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## NORTH AYRSHIRE COUNCIL

23rd May 2018

### Planning Committee

Locality	
Reference	18/00292/PP
Application Registered	11th April 2018
Decision Due	11th June 2018
Ward	Kilbirnie And Beith

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<b>Recommendation</b>	Approved subject to Conditions
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<b>Location</b>	51 Holmhead Kilbirnie Ayrshire
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<b>Applicant</b>	GKN Properties
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<b>Proposal</b>	Erection of restaurant with takeaway facility and ATM
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### 1. Description

Planning permission is sought to develop a restaurant and hot food takeaway together with an ATM and a 12 space car park on the site of the former Paterson & Brown Bus Garage at 51 Holmhead, Kilbirnie. The site has been disused since 2005 or earlier and the vacant bus garage was demolished following a fire in 2008.

The proposal seeks permission to erection a single storey building of 118 square metres (gross) which would include a restaurant, hot food takeaway and ATM adjacent to the 'Lunch Box' food takeaway which fronts onto Holmhead. The building would be of modern design and would have a glazed frontage and partially glazed north side elevation. The walls would be finished with a white render, vertically laid timber cladding, grey aluminium windows and doors, dark grey brick base course and mono-pitched profiled zinc clad roof with a ventilation flue terminating 1m above the roof ridge. The building would also have an ATM on its front elevation.

Vehicular access into the site from Holmhead would be provided towards the north end of the site leading to a 12 space car park and service access. A footpath would be provided along the edge of the car park leading onto Holmhead, with the land between the car park and the proposed building surfaced with grass. The rear of the site would be screened with a 1.8m high timber fence. The bin storage area would be screened by the proposed fence.

The application site is located within a residential area in terms of the adopted Local Development Plan. To the north and east and north-west are residential dwellings, four-in-a-block flats and tenement buildings; to the south is an existing food takeaway, beyond which is a small supermarket operated by the Co-op. Also nearby is the Kilbirnie Health Centre, the social work offices, the public park, several day care facilities, several other convenience shops and several areas of vacant land. To the front of the site, on the public footway, is a bus stop and its associated shelter.

The site is level ground and has a concrete hardstanding. There are numerous self-seeded plants and trees on the site, as well as the remnants of the former pumps which served the bus garage.

A supporting statement outlining the potential benefits of the proposed development has been submitted, which highlights the following key issues:

1. There is no suitable available site within the town centre for a modern restaurant/takeaway development with its own car park and servicing arrangements;
2. Most available units in the town centre have residential properties directly over and adjacent. In such circumstances, Class 3 and takeaway uses are often discouraged because of amenity impacts;
3. The site is vacant and brownfield, and it is near other commercial uses. As such, it is a mixed use area rather than wholly residential;
4. The nearest residential property is over 30m away, and the proposed building has been sited to minimise any impacts on local residents;
5. The provision of car parking on the site would be available for customers of other businesses nearby, therefore minimising on street car parking and the associated congestion this causes;
6. Sightlines would be unaffected by the proposed development;
7. A purpose-built building of modern design has been proposed for the site that would satisfy the proposed occupier rather than having to adapt an existing building that may not be suitable;
8. The proposed car park would provide accessible spaces for wheelchair or mobility impaired people;
8. Footpaths and pavements leading from the car park would be designed to be fully accessible, ramped as necessary;
9. The development would service far more than just the immediate community, with the intention of serving the wider Garnock Valley area. The site has a main road frontage, which is also a bus route, making it a central location within the Garnock Valley;
10. A new purpose-built restaurant with modern facilities would reduce the need for local residents to travel outwith the area;
11. A national operator who currently has no presence in the area has expressed an interest in the proposal and this would provide additional employment for the local community, rather than undermine existing employment in local takeaways.
12. The site is derelict and has not been in use for many years. It has become overgrown and is an eyesore. The proposal would remedy this harm to the amenity of the area.
13. The proposed hours of operation would be in line with the proposed operators national opening hours. The restaurant would not be open in the late evening and would only provide for a delivery service late on in order to safeguard the amenity of nearby residents.
14. The applicant has a track record of property management and development in the West of Scotland, and has an interest in upgrading the area to benefit the local community.

