

**REGULATORY PANEL: 28 FEBRUARY 2024**

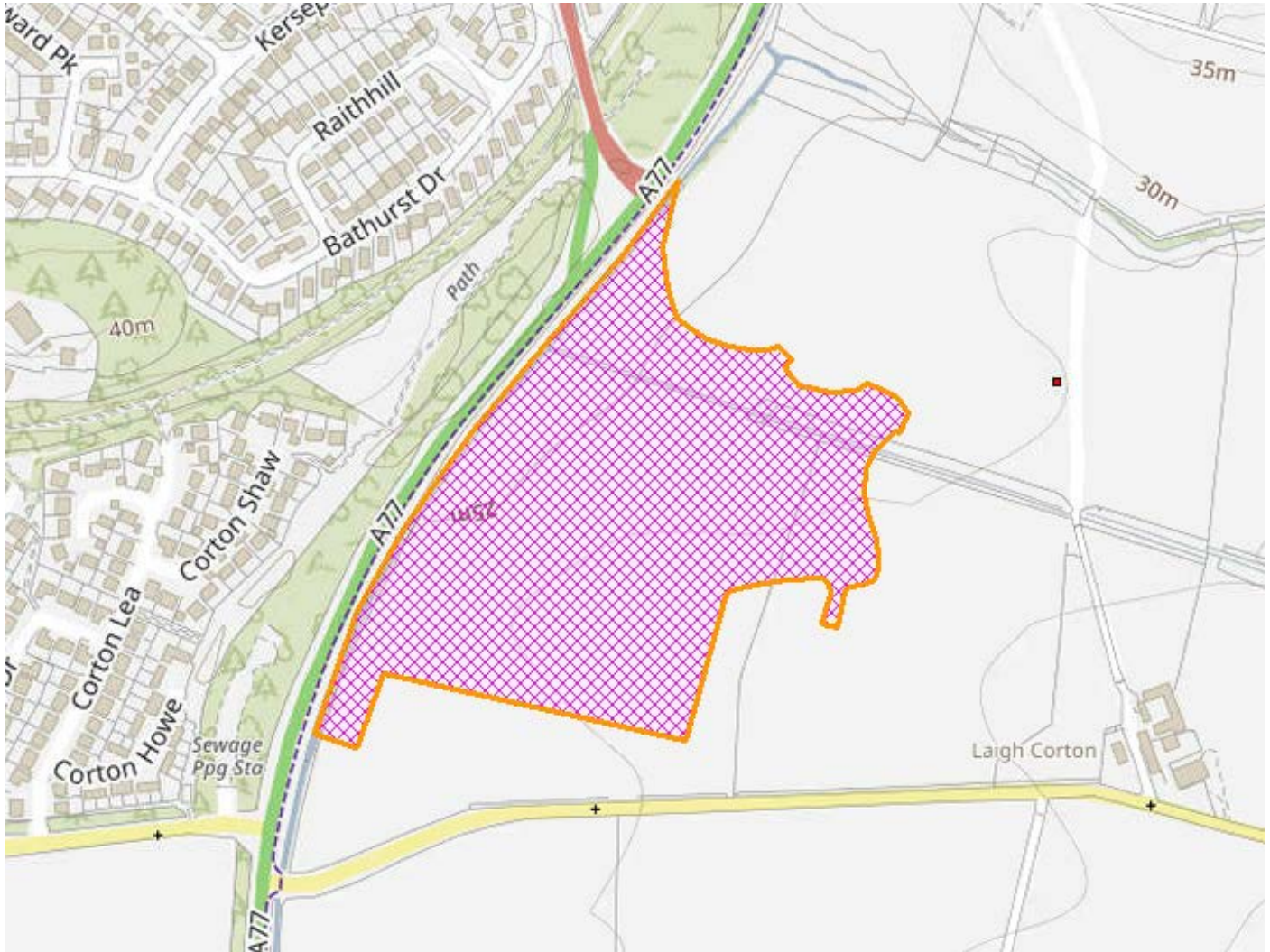
**REPORT BY HOUSING, OPERATIONS AND DEVELOPMENT**

**23/00345/APPM**

**CORTON A77T FROM BANKFIELD ROUNDABOUT - B7034 JUNCTION AYR SOUTH AYRSHIRE**

**Location Plan**

**APPLICATION SITE** 



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**Summary**

This proposal is for a mixed-use retail development within the Corton phase of the AYR4 housing allocation (also known as South East Ayr) in the Council's Adopted Local Development Plan 2 (LDP2).

The proposals take the form of a traditional retail park centred around a carpark with the five retail units being located on the southern side of a carpark with three Drive-through restaurants and a self-service petrol station and electric vehicle recharging station being located on the northern side of the carpark. The carpark would provide 343 spaces for the retail units while the Drive-through units would share two separate parking areas with total parking space available for 84 vehicles. The area would be landscaped, with an acoustic bund on the southern and eastern boundary and a 4-metre-wide footpath is proposed from the distributor road to the retail units.

Vehicular access to the site is via the distributor road, with a central roundabout allowing access to the Drive-through restaurants, the five retail units and the service yard to the rear of the retail units.

The Applicant has indicated that the separate Section 42 planning application Ref. 23/00261/FURM is intrinsically linked to this current application, as this proposal fills the void in the masterplan submitted under application Ref.23/00261/FURM. The applicant has asked that they be considered at the same Regulatory Panel (Planning).

The applicant has provided a Development Viability Appraisal in support of these applications which demonstrates that the overall Corton project (both applications combined) is only financially viable if the separate Section 42 application is permitted in conjunction with this current application and the Council provides funding of approximately £17million over the next two and a half years. The applicant proposes that the provision of £17m from the Council is repaid through other future developments in South East Ayr.

For the avoidance of doubt, this funding arrangement has not been agreed or encouraged by Council Officials or the Council. In addition, this Regulatory Panel (Planning) only has the delegated authority from the Council to determine applications submitted under various Planning legislations. It does not have authority to approve or commit the Council on any fiscal expenditure matter.

As set out in the Section of the Report on Public Subsidy considerations, external legal advice indicates that there is significant risk that the proposed funding from the Council would constitute a subsidy to the applicant in relative to the Subsidy Control Act 2022 to the extent that the viability of the Corton development depends on the Council funding infrastructure, it would therefore not be possible for Elected Members to proceed on the *assumption* that the Council has the powers to provide such finance.

Therefore, if members are minded to approve this application, it cannot be based on the Council providing the approximate £17million initial funding as proposed and detailed within the applicant's Development Viability Appraisal.

Independent expert legal advice advises that there is a significant risk that a court would find that it is irrational/perverse to grant planning permission relying on a viability case, when the evidence shows the two developments, comprising Ref. 23/00261/FURM and Ref. 23/00345/APPM are not deliverable without significant forward funding from the Council and also shows that there is a strong likelihood of that funding not being available, for legal and financial reasons.

It is considered that this retail park proposal is unacceptable due to the non-compliance of the retail and drive-through restaurant elements of the proposals with the relevant policies within NPF4 and LPD2. In coming to this conclusion, it was found that there were no material considerations which would outweigh the non-compliance of the proposals in relation to the National and Local planning policy position. It is further considered that the design of the retail proposals and associated car parking are not acceptable when considered against the Development Plan.

It is noted that this is a standalone planning application, which if approved, could be capable of being delivered on its own, without being reliant on the separate S42 application being approved and implemented or any other developments at South East Ayr.

If Members accept the recommendation of refusal, the determination route is via this Regulatory Panel. However, if Members are minded to grant permission, the application must be notified to Scottish Ministers who may 'call-in' the application for their determination.

**REPORT BY HOUSING, OPERATIONS AND DEVELOPMENT**

**REGULATORY PANEL: 28 FEBRUARY 2024**

<b>SUBJECT:</b>	<b>PLANNING APPLICATION REPORT</b>
<b>APPLICATION REF:</b>	<b>23/00345/APPM</b>
<b>SITE ADDRESS:</b>	<b>Land at Corton A77T From Bankfield Roundabout - B7034 Junction Ayr South Ayrshire</b>
<b>DESCRIPTION:</b>	<b>Application for planning permission for a retail led mixed use development (use classes 1 retail comparison, convenience and bulky goods/garden centre, 3 (food &amp; drink), sui generis (drive-thru and petrol filling station facilities)) with associated infrastructure, landscaping and engineering works</b>
<b>RECOMMENDATION:</b>	<b>Refusal</b>

**APPLICATION REPORT**

This report fulfils the requirements of Regulation 16, Schedule 2, paragraphs 3 (c) and 4 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013. The application is considered in accordance with the Council's Scheme of Delegation as well as the Procedures for the Handling of Planning Applications.

**Key Information:**

- The application was received on 2<sup>nd</sup> May 2023.
- The application was validated on 18th August 2023.
- The case officer visited the application site on 22 August 2023.
- Neighbour notification, under Regulation 18 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, was carried out by the Planning Authority in September 2023 and December 2023
- No site notice was required.
- Public Notices, under Regulation 20 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 were placed in the Local Press on 12 September 2023 and 12 December 2023.

**1. Proposal:**

**Site Description:**

This site to which this application relates is located to the south east of Ayr on the eastern side of the A77 trunk road, southwest of the railway line. It has an area of approximately 5.4 hectares and is broadly rectangular in shape. It is bounded to the west by the Slaphouse Burn and a 1km stretch of the A77 and to the north by an unnamed watercourse and open farmland and south by open farmland. The site itself is currently undulating agricultural land with fields, hedge boundaries and has some limited tree cover alongside the Slaphouse Burn.

## **Development Proposal:**

This planning application is for a retail park development (use classes 1A retail comparison, convenience and bulky goods/garden centre, use class 3 (food & drink) and 'sui generis' (drive-thru and petrol filling station facilities)) with associated infrastructure, landscaping and engineering works. The applicant's Retail Impact Assessment indicates that the retail floor space proposals would be 5 retail units ranging from 836sqm Gross Floor Area (GFA) to 2323 sqm GFA (plus garden centre). The Units would include; discount foodstore; non-food discounter; general supermarket; general and /or bulky comparison units.

It should be noted that there are permitted changes within Use Class 1A e.g., Permitted changes from convenience retailing to comparison retailing. This means that the mix of types of retailing proposed through this current application could change significantly with potential greater impacts on the town centres than that assessed under the current application.

The proposals take the form of a traditional retail park centred around a carpark with the five retail units being located on the southern side and three Drive-through restaurants and a self-service petrol station and electric vehicle recharging station being located on the northern side of the carpark. The carpark would provide 343 spaces for the retail units while the Drive-through units would share two separate parking areas with total parking space available for 84 vehicles. The area is proposed to be landscaped and a 4-metre-wide footpath would be provided from the proposed distributor road to the retail units.

Vehicular access to the site is via the proposed distributor road, with a central roundabout allowing access to the Drive-through restaurants, the five retail units and the service yard to the rear of the retail units.

As part of the proposals, a substantial acoustic earth bund of unspecified height is proposed on the southern and eastern boundary of the site to provide noise attenuation from the retail development for the benefit of potential future residential units in that area.

