



**North Ayrshire Council**  
Comhairle Siorrachd Àir a Tuath

## **Planning Committee**

A Meeting of the **Planning Committee** of North Ayrshire Council will be held in the **Council Chambers, Ground Floor, Cunninghame House, Irvine, KA12 8EE** on **Wednesday, 26 September 2018 at 14:00** to consider the undernoted business.

**1       Declarations of Interest**

Members are requested to give notice of any declarations of interest in respect of items of business on the Agenda.

**2       Minutes**

The accuracy of the Minutes of the meeting held on 29 August 2018 will be confirmed and the Minutes signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973 (copy enclosed).

**3       Irvine**

Submit reports on the following applications:

**3.1     1800655PP - Riverway Retail Park, New Street, Irvine**

Section 42 planning application for non-compliance with planning conditions 4, 5 and 6 of planning permission CH/01/88/0546/L (copy enclosed).

**4       Isle of Arran**

Submit reports on the following applications:

**4.1     1800823ALO - Whin Farm, Brodick, Isle Of Arran**

Removal of Section 75 obligation attached to planning permission 06/00278/PP to remove occupancy restriction (copy enclosed).

- 5 Notice under Section of 145 of the Town and Country Planning (Scotland) Act 1997: Site To East Of Castlepark Gardens, Fairlie**  
Submit report by the Executive Director (Economy and Communities) seeking to serve a Notice under Section of 145 of the Town and Country Planning (Scotland) Act 1997 requiring compliance with a condition attached to planning permission (ref: 17/00584/PPM & 18/00659/PP) (copy enclosed).
- 6 Urgent Items**  
Any other items which the Chair considers to be urgent.

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## Planning Committee Sederunt

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Tom Marshall (Chair)  
Timothy Billings (Vice-Chair)  
Robert Barr  
Ian Clarkson  
Robert Foster  
Christina Larsen  
Shaun Macaulay  
Ellen McMaster  
Ronnie McNicol  
Donald Reid

Chair:

Apologies:

Attending:

**Irvine, 29 August 2018** - At a Meeting of the Planning Committee of North Ayrshire Council at 2.00 p.m.

**Present**

Tom Marshall, Timothy Billings, Robert Barr, Robert Foster, Christina Larsen, Ellen McMaster, Ronnie McNicol and Donald Reid.

**In Attendance**

J. Miller, Senior Manager (Planning) (Economy and Communities); M. Barbour, Solicitor (Legal Services); and E. Gray, Committee Services Officer (Chief Executive's Service).

**Chair**

Councillor Marshall in the Chair.

**Apologies for Absence**

Ian Clarkson and Shaun Macaulay

**1. Declarations of Interest**

In terms of Standing Order 10 and Section 5 of the Code of Conduct, Councillor Billings, as a Council representative on North Ayrshire Leisure Ltd., declared an indirect interest in Agenda Item 4.1 (18/00522/PPM: East Park, Quarry Road, Irvine) and took no part in the decision making process for this item.

**2. Minutes**

The Minutes of the meeting of the Planning Committee held on 23 May 2018 were confirmed and the Minutes signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973.

**3. Isle of Arran**

Submitted reports on the following applications:

**3.1 18/00570/PP: Bay News, Whiting Bay, Brodick, Isle Of Arran**

Tim Hodkinson has applied for a change in use from Class 1 (Retail) to Class 2 (Financial & Professional Services), and the removal of condition 1 of a planning permission (ref. 13/00612/PP) to remove an occupancy restriction of an associated dwelling flat and discharge of the Section 75 Agreement at Bay News, Whiting Bay, Brodick, Isle Of Arran.

The Senior Manager (Planning) outlined the terms of the planning report, including narrating the relevant planning history of the site. On 4 August 2009, the Planning Committee agreed to grant planning permission for alterations to the roof of the shop to form a dwelling flat and the erection of a balcony to the rear (ref. 09/00199/PP), subject to the applicants entering into a Section 75 Agreement to limit the occupation of the dwelling flat to the owner or an employee of the retail premises on the ground floor. On 16 May 2014, the Planning Committee agreed to amend the terms of the Section 75 Agreement and condition 1 of planning permission 09/00199/PP to include use of the 1<sup>st</sup> floor accommodation for holiday letting (ref. 13/00612/PP).

The Committee unanimously agreed to grant the application.

### **3.2 18/00489/PP: Site to The East Of Linevern Silverhill, Whiting Bay, Brodick, Isle Of Arran**

Stuart Heaney has applied for planning permission for road upgrading, the erection of a dwellinghouse and temporary siting of a caravan in the Upper Silverhills area of Whiting Bay. Four letters of objection and three letters of support were received and were detailed in the report.

The Senior Manager (Planning) outlined the terms of the planning report, including narrating that there has been a history of refusals of planning applications for housing development in the Upper Silverhills area, due to concerns over the unsuitability of the road provision in the area.

The Committee unanimously agreed to grant the application subject to the following conditions:-

1. That prior to the commencement of the development hereby approved, the developer shall submit for the written approval of North Ayrshire Council as Planning Authority:
  - Full details and/or sample of the proposed external finishes of the buildings;
  - Full details of the proposed boundary enclosures; and
  - Full details of the proposed drainage scheme for the site.

If approved, the development shall thereafter be completed only in accordance with the approved details, to the satisfaction of North Ayrshire Council as Planning Authority.

2. That prior to the commencement of development the developer shall submit for the written approval of North Ayrshire Council as Planning Authority, full details of the proposed upgrading of the access road and turning hammerhead, as outlined on plan 1704/02-Rev F, hereby approved. For the avoidance of doubt the access road shall be upgraded to an adoptable standard to the satisfaction of North Ayrshire Council as Planning Authority. The access road upgrade shall be completed, prior to the commencement of the development of the dwellinghouse, hereby approved, to the satisfaction of North Ayrshire Council as Planning Authority, unless otherwise agreed in writing, by North Ayrshire Council as Planning Authority.

3. That the first 2 metres of the driveway access shall be hard surfaced in order to prevent loose material being carried onto the carriageway and shall be designed in such a way that no surface water shall issue from the access onto the carriageway, all to the satisfaction of North Ayrshire Council as planning authority.
4. That notwithstanding the details within the approved plans the proposed residential caravan is temporary and shall be removed from the application site by 28th August 2020 or on first occupation of the dwellinghouse hereby approved, whichever occurs first, all to the satisfaction of North Ayrshire Council as planning authority. Details of the resiting of the caravan shall be submitted for the approval in writing of North Ayrshire Council as planning authority.

