

EAST AYRSHIRE COUNCIL

DEVELOPMENT SERVICES COMMITTEE: 27 JUNE 2002

01/0560/OL: ERECTION OF 85,000 SQ FT FOOD SUPERSTORE, PETROL FILLING STATION WITH ENVIRONMENTAL IMPROVEMENTS AND FLATTED RESIDENTIAL DEVELOPMENT WITH HERITAGE CENTRE AT WEST LANGLANDS STREET/NORTH HAMILTON STREET, PARK STREET/LANGLANDS STREET AND BRAE/WEST GEORGE STREET/GARDEN STREET/PORTLAND ROAD AND JOHN FINNIE STREET, KILMARNOCK

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 The applicants submission for outline consent comprises the following elements

- an 85,000 sq ft superstore
 - a petrol filling station
 - a flatted residential development with heritage centre
- physical improvements to link the site to the town centre

Accompanying documents with the application include:

- a Retail Impact Analysis (RIA)
- a Traffic Impact Analysis (TIA)
- a Green Transport Plan
- a supporting document entitled "Development Principles, Procedures and Objectives"

These are summarised below.

Outline planning consent is sought for the erection of an 85,000 sq. ft. food superstore (7,897 sq. metres), petrol filling station and flatted residential development with heritage centre. Environmental improvement works are also proposed principally to West Langlands Street, Langlands Brae and West George Street. An indicative layout has been submitted showing the superstore located to the rear of the site with 571 car parking space provided at the front of the store adjacent to West Langlands Street. A petrol filling station is proposed in the western area of the site adjacent to West Langlands Street. The residential development comprising 47 flats and a heritage centre are proposed within the Andrew Barclay listed building. This component of the present proposal is also the subject of a separate application for listed building consent which has been held in abeyance at the request of the applicant until detailed proposals have been prepared and submitted. Details regarding the number, layout and design of the residential development and the design and layout of the superstore and petrol filling station will be the subject of a detailed application. The heritage centre is proposed to be integrated within the residential development and will provide information and

exhibits on the industrial heritage of the Andrew Barclay building and the surrounding area.

2. RECOMMENDATION

2.1 It is recommended that the application should be approved subject to the conditions indicated on the enclosed sheets and that the issuing of the Planning Decision Notice be withheld until the Solicitor to the Council has satisfactorily concluded a formal Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 with the applicants and other interested parties on the matters detailed in Section 7 of the report.

2.2 It is recommended that the application should be notified to the Scottish Ministers under the Town and Country Planning (Notification of Applications) (Scotland) Direction 1997 as a significant departure from the Development Plan and subject to the conditions indicated on the enclosed sheets.

3. CONCLUSIONS

3.1 As is indicated at Section 5 of the report the proposal is considered to be contrary to the Adopted Local Plan and the Approved Ayrshire Joint Structure Plan. Therefore given the terms of Section 25 and Section 37 (2) of the Town and Country Planning (Scotland) Act 1997 the application should be refused unless material considerations indicate otherwise. The proposal is considered to be contrary to the Development Plan for the following reasons:

- The site lies outwith the town centre in the Adopted Local Plan
- There is no quantitative need for additional convenience floor space and thus there is an unacceptable impact on the convenience stores within the town centre

The proposal is considered to be in accordance with the Development Plan for the following reasons:

- It is accepted that the site is acceptable in terms of the sequential test as there is no suitable or available site to accommodate the proposal within the town centre
- The proposed store will operate as an "edge of centre" rather than "out of centre" store
- In terms of vitality and viability of the town centre there is a need for a qualitative improvement in floorspace

3.2 Within the context of the development plan the proposal has been modified by the applicant through amendments to the description and application site and by a commitment by the applicant to enter into a Section 75 legal agreement; to make it acceptable in the following way;

- By agreeing to retention of convenience floorspace in the town centre the proposal ensures the continued vitality and viability of the town centre by allowing a time for adaptation by the town centre uses
- By strengthening linkages to the town centre by improved pedestrian access, and by providing car parking spaces in excess of the minimum standards normally applied for an out-of-town store combined with contributions to public transport the proposal will increase accessibility to the town centre for those with or without a car
- By agreeing to provide a quality store by an operator recognised by the Council as providing quality convenience shopping

3.3 In conclusion within the context of the Development Plan the proposal represents an acceptable departure from the Development Plan and the following material considerations add weight to that view

- The Finalised East Ayrshire Local Plan with Modifications is more aligned with NPPG8 and the Approved Structure Plan and although the site of the superstore remains outwith the town centre boundary; the site can be acceptable in terms of the sequential test. The proposal is considered to be “edge of centre” due to the physical and environmental improvement works to be undertaken by the applicant between the superstore and town centre
- The agreement to retain convenience floorspace in the town centre and the provision of the new superstore minimises impact on the town centre and extends quality and choice of retail facility
- The measures contained within the Green Transport Plan and the environmental and physical linkages to the town centre improve accessibility for all to the site and strengthens the link between the site and the town centre
- The proposed development embodies and promotes many of the actions identified in the Strategy for the Regeneration of Kilmarnock town centre
- The cross subsidy of the retail element towards the residential development allows complete retention of a listed building and retention of the façade of another listed building in a conspicuous and dominant location

3.4 The following material considerations do not favour the proposal;

- Part of the site is designated for miscellaneous development and protected by Policy IND 5 in the Finalised East Ayrshire Local Plan which does not allow for retail development

3.5 On balance and with the context of Section 25 of the Town and Country Planning (Scotland) Acts the proposal represents a departure from the Development Plan which is acceptable within the context of the development plan and other material considerations.

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 Director of Development Services

1. PURPOSE OF REPORT

1.1 The purpose of this report is to present for determination an outline 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 2,000m², which constitutes a significant departure from the East Ayrshire Local Plan Finalised Version, and the application is subject to objection.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site comprises the site of the former Britannia Works, a motor car showroom and garage, vacant land and building to the rear of the showroom, the existing car park of Hunslet Barclay, a vacant industrial unit and the Andrew Barclay listed building. The application site is split into two distinct areas by West Langlands Street. The northern area of the site is 3.87 hectares in area with the majority of the area being vacant derelict land with the exception of the existing Peugeot car showroom and garage and the car park presently used by Hunslet Barclay. The southern area of the site is 0.52 hectares in area and comprises the Andrew Barclay Category 'B' listed building which is now vacant as it is surplus to the requirements of its owners Hunslet Barclay. The application site is bounded to the north by the main Kilmarnock railway line, to the south by mainly residential properties and to the west by industrial/commercial premises and residential properties and to the east by commercial properties and Hunslet Barclay.

2.2 **Proposed Development:** The applicants submission for outline consent comprises the following elements

- an 85,000 sq ft superstore
- a petrol filling station
- a flatted residential development with heritage centre
- physical improvements to link the site to the town centre

Accompanying documents with the application include:

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- a Green Transport Plan
- a supporting document entitled “Development Principles, Procedures and Objectives”

These are summarised below.

2.3 Outline planning consent is sought for the erection of an 85,000 sq. ft. food superstore (7,897 sq. metres), petrol filling station and flatted residential development with heritage centre. Environmental improvement works are also proposed principally to West Langlands Street, Langlands Brae and West George Street. An indicative layout has been submitted showing the superstore located to the rear of the site with 571 car parking space provided at the front of the store adjacent to West Langlands Street. A petrol filling station is proposed in the western area of the site adjacent to West Langlands Street. The residential development comprising 47 flats and a heritage centre are proposed within the Andrew Barclay listed building. This component of the present proposal is also the subject of a separate application for listed building consent which has been held in abeyance at the request of the applicant until detailed proposals have been prepared and submitted. Details regarding the number, layout and design of the residential development and the design and layout of the superstore and petrol filling station will be the subject of a detailed application. The heritage centre is proposed to be integrated within the residential development and will provide information and exhibits on the industrial heritage of the Andrew Barclay building and the surrounding area.

2.4 The applicant has provided both a Retail Impact Assessment and Transport Assessment for the proposed development. The Retail Impact Assessment (RIA) purports to demonstrate the impact that the superstore will have on the vitality and viability of Kilmarnock town centre and consistency of the proposal within National and Local Plan policy. The submitted RIA provides both a quantitative and qualitative assessment of the need for an additional superstore. The capacity element of the study of RIA assesses the future relationship between projected expenditure within the catchment and availability of floorspace to enable the future retail requirements of the catchment population to be met. The process of estimating capacity for additional retail floorspace involves estimating available expenditure at a specified future date within the identified catchment area and then comparing this figure with the amount of turnover which might be expected to be achieved at that time in existing shops whilst having regard to their type, quality and location and the published trading performances of retailers trading in the type of goods being sold in these shops. Within the RIA the applicant provides 2 scenarios regarding the identity of the proposed superstore operator, one involves Tesco relocating from their existing Fowlds Street store and the other involves a totally new operator which is not present in the town at this present time. These two possibilities are used within the RIA to estimate the trade diversions from other stores that the additional turnover from the new store will generate at a specified future date.

2.5 Details regarding the size of the superstore have been submitted within the RIA. The gross floorspace will be 7,897 sq. metres with a net sales area of 4,975 sq.

metres. The net sales area will comprise 2,610 square metres used for convenience goods and 2,365 square metres used for comparison goods. These floorspace figures are the same whether it is a Tesco store or a new operator. Comparison goods envisaged to be sold in the superstore include household electricals, audio visual items, health care and beauty products, seasonal items, stationary, clothing and general household goods. The overall emphasis is on the needs of households reflecting the fact that the superstore would be catering for its main food shopping trip. Emphasis is placed on the provision of a quality superstore with the new superstore being built to the latest high design with a wide range of food and non-food products, cafeteria, baby-changing areas, a dedicated butchery and wet/fish department, large scale delicatessen, wider aisles and many checkouts.

2.6 The Transport Assessment addresses the impact the proposed development will have on the surrounding road network. Vehicular access to the superstore and petrol filling station would be via a roundabout at the junction of West Langlands Street, North Hamilton Street and Bonnyton Road. Traffic signals are required to cater for traffic, pedestrian and cycle movements at the junction of Munro Avenue and Bonnyton Road.