The retail units are proposed to be constructed using clear span steel portal frame construction, which allows for flexibility to accommodate differing internal shopfit layouts. The internal footprints range from approximately 836 square metres to 2322 square metres and the heights of the units are consistent at approximately 10.5 metres when measured from ground level. The two units at either end of the units project further forward from the main retail elevation.

The external finish to the front elevation of the retail units is divided into a lower level of anthracite aluminium-coloured glazed shopfronts interspersed with blue brickwork, while the upper level proposes rainscreen cladding, and signage panels. The other elevations of the units are proposed to be finished in a basic silver/grey coloured cladding.

The three separate drive-through restaurants that are proposed would also accommodate internal seating areas. All three would be of rectangular floorplan with flat roof construction and would be finished in multi-coloured rainscreen and powder coated cladding panels and facing brick. The units would be approximately 371, 223 and 185 square metres in footprint.

The petrol station is a framed canopy structure measuring approximately 10.5 metres in width, 21 metres in length, 5.5 metres in height and would accommodate 6 fuel pumps.

The separate EV charging station is also of framed canopy construction and would measure approximately 33 metres in length, 11.7 metres in width, 4 metres in height and would accommodate up to 20 electric charging bays. Both the EV charging station and petrol filling station would have solar PV panels mounted on the roofs.

For clarity, the application site includes the retail unit (referred to as 'supermarket') proposed in the separate Section 42 application Ref. 23/0261/FURM.

## 2. Procedural Matters and Approach to Assessment:

### Hierarchy of Development

The proposed development is classified as 'Major' development under the Hierarchy Regulations. The applicant has carried out a public consultation process, which has included an online public meeting 12 October 2022 and an in person public event held on 31 January 2023 in line with the amended Pre-Application Consultation Regulations. A Pre-Application Consultation Report has been submitted with the application.

### Environmental Impact Assessment

The proposal falls within Schedule 2 of the Town and Country Planning (EIA) Regulations 2017. An Environmental Impact Assessment was undertaken in 2014 for the original application under the previous 2011 Regulations and this concluded that the development, subject to mitigation, will have no significant impacts on the environment. An EIA Screening Request relating to the current proposal was submitted in September 2022 and the Council issued a Screening Opinion on 13 September 2022 confirming no requirement for a further EIA.

### Determination Route

Due to the 'Major' status of this planning application it is necessary for the Council to come to a view on whether the application proposal is 'significantly contrary to the development plan' as this affects the procedure for how the Council determines the application and subsequently if it requires to be notified to Scottish Ministers. The retail element of this particular proposal is considered to be significantly contrary to the spatial strategy of the development plan (as explained in more detail in the assessment below). Guidance on the procedural implications of being 'significantly contrary' are explained in Circular 3/2009 (Notification of Planning Applications) and Circular 3/2022 (Development Management Procedures) and outlined below.

If Members accept the recommendation of refusal, the determination route is via this Regulatory Panel. However, if Members are minded to grant permission, contrary to the officer recommendation, the combination of the application being significantly contrary to the development plan for the area and also being a development in which the planning authority has an interest means that the application must be notified to Scottish Ministers who may 'call-in' the application for their own determination under section 46(1) of the Town and Country Planning (Scotland) Act 1997. The 'interest' that the Council has in this application is considered to be the intended transfer/Sale of land to the Council for the erection of a primary school & community facility, the sale of land for the Park and Ride facility and the applicant's inferred transfer of approximately £17 million from the Council to the applicant to fund their initial infrastructure works. While the proposals with respect to the primary school, community and park and ride facility are not elements within the land holding subject to this application, the applicant has indicated their intention that this planning application and the separate application Ref. 23/00261/FURM be linked, therefore notification to the Scottish Government would be required for this reason and because of the inferred transfer of £17 million from the Council to the applicant. Advice on the ability to provide such in link permanently is provided in the legal implications below.

### Legal Implications

#### *Limits to Regulatory Panel authority/ decision making and public subsidy considerations*

For clarity, the Regulatory Panel (Planning) only has the delegated authority from the Council to determine applications submitted under the various Planning legislations. It does not have authority to approve or commit the Council on any fiscal expenditure matter.

Therefore, if members are minded to approve this application contrary to the recommendation in the report, it cannot be based on the Council providing the approximate £17million funding as proposed and detailed within the applicant's Development Viability Appraisal; the applicant should not take this as an endorsement or a recommendation that the Council should or can at some future point, be in a position to be able to commit to the provision of the approximate £17million funding detailed in the Development Viability Appraisal.

The applicant has submitted this planning application based upon a presentation of the development viability appraisal of the proposals which involves the applicant applying for a range of planning proposals not consistent with the development plan and the Council providing £17m to the applicant in lieu of lost development value for land involved in common infrastructure provision and seeking reimbursement from other developers with proposals in the area.

The Council has received independent expert legal advice that any decision to grant permission could be legally quashed on the grounds that it is irrational/ perverse to grant planning permission relying on a viability case, when the evidence shows the development is not deliverable without significant forward funding from the Council, and the Council has neither committed to provide that funding nor identified any funds that could be used. In those circumstances, it is considered irrational/ perverse to conclude that the development is viable and there are issues about the Council's legal competence to provide those funds.

### Public Subsidy Considerations

The Council has also received independent expert legal advice on the question of possible public subsidy in relation to the forward funding requested by the applicant. With respect to public subsidy considerations, there is a four-limb test to identify whether the financial assistance requested by the applicant in their Development Viability Appraisal constitutes a public subsidy for the purposes of the Subsidy Control Act 2022:

- A subsidy must be financial assistance which is given directly, or indirectly, from public resources by a public authority. This includes any form of transfer of value, including financial assistance given via contingent transfer of funds or the forgoing of revenue otherwise due.
- It must confer an economic advantage on one or more enterprises. In order to satisfy this condition, the financial assistance provided to the recipient enterprise (i.e., a person operating on a market) must be something that would not be available to the enterprise on market terms.
- The financial assistance must be specific, in that it benefits the recipient enterprise(s) over other enterprises in respect of the production of goods or provision of services.
- Finally, the financial assistance must have, or be capable of having, an effect on either competition or investment within the UK, or international trade or investment.

These four limbs are cumulative tests; they must all be present for the proposed financial assistance to be deemed a subsidy. If the subsidy fails on just one of the four limbs, then it is not a subsidy for the purposes of the 2022 Act.

A subsidy may arise where the Council pays for the development of infrastructure for the benefit of a specific business (or specific businesses). It is understood that the applicant would use the approximate £17 million it has asked the Council for in their Development Viability Appraisal to develop additional infrastructure (connecting the site into the A77) in order for the Corton development to be viable, and that the applicant proposes that the Council recover that investment from the developers of future developments that also benefit from that new infrastructure. However, at this moment in time there are no other developments approved or in progress that would benefit from the A77 connection and there is no immediate prospect of any other developer entering into a section 75 agreement under which it will be liable for a contribution to the connection. Accordingly, while it might be possible the Council may be able to recover contributions in future, it appears that any additional infrastructure will require to be paid for out of public resources. The first limb of the above test would therefore be satisfied if the Council was to pay to develop new infrastructure, since any reimbursement by other private sources is at best speculative.

The provision of additional infrastructure to connect the Corton site to the A77 will relieve the applicant of a cost that it would otherwise have to incur itself in order for the development to proceed. It therefore provides an economic advantage, and the second limb of the test set out above is met.

Whether the third limb of the test is satisfied in relation to expenditure on roads infrastructure would depend on the way in which the infrastructure would be used. Where a road is not intended to be commercially exploited and is made available to the public to use for free, the provision of access to that infrastructure is not an economic activity and public funding to develop it will not fall within the scope of the 2022 Act. However, where a road is built that connects a given economic activity to the public highway and in so doing provides a direct, identifiable benefit to the business undertaking that economic activity, then it will satisfy this test even if the road is open to the public and free to use. Given that the infrastructure required by the applicant appears to be designed in order to connect the site to the A77 there would be a strong argument that the provision of that infrastructure directly and specifically benefits the applicant's economic activity at Corton, and accordingly that the third limb of the test is met.

As the applicant operates in a competitive market for property development, the fourth limb of the test will be met.

There is, accordingly, a significant risk that the transfer of approximately £17 million from the Council to the applicant for the development of an A77 connection would constitute a subsidy to the applicant. The Council could only proceed with that if it was satisfied that doing so, that this was compatible with the subsidy control principles set out in the 2022 Act. The Council has not considered that in any level of detail but in principle it would require the Council to identify (amongst other things) a market failure or social inequality that could only be resolved through the provision of financial assistance from public resources. The Council could not commit to providing that funding for such infrastructure until such an assessment is undertaken. It is unlawful for the Council to proceed with a subsidy unless it is satisfied that doing so is compatible with the principles. That conclusion is subject to the ordinary public law rules in relation to decision making, including that the Council has taken all relevant matters into account and acted rationally.

To the extent that the viability of the Corton development depends on the Council funding infrastructure, it would therefore not be possible for Elected Members to proceed on the *assumption* that the Council has the powers to do so.

#### *Standalone planning application and link with separate Section 42 application Ref. 23/00261/FURM*

It should be noted that this is a standalone planning application, which if approved, could be capable of being delivered on its own, without being reliant on the separate S42 application being approved and implemented or any other developments at South East Ayr. The applicant indicates that this planning application is part of a wider development proposal that this planning application can be linked to the separate Section 42 application Ref. 23/00261/FURM via a legal agreement under Section 75 of the Planning Act.

The Council's external legal advisers, in addition to stating that achieving such a legal agreement would be very complicated, have not been able to assure the Council that, through conditions or legal agreement it would be possible to permanently link this application to any other permission. That is because of difficulties in imposing time limits for phases of the development to be completed, which are often unacceptable to developers/ funders, and difficulties with enforcement, especially if the developer did not have the funding to complete a phase within the specific time limit.

A consequence of the two separate applications not being tied together through a legal agreement could be the delivery of the retail park and no guarantee when or if the development associated with the Section 42 application will be delivered.

### **3. Background**

As can be seen from the Planning History below, this section of the Corton Site is part of the South East Ayr Strategic Expansion location, which was identified in the Ayrshire Joint Structure Plan 2007 and the 2007 South Ayrshire Local Plan to provide a housing growth area for Ayr. In 2014 Planning permission Ref. 14/00220/PPPM was granted for a residential and mixed-use development containing various elements including a large supermarket however this was never implemented, and no other development has occurred on the site.

The provision of a large-format supermarket at this location was not in accordance with the Development Plan and was considered to be significantly contrary. The policies of the development plan at that time did not provide support for out-of-centre retail development unless it could be demonstrated that there would be no harm to the vitality and viability of town centres. The assessment of the proposal concluded that there would be a level of impact on Maybole town centre that was of concern and that there was an alternative site available within the Heathfield Commercial Centre that could have accommodated the proposal. Furthermore, the Local Plan required that South East Ayr (SEA) be developed in a coordinated manner and a masterplan was required for the entire area. Notwithstanding the requirements of the development plan the application was approved as a departure to the Plan on the basis that Corton would provide all the community infrastructure required for SEA and the supermarket would provide all the funding to provide this infrastructure upfront and without the requirement for contributions from the Council to front fund the provision of a primary school. . Due to a change in the retail industry the supermarket development did not materialise and the site remains agricultural land with a housing allocation in the current adopted LPD2.

