

## **EAST AYRSHIRE COUNCIL**

**CENTRAL LOCAL PLANNING COMMITTEE: 09 NOVEMBER 2001**

**01/0501/FL: PROPOSED ALTERATION AND CHANGE OF USE TO FORM  
AMUSEMENT CENTRE  
AT 1/9 PORTLAND STREET, KILMARNOCK  
BY MITCHELLS AMUSEMENTS LTD**

### **EXECUTIVE SUMMARY SHEET**

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

1.1 This is a full planning application to change the use of the unit to an amusement centre. The unit was latterly used for non-retail purposes as a betting office by Ladbrokes who have re-located into Croft Street. The unit is now vacant. The plans submitted show no external alterations and any such works would require to be the subject of a further detailed planning application and an application for listed building consent. The applicant has indicated his intention to operate an amusement centre consisting of amusements with prizes (AWP) machines and has advised there will be no catering or prize bingo on the premises.

1.2 The plans show some internal changes with the removal of the counter area used by Ladbrokes which is free standing and some left over display modules. No other structural alterations are proposed. The plans indicate the intention to site 80 AWP machines within the premises.

1.3 The applicants have submitted a statement in support of their application. It indicates that Amusement centres are very common uses throughout town and district centres in Scotland and states the applicant's opinion that such uses add to, not detract from, the town centre. A town centre without two or three such amusement centres is at a disadvantage compared to other town centres. A survey has been submitted which examines the relationship in selected Scottish town centres between the number of Amusement with Prizes (AWP) units and the total town centre floorspace and units. This shows that many town centres similar to those in East Ayrshire have more than one AWP unit. They have carried out a frontage survey of the block containing the application site and the blocks opposite. The amount and location of non-shop use is not a barrier to retail success in their opinion. The frontage is not part of a parade and not part of a linear experience of window shopping. This particular building has elevated windows which are totally unsuitable for retailing.

1.4 The applicant states that it has been accepted many times on appeal that AWP units are very different from the traditional seaside arcade. One reporter recently pointed out and accepted in his decision that an amusement 'centre' was very different from 'arcade'. In addition, as outlined below, the present proposal is a very different type of AWP centre and even further removed from the arcade than most AWP centres. At 117/119 Trongate, Glasgow, the applicants secured consents for and now run an AWP centre exactly the same as proposed here. The building was 'A' listed and of some considerable historical importance. Retail vouchers are part of the prizes awarded in this particular version of an amusement with prizes centre. In the applicants view this

particular type of centre will partially support the retail function of the town centre whereby High Street vouchers are obtained as part of the prizes offered. This scheme benefits surrounding retailers and gives the applicant's business a higher retail aspect than all other classes other than retail. The applicants advise that at their site in 117 Trongate, over a two year period they have distributed £216,000 worth of High Street and supermarket vouchers which are generally spent locally. The applicant would not object if the Council inserted a planning condition as to the voucher system. Whether or not this is done they would intend to continue the system as this is part of their integral trading as it provides a better customer service.

## **2. RECOMMENDATION**

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

## **3. SUMMARY OF ANALYSIS**

3.1 As indicated in Section 5 of the report the proposal does not strictly comply with the policies of the Adopted Kilmarnock Local Plan. The proposal is acceptable in terms of the policies of the approved Ayrshire Joint Structure Plan. Given the terms therefore of Sections 25 and 37 (2) of the Town and Country Planning (Scotland) Act 1997, the application should be refused unless material considerations indicate otherwise.

3.2 The Council has agreed that the EALP is a prime material consideration. The proposal is contrary to the EALP as it will introduce an amusement centre within the Core Shopping Area. It does not however breach the acceptable ratio of non retail to retail uses. Although the EALP is a material consideration greater weight should be attached to the findings of the Reporter on the appeal against refusal of planning consent for an amusement centre at 105 King Street, Kilmarnock. Policies in the EALP which presume against amusement centres in the core shopping area were tested at this appeal. The Reporter in granting the above appeal placed limited weight on both the Adopted Kilmarnock Local Plan and the EALP. He considered the Adopted Local Plan was very dated and felt there were inconsistencies in the EALP which allows a bingo hall, gymnasium or a betting office but not an amusement centre in the core shopping area even though these uses are of a similar nature. He did not consider that an amusement centre of the type proposed for 105 King Street (which is largely the same as this proposal excluding bingo and catering) would adversely affect the vitality and viability of the town centre. This conclusion was based on independent market research surveys submitted by the appellant in that appeal in which the Reporter found no obvious flaws. Therefore taking account of the findings of the Reporter, it is considered that the change of use of this building to an amusement centre is acceptable. The proposed amusement centre would be complimentary to the variety of other uses in the immediate area and would not affect the vitality and viability of the town centre. The applicant has submitted they operate a retail voucher scheme as prizes which he states would help to support the retail function of the town centre. The permitted use of the property is already a non-retail use and therefore the proposal will not result in the loss of an existing retail use. The proposed use is not considered to have an adverse effect on the historic and architectural merit of this C(S) listed building which would in any case be a matter properly dealt with under a subsequent listed building consent application.

