantitative deficiencies in shopping in the Irvine Valley it should be noted that the proposed store is significantly larger in size and scale than any other retail outlet in the Irvine Valley. The applicant maintains that a store of this scale would result in less leakage of retail trade from the Irvine Valley to other areas such as the larger stores in nearby Kilmarnock. However, some leakage is inevitable in a hierarchical structure of shopping destinations and it is unrealistic to expect Galston as a service centre to be self sufficient.

8.6 In this particular case a material planning consideration in the determination of the application is the commitment by Tesco and Dawn Developments to the sustainable regeneration of Galston town centre. To this end the developer has submitted a detailed Memorandum of Understanding, including a substantial

developer contribution, which outlines their commitment to work in partnership with East Ayrshire Council and the local community to facilitate the regeneration of Galston town centre. In this instance the applicants envisage that the developer contribution, through the implementation of a community trust, would enable match funding towards future projects to deliver the regeneration of Galston.

8.7 In addition to funding opportunities the applicants have committed to provide an appropriately qualified multi-disciplinary team providing regular professional advice and guidance to the community to attract new businesses to the town, encourage entrepreneurs, provide business planning advice to retailers and encourage local food producers to develop products and sell them in the store. The applicants maintain that approval of the application would result in substantial benefits for Galston as the applicants overarching aim as stated in their Memorandum of Understanding is to facilitate the regeneration of Galston town centre through the provision of the Tesco store.

8.8 Notwithstanding the significant social and economic benefits submitted by the applicant, the planning application under consideration is significantly contrary to the terms of the development plan and is subject to an objection from SEPA in terms of flooding. Furthermore the proposal does not satisfy all of the principles that Scottish Planning Policy considers a development that does not accord with the development plan ought to meet in order to accord with national policy. This is predominantly because the proposal is likely to have an unacceptable impact on the vitality and viability of Galston town centre and the other settlements in the Irvine Valley.

8.9 In conclusion, the proposal is significantly contrary to the development plan and in this instance the material considerations are not of sufficient weight to merit the approval of the application. Indeed, the Report on the Examination into the Alteration to the East Ayrshire Local Plan Finalised Draft clearly sets out that the proposal would be unacceptable. Consequently the proposal does not represent an acceptable departure from the Development Plan and cannot be justified in terms of Section 25 of the Town and Country Planning (Scotland) Act 1997.

9. RECOMMENDATIONS

9.1 It is recommended that the Local Planning Committee approves the recommendation of the Head of Planning and Economic Development that the application should be refused for the reasons indicated on the attached sheet.

9.2 It is recommended that the recommendation of the Local Planning Committee should be notified to the Council for consideration in their determination of this application.

9.3 In the event that the Local Planning Committee does not approve the recommendation of the Head of Planning and Economic Development and recommends that the application should be approved, then in those circumstances, prior to this application being notified to the Council for

determination, it is recommended that the application be delegated to the Head of Planning and Economic Development to provide a list of planning conditions to be attached to any subsequent approval.

9.4 It is recommended that, in the Council's determination of the application, they have regard to such conditions as are drafted by the Head of Planning and Economic Development should recommendation 9.2 above apply.

CONTRARY DECISION NOTE

Should the Council agree that this application be approved contrary to the recommendation of the Head of Planning and Economic Development then:

1. The application requires to be submitted to the Scottish Ministers in accordance with the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009.

2 Should approval of the application be cleared by Scottish Ministers the issue of the decision notice should be withheld until the Solicitor to the Council has satisfactorily concluded a formal Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 with the applicants in respect of the matters detailed in Paragraph 7.1 of this report.

17 June 2010

**Alan Neish
Head of Planning and Economic Development.**

JL/DVM

FV/DVM

List of Background Papers

1. Application form, plans and statutory notices/certificates.
2. Public Advertisements.
3. Statutory Consultations.
4. Letters of objection.
5. Letters of support
6. Transport Assessment.
7. Flood Assessment.
8. Retail Impact Analysis.
9. Galston: Contributing to Sustainable Development
10. Developer Memorandum of Understanding
11. Ayrshire Joint Structure Plan.
12. East Ayrshire Local Plan (2003)
13. Alteration to the East Ayrshire Local Plan 2009.
14. Scottish Planning Policy Flooding and Drainage and Retailing and Town Centres.
15. Planning Advice Note 69
16. Previous applications as indicated in Section 6.17 of this report.

Anyone wishing to inspect the above background papers should contact Jane Little on 01563 576768.