### **3.3 18/00542/PP: Plot 3, Greenhill Torbeg, Blackwaterfoot, Brodick, Isle Of Arran**

Ms Janet Murchie has applied for planning permission for the erection of a house on a site known as Plot 3 Greenhill in Torbeg, north of Blackwaterfoot. Five letters of objection and 20 letters of support were received and were detailed in the report.

The Senior Manager (Planning) provided details of a representation which had been received following the publication of the agenda and a copy was circulated to Members. This representation highlighted concerns regarding the requirements for a visibility splay to the north of the site, use of the current septic tank and the impact of the development on the skyline.

The Senior Manager (Planning) outlined the terms of the planning report, including narrating the responses detailed in the report, some of which raised similar concerns to the most recent representations.

The Committee was informed of a letter received from the applicant's solicitor advising that the existing north visibility splay is owned by all five plots on a pro-indiviso basis as is the existing access road; meaning that each plot owner owns an equal share in the property which can be sold but which cannot be divided physically. These rights being set out in a Deed of Conditions granted in 1996 and include the following burdens:-

- 1 a condition that all buildings must be drained and sewered via one septic tank;
- 2 a right of an outflow pipe for the 5 plots' septic tank; and
- 3 the right to build 5 houses.

The Senior Manager (Planning) highlighted an amendment to the second recommended condition which should read:-

*“That the private road, as detailed on the approved plan 1807/11 to include a passing place and visibility splays of 2.5m by 90m in both directions at the junction with the public road, shall be upgraded to adoptable standard prior to the commencement of the development hereby approved, to the satisfaction of North Ayrshire Council as planning authority, unless otherwise agreed in writing by the planning authority. A road construction consent shall require to be obtained prior to the commencement of the development hereby approved, all to the satisfaction of North Ayrshire Council as planning authority.”*

The Committee unanimously agreed to grant the application subject to the following conditions:-

1. That prior to the commencement of the development hereby approved, the developer shall submit for the written approval of North Ayrshire Council as Planning Authority:

- Full details and/or sample of the proposed external finishes of the buildings;
- Full details of the proposed boundary enclosures; and
- Full details of the proposed drainage scheme for the site.

If approved, the development shall thereafter be completed only in accordance with the approved details, all to the satisfaction of North Ayrshire Council as Planning Authority.

2. That the private road, as detailed on the approved plan 1807/11 to include a passing place and visibility splays of 2.5m by 90m in both directions at the junction with the public road, shall be upgraded to adoptable standard prior to the commencement of the development hereby approved, to the satisfaction of North Ayrshire Council as planning authority, unless otherwise agreed in writing by the planning authority. A road construction consent shall require to be obtained prior to the commencement of the development hereby approved, all to the satisfaction of North Ayrshire Council as planning authority.
3. That the first 2 metres of the driveway access shall be hard surfaced in order to prevent loose material being carried onto the carriageway and shall be designed in such a way that no surface water shall issue from the access onto the carriageway, all to the satisfaction of North Ayrshire Council as planning authority.
4. That, for the avoidance of doubt, the detached garage hereby approved shall be used for domestic purposes incidental to the enjoyment of the associated dwellinghouse only and for no other purpose.

### **3.4 18/00541/PP: Plot 5, Greenhill Torbeg, Blackwaterfoot, Brodick, Isle Of Arran**

Mr Donald Murchie applied for planning permission for the erection of a house on Plot 5 Greenhill in Torbeg, north of Blackwaterfoot. Five letters of objection and 20 letters of support were received and were detailed in the report.

The Senior Manager (Planning) provided details of a representation which had been received following the publication of the agenda and a copy was circulated to Members. This representation highlighted concerns regarding the requirements for a visibility splay to the north of the site, use of the current septic tank and the impact of the development on the skyline.

The Senior Manager (Planning) outlined the terms of the planning report, including narrating the responses detailed in the report some of which raised similar concerns to the most recent representations and consideration of these representations.

The Committee were informed of a letter received from the applicant's solicitor advising that the existing north visibility splay is owned by all five plots on a pro-indiviso basis as is the existing access road; meaning that each plot owner owns an equal share in the property which can be sold but which cannot be divided physically. These rights being set out in a Deed of Conditions granted in 1996 and include the following burdens:-

- 1 a condition that all buildings must be drained and sewered via one septic tank;
- 2 a right of an outflow pipe for the 5 plots' septic tank; and
- 3 the right to build 5 houses.

The Senior Manager (Planning) highlighted an amendment to the second recommended condition which should read:-

*“That the private road, as detailed on the approved plan 1807/11 to include a passing place and visibility splays of 2.5m by 90m in both directions at the junction with the public road, shall be upgraded to adoptable standard prior to the commencement of the development hereby approved, to the satisfaction of North Ayrshire Council as planning authority, unless otherwise agreed in writing by the planning authority. A road construction consent shall require to be obtained prior to the commencement of the development hereby approved, all to the satisfaction of North Ayrshire Council as planning authority.”*

The Committee unanimously agreed to grant the application subject to the following conditions:-

1. That prior to the commencement of the development hereby approved, the developer shall submit for the written approval of North Ayrshire Council as Planning Authority:
  - Full details and/or sample of the proposed external finishes of the buildings;
  - Full details of the proposed boundary enclosures; and
  - Full details of the proposed drainage scheme for the site.

If approved, the development shall thereafter be completed only in accordance with the approved details, all to the satisfaction of North Ayrshire Council as Planning Authority.



2. That the private road, as detailed on the approved plan 1807/11 to include a passing place and visibility splays of 2.5m by 90m in both directions at the junction with the public road, shall be upgraded to adoptable standard prior to the commencement of the development hereby approved, to the satisfaction of North Ayrshire Council as planning authority, unless otherwise agreed in writing by the planning authority. A road construction consent shall require to be obtained prior to the commencement of the development hereby approved, all to the satisfaction of North Ayrshire Council as planning authority.
3. That the first 2 metres of the driveway access shall be hard surfaced in order to prevent loose material being carried onto the carriageway and shall be designed in such a way that no surface water shall issue from the access onto the carriageway, all to the satisfaction of North Ayrshire Council as planning authority.
4. That, for the avoidance of doubt, the detached garage hereby approved shall be used for domestic purposes incidental to the enjoyment of the associated dwellinghouse only and for no other purpose.

