

## REGULATORY PANEL:

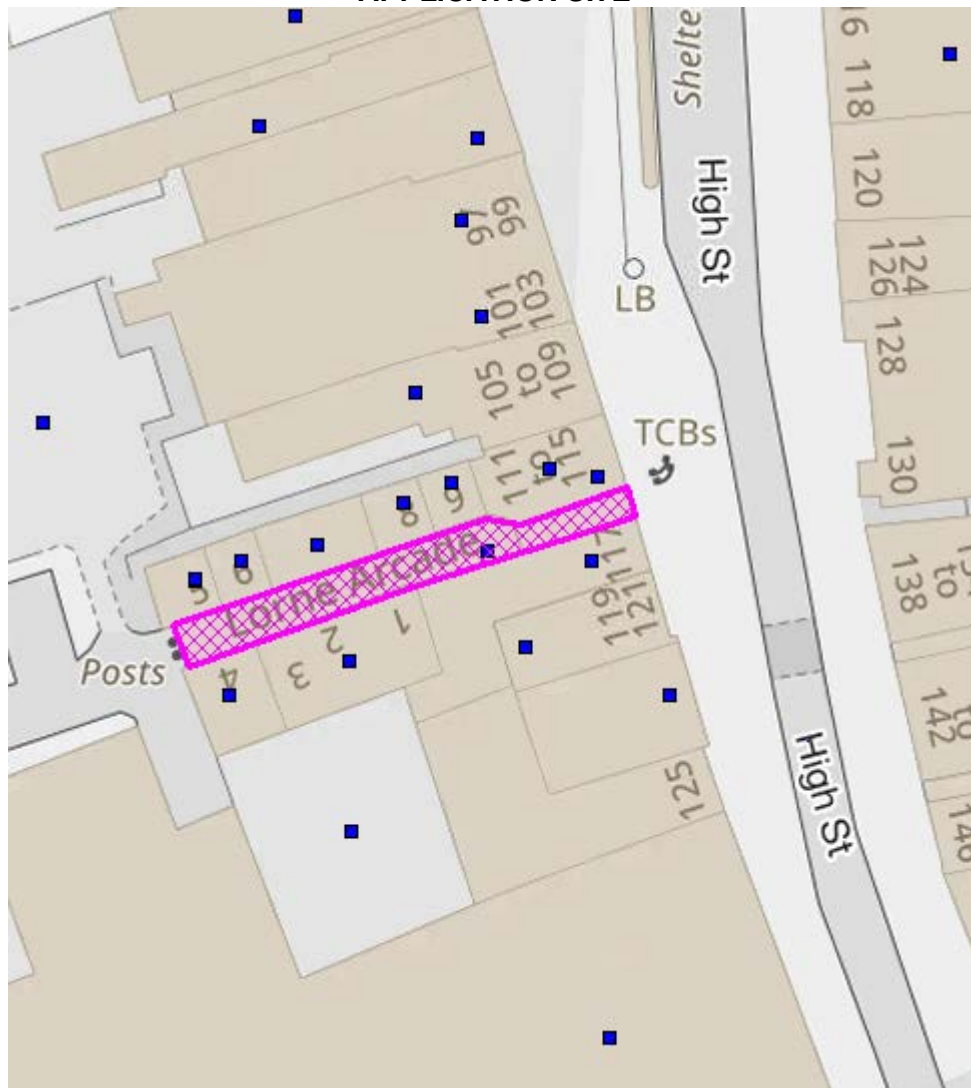
### REPORT BY HOUSING, OPERATIONS AND DEVELOPMENT DIRECTORATE

24/00040/APP

LORNE ARCADE HIGH STREET AYR SOUTH AYRSHIRE KA7 1QL

### Location Plan

#### APPLICATION SITE



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## Summary

Planning permission is sought for alterations to both entrance points to the Lorne Arcade at Arthur Street and High Street, including the installation of shutters. There are no objections to the proposals from a built heritage perspective insofar as the design and materials of the altered entrances and proposed shutters do not adversely affect the character, appearance or setting of Ayr Central Conservation Area. However, a right of way, in which access by all non-motorised means is exercisable under the Land Reform (Scotland) Act 2003, exists through the Lorne Arcade, and has done so for at least 60 years. The shutters, when in the closed position, will obstruct this right of way to the detriment of public access in the locale.

