

## **EAST AYRSHIRE COUNCIL**

**DEVELOPMENT SERVICES COMMITTEE: 07 FEBRUARY 2007**

**06/0686/FL: ERECTION OF 199 RESIDENTIAL UNITS WITH ASSOCIATED  
LANDSCAPING, OPEN SPACE, ACCESS ARRANGEMENTS AND FLOOD  
DEFENCE WORKS**

**AT: STODDARD CARPET FACTORY, BARBADOES ROAD,  
KILMARNOCK**

**BY: FM DEVELOPMENTS LTD**

### **EXECUTIVE SUMMARY SHEET**

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

1.1 Full planning consent is sought for the erection of 199 dwellings. A total of 103 dwellings are proposed to be two storey terraced dwellings, of which 43 are proposed as 2 bedroom dwellings, while 60 are proposed to provide 3 bedroom accommodation. A total of 34 dwellings are two storey 3 bedroom semi detached; 31 units are proposed as 3 bedroom detached dwellings with a further 31 providing 4 bedroom accommodation. Each of the 96 detached units also include integral garages. A large area of open space is proposed extending from the north-west of the application site at the rear of Holmlea Drive to the application site boundary with the Kilmarnock Water and the Barbadoes Place Estate. A centrally located children's play area is also proposed within the development. As stated at 2.1, the application site also includes the full extent of the public road at Blackwood Avenue; Matthew Smith Avenue; Barbadoes Road; Aird Avenue; Scott Crescent and Scott Road. The application site also encompasses the section of Holmes Road from its junction with Blackwood Avenue to the Aird Avenue/ Dundonald Road/ Dundonald Place/ Holmes Road junction within the application site. This is to facilitate traffic calming within the existing road network in the immediate vicinity of the proposed residential development.

#### **2. RECOMMENDATION**

2.1 It is recommended that the application be approved subject to the notification of the Scottish Ministers under the Town and Country Planning (Notification of Applications) (Scotland) Direction and subject to the conditions listed on the attached sheet and that the issue of the decision notice be withheld until the Solicitor to the Council has satisfactorily concluded a Section 75 Agreement with the applicant regarding the matters referred to in Section 7.2 of the report.

### **3. CONCLUSIONS**

3.1 As is indicated in Section 5 of the report the application is considered to be in accordance with the development plan. Therefore given the terms of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 the application should be approved unless material considerations indicate otherwise.

3.2 As indicated in Section 6 of the report there are material considerations relevant to this application. The consultation responses received are detailed at Section 3 of the report, none of which indicate the proposed development should be refused. The comments of the objectors, whilst noted, are not considered of sufficient weight to justify the refusal of the proposed development as their concerns are largely based on roads and traffic issues which are not echoed by the Council's Road's Division. The issues relating to flooding, construction traffic management and the revocation of the Hazardous Substances Consent can all be dealt with by appropriately worded conditions or through a legal agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997. It is considered that the former Stoddard's Factory is an eyesore within the area and is a visually prominent site, given its close proximity to the A71 Kilmarnock by-pass. The proposed development would, undoubtedly, provide a more compatible form of development within this largely residential area.

3.3 The site, due to its previous use, is partially contaminated and is blighted by the existing Scottish Gas Networks gasometer, which the application site surrounds. The proposed development would decontaminate the former industrial site and will see the revocation of the existing Hazardous Substances Consent for the gasometer once the gasometer and infrastructure has been decommissioned. It is also considered that traffic calming in the immediate vicinity of the development would be beneficial as a result of the proposed development. It is therefore concluded that the proposals will improve the amenity of the area and provide a sustainable future for this prominent brownfield site.

3.4 In as much as the Council has an interest in the application site; the public road network; and there are a substantial body of objections in part addressing works proposed on such land, any favourable consideration of the development will require notification of the application to the Scottish Ministers.

**Alan Neish**

**Head of Planning, Development and Building Standards**

**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, Development and Building Standards**

#### **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 Development Services Committee under the scheme of delegation as it is a larger scale residential development which is subject to objections and the Council have an interest in the application site, being owner as Roads Authority, of the road network included in the application site.

#### **2. APPLICATION DETAILS**

2.1 **Site Description:** The application site comprises approximately 8.4 hectares of land which includes the existing derelict Stoddard's Carpet Factory buildings and two electricity pylons carrying overhead power lines over the south and east of the application site. To the north of the application site there is traditional two-storey semi-detached local authority and ex-local authority housing stock, traditional single storey and one-and-a-half storey bungalows and 1960s/ 1970s two storey and one-and-a half storey dwellings. To the south there is an existing operational gasometer, with the Kilmarnock Water and River Irvine converging immediately to the south of the application site. Beyond the Kilmarnock Water is the East Ayrshire Council Building and Works Department. To the east of the application site there are modern two-storey detached and semi detached dwellings and an electrical substation. To the west of the application site is vacant land, currently over grown, which acts as part of the functional flood-plain. The current factory buildings are protected by a flood-defence embankment to the west and south west of the existing factory. The application site includes the full extent of the public road at Blackwood Avenue; Matthew Smith Avenue; Barbadoes Road; Aird Avenue; Scott Crescent and Scott Road. The application site also encompasses the section of Holmes Road from its junction with Blackwood Avenue to the Aird Avenue/ Dundonald Road/ Dundonald Place/ Holmes Road junction.

