

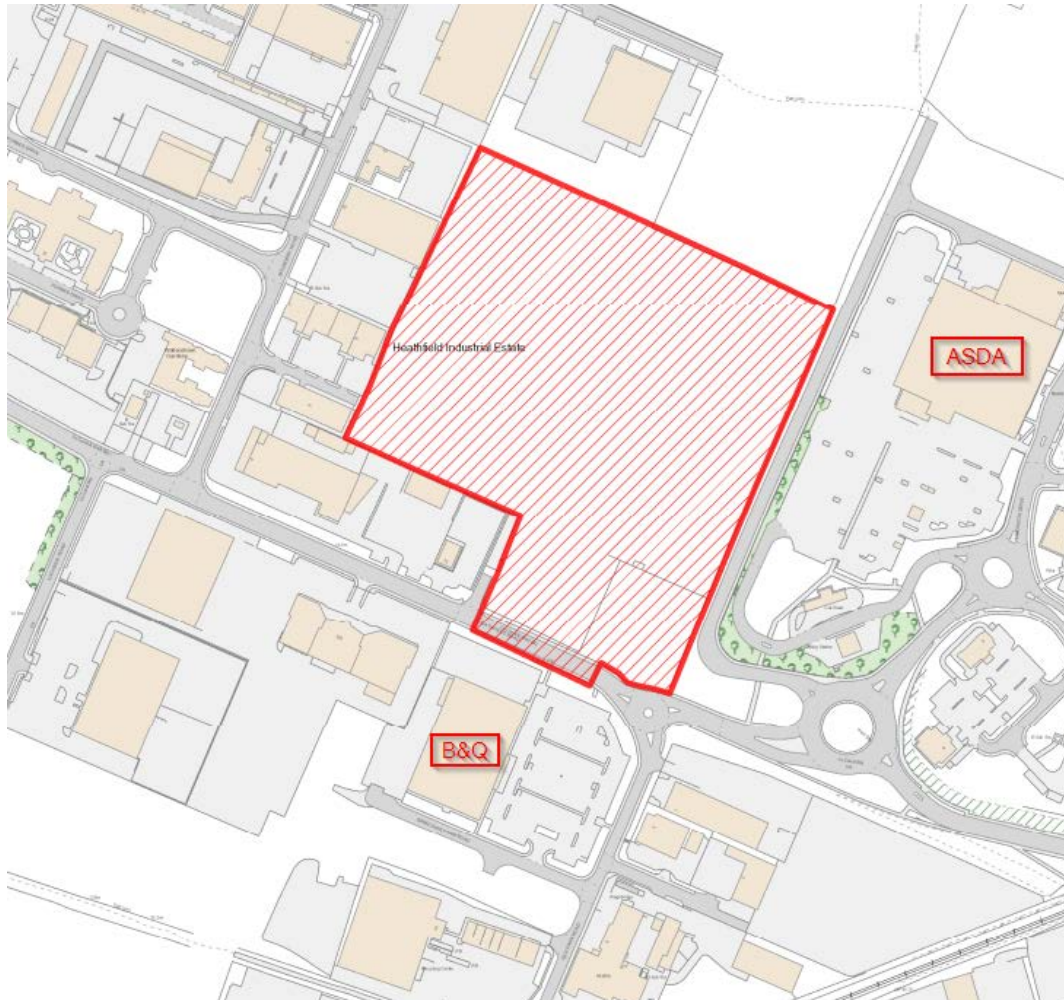
REGULATORY PANEL 23 JUNE 2022

21/00772/PPPM

ALEXANDERS SAWMILLS LTD, HEATHFIELD ROAD, AYR, SOUTH AYRSHIRE

REPORT BY PLACE DIRECTORATE

Location Plan



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Summary

This application seeks planning permission in principle for the erection of a Class 1 retail foodstore, Class 9 residential development and associated works (with detailed matters brought forward for the Class 1 foodstore, car parking access, landscaping, and other works). The application proposes the erection of a Class 1 foodstore (stated as Lidl) and up to 120 residential dwellings (including 33% (approximately 40) on-site affordable housing units). Nineteen representations have been received, of which eight are objections (5 of which are on behalf of ASDA stores) which are concerned with issues relating to: planning policy, noise and traffic and transportation. Eleven representations have been received in support of the proposed development (including from Ayrshire Housing) which outline the benefits of the proposed foodstore and housing. Consultation responses have been received from seven consultees. In assessing the proposed development, the terms of Scottish Planning Policy, relevant policies within the South Ayrshire Local Development Plan and the Report of Examination on Local Development Plan 2 have been considered with significance. It is considered that the proposed development is found to be contrary to the aforementioned policy documents and that there are no over-riding reasons to depart from planning policy. The application is therefore recommended for refusal.



