



North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

Planning Committee

A meeting of the **Planning Committee** of North Ayrshire Council will be held remotely on **Wednesday, 23 August 2023** at **14:00** to consider the undernoted business.

Meeting Arrangements - Fully Remote

This meeting will be held remotely in accordance with the provisions of the Local Government (Scotland) Act 2003. Where possible, the meeting will be live-streamed and available to view at <https://north-ayrshire.public-i.tv/core/portal/home>. In the event that live-streaming is not possible, a recording of the meeting will instead be available to view at this location.

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 14 June 2023 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 **Planning Enforcement Charter**

Submit report by the Executive Director (Place) on the updated Planning Enforcement Charter (copy enclosed).

4 **23/00388/PPM: Bonded Warehouse Chivas Bros Ltd, Balgray, Beith**

Change of use of agricultural land to form extension to bonded warehousing complex to include the erection of 5 no. double cell and 3 no. triple cell warehouses, associates earthworks, internal access roads, SuDS and landscaping (copy enclosed).

5 **23/00436/PP: Old Pavilion, Lamlash, Brodick**

Siting of burger van within one car parking space for temporary period of three years (copy enclosed).

6

Urgent Items

Any other items which the Chair considers to be urgent.

Webcasting

Please note: this meeting may be filmed/recorded/live-streamed to the Council's internet site and available to view at <https://north-ayrshire.public-i.tv/core/portal/home>, where it will be capable of repeated viewing. At the start of the meeting, the Provost/Chair will confirm if all or part of the meeting is being filmed/recorded/live-streamed.

You should be aware that the Council is a Data Controller under the Data Protection Act 2018. Data collected during the webcast will be retained in accordance with the Council's published policy, including, but not limited to, for the purpose of keeping historical records and making those records available via the Council's internet site.

Generally, the press and public seating areas will not be filmed. However, by entering the Council Chambers, using the press or public seating area or (by invitation) participating remotely in this meeting, you are consenting to being filmed and consenting to the use and storage of those images and sound recordings and any information pertaining to you contained in them for webcasting or training purposes and for the purpose of keeping historical records and making those records available to the public. If you do not wish to participate in a recording, you should leave the meeting. This will constitute your revocation of consent.

If you have any queries regarding this and, in particular, if you believe that use and/or storage of any particular information would cause, or be likely to cause, substantial damage or distress to any individual, please contact dataprotectionofficer@north-ayrshire.gov.uk.

Planning Committee Sederunt

Robert Foster (Chair)
Timothy Billings (Vice-Chair)
Scott Davidson
Stewart Ferguson
Cameron Inglis
Amanda Kerr
Davina McTiernan
Jim Montgomerie
Ian Murdoch
Chloe Robertson

Chair:

Apologies:

Attending:

At a Meeting of the Planning Committee of North Ayrshire Council at 2.00 p.m. involving a combination of participation by remote electronic means and physical attendance within the Council Chambers, Irvine.

Present (Physical Participation)

Robert Foster, Timothy Billings, Stewart Ferguson, Cameron Inglis, Davina McTiernan Chloé Robertson.

Present (Remote Participation)

Amanda Kerr.

In Attendance

Y. Baulk, Head of Service (Housing & Public Protection) and I. Davies, Senior Development Management Officer (Place); and R. Lynch, Senior Manager (Legal Services), J. Niven, Solicitor (Legal Services) and H. Clancy and D. McCaw, Committee Services Officers (Democratic Services) (Chief Executive's Service).

Chair

Councillor Foster in the Chair.

Apologies

Scott Davidson, Jim Montgomerie and Ian Murdoch

1. Declarations of Interest

There were no declarations of interest by Members in terms of Standing Order 11 and Section 5 of the Code of Conduct for Councillors.

2. Minutes

The Minutes of the Meeting held on 24 May 2023 were confirmed and signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973.

3. Notice under Section 170 of the Town and Country Planning (Scotland) Act 1997: Land at 30-44 Morrison Court, Stevenston KA20 4JS

Submitted report by the Chief Planning Officer seeking authority to serve a Notice under Section 170 of the Town and Country Planning (Scotland) Act 1997 requiring proposed maintenance of land for the abatement of the adverse impact on the local area.

The report advised that the property was a four-storey block of flats with amenity space to all sides, understood to be owned in common with the other flats in Morrison Court. In February 2022, Planning received a complaint regarding the condition of the area. Household furniture items had been dumped in various places including the amenity space around this block.

Whilst some of the items had been cleared, it was noted that further complaints had been received this year by both Planning and Streetscene regarding the condition of the area. The amenity space around the property had been subject to dumping with items of refuse particularly prevalent on the land to the south of the building and in a former bin store to the east. Windows of the entrance area on the southern ground floor elevation had been smashed. Letters had been sent to the owners of all the flats. However, no action had been taken in respect of these areas.

The Committee unanimously agreed to grant authority for the service of a Notice under Section 179 of the Town and Country Planning (Scotland) Act 1997 to abate the adverse impact on the land on the local area at the land at 30-44 Morrison Court, Stevenston KA20 4JS.

The meeting ended at 2.10 p.m.

NORTH AYRSHIRE COUNCIL

23rd August 2023

Planning Committee

Title:	Planning Enforcement Charter
Purpose:	To seek approval for the updated Planning Enforcement Charter
Recommendation:	That the Committee approves the updated Planning Enforcement Charter

1. Executive Summary

- 1.1 This report recommends that approval be granted for the reviewed and updated Planning Enforcement Charter dated August 2023.

2. Background

- 2.1 S.158A of the Town and Country Planning (Scotland) Act 1997 (as amended) requires a planning authority to prepare and publish an enforcement charter. This will set out a statement of the authority's policies as regards taking enforcement action for the purposes of the Act. This will also set out how members of the public are to bring a breach of planning control to the attention of the authority, an account of how any complaints as regards taking enforcement action is to be made and of the procedures for dealing with such a complaint.
- 2.2 A planning authority must keep their enforcement charter under review and must update and republish it every 2 years. North Ayrshire Council's planning enforcement charter was last reviewed and republished March 2021.
- 2.3 The enforcement charter has been reviewed. There are no significant changes proposed. The contact details and links have been updated and reviewed and the document has been formatted to make it accessible. The charter contains the Council's policies in regard of enforcement action, details of how to report breaches, make complaints and the procedure for dealing with them. The charter also contains service standards for dealing with reports and details the powers available to the planning authority.

3. Proposals

- 3.1 The attached Planning Enforcement Charter be approved and re-published in accordance with the requirements of the Town and Country Planning (Scotland) Act 1997, as amended.

4. Implications/Socio-economic Duty

Financial

4.1 None

Human Resources

4.2 None

Legal

4.3 The Enforcement Charter is in accordance with Statutory Regulations.

Equality/Socio-economic

4.4 None

Environmental and Sustainability

4.5 None

Key Priorities

4.6 None

Community Wealth Building

4.7 None.

5. Consultation

5.1 None

RUSSELL McCUTCHEON
Executive Director (Place)

For further information please contact **Iain Davies, Senior Development Management Officer**, on **01294 324 320**.

Background Papers

1 Enforcement Charter dated August 2023



North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

Planning Enforcement Charter

A Guide to Enforcing Planning Controls in North Ayrshire

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1. Introduction

The Scottish Government places a strong emphasis on the role of planning enforcement in delivering key policy objectives and maintaining public confidence in the planning system. The Planning etc. (Scotland) Act 2006 introduced the requirement for Councils to produce enforcement charters, as a means of clarifying the purpose, powers and raising the overall profile of planning enforcement.

This Charter, which was revised in 2023, explains what enforcement means, what the Council can and cannot do, the service standards and what happens at each stage of what can be a lengthy process.

Planning permission is required for most development that takes place in Scotland, with the exception of a wide range of “permitted developments” including some changes of use.

Sometimes, development is undertaken without the necessary consents or without complying with conditions of a permission which has been granted. In such cases, the Council has powers to take action in order to remedy the issues which can occur.

There is a key role for members of the public to alert the Council to any potential breaches of planning control they become aware of, whether large or small. The Council can also monitor high profile and other developments of public interest, where resources allow, to ensure planning regulations and conditions are being adhered to.

It should be noted that enforcement action is a discretionary power: even when a breach of planning control has occurred, it may be determined by the Council that it would not be in the public interest to take formal action. The planning system does not exist to protect the interests of private individuals against each other but must work in the public interest.

The Council, as Planning Authority, has to consider each case on its merits and decide the most appropriate response. The Council is unlikely to take formal action, for example over developments, which in planning terms, are seen to be acceptable.

Enforcement is one of the most complex parts of the planning system. The aim of this Charter is to ensure that the adopted procedures are applied fairly and reasonably, and that interested parties are kept informed and are made aware of the process.

It is understood that planning enforcement is an issue that interests many people and it is hoped that this Charter is useful. It should also be noted that we regularly review the Charter and that comments on its content are welcomed.

This Charter sets out the current powers available to Planning Authorities. These powers are set out in the Town and Country Planning (Scotland) Act 1997 as amended.

2. Key points on planning enforcement

- A breach of planning control is **not** of itself a criminal offence
- A breach of listed building control can be a criminal offence

It is important to remember that the primary purpose of planning enforcement is to remedy any breach which has occurred, rather than to apply punitive measures to those responsible. In addition, any action taken must be appropriate to the breach. The Council has statutory powers to:

- investigate alleged breaches of planning (such as unauthorised developments and changes of use);
- investigate alleged unauthorised works to listed buildings;
- investigate alleged displays of unauthorised advertisements;
- investigate alleged unauthorised tree works;
- investigate the conditions attached to permissions/consents;
- initiate formal action where a satisfactory outcome cannot be achieved by negotiation.

The Council is not required to take any particular action on a specific breach, and indeed can decide that no action is necessary.

Fuller information on the use of enforcement powers can be found in the Scottish Governments Planning Circular 10/2009: Planning Enforcement which can be viewed online [view Planning Circular 10/2009: Planning Enforcement](#)

Service standard

By publishing our standards and targets, we aim to improve our enforcement service and make it responsive to the needs of our customers. We will monitor the contents of this Charter to ensure that standards and targets are being met.