**2.2 Proposed Development:** Full planning consent is sought for the erection of 199 dwellings. A total of 103 dwellings are proposed to be two storey terraced dwellings, of which 43 are proposed as 2 bedroom dwellings, while 60 are proposed to provide 3 bedroom accommodation. A total of 34 dwellings are two storey 3 bedroom semi detached; 31 units are proposed as 3 bedroom detached dwellings with a further 31 providing 4 bedroom accommodation. Each of the 96 detached units also include integral garages. A large area of open space is proposed extending from the north-west of the application site at the rear of Holmlea Drive to the application site boundary with the Kilmarnock Water and the Barbadoes Place Estate. A centrally located children's play area is also proposed within the development. As stated at 2.1 above the application site also includes the full extent of the public road at Blackwood Avenue; Mathew Smith Avenue; Barbadoes Road; Aird Avenue; Scott Crescent and Scott Road. The application site also encompasses the section of Holmes Road from its junction with Blackwood Avenue to the Aird Avenue/ Dundonald Road/ Dundonald Place/ Holmes Road junction within the application site. This is to facilitate traffic calming within the existing road network in the immediate vicinity of the proposed residential 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:

#### Access to the site

The proposals indicate Mathew Smith Avenue/Aird Avenue junction should remain open. This would allow traffic to and from the development site the option to route either via Blackwood Avenue or Aird Avenue/Barbadoes Road.

The junction analysis presented by the transport assessment concluded that all of the junctions in the study area would be able to satisfactorily accommodate the generated development traffic.

#### Traffic Calming Proposals

Traffic calming measures are proposed on Aird Avenue, Barbadoes Road, Scott Street, Mathew Smith Avenue and Blackwood Avenue. The traffic calming features are shown as indicative. A condition should be attached to any planning consent stating that the exact design and location of the traffic calming measures will require to be submitted to the Roads Division for approval. The traffic calming proposals will also be subject to the Road Humps (Scotland) Regulations, 1998. The Roads Humps Notice will be undertaken by the Council with the cost being met by the developer.

The traffic calming measures must be in place prior to occupation of the houses. All costs for the traffic calming measures, any street lighting improvements and the Council's costs in promoting the Road Humps Notice, must be met by the developer in full.

### Construction Traffic

A preliminary Construction Traffic Statement from FM Construction has been submitted. It should be a condition of planning consent that a detailed construction traffic management plan should be submitted to and agreed by the Council prior to commencement of development.

### Pedestrian/Cycle Access

The developer has confirmed that a pedestrian/cycle link connection from the site to Barbadoes Place will be provided. This will enhance the accessibility of the site to the Holmquarry Road area and connect to existing pedestrian and cycle routes.

### Flooding

Jacobs Babbie's report states that it is proposed to raise the ground levels within the proposed site to the level of the 1 in 200 year flood event; to a level of 22.50metres OD. The principle of this is acceptable. It is also proposed that property thresholds would be set 500mm above 22.5 metres OD resulting in a recommended property threshold level of 23.00 metres OD. The minimum 500mm threshold level is to be to any property air vents or finished floor level, whichever is the lower.

Evidence is required that the gasometer will be removed and that it forms part of the Planning conditions. In addition, as the ground levels within the boundary of the gasometer will be retained at the same level, it is noted that a retaining wall may be required at the boundary of the gasometer site. Further information/detail on this will be required.

The principle of the flood route shown for the 1 in 200 year rainfall event is acceptable, Evidence is required to show that the land to which the surface water discharges will be part of this development and will be retained for this purpose only. Further information/detail on the treatment of the exiting embankment, erosion protection etc, over which surface water will discharge, will be required. Further detailed information on site/road levels will be required at Construction Consent stage to ensure that the flow routes do not interfere with properties, gardens etc.

Some further information is detailed for the disposal of surface water from driveways, roof drainage and roads. Confirmation is required that Scottish Water will adopt the main surface water drain. Confirmation is required as to who maintains the detention basin and outlet flow control valve. Confirmation is also required as to who maintains the pipe apparatus and flap valves at the three discharge locations (flood routes).

***The requirements of the Roads Division can be met by attaching suitably worded conditions to any grant of Planning Consent. With regards to flooding issues the developer has advised that they are willing to enter into a Section 75 legal agreement, as detailed at 7.2 below, which would retain the existing floodplain, in the applicants ownership, for such use, with the applicant or their successors being responsible for the on-going maintenance of this area. The applicant has also confirmed their willingness to enter into a legal agreement which ensures no occupation of the development will take place until the Hazardous Substances Consent is revoked for the gasometer. The applicant has confirmed in writing that the gasometer will be removed and this too can be addressed in the Legal Agreement.***

3.2 Scotland Gas Networks objects to the proposed development on the following grounds:

They object to any works commencing on this site before any gas mains on site are diverted at the cost of the developer.

***The requirements of Scottish Gas Networks can be addressed by a suitably worded condition attached to any grant of planning consent.***

3.3 Scottish Water has no adverse comments in relation to the proposed development although advise that approval at this stage does not guarantee a connection to Scottish Water's infrastructure

***Noted.***

3.4 Scottish Environment Protection Agency (SEPA) advises that they would object unless mitigation measures to manage the flood risk are secured by planning conditions on any grant of consent. If the Council are minded to grant consent without appropriate conditions SEPA advise that the application would require referral to the Scottish Ministers. SEPA advise that conditions should request that the post development ground levels are confirmed as being a minimum of 22.5 metres OD; that measures are put in place to ensure the maintenance of the existing flood prevention schemes on-site and a detailed drainage design including proposals for managing an extreme ( 1 in 200 year) rainfall event. SEPA also state that any further residential development within the functional flood-plain would be contrary to Scottish Planning Policy (SPP) 7, Planning and Flooding.

***The requirements of SEPA can be addressed by attaching suitably worded conditions and notes to any grant of planning consent. The proposed Section 75 Legal Agreement would provide a legally binding agreement with the Council to ensure the developer and their successors maintain the functional flood plain.***

3.5 East Ayrshire Council's Environmental Health and Waste Management Division have no objections to the proposals although have advised that a final environmental report should be submitted as a condition to take into account final testing of the flood prevention bund and a further round of groundwater and gas monitoring, from existing boreholes, and should consider the preventative measures to mitigate the risks to site users and occupiers during the decommissioning and demolition of the gasometer.

***The requirements of Environmental Health can be addressed by means of suitably worded conditions and notes attached to any grant of Planning Consent.***

3.6 East Ayrshire Council's Outdoor Amenities Services have not responded to their consultation response at the time of writing this report.