As a requirement of the Local Development Plan 2 (LDP2) process, the Planning Authority is expected to prepare Supplementary Guidance for all housing sites within the LDP2. To that end, the Planning Authority has been carrying out a consultation process to bring forward a Supplementary Guidance Design Brief document for the South East Ayr development site **AYR 4**, which includes Corton. As detailed below, that process has not been concluded and the document is at a draft stage, awaiting conclusion of the LDP2 Proportionate Transport Appraisal that is being undertaken with Transport Scotland with respect to the A77. No agreement has been reached with relevant landowners about how common infrastructure costs are identified, apportioned or finance provided. As the document is only at draft stage, it can only be afforded minimal, if any, material weight.

The applicant has submitted representations to the Draft Supplementary Guidance Design Brief which promotes greater retail provision which does not align with the Development Plan's aspirations for this development site.

A separate Planning application under Section 42 of the 1997 Planning Act – Ref. 23/00261/FURM looks to amend the conditions of the original 2014 Planning permission in such a manner which would allow a different development to be implemented from the original 2014 permission. Planning Application Ref. 23/00261/FURM has been recommended for refusal at the panel meeting on the 28th of February 2024. This report is phrased in the context that application Ref. 23/00261/FURM has been refused.



## 4. Consultations

**Transport Scotland (Trunk Roads)** - do not object subject to Conditions relating to the timing of construction of the proposed A77 roundabout access junction and upgrading of existing A77 access junctions. A condition is also required to ensure the proposed development is not occupied until improvement of the A77 to dual carriageway standard has been completed or the developer has entered in a legal agreement with Transport Scotland to provide proportionate contributions toward upgrading the A77. Further conditions are required to ensure that a pedestrian/cyclist/equestrian bridge over the A77 is constructed and that details of lighting, landscaping and a barrier fence along the edge of the trunk road are approved.

**Ayrshire Roads Alliance (traffic)** - do not object to the proposals however have concerns regarding the over designed of the access route for the retail park development.

**Strathclyde Passenger Transport** - have no objection subject to the provision of a local bus service being provided linking the retail site with Ayr Town centre for a minimum of 3 years.

**Scottish Water** - do not object.

**Scottish Environment Protection Agency** - do not object.

**Ayrshire Roads Alliance (Flood Officer)** do not object

**Council's Environmental Health Service** – have no objection subject to conditions.

**Council's Sustainable Development Service** – have concerns regarding the density of the landscaping and its adequacy to provide appropriate screening.

**Alloway, Doonfoot & St Leonards Community Council** - Have objected and their comments are detailed below.

**Coylton Community Council** - have not responded.

**Belmont And Kincaidston Community Council** - have not responded.

## 5. Planning History

**Ayrshire Joint Structure Plan 2007 (former now defunct)** - The 2007 Structure Plan included South East Ayr as a Strategic Expansion Location (Policy COMM2: Housing Investment, Schedule 5) for 2700 units.

**South Ayrshire Local Plan 2007 (former now defunct)** - In the 2007 South Ayrshire Local Plan, South East Ayr was identified within *STRATEGIC POLICY STRAT 6*. *The Plan indicated that "224 Hectares of land at South East Ayr is identified as a longer term strategic growth area, should a requirement for additional housing land be identified through the structure plan process. Any residential, or associated development in this location will be required to conform with the provisions of a master plan which has received the prior approval of the Council and which has been prepared in consultation and agreement with key service providers in order to ensure appropriate mitigation measures to address the consequential impacts arising from the development are incorporated within the overall master plan. It is an essential requirement that the site will not be made available other than for development in accordance with Strategic Policy IND 3, until such a time that a comprehensive master plan has been prepared."*

14/00220/PPPM - Planning Permission in Principle for mixed use development at Corton was granted on 23 June 2014. The approved development comprised of 750 houses, a large format supermarket with gross floorspace of 9406 sqm, petrol filling station, neighbourhood centre, serviced business land/units, land for a primary school, land for a 'park and ride', and safeguarding land for a future railway station. A masterplan was approved covering Corton only. The Section 75 Legal agreement relevant to this permission included the following obligations for the developer.

- The Provision of affordable housing (25%)
- Phased funding for education provision totalling £9,500,242
- Transfer of proposed Corton Primary School site to the Council
- Provision of Bus Service for 10-year period (subject to criteria)
- Provision of public access overbridge across A77
- Provision and transfer of land for Rail Halt and temporary park and ride
- Provision of business units

This permission has not been implemented and expired on 31 March 2023.

14/01552/FURM - Further application to vary condition (4) iii of Planning Permission in Principle (14/00220/PPPM) was granted on 7 April 2015. This permission varied the retail floorspace restriction to increase the proportion of net sales space in the 'supermarket' that can be used for sale of non-bulky comparison. This effectively granted a second planning permission in principle for the Corton mixed-use development. Approval of Matters Specified in Conditions (AMSC) applications were approved in 2016 for the Sainsbury supermarket; design review and Development Brief/Design Code; initial infrastructure works; first business unit and railway crossings (see below). The time limit for submission of AMSC applications was 6 April 2023 and condition 1 requires development to commence within 2 years from the approval of the requisite AMSC applications. No development was commenced and accordingly the subsequent AMSC approvals expired on 19 May 2018. However, the current applicant submitted a further AMSC application (ref 23/00262/MS) for amended landscaping details on 3 April. Determination of this application is still pending. If this application is approved, it will have the effect of extending the period for implementation of the earlier AMSC approvals by two years from the date of approval of 23/00262/MS. This Consent was also the subject of legal agreement as detailed above.

15/00176/APP – Planning permission for erection of A77 overbridge connecting the current application site at Corton to the west of the A77. The bridge was designed suitable for pedestrians, cyclists and equestrians and was approved on 07/01/2016. This permission has expired.

20/00462/APP – Planning permission to renew the permission for the overbridge was subsequently approved on 08/01/2021.

22/01019/FUR – Planning permission to modify conditions attached to permission for the overbridge was approved on 07/03/2023.

21/00093/FURM and 21/00157/APP – Applications to delete the requirement for equestrian provision were refused on 11/03/2021.

15/01039/MSCM – Approval of Matters Specified in Conditions for erection of Supermarket, Petrol Filling Station, etc was granted on 20/05/2016 under the second Planning Permission in Principle (ref 14/01552/FURM).

15/01040/MSCM – Approval of Matters Specified in Conditions for Design Review and Development Brief/Design Code (including approval of indicative masterplan for Corton) approved on 16/12/23 under the second Planning Permission in Principle (ref 14/01552/FURM).

15/01042/MSCM – Approval of Matters Specified in Conditions for business unit was granted on 20/05/2016 under the second Planning Permission in Principle (ref 14/01552/FURM).

16/00120/MSCM – Approval of Matters Specified in Conditions for railway crossings approved 20/05/2016 under the second Planning Permission in Principle (ref 14/01552/FURM).

23/00246/FURM – Modification of Condition 1 of Planning Permission in principle 14/00220/PPPM to extend period for submission of applications for approval of matters specified in conditions was submitted on 29/03/2023. If approved, this application would have the effect of granting a third Planning Permission in Principle for the mixed-use development approved under 14/00220/PPPM.

20/00970/PPPM – Application for Planning Permission in Principle for mixed use residential development (circa 250 dwellings) and neighbourhood/commercial (Class 1A, Class 3), care home (Class 8), Creche (Class 10), access, car parking, servicing and associated works at Glenparks, South East Ayr. The application site forms part of the AYR4 housing allocation (South East Ayr). The Regulatory Panel considered the application 08 December 2021 and were minded to grant conditional permission subject to a Section 75 Agreement to secure a strategic development framework for all of South East Ayr. The Agreement is required to cover the mechanism for proportionate contributions towards the cost of key infrastructure and an indicative masterplan for all of SEA. The Section 75 Agreement has not been progressed by the applicant and the permission has, therefore, not been issued.

## 6. Submitted Assessments/Reports by the applicant in support of their case:

In assessing and reporting on a Planning application the Council is required to provide details of any report or assessment submitted as set out in Regulation 16, Schedule 2, para. 4 (c) (i) to (iv) of the Development Management Regulations.

As part of this planning application the applicant has submitted the following documents and where necessary these are considered in greater detail in the material considerations section of the Report below:

**Design & Access Statement** – The applicant has provided this document which sets out the principles behind the design of the project.

**Planning Statement** – This document sets out the applicant's position in relation to NPF4 and LDP2 and the material considerations relevant to the determination of the application. It considers that Corton should have the Planning Status of a Local Centre under LDP2. It is noted in this document that the applicant believes that their *“Development Viability Appraisal confirms the ongoing need for income from the sale of this approved site for Retail to inject a significant capital return into the development cash flow for the Corton phase.” It goes onto indicate that “It is necessary that a marketable retail use on this site continues. Changing the use for example, to residential will not generate the capital value needed to make the development of the Corton phase viable.”*

These issues are considered in the assessment of the proposals below.

**Transport Statement** – The applicant submitted this document with the intention to establish if the agreed junction improvements on the A77 remain appropriate. The study concludes that the total trip generation of the proposed development is less than the total trip generation of the previous proposal and significantly so during weekday evening and Saturday afternoon peak periods.

**Travel Plan Framework** – The applicant has submitted this document as a study of different aspects of transport associated with this development with an aim of reducing car use.

**Flood Risk Assessment** – The FRA has been updated to take account of policy changes since 2014 including increased requirements relating to climate change. The conclusion of the study is that provided the measures specified within the study are implemented, the site can be developed without unacceptable risk of flooding within the site and without increasing the risk of flooding elsewhere.

**Drainage Strategy** – This report provides an insight into how the drainage serving the proposed development can be managed in a sustainable manner to meet the requirements of South Ayrshire Council, Scottish Water and SEPA.

**Retail Impact Assessment** – The retail impact assessment (RIA) sets out information in support of a proposal for a retail development comprising a series of medium-large retail and leisure units together with services and associated facilities, including drive-through units and a petrol filling station at Corton. Table 3.7 of the Retail Impact Assessment demonstrates that the retail park at Corton will result in a trade diversion of £8.5 million from Ayr Town Centre £12.3million from the Heathfield Retail Park and £ 6 million from Morrisons' and £6m from Tesco's Ayr stores. In addition, it identifies that Prestwick Town Centre will see a Trade diversion of £0.26 million while the Prestwick Sainsbury and Aldi could be impacted to £3.8million. The Report indicates that the Retail Park will have no impact on Maybole however £0.5million of trade will be diverted from Troon town centre and its Morrisons.

The Retail Impact Assessment assumes that the new Retail Park would have the following estimated impacts in the year of opening (2025) - Ayr Town Centre (-5%), Heathfield (-10%), Prestwick (-2%), Troon (-1%) while Maybole and Girvan would not be impacted.

The assessment concludes that the proposals will have no significant adverse impact on any of the surrounding town centres, including Ayr, Prestwick, Troon, Maybole and Girvan.

**Sequential Assessment** – This assessment sets out information in support of the application submitted for retail development at Corton.

