

**EAST AYRSHIRE COUNCIL**

**CABINET – 6<sup>TH</sup> FEBRUARY 2013**

**CUMNOCK REGENERATION PROJECT  
EAST AYRSHIRE COUNCIL**

**Report by Depute Chief Executive/ Executive Director of Neighbourhood Services**

**1. PURPOSE OF REPORT**

- 1.1 The purpose of the report is to update members on the progress of the Cumnock Regeneration Project, agree to terminate the joint venture company, provide a report on the condition of the Glaisnock Centre and costs of refurbishment, and agree next steps.

**2. INTRODUCTION AND BACKGROUND**

- 2.1 At the meeting of the then Development Services Committee on 28 November 2006 it was agreed to appoint Deanway Development Ltd, in association with the Muir Group, as the Council's development partner for the regeneration of Cumnock Town Centre. The appointment came at the conclusion of a lengthy and detailed tendering exercise carried out under the then newly established Competitive Dialogue Procedure.
- 2.2 On 24 October 2007, Cabinet approved the Council's participation and membership in two separate joint venture companies namely Cumnock Regeneration (Office) Limited and Cumnock Regeneration (Retail) Limited which companies were designed to be the contractual structure between the Council and its development partners for delivery of the principal individual constituent parts of the Cumnock Town Centre Regeneration Project. Cabinet approval was given after consideration of the principal aspects of the structure of a joint venture agreement which necessarily were of a detailed and complex nature.
- 2.3 Thereafter, on 19 December 2007, in accordance with the Cabinet decision of 24 October 2007, Cabinet approved the appointment of Elizabeth Morton, Depute Chief Executive/ Executive Director of Corporate Support (now Depute Chief Executive/Executive Director of Neighbourhood Services) and, subject to Council ratification (which subsequently occurred on 28 February 2008), Councillor Douglas Reid as the Council's nominated directors for both joint venture companies.
- 2.4 In addition it should also be noted that, at the meeting of the then Emergency Powers Committee, on 5 July 2007 it was agreed to approve the location of the proposed office development on a site lying to the south of Greenholm Road, Cumnock.

- 2.5 Matters pertaining to the Cumnock Regeneration Project were subsequently presented once again to Cabinet on 18 February 2009 and 2 December 2009 in terms of which it was ultimately agreed that the office project proceed under the auspices of an Alliance Agreement (as opposed to the original joint venture concept) primarily due to the Council's intention to be the owner/occupier of the entire building. This decision resulted in the office project proceeding under a standard design and build type contract.
- 2.6 Members will be aware that the final design and construction of the new office thereafter proceeded quickly with the completion and occupation of the building by a range of Council services being achieved in the spring of 2012. To that extent therefore the Cumnock Regeneration (Office) Project has been entirely successful with the building having been delivered on time and within budget by the Deanway Muir consortium.

### **3. CUMNOCK REGENERATION (RETAIL) LIMITED**

- 3.1 Unfortunately the aims and aspirations of the retail project have proven much more difficult to realise than the office project. The originally approved concept was to seek to attract a Grade 1 supermarket operator from one of the four main national operators being Morrisons, Tesco, Sainsbury or Asda. Concerted efforts to successfully attract one of these operators to become an anchor tenant in a new purpose built unit have been ongoing since the outset but the factual position is that in respect of each operator they have all ultimately declined to consider becoming such a tenant. The remaining potential operator (of the four) only confirmed in December 2012, after significant levels of negotiation, irrespective of any financial incentives which the Council may have been potentially able to provide, that economically the opening of a new store in Cumnock would simply be unachievable. This also takes into account the fact that outline planning permission for such a new development is already in place.
- 3.2 One of the additional major issues which the Council has had to seek to overcome relates to the title position of the Glaisnock Shopping Centre. In that regard, the position is that when originally developed the antecedent local authority did not own significant parts of the land on which the Centre was built or indeed the adjacent car park. This unfortunate position was compounded when, in the context of the leases originally granted to initial tenants in the Centre, they were given "options to purchase" their individual units. The Council was able to acquire the areas of ground from Dumfries Estates but thereafter was legally obliged to convey six individual units within the Centre to their respective tenants who had exercised their options. The consequence is that currently the Council is the co-owner of the Glaisnock Shopping Centre together with six other parties. Any form of redevelopment of the Centre would therefore always have necessitated that the interests of these parties be taken into account.