3.3 Taking all of the material considerations into account, it is considered that a departure from the Adopted Kilmarnock Local Plan and the EALP can be justified in this instance.

3.4 If the Committee determine that the application should be refused in principle on the basis of policy considerations, it will not require to be referred to the Development Services Committee.

**Alan Neish**  
**Head of Planning and Building Control**

**Note: This document combines key sections of the associated report for quick reference and should not in itself be considered as having been the basis for recommendation preparation or decision making by the Planning Authority.**

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**Report by Head of Planning and Building Control**

### 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 it is subject to objection and is a minor departure from the East Ayrshire Local Plan Finalised Version with Modifications.

### 2. APPLICATION DETAILS

2.1 **Site Description:** The application site comprises the blond sandstone former Bank building which lies to the north of The Cross and is a Category C(S) listed building. The site is bound to the north by the new retail units of the recent Portland Gate development and commercial retail units on The Foregate, to the east by the Nobles Amusement Centre on The Foregate, to the south by The Cross pedestrianised square, and to the west by other retail units.

2.2 **Proposed Development:** This is a full planning application to change the use of the unit to an amusement centre. The unit was latterly used for non-retail purposes as a betting office by Ladbrokes who have re-located into Croft Street. The unit is now vacant. The plans submitted show no external alterations and any such works would require to be the subject of a further detailed planning application and an application for listed building consent. The applicant has indicated his intention to operate an amusement centre consisting of amusements with prizes (AWP) machines and has advised there will be no catering or prize bingo on the premises.

2.3 The plans show some internal changes with the removal of the counter area used by Ladbrokes which is free standing and some left over display modules. No other structural alterations are proposed. The plans indicate the intention to site 80 AWP machines within the premises.

2.4 The applicants have submitted a statement in support of their application. It indicates that Amusement centres are very common uses throughout town and district centres in Scotland and states the applicant's opinion that such uses add to, not detract from, the town centre. A town centre without two or three such amusement centres is at a disadvantage compared to other town centres. A survey has been submitted which examines the relationship in selected Scottish town centres between the number of Amusement with Prizes (AWP) units and the total town centre floorspace and units. This

shows that many town centres similar to those in East Ayrshire have more than one AWP unit. They have carried out a frontage survey of the block containing the application site and the blocks opposite. The amount and location of non-shop use is not a barrier to retail success in their opinion. The frontage is not part of a parade and not part of a linear experience of window shopping. This particular building has elevated windows which are totally unsuitable for retailing.

2.5 The applicant states that it has been accepted many times on appeal that AWP units are very different from the traditional seaside arcade. One reporter recently pointed out and accepted in his decision that an amusement 'centre' was very different from 'arcade'. In addition, as outlined below, the present proposal is a very different type of AWP centre and even further removed from the arcade than most AWP centres. At 117/119 Trongate, Glasgow, the applicants secured consents for and now run an AWP centre exactly the same as proposed here. The building was 'A' listed and of some considerable historical importance. Retail vouchers are part of the prizes awarded in this particular version of an amusement with prizes centre. In the applicants view this particular type of centre will partially support the retail function of the town centre whereby High Street vouchers are obtained as part of the prizes offered. This scheme benefits surrounding retailers and gives the applicant's business a higher retail aspect than all other classes other than retail. The applicants advise that at their site in 117 Trongate, over a two year period they have distributed £216,000 worth of High Street and supermarket vouchers which are generally spent locally. The applicant would not object if the Council inserted a planning condition as to the voucher system. Whether or not this is done they would intend to continue the system as this is part of their integral trading as it provides a better customer service.

