

## **EAST AYRSHIRE COUNCIL**

**NORTHERN LOCAL PLANNING COMMITTEE: 05 MARCH 2010**

**07/0621/FL: CHANGE OF USE OF FARM BUILDINGS FOR STORAGE OF VEHICLES, EQUIPMENT, TOOLS AND MATERIALS AND THE OPERATION OF LANDSCAPING, FENCING AND SITE CLEARANCE BUSINESS (IN RETROSPECT) AT THREEPWOOD FARM, SORN ROAD, GALSTON.  
BY MR JAMES GIBB.**

### **EXECUTIVE SUMMARY SHEET**

#### **1. DEVELOPMENT DESCRIPTION**

1.1 The applicant is applying retrospectively for the change of use of farm buildings for the storage of vehicles, equipment, tools and materials; and the operation of a landscaping, fencing and site clearance business, all from within buildings in the south of the farm complex. This major aspect of the proposals is unchanged since submission to the Northern Local Planning Committee in December 2008.

1.2 The application was originally submitted with no details of improvements to public roads access. However following its continuation at Committee, the applicant now proposes –

- Formation of 2 additional intervisible passing places on the C106 between Threepwood and the B7037,
- Improvements to the C106 / B7037 junction within the publicly adopted road curtilage,
- Improvements to the Threepwood farm access with full battered kerbs and regrading to improve sightlines.

1.3 Upon request from the Division, the applicant has also submitted details of accesses proposed to be used from the C106 into Threepwood itself, named the “northern” and the “southern” accesses. The applicant confirms that the southern access is not the principal access into and out of the farm for which planning permission is sought. Plans have been submitted indicating how vehicles would service the application site from the northern access which route is stated as having safety and visual benefits. The applicant maintains that whilst vehicles servicing the application site could safely do so from the southern access, it is the applicant’s preference to use the northern access for the traffic associated with this application, 07/0621/FL.

1.4 The application was originally submitted following the service of an enforcement notice, (No4 May 2007), in respect of the above mentioned, unauthorised activities. The applicants appealed that Notice which was

subsequently withdrawn, given the passage of time and changed circumstances on site.

## **2. RECOMMENDATION**

**2.1 It is recommended that the Planning Application be approved subject to the conditions indicated on the attached sheet.**

## **3. CONCLUSIONS**

3.1 As indicated in the report, the application, subject to the provision of necessary road improvements as agreed with the Roads and Transportation Division, is consistent with the Development Plan. Therefore, it should be approved unless material considerations indicate otherwise. The material considerations, including the additional representations received, and the policy context have been assessed within the report. In policy terms most weight should now be applied to the Local Plan Alteration.

3.2 The material considerations in Section 7 do not suggest that the application should be refused. The advice from the Roads and Transportation Division is now, in respect of the activities proposed within the tight confines of the application site; and not including any activity elsewhere in Threepwood on land outwith the application site; that the application is acceptable in roads terms, subject to the use of appropriate conditions.

## **CONTRARY DECISION NOTE**

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Economic Development it will not require to be referred to the Full Council, as that would not represent a significant breach of Council policy.

**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.**

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BY MR JAMES GIBB.**

### **Report by Head of Planning and Economic Development**

#### **1. PURPOSE OF REPORT**

1.1 The purpose of this report is to present for determination an application for planning permission which is to be considered by the Local Planning Committee under the scheme of delegation as the proposal is subject to more than 10 objections and raises significant issues which merit determination by Committee. The application was previously considered at a Northern Local Planning Committee on 05 December 2008 and was continued to allow an investigation into clarifying the position with regard to the ownership of a piece of land adjacent to the applicant's site which could have implications for road improvements necessary to the application. (This was in the context of the Roads and Transportation Division at that time requiring substantial roads improvements).

1.2 During 2009, extensive discussions have been undertaken with the applicant's agent. These initially took forward the Committee's decision to seek certain ownership information. However, the applicant subsequently presented a case for this application requiring a lesser set of road improvements; the more extensive roads improvement works having been targeted at the much larger operation that was refused by committee. Over a period of six months, the applicant's roads consultants negotiated with the Roads and Transportation Division arriving at an agreed, lesser schedule of road improvements which were submitted for consideration within the continued application.

1.3 Neighbours and objectors were advised of the improvements to the public road, the access route through the site to the proposed landscape business buildings and that they could comment on the application in its entirety and would have the chance if they wished to address members at Committee.

1.4 This report therefore summarises the application as it stands, the supporting information and representations received. It incorporates the most

up-to-date consultation responses and has been revised to reflect the current situation.

## 2. APPLICATION DETAILS

2.1 **Site Description:** The application site comprises some of the existing buildings immediately to the rear of the main farmhouse at Threepwood Farm. The applicant has indicated that these extend to some 700sq metres in area, the buildings are clearly former agricultural buildings associated with Threepwood Farm.

2.2 Immediately to the north of these buildings is the applicant's lawful animal feeds business and beyond this the yard area associated with planning application number 07/0190/FL, that was refused by Committee in December 2008, subsequently appealed by the applicants, which appeal was for the most part dismissed by Scottish Ministers. The current application site is located within the main farm complex and is generally surrounded by agricultural land in the applicant's control. The nearest residential property to the site is Threepwood Cottage and garden, to the west of the farm on the opposite side of the existing access road.

2.3 **Proposed Development:** The applicant is applying retrospectively for the change of use of farm buildings for the storage of vehicles, equipment, tools and materials; and the operation of a landscaping, fencing and site clearance business, all from within buildings in the south of the farm complex. This major aspect of the proposals is unchanged since submission to the Northern Local Planning Committee in December 2008.

2.4 The application was originally submitted with no details of improvements to public roads access. However following its continuation at Committee, the applicant now proposes –

- Formation of 2 additional intervisible passing places on the C106 between Threepwood and the B7037,
- Improvements to the C106 / B7037 junction within the publicly adopted road curtilage,
- Improvements to the Threepwood farm access with full battered kerbs and regrading to improve sightlines.

2.5 Upon request from the Division, the applicant has also submitted details of accesses proposed to be used from the C106 into Threepwood itself, named the "northern" and the "southern" accesses. The applicant confirms that the southern access is not the principal access into and out of the farm for which planning permission is sought. Plans have been submitted indicating how vehicles would service the application site from the northern access which route is stated as having safety and visual benefits. The applicant maintains that whilst vehicles servicing the application site could safely do so from the southern access, it is the applicant's preference to use the northern access for the traffic associated with this application, 07/0621/FL.

2.6 The application was originally submitted following the service of an enforcement notice, (No4 May 2007), in respect of the above mentioned, unauthorised activities. The applicants appealed that Notice which was subsequently withdrawn, given the passage of time and changed circumstances on site.

### 3. CONSULTATIONS AND ISSUES RAISED

3.1 Galston Community Council – Notwithstanding the amended road improvement details submitted, the Community Council still objects to this proposal on the following grounds:-

- a) The development is totally inappropriate to the area, in land designated as agricultural.
- b) The visual impact on the area would be horrendous.
- c) No environmental audit has been supplied with the application.
- d) The increased volume of traffic on the country roads is unacceptable and slow moving HGVs on the brow of a hill could cause an accident. The proposed road on the B7037 does not appear to be any different than that of the previous application.
- e) Concern over the disposal of non-reclaimable items.
- f) The Community Council further expressed unhappiness at the late submission of the additional supporting material but confirmed that in relation to the additional submissions, its objections still stood.

***The business is proposed to operate from inside the existing buildings and therefore, will not result in the loss of agricultural land nor will it be visually prominent. The concerns about the increase in traffic are noted and are material in the consideration of the application. However, the Roads Division have agreed a scheme of improvements within the road curtilage that do not require a new road. It is not considered that the proposal requires submission of an Environmental Assessment but that due regard must be had to the extensive documentation submitted with the application.***

3.2 Scottish Power - Advise that they have no objection in principle to the proposal, however, they have both underground apparatus and overhead cables in the area. Therefore, they reserve the right to protect and/or deviate this equipment at the applicant's expense.

***Noted. No response to the additional supporting material.***

3.3 East Ayrshire Council Roads and Transportation Division – recommend approval of the application subject to conditions as follows.