***Noted.***

3.7 Grange/Howard Community Council objects to the proposed development on the following grounds:

The Community Council feel it cannot support the development in its current form due to uncertainties and lack of determination relative to the following:

The access to the site and to the significant consequential changes to the public streets and road junctions in the area;

They also object on the basis the ground and geophysical conditions of the site may affect the practicability and viability of the proposed development; and

The possibility of river and site flooding prevention measures being required.

***The concerns of the Community Council, whilst noted, are not echoed by the comments received from the Council's Roads and Transportation or Environmental Health Divisions. The viability of the site from a commercial point of view is not a material consideration in the determination of this planning application.***

3.8 The Health and Safety Executive (HSE) have advised that the development falls within the zone of the Transco Kilmarnock North/South gasholders. HSE originally advised against the granting of planning consent, however, following discussions between Scotland Gas Networks and the developer, agreement has been reached over the removal of the existing gas holder and revocation of the Hazardous Substances Consent. The HSE advise that in previous cases it would not advise against the granting of planning permission so long as no occupation of any dwellings takes place prior to the revocation of the Hazardous Substances Consent for the gasometer and a legal agreement is put into place to that effect under Section 75 of The Town and Country Planning Act (Scotland) 1997. HSE would wish to be consulted on such a legal agreement. HSE advise that they cannot

withdraw their previous advice recommending against the grant of planning consent however, if consent is granted subject to a Section 75 legal agreement, then they would advise the Scottish Ministers accordingly and would not request that they call in the application for determination.

***The requirements of HSE can be addressed by way of a suitably worded legal agreement under Section 75 of The Town and Country Planning (Scotland) Act 1997.***

#### **4. REPRESENTATIONS**

4.1 There are 78 objections to the proposed development, including the objections received from Scottish Gas Networks and Grange/Howard Community Council addressed at sections 3.2 and 3.7 above. It should be noted that following the amendment of the red-line application site, to include traffic calming measures within the existing adjoining road network, the statutory neighbour notification was carried out by the applicant on 8 December 2006. This Division followed the re-neighbour notification procedure by lettering each of the objectors on 21 December 2006, enclosing a copy of the proposed traffic calming layout plan proposed by the applicant. This Division requested that each objector respond, in writing, by 8 January 2007. To-date 16 responses have been received. Nonetheless the main grounds of objection are as follows.

4.2 They object to the closure of Matthew Smith Avenue which would increase the flow of vehicular traffic along Blackwood Avenue/ Holmlea Drive.

***The amended plans, about which adjoining neighbours received a further neighbour notification on 8 December 2006, show that Matthew Smith Avenue is to remain open. This would allow traffic to and from the development site the option to route either via Blackwood Avenue or Aird Avenue/Barbadoes Road. The junction analysis presented by the Transportation Assessment concluded that all of the junctions in the study area would be able to satisfactorily accommodate the generated development traffic. Traffic calming measures are proposed on Aird Avenue, Barbadoes Road, Scott Street, Mathew Smith Avenue and Blackwood Avenue, thus reducing traffic speeds in the immediate vicinity***

4.3 The creation of play areas to the rear of the gardens at Holmlea Drive will lead to youths congregating creating disorder and affecting the quality of life for residents.

***The proposed children's play area is located in the south-west of the application site and is not adjacent to the rear gardens of Holmlea Drive. There is open space proposed to the rear of 1-9 Holmlea Drive, which is to be overlooked by the proposed dwellings.***

4.4 The creation of access to the site adjacent to 1 Holmlea Drive at the junction of Blackwood Avenue causing unnecessary disruption and danger to the children and residents of Holmlea Drive. At present there is a perfectly good access to this site via Barbadoes Road, which was the main access to the site when the factory was operating. Why have the Council rejected a roundabout at this location?

***The Roads Division have indicated that the junction spacing at the Matthew Smith Avenue/ Barbadoes Road/Aird Avenue and the existing site access would be unacceptable.***

4.5 They object on the basis that the developer has refused to remove the electricity pylons and replace them with underground cabling in spite of health risks and making the site more aesthetically pleasing.

***Scottish Power have offered no objection to the proposed development given a no-build zone of 25 metres on either side of the overhead line. It is not considered that the proposed overhead power lines or 2 pylons located within the site will have a significant detrimental impact on the residential amenity of the proposed development. Perceived health risks from such apparatus are controlled by other bodies and are not a material consideration in the determination of this application.***

4.6 They object to housing on low lying ground where flood prevention from higher ground is by means of earthwork barriers. They believe the use of earthwork barriers in the manner proposed may contravene existing planning standards/ regulations.

***As noted at 3.2 above the development site requires to be up-filled to ensure the proposed development would not have to rely on the existing flood defences to protect dwellings from potential flooding.***

4.7 If by building on the site an additional burden is placed on existing access routes/ junctions then the applicant should ensure that adequate junction alterations are proposed, agreed and paid for.

***The proposed development includes traffic calming measures on Aird Avenue, Barbadoes Road, Scott Street, Mathew Smith Avenue and Blackwood Avenue.***

4.8 The area is congested enough when Kilmarnock F.C are playing at home without further traffic from the proposed development.

***The comments of the objector, whilst noted, are not echoed by the Council's Roads Division.***

4.9 They understand a second phase of a further 193 dwellings is planned at a later date adding to the volume of traffic in the area. They suggest a new access to the site from the west skirting all present roads and housing.

