

EAST AYRSHIRE COUNCIL

PRINCIPAL PLANNING COMMITTEE - 7 SEPTEMBER 2007

DECISION OF THE NORTHERN LOCAL PLANNING COMMITTEE HELD ON FRIDAY 17 AUGUST 2007 RELATING TO PLANNING APPLICATION NO 05/1201/FL: PROPOSED RE-DEVELOPMENT OF KILMARNOCK RUGBY FOOTBALL CLUB GROUND, INCLUDING NEW CLUBHOUSE FACILITIES AND PITCHES, NEW RETAIL AND LEISURE DEVELOPMENT AT KILMARNOCK RUGBY GROUND, QUEENS DRIVE, KILMARNOCK BY KILMARNOCK RUGBY FOOTBALL CLUB/ALDI STORES LIMITED

Report by the Depute Chief Executive/Executive Director of Corporate Support

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to inform the Committee of the decision of the Northern Local Planning Committee held on 17 August 2007 regarding the above planning application.

2. BACKGROUND

- 2.1 The Northern Local Planning Committee on 17 August 2007 considered a report dated 9 August 2007 with a recommendation for approval on the grounds that it was considered to be an enabling application, with wider implications and impact on sport and leisure facilities; was considered to be an acceptable departure from the Development Plan; to delegate to the Head of Planning and Economic Development that appropriate conditions be attached to the consent and to consider the requirements for a Section 75 Agreement regarding access and egress, emergency access and egress, road alterations and occupation of the retail unit within the leisure facility.
- 2.2 Five objections were submitted in respect of this application and, therefore, there is a requirement to hold a Hearing at this meeting.

3. FINANCIAL/LEGAL IMPLICATIONS - Nil.

4. POLICY IMPLICATIONS

- 4.1 The Committee are referred to the report dated 9 August 2007 by the Head of Planning and Economic Development, attached as an Appendix to this report.

5. RECOMMENDATION

- 5.1** It is recommended that this Committee consider the planning application with reference to the report by the Head of Planning and Economic Development dated 9 August 2007, and with consideration to the recommendation by the Northern Local Planning Committee as detailed in Paragraph 2.1 above.

Elizabeth Morton
Depute Chief Executive/Executive Director of Corporate Support

30 August 2007
RB/SR

LIST OF BACKGROUND PAPERS

NIL

Any person wishing further information on this report should contact Bill Walkinshaw, Head of Democratic Services on telephone number (01563) 576135.

Implementation Officer: Robert Beaton, Administrative Officer.

APPENDIX

EAST AYRSHIRE COUNCIL

NORTHERN LOCAL PLANNING COMMITTEE: 17 AUGUST 2007

**05/1201/FL: PROPOSED RE-DEVELOPMENT OF KILMARNOCK RUGBY FOOTBALL CLUB GROUND, INCLUDING NEW CLUB HOUSE FACILITIES, PITCHES, NEW RETAIL AND LEISURE DEVELOPMENT
AT: KILMARNOCK RUGBY FOOTBALL CLUB GROUND, BELLSLAND, QUEENS DRIVE, KILMARNOCK
BY: KILMARNOCK RUGBY FOOTBALL CLUB/ ALDI STORES LTD.**

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

Full planning permission is sought for the following:

- Erection of a new club house for Kilmarnock Rugby Football Club that would incorporate new changing rooms, bar and function facility, a new stand and linked sports hall;
- Upgrading the 1st and 3rd pitches and replacing the 2nd pitch with an astro-turf pitch that would be suitable for many ball sports;
- A new rugby/football pitch on land adjacent to the River Irvine, north west of the Citroen car showroom;
- Upgrading the access/egress to the site and parking facilities;
- A new Aldi food store; (1381 Square metres gross floorspace)
- A new health club (2006 square metres gross floorspace with associated retail floorspace of 1621 square metres).

2. RECOMMENDATION

2.1 It is recommended that the application be refused for the reasons indicated on the attached sheet.

3. CONCLUSIONS

3.1 As indicated at Section 5 of the report the application is not considered to be in accordance with the Development Plan. Therefore given the terms of Sections 25 and 37 (2) of the Town and Country Plan (Scotland) Act 1997 the application should be refused unless material considerations indicate otherwise.

3.2 As indicated at Section 6 of the report there are material considerations relevant to this application. In relation to the objection received relative to the proposed development failing to accord with the Adopted East Ayrshire Local plan and Approved Ayrshire Joint Structure Plan, it is considered that the retail element of the proposals is contrary to the policies outlined in Section 5 above which therefore indicate that the proposals should be refused.

3.3 The remaining comments of the objectors in relation to the analysis of the Transport Assessment are not echoed by the Roads Division whilst concerns relative to flooding are also not supported by the Council's Roads Division and SEPA, subject to appropriately worded conditions being attached to any grant of planning consent. The objector's concern relative to the ability of their site being developed is not a material consideration in the determination of this application as each planning application requires determination on its own merits and as such the planning status of the objector's land cannot be taken into consideration as part of the proposals. The concerns of the objectors relative to the use of the objector's ground for an emergency access route is primarily a legal issue and would not affect the determination of this application although if appropriately worded conditions were attached to any grant of planning consent, consistent with the requirement of SEPA and the Council's Roads Division, any consent would not be able to implemented until a sustainable emergency access/ egress route can be formed.