**Town Centre First Assessment** – This report provides a Town Centre first assessment for the current proposals.

**Noise Impact Assessment** – The assessment considers how noise from the proposed retail centre has the potential to affect adjacent proposed residential uses. The proposed mitigation includes erection of a substantial acoustic bund/barrier around the service yard, restriction of deliveries/dispatch in the service yards to the south of the retail units in the evening and at night, except at docking bays, the specification of maximum sound power levels for fixed plant and the inclusion of layout and other design measures within any new housing. Subject to the mitigation measures the residual impact is predicted to be of Neutral/Slight.

**Air Quality Assessment** – The air quality impact assessment has been carried out for the cumulative development proposed through applications 23/00345/APPM and 23/00261/FURM for a mixed-use development comprising of residential, retail and other uses within Corton. The impact from the proposed development traffic is predicted to be of “Negligible” significance at all existing and proposed receptors within the study area in terms of the statutory limits for NO<sub>2</sub> and PM<sub>10</sub> and PM<sub>2.5</sub> particulate matter.

**Lighting Strategy** – This report details the lighting strategy for the development.

**Market Assessment** – This document provides a review of the market prospects and recommendations on the commercial viability of the commercial elements contained within the existing Planning Permission in Principle (ref 14/00220/PPPM) and this application (Ref. 23/00345/APPM).

**Representations from the applicant to the Council’s Draft Supplementary Guidance: Housing Site Design Briefs (Part 2): South East Ayr** – This sets out the applicant's submissions to the consultation process on the LPD2 Draft SG Design Brief on South East Ayr.

**Statement on Energy** – This report sets out how the proposal have been designed to address the requirements of LDP2 and NPF 4 in relation to renewable energy and low carbon matters.

**Development Viability Appraisals - Confidential version & Public version (October 2023)** – The applicant has provided a Development Viability Appraisal, a confidential and public version in support of this planning application Ref. 23/00345/APPM and their separate Section 42 application 23/00261/FURM. This was submitted in two forms, the first the applicant designated as ‘commercially sensitive’ and therefore confidential and the second was a version that could be uploaded for public scrutiny. The document states that the proposed retail park is necessary for the financial viability of the housing development proposed under the separate S.42 application Ref.23/00261/FURM. Specifically, the document states that the financial viability of the housing proposal is affected by the Development Plan requirements in terms of infrastructure to serve all of South East Ayr. The document states that these costs are additional to the cost of the infrastructure required for Corton only, including constructing the main internal distributor road in a single phase to ensure that the primary school can be accessed from the outset. The document states that the retail park is required to generate sufficient financial return on infrastructure investment to cover these additional costs and to ensure a reasonable profit, thereby making the development of Corton viable.

In addition to the above, the Confidential Development Viability Appraisal also indicates that approximately £17million of upfront funding from the Council would be drawn down at a monthly rate of £595,007 over the period of 2023-2026. Notwithstanding this, it is noted in subsequent correspondence between the applicant and the Council dated 12<sup>th</sup> December 2024 indicates that the applicant does not consider this provision of funds from the Council to be public subsidy. The Service assessment on public subsidy matters is captured above in Section 2 of this report.

**In summary, the Development Viability Appraisal, in the context of this current application, requires both a significant retail park development and approximately £17 million from the Council to make the development at Corton viable.**

**Point of Clarification – For the avoidance of doubt, this funding arrangement has not been agreed by Council Officials or the Council. This matter is discussed further in the Material Considerations section of this report.**

## **7. Section 75 Obligations**

In assessing and reporting on a Planning application the Council is required to provide a summary of the terms of any Planning obligation entered into under Section 75 of The Town and Country Planning (Scotland) Act in relation to the grant of Planning permission for the proposed development.

The original 2014 planning permission in principle for Corton incorporates a legal agreement under Section 75 of the Act with obligations for:

- The Provision of affordable housing at 25% (of 750 units)
- Phased funding for education provision totalling £9,500,242
- Transfer of proposed Corton Primary School site to the Council
- Provision of Bus Service for 10-year period (subject to criteria)
- Provision of public access overbridge across A77
- Provision and transfer of land for Rail Halt and temporary park and ride
- Provision of business units

These obligations did not require any financial contributions from third parties.

The applicant has indicated in their Development Viability Appraisal that this retail park application and the separate Section 42 application are linked and interdependent, however, while the Development Viability Appraisal identifies various legal commitments, listed below for the wider Corton Development, it does not indicate how the proceeds from this retail park development (Ref. 23/00345/APPM) will be secured permanently to ensure the wider development delivery of Corton i.e., the development within the separate Section 42 application.

The applicant indicates that the retail park is required to generate sufficient financial return on infrastructure investment to ensure that the remainder of Corton is developed for housing purposes. It follows that without a permanent mechanism to link the retail park to the housing development then the development viability of Corton for housing development will be significantly adversely impacted.

### Proposed legal obligations listed in the Development Viability Appraisal

- Transport interventions - No allowances for upgrade works to the trunk network other than specific Corton roundabouts
- Subsidy to Public Transport Services - a contribution of £250,000
- Primary School Education - £50,000 for Corton and a contribution toward interim capacity at Kincaidston Primary School. AHPL will pay a proportionate share land value as per all landowners and a proportionate share of common infrastructure works to serve the school
- Secondary Education – £2,117,713 contribution over the development period
- Affordable Housing – land will be provided for 72 houses (approximately 9% of 850 units)

It is noted that none of the elements listed above are within the current application site and therefore could not be secured through this application. It is noted however that Strathclyde Partnership for Transport (SPT) have advised however that a public transport service is necessary to service this site and it would require to be secured through a Section 75 legal agreement.

As noted in Section 2 of this report, the applicant suggests that the current application and separate Section 42 application could be linked together to ensure that the retail park does not take place without the corresponding housing development being implemented. Independent legal advice obtained by the Council has not been able to provide assurance on the permanent integrity of such a legal agreement to link both applications and therefore it is the view of the Service that such an arrangement has the potential to be undone.

## 8. Scottish Ministers Directions:

In determining a Planning application, the Council is required to provide details of any Direction made by Scottish Ministers under Regulation 30 (Directions requiring consultation), Regulation 31 (Directions requiring information), Regulation 32 (Directions restricting the grant of Planning permission) and Regulation 33 (Directions requiring consideration of condition) of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, or under Regulation 50 (that development is EIA development) of The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017.

None.

## 9. Representations

9 representations have been received in objection to the application. All representations can be viewed online at [www.south-ayrshire.gov.uk/planning](http://www.south-ayrshire.gov.uk/planning). In the following section the representations have been summarised in *italics* and responded to in **bold**.

- The current road cannot cope with the existing traffic and increased traffic it will inevitably lead to regular gridlock. This will prevent emergency vehicles from accessing Ayr Hospital*
- No planning for any first phase Corton development should be considered before the A77 from Doonholm Road is dualled to accommodate increased traffic on an already congested and dangerous section of road.*
- The proposals do not take account of the potential dualling of the A77 at some point in the future.*
- The A77 is currently very congested and cannot cope with the current traffic*
- The Maybole Road/ St Leonards Road currently suffers from heavy traffic in an area where school children are required to cross roads to school*

**Planning Service response: The Proposals have been assessed by Transport Scotland and ARA who indicate that they do not object to the proposals subject to a suitable planning condition which will ensure that all issues identified in the applicant's Transport Statement are adequately addressed. Therefore, they consider that if the appropriate mitigation is put in place the scheme will not have a negative impact on the road network.**

- Environment (reduction of open spaces) - irrespective of current designation, the site is not brown belt it is clearly greenbelt. The development will have a detrimental impact on the local environment.*

**Planning Service response: The site is allocated within the LDP2 as a housing development opportunity. The application site is not designated 'green belt' in the Local Development Plan.**

- Local Area (detrimental to town amenities, character and indeed viability) - Ayr has seen the town centre deteriorate over the past number of years. The addition of a further out of town development with accompanying retail centre will inevitably lead to fewer viable shops in the town centre which is rapidly becoming a waste ground.*
- Local Amenity - the local area is already well served by retail outlets and food outlets. However, the town has several areas with retail spaces that are empty and in decline. Rather than creating more retail space to lie empty/ create more empty space elsewhere it would be better to rejuvenate these units and Ayr High Street. The idea to create retail outlets here to satisfy 20-minute neighbourhood criteria is nonsense as all of Ayr is accessible in that time*
- Further developments may also have a detrimental effect on Ayr's High Street which has many empty retail units*

**Planning Service response: These matters are considered in the assessment section of this report.**

- *Antisocial behaviour – Fast food outlets open till late at night encourage antisocial behaviour and loud vehicles*

**Planning Service response: The issues of anti-social behaviour associated with late night activity is a matter outwith the scope of planning and is addressed under separate legislation by the Council's Environmental Health Service or Police Scotland.**

- *Litter – the litter situation along the A77 and Doonholm Road is already poor with a lot of rubbish thrown out of vehicles. Fast food outlets rubbish would add to this to the detriment of the local environment.*

**Planning Service response: While any proposal if approved would have waste provision on site, the issues of littering are matters which are outwith the scope of planning.**

- *There is a lack of masterplan for the whole development site*

**Planning Service response: It is noted that the proposals have been submitted prior to the conclusion of the LDP2 Supplementary Guidance Design Brief process and therefore the Planning Authority does not have a masterplan for this area. It is also noted that the proposals are not featured on the proposed masterplan of the separate Section 42 application Ref. 23/00261/FURM.**

- *The housing at the southern end of the site adjacent to the retail park is not a satisfactory proposal*

**Planning Service response: The housing shown at this location does not form part of the current application.**

In accordance with the Council's procedures for the handling of Planning applications the opportunity exists for Representees to make further submissions upon the issue of this Panel Report by addressing the Panel directly. A response to these representations is included within the assessment section of this report.

## **10. Assessment**

Sections 25(1) and 37(2) of the Town and Country Planning (Scotland) Act 1997 (as amended) indicates that in making any determination under the Planning Acts, regard is to be had to the development plan. The determination of an application shall be made in accordance with the plan unless material considerations indicate otherwise. The application is determined on this basis.

Legislation states that in the event of any incompatibility between a provision of NPF4 and a provision of an LDP, whichever of them is the later in date is to prevail (Town and Country Planning (Scotland) Act 1997 ("the 1997 Act"); Section 24(3)). NPF4 was adopted after the adoption of LDP 2, therefore NPF4 will prevail in the event of any incompatibility.

### **NPF4 Aims**

NPF4 confirms that the purpose of planning is to manage the development and use of land in the long-term public interest. NPF4 also maintains a plan-led system and provides a long-term spatial strategy to 2045 based around enabling the transition to net zero emissions and environmental sustainability; driving inclusive economic growth; and building resilient and sustainable places, which adapt to the impacts of climate change, whilst protecting, recovering, and restoring our environment.

## **Assessment of Against the Development Plan (NPF4 & LDP2)**

### **Assessment Against Retail Policy**

NPF4 Policy 28 (Retail) partially supersedes LDP2 Policy: *general retail* in respect to the “retail outside of town centres” section of the policy, as this aspect of the LDP policy is incompatible with NPF4 Policy 28.