Implementation Officer: Dave Morris

Location: Land to the South of the A71 Galston

Nature of Proposal: Erection of superstore and associated car park

Name & Address of Applicant: Tesco Stores Ltd. / Dawn Developments Ltd.
c/o Development Planning Partnership
The Hatrack
144 St Vincent Street
Glasgow
G2 5LQ


Name & Address of Agent: Development Planning Partnership
The Hatrack
144 St Vincent Street
Glasgow
G2 5LQ

The above full application should be refused for the following reasons:

1. The application does not comply with Policy COMM 6 of the Ayrshire Joint Structure Plan for the following reasons:
 - (i) the proposal is of such significant size and scale that it would be detrimental to the vitality and viability of existing retailers in Galston Town Centre; and
 - (ii) the proposal is contrary to Policy COMM 6 of the Ayrshire Joint Structure Plan which restricts new retail floorspace at out-of-centre locations to the sale of do-it-yourself, furniture, carpets electrical and gardening goods.
2. The proposal does not comply with the terms of Policy ENV 8, in accordance with Scottish Planning Policy, of the Ayrshire Joint Structure Plan as the development site is located within the functional floodplain and considered to be at medium to high risk of flooding.
3. The proposal does not comply with Policy RTC2 of the East Ayrshire Local Plan as the proposed Class 1 use is located at an out of town centre location on a site specifically identified for non retail uses.
4. The proposal does not comply with Policy RTC3 of the East Ayrshire Local plan as the proposal is of significant size and scale (more than 1500m²) and is located outwith Kilmarnock and Cumnock town centres.

5. The proposal does not comply with the terms of Policy RTC5 of the East Ayrshire Local Plan as the proposal is of significant size and scale that would be detrimental to the vitality and viability of existing retailers in Galston Town Centre and the Irvine Valley.
6. The proposal does not comply with the terms of Policy ENV17 of the East Ayrshire Local Plan because the application site is located in the functional floodplain in an area identified as at medium to high risk of flooding and the Scottish Environment Protection Agency has objected, in principle, to the application.
7. The proposal does not comply with the terms of the Reporter's decision on the Examination into the Alteration to the East Ayrshire Local Plan Finalised Draft.
8. The proposal does not comply with Policy RTC2 of the Alteration to the East Ayrshire Local Plan as the significant size and scale of the proposal is not commensurate with the size and function of Galston, resulting in an adverse effect on the vitality and viability of Galston town centre.
9. The proposal does not comply with Policy RTC8 of the Alteration to the East Ayrshire Local Plan as the proposal includes the provision of convenience retail floorspace outwith Galston town centre resulting in an adverse impact on the viability and vitality of Galston town centre.
10. The proposal does not comply with Policy ENV21 of the Alteration to the East Ayrshire Local Plan as the site is located in the functional floodplain and is identified as at medium to high risk of flooding and does not therefore meet all of the provisions of Scottish Planning Policy.
11. The proposal is contrary to the site specific designation reference 105M in the East Ayrshire Local Plan and the Alteration to the East Ayrshire Local Plan as the site has a specific designation as a miscellaneous development site for non retail uses.



| | |
|---|--|
| <p>Title/Location Land to the south of A71</p> <p> Galston</p> <p> Application No. 08/0374/FL</p> | <p>East Ayrshire Council</p> <p>Department of Neighbourhood Services Planning & Economic Development Service 6 Croft Street Kilmarnock KA1 1JB Tel: (01563) 576790 Fax: (01563) 576774 E-Mail : Planning@east-ayrshire.gov.uk</p> <p>Com Date: 24/06/2010</p> |
| <p>Key</p> <p> Application Site</p> | <p style="text-align: right;"></p> |

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APPENDIX 2

Form TP24

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application No: 08/0374/FL

| | |
|------------------------------|---|
| Location: | Land to the South of the A71 Galston |
| Nature of Proposal: | Erection of superstore and associated car park |
| Name & Address of Applicant: | Tesco Stores Ltd. / Dawn Developments Ltd. c/o Development Planning Partnership The Hatrack 144 St Vincent Street Glasgow G2 5LQ |
| Name & Address of Agent: | Development Planning Partnership The Hatrack 144 St Vincent Street Glasgow G2 5LQ |

The above full application should be approved subject to the following conditions:

1. The superstore permission hereby granted is subject to the following restrictions:
 - (a) the maximum gross floor space area shall not exceed 3346 square metres (36017 square feet)
 - (b) the maximum net sales area shall not exceed 2272 square metres (24456 square feet)
 - (c) No part of the floorspace may be used as a café, restaurant (other than staff café or restaurant), post office or pharmacy.

REASON: In order to safeguard the vitality and viability of the town centre

2. Prior to the commencement of development details of all boundary treatments shall be submitted to and approved in writing by the Planning Authority. The approved boundary treatments shall be implemented and require to be in place before the occupation of the building hereby approved.