1. The B7037 / C106 priority junction will require to be widened out as far as is practicable within existing Roads controlled land to allow a commercial vehicle and a car to pass without mounting the grass verge. This is as indicated in the Colin Buchanan drawing CB/16650/01/SK06. A section 56 will be required to allow this work to proceed.
2. On the C106, 2 no. additional intervisible passing places are required as a result of the existing geometry of this section of the road. These are shown on the Colin Buchanan drawing CB/16650/01/SK05. It is anticipated that the final position of these passing places will be identified on site to ensure the intervisibility is as required. A Section 56 will also be required to allow the formation of these passing places within Roads controlled land.
3. The 2 no. existing informal passing places on the C106 shall be left insitu. These will be resurfaced by the Roads Division as part of our proposals to re-surface from the B7037 to the Threepwood farm entrance.
4. The access to Threepwood farm should be amended and improved as indicated on the Colin Buchanan drawing, CB/16650/01/SK07. This arrangement will maintain the parking at the entrance whilst providing suitable radii to ensure that the Road Division's visibility criteria are achieved. As above, a Section 56 will be necessary to allow the required alterations to the access junction.
5. As East Ayrshire Council intends to carry out re-surfacing works on the C106 from the B7037 to the Threepwood Farm access, any works required as part of the landscaping application should be co-ordinated in conjunction with the Roads Division's re-surfacing programme to ensure that traffic disruption as a result of the traffic management requirements is kept to a minimum.

The Division would support the use of the "northern" access as the main access to and from the site. (The access referred to in para 4 above). As regards access to the public road from the site:-

- a) sightlines at the northern junction should be improved to 2.5m by 90m visibility to both sides with no obstruction over 1 metre in height within these splay areas,
- b) Junction improvements at the northern access should be as per 4. above,
- c) Internal signage and instructions should be provided to drivers associated with the business (including deliveries) to utilise the

northern access for all large vehicle movements both in and out of the site with the southern access utilised, when necessary, for incoming vehicles only. As indicated on the original plans submitted, Roads would not object to the historical use of the southern access for farm equipment. The southern junction visibility should also be improved for the public and applicant's benefit to 2.5m by 35m to both sides with no obstruction over 1m in height within the splay areas as indicated on Colin Buchanan's Drawing no. CB/16650/01/SK13. The kerbing / surfacing works on CB/16650/01/SK12 should be conditioned to cater for incoming traffic movements.

***The road improvements agreed by the Roads Division, subject to conditions, are achievable on land either in the control of the applicant or within the road curtilage.***

3.4 East Ayrshire Council, Environmental Health, Licensing and Community Safety – Advise they have no objections, however would make the following comments:-

1. Noisy work on the site during construction should be restricted to 7am to 7pm Monday to Friday, 8am – 1pm on a Saturday, and no noisy work on a Sunday.
2. Noise from the works during construction and subsequently during their operation should be at such a level as will not cause the underlying background noise level LA901 hour to rise by more than 3dB.
3. Hours of operation of the business should be restricted to 7am – 7pm.
4. All waste arising from the construction works should be disposed of to the satisfaction of the Waste Management Authority and otherwise than by burning.
5. All drainage associated with the development should be completed to the satisfaction of Scottish Water and/or SEPA.
6. The above comments are unchanged by the additional supporting material.

***It is considered that should consent be granted, the concerns of the Environmental Health Section could be covered by the imposition of appropriate planning conditions and notes.***

3.5 Scottish Environment Protection Agency – Advised that although they originally objected to this proposal, following clarification of the proposal, they now remove their objection, provided the following requirements are satisfied. They more recently also commented that they did not need to be reconsulted on access changes.

3.6 Waste Management – SEPA has reviewed the submitted additional information and it understands that the site boundaries of planning applications 07/0190/FL and 07/0621/FL are located adjacent to each other

without overlapping. Moreover, the applicant has explained that application 07/0621/FL is only proposing the change of use of existing buildings into storage for vehicles, equipments, tools and hardware used for the landscaping and contracting business. In his letter, the applicant has clarified that the proposed site clearance business consists of external work involving clearing of customers' premises outwith Threepwood Farm. At this stage, we would note that its not clear whether the waste material cleared from customers' premises is proposed to be stored within the site of application 07/0621/FL or not. In view of this, the applicant should be aware that storage of such waste at this site is likely to require authorisation from SEPA under the Waste Management Licensing Regulations 1994. The applicant should also note that SEPA may only consider applications for waste management licences once planning permission has been granted.

3.7 Surface Water – Advise that if planning permission is granted a condition should be imposed to collect and treat surface water from the site, in accordance with the principles and techniques detailed in the Sustainable Urban Drainage System (SUDS Manual (C967).

3.8 Bio-diversity – Suggest that the applicant discusses the details of the proposed wetland with the relevant Department within the Council in view of the objectives of the Local Biodiversity Action Plan.

No further comments were made following receipt of the additional supporting material.

***SEPA have removed their objection subject to the aforementioned requirements being satisfied. It is considered that should consent be granted, these concerns could be addressed through the imposition of appropriate planning conditions and notes. It should also be noted that further to the appeal decision on 07/0190/FL, the limited works approved included a SUDS wetland system, details of which have recently been submitted for approval.***

3.9 No replies have been received from the Access Officer, Scottish Water or West Of Scotland Archaeology Service.

***Noted***

#### **4. REPRESENTATIONS**

Objections have been received from 27 parties including the Galston Community Council, as detailed in Section 3. A number of these objections have been expanded following the issue of amended plan notifications in August and November 2009.

A single third party letter of support has been received which is summarised at 4.50 below.

The objections relate to the following concerns:-

4.1 Object to the establishment of a 'Site Clearing' business on a site in a Rural Protection Area and to the importation, processing and disposal of waste materials; in respect of which there is no information. This was refused in terms of the other application and could include dangerous substances and chemicals being stored.

***There is reference to the operation of a site clearance business from the application site. The applicants have confirmed that this is simply an expansion of the description of what Mr Gibb does as part of his landscaping work. Plant and machinery is to be kept in the building which is designed specifically to deal with the preparation of brownfield sites for development. It is possible for any consent on this site to be conditioned such that within the site there is no storage or importation / processing of waste materials.***

4.2 The proposal is similar to the applicant's other planning application 07/0190/FL and this is an attempt to get a 'back door' approval for the operation of a waste transfer station on this site.

***This proposal remains significantly smaller in content than the refused application, 07/0190/FL, and is not for a waste transfer station.***

4.3 There is no local or community need for such a business.

***The applicant previously submitted various documents that concentrated on the need for and benefits related to the adjacent application, (07/0190/FL). The need for this proposal however, is less well detailed resting chiefly on the benefits of proximity to the proposals seeking consent under the other application.***

4.4 There is no description of how and where the material from the 'site clearing' is to be stored and processed and no limitation placed on the type of material to be brought onto the Threepwood site. This is wholly unacceptable and a clear description of how the material is to be handled and strict limitations as to the type of material imported need to be made.

***It should be noted that the tightly drawn boundary of this application site would afford little opportunity to accommodate waste processing and storage as formed part of the adjacent, refused application.***

4.5 It is understood a waste processing licence application will need to be made to SEPA to allow such activities on site.

***The applicant has applied to SEPA for a licence and determination of that application is being withheld pending the outcome of this application and application 07/0190/FL.***

4.6 Object to Threepwood Farm being used as an industrial site on a Greenfield site without any planning permission.

***This application seeks to rectify this situation retrospectively where it concerns the specifically identified buildings at the south of Threepwood.***

4.7 Concerns have been raised concerning the noise from skip lorries at present going to and from Threepwood Farm.

***It is not part of the use proposed that loaded skip lorry movements would be generated.***

4.8 The local roads are not of sufficient size to accommodate the extra vehicle activities that these businesses would bring into the area. In fact the road to Threepwood cannot handle even the current approved business activities. The increase in traffic flow is causing difficulty for residents and further destruction of the roads and verges in the area.

***The Roads Division do not object to the proposals, subject to the application of conditions, having received revised road improvement proposals from the applicant.***

4.9 The large scale and unauthorised road access that has been formed has dire consequences for road safety. There has been damage to the road leading to the Sorn Road.

***The Roads Division have not objected to the revised proposals subject to the application of conditions.***

4.10 The road improvements as proposed do not change the safety of the junction with the B7037 where there is a blind dip and blind bend. Our hedge is aligned at this junction consistent with our feu plan which does not match the submitted details.

***The Roads Division have not objected to the revised proposals subject to the application of conditions.***

4.11 The road improvements do not make the road safer or less busy or address the issue of traffic coming from beyond Mr Gibb's main access, (which is unauthorised),. The access point for the change of use of these buildings at the south of the farm is unaltered.