#### **4. Irvine**

Submitted reports on the following applications:

##### **4.1 18/00522/PPM: East Park, Quarry Road, Irvine**

Hub SW/North Ayrshire Council has applied for planning permission for the erection of a building to accommodate an indoor artificial pitch, erection of changing rooms (linked to existing building from phase 1); the formation of an external all-weather sports pitch and three tennis courts, to include associated boundary enclosures; the erection of a storage building; the formation of a 750m cycling loop together with associated car parking provision, SuDs and drainage infrastructure and the demolition of an existing workshop building. Two representations were received and were detailed in the report.

The Committee unanimously agreed to grant the application subject to the following conditions:-

1. That, for the duration of the land engineering and construction operations hereby approved, an area of ground within the site equivalent to the size of an existing full size grass pitch shall be retained for public use at all times, unless otherwise agreed in writing with North Ayrshire Council as Planning Authority..
2. That, prior to the commencement of any land drainage works hereby approved, confirmation shall be submitted in writing to North Ayrshire Council as Planning Authority and certified by a suitably qualified person that a scheme to treat the surface water arising from the site has been prepared in accordance with the principles and practices contained in 'The SuDS Manual' (CIRIA report C753, published November 2015), and that the site would be drained in accordance with the details contained in the submitted Flood Risk Assessment, Drainage Strategy and Landscaping Proposals. Thereafter, the

certified scheme shall be implemented prior to the completion of the development and maintained thereafter to the satisfaction of North Ayrshire Council as Planning Authority.

3. That, prior to commencing the construction of the buildings hereby approved, the applicant/agent shall submit for the written approval of North Ayrshire Council as Planning Authority a detailed schedule of the proposed external finishes to be used.
4. That the presence of any significant unsuspected contamination that becomes evident during the development of the site shall be brought to the attention of Environmental Health. Thereafter a suitable investigation strategy as agreed with North Ayrshire Council shall be implemented and any necessary remediation works carried out prior to any further development taking place on the site, all to the satisfaction of North Ayrshire Council as Planning Authority.

#### **4.2 18/00466/PPM: Dundonald Links, Ayr Road, Irvine**

Loch Lomond Golf Club have applied under Section 42 of Town and Country Planning (Scotland) Act 1997 to vary conditions 1, 2 and 3 of planning permission in principle ref. 15/00705/PPPM for housing development and visitor accommodation at Dundonald Links Golf Course.

Conditions 1 and 2 of 15/00705/PPPM relate to the timing of submission of technical studies in advance of considering matters specified in conditions application for development. Condition 3 sets out the need for a detailed masterplan and development brief.

The Committee unanimously agreed to grant the application subject to the following conditions:-

1. That along with the submission of the first application for the approval of matters specified in conditions (MSC), a programme of archaeological works in accordance with a written scheme of investigation, the results of which shall inform the layout of the detailed masterplan required by Condition 3, shall be submitted for the approval of North Ayrshire Council as Planning Authority. Thereafter, the developer shall ensure that the approved programme of archaeological works is fully implemented and that all recording and recovery of archaeological resources within the development site is undertaken to the satisfaction of North Ayrshire Council as Planning Authority.
2. That along with the submission of the first application for the approval of matters specified in conditions (MSC) a scheme to treat the surface water arising from the site in accordance with the principles and practices contained in CIRIA's SuDS Manual (C753) (published 11th November 2015), the results of which shall inform the layout of the detailed masterplan required by Condition 3, shall be submitted for the written approval of North Ayrshire Council as Planning Authority. Thereafter, the scheme as may be approved shall be implemented during the course of development and maintained thereafter to the satisfaction of North Ayrshire Council as Planning Authority.

3. That along with the submission of the first application for the approval of matters specified in conditions (MSC), a detailed masterplan for the site and a development brief shall be submitted for the approval of North Ayrshire Council as Planning Authority. The detailed masterplan and development brief shall take into account the findings of the archaeological investigations and the detailed SuDS scheme required by conditions 1 and 2 respectively, and shall indicate:
- the means of access to the site, including multi-user link(s) to public transport at Ayr Road;
  - the development layout;
  - the housing designs for the development;
  - structural landscaping including earthworks to mitigate road noise from the A78 and industry;
  - areas of open space;
  - areas for children's play and
  - phasing.

For the avoidance of doubt, the maximum number of housing units within the development hereby approved shall not exceed 45. In addition, the housing development area shall be limited to the land generally to the south of the replacement clubhouse consented under the terms of planning permission ref. 15/00558/PP.

Thereafter, the details contained in the MSC application(s) shall accord with the detailed masterplan and development brief as may be approved, to the satisfaction of North Ayrshire Council as Planning Authority.

4. That the approval of North Ayrshire Council as Planning Authority with regard to the siting, design and external appearance of, landscaping, means of access to the proposed development and affordable housing contribution shall be obtained before the development is commenced.
5. That application(s) for the approval of matters specified in conditions (MSC) shall include details of the noise mitigation measures in accordance with PAN 1/2011 'Planning and Noise' and the associated Technical Advice Note (TAN) - 'Assessment of Noise'. The assessment shall take into account all noise related details contained in the consultation response of Environmental Health dated 9th December 2015. Thereafter, the findings arising from the noise impact assessment as may be approved shall be implemented prior to any of the houses being occupied to the satisfaction of North Ayrshire Council as Planning Authority.
6. That application(s) for the approval of matters specified in conditions (MSC) shall include measures to implement the findings and recommendations of the Extended Phase 1 Habitat Survey prepared by Energised Environments Ltd dated October 2015. Thereafter, the development shall be implemented only in accordance with the measures as may be approved unless North Ayrshire Council as Planning Authority gives written consent to any variation.

7. That application(s) for the approval of matters specified in conditions (MSC) shall include a biodiversity action plan, which shall include details of bat hibernacula, bird boxes, wildflowers and other measures to promote/safeguard biodiversity and nature conservation. Thereafter, the action plan as may be approved shall be implemented prior to the completion or occupation of the development, whichever is the sooner, to the satisfaction of North Ayrshire Council as Planning Authority.
8. That visibility splays of 4.5m x 215m shall be provided and maintained on land within the applicant's control, such that there is no obstruction to visibility above a height of 1.05 metre measured above the adjacent carriageway level to the satisfaction of North Ayrshire Council as Planning Authority.
9. That, prior to the commencement of the development, hereby approved, full details of proposed treeworks and tree protection measures for the development shall be submitted for the written approval of North Ayrshire Council as Planning Authority. The details shall comply with the principles and practices contained in "BS 5837:2012 - Trees in relation to design, demolition and construction - Recommendations." Detailed plans indicating tree protection fencing to be erected, an Arboricultural Impact Assessment and an Arboricultural Method Statement shall be submitted for written approval. For the avoidance of doubt:
  - there shall be no treeworks undertaken during the main bird breeding season (March - September);
  - all tree protection measures to be erected shall be maintained in a satisfactory condition for the duration of all engineering and construction operations until the completion of the development.