The Charter will be made available on the Council's website and by appointment at Planning Services, Cunninghame House, Irvine KA12 8EE.

3. Identifying possible breaches of planning control

Planning enforcement has two main issues –

1. To establish whether a breach has taken place, and
2. Whether it is expedient or appropriate to take enforcement action.

The decision to take enforcement action is at the sole discretion of the Council.

Possible breaches of planning and listed building control can include:

- Development being undertaken without planning permission;
- Alterations to or demolition of a listed building without listed building consent;
- the change of use of a building or land without planning permission;
- the failure of a developer, owner or occupier of land/buildings to comply with conditions attached to planning permission or listed building consent; and
- departures from approved plans or consents.

Members of the public have a vital role in reporting breaches of control. Any concern should be raised with the Council either via a local councillor or directly to Planning Services (see below). You can make preliminary enquiries by telephone or in person at the Council offices, but these must be followed up in writing or email in order for an alleged breach to be investigated.

For preliminary enquiries, Planning Services can be contacted by the following methods:

By telephone:

01294 324319 (24 hour voicemail facility available)

Please see the Council's website for further telephone numbers
[view the Council's website for additional telephone numbers](#)

By email:

<mailto:epanning@north-ayrshire.gov.uk>

In person:

Planning Services

North Ayrshire Council

Cunninghame House, Irvine KA12 8EE

Please make an appointment to see an Officer prior to coming to Cunninghame House

Suspected planning breaches should be reported to the Council as follows:

Using the North Ayrshire Council website:

[Report a Planning Breach](#)

By post:
Planning Services
North Ayrshire Council
Cunninghame House, Irvine KA12 8EE

The following information is essential when reporting a suspected breach:

- Details of the alleged breach, with times and dates if relevant;
- The address or location of the breach;
- Your name, telephone number, postal and email address;
- Whether the enquiry is to be treated confidentially.

Failure to provide the above information may result in no investigation taking place.

The Council is subject to the requirements of the Freedom of Information (Scotland) Act 2002. Requests for total confidentiality may limit the ability of the Council to take formal action and cannot be guaranteed if the case leads to court proceedings.

In relation to development with planning permission, monitoring is undertaken by the Council's Planning Services. It is not a statutory requirement that the Council monitors all planning conditions at all times. Public involvement is therefore invaluable in providing information where it is believed that conditions attached to consents are not being complied with or have not been discharged in a satisfactory way.

Information received by Planning Services is checked to ensure that it involves a possible breach of control and includes all the details required for a possible investigation. After preliminary checking and compliance with the requirements for investigation, the complaint will be registered. Once registered, and where contact details have been provided, a written or email acknowledgment will be sent to the person who has made the complaint.

Some complaints, such as neighbour disputes over boundaries, relate to matters over which the Planning Service has no control and cannot therefore be pursued.

Service standard

If preliminary checking of a complaint suggests a possible breach of planning control, the complaint will be registered. Once registered, an acknowledgement will be sent out within 5 working days if a postal address or email address has been provided. The acknowledgement will include a reference number and contact details for the Planning Officer.

4. Investigating alleged breaches of planning control

A priority system is used for investigating complaints based on matters such as the significance of the harm of the alleged breach on amenity or other relevant planning considerations.

Service standard

Priority will be given to significant alleged breaches of planning control including, but not limited to:

- Significant detrimental impact on amenity;
- Alleged breaches of condition for major developments;
- Irreversible damage to listed buildings; and
- Unauthorised felling or other works affecting trees protected by Tree Preservation Orders

An investigation normally begins with the Planning Officer visiting the site. Following this visit, the individual who has made the complaint will be informed of what action, if any, is proposed.

In some cases, additional investigation may be needed. A record will be maintained of all contact, both verbal and written.

Service standard

Where contact details have been provided, a person who provides information by letter or email to Planning Services will receive a formal response within 20 working days of receipt. The person will also be advised of the proposed action to be taken. The action may include the need for additional investigation prior to deciding on the course of action. The person will be advised if the matter does not involve a breach of planning control.

The length of time required to resolve the case or take action can be affected by a number of factors. Progress can be delayed by the gathering of further evidence, to allow negotiations to take place or for formal procedures to be concluded. Similarly, an application to remedy the alleged breach or an appeal against a decision of the Council can also delay resolution of the case.

The Council can also grant planning permission retrospectively. Conditions may be attached to planning permission in order to remedy a breach.

The Council recognises that delays can be a source of considerable frustration to persons submitting information, particularly if they consider their amenity is affected by the alleged breach. Consequently, interested parties may wish to contact the Planning Officer for more regular updates.

5. Acting on alleged breaches of planning control

The Council has to consider each case on its merits and decide on the most appropriate solution.

In the first instance, an investigation will be undertaken by the Planning Officer to establish whether or not a breach has occurred and decide on whether to take any further action.

In some cases, enforcement action may not be considered appropriate, even although planning regulations may have been breached. Enforcement action will only be taken when it is in the wider public interest which is at the Council's discretion.

The Council is unlikely to take formal enforcement action over developments which, in planning terms, are considered acceptable had an application been made beforehand. In such cases, a retrospective planning application is normally sought. In granting planning permission retrospectively, the Council can impose conditions to regulate a wide range of planning matters in order to make a retrospective development acceptable. It is not always necessary to impose conditions.

Only a relatively small number of cases lead to formal enforcement action. Where formal action is required, a report may be prepared for consideration by the Council's Planning Committee. Formal enforcement action can include the issue of a Notice to the landowner or developer. Various options are available, including a Notice requiring a retrospective planning application to be made, an Enforcement Notice, or a Breach of Condition Notice.

The Council also has the power to serve an Amenity Notice, the purpose of which is to require improvements to land or buildings which have become detrimental to the amenity of an area.

Enforcement Notices served by the Council are placed on the Enforcement Register. You can view the Register by appointment at Planning Services, Cunninghame House, Irvine between 9am and 4.45pm Monday – Thursday (9am and 4pm on Fridays). The post 2015 Register is available to view online [view the Enforcement Register](#)

Enforcement Notices and Breach of Condition Notices include the following information:

- A description of the breach of control that has taken place;
- The steps that should be taken to remedy the breach;
- The timescale for taking these steps;
- The consequences of failure to comply with the Notice; and
- Where appropriate, any rights of appeal the recipient has and how to lodge such an appeal.

Appeals against Enforcement Notices and Amenity Notices are considered by Scottish Ministers and dealt with by a Scottish Government's Directorate for Planning and Environmental Appeals (DPEA).

There is no right of appeal against a Breach of Condition Notice.

Service standard

Where a planning breach cannot be resolved and action is justified, formal enforcement action will be taken. Authorisation from the Planning Committee may be required for the service of a Notice, or to take any other formal action that is appropriate to the breach. The Notice will explain to the recipients what is required, the timescales involved and the available options to resolve the issue.

Failure to comply with a Notice may result in the Planning Authority taking further action. There are a range of possible options, such as:

- Referring the case to the Procurator Fiscal for possible prosecution;
- The Council may carry out work and charge the person for the costs involved;
- Seeking a court interdict to stop or prevent a breach of planning control.

For more details, see the Enforcement Powers section at page 11.

Service standard

Where the terms of any formal Notice are not complied with, every effort will be made to resolve the case to the satisfaction of the Council. Options include:

- In the case of an Enforcement Notice, direct action by the Council;
- For either an Enforcement Notice or a Breach of Condition Notice, the matter being referred to the Procurator Fiscal for possible prosecution or alternatively offering the opportunity to pay a fixed penalty (issue of a Fixed Penalty Notice).

The Council has powers to enter land to:

- Establish if there has been a breach of planning regulations;
- Check if there has been compliance with a formal Notice; and
- Check if a breach has been satisfactorily resolved.

Powers of entry apply to any land and may also involve officials entering land adjacent to the site of the alleged breach.

Enforcement Action has to be taken within strict time limits:

A four year limit applies to "unauthorised operational development" (the carrying out of building, engineering, mining or other operations in, on, over or under land) and the change of use of a building to a dwellinghouse. After 4 years, such developments become lawful for planning purposes, and enforcement action cannot be taken.

A ten year limit applies to all other development including change of use (other than to a single dwellinghouse) and breaches of condition. After 10 years the development becomes lawful if no enforcement action has begun; and

There is no time limit for breaches of listed building control.

Breaches of listed building control can be a criminal offence. Persons responsible can be reported to the Procurator Fiscal without the prior issue of a Listed Building enforcement notice.

6. Making a suggestion or complaint

The Council makes every effort to deliver a satisfactory planning enforcement service. However, if you have any suggestions, concerns or difficulties, we want to hear from you.

The Council is committed to improving our Planning service. We will consider all complaints about the way an Enforcement Inquiry has been dealt with.

Dissatisfaction with the outcome of an investigation is not sufficient grounds for complaint.

In the first instance, complaints should be discussed with the member of staff involved. If you are still dissatisfied, please request a discussion with the Senior Planning Officer (see list of contacts). If they are unable to help, you will be given the name of a more Senior Manager who will investigate the matter.

Written complaints will be acknowledged within 10 working days and then fully and promptly investigated. The complainant will be given a written response explaining the outcome of the investigation and any action that the Council proposes to take. If no action is proposed, the reasons for this will be explained.

Service standard

Where contact details are provided, we will get in touch with you within 5 working days of receiving a complaint or suggestion to let you know what is happening. We will monitor all complaints and suggestions made and use them to review and improve the service we provide.

If you are not happy with the level of service provided (but not the decision reached on planning merits), you can make a complaint. You can submit the details via the Council's Complaints and Feedback section on the website:

[Make a complaint](#)

The various stages of the complaint procedure are set out on the complaints form and on the website.

Lastly, if you are dissatisfied with the Council's complaints process, you have the right to take your complaint to the Scottish Public Services Ombudsman, at:

Freepost SPSO, Edinburgh

Telephone: **0800 377 7330**

Email: <mailto:ask@spsorg.uk>

Generally, you must contact the Ombudsman within 12 months following the conclusion of the Council's complaints procedures.