In terms of planning history, permission was granted in 2006 (ref. 06/00161/PP) for the erection of 12 no. flats within a three/four storey block which would have covered the site frontage. This permission was not implemented and has since lapsed.

During 2017, a planning application for a car wash, retail unit and hot food takeaway (ref. 17/00698/PP) was refused.

### **Relevant Planning History**

17/00698/PP for Erection of building to include Class 1 retail unit with ATM and hot food takeaway unit with external flue, erection of building for car valeting to include external car wash area together with associated car parking area, refuse storage area and the provision of landscaping. Application Refused on 09.08.2017.

### **Relevant Development Plan Policies**

Policy TC 5

General Policy

## **2. Consultations and Representations**

Neighbour notification was undertaken in accordance with statutory procedures. In addition, a public notice was published in a local newspaper. A significant number of objection letters and letters in support have been received.

Objections against the development, including points raising concerns over specific issues:

1. The proposal is contrary to Policy TC 5 of the adopted Local Development Plan - no need has been demonstrated.

*Response: See Analysis.*

2. Traffic generation would adversely affect the safety of the local road network, which is already congested outside the site due to inconsiderate parking. The site is near a bend in the road and there is a bus stop/shelter at the site frontage. In addition, parking provision proposed on the site plan is insufficient.

*Response: Negotiations and discussions on these matters have taken place with the Council's Transportation officers and an amended site plan meeting the required specification for the scale of the proposal has now been submitted, including enhanced sightline requirements of 70m to either side of the proposed access with Holmhead. The amended plan indicates 12 parking spaces, of which 2 would be accessible for people with mobility impairments. The bus shelter may require to be set back from the sightline visibility splays. This issue would be the subject of further discussion with NAC Roads and SPT in the event of the development proceeding. See consultation responses, below.*

3. The estimated jobs are unlikely to materialise - no weight should be attached to any claims made about a potential operator.

*Response: Estimates of potential job numbers directly created are only one factor in considering the economic benefits from a proposed development. The potential economic benefits of a new 'fit for purpose' Class 3 development, as well as the environmental, townscape and amenity impacts arising from the proposal require to be considered. No weight can be attached to any potential operator for the proposed development. See Analysis.*

4. Any new jobs created are likely to result in jobs being lost elsewhere.

*Response: There is no evidence to substantiate this claim.*

5. There are already enough takeaways in Kilbirnie and there is no need for any more.

*Response: It is agreed that, in terms of Policy TC 5, there is no 'need' for any further takeaways to serve the immediate walk-in catchment. The key planning issue is whether or not the site is suitable for such a development, as well as the potential benefits such a development would deliver. See Analysis.*

6. The site is within a housing area and the proposed hours of operation together with the associated noise, disturbance and additional traffic would harm residential amenity.

*Response: The site and surrounding area is characterised by mixed uses, including residential, commercial and community uses. It is not considered that the proposed development is incompatible with the surrounding area, given its location adjacent to a main road and in view of the history of the site. The hours of operation could be controlled by a planning condition in order to safeguard residential amenity.*

7. The town centre will suffer further as a result of the proposal.

*Response: There is no suitable site available to accommodate the proposal in the town centre. See Analysis.*

8. Another use for the site should be considered, such as housing.

*Response: The planning authority is required to consider the current application on its individual merits.*

9. Banking facilities in the town are adequate and there is no need for another ATM.

*Response: Noted. There is no requirement in planning terms to justify need for an ATM.*

Representations in favour of the development:

1. The proposal would improve the local environment by tackling a long standing eyesore and make use of a derelict and abandoned site.

*Response: Agreed. See Analysis.*

2. The proposal would create more jobs, especially among the young people in the area.

*Response: It is agreed that the proposal would generate economic activity and result in job creation.*

3. There is public transport available to serve the development.

*Response: The site is located adjacent to a local bus route, which would provide a sustainable transport choice for staff and customers.*

4. Although Main Street needs investment, this site is better placed for the proposed development since it would include parking provision.

*Response: Agreed. See Analysis.*

5. Investment, new jobs and activity in the town should be welcomed, as the area is often overlooked for new developments. There is a lack of choice available in the Garnock Valley for eating out, especially in relation to the modern format proposed. There is also a high level of unemployment and deprivation, which requires to be tackled.