The development shall be implemented only in accordance with such details as may be approved to the satisfaction of North Ayrshire Council as Planning Authority.
10. That, during the implementation of the development hereby approved, all recommendations contained within the report titled "Residential Development - Dundonald Links, Geo-Environmental Desk Study Report" by Fairhurst, Report No. 111895 and dated November 2015 shall be implemented to the satisfaction of North Ayrshire Council as Planning Authority.
11. That the presence of any significant unsuspected contamination that becomes evident during the development of the site shall be brought to the attention of Environmental Health. Thereafter a suitable investigation strategy as agreed with North Ayrshire Council shall be implemented and any necessary remediation works carried out prior to any further development taking place on the site, all to the satisfaction of North Ayrshire Council as Planning Authority.
12. That the clubhouse, as previously approved under the terms of planning permission ref. 18/00465/PP, shall be erected to the satisfaction of North Ayrshire Council as Planning Authority prior to the commencement of the housing development hereby approved, unless otherwise agreed in writing.

## **5. North Coast and Cumbraes**

Submitted reports on the following applications:

### **5.1 18/00518/PP: 48 Gallowgate Street, Largs**

Stephen McDonald has applied for the extension of an outdoor seating area (in retrospect) at 48 Gallowgate Street, Largs. Three letters of support and one letter of support were received and were detailed in the report.

The Senior Manager (Planning) provided details of three further representations (two objections and one of support) which were received following the publication of the agenda and copies were circulated to members. The objections raised concerns around expanding areas for the sale of alcohol and size of the seating area. The letter of support was concerned with supporting jobs and businesses in the area.

The Committee unanimously agreed to grant the application subject to the following conditions:-

1. That the seating area shall at all times be enclosed by a suitably designed removable barrier, full details of which shall be submitted for the written approval of North Ayrshire Council as Planning Authority. For the avoidance of doubt no artificial lighting or individually sited heating systems shall be provided within the outdoor seating area.
2. That the maximum permitted hours of operation of the outdoor seating area shall be between 1100 and 2100 hours on any day unless otherwise agreed in writing by North Ayrshire Council as Planning Authority. The seating together with any tables, umbrellas, associated posts and barriers shall be removed from the square outwith these hours and at all times when the premises are closed to customers.

### **5.2 18/00393/PPPM: Site To South East Of 41 Tarbert Avenue, West Kilbride**

Robert McMillan has applied for planning permission in principle for residential development of the site to the south east of 41 Tarbert Avenue, West Kilbride. Seven letters of objection were received and were detailed in the report.

The Committee unanimously agreed to grant the application subject to the following conditions:-

1. That prior to the submission of the first application for the approval of matters specified in conditions (MSC), a programme of archaeological works in accordance with a written scheme of investigation, the results of which shall inform the layout of the detailed masterplan required by Condition 3, shall be submitted for the approval of North Ayrshire Council as Planning Authority. Thereafter, the developer shall ensure that the approved programme of archaeological works is fully implemented and that all recording and recovery

of archaeological resources within the development site is undertaken to the satisfaction of North Ayrshire Council as Planning Authority.

2. That prior to the submission of the first application for the approval of matters specified in conditions (MSC), a water and drainage assessment shall be for the approval of North Ayrshire Council as Planning Authority which actions all relevant recommendations of the Flood Risk Assessment. The water and drainage assessment shall demonstrate that:
  - (i) the development will not be at high medium or low likelihood of flooding or will increase the likelihood of flooding elsewhere;
  - (ii) run-off to the site from adjacent steeply sloping ground shall be intercepted and appropriately attenuated and treated before discharging to the water environment or to a suitable piped system;
  - (iii) in the event that surface water will discharge to the existing culvert at the site's Western edge, there would be no notable negative impact in terms of flood risk and water quality; and,
  - (iv) full details of the parties responsible for the maintenance of all drainage assets are provided in a suitably detailed plan and that all associated maintenance operations are identified on an accompanying schedule.

The water and drainage assessment shall detail a scheme to treat the surface water arising from the site in accordance with the principles and practices contained in CIRIA's SuDS Manual (C753) (published 11th November 2015), the results of which shall inform the layout of the detailed masterplan required by Condition 3. Thereafter, the scheme as may be approved shall be implemented during the course of development and maintained thereafter to the satisfaction of North Ayrshire Council as Planning Authority.

3. Prior to the commencement of development on site, a further application(s) for the approval of the matters specified in this condition (MSC) must be submitted to and approved by North Ayrshire Council as Planning Authority. These matters are as follows:
  - (a) the layout of the site, including all roads, footways, shared paths, car parking areas, and open spaces;
  - (b) the siting, design and external appearance of all building(s) and any other structures, including plans and elevations showing their dimensions and type and colour of external materials;
  - (c) a detailed flood risk assessment, including cross-sections of existing and proposed ground levels, details of under-building and finished floor levels in relation to a fixed datum, preferably ordnance datum, and detailing how flood issues are addressed.
  - (d) the means of drainage and surface water strategy and methodology for sewage disposal, including Sustainable Urban Drainage Systems (SUDS), all set out in a comprehensive Drainage Assessment, including maintenance. Such SUDS shall be self-certified by a suitably qualified person;
  - (e) the means of access to the site including an updated Transport Strategy;
  - (f) the design and location of all boundary treatments including walls and fences;

- (g) the landscaping and associated maintenance proposals for the site, including details of existing trees, hedgerows and other planting to be retained and tree protection measures together with proposals for new planting specifying number, size and species of all trees and shrubs and a woodland management implementation programme;
- (h) details of the phasing of development (covering all relevant aspects of development detailed in (a) above);
- (i) a design and access statement with the design issues addressed in the formulation of the proposals, set out in line with the relevant supplementary design guidance approved by North Ayrshire Council.

For the avoidance of doubt the illustrative masterplan provided with this application is not approved. The layout of the site shall take into account archaeological investigations, the detailed SuDS scheme, water and drainage assessments required by conditions 1 and 2 respectively, and shall take into account the principles of the Scottish Government's 'Designing Streets' and 'Designing Places' policy documents to the satisfaction of North Ayrshire Council as Planning Authority.