NPF4 Policy 28 marks a significant shift in national government policy in relation to retail outside of town centres/edge-of-town centres since the original planning permission in principle (Ref. 14/00220/PPM) to which this Section 42 application relates.

**Policy 28 of NPF4 states:**

***“a) Development proposals for retail (including expansions and changes of use) will be consistent with the town centre first principle. This means that new retail proposals:***

- i. will be supported in existing city, town and local centres, and***
- ii. will be supported in edge-of-centre areas or in commercial centres if they are allocated as sites suitable for new retail development in the LDP.***
- iii. will not be supported in out of centre locations (other than those meeting policy 28(c) or 28(d)).***

***b) Development proposals for retail that are consistent with the sequential approach (set out in a) and click-and-collect locker pick up points, will be supported where the proposed development:***

- i. is of an appropriate scale for the location;***
- ii. will have an acceptable impact on the character and amenity of the area; and***
- iii. is located to best channel footfall and activity, to benefit the place as a whole.***

***c) Proposals for new small scale neighbourhood retail development will be supported where the proposed development:***

- i. contributes to local living, including where relevant 20-minute neighbourhoods and/or***
- ii. can be demonstrated to contribute to the health and wellbeing of the local community.***

***d) In island and rural areas, development proposals for shops ancillary to other uses such as farm shops, craft shops and shops linked to petrol/service/charging stations will be supported where:***

- i. it will serve local needs, support local living and local jobs;***
- ii. the potential impact on nearby town and commercial centres or village/local shops is acceptable;***
- iii. it will provide a service throughout the year; and***
- iv. the likely impacts of traffic generation and access and parking arrangements are acceptable.”***

Under the previous Scottish Planning Policy, new retail development outside of a town centre could be considered consistent with the development plan where the applicant could demonstrate (through a Retail Impact Assessment) that the development would not harm the vitality and viability of town centres retail. As detailed above NPF4 now requires a strict application of the town centre first approach and directs all retail development to city/town centres, commercial centres and local centres.

Part (A) of Policy 28 states that retail proposals are not supported in out of centre locations (other than those meeting Policy 28(c) or 28 (d)). Therefore, the historic policy ‘exception’ for proposals that demonstrate they do not harm the vitality and viability of town centres is no longer available.

In respect of Policy 28 part (A), this retail park development site is:

- not located within any of the town centres identified through South Ayrshire LDP2
- it is not considered to be an “edge-of-centre” location, due to the distance it is located away from any defined town centre.
- It is not within the Heathfield Commercial Centre.



The network of centres identified in LDP2 does not contain any 'local centres'. NPF4 was approved after the adoption of LDP2 and consequently, LDP2 does not contain such a designation. 'Local Centre' is not defined within NPF4 nor has the Scottish Government issued any guidance that would assist planning authorities on how to interpret this new term.

**Considering this, the proposal is contrary to NPF4 Policy 28 (A).**

Policy 28 (B) only relates to proposals which are consistent with the sequential approach set out in Part A of the policy.

**Considering the above, policy 28(B) is not relevant in the consideration of this application.**

NPF4 Policy 28 (C) provides support for proposals for new small scale neighbourhood retail development where the proposal will (i) contribute to local living, including where relevant 20-minute neighbourhoods and/or (ii) can be demonstrated to contribute to the health and wellbeing of the local community.

NPF4 does not define the term "small scale neighbourhood retail". NPF4 Policy Local Living and 20 Minute Neighbourhoods, however, provides further guidance on the scale and form of retail that should be supported under Policy 28(C). The intent of the policy is to create connected and compact neighbourhoods where people can meet the majority of their daily needs within a reasonable distance of their home by non-motorised transport or sustainable transport options. The policy outcomes include that places are planned together with homes and the key local infrastructure, including local shops. The concept of "20 Minute Neighbourhood" is defined within the Glossary. This refers to achieving connected and often compact neighbourhoods designed in such a way that people can meet the majority of their daily needs within a reasonable distance of their home, preferably by sustainable and active travel methods. It is noted that the emphasis is on meeting "daily" needs and not all needs. In relation to retail, the Planning Service interpret this as the provision of retail floorspace that is sufficient to meet daily shopping requirements, primarily for convenience goods. The applicant's Retail Impact Assessment and supporting statement suggest that the size of retail park proposed is suited to meeting weekly shopping needs (main weekly food and grocery shop) and less frequently purchased items (comparison goods) and is likely to attract trade from a primary catchment area that extends significantly beyond SEA to include all of Ayr and Prestwick and the surrounding villages and rural areas as far south as Maybole and as far east as Straiton in South Ayrshire. The applicant anticipates that the primary catchment will also extend to Dalmellington in East Ayrshire and Castle Douglas in Dumfries and Galloway. The physical size of the units, the range of goods to be sold and the extensive catchment area suggested in the applicant's Retail Impact Assessment, demonstrate the retail park proposed through this application is, therefore, significantly larger than required to meet the daily shopping needs of the future residents of SEA.

**It is, therefore, concluded that the proposed retail park, having regard to its size in the context of SEA, is not consistent with scale and nature of retail development supported by NPF4 Policy 28 part (C).**

The principle of the proposed retail park also requires to be assessed against the retail policies in LDP2. LDP2 Policy: general retail sets out the Council's approach to the location of new retail development ("sequential approach") which, in common with NPF4, prioritises town centres, edge of town centres, commercial centres and local neighbourhood centres over other locations. Corton is recognised as a local neighbourhood centre through LDP2 Policy: small town centres and local neighbourhood centres, which requires that the Supplementary Guidance Site Design Brief for SEA identifies land for a local neighbourhood centre within Phase 1 (Corton), to serve the local catchment.

Having regard to the designation of Corton as a local neighbourhood centre, the proposed retail park, which is separate from and in addition to the retail units contained within the proposed neighbourhood centre shown on the masterplan submitted with the separate planning application Ref. 23/00261/FURM, requires to be assessed against LDP2 Policy: small town centres and local neighbourhood centres. The policy supports proposals for new shops where they provide extra services for local communities and otherwise comply with the retail policies in the LDP. The LDP2 Glossary defines “*local neighbourhood centre*” as “*small groupings of shops, typically comprising a general grocery store, a sub-post office, occasionally a pharmacy and other small shops, offices or facilities of a local nature*”. The Glossary also defines “*local neighbourhood needs*” “*as retailing of convenience goods with a local catchment profile*”. As noted above in the assessment against the relevant NPF4 policies, the applicant’s supporting information indicates that the proposed ‘retail park’ is expected to draw trade from a catchment significantly wider than SEA.

The ‘retail park’ by virtue of its size and potential catchment is, therefore, not compatible with the scale of retail supported by LDP Policy: small town centres and local neighbourhood centres.

Under the ‘assessment’ section of this report is ‘material considerations’ relevant to this application which require to be considered and ultimately whether they justify taking a different approach to the Development Plan. With respect to the above assessment of the retail park proposal, the other material considerations are the original 2014 permission which granted a large format supermarket with a similar overall retail floorspace to that currently proposed and the Retail Impact Assessment submitted by the applicant. Following an assessment of these material considerations, it has been concluded that these do not provide sufficient justification for a departure from policy 28 of NPF4 or the retail policies of the Local Development Plan.

**Policy 28 (D) relates to retail in islands and rural areas and is therefore not relevant to the consideration of this application.**

**Considering the above, the proposed retail park is contrary to NPF4 Policy 28 and LDP2 Policy: small towns centres and local neighbourhood centres.**

Notwithstanding the incompatibility of the proposed retail element with Policy 28, NPF4 must be read as a whole and the principle of retail requires to be considered against all policies that are relevant. NPF4 policy 27 (city, town, local and commercial centres) illustrates and emphasises the significant shift in national policy towards protection of town centres from out-of-town centre development. The intent of the policy is to encourage, promote and facilitate development in city and town centres by applying the Town Centre First Approach. In combination, Policy 27 and 28 demonstrate the Government’s preferred strategy to consolidate physical retail floorspace and other footfall generating uses within town centres rather than dispersing these to locations outwith established town centres. This Policy is not supportive of the proposals.

Policy 27 (D) is particularly relevant to the drive-through restaurant element of the current application proposals. The Policy indicates “*Drive-Through Developments will only be supported where they are specifically supported in the LDP*”.

**Therefore, as the Corton site has not been identified within the Local Development Plan 2 as a suitable location for such a facility, the proposals for 3 drive-through restaurants at this location fail to accord with the requirements of Policy 27(d) of NPF4. While it is noted that this requirement for Drive-throughs to be identified within LDPs was brought in through NPF4 and after the Adoption and publication of LPD2, it is considered that the proposed location of these units would not meet the intent of the policy to be supportive of creating centres that are vibrant, healthy, sustainable and accessible.**

It is noted that the applicant has not considered the positive impacts that the development of South East Ayr, for a 850 house development at Corton specifically, could have on the vitality and viability of town centres through population growth and expenditure and opportunities for re-use of existing vacant floor space and new retail development. It is considered that the effects would undoubtedly be positive and consistent with the Town Centre First Principle. While an assessment has not been undertaken to quantify this, it is a reasonable conclusion to draw.

NPF4 Policy 15 (Local Living and 20-Minute Neighbourhoods) seeks to encourage, promote and facilitate the application of the *place principle* and create connected and compact neighbourhoods where people can meet the majority of their daily needs within a reasonable distance of their home, preferably by walking, wheeling or cycling. The scale of retailing proposed, having regard to the extensive range of products that the proposed retail park units will be able to stock, is considered to exceed what is required to meet daily needs and more suited to weekly and occasional shopping trips. As considered under NPF4 Policy 28 (C) the scale of retail floorspace proposed will attract customers from a wide catchment to undertake weekly food and grocery shopping trips and less frequent comparison shopping trips.

As evidenced by the applicant's own Retail Impact Assessment the scale of retail unit proposed will attract customers from a wide catchment, including the south and east of Ayr, to undertake weekly shopping trips. As a result, this may discourage retailers from investing in existing and new retail floorspace within the affected areas. This could reduce the likelihood of local shopping opportunities being maintained and created within the existing suburban parts of south and east Ayr and the surrounding villages i.e., Maybole and Girvan, thus undermining the objectives of the NPF4 Place Principle and 20 Minute Neighbourhoods.

**It is therefore concluded that the retail park development' element of the mixed-use proposals is also contrary to Policy 15.**

NPF4 Policy 13 (sustainable transport) seeks to encourage, promote and facilitate developments that prioritise walking, wheeling, cycling and public transport for everyday travel and reduce the need to travel unsustainably. A key policy outcome is that developments are in locations which support sustainable travel. The proposed retail park development would provide good quality shopping, accessible by sustainable travel modes, for people living within Corton and the wider South East Ayr area, thus potentially reducing the number of carborne trips for shopping at destinations outwith SE Ayr. However, as stated above, the scale of retail floorspace proposed would attract customers from a wide area. As there are no extensive established public transport networks linking the site to other parts of Ayr/Prestwick and to the more distant communities within the catchment area of the proposed retail park, in comparison with other areas that are better served by public transport, including the town centres, the proposal has the potential to lead to an increase in the number of journeys made by private car. On balance, a more sustainable approach would be to follow NPF4 policy and locate larger scale retail within one of the town centres or Heathfield Retail Park which are accessible through a range of established sustainable transport options. Criterion (e) of Policy 13 states that development proposals for significant travel generating uses will not be supported in locations which would increase reliance on the private car, taking into account the specific characteristics of the area.