***The Roads Division do not object to the proposals having received revised road improvement proposals from the applicant. They have recognised the historical use of the southern access adjacent to the planning application site. They do not object, subject to conditions, to its use for “landscaping related” incoming vehicles only or for farming operations.***

4.12 The road improvements will increase traffic flow and speed and be detrimental to pedestrian safety by giving drivers a false sense of security. The concentration of traffic and roadside parking will cause further hazards.

***The Roads Division have not objected to the revised proposals subject to the application of conditions.***

4.13 There is no signage indicating the use of the passing places proposed or advising those exiting Threepwood to look left before doing so.

***The Roads Division recommend the use of conditions securing internal signage such that drivers associated with the business are informed about the use of the “northern” access. A condition can be applied requiring signage at the passing places confirming their use for that purpose alone.***

4.14 The application was continued to determine if Mr Gibb had a right over land to form a new road. In effect, a new submission has now been made.

***The application was minuted as being “continued to a future meeting to allow an investigation into clarifying the position with regard to the ownership of a piece of land adjacent to the applicant’s site which could have implications for road improvements necessary to the application”. Following the continuation, the applicant entered into discussions with the Roads Division that led to a reduced extent of road improvements that did not require additional private land. Given that the continuation informed whether the sole recommended reason for refusal, “adverse impact on road network and road safety”, was capable of being resolved, it was not unreasonable for the Council to consider proposals that also set out to address road safety.***

4.15 DLA Piper refer to two accesses at Threepwood; there are three plus a shed with access directly on to the public road. The access analysis provided on behalf of Mr Gibb takes insufficient account of vehicles heading north past Threepwood and having to negotiate a steep incline.

***Noted, however the revised access details have been considered by the Roads Division and they are content that the proposal can be approved subject to the use of appropriate conditions.***

4.16 During an open meeting held by Mr Gibb, the prime reason for the applications was stated to be for recycling and waste transfer. Mr Gibb’s

comments were on occasion curtailed by his solicitor, was he “giving too much away?”

***No comment possible on this remark as this Division was not advised of this meeting.***

4.17 The McCreadie Mitigation Scheme doesn't consider or address the impact of the proposals on the grade “A” Cessnock Castle.

***A Landscape Overview and Mitigation Strategy produced by Farningham McCreadie did form part of application 07/0190/FL but did not refer to Cessnock Castle.***

4.18 Various photographs accompanied one response to the additional supporting information, to illustrate the visibility of the site which is described as prominent, high and exposed by another objector.

***These photographs have been noted, however, the proposals are contained within existing buildings in the Threepwood Farm complex and as such will not be detrimental to the character of the area as suggested.***

4.19 Mr Gibb has no right to plead any advantage in terms of numbers of employees or his contribution to the public weal as he has proceeded without planning consent.

***The application has to be determined in accordance with the development plan unless material considerations indicate otherwise. The employment benefits of the proposal are material in this respect however, the fact that such employment may already be in place should not be a factor in the determination.***

4.20 The proposals amount to an industrial estate without policy support.

***The application is assessed against the relevant policy context under section 6 below.***

4.21 The new road impacts on land in other ownership or subject to burdens favouring other people. The SEPA license application seeks collection and disposal of domestic and commercial waste, beyond what is proposed in the planning application.

***These representations are not relevant to this application.***

4.22 A stone crusher has been in operation and it highlights the industrial activity on site. This is very noisy and has been operated till 11pm.

***The stone crusher was investigated when first the issue was raised and in recent times further complaints have been received***

**about its use. These are again being investigated by enforcement officers.**

4.23 The proposal is not simply an extension of the previous animal feed business.

***This is recognised through the submission of the planning application whose merits will be assessed against the development plan and other material considerations.***

4.24 Mr Gibb has gambled on the commercial advantage of going ahead with an unregulated business and a “built and be damned” attitude. This is a rural site and the noise levels are intolerable, never mind traffic, dirt and dust.

***Subject to the application of conditions / notes, Environmental Health has no objections. The Roads Division have not objected to the revised proposals subject to the application of conditions.***

4.25 The recycling and site clearance businesses are wholly inappropriate for the countryside and should be carried out on brown field sites, not in the beautiful Ayrshire countryside.

***The site clearance reference within this application is explained by the applicant as an expansion of the description of what Mr Gibb does as part of his landscaping work. Plant and machinery to be kept in the building is designed specifically to deal with the preparation of brownfield sites for development. The location of this proposal within existing premises limits its impact on the countryside.***

4.26 Material from demolished flats in Galston has been used as landfill at the site.

***If such materials have been disposed of, this has not occurred within the site of this application.***

4.27 The industrial development is contrary to East Ayrshire Council Policies and the Structure Plan; has no specific locational need, does not benefit the community socially or economically, does not contribute to rural diversification and is not required for agricultural / forestry purposes.

***The application is considered against the policies of the development plan in section 6 below.***

4.28 The suggestion that Threepwood is not easily discernible from Sornhill is “insane.”

***The separation of Sornhill from Threepwood provides only limited mitigation of visual and other impacts.***

4.29 The proposal would be a visual scar on an area of Great Landscape Value and be detrimental to the character and appearance of the area and eliminates the potential to attract tourism and walkers.

***The site is not affected by any statutory landscape designation, however, the proposals are contained within existing buildings in the Threepwood Farm complex and as such will not be detrimental to the character of the area as suggested.***

4.30 The application is contrary to TRANS1, ECON 3, SD1, 2 and 3.

***The relevance of these Structure Plan policies is assessed in section 6 of the report.***

4.31 It is beyond belief that having won the appeal for 07/0190/FL; that favourable consideration could be given to the current proposal.

***The application 07/0190/FL concerned a much larger set of proposals raising a wider range of issues. The report submitted to the Committee in December 2008 in respect of 07/0621/FL, concluded only that the application was unacceptable on the basis of its impacts on the road network and road safety. The considerations material to this application now include the Alteration to the East Ayrshire Local Plan, Finalised Draft with Modifications. It's relevance is discussed in Section 7 of the report.***

4.32 The proposals could affect a private hedge line and drawings indicate the loss of a tree, whilst the form says none will be felled.

***A tree at the entrance to the Threepwood complex is indicated for removal in the additional plans received in August 2009, but is not covered by a TPO. The proposals relating to road improvements are located within the road curtilage over which any overhanging branches or hedging could properly be trimmed by the Council as roads authority.***

4.33 The terms of the recent appeal dismissal on the adjacent site should apply equally to this application.

***The application 07/0190/FL concerned a much larger set of proposals raising a wider range of issues. That application included, within its many other elements, a recycling facility and yard incorporating skip hire and reclamation. With regard to this current application, the reference to "operation of site clearance business" has been explained by the applicant as an expansion of the description of what Mr Gibb does as part of his landscaping work. Plant and machinery to be kept in the building is designed specifically to deal with the preparation of brownfield sites for development.***

4.34 Extensive storage relating to the landscaping business is creating an eyesore and generates noise and pollution without regard to neighbours.

***This application concerns the use of a restricted and tightly defined number of buildings to the south of the Threepwood complex and not the yard area north of Threepwood which was subject to a separate, refused application. Consequently, the likelihood of noise or pollution being generated by the specific proposals subject of this application is minimal.***

4.35 The application is fundamentally the same as that earlier application which the Committee refused and about which the Reporter on appeal had been so damning.

***This is not accepted. The application 07/0190/FL concerned a much larger set of proposals raising a wider range of issues. The report submitted to the Committee in December 2008 on 07/0621/FL, concluded only that the application was unacceptable on the basis of its impacts on the road network and road safety.***

4.36 Mr Gibb's past involvement in site clearance / recycling has involved noise from a mechanical crusher even at weekends, operating without an appropriate license and setting of bonfires as late as 3.20am.

***The stone crusher was investigated when first the issue was raised and in recent times further complaints have been received about its use. These are again being investigated by enforcement officers.***

4.37 The application was continued in December 2008 not to enable clarification of land ownerships and implications for necessary road improvements, but simply to consider land ownership. Mr Gibb has used the continuation to promote an alternative scheme which he should not be allowed to submit.