### **3. CONSULTATIONS AND ISSUES RAISED**

3.1 The Roads and Transportation Division has no objections to make regarding the proposed development.

***Noted.***

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

***Noted.***

### **4. REPRESENTATIONS RECEIVED**

One letter of representation has been received. The points raised are as follows:

#### **Ayrshire Joint Structure Plan**

4.1 Structure Plan Policy L8 establishes the need to maintain and enhance the vitality, viability and design quality of town centres. The vitality and viability of a centre is inextricably linked with the variety and quality of its retail offer. While we accept that a vital centre requires a selection of non-retail uses in order to sustain and complement the

principle retail use, such uses need to be introduced selectively and with care in order to complement the retail provision and not undermine its principle use. Kilmarnock already enjoys significant amusement centre provision. Adding a further unit will not add to the vitality of the centre, as the use is already well represented. Rather, it will detract from the vitality of the centre by removing more units from the potential for a retail use. The use of the unit at 1/9 Portland Street as an amusement centre may also affect the attractiveness of the core area north of The Cross. The prominence of this unit combined with the existing Nobles operation at Foregate would create a significant visual massing of amusement centres thereby limiting the offer of this part of the core. Shoppers are more likely to avoid this area, considering it to be deficient in a desirable variety of retail goods and services. Consequently, the viability of retail units north of the Cross could suffer as a result. In light of all the above, the proposal should be seen as contrary to Policy L8.

## **Adopted Kilmarnock Local Plan 1985**

4.2 There are two policies within the local plan that address the development of non-retail uses in Kilmarnock town centre, detailed in paragraphs 4.3.5 and 5.2.10 of the plan.

Policy 4.3.5 establishes the Council's position in respect of non-retail uses within the centre of Kilmarnock, where the approach is to be generally restrictive, with a gradation of restriction imposed across the core and secondary areas as detailed below.

Policy 5.2.10 details the policy to be applied to non-retail commercial development within the core area. The local plan justifies the use of the above policy as "there is already a substantial proportion of non-retail uses (within the core), any uncontrolled increase may lead to a reduction in the attractiveness of the town centre as a prime shopping area".

In addition to the above restrictive policy, the local plan includes a policy under paragraph 5.2.12 which encourages non-retail uses to be sited outwith the core area. Policy 5.2.10 establishes three principles against which these applications should be considered. Firstly, the policy expresses a clear presumption against non-retail uses within the core area, with only two exceptions. Secondly, the policy will only approve changes of use where the use exists elsewhere within the core area and seeks to relocate, resulting in no overall increase in non-retail provision. Thirdly, the policy expresses a more favourable view to food and drink uses than other non retail uses. Given the clear presumption against non-retail uses, the Council should expect applicants to submit detailed evidence to justify their proposal and to demonstrate clearly how their proposed development will impact on the core area in terms of vitality and viability. None has been submitted therefore the Council must consider that it is not in a position where it can approve the application, as it cannot judge its potential impact.

The applicant has not offered any details regarding their intentions to relocate from existing premises elsewhere within the core area. While it is accepted that the existing use of 1/9 Portland Street is non-retail, the policy is worded to only allow the transference of uses within the core. The justification for the policy makes it clear that the intention is to prevent an increase in non-retail floorspace which could affect vitality and viability that implies that in particular the proposal for 1/9 Portland Street would need to represent in the particular circumstances of Kilmarnock, a more vital and attractive use than the existing Class 2 use. Bear in mind that class 2 uses are classified as retail service uses and that given the extreme proximity of Nobles amusements at The Foregate, the proposal at 1/9 Portland Street will bring no additional vitality regardless of the merits of the use in other locations.. While there would not be any overall increase in non-retail floorspace in these

cases, there is still likely to be an impact on vitality and viability were the Council to allow a concentration of such uses within one particular part of the core area and an increase in the overall proportion of amusement centres compared to non-retail uses within the centre.

The intention of policy 5.2.10 is to allow a selection of non-retail uses which compliment the primary function. Allowing the development of a high proportion of one non-retail use will not compliment the retail function but would in fact challenge the primacy of that function within the area where the non-retail use is concentrated. Approval of the application could therefore be severely damaging to the core area, removing variety and affecting the strength of the retail offer at a key location. The proposal is therefore contrary to Policy 5.2.10. It should also be noted that, as policy 5.2.12 positively encourages amusement centres and arcades outwith the core area, the local plan should not be seen as unreasonably restrictive.

## **East Ayrshire Local Plan**

4.3 The Council have indicated that this new plan forms the basis of development control decision making within the area. Retailing policies applicable within the plan area all refer to a schedule of “acceptable town centre uses”, Schedule 5 which includes amusement arcades and centres.

Policy RTC1 indicates that the sequential approach will be applied to all new retail, commercial, leisure and other town centre uses. Policy RTC 2 establishes that all those uses detailed within Schedule 5 are considered appropriate, in principle, within town centres.

