

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

Reference No: 10/00222/PPP

Planning Hierarchy: Major

Applicant: CWP Property Development and Investment

Proposal: Erection of Class 1 foodstore with associated development to include car parking, access road, road bridge, petrol filling station and engineering works.

Site Address: 361 Argyll Street, Dunoon.

SUPPLEMENTARY REPORT No. 6

1.0 SUMMARY

This application was considered by the PPSL Committee at a Hearing in the Queen's Hall Dunoon on 8 April 2011 when Members resolved to continue consideration of the application. This Supplementary No 6 should be read in conjunction with Supplementary No 5 dated 8th September 2011.

The purpose of this supplementary report is to confirm the receipt of further emails of representation and correspondence which have arisen since the previous Supplementary was prepared and to clarify pertinent matters.

This application is intrinsically linked to Application 11/00689/PPP (agenda item 7) for construction of a retail store at the former Gasworks Site at Argyll / Hamilton Street, Dunoon which is also referred to in this Supplementary (National Grid Site).

2.0 FURTHER REPRESENTATION

There have been multiple email's issued to the Council (dated 12th, 14th, 15th, 16th and 19th September) by the Applicant and their specialist agent's relating to retail impact matters relevant to their own site and flooding matters at the National Grid site.

It is understood the Applicant (Mr Bruce C Weir) has issued PPSL Members with a letter dated 19th Sept summarising his specialist's concerns and alleging that the Council has acted *'inconsistently and unfairly'* with a bias towards the National Grid application over his own.

Council Officers strongly refute these allegations and wish to address them within this Supplementary Report. It is noteworthy that concerns the Council's review of the applicants Retail Impact Assessment were not raised as a concern during the Hearing process.

3.0 FLOODING

Concerns over flooding issues principally relate to the applicants specific / specialised objections to the National Grid site. All of the technical objections from this applicant have been assessed and recorded on the planning file by the Council's Flood Management Officer and SEPA. There has been recent significant correspondence relating to this and a dedicated Supplementary Report for Application 11/00689/PPP (National Grid Application) has been prepared for PPSL.

To summarise, CWP consider that the extent of the functional flood plain affected and amount of compensatory flood storage provided to satisfy SPP have not been determined. CWP question whether the Council have the detailed information at this stage to enable confirmation whether a store of the size proposed on the National Grid site can be accommodated and will not contravene SPP and be acceptable to SEPA.

In response, both SEPA and the Council's Flood Management Officer are satisfied that the site can accommodate development on a scale which is proposed but there remain various options which require to be fully explored at the detailed design stage to allow refinement of the submitted flood risk measures. The revised condition suggested by SEPA and the Council's Flood Risk Management takes on board comments made by Kaya (CWP's Flood Risk Consultant) and considered to be appropriate to allow this application for Planning Permission in Principle to be recommended for approval.

National Grid have confirmed that they will provide additional details on flood mitigation at a Hearing should Members be minded to continue their application as recommended by Officers. At a Hearing for the National Grid site CWP shall be able to put their own specialist case forward as an objector to the scheme.

4.0 RETAIL IMPACT

The applicants email / letter dated 19th September is accompanied by an email of the same date from his Retail Planning Consultant (*Alex Mitchell*). His consultant identifies 5 areas of concern which shall be addressed in turn:-

- 1) The Council's assessment of the proposal properly requires that the sequential test is followed, but goes on in reason for refusal No. 2 to identify significant detrimental impact upon the vitality and viability of the town centre and other retail outlets. This indicates consideration being given to impacts upon the Co-op and other retail outlet not in the town centre which is inappropriate as the policy position is directed solely at safeguarding town centres. It also favours the National Grid proposal given that the report on that application make it clear that retail uses outwith the town centre are not afforded the same degree of policy protection as town centres .

Comment: In terms of assessing whether the scale of the proposed development is appropriate, I consider that it is also necessary to take into account the expenditure which is spent outwith the town centre but within the catchment. While the retailing outwith the town centre is not subject to the vitality and viability test, its existence will have an effect on what scale of development is appropriate. Reason for refusal No. 1 is consistent with development plan policy. The second reason for refusal refers to LP RET 1 of the Argyll and Bute Local Plan. This policy relates to the application of the sequential test and contains a presumption in favour of retail development firstly within defined town centres, and then if no suitable sites are available, secondly within the defined edge of town centre locations. The policy requires that any proposals for development do not have a detrimental impact on the vitality and viability of existing town centres. It is concluded that the development proposed will have such an effect.

However, it is accepted that the wording for reason for refusal No. 2 does refer to 'a significant detrimental impact on the vitality and viability of the town centre and other retail outlets' and that this wording is not appropriate in the context of Policy LP RET 1. Accordingly, reference to "and other retail outlets" should be deleted from this part of the reason for refusal, as per the recommendation at the end of this report.

- 2) The requirement for a Household Survey is disputed in this case, given that the catchment is not a complicated one and retail choice is limited. Such a survey has not been requested for the National Grid site, suggesting that the applicants for this site are not being treated fairly.

Comment: Whilst a household survey would have introduced additional reliability beyond the assumptions underpinning both retail impact assessments, and the applicants were asked to consider providing one, it has been accepted that the absence of such a survey is not fatal in either case to the assessment of the respective proposals.