REASON: In the interests of visual amenity

3. Prior to the occupation of any part of the development hereby approved, details of all external lighting, including that proposed on the building, shall be submitted to and agreed in writing by the Planning Authority. Only lighting as approved shall be installed on site.

REASON: In the interest of limiting light pollution to the detriment of the surrounding amenity

4. Prior to the commencement of development a programme of archaeological survey work for the preservation and recording of any archaeological features affected by the proposed development, including a timetable for investigation, shall be submitted to and require the approval in writing of the Planning Authority. All arrangements thereby approved shall be implemented by the developer at its expense in accordance with the approved timetable for investigation.

REASON: In order to preserve/record the archaeological and historical interest of the site.

5. Prior to the commencement of development and for the avoidance of doubt, "designed confirmation" that the proposed frontage on the north facing elevation of the building would not impede access for flood waters shall be submitted to and agreed in writing by the Planning Authority.

REASON: In order to provide flood mitigation measures.

6. Prior to the commencement of development details of the maintenance scheme to be adopted for the store building louvers shall be submitted to and agreed in writing by the Planning Authority and thereafter implemented as approved.

REASON: In order to provide flood mitigation measures.

7. Prior to the commencement of development details of the seasonal water table levels shall be submitted to and agreed in writing by the Planning Authority.

REASON: In order to provide flood mitigation measures.

8. Before any work commences on site, details of a Sustainable Urban Drainage System and its maintenance following installation shall be submitted to and approved by the Planning Authority in writing. The approved Sustainable Urban Drainage System shall thereafter be installed on site prior to the occupation of the building.

REASON: To ensure that adequate drainage is provided.

9. Prior to the commencement of any construction works on site, full details of a scheme for both hard and soft landscaping shall be submitted to and approved in writing by the Planning Authority. Said landscaping scheme shall be implemented not later than the next available planting season after the development has been carried out to the satisfaction of the Planning Authority.

REASON: To ensure the provision of an appropriate landscaped area in the interest of residential and visual amenity.

10. Noisy construction work shall be restricted to the hours of 0800 to 1900 hours Monday to Friday, 0800 hours to 1300 hours on a Saturday and not at all on Sundays.

REASON: To prevent noise and disturbance extending into hours during which other sources of noise have subsided, in the interest of residential amenity.

11. Prior to the commencement of development details of replacement tree planting shall be submitted to and agreed in writing by Planning Authority. Thereafter the approved planting shall be implemented prior to the occupation of the building.

REASON: In the interest of visual amenity.

12. Notwithstanding the plans hereby approved samples of all external materials shall be submitted to and agreed in writing by the Planning Authority before any development commences on the site.

REASON: In the interest of visual amenity

13. Prior to the commencement of development details in relation to recommendations 1-15 contained in section 4.2 of the otter presence survey submitted by the applicants and dated March 2008 shall be submitted to and agreed in writing by the Planning Authority in consultation with Scottish Natural Heritage.

REASON: In the interests of habitat management.

EXTRA CONDITIONS AS REQUIRED BY NORTHERN LOCAL PLANNING COMMITTEE ON 24 JUNE 2010.

14. The business hereby approved shall operate from 0600 hours to 0000 hours Monday to Saturday inclusive and on Sundays from 0800 hours to 2000 hours.

REASON: To prevent noise and disturbance extending into hours during which other sources of noise have subsided.

15. The business hereby approved shall operate delivery hours from 0600 hours to 2300 hours Monday to Saturday inclusive and on Sundays from 0800 hours to 2000 hours.

REASON: To prevent noise and disturbance extending into hours during which other sources of noise have subsided.

16. Prior to the commencement of any construction works on site, details shall be submitted to and approved by the Planning Authority in consultation with Scottish Water and the Scottish Environment Protection Agency of the foul drainage proposals. Thereafter the foul drainage scheme shall be installed on site in accordance with the approved details.

REASON To ensure a satisfactory foul drainage system is provided for the development.

Notes to Applicant

1. The Planning Authority shall be informed immediately should the presence of unsuspected contaminated land be encountered during construction and appropriate remedial measures to treat the contamination implemented by the developer.

2. Any waste arising from the works during construction should be disposed of to the satisfaction of the Waste Management Authority and otherwise than burning.

3. The developer is advised to contact Scotland Gas Networks to obtain information on gas pipes owned by Scotland Gas Network in the area.

4. The developer is advised to contact Scotia Gas Networks plc (01563 573462) to obtain information on gas apparatus in the area.

5. The developer is advised to contact the Fire Service to ensure that sufficient access/hydrants are suitably positioned to serve. emergency service requirements in the event of fire.