REPORT BY PLACE DIRECTORATE

REGULATORY PANEL 23 JUNE 2022

SUBJECT:	PLANNING APPLICATION REPORT
APPLICATION REF:	21/00772/PPPM
SITE ADDRESS:	ALEXANDERS SAWMILLS LTD HEATHFIELD ROAD AYR SOUTH AYRSHIRE
DESCRIPTION:	PLANNING PERMISSION IN PRINCIPLE FOR ERECTION OF CLASS 1 RETAIL FOODSTORE, CLASS 9 RESIDENTIAL DEVELOPMENT AND ASSOCIATED WORKS (WITH DETAILED MATTERS BROUGHT FORWARD FOR THE CLASS 1 FOODSTORE, CAR PARKING ACCESS, LANDSCAPING AND OTHER WORKS)
RECOMMENDATION:	REFUSAL

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.

1. Proposal and site description:

This application seeks planning permission in principle for the erection of a Class 1 retail foodstore, Class 9 residential development and associated works (with detailed matters brought forward for the Class 1 foodstore, car parking access, landscaping, and other works). The site is located within the Heathfield area of Ayr, is currently vacant and extends to an area of approximately 5.88 hectares. The site is bound to the north by a commercial/industrial units and open space, by a 24-hour ASDA store to the east, by vehicle sales premises, Heathfield Road and B&Q store beyond to the south and by various commercial/industrial units to the west. The topography of the site is generally level, although there is a gradual level change across the site, running west to east.

The proposed foodstore will extend to 1,916 m² and will be supported by 124 parking spaces, inclusive of 8 dedicated accessible spaces, 11 parent and child spaces and 2 electric vehicle charging spaces. It is proposed that solar roof panels will provide up to 25% of the store's total electricity requirements. The proposed store would be single storey with a mono pitch sloped roof. The proposed access strategy would remove the existing priority junction and introduce a roundabout to accommodate the proposed development and background traffic. The proposed spine road would provide access to both the retail and residential elements but would be a segregated route designed to be suitable to accommodate both lanes. Pedestrian and cycle access would also be from the spine road.

It is important to be mindful that the residential aspect of the application is for planning permission in principle and therefore no details have been provided in this regard. However, it is stated within the application submission that the proposed residential development would be for up to 120 units comprised of mixed sizes and tenure, including 33% (approximately 40) on-site affordable housing units.

Planning Process

Due to the 'Major' status of this planning application it is necessary for the Council to come to a view on whether or not 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. Paragraph 4.73 of Circular 3/2013 notes with specific regard to 'pre-determination hearings' that while the judgement as to whether a proposal is significantly contrary to the development plan lies with the Planning Authority, Scottish Ministers' general expectation is that this applies where approval would be contrary to the vision or wider spatial strategy of the plan.

In this regard, the proposed development is not considered to be **significantly** contrary to the development plan, although it is considered to be contrary (as explained in more detail in the 'Assessment Section of this report'). As the application proposal is a 'Major' development, the scheme of delegation requires that it be presented to the Regulatory Panel for determination. The assessment section of this report concludes that the proposal is not **significantly** contrary to the South Ayrshire Local Development Plan and consequently there is no requirement for referral of the application to Full Council.

The development proposal falls within schedule 2 of the EIA Regulations and a screening opinion has been issued which advises that an Environmental Assessment is not required.

A Processing Agreement has been prepared and agreed in consultation with the applicant which agrees that the Planning Service will seek to present the application to the Council's Regulatory Panel (Planning) no later than the end of June 2022.

A Proposal of Application Notice (Ref. 21//00241/PAN) described as "Proposal of application Notice for Erection of a Class 1 Retail foodstore and Class 9 Residential Development and Associated Works, with Detailed Matters Brought Forward for the Class 1 foodstore, Car Parking Access, Landscaping and Other Works" was submitted on 2nd March 2021. It is considered that the nature of the scheme as submitted through the current application is such that it is clearly and recognisably linked to the proposal described in the proposal of application notice.

Planning History

21/00241/PAN - Proposal of application Notice for Erection of a Class 1 Retail foodstore and Class 9 Residential Development and Associated Works, with Detailed Matters Brought Forward for the Class 1 foodstore, Car Parking Access, Landscaping and Other Works - Approved March 2021.

20/00747/MDO - Discharge of minute of agreement (Section 50) dated 18th June 1984 with regards to land at Heathfield Road, Ayr – Approved November 2020.