However, the application site lies within the core retail area of Kilmarnock and the proposal should be considered against Policy RTC 4.

Policy RTC 4 reflects the intention and approach of the adopted core retail area policy in the local plan, but imposes a more detailed exclusion of non-retail uses, only allowing Classes 2 and 3 uses and public houses in up to 33% of ground floor floorspace. The policy therefore offers a clear presumption against the development of amusement arcades or centres within the core. This is unambiguous and demonstrates a tightening of policy from that allowed within the adopted local plan.

It is also clear that the Council’s concerns regarding the effect of non-retail uses within the core area are more significant than when the adopted plan was prepared. The new policy offers a more restrictive framework for the core area and implicit in its exclusion of amusement centres and arcades must be the view that provision of such uses is at least sufficient and potentially at a damaging level already. Consequently, the approval of further developments must be seen as endangering the vitality and viability of the whole core area. The proposal is therefore contrary to this policy.

Policy RTC 20 “Amusement Centres” reinforces the presumption against locating such a use within the core area. The existence of amusement centres within the core at present should not be seen as diluting the need for this policy, rather the existence of facilities reinforces the need to resist the further introduction of such uses within the area. Therefore, as with Policy RTC4, the proposal must be considered contrary to Policy RTC 20.

## **NPPG 8: Town Centres and Retailing**

4.4 NPPG 8 does not create an embargo on such uses in primary shopping areas although suggests that a general presumption against such developments should be applied. This should be the case here where there is existing provision in the core area. The introduction of further facilities would be likely to have a more significant effect, both on their own and in terms of the cumulative effect of so many such uses concentrated within the northern section of the core area.

4.5 In addition, NPPG 8 expresses a general presumption against the redevelopment of Listed Buildings for amusement centre uses and states “[amusement centres] *are unlikely to be acceptable in primary shopping areas ... especially in conservation areas or other places of architectural or historic interest*”. The unit at 1/9 Portland Street is Category C(S) Listed, occupying a prominent position within the core area and relating closely to the historic centre of the town – The Cross. The approval of uses in this location must be made with extreme care in order to ensure that the visual integrity and amenity of the historic centre is protected. NPPG 8 expresses clear concern regarding the introduction of amusement uses into Listed Buildings and the applicant has failed to offer sufficient justification to allow such concerns to be ignored.

“Amusement centre” is a generic term encompassing a whole range of disparate facilities. That is why the use is sui generis and it emphasises the special need for the nature and characteristics of the individual proposal – its function and its effect on vitality and viability to be scrutinised with care. The applicant has not offered any detailed analysis of comparable facilities elsewhere, the likely level of customers or their target customer profile, the impact on passing trade or footfalls within the street.

4.6 Aside from Local and National Policy, it is well established and accepted that the decision-maker should exercise general planning judgement in the determination of applications. In such cases regard should be given to the legitimate objectives of supporting the vitality and viability of town centres. The proposal if granted by the Planning Authority would create an over-concentration of an amusement use within an important part of the retail core.

This is particularly the case in respect of 1/9 Portland Street given its highly visible location at the historic centre of the town and its status as a Category C(S) Listed Building.

***The development plan policies and other material considerations to which the above objection refers in detail are considered in Sections 5 and 6 of this report.***

## **5. ASSESSMENT AGAINST THE 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 Structure Plan and Adopted Kilmarnock Local Plan. The Adopted Local Plan was prepared within the context of the then emerging Strathclyde Structure Plan.

5.2 The Ayrshire Joint Structure Plan was approved on 24 January 2000. The proposal would fall to be considered against Policies L7 and L8. Policy L7 seeks to encourage a wide range of uses including retail, commercial and leisure in order to promote or enhance town centres in Ayrshire. Policy L8 states that the vitality, viability and design quality of existing town centres as defined by local plans shall be maintained and enhanced.

***It is considered that the proposed use is not contrary to Policies L7 and L8 of the Approved Ayrshire Joint Structure Plan. There is no evidence to suggest that the amusement centre would not be complementary to the other uses in the town centre or that it would detrimentally affect the vitality or viability of the town centre.***

5.3 Notwithstanding the age of the Adopted Kilmarnock Local Plan, policies 4.3.5 and 5.2.10 are applicable in the consideration of this application. These policies were formulated in order to maintain the attractiveness of the town centre as the major shopping area in the District. They were also drafted to prevent any uncontrolled increase of non-retail uses in the Central Core Area which could lead to a reduction in the attractiveness of the town centre as a prime shopping area.