2.7 A Green Transport Plan has also been submitted for the proposed development which offers the opportunity for staff and shoppers to travel to the store by more sustainable means of transport. The Green Transport Plan produced by the applicant embodies advice from central government for the integration of transport policies outlined in NPPG17 and PAN 57 and the Council's document 'Local Transport Strategy 2001-2004 in which the Council sets out its aims and objectives in support of sustainable transport policies. In developing a Green Transport Plan the applicant recognises that consideration requires to be given to the promotion and use of public forms of transport including buses, trains and taxis, the needs of cyclists, pedestrians, disabled shoppers and staff, mothers with children, the elderly, alternative shopping experiences such as home delivery services, extended store opening hours, internet and telephone shopping. Consideration should be given to the improvement of the highway infrastructure serving the site by the provision of new bus stops at the entrance to the store and re-routing of existing bus services, notice boards with train and bus routes and a taxi rank within the car park. Measures such as drop kerbs at existing crossing points, traffic calming schemes, integration of routes to the store into local cycle routes and secure cycle storage ranks would encourage use by cyclists and pedestrians. To encourage the use of the superstore by the elderly, the disabled and mothers with families, in store provision of trolleys suitable for converting to pushchairs and wheelchairs, disabled and mother and toddler parking spaces close to the store entrance, appropriate child changing and feeding facilities and walker assistants to walk around with and assist the elderly and the disabled.

2.8 The applicant has submitted a supporting document with the title 'Development Principles, Procedures and Objectives'. It shows how the present proposal under consideration and its benefits could support further development opportunities and improvements within Kilmarnock town centre. The document also addresses the economic benefits that could be gained for the town in respect of additional employment and the economic benefits in particular to Hunslett Barclay.

2.9 The applicant is proposing to improve the physical and environmental links between the shopping core of the town centre and the proposed superstore. This would take the form of providing footpath and landscape improvements in the form of new paving, tree planting, sign posting and seating from the top of Portland Gate, along both sides of West George Street, Langlands Brae and West Langlands Street. Indicative proposals have been submitted as part of this proposal for consideration.

2.10 The applicant believes both the new superstore together with the physical and environmental improvements will renew market interest in, and assist redevelopment of the 'top of the town' area. The applicant also believes that it will be of long term benefit to the recently completed Portland Gate development by providing a greater retail focus to the north end of the town centre after years of a more southerly focus.

2.11 It is the contention of the applicant that these improvements will not only ensure that the superstore will function as part of the town centre and redress the leakage of expenditure back into the shopping core but will have the added benefit of improving the street scene and provide a much more pleasant shopping environment.

2.12 The supporting document highlights the benefit of the proposal in providing further development opportunities and improvements. As part of the present application there is a proposal to provide 47 loft style apartments within the Andrew Barclay listed building. The applicant has also received Committee approval for an office and residential development at the former Kilmarnock Infirmary site. The applicant has also been in discussion with the Planning Division regarding refurbishment proposals for a principal vacant building within the town centre. All of these proposals taken together are expressed by the applicant as being important to the regeneration of Kilmarnock and taken with the current proposal will stimulate regeneration of the top of the town.

2.13 The present proposal is linked with the adjacent Hunslet Barclay industrial operations. It will provide a capital injection into Hunslet Barclay, by reducing Hunslet Barclays' current trading liability to its bankers allowing further contract bonding. Surplus land is identified within the site which will also be gifted to Hunslet Barclay for the future expansion of the existing wheelwork operation from their existing factory which would allow further expansion of train and machine press work and ultimately further employment opportunities.

3. CONSULTATIONS AND ISSUES RAISED

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3.1 East Ayrshire Council Roads and Transportation Division have examined the Transport Assessment and Green Transport Plan and would make the following points which should be taken into account in determining the planning application, in the formulation of planning conditions and in any Section 75 Legal Agreement:

- (i) Traffic signals at Munro Avenue/Bonnyton Road are required to cater for generated traffic and likely pedestrian and cycle movements. All works to be carried out at the developers expense and carried out before the superstore is opened for use. Detailed design of the signal arrangements to be the subject of further approval.
- (ii) The access location and roundabout as a suitable means of access to the development is acceptable. Appropriate cycle and pedestrian facilities should be provided.
- (iii) An initial Green Transport Plan (GTP) has been submitted however a comprehensive GTP should be submitted for approval and all measures arising from that must be installed before the development is brought into use.
- (iv) The developer to provide a financial contribution for a hopper bus service linking the site to the railway station, bus station and other key town centre locations.
- (v) The provision of appropriate locations for bus infrastructure including lay by/setting down points either adjacent to or within the site and the provision of appropriate public transport timetable displays.
- (vi) The proposed parking levels and arrangements within the site and pedestrian links to be the subject of a detailed application.
- (vii) The proposed roundabout design will require to be altered in order that extra long loads to Hunslet-Barclay can safely negotiate the junction.
- (viii) The amended site plan indicates an extension of the car park but does not address the concerns raised previously regarding the internal roads arrangement, the proposed layout could result in traffic backing onto the new roundabout.
- (ix) Further discussion is required on the details of surfacing of footways and landscaping proposals.

Conditions can be attached to any consent granted for the proposed development to meet the requirements of the Roads Division including the provision of traffic lights and other off site improvements within the road carriageways. With regard to making a financial contribution to

the hopper bus service, this can be secured through a Section 75 Agreement should planning consent be granted for the proposed development. The applicant has agreed to make a financial contribution to the hopper bus service.

3.2 Scottish Water objects to this application whereby the proposed development drains to the public sewerage system. This is due to the cost of providing infrastructure to serve the development is outwith Scottish Water's "reasonable cost" obligations in terms of the Sewerage (Scotland) Act 1968. They would remove its objections if the applicant:-

- (a) Bears the cost of the increase in capacity of Scottish Water's existing infrastructure to accommodate their development and/or
- (b) Promotes a scheme that does not compromise the quality and quantity of discharge from the existing sewerage system and which is in terms satisfactory to Scottish Water.
- (c) Utilises the use of a soakaway or similar to accommodate the surface water run off from the proposed development

Should the application be approved an appropriate suspensive condition can be attached to any grant of planning consent requiring that no works shall start on site until such time as the applicant can provide written confirmation from Scottish Water that it is satisfied with the proposed drainage arrangement.

3.3 Scottish Environment Protection Agency have no objections provided foul drainage from both developments, service yard area and forecourt drainage from the petrol filling station connects to the foul sewer. They would seek a written assurance from Scottish Water that the additional foul drainage arising from these developments can be accommodated within the current sewerage infrastructure and furthermore that it will not cause premature operation of existing consented storm sewer overflows. The treatment and discharge of surface water may employ a mixture of Sustainable Urban Drainage techniques and petrol interceptors as appropriate and the applicant should contact them to discuss these options in more detail and to confirm if formal consent in terms of the Control of Pollution Act 1974 will be required. The petrol station will also require authorisation in terms of the Environmental Protection (Prescribed Processes and Substances etc) (Amendment) (Petrol Vapour Recovery) Regulations 1996 and the applicant should contact them.

It is possible that past industrial uses at the site and in the immediate vicinity of the site may have resulted in land contamination. No details have been received describing the site history or the site condition. SEPA expect that a risk assessment be undertaken as described in PAN 33 which should consider whether or not contaminants are entering or are likely to enter controlled waters and at what concentration. The overall objective of the risk assessment should be to determine whether or not any contamination present would constitute pollution of controlled water (and indeed harm to other receptors so that any required remedial action can

be undertaken prior to redevelopment. It is desirable that any investigation or remedial works should be at least sufficient to ensure that the site conditions once developed would not constitute contaminated land under Part 11A of the Environmental Protection Act 1990.

The applicant has notified SEPA of their proposals and they do not foresee any fundamental alterations to the existing proposals. The requirement of SEPA regarding a Risk Assessment to address whether or not any contaminants are present and the required remedial action to be undertaken prior to any works on site and the treatment and discharge of surface water by Sustainable Urban Drainage techniques and petrol interceptors can be addressed by attaching conditions and notes to any grant of outline planning consent. Scottish Water have objected to the proposal however, it is considered that their objection can be addressed by attaching a condition to any grant of planning consent requiring that no works start on site until such time as the applicant can provide written confirmation from Scottish Water that it is satisfied with the proposed drainage arrangements.

3.4 East Ayrshire Council Environmental Health and Waste Management have no objection in principle. They advise that site investigation works should be undertaken to check on any residual contamination due to the industrialised use of the area. If any contamination is found, any removal of material should be disposed of to appropriate sites. The existing old factory buildings behind Parks garage should be checked prior to demolition as they suspect that they contain asbestos. This would necessitate specialist removal and disposal in accordance with legal requirements. Conditions are recommended to control noise from site activities and to ensure that no dust nuisance is created arising from site activities particularly through the break up of the existing extensive concrete areas on the site. With regard to the old Hunslet Barclay railway works for the proposed residential development, investigation work and checks should be carried out by the developer in order to determine whether there are any hazardous materials e.g. asbestos, mineral oil, waste materials which would require to be dealt with prior to the commencement of work on site.

Adequate and suitable refuse storage provision accessible for cleansing service uplift, should be designed into the layout. Environmental Health would be concerned to ensure that the operation of the filling station does not result in any nuisance to the occupants of the houses opposite. They note that some screening and landscaping of the perimeter around the filling station on the submitted plans. Their principal reservation about the filling station would be if it were intended to operate on a 24-hour basis in which case it could have the potential to cause some disturbance to the nearby flats

The applicant has been advised of the above comments and conditions can be attached to any grant of outline planning consent regarding the requirements of Environmental Health and Waste Management. With regard to the concern expressed by Environmental Health to the proposed location of the petrol filling station, this is an outline proposal and details regarding the precise location of the petrol filling station will

be dealt with at the detailed stage. It may be necessary to relocate the petrol filling station from the location shown on the indicative plans to reduce its impact on adjacent residential properties.

3.5 The Coal Authority, Scottish Power, West of Scotland Archaeology Service has no adverse comments to make regarding the proposed development.

Noted.

3.6 Transco have advised that no mechanical excavation to be carried out within 500mm of their plant and a site visit is likely to be required prior to the commencement of works on site as measures may be necessary to protect/direct their plant at the developer's cost.

A note can be attached to any grant of planning consent advising the developer of the requirements of Transco.