*Response: Whilst there are many eating outlets across the Garnock Valley, some of which have been developed in recent years, it is agreed that there would be various social and economic regeneration benefits to the area arising from the development, which would be at an accessible location for many local residents and visitors. See Analysis.*

6. A free to use ATM is required in the town following the bank closures across the Garnock Valley area.

*Response: Noted. However, as noted above, there is no requirement in planning terms to justify need for an ATM.*

The following points raised are not material planning considerations:

- the staff would have to work zero hours contracts;
- comments relating to the type of food being served in the proposed development;
- comments that the proposal goes against the government's plan to tackle obesity;
- comments about Corporate Social Responsibilities (CSR) policies;
- the type of ATM machine which could be installed (ie. free to use or charged);
- that present businesses in the town centre should be protected against competition;
- that there are no quality eating establishments in the area;
- that a food use will create an outbreak of vermin in the area, which will cause illnesses in humans;
- that a restaurant and takeaway would result in additional litter being dropped in the area.

## **Consultations**

**Environmental Health** - no objections subject to conditions in respect of various matters, including a range of environmental protection measures (non-planning matters). These have also been provided directly to the applicant.

*Response: Noted. Any relevant planning conditions recommended by Environmental Health could be attached to any grant of consent.*

**Kilbirnie Community Council** - object to the proposals on the grounds that the adjacent 'Lunch Box', already does takeaway food; considers the road outside the site is unsafe for further retail businesses and question the need for a further ATM when there is already one outside the Co-op. There is a plethora of takeaways on the Main Street of Kilbirnie, which has very few shops. The last application gathered quite a large selection of votes against the proposals, which should have sent the message that it isn't wanted or needed on that site.

*Response: Noted. See Analysis.*

**NAC Active Travel and Transportation** - no objection subject to the conditions relating to the bus shelter, construction traffic, road dimensions, surface finishes and footway repairs.

*Response: Noted. A condition could be attached to the matters raised. The bus shelter issue would be more appropriately dealt with using an informative, as the applicant's agent considers that the required sightlines could be achieved without its relocation.*

### **3. Analysis**

As noted above, planning permission was granted for residential development on the site in 2006, although this consent has now lapsed. Since that time, the former bus garage was demolished due to a fire in the Autumn of 2008. The site has been the subject of a number of complaints due to its adverse impact it has had on the amenity of the area. A previous application for commercial development consisting of a car wash, retail unit and a hot food takeaway unit was refused in 2017 for the following reasons:

- 1. That the proposal would be contrary to Policy TC 5 of the adopted North Ayrshire Council Local Development Plan in that no need has been demonstrated for additional retail and hot food takeaway development outwith Kilbirnie town centre, taking account both of the existing level of provision nearby and in view of vacancy levels within Kilbirnie town centre, the overall effect of which would be detrimental to the vitality and viability of the town centre.*
- 2. That the proposal would be contrary to the General Policy of the adopted North Ayrshire Council Local Development Plan in respect of (a) the design and layout would detract from the character and appearance of the surrounding area, (b) the proposed uses would detract from the predominant residential amenity of the area, and (d) the access/egress arrangements and parking provision would be detrimental to both vehicular and pedestrian traffic safety in the vicinity of the site.*

As noted above, the proposal involves the development of a restaurant with hot food takeaway facility and ATM. In terms of Policy TC 5: Local Shops, cafes and hot food uses outwith town centres require to be justified against the following criteria:

- (a) unit size to be less than 400 square metres, and total development less than 1000 square metres;
- (b) the development meets a recognised local need. Determination of local need will include consideration of the range of facilities available which already serve all or part of the catchment of the proposed unit. Where there are at least two existing units providing the same or similar services to a majority of the catchment, no need will be demonstrated;

(c) it is located where it can be conveniently accessed on foot from adjacent, existing development.

Whilst the restaurant/takeaway building would, at 118 square metres, be considerably less than 400 square metres in floor area, the proposal appears to offer facilities already provided for in the locality, including the nearby group of shops and the town centre. In terms of Policy TC 5, there is no 'need' for a further restaurant or takeaway to serve the walk-in catchment population. That is not to suggest that there is no demand, however. As such, the proposal would not fully accord with the provisions of Policy TC 5.