7. Enforcement Powers

The planning enforcement powers available to the Council are set out in the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006. Listed Building Enforcement Notices are covered by the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. The Planning Acts can be viewed online [view the Planning Acts](#)

Scottish Government policy on planning enforcement is set out in planning Circular 10/2009: Planning Enforcement. The Circular is published on the Scottish Government website - [view Circular 10/2009: Planning Enforcement](#)

Types of Notice

Breach of Condition Notice (BCN) – used to enforce the conditions applied to any planning permission. It comes into effect 28 days after being served. It may be used as an alternative to an Enforcement Notice (see below) and is served on any person carrying out the development and/or any person having control of the land. There is no right of appeal. Contravening a BCN can result in the Council deciding to prosecute. On conviction, a fine of up to £51,000 can be imposed.

Enforcement Notice (EN) – generally used to deal with unauthorised development. There are similar notices and powers to deal with listed buildings (see below), and advertisements. An EN will specify a time period to take effect (a minimum of 28 days – but see section below on advertisements); the steps that must be taken to remedy the breach and the time for this to be completed. There is a right of appeal to Scottish Ministers against an EN. In the event of an appeal, the terms of the EN are suspended until a decision is reached.

Failure to comply with an EN within the time specified is an offence. On conviction, this can result in a fine of up to £50,000. Failure to comply may also result in the Council taking direct action to remedy the breach (see other powers below). The Council will then seek to recover costs from the owner of the building or land.

Listed Building Enforcement Notice (LBEN) – in the event of unauthorised works to a listed building, including demolition, an LBEN can be served on the owner, occupier and anyone else with an interest in the property. The procedures are similar to those outlined above. The LBEN must specify the steps to be taken to remedy the breach and a date for compliance. Failure to meet the terms of an LBEN by the specified date is an offence. There is the right of appeal to Scottish Ministers against the LBEN.

Breaches of listed building control are considered a serious matter. The legislation makes it clear that it is a criminal offence to undertake works to demolish, significantly alter, or extend a listed building without the proper authorisation from the Council and, in some circumstances, Historic Scotland. On conviction, this can lead either to an unlimited fine or imprisonment.

Stop Notice – used in urgent or serious cases where unauthorised activity must be stopped, usually on grounds of public safety. When a Stop Notice is served, the

planning authority must also issue an Enforcement Notice. There is no right of appeal against a Stop Notice and failure to comply is an offence. An appeal can be made against the accompanying Enforcement Notice. If a Stop Notice is served without an adequate reason, or an appeal against the Enforcement Notice is successful, the Stop Notice may be quashed, and the Council may face claims for compensation.

The use of Stop Notices therefore needs to be carefully assessed by the Council.

Temporary Stop Notice (TSN) – used to require the immediate halt of an activity which breaches planning control. There is an exception that a Temporary Stop Notice cannot prohibit the use of building or a caravan as a dwellinghouse. Temporary Stop Notices are enforceable for 28 days, after which time they expire. They may, however, be followed by further enforcement action such as an Enforcement Notice and Stop Notice. There is no provision to appeal against a Temporary Stop Notice.

Fixed Penalty Notice (FPN) – used to address situations where a person has failed to comply with the requirements of an Enforcement Notice (EN) or a Breach of Condition Notice (BCN). By paying the penalty imposed by the Fixed Penalty Notice, the person will discharge any liability for prosecution for the offence. It will not, however, discharge the obligation to comply with the terms of the Enforcement Notice or Breach of Condition Notice and the planning authority will retain the power to take direct action to remedy the breach and recover the costs of such work from that person. The Council is not required to offer the option of paying a fixed penalty. Any decision to do so would depend on specific considerations, such as the scale of the breach and its impact on local amenity.

Notice Requiring Application for Planning Permission for Development

Already Carried Out – where the Council considers that a development which does not have planning permission may be acceptable they may issue a Notice requiring the landowner or development to submit a retrospective planning application. Such an application would be considered on its planning merits and handled in the same way as any other planning application. Issuing such a Notice does **not** guarantee that permission will be granted – the Council may decide instead to refuse permission, or to grant permission subject to conditions or amendments to make the development acceptable.

Other Powers

Planning Contravention Notice (PCN) - used to obtain information about activities on land where a breach of planning control is suspected. It is served on the owner or occupier, or a person with any other interest on the land or who is carrying out operations on the land. Such a notice may be a precursor to further investigation. Failure to comply with a PCN is an offence and, on conviction, can result in a fine.

Notice under Section 179 of the Town and Country Planning (Scotland) Act 1997 – S.179 allows planning authorities to serve a Notice on the owner, lessee or occupier of land which is adversely affecting the amenity of the area. This is also known as an “Amenity Notice” and sets out the action that needs to be taken to

improve the condition of the land or building within a specified period. There is a right of appeal against a Section 179 notice. Whilst non-compliance cannot result in prosecution, the Council may undertake the specified work at its expense and re-charge the owner, occupier or lessee, as appropriate, to recover the costs.

Notice under Section 272 of the Town and Country Planning (Scotland) Act 1997 – S.272 provides limited powers to obtain information on interests on land and the use of land. Failure to provide the information required is an offence.

Interdict and Interim Interdict – an interdict is imposed by the courts and is used to stop or prevent a breach of planning control. Court proceedings can prove costly and Councils normally only seek Interdicts in serious cases or where Enforcement Notices have been ignored in the past. However, a Council can seek an interdict in relation to any breach without having to use other powers first. Breaching an interdict is treated as a contempt of court and carries heavy penalties.

Direct Action – failure to comply with the terms of an Enforcement Notice within the time specified can result in the Council carrying out the specified work. The Council may recover any costs it incurs from the landowner.

Notification of Initiation of Development (NID); Notification of Completion of Development (NCD) and Display of Notices while Development is Carried Out – while not in themselves planning enforcement powers, these Notices are intended to improve delivery the monitoring of planning enforcement by requiring confirmation that development has commenced and been completed. For example, this enables planning conditions to be checked for compliance. Site Notices, which apply to major developments, may help to raise awareness of developments in a locality.

Starting a development without submitting an NID is a breach of planning control and the Council may consider enforcement action. The NCD requires a developer to submit a further Notice after development has been completed.

Site notices contain basic information about the site and the development. Notices also provide contact details where members of the public may find out more information or report alleged breaches of planning control. It is a breach of planning control to fail to display a site notice when required to do so.

Certificates of Lawful Use or Development (CLUD) – may determine whether any enforcement action could be taken by providing a mechanism for establishing the planning status of land i.e. whether an existing or proposed use or development is considered lawful for planning purposes. In addition, the procedure provides a mechanism for obtaining from the Council (or the Scottish Ministers on appeal) a statutory document certifying the lawfulness, for planning purposes, of existing operational development or use as a single dwellinghouse. Anyone can apply to the Council for a decision on whether a specified existing use, operational development, or failure to comply with a planning condition or limitation is lawful for planning purposes.

There are similar provisions for establishing whether a proposed use or operational development would be lawful for planning purposes. In both cases, the onus of proof lies with the applicant. Certificates can be revoked if it subsequently appears that false or misleading information has been submitted with an application.

It should be noted that a CLUD does not mean that planning permission has been granted, but that the use or development is lawful and immune from enforcement action.

8. Enforcement and advertising

The display of advertisements is covered by the Town and Country Planning (Control of Advertisements (Scotland) Regulations 1984 (as amended). Many advertisements are displayed with what is called “deemed consent” which means they do not require advertisement consent from the Council if they meet the criteria and conditions set out in the Regulations.

One of these conditions is that the landowner has given permission for the advertisement to be displayed on their land.

Displaying an advertisement in contravention of the Regulations is an offence. On conviction, an offender can be fined. The Court can impose further fines for each day the breach of the Regulations continues.

The Council also has the power to serve an Enforcement Notice against unauthorised advertisements, requiring their removal. Such a notice specifies the time period (normally 28 days) for compliance. However, the compliance period can be reduced to seven days if the Council believes there is an urgent need for the advertisement to be removed or altered in the interests of public safety, or if the advertisement can be removed without any other work being required.

An Enforcement Notice can also require that a particular piece of land should not be used to display advertisements. A notice remains in force even once the original advertisement is removed. Any subsequent advertising on this site would amount to a breach of the Notice.

The Council can also take action against advertising being displayed with “deemed consent” where it is held that the advert is either a danger to public safety or substantially injures local amenity.

A Discontinuance Notice, requiring removal of an advert, can be served on the owner or occupier of the land as well as the person who displays the advertisement.

There is a right of appeal against both an Enforcement Notice and Discontinuance Notice.

The Council also has powers to remove or destroy placards and posters that do not benefit from either advertisement consent or deemed consent. If the person or company who put up the poster can be suitably identified, they can be given at least two days’ notice that the Council intends to take the poster down. If the person or company cannot readily be identified, then the advert can be removed immediately.

If necessary, Council planning officers can enter unoccupied land to remove an advertisement. However, planning officers have no powers to remove advertisement displays within a building to which there is no public access.

9. Enforcement contacts

There are various ways to contact Planning Services do this:

Using the North Ayrshire Council website:
[Report a Planning Breach](#)

By telephone:
01294 324319 (24 hour voicemail facility available)
or 01294 310000

By email:
<mailto:eplanning@north-ayrshire.gov.uk>

By post or in person:
Planning Services
North Ayrshire Council
Cunninghame House, Irvine KA12 8EE
Please make an appointment prior to attending Cunninghame House

If the initial complaint has not been resolved to your satisfaction, you may report the matter to the Senior Development Management Officers on either 01294 324318 (East Team) or 01294 324320 (West Team). Both numbers have voicemail should you be unable to speak directly to the person.

General enquiries on planning issues in North Ayrshire should be made either by phone to 01294 310000 or email <mailto:eplanning@north-ayrshire.gov.uk>

The postal address for making a complaint regarding the handling of a planning enforcement matter is:

**Customer Complaint Team
Cunninghame House
Irvine
KA12 8EE**

For enquiries about the Planning and Enforcement system in Scotland, please contact the Scottish Government at Victoria Quay, Edinburgh EH6 6QQ. The Scottish Government website also has an extensive planning section at [visit the Planning section of the Scottish Government website](#)

Free, impartial and professional planning advice can be obtained from Planning Aid Scotland on 0131 220 9730 and via [Planning Aid Scotland website](#)

Complaints regarding the **content** of advertisements should be made to the Advertising Standards Authority via its website [visit the Advertising Standards Authority website](#)

10. Summary of the Planning Enforcement Charter

This Charter does not comprise an authoritative interpretation of the Planning Acts in Scotland.