- 3.3 As detailed above, given the inability of the Joint Venture partnership to successfully attract a new anchor tenant for a redeveloped retail offering in Cumnock town centre the disappointing conclusion is that the retail regeneration project as originally conceived and approved by East Ayrshire Council has ultimately been unsuccessful principally as a consequence of nationally prevailing economic factors.
- 3.4 Against this background it is now the case that consideration should be given to agreeing the dissolution of the joint venture company (JVCo) created for the retail project and consequently also to agree an amicable termination of all outstanding issues with the Council's development partner Deanway Muir. Had the successful completion and sale of a retail development been achieved all expenditure incurred by the JVCo would have been expected to be recovered in full. As any such expenditure on the retail project has initially been fully underwritten by Deanway Muir the most significant aspect of such a strategy will be the reimbursement of all outlays which have been accrued on behalf of the retail project. These are approximately £0.280M. It should be noted that this amount is in respect of outlays only and that Deanway Muir will not be entitled to or seek to claim any form of profit from the Council as allJVCo documentation was originally structured to the effect that they would only gain from completion of a successful project.A summarised breakdown of this figure is provided in the following table for reference purposes:-

<b>EXPENDITURE</b>	<b>£'M</b>
<b>PROFESSIONAL FEES</b>	
<b>Site Investigations</b>	<b>0.061</b>
<b>Environmental Studies</b>	<b>0.032</b>
<b>Civil Engineering</b>	<b>0.026</b>
<b>Flood Studies</b>	<b>0.029</b>
<b>Architectural Services</b>	<b>0.023</b>
<b>Legal Fees</b>	<b>0.025</b>
<b>Project Management</b>	<b>0.020</b>
<b>Traffic Studies</b>	<b>0.013</b>
<b>Insurance</b>	<b>0.010</b>
<b>Planning Fees</b>	<b>0.008</b>
<b>Other Fees and Expenses (Note 1)</b>	<b>0.033</b>
<b>TOTAL EXPENDITURE</b>	<b>0.280</b>

Note 1 – Other Fees and Expenses include: Topographical Surveys; Archaeology Services; Property Advice; Marketing; Audit and Taxation Services.

- 3.5 These costs have been incurred on a cumulative basis since the outset of the retail project and on the dissolution of the JVCo the Council would be in a position to make use in the future of all of the various professional reports and data which has been accumulated.

- 3.6 It should also be noted that in terms of the report which was considered by Cabinet on 24 October 2007 it was identified that in the event that the retail project did not proceed then the Council would ultimately be required to reimburse Deanmuir in respect of all outlays which as the project progressed would assume a significant value. In addition, a potential liability of £0.280m in respect of the retail project was identified in the period 9 (2011/12) East Ayrshire Performs report.

#### **4. OWNERSHIP AND CURRENT OPERATING COSTS OF THE GLAISNOCK CENTRE**

- 4.1 The Glaisnock Shopping Centre contains twenty separate retail units with a total floor area of 3248 sq m (34,962 sq ft) or thereby and first floor office accommodation extending to 175 sq m (1,884 sq ft) or thereby. The six retail units which are in private ownership comprise 796 sq m (8,568 sq ft) or thereby continue to be occupied and operated by their respective owners. In respect of the fourteen retail units owned by the Council, four units comprising 304 sq m (3,272 sq ft) or thereby are currently occupied producing a total rental income of £23,795 per annum and ten retail units comprising 2148 sq m (23,122 sq ft) or thereby are currently unoccupied which represents 66% of the total retail floor space.
- 4.2 The Council incurs costs in relation to the management of the common areas and toilets situated within the Centre including caretaking, cleaning, maintenance, energy costs, etc. and expenditure as at 31 March 2012 amounted to £81,720 which it is anticipated will increase to £117,000 for the period ending 31 March 2013. Part of these costs extending in total to 23.26% is recoverable from the owner occupiers with 8.89% being recoverable from the existing tenants. The balance of 67.85% in respect of the unoccupied units including the vacant office accommodation is non-recoverable and based on cost estimates for the current financial year will amount to a figure in the region of £79,000. The Council is also responsible for the payment of empty property rates and in the current financial year, as to date this has amounted to £27,693.

#### **5. CONDITION OF GLAISNOCK CENTRE AND COSTS OF REFURBISHMENT PROPOSALS**

- 5.1 In November 2012 Corporate Infrastructure was requested to undertake a condition survey of the Glaisnock Shopping Centre and prepare a report that would also include refurbishment proposals.
- 5.2 The completed report dated December 2012 – Structural Condition and Refurbishment Feasibility Study references (i) a structural condition report commissioned from Jacobs, Consultant Structural Engineers in December 2012 (ii) Glaisnock Shopping Centre Condition Report and (iii) an earlier condition report prepared by Drivers Jonas, Property Consultants in February 2010 - Building Condition Report. Reference is also made to a report prepared by The Prince's Foundation for the Built Environment in February

2009 – Workshop Report. Members should note that these reports are available on the Members' portal for reference purposes.