However, further scrutiny of the proposal is necessary. There is also a requirement to consider other material considerations which may outweigh the provisions of the development plan.

It is considered that the basis of the proposal is largely dependent on securing an operator that is not presently active in the Garnock Valley and who has identified a market opportunity for a new restaurant/takeaway in the area.

Scottish Planning Policy (SPP) highlights that due weight is given to net economic benefit; using land within or adjacent to settlements for a mix of uses; considering the re-use or re-development of brownfield land before new development takes place on greenfield sites; locating development where investment in growth or improvement would have most benefit for the amenity of local people and the vitality of the local economy. Finally, SPP highlights that a core value of the planning service is to "play a key role in facilitating sustainable economic growth, particularly the creation of new jobs and the strengthening of the economic capacity and resilience within communities."

In this particular case, the amenity of the area has been harmed by the derelict condition of the site over many years. The history of the site indicates that a commercial use was established in the early twentieth century (cinema). By the late twentieth century the cinema had been converted to a bus depot, which continued until the early 2000s. Therefore, the site has operated as a place of employment for many decades. However, for well over a decade the site has been disused. A residential proposal was consented in 2006 but this has since lapsed and is no longer thought to be viable.

The refusal of a previous planning application in 2017 has not resolved the issues associated with the site: dereliction, adverse impact on amenity, and lack of economic development. Therefore, the proposal now submitted represents a positive opportunity to redevelop a brownfield site, add value to the land and the surrounding area, tackle the adverse amenity issues, provide a modern building for a restaurant with car parking and service facilities on site, and generate economic activity.

The applicant's contention that there are currently no suitable sites within the nearby town centres with the road frontage and parking opportunities offered by the application site is considered to be a reasonably accurate conclusion. Moreover, the planning system does not exist to protect the interests of one person or business against the activities of another, although in some cases private interests may coincide with the public interest. Whilst Kilbirnie town centre does currently provide a number of hot food takeaway outlets, there are notably few restaurants or sit-in cafe facilities. The availability of vacant shop units does not make them necessarily suitable for restaurant or takeaway use, as has been highlighted by the applicant's agent. Furthermore, the layout and design of Main Street, most of which is

conservation area, has limited opportunities for new-build (other than redevelopment of narrow gap sites). Whilst there is a vacant former supermarket site to the north of the town centre, it does not benefit from the road frontage offered by the application site. The site is also within a part of the town which has long established commercial and community uses nearby: it cannot be considered a wholly residential area, notwithstanding the general 'residential' allocation in the adopted LDP.

In summary, the constraints presented by the town centre would tend to preclude against certain more modern restaurant formats such as has been proposed for the site at 51 Holmhead. It is not considered that a restaurant with takeaway facility would act to undermine the town centre in the manner or to the degree suggested by some of the objectors to the proposal. Given the presence of complementary uses nearby, it is considered that the proposal would be acceptable. A final point to note is that the proposed building, at 118 square metres, would not represent overdevelopment of the site.

Whilst the conclusion reached is that the proposal, in its revised form, would be acceptable on the grounds of regeneration, amenity and economic benefit, it must also be noted that the application is materially different from the 2017 proposal which sought approval for three uses on the site, including a shop, takeaway and car wash. The current proposal seeks to introduce a new use to the town which cannot readily be offered within the town centre. As such, the material considerations as outlined above are considered to outweigh the provisions of the development plan and in particular Policy TC 5 Local Shops.

In terms of the General Policy, criteria (a) Siting, Design and External Appearance, (b) Amenity and (d) Access, Road Layout, and Parking Provision are relevant to the overall proposal, including the car wash and the shops/hot food takeaway.