**Given that the proposal is likely to increase dependency on private car use, the retail park development element of the proposals is considered to be contrary to Policy 13 (e).**

Finally, in relation to NPF4 Policy 1 (climate change and nature crisis) and Policy 2 (climate mitigation and adaptation), Policy 1 requires that in considering all development proposals, significant weight is attached to the global climate and nature crises. In tandem, Policy 2 requires that development proposals are sited and designed to minimise lifecycle greenhouse gas emissions as far as possible. As assessed under policies 13 and 15 above, the scale of the 'retail park development' will attract customers from a wide catchment area. As assessed under Policy 13 above, Corton is less accessible than the town centres, which are served by multiple bus and train services. It is considered that a more sustainable approach would be to follow NPF4 policy and locate larger scale retail within one of the town centres which is accessible through a range of sustainable transport options.

**Given that the proposal is likely to encourage private car use and that there is considered to be more sustainable options available, the retail park proposals are considered to be contrary to the aims and objectives of Policies 1 and 2.**

### **Assessment Against LDP Policy: *maintain and protecting land for housing***

The application site is located within the AYR4 Housing Allocation. LDP Policy: maintaining and protecting land for housing, states that residential development on sites identified in the LDP settlement maps will be acceptable. Proposals for development other than housing on land identified for residential development will have to show they have environmental, economic or social benefits or encourage regeneration. The proposal must also have an acceptable effect on the amenity of the surrounding uses, especially residential uses.

In regard to any potential environmental benefits and regeneration, the site is currently greenfield land that was last used for agriculture and is not an area that is in need of environmental enhancement or regeneration.

It is considered that the provision of the mixed-use retail development will not encourage sustainable shopping and will not have a positive environmental impact. The applicant indicates that the catchment for the retail park development is the South and east of Ayr not just those future residents of the new South East Ayr. Therefore, while some shoppers may walk or cycle to the retail park development, due to the lack of public transport links to the site the majority of shoppers will use their vehicles to carry out the weekly shop or visit the drive-through restaurants hence being unsustainable and having a detrimental impact on the environment.

The applicant's supporting statements indicate that the development of a retail park at Corton will result in economic benefit to South Ayrshire through the creation of direct and indirect employment during the construction phase and potentially as a result of spending on local supplies of building materials. However similar benefits would also be found during the construction of a residential development. During the operational phase, the retail park will create direct employment and potentially indirect employment through the use of local suppliers, however this would be to the detriment of town centres and other retail areas with no net additional employment being created. It is the Planning Service's opinion that the economic benefits associated with the development are not unique to the site at Corton and could also arise if the new retail floorspace were to be sited in the town centre.

In regard to potential social benefits, the applicant's supporting statements suggest that there may be opportunities for apprenticeship schemes in construction and local employment in retail. The applicant has not provided any evidence to demonstrate that such benefits will arise, and these suggestions are speculative. As with the potential for direct and indirect employment, these potential benefits could arise if the new retail floorspace were to be located within a town centre and are not unique to Corton.

**It is concluded therefore that the applicant has not adequately demonstrated that the inclusion of the additional retail land use will result in economic, social or environmental benefits that justify a non-residential use within the housing allocation. As such, the proposal is considered to be contrary to LDP2 Policy: *maintaining and protecting land for housing*.**

**Moreover, the applicant's development viability document notes the positive contribution that the retail park would provide to the development viability of the remainder of Corton for housing development. Without an ability to ensure that any planning permission for this retail park was linked to the provision of housing in the remainder of Corton there is a significant risk that the approval of a retail park would compound the development viability of Corton for housing development. The linking of the supermarket to the housing development of planning application 14/00220/PPP ensured that the retail contribution supported the housing development and required infrastructure. By removing the retail 'income' from future housing development there is a significant risk that South East Ayr will not be able to support housing development contrary to policy AYR 4.**

### **Other Policy Considerations**

The assessment against planning policy and material considerations set out above is focussed on the retail policies contained within the development plan as it is considered that the principle of the development is significantly contrary to the development plan. This part of the assessment provides an assessment of the detail of the proposals against the development plan and more general 'development management' matters.

NPF4 Policy 3 (Biodiversity) and LDP2 Policy: natural heritage– the proposals are assessed as contrary. The development will maintain stand-off distances from watercourses and provide additional shrub planting along the burn corridors to be benefit of their biodiversity value. However, the boundary treatment should be more robust in order to achieve better screening, create sense of space and further enhance the two watercourses. The extent of shrub areas and native species hedge could be increased to achieve greater diversity of habitat.

NPF4 Policy 5 (soils) – the proposals are assessed as consistent as there are no carbon rich soils or peatland and the extent of cut and fill is not excessive having regard to the unavoidable need to form level building platforms.

NPF4 Policy 6 (forestry, woodland and trees) and LDP2 Policy: preserving trees and LDP2 Policy: woodland and forestry – the proposals are assessed as consistent having regard to the retention of existing trees and additional tree planting proposed.

NPF4 Policy 7 (historic assets and places) and LDP2 Policy: historic environment – the proposals are consistent as the development will not directly impact any historic assets or the settings of any assets.

NPF4 Policy 12 (zero waste) and LDP2 Policy: waste management – the proposals are assessed as consistent. Dedicated areas are identified within the retail service yard for collection, separation and storage of waste. The restaurant units will have enclosed compounds for waste management. A dedicated recycling centre is proposed adjacent the EV charging station. A waste management plan will be operated during the construction phase.

NPF4 Policy 13 (sustainable travel) and LDP2 Policy: land use and transport and LDP Policy: public transport – proposal for electric vehicle charging station, cycle parking and active travel link from site to connect with network of active travel routes within the wider Corton area are consistent with the policies. There is scope to improve legibility of walking routes through drive-through area between Units B and C and Unit A. SPT have advised that a public transport service is needed from the outset of the development to ensure sustainable travel habits are established. These are matters which could be dealt with by condition.

NPF4 Policy 14 (design quality and place) – The proposal is assessed as contrary to this policy. The buildings proposed within the retail park are standard large scale commercial structures with simple rectangular floorplan and shallow pitched roofs. The overall dimensions of the buildings are significantly larger than typically found within the countryside surrounding Ayr and only very limited effort has been made to break up the overall massing of the structures both horizontally and vertically. The west elevation, which will front onto the A77 is particularly poorly designed, having regard to the expanse of blank wall with no openings or projections or design features to break up the large expanse of metal cladding proposed. Overall, the approach to the design has failed to respond to the site's unique rural setting, particularly in regard to the scale and massing of the buildings and selection of exterior finishes. The proposal will result in a built form that is bland, not distinctive and does not respect the vernacular traditions of this part of rural South Ayrshire. The uninspired architectural design of the retail park is mirrored by the standard approach to providing parking which comprises of a large area to the front of the retail units with very limited amounts of soft landscaping to break up the hard paved areas. The design of this large area is entirely car dominated and would be improved through the inclusion of significant additional greenspaces which divide the parking areas up into a number of separate areas. Similarly, the drive-through units and petrol filling station are of standardised 'anywhere' design with no sense of place and are equally bland. In relation to the landscaping proposals for the site, it is noted that additional planting is required along the boundaries to achieve better screening, create a sense of space and enhance the two existing watercourses. Greater amounts of hedge and shrub planting are required to increase the diversity of species proposed through the landscaping scheme in the interest of visual amenity and biodiversity. The proposal is therefore fundamentally contrary to policy 14. There are also concerns that this application, when considered on its own merits, and in isolation from the wider Corton proposals as proposed through the separate application Ref.23/00261/FURM, is insufficient with respect to biodiversity enhancements to meet the requirements of Policy 3 - Biodiversity of NPF4.

NPF4 Policy 16 (infrastructure first) and LDP Policy: delivering infrastructure and LDP2 Policy: strategic road development – Transport Scotland have advised prior to the occupation of any part of the development improvements are required to the A77 road. These include upgrading of the various junctions and improvement to the dual carriageway standard between Holmston and Whitlets. In the case of the latter, Transport Scotland have indicated that the developer has the option to enter into an agreement to make a proportionate contribution toward the cost of dualling the A77 which will permit the occupation of the retail park prior to the upgrading works being completed. Transport Scotland have also advised that a pedestrian/cyclist/equestrian bridge over the A77 is required prior to occupation. Strathclyde Partnership for Transport have advised that safe and attractive active travel links and public transport provision are required. Scottish Water have advised that there are no constraints in terms of potable water supply and disposal of waste water.

NPF4 Policy 19 (heating and cooling) and LDP2 Policy: low and zero carbon buildings – The proposals are assessed as consistent. The application supporting information “Statement on Energy” indicates that the developer will seek to achieve an Energy Performance Rating of B+ that the buildings will be designed to promote sustainable temperature management. Three options have been identified for heating which avoid the need for mains gas. The applicant indicates that the feasibility of a district heat network to serve the retail park and the related housing development will be investigated. These matters could be dealt with by condition.

NPF4 Policy 20 (blue and green infrastructure) and LDP2 policy green networks – the proposals are assessed as consistent. The proposed layout ensures that the existing blue network (burn corridors) are not further fragmented. SEPA have no objections to the proposals in terms of the impact on the hydrology and biodiversity value of the watercourses within the site.

NPF4 Policy 22 (flood risk and water management) and LDP2 Policy flood and development the proposals are consistent. The application site is partially located within an area at risk of flooding. The Flood Risk Assessment submitted with the application indicates that the site can be developed without increasing the risk of flooding, provided that a SUDS is constructed and minimum finished floor levels are maintained. SEPA do not object subject to conditions to ensure that a suitably designed SUDS is provided and the measures identified in the FRA are implemented.

Policy 31 (culture and creativity) – consistent. In accordance with Policy 31 the applicant proposes to provide public art within the landscaping proposals for the site. This is a matter that could be dealt with by condition.

LDP2 Policy: air, light and noise pollution – consistent. The applicant has provided supporting information in connection with potential for air, noise and light pollution. The Council’s environmental health service have reviewed the documents and have offered no objection provided that conditions are imposed to ensure that the measures contained within the Noise Assessment are implemented.

## **Material Considerations**

### **Applicant Supporting Information**

As can be seen from the applicant's submission they have submitted a significant amount of information in support of their application all of which has been reviewed and considered as part of this assessment process. This section of the Report looks to consider the impact of these reports on the determination of this application.

With regards to the relationship of the proposed development to NPF4 and to LDP2 the Applicant's Supporting Statement indicates that they consider that the mixed-use retail provision is in accordance with NPF4 and LDP2 as a result of the LDP2 Policy Small Town Centre and Local Neighbourhood centres. They consider that under this policy, which expects the Supplementary Guidance Design Brief for South East Ayr to identify land for a Local Neighbourhood centre and community facilities, that “*South East Ayr and Corton specifically, is differentiated from other non-town centre locations in terms of LDP2 granting it retail hierarchy status as a local neighbourhood centre and placing a duty on the council to prepare supplementary guidance which would confirm the scale and location of new shopping and other facilities within Corton to meet the needs of the Local Catchment.*”

The applicant goes onto indicate that “*the retail status of Corton in terms of LDP2 is therefore an existing local neighbourhood centre and the scale of shopping provision should be that necessary to serve the needs of the local catchment. The scale of the shopping provision is a matter for the Council’s supplementary guidance to define.*” The applicant goes on to indicate that they consider the catchment area for the South East Ayr Local Neighbourhood Centre should include existing housing within the suburbs to the south and east of Ayr which are within an easy walking distance of Corton, they estimate this to be 3000 existing households.