***The application was minuted as being "continued to a future meeting to allow an investigation into clarifying the position with regard to the ownership of a piece of land adjacent to the applicants site which could have implications for road improvements necessary to the application". Following the continuation, the applicant entered into discussions with the Roads Division that led to a reduced extent of road improvements that did not require additional private land. Given that the continuation would inform whether the sole recommended reason for refusal, "adverse impact on road network and road safety", was capable of being resolved, it was not unreasonable for the Council to consider proposals that set out to address road safety.***

4.38 The Committee should only have placed before it the issue of Mr Gibb's land ownership. The only permissible additional feature that should now be put to the Committee is whether Mr Gibb owned land required for the original roads improvements.

***See response to 4.37 above***

4.39 If Mr Gibb is allowed to submit yet further information to "rescue" his application, then objectors should not be fettered in relation to their objections.

***The Council's Legal Service has confirmed that it is appropriate, reasonable and in the interests of Natural Justice, given the passage of time, to permit all relevant parties to present to Committee their positions in respect of both the roads improvements but also the application itself.***

4.40 The objections put forward by the Planning Department in their recommendation for rejection of Mr Gibb's application are not limited totally to "roads" conditions and the reference to "land clearance business" is little or no different to much of what was previously recommended for refusal.

***There is a very clear distinction between the application refused at Committee in December 2008 and substantially dismissed on appeal in June 2009, and that now under consideration. For clarity, the appealed application concerned a "Proposed Recycling Facility and Yard, Polytunnels and Animal Feed Store, Change of Use of existing buildings to Office, Shop, Café, Heritage Centre, new Access Road, Traffic Calming and Landscaping (in retrospect)". It was therefore a much wider ranging application that included the sizeable yard area formed to the north of the farm steading. This proposal is essentially in respect of the operation of a base from which a business, undertaken elsewhere, can be operated. The applicant has confirmed that the reference to the operation of a site clearance business is a reference to the nature of the works that would be undertaken away from the site.***

***Lest there be any doubt in this matter, the planning authority could condition that no importation, storage or sorting of waste materials should be carried out within the application site; which itself is tightly drawn around a limited number of existing buildings plus access.***

4.41 If the proposal is to be viewed as a "continuation" will the next committee require only the same members to consider the continued application? If not, the point is underscored that this should be a fresh application.

***The Council's Legal Service has confirmed that it is appropriate, reasonable and in the interests of Natural Justice, given the***

**passage of time, to permit all relevant parties to present their positions in respect of both the roads improvements but also the application itself.**

4.42 The application form confirms that the continued application was part and parcel of larger plans for Threepwood. I (the objector) am concerned at this, because I am advised that if this application is successful, Mr Gibb will “re-launch” the rejected larger application.

**The application forms query whether the proposal forms a stage in a larger scheme; the applicant indicated the parallel (at the time) application 07/0190/FL, now refused and largely dismissed at appeal.**

**Members will be aware of the need to consider the merits of this current application separate from proposals that may be submitted at some point in the future and which, at that time, would again be assessed on their merits.**

4.43 The land over which the applicant now proposes to carry out alterations to the existing road is not owned by him.

**A planning authority is able to apply negative suspensive conditions, for example requiring the formation of passing places prior to some other activity or event occurring, within a road curtilage.**

4.44 The application as amended over 2009 now bears no resemblance to the original proposed, small landscaping business. The proposals allocate over 40 parking spaces and the site is so altered in layout that it appears to be designed on a completely different scale.

**The details of the application remain as originally submitted. The applicants have, however, confirmed in a plan how they intend to secure vehicular access to the application site through the rest of the Threepwood premises. In so doing they have submitted a plan which shows extensive use made of the yard area. If this application was to be approved, it should be a strict condition of any consent that the uses indicated on this plan were not authorised.**

4.45 To the extent that this application seeks permission for activities / uses contained within the larger adjacent application, they too should be refused. To do otherwise would be irrational and contrary to natural justice.

**Each application must be determined on its merits although the planning history of the site can be taken as a material consideration. The extent to which the recent refusal is material is dependent amongst other things, upon the similarities between the developments. It is considered, given the clear distinctions in**

***scale and activity, that this application is unlike that refused previously and deserves to be assessed against the development plan and material considerations on its own merits.***

***A reference to an intention to operate a site clearance business has been explained above, (4.1, 4.25 and 4.33). Should there be any doubt that this defines the nature of the business as one operated remote from the site, a condition could be applied to any permission to preclude importation, storage or processing of waste materials.***

4.46 The application is large and without justification through the development plan and approval would represent an unprecedented relaxation of all planning principles and guidelines.

***The application is assessed against the development plan under Section 6 below.***

4.47 That employment is offered to people on the back of illegal activities should be ignored; it would be contrary to natural justice to take it into account.

***The delivery of employment opportunities through a proposed development is a material planning consideration. It would however, be inappropriate to apply unreasonable weight to such employment because the jobs were already in existence at a site operating without planning permission.***

4.48 The Roads issues have not been clarified, represent a significant alteration to the topography of the site and location and still presuppose that he (Mr Gibb) will be able to acquire land belonging to objectors.

***The Roads Division have been in discussion with Consultants acting for Mr Gibb and have agreed on a package of improvements either within the curtilage of the public road or on land in the ownership of Mr Gibb; eg at the entrance to the farm itself.***

4.49 One of the plans submitted in support of the application, (*to show how vehicle movement through the site itself would be achieved*), details a full range of activities in the yard area north of the farm buildings which, if the application was to be approved, would feature on a stamped "approved plan". The applicant may then claim authority for those uses by that means.

***The plan referred to illustrates how vehicle access can be achieved to the application site through the rest of the Threepwood premises. If the application were to be approved, it would be a strict condition of that consent that the uses indicated on this plan were not authorised.***

4.50 One letter has been received expressing support for the developments at Threepwood, indicating that Mr Gibb has made a huge difference to the premises at Middlethird Farm and that if he finished the development at Threepwood to the same standard, then it will be extremely successful. The development, it is stated, is a good business and provides many jobs. It can only be an asset to Galston and the Irvine Valley.

***Comments noted.***

## **5. ADDITIONAL SUPPORTING INFORMATION**

During 2008 the applicants submitted additional supporting information detailed below.

- Correspondence concerning Loudoun and Stewarton Academies being engaged in small business projects under the “Determined to Succeed” banner.
- Copy of the Certificate of Lawful Existing Use or Development in respect of the use of certain defined parts of the farm as shop, office, warehouse and feedstore mill.
- Copy of the Council’s appeal statement in response to the appeal by Mr Gibb against the Enforcement Notice served with respect to unauthorised use of the application site as a landscape contractor’s business and for the storage of building materials.
- Expression of pleasure from Visit Scotland about a “walking leaflet” produced by Gibb of Galston.
- Extract from “Enterprise into Education”, produced by Ayrshire Chamber of Commerce, illustrating the involvement of Galston Nursery school children in tree planting, photographic surveys and the Burn Anne Walk, all at Threepwood.
- East Ayrshire’s “Enterprise Exchange” newsletter featuring participation of Stewarton Academy in a pond project based at Threepwood.
- Leaflets by Gibb of Galston – “History of Covenanting at East Threepwood”, “Galston the Historical Heart of Ayrshire”, “Wildlife Site at Threepwood” “Burn Anne Walks” and “Burn Anne Agate”.
- “The Natural Step, Learn, De-stress, Enjoy”. Document laying out the concept of a sustainable healthy lifestyle for future generations, including access to walking paths, quiet countryside, excellent vistas, an eco-centre, centre for education and schools educational partnerships, picnic areas, new tree planting and interpretation boards. Aside from listing past educational / heritage events, the document lays out how reclaimed materials can be utilised in gardens and anticipates future employment numbers; a further 6-10 over and above the 35 employed in the Gibb of Galston companies.

***The majority of the above documents were of most relevance to the related application 07/0190/FL refused by Committee in December 2008..***

5.1 An Additional Supporting Statement was also lodged in respect of this application. The applicant's statement addresses the policy context with the following comments. (Where appropriate, the Division's response is detailed below each comment.)

#### Ayrshire Joint Structure Plan

5.2 'TRANS 1 The proposals would require car or van access wherever located and the site is not peripheral and has close proximity to the A71.'

***The above conclusions are not accepted, the site is not best placed to achieve a sustainable development and fails Policy TRANS 1, but not to the extent that the application should be refused.***

5.3 'ECON 3 The business is small scale, contained in existing buildings and would have no impact on the surrounding area. The area to the north is subject of a Certificate of Lawful Existing Use or Development (CLUD) and this affords industrial, storage and distribution rights. The proposal relates to that established industrial use.'