20/00230/MDO - Modify minute of agreement (Section 75) of Planning Permission 16/00931/FURM – Approved July 2020. An amendment was required to the legal agreement as it referred specifically to the original outline planning permission (05/00108/OUT) as amended by the 2013, 2016 and 2019 further matters applications (13/00860/FURM ,16/00931/FURM and 19/00960/FURM).

19/00960/FURM - Further application under Section 42 to vary condition 1 of planning application 16/00931/FURM – Approved October 2020.

17/00182/MDO - Discharge of minute of agreement (Section 75) (Planning Permission 13/00860FURM & 16/00931/FURM) – Approved May 2017. An amendment was required to the legal agreement as it referred specifically to the original outline planning permission (05/00108/OUT) as amended by the 2013 and 2016 further matters applications (13/00860/FURM and 16/00931/FURM).

16/00931/FURM - Further application to vary condition 1 of planning application 13/00860/FURM – Approved July 2017.

13/00860/FURM - Further application so as not to comply with condition 1 of planning permission 10/00911/FURM – Approved April 2014.

10/00911/FURM - Further application so as not to comply with condition 1 of planning permission 05/00108/OUT – Approved April 2011.

05/00108/OUT - Outline planning permission for the erection of non-retail development, garden centre and builder's yard – Approved November 2007.

2. Consultations:

Ayrshire Roads Alliance (ARA) No objection subject to conditions.

Environmental Health No objection subject to conditions.

Housing Development and Monitoring No response received.

Schools and Service Support SAC Education anticipate that the catchment area primary schools relative to the proposed development, St John's PS and Heathfield PS would be able to accommodate children from a 120-dwelling development on Heathfield Rd. However, the associated secondary school, Prestwick Academy, is currently at capacity and SAC Education have some concerns over where secondary age pupils arising from the development would be accommodated. Education contributions will therefore be required from the Developer, should the application be approved.

Scottish Environment Protection Agency (SEPA) No objection.

Scottish Water No objection.

Sustainable Development (Landscape and Parks) No objection subject to conditions.

Transport Scotland (Trunk Roads) No objection subject to condition restricting the number of residential units to 120.

Health and Safety Executive No response received.

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.

Pre-Application Consultation (PAC) Report: This report outlines the community engagement undertaken by the applicant on the proposed "*application for erection of a Class 1 Retail foodstore and Class 9 Residential Development and Associated Works, with Detailed Matters Brought Forward for the Class 1 foodstore, Car Parking Access, Landscaping and Other Works*" during the pre-application consultation period, compliance with statutory requirements and the views expressed by the local community and how the development proposals take them into consideration. The PAC Report provides a summary of the issues raised as part of the consultation exercise and provides a response to each. The report states that just over 14,000 leaflets were delivered to surrounding residential addresses informing them of the proposal and inviting them to attend an online Q&A session – the session was held on 14th April 2021. A dedicated webpage was also set up and a survey could be completed.

Preliminary Ecological Appraisal: The report states that a Desk Study and extended Phase 1 habitat surveys of the site were undertaken on 9th June 2021. One statutory designated site was identified within 5k of the site (SSSI Troon Golf Links and Foreshore); however, it is stated that the site will have no ecological connectivity or significant impact on the qualifying sand dune habitat the SSSI is designated for. The site was found to comprise mainly of ephemeral/short perennial (65.58%), with marshy grassland (10.63%) and tall ruderal (8.28%) covering the majority of the rest of the site area. Habitats of broad leaved semi-natural woodland, bare ground, dense scrub, species poor hedge with trees, dry ditch and buildings also stated as being present. The report states that no evidence of protected species was recorded within the site, no reptiles or amphibians were found in or around the site and that no protected plant species were found near or within the site. It is further stated that it is not anticipated that any of the trees identified within the site possess features suitable for roosting bats and therefore a further study would not be required prior to their removal. Finally, although no bird nesting features were observed on site, the report recommends that a nesting bird check is undertaken on trees and bushes within the site prior to construction, should construction occur within the breeding bird season (March – August).