3.7 East Ayrshire Council Economic Development Division have commented that from a job perspective the application is welcomed, however this is qualified to the extent that the development should not be to the detriment of the town centre retailers. A careful analysis of the retail impact is imperative from their view. The funding secured from the proposal for Hunslet Barclay Ltd is also welcomed as it will allow the company to consolidate its financial position and help with its working capital requirements. From an analysis of Hunslet Barclay Ltd's financial position which has improved considerably over the last eighteen months, the impact of cash from the land deal could help with the company's future bonding requirements. If the land deal does not take place, however it is their view it would not result in the closure of Hunslet Barclay Ltd.

The impact of the development on the vitality and viability of the town centre is examined in Sections 5-6 of the report. The relationship of the proposed retail development to the adjacent Hunslet Barclay engineering business is a material planning consideration which must be of some benefit but to which minimal weight should be attached.

3.8 Bonnyton Community Council have no objection the proposed development, however they would like public toilets in the superstore and heritage centre and these should be available to the general public and not just to patrons of the establishments, as there is a shortage of public toilets in the town centre.

The provision of public toilets is a common feature in a modern superstore. Public toilets will require to be provided within the superstore and heritage centre as part of the building warrant process. Restriction on the use of the toilets by just patrons of the establishments is not a planning consideration and is a matter for the operator of the establishments.

3.9 Ayrshire Joint Structure Plan and Transportation Committee have advised that the proposed development is not consistent with the development plan. In respect of

the retail proposals that are inconsistent with the development plan these require to be assessed within the context of NPPG 8 and the approved Structure Plan. These documents seek to sustain and improve existing town centres and to direct new investment towards them in preference to out of centre locations. As the application involves retail development in excess of 1500 sq. metres in an out-of-centre location it requires to be assessed against Policy L8 and L9 of the Structure Plan. Paragraph 45 of the NPPG 8 sets out considerations which must be met in full if an exception to policy is to be made. The following criteria is therefore applicable:

(i) Sequential approach and consideration of alternative sites

NPPG 8 gives the most up to date interpretation of the application of the sequential test. This reflects the government's commitment to primacy of town centre as retail centres and to wider objectives of approving development which do not lead to greater car dependence but offer choice of means of transport. The NPPG seeks developers to have regard to format, design and scale of development and adjusting or sub-dividing large proposals in order their scale might offer a better fit with the opportunities within the town centre.

Innovative solutions are sought and known opportunities evident in the town centre cannot be readily dismissed. It is their view that the sequential test exercise undertaken by the applicant has not been vigorously applied to this proposal as there appears to be a number of retail opportunities within or immediately adjoining the town centre which could accommodate forecast growth in convenience expenditure.

(ii) Effect of Vitality and Viability of Existing Town Centre

The vitality and viability of a centre is dependent on a number of variables and crucial to this assessment is the extent that an existing centre can absorb additions to floorspace over time without suffering adversely. A capacity assessment undertaken prior to the finalising of Ayrshire Joint Structure Plan and a subsequent update for the Kilmarnock catchment area confirmed the adequacy of known opportunities within the centre to meet forecast expenditure requirements. Accordingly, no additional opportunities for convenience outwith the centre have been made in the Structure Plan.

(iii) Existing and Proposed Floorspace that can be supported

This issue has been discussed in point (ii) and is reflected in the Scottish Ministers approval of the Ayrshire Joint Structure Plan.

(iv) Integration of Convenience/Comparison Goods Floorspace

Effective integration of additional retail floorspace is most readily achieved within a town centre location. It is difficult to envisage effective functional integration with other convenience and comparison floorspace. The proposal is clearly out of centre and physically separated from the core shopping area by a walking distance in excess of 600m and by the traffic on John Finnie Street. Moreover the route is through non-commercial frontages and uphill.

(v) Environmental Impact

The location is already an established area for industrial development and for the location of car showrooms. It is assumed that the design, form and material will be similar to other retail units of this scale elsewhere in Ayrshire and Scotland and is therefore unlikely to contribute negatively to the environment of the area. The principal environmental effects are likely to be associated with the concentration of traffic generated by this scale of development particularly through the housing area to the west.

(vi) Accessibility

The access of retail facilities to the community has gained in importance. NPPG8 stresses, where a developer as part of the sequential approach demonstrates an out-of-centre location to be the most appropriate the development should be easily accessible by a choice of means of transport and not be dependent on access solely or mainly by car. Networks for walking, cycling and regular and frequent bus services should serve the majority of customers and staff in the catchment area.

(vii) Infrastructure Improvements

This relates to point (vi) above but also on the obligation placed on the developer through NPPG8 to address the consequences to the local road network of generated or distributed traffic resulting from the development proposed.

(viii) Housing Component

While the Structure Plan is supportive of brown field redevelopment proposals the application does not contain sufficient information to assess whether the architectural resource in this area will be given adequate protection. Proposals that have an adverse effect on listed or buildings of an architectural and historic interest will not conform to Policy E19 of the Structure Plan.

In conclusion the proposed development is not consistent with the Development Plan with this opportunity for retail development neither being recognised in the approved Structure Plan or the recently finalised local plan as an appropriate location for this form of retail development. The proposal also appears inconsistent with the guidance issued in NPPG 8. On the basis of the information submitted an exception to the national and regional policy framework cannot be justified.

The proposal has been assessed against the relevant policies of the Ayrshire Joint Structure Plan in Section 5 of the report.

3.10 North Ayrshire Council and South Ayrshire Council have considered the information submitted and consider that the proposal represents a significant departure from the provisions of the Ayrshire Joint Structure Plan. They are in agreement with the comments submitted by the Ayrshire Joint Structure Plan and Transportation Committee in their consultation response and share their concern

regarding justification for departing from the policy framework and implications that the grant of planning consent for this proposal may have on the integrity of the retail policies on the Structure Plan that will continue to operate throughout Ayrshire. If the Council is minded to approve the application on the basis that there is a material consideration which overrides the presumption in favour of the development plan both North and South Ayrshire Councils would not formally object to the proposal. They ask that their consultation response letters and the consultation response from the Ayrshire Joint Structure Plan and Transportation Committee are submitted to the Scottish Ministers as part of the referral in accordance with the Town and Country Planning (Notification of Applications (Scotland) Directions) 1997.

The comments of both North and South Ayrshire Councils are noted and their comments and those of the Ayrshire Joint Structure Plan and Transportation Committee will be forwarded to the Scottish Ministers as part of the referral under the Town and Country Planning (Notification of Applications (Scotland) Directions) 1997.

3.11 Kilmarnock Town Centre Management Initiative has raised no objection to the proposed development.

Noted.

3.12 Piersland and Bentinck Community Council and the Health and Safety Executive have not responded to their consultation letter at the time of writing this report.

Noted.

4. REPRESENTATIONS

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4.1 A total of 4 letters of representation have been received objecting to the proposed development, (one of which is from Scottish Water and this is detailed in Section 3.2 of the report). The main points of objection are summarised as follows.

4.2 There may not be sufficient retail capacity within the local catchment to sustain an additional food retail development of the significant scale proposed without having an adverse impact upon the vitality and viability of Kilmarnock town centre. The town features a number of existing food stores including Asda, Safeway, Kwiksave and Tesco's. The town appears to be well provided with food superstores and the need for a further such store would appear unlikely. This is particularly the case given the application site is situated in an out-of-centre location and as such would draw expenditure away from as well as fail to facilitate, linked shopping trips within Kilmarnock town centre.

The assessment of the proposed retail development against the sequential test and its impact on the vitality and viability of the town centre is considered in Section 5.6 of the report.

4.3 The proposal is contrary to NPPG8 and the East Ayrshire Local Plan Finalised Version with Modifications (EALP). Policy RTC 1 of EALP follows the provisions of NPPG8 and requires new development to satisfy the sequential approach to site location. In addition Policy RTC 3 of EALP directs all acceptable town centre uses, over 1,500 sq. metres to the town centres of Kilmarnock and Cumnock. The development of a food retail superstore in the location proposed by the applicant would therefore not only be inappropriate but also contrary to the principles of current development plan policy.

The assessment of the proposed retail development against NPPG8 and the policies of EALP are discussed in Section 6 of the report.

4.4 The proposed development falls outwith both the defined Kilmarnock town core shopping area and the defined town centre. The development lies approximately 300m from the edge of the core shopping area and 180m from the edge of the town centre. The site's distance from the core shopping area of the town centre limits the possibility of shoppers making linked visits. The size of the proposed food store and its location outside Kilmarnock town centre is therefore contrary to Policy RTC3 of EALP.

The distance from the edge of car park of the superstore to the town centre boundary is 115 metres and the distance to the core shopping area is 357 metres. Linked shopping trips then could be encouraged by the establishment of a quality townscape linkage to the core shopping area and the provision of a hopper bus service.

4.5 The impact is likely to be further exacerbated by recent developments in retailing market which have seen food superstores widen their non-food ranges of merchandise so that they compete more widely with the high street. Some 40% of

their merchandise is now typically non-food. If these ranges are sold in locations separate from the High Street than existing town centre retailers are not able to compete effectively. In judging impact it may be interesting to know that profits typically fall at a rate twice the decline in retail sales. It is the level of profit that determines the ability of a business to reinvest in regeneration. A relatively modest impact on town centre sales will have a major long term effect on vitality and viability. Evidence of the intent of established food retailers to promote non-food sales can be found in Tesco's interim report of September 2000 where it was indicated that non-food will contribute £5 billion to the group's turnover by 2002.

It is considered that the sale of comparison goods from the proposed superstore is unlikely to significantly affect the vitality and viability of the town centre as the nature of comparison shopping in major shopping superstores is more orientated towards impulse buying while on a food shopping trip than a specific non food shopping trip. There is a surplus of comparison expenditure anticipated by 2008 however the majority of this surplus, either will be taken up by recent developments taking place on site or planning consents granted already. The Retail Impact Assessment submitted by the applicant in support of the application states that the impact on the town centre in terms of comparison goods will be 1.6% and this is considered to be an acceptable level.

4.6 The proposal will result in greater direct competition with existing retailers within Kilmarnock town centre resulting in harm to its vitality and viability.

Competition between existing retailers and a new potential operator is not a material planning consideration, however the impact of the superstore on the vitality and viability of the town centre is a material consideration and is examined in Section 5.6 of the report. It should be noted that the Kilmarnock Town Centre Management Initiative which represents retailers within the town centre have no objections to the proposed development.

