

**EAST AYRSHIRE COUNCIL  
DEVELOPMENT SERVICES COMMITTEE: 31 MAY 2005**

**02/0746/FL: PROPOSED USE OF EXISTING FOODSTORE AS NON-FOOD  
RETAIL UNIT**

**GLENCAIRN RETAIL PARK, KILMARNOCK  
BY WM MORRISON SUPERMARKETS**

**EXECUTIVE SUMMARY SHEET**

**1. DEVELOPMENT DESCRIPTION**

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

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

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

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

Condition 5 of the above consent therefore restricts the store to retail food and other convenience goods only and that further permission is required for the sale of non-food items (comparison goods). Morrisons have indicated that they intend to close the existing Safeway food store for business in June 2005 and are hoping to sell the building and its car park to a non-food operator subject to planning permission being granted.

The existing store has a gross floor space of 47,362 sq ft with a net retail floor space of 31,400 sq ft.

**2. RECOMMENDATION**

2.1 It is recommended that the application should be approved subject to the conditions listed on the attached sheet and that the issue of the decision notice be withheld until the Solicitor to the Council has satisfactorily concluded a Section 75 Agreement with the applicants regarding the obligations referred to in Section 7.2 of the report.

### **3. CONCLUSIONS**

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

3.2 As indicated in Section 6 there are material considerations relevant to this application and they are generally supportive of the development. The proposed development can be accommodated within the policies of Approved AJSP and Adopted EALP by minimising any adverse impact in the vitality and viability of the Town Centre, whilst helping to claw back the leakage of expenditure outwith East Ayrshire by the occupation of the unit by a quality retailer that is not already present in the Town Centre. The applicant has indicated that they intend to close the existing food store on June 2005 for business. Approval of this application would allow the applicant to sell the unit to a non-food operator and therefore reduce the time the existing unit remains vacant and being an eyesore in this part of the town.

**Alan Neish**

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

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

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

**1. PURPOSE OF REPORT**

1.1 The purpose of this report is to present for determination a full planning application which is to be considered by the Development Services Committee under the scheme of delegation as it involves a retail development of over 2000m<sup>2</sup> and is subject to objection.

**2. APPLICATION DETAILS**

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

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

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

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

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

Condition 5 of the above consent therefore restricts the store to retail food and other convenience goods only and that further permission is required for the sale of non-food items (comparison goods). Morrisons have indicated that they intend to close the existing Safeway food store for business in June 2005 and are hoping to sell the building and its car park to a non-food operator subject to planning permission being granted.

The existing store has a gross floor space of 47,362 sq ft with a net retail floor space of 31,400 sq ft.

### **3. CONSULTATIONS AND ISSUES RELATED**

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

***Noted.***

3.2 Scottish Water, Piersland and Bentinck and Grange/Howard Community Councils have not responded to their consultation letter at the time of writing this report.

***Noted.***

### **4. REPRESENTATIONS RECEIVED**

4.1 There is one objector to the proposed development and their grounds of objection are as follows.

4.2 It is premature until Safeway's current application for replacement store is determined.

***This application is not premature as planning permission was granted on 15 October 2004 for the erection of a new superstore on the adjacent former Stoddards factory site.***

4.3 It would result in an over-provision of non-food retail floorspace within the Town Centre.

***This is addressed in Section 5 of the report.***

4.4 The estimated trade diversion is an under estimate. It would have an unacceptable impact on existing Town Centre Retailers, with an estimated trade diversion of 4% for clothing retailers. They fear for the future of existing clothing outlets such as Marks and Spencer.

***This is addressed in Section 5 of the report.***

4.5 The proposal is therefore contrary to National, Structure and Local Plan Policies Guidelines in respect of maintaining the vitality and viability of town centres.

***This is addressed in Section 5 of the report.***

4.6 There are several planning refusals and at least one planning appeal where the above policies have been upheld and planning consent for non-food retail development outside Kilmarnock Town Centre have been refused.

***This is addressed in Section 5 of the report.***

4.7 There is already an identified adjacent site (169 metres) for appropriate retail warehousing use, so the re-use of the existing Safeway site would add to over-provision with an adverse impact on existing centrally located businesses.