This application is being reported to the Council's Regulatory Panel, in accordance with the Council's approved procedures for handling planning applications and Scheme of Delegation, as the Service Lead for Planning and Building Standards considers it would be appropriate for members of the planning authority to take the decision on the application due to the significant number of representations that have been received. The objections principally relate to the blocking up of a right of way, and issues in respect of the impact of the shutters on the local economy and on public safety. It is considered that the proposals are contrary to the provisions of Policy 15 of National Planning Framework 4 (NPF4) and the provisions of South Ayrshire Local Development Plan 2, specifically Strategic Policy 1: Sustainable Development and LDP Policy: Outdoor Public Access and Core Paths as the proposals obstruct a right of way and do not meet with the principles of good place making, local living or 20 minute neighbourhoods, and do not facilitate interconnectivity and permeability between streets and facilities within Ayr town centre.

As such, it is recommended that the application be refused.

## REPORT BY HOUSING, OPERATIONS AND DEVELOPMENT DIRECTORATE

### REGULATORY PANEL: 9 MAY 2024

<b>SUBJECT:</b>	<b>PLANNING APPLICATION REPORT</b>
<b>APPLICATION REF:</b>	<b>24/00040/APP</b>
<b>SITE ADDRESS:</b>	<b>Lorne Arcade High Street Ayr South Ayrshire KA7 1QL</b>
<b>DESCRIPTION:</b>	<b>Alterations to Shopping Arcade Entrances</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 23 January 2024.
- The application was validated on 23 January 2024.
- A Site Visit was carried out by the Planning Authority on 1 February 2024.
- Neighbour Notification, under Regulation 18 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, was carried out by the Planning Authority on 1 March 2024.
- A Site Notice was posted in the locality under Section 65 of Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (as amended) by the Planning Authority on 6 February 2024.
- A Public Notice, under The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (as amended) was placed in the Local Press on 6 February 2024.

#### **1. Site description and Proposal:**

##### Site description

The site of the proposed development is the Lorne Arcade, which is accessible from both High Street and Arthur Street, Ayr. The site falls within Ayr Central Conservation Area.

The Lorne Arcade is a right of way in which access, by all non-motorised means, is exercisable under the Land Reform (Scotland) Act 2003.

The Lorne Arcade exists between two buildings and links High Street with Arthur Street and is approximately 40 metres in length. From the High Street end, approximately the first 10 metres of the arcade is covered by flatted properties above. Access to the flats is obtained from within the arcade, at the High Street end.

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Beyond this, the arcade has a glazed roof covering which then terminates at the Arthur Street end with the last few metres having a solid roof covering. The floor of the arcade is mostly tiled throughout its length. Both the High Street and Arthur Street access/ egress points to the arcade are open and unobstructed. The right of way through the arcade has existed for at least 60 years.

### Proposal

Planning permission is sought for alterations to both entrance points to the Lorne Arcade, including the installation of shutters to improve security. The shutters that would prevent access through the arcade between the hours of 8pm to 6.30am weekdays (except for a Thursday where the shutters would close at 9.30pm) and 8pm and 7am at weekends.

The shutters would obstruct access through the Lorne Arcade during the hours noted above but due to the positioning of the shutter from the High Street end, it would not obstruct access to the flats above.

Full details are set out in the submitted plans.

This application requires to be reported to the Council's Regulatory Panel, in accordance with the Council's approved procedures for handling planning applications and Scheme of Delegation, as the Service Lead - Planning and Building Standards considers that it would be appropriate for members of the planning authority to take the decision on the application due to the significant number of representations received.

## **2. Consultations:**

**Scottish Fire and Rescue** have not responded.

**Council's Building Standards Service** has advised that a Building Warrant would not be required for the proposed works however they note that, from a fire safety perspective, access and egress of any properties within or surrounding the area should not be compromised by the works.

## **3. Submitted Assessments/Reports:**

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.

Supporting information in the form of an access statement has been submitted by the applicant. In summary, the statement considers that no right of way can exist through a building, provides times between which the proposed shutters would be in the closed position, and indicates a willingness to accept a condition regarding times on any planning permission granted.

## **4. S75 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.

None.

## **5. 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.

## **6. Representations:**

117 individual representation(s) has/have been received, 112 of which object to the proposed development. All representations can be viewed online at [www.south-ayrshire.gov.uk/planning](http://www.south-ayrshire.gov.uk/planning)

The objections primarily relate to the blocking up of a right of way and the implications this has for businesses, public safety and means of escape from flatted dwellings and nearby business premises in the event of a fire.