- It is important to remember that the primary purpose of planning enforcement is to remedy any breach which has occurred rather than to apply punitive measures to those responsible
- The Council is not required to take any particular action on a specific breach, and indeed can decide that no action is necessary
- A priority system is used for investigating complaints based on matters such as the significance of the alleged breach on amenity or other relevant planning considerations
- The Council routinely monitors high profile and other developments of public interest to ensure planning regulations and conditions are being adhered to
- There is a role for members of the public to alert the Council to any potential breaches of planning control they become aware of, whether large or small
- Some complaints, such as neighbour disputes over boundaries, relate to matters over which the Planning Service has no control and cannot therefore be pursued
- The planning system does not exist to protect the interests of private individuals against each other, but must work in the public interest
- The resolution of enforcement cases can be lengthy
- The Council can also grant planning permission retrospectively. Conditions may be attached to planning permission in order to remedy a breach

Planning legislation is complex, and if you are in receipt of any correspondence or formal notice from the Council relating to planning enforcement, you are advised to seek legal or independent professional planning advice.

Updated August 2023

NORTH AYRSHIRE COUNCIL

23rd August 2023

Planning Committee

Locality	Garnock Valley
Reference	23/00388/PPM
Application Registered	31st May 2023
Decision Due	30th September 2023
Ward	Garnock Valley

Recommendation	Approved subject to Conditions
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Location	Chivas Bros Ltd, Balgray, Beith
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Applicant	Chivas Brothers Ltd
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Proposal	Change of use of agricultural land to form extension to bonded warehousing complex to include the erection of 5 no. double cell and 3 no. triple cell warehouses, associated earthworks, internal access roads, SuDS and landscaping
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1. Description

Planning permission is sought for the development of an extension to an established bonded warehouse site on 14 hectares of farmland to the northwest of the existing boundaries of the Balgray Bond to the north of Barrmill. The site consists of seven fields, currently used as grazing land, and which slope gently downhill from northwest to southeast. The proposed development would, in effect, 'round-off' the existing development by extending Balgray up to two adjacent public roads at the northwest and northeast of the application site boundary.

It is proposed to erect a total of 19 new warehouses within two groups of 'double' and 'triple' blocks, giving a total internal floorspace of 47,500 square metres. Subject to the submission and approval of a separate application for hazardous substances consent, the warehouses would be used to mature scotch whisky or other spirits.

There would be a total of five 'double cell' blocks sited alongside the southern boundary. Their long elevations would face generally NW/SE. A double cell warehouse is formed by

adjoining 2 no. single warehouses with a separating firewall, giving a total length of approximately 151m in length, 35m in width and 10.7m to the roof ridge.

There would also be three 'triple cell' blocks towards the northern portion of the site, also with their long elevations facing generally NW/SE. A triple cell warehouse is formed by adjoining 3 no. single warehouses with separating firewalls, giving a total length of approximately 280m in length, 35m in width and 10.7m to the roof ridge.

The proposed double and triple cell warehouses would be similar in size, height, design and appearance to the recent phases of development at Balgray, including those currently under construction at the southern end of the complex. The walls and roofs of all blocks would be clad with Olive Green coloured metal cladding.

The warehouses would be linked using a series of internal site roads. Access to the site would be taken from the existing site via the main gate which connects onto the public road to the northeast. There is no additional connection proposed from the site to the public road network.

A SuDS pond, for the storage and treatment of surface water drainage from the buildings, swales, ditches and access roads, would be formed towards the eastern part of the site, connected through existing field ditches and eventually discharging to the Dusk Water which flows through Balgray. The Dusk Water is the main watercourse in the locality, and flows southwards to the River Garnock between Dalry and Kilwinning.

The application also proposes to landscape the ground to the perimeter of the site where it adjoins the two public roads (northwest and northeast). The landscaping works would consist of earth mounding and tree planting. Elsewhere in the site, open ground would be planted with grass seed and areas would be set aside for planting aimed at enhancing biodiversity.

Balgray (and Willowyard, also near Beith) were developed on greenfield rural sites. There are currently around 56 warehouses at Balgray. In addition, the facility accommodates offices, plant, external barrel storage areas and lorry parking facilities.

The original warehouse type at Balgray was a single cell design which accounts for 38 out of the total. The single cell warehouses tend to be taller in height at around 15m to ridge. For fire safety purposes, the single cell warehouses were developed at a lower density, with a much greater separation distance between each in comparison with the warehouses built during recent decades. The more recent developments at Balgray between the 1990s and 2023 include a number of double and triple cell warehouses. The increased density of the warehousing built during the past twenty five years has made more efficient use of the available land without extending beyond the original planning permission boundary. This has been achieved through improved building standards in relation to fire suppression, including the use of more fire retardant materials and sprinkler systems. The current proposal is the first time the applicant has sought to extend beyond the original site boundary, which dates back to the early 1970s.

Beyond the warehousing complex, the surrounding area mostly comprises agricultural land. The nearest part of the village of Barrmill is located around 1.1km to the SSW of the site. The village of Gateside is approximately 1.5km to the northwest. The hamlet of Hessilhead is around 550m to the northeast. There are a number of individual houses and farms in the

vicinity of the site, the nearest being Gatehead Farm which comprises the original steading and a 1970s bungalow, which is immediately to the northwest.

In addition to plans and drawings, the application is accompanied by the following reports and information:

Pre application Consultation (PAC) Report

The PAC report identifies the engagement undertaken by the applicant with the local community and the planning authority before the proposals were finalised. It notes that the first public event was held on 26th January 2023 in Barrmill Community Centre. The second public event was held on 22nd February 2023 also in Barrmill Community Centre. Both events are documented in the PAC report. Attendance at the first event was 15, with 13 people attending the second. The main issues raised were in respect of concerns about additional traffic, including the effect on school drop-off/pick-up times at Gateside Primary School, road safety, the blackening of buildings from mould, and the lack of any perceived community benefit.

Design and Access Statement

It is a statutory requirement to provide a design and access statement for major planning applications (other than for applications seeking permission in principle). The document provides an overview of the site, describes the proposed development together with the design solutions adopted and discusses the proposed access arrangements for traffic, pedestrians, cyclists and service vehicles. The basis for the submitted design is to accommodate whisky barrels on pallets. Six barrels can be stored on a pallet and stacked seven high. The storage period would range from 3 years to 21 years. It discusses the need to form level platforms on which to build the warehouses for the pallets/barrels. Soils to be excavated for the platforms would be retained on site and used to create earthworks. Warehouses would have concrete floors and steel framed walls and roofs, clad using Olive Green metal cladding panels. The warehouses would be unheated with minimal lighting.

Access to the site would be by road using the existing route from Beith via Gateside. Current traffic levels are typically 45 HGVs per week (90 two way movements). The proposed development would generate an increase of 3 (or 6 two way movements) to 48 per week (a total of 96 two way movements weekly). Other traffic consists of staff cars and small service vehicles delivering to the offices. Working hours are between 7am and 5.45pm on Mondays to Thursdays and from 7am to 1.45pm on Fridays.

Data for construction traffic and construction working hours are not detailed and would require to be the subject of additional information, should planning permission be granted.

Drainage Strategy

The strategy identifies that the site is not at risk of flooding from surface water nor watercourses. The drainage strategy relates to the management of surface water flows from the site, taking into account the need to manage spillages and contaminated water in the event of a fire.

Ground Investigation Report

Ground investigation works took place prior to the acquisition of the site by the applicant. The site was found to comprise a layer of topsoil over clay and bedrock. The investigation concluded that there is no evidence of made ground nor contamination. Ground gas levels

were investigated and it has been concluded that the site is acceptable for the proposed development.

Mining Stability Report

Investigation involving the use of boreholes was carried out. It was established that the Dalry Clayband Ironstone seam was encountered between depths of 4.85m and 24.95. The boreholes found the seam to be intact, with the conclusion that no ironstone has been worked below the investigation area in the past, and that the site can be regarded as minerally stable.

Planning Statement

The statement reviews the development plan, including National Planning Framework 4 (NPF4) and the North Ayrshire Local Development Plan (LDP). A review of the various policies were carried out. Both NPF4 the LDP provide support in principle for development associated with the whisky industry. The statement goes on to discuss how the proposed development would address the climate and nature crises through appropriate mitigation and through the use of pro-active measures to improve biodiversity at the site, such as new planting. It concludes that significant weight should be given to these factors in the determination of the application.

Preliminary Ecological Appraisal

The appraisal includes a phase 1 habitat survey, desk study and survey for protected species. The survey work was carried out in April 2023 and is considered to be up to date. The desk study indicated that records for soprano pipistrelle and brown long-eared bat can be found within 2km of the site. There are 19 designated sites of wildlife interest within 2km, including four ancient woodlands and an SSSI at Trearne Quarry. The site provides suitable habitat for foraging and commuting bats and vegetation provides opportunities for tree and ground nesting birds within the active season. No field signs for protected species were identified. A series of recommendations have been made in the appraisal, including the avoidance of any site clearance works during the main bird breeding season and in respect of appropriate planting and other measures for nature.

In terms of the adopted Local Development Plan (LDP), the application site and surrounding area is within a Countryside Area. Strategic Policy 1 (Countryside Objective) applies to development in rural areas. The application requires to be considered in terms of the Placemaking Policy of the LDP (Strategic Policy 2) and Policy 35 (Hazardous Installations and Substances). The application also requires to be considered in terms of National Planning Framework 4 (NPF4).

The application was subject to a processing agreement.

2. Consultations and Representations

Neighbour notification was undertaken in accordance with statutory procedures which included the publication of a notice in a local newspaper. 5 representations were received, all expressing concerns with the proposed development.

Representations

1. Loss of farmland. Planting hedges around the perimeter will not replace the effects on wildlife and farming opportunities nor help our carbon footprint. Healthy trees and hedgerows are already being removed to facilitate the current development taking place.

