

**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:** 10/00222/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.

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**SUPPLEMENTARY REPORT No. 8**

**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. The application was considered by the PPSL Committee on 18th May 2011 but continued until the application for the erection of a retail store at the former Gasworks Site at Argyll / Hamilton Street, Dunoon (ref. 11/00689/PPP) could be reported.

Both applications were considered at the PPSL Committee on 21st September 2011 where it was recommended that both applications be continued with the National Grid scheme to be determined at a Hearing on 9th November 2011 and the CWP scheme determined thereafter. The outcome of the Hearing was to, further continued determination of the National Grid application for additional flood risk information to be submitted for consideration (and therefore continuation of the CWP scheme).

This Supplementary No. 8 should be read in conjunction with other supplementary reports and an understanding of the National Grid.

The purpose of this supplementary report is to confirm the receipt of further correspondence which has arisen since the previous supplementary was prepared.

**2.0 FURTHER REPRESENTATION**

A letter of objection (dated 8<sup>th</sup> December 2011) has been received from the Commercial Property Manager of National Grid Property and copies have also been sent to the Chief Executive and Head of Governance and Law.

*National Grid Property (NGP) wish to make a further strong objection to the CWP application and ensure that each of the points made is drawn to the attention of the planning committee as material to the determination of the CWP application in the context of deliverability.*

*NGP comment that Kaya Consulting have submitted numerous objections to the NGP scheme on behalf of CWP which attempt to distract attention away from planning policy and relative merits of the two schemes. NGP consider these objections as unsustainable and factually unsupportable which is why both the Council's Flood Alleviation and SEPA have raised no objection to the NGP scheme.*

*Whilst NGP is providing clarification in respect of one of the flood conditions, nothing raised at any of the committees or hearings to date, or in correspondence, has caused the Council or statutory consultees to change their recommendations on the two schemes in any way. Similarly, it has not been possible to bring forward competent motions to refuse the NGP application or approve the CWP scheme.*

*Nonetheless, National Grid has listened with concern to further, but equally erroneous allegations by CWP and their advisers - both at the hearing and in the press - that a supermarket cannot be delivered on the NG site at Argyll Street. In reality, doubt surrounding deliverability should more accurately be directed towards the CWP scheme for the following three very important reasons:*

### **1. Site ownership**

*National Grid owns its site in Dunoon and therefore in a position to bring the site forward for retail use quickly should the Council grant planning permission. By contrast, CWP do not own the application site at 361 Argyll Street but controlled by two third parties. CWP would therefore require to successfully conclude commercial terms with these two landowners before a supermarket could be delivered on the site. CWP may well have option agreements in place but the chances of successfully concluding commercial terms with both in a reasonable timescale, or indeed at all, in a difficult and changing economic climate are far from certain.*

*Moreover, circumstances will undoubtedly have changed since the original option agreements were made, not least in relation to planning, and so the expectations of the various parties are also likely to have changed accordingly. Against this backdrop, reaching the necessary agreements to free up the site for development simply cannot be guaranteed.*

*In light of this, it is imperative that details of the CWP option agreements are fully aired and debated as these are critical to assessing the likelihood of a supermarket coming forward on the site.*

*Given the nature of the debate about the relative merits of the two competing retail proposals currently before the council, these are key material considerations which the Council is legally obliged to assess in the context of deliverability.*

**Comment:** Whilst landownership may be a contributing and material factor to the planning process, especially when viability / deliverability are under scrutiny, CWP have submitted a 'red line' boundary plan showing land within their control and an owner notification certificate with their application which have not been challenged. To this extent, the Council should assume land ownership is not an insurmountable hurdle at this point.

### **2. Relocation of existing businesses**

*In addition to not owning the land, there are existing commercial uses on the CWP application site which would have to be extinguished or relocated in order to deliver a new supermarket.*

A supporting letter from Colliers on behalf of CWP dated September 1<sup>st</sup> 2011 explains the inextricable link between relocating the existing uses on the site and its redevelopment for retail. This makes clear that,

"CWP are not proposing to extinguish an existing business but are making arrangements to relocate this on an alternative site offering more suitable accommodation, enabling the existing business to expand and prosper" (my emphasis)

This information is amplified on the CWP website which explains that the application will enable ".....Walkers to relocate nearby to a purpose built DIY garden centre and café" (my emphasis). (NGP note that there is no mention of Mica Hardware).

It is clear that the ability to bring the site forward for retail is entirely dependent upon the CWP's stated requirement of relocating the existing garden centre and other uses which currently occupy it. Moreover, enabling the business to "expand and prosper" clearly implies a larger site than occupied at present.