The comments of support refer to the proposals increasing security for businesses operating within the Lorne Arcade and suggest that the shutters would reduce the occurrence of anti-social behaviour.

The Fort, Seafield and Wallacetown Community Council (hereafter referred to as FSWCC) made a representation in support of the application, subject to two conditions being met, specifically that confirmation is received that the Lorne Arcade was in private ownership and that there was no right of way or thoroughfare through the arcade, and that the closure of the shutters was in accordance with the hours suggested by the applicant. However, as the Planning Service considers that a right of way exists through the Lorne Arcade, the representation was registered as an objection on the basis that condition 1 of the conditional support afforded by the FSWCC to the proposals could not be met.

The Scottish Rights of Way Access Society (an independent charity that seeks to monitor, protect and promote rights of way in Scotland) has also objected to the application as the shutters would prevent access through a right of way.

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.

## **7. Assessment:**

The material considerations in the assessment of this planning application are the provisions of the development plan, other policy considerations (including government guidance), objector concerns and the impact of the proposal on the amenity of the locality.

On 13 February 2023, Scottish Ministers published and adopted National Planning Framework 4 (NPF4). NPF4 sets out the Scottish Ministers position in relation to land use planning matters and now forms part of the statutory development plan, along with the South Ayrshire Local Development Plan 2 (LDP2) (adopted August 2022).

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 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 LDP2, therefore NPF4 will prevail in the event of any incompatibility.

### **(i) National Planning Framework 4 (NPF4)**

The following policies of NPF4 are relevant in the assessment of the application and can be viewed in full online at [National Planning Framework 4 - gov.scot \(www.gov.scot\)](http://www.gov.scot):

- Policy 7 – Historic assets and places;
- Policy 14 – Design, quality and place; and
- Policy 15 - Local living and 20-minute neighbourhoods

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An assessment of the proposals against the provisions of NPF4 is set out below.

The provisions of NPF4 must be read and applied as a whole, and as such, no single policy should be read in isolation. The application has been considered in this context.

(ii) South Ayrshire Local Development Plan 2

The following policies of the South Ayrshire Local Development Plan 2 are relevant in the assessment of the application and can be viewed in full online at [Local development plan 2 - South Ayrshire Council \(south-ayrshire.gov.uk\)](https://www.south-ayrshire.gov.uk):

- Strategic Policy 1: Sustainable Development;
- Strategic Policy 2: Development Management;
- LDP Policy: Historic Environment; and
- LDP Policy: Outdoor Public Access and Core Paths

An assessment of the proposals against the provisions of Local Development Plan 2 is set out below.

The provisions of the Adopted South Ayrshire Local Development Plan 2 must, however, be read and applied as a whole, and as such, no single policy should be read in isolation. The application has been considered in this context.

The proposals seek to improve security measures within the arcade (particularly when the businesses operating within the arcade have ceased trading) whilst refreshing its external appearance.

With regard to the proposed security measures, this involves the installation of shutters that will prevent access through the arcade between High Street and Arthur Street outwith shopping hours. Whilst the principle of installing shutters would ordinarily be acceptable to commercial premises, and that the lattice style brick bond effect shutters with hidden / concealed shutter housings would be acceptable from a built heritage perspective, in this instance, it is noted that these will ultimately prevent through access between High Street and Arthur Street.

Public Rights of Way in Scotland become established through a history of use. For a right of way to exist, it must meet the following criteria:

- The route must connect two public places
- The route must follow a defined route
- The use must have been a right and not a consent
- There must have been continuous use without substantial interruption for at least 20 years.

In the case of the route through the Lorne Arcade, it connects High Street to Arthur Street which are public spaces. The route through the Lorne Arcade is clearly defined and has been used openly without substantial interruption by the general public as a matter of right for at least 60 years according to publicly available mapping sources. The route through the Lorne Arcade is therefore considered by South Ayrshire Council Planning Service as a Right of Way which is a significant and convenient access route for cyclists and pedestrians, by prescriptive use, at common law, though its status has never been vindicated in court. The Council keeps a record of right of ways and the Lorne Arcade features on this list as right of way that has been "established, accepted but not vindicated." It should be noted that a right of way does not require to be vindicated in court to be recognised as a right of way, through prescriptive use.

It is also considered that access through the Lorne Arcade is exercisable under the Land Reform (Scotland) Act 2003.

