

**EAST AYRSHIRE COUNCIL
DEVELOPMENT SERVICES COMMITTEE: 11 JANUARY 2006**

**05/0888/FL: NON COMPLIANCE WITH CONDITION 5 OF PLANNING
PERMISSION KL/W/FL/85/294F TO ALLOW THE EXISTING CLASS 1
RETAIL USE TO BE USED FOR NON-FOOD RETAIL ONLY AS OPPOSED
TO EXISTING CLASS 1 RETAIL LIMITED TO FOOD SALES ONLY
GLENCAIRN RETAIL PARK, KILMARNOCK
BY WM MORRISON SUPERMARKETS**

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 involves a retail development of over 2000m².

2. APPLICATION DETAILS

2.1 **Site Description:** The application site comprises the existing Safeway store building and its car park located at the junction of West Shaw Street and Low Glencairn Street to the southern end of Kilmarnock Town Centre.

2.2 **Proposed Development:** Full planning permission is sought to the change the use of the existing Safeway foodstore to a non-food retail unit which would sell comparison goods only.

Planning permission (KL/W/FL/85/294/F) was granted on 17 January 1990 for a food store and car park and Condition No. 5 of this permission stated that:

“Notwithstanding the provisions of the (General Development) (Scotland) Order 1981-1985 and the (Use Classes) (Scotland) Order 1989, this permission relates to the retailing of food and other convenience items only and the further express permission of the District Planning Authority shall be required in respect of the proposed retailing of any other type of goods or service.

REASON In order that control can be retained over the use of the building so as not to prejudice the District Council’s retail strategy regarding the provision of retail floorspace.”

Condition 5 of the above consent therefore restricts the store to retail food and other convenience goods only and that further permission is required for the sale of non-food items (comparison goods). The former Safeway food store closed for business in June 2005, although the existing in- store Pharmacy

remains open and Morrison's are hoping to sell the building and its car park to a non-food operator subject to planning permission being granted. The existing store has a gross floor space of 47,362 sq ft with a net retail floor space of 31,400 sq ft.

3. CONSULTATIONS AND ISSUES RELATED

3.1 East Ayrshire Council's Roads and Transportation Division, Environmental Health, Licensing & Community Safety, Scottish Environment Protection Agency, Scottish Water and Ayrshire Joint Structure Plan have no adverse comments to make regarding the proposed development.

Noted.

3.2 Grange/Howard Community Council have not responded to their consultation letter at the time of writing this report.

Noted.

4. REPRESENTATIONS RECEIVED

4.1 There are no third party objectors to the proposed development.

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 Policy L8 of the AJSP directs retail and commercial leisure facilities first to existing town centres then to edge of centres in preference to out of centre locations. As the proposal is for the re-use of an existing supermarket with a gross floor space exceeding 1500m² for the sale of non-food goods, the proposed development will require to be justified against the criteria of Policy L9 of the AJSP.

5.3 As the criteria of Policy L9 of AJSP is very similar to the Policy RTC5 of the EALP, the proposed development has been assessed against Policy RTC5 in Section 5.6 below

Adopted East Ayrshire Local Plan

5.4 Policies RTC1, RTC3 and RTC5 are relevant in the consideration of this application.

5.5 Policy RTC1 adopts a sequential approach for new retail developments, directing them first to town centres, and secondly in edge of centre locations in preference to out of town centre locations. Policy RTC3 also directs all retail development of a gross floor space exceeding 1,500m² to Kilmarnock Town Centre. As the proposed development is for the re-use of an existing supermarket with a gross floor space exceeding 1500m² for the sale of non-food foods outwith the town centre boundary the proposed development requires to be assessed against the criteria of Policy RTC5.

5.6 Policy RTC5 states in accessing all out of centre retail development, it should 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;
- (ii) whether the proposal would affect, their individually or cumulatively the vitality and viability of town centres and whether the scale of the proposal is appropriate to its location;
- (iii) whether the proposal is accessible to a choice of means of transport;
- (iv) the effect of the proposal on travel patterns, infrastructure and road works;
- (v) whether the proposal would be compatible with other uses in the surrounding area;
- (vi) whether the design of the proposed building would be acceptable;
- (vii) the effect of the proposal on the environmental quality, character and amenity of the area, and
- (viii) whether the proposal would be compatible with other Local Plan Policy objectives.

The proposed development involves the change of use of an existing vacant food store within an established Retail Park to a unit selling comparison goods only.

Research and analysis conducted by the Ayrshire Joint Structure Plan Team has indicated that East Ayrshire suffers from significant leakage of comparison goods expenditure. In order to address the expenditure leakage and to minimise the impact of the proposed development on the vitality and viability of the Town

Centre, the Council will require the applicant to enter into a Section 75 Legal Agreement with the Council regarding the matters detailed in Section 7.2 of the report. Of particular relevance and to address the criteria of Policy RTC5, it is proposed that there should be an Agreement to the effect that the proposed unit will not be occupied by an existing retailer (with a net floor space greater than 450 sq metres) from within the Kilmarnock core shopping area.