***The developer indicated within the supporting statement submitted with the application that a possible future development contained within the current flood plain could accommodate a further 193 dwellings. Members are advised that this does not form part of the proposals before the committee for determination. Notwithstanding this the applicant will require to utilise land from this area to upfill the proposed development site. In addition to this the applicant has confirmed that they are willing to enter into a section 75 legal agreement for the maintenance of the functional floodplain, as indicated at 7.2 below. Such an agreement would prevent further development on the floodplain if the planning application before members was implemented. The site is constrained relative to potential access points with the A71 Kilmarnock By-pass to the west; Kilmarnock Water and flood defence wall to the south and existing housing to the north and east.***

4.10 They object to the proposed footpath link to Barbadoes Road, located the rear of their property at Barbadoes place as this would provide a place where muggings and assaults would take place as a regular occurrence and would provide an ideal secluded location for glue sniffing and drug misuse. They believe such a footpath would reduce their security and personal safety.

***There is no footpath link to Barbadoes Road proposed as part of the application. The footpath proposed to the rear of 7 Barbadoes Place is for rear access to the proposed terraced dwellings. The application site does include an area of land which runs between 42 and 44 Barbadoes Road although no development is proposed on this area of land and there is no through access.***

4.11 They believe the alternative proposal on public display by the developer at The Park Hotel would be more acceptable as it would be possible to provide more than one access into the development.

***The applicant carried out a public exhibition at the Park Hotel on 15 November 2006. Two proposals were exhibited and the public's views were sought by the developer. The proposed development before this Division is for one such proposal and not for any revised proposals which were given consideration by the developer.***

4.12 Large numbers of vehicles using the roads in the immediate vicinity will present health and safety hazards in the form of increased noise and air pollution.

***The objector's comments, whilst noted, are not echoed by the Council's Environmental Health and Waste Management Division.***

4.13 There is nothing to be gained by increasing traffic flow through the quiet streets in the vicinity of the application site. The sensible solution would be to build a bridge from the site to Holmquarry Road so that traffic enters from main arterial routes in a retail/ industrial area which in turn causes minimal disruption to the quality of life and security enjoyed by the residents in the area.

***As stated at 4.9 above the site is constrained relative to potential access points with the A71 Kilmarnock By-pass to the west; Kilmarnock Water and flood defence wall to the south and existing housing to the north and east.***

4.14 Strenuous objection has been received to the proposed footpath to the rear of 20 Barbadoes Place.

***The Council's Roads Division have commented that the proposed footpath will enhance the accessibility of the site to the Holmquarry Road area and connect to existing pedestrian and cycle routes.***

4.15 Construction traffic, plant and machinery will be a constant hazard as Blackwood Avenue was not built to withstand the constant passage of heavy lorries. The street already has problems with gas leaks.

***The Council Road's Division state that a detailed construction traffic management plan should be submitted to and agreed by the Council prior to commencement of development. An appropriately worded condition attached to any grant of planning consent would ensure such measures are put in place to alleviate the objector's concerns relative to construction traffic. In relation to any current gas leaks in the locality, Scottish Gas Networks should be contacted urgently by anyone with such concerns.***

4.16 The volume of traffic using Blackwood Avenue which will travel north where it terminates with Holmes Road will lead to considerable difficulty in the manoeuvrability at this junction whilst the Dundonald Road/ Aird Avenue/ Holmes Road traffic island is not designed to cope with traffic on busy days.

***The Council's Roads Division states that the junction analysis presented within the Transportation Assessment concluded that all of the junctions in the study area would be able to satisfactorily accommodate the generated development traffic.***

4.17 They understand that speed tables are intended for use where traffic speed is an issue. Having lived in the area for around 20 years they can say

from experience that traffic speed is not an issue and further believe that as East Ayrshire Council has not seen fit to install such traffic calming to-date they are of the opinion that traffic calming is not required. They believe the main problem in the area is parking congestion due to the fact many of the dwellings are flats or do not have private car parking. They believe the introduction of speed humps will reduce the available on-street parking by around one-hundred spaces. They further believe that such a loss of parking spaces will lead to more inconsiderate or dangerous parking. The developer's proposals show no attempt at traffic management and instead take a scattergun approach. They believe cyclists will be put in danger as a result of the increase in traffic and the traffic calming will lead to noise and a loss of amenity to the area.

***The comments of the objector, whilst noted, are not echoed by the Council's Roads Division. It is considered that the proposed traffic calming would in fact improve the amenity of the area as a result of slowing down traffic in this part of the town.***

4.18 They note that houses are to be built in close proximity to the existing gasometer.

***As stated at 3.8 above the existing gasometer will require to be decommissioned and an application made for the revocation of the existing Hazardous Substances Consent. The applicant has also confirmed, in writing, their intention to demolish the gasometer. The Health and Safety Executive (HSE) have stated that it would not advise against the granting of planning permission so long as no occupation of any dwellings takes place prior to the revocation of the Hazardous Substances Consent for the gasometer and a legal agreement is put into place to that effect under Section 75 of The Town and Country Planning (Scotland) Act 1997.***

4.19 Blackwood Avenue was recently made a "twenty's plenty" zone by the Council, indicating its unsuitability to be used as a main access for a development of this size.

***The comments of the objector, whilst noted, are not echoed by the Council's Roads Division.***

4.20 Residents of Scott Road cannot understand why they were not originally notified of the proposed development.

***These residents were not originally neighbour notified of the proposed development as residents in Scott Road did not bound the original application red-line site. The residents of Scott Road were, however, neighbour notified on 8 December 2006, as the red-line application site was extended to include Scott Road as a result of the proposed traffic calming measures.***

4.21 There will be a distinct loss of privacy to the rear of 9 Barbadoes Place as a result of the closeness of the proposed housing overlooking their property.

***Public open space is proposed immediately to the rear of 9 Barbadoes Place, whilst the indirect window to window distance between the nearest proposed dwelling and 9 Barbadoes Place is approximately 32 metres, exceeding the Council's minimum 18 metre direct window to window distance.***

4.22 They are concerned that the proposed open-space to the rear of 9 Barbadoes place could be easily misused.

***The proposed public open space is located to ensure it is overlooked by existing and proposed dwellings, thus ensuring it is centrally located, accessible and safe for users. The open space to the rear of 9 located in the south-west of the application site.***

4.23 There is little merit in leaving the existing vegetation along the outside of our garden wall. This scrubland was never deliberately planted and is an eyesore.