- 5.3 The contents of the report are summarised as follows. The shopping centre, constructed in 1977, is of concrete frame construction with lightweight profiled sheet flat roofing. External walls are of cavity masonry construction clad internally and externally in ceramic tiles. Floors are in-situ concrete slab construction with terrazzo tile finish. Windows are aluminium framed units with sealed double glazing units.
- 5.4 A non-intrusive visual survey concludes that the in-situ reinforced concrete frame is considered to be in good structural condition. Cracking evident on the floor of the mall would appear to be due to a lack of movement joints in the concrete floor slab but is not considered to be structurally significant. The condition of the supporting steelwork to the flat roof appears in reasonable condition however the roof covering is badly deteriorated as noted in 5.5 below.
- 5.5 As the building is approximately 35 years old the principle components, most of which are original, are now at or approaching life expectancy. Of significant concern is the condition of the flat roof covering which is severely damaged in locations. In addition, hidden and valley gutters are impeding the flow of water. Given the defects and current condition of the roof it is recommended that, as a minimum, the roof covering be replaced and upgraded which would also increase energy efficiency to current standards. Consideration could be given to replacing the roof structure with a new pitched roof which would require less future maintenance. Feasibility of constructing a pitched roof would require further structural assessment of the capacity of the existing supporting steelwork. This option has not been costed at present.
- 5.6 Aluminium framed windows and doors have reached the end of their useful life with double glazed units failing. It is recommended that these be replaced. Mechanical and electrical installations are dated and it is recommended that these be upgraded to current standards. As noted above and within the reports the condition of most components, including sanitary facilities, ceilings, wall and floor finishes, due to age, warrants upgrade or replacement.
- 5.7 The centre does not comply with the requirements of the Equality Act 2010 in relation to provision for use by persons with a disability and would require upgrading works and alternations to achieve this. Areas of hard landscaping around the centre are generally in poor condition and it is recommended that these be repaired or replaced.
- 5.8 The centre is in need of repair and refurbishment. It is structurally sound but requires a significant amount of work to be undertaken, particularly to the roof, in order to bring it to a reasonable condition and to comply with current statutory requirements. The indicative cost for repair and refurbishment is approximately £4m. Cost of demolition and site clearance is estimated at £500,000.

## **6. SUMMARY OF THE CURRENT POSITION**

- 6.1 It has not been possible to attract a new anchor tenant for a re-development of the Glaisnock Shopping Centre principally as a consequence of nationally prevailing economic factors.
- 6.2 In the meantime whilst the Glaisnock Centre is structurally sound it is in significant need of repair and refurbishment which is likely to cost a minimum of around £4.000M. As a comparison, it is anticipated that the cost of demolition would be approximately £0.500M. However, the Council does not own all of the shops. Of the twenty retail units, six are in private ownership and fourteen are owned by the Council. In relation to the fourteen that are owned by the Council, ten are currently vacant. The Council would in any case want to continue to work with the remaining retailers (both owners and tenants) that are left to ensure business continuity if, of course, they wish to remain trading. However, the fundamental point is that the Council given the position in relation to land ownership do not have unilateral control over the way ahead.
- 6.3 At present, due to the low occupancy levels the Council is in receipt of only £23,795 per annum in rental income. The Council currently incurs costs of £83,140 per annum which are anticipated to be in excess of £110,000 in the next financial year in relation to management costs. This is not sustainable in the long term. Even if the centre were to be refurbished at the cost level indicated there is no guarantee in the current economic climate that there would be sufficient interest in attracting new occupiers for the vacant units.

## **7. THE WAY FORWARD**

- 7.1 In all of the current circumstances it is apparent that efforts must continue to be made to identify the most practical and cost effective solution for the future of the Glaisnock Shopping Centre which will meet the aspirations of the Council, co-owners and tenants alike. In that regard, a number of principal options have been identified which, subject to Cabinet approval, it is proposed should form the basis of a full option appraisal exercise. These principal potential options have been identified as:-

### **Option1**

#### **Status Quo**

- Continue to operate the Glaisnock Shopping Centre on the current basis. This would necessarily require initial minimal and ongoing repairs and maintenance to the fabric and fixtures of the building. The various joint owners would, in terms of the Deed of Conditions relating to the sale of their units, be obliged to contribute to such costs on an ongoing basis, but as detailed above the overwhelming majority of such costs would fall to be borne by the Council. The Council could also on such a basis actively market the vacant units. Under such an option the

Council would have no requirement to reacquire the units in private ownership.

**Option 2  
Refurbishment**

- Carry out a full refurbishment of the Glaisnock Shopping Centre and surrounding hard landscaped areas. Again such an option would not require the reacquisition of the units outwith Council ownership but would result in the owner occupiers being required to make significant individual contributions to the overall total costs. It is also important to note that such an option would require the consent of all of the owner occupiers which could prove to be problematic.