4.7 The proposed development site is situated in an out of centre location and it is contended that more suitable sites exist within or on the edge of Kilmarnock town centre and therefore the applicant has failed to adopt a robust sequential approach to site selection. It therefore fails to comply with national and local planning policy.

It is accepted that the application of the sequential test has been satisfactorily undertaken by the applicant. No development opportunities existed in the town centre for this type of retail development and the only potential edge of centre site is subject to an application by Safeway Stores. Therefore this site is accepted in terms of the sequential test as it is viewed as the next best alternative. This is discussed fully in Sections 5.6 of the report.

4.8 The supermarket element of the application does not comply with the Finalised East Ayrshire Local Plan's designation of site as it is identified for appropriate residential, business, industrial or storage and distribution use.

The proposed development fails to comply with the above designation in the Finalised East Ayrshire Local Plan and the assessment of the proposed development against the Development Plan and other material considerations including the Finalised East Ayrshire Local Plan is discussed in Sections 5 and 6 of the report.

4.9 The application represents an out of centre retail development which should be assessed against the criteria of Policy RTC 5 of the East Ayrshire Local Plan one of which is the compatibility of the use with surrounding land uses. Due to the existing railway which lies to the north of the site the vast majority of traffic generated by customers and service vehicles visiting the store is likely to approach from the south and are likely to have an adverse effect upon the residential amenity of both the adjacent residential area and the residential development element of the application.

The proposed development has been assessed against Policy RTC 5 of the Finalised East Ayrshire Local Plan in Section 6.6 of the report. It is recognised that the development is proposed in a mixed use area with a number of commercial, industrial and residential uses in close proximity. The Roads Division has no objections to the development provided certain road alterations are carried out, as detailed in Sections 3.1 of the report. It is not considered that the proposed development will have an adverse effect on adjacent residential properties.

4.10 The proposal requires to be assessed against Policy L8 of the Ayrshire Joint Structure Plan and Policy RTC5 of Finalised East Ayrshire Local Plan which requires out-of-centre developments to be assessed in terms of the effect of the development either individually or cumulatively with similar or existing developments on the vitality and viability of town centres.

The proposed development has been assessed against Policy L8 of the Ayrshire Joint Structure Plan and Policy RTC 5 of the Finalised East Ayrshire Local Plan and this is discussed in Sections 5 and 6 of the report.

4.11 The applicant in the submitted Retail Impact Document, in the first scenario assures that the operator of the proposed store will be Tesco and that they will relocate from their existing town centre store at Fowlds Street. The increase in turnover will result in a positive impact of 53-4% on the town centre. However, the fundamental problem with the town centre impact figure is that the proposed store is not considered to be located within a town centre location. The store is located 300 metres from the town centre; but in reality the proposed store is actually located 300 metres from the town centre boundary as defined by the Finalised East Ayrshire Local Plan rather than the primary shopping area. An edge of centre location is one of which is located within "easy walking distance" (i.e. 200-300 metres) of the

primary shopping area. The store must be considered to be out of centre as it is located some 500 metres to the Core Shopping Area and therefore the proposal cannot have a positive effect upon the town centre's level of trade.

There is no definition of "easy walking distance" in NPPG8 Town Centre and Retailing, the reference to 200-300 metres is from English Guidance in the form of PPG6. It is accepted that the new superstore will not operate as a town centre store but as "edge of centre" if physical and environmental links are improved by the applicant between the town centre and proposed site of the superstore. The distance from the edge of the proposed car park of the superstore to the town centre boundary as defined in Finalised East Ayrshire Local Plan is 115 metres, the distance to the core shopping area is 357 metres. It is considered that these distances are acceptable. To encourage linked trips the physical and environmental links are proposed to be improved between the proposed superstore and core shopping area.

4.12 The present Tesco store in the town centre retains 23% of convenience spend and if it ceases trading in its current location and relocates to an out of centre site, this will result in a 100% impact upon the Tesco store, a town centre store which should be protected by planning policy.

It is accepted that whether the new superstore is operated by a new operator or by Tesco, it is likely to lead to the closure of Tesco in the town centre. The applicant has addressed this impact by agreeing to enter into Section 75 agreement to provide a convenience store in the core shopping area or retain the existing town centre Tesco store for a period of 3 years, to cushion the potential closure of Tesco. This is discussed in more detail in Section 5-6 and Section 7 of the report.

4.13 The impact of the new store upon Kwik Save and other town centre stores will be more significant than envisaged by the applicant in the Retail Impact Document. The impact upon the existing Tesco store located within the town centre will remain at an unacceptable level of 100%. The combined impact can only have a detrimental affect upon the vitality and viability of the town centre.

It is accepted that the impact of the new store upon Kwik Save and other town centre stores may be greater than specified by the applicant in the Retail Impact Statement; however its impact will be still less than 10% on other town centre stores except Tesco where the impact is stated to be 16%. The impact of the new superstore on other town centre stores except Tesco is not considered to be significant.

4.14 A higher turnover density for the proposed store is likely than stated in the Retail Impact Document which would increase the impact figures stated in the Document.

It is accepted that the turnover figures provided by the applicant are unduly low and the impact of the new superstore may be greater than stated in the Retail Impact Statement. This has been taken into account

when considering the impact of the new superstore and is discussed in Section 5 of the report.

4.15 The second scenario within the Retail Impact Assessment assumes that the existing Tesco store will continue to trade and the new store will be occupied by a new operator. This is highly unlikely given that a number of national superstore operators are represented with Kilmarnock already. A 16.2% impact on the town centre Tesco coupled with a 3% impact upon the town centre Kwik Save and a further 5.6% impact upon other town centre shops – a cumulative impact of 24.8% is considered significant. Such a large impact will have a negative impact upon the viability and vitality of Kilmarnock town centre.

The applicant has not named the operator of the superstore at this stage. Although Kilmarnock has a number of national superstore operators operating stores in the town there are other national superstore operators which are not currently present. The impact of the new superstore on the town centre Tesco and the existing town centre stores is addressed in Section 5.6 of the report.

4.16 The turnover density of the new store stated by the applicant is considered unrealistically low, assuming more realistic sales density figures, the likely cumulative impact upon the town centre will be even more significant with a total impact of 27.7%. This level of impact is unacceptable in terms of national, strategic and local planning policy which safeguards the vitality and viability of town centres.

It is accepted that the turnover figures provided by the applicant are unduly low. This has been taken into account when assessing the impact of the proposed superstore on town centre stores. The impact of the new superstore on Tesco alone is 16%.

4.17 A number of assumptions made by the Retail Impact Statement cause concern, as it assumes that 20% of the proposed stores trade will be drawn from outwith the catchment area. This is more likely to be between 10-15%. Employing a lower figure will have obvious implications upon the potential impact stated due to the fact that higher levels of trade will be drawn from stores and centres located within the catchment area. The test year of 2008 is also considered generous and the main food/local spend weighing of 85/15 is not the recognised standard. Usually a 75/25 ratio is employed and would reduce the levels of expenditure flowing to each store and centre and therefore increase the potential impact stated.

It is considered that the diversion of expenditure arising from outwith East Ayrshire to the new superstore or the relocated Tesco is unlikely to be significant. The use of the test year of 2008 has been adopted in line with similar criteria used by the Ayrshire Joint Structure Plan Team. The total expenditure in convenience stores was assessed in order to determine the impact of the new superstore. The impact of the split of expenditure within superstores outwith the town centre is not a material planning consideration. It is accepted that the impact of the new superstore would lead to the closure of Tescos in the town centre. The

issue is not one of the split of expenditure but whether it will adversely impact on the vitality and viability of the town centre.

4.18 The location does not comprise an established retail area and more suitable sites exist within Kilmarnock to accommodate a modern superstore development. These would present greater scope to provide more sustainable retail development by encouraging linked trips.

The objector has failed to identify alternative suitable sites for the proposed retail development. The application of the sequential test has been addressed in Section 5.6 above.

4.19 There are a number of other applications for retail development for consideration. This application does not represent the most suitable location for new retail developments in terms of the sequential approach, the scope to provide linked trips or compatibility with the surround land uses.

This is addressed in Sections 5 and 6 of the report.

5. ASSESSMENT AGAINST DEVELOPMENT PLAN

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 (1999) and the Adopted Kilmarnock Local Plan (1985). The Adopted Local Plan was prepared within the context of the then emerging Strathclyde Structure Plan. In arriving at the views expressed in this section the Council has taken into account the views of consultees in Section 3, objectors in Section 4, the applicants RIA as summarised in Appendix 1 and the report by David Bryce commissioned by the Council summarised in Appendix 2.

Adopted Kilmarnock Local Plan

5.2 Notwithstanding the age of the Adopted Kilmarnock Local Plan the proposal requires to be assessed against its relevant policies. The application site is located adjacent to the town centre boundary and is identified as industrial under **Policy 4.2.5** which encourages most types of industrial development in those areas identified as “industrial areas.” **Policy 4.3.2** allows additional retail convenience floorspace outside the Kilmarnock town centre where it is intended for the sale of daily provisions to meet an identified local need, and is a unit of not more than 200 square metres. **Policy 4.3.3** allows durable retail floorspace of a single shop unit of not more than 200 sq metres for sale of goods which are of a type not normally sold in the town centre or directly related to goods specifically manufactured on site. If the development does not accord with **Policies 4.3.2 and 4.3.3** above the retail development should not be allowed in terms of **Policy 4.3.4**. These policies were formulated to prevent an oversupply of retail floorspace which would have a detrimental effect on existing shopping facilities in Kilmarnock town centre.

The proposed superstore is essentially contrary to the above policies as it fails to meet the above criteria. However, the Adopted Local Plan is considered to be significantly out of date as the retail sector and Government guidance on retailing has moved on considerably since the above plan was adopted. The Adopted Local Plan identified a surplus of retail floorspace by 1989 however this has been superseded by the retail developments at Glencairn and Queens Drive in the 1990’s. Although the above Plan was adopted in 1985 and predates the sequential approach to retailing advocated in NPPG 8 “Town Centres and Retailing”, the overall objective of the above policies was to maximise the opportunities for improving the quality and range of existing facilities within Kilmarnock town centre.