3.4 The applicants supporting statement accepts that the retail element of the proposals is contrary to the development plan, and argues that greatest weight should be placed on material considerations as the proposals represent a realistic chance of re-developing the Club's facilities as they believe the re-development of the club to be of paramount importance to the community of Kilmarnock and Ayrshire. The contents of the applicants supporting statement are noted, and there is an obvious level of support for the re-development of the clubs facilities from the public and from various sporting organisations. It is noted that part of the site is designated in the Adopted East Ayrshire Local Plan as Site 225M, where the Council will encourage and support commercial leisure uses or

the sale and display of motor vehicles, but only as an enabling catalyst for the development of any Kilmarnock Sports Park to provide a fully integrated indoor and outdoor sporting and recreational facility to meet the needs of East Ayrshire. The Health Club element of the proposal would comply, in principle, with this policy although it is considered that the accompanying retail floorspace and ALDI supermarket would not accord with this policy. Whilst it is acknowledged that a form of “enabling development” to secure the re-development of the Kilmarnock Ruby Football Club is necessary, it is considered that the designation of site 225M for commercial leisure uses or for the sale and display of motor vehicles, provides an opportunity for the re-development of the Rugby Club facilities, without jeopardising the vitality and viability of the town centre by introducing convenience retailing.

3.5 The retail floorspace proposed as an integral part of the wider Rugby Club re-development contravenes the aims of the Kilmarnock Town Centre Strategy which is a significant material consideration. The Strategy states clearly that out-of-centre retailing will be resisted in favour of a town centre location and it directs retailing to the town centre. Furthermore the application is also considered contrary to SPP 8, as the applicant has not given due consideration to the sequential approach in relation to their proposals as they have failed to provide a retail impact assessment, thus ensuring it is impossible to fully assess the impact the additional retail floorspace would have on the vitality and viability of the town centre. The cumulative impact of additional retail floorspace on land not identified for such purposes in the Adopted East Ayrshire Local Plan gives rise to serious concern in the long term as such development could erode the vitality, viability and character of the town centre.

3.6 In conclusion, the proposal does not represent an acceptable departure from the Development Plan and cannot be justified in terms of Section 25 of the Town and Country Planning (Scotland) 1997. Whilst the significant benefits of re-developing the Rugby Club facilities are recognised it is considered that the Adopted East Ayrshire Local Plan includes provision for an acceptable form of development to act as a catalyst for the re-development of the sporting facilities in the area by way of identifying part of the site for commercial leisure uses or for the sale and display of motor vehicles. It is recognised that it is important to provide first class sporting facilities for East Ayrshire, but it is considered that this should not be provided for to the potential detriment of the long term vitality and viability of Kilmarnock Town Centre, which was recognised as having the highest vacancy rates of Class 1 retail units in the town centre out of the 3 main comparison shopping centres in Ayrshire, Kilmarnock was only 1 of 4 Scottish towns where prime rental levels fell between May 2005- May 2006 according to Prime Retail Statistics for Autumn 2006. It is of significance that the recent decision by the Scottish Executive Reporter at the adjacent ASDA store highlights the importance of the sequential test.

CONTRARY DECISION NOTE

Should the Committee agree that the application be approved contrary to the recommendation of the Head of Planning and Economic Development the application will require to be referred to the Principal Planning Committee as this would 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.

EAST AYRSHIRE COUNCIL

NORTHERN LOCAL PLANNING COMMITTEE: 17 AUGUST 2007

**05/1201/FL: PROPOSED RE-DEVELOPMENT OF KILMARNOCK RUGBY FOOTBALL CLUB GROUND, INCLUDING NEW CLUB HOUSE FACILITIES, PITCHES, NEW RETAIL AND LEISURE DEVELOPMENT
AT: KILMARNOCK RUGBY FOOTBALL CLUB GROUND, BELLSLAND, QUEENS DRIVE, KILMARNOCK
BY: KILMARNOCK RUGBY FOOTBALL CLUB/ ALDI STORES LTD.**

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 a significant issue and is considered contrary to the Development Plan.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site comprises the existing Kilmarnock Rugby Football Club grounds with a frontage onto Queens Drive, which is a main arterial route in and out of Kilmarnock Town Centre to the M77, A71 and A76 strategic road network. The application site is bound to the south by Queens Drive with retail units within the Queens Drive Retail Park beyond. To the north is the River Irvine with the Scott Ellis Playing Fields. To the east are playing fields and to the west there are various car showrooms and Glenfield Bowling Club all accessed via Victoria East Road.

2.2 **Proposed Development:** Full planning permission is sought for the following:

- Erection of a new club house for Kilmarnock Rugby Football Club that would incorporate new changing rooms, bar and function facility, a new stand and linked sports hall;
- Upgrading the 1st and 3rd pitches and replacing the 2nd pitch with an astro-turf pitch that would be suitable for many ball sports;
- A new rugby/football pitch on land adjacent to the River Irvine, north west of the Citroen car showroom;

- Upgrading the access/egress to the site and parking facilities;
- A new Aldi food store; (1381 Square metres gross floorspace)
- A new health club (2006 square metres gross floorspace with associated retail floorspace of 1621 square metres).