5.4 Policy 4.3.5 states that the Council shall restrict the establishment of non-retail uses in the main shopping area of Kilmarnock Town Centre subject to Policies 5.2.10 and 5.2.11. Policy 5.2.11 relates to floors above ground floor level and is not therefore relevant to this application. Policy 5.2.10 states that the Council shall not allow non-retail uses at ground floor level within the central core area except where the proposed development replaces an existing non-retail use on a different site in the central core area or the proposed development is restaurant or other catering establishment.

***The proposed use is technically contrary to Policies 4.3.5 and 5.2.10 of the above Plan, however the Adopted Local Plan is considered to be significantly out of date, as the retail sector and government guidance on town centre uses has moved on considerably since the plan was adopted. The Reporter in his findings regarding an appeal against refusal of planning consent for an amusement centre at 105 King Street, Kilmarnock found that it made no sense to deny a non-retail use which replaces a non-retail activity on the subject site, but to accept the same use where it would be a replacement for a different site. The application site was previously used as a betting office and previous to this was used as a bank. As the application site has a history of non-retail uses it would be illogical to deny another non-retail use access to the site. Policy 5.2.10 is applicable with any force only where the use being "lost" to the proposal is a retail use. The introduction of an amusement centre at this unit would not, in the sense to which 5.2.10 applies, represent an uncontrolled increase in non-retail activity. The proposal is contrary to the wording of this policy but does not breach the spirit of its intentions; i.e. restricting the loss of retail to non-retail activity.***

## **6. OTHER MATERIAL CONSIDERATIONS**

6.1 The principle material considerations comprise the East Ayrshire Local Plan Finalised Version with Modifications (EALP), the consultation responses, Government guidance contained in NPPG8 "Town Centre and Retailing", the planning history of the

site, the recent appeal decision for an amusement centre at 105 King Street, Kilmarnock and the Memorandum of Guidance on Listed Buildings and Conservation Areas.

### East Ayrshire Local Plan Finalised Version with Modifications

6.2 The Adopted Local Plan is considerably out of date and it is considered appropriate that greater weight should be attached to a more recent expression of policy. The Council has agreed that, where applicable to an application, the policies of the EALP should be considered as a prime material consideration. Policies RTC 2, 4, 20 and ENV 2 are relevant.

Policy RTC 2 of the EALP outlines the type of development detailed in Schedule 5 of the Plan that is considered to be acceptable in principle within town centres. This includes Class 1: shop uses, Class 2: Financial, professional and other services, Class 3 food and drink, Class 11 Assembly and leisure uses such as cinemas, bingo hall, discotheque and sui-generis uses such as theatres, public houses and amusement arcade or centre. (Sui-generis uses are those which do not lie within any specific use class). Policy RTC 4 however states that within the Kilmarnock Core Shopping Area, the Council will encourage and support the continuing use of existing ground floor retail floorspace for retail purposes and the change of use of vacant ground floor premises to non-retail use will only be acceptable where the proposed use comprises Class 2 Financial, Professional and Other Service Use, Class 3 Food and Drink Use or a Public House. Notwithstanding this, the Council will ensure that the ratio of gross non-retail to retail ground floor floorspace does not exceed 1:3 in the core area. This policy was formulated to preserve the prime retail function of the core area for shopping and general retail purposes.

***The proposal accords with RTC 2 being an amusement centre in the town centre. As regards RTC 4 the proposal would not threaten the 1:3 ratio of non-retail to retail ground floor floorspace in the core shopping area although the proposed use falls outwith the terms of Classes 2 and 3. As previously indicated there is a history of non-retail uses on this site which limits the applicability of the policy.***

6.3 RTC 20 states that all applications for amusement centres or arcades will be directed to existing town centres although they are “unlikely to be acceptable at ground floor level within the Kilmarnock Core Shopping Area” or where there would be any detrimental impact on the amenity of nearby uses such as residential properties, schools, places of worship etc which require and enjoy a high level of environmental quality by reason of noise or other disturbance. This policy was formulated to maintain the prime function of the core area for shopping and complementary essential services.

***The application site is located within the core shopping area of Kilmarnock Town Centre. Regard must therefore be had to Policy RTC 20 which states that amusement arcades or centres are “unlikely” to be acceptable; this to maintain the prime retail function of the core area for shopping and essential services providing direct support and complimenting the retail function. The proposal is contrary to RTC 20. However, the appeal against refusal of planning consent for an amusement centre at 105 King Street allowed for testing of these various policies. The Reporter’s findings into the above policies are discussed in paragraphs 6.9 – 6.12 of this report. In summary the Reporter concluded that an amusement centre of the type operated by the applicants, would not be detrimental to the vitality and viability of the core shopping area.***

6.4 Policy ENV 2 actively encourages the retention, restoration, renovation and re-use of listed buildings.

***The proposed use will bring this vacant listed building back into use.***

#### Consultation Responses and Letters of Representations

6.5 None of the consultation responses discussed in Section 3 of this report have raised any negative issues which would affect the determination of this application. Section 4 of this report indicates the content of the one letter of representation.