5.3 In terms of the residential component of the application the site proposed for this use is also protected by **Policy 4.2.5** which encourages industrial development and **Policy 4.2.3** encourages the use for appropriate industrial purposes of all vacant industrial buildings. **Policy 4.1.5** encourages housing development for a maximum of 10 dwellings on a site of not more than 0.5 hectares or an infill site which

constitutes vacant and degraded land and is not likely to be detrimental or be adversely affected by adjacent uses.

The proposed residential use is essentially contrary to the above policies as the proposal involves more than 10 dwellings. The former offices and workshop of Hunslet Barclay which are vacant have been marketed for the last 10 years but no interest has been shown by potential occupiers. The proposal would result in the re-use of a vacant building and site and ensure a long-term use for the listed building.

5.4 The proposed heritage centre complies with **Policy 4.5.6** which promotes tourist attractions within the area.

Ayrshire Joint Structure Plan

5.5 The Ayrshire Joint Structure Plan was approved on 24 January 2000. The proposed development would fall to be considered against Policies L7, L8 and L9. **Policy L7** refers to measures to promote and enhance town centres and **Policy L8** encourages the viability, vitality and design quality of existing town centres. Proposals for major new retail developments should be assessed against **Policy L9**.

5.6 **Policy L9** requires retail development above 1500 square metres gross floorspace to be justified against the following criteria:-

- A whether the applicant adopted a sequential approach to site selection considering fully alternative sites in, and then adjoining, existing town centres;
- B effect on the viability, vitality and character of existing town centres either as an individual development or cumulatively with similar existing or approved developments (including those in adopted local plans);
- C existing and proposed floorspace that can be supported;
- D accessibility to the public transport network;
- E accessibility by means other than the private car;
- F effect on important neighbourhood retail facilities and small shops; and
- G the potential to integrate convenience and/or comparison goods floorspace.

A Sequential Approach

It is recognised that there are no development opportunities that exist in the town centre for this type of retail development. The two town centre development opportunities identified in the Finalised East Ayrshire Local Plan at Armour Street and John Finnie Street are not considered suitable for the proposed development. The retail approval at Armour Street has been taken up by MFI and is progressing on site and John Finnie Street can be discounted because of its size. Therefore the proposal falls to be considered against opportunities which exist in edge of centre locations.

Relevant definitions of 'edge of centre' and out of centre are provided within NPPG 8 'Town Centres and Retailing'. 'Edge-of-centre' is defined as a location within easy walking distance of the town centre and usually adjacent to the town centre and providing parking facilities that serve the centre as well as the store thus enabling one trip to serve several purposes. "Out-of-centre" is defined as a location that is clearly separate from a town centre but within the urban area including programmed extensions to the urban area in approved or adopted development plans.

The only other potential edge of centre site is subject to an application by Safeway Stores for a superstore of similar size to the present proposal under consideration. As this is largely a replacement store this application is not in competition with the current proposal. It is accepted that development opportunities to the north, south, east and west of the town centre are limited and sites at Queens Drive are considered to be out of centre.

The distance from the edge of the proposed car park of the superstore to the town centre boundary as defined by the Finalised East Ayrshire Local Plan is 115 metres, the distance to the core shopping area as defined in the East Ayrshire Local Plan is 357 metres. Whilst the application site is within an acceptable walking distance to the town centre, the provision of a superstore without physical and environmental improvements to the streetscape between the application site and the town centre is unlikely to encourage linked trips because the walk between the town centre and application site is unattractive, mainly industrial in character and there is a lack of a "shopping" experience between the site and the town centre. Furthermore John Finnie Street provides a barrier to the town centre for pedestrians.

The applicant has addressed strengthening the links between the application site and the core shopping area by including further land to the east for car parking for the superstore within the application site thus bringing the site closer to the core shopping area. Additional car parking beyond the normal requirements is also proposed and this will give an added benefit to the town centre by providing an opportunity for linked trips. The applicant is further strengthening the links to the town centre by providing footpath and landscape improvements from the top of Portland Gate along West George Street, Langlands Brae and Langlands Street are proposed. These environmental improvement works will not only encourage further investment in this northern end of the town but also encourage shoppers to walk from the core shopping area to the proposed superstore and vice-versa. The provision of a hopper bus service would also facilitate further integration between the superstore and other shopping and town centre facilities being especially directed at those people without a car.

In conclusion it is accepted that the West Langlands Street site is appropriate under the terms of the sequential test and the measures agreed by the applicant will strengthen the linkages between the site and the town centre.

B Effect on Viability, Vitality and Character of Town Centre

The impact of the proposal on the out-of-centre Asda, the existing Safeway store and any other out-of-centre store is not a relevant planning consideration. It is only the

impact which the store will have on the town centre as a whole that is considered material. Having regard to the retail capacity assessment carried out by the AJSP team, the RIA submitted by the applicant and the retail assessment by Bryce Associates it is accepted that there is no capacity for any additional convenience floorspace in the Kilmarnock area. However, the comparison capacity assessment indicated that there was likely to be a surplus of comparison expenditure over turnover.

It is estimated that £7million of comparison trade is likely to be absorbed by the new store and this figure is unlikely to raise any significant capacity issue even taking account of the recent MFI permission and other existing planning consents. This would help to claw back expenditure leakage out of East Ayrshire. It is stated that even if some £7million is diverted from existing shops rather than met through expenditure growth, the nature of comparison shopping in major superstores is more orientated towards impulse buying while on a food shopping trip than specific non-food shopping trips. The applicant has been asked to consider splitting the sale of convenience and comparison goods however this has been dismissed by the applicant as it is considered that the benefits of an “under-one-roof” store would be lost.

In terms of impact on convenience stores in the town centre the Council’s consultant noted that there was an underperformance in the existing Tesco and Kwik Save stores. The applicants RIA considers impact by two development scenarios:

- (1) Relocation of Tesco to West Langlands Street
- (2) A new operator opening at West Langlands Street

The Council accepts that a relocated store will have a noticeable impact on the town centre. However, it is considered that steps can be taken to cushion the impact of a relocated Tesco on the town centre to an acceptable level. This can be achieved by securing a convenience store presence in the core area, establishing a “bus hopper service” and improving the physical linkages to the store to the town centre to make it more accessible. This can be achieved through a legal agreement.

In the second scenario (a new operator) the greatest impact will be on Tesco (16%) and Kwik Save (3%) with overall impact on other town centre stores as 4%. The Council considers that the existing Tesco is trading at less than company average (a view that is endorsed by Bryce Associates) and that the actual turnover of the store is considerably less than that stated in the assessment. The resultant effect is that the impact of a new store operator on the Tesco store is likely to be even higher than the 16% stated. Notwithstanding, it is considered that even an impact of 16% on the store would almost certainly lead to its closure.

The potential closure of Tesco would significantly impact on the vitality and viability of the town centre resulting in the loss of a town centre store and leaving a prominent vacant site.

NPPG 8 states that convenience food supermarkets and food superstores play a vital role as an anchor store in maintaining the quality and range of shopping in existing centres. In these locations they also provide an essential service for the

less mobile members of the community. Convenience food shopping should where feasible continue to be an important element of retailing in many town centres. In this context the applicant was asked to address the need to maintain a town centre presence for a convenience store and further demonstrate that the proposal would address the qualitative issue.

The applicant has addressed this concern by agreeing to enter into a Section 75 agreement to maintain the existing Tesco store at Fowlds Street (approximately 34,000 sq ft gross) for a period of 3 years if the superstore is operated by Tesco or alternatively to provide a convenience food unit of approximately 10,000 sq.ft (gross) within the shopping core for a period of 5 years once the new store is opened for business if the operator is not Tesco. Therefore, the present proposal adds to the vitality and viability of the town centre by minimising the impact on the town centre. A shopping facility for the elderly, those without a car, office workers and those people shopping in the town centre would still be available for a period of time following the opening of the superstore. This would allow time for the physical links between the superstore and town centre to be developed and strengthened, time for adaption by the town centre uses and provide an impetus for the stimulation of new investment in the town centre at the northern end of the town.

The applicant has also addressed the issue of offering a qualitative opportunity for convenience shopping. A quality store is defined as one which offers wide aisles, more check outs, improved parking and access, maintaining and increasing the range of goods sold, both food and non food products, large delicatessen, wet fish, butchery and bakery sections, cafeteria, baby changing area and facilities. The applicant has agreed to enter into a Section 75 Legal Agreement to cover these matters and has specifically named the store as being one of the following three operators; Morrisons, Sainsbury's or Tesco. The applicant has recently agreed to commit the new development to one of the specified three operators prior to the submission of a reserved matters application.

In conclusion it is accepted that there will be an impact on the town centre but this will be minimised by ensuring replacement floorspace and has to be balance with the additional gain of the large quality store close to the town centre.

C Existing and Proposed Floorspace

This is discussed in Section B above.

D Accessibility to the Public Transport Network

The application site is served by a bus service and the railway station is in close proximity. A Green Transport Plan has been submitted, which offers staff and customers the opportunity to travel to the store by more sustainable means of transport. The applicant has agreed to make a financial contribution to a hopper bus service which will link the site to the railway station, bus station and other town centre locations. Bus infrastructure such as setting down points are proposed within

or adjacent to the site together with appropriate public transport timetable displays. It is proposed to strengthen the pedestrian links between the site and the town centre by undertaking physical improvements to West Langlands Street and West George Street to encourage pedestrians to walk from the town centre the superstore and vice-versa. This will offer the shopper both choice and accessibility to the superstore.

E Accessibility by Means Other than Private Car

This is discussed in Section D above.

F Effect on Important Neighbourhood Retail Facilities and Small Shops

It is considered that the proposed superstore will not have a detrimental impact on important neighbourhood retail facilities that are reasonably distant from the proposed store. There may be an impact on small shops outwith the town centre close to the site which is difficult to predict but in any case has to be balanced against the benefits of obtaining a quality superstore of a scale that does not currently exist in Kilmarnock.

G Potential to Integrate Convenience and/or Comparison Goods Floorspace

The proposal involves a net sales area of 2,610 square metres used for convenience goods and 2,365 square metres used for comparison goods. Comparison goods envisaged to be sold in the superstore include household electricals, audio visual items, health care and beauty products, seasonal items, stationery, clothing and general household goods. The applicant was asked to consider splitting the sale of convenience and comparison goods, allowing the comparison goods to be sold in the town centre. This was dismissed by the applicant as it is considered that the benefits of an “under-one-roof” store would be lost, which is a common feature of modern superstores.