### **5.3 18/00315/PP: Site To North Of Seaview Caravan Park, Ardrossan Road, Seamill**

Iain McClain has applied for the formation of extension to Seaview Caravan Park, Ardrossan Road, Seamill. 14 letters of support were received and were detailed in the report.

The Senior Manager (Planning) highlighted an amendment to the second recommended condition which should read:-

*“That the site shall only be used as a caravan site for non-permanent occupation for holiday or tourism use only to the satisfaction of North Ayrshire Council as Planning Authority.”*

Councillor Barr, seconded by Councillor McNicol, moved that the application be granted with no conditions.

As an amendment, Councillor Reid, seconded by Councillor Foster, moved that the application be granted subject to the conditions set out in the report.

On a division, there voted for the amendment six and for the motion two and the amendment was declared carried.

Accordingly, the Committee agreed to grant the application subject to the following conditions:-

1. That prior to the commencement of development the developer shall ensure that all planting and seeding, comprised in approved drawing LS01, shall be carried out in the first planting season and seeding seasons to the satisfaction of North Ayrshire Council as Planning Authority. Any trees or plants which, within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the

next planting season with others of a similar size and species, unless North Ayrshire Council as Planning Authority gives written consent to any variation. For the avoidance of doubt, the trees and planting shall be protected with fencing during the construction of the development.

2. That the site shall only be used as a caravan site for non-permanent occupation for holiday or tourism use only to the satisfaction of North Ayrshire Council as Planning Authority.

The meeting ended at 3:30 p.m.



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**NORTH AYRSHIRE COUNCIL**

26th September 2018

**Planning Committee**

Locality	Irvine
Reference	18/00655/PP
Application Registered	26th July 2018
Decision Due	26th September 2018
Ward	Irvine South

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<b>Recommendation</b>	Approved with no Conditions
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<b>Location</b>	Riverway Retail Park New Street Irvine Ayrshire
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<b>Applicant</b>	M & G Real Estate
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<b>Proposal</b>	Section 42 planning application for non-compliance with planning conditions 4, 5 and 6 of planning permission CH/01/88/0546/L
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**1. Description**

Planning permission is sought for non-compliance with conditions 4, 5 and 6 attached to outline planning permission CH/01/88/0546/L in order to enable a discount food retailer (The Food Warehouse) to move into Unit 3.

It is intended that Sports Direct would relocate from Unit 3 to currently vacant Unit 1, although this is not dependent on the outcome of the current application. Each of these units are around the same size (approximately 10,000 square feet or 929 square metres). Currently, both Units 1 and 3 are restricted to non-food retail by a condition of the original planning permission. Both units are in the same 'parade' and are approximately 45 metres apart. There are two smaller units each of around 5,000 square feet (465 sq.m) in between. These units were formed by sub-dividing a larger 10,000 square feet unit.

Unit 1 has been vacant for around 3 months following the closure of Next Clearance. At present, this is the only vacant unit within the original phase of Riverway (although there are two vacant units in the second phase, adjacent to Tesco Extra). The conditions attached to the 1988 permission, which relate to the first 7 units running from north to south are reproduced below (NB an eighth unit in this group has recently been formed through sub-division of a larger unit):

C4 - that the proposed development shall be used for non-food retail businesses and for no other purpose.

C5 - that the gross floorspace of the development shall not exceed 90,000 square feet.

C6 - that all retail sales shall be located on the ground floor of any unit.

In the 1988 decision notice, the reason given for conditions 4 and 5 were "to restrict the development to the terms of its justification/special need." The reason for condition 6 was "to meet the requirement of Health and Safety Executive."

Over the thirty years since outline planning permission was granted for Riverway Retail Park, and following the development taking place during 1989/90, there have been a number of applications submitted for the variation of conditions attached to the first phase of development, all of which have been granted.

Following the completion of the original phase of development, consent was sought to expand Riverway in the late 1990s, which included an anchor superstore, Tesco Extra. During the first decade of the 2000s, consents were granted to relax the restrictions placed on the sale of non-food items in some of the original units, helping to attract new tenants such as Marks and Spencer and Lidl (now Home Bargains).

Over time, Riverway Retail Park has grown and evolved significantly, and now offers a diverse range of comparison goods including clothing, sportswear, DIY and gardening products, electrical and electronic goods as well as food and non-food convenience goods. The park also offers a range of restaurants and eating places.

A supporting statement has been provided by the applicant's agent, highlighting the rationale for the proposed change to the historic conditions.

In terms of the adopted Local Development Plan (LDP), Riverway Retail Park is recognised as a commercial centre for comparison goods retailing. The relevant LDP policies are TC 3 and the General Policy.

## **2. Consultations and Representations**

Neighbour notification was undertaken in accordance with statutory procedures. No representations were received. No consultations were required.

## **3. Analysis**

Section 42 of the Town and Country Planning (Scotland) Act 1997 is a mechanism which allows for the submission of a planning application for the development of land without complying with condition(s) subject to which a previous permission was granted. Section 42 of the Act stipulates that in this type of application the "planning authority shall consider only the question of the conditions subject to which permission should be granted."

The main determining issue in this case is whether the proposed modifications would conflict with the relevant LDP policy and relevant criteria of the General policy.

Circular 4/1998 sets out the tests for planning conditions, as follows:

- Need for a Condition
- Relevance to Planning
- Relevance to the Development to be Permitted
- Ability to Enforce
- Precision
- Reasonableness

Policy TC 3 of the adopted Local Development Plan (LDP) restricts uses at Riverway Retail Park to comparison goods, secondary convenience goods and ancillary other commercial development.

The application before the planning authority proposes non-compliance with conditions attached to a grant of outline planning permission dating from 1988. It is noted that LDP Policy TC 3 supports the use of the retail park at Riverway for both comparison and convenience goods, which is consistent with the long established pattern of use at the site. As noted above, there is already a range of food and non-food products on offer at Riverway, as well as a large anchor superstore (food and non-food) within the second phase of the development. The mix of tenants in the retail park is affected by many economic factors, and in order to remain viable, there have been numerous planning applications made over the years to relax the implications of the 'non-food' limitation that was applied to the first phase in 1988. This has included the introduction of food retailers and comparison goods retailers within the phase 1 area, the effect of which has increased footfall between Rivergate and Riverway.

The Council's overall policy intention is to safeguard town centres from adverse effects caused by out-of-centre retail developments in line with the 'town centre first' principle. As such, it is considered that Riverway has, for some considerable time, functioned as an extension of Irvine town centre and that it offers a range of goods from a modern format that is complementary to the older parts of the centre. As retail patterns continue to evolve and change in response to a variety of new pressures which were not envisaged thirty years ago, it is considered that the 1988 conditions are no longer relevant.