***The Council has issued a CLUD; but relative to specifically defined uses and buildings. This recognised in December 2005 that the use of specified buildings as a shop, office, warehouse and feed store mill was established over a period of 10 years and was lawful. This was simply and only a factual process consistent with the relevant legislation and did not require assessment of the merits or impacts of the uses. The premises concerned were limited in their floor area and do not collectively represent the adjacent, wide ranging industrial complex as suggested by the applicant.***

5.4 'SCHEDULE 1 GUIDING PRINCIPLES FOR SUSTAINABLE DEVELOPMENT Threepwood should be seen as part of a wider economic regeneration of Irvine Valley.'

***Comment noted***

5.5 'ENVIRONMENTAL QUALITY There would be no negative consequences for natural or built heritage. The proposal is contained in existing buildings with no negative landscape impact. There is no flood risk, no effect on land, air or water quality, no history of noise complaints and no Environmental Health objections.'

***Complaints have been received by this Division about noise emanating from the site. These are under investigation; see 4.36 of this report.***

5.6 'IMPROVED ACCESSIBILITY Can be achieved through a conditioned Green Travel Plan.'

***Noted***

5.7 'ECON 14 With regard to rural diversification, SPP15 supports rural diversification as a means to expand / start new businesses in appropriate circumstances and at appropriate scale. The Government wishes the countryside to play a more significant role in regenerating the national economy.'

***SPP15 has now been superseded by SPP published in February 2010. The principles of both are fully accommodated within the evolving local plan. The principles of SPP15 were embraced in the adopted local plan where policies permit development in the countryside in certain circumstances.***

East Ayrshire Local Plan

5.8 'SD1 Gibb of Galston operates throughout Ayrshire and sustainability issues would apply wherever the business was based. The proposal is functionally linked to the recycling business adjacent, so the location is sustainable.'

***The recycling business adjacent does not have the benefit of planning permission and cannot be used to justify this proposal.***

5.9 'SD2 This policy is irrelevant, as the proposal is compatible with SD3. In any event, the proposal is an extension of the industrial use rights to the north.'

***The uses authorised by CLUD to the north are small in scale and tightly defined and therefore do not justify this proposal.***

5.10 'SD3 The AJSP strongly suggests the site is in the Irvine Valley Investment Corridor where STRAT 2 and ENV 4 apply. Criteria (e) of STRAT 2 supports the rural area through measures that seek to diversify the rural economy and facilitate new rural business & industry. In ENV 4 development is supported where it will not result in a negative impact on the landscape and will enhance bio-diversity. The report prepared for the Committee on 25 April 2008 recognised that only one of the tests in policy SD3 requires to be met.'

***An appeal against the service of an enforcement notice (No 4) was sisted pending consideration of application 07/0190/FL and this application for "change of use of farm buildings for storage of vehicles, equipment, tools and materials and the operation of a landscaping, fencing and site clearance business". Notice no. 4 has since been withdrawn in recognition of the changed circumstances on site.***

***The AJSP para 18, says that “Investment Corridors provide the link between the Core Investment Area, the main urban centres of Scotland and beyond to national and international markets. It is generally along these main road and rail corridors, which contain much of Ayrshire’s concentrations of population, activities and services, that accessibility to both employment and to markets is best afforded.” Development in these corridors will contribute to sustainable development.***

***The site, however, is not in the Irvine Valley Investment Corridor, as the proposal is completely remote from the A71 which is defined in schedule 2 as being the location of the investment corridor. Schedule 1 outlines the guiding principles for sustainable development and under “improving accessibility”, it is stated that areas of economic development will require to be accessible by a range of transport modes. As a wide range of transport modes is not available to service this location, the site is not sustainable.***

***However, criterion (iv) of SD3 does apply such that the site does contribute to rural land diversification.***

‘The Council’s appeal statement relative to the applicant’s appeal against the service of enforcement notice says the proposal can be considered to contribute to rural diversification, but the withdrawn report of 25 April says the proposal was not an acceptable form of rural land diversification.’

***This point is accepted. The report of 25 April 2008 was withdrawn and in recognition also of the changed circumstances on site, subsequently, the enforcement notice (No 4) was also withdrawn.***

‘Existing jobs will be lost if the application is refused; some 37 persons are employed.’

***The applicants confirm that 6 of these jobs were taken on since submission of applications 07/0190/FL and 07/0162/FL and not all relate to the landscaping, fencing and site clearance business. Any employment associated with the landscaping, fencing and site clearance business could be retained equally at a more appropriate site.***

‘Together with the associated application, a total of 64 jobs would result, ie, a further 27 over current levels.’

***Employment opportunities are a material consideration to be weighed against the development plan and other environmental considerations.***

'The proposal is consistent with SPP15 and the principle of rural diversification. The principle of industrial use within Threeewood has already been recognised.'

***Only limited existing industrial floorspace was recognised by the CLUD. The repeated references to recognised industrial and distribution rights fail to reflect the scale of the uses accepted as established and imply incorrectly that a substantial industrial complex is already sanctioned.***

5.11 'IND 6 requires justification of new or industrial development on land not specifically so identified to be justified against all of the following:-

Criterion 1 The proposal is an extension of land benefiting from industrial and distribution rights and therefore has "locational need" justification.'

***The extent of the uses recognised through the CLUD does not amount to a justification for the proposal. The proposal does, though, contribute to rural land diversification.***

'Criterion 2 The availability of alternative land has been assessed. No single user or Strategic sites are identified in the Irvine Valley. In the adopted Local Plan, there is one local site in Darvel which would not permit any of the retail or tourism elements of the Threeewood activities and which is not being considered in the Finalised Draft Alteration to the Local Plan for development.

There are no available Miscellaneous Development Opportunity sites with Potential for Industrial and Business Development in the Irvine Valley.

No suitable sites were found in the Safeguarded Areas for Business and Industry.

The proposed site is next to existing industrial use rights and is appropriate bearing in mind the Council has recognised the suitability of the site for this purpose.'

***The Council has acknowledged that adjacent to this application site, certain limited activities have use rights established through the CLUD process. It was not required to formally assess the merits of the uses so established. There has been no recognition of the suitability of the uses, as the applicant incorrectly suggests. It is simply accepted that through time certain limited uses have become lawful. It is therefore incorrect to suggest in the generalised terms being used, that the Council has recognised the suitability of the site for industrial purposes. This very clearly is not the case.***

***However, a landscaping, fencing and site clearance business operating within the confines of the application site and within***

***existing buildings could be considered an appropriate rural business and is therefore acceptable at this location.***

'Criterion 3 As regards "economic benefit", the Council's enforcement appeal statement said there would be such benefit, yet the report prepared for the Committee in April said the benefits were minimal.'

***Having reviewed this comment, it is considered that economic benefits would arise from the development.***

'Criterion 4 It is assumed the Council has no issue with impact on surrounding uses as this was not mentioned in the report prepared for the April Committee. The proposal will relate well with the established industrial activities to the north.'

***It is indeed considered that the proposed use will not have an impact on the surrounding environment when contained within existing buildings. However, there are only limited authorised industrial activities to the north. It is therefore incorrect to gauge the impacts of this application as if being diminished by the scale of the unauthorised activities nearby.***

'Criterion 5 As regards "transport" the Roads Division's upgrade requirements are only viable in the event of the associated application being approved. The closure of existing access points that are not suitable for commercial vehicles could be conditioned in the context of traffic management details to be lodged with the Council.'

***Originally, there was no proposal in this application to upgrade the existing road network. The Roads Division recommended refusal unless the road improvements associated with the larger 07/0190/FL application were put in place for this application. However, agreement has now been reached relative to a scheme of lesser road improvements contained within the road curtilage. The proposal now complies with criterion 5 of Policy IND 6.***

5.12 'IND 10 Consideration must be given to the lawful industrial and warehouse use at Threepwood. The April 2008 committee report and the appeal statement are in contradiction and the proposal is a sympathetic industrial and business use related to appropriate rural activities.'

***IND 10 says industrial and business development outwith settlement boundaries will be acceptable only in certain circumstances. The criterion being highlighted, (iii), is that of "sympathetic industrial and business developments related to appropriate rural activities such as small scale craft industries and leisure, recreation and tourism developments." The nature of the use, given its accommodation in existing buildings, makes it a rural business that is sympathetic to the area and consistent with IND 10.***

***Policy IND 10 concludes by indicating that all proposals in the countryside for industrial and business proposals will have to be assessed against their impacts including on transport and infrastructure. Road safety is now satisfied following agreement to arrange of lesser improvements being given by the Roads Division.***

‘As recognised in the Council’s enforcement appeal statement, the proposal is policy compliant. In addition, the CLUD has established an adjacent industrial presence. SPP15 indicates that “the overarching themes and visions of this SPP should be increasingly reflected in planning policy and decisions.”