Report on Site Investigations (1) – (March 2021): This report relates to the part of the application site that covers the proposed residential development. The purpose of this report was to: investigate the possible presence of ground contamination associated with the historical uses of the site and any potential associated risks, investigate the ground conditions, and provide recommendations on foundation and infrastructure design, to assess the possibility of surface instability associated with shallow mining and mine entries and to provide recommendations (if any) for additional works/remediation required. Made ground across the site to a maximum recorded depth of 2.9m – these deposits generally described as grey and brown gravel, occasionally clayey, sandy, and silty. Peat was encountered during previous investigations with one exploratory hole, but none encountered within any recent exploratory holes. Sand and gravel with cobbles discovered. A localised area of hydrocarbon contamination was recorded in the south-west of the site and a 600mm capping layer should therefore be incorporated in all soft landscaping areas. Excavation of these soils may also be necessary. The report also states that based on recorded gas emissions to date and the recorded ground conditions, gas protection measures are required at the site but that the site is not located within a radon affected area and as such, radon gas preclusion measures are not considered necessary. Documentary information and borehole records indicate that the area is potentially underlain by mine-workings. The report goes on to state that there was no indication of the presence of any mine entries within the site (however, three mine entries were noted to the east of the site boundary) but that vigilance should be maintained during any ground works. Finally, the report states that due to the presence of made ground soils across the site, a full 600mm capping layer is considered necessary at the site.

Report on Site Investigations (2) - (May 2021): It should be noted that this report relates solely to the proposed Lidl store position within the overall site (i.e., the south section). The purpose of this report was to: investigate the possible presence of ground contamination associated with the historical uses of the site and any potential associated risks, investigate the ground conditions, and provide recommendations on foundation and infrastructure design, to assess the possibility of surface instability associated with shallow mining and mine entries and to provide recommendations (if any) for additional works/remediation required. It is stated that the site is underlain by made ground overlying very loose/loose sands and gravels and soft and firm clays, with shallow abandoned mine-workings present below. The report concludes that soils present do not represent a significant risk to future site users and that no remedial works are required. The groundwater risk assessment concludes that the site represents a low risk to the water environment. The report also states that based on recorded gas emissions to date and the recorded ground conditions, gas protection measures are required at the site but that the site is not located within a radon affected area and as such, radon gas preclusion measures are not considered necessary. Documentary information and borehole records indicate that the area is potentially underlain by mine-workings. It is stated that these workings may be limited in extent and that further, more detailed ground investigations are recommended to be undertaken below the area of proposed structures and any adoptable roads. The report goes on to state that there was no indication of the presence of any mine entries within the site, but that vigilance should be maintained during any ground works. Finally, the report states that due to the presence of made ground soils across the site, a full 600mm capping layer is considered necessary at the site – although it is outlined that this could be lowered by proof rolling the upper made ground and granular soils.

Tree Survey: There are no statutory protections on trees within the site. It is stated that the site comprises several groups of relatively young trees, with one substantial shelter/screening belt and one smaller group appearing to have been planted in conjunction with earlier developments on or adjacent to the site. Remaining groups are of common colonising species and appear to be self-generated, as do sporadic small trees on otherwise unpopulated parts of the site.

Design Statement: This statement sets out the design principles and concepts that have been applied to the proposed development, demonstrating how the context of the proposed development has been appraised and how the design of the proposed development takes the context into account. The statement subsequently outlines the applicant's approach to access, how the applicant considers that relevant Local Development Plan policies have been taken into consideration and how specific issues which might affect access to the proposed development have been addressed. The proposed foodstore comprises 1,916 sq. m gross internal area with a net sales area of 1,266 square metres; 103 standard car parking spaces, 8 disabled spaces, 11 Parent and Child spaces, 2 electric vehicle charging spaces and a trolley bay located adjacent to the proposed store entrance. The application also seeks planning permission in principle for the erection of up to 120 dwellings.

Transport Assessment: The assessment states that the proposed access strategy will remove the existing priority junction and introduce a 32m roundabout which it is stated as having been designed to accommodate the proposed development and background traffic levels. It is outlined that the proposed spine road will provide access to both the proposed retail and residential elements but will be a segregated route designed to be suitable to accommodate both land uses. Pedestrian and cycle access will also be from the spine road and offer a direct link to the existing footway network on Heathfield Road. The assessment further states that the required retail parking requirement is 130 spaces; however, the applicant states that 114 parking bays (103 standard and 11 parent and child) are sufficient based on the operator's experience of their store operations. 8 mobility impaired spaces are also proposed adjacent to the proposed store entrance. 10 cycle parking spaces are also proposed. The assessment concludes by stating that the proposed development site will be accessible by sustainable modes of travel and integrate effectively with the existing transport network following the introduction of additional non-car promoting measures. In addition, it is outlined that the site can be accessed safely from the adjacent road network by private vehicles without compromising the safety or efficiency of existing road users, thereby satisfying all policy requirements.