Having regard to the statements made by CWP, it follows that relocation cannot happen until and unless two critical things have occurred:

- 1 CWP has secured a (larger) relocation site nearby, capable of enabling the existing business to expand and prosper; and
- 2 CWP has obtained the necessary planning permission for a new purpose built DIY garden centre and café on the relocation site.

Had they not recommended the CWP scheme for refusal, NGP assumes that the Council would have sought to control this sequence of events by means of a legal agreement otherwise there would be the risk that a food store could be developed without first satisfactorily relocating the existing businesses.

The difficulties in relocating existing businesses are many and cannot be underestimated. The costs alone of securing a larger relocation site nearby would not be insubstantial thereby presenting a financial and very real obstacle to developing the existing Argyll Street site.

Perhaps the biggest challenge of all is finding and securing a larger suitable relocation site nearby in Dunoon. In this context, the Council should be aware that CWP contacted National Grid about purchasing the former gasworks site in Argyll Street site but it is clearly not available given current application 11/00689/PPP.

NGP is not aware of a suitable alternative in Dunoon which accords with CWP's strict site selection criteria. Similarly, NGP is not aware that CWP have undertaken any pre-application discussions with the Council in respect of potential relocation sites.

Nonetheless, given CWP's own confirmation that a relocation site is a prerequisite for delivery of the their site, progress in respect of the "arrangements" being in respect of items 1 and 2 above are further key issues which must be fully aired and debated.

Again, these are all key material considerations which the Council is legally obliged to assess in the context of deliverability, albeit that the option agreements referred to above may provide some clarification on these matters.

It is NGP's view that displacement and extinguishment of existing commercial uses and loss of existing jobs - through the lack of a viable and deliverable relocation site - would amount to a fifth reason for refusal of the CWP application.

**Comment:** The loss of the existing employment use / garden centre is a material concern and has been addressed by CWP thus far who have confirmed that alternative sites are being considered for the displacement and shall be addressed on submission of AMSC (detailed application) if their scheme is approved as Planning Permission in Principle. They are not currently in a position to identify the alternative provisions. A S75 agreement, similar to that used at Tesco Campbeltown, may be deployed should Members be minded to approve the scheme.

### **3. Excessive infrastructure costs**

*The description of development in the CWP includes reference to “access road, road bridge and engineering works ” and understand that this is to enable future access to the land to the rear, unconnected with a retail scheme and that these works will be paid for by any retailer locating on the site. In the course of NG’s discussions with operators, one of the major retailers this has identified the prohibitive abnormal costs of this infrastructure and associated land profiling as a major constraint to developing the site.*

*This represents a further important material consideration and question mark over the site at 361 Argyll Street which, again, is central to the Council’s assessment of deliverability.*

#### *Summary*

*Leaving aside the four insurmountable reasons for refusal, CWP would require to successfully undertake a number of difficult, costly and uncertain steps in order that the site at 361 Argyll Street would have any chance of coming forward for retail use. These include:-*

- 1. successfully concluding commercial negotiations with not one , but two landowners,*
- 2. finding and securing a larger relocation site in Dunoon,*
- 3. obtaining planning permission for development on the relocation site;*
- 4. physically relocating existing uses and setting them up on the new site;*
- 5. persuading retailers to pay for costly infrastructure unrelated to a retail development which we know at least one major operator has already balked at.*

*Singularly, these matters will not be attractive to retail operators, particularly in the current climate. Cumulatively, they reveal a convoluted and financially precarious arrangement over which CWP do not have complete control.*

*As a consequence, CWP are simply not in a position to bring the Argyll Street site forward for retail development and cannot demonstrate, with any certainty, the ability to do so in the future.*

*Unencumbered by the above issues, the National Grid site is the only realistic option to deliver a new supermarket for Dunoon. The existing businesses and petrol filling station at 361 Argyll Street would not be displaced and would continue to provide services to the local community.*

*In addition to enjoying the support of officers, delivering the NG site does not rely on third party landowners, finding new sites or relocating existing uses with all the time, expense and uncertainty which this necessarily involves.*

*Very well aware of these factors, retailers have confirmed that they are happy to trade from the NG site, should it be granted planning permission. Had this not been the case, operators would have committed fully to the CWP site long before now given that their application was submitted in February 2010.*

## **5.0 RECOMMENDATION**

It is recommended that Members note the content of this supplementary report and letter of objection from NGP to the CWP scheme as a material consideration in their determination of the application.

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