In terms of criteria (iii-viii) the proposed development does not conflict with this criteria. The Roads Division have not offered any adverse comments and the building is sited within the established Glencairn Retail Park surrounded by other retailers selling comparison goods. No external alterations are proposed as part of this application and the development is compatible with other local plan policy objectives.

6. ASSESSMENT AGAINST OTHER MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of the application are the consultation responses received detailed in Section 3, the planning history; NPPG8 "Town Centre and Retailing" and The Kilmarnock Town Centre Strategy.

Consultation Responses and Representations Received

6.2 The consultations received are addressed in Section 3 of the report, none of which indicate that the application should be refused.

Planning History

6.3 KL/W/FL/85/294/F: Planning permission was granted on 17 January 1990 for a food store and car park. Condition No. 5 of this permission restricted the food store to the sale of food and other convenience items only. This condition is detailed fully in Section 2.2 of this report.

6.4 02/0005/OL: Planning permission was granted for the erection of 95,000sq ft superstore on the adjacent former Stoddard's Carpet Mill on 15 October 2004. Morrison's are presently having discussions with the Council regarding the future development of the site.

6.5 02/0746/OL: Planning permission was refused for the proposed change of use of food store to non-food retail by the Development Services Committee on 31 May 2005 as the application was considered to be premature in relation to the Kilmarnock Town Centre Action Plan and could adversely affect the vitality and viability of Kilmarnock Town Centre

NPPG8: 'Town Centres and Retailing'

6.5 National Planning Guidance recognises the important role Town Centres have in society and the Government is committed to protecting and enhancing the vitality and viability of Town Centres. The Guidance advocates the sequential test approach for selecting sites for new retail development, with first preference to Town Centre Sites followed by edge of centre sites and only then by out-of centre sites in locations that are or easily accessible by a choice of means of transport. Both the policies of the AJSP and EALP reflect the guidance and criteria contained in NPPG8.

The proposed retail development has been assessed against the criteria in Paragraph 45 of NPPG8 within Section 5 of the report.

Kilmarnock Town Centre Strategy

6.6 The Kilmarnock Town Centre Strategy was approved by the Development Services Committee on 20 December 2005. This Strategy provides a framework for co-ordinated action pertaining to the development of Kilmarnock. It proposes a retail led, mixed use development with an associated residential or office component would be considered acceptable for the existing Safeway Supermarket site

It is considered that the proposed development under consideration does not conflict with the main objectives of the Kilmarnock Town Centre Strategy.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial implications for the Council.

7.2 Legal implications for the Council would arise from the Council entering into a Section 75 Legal Agreement with the applicant. The Section 75 Legal Agreement would address the following matters:

- Retail Operator Restrictions
To ensure the premises are not utilised by an existing retailer within Kilmarnock core shopping area of a net floor space greater than 450sq metres.

8. CONCLUSIONS

8.1 As 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 there are material considerations relevant to this application and they are generally supportive of the development. The previous application 02/0746/FL refused by the Development Services Committee on 31 May 2005 was prior to the approval of the Kilmarnock Town Centre Strategy and it is considered that the proposed development would accord with the aims and objectives of the approved Strategy. The proposed development can be accommodated within the policies of Approved AJSP and Adopted EALP by minimising any adverse impact in the vitality and viability of the Town Centre, whilst helping to claw back the leakage of expenditure outwith East Ayrshire by the occupation of the unit by a retailer that is not already present in the Town Centre. The former Safeway store ceased trading in June 2005 as a food store although the in-store pharmacy is currently still in operation on-site. Approval of this application would allow the applicant to sell the vacant unit to a non-food operator and therefore reduce the time the vacant unit remains empty and potentially becoming an eyesore in this part of the town.

9. RECOMMENDATION

9.1 It is recommended that the application should be approved 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 applicants regarding the obligations referred to in Section 7.2 of the report.

Alan Neish
Head of Planning, Development and Building Standards

050888FLSafewayGlencairnRetailParkKilmarnockRH

21 December 2005

LIST OF BACKGROUND PAPERS

1. Application Forms and Plans.
2. Statutory Notices/Certificates.
3. Consultation Replies.
4. Letter of Objection,
5. Adopted East Ayrshire Local Plan.
6. Approved Ayrshire Joint Structure Plan.
7. NPPG8: Town Centres and Retailing.
8. Application Nos: KL/W/FL/85/297/FL; 02/0005/OL and 02/0746/FL
9. Kilmarnock town Centre Strategy.

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

Implementation Officer: Alan Neish

REASON To enable the Planning Authority to retain control over the use of the site in the interests of local planning retail policies.

Note:

1. Formal application for planning permission in respect of detailed plans of any proposed new buildings or extensions or alterations (including building materials), and any new accesses shall be submitted to and approved by the Planning Authority before any such development commences as the approval relates to a change of use only.

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PLANNING OFFICE IN KILMARNOCK. FOR INFORMATION ON
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