#### National Planning Policy Guideline 8 “Town Centres and Retailing”

6.6 This NPPG states government policy guidance for certain retail proposals and the approach to town centres. It also addresses other non-retail uses which have a role in contributing to the economic health and enhancement of the town centre. The NPPG states that the Government is committed to protecting and enhancing the vitality and viability of town centres. These areas should offer a range, quality and convenience of services and activities attractive to the local population and investors. Shops in particular make an important contribution to their character however a range of uses other than shopping should be encouraged to locate within the town centre including commercial, leisure developments. It is important that retailing is retained as its core function as shopping still largely underpins the use and value of town centres making a major contribution to their vitality and viability. Discussing amusement centres specifically, NPPG8 states that depending on the type of facility proposed, amusement centres may cause noise and disturbance and be of concern because of their location and impact on the amenity of the neighbourhood, on vehicular and pedestrian movements and their location and appearance. It continues that generally amusement centres are most appropriately sited in secondary shopping areas or in areas of mixed and commercial development. They are unlikely to be acceptable in primary shopping areas, close to housing and near schools, places of worship, hospitals and hotels and where they are likely to affect amenity adversely, especially in areas or places of special architectural or historic character. In granting planning approval, authorities should give careful consideration to the nature and extent of any planning conditions which may be appropriate to mitigate effects. These might include conditions regarding opening hours or noise reduction measures i.e. insulation, self closing doors or enclosure of the front of the premises.

***NPPG8 suggests that amusement centres may be best sited in secondary areas of town centres. The application site lies within the Core Shopping Area in Kilmarnock’s established town centre. However, taking into account the conclusions of the Reporter on the planning appeal at 105 King Street and noting that the applicants intend to operate the new facility largely in the same manner, it is not considered that the proposal is contrary to the guidance contained in NPPG8 to the extent that would justify a refusal of planning permission. The Reporter in the above appeal considered that the amusement centre would not have an adverse effect on the vitality and viability of the town centre and would (based on surveys undertaken) attract customers to the town centre and therefore be a complementary use. The current site is located in a mixed use commercial area in close proximity to an amusement centre, a bingo hall, public house, café bar and retail units. It is***

***not in the immediate vicinity of any housing, places of worship, hospitals or hotels. The building is however listed and the John Finnie Street and Bank Street Outstanding Conservation Area is in close vicinity. The use will ensure the continued use of the listed building and need not involve structural alterations which would adversely affect its character.***

***In as much as the NPPG says only that amusement centres are “generally” most appropriate in secondary retail areas and given the mix of uses in Portland Street and given the non retail uses previously on site, it is considered that the proposal can be supported in terms of NPPG 8.***

### Planning History

6.7 The building was latterly occupied by Ladbrokes who used the premises as a betting office under class 2 (Financial, Professional and other uses) of the Town and Country Planning (Use Classes)(Scotland) Order 1997. This company have now re-located to 3 Croft Street and the premises are lying vacant.

6.8 Planning consent (01/0352/FL) was refused on 13 September 2001 by Central Local Planning Committee for a change of use to amusement centre at Unit 8, Portland Gate, Portland Street, on the grounds that the proposal would not be in accordance with Policy RTC4 of EALP which encourages retail uses to the core shopping area. The proposal was also considered to be contrary to Policy RTC 20 of EALP which generally reinforces the presumption against amusement centres within the core shopping area.

### Planning Appeal : 105 King Street Kilmarnock

6.9 A planning application was lodged by the Noble Organisation Ltd for 105 King Street (formerly a Class 2 Financial, Professional use) for a “Change of Use to Amusement Centre”. The application was refused by the Central Local Planning Committee on 7 April 2000 for the reason that the proposal would be contrary to Policy RTC 19 (now Policy RTC 20) of the EALP in that it would introduce an amusement centre within the town centre core shopping area thereby prejudicing the Council’s attempts to retain and improve the range and quality of Kilmarnock Town Centre.