2.4 The applicant has submitted a supporting statement as part of their submission which will be fully considered at Section 6 below. The applicant has not submitted a Retail Impact Assessment nor has a sequential test been adopted for the proposed retail element of the development.

2.5 A Transport Assessment, Ground Investigation Report and a Report on Emergency Access During Flooding have also been submitted as part of the proposed development.

3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Council's Roads and Transportation Division have no objections to the proposed development and have commented as follows:

Flooding

In relation to the flood risk at the site the proposed raising of Victoria East Road to provide access and egress along this part of the route for emergency services is approved in principle subject to acceptable final road design details and subject to a condition that a sustainable safe access and egress for emergency services would have to be put in place prior to the commencement of any proposed development.

The road drainage is approved in principle, subject to acceptable details and outfall arrangements to the River Irvine.

Transport Assessment

The TA analysis and conclusions presented by the applicant's Transportation Engineers are considered to be robust.

Footpath widening to Queens Drive

The widening of the footpath on Queens Drive requires to be extended between both crossing points.

The requirements of the Roads Division with regard to the proposed road level alterations, footpath widening and the requirement for availability of a sustainable emergency access/egress route prior to the commencement of development can be addressed by attaching conditions to any grant of planning consent.

3.2 The Piersland/Bentinck Community Council have not responded to their consultation letter at the time of writing this report.

Noted.

3.3 The East Ayrshire Council Environmental Health and Waste Management Division have no objections to the proposed development

Noted.

3.4 The Scottish Environment Protection Agency (SEPA) have advised that given the output from the refined model and on the basis that the road can be raised as proposed to the satisfaction of the Council, they would consider that a suitable access/egress route to/from the site will be technically available at the design event. SEPA are of the opinion, however, that ownership of the access route has still to be determined and would therefore recommend that it is clearly demonstrated that the route will be available as an access/egress route in perpetuity. Therefore, given that it remains unclear if the access route can be maintained as such SEPA would maintain its objection to this application. In the event that the planning authority proposes to grant planning permission contrary to this advice on flood risk, SEPA advise that the application must be notified to the Scottish Ministers as per the Notification of Applications Direction 1997.

However, if the level of the access road and its status as a safe route in the event of a flood are secured by condition on any planning permission granted by the Council then this should ensure that safe access will be available from the site and thus negate the need for objection/notification on these grounds.

The requirements of SEPA with regard to the proposed road level alterations and for the requirement of a sustainable emergency access/egress route prior to the commencement of development could be addressed by attaching conditions to any grant of planning consent should Members be minded to grant planning consent for the proposed development. Note: the Notifications Direction is now that of 2007, although the requirement to notify to the Scottish Ministers would still apply.

3.5 Scottish Water have no objections to the proposed development and have advised that there is sufficient capacity in the network for the proposed development.

Noted.

3.6 Sports Scotland are supportive of the club's ambitions to improve the club house and sports pitch facilities at the site. They note that the proposed pitch to the north of the application site would fulfil the requirement for such a pitch as part of the re-development of Queens Drive (in this respect Members are referred to section 6.2 of this report). They recommend the levels of the pitch to the north of the site ensure flood risk is minimised, whilst the pitch should not be used as attenuation apart for very infrequent flood events.

Noted.

3.7 East Ayrshire Access Panel have no comments to make on the proposed development

Noted.

4. REPRESENTATIONS

4.1 There are 5 objections to the proposed development whilst 35 letters of support from individuals, sporting organisations; local businesses and a local school. Letters on behalf of East Ayrshire Council's Sports Development Manager and East Ayrshire Sports Council have welcomed new facilities for the Club, although it is not explicitly clear that their letters are in support of this planning application before Members. In addition a petition containing 139 names has been submitted urging the Council to support the proposed development.

4.2 These objections on the grounds that their analysis of the traffic analysis carried out by the applicant's transportation engineers has identified a number of inconsistencies and errors. They believe there are discrepancies with the junction capacity assessment on the Saturday and the geometry for the Asda access is different to that agreed by the Council. They also state there has been no consideration of HGV's and any future testing. On this basis they believe planning permission should be refused.

The applicants transportation engineer's have advised, through the Council's Roads and Transportation Division, that they accept some of the junction assessment information presented in the Transportation Assessment has been wrongly transposed from the spreadsheets which were analysed by the objector. They also advise that junction parameters used in the assessment were obtained by on-site measurements. The analysis has been re-run and shows that

the operation of the main site access roundabout, will not result in an adverse traffic situation. HGV movements are taken account of in the analysis as the traffic flows used in the assessment are passenger car equivalents (PCU's) and not vehicles. They further advise that it was agreed at the outset that the assessment year for the junction analysis would be the assumed year of opening of the proposed development. Consequently the Council's Roads Division have reviewed the objection received and the response from the applicants Transportation Engineers and advise that the original Transport Assessment is robust and that the proposals should not be refused on the basis of this objection.

4.3 The proposals would result in development on a flood plain and as such may have an impact on the adjoining land which they own. This is a new development not envisaged when the dry pond/swale was put in place to enable East Ayrshire Council/ G&M Estates to develop the adjacent site housing the bowling club/Arnold Clark/ Reg Vardy and Alistair Fleming. The objector wishes confirmation that should this new proposal be permitted it would not restrict the development of their land.