***Road safety issues are now addressed in relation to the application and would not now form a viable reason for refusal given the comments received from the Roads Division. The Council has accommodated the provisions of SPP 15 and the recent SPP in the Finalised Draft Alteration to the Local Plan. The Council recognises a range of circumstances in the Adopted Local Plan where such development may be acceptable. These are considered below.***

## **6. ASSESSMENT AGAINST DEVELOPMENT PLAN**

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

### Ayrshire Joint Structure Plan 2007 (AJSP)

#### **6.2 TRANS 1 Land Use and Transportation**

The three Ayrshire Councils shall ensure that:-

- A) all significant new trip generating development is closely linked to existing and proposed walking, cycling and public transport networks;
- B) adequate access is provided for a range of transport modes to areas of economic opportunity and particularly to the Gateway and strategic business locations identified in ECON 1 and ECON 2.
- C) all appropriate measures are promoted to minimise any negative environmental impacts of road traffic;

- D) essential use of the private car is accommodated within the context of an integrated approach to transport;
- E) accessibility to local services is maintained and improved by the integration of transport networks linking services to local communities; and
- F) costs of new transport infrastructure and services incurred as a result of development proposal are met by developers.

***The peripheral position of the application site, is considered to fail to satisfy the sustainable principles embodied in this policy, although not to the extent that it should be refused for this reason.***

### 6.3 ECON 3 Local and Other Business Opportunities

The three Ayrshire Councils shall make provision for an adequate supply of land for office, business and industrial use throughout their areas to cater for locally based services and other business development opportunities providing the development is small in scale and in keeping with the character of the surrounding area.

***The Council through the local plan, in line with the requirements of the Structure Plan, has provided for appropriate business/ industrial areas within the Irvine Valley.***

### 6.4 ECON 14 Rural Diversification

This requires that there is support for rural diversification particularly through proposals for small scale renewable energy; forest based products and industries; leisure, recreation and tourism; non-food crops and local quality food initiatives; appropriate rural housing and small business development; and,

that appropriate criteria are identified to assess proposals related to the diversification and growth of existing rural businesses and for the establishment of appropriate new business development in rural areas.

***The Adopted East Ayrshire Local Plan identifies circumstances where rural diversification can be accommodated; Policies IND 6 and 10 apply. These offer support for sympathetic industrial and business developments related to appropriate rural activities such as small scale craft industries and leisure, recreation and tourism developments. As indicated above, 5.11, the proposal, given its accommodation within existing buildings, is acceptable rural diversification.***

Adopted East Ayrshire Local Plan

### 6.5 Policy SD1

The Council will adhere to the principles of sustainability in its consideration of all development proposals.

***The applicants contend that Gibb of Galston operates throughout Ayrshire and sustainability issues would apply wherever the business was based and that the proposal is functionally linked to the recycling business adjacent and thus is sustainable. However, the recycling business adjacent does not have the benefit of planning permission and cannot be used to justify this proposal.***

## 6.6 Policy SD2

There will be an over-riding presumption that all new developments will be located within the East Ayrshire settlements, unless the development is acceptable to the Council in terms of Policies SD3 and SD4 below.

***The site is clearly located well outwith the closest defined settlement of Galston and falls to be assessed against policies SD3 and SD4.***

## 6.7 Policy SD3

Within the Rural Protection Area, development proposals relating to land located outwith settlement boundaries will be acceptable to the Council only where the development:

- (i) comprises an acceptable form of residential use as detailed in Policy RES13 of the Local Plan; or
- (ii) can be fully justified in terms of site specific locational need; or
- (iii) can be fully justified in terms of social and economic benefit to the community; or
- (iv) contributes to rural land diversification; or
- (v) provides for the operational needs of agriculture or forestry.

***The application site lies within the defined Rural Protection Area in the adopted local plan. The applicants in their additional supporting information address in particular criteria (ii) (iii) & (iv).***

***The applicant has sought to provide a site specific locational need based on proximity to authorised, similar uses. The issued CLUD relates to small scale, long standing activities with strong links to the farm activity on site. The limited and defined nature of the uses accepted as lawful does not justify further wider industrial activity.***

***Details have been supplied of the existing and proposed numbers of staff associated with the operations. These relate to the totality of operations on the site not just the landscaping, fencing and site clearance operations. 7 jobs would arise from this proposal.***

***However, that figure would pertain wherever the business was located.***

***Notwithstanding the above, the landscaping, fencing and site clearance business can be considered to contribute to rural land diversification; consistent with criterion (iv); and thus complies with Policy SD3.***

#### **6.8 Policy SD4**

Within the Rural Diversification Area, development proposals relating to land outwith settlement boundaries will be acceptable to the Council where the development:

- (i) comprises an acceptable form of residential use as detailed in Policy RES 14 of the Local Plan; or
- (ii) provides for sensitive industrial, business, recreational or tourism development with a site specific locational need; or
- (iii) can be fully justified in terms of social and economic benefit to the community

***Policy SD4 does not apply as the site lies entirely within the Rural Protection Area.***

#### **6.9 Policy IND6**

All proposals for new industrial or business development on land not specifically identified for such purposes on the Local Plan maps and changes of use of existing premises to industrial or business use, will require to be justified against all of the following criteria:

- (i) locational need;
- (ii) availability of alternative land/premises in established industrial areas or on land identified as part of the marketable industrial land supply;
- (iii) economic benefit;
- (iv) impact on surrounding environment and adjacent uses;
- (v) transportation and infrastructure implications;
- (vi) loss of public amenity open space;
- (vii) loss of prime quality and good quality locally important agricultural land falling within categories 1, 2, 3.1 and 3.2 of the Macauley Land Use Research Institute; and
- (viii) impact on natural and built heritage resources.

***In terms of the eight criteria specified in this policy;***

- (i) The CLUD does not amount to a justification for the proposal but the proposal does contribute to rural land diversification.***
- (ii) A landscaping, fencing and site clearance business operating within the confines of the application site and within existing buildings can be considered an appropriate rural business and is therefore acceptable at this location.***

***(iii)The proposal will have an economic benefit, albeit one that could be achieved elsewhere in a more sustainable manner.***

***(iv)The operation of the proposals within existing buildings will reduce environmental impacts.***

***(v)Following discussions between the applicant and the Roads Division, a scheme of road improvements has been agreed. That Division do not object to the proposal, subject to the use of appropriate conditions.***

***(vi)The proposal will not result in the loss of public amenity open space.***

***(vii)Not applicable in that there would be no loss of prime or good quality land.***

***(viii)Not applicable in that the proposal will have minimal impact on natural and built heritage resources.***

***Subject to the provision of suitable conditions in respect of road improvements, the application is consistent with this policy.***

#### **6.10 Policy IND10**

Industrial and business development outwith settlement boundaries will be acceptable to the Council only where the proposal relates to:-

(i) Category 1 and 2 business and industrial sites and those Miscellaneous Development Opportunity sites with potential for industrial or business development, as indicated on the Local Plan Rural Area Map;

(ii) sympathetic industrial and business developments associated with the traditional activities of agriculture and forestry;

(iii) sympathetic industrial and business developments related to appropriate rural activities such as small scale craft industries and leisure, recreation and tourism developments;

(iv) rail freight based industrial uses at existing coal disposal points; or

(v) sensitive industrial and business developments with a clearly demonstrated site specific locational need to be located within the Rural Diversification Area. All proposals for industrial and business developments in the countryside will require to be justified and will be assessed against their impact on the surrounding environment and adjacent uses, transportation and infrastructure implications, loss of prime agricultural land and impact on natural and built heritage resources.

***Only one of these criteria, (iii), is relevant to this proposal, that of “sympathetic industrial and business developments related to appropriate rural activities such as small scale craft industries and leisure, recreation and tourism developments.”***

***It is considered that a landscaping, fencing and site clearance business can be considered to be an appropriate rural business and therefore acceptable in this location. The proposal is also sympathetic to its location as it will be utilising existing farm buildings within the site for the business.***

***Policy IND 10 concludes by indicating that all proposals in the countryside for industrial and business proposals will have to be assessed against their impacts including on transport and infrastructure.***

***Subject to the provision of suitable conditions in respect of road improvements, the application is consistent with this policy.***

## 6.11 Summary

**Subject to the provision of the road improvements agreed with the Roads and Transportation Division the proposal is compliant with the terms of the Adopted Local Plan.**

## 7. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

7.1 The principal material considerations relevant to the determination of the application are the consultation responses received, the letters of objection, the additional supporting information, the letter of support, the planning history, the Alteration to the East Ayrshire Local Plan (Finalised Version with Modifications), National Planning Guidance and Policy and the impact on the various amenities of the area.