6.10 This decision was subsequently appealed and a public local inquiry held. The Reporter acting on behalf of the Scottish Ministers sustained the appeal granting planning permission subject to conditions. The Reporter was of the opinion that it makes no sense to deny a non-retail use which replaces an existing non-retail use on the subject site. The Reporter in reaching his decision, considered the determining issues to be whether the planning application was consistent with development plan policy and if not whether an exception to the provisions of the plan is justified by the policies of the emerging EALP or by other material considerations. The Reporter referred to the reports of surveys produced by the appellant which had been undertaken by Independent Market Researchers. These indicated that the Company’s other premises in similar locations in other towns attracted a proportion of customers to those town centres on their own account, customers who often went on to shop in the town centre, sustained customer flows greater than some Class 1 uses in the vicinity and maintained shop fronts which shoppers reported as comparing favourably with the appearance of same Class 1, 2 and 3 uses in these centres. He considered that the surveys presented a useful indication of the broad characteristics and opinions of the targeted population.

6.11 The Reporter stated in terms of the Adopted Kilmarnock Local Plan that the proposal was not contrary to Policy 4.3.5 which restricts the establishment of non-retail uses. As the site already had a non-retail use the Reporter held that the proposal did not conflict with that Policy. In terms of Policy 5.2.10 the Reporter found that the proposal did not satisfy the letter of the policy as it did not replace an existing non-retail use elsewhere in the core area. He agreed that it makes no sense to deny a non-retail use which replaces an existing non-retail use on the subject site but to accept the same use where it would be a replacement for a different site. The Reporter considered that the proposal did not conflict with Policy 5.2.10 of the plan. He also noted that the retail sector and government guidance had moved on considerably since the plan was adopted which justified limited weight being placed on its provisions.

6.12 In terms of the East Ayrshire Local Plan, the Reporter noted Policy RTC3 (now RTC 4) which in practice allowed a doubling of the existing level (as at December 2000) of non-retail floorspace as a proportion of all the appropriate town centre uses combined in Schedule 5. Notwithstanding this ratio of retail to non-retail floorspace, new amusement centres and arcades are prohibited from the core shopping area by virtue of Policy RTC19 (now RTC 20); the reason being to control developments considered to have significant impact on their surroundings by reason of their scale, nature or location. The Reporter stated that it is particularly difficult to envisage why amusement centres of any type would harm the Core Shopping Area but a bingo hall or gymnasium or indeed a betting office would not. The Reporter placed only limited weight on Policy RTC19 (new RTC 20). He felt that the impact of the use on the vitality and viability of the town centre could be adequately controlled by the imposition of planning conditions and agreed with the appellant that the use would assist in increasing the vibrancy of the evening economy of the town centre in view of its opening hours in accordance with Policy RTC10 (now Policy RTC 11).

***The findings of the Reporter are a prime material consideration in the determination of this application in terms of the proposed use. The Reporter placed limited weight on Policy RTC 20 as he found it difficult to envisage why amusement centres of any type would harm the Core Shopping Area but a bingo hall or betting office would not. He considered that an amusement centre could also increase the vitality and viability of the town centre especially at night. As detailed previously the application site is located in a mixed use area near to a bingo hall, amusement centre, public house, café bar and retail units. It is considered that the proposed use will be complementary to these uses and will not have an adverse impact on the vitality and viability of town centre. In fact the applicants operate a retail voucher scheme as part of the prizes awarded which can be used in shops located in the town centre. It is acknowledged such a use may also increase the vitality and viability of town centre especially at night. Although there is no concept of binding precedents in planning, whereby the planning authority is obliged to follow the same approach taken in a previous decision, consistency in decision making is desirable. The Reporter's decision as regards 105 King Street gives an independent interpretation of the policies and material considerations applicable to determining applications for amusement centres in Kilmarnock.***

6.13 The Memorandum produced by Historic Scotland states that the best use for a historic building is usually the use for which it was designed. Whilst not initially a listed building consent, planning consent in principle for change of use calls for special care to determine whether the building can reasonably fulfil the new use without undesirable destruction or sub-division or interior work.

The Memorandum advises that applications for changes of use should be dealt with in a flexible manner by Planning Authorities and consent should not be refused in terms of the listed building, except for specific and major difficulties which cannot be overcome by attaching reasonable conditions.