Response: There is no evidence to suggest that the loss of farmland would be significant in this instance. The land is used for grazing/silage production and is of similar quality to the surrounding agricultural land (Grade 4.2 in terms of the James Hutton Institute Classification, which is noted as 'poor quality'). The proposals would provide enhanced conditions for wildlife and ecology in comparison with intensive farmland through the creation of new woodland areas, hedgerows, water features and wild flower meadows. To secure these outcomes, the long term management of the land around the proposed warehouses would be subject to a planning condition.

2. The development will not create any long term jobs since the warehouses are for storage only.

Response: The proposed development would safeguard existing employment at the site and within the scotch whisky industry in the wider region. See Analysis, below.

3. The effects of the existing warehousing at Balgray results in black mould forming on all outdoor surfaces including buildings, plants, children's toys, vehicles, etc. The applicant has never taken responsibility for this side effect which local residents have no control over. There is no environmental report which addresses this matter in the application. The resultant impact of additional warehouses will reduce property values in the area. The applicant should be held accountable for this issue and either be made to add filtration systems to each warehouse in order to prevent the release of vapour, or fund the cleaning and repainting of the houses/gardens impacted by the mould each year. Building additional sheds will only make matters worse.

Response: Comments about black mould and property values are private legal matters rather than material planning considerations. Accordingly, there is no planning issue to consider in relation to the determination of the application. Refer also to point 6, below.

4. The access road to the site is unfit for the current heavy goods vehicles using it to access the existing warehouses. The road is not wide enough. The additional traffic that the proposed development will generate will worsen road safety.

Response: No objection to the application has been raised by the Council's Active Travel and Transport officers (see below). A condition is recommended with respect to the management of construction traffic. Since the application is for a major development, with the potential for significant traffic generation during the construction phase, is considered necessary to attach a Construction Environmental Management Plan (CEMP) which would address traffic management during construction. It is not considered that the operational traffic levels (once the construction phase is over) would result in significant additional traffic generation on the nearby public roads. Figures provided by the applicant's agent indicate HGV vehicle movements would increase from 90 per week (2 x 45 in each direction) to 96 per week (2 x 48). See also consultation response from Beith Community Council, below.

5. The application has been subject to consultation with the Health and Safety Executive but not in respect of the intended use of the proposed warehousing to store ethanol spirits. It is anticipated that, in due course, the adjoining fields will be designated as being within a consultation zone for health and safety purposes under the COMAH Directive (Control of Major Accident Hazards) once an application for hazardous substances consent is considered by the Council. This will significantly affect property and buildings not owned or controlled by the applicant outside their site boundaries. It is argued that both applications should be lodged and considered together and not separately. The safety implications of the proposed development should be wholly contained within the application site or within land owned by Chivas Brothers and not on land owned by third parties. The HSE will, in due course, arbitrarily issue a consultation zone that will impact on what surrounding landowners are able to do with their land in the future due to the safety implications associated with the management of an expanded COMAH site at Balgray. It is suggested that the HSE should apply its zones inwards to the Chivas site in order that the Council can determine what can safely be built within land owned by Chivas without external effects on others beyond.

Response: There is no statutory obligation for an applicant to seek a hazardous substances consent (HSC) at the same time as applying for planning permission. Planning decisions can be made independently and without prejudice to the determination of any subsequent HSC application. In the event that an HSC consent was not obtained, it is unlikely that the applicant would proceed with the development, given the intended purpose of the proposed warehousing. With respect to this issue, the applicant's agent has commented as follows:

"The COMAH zones will be undertaken during the HSC application as part of Chivas requirements to update the COMAH Site Safety Report for the enhanced site. It should be noted that when COMAH was implemented in 1999 the site would have been designated as an Upper tier COMAH site and by default the Browns Pressure washer building would have sat within the inner zone based on its current close proximity to the historic warehouses that predated the COMAH implementation.

The proposed new warehousing moves the COMAH inner zone to stand off from the boundary of these new warehouses. This new inner zone has no detriment to the Browns Pressure washer building, as it already sits within the Inner zone irrespective of this application.

Gatehead Farm is the only property in the vicinity of the site that would be incorporated within the revised inner zone boundary. The land that is part of this application is being sold by the owner of Gatehead Farm to Chivas Brothers and is aware of the proposed use of land.

In relation to the specific allowance on permitted properties within the Inner Zone. There is no clear guidance on existing properties within a COMAH zone other than notification.

The only guidance in place would be if a new farm and farm building was to be formed within the COMAH zones. The HSE Land use planning methodology would permit the construction of a new farm building to be constructed within the inner zone provided it was less than 3 storeys and employed less than 100 people. We would suggest that Gatehead Farm falls within this category."

6. A current case being heard by the Court of Session on a claim of damage to private property in the Bonnybridge area from a bonded warehouse complex should be taken into account in the planning conditions for the proposals at Balgray. Such a condition should require Chivas to automatically abide by any outcome of the damages case and accept it as a legal precedent.

Response: This is not a material planning consideration. Planning applications must be determined on their planning merits in accordance with the development plan and not in relation to legal matters outwith the scope of the statutory planning application process. The applicant's agent has stated that the legal case referred to is "ongoing and has been for well over 10 years. It has yet to be heard in court therefore there is no determination in place. The objector appears to have predetermined the outcome of the case. This aspect of the objection has no bearing on the planning application."

Consultations

NAC Active Travel & Transport - no objection subject to the condition that a construction traffic management plan should be submitted and approved before construction work begins.

Response: Noted. The use of a Construction Environmental Management Plan (CEMP) would address the matters raised. A CEMP can be secured by condition.

Beith Community Council - highlight concerns about traffic impacts and road safety, and raise several questions in respect of traffic management, especially for the construction phase. There is particular concern about the timing of heavy vehicles passing through Gateside at school drop off and pick up times. The community council have also asked if a community benefit scheme can be given consideration to support local residents with community activities and to reduce the impacts of the black mould on their properties.

Response: As noted above, a CEMP would be attached as a condition of any planning permission granted. Community benefits schemes are outwith the scope of the planning process and are not material considerations. As noted above, comments made in respect of mould are not a material planning consideration.

NAC Environmental Health - no objections. Various observations have been made with respect to the control of environmental impacts (noise and other forms of pollution) during construction.

Response: Noted. The use of a Construction Environmental Management Plan (CEMP) would address the matters raised. A CEMP can be secured by condition.

NAC Flooding Officer - no objection. Various matters raised for consideration by the applicants relating to drainage design.

Response: All points raised have been addressed by the applicant's agent.

Health & Safety Executive - does not advise, on safety grounds, against the granting of planning permission in this case.

Response: Noted.

Scottish Water - no objection. There is sufficient capacity in the water treatment works at Camphill to service the development. There is no public sewer in the area.

Response: The development does not require a waste water connection. The surface water would be treated and attenuated in a SuDS system which would include a detention basin and drained to existing ditches where it would subsequently discharge to the Dusk Water.

SEPA - no objection. Review of the SEPA Flood Map indicates that the site is outwith the river/coastal future flood extents. A small watercourse runs along the eastern edge of the site boundary. SEPA recommends that the buffer zone between the proposed SuDS pond and the small watercourse is set back as far as possible to ensure flood extents which may originate from the watercourse are unable to reach the pond. The existing facilities at Balgray fall within the scope of the Control of Major Accident Hazards Regulations 2015 (COMAH) for which SEPA and HSE are competent authority. It is recommended that the applicant makes contact with the competent authority to submit an updated notification.

Response: The applicant has taken into account the issues raised by SEPA in the drainage design and a condition is also recommended in this regard to enable details to be finalised before any development of the site commences. The other matters raised have been sent to the applicant's agent for their attention and appropriate action.

West of Scotland Archaeology Service - no objection. Recommend a programme of archaeological works in accordance with a written scheme of investigation to be submitted and approved beforehand.

Response: Noted. An appropriate condition could be attached.

3. Analysis

As noted above, the application site is located within the countryside as defined by the North Ayrshire LDP.

Strategic Policy 1 (the Countryside Objective), indicates support in principle for expansions to existing rural businesses and uses such as expansions to the brewery and distillery based enterprises in the area. Given that the proposal is for the maturation of ethanol spirit primarily related to the Scotch Whisky industry, it is considered that the proposed development as an expansion of the existing Balgray complex has a justifiable specific locational need. The existing operation already provides all necessary site security, staffing and road access infrastructure. Whilst the proposed development would result in the loss of some 14 hectares of grazing land, it would 'round-off' the existing warehouse complex and create more defensible long-term boundaries beside two adjoining rural roads using earthworks and structure planting. In addition to being supported by the planning history of the site, the proposal accords with Strategic Policy 1.

The siting and design attributes of the proposed development requires to be reviewed in terms of Strategic Policy 2 (Placemaking), which follows below. The most relevant qualities of a successful place to this proposal are 'safe and pleasant', 'resource efficient' and 'easy to move around and beyond.' A response to each quality is provided below, as follows:

'safe and pleasant' - it is noted that the existing warehouse complex at Balgray imposes a relatively significant visual impact on the rural landscape around Barrmill, albeit across a fairly localised area. The proposed earthworks and associated woodland planting, once mature, would greatly mitigate the visual impact of the development when viewed from the nearby public roads, the bungalow and steading at Gatehead, as well as mitigating the visual impact of the existing warehouses further east.

The use of Olive Green cladding would help to reduce the apparent bulk of the warehouses in comparison with lighter colours (such as light grey or light green) that were used in earlier phases at Balgray. The evidence for the reduced visual impacts achieved through the use of Olive Green cladding has been demonstrated successfully by the recent bonded warehousing built towards the southern part of Balgray.

'resource efficient' - a SuDS drainage system would be provided to ensure that run-off from the development is properly treated, attenuated and discharged to the Dusk Water, which flows to the east of the site. As well as reducing the visual impact of the proposed development, the proposed earthworks would reduce the need for off-site disposal of surplus soils.

'easy to move around and beyond' - all access to the site would be via the existing gated access serving the Balgray site. The complex is easily accessible by road, being less than two miles from the A737 trunk road at Beith (via the B777 at Gateside) and around 1.5 miles from the A736. As noted above, a condition could be attached with regard to construction environmental management, which would address traffic impacts in the locality in addition to other matters.

In summary, the proposal would satisfy the requirements of the Placemaking Policy.