***The developer proposes a landscaping scheme to develop the open space areas within the development site. A condition can be attached to any grant of planning consent to ensure that a maintenance agreement for the play equipment and all other areas of public open space and landscaping are submitted to and approved by the Planning Authority prior to commencement of development on-site.***

4.24 They insist on an agreement being enforced on the developer with regard start and stop times for the use of heavy machinery.

***A condition can be attached to any grant of planning consent to ensure that no demolition or external construction work, site clearance or preparation works takes place out with specified hours.***

4.25 They object to the proposed footpath link to the rear of 48 Barbadoes Road as this would be a security risk.

***The footpath proposed to the rear of 48 Barbadoes Road is for rear access to the proposed terraced dwellings to allow, for example, wheelie bins to be taken to the front of the dwelling for collection.***

4.26 There is an area on the plans marked for the dumping of rubble. It appears this is close to their dwelling and they are concerned that impurities from this rubble may become airborne.

***The Council's Environmental Health and Waste Management Section has no objections to the proposed development. This Division is not aware of any plan which shows rubble is to be dumped in the proximity of the objector's rear garden.***

4.27 The increase in traffic from the proposed development will increase the amount of traffic which will have a detrimental effect on external boundary walls and internal ceilings.

***The Council's Roads Division have no adverse comments on the proposed development with regard to traffic impact.***

4.28 The application site extends into the Conservation Area and the proposed development would have a significantly detrimental effect on this area by increasing traffic, noise and parking.

***The application site does encroach slightly into the Conservation Area at the Barbadoes Road/ McLelland Drive junction. Within the Conservation Area there is only one proposed "speed hump" and it is not considered that such works to the roadway would have an adverse impact on the Conservation Area. Once again with reference to the provision of car parking and the increase in traffic, the Council's Roads Division have no adverse comments on the proposed development.***

4.29 They assume that as the site has not been identified for housing within the Adopted East Ayrshire Local Plan, this Division will recommend refusal of the proposed development.

***Whilst the site has not been specifically identified for a residential use members are reminded that within settlement boundaries the presumption is in favour of such development subject to assessment against certain criteria. Not every area of land in East Ayrshire is earmarked for particular forms of development. The application site is in a largely residential area and as such it is considered that the proposed development accords with the development plan, as indicated at 5.3-5.12 below.***

## **5. ASSESSMENT AGAINST DEVELOPMENT PLAN**

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

Approved Ayrshire Joint Structure Plan (AJSP)

5.2 The proposed development does not raise any strategic issues in terms of the AJSP.

#### Adopted East Ayrshire Local Plan (EALP)

5.3 Policies RES4; RES19; RES20; RES22; TLR5 ; ENV7; ENV17; ENV18 and IND8 of the Adopted EALP are specifically relevant in the consideration of this application.

5.4 Policy RES4 states that, within Settlement Boundaries, the Council will positively encourage the sympathetic residential development of gap, infill or other redevelopment sites, including those sites created through the large scale demolition of existing housing, not specifically safeguarded or identified for particular development purposes on the Local Plan maps. Developments will be assessed against a set of four stated criteria, as follows:

- (i) impact on the surrounding natural and built environment and adjacent uses;
- (ii) transportation and infrastructure implications;
- (iii) compatibility with surrounding densities and housing types; and
- (iv) compliance with the Council's Development Promotion and Design Guidance.

***It is considered that the proposed development accords with Policy RES4 as the area is predominantly residential in nature and the density and storey heights of the proposed dwellings are in keeping with the dwellings in the immediate vicinity. East Ayrshire Council's Roads and Transportation Division has no adverse comments in relation to the proposed development. The proposed development accords with the Council's Design Guidance and is addressed in Sections 5.9 below.***

5.5 Policy RES19 requires all housing developers to provide areas of recreational and amenity open space in their developments to the indicative basic standards set out in Schedule 3 of the Local Plan. The policy states also that the precise type, size, location and design of the open space required is dependent on the extent of existing open space provision in the vicinity and the recreational and amenity needs of the wider area.

***The proposed development meets the Council's minimum public open space standards.***

5.6 Policy RES20 states that, in formulating their development proposals, developers should ensure that the provision of open space should meet seven stated criteria, as follows:

- (i) that areas of open space are of a size and configuration that is easily maintainable. The policy advocates that larger areas of well located, consolidated open space should be provided in preference to a series of smaller, individual areas scattered throughout the proposed development site;
- (ii) that proposed areas of open space link, wherever possible, with other areas of adjacent existing open space;
- (iii) that the proposed areas of open space are safe and secure, overlooked if possible by adjacent properties;
- (iv) that play areas, kick about areas and games pitches are provided as required by the Council's Head of Leisure Services;
- (v) that play equipment and facilities for the disabled and those with special needs are provided as considered appropriate;
- (vi) that areas of open space are attractively planted and, where appropriate, use plant species to encourage wildlife; and
- (vii) that all open spaces are provided, as appropriate, with footpaths for both access and leisure walking, linking with adjacent open spaces wherever possible.

***The proposed areas of public open space are well located within the development and are generally overlooked by adjacent properties providing a secure environment. It is considered that the overall proposal meets with the provisions of policy RES 20.***

5.7 Policy RES22 requires all developers to observe the minimum standards for the provision of private open space in terms of a minimum 100 square metres for detached and semi-detached dwellings and 70 square metres for terraced dwellings.

***The proposed development accords with Policy RES22.***

5.8 Policy TLR5 requests all potential developers of residential sites comprising four or more houses to enter into a Section 75 Agreement concerning contributions towards the provision of appropriate leisure and recreational facilities within the area to which the development relates.