***This is addressed in Section 5 of the report.***

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

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

### Approved Ayrshire Joint Structure Plan (AJSP)

5.2 Policy L8 of the AJSP directs retail and commercial leisure facilities first to existing town centres then to edge of centres in preference to out of centre locations. As the proposal is for the re-use of an existing supermarket with a gross floor space exceeding 1500m<sup>2</sup> for the sale of non-food goods, the proposed development will require to be justified against the criteria of Policy L9 of the AJSP.

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

### Adopted East Ayrshire Local Plan

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

5.5 Policy RTC1 adopts a sequential approach for new retail developments, directing them first to town centres, and secondly in edge of centre locations in preference to out of town centre locations. Policy RTC3 also directs all retail development of a gross floor space exceeding 1,500m<sup>2</sup> to Kilmarnock Town Centre. As the proposed development is for the re-use of an existing supermarket with a gross floor space exceeding 1500m<sup>2</sup> for the sale of non-food foods outwith the town centre boundary the proposed development required to be assessed against the criteria of Policy RTC5.

5.6 Policy RTC5 states in assessing all out of centre retail development, it should be assessed against the following criteria.

- (i) whether the applicants have adopted a sequential approach and can demonstrate that no suitable alternative sites are available within or on the edge of town centres;
- (ii) whether the proposal would affect, their individually or cumulatively the vitality and viability of town centres and whether the scale of the proposal is appropriate to its location;
- (iii) whether the proposal is accessible to a choice of means of transport;
- (iv) the effect of the proposal on travel patterns, infrastructure and road works;
- (v) whether the proposal would be compatible with other uses in the surrounding area;
- (vi) whether the design of the proposed building would be acceptable;
- (vii) the effect of the proposal on the environmental quality, character and amenity of the area, and
- (viii) whether the proposal would be compatible with other Local Plan Policy objectives.

***The proposed development involves the change of use of an existing food store within an established Retail Park to a unit selling comparison goods only. Planning permission was granted on 15 October 2004 for the erection of 95,000sq ft superstore on the adjacent former site of the Stoddards Carpet Mill, as part of the justification for the acceptability of the new superstore Safeway, the applicant indicated that the existing store would cease trading as a food store on the date the new superstore commenced trading. Before the release of the decision notice for the new superstore WM Morrison Supermarkets PLC acquired Safeway Stores PLC on 08 March 2004 which included the existing Safeway store at Glencairn Retail Park.***

***Research and analysis conducted by the Ayrshire Joint Structure Plan Team has indicated that East Ayrshire suffers from significant leakage of comparison goods expenditure. In order to address the expenditure leakage and to minimise the impact of the proposed development on the vitality and viability of the Town Centre, the applicant has agreed to enter into a Section 75 Legal Agreement with the Council regarding the matters detailed in Section 7.2 of the report. Of particular relevance and to address the criteria of Policy RTC5, the applicant has agreed within the Section 75 Agreement that the proposed unit will not be occupied***

***by an existing retailer (with a net floorspace greater than 450 sq metres) from within the Kilmarnock core shopping area, a discount retailer, a charity shop or trade as a food store.***

***Within the Section 75 Agreement, the applicant has agreed a definition of 'discount retailer' in terms of quality and range of goods, price and basic shop units and this is as detailed in Appendix A.***

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

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

6.1 The principal material considerations relevant to the determination of the application are the consultation responses received detailed in Section 3 and the letter of objection detailed in Section 4, the planning history and NPPG8 "Town Centre and Retailing", the Consultative Draft: Kilmarnock Town Centre Strategy.

### Consultation Responses and Representations Received

6.2 The consultations and representations received are addressed in Sections 3 and 4 of the report, none of which indicate that the application should be refused. The consultation responses have not raised any adverse comments. The concerns of the objector with regard to the impact of the proposed development on the vitality and viability of the Town Centre have been fully addressed in Section 5.6 of the report.