It is agreed that the LDP2 sets out the need for Local Neighbourhood Centre, at Corton which should be identified through the Supplementary Guidance Design Brief. However, the LPD 2 policy does not require any survey work to be carried out to establish the scale of the Local Neighbourhood Centre, as the scale of this is already established in the Glossary to the LDP2 where it states “*Local / Neighbourhood Centre Small groupings of shops, typically comprising a general grocery store, a sub –post office, occasionally a pharmacy and other small shops, offices or facilities of a local nature.*” This description clearly indicates the scale of the proposed Local neighbourhood centre, it was not anticipated to serve the 3000 existing households in Ayr as indicated by the applicant, rather it is to provide for the Corton section of AYR4 housing allocation (“South East Ayr”).

### Development Viability Appraisal

Through their supporting statements and the Development Viability Appraisal, the applicant has sought to demonstrate that the development of Corton for residential (under separate application Ref. 23/00261/FURM) is not financially viable as a result of the substantial requirements placed on the development by the Council to provide all the common infrastructure to serve SEA. The applicant states that the costs of delivering the development required by the Council substantially exceed the income from the development and without additional income generated by the sale of the retail park Corton and approximately £17 million funding by the Council, the development of South East Ayr will not be deliverable.

Notwithstanding the information contained within the Development Viability Appraisal, it is clear that the premise upon which the document has been formulated is fundamentally flawed. Those reasons are:

### Funding from the Council

The assessment indicates that South Ayrshire Council will provide “drawdowns” of £595k per month for a period from 2023 to 2026 to the applicant to a total value of approximately £17million for the provision of infrastructure to Corton. This proposal is unrelated to phasing of development and it is unclear what development the applicant would be willing to obligate undertaking whilst this money was being transferred. Without a clear relationship to development and development phasing it could mean the forwarding of money resulted in no security of development or infrastructure being provided.

### Future Developers

The assessment indicates that South Ayrshire Council will recoup this financial outlay as set out above from other future developers of the rest of the South East Ayr Development i.e., not Corton. There are currently no planning permissions in place at South East Ayr for the Council to have any certainty that there is a feasible mechanism that would enable the recouping of the funding from future developers.

In addition, there is no evidence that the repayment of this money by the other developers would not undermine the development viability of the other sites in South East Ayr. Without such evidence there can be no confidence that any other developer will be able or willing to provide this money. To this end, the development viability appraisal is considered to be fundamentally flawed being based on assumption and lack of evidence of viability impacts on other developers of South East Ayr.

### Land Value

The assessment indicates that the site acquisition and development costs are approximately £20 million. As stated above, the site is allocated for residential use, however the applicant indicates that the land values are at a Retail rate for part of the site yet the commercial changes impacting on large scale supermarket development were known at the time of site acquisition. It appears that no account has been taken of the outlay required for the significant planning gain required as part of the 2014 consent. The current proposals 23/00345/APPM & 23/00261/FURM (either separately or combined) are unable to fund any of the required planning requirements of the 2014 consent. The planning requirements of the 2014 consent remain relevant.

The proposals presented in this Development Viability Appraisal demonstrate even with a significant retail park development being proposed, (together with affordable housing requirements significantly below the required National and Council standards and the primary school to be front funded by the Council – through separate application Ref. 23/00261/FURM) this project still requires to be financially supplemented by approximately £17million from an external, source – this being the Council. Therefore, there is a £17million shortfall in the applicant's development viability case (£17m that cannot be committed by the Council), and the conclusion is that the scheme is unviable.

Given that by the applicant's own submission the scheme is not viable and with the substantive legal matters on the principals provided in the appraisal, the Planning Service has not had the Development Viability Appraisal document reviewed by an independent financial expert.

Notwithstanding the findings in the Development Viability Appraisal, the assumption that the Council could and will make £595k monthly payments to the applicant for a period of approximately 2.5 years for infrastructure works and recoups approximately £17million from future developers in the area, demonstrates a fundamental flaw in the logic of the assessment therefore little weight can be attached to the Development Viability Appraisal as a material consideration in the determination of this Section 42 planning application.

### Funding from the Council for the primary school

The Council has agreed through the Capital Programme to fund the phased provision of the Primary school at SEA. This funding would be provided on the basis of the cost being recovered via a per house contribution of all houses constructed at South East Ayr. The detail of that process has yet to be agreed and formalised through the adoption of Supplementary Guidance Design Brief for South East Ayr by SAC. It is important to note that the Council funding the phased provision of the primary school with recovery of that funding is different from the matters set out in the preceding paragraphs in terms of the applicant's proposal that the Council also forward funds the applicant's development through providing approximately £17 million towards infrastructure works.

The provision of education in Scotland is the responsibility of local authorities who are under a statutory duty to ensure that there is adequate and efficient provision of school education in their area to serve existing and anticipated populations. It can also be secured via condition and legal agreement that work does not begin on the school until the housing has commenced, thereby minimising risk to the Council. This enables the Council to enter into an arrangement to front fund a primary school and recoup this cost. This does not enable the Council to provide £17m in lieu of a developers lost development value on land for common infrastructure.

**In conclusion, the submitted Development Viability Appraisal is critically reliant upon assumptions on the Council's legal ability and agreement to forward fund the initial infrastructure works and to recoup this financial outlay from the other landowners within the application site and outwith the application site, within the wider South East Ayr area. The applicant also makes critical assumptions relating to the agreement of the other landowners to support common infrastructure, the land valuations and the mechanism for equitably sharing these land values between all the landowners within the South East Ayr area. These assumptions have not been agreed by these landowners and there are serious concerns over their implication on the development viability of these other developments. There may be other legal or financial reasons for these landowners to resist such proposals, which could include challenge on the components making up areas of common infrastructure.**



## Draft Supplementary Guidance Design Brief

As detailed in the report, it is a requirement of the LDP2 that the Planning Authority prepare a Supplementary Guidance Design Brief for the allocated housing site AYR 4 "South East Ayr". At this time the preparation of the Supplementary Guidance Design Brief document is still ongoing, and it has not been adopted by the Council therefore does not form part of the Development Plan. Thus, it should only be afforded minimal, if any, material weight in the decision-making process of this Planning application.

It is noted that the applicant has lodged representations in the consultation process for the Supplementary Guidance that promotes a significant area of retail development contrary to the Development Plan.

Members will be aware that the Planning Service published a first draft version of the Corton Site Design Brief SPG for public consultation in March 2023. The draft included a proposal to increase the level of retail floorspace, within the neighbourhood centre, from the level previously approved through the original Planning Permission in Principle (PPP) (ref 14/00220/PPPM). Condition 4(ii) of the PPP specified that the total floorspace within the neighbourhood centre was to be 1000 sqm and no single unit was to exceed 200 sqm (gross floorspace). The first draft of the new Site Design Brief indicated that the total floorspace could increase to 2500 sqm (gross floorspace) and no single unit should exceed 2000 sqm. This floorspace is expected to be entirely contained within the neighbourhood centre. The draft Site Design Brief was issued for consultation shortly after the adoption of NPF4 on 13 February 2023. The document had been prepared some time prior to that and, as a consequence, could not take account of the significant changes to retail policy that NPF4 has introduced. Given these significant changes and the public comments received on aspects of the Design Brief which relate to retail, this part of the Brief will require to be reviewed to ensure that it is consistent with the changed national policy position.

It is a requirement of NPF4 that identification of locations for new significant retail development are made through an LDP review. If unmet demand for additional retail floorspace were identified, the LDP review would need to consider all potential locations for the provision of additional retail floorspace alongside other planning objectives, including regeneration of town centres and sustainable transport.

**Only very limited weight can be attached to the first draft Site Design Brief and that this does not provide a basis for approval of the current proposals.**

## Original 2014 Planning permission and Retail Impact Assessment

As mentioned elsewhere in this report, NPF4 policy 28 has been clearly designed to direct retail to centres and only to edge of centres if it is a site allocated for such a use in the LDP; the only exception to this being criteria 'c' and 'd.' There is no ambiguity in the intention of the policy, and, in the view of the Service, it is not open to different interpretation. NPF4 must be read as a whole and there are no other policies that persuade a different conclusion. The proposed retail park does not accord with policy 28 and therefore the proposal is contrary to the development plan in this regard. Other material considerations with respect to the assessment of the supermarket proposal is the original 2014 permission and the applicant's Retail Impact Assessment (RIA).

### Original Planning Permissions in Principle (PPP)

The original 2014 permission (Ref. 14/00220/PPPM) and the second PPP (Ref. 14/01552/FURM) granted a supermarket, that was contrary to the retail and other policies of the Development Plan of that time. The supermarket was justified as an acceptable departure as it would 'enable' housing to be delivered at Corton through funding of essential infrastructure works into the housing development, a new school, business units, and public transport support for ten years. The 2014 planning permission and associated legal agreement demonstrated that the applicant would be able to deliver their development and the infrastructure requirements at no cost to the Council and without the need for developer contributions from other landowners at South East Ayr. The Planning Authority at the time, decided that it was appropriate to allow the significant departure from the Development Plan.

The circumstances are now materially different for the following reasons:

The supermarket was never delivered, and the original 2014 permission has lapsed.

The applicant's Retail Impact Assessment (RIA) states that *"the retail market has changed fundamentally...there is limited demand for development of new superstores nationally and no current or foreseeable demand for a large superstore in Ayr."*

The circumstances are also materially different because while the applicant previously required only the large-scale supermarket to 'enable' the development, the applicant now requires the following to enable the development:

- Smaller scale supermarket
- 25% affordable housing to be provided in 2014 (187 affordable homes) to under 9% affordable housing (72 affordable homes) through the Section 42 application
- A separate and significant retail development as proposed through this application (Ref.23/00345/APPM)
- Approximately £17 million of front funding support from the Council
- Council to front fund the primary school

In addition, the proposal for a retail park and the separate Section 42 application proposals to modify the previously approved planning permission in principle do not provide the full range of benefits which the 2014 planning permission was obligated to deliver.

Planning Policy has moved on since 2014 in that a new LDP has been Adopted and it does not allocate land at South East Ayr for a retail development but a neighbourhood centre only, this reflects the fact that the 2014 permission was a policy exception based on the specific circumstances of that time. The current LDP reflects the Council's current position and objectives of Corton being developed for housing with ancillary neighbourhood centre only.

### Retail Impact Assessment

While the Retail Impact Assessment (RIA) has been submitted, and is a material consideration, it has been afforded little weight in the assessment of this application. NPF4 policy 28 removed previous planning policy framework for retail which provided a route for approval of retail proposals where it could be demonstrated through an RIA that there would be no adverse effect on vitality and viability of town centres, that were otherwise contrary to the town centre first approach. The current policy framework does not allow for such exceptions and in the opinion of the Service, it should not afford significant weight to an approach which would undermine the current policy framework for retail as set out in NPF4.