In terms of the integration of the proposed superstore to existing convenience and comparison goods floorspace within the town centre, measures such as strengthening the walking links between the town centre and West Langlands Street and environmental improvements to the streetscape of West Langlands Street and West George Street will help to integrate the superstore and reduce physical and environmental barriers between the superstore and town centre facilities.

5.7 **Policy L7** encourages proposals to be brought forward to promote and enhance town centres in Ayrshire through measures that encourage a wide range of retail, commercial, leisure, business, culture and art facilities and residential uses, promote environmental improvement and improve pedestrian and cycle access, improve public transport links and provide for appropriate levels of car parking.

The applicant is proposing a number of measures to integrate and enhance the proposed development with the core shopping area. This would involve providing quality hard and soft landscaping, seating areas and signposts. These measures would strengthen the walking links between the proposed development and the core shopping area. The applicant has also agreed to provide a contribution to the hopper bus services which would link the development to the railway station, bus station and other town centre facilities. It is also hoped that it will provide a catalyst for new investment in this northern end of the town.

5.8 **Policy L8** provides the setting for local plans to encourage the viability, vitality and design quality of town centres through the application of the sequential test for new development and encourages development to be of a size and scale appropriate to the function of the town centre serving the needs of the town and its catchment population.

The Finalised East Ayrshire Plan is in accordance with this policy direction and the issues are specifically dealt with under Paragraph 5.6 above.

5.9 **Policy E19** states that development proposals considered to have an adverse effect on the listed buildings of architectural and historic interest shall not conform to the Structure Plan.

The change of use of the former Andrew Barclay listed building is considered to be acceptable in policy terms and does not conflict with the above policy. Any proposed alterations or demolition is the subject of a separate listed building application or a detailed application following the grant of any outline planning consent

In conclusion, the proposal is considered to be contrary to the Adopted Local Plan and Approved Ayrshire Joint Structure Plan but the various amendments to the proposal and the commitments required by a Section 75 Legal Agreement will make it an acceptable departure from the Development Plan.

6. ASSESSMENT AGAINST OTHER MATERIAL CONSIDERATIONS

6. ASSESSMENT AGAINST OTHER MATERIAL CONSIDERATIONS

6.1 The principal material considerations comprise the East Ayrshire Local Plan Finalised Version with Modifications (EALP), Government guidance contained in NPPG 8 “Town Centre and Retailing”, the planning history of the site, linkage with adjacent industrial use and employer, the consultation responses detailed in Section 3 above, the objections detailed in Section 4 above and other retail proposals.

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.

6.3 The site of the former Britannia Works is identified as a miscellaneous opportunity site in the EALP whereby the Council will encourage and support the development of the site for appropriate residential, business, industrial or storage and distribution use. The area of the site to the rear of the car showroom, the Hunslet Barclay car park and the former JRG building are safeguarded for business, industrial and storage and distribution uses falling within Classes 4, 5 and 6 of Use Classes Order in terms of **Policy Ind 5**.

The proposed development fails to comply with the above policies. The area of the site to the rear of the car showroom, although safeguarded by Policy Ind 5, is surplus to Hunslet Barclay requirements and existing car parking facilities for Hunslet Barclay will be accommodated within their existing curtilage. Part of the site of the former JRG building will be gifted to Hunslet Barclay for future expansion of the existing wheelwork. Although contrary to the above policies, the proposal will not result in the loss of high quality industrial land.

6.4 Policies RTC1, RTC3, RTC5 and RTC8 are relevant in terms of the retailing component of the application. **Policy RTC 8** requires all major retail developments which create over 1,500m² gross retail floor space to be supported by formal Retail Impact Assessments addressing the criteria detailed in **Policy RTC 5** of EALP. Transport Impact Assessments will also be required where major retail or commercial leisure development proposals have significant transport and traffic implications.

The application has been accompanied by both a Retail Impact Assessment and Transport Impact Assessment. Details of the Transport Impact Assessment are discussed in Sections 2-5 and 3-1. The content of findings of the RIA are discussed in Section 5 of the report.

6.5 **Policy RTC 1** adopts a sequential approach in assessing development proposals for retail, commercial leisure developments and other uses appropriate to

town centres as described in Schedule 5 of the Plan. Developers will be required to direct all such development firstly to town centres as identified on the Local Plan maps and secondly to edge of centre locations in preference to out-of-town centre locations. Applicants proposing such developments in out-of-town centre locations shall require to demonstrate that no suitable alternative site can be found or assembled within town centres and thereafter in an edge of centre location. **Policy RTC 3** requires all retail developments of a gross floorspace exceeding 1,500m² to be directed to Kilmarnock and Cumnock Town Centres. This policy was formulated to protect the vitality and viability of Kilmarnock town centre.

The application of the sequential approach to selecting a site for the superstore is discussed in Sections 5.6 of the report. The proposed store will operate as an "edge of centre" store and therefore requires to be assessed against Policy RTC 5 below.

6.6 As the proposal is considered to be an edge of centre development it requires to be assessed against **Policy RTC 5** which states “ With the exception of the types of development detailed in Policy RTC 7, where development of the types detailed in Schedule 5 of the Local Plan are proposed in locations outwith town centre boundaries or on sites not identified as being suitable for such purposes as shown on the Local Plan maps, these will require to be justified and will be assessed against the following criteria:

- (i) Their compliance with the sequential approach detailed in Policy RTC 1 above;
- (ii) The extent of the development’s catchment area and the effect of the development either individually or cumulatively with similar existing or approved developments on the vitality and viability of town centres, neighbourhood centres or local retail facilities within that catchment area;
- (iii) The accessibility of the site by a choice of means of transport and the effect of the development on overall travel patterns and land use;
- (iv) The compatibility of the use with surrounding land uses;
- (v) Its contribution to the environmental quality, character and amenity of the area;
- (vi) The compatibility of the proposal with all other policy objectives of the Local Plan; and
- (vii) The implications that the development would have on existing infrastructure and the trunk and local road networks.

Criteria (i) to (iii) of Policy RTC 5 are similar criteria used in Policy L9 of Ayrshire Joint Structure Plan and are addressed in Section 5.6 of the report.

(iv) Compatibility of Use

The proposed superstore is compatible with the surrounding area as it is to be sited in a mixed use area surrounded by commercial, industrial and residential uses. No objections have been offered by the Roads Division in terms of traffic issues.

(v) Design and Finish

It is envisaged by the applicant that the store will be built to the latest high quality design, incorporating a striking fully glazed frontage and full width canopy. Details of the design and layout of the superstore would be the subject of a further application for detailed consent. The proposal will introduce a vibrant use into a mixed-use area which will substantially improve the environmental amenity of the immediate area.

(vi) Compatibility with Other Policy Objectives

Notwithstanding the retail policies identified above that are contravened, the proposal does not conflict with the other policy objectives of the EALP. The proposed development will assist Hunslet Barclay to continue to operate and provide jobs in Kilmarnock. It does not involve the loss of any high quality industrial land.

(vii) Implications on Existing Infrastructure

A TIA has been submitted for the proposed development and it is discussed in Section 3.1 of the report. The proposed use can be accommodated on the site without giving rise to traffic difficulties on the existing infrastructure.

6.7 In terms of the residential development, this requires to be assessed against **Policy RES 4** which encourages sympathetic residential development of gap, infill or other redevelopment sites not specifically safeguarded or identified for particular development purposes. Developments will be assessed against the following criteria:-

- (i) Impact on the surrounding natural and built environment and adjacent uses.
- (ii) Transportation and infrastructure implications.
- (iii) Compatibility with surrounding densities and housing types, and
- (iv) Compliance with the Council's Development Promotion and Design Guidance.

The use of the former Andrew Barclay listed building with residential development is considered to be appropriate. The building has been marketed in the past but no interest has been shown by potential occupiers. There are considered to be no transport or infrastructure

implications that cannot be overcome and the use of the building for flats would be compatible with the surrounding area. This present proposal is considering the principle of residential development and details regarding the number, layout and any building/demolition works will be addressed at the reserved matters stage. Any demolition works regarding the listed building will be addressed through a listed building application for any such works.

6.8 **Policy TLR 5** states that the Council will request all potential developers of residential sites comprising four or more houses to enter into a Section 75 agreement with the Authority to make a contribution towards the provision of appropriate leisure and recreational facilities within the area to which the development relates. Contributions will be at a level to be agreed by Council based on the expected number of houses and the level of need in a particular area for particular facilities. The Development Services Committee in June 2001 agreed that the contribution would be equivalent to 1% of construction costs.

In terms of this proposal the applicant has agreed that they would be willing to enter into a Section 75 Agreement enabling a contribution of 1% of the construction costs of the residential development to be made to the Sports Leisure and Recreation Fund pertaining to the area to which the development relates.

6.9 The proposal for a new petrol filling station is assessed against **Policy RTC 16** and the criteria of locational need, compatibility of the use with surrounding land uses, impact of the development on the character and amenity of the surrounding area and the requirements of the Roads Authority.

The construction of a petrol filling station associated with the superstore is considered to be acceptable in principle and it accords in principle with the criteria of the above policy. Details of the exact location and design features of the petrol filling station within the site will be dealt with at the detailed stage.

6.10 **Policies TLR 1 and TLR 3** encourage and support the development of sustainable tourism, with encouragement given to the use of existing buildings in preference to the construction of new build facilities provided the use and any associated structures is not visually or environmentally intrusive and is not detrimental to the character and amenity of the area and can be justified in terms of infrastructure, provision of services, access and car parking provision. There should be no adverse impact on the built heritage resources requiring conservation.

The proposed development of a heritage centre is compatible with the above policy as it will provide a tourist facility as well as providing a centre for the industrial heritage associated with this area.

6.11 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. Town Centres offer a range, quality and convenience of services and activities that are attractive not only to the local population and visitors but also to investors. 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 are easily accessible by a choice of means of transport. Both the policies of the AJSP and EALP reflect the guidance contained in NPPG 8.

6.12 Paragraph 45 of NPPG 8 states that where a proposed development is not consistent with the development plan it is for the developer to demonstrate why an exception to policy should be made. Such proposals should be rigorously assessed against the policies set out in the NPPG 8 and should be refused if all criteria contained in para 45 cannot be met. Criteria such as the sequential approach, effect on the vitality and viability of the town centre accessibility impact on the local infrastructure are duplicated in the criteria of Policy L9 of AJSP and Policy RTC 5 of EALP. The proposed retail development is assessed against the criteria in para 45 within Sections 5 and 6 of this report.