In terms of Policy 35 (Hazardous Installations and Substances), a consultation was undertaken with the Health & Safety Executive who has no objection to the proposal. A further Hazardous Substances Consent (HSC) for the storage of ethanol spirits requires to be sought and obtained before the proposed warehouses could be used. This would involve further consultation with the Health & Safety Executive and SEPA, as the competent authority for COMAH sites. The applicant is currently working towards the submission of an HSC application. Given the economic justification for expanding the existing facility at Balgray, it is considered that the application is acceptable in terms of Policy 35.

Turning to NPF4, the applicant has provided a statement which appraises the proposed development against the spatial framework and policies.

It is considered that, in principle, the proposed development accords with the strategic intention of NPF4 in respect of the whisky industry. NPF4 recognises the importance of whisky as a nationally important export product and its significance to the Scottish and UK economy. The LDP is broadly in alignment with NPF4 in respect of its other strategic policy objective, those of tackling the climate and nature crises. New development requires to be 'nature positive'. Vegetation removal would chiefly relate to grasses and some poorly maintained hedgerows, with no loss of woodland. Soil would be retained on the land and re-used for bunding and landscaping.

A series of recommendations have been made in the ecology survey submitted in support of the application. In order to take into account the matters raised, it is considered that a

condition should be attached to require their implementation during the development of the site. This would help to ensure that the principles set out in NPF4 for nature are implemented.

Once construction works are complete, the proposed warehousing would not result in significant energy consumption during its operational lifespan, since the warehouses would not be heated and artificial lighting would be minimal. Whilst there would be a permanent loss of agricultural land to the development, much of the site would be planted with trees, wildflowers and grasses, in addition to the creation of a large water body. Subject to adequate management practices, the proposed measures would create favourable conditions for a wider range of wildlife than is the case on the land at present.

Future land management would reduce the need for pesticides and fertilisers, which would also improve conditions for wildlife and have a beneficial effect on water quality. In the above ways, it is considered that the proposed development would be nature positive and would accord with NPF4.

There are no other material considerations. In conclusion, it is considered that the proposed warehouse development would accord with the development plan. The development would support the ongoing use of Balgray for the maturation of ethanol spirit, thus supporting local employment within a key sector of the Scottish economy. It is recommended that planning permission is granted, subject to the conditions noted below.

4. Full Recommendation

Approved subject to Conditions

Reasons for Decision

The proposal complies with the relevant provisions of the development plan and there are no other material considerations that indicate otherwise. This is determined following an assessment which has had regard to the provisions of the development plan, so far as material to the application, and to any other material considerations.

Condition

1. That no development shall take place until the applicant has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation to be submitted by the applicant, agreed by the West of Scotland Archaeology Service, and approved by North Ayrshire Council as Planning Authority. Thereafter the applicant shall ensure that the 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 the Planning Authority in agreement with the West of Scotland Archaeology Service.

Reason

To ensure any archaeological remains below the ground are investigated and recorded/recovered before the development commences.

Condition

2. That prior to the commencement of the development hereby approved, the applicant shall submit a Construction Environmental Management Plan (CEMP) for the written approval of North Ayrshire Council as Planning Authority. The CEMP shall take into account the management of construction traffic to and from the site, and shall include information about the roads to be used and their suitability for heavy goods vehicles. Consideration shall be given to the potential impacts on safety within the village of Gateside particularly during school drop-off and pick-up times. The CEMP shall also identify the hours of working for the construction of the development. Thereafter, the development shall be implemented in accordance with such details as may be approved to the satisfaction of North Ayrshire Council as Planning Authority.

Reason

In the interests of safety and environmental protection during the construction phase.

Condition

3. That, for the avoidance of doubt, surface water arising from the development of the site, including during construction operations, shall be treated and managed using a SuDS system. Prior to the commencement of the development, 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 development of the site (during construction and operational phases) has been prepared in accordance with the principles and practices contained in 'The SuDS Manual' (CIRIA report C753, published November 2015). 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.

Reason

In the interests of securing sustainable drainage for the development to safeguard the water environment.

Condition

4. That, prior to the commencement of any landscaping works, the applicant shall submit for the written approval of North Ayrshire Council as Planning Authority a finalised scheme of landscaping and planting. The finalised scheme shall be based on the landscape plan hereby approved and as per the recommendations Part 5 (Planting for Wildlife) of the Preliminary Ecological Appraisal submitted in support of the application (Wild Surveys project number WWS4047.23 dated 18 April 2023). The scheme shall include details of species, planting densities, soil treatment, aftercare and future management. All tree and plant species shall be selected to enhance biodiversity and support nature/wildlife, with future management measures designed to minimise the use of chemical pesticides and manufactured fertilisers. The scheme as may be approved shall be implemented prior the development becoming operational and retained/managed permanently thereafter to the satisfaction of North Ayrshire Council as Planning Authority. Any trees or areas of planting which fail shall be replaced until successfully established.

Reason

To mitigate landscape and visual impacts and in the interests of amenity, biodiversity and habitat creation.

Condition

5. That the recommendations contained in Part 5 of the Preliminary Ecological Appraisal submitted in support of the application (Wild Surveys project number WSWS4047.23 dated 18 April 2023) shall be implemented during the course of the development. For the avoidance of doubt, no vegetation clearance or soil stripping works shall be undertaken during the main bird breeding season of March - September.

Reason

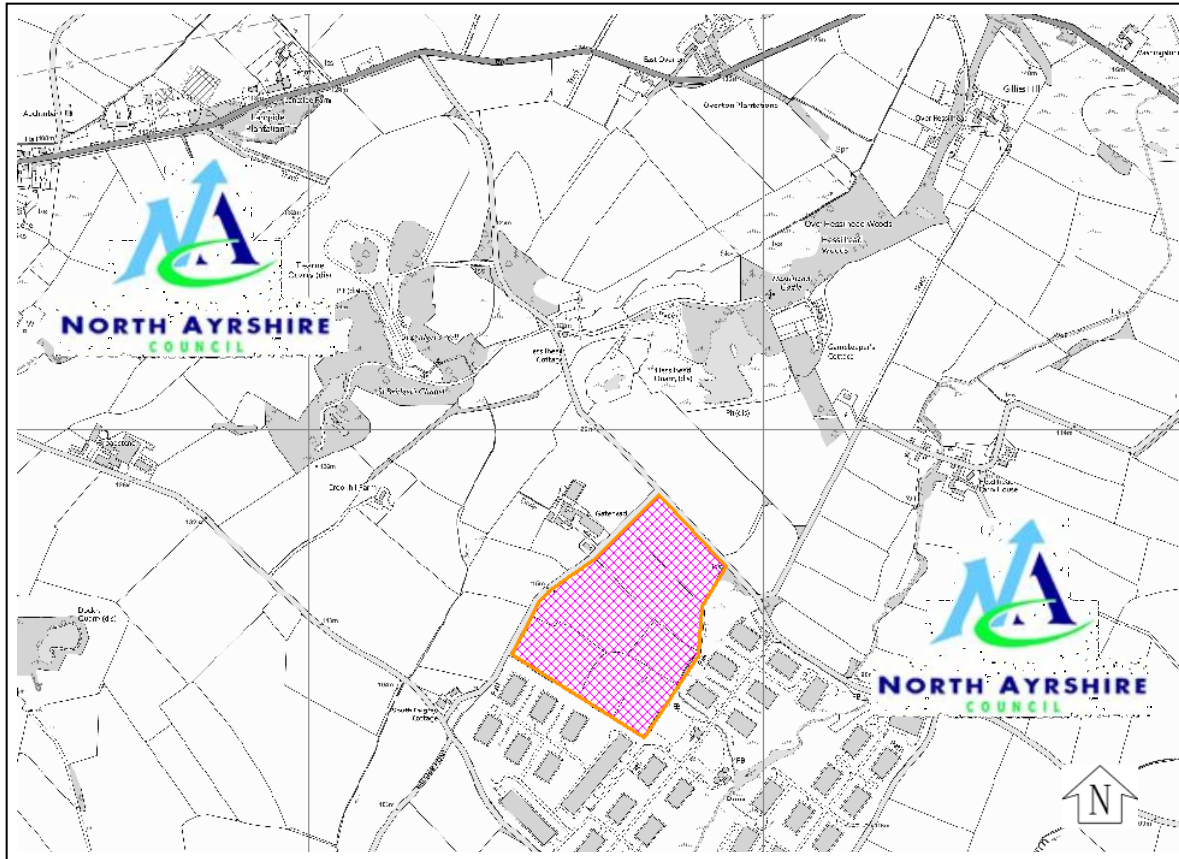
To prevent any disturbance to breeding birds and their habitats.

Allan Finlayson
Chief Planning Officer

For further information please contact Mr A Hume, Senior Development Management Officer on 01294 324318.

Appendix 1 – Location Plan

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NORTH AYRSHIRE COUNCIL

23rd August 2023

Planning Committee

Locality	Arran
Reference	23/00436/PP
Application Registered	14th June 2023
Decision Due	14th August 2023
Ward	Arran

Recommendation	Refuse and Approve service of Enforcement Notice
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Location	Old Pavilion Lamlash Brodick Ayrshire KA27 8LS
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Applicant	Fergie's F.A.O. Mrs Emma Ferguson
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Proposal	Siting of burger van within one car parking space for temporary period of three years
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1. Description

Planning permission is sought for the siting of a mobile snack van for a temporary period of three years on an existing car park within the Conservation Area of Lamlash. The car park is leased and maintained by North Ayrshire Council.

BACKGROUND

Public complaints over the van were initially reported to Planning Services in early 2023, no planning permission for the use had been gained and the matter was investigated as an unauthorised use under planning enforcement reference 23/00019/BREACH. The owners claimed at that point that the van was licensed, was only intermittently sited and had not been at that particular site for more than 28 days and so was not in breach of Planning law. They were advised at that time that the investigation would be closed and that the site would be monitored for potential future planning breaches. Advice was given that they were free to apply for planning permission for the use if they wished in the meantime.

PROPOSAL

The van is fully mobile and is a standard sized Fiat van converted to have a high sided compartment to the rear with a serving hatch to the side. It is not fixed to the site and has not

been permanently positioned at the car park. It has been observed by Council Officers sited on the first, westmost space of the gravel public car park to the north of the Old Pavilion and tennis courts in Lamlash at the entrance from the A841 road for more than 28 days cumulatively since the initial complaints above were received.