Therefore, in applying the Circular 4/1998 tests for conditions to the current proposal, it is considered that the 1988 conditions are no longer needed, relevant, precise nor reasonable. As noted above, the Council has granted every application for relaxing conditions 4, 5 and 6 on an individual unit basis, introducing food retailers as well as comparison retailers, meaning that there is little, if any, land use planning rationale for continuing to operate an historic restriction on the remaining units in the original phase.

The relaxation on the historic restrictions on the remainder of the first phase at Riverway would enable occupiers to move more freely into the most appropriate unit for their operation, thus providing the owners of the park a more rational basis to organise tenants based on footfall patterns or unit size rather than simply the availability of an unexpected vacancy. This is demonstrated in the current proposal through the intention to relocate Sports Direct from its current location to the former Next Clearance Unit, thus creating some physical separation between an existing and proposed food outlet, for footfall reasons. It is considered that providing such flexibility within the retail park would be in the interests of its long term viability without harming the wider town centre of Irvine.

Similarly, condition 6, which placed a limit on the size of each retail unit for "health and safety" reasons is thought to be related to the consultation zone around the former chipboard factory, the site of which was subsequently redeveloped as the second phase of the retail park. It is considered that the rationale for applying an upper limit to the retail units in phase 1 is no longer relevant for health and safety reasons. As such, condition 6 is not necessary.

In summary, the proposal for non-compliance with conditions 4, 5 and 6 is considered acceptable in terms of Policy TC 3.

In terms of the General Policy, criteria (b) and (d) are relevant.

In terms of (b), the proposal is satisfactory in that the non-compliance with the conditions would have no adverse impact on the amenity of the area. The proposal also has the potential to add positively to the vitality and viability of the town centre by attracting a wide range of tenants into the retail park.

In terms of (d), it is considered that the additional floor area which would be formed is not significant in terms of traffic generation and the availability of parking spaces. The owner of the retail park has placed a time limit on car parking which ensures that there is a turnover of spaces throughout the day. In addition, the nature of the retail park is such that customers will typically spend a relatively short part of the day there. It is not anticipated that this pattern of use would change through the removal of the historic conditions.

There are no other material considerations. Accordingly, it is considered that planning permission could be granted, meaning that the restrictive effects of conditions 4, 5 and 6 from the 1988 outline planning permission would no longer apply. This would accord with the provisions of the current LDP.

#### **4. Full Recommendation**

Approved with no Conditions



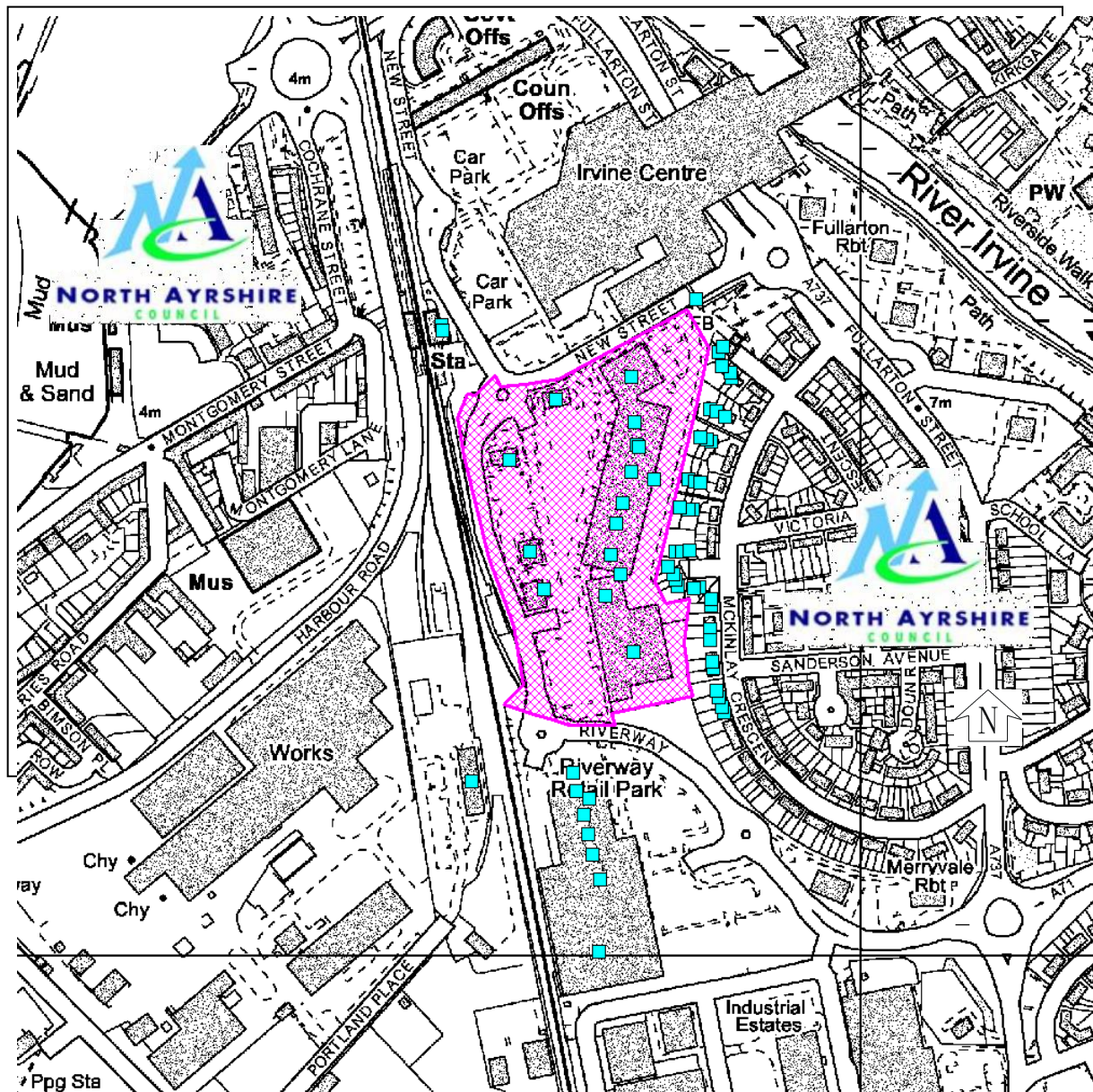
Karen Yeomans  
Executive Director  
Economy & Communities

For further information please contact Mr A Hume Planning Officer on 01294 324318.



