

EAST AYRSHIRE COUNCIL

NORTHERN LOCAL PLANNING COMMITTEE: 05 DECEMBER 2008

**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 the farm buildings for the storage of vehicles, equipment, tools and materials; and the operation of a landscaping, fencing and site clearance business.

1.2 The application was submitted following the service of an enforcement notice in respect of all the aforementioned, unauthorised activities. The applicants have appealed that Notice and the appeal is sisted pending the outcome of this application and the adjacent application 07/0190/FL.

1.3 The applicant has indicated that both the existing and proposed access to this business are through his other operations to the north, along a still to be approved and constructed, new 6.0 metre wide access road.

2. RECOMMENDATION

2.1 It is recommended that the Planning Application be refused for the reason indicated on the attached sheet. It is further recommended that, due to the retrospective nature of parts of this proposal, enforcement action be taken forward as detailed in Section 8.1 of this report.

3. CONCLUSIONS

3.1 As indicated in the report, the application is considered to be contrary to the terms of the Development Plan. Therefore, it should be refused unless material considerations indicate otherwise. The material considerations and the policy context have been assessed within the report. The material considerations in Section 7 are not of sufficient weight to merit approval of the application. The advice from the Roads and Transportation Division is clear, that the application should be refused.

CONTRARY DECISION NOTE

Should the Committee agree that the application be approved contrary to the recommendation of the Head of Planning and Economic Development it will require to be referred to the Principal Planning Committee, as there would be 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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Report by Head of Planning and Economic Development

1. PURPOSE OF REPORT

1.1 The purpose of this report is to present for determination a full planning application 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 withdrawn from the agenda of the Committee of 25 April 2008 following representations on behalf of the applicant. Additional supporting information has now been received from the applicant and objectors have been notified of the opportunity to review the application details as supplemented. The report summarises the supporting information and incorporates the most up-to-date consultation responses.

1.2 This report therefore updates and supersedes that withdrawn from the Committee agenda of 25 April 2008.

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 present animal feeds business and beyond this the yard area and associated activities which are presently the subject of planning application 07/0190/FL. The 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 track.

2.3 **Proposed Development:** The applicant is applying retrospectively for the change of use of the farm buildings for the storage of vehicles, equipment, tools and materials; and the operation of a landscaping, fencing and site clearance business.

2.4 The application was submitted following the service of an enforcement notice in respect of all the aforementioned, unauthorised activities. The applicants have appealed that Notice and the appeal is sisted pending the outcome of this application and the adjacent application 07/0190/FL.

2.5 The applicant has indicated that both the existing and proposed access to this business are through his other operations to the north, along a still to be approved and constructed, new 6.0 metre wide access road.

3. CONSULTATIONS AND ISSUES RAISED

3.1 Galston Community Council – object 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.
- 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 understandable and are material in the consideration of the application. 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 refusal of the application unless the road improvements associated with planning application 07/0190/FL are applied to this application.

In addition the access points adjacent to these buildings onto the adopted road must be closed as the road and junction are not suitable for commercial vehicles. Alternatively the road improvements specified for 07/0190/FL should be extended to include the present application site and a suitable junction constructed for commercial vehicles.

The submitted plans do not show the existing access to these buildings from the existing access road to the west of Threepwood Farm. Both plans indicate the use of the new internal roadway, yet to be approved, for HGV's to the north of the farm.

In discussions, the applicant was unwilling to extend the existing adopted road to access points on the existing track, but has also failed to incorporate into this application the roads proposals advocated for his other planning application 07/0190/FL, to satisfy the traffic safety concerns of the Roads Division. No Roads comments were submitted in relation to the additional supporting material, consequently the application is unacceptable on roads safety grounds.

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 – Advise that although they originally objected to this proposal, following clarification of the proposal, they now remove their objection, provided the following requirements are satisfied:-

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.

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).

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 now 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.

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

Noted

4. REPRESENTATIONS

Objections were received from 18 parties and from the Galston Community Council, as detailed in Section 3. Upon receipt of additional supporting information the representees were asked if they wished to make additional comments. 12 persons submitted either confirmation of previous or additional objections. The totality of objections is included in the summary below. A single third party letter of support has been received which is summarised at 4.23 below. The objectors raised the following concerns:-

4.1 Object to the establishment of a 'Site Clearing' business on a site in a Rural Protection Area.

Noted.

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 is significantly smaller than the applicant's other planning application, although the activity on site has also commenced prior to the consideration of this application.

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

The applicant has submitted various documents that concentrate most directly on the need and benefits related to the associated application also before committee, (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.

The site clearing operation links into the activities proposed under application 07/0190/FL. The objector's concerns are best addressed under that application; however it is worth noting that the tightly drawn boundary of this application site would afford little opportunity to accommodate the totality of the waste processing and storage currently being undertaken, in the event the adjacent application was refused.

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 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.

As stated in Section 3 of this report the Roads Division have recommended refusal of this application unless various roads improvements are undertaken; such improvements however have not been incorporated by the developer within this application.

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

Noted. This and the related application seek to rectify this situation retrospectively.

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

Should planning consent be granted, conditions could be attached seeking to constrain noise impacts and in addition, the question of any noise nuisance arising for the site may also be a matter for the Council's Environmental Health Division to deal with.

4.9 During an open meeting recently 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.

4.10 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 does form part application 07/0190/FL and does not refer to Cessnock Castle.

4.11 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.

4.12 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.

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

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

4.14 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 indicated that they would object to the application without implementation of a new road access arrangement.