- 3) Whilst there are differences in the retail impact assessments as to the percentage of national average turnovers used in the respective assessments (CWP 75%, National Grid 80%) the former has been contested by officers whereas the latter has been accepted with no evidence provided, which again indicates unfairness..

Comment: For the purpose of modeling likely retail impacts, I consider that average turnovers should be used, these are what are normally attributed to existing shops within the catchment, and for a new store where the operator is known, that operators average turnover can be used. Where the operator is not known then the average turnover of the top 4 operators should be used. I note that in the Applicants revised planning and retail statement, their Table 9 referred to the top 5 foodstore company average turnovers. Included in this list is Waitrose, which has a much lower presence in Scotland than Morrisons, Sainsburys ASDA and Tesco. James Barrs original Planning and Retail Statement attributed the turnover /floorspace ratios for Morrisons and the Co-op to the average company turnovers from Retail Rankings, although in subsequent amendments to their Retail Statement, this is one of the elements which changed. In relation to James Barrs use of 75% of company averages, this figure is contained in their Retail Statement of September 2010 and subsequent amendments. It is a figure which they have sought to justify by referring to table 9 of that Retail Statement where they have provided details of the proposed turnovers of selected foodstores in rural locations in support of their argument for not applying the average of the turnovers of the top four supermarket operators as advocated by this Department. Since this is the basis of their assessment they must be happy with this figure, and it is the information in their retail assessment which is being relied upon in drawing conclusions as to the acceptability of the development.

- 4) The content of the National Grid retail impact assessment is disputed in terms of detail and not just in matters of opinion. In particular, the predicted convenience impact on the town centre (excluding Morrisons) is stated to be 8%, whereas when Morrisons are properly included as a town centre business, this rises to a 20.5% impact.

Comment: The committee report for the National Grid development largely draws on the information which was provided by Montagu Evans and presents the figures which they submitted in support of their application. These are different from the judgements which James Barr makes in support of this application. We have to accept that both parties will be seeking to present the argument in favour of their application in the best possible light. However, the report clearly point out that the

convenience impact on the town centre as a whole would be 20.5%. In the case of both developments it is accepted that there would be convenience impacts on the town centre of similar significance, which is unsurprising given that they both propose the same floorspace.

- 5) The National Grid committee report seeks to draw a significant difference in comparison impact between the two proposals and goes on to suggest that the retail impact assessment for the CWP proposal represents an under-estimation of impact. Given that the National Grid RIA uses a much lower turnover ratio, a similar conclusion could equally be drawn about that proposal, but it is not, again suggesting unfairness.

Comment: The table below provides an extract from the retail assessments for both this application and that for the National Grid Site. This provides a comparison of the floor space proposed in both applications and the turnover which the respective retail consultants estimate their proposed stores will have. Each has made different assumptions on the turnovers per square metre of comparison and convenience floorspace, and the amount of trade diverted from existing town centre shops to the proposed new stores. Both specialist retail agents have argued that their approach to the assumption of turnover ratios is correct in the context of their proposals.

	CWP Convenience	CWP Comparison	National Grid Convenience	National Grid Comparison
Square metres (net)	1448	780	1448	552
Turnover per square metre	£8977	£6180	£9236	£4618
Total turnover	£12,998,696	£4,820,400	£13,373,728	£2,549,136
Overall turnover of store (convenience and comparison)		£17,819,096		£15,922,864

In conclusion, concerns have been raised with regard to the methodology and the conservative findings of the retail assessment which accompanies this application. However, in the absence of our own retail impact assessment, we are not sufficiently resourced to rebut these with our own predictions (nor is there certainty that a further assessment would clarify matters rather than simply introduce additional uncertainty into the process). It is important that Members appreciate that Retail Impact Assessments should be regarded as an art rather than an exact science, and this is evidenced by the different approaches taken by James Barr in support of the CWP application and those of Montagu Evans in relation to the application on the National Grid site. It must be accepted that each consultant will seek to present his client's proposal in the most favourable light based on the available data and those assumptions which can reasonably be made, and in turn, the conclusions which can be drawn, in the context of the particular catchment area and the nature of the development proposed. Neither approaches should be regarded as being definitive, but a broad indication of the likely level of impact. Accordingly some degree of disparity between assessments for these competing proposals must be accepted as an unavoidable feature of the decision-making process

5.0 RECOMMENDATION

It is recommended that Members note the content of this supplementary report and planning permission be refused as per reasons 1, 3, and 4 of the original report and with reason 2 amended to read as follows:

2. The proposal is considered to be contrary to the policy LP RET 1 of the 'Argyll and Bute Local Plan' (August 2009). The proposed foodstore is outwith Dunoon Town Centre, an alternative sequentially better site is available within the edge of town centre, and there is a significant detrimental impact on the vitality and viability of the town centre. The proposal is not consistent with Development Plan Policy, as the sequential test has not been satisfied, and that it would be possible to provide a smaller store, more appropriate to the catchment area's available expenditure either within the defined town centre, or edge of town centre areas.

Accordingly, the proposed development would be contrary to Scottish Planning Policy (February 2010, paras. 52-65), to PROP SET 2 of the 'Argyll and Bute Structure Plan' (November 2002), and to policy LP RET 1 of the 'Argyll and Bute Local Plan' (August 2009).

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