Each planning application requires determination on its own merits and as such the Council's Roads (Flooding) Section have no objections to the proposed development. Scottish Planning Policy 7 (SPP 7), Planning and Flooding, as stated at 6.3 below, expects developers and planning authorities to address issues of flooding very seriously and to take an informed approach to preclude adverse impacts either on the site concerned or on neighbouring land. It is, nevertheless, not considered that the proposed development would have an adverse impact, by way of flooding, on the adjacent undeveloped land in the objector's ownership.

4.4 The application also relates to a proposed retail development by Aldi stores though no details of this are shown on the neighbour notification plans. If further land in the area is to be zoned for retail use it would seem reasonable to the objector to include the adjacent land in their ownership which already has infrastructure and is included in the local plan for development.

As stated at 4.3 above each planning application requires determination on its own merits and as such the planning status of the objectors land cannot therefore be taken into consideration as part of the proposals before this Division for consideration. The plan submitted with the statutory neighbour notification, supplied by the applicant, provides the basic site location details and forms one part of the notification, that also includes information which states that the full pack of plans and relevant supporting information can be

viewed at the Planning and Economic Development Division's office at 6 Croft Street, Kilmarnock.

4.5 They object as the application site includes ground owned by them whilst the objector's have no agreement in place with the applicants and do not wish to support the application as submitted at the time of writing.

Noted. The applicants have confirmed the correct neighbour and owner notification has been carried out.

4.6 They object on the grounds that the proposals would be detrimental to their own planning application which has been before the Council since July 2004.

As stated at 4.3 and 4.4 above each planning application requires determination on its own merits. Notwithstanding this the objector's planning application has since been approved by the Development Services Committee on 27 March 2007.

4.7 An emergency access route is shown across land let by the objector on a long term lease to Glenfield Bowling Club. Again there is no agreement in place with the applicants in this matter.

The agreement of the land owner/tenant would be required for the applicant to take access over their land should planning consent be granted. However, it should be noted that this is a legal matter between the applicant and objectors and is not a material consideration in the determination of the proposed development.

4.8 They note the application involves proposals to raise the road level on Victoria East Road and part of Queens Drive which will result in an increase in the road levels at the entrance to Glenfield Bowling Club which is part of their property. If the proposals go ahead access to and from the Bowling Club will be required on a daily basis.

As stated at 4.7 above the agreement of the land owner/tenant would be required for the applicant to carry out works on their land should planning consent be granted. However, it should be noted that this is a legal matter between the applicant and objectors and is not a material consideration in the determination of the proposed development.

4.9 They feel that there is very poor communication between the applicant to the Council in reference to the submission of amended plans which could not be viewed upon visiting the Council Offices despite having received their neighbour notification.

The amended plans referred to in respect of this point of objection were lodged with this Division on 13 March 2007 in relation to the proposals to increase the road levels at Victoria East Road and roundabout and at Queens Drive. They were, however, not received by this office until later in the day that the objector came to view them. In this regard it should be noted that the amended plans included only a site plan plus a technical report on emergency access during flooding.

4.10 The Glenfield Bowling Club had previous problems with vandalism resulting in them installing a fence and security shutters. They understand an emergency access gate cannot be locked and this would defeat the purpose of a fence. They claim vandalism in the area is common as the Rugby Club know to their sorrow. In addition they believe their car park area would not support heavy vehicles such as fire engines whilst they believe Victoria East Road is heavily congested which would prove problematic for emergency vehicles utilising the proposed emergency access.

The agreement of the land owner/tenant would be required for the applicant to take access over their land for the emergency access/ egress should planning consent be granted. The Council's Roads and Transportation Division have no adverse comments to make on the proposed emergency access, other than the provision of such an emergency access would be a requirement of any planning consent, prior to the commencement of development on-site.

4.11 The proposed development by Aldi will undermine the town centre, the most appropriate location for their proposals would be in the town centre and/or within one of the town centre re-development sites precisely as Lidl have done with their recent investment. They are of the opinion that the retail proposals are contrary to Policies RTC1; RTC3; RTC5; RTC7 and TLR9 of the Adopted East Ayrshire Local Plan and Policies L8 and L9 of the Approved Ayrshire Joint Structure Plan. They also state that the retail element of the proposed development is not envisaged by NPPG8 (now SPP8) to be one which would be expected to be granted planning consent. They note that site 225M in the Adopted East Ayrshire Local Plan covers part of the application site where the Council encourages development for commercial leisure uses or sale and display of motor vehicles on condition that this is an enabling catalyst of the development of the Kilmarnock Sports park (site 226M). As such they believe it is clear that the development of an Aldi store at this location is contrary to this policy. They also wish members of the planning committee to be made aware that should the application be approved this will require to be notified to the Scottish Ministers.

The application is assessed against the relevant policies of the Adopted East Ayrshire Local Plan and Approved Joint Structure Plan

at Section 5 below. Other material considerations are considered at Section 6 of the report where SPP8 - Town Centre and Retailing is a material consideration in the determination of the proposed development. As stated at Section 9 of the report, should the Committee agree that the application be approved contrary to the recommendation of the Head of Planning and Economic Development the application will require to be referred to the Principal Planning Committee as this would represent a significant breach of Council policy. Should the Principal Planning Committee agree in turn that planning consent be granted, the proposals would require to be notified to Scottish Ministers in that consent would represent a significant breach of the development plan and because the Council has an interest in part of the site.