***The applicant's have confirmed that they are willing to contribute £100,000 towards the Sports, Leisure and Recreational Fund.***

5.9 Policy ENV7 of the EALP is relevant and advises that all developers will be expected to fully comply with the Council's Design Guidance for new residential development. It states that house types must reflect and respect the built form of the surrounding area by reflecting the existing buildings in terms of design, storey height, scale, density and external finishes. In

general, housing layouts shall include a variety of house types of differing sizes suitable for a wide range of households. Furthermore, the Design Guidance also states that any new housing development shall not result in unacceptable overlooking or have a visually intrusive impact on residential amenity.

***It is considered that the proposed development is in keeping with the surrounding dwellings in terms of density; storey heights; design and external finishes. It is not considered that any of the proposed dwellings would lead to an unacceptable overlooking or overbearing aspect with regard to any of the adjacent residential dwellings.***

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

***The proposed flood prevention measures are acceptable to both the Council and SEPA. A further application will require to be submitted in respect of the up-filling of the site, taking materials from the adjacent flood-plain which is in the applicant's ownership.***

5.11 Policy ENV18 states that, in cases where a development is proposed on land which is known or suspected to be contaminated, the Council will require the developer to investigate and identify the nature of the contamination and detail the remedial measures to be undertaken to treat or remove the contamination.

***The Council's Environmental Health and Waste Management Division have no adverse comments to make in respect of the proposals, subject to conditions.***

5.12 Policy IND8 states that proposals for alternative uses of land or premises currently or formerly used for industrial purposes shall be considered acceptable subject to a set of three criteria being met, as follows:

- (i) the proposed use not being detrimental to surrounding established uses;

- (ii) the proposal meeting with the requirement of all other relevant Local Plan policies; and
- (iii) the existence of alternative industrial or business land or premises with potential for future employment use within the settlement concerned.

***It is considered that housing development would not be detrimental to the surrounding area which is largely residential in nature. There are sufficient alternative industrial sites available for development in Kilmarnock, whilst it is considered the proposed development accords with other relevant local plan policies.***

## **6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS**

6.1 The principal material considerations relevant to the determination of the application are the consultation responses received which are addressed in Section 3 of this report, the letters of objection addressed in Section 4 of this report, SPP7 “Planning and Flooding” and PAN33 “ Development of Contaminated Land”.

### Consultation Responses and Representations Received

6.2 The consultations and representations received are addressed in Sections 3 and 4 of the report, none of which, it is considered, indicate that the application should be refused. The objections are primarily in relation to the proposed access arrangements to the development, concerns relating to traffic impact and they question the need for traffic calming, stating that traffic speed is not a problem in the streets in the immediate vicinity of the application. Objections have also been received relative to flooding issues, the retention of the existing electricity pylons within the site and the proximity of proposed dwellings to the existing gasometer. Whilst the concerns of objectors are noted their concerns relative to traffic impact, traffic calming and the access arrangements into the site are not echoed by the Council’s Roads Division. With regard to flooding, appropriate conditions can be attached to any grant of planning consent to ensure the proposed development accords with the requirements of SEPA and the Council’s Roads Division (Flooding Section). With regard to the retention of the proposed pylons, as noted at 4.5 above, Scottish Power have no objections to the proposed development and the proposals accord with Scottish Power’s requirements relative to no-build zones adjacent overhead lines. The perceived health risks associated with the existing pylons are not material planning considerations in the determination of this application. With reference to concerns relating to the proximity of the proposed development to the existing gasometer, it is noted that this will require to be decommissioned and an application made for the revocation of the existing Hazardous Substances Consent prior to the occupation of any dwellings on site. The applicant has also confirmed, in writing, their intention to demolish the gasometer. The Health and Safety Executive (HSE) have stated that it would not advise against the granting of planning permission so long as no occupation of any dwellings takes place prior to the revocation of

the Hazardous Substances Consent for the gasometer and a legal agreement is put into place to that effect under Section 75 of The Town and Country Planning (Scotland) Act 1997.

#### Supporting Statement Submitted by Applicant

6.3 The applicant has submitted a supporting statement as part of their planning application. The applicant considers that the proposed development accords with both the Adopted East Ayrshire Local Plan; Approved Ayrshire Joint Structure Plan and finalised draft of the Ayrshire Joint Structure Plan. The developer also considers that the proposed development accords with the relevant Scottish Planning Policies and Planning Advice Notes. The applicant has also provided a Design Statement, Transportation Assessment and Flood Risk Assessment in support of their application.

#### SPP7 Planning and Flooding

6.4 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 (see above).

#### PAN33 Development of Contaminated Land

6.5 Past industrial uses of the site indicate that its development for residential purposes requires to be carefully considered to preclude any adverse impacts either on the proposed dwellings or on adjacent property arising from the disturbance or re-contouring of the site. The application is accompanied by an Environmental Desk Study Report and a "ground investigation scope of further works" study which together address the issue of contamination.

### **7. FINANCIAL AND LEGAL IMPLICATIONS**

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

7.2 Legal implications would arise from the Council entering into a legal agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997. A legal agreement would address the following matters

- **Revocation of Hazardous Substances Consent**

To ensure no dwellings are occupied within the application site prior to the decommissioning of the adjacent gasometer and all associated infrastructure owned by Scotland Gas Networks and prior to the revocation of the Hazardous Substances Consent for the gasometer.

- **Flooding**

The land, outlined in blue on the site layout plan, which forms part of the functional flood plain shall be subject to ongoing maintenance. The burden of maintenance will fall upon the applicant and its successors and will be dealt with by a factor appointed to maintain the development. Details of the maintenance arrangements, and of the factor, and of all works including proposed excavations necessary for the on-going effective operation of the floodplain, shall be submitted to and approved by East Ayrshire Council prior to the commencement of development.

- **Contribution towards the Sports, Leisure and Recreation Fund**

The applicant has indicated their willingness to contribute £100,000 (one hundred thousand pounds) towards the East Ayrshire Council Sports Leisure and Recreation Fund.