Strategy for Regeneration of Kilmarnock Town Centre

6.13 The above application should also be considered within the context of the strategy for the regeneration of Kilmarnock town centre approved by Development Services Committee on 7th May 2002. The proposed regeneration strategy builds on known current investment interest. This includes supporting office development to bring jobs into the town centre, housing to bring homes back to the town centre and retail investment to bring shoppers back into the town. All three types of development would be drawn together to increase the activity in the traditional core of the town centre and create a multi-function town centre in line with the objectives of the Finalised EALP. Key actions include making improvements in the amenity of the key pedestrian thoroughfares linking the edge of town locations with the core town centre, seeking support for the hopper bus service and introduction of a shop mobility scheme. Retention of shops in the core town centre to complement retail developments at the edge of town centre locations and promoting residential development opportunities are also encouraged. Developments are supported within the context of the town centre by pushing forward with the implementation of the above strategy. Implementation of this strategy requires to be reflected in consideration of planning applications.

6.14 The present proposal by the applicant embodies and promotes many of the actions identified by the town centre strategy as the development includes proposals to improve the pedestrians link between the development site and core shopping area. The developer has also agreed to make a financial contribution to the “hopper bus service” and the shopmobility scheme. The proposal also includes the conversion of a listed building to residential use.

Planning History of the Site

6.15 00/0462/FL: Full planning consent was granted on 04 May 2001 to the applicant for a mixed residential development of 76 units on the site of the former Britannia works. This consent has never been implemented on site.

6.16 96/0199/OL: A previous application for residential development was withdrawn on 12 April 1999.

6.17 01/0568/LB: Proposed Demolition of Outbuildings and Façade Retention of Caledonia Works, West Langlands Street, Kilmarnock, received on 21 August 2001. This listed building application was submitted by the same applicant as the present application under consideration and has been held in abeyance at the request of the applicant until detailed proposals have been prepared and submitted.

Linkage with Adjacent Industrial User

6.18 The relationship of the proposed retail development to the adjacent Hunslet Barclay engineering business is a material planning consideration. Development of the Hunslet Barclay land will relieve the company of property which is surplus to requirements and the value of the surplus land will enable the long-established Hunslet Barclay engineering business to remain operational on its existing site. Approval of the retail development would allow the release of funds for investment in Hunslet Barclay which would help with the company's future bonding requirements and the gifting of land of part of the former JRG building will allow future expansion of their existing wheelwork facility. The comments of the Head of Economic Development in their consultation response are material in the determination of this application that if the land deal does not take place, in their view this would not result in the closure of Hunslet Barclay.

Other Retail Applications Under Consideration

6.19 02/0005/OL: A similar planning application for a superstore of 95,000 sq ft, and ancillary facilities has been lodged by Safeway Stores PLC on 04 January 2002 on the site of Stoddards, West Shaw Street, Kilmarnock. The present application under consideration is not considered to be competing with the Safeway application, as the Safeway proposal involves largely a replacement of the existing floorspace of the existing Safeway Store with a slight increase and it is adjacent to the town centre.

7. FINANCIAL AND LEGAL IMPLICATIONS

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial implications for the Council in the determination of this application. Legal implications would arise should the Council agree to approve the application as this would necessitate the Council entering into a Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997 with the applicant landowners and other relative parties to secure obligations on the developer as detailed below. The Legal Agreement should contain the following principles:-

1. A binding commitment to provide, maintain and operate a minimum of 10,000 sq ft (gross) convenience food unit within the Core Shopping Area for a period of 5 years from the date of opening of the unit hereby approved or maintain the existing Tesco store at Fowlds Street (34,000 sq ft gross) for a period of 3 years from the date of opening of the unit hereby approved.
2. That the retail unit should provide for a quality store by an operator recognised for catering for quality shopping as defined in Section 5.6 of the report and shall be one of the following operators, Tesco, Sainsbury or Wm Morrison with a commitment to entering into a binding agreement with one operator prior to the lodging of the reserved matters application.
3. A binding commitment to provide a quality townscape link to the core shopping area comprising quality hard landscaping, soft landscaping, seating areas and signposts; prior to the opening of the superstore in accordance with details to be agreed before the consent is issued.
4. A binding commitment to financially contribute to the Hopper Bus Service and Shopmobility Scheme at a level to be agreed with the Council and implementation of the proposals contained in the Green Transport Plan.
5. A binding commitment to provide a programme for implementation of the heritage centre and conversion of the listed buildings to flats as provided on the approved plan.
6. A contribution amounting to 1% of the construction costs of the residential development, being made into the Sports, Leisure and Recreation Fund in order to address identified deficiencies in the area.
7. A commitment to transfer ownership of the JRG building to Hunslett Barclay.

7.2 The Council is obliged to notify the Scottish Executive under the Town and Country Planning (Notification of Applications)(Scotland) Direction 1997 if it intends to grant planning permission as the proposal represents a significant departure from the Ayrshire Joint Structure Plan and Adopted Kilmarnock Local Plan approved by the Scottish Ministers.

8. CONCLUSIONS AND RECOMMENDATION

8. CONCLUSIONS

8.1 As is indicated at Section 5 of the report the proposal is considered to be contrary to the Adopted Local Plan and the Approved Ayrshire Joint Structure Plan. Therefore given the terms of Section 25 and Section 37 (2) of the Town and Country Planning (Scotland) Act 1997 the application should be refused unless material considerations indicate otherwise. The proposal is considered to be contrary to the Development Plan for the following reasons:

- The site lies outwith the town centre in the Adopted Local Plan
- There is no quantitative need for additional convenience floor space and thus there is an unacceptable impact on the convenience stores within the town centre

The proposal is considered to be in accordance with the Development Plan for the following reasons:

- It is accepted that the site is acceptable in terms of the sequential test as there is no suitable or available site to accommodate the proposal within the town centre
- The proposed store will operate as an "edge of centre" rather than "out of centre" store
- In terms of vitality and viability of the town centre there is a need for a qualitative improvement in floorspace

8.2 Within the context of the development plan the proposal has been modified by the applicant through amendments to the description and application site and by a commitment by the applicant to enter into a Section 75 legal agreement; to make it acceptable in the following way;

- By agreeing to retention of convenience floorspace in the town centre the proposal ensures the continued vitality and viability of the town centre by allowing a time for adaptation by the town centre uses
- By strengthening linkages to the town centre by improved pedestrian access, and by providing car parking spaces in excess of the minimum standards normally applied for an out-of-town store combined with contributions to public transport the proposal will increase accessibility to the town centre for those with or without a car
- By agreeing to provide a quality store by an operator recognised by the Council as providing quality convenience shopping

8.3 In conclusion within the context of the Development Plan the proposal represents an acceptable departure from the Development Plan and the following material considerations add weight to that view

- The Finalised East Ayrshire Local Plan with Modifications is more aligned with NPPG8 and the Approved Structure Plan and although the site of the superstore remains outwith the town centre boundary; the site can be acceptable in terms of the sequential test. The proposal is considered to be “edge of centre” due to the physical and environmental improvement works to be undertaken by the applicant between the superstore and town centre
- The agreement to retain convenience floorspace in the town centre and the provision of the new superstore minimises impact on the town centre and extends quality and choice of retail facility
- The measures contained within the Green Transport Plan and the environmental and physical linkages to the town centre improve accessibility for all to the site and strengthens the link between the site and the town centre
- The proposed development embodies and promotes many of the actions identified in the Strategy for the Regeneration of Kilmarnock town centre
- The cross subsidy of the retail element towards the residential development allows complete retention of a listed building and retention of the façade of another listed building in a conspicuous and dominant location

8.4 The following material considerations do not favour the proposal;

- Part of the site is designated for miscellaneous development and protected by Policy IND 5 in the Finalised East Ayrshire Local Plan which does not allow for retail development

8.5 On balance and with the context of Section 25 of the Town and Country Planning (Scotland) Acts the proposal represents a departure from the Development Plan which is acceptable within the context of the development plan and other material considerations.

9. RECOMMENDATION

9.1 It is recommended that the application should be approved subject to the conditions indicated on the enclosed sheets and that the issuing of the Planning Decision Notice be withheld until the Solicitor to the Council has satisfactorily concluded a formal Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 with the applicants and other interested parties on the matters set out in principle in Section 7 of the report.

9.2 It is recommended that the application should be notified to the Scottish Ministers under the Town and Country Planning (Notification of Applications) (Scotland) Direction 1997 as a significant departure from the Development Plan and subject to the conditions indicated on the enclosed sheets.

Stephen Chorley
Director of Development Services

17 June 2002
(PC/SA/MMM)

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
2. Statutory Notices/Certificates.
3. Retail Impact Document by Robert Drysdale Planning Consultancy – November 2001, Supplementary Retail Information dated 22 January 2002 and 25 February 2002.
4. Transport Assessment by Miller Allan and Stewart Paton Associates submitted on 3 December 2001.
5. Consultation Responses.
6. Letters of Representation.
7. Adopted Kilmarnock Local Plan.
8. Approved Ayrshire Joint Structure Plan.
9. Approved Strathclyde Structure Plan.
10. East Ayrshire Local Plan Finalised Version with Modifications.
11. Planning Application Nos: 01/0568/LB; 00/0462/FL; 96/0199/OL, 02/005/OL.
12. NPPG 8 Town Centres and Retailing.
13. David Bryce Associates Report May 2002.

Anyone wishing to inspect the above papers please contact Pamela Clifford on 01563 576772.

Implementation Officer: Alan Neish

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

01/0560/OL

Site of Proposal: West Langlands Street/North Hamilton Street/Park Street/Langlands Street/Langlands Brae/West George Street/Garden Street/Portland Street and John Finnie Street KILMARNOCK

Nature of Proposal: Proposed Erection of 85,000 sq ft Food Superstore & Petrol Filling Station with Environmental Improvements and Flatted Residential Development with Heritage Centre

Name & Address of Applicant: Klin Holdings Ltd
27 John Finnie Street
KILMARNOCK
KA1 1BL

Name & Address of Agent:

DPOs Reference: PC/SA

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

(1) The proposed development shall be carried out in accordance with the application form received on 21 August 2001 as amended by the letter received on 16 April 2002; the Retail Impact Document on November 2001 and the Supplementary Retail Information submitted on 22 January and 25 February 2002, the Transport Assessment submitted on 3 December 2001, the document titled "Development Principles, Procedures and Objectives submitted on 5 April 2002 and the amended plans received by the Planning Authority on 18 April 2002, 20 May 2002 and 10 June 2002.