4.15 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.

4.16 A stone crusher is now in operation, (since June) and it highlights the industrial activity on site. This is very noisy and has been operated till 11pm.

This is currently being investigated as a potential breach of planning control.

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

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

4.18 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 objections of the Roads Division would be removed through the availability of the improved access road arrangements forming part of the related application. Such roads proposals do not form part of this application and for that reason this application is flawed.

4.19 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 business is considered within this application as distinct from the recycling activities elsewhere on site. It's location within existing premises limits its impact on the countryside.

4.20 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.

4.21 The industrial development is contrary to East Ayrshire Council policies.

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

4.22 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.

4.23 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

5.1 Following the withdrawal of the application from the agenda for the Committee of 25 April 2008, the applicants have submitted the following additional information.

- 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 are of most relevance to the related application 07/0190/ FL.

5.2 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

5.3 ‘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.

5.4 ‘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.

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

Comment noted

5.6 '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 4.16 of this report.

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

Noted

5.8 '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 will be fully accommodated within the evolving local plan and its principles are currently embraced in the adopted local plan where policies permit development in the countryside in certain circumstances.

East Ayrshire Local Plan

5.9 '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.

5.10 ‘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.

5.11 ‘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.’

The enforcement notice appeal is currently sisted pending consideration of this application, and the associated 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”.

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 recognised and in part merited withdrawal of the 25 April report.

‘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 the applications before committee 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 Threepwood 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.

5.12 ‘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 Threepwood 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 and the much wider current activities on site are the subject of the associated application. 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.'

There is no proposal in this application to upgrade the existing road network as required by the Roads Division. They recommend refusal unless the road improvements associated with the larger 07/0190/FL application are put in place for this application. This application site boundary does not encompass adjacent road networks. The proposal fails criterion 5 of Policy IND 6.

5.13 **IND 10** Consideration must be given to the lawful industrial and warehouse use at Threepwood. The April 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.

However 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 not satisfied by the application and the Roads Division recommends refusal unless there is an upgrade of the road network; not allowed for within this application.

'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 not addressed within the application and are a significant material consideration indicating refusal. The Council is accommodating the provisions of SPP 15 in the Finalised Draft Alteration to the Local Plan. At present 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, 5.13, 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 be 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) The location of the site creates adverse transport and infrastructure implications as detailed elsewhere in the report, particularly in terms of road safety.***
- (vi) The proposal will not result in the loss of public amenity open space.***
- (vii) Not applicable.***
- (viii) Not applicable.***

The proposal is required to be justified against all of the criteria and does not meet the terms of (v) as currently configured.

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.”

The nature of the use given its accommodation in existing buildings makes it a rural business that is sympathetic to the area.

However 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 not satisfied by the application and the Roads Division recommends refusal unless there is an upgrade of the road network; not allowed for within this application.

6.11 In summary:-

- To comply with Policy IND6 the proposal requires to be justified against all of eight criteria. The proposal fails because the location of the site creates adverse transport and infrastructure implications as detailed elsewhere in the report, particularly in terms of road safety.
- The application is not compatible with Policy IND10 as it cannot be justified because of its transportation and infrastructure implications; in particular road safety.

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, 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 and, without substantial upgrade works, the Roads Division would seek refusal on road safety grounds.

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.

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) – still to be determined application on adjacent site.

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 - 2nd 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 was sisted following the submission of planning application 05/0287/FL which sought to address the issues raised. This 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 failed to embrace the landscaping contractors business or the issue of building materials being stored on the site.

Notice 2 has not been appealed and is now effective. The further pursuit of this notice and its provisions is being held in abeyance pending the outcome of the applications before committee.

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 complied with.

Notice 4

- 10 May 2007 - Further notice served to address landscape contractors business and storage of building materials. Notice required the

stopping of the unauthorised use and removal of building materials. This notice has been appealed and that appeal is sisted pending the outcome of this and the adjacent application.

Supporting Information

7.12 Extensive supporting information has now 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 McCreadie 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 the associated application 07/0190/FL before committee.

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 SPP15 and PAN 73 address Rural Diversification. These issues are also acknowledged in the Adopted Local Plan where policies permit development in the countryside in specific circumstances.

8. FINANCIAL AND LEGAL IMPLICATIONS

8.1 There are no financial or legal implications for the Council in the determination of this application. However, should the application be refused, the division would require to revisit the enforcement actions to date and the appeal process relative to Enforcement Notice 4 (10 May 2007)

8.2 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.

8.3 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 is considered to be contrary to the terms of the Development Plan. Therefore, it should be refused unless material considerations indicate otherwise. The material considerations and the policy context have been assessed within the report. The material considerations in Section 7 are not of sufficient weight to merit approval of the application. The advice from the Roads and Transportation Division is clear, that the application should be refused.

10. RECOMMENDATION

10.1 It is recommended that the Planning Application be refused for the reason indicated on the attached sheet. It is further recommended that, due to the retrospective nature of parts of this proposal, enforcement action be taken forward as detailed in Section 8.1 of this report.

CONTRARY DECISION NOTE

Should the Committee agree that the application be approved contrary to the recommendation of the Head of Planning and Economic Development it will require to be referred to the Principal Planning Committee, as there would be a significant breach of Council policy.

Alan Neish
Head of Planning and Economic Development

26 November 2008
DVM/KW

FV/DVM

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
2. Supporting documentation (see sections 5 and 7 above)
3. 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. SPP15 Rural Diversification
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