5. ASSESSMENT AGAINST DEVELOPMENT PLAN

5.1 Sections 25 and 37 (2) of the Town and Country Planning (Scotland) Act 1997 require that planning applications are 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 (1999) and the Adopted East Ayrshire Local Plan (EALP).

Ayrshire Joint Structure Plan (AJSP)

5.2 The proposed development would fall to be considered against Policies L7, L8 and L9. Policy L7 refers to measures to promote and enhance town centres and Policy L8 encourages the viability, vitality and design quality of existing town centres. Proposals for retail development above 1500 square metres gross floorspace require to be assessed against Policy L9 of which the criteria A-C are similar criteria used in Policy RTC5 and are addressed in Section 5.5 of this report.

The Supporting Statement submitted by the applicant concedes that they have not undertaken, and do not intend to undertake, a sequential approach to site selection for the proposed retail element of the development. The applicant has also stated that no sites within or adjacent to the town centre were considered for the proposed retail development. The applicant fully admits that the proposal is contrary to these policies and it is considered that the applicant has not fully complied with the requirements to satisfy the sequential approach. As such it is considered that in terms of the retail elements of the proposals, the application is contrary to the Approved Ayrshire Joint Structure Plan.

East Ayrshire Local Plan (EALP)

5.3 Policy RTC1 states that the Council will adopt a sequential approach in assessing development proposals for retail and other uses appropriate to town centres as described in Schedule 5 of the Plan. Applicants proposing such developments in out-of-town centre locations are required to demonstrate that no suitable alternative site can be found or assembled within town centres and thereafter in an edge-of-centre location.

The proposed development is in an out-of-centre location and in an area that has not been designated in the East Ayrshire Local Plan for further non-bulky comparison goods retailing.

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

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

The proposed development requires to be directed to a town centre location under this policy and therefore the development is contrary to Policy RTC3.

5.5 Policy RTC5 states that, in assessing all out-of-centre retail and other Schedule 5 development proposals, the proposed development requires to be assessed against the following criteria.

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

The Supporting Planning Statement submitted by the applicants discloses that they have not undertaken, and do not intend to undertake, a sequential approach to site selection. The applicant has also stated that no sites within or adjacent to the town centre were considered for the proposed retail development. The applicant fully admits that the proposal is contrary to this policy and it is considered that the applicant has not fully complied with the requirements to satisfy the sequential approach as required.

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

The applicant has not made any attempt to justify the proposed development or give any indication of impacts on the town centre.

It is considered that the further provision of convenience goods floorspace at an out-of-centre location would adversely impact on town centre vitality and viability. It is considered that retail investment should be guided to the town centre first and foremost and the proposed development if allowed to progress, could undermine ongoing efforts to regenerate the town centre.

The proposals would have serious implications for the approved Kilmarnock Town Centre Strategy which aims to strengthen and transform the town centre as discussed fully in Section 6.8. This is the most updated Statement by the Council in terms of retailing and the high priority being given to town centre retailing is an important material consideration.

The future vitality and viability of Kilmarnock town centre depends on continued investment within the established boundary or at edge-of-centre locations that provide potential synergistic benefits, not at an out-of-centre location where further convenience goods retailing has not been identified in the local plan.

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

Queens Drive is served by regular bus links. There are no rail links.

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

It is considered that the majority of users of Queens Drive visit via private car. Queens Drive is also fairly isolated from any residential development and as an out-of-centre location receives little pedestrian traffic. SPP8 states that development should be located where there is better access by public transport, walking and cycling and less dependence on access by car. As stated above the Queens Drive Retail Park is well served by Bus Operators. The road alterations proposed as part of this application have received no adverse comments from the Council's Roads Division.

- (v) Whether the proposal would be compatible with other uses in the surrounding area;

The proposed development is in an out-of-centre location and in an area that has not been designated for further non-bulky comparison goods retailing. In addition part of the application site has been identified within

the Local Plan as a site (225M) where the Council will encourage and support commercial leisure uses and the sale and display of motor vehicles. The proposed retail development is considered to be contrary to this policy.

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

It is considered the design is in-keeping with the vicinity.

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

It is considered that the proposed retail element of the proposal would adversely affect the environmental quality, character and amenity of the area as the site has not been identified for such purposes within the Local Plan.

- (viii) Whether the proposal would be compatible with other local plan policy objectives;**

The primary policy objective regarding retail development is to secure the protection and enhancement of the town centre as the primary location for retail and other town centre related developments. The proposed development does not adhere to this objective and would undermine efforts to enhance the town centre.

5.6 Policy RTC7 supports retail development proposals in out-of-town centre locations where:

- (i) the proposal relates to a site specifically identified for such purposes on the Local Plan maps.
- (ii) the proposal is for a local shop or shops not exceeding a total of 200m² gross floor area and falling within Class 1 of the Use Classes Order.
- (iii) the proposal is for a factory shop, not exceeding 200m² gross floor area.
- (iv) the proposal is for a farm shop.
- (v) the proposal is for a tourism, leisure or recreation related retail development.
- (vi) the proposal is for the sale of coal or other minerals direct from an extraction site.

