

## **EAST AYRSHIRE COUNCIL**

**CENTRAL LOCAL PLANNING COMMITTEE: 13 SEPTEMBER 2001**

**01/0352/FL: PROPOSED CHANGE OF USE TO AMUSEMENT CENTRE AT  
UNIT 8 PORTLAND GATE PORTLAND STREET KILMARNOCK BY THE  
NOBLE ORGANISATION 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. There has thus far been no other use introduced into the unit. The applicant has advised of their intention to operate a shopper-orientated amusement centre consisting of amusements with prizes machines, prize bingo, ancillary retail sales and an ancillary catering establishment. The plans submitted do not show any external alterations and any such, works would require to be the subject of a further detailed planning application.

#### **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 this 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 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 was the same as this proposal for Portland Gate) 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 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 unit 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. Planning consent has already been granted for a Class 3 food and drink use (although not yet implemented) on this site. Therefore the loss of a Class 1 retail use at this site has already been approved.

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.

**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 Unit 8 at Portland Gate located within the new retail development to the north of the Cross in Kilmarnock Town Centre. The site lies to the east of the overall development and is a centrally located vacant unit. It is bound by the units in the development to the north and south, the rear service yard to the east and Portland Street and retail units to the west.

2.2 **Proposed Development:** This is a full planning application to change the use of the unit to an amusement centre. There has thus far been no other use introduced into the unit. The applicant has advised of their intention to operate a shopper-orientated amusement centre consisting of amusements with prizes machines, prize bingo, ancillary retail sales and an ancillary catering establishment. The plans submitted do not show any external alterations and any such works would require to be the subject of a further detailed planning application.

#### 3. CONSULTATIONS AND ISSUES RAISED

3.1 The Roads Division and The Coal Authority have no objections to make regarding the proposed development.

*Noted.*

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

***Noted.***

3.3 West of Scotland Water has no comment to make regarding this application however if the developer is aware of any public sewers/water mains affected by this application, they must notify WOSWA immediately.

***Noted. If Members choose to grant planning consent, an appropriate advisory note can be incorporated into any decision notice.***

3.4 Transco have advised that the applicant should contact their office prior to starting work on site and have forwarded a copy of their record plans.

***If Members choose to grant planning consent, a copy of Transco's consultation response can be forwarded to the applicant and an advisory note bringing the matter to their attention can be incorporated in any decision notice.***

#### **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. 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 proposals 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 8 Portland Gate is a permitted retail use, 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. 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.

“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.

4.5 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.

***The development plan policies and other material considerations to which the above objection refers are outlined in further detail 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. Planning approval was granted in January 2001 for a Class 3 Use (Food and Drink), for the unit the subject of this application although this consent has never been implemented. As planning permission already exists for a non-retail use of this unit, it would be similarly 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 and the recent appeal decision for an amusement centre at 105 King Street, Kilmarnock.

### 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 and RTC 20 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. As previously indicated there is an existing non retail consent 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 be had therefore 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 (Nobles were also the applicants at 105 King Street), would not be detrimental to the vitality and viability of the core shopping area.***

#### Consultation Responses and Letters of Representations

6.4 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”

6.5 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 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 beside 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. Whilst there is one listed building at The Cross and the Bank Street and John Finnie Street Outstanding Conservation Area in close vicinity, the site will not affect these in an adverse manner as it is related more to the new Portland Gate development by virtue of its location.***

***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, it is considered that the proposal can be supported in terms of NPPG 8.***

### Planning History

6.7 The retail units within which this site is located, were constructed in 2000 as part of an overall re-development of Portland Street. A total of 15 units are provided with some units still awaiting occupation.

6.8 The application site was previously granted planning permission on 12 January 2001 (ref. 00/0775/FL) for a change of use from Class 1 retail to Class 3 (Food and Drink). The permission allows the use of the unit for a restaurant,

snack bar, café for the sale of food and drink on the premises. To date neither the Class 1 or Class 3 uses have been implemented.

#### 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 2001 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 adjacent to a bingo hall, 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. It is acknowledged such a use may in fact 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 Reporters 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.***

## **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 this 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 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 was the same as this proposal for Portland Gate) 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 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 unit 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. Planning consent has already been granted for a Class 3 food and drink use (although not yet implemented) on this site. Therefore the loss of a Class 1 retail use at this site has already been approved.

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.

## **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**

4 September 2001 (FF/SA)  
FV/DM

**LIST OF BACKGROUND PAPERS**

1. Application form and plans.
2. Statutory Notices and Certificates.
3. Consultation Responses.
4. Approved Ayrshire Joint 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: Unit 8 Portland Gate, Kilmarnock – 00/0775/FL.
9. NPPG 8 “Town Centres and Retailing”.
10. Approved Strathclyde Structure Plan.

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

***Implementation Officer: Dave Morris***

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

01/0352/FL

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Site of Proposal: Unit 8 Portland Gate  
Portland Street  
KILMARNOCK

Natural of Proposal: Proposed Change of Use to Amusement  
Centre

Name & Address of Applicant: The Noble Organisation Ltd  
1A Dukesway Court  
Team Valley  
GATESHEAD  
Tyne and Wear NE11 0PJ

Name & Address of Agent: Mr Michael Fox  
The Noble Organisation Ltd  
1A Dukesway Court  
Team Valley  
GATESHEAD  
Tyne and Wear NE11 0PJ

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DPOs Reference: FF/SA

**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 ancillary prize bingo and for ancillary sales and catering; no games of a sessional nature shall be played.

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

2. Before the use hereby approved is brought into operation, the premises must be sound proofed and fitted with self closing doors in accordance with details to be submitted to and approved in writing by the Planning Authority. Those facilities shall be retained thereafter for the entire period of operation of the

premises as an amusement centre. The use shall be inaudible in adjacent premises.

REASON In order to protect the amenity of neighbouring properties.

3. A display of priced goods available within the premises shall be provided at all times on its Portland Street frontage.

REASON In order to maintain the attractiveness of the shopping frontage.

4. 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.

REASON The approved relates to a change of use only

#### NOTES

1. West of Scotland Water have advised that if the developer is aware or discovers any public sewers/water main which is affected by this application, they must notify their office immediately at 35 Glenburn Road, Prestwick (0808 100 5333).
2. Copies of consultation responses received from the Coal Authority and Transco are attached. The applicant/developer is strongly advised to note the content of same.

**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.**

**AGENDA**