The business sells hot filled rolls, other prepared foods and hot and cold drinks and snacks. It is not permanently connected to any services, a gas bottle is placed to the side for the cooking equipment when sited and a water bottle and small generator are also brought to the site.

APPLICANTS' PLANNING STATEMENT

The application was supported by a Planning Statement, a copy of an Arran Banner article and thirteen comments in support given by customers and submitted by the applicants.

The Statement confirms that a Licence was obtained from North Ayrshire Council for street trading but claims that they were unaware that they also needed planning permission for the change of use of the land if sited in the same place for more than 28 days in a calendar year.

The Statement claims that the van fills a gap in the market by providing hot food at affordable prices which is not otherwise available in the surrounding area, where there is only a small sandwich shop offering cold pasta and rolls or a Co-op supermarket offering 'meal deals'. It claims that eating at pubs or restaurants in the area would not be affordable for most locals. It also claims to cater for elderly lunch clubs and for local High School pupils whose parents pre-pay and pre-order lunches although no evidence was provided.

The business claims to be aimed more at affordable food for locals rather than tourists who are well catered for elsewhere and confirms the intention to seek permanent premises once established, hence the application being for a temporary period only.

In recognising the Conservation Area location, the Statement confirms that the van is not permanently sited and usually trades only between 10am and 4pm on Tuesdays to Saturdays using only one parking space. The van is otherwise kept at the applicants' home address and is deep cleaned between shifts. During trading, a bin is supplied for customers' use and is removed at the end of trading. The Statement continues that no wastewater or other materials are disposed of at the site, that no fumes or unpleasant smells are created and concludes that no issues have been encountered in trading from the site thus far.

The site is at the western side of the Lamlash Conservation Area on the approach to the village centre from Whiting Bay and the van has been sited on the first space of the car park c.38-40 metres north of the tennis courts. The site is adjoined by the remaining car park to the east, the Whitehouse Woods site to the west and by Lamlash Green to the north. The car park is accessed directly from the A841 road immediately to the west of the site. There are commercial premises some 190m to the north and c.120m to the southwest and Lamlash Medical Centre and dwellinghouses are to the south.

In terms of the Adopted 2019 North Ayrshire Council Local Development Plan ("the LDP"), the site is located on an area identified as Open Space within the General Urban Area of Lamlash. The site is also within the boundary of Lamlash Conservation Area.

Relevant policies of the LDP include:

- Strategic Policy 1: Spatial Strategy (the Towns and Villages Objective);
- Strategic Policy 2: Placemaking;
- Policy 8: Business Development on Arran and Cumbrae;
- Policy 9: Preserving and Enhancing our Conservation Areas; and
- Policy 19: Developments Involving Open Space.

Relevant Development Plan Policies

SP1 - Towns and Villages Objective Towns and Villages Objective

Our towns and villages are where most of our homes, jobs, community facilities, shops and services are located. We want to continue to support our communities, businesses and protect our natural environment by directing new development to our towns and villages as shown in the Spatial Strategy. Within urban areas (within the settlement boundary), the LDP identifies town centre locations, employment locations and areas of open space. Most of the remaining area within settlements is shown as General Urban Area. Within the General Urban Area, proposals for residential development will accord with the development plan in principle, and applications will be assessed against the policies of the LDP. New non-residential proposals will be assessed against policies of this LDP that relate to the proposal.

In principle, we will support development proposals within our towns and villages that:

- a) Support the social and economic functions of our town centres by adopting a town centre first principle that directs major new development and investment to town centre locations as a priority including supporting town centre living.
- b) Provide the right new homes in the right places by working alongside the Local Housing Strategy to deliver choice and variety in the housing stock, protecting land for housing development to ensure we address housing need and demand within North Ayrshire and by supporting innovative approaches to improving the volume and speed of housing delivery.
- c) Generate new employment opportunities by identifying a flexible range of business, commercial and industrial areas to meet market demands including those that would support key sector development at Hunterston and i3, Irvine.
- d) Recognise the value of our built and natural environment by embedding placemaking into our decision-making.
- e) Prioritise the re-use of brownfield land over greenfield land by supporting a range of strategic developments that will deliver:
 - regeneration of vacant and derelict land through its sustainable and productive re-use, particularly at Ardrossan North Shore, harbour and marina areas, Montgomerie Park (Irvine) and Lochshore (Kilbirnie).
 - regeneration and conservation benefits, including securing the productive re-use of Stoneyholm Mill (Kilbirnie) and supporting the Millport Conservation Area Regeneration Scheme.

- f) Support the delivery of regional partnerships such as the Ayrshire Growth Deal in unlocking the economic potential of the Ayrshire region.

Strategic Policy 2

Placemaking

Our Placemaking policy will ensure we are meeting LOIP priorities to make North Ayrshire safer and healthier by ensuring that all development contributes to making quality places. The policy also safeguards, and where possible enhances environmental quality through the avoidance of unacceptable adverse environmental or amenity impacts. We expect that all applications for planning permission meet the six qualities of successful places, contained in this policy. This is in addition to establishing the principle of development in accordance with Strategic Policy 1: Spatial Strategy. These detailed criteria are generally not repeated in the detailed policies section of the LDP. They will apply, as appropriate, to all developments.

Six qualities of a successful place

Distinctive

The proposal draws upon the positive characteristics of the surrounding area including landscapes, topography, ecology, skylines, spaces and scales, street and building forms, and materials to create places with a sense of identity.

Welcoming

The proposal considers the future users of the site and helps people to find their way around, for example, by accentuating existing landmarks to create or improve views (including sea views), locating a distinctive work of art in a notable place or making the most of gateway features to and from the development. It should also ensure that appropriate signage and lighting is used to improve safety and illuminate attractive buildings.

Safe and Pleasant

The proposal creates attractive places by providing a sense of security, including by encouraging activity, considering crime rates, providing a clear distinction between private and public space, creating active frontages and considering the benefits of natural surveillance for streets, paths and open spaces.

The proposal creates a pleasant, positive sense of place by promoting visual quality, encouraging social and economic interaction and activity, and by considering the place before vehicle movement.

The proposal respects the amenity of existing and future users in terms of noise, privacy, sunlight/daylight, smells, vibrations, glare, traffic generation, and parking. The proposal sufficiently investigates and responds to any issues of ground instability.

Adaptable

The proposal considers future users of the site and ensures that the design is adaptable to their needs. This includes consideration of future changes of use that may involve a mix of densities, tenures, and typologies to ensure that future diverse but compatible uses can be integrated including the provision of versatile multi-functional greenspace.

Resource Efficient

The proposal maximises the efficient use of resources. This can be achieved by re-using or sharing existing resources and by minimising their future depletion. This includes consideration of technological and natural means such as flood drainage systems, heat

networks, solar gain, renewable energy and waste recycling as well as use of green and blue networks.

Easy to Move Around and Beyond

The proposal considers the connectedness of the site for people before the movement of motor vehicles, by prioritising sustainable and active travel choices, such as walking, cycling and public transport and ensuring layouts reflect likely desire lines, through routes and future expansions.

Detailed Policy 8 - Develop on Islands

Policy 8:

Business Development on Arran and Cumbrae

We will support developments that will have a positive impact on the vitality, vibrancy and viability of the island and avoid unacceptable adverse impacts on the environment, amenity or the tourism offer of the area.

We will promote as a preference, the existing settlement pattern in providing the best-placed locations because these are likely to have access to utilities and services and to ensure the greatest range of employees can access new businesses.

Proposals will be supported where they have demonstrated a sequential approach to site selection in the following order of preference:

- o Within or adjacent to established industrial and business locations
- o Within settlements
- o Edge of settlements
- o Within existing countryside buildings
- o Rural locations that are, or can be made, easily accessible by a choice of transport modes

We will be flexible and realistic in applying the sequential approach, in particular where key sector and employment uses are proposed to ensure the island can capitalise on major inward investment opportunities.

Detailed Policy 9 - Conservation Areas

Policy 9:

Preserving and Enhancing our Conservation Areas

Development within or adjacent to a Conservation Area, that preserves or enhances its character and appearance, and is consistent with any relevant Conservation Area Appraisal or Management Plan, will be supported providing it can be demonstrated that it retains appropriate scale, proportion, siting, massing, design, and use of materials whilst not inhibiting high quality innovative design.

There is a presumption against the demolition of unlisted buildings that contribute positively towards the character and appearance of a Conservation Area. Proposals will only be supported in the following exceptional circumstances:

- i) The proposal is accompanied by a suitable redevelopment of the site which contributes positively toward the character and appearance of the Conservation Area. Such proposals should also include interim landscaping or sensitive screening of the site. We will also expect proposals to be accompanied by an implementation timetable and where the

redevelopment period is considered to be excessive the demolition will generally be resisted.

AND

- ii) A competent assessment of the building's contribution to the Conservation Area has concluded that there is little or no value in the building's retention; and
 - o The repair or reuse of the building is not economically viable; or
 - o The demolition of the building is essential to delivering significant benefits to the wider community economically, socially or environmentally.
- Works to trees within Conservation Areas will be supported where they are:
- o Part of an agreed scheme of tree management; or
 - o Required on the grounds of safety or nuisance; or
 - o Directed towards trees which are not of a material value to the conservation area (i.e. the trees are small, self-seeded saplings; or not otherwise visible to the public/neighbours - they are remotely located; or fast growing tree species such as conifers, leylandii etc.); or
 - o In association with a wider development proposal which would enhance the amenity of the conservation area overall - including one where suitable replacement trees can be accommodated.

Further information on our Built Heritage Designations can be found in schedule 9.

Detailed Policy 19 - Open Space Devs

Policy 19:

Developments Involving Open Space

Developments involving the loss of open space (excluding outdoor sports facilities) will only be supported where they accord with the Council's current Open Space Strategy and in the following exceptional circumstances:

- o the open space is:
- o of limited amenity and/or recreational value (not as a result of neglect or poor maintenance) and does not form part of a recognised upgrading/ improvement scheme or strategy; or
- o a minor part of a larger area of functional open space and the development would not harm or undermine the function of the main site; or
- o a minor part of the wider provision of open space and its loss would not result in a significant deficiency of open space provision within the immediate area; or
- o the development would result in
- o a local benefit in terms of either alternative equivalent provision being made or improvement to an existing public park or other local open space; or
- o significant benefits to the wider community which outweigh the loss of open space.