### Consultations responses

7.2 These are noted in Section 3 of the Report wherein the Community Council oppose the application. The Roads Division consider that the application is acceptable subject to the use of appropriate conditions attached to any consent granted.

### Representations

7.3 The representations have been summarised in Section 4 of the report and include submissions supportive of refusal for a range of reasons including those of road safety and policy compliance as discussed above. These representations have been updated to take account of submissions made further to the receipt of additional information relative to road improvements.

7.4 The letter of support is also detailed above and highlights benefits arising in terms of jobs and the promotion of the surrounding area.

### Planning History

7.5 07/0190/FL – Proposed Recycling Facility and Yard, Polytunnels and Animal Feed Store, Change of Use of existing buildings to Office, Shop, Café, Heritage Centre, new Access Road, Traffic Calming and Landscaping (in retrospect) – refused by the Northern Local Planning Committee on 05 December 2008.

Subsequent appeal resulted in split decision from the Reporter which in effect only gave permission to –

- The use of existing polytunnels and the erection of a new polytunnel for the storage of screened soil processed within the mill building;
- the new sewerage to a septic tank and reed bed with tree screening; and
- a sustainable urban drainage system.

7.6 06/0301/FL – Construction of farm field access roads – Approved with conditions 16/0/2006.

7.7 05/0287/FL – Proposed new access road for existing business, storage area for retailing wood, stone, soil, bark, general building and landscape waste and builders landscape waste. Operation of landscape and contractors business, Skip hire – withdrawn 09/0/2006.

7.8 05/0207/FL – Proposed erection of Modular Officer Block – withdrawn 09/10/2006.

7.9 05/0132/LD - Application for confirmation of existing lawful use for shop, office, warehouse and feedstore mill – Approved 13/12/2005.

7.10 02/0431/AD – Proposed signboarding, approved with conditions 4 July 2008.

#### Planning Enforcement History: DP/030/02/0167

7.11 The Council have over the period of the last 7 years been investigating activities being undertaken at Threepwood. The following is a history of these investigations;

#### Notice 1

- 23 June 2004 – Operational Development Enforcement Notice served in relation to waste building materials being stored on the site without the benefit of PP.

The notice required the removal of these stored materials from the site.

## Notice 2

- 23 December 2004 - 2<sup>nd</sup> notice served as business activities were further developing – Breach alleged - An animal feed business, contractors business, turf business, fencing business, demolition and site clearance business, soft landscape and design business, plant hire business and the import, export and re-grading of soil are all ongoing at the premises without the benefit of planning consent. In addition to this, portakabins have been introduced to provide office accommodation along with the erection of poly tunnels for the wintering of sheep, all without the benefit of planning consent.

The notice required -

- 1) Discontinue the unauthorised uses as described in part 3.
- 2) Remove the unauthorised structures described in part 3 from the site, ie. the polytunnels for wintering sheep and the office portakabins.

This notice remains in effect following the submission of planning application 05/0287/FL which sought to address the issues raised. That application, after being amended several times, was withdrawn by the applicant on 9 October 2006. A further application, 07/0190/FL was submitted however this did not include the landscaping contractors business or the issue of building materials being stored on the site.

Any further pursuit of this notice and its provisions is being held in abeyance pending the outcome of this application before committee and further discussions with the applicant.

## Notice 3

- 27 March 2006 - Stop and Enforcement Notices served in relation to formation of new private ways through site. Subsequent application received and approved in this regard therefore terms of notice were complied with.

## Notice 4

- 10 May 2007 - Further notice served to address unauthorised “landscaping business and storage of building materials, (comprised of breeze blocks and facing bricks)”. Notice required the stopping of the unauthorised use and removal of building materials. This notice was appealed and then withdrawn by the Council, having regard to changing circumstances on site affecting the continued relevance of the notice.

## Notice 5

- 01 April 2009 – Enforcement and stop notices served in respect of unauthorised formation of bund and storage of materials. Notices was appealed and appeal was sustained by Scottish Ministers who granted planning consent for the bund around the yard area, subject to conditions.

### Supporting Information

7.12 Extensive supporting information has been received, the most recent of which being addressed in Section 5 above. The information also includes a Landscape Overview and Mitigation Strategy by Farningham McCreddie Partnership; reference was made to this by an objector. This lays out proposals for mitigating impacts arising from the wider development by extensive landscape planting.

***The mitigation proposals recognise and predominantly address the aspect to the site from the north, looking up hill. However, it was produced in relation to application 07/0190/FL refused by committee in 2008.***

### Alteration to the East Ayrshire Local Plan (Finalised Version with Modifications)

7.13 This policy document was published in February 2009 since which time, where not subject to objections, specific policies therein can be given significant weight in the determination of planning applications.

#### **Policy SD5**

Development proposals outwith settlement boundaries, as indicated on the Local Plan Rural Area Map, will be acceptable to the Council only where the development:

- (ii) contributes to rural diversification through the development of appropriate industrial, business, tourism, leisure, recreational and other developments with a justified need for a rural location; or

***It is considered that the operation of a landscaping, fencing and site clearance business at this location can be considered to contribute to rural land diversification and requires a rural location.***

#### **Policy IND5**

New industrial, commercial and business development outwith settlement boundaries will be encouraged and considered acceptable to the Council only where the proposal relates to:

- (iii) sympathetic industrial, commercial and business developments including sensitive recreational, tourism, leisure and sporting developments and developments which support the knowledge based economy and the service sector, and which contribute positively to the diversification of the rural economy and can be clearly demonstrated to have a specific requirement for a rural location;

***It is considered that a landscaping, fencing and site clearance business can be considered to be an appropriate rural business acceptable in this location. Importantly, the proposal is also sympathetic to its location as it will be utilising existing farm buildings within the site for the business.***

## **Policy IND6**

Outwith settlement boundaries, all proposals for new industrial, commercial and business developments which fall within the categories of development detailed in Policy IND5 (ii) to (vi) above, will require to be justified and will only be supported where:

- (i) the proposed use is compatible with surrounding land uses;

***It is considered that the proposed use is compatible with surrounding land uses.***

- ii) the development has no unacceptable adverse impact on the landscape quality, character and amenity of the surrounding area which cannot be adequately mitigated through the appropriate provision of screen planting or landscaping;

***It is considered that the proposal will have no unacceptable adverse impact on the landscape quality, character and amenity of the surrounding area as the proposal is utilising existing farm buildings within the site for the business.***

- (iii) the development has no unacceptable transportation or infrastructure implications;

***The Roads Division have no objections to the application, subject to the use of appropriate conditions.***

- (iv) there is no unacceptable loss of prime quality and good quality, locally important agricultural land falling within categories 1, 2, 3.1 and 3.2 of the Macauley Land Use Research Institute; and

***There will be no loss of prime quality and good quality, locally important agricultural land falling within categories 1, 2, 3.1 and 3.2 of the Macauley Land Use Research Institute.***

- (v) the development has no unacceptable adverse impact on natural and built heritage resources.

***It is considered that the development will have minimal adverse impact on natural and built heritage resources.***

Developments that do not meet these criteria will not receive Council support.

**It is considered that the proposal accords with Policies SD5, IND 5 and IND 6 of the Alteration to the East Ayrshire Local Plan (Finalised Version with Modifications).**

7.13 Planning Consultant, Michael S Evans, had produced a Planning Statement and Albion Environmental has produced a Waste Management Working Plan, but neither apply specifically to this proposal.

7.14 Scottish Planning Policy (SPP) and PAN 73 address Rural Diversification. From February 2010, the SPP supersedes SPP15 "Planning for Rural Development". SPP states that by taking a positive approach to new development, planning authorities can help to create the right conditions for rural businesses and communities to flourish. The aim should be to enable development in all rural areas which supports prosperous and sustainable communities whilst protecting and enhancing environmental quality.