Considering the above, the installation of shutters to approximately either end of the Lorne Arcade is not considered acceptable as the shutters, when in the closed position, would obstruct a recognised right of way and would not meet with the principles of good place making, local living or 20 minute neighbourhoods, and would affect interconnectivity and permeability between streets and facilities within Ayr town centre. As such, the proposed shutters are not considered to accord with Policy 15 of NPF4, Strategic Policy 1: Sustainable Development of LDP2 or LDP Policy: Outdoor Access and Core Paths.

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In respect of the architraves proposed to the High Street and Arthur Street entrances to the arcade, it is considered that the use of timber with a dark grey painted finish is appropriate to the locale, and will not adversely affect the character, appearance or setting of Ayr Central Conservation Area. The proposals are therefore consistent with Policy 7 and 14 of NPF4 and Strategic Policy 2 and LDP Policy: Historic Environment of LDP2.

### (iii) Other Policy Considerations (including Government Guidance)

In terms of managing change within conservation areas, Planning Advice Note 71 (PAN71) indicates that all new development should respect, enhance and have a positive impact on the area. Physical and land use change in conservation areas should always be founded on a detailed understanding of the historic and urban design context.

The provisions of PAN71 are largely emphasised by policies HEP2 and HEP4 of the adopted Historic Environment Policy for Scotland which states that decisions affecting the historic environment should ensure that its understanding and enjoyment as well as its benefits are secured for present and future generations, whilst Policy HEP4 states that changes to specific assets and their context should be managed in a way that protects the historic environment.

Historic Environment Scotland's Managing Change document on Setting requires planning authorities to take into account the setting of historic assets in the determination of applications for planning permission.

Guidance Policy 1 of South Ayrshire Council's Guidance on the Historic Environment refers to design quality, and states that development proposals will be considered in terms of compliance with the 'General Criteria for New Development', which applies to both new development and extensions to existing development / buildings. Guidance Policy 3 refers specifically to development proposals within conservation areas, and states that all new development within, or affecting the setting of, a conservation area shall be required to preserve or enhance its character or appearance.

South Ayrshire Council's Guidance on Shopfront Security offers advice in respect of shutters and shutter boxes.

It is considered that the proposed physical alterations to the entrances of the Lorne Arcade, including the design of the shutters, are appropriate from a built heritage perspective, and will not adversely affect the character, appearance or setting of Ayr Central Conservation Area. However, as noted elsewhere within this report, there are concerns that the proposals will prevent access via an established right of way, and do not facilitate interconnectivity and permeability between streets and facilities within Ayr town centre outwith the opening hours of the Lorne Arcade.

### (iv) Applicants supporting statement

While the applicant states that no right of way can exist through a building, the determining criteria for a right of way is the following:

- The route must connect two public places
- The route must follow a defined route
- The use must have been a right and not a consent
- There must have been continuous use without substantial interruption for at least 20 years.

As noted elsewhere within this report, the route through the Lorne Arcade connects High Street to Arthur Street which are public spaces. The route through the Lorne Arcade is a clearly defined route between two buildings and which is under flatted properties and a glazed roof. It has been used openly, without substantial interruption, by the general public as a matter of right for at least 60 years, according to publicly available mapping sources. The route through the Lorne Arcade meets the criteria above and is therefore considered by South Ayrshire Council Planning Service to be a right of way which is a significant and convenient access route for pedestrians and cyclists, by prescriptive use, at common law, though its status has never been vindicated in court. The Council keeps a record of right of ways and the Lorne Arcade features on this list as right of way that has been "established, accepted but not vindicated." It should be noted that a right of way does not require to be vindicated in court to be recognised as a right of way, through prescriptive use.

(v) Objector Concerns

It is considered that the shutters proposed, when in the closed position, will prevent through access between High Street and Arthur Street, blocking up and obstructing a right of way in the process. It would also prevent access which is exercisable under the Land Reform (Scotland) Act 2003 by all non-motorised means. This will inevitably have an impact on late night establishments operating on both streets through loss of footfall as the closure of the arcade would prevent convenient direct access between High Street and Arthur Street, therefore adversely affecting permeability between streets, businesses and other facilities. Additionally, the proposals would increase the time to get from the Lorne Arcade entrance point at High Street to the Lorne Arcade entrance point at Arthur Street and vice versa by up to approximately 10 minutes on foot and this length of diversion on a permanent basis while the shutters would be closed is considered to be unacceptable. With regard to fire safety and means of escape from flats dwellings and nearby businesses, the Scottish Fire and Rescue Service was consulted on this application, and has not responded. The Council's Building Standards Service has however advised that they do not have any concerns provided that there are means of escape that do not exit through the arcade. Access to the flats above, while located within the arcade, is not obstructed by the proposed shutter at the High Street end. Furthermore, shop units within the arcade appear to have means of escape outwith the arcade itself.