## Appendix 1 – Location Plan

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**NORTH AYRSHIRE COUNCIL**

26th September 2018

**Planning Committee**

Locality	Arran
Reference	18/00823/ALO
Application Registered	5th September 2018
Decision Due	5th November 2018
Ward	Ardrossan And Arran

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<b>Recommendation</b>	Approved with no Conditions
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<b>Location</b>	Whin Farm Ballymenoch Kildonan Brodick Isle Of Arran KA27 8SF
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<b>Applicant</b>	Mr & Mrs I Armstrong
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<b>Proposal</b>	Removal of Section 75 obligation attached to planning permission 06/00278/PP to remove occupancy restriction
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**1. Description**

An application has been made in terms of Section 75A of the Town and Country Planning (Scotland) Act 1997 to remove a legal obligation that was entered in to under Section 75 of the Town and Country Planning (Scotland) Act 1997. The obligation was in relation to an occupancy restriction.

Planning permission (ref.96/00451/PP) for a house on a different part of the site was granted on 31st May 1996 but was not implemented and lapsed. An application for planning permission for a revised siting of a detached dwellinghouse for an agricultural worker (ref: 06/00278/PP) was approved by the Planning Committee on 29th May 2006, subject to a Section 75 obligation and conditions. The planning permission was subsequently issued on 16th May 2007 following the signing of a legal agreement which stipulated that the house must be occupied only by a person either currently or last employed locally in agriculture, or in forestry, or their dependants, or a widow or widower of such a person.

The detached single storey dwellinghouse is sited in an elevated position approximately 1km north of the settlement of Kildonan and is accessed by a 130m long private road from the north side of the A841. It has a small entrance porch to the front (south) elevation and a pitched roof and is externally finished in slate effect roof tiles and white painted render. The house is bounded by the associated farmland on all sides and the immediate curtilage is defined by stob and wire fences and tree planting.

The 2006 planning application was accompanied by supporting statements and labour reports indicating a requirement for an agricultural worker's house to replace a previous caravan on the land to serve the 65ha farm which supported a herd of 350 sheep.

The current applicants were also the original applicants in 2006 and were signatory to the Section 75 legal agreement. A supporting statement has been submitted with this application stating their intention to sell the farming unit which they have built up and to re-invest in a larger farm. They have now applied for discharge of the legal agreement on the following grounds:

- Some years have passed since the house was built and the owners wish to move on to new projects;
- The post 'credit crunch' housing market and lack of bank funding has made it almost impossible to sell the property, with the occupancy restriction, at the market value required to fund their further investment;
- Sales evaluations have been submitted showing that the property valuation would be £73,000 less with the occupancy condition attached than if it were removed, which the applicants consider to have a major negative impact on their business and livelihood;
- A copy of the Scottish Government Chief Planner's letter to planning authorities of 4th November 2011 in which he states that "the Scottish Government believes that occupancy restrictions are rarely appropriate and should generally be avoided" has been submitted. The Chief Planner continues that occupancy restrictions should only be used where there is a potential for adverse impacts on road safety, landscape quality, natural heritage etc. and it is submitted that there would be no such impacts at Whin Farm;

The application site is located within the countryside, as identified in the adopted North Ayrshire Local Development Plan ("the LDP") and is unaffected by any site specific policies or proposals therein. The relevant policy is ENV 2 (Housing Development in the Countryside). This allows that housing for workers engaged in an appropriate rural business (such as farming) shall accord with the LDP, subject to meeting a range of criteria, including a genuine operational need for a dwellinghouse.

## **2. Consultations and Representations**

Consultations were not required, the statutory neighbour notification procedures were followed and the application did not require to be advertised. No objections were received.

## **3. Analysis**

The proposal requires to be considered in terms of the adopted Local Development Plan policy ENV 2 and any other material planning considerations. Policy ENV 2 relates to the



circumstances under which new housing in the countryside can be justified. It does not specifically address a change of circumstances such as has been presented in this case. The application seeks to discharge the occupancy restriction attached to the Section 75 and provides a supporting statement in relation to the justification for the removal of this restriction.

In terms of the removal of occupancy conditions, the following points can be considered to be material considerations:

- (i) The house was originally occupied in association with the rural business against which it was justified;
- (ii) The associated agricultural land has not been split from the house and the applicants advise that they propose to sell the whole farm unit including the house and all land;
- (iii) The occupancy restriction has caused difficulty for the owners in achieving the required sale to allow them to pursue their own future plans;
- (iv) SPP (Scottish Planning Policy 2014) has indicated a shifting policy in regards to the use of occupancy conditions since the time of the original approval.

Requests to remove such occupancy restrictions should normally take into consideration: the time passed since the original restriction was imposed; the change in circumstances given as justification; consideration of any risks associated with removal of the restriction; difficulties caused by retention of the restriction, e.g. mortgage borrowing; and that the house is suitably sited and designed and provides a reasonable level of residential amenity.

The applicants first purchased the farm in 1997 with existing planning permission for a house; they then lived in a temporary caravan on the land whilst building the business finances to a state allowing the house to be constructed; the revised planning permission was granted in 2007 and the house completed in 2011. Twenty one years have therefore passed since the original consent and seven years from the completion of the house, which is considered to be a sufficiently long period following the imposition of the occupancy restriction.

The supporting statement advises that the applicants intend to sell the house and land together but that the occupancy restriction unfairly restricts the achievable sale value. Whilst removal of the restriction may result in the house being occupied in isolation from the operation of the agricultural land, planning law cannot compel an owner to work farmland in their ownership. Should the land ownership be split from the house in future, any proposed new farmhouse would require planning permission which would be assessed on its own merits against the LDP policies.

In terms of siting and amenity, the house has been in occupation for many years and provides a reasonable level of residential amenity and outlook. It is relatively close to the main road and the siting is acceptable. It is also agreed that the Chief Planners advice on the desirability of avoiding occupancy restrictions, other than to guard against identified impacts on road safety, amenity etc. is a material planning consideration.

Taking all of these factors into consideration, it is considered that there is no longer a requirement to retain the occupancy restriction. It is therefore recommended that the occupancy restriction be removed, and the associated Section 75 agreement be discharged.

#### **4. Full Recommendation**

Approved with no Conditions

A handwritten signature in black ink, appearing to read 'Karen Yeomans', written in a cursive style.

Karen Yeomans  
Executive Director  
Economy & Communities

For further information please contact Mr Neil McAteer Planning Officer on 01294 324316.