The proposed development, as a whole, cannot be accommodated within the above policy.

5.7 Policy RTC8 requires all major retail development including extensions to existing premises which create over 1,500m² gross retail floorspace to be supported by a formal Retail Impact Assessment addressing the criteria detailed

in Policy RTC5 above. Transport Impact Assessments will also be required where major retail development proposals have significant transport and traffic implications.

The submitted Supporting Statement discloses that the applicants have not undertaken, and do not intend to undertake, a sequential approach to site selection. The applicant has submitted a Transportation Assessment, regarding which the Council's Roads Division have no adverse comments.

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

Part of the application site is identified as site 225M, where the Council will encourage and support commercial leisure uses. The Health Club element of the proposal is considered to comply, in principle, with this policy although it is considered that the accompanying retail floorspace would not accord with this policy.

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of this application are the consultations and representations which are detailed in Sections 3 and 4 of the report, the planning history of the site; SPP7 "Planning and Flooding"; SPP8 "Town Centres and Retailing"; the applicants supporting statement and the Kilmarnock Town Centre Strategy.

Consultations and Representations

6.2 The consultations are detailed at Section 3 above, and it is considered that none of the consultation responses convey any adverse comments on the proposed development which would merit the refusal of the proposed development.

6.3 The comments of the objectors relative to the analysis of the Transport Assessment are not echoed by the Roads Division whilst concerns relative to flooding are also not supported by the Council's Roads Division and SEPA, subject to appropriately worded conditions being attached to any grant of planning consent. The objectors concerns relative to the ability of their site being developed is not a material consideration in the determination of this application as each planning application requires determination on its own merits. As such the planning status of the objectors land cannot be taken into consideration as

part of the proposals. The concerns of the objectors relative to the use of the objectors ground for an emergency access route is primarily a legal issue and would not affect the determination of this application although if appropriately worded conditions were attached to any grant of planning consent, consistent with the requirements of SEPA and the Council's Roads Division, any consent would not be able to implemented until a sustainable emergency access/ egress route can be formed.

6.4 In relation to the objection received relative to the proposed development failing to accord with the Adopted East Ayrshire Local Plan and Approved Ayrshire Joint Structure Plan and SPP8 – Town Centre and Retailing, it is considered that the retail element of the proposals is contrary to the policies outlined in Section 5 above and therefore that the proposals should be refused.

Planning History

6.5 Planning application no. 96/0141/OL was approved subject to conditions on the 19 December 1996 by the then Development Services Committee for Car Showrooms, Cinema, Drive through restaurant, bowling green and clubhouse, light industrial units, cricket square and improvements to the rugby club complex access.

6.6 Then Planning Application No. 00/0030/FL was approved subject to condition by the Development Services Committee on 24 April 2000 for a retail motor showroom facility with associated workshops, office, external car display areas, parking, area for future motor showroom facility, access and ground works in relation to formation of dry pond attenuation area. This application also included an area set aside for the pitch detailed in Sports Scotland consultation response outline n Section 3.6 above.

6.7 Planning Application No. 05/0984/FL was refused by the Central Local Planning Committee on 31 March 2006 and subsequently dismissed on appeal by the Scottish Ministers following a public local inquiry for Asda at Queens Drive. This application sought an additional 929 square metres of comparison retail floorspace. The application was refused on the grounds that the increased retail element of the proposals was contrary to the retail policies of the development plan, would have an adverse impact on the vitality and viability of Kilmarnock Town Centre and was contrary to the aims and objectives of the Town Centre Strategy. In dismissing the appeal, the Reporter to the Scottish Ministers stated that the proposals were unlikely to benefit the town centre as the ability of shoppers to obtain a greater range of goods at Queens Drive is likely to reduce the potential for onward trips.

Kilmarnock Town Centre Strategy

6.8 The Kilmarnock Town Centre Strategy was approved by the Development Services Committee on 20 December 2005 and is the most up to date Council statement on retailing and a significant material consideration in the determination of planning applications. The strategy intends to guide investment, improvements and growth to the town centre to the benefit of Kilmarnock and East Ayrshire generally and resists out of town centre proposals. It sets out a vision for the town centre and a programme of projects and actions to enhance its position and ensure its future viability and vitality. It is considered that the proposed retail development would contravene the principles of the strategy. The Town Centre Strategy does not identify this site as a retailing opportunity. To grant retailing consent in this instance would undermine the aims of the strategy.

SPP 8 Town Centres and Retailing

6.9 SPP8 provides guidance to Planning Authorities relative to the Scottish Executive's commitment to retailing within town centres. The proposed development is not considered to accord with the provisions of SPP8.

Finalised Draft – Ayrshire Joint Structure Plan

6.10 The finalised draft of the Ayrshire Joint Structure Plan was approved by the three Ayrshire Council's and has subsequently been referred to the Scottish Ministers for consideration in mid February 2006.