It is a requirement of NPF4 that identification of locations for new significant retail development are made through an LDP review. If unmet demand for additional retail floorspace were identified, the LDP review would need to consider all potential locations for the provision of additional retail floorspace alongside other planning objectives, including regeneration of town centres and sustainable transport.

Notwithstanding that little weight is to be afforded to the Retail Impact Assessment it is worth commenting that the Retail Impact Assessment is based on a telephone or face to face survey of 1001 people. These people are residents of 8 Zones in Ayrshire; Zone 1 Ayr, Zone 2 Prestwick, Zone 3 Maybole, Zone 4 Girvan, Zone 5 Mauchline, Zone 6 Troon & East, Zone 7 Irvine & North Ayrshire, Zone 8 Kilmarnock.

Based on the Survey of residents, the Retail Impact Assessment identifies that the retail park will have no impact on Maybole and Girvan. However, it is noted that the survey gives no consideration to the spending capacity of tourists or travellers on the A77 who, would normally utilise the cafes, shops and restaurants at Maybole and Girvan when travelling along the A77 including those using the ferry services to and from Northern Ireland.

It is highly likely that holiday makers, motorists or coach parties travelling on the A77 would take a simple, quicker diversion into a Retail Park at Corton offering 5 retail units, three Drive-through restaurants and petrol station with electric charging points located adjacent to the A77 in preference to stopping/diverting in Girvan, Maybole or Ayr to locate such services and provisions. This impact is not captured within the RIA or any of the applicant's supporting information, therefore there is no understanding of the impact this proposal will have on the commercial spending or tourism within the Southern part of the district.

In addition, given the Retail Park also contains three drive-through restaurants, it is considered that this would have a positive impact on the attractiveness of the retail park as a destination. It is noted that the RIA provides no commentary on the impact that such provisions would have on the financial draw of the overall retail park in comparison to the basic retail element it considers.

It is also noted that the RIA and the supporting information are also silent on the positive impact that the additional future residents of Corton and the wider South East Ayr development would have on those existing town centres and Heathfield if the Corton retail park was not developed.

### **Consultees**

As detailed above the majority of the consultees have no objections to the proposals from a technical aspect. However, it is noted that ARA consider that the proposed access road from the A77 would be considered 'over-designed' if the retail park were to be developed on its own, without the housing, etc propose under the separate planning application 23/00261/FURM. ARA do not however object to the proposals, subject to minor modifications to aspects of the Development Brief/Design Code. These minor modifications are matters that could be dealt with by condition if the recommendation had been for approval of the application.

### **Representations**

The issues raised by Representees which primarily include matters of the A77, the negative impact on the town centre and the negative impact of the drive-through restaurants are responded to earlier in this report. While they have been considered and taken account of in the assessment of this application, they do not in themselves raise matters of material overriding concern or factor in the reasons for the recommendation of refusal of this application.

### **Conclusion**

It is considered that this mixed retail development proposal is unacceptable due to the retail and drive-through restaurant elements of the proposals being non-compliant due to their location with the relevant policies within NPF4 and LPD2 as detailed in the Report. In addition to these matters of principle, the design of the proposed retail park and associated car parking area would not result in a high quality and distinctive place and would fail to meet the requirements of NPF Policy 14 which requires all developments to meet the Six Qualities of Successful Places. In coming to this conclusion, it was found that there were no material considerations which would outweigh the non-compliance of the proposals in relation to the National and Local planning policy position.

### **Recommendation**

It is recommended that this application be refused for the following reasons;

**Reason 1** The proposal for 5 retail units (Class 1A of the Use Classes (Scotland) Order 1997 (as amended)) is contrary to National Planning Framework 4 Policy 28 (A) as the proposed location and scale of the retail units are not consistent with the town centre first principle as the development is not located in an existing city, town or local centre and is not in an edge-of-centre area or a commercial centre allocated through the Local Development Plan.

**Reason 2** The application site is in an out-of-centre location where NPF4 Policy 28(C) only supports proposals for new small scale neighbourhood retail development which contributes to local living, including 20-minute neighbourhoods and/or can be demonstrated to contribute to health and wellbeing of the local community. Having regard to the size of the retail units proposed and the extent of their likely market area, the proposal is significantly larger than required to meet the daily shopping needs of the future residents of South East Ayr. It is, therefore, concluded that the proposed retail units, are not consistent with scale and nature of retail development supported by NPF4 Policy 28 part (C) and are therefore unacceptable.

**Reason 3** The provision of 5 retail units with gross floorspace of 8733 sqm (Class 1A of the Use Classes (Scotland) Order 1997 (as amended)) are not supported by the South Ayrshire Local Development Plan Policy: small town centres and local neighbourhood centres as the physical size of retail units proposed significantly exceeds the size of retail development supported under this policy and will function as a destination for weekly shopping trips for a catchment likely to extend significantly beyond South East Ayr. The scale and nature of this form does not accord with the Glossary definitions of retail supported under the Local Development Plan. The proposals are therefore unacceptable.

**Reason 4** The proposed 5 retail units with gross floorspace of 8733sqm (Class 1A of the Use Classes (Scotland) Order 1997 (as amended)) are not supported by National Planning Policy 15 (Local Living and 20 – Minute Neighbourhoods) as the size of retail units proposed are not consistent with the place principle. The scale and number of retail units proposed is likely to attract customers from existing residential areas in Ayr, Prestwick and Troon in addition to the proposed neighbourhoods within Corton and the wider South East Ayr area. The proposal is likely therefore to encourage consumers to make longer trips to meet their shopping needs, which are beyond convenient walking, wheeling, and cycling distance. The proposal is therefore unacceptable.

**Reason 5** The proposal is contrary to National Planning Framework Policy 13 as the proposed 5 retail units with gross floorspace of 8733sqm (Class 1A of the Use Classes (Scotland) Order 1997 (as amended)) do not encourage, promote, and facilitate development that prioritises walking, wheeling, cycling and public transport for everyday travel and reduce the need to travel unsustainably and has the potential to lead to an increase in the number of journeys made by private car from Ayr, Prestwick and Troon and surrounding rural area to Corton, contrary to the outcomes of Policy 13.

**Reason 6** The proposed five retail units with gross floorspace of 8733 sqm (Class 1A of the Use Classes (Scotland) Order 1997 (as amended)) within the proposed development is contrary to National Planning Framework Policies 1 (climate change and nature crises) and Policy 2 (climate mitigation and adaptation) as the proposal is likely to encourage private car use as a result of the attraction of customers from established residential areas in the Ayr Prestwick and Troon who may otherwise shop in Ayr town centre. The existing residential areas in Ayr Prestwick and Troon are linked to Ayr town centre by an established network of sustainable transport modes, whereas Corton is poorly connected to these areas by established public transport networks.

**Reason 7** The application site lies within the AYR4 housing allocation wherein South Ayrshire Local Development Plan Policy: maintaining and protecting land for housing only permits non-residential uses which will have environmental, economic, or social benefits or encourage regeneration. The applicant has failed to demonstrate that the proposals would not undermine the development of the site for housing development as a result of the inability to permanently, legally link the retail park to an obligation to provide housing. The applicant has also not demonstrated sufficient environmental, economic or social benefits related to the proposed 5 retail units with gross floorspace of 8733sqm (Class 1A of the Use Classes (Scotland) Order 1997 (as amended)) and accordingly the inclusion of this aspect of the proposed mixed-use development is contrary to the LDP policy.

**Reason 8** The proposed 3 Drive-Through restaurants within the development are contrary to NPF Policy 27 (d) as they are not located on identified sites within the Local Development Plan 2. While it is noted that this requirement for Drive-throughs to be identified within LDPs was brought in after the publication of LPD2, it is considered that the proposed location of these units would not meet the intent of the policy to be supportive of creating centres that are vibrant, healthy, sustainable and accessible. The proposal is contrary to NPF4 Policy 27 (d)

**Reason 9** The proposed development is contrary to NPF Policy 14 as the design of the proposed retail terrace by virtue of its scale and massing, very low-pitched roof, choice of exterior cladding and limited features to break up its visual bulk would result in a development which lacks distinctiveness and identity and does not support attention to detail of local architectural styles and the character of the surrounding rural area. Furthermore, the large expanse of car parking and vehicle circulation space to the front of the units and surrounding the proposed drive-through units is car dominated and lacks sufficient greenspace and adds to the sense of lack of distinctive character. The proposal is not, therefore, consistent with the six qualities of successful places and will not improve the quality of the existing rural area and future urban area within which it is located, contrary to NPF Policy 14.

**Reason 10** – The proposed landscaping is contrary to NPF4 Policy 3 (Biodiversity) and LDP2 Policy: natural heritage in so far as the boundary treatment should be more robust in order to achieve better screening, create sense of space and further enhance the two watercourses. The extent of shrub areas and native species hedge should be increased to achieve greater diversity of habitat.

**List of Determined Plans:**

Drawing - Reference No (or Description): 21022-PLBD-P006 Land in same ownership

Drawing - Reference No (or Description): 19251-100-701 Vertical Geometry 1 of 2

Drawing - Reference No (or Description): 19251-100-702 Geometry 2 of 2

Drawing - Reference No (or Description): 19251-500-700 Drainage Layout 1 of 2

Drawing - Reference No (or Description): 19251-500-701 Drainage Layout 2 of 2

Drawing - Reference No (or Description): 21022-MPSK-P010 Application Site

Drawing - Reference No (or Description): 20069-100-100 Proposed Site Levels

Drawing - Reference No (or Description): 20069-100-101 Construction Details Sheet 1

Drawing - Reference No (or Description): 260069-100-102 Construction Details Sheet 2

Drawing - Reference No (or Description): 20069-500-100 Drainage Layout Network 1

Drawing - Reference No (or Description): 20069-500-101 Drainage Details Sheet 1

Drawing - Reference No (or Description): 20069-500-101 Drainage Details Sheet 2

Drawing - Reference No (or Description): 9910(PL)230301-01C Location Plan

Drawing - Reference No (or Description): 9910(PL)2303301-10B Proposed Site Layout

Drawing - Reference No (or Description): 9910(PL)230301-11B Context Section

Drawing - Reference No (or Description): 9910(PL)230301-12B Context Elevations

Other - Reference No (or Description): Design and Access Statement

**Regulatory Panel (Planning): 28 February 2024**

Report by Housing, Operations and Development (Ref: 23/00345/APPM)

Other - Reference No (or Description): Drainage Strategy

Other - Reference No (or Description): Flood Risk Assessment

Other - Reference No (or Description): Planning Statement

Other - Reference No (or Description): SuDS Simple Index Tool

Other - Reference No (or Description): Town Centre First Assessment

Other - Reference No (or Description): Transport Statement

Other - Reference No (or Description): Travel Plan Framework

Other - Reference No (or Description): Updated Ecology Report

**Equalities Impact Assessment:**

An Equalities Impact Assessment is not required because the proposed development is not considered to give rise to any differential impacts on those with protected characteristics.

**Person to Contact:**

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