**Option 3  
Disposal of Council's Interests**

- The possible marketing and future sale of the Council's interest in the Glaisnock Shopping Centre. This would involve the identification of a private company/investor who would be prepared to acquire the Council's interests and refurbish/redevelop the existing centre in association with the owners of the other units forming part of the centre.

**Option 4  
Reacquisition and Demolition with no Identified Future Use**

- The voluntary/ negotiated re-acquisition of the various units outwith Council ownership followed by the demolition of the Centre and clearance of the site for no identified future use.

**Option 5  
Reacquisition, Demolition and Provision of Alternative Retail Units**

- The voluntary/negotiated re-acquisition of the various units outwith Council ownership followed by the demolition of the Centre and clearance of the site combined with the provision of alternative retail units within the Cumnock Town Centre area.

**Option 6  
Reacquisition, Demolition for Future Local Authority Non Retail Use**

- The voluntary/negotiated/compulsory re-acquisition of the various units outwith Council ownership followed by the demolition of the Centre and clearance of the site for future Local Authority non retail use being identified. The identification of potential uses will form part of the option appraisal.

- 7.2 Whist the above options have been identified as the principal options on which to embark upon a full option appraisal exercise it may well be the case that in the course of such an exercise additional considerations may arise and on that basis the above suggested options should not be regarded as exhaustive. Any likely outcome will also necessarily require the consent and co-operation of the owner occupiers and accordingly it will be absolutely essential that early and ongoing dialogue, which has already commenced with some of the owner occupiers, be maintained.

## **8. FINANCIAL IMPLICATIONS**

- 8.1 Under the terms of the Retail Joint Venture Agreement the costs incurred to date by the Joint Venture Company of £0.280M require to be repaid to Deanway Muir. Under proper accounting practice this cannot be capitalised and will require to be met from General Fund Reserves. Should a future decision be made to demolish the Glaisnock Centre then, unless this forms part of a wider capital asset replacement it is expected that the costs, currently estimated at £0.500M will require to be met from revenues reserves at these costs are not classed as capital expenditure. In addition further costs, which cannot currently be quantified, will be incurred to buy out the existing owner occupiers.

## **9. LEGAL IMPLICATIONS**

- 9.1 The proposals contained within this report take full account of the Council's interest in, and its legal rights and responsibilities relative to, both the Joint Venture Company and the Centre itself and, if agreed, should serve to protect and promote those interests as the Council continues its efforts to deliver an effective solution in respect of the Centre.

## **10. POLICY IMPLICATIONS**

- 10.1 Cumnock is recognised as the service centre for the southern part of East Ayrshire. It is identified as one of five key town centres in the Local Plan. The local plan takes a very flexible approach to town centre development and as such promotes the development of a wide variety of uses to help create town centres that are dynamic and vibrant. Proposals that come forward and are subsequently developed further would require to be assessed at a later stage against the provisions of the local plan.

## **11. COMMUNITY PLAN IMPLICATIONS**

- 11.1 The proposals to review the alternative land use options within Cumnock Town Centre are in accordance with the Delivering Community Regeneration

Thematic Action Plan under Local Outcome 1 “Our Town Centres and Villages are sustainably regenerated.”

## **12. RECOMMENDATIONS**

12.1 It is recommended that Cabinet

- (i) Agrees to formally terminate the Joint Venture Agreement with Deanway Muir, arrange the formal dissolution of Cumnock Regeneration (Retail) Limited (the JVCo) and proceed with appropriate re-imburement to Deanway Muir as required by the JVCo agreement;
- (ii) Authorises the Depute Chief Executive/Executive Director of Neighbourhood Services to continue to meet joint owners and tenants within the Glaisnock Centre as part of the option appraisal exercise;
- (iii) Remits to the Depute Chief Executive/Executive Director of Neighbourhood Services to embark upon a comprehensive option appraisal exercise on the future of the Glaisnock Shopping Centre and report back to Cabinet before summer recess and
- (iv) Otherwise notes the contents of this report.

**Elizabeth Morton**

**Depute Chief Executive/Executive Director of Neighbourhood Services**

**23 January 2013 (AN/SA)**

### **BACKGROUND PAPERS**

1. Report to Development Services Committee on 28<sup>th</sup> November 2006
2. Reports to Cabinet on 24<sup>th</sup> October, 2007, 19<sup>th</sup> December, 2007
3. Report to Full Council on 28<sup>th</sup> February, 2008
4. Report to Emergency Powers Committee on 5<sup>th</sup> July, 2007
5. Reports to Cabinet on 18<sup>th</sup> February, 2009 and 2<sup>nd</sup> December 2009

Members wishing further information should contact Alan Neish, Head of Planning and Economic Development on (01563) 576767.

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