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

(2) That the indicative layout submitted along with the application are for information purposes only and shall not be treated as forming part of the issued planning permission.

REASON The approval is in outline only.

(3) Before any development commences on site, the further approval of the Planning Authority shall be obtained in respect of the undermentioned matters hereby reserved.

- (a) The layout of the site;
- (b) The size, height, design and external appearance of the proposed dwellings, superstore, petrol filling station and heritage centre;
- (c) The layout, design and materials of all environmental improvement works;
- (d) The means of drainage and sewage disposal;
- (e) Details of the access arrangements;
- (f) The provision for open space and associated maintenance arrangements;
- (g) The provision for car parking;
- (h) The boundary walls/fences to be erected;
- (i) The landscaping of the site and associated maintenance arrangements;
- (j) Finished site levels/floor levels.

REASON The approval is in outline only.

(4) The details of the environmental improvement works to be approved under Condition 3 above shall be implemented on site prior to the opening of the superstore and maintained thereafter.

REASON To enhance the pedestrian links between the superstore and Kilmarnock Town Centre.

(5) The gross floorspace of the superstore shall be limited to 7,897 square metres with a net sales area of 2,610 square metres for convenience goods only and net sales area of 2,365 square metres for comparison goods only.

REASON To restrict the floorspace of the superstore in order to safeguard the viability and vitality of the town centre.

(6) At no time unless with the prior written consent of the Planning Authority shall any retail trading occur or goods be stored outwith the internal floorspace of the superstore hereby approved.

REASON In the interests of the proper planning of the superstore.

(7) The details to be submitted under Condition 3 above shall include the

following road alterations which shall be provided on site prior to the opening of the superstore.

- (a) Traffic signals at Munro Avenue/Bonnyton Road shall be provided to cater for generated traffic and pedestrian and cycle movements
- (b) The design and location of the roundabout as a suitable means of access to the development site. The design of the roundabout shall provide for cycle and pedestrian facilities and shall cater for extra long loads to the adjacent Hunslet-Barclay industrial use.
- (c) The provision of locations for bus infrastructure including lay-by/setting down points either adjacent or within the site and provision of appropriate public transport timetable displays.
- (d) The layout of the internal road arrangements shall be designed to prevent traffic backing on to the proposed roundabout.
- (e) The design and layout of pedestrian access to the site of the superstore and heritage centre

REASON The application is in outline only and such details are required to be approved and implemented in the interests of road safety and providing sustainable travel patterns.

- (8) Prior to the commencement of development on site a comprehensive Green Transport Plan shall be submitted for approval and all measures arising from that shall be installed on site prior to the opening of the superstore.

REASON To promote and implement sustainable travel patterns.

- (9) Prior to the commencement of development on site a Risk Assessment shall be submitted to and approved by the Planning Authority to address whether or not contaminants are entering or are likely to enter controlled waters and at what concentration. Any required remedial action shall be undertaken prior to any construction works commencing on site.

REASON To enable the site to be prepared to a condition suitable for the proposed use in the interests of public safety.

- (10) The development hereby approved shall be undertaken without detriment to neighbouring residential and commercial properties by virtue of noise, dirt or general disturbance.

REASON In the interests of amenity and to prevent such established amenity being adversely affected.

- (11) No construction work, site clearance or preparation works shall take place before 07.00 hours and after 17.00 hours on Mondays to Saturdays nor at any time on Sundays.

REASON In the interests of residential amenity.

(12) No materials other than top soil shall be brought onto the site for the purposes of infilling or upraising ground levels without the prior written consent of the Planning Authority.

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

(13) The developer of the site shall ensure that adequate and continuing measures are taken to ensure that roads and footpaths adjoining the site are maintained free from mud and other material carried from the site by construction and any other vehicles.

REASON In the interests of road safety and the amenity of the area.

(14) The details submitted under Condition 3 (h) shall ensure that 1.8 metre high concrete post and weldmesh fence is erected along any part of the application site with the boundary of the railway if it is not presently protected by a wall.

REASON To prevent any risk of trespass onto the railway.

(15) The existing wall between the application site and the Kilmarnock railway line shall remain in tact.

REASON To prevent trespass onto the railway line.

(16) No work shall commence on site until such time as the applicant has provided the Planning Authority with written confirmation from Scottish Water that the sewerage system is capable of accommodating the connection of this approved development.

REASON To ensure that adequate drainage is provided.

(17) Before any work commences on site, details of a Sustainable Urban Drainage System and its maintenance following installation shall be submitted to and approved by the Planning Authority in writing. The Sustainable Urban Drainage System shall thereafter be installed on site,

- (a) prior to the opening of the superstore;
- (b) prior to the occupation of the dwellings; and
- (c) prior to the opening of the heritage centre.

REASON To ensure that adequate drainage is provided.

(18) The details to be submitted under the terms of Condition 3 above, in respect of the proposed pedestrian access point to the application site of the superstore and the proposed entrance and exit doorway to the superstore, shall be located in a position as close as possible to the town centre as defined within the East Ayrshire Local Plan Finalised Version with Modifications.

REASON To ensure that the proposed development has a satisfactory physical link to integrate it into the defined town centre.

(19) Notwithstanding the terms of Condition 3 above, in so far as this permission accepts the principle of residential development on the site of the former Andrew Barclay listed building at the south easterly boundary of the application site, this permission does not grant listed building consent for any demolition/works to the former Andrew Barclay listed building. A separate application for listed building consent shall require to be submitted to the Planning Authority for approval before any such works are commenced on the listed building.

REASON In order to comply with the provisions of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and to allow the Planning Authority control over future development of the site.

NOTES TO APPLICANTS

(1) Prior to the commencement of development on site, the applicant should satisfy him/herself as to the suitability of the site for construction purposes.

(2) The developer shall take into account the requirements of Railtrack (copy enclosed) when submitting an application for reserved matters and during construction on site.

(3) No mechanical excavation shall take place within 500mm of Transco Plant.

(4) "The developer shall make early contact with the Scottish Environment Protection Agency and Scottish Water to confirm their request to utilise a Sustainable Urban Drainage System (SUDS) with regard to surface water. These Authorities require this development to be drained in accordance with the recommendations contained in the CIRIA manual on SUDS".

(5) "The Council does not currently have a general agreement with Scottish Water in relation to the maintenance of public SUDS. Proposals for site specific agreements which may require to involve the developer or other third parties will be considered within the overall framework recommended in the design manual for SUDS published by CIRIA."

APPENDIX 1

Summary of Retail Impact Assessment submitted by the Applicant

The RIA produced by the applicant addresses the impact of the proposed development on the town centres stores based on 2 development scenarios, namely

- (1) re-location of Tesco to West Langlands Street, and
- (2) a new operator opening at West Langlands Street.

As the applicant has not named a specific operator the highest impact figure from the RIA must be taken. The Retail Impact Assessment shows that the overall impact on the town centre will not differ whether the store is regarded as a town centre or an out-of-centre store. The impact is stated as 11.5%. The impact on comparison goods is 1.6%. The assessment states the overall impact as 2.9%.

The impact on Safeway and Asda is not a planning matter as they are out-of-centre stores.

Scenario 1 - Re-location of Tesco

The RIA states that the introduction of the new superstore whether for a new operator or for a re-location of Tesco's could be achieved without harming any existing shops in the town centre.

Scenario 2 – New Store Operator

The greatest impact (insofar as it relates to town centre stores) will be on the existing town centre Tesco store. The Retail Impact Statement states that the impact on Tesco will be 16%. Further that despite a new superstore occupied by a new retailer trading at a turnover of £21million, the existing superstores and the Tesco's supermarket would still be capable of capturing a total turnover of more than £60million between them. It is therefore argued that capacity exists in the area for additional convenience floorspace. The RIA indicates that the impact of the development on Kwik-Save is 3% while the impact on the other town centre stores is 5.6%. The overall impact on other town centre stores is 4%.

APPENDIX 2

Retail Assessment by Bryce Associates

In preparation for the local plan inquiry, the Ayrshire Joint Structure Plan Team carried out an assessment of the capacity and demand for convenience and comparison shopping in the Kilmarnock catchment area to the year 2008.

In November 2001 the Council commissioned independent retail consultants (Bryce Associates) to

- i) comment on all aspects of the study including the catchment area;
- ii) comment on the supply and demand for retail floorspace within the defined catchment area for both food and non-food retail goods;
- iii) advise on the suitability of sites within Kilmarnock to meet any identified shortfall;
- iv) provide assistance in the preparation of evidence for the public local inquiry and if necessary give evidence on behalf of the Council at the inquiry
- v) comment and advise on current and future applications for retail development within East Ayrshire

The report was completed in May 2002 (and is included as a background paper to this report).

In summary the report concludes that an examination of the convenience capacity assessment concludes

- i) there is no shortfall of convenience floorspace in quantitative terms
- ii) it is likely that there is an under performance of certain major stores, including Tesco and Kwiksave in Kilmarnock Town Centre, when compared with national trading performance
- iii) the underperformance of town centre stores suggests that consideration be given to the feasibility of achieving some form of qualitative improvements that will not impact on the vitality and viability of Kilmarnock town centre.

The Bryce Report highlights that the application at West Langland Street as submitted, whilst proposing qualitative improvements to convenience shopping, is not particularly supportive of the town centre.

It should be noted that the Bryce Report has not considered the supplementary information submitted by the applicant in the Development Principles, Procedures &

Objectives document, and the environmental and physical improvements to pedestrian links between the superstore site and core shopping area highlighted in Section 2 of this report and the Legal Agreement outlined in Section 7.

The Bryce Report also concludes that the Council requires to review its town centre strategy and adopt a pro-active role towards town centre change and improvement. (It should be noted that the Council's strategy for the Regeneration of Kilmarnock Town Centre, which seeks to achieve this objective was approved by the Development Services Committee on 7 May 2002).

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