## Appendix 1 – Location Plan

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**NORTH AYRSHIRE COUNCIL**

**26 September 2018**

**Planning Committee**

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**Title:** **Notice under Section of 145 of the Town and Country Planning (Scotland) Act 1997: Site To East Of Castlepark Gardens, Fairlie**

**Purpose:** To seek approval to serve a Notice under Section of 145 of the Town and Country Planning (Scotland) Act 1997 requiring compliance with a condition attached to planning permission (ref: 17/00584/PPM & 18/00659/PP)

**Recommendation:** That the Committee grants authority for the service of a Notice under Section of 145 of the Town and Country Planning (Scotland) Act 1997 requiring compliance with a condition attached to planning permission (ref: 17/00584/PPM & 18/00659/PP)

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**1. Executive Summary**

- 1.1 Planning permission was granted on 20 September 2017 (ref: 17/00584/PPM) for the erection of 95 dwelling houses. The permission was granted subject to conditions. Condition 6 requires the formation of a shared use link for pedestrians and cyclists to Castlepark Gardens. The condition required the link to be installed no later than 12 months from the date of the planning consent.
- 1.2 Thereafter planning permission was granted on 7 September 2018 (ref: 18/00659/PP) to vary phase 2 of the original planning permission to amend house types and the addition of 2 extra houses. The permission was granted subject to conditions. Condition 4 requires the shared use link to be installed no later than 20 September 2018.
- 1.3 To date the applicant has failed to form the required link. Therefore it is proposed to serve a Breach of Condition Notice, which would require full compliance of the condition.

**2. Background**

- 2.1 The following conditions attached to the planning permissions dated 20 September 2017 (ref: 17/00584/PPM) and 7 September 2018 (ref: 18/00659/PP) have not been complied with and are therefore a breach.

Condition 6 of 17/00584/PPM - *That prior to the commencement of development details of the proposed programme for the installation of the proposed shared use link for pedestrians and cyclists to Castlepark Gardens and the emergency access, located in the south of the site, shall be submitted for the written approval of North Ayrshire Council as Planning Authority. The links should be completed in compliance with the approved programme to the satisfaction of North Ayrshire Council as Planning Authority, unless North Ayrshire Council as Planning Authority gives written consent to any variation. For the avoidance of doubt the proposed shared use path to Castlepark Gardens should be completed prior to the completion of plots 34, 35 and 36, as outlined within approved plan AL(0)100 Revision I, or no later than 12 months from the date of the planning consent, whichever is sooner. The proposed emergency access shall be completed prior to the completion of plots 68, 69, 70, as outlined within approved plan AL(0)100 Revision I.*

Condition 4 of 18/00659/PP - *That for the avoidance of doubt the proposed shared use path to Castlepark Gardens should be completed prior to the completion of plots 35, 36 and 37, as outlined within approved plan AL(0)114, or no later than 12 months from the date of the original planning consent, that date being 20th September 2018.*

The proposed programme for installation was submitted with the expectation that the link to Castlepark Gardens would be completed by 20 September 2018

- 2.2 The developers, through correspondence, confirmed on 12 September 2018 that due to constraints associated within existing utilities crossing the site, a high pressure gas main and high voltage electricity line, that they would be unable to install the full link by 20<sup>th</sup> September.
- 2.3 They state that the nature and significance of these services have limited construction of the roads and footpath to the initial 150m of Phase 2, at which point the site is traversed by a high pressure gas main which currently serves Fairlie Primary School. The diversion of this main relies upon the installation of a new main within the residential area of which Castlepark Gardens is a part of. Scottish Gas Networks has prohibited construction traffic crossing the gas main until the new installation is in place. Due to delays by Scottish Gas Networks anticipated completion of the gas main diversion is estimated to be October/November 2018.
- 2.4 In addition, once the gas main diversion is completed the developer is required to divert an existing overhead High Voltage electrical line to allow the link access to be formed. The developers state that legal servitudes are required prior to this work being programmed and the necessary road and service duct formation will not be complete until February 2019. This issue is likely to delay the removal of the overhead cables until spring 2019, thus delaying the implementation of the shared link path.
- 2.5 The developers have provided a potential temporary solution which would result in the implementation of a pedestrian link that would be located on the western boundary of the site and would be redirected into the grounds of Fairlie Primary School at the location of the gas main.
- 2.6 Whilst the temporary solution would create a path onto Castlepark Gardens, due to the constraints on the new route, the path would not be wide enough for cyclists. There is

likely to be significant delay of some 10 -11 months before the shared use link approved under both planning permissions is completed.

- 2.7 Notwithstanding the above, it has been reported that on Thursday, 13<sup>th</sup> September, the developer had constructed a temporary crossing of the gas main to allow heavy machines to access the southern part of the site. Heavy tracked machines were crossing the pipe route. In these circumstances it is considered that a Breach of Condition Notice is supported and would require full compliance of the condition, including completion of the multi user link. There is no right of appeal against a Breach of Condition Notice. Anyone responsible for not complying with a Breach of Condition Notice is guilty of an offence, which can be reported to the Procurator Fiscal.

### **3. Proposals**

- 3.1 In the interests of ensuring permeability through the site and compliance with the approved plans it is proposed to issue a Breach of Condition Notice requiring the following action, in respect of Condition 6 of the planning permission dated 20 September 2017 (ref: 17/00584/PPM) and Condition 4 of the planning permission dated 7 September 2018 (ref: 18/00659/PP):
- (i) Complete the proposed shared use link for pedestrians and cyclists to Castlepark Gardens.
- 3.2 It is proposed that the compliance period be 8 weeks which will allow sufficient time for the works to be carried out.

### **4. Implications**

<b>Financial:</b>	The service of the Notice has no financial implications out with normal budgetary provisions.
<b>Human Resources:</b>	N/A

<b>Legal:</b>	The proposed Breach of Condition Notice is in accordance with Statutory Regulations. Non-compliance with such a Notice is an offence and the Council as Planning Authority, could report such an offence to the Procurator Fiscal.
<b>Equality:</b>	N/A
<b>Children and Young People:</b>	N/A
<b>Environmental &amp; Sustainability:</b>	N/A
<b>Key Priorities:</b>	The proposed Breach of Condition Notice supports the Council Plan priority – “Protecting and enhancing the environment for future generations.”
<b>Community Benefits:</b>	N/A

## 5. Consultation

5.1 No consultation is required in association with this report.



Karen Yeomans  
Executive Director (Economy and Communities)

For further information please contact **Ross Middleton** on **01294 324379**.

## Background Papers

N/A

## Appendix 1 – Location Plan

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