(vi) Impact on the Locality

Whilst the principal aim of the proposals to protect shop units/ assets owned by the applicant and rented out to other businesses would ordinarily be acceptable, it is noted that a right of way through the Lorne Arcade has existed for at least 60 years and appears to have been continually used throughout. The installation of the proposed shutters would obstruct the right of way outwith the hours of operation of the businesses within the arcade, and it is considered that the installation of shutters is not the most appropriate method of achieving increased security within the arcade from an accessibility / right of way perspective. It is not known whether other options such as the installation of shutters to each individual unit within the Lorne Arcade was explored prior to the submission of this application. Should the applicant wish to explore such an option, subject to appropriately designed shutters being installed, the installation of shutters to each individual unit within the arcade would be unlikely to present any built heritage or public accessibility issues.

As previously set out elsewhere within this report, it is considered that a right of way exists through the Lorne Arcade, and has done so for at least 60 years which access, by all non-motorised means, is exercisable under the Land Reform (Scotland) Act 2003. The shutters, when in the closed position, will obstruct this right of way, to the detriment of public access, interconnectivity and permeability in the area and would also potentially affect footfall to businesses in the immediate area that benefit from passing trade generated through the existing route/ public right of way. Whilst it is acknowledged that other routes between High Street and Arthur Street are available and will continue to be available regardless of the outcome of this application, it is noted that these routes are not direct, and could add as much as 10 minutes walking time between the two streets.

It is considered that the proposals will not give rise to visual amenity concerns insofar as the design, materials and finishes of the entrances as altered would not adversely affect the character, appearance or setting of Ayr Central Conservation Area. However, the obstruction of the right of way is a material consideration in the determination of this application, and it is considered to have an adverse impact on Ayr town centre in that the shutters in the closed position do not facilitate interconnectivity and permeability between streets and facilities within Ayr town centre outwith the opening hours of the Lorne Arcade.

**8. Conclusion:**

As set out elsewhere within this report, it is considered that there is a right of way affording pedestrian and cycle access through the Lorne Arcade between High Street and Arthur Street, and the installation of shutters to the arcade to improve security would obstruct that access and affect interconnectivity and permeability between streets and facilities within Ayr Town Centre, to the detriment of the locale. The proposed shutters are therefore contrary to Policy 15 – Local Living and 20-minute neighbourhoods of NPF4, Strategic Policy 1: Sustainable Development of LDP2 or LDP Policy: Outdoor Access and Core Paths. Given the above assessment, and having balanced the rights of the applicant against the general interest, it is recommended that the application be refused.



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**9. Recommendation:**

It is recommended that the application is refused.

**9.1 Reasons:**

- (1) The proposed installation of shutters is contrary to the provisions of Policy 15 of NPF4 and the provisions of South Ayrshire Local Development Plan 2, specifically Strategic Policy 1: Sustainable Development and LDP Policy: Outdoor Public Access and Core Paths as they would obstruct a right of way through the Lorne Arcade and access by all non-motorised means which is exercisable under the Land Reform (Scotland) Act 2003 and do not meet with the principles of good place making, local living or 20-minute neighbourhoods; the shutters would adversely affect interconnectivity and permeability between streets and facilities within Ayr town centre, to the detriment of the locale.

**9.2 Advisory Notes:**

N/A

**9.3 List of Determined Plans:**

Drawing - Reference No (or Description): AL(0)01

Drawing - Reference No (or Description): AL(0)02

Drawing - Reference No (or Description): AL(0)03

Drawing - Reference No (or Description): AL(0)04

Drawing - Reference No (or Description): AL(0)05

Drawing - Reference No (or Description): AL(0)07

Other - Reference No (or Description): SHUTTER SPECIFICATIONS

**9.4 Reason for Decision (where approved):**

N/A

**Background Papers:**

1. Planning application form and plans (available online)
2. National Planning Framework 4 (available online)
3. Adopted South Ayrshire Local Development Plan 2 (available online)
4. South Ayrshire Council Guidance - Historic Environment (available online)
5. Planning Advice Note 71 - Conservation Area Management (available online)
6. Historic Environment Policy for Scotland (available online)
7. Historic Environment Scotland Managing Change in the Historic Environment - Setting (available online)
8. Representations (available online)

**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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