### Planning History

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

6.4 02/0005/OL: Planning permission was granted for the erection of 95,000sq ft superstore on the adjacent former Stoddards Carpet Mill on 15 October 2004. Morrisons have indicated that they do not intend to implement this planning permission as they already have a new Superstore in the town. They are presently having discussion with the Council regarding the future development of the site.

However as planning permission goes with the land and Morrisons are not prepared to revoke this planning permission and the acceptability of the new Superstore was based on the existing store cease trading as a food Superstore, the legal agreement associated with this planning application will also include a clause to ensure that the existing store ceases trading as a food Superstore no later than the opening date for trading of the new Superstore. This is detailed in Section 7.2 below.

#### NPPG8: 'Town Centres and Retailing'

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

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

#### Consultative Draft; Kilmarnock Town Centre Strategy

6.6 A draft Kilmarnock Town Centre Strategy was approved for consultation purposes by Development Services Committee on 03 May 2005. This Strategy, once finalised and approved will provide a framework for co-ordinated action pertaining to the development of Kilmarnock. It proposes a retail led, mixed use development with an associated residential or office component would be considered acceptable for the existing Safeway Supermarket site,

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

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

7.1 There are no financial implications for the Council.

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

- The existing store will cease trading as a food Superstore no later than the opening date for trading of the new Superstore.
- Retail Operator Restrictions
  - do not trade as a food Superstore;



- is not a discount retailer;
- is not a charity shop; and
- are not an existing retailer within Kilmarnock core shopping area of a net floorspace greater than 450sq metres.

- Definition of what typifies a discount retailer based on defined factors. This definition is detailed in Appendix A.

## **8. CONCLUSIONS**

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

8.2 As indicated in Section 6 there are material considerations relevant to this application and they are generally supportive of the development. The proposed development can be accommodated within the policies of Approved AJSP and Adopted EALP by minimising any adverse impact in the vitality and viability of the Town Centre, whilst helping to claw back the leakage of expenditure outwith East Ayrshire by the occupation of the unit by a quality retailer that is not already present in the Town Centre. The applicant has indicated that they intend to close the existing food store on June 2005 for business. Approval of this application would allow the applicant to sell the unit to a non-food operator and therefore reduce the time the existing unit remains vacant and being an eyesore in this part of the town.

## **9. RECOMMENDATION**

**9.1 It is recommended that the application should be approved subject to the conditions listed on the attached sheet and that the issue of the decision notice be withheld until the Solicitor to the Council has satisfactory concluded a Section 75 Agreement with the applicants regarding the obligations referred to in Section 7.2 of the report.**

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

20 May 2005  
(PC/RH/MMM)

### **LIST OF BACKGROUND PAPERS**

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

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

***Implementation Officer: Alan Neish***

020746FLGlencairnRH

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

02/0746/FL

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Site of Proposal:	Glencairn Retail Park KILMARNOCK KA1 4BS
Nature of Proposal:	Proposed Use of Food Store as Non-Food Retail Unit
Name & Address of Applicant:	Wm Morrison Hilmore House Thornton Road BRADFORD BD8 9AX
Name & Address of Agent:	Gary Mappin Mappin Planning & Development plc 141 St James Road GLASGOW G4 0LT

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DPOs Reference: PC/RH

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

1) Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) (Scotland) Order 1992 and the Town & Country Planning (Use Classes) (Scotland) Order 1997 (or any order or Act replacing this) as this permission relates to a non-food retail unit and the further express permission of the Planning Authority shall be required in respect of the proposed retailing of food and other convenience items only.

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

Note:

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

## Appendix A

### Definition of Discount Retailer

**“Discount retailer”** means those retailers who focus primarily on price appeal and low operating costs and which predominantly operate at the lower end of the market. Such retailers are typified by the following factors although all these factors do not apply to all discount retailers, as it is frequently dependant on the goods sold:

- The sale of factory seconds, discounted and/or out of season merchandise, and/or
- The requirement for membership to purchase goods from the store
- Quality and range of goods is often secondary to low prices.
- Basic shop units-emphasis on functionally over shop design in terms of fixtures, furniture and shopfront design and the presentation of goods
- High volumes of a restricted line of popular merchandise sold at discounted prices.