## **8. CONCLUSIONS**

8.1 As is indicated in Section 5 of the report the application is considered to be in accordance with the development plan. Therefore given the terms of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 the application should be approved unless material considerations indicate otherwise.

8.2 As indicated in Section 6 of the report there are material considerations relevant to this application. The consultation responses received are detailed at Section 3 of the report, none of which indicate the proposed development should be refused. The comments of the objectors, whilst noted, are not considered of sufficient weight to justify the refusal of the proposed development as their concerns are largely based on roads and traffic issues which are not echoed by the Councils Road's Division. The issues relating to flooding, construction traffic management and the revocation of the Hazardous Substances Consent can all be dealt with by appropriately worded conditions or through a legal agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997. It is considered that the former Stoddard's Factory is an eyesore within the area and is a visually prominent site, given its close proximity the A71 Kilmarnock by-pass. The proposed development would, undoubtedly, provide a more compatible form of development within this largely residential area.

8.3 The site, due to its previous use, is partially contaminated and is blighted by the existing Scottish Gas Networks gasometer, which the application site surrounds. The proposed development would decontaminate the former industrial site and will see the revocation of the existing Hazardous

Substances Consent for the gasometer once the gasometer and infrastructure has been decommissioned. It is also considered that traffic calming in the immediate vicinity of the development would be beneficial as a result of the proposed development. It is therefore concluded that the proposals will improve the amenity of the area and provide a sustainable future for this prominent brownfield site.

8.4 In as much as the Council has an interest in the application site; the public road network; and there are a substantial body of objections in part addressing works proposed on such land, any favourable consideration of the development will require notification of the application to the Scottish Ministers.

## **9. RECOMMENDATION**

**9.1 It is recommended that the application be approved subject to the notification of the Scottish Ministers under the Town and Country Planning (Notification of Applications) (Scotland) Direction and subject to the conditions listed on the attached sheet and that the issue of the decision notice be withheld until the Solicitor to the Council has satisfactorily concluded a Section 75 Agreement with the applicant regarding the matters referred to in Section 7.2 of the report.**

**Alan Neish**  
**Head of Planning, Development and Building Standards**

(BD/RH)

FV/DVM  
29 January 2007

### **LIST OF BACKGROUND PAPERS**

1. Application Form, Plans and accompanying submissions.
2. Statutory Notices/Certificates.
3. Consultation Replies.
4. Letters of Objection
5. Adopted East Ayrshire Local Plan.
6. Approved Ayrshire Joint Structure Plan.

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

***Implementation Officer: Alan Neish***

060686FL

TP24

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

06/0686/FL

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Site of Proposal: STODDARD CARPET FACTORY  
BARBADOES ROAD  
KILMARNOCK  
KA1 1UX

Nature of Proposal: ERECTION OF 199 RESIDENTIAL UNITS  
WITH ASSOCIATED LANDSCAPING, OPEN SPACE, ACCESS  
ARRANGEMENTS AND FLOOD DEFENCE WORKS

Name & Address of Applicant: FM DEVELOPMENTS LTD  
9 GREAT STUART STREET  
EDINBURGH  
EH3 7TP

Name & Address of Agent: RPS  
45 TIMBERBUSH  
BERNARD STREET  
LEITH  
EDINBURGH  
EH6 6QH

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DPOs Reference: BD/RH

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

1. The proposed development shall be carried out in accordance with the application form, Preliminary Environmental Desk study report, Design Statement and Transportation Assessment received on 09 August 2006, outline scope of environmental works received on 19 January 2007 and the amended site plan and finished floor level received by the Planning Authority on 18 December 2006; 1:200 year flood route plan received on 18 January 2007; Amended application site boundary and neighbour notification plan received on 08 December 2006 and traffic calming plan received on 19 December 2006.

REASON To ensure that development is carried out in accordance with the approved details.

2. Notwithstanding the submitted plans, details and samples of all external materials to be used in the construction of the dwellings and the road/driveway surfaces shall be submitted to and approved by the Planning Authority in writing prior to the commencement of development on site and implemented as approved thereafter.

REASON In the interests of visual amenity.

3. During the period of construction works the developer of the site shall ensure that adequate and continuing measures are taken to ensure that roads and footpaths adjoining the site are maintained free from mud and other material carried from the site by construction and any other vehicles.

REASON In the interests of public and road safety.

4. Notwithstanding the approved plans a detailed landscaping scheme shall be submitted to and approved by the Planning Authority in writing prior to the commencement of development on site and implemented as approved during the first available planting season.

REASON In the interests of visual and residential amenity.

5. Notwithstanding the approved plans details of a maintenance agreement for the play equipment and all other areas of public open space and landscaping shall be submitted to and approved by the Planning Authority in writing prior to the commencement of development on site and implemented as approved thereafter.

REASON To ensure the future maintenance of all open areas, landscaping and play areas.

6. Notwithstanding the approved plans, a phasing plan for the completion of all roads and footpaths to final wearing surface, street lighting and street signs within the application site shall be submitted to and approved by the Planning Authority prior to the commencement of development on site. The approved phasing plan shall thereafter be adhered to at all times.

REASON In the interests of residential amenity and road safety.

7. Notwithstanding the submitted plans, the exact location and form of all proposed traffic calming measures shall be submitted to and approved by the Planning Authority and implemented thereafter prior to the occupation of any dwelling house.

REASON In the interests of road safety and residential amenity.

8. Prior to the commencement of development on site, final details of the proposed Sustainable Urban Drainage System, including the detention basin and outlet flow control valve, and its maintenance following installation shall be submitted to and approved in writing by the Planning Authority. The Sustainable Urban Drainage System shall have been formed with all necessary consents in place, prior to the occupation of any dwellinghouse. The SUDS arrangement shall thereafter be maintained in accordance with the approved details.

REASON To ensure adequate drainage is provided.

9. All site servicing and workers' vehicles shall be accommodated within the development site at all times throughout the period of construction unless otherwise agreed in writing in advance with the Planning Authority.