In terms of criterion (a) of the General Policy, the submitted layout would involve a new single storey building being erected alongside the 'Lunch Box' takeaway unit. The building would be single storey and its roof would be mono-pitched. Following an officer request, the design of the proposal has been significantly amended following the initial submission. The weight to be afforded to good design in this case is significant, given the need for improving this part of the townscape which has been harmed by demolition and neglect. In terms of the six qualities of a successful place, it is considered that the proposal would be welcoming, in that the design is aimed at creating an attractive building in an attractive setting; Distinctive, in that the proposed building would be unique within the town; safe and pleasant, in that any hazards at the site would be remedied, and current amenity concerns addressed; easy to move around, in that the site would have its own car park, servicing and pathways all set back from the main road; resource efficient, in that the building would meet all current building standards with respect to energy efficiency and, finally, adaptable, in that the building would have the potential for accommodating alternative commercial uses at a future date, if required. It is therefore considered that the proposal would generate positive 'placemaking' benefits and would be acceptable in terms of criterion (a).

In terms of (b) amenity, it is considered that the impacts arising from the proposal would be acceptable, given the purpose-built nature of the design and its siting away from the nearest housing. A condition could be attached with respect to ventilation and hours of operation. Given the smaller scale of the proposal in comparison with the 2017 application, the proposal is considered acceptable in terms of criterion (b).



With regard to (d) access and parking, NAC Transportation has negotiated various matters relating to parking, access, sightlines and the bus shelter. Subject to conditions and an informative, the proposal is considered acceptable in terms of criterion (d).

In summary, whilst the proposal would not satisfy all of the criteria of Policy TC 5 Local Shops, there are material considerations which would outweigh the provisions of the LDP in this case, in particular the redevelopment of a long term derelict site for an employment generating use. In addition, the proposal would meet the relevant criteria of the LDP General Policy. As such, planning permission should be granted, subject to conditions.

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

Approved subject to Conditions

#### **Reasons for Decision**

The proposal does not comply with the relevant provisions of the Local Development Plan, however other material considerations indicate otherwise and planning permission should be granted.

#### **Condition**

1. Prior to the commencement of the development, hereby approved, the applicants shall undertake a desk study of the application site, (including the review of any previous site investigations) to assess the likelihood of contamination and assist in the design of an appropriate site investigation and subsequent suitable quantitative risk assessment. Remediation proposals shall also be presented in relation to any significant findings. All documentation shall be verified by a suitably qualified Environmental Consultant and submitted to the satisfaction of North Ayrshire Council as Planning Authority. Thereafter, the development shall be implemented in accordance with any remediation proposals as may be approved. The presence of any significant unsuspected contamination, which becomes evident during the development of the site, shall be reported to North Ayrshire Council and treated in accordance with an agreed remediation scheme. On completion of the proposed works written verification, detailing what was done by way of any remediation, shall also be submitted.

#### **Reason**

To meet the requirements of Environmental Health.

#### **Condition**

2. That prior to the commencement of the development the applicant shall submit for the written approval of North Ayrshire Council as Planning Authority a schedule of the proposed external finishes to be used in the building, car park, access road and fencing. Thereafter, 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.

#### **Reason**

In the interest of the amenity of the area.

#### **Condition**

3. That prior to the commencement of the development hereby approved, the applicant shall submit for the written approval of North Ayrshire Council, as Planning Authority full

details of the proposed odour extraction system for the premises, which shall be located to the south side of the building hereby approved and not on the main roof slope. Prior to the restaurant/takeaway coming into operation, the system as may be approved shall be fully implemented and maintained thereafter to the satisfaction of North Ayrshire Council as Planning Authority.

**Reason**

To meet the requirements of Environmental Health.

**Condition**

4. That, during the construction phase, and prior to the development hereby approved coming into operation, the following infrastructure requirements shall be undertaken to the satisfaction of North Ayrshire Council as Planning Authority:

- (a) all construction vehicles shall park within the site boundary not on Holmhead;
- (b) any damage to the public road or footway during the construction phase shall require to be resurfaced unless otherwise agreed on completion of the works;
- (c) the proposed courtyard parking aisle width shall be minimum of 6 metres wide;
- (d) the first 2 metres of the parking area as measured from the heel of the footway shall be hard surfaced.

**Reason**

To meet the requirements of North Ayrshire Council as Roads Authority.

**Condition**

5. That the restaurant/takeaway development hereby permitted, including takeaway deliveries, shall not operate between the hours of 11.00pm on any day and 11.00am the following day.

**Reason**

In the interest of the amenity of the area.



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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