***In this instance the applicants are undertaking no major structural or internal alterations which will adversely affect or destroy the character of the listed building. The AWP machines will be positioned within the building and will not be affixed to the structure and the electrical supply will be formed through ducting which will not require the installation of new power sockets through the floor. It is recommended if Members are disposed to granting planning permission, that the applicants be advised that permission is not granted for any physical alterations to the building other than the removal of the internal counter area nor for the fixing of any AWP machines to the internal structure of the building as listed building consent would be required.***

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

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

## **8. CONCLUSIONS**

8.1 As indicated in Section 5 of the report the proposal does not strictly comply with the policies of the Adopted Kilmarnock Local Plan. The proposal is acceptable in terms of the policies of the approved Ayrshire Joint Structure Plan. Given the terms therefore of Sections 25 and 37 (2) of the Town and Country Planning (Scotland) Act 1997, the application should be refused unless material considerations indicate otherwise.

8.2 The Council has agreed that the EALP is a prime material consideration. The proposal is contrary to the EALP as it will introduce an amusement centre within the Core Shopping Area. It does not however breach the acceptable ratio of non retail to retail uses. Although the EALP is a material consideration greater weight should be attached to the findings of the Reporter on the appeal against refusal of planning consent for an amusement centre at 105 King Street, Kilmarnock. Policies in the EALP which presume against amusement centres in the core shopping area were tested at this appeal. The Reporter in granting the above appeal placed limited weight on both the Adopted Kilmarnock Local Plan and the EALP. He considered the Adopted Local Plan was very dated and felt there were inconsistencies in the EALP which allows a bingo hall, gymnasium or a betting office but not an amusement centre in the core shopping area even though these uses are of a similar nature. He did not consider that an amusement centre of the type proposed for 105 King Street (which is largely the same as this proposal excluding bingo and catering) would adversely affect the vitality and viability of the town centre. This conclusion was based on independent market research surveys submitted by

the appellant in that appeal in which the Reporter found no obvious flaws. Therefore taking account of the findings of the Reporter, it is considered that the change of use of this building to an amusement centre is acceptable. The proposed amusement centre would be complimentary to the variety of other uses in the immediate area and would not affect the vitality and viability of the town centre. The applicant has submitted they operate a retail voucher scheme as prizes which he states would help to support the retail function of the town centre. The permitted use of the property is already a non-retail use and therefore the proposal will not result in the loss of an existing retail use. The proposed use is not considered to have an adverse effect on the historic and architectural merit of this C(S) listed building which would in any case be a matter properly dealt with under a subsequent listed building consent application.

8.3 Taking all of the material considerations into account, it is considered that a departure from the Adopted Kilmarnock Local Plan and the EALP can be justified in this instance.

8.4 If the Committee determine that the application should be refused in principle on the basis of policy considerations, it will not require to be referred to the Development Services Committee.

## **9. RECOMMENDATION**

**9.1 It is recommended that the application be granted subject to the conditions indicated on the attached sheet.**

**Alan Neish**  
**Head of Planning and Building Control**

01 November 2001  
(FMF/MMM)

FV/DVM

### **LIST OF BACKGROUND PAPERS**

1. Application form and plans.
2. Statutory Notices and Certificates.
3. Consultation Responses.
4. Approved Ayrshire Structure Plan.
5. Adopted Kilmarnock Local Plan.
6. East Ayrshire Local Plan Finalised Version with Modifications.
7. Planning Application and Appeal Decision: 105 King Street, Kilmarnock – 00/0073/FL.
8. Planning Application No: 01/0352/FL.
9. NPPG 8 “Town Centres and Retailing”.
10. Approved Strathclyde Structure Plan.
11. Information submitted by the applicant.
12. Representations.

Anyone wishing to inspect the above papers please contact Fiona Finlay on (01563) 576768.

***Implementation Officer: Dave Morris***  
010501FL

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

01/0501/FL

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Site of Proposal: 1/9 Portland Street  
KILMARNOCK

Natural of Proposal: Proposed Alteration and Change of Use to Form  
Amusement Centre

Name & Address of Applicant: Mitchells Amusements  
7 Callendar road  
FALKIRK FK1 1XS

Name & Address of Agent: J W Interiors  
33 Ingleston Avenue  
Denny  
FALKIRK FK6 6QW

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DPOs Reference: FMF/MMM

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

1. The amusement centre hereby approved shall be used only for the playing of amusements with prizes machines and for ancillary sales.

REASON To ensure that the premises operate without detriment to the vitality, viability and amenity of Kilmarnock Core Shopping Area.

2. Formal application for planning permission in respect of detailed plans of any proposed new 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.

REASON The approved development relates to a change of use only.

Note:-

The applicant is advised that this approval does not grant listed building consent for any internal alterations or for the fixing of any amusement with Prizes (AWP) machines to the internal structure of the building. The applicant is advised that a separate application for Listed Building consent for any such works and for the display of any external signage would be required.

010501FL

**AGENDA**