REASON In the interests of road safety and residential amenity.

10. Notwithstanding the approved plans details of the proposed bin storage facilities providing for three bins per dwelling shall be submitted to and approved by the Planning Authority in writing prior to the commencement of development on site and shall be implemented prior to the occupation of any dwellinghouses.

REASON To ensure adequate bin storage facilities in relation to the three bin re-cycling programme.

11. Notwithstanding the submitted plans, details of the design and construction of all boundary features, fences and walls to be erected on the site shall be submitted to and approved by the Planning Authority before any development commences on the site and implemented as approved thereafter. Details shall include an appropriate and attractively designed entrance feature at the access to the site.

REASON To allow the Planning Authority to control the design and construction of such features in the interests of visual amenity.

12. No demolition or external construction work, site clearance or preparation works shall take place before 08:00 hours and after 18:00 hours on Mondays to Fridays and before 08:00 hours and after 13:00 hours on Saturdays, nor at any time on Sundays.

REASON In the interests of residential amenity.

13. Notwithstanding the submitted plans details of the proposed play equipment within the children's play area and the exact location of such play equipment shall be submitted to and approved by the Planning Authority, in writing, prior to the commencement of development on site, and implemented as approved thereafter within a timescale to be agreed by the Planning Authority as part of a phasing plan. Details to be submitted shall include the

boundary treatment of the proposed play area; details of a self-closing gate and animal grid to the entrance of the play area.

REASON To ensure adequate play equipment is provided for the use of future occupants of the development.

14. All future occupants of the proposed dwellings shall be made fully aware of the location of the proposed play area prior to the purchase or leasing of any dwellinghouse. Details of how future occupants of the proposed dwellings are to be informed of these approved items shall be submitted to and approved by the Planning Authority prior to the commencement of development on site and implemented thereafter as approved.

REASON To ensure potential residents are fully aware of the location of the play equipment in the interests of residential amenity.

15. Notwithstanding the approved plans, details of existing and proposed ground levels of the application site and proposed finished floor levels shall be submitted to and approved by the Planning Authority prior to the commencement of development on site and implemented on site as approved thereafter. Details shall include post development ground levels for the site at no less than 23.0 metres OD.

REASON In the interests of visual and residential amenity and in the interests of flood prevention.

16. No materials other than material from the application site or adjacent floodplain in the applicants ownership shall be brought onto the site for the purposes of infilling or upraising ground levels, without the prior written consent of the Planning Authority.

REASON In order to control the development of the site and materials used in the making up of ground levels.

17. Any waste arising from the construction works shall be disposed of to the satisfaction of the Waste Management Authority and other than by means of burning.

REASON In the interests of residential amenity.

18. A detailed construction traffic management plan shall be submitted to and approved by the Planning Authority prior to the commencement of development on-site and adhered to at all times throughout the period of construction and site clearance on-site.

REASON In the interests of residential amenity and road safety.

19. Notwithstanding the approved plans, details of the proposed treatment of the existing flood prevention embankment and erosion protection for the embankment at surface water discharge points shall be submitted to and

approved by the Planning Authority, in writing, prior to the commencement of development on-site and implemented as approved thereafter.

REASON In the interests of residential amenity.

20. Notwithstanding the submitted plans a finalised detailed drainage design taking into account proposals to manage a 1 in 200 year rainfall event, including maintenance arrangements, shall be submitted to and approved by the Planning Authority, in writing, prior to the commencement of development on-site.

REASON In the interests of flood prevention and residential amenity.

21. Notwithstanding the approved plans, no development shall commence within the HSE inner-zone of influence, as detailed on the proposed site plan, until the gasometer is demolished and removed, following an approval to revoke the hazardous substances consent for the adjacent gasometer.

REASON In the interests of the residential amenity.

22. Prior to the commencement of development on-site a final environmental report should be submitted to and approved by the Planning Authority in writing to take into account final testing of the flood prevention bund and a further round of groundwater and gas monitoring from existing boreholes, giving consideration to preventative measures to mitigate the risks to site users and occupiers during the decommissioning and demolition of the gasometer.

REASON In the interests of public health.

23. Notwithstanding the approved plans, details of any proposed retaining wall surrounding the gasometer and application site shall be submitted to and approved by the Planning Authority in writing prior to the commencement of development on site and implemented as approved thereafter.

REASON In the interests of residential amenity.

24. Prior to the commencement of development on site, details of the proposed measures to remove/divert gas mains on site shall be submitted to, with the written approval of Scotland Gas Networks, and approved by the Planning Authority in writing, and implemented as approved thereafter.

REASON In the interests of public safety.

NOTES:-

1. The applicant should make early contact with Scotland Gas Networks as the development may affect their apparatus in the area. Scotland Gas Networks can be contact on 0141 418 4093.
2. The applicant should make early contact with East Ayrshire Council Roads and Transportation Division prior to the commencement of development on site to ascertain if any permits for road/footway works are required. East Ayrshire Council Roads and Transportation Division can be contacted on 01563 576310.
3. The applicant should make early contact with Scottish Water on 0845 601 8855. The applicant should ensure that prior to development commencing on site, they have secured agreement from Scottish Water regarding the suitability of all proposed drainage connections and the suitability of the existing infrastructure to accommodate such connection.
4. The developer shall make early contact with Scottish Environment Protection Agency and Scottish Water to confirm their request to utilise a Sustainable Urban Drainage System (SUDS) with regard to surface water. These Authorities require this development to be drained in accordance with the recommendations contained in the CIRIA manual on SUDS.
5. The Council does not currently have a general agreement with Scottish Water in relation to the maintenance of public SUDS. Proposals for site specific agreements which may require to involve the developer or other third parties will be considered within the overall framework recommended in the design manual for SUDS published by CIRIA.
6. Prior to the commencement of development on site, the applicant should satisfy him/herself as to the suitability of the site for construction purposes.

**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.**