Policy Comm 6 – “Town Centres” is relevant and states:

The three Councils shall promote the viability of town centres by proposals that:

- (A) Encourage a wide range of retail, commercial, business, entertainment and leisure and residential opportunities;
- (B) Provide development of a size and scale appropriate to the function of the centre and serve the needs of its catchment;
- (C) Identify sufficient land to accommodate development to meet the projected growth in surplus retail expenditure set out in Schedule 6 having regard to extant planning permissions for retail development, land allocated through local plans and the level of vacant premises;
- (D) Adopt a sequential approach to the approval of retail and commercial leisure development with new investment directed first to town centres and then edge-of-centre locations;
- (E) Restrict new retail floorspace at out-of-centre locations to the sale of Do-It-Yourself, furniture, carpets electrical and gardening goods; and
- (F) Keep under review the retail capacity assessment and have regard to any revised figures when identifying land in accordance with (C) above

The retail elements of the proposals are contrary to Policy Comm 6 of the Finalised Draft Ayrshire Joint Structure Plan which restricts in particular new retail floorspace at out-of-centre locations. The application of the sequential test has not been undertaken to illustrate that the retail capacity of Kilmarnock accommodate the additional floorspace to warrant setting aside the relevant policies.

Applicants Supporting Statement

6.11 The applicant has submitted a Supporting Planning Statement entitled "New Bellsland- A future for Kilmarnock Rugby Football Club". The applicant provides a background to the history of Kilmarnock Ruby Football Club and advises of the background to Aldi and the proposed Health Club. The Supporting Statement details the proposed development, layout and design of the proposed buildings and gives information on the access arrangements, car parking, servicing, waste disposal, external lighting and opening hours proposed for Aldi and the Health Club.

6.12 The Supporting Statement fully acknowledges the retail element of the proposed development is contrary to the retail policies of the development plan, however the applicant states that the proposals before the Council for consideration represent a realistic chance of re-developing the Club's facilities and as such the applicant suggests greatest weight should be placed on material considerations rather than planning policy as they believe the re-development of the club to be of paramount importance to the community of Kilmarnock and Ayrshire.

The applicants' supporting statement is noted and the re-development of the Kilmarnock Rugby Football Club facilities is recognised as a benefit to the area that would provide improved sporting facilities for East Ayrshire. However, it is considered that such sporting facilities cannot be provided to the detriment of Kilmarnock Town Centre. Kilmarnock has the highest vacancy rates of Class 1 retail units in the town centre out of the 3 main comparison shopping centres in Ayrshire and only 1 of 4 Scottish towns where prime rental levels fell between May 2005 – May 2006 according to Prime Retail Statistics for Autumn 2006.

SPP7 Planning and Flooding

6.13 SPP7 expects developers and planning authorities to address issues of flooding very seriously and to take an informed approach to preclude adverse impacts either on the site concerned or on neighbouring land. Flood risk is a material consideration and consequently the advice of SEPA and the Council's own expert officers has been fully noted in the consideration of the application at Sections 3.1 and 3.4 above.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are financial and legal implications for the Council in the determination of this application, if Members are minded to grant Planning Consent, contrary to the recommendation of the Head of Planning & Economic Development as the Council have an ownership interest in the site.

8. CONCLUSIONS

8.1 As indicated at Section 5 of the report the application is not considered to be in accordance with the Development Plan. Therefore given the terms of Sections 25 and 37 (2) of the Town and Country Plan (Scotland) Act 1997 the application should be refused unless material considerations indicate otherwise.

8.2 As indicated at Section 6 of the report there are material considerations relevant to this application. In relation to the objection received relative to the proposed development failing to accord with the Adopted East Ayrshire Local plan and Approved Ayrshire Joint Structure Plan, it is considered that the retail element of the proposals is contrary to the policies outlined in Section 5 above which therefore indicate that the proposals should be refused.

8.3 The remaining comments of the objectors in relation to the analysis of the Transport Assessment are not echoed by the Roads Division whilst concerns relative to flooding are also not supported by the Council's Roads Division and SEPA, subject to appropriately worded conditions being attached to any grant of planning consent. The objector's concern relative to the ability of their site being developed is not a material consideration in the determination of this application as each planning application requires determination on its own merits and as such the planning status of the objector's land cannot be taken into consideration as part of the proposals. The concerns of the objectors relative to the use of the objector's ground for an emergency access route is primarily a legal issue and would not affect the determination of this application although if appropriately worded conditions were attached to any grant of planning consent, consistent with the requirement of SEPA and the Council's Roads Division, any consent would not be able to implemented until a sustainable emergency access/ egress route can be formed.

8.4 The applicants supporting statement accepts that the retail element of the proposals is contrary to the development plan, and argues that greatest weight should be placed on material considerations as the proposals represent a realistic chance of re-developing the Club's facilities as they believe the re-development of the club to be of paramount

importance to the community of Kilmarnock and Ayrshire. The contents of the applicants supporting statement are noted, and there is an obvious level of support for the re-development of the clubs facilities from the public and from various sporting organisations. It is noted that part of the site is designated in the Adopted East Ayrshire Local Plan as Site 225M, where the Council will encourage and support commercial leisure uses or the sale and display of motor vehicles, but only as an enabling catalyst for the development of any Kilmarnock Sports Park to provide a fully integrated indoor and outdoor sporting and recreational facility to meet the needs of East Ayrshire. The Health Club element of the proposal would comply, in principle, with this policy although it is considered that the accompanying retail floorspace and ALDI supermarket would not accord with this policy. Whilst it is acknowledged that a form of “enabling development” to secure the re-development of the Kilmarnock Ruby Football Club is necessary, it is considered that the designation of site 225M for commercial leisure uses or for the sale and display of motor vehicles, provides an opportunity for the re-development of the Rugby Club facilities, without jeopardising the vitality and viability of the town centre by introducing convenience retailing.

