

**Argyll and Bute Council**  
**Development and Infrastructure Services**

**Delegated or Committee Planning Application Report and Report of handling as required by Schedule 2 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 relative to applications for Planning Permission or Planning Permission in Principle**

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**Reference No:** 10/00239/PP

**Planning Hierarchy:** Major

**Applicant:** Tesco Stores Ltd

**Proposal:** Erection of Class 1 Foodstore, Petrol Filling Station, Car Parking and Associated Access

**Site Address:** Campbeltown Creamery, Witchburn Road, Campbeltown

**SUPPLEMENTARY REPORT NO.3**

**1.0 INTRODUCTION**

- 1.1 The purpose of this report is to advise Members of a proposed change of the terms of the section 75 legal agreement associated with the above proposal.
- 1.2 Members will recall that following a pre determination Hearing on 30 September 2010, they were minded to grant the proposal with a section 75 agreement with the following Heads of Terms:

***1. A developer contribution of £120,000 in order to fund specific projects within Campbeltown Town Centre aimed at securing a vibrant and economically active town centre. The full sum will be paid on implementation of the consent when works commence on site. If not committed within a 5 year period, all monies shall be returned to the developer.***

***2. The restriction of the existing Tesco store from being used in future as a retail outlet for convenience goods. This should take effect as soon as the new Tesco store opens.***

***3. The funding of a safer access at Campbeltown Heritage Centre. This is currently priced at £12,000 and the developer's contribution shall not exceed this level. If unused within a 5 year period, all monies shall be returned to the developer.***

***4. A contribution from the developer in order to support the re routing of public transport bus routes plus the installation of a display rack in store for public transport timetables. This subsidy is to the value of £15,000 and is for one year only.***

- 1.3 The Proposed Amended Terms of the Legal Agreement

#### 1.4 Head of Term 2: Restriction of Convenience Goods at Existing Store

- 1.5 The principle reason for seeking this amendment is deliverability. For various reasons the original wording of the term regarding the restriction on the use of the Existing Store is unsatisfactory to both the Applicant and the Council. It is now proposed that a section 75 to be concluded prior to the grant of Planning Permission be amended to provide that; *“Commencement of Development shall not be permitted, unless and until an agreement under Section 75 of the 1997 Act, which provides that for so long as the Proposed Store remains open to the public, the Existing Store shall not be used for the sale of Convenience Goods, has been entered into between the Council and the Applicant or their successors (as proprietors of the Existing Store Site), and has been registered in the Land Register of Scotland/recorded in the General Register of Sasines, as appropriate”*.

This amendment will prevent the existing store from selling convenience goods when the new superstore opens. Whilst members were previously minded to grant planning permission subject to the applicant entering into an Agreement which placed a positive obligation on them to restrict the use of the existing store site upon the proposed store being opened by them, the amended wording places a negative obligation on the Creamery Site which provides that works cannot be commenced until such a time as the applicants have entered into a further s75 Agreement with the Council providing that the existing store shall not be used for the sale of convenience goods for so long as the proposed store remains open. Instead of a single section 75 being concluded, it is now proposed that an initial section 75 will be concluded which deals with points 1, 3 and 4 above at the outset. Where point 2 is concerned, the s75 will include provision for a further section 75 to be concluded prior to the commencement of works. This second section 75 will require that the existing store must not sell convenience goods for so long as the new store is open to the public. This mechanism of restricting the use of the existing store site would achieve the same outcome of the one s75 Agreement approach previously approved by members.

- 1.6 It is understood that the applicant would be unwilling to be a party to an Agreement based on the original one s75 approach which was advised in the committee report because there are a number of suspensive conditions contained in the missives entered into between the applicant and First Milk that require to be satisfied prior to the First Milk conveying the Creamery Site to the applicant. This includes First Milk's requirement to conclude Missives with HIE in respect of the Snipefield site. First Milk cannot progress this matter until such a time as they have ensured that planning permission will be issued in respect of the existing Creamery Site. Accordingly, it is not yet certain that the applicant will have control of the existing Creamery's site. If they commit to a legal agreement at this stage then there is a possibility that another retail operator could implement the consent thereby causing the applicant to have to stop selling convenience goods in their existing store. It is considered that the Committee had previously been minded to grant Planning permission on the understanding that the applicant would refrain from trading convenience goods from their existing store site in exchange for the opportunity to develop the Proposed Store. The applicant and First Milk remain committed to the development of the Proposed Store in Campbeltown.
- 1.7 Following a discussion with the parties involved, namely First Milk, the applicant and the planning and legal officers from the Council, the alternative noted above was proposed. While this would allow the applicant to be sure that they were going to secure the existing Creamery site before they entered into this element

of the section 75, in planning terms it would not preclude the possibility of another operator implementing the planning permission. The two s75 Agreement approach would serve the same planning purpose, namely that the new store could not open until such time as the existing store ceased selling convenience goods thereby providing protection to the existing town centre. The planning service is satisfied with this approach because in planning terms the end result would be exactly the same as if it had been achieved through the original single section 75 agreement.

### **1.8 Head of Term 3: Campbeltown Heritage Access Contribution**

- 1.9 Consent for the development of the bunkhouse accommodation at Campbeltown Heritage Centre was approved on 22 December 2010 (ref. 10/01693/PP) and condition no. 5 of this consent requires that the new access arrangement be completed prior to works starting on site.
- 1.10 As the timetable for this development is running ahead of the superstore proposal, further negotiations were undertaken with the applicant. As a good will gesture the applicants have agreed to pay the Access Contribution to the Council within 7 days of the issue of planning permission rather than on the commencement of works on the superstore are previously agreed. This would allow the development of the bunkhouse to proceed in advance of the superstore.

### **2.0 SUMMARY**

- 2.1 With regard to Term 2, the proposed amendment would serve the same planning purpose in that it would deliver the same requirements of the original section 75 at the same time, namely that the existing store would not be able to sell convenience goods when the new store opens.
- 2.2 Bringing forward the access payment referred to under Term 4 would be of benefit to the developers of the bunkhouse project which it is anticipated will be on site in March / April.

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### **3.0 RECOMMENDATION:**

- 3.1 It is recommended that Members approve the amended terms of the section 75 agreement noted above.

**Angus Gilmour**  
**Head of Planning and Regulatory Services**  
**7 February 2011**

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