***These issues are also acknowledged in the Adopted Local Plan and in the Alteration to the East Ayrshire Local Plan Finalised version with Modifications) where policies permit development in the countryside in specific circumstances.***

## **8. FINANCIAL AND LEGAL IMPLICATIONS**

8.1 There are no financial implications for the Council in the determination of this application.

8.2 The alterations to the application since it was first considered by the Northern Local Planning Committee on the 5<sup>th</sup> December 2008 require that the application be considered in its entirety afresh in order to minimise any potential challenge once the application is determined.

8.3 Further should the application be refused, the Division would require to consider appropriate enforcement action, noting the withdrawal of Enforcement Notice 4 (10 May 2007) and the extent to which Notice 2 remained applicable.

8.4 Members will be aware of the Planning and Economic Development Division's usual procedure which allows for the consideration of applications seeking to secure planning permission in retrospect for works or activities already underway. The entertaining of an application in these circumstances does not imply that a favourable recommendation will necessarily follow,

however this approach and the application process do allow for the gathering and assessment of all matters relevant to the proper consideration of the development on site, which detailed assessment would otherwise not be reasonably possible.

8.5 It follows that where there are circumstances that would render an application entirely unsupportable in all respects, then the Division would pursue enforcement action to its fullest extent.

## **9. CONCLUSIONS**

9.1 As indicated in the report, the application, subject to the provision of necessary road improvements as agreed with the Roads and Transportation Division, is consistent with the Development Plan. Therefore, it should be approved unless material considerations indicate otherwise. The material considerations, including the additional representations received, and the policy context have been assessed within the report. In policy terms most weight should now be applied to the Local Plan Alteration.

9.2 The material considerations in Section 7 do not suggest that the application should be refused. The advice from the Roads and Transportation Division is now, in respect of the activities proposed within the tight confines of the application site; and not including any activity elsewhere in Threeewood on land outwith the application site; that the application is acceptable in roads terms, subject to the use of appropriate conditions.

## **10. RECOMMENDATION**

**10.1 It is recommended that the Planning Application be approved subject to the conditions indicated on the attached sheet.**

### **CONTRARY DECISION NOTE**

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Economic Development it will not require to be referred to the Full Council, as that would not represent a significant breach of Council policy.

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

24 February 2010  
DVM/KW

## **LIST OF BACKGROUND PAPERS**

1. Application Form and Plans.
2. Supporting documentation (see sections 5 and 7 above)
3. Additional road improvement plans and correspondence.
4. Consultation Responses.
3. Letters of Objection and support.
4. Adopted East Ayrshire Local Plan (2003).
5. Statutory Notices and Certificates.
6. Relevant Planning applications
7. Relevant enforcement Notices.
8. PAN73 Rural Diversification.
9. SPP (Scottish Planning Policy)
10. SPP2 Economic Development

Anyone wishing to inspect the above papers please contact Dave Morris, Development Management Manager, on 01563 576753.

Implementation Officer: Dave Morris

## **EAST AYRSHIRE COUNCIL**

### **TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997**

**Application no: 07/0621/FL**

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Location

THREEPWOOD FARM SORN ROAD

THREEPWOOD FARM, SORN ROAD, , GALSTON,  
AYRSHIRE KA4 8ND

Nature of Proposal:

CHANGE OF USE OF FARM BUILDINGS FOR  
STORAGE OF VEHICLES, EQUIPMENT, TOOLS AND  
MATERIALS AND THE OPERATION OF  
LANDSCAPING, FENCING AND SITE CLEARANCE  
BUSINESS

Name and Address of Applicant: JAMES GIBB  
THREEPWOOD FARM  
SORN ROAD  
GALSTON  
AYRSHIRE  
KA4 8ND

Name and Address of Agent

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DPO's Ref: DVM/KW

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

1. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended), there shall be no importation to the site or storage and processing within the application site of waste materials and recycled or other products associated with the operation of the fencing, landscaping and clearance business hereby approved.

REASON: In the interests of residential amenity and because the uses hereby approved have been specifically assessed as compliant with the development plan.

2. Notwithstanding the various uses, structures and activities detailed on the A3 drawing of 02 November 2009, titled "HGV and LGV traffic aisles & loading / unloading areas for Animal Feeds and Landscaping Traffic", planning consent is NOT hereby granted for any of the aforementioned uses or activities therein detailed.

REASON: These uses, structures and activities require to be the subject of a separate application to the Planning Authority as the purpose of the drawing is only to illustrate how access through the site could be achieved.

3. The B7037 / C106 priority junction shall be widened out as far as is practicable within existing Roads controlled land to allow a commercial vehicle and a car to pass without mounting the grass verge. This shall be undertaken

as indicated in the Colin Buchanan drawing CB/16650/01/SK06 with works completed prior to the commencement of the landscape business operations.

REASON: In the interests of road and pedestrian safety.

4. On the C106, 2 no. additional intervisible passing places shall be provided in accordance with the details shown on the Colin Buchanan drawing CB/16650/01/SK05. This shall be undertaken with works completed prior to the commencement of the landscape business operations. The final position of these passing places shall be identified and agreed on site in conjunction with the Roads and Transportation Division to ensure the intervisibility is as required.

REASON: In the interests of road and pedestrian safety.

5. The 2 no. existing informal passing places on the C106 shall be left insitu.

REASON: In the interests of road and pedestrian safety and because these passing places are to be resurfaced by the Roads Division as part of their proposals to re-surface from the B7037 to the Threepwood farm entrance.

6. The access to Threepwood farm shall be amended and improved as indicated on the Colin Buchanan drawing, CB/16650/01/SK07. This shall be undertaken with works completed prior to the commencement of the landscape business operations.

REASON: In the interests of road and pedestrian safety and to provide a suitable entrance to the public road.

7. The works required further to conditions 3 to 6 above shall be undertaken in co-ordination with the Council's Roads and Transportation Division.

REASON: In the interests of road and pedestrian safety and to ensure that traffic disruption as a result of the traffic management requirements is kept to a minimum.

8. In accordance with the Colin Buchanan drawing, CB/16650/01/SK12 and the content of DLA Piper's letter of 03 November 2009, the inside of the road bend as indicated in that drawing shall be kerbed and resurfaced together with the adjacent entrance to the farm; these works to be completed prior to the commencement of the landscape business operations.

REASON: In the interests of road and pedestrian safety.

9. Sightlines at the northern junction should be improved to 2.5m by 90m visibility to both sides with no obstruction over 1 metre in height within these splay areas.

REASON: In the interests of road and pedestrian safety.

10. Internal signage and instructions shall be provided to drivers associated with the business (including deliveries) advising of the need to utilise the northern access for all large vehicle movements both in and out of the site with the southern access being utilised, when necessary, for incoming vehicles only.

REASON: In the interests of road and pedestrian safety.

11. In so far as it lies within land in the ownership of the applicant or within the curtilage of a public road, the existing southern junction visibility shall be improved to provide sightlines of 2.5m by 35m to both sides with no obstruction over 1m in height within the splay areas; this as indicated on Colin Buchanan's Drawing no. CB/16650/01/SK13.

REASON: In the interests of road and pedestrian safety.

12. Noisy work on the site during construction should be restricted to 7am to 7pm Monday to Friday, 8am – 1pm on a Saturday, with no noisy work on a Sunday.

REASON: In the interests of residential amenity.

13. The hours of operation of the business should be restricted to 7am – 7pm.

REASON: In the interests of residential amenity.

14. Any waste arising from construction works required to implement this permission shall be disposed of to the satisfaction of the Waste Management Authority and otherwise than by burning.

REASON: To secure the proper disposal of arisings in the interests of the amenity of the area.

15. All surface water from the site shall be treated in accordance with the principles of the Sustainable Urban Drainage Systems Design Manual for Scotland and N Ireland published by CIRIA in March 2000.

REASON: In order to control the surface water provision on the site.

16. Details of signage to be located at the intervisible passing places and which shall confirm their use for that purpose and not for parking, shall be submitted to and approved by the Planning Authority prior to the commencement of the use hereby approved and shall thereafter be installed prior to the use commencing.

REASON: In the interests of road safety.

17. At no time shall there be any sale to the public from the application site of waste materials and recycled or other products associated with the operation of the fencing, landscaping and clearance business hereby approved.

REASON: In the interests of residential amenity.

Notes to Applicant

1. A section 56 agreement will require to be secured with the Council's Roads and Transportation Division in respect of works proposed to the public road network.
2. All drainage associated with the development should be completed to the satisfaction of Scottish Water and/or SEPA.