8.5 The retail floorspace proposed as an integral part of the wider Rugby Club re-development contravenes the aims of the Kilmarnock Town Centre Strategy which is a significant material consideration. The Strategy states clearly that out-of-centre retailing will be resisted in favour of a town centre location and it directs retailing to the town centre. Furthermore the application is also considered contrary to SPP 8, as the applicant has not given due consideration to the sequential approach in relation to their proposals as they have failed to provide a retail impact assessment, thus ensuring it is impossible to fully assess the impact the additional retail floorspace would have on the vitality and viability of the town centre. The cumulative impact of additional retail floorspace on land not identified for such purposes in the Adopted East Ayrshire Local Plan gives rise to serious concern in the long term as such development could erode the vitality, viability and character of the town centre.

8.6 In conclusion, the proposal does not represent an acceptable departure from the Development Plan and cannot be justified in terms of Section 25 of the Town and Country Planning (Scotland) 1997. Whilst the significant benefits of re-developing the Rugby Club facilities are recognised it is considered that the Adopted East Ayrshire Local Plan includes provision for an acceptable form of development to act as a catalyst for the re-development of the sporting facilities in the area by way of identifying part of the site for commercial leisure uses or for the sale and display of motor vehicles. It is recognised that it is important to provide first class sporting facilities for East Ayrshire, but it is considered that this should not be provided for to the potential detriment of the long term vitality and viability of Kilmarnock Town Centre, which was recognised as having the highest vacancy rates of Class 1 retail units in the town centre out of the 3 main

comparison shopping centres in Ayrshire, Kilmarnock was only 1 of 4 Scottish towns where prime rental levels fell between May 2005- May 2006 according to Prime Retail Statistics for Autumn 2006. It is of significance that the recent decision by the Scottish Executive Reporter at the adjacent ASDA store highlights the importance of the sequential test.

9. RECOMMENDATION

9.1 It is recommended that the application be refused for the reasons indicated on the attached sheet.

Contrary decision notice

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

Alan Neish
Head of Planning and Economic Development

09 August 2007

BD/RH/IMB

FV/DVM

LIST OF BACKGROUND PAPERS

1. Application form and plans
2. Statutory Notices and certificates
3. Consultation responses
4. Adopted East Ayrshire Local Plan
5. Approved Ayrshire Joint Structure Plan
6. Planning Application nos:
7. The Kilmarnock Town Centre Strategy Report
8. SPP8 Town Centres and Retailing
9. Letters of objection/Support and Petition of support
10. Supporting Planning Statement
11. SPP7 Planning and Flooding

Anyone wishing to inspect the above papers please contact Barry Douglas on 01563 576770.

Implementation Officer: Alan Neish

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

05/1201FL

Site of Proposal: Kilmarnock Rugby Football Club, Bellsland,
Queens Drive, KILMARNOCK KA1 3XF

**Nature of Proposal: Proposed redevelopment of Kilmarnock
Rugby Football Club Ground, including new
Clubhouse facilities and pitches and new
retail and leisure development.**

Name & Address Of Applicant:: Kilmarnock Rugby Football Club/
Aldi Stores Ltd,
Queens Drive
KILMARNOCK
KA1 3XF

Name & Address of Agent: Turley Associates
80 St Vincent Street
GLASGOW
G2 5UB

DPOs Reference: BD/RH

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

- 1. The proposed additional floorspace is contrary to policies RTC1, RTC3 and RTC5 of the Adopted East Ayrshire Local Plan as the applicant has not complied with the requirement for a sequential approach which directs retail development to town centres first and foremost then to edge of centres and only if sites are not available in these two areas is an out-of-centre location acceptable. Furthermore the proposed development would have a cumulative impact on the future viability and vitality of Kilmarnock Town Centre.**
- 2. The proposed retail floorspace is contrary to the aims and vision of the recently approved Kilmarnock Town Centre Strategy which intends to guide investment, improvements and growth to**

Kilmarnock town centre and resists further out of centre retailing.

- 3. The proposed additional floorspace is contrary to Policies L7, L8 and L9 of the Approved Ayrshire Joint Structure Plan as it will have an adverse impact on the vitality and viability of the town centre and the application of the sequential test has not been undertaken.**

- 4. Insufficient information has been submitted to enable the proper determination of this application by way of a Retail Impact Assessment not being submitted which demonstrates a sequential approach to the proposals has been considered, as required for out of centre retail developments by SPP8 Town Centres and Retailing.**

**DUE TO ORDNANCE SURVEY REGULATIONS AND COPYRIGHT
THE MAP IS AVAILABLE FOR VIEWING AT THE COUNCIL'S
PLANNING OFFICE IN KILMARNOCK. FOR INFORMATION ON
VIEWING PLEASE CONTACT (01563) 576790.**