2. Consultations and Representations

The statutory neighbour notification was carried out and the application was advertised in the local press (Arran Banner). Nine objections, ten supporting and one neutral comment have been received, the various points of which are summarised as follows:

OBJECTION 1: Overprovision / Effects on existing businesses. The presence of this van is detrimental to the survival of existing well established businesses in permanent premises.

RESPONSE: The purpose of the Planning system is not to protect the private interests of one business owner over another but to support the provision of an adequate range of services and facilities without significant adverse effects on existing land users. The matters of need and/or over-provision are considered in the following Analysis.

OBJECTION 2: Health. Other businesses and the High School offer healthier and more affordable alternatives than stated in the application.

RESPONSE: Food uses are regulated by Environmental Health legislation and the range of goods sold is not directly a material planning consideration.

OBJECTION 3: Appearance. The van is unsightly and is not what people expect to see on Arran when they visit for the scenery. It looks old and dirty and usually has boxes piled up on the front seat.

RESPONSE: This is personal opinion. The condition and interior of moving vehicles is not controlled by planning legislation. This application relates to the proposed use of the site.

OBJECTION 4: Noise. The noise and fumes from the generator are not fitting to the wider amenity.

RESPONSE: Noise complaints would be a matter for Environmental Health. EH was consulted on the application and the response is in the following section of this report.

OBJECTION 5: Hygiene. How can a small van without running water be adequately cleaned during the day's operation?

RESPONSE: The application states that supply would be from a water barrel when trading. This is not a material planning consideration and would be covered by Environmental Health and Licensing legislation.

OBJECTION 6: Loss of public parking space / Traffic impacts.

RESPONSE: Active Travel and Transport was consulted on Road safety and traffic issues. The response is in the following section of this report.

OBJECTION 7: Adverse impact on Conservation Area character.

RESPONSE: Effects on the character and setting of the Conservation Area are considered in the following Analysis.

SUPPORT

SUPPORT 1: Variety. A great number of tourists, local residents and working tradesmen appreciate affordable and readily available foods that don't demand the premium prices of local supermarkets. People appreciate a variety of different food options and would alternate between the local options

SUPPORT 2: Community benefit. Support should be given to a new business run by a local family and would encourage other to pursue other ventures.

SUPPORT 3: Temporary nature. The temporary trial period shows a thoughtful approach to assessing the impact of the van on its surroundings.

SUPPORT 4: Well run business. The young couple who run the business are very quick, efficient and friendly and take pride in the produce offered. They provide a good service to their community.

SUPPORT 5: Visual amenity. Convenient siting near the beach. The aesthetic of the village is mentioned by objectors but if this business was not using the car park space there would be no control over who could park there eg. industrial tankers, council vehicles etc so this not relevant

RESPONSE: All noted.

NEUTRAL

Comment: The ownership of the car park is in the process of changing from the Council to COAST and North Ayrshire Council should not grant a licence until that process is complete.

RESPONSE: The business already has a Street Traders Licence and this application is for Planning Permission. Site ownership is not a material planning consideration. Even if planning permission were in place, the landowners consent would be a separate legal matter that the applicants would have to address.

CONSULTATIONS

NAC ACTIVE TRAVEL AND TRANSPORT: Recommend Refusal. It is proposed that the van will be parked in the parking space all day. Parking is at a premium in Lamlash at this location. The parking area is not adopted by the Council but this would remove parking provision for the general public.

Response: Noted.

ENVIRONMENTAL HEALTH: No objection

CLEANSING: No objection

ARRAN COMMUNITY COUNCIL: No comments received

Publicity:- Advertised in the Arran Banner local newspaper

Reason for advertisement:- Regulation 20 (1) Advert
Published on:- 23.06.2023

Reason for advertisement:- Schedule 3

Published on:- 23.06.2023

Site Notices:- No Site Notice

3. Analysis

Planning permission is required for the use of land for any purpose on more than 28 days in total in any calendar year or the placing of any moveable structures on the land for the purposes of that use.

Hot food takeaway is a *sui generis* use in terms of the Town and Country Planning (Use Classes) (Scotland) Order 1997, as amended. *Sui Generis* use indicates that the use does not fall within any specific use class in the Order.

The Town and Country Planning (Scotland) Act 1997, as amended, requires that, in dealing with planning applications, the planning authority have regard to the development plan and to any other material considerations. The Development Plan comprises the LDP and National Planning Framework 4. An assessment of the proposal against the LDP policies follows:

The site is in the village of Lamlash and the Towns and Villages Objective of Strategic Policy 1 aims to generate new employment opportunities by identifying a flexible range of business commercial and industrial areas to meet market demands. In order to fully comply with SP1, proposals should also demonstrate compliance with Strategic Policy 2: Placemaking.

SP2 requires that development proposals meet the qualities of successful places which are outlined in the policy without significant adverse environmental or amenity impacts.

The main relevant qualities in relation to the policy are: Distinctive; and Safe and Pleasant.

Distinctive requires proposals to draw on positive characteristics of the surrounding area, including building forms, landscapes, spaces and scales etc. and in this regard, it is not considered that the siting of a temporary mobile snack van at such a prominent position, effectively at the roadside, would draw on or accentuate positive elements of the surrounding built environment as outlined in the policy.

Safe and Pleasant requires that proposals should create attractive places by providing a sense of security and creating a pleasant, positive sense of place by promoting visual quality and should respect the amenity of existing and future users. Whilst the proposal is proposed to be sited for several days each week and not a fixed permanent structure at the site and it is acknowledged that there would be no planning control over what vehicles may otherwise use the parking places, the proposal does not promote visual quality. The associated generator use and water and gas bottles etc would be readily visible from the roadside through the conservation area and would be detrimental to visual amenity. The proposal would not respect the amenity of users of Lamlash Green for leisure purposes in terms of noise, smells, traffic and parking as required under this criterion and cannot therefore comply with Strategic Policy 2.

Policy 8: Business Development on Arran and Cumbrae supports developments which have a positive impact on the vitality, vibrancy and viability of the island without unacceptable adverse impacts on the environment, amenity or the tourism offer of the area. In this regard, it is acknowledged above that the use of parking spaces would otherwise be uncontrolled by planning legislation, and also that the business has a Street Trading Licence which would allow occasional trading from the site. However, more than 28 days trading requires planning permission and for the reasons covered above, the vehicle type and scale and the associated visual aspects do not accord with the LDP in visual terms.

It cannot therefore be accepted in Planning terms that the regular siting of the mobile business within the conservation area of the village would positively impact on the visual amenity of the island or that it would not potentially adversely affect the viability of existing businesses within permanent premises within the village.

It is further considered that the existing Street Trading Licence and the provisions of planning legislation which would have allowed trading from various sites, each for up to 28 days in a year, would give ample scope to establish that the business itself is viable, at which point permanent premises could be sought. It is not therefore considered that a need has been demonstrated for permanent siting of the business at this location. For these reasons, the proposal does not accord with Policy 8.

Policy 9: Preserving and Enhancing our Conservation Areas states that development should be consistent with the area and the siting of a business at this location, which is a prominent entry point to the Conservation Area at the approach to the village from the south and Whiting Bay, would not preserve the character of the Conservation Area where Lamlash Green functions as a peaceful undeveloped green area framing the wider village centre, and would not enhance the setting of the Conservation Area or the qualities for which it was designated. The proposal does not therefore accord with Policy 9.

Turning to Policy 19 of the LDP, this states that developments involving the loss of Open Space will only be considered where the open space is of little amenity value or the development would result in either alternative equivalent local open space being provided or significant benefits to the wider community which outweigh the loss of open space.

In this case, the open space (Lamlash Green) would not itself be lost, but an element of public access to it would (the car parking provision). Given that the Roads Authority have identified that public parking is already under pressure in Lamlash and therefore recommended refusal of the application, the proposal does not accord with the Policy which aims to preserve Open Space and its functionality.

Given the above Analysis, the proposal does not therefore accord with the Local Development Plan.

The most relevant policy of National Planning Framework 4 is Policy 7 which identifies that development affecting conservation areas will only be supported where the character and appearance of the conservation area and its setting will be preserved or enhanced. In light of the foregoing Analysis, the conservation area character would be eroded and not enhanced by the proposal.

The proposal does not therefore accord with the Development Plan and it is therefore recommended that planning permission should be refused.

In recognising the existing Street Trading Licence and the allowance in the Town and Country Planning (General Permitted Development) (Scotland) Order which allows the use of land for up to 28 days in a calendar year without the benefit of planning permission, it is further recommended that approval be given for the service of a Planning Enforcement Notice specifying that the business should not operate from the site.

4. Full Recommendation

Refused

Reason for Refusal

Reason

1. The proposed development would be contrary to Strategic Policy 2 (Placemaking) of the Adopted North Ayrshire Local Development Plan, in that it has not been shown: (i) that the development would draw on positive characteristics of the surrounding area as required by the quality 'Distinctive'; or (ii) that the development would enhance visual quality as required by 'Safe and Pleasant'.

Reason

2. The proposed development would be contrary to Policy 8: Business Development on Arran and Cumbrae of the Adopted North Ayrshire Local Development Plan, in that it has not been shown that the development would have a positive impact on the vitality, vibrancy and viability of the island without unacceptable adverse impacts on the environment, amenity or the tourism offer of the area

Reason

3. The proposed development would be contrary to Policy 9: Preserving and Enhancing Our Conservation Areas of the Adopted North Ayrshire Local Development Plan, in that it has not been shown that the development would preserve or enhance the character and setting of Lamlash Conservation Area.

Reason

4. The proposed development would be contrary to Policy 19: Developments Involving Open Space of the Adopted North Ayrshire Local Development Plan, in that it has not been shown that the development would result in significant benefits to the wider community which would outweigh the loss of open space or the access to it.

Allan Finlayson
Chief Planning Officer

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

Appendix 1 – Location Plan

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