Acoustic Review: The review outlines the site and proposed development before outlining the assessment methodology used. It is stated that noise measurements were carried out between 0730 hours on Friday 11th June 2021 and concluded at 1100 hours on Tuesday 15th June 2021 to establish the existing noise levels at the site. Noise measurements were undertaken from one point within the application site, located approximately adjacent to the entrance to the first car parking spaces within the ASDA store, to the east of the site. The review states that this position was chosen as it is considered to be representative of the expected closest residential facades in the south-east corner of the proposed residential development (note this is an application for Planning Permission in Principle and no details of the proposed housing or housing layout have been submitted at this time) and based on the dominant noise sources in the area being activity along Heathfield Road and activity associated with the ASDA supermarket. The review also states that it is important to note that the survey was undertaken during the third enforced lockdown due to the COVID-19 pandemic, meaning that the noise levels recorded will be lower than would normally be typical. The review states that noise data collected at the expected most affected dwelling shows that the site would be considered suitable for residential development with the existing noise climate expected to have only a minor impact on the proposed development. The review also states that the BS4142 delivery noise assessment indicates no adverse impact based on daytime deliveries and that this could be extended to night-time deliveries with the introduction of simple and suitable acoustic screening around the service yard so as to protect new dwellings. The BS4142 assessment for plant noise demonstrates that this would be of low impact at all times of the day and night with solid screening eliminating any line of sight between the plant and the nearest dwellings. It is stated that assessing the plant against the typical planning requirement of the local authority showed that the resultant noise within the proposed dwellings will readily satisfy the standard condition by at least 8dB without any additional acoustic screening. Finally, it is stated that noise from the movement of cars within the customer car park during a peak hour has also been assessed and that the resultant noise levels will be at least 7dB below the lowest typical evening background noise level and therefore can be considered of low impact and not out of character for the area based on the existing traffic flow along Heathfield Road, the adjacent commercial retail parks, and existing ASDA car park/delivery activity.

Acoustic Review Addendum (February 2022): This report presents an addendum to the previously issued acoustic review of the site (above) and details the results of a second environmental noise monitoring position in the north-east of the site. Noise measurements were undertaken between 1400 hours Friday 14th January 2022 and 0900 hours Monday 17th January 2022. It is stated that the latest measurement position represents the location of the expected closest and therefore most likely affected new residential façade to any activity noise associated with the existing ASDA store operations and that due to the open and flat nature of the site, the noise levels measured at the second monitoring position are expected to be representative of the existing noise levels along the full northern boundary. It is further stated that the boundary of the ASDA store loading bay is approximately 100m from the nearest proposed new dwelling and that the believed 2.4m existing tall solid brick wall to the loading bay will offer significant levels of acoustic screening towards the proposed new dwellings. It is stated from subjective impressions on site and analysis of the sample audio recordings taken periodically during the second survey position, that none of the existing local noise sources would confidently qualify as including distinctive acoustic characteristics in the context of the existing soundscape at the northern boundary of the site and so would not typically require an assessment in line with BS4142. In their report produced on behalf of the existing ASDA site, Messrs Acoustic Consultancy Partnership Ltd state that the operation of the existing ASDA store should be considered as distinctive and therefore assessed in accordance with BS4142 to identify the potential impact at the proposed new dwellings. It is stated that the calculated level of acoustic impact outlined by the consultancy acting on behalf of ASDA does not immediately align with the subjective impressions of the site gained during attendances or through analysis of the audio recordings, with the summary assessment potentially overestimating the noise impact. The previous report issued by EEC Ltd (on behalf of applicant) concluded that the site is generally acceptable for residential development but would require closed windows at the new dwellings to achieve the level of façade sound separation required for BS8233:2014 compliance. The new northern survey suggests that this isn't required site wide and openable windows for the northern dwellings may result in appropriate ambient noise levels, dwellings towards the southern extent of the site (and in close proximity to the proposed Lidl store) would still require closed windows for acoustic comfort. The acoustic report provided on behalf of ASDA states that this goes against Good Acoustic Design. It is stated that whilst this is an aspiration, it is not always practical. However, it is stated that the outcome of this report, together with the original, show that with some small mitigation measures the site is suitable for residential development. Mitigation measures would be considered in designing the layout of the proposed dwellings. Finally, the review notes that there are residential dwellings in situ to the north-west of the ASDA store that could be expected to be subject to similar noise from activity in the service yard and presumably have adequate noise control measures in place or that the resultant noise levels are lower based on screening around the service yard.

Flood Risk Assessment: The document outlines the location of the application site and describes the topography of the site as relatively flat, with ground levels between approximately 13.9mAOD and 18.2MAOD. The highest ground levels are located along the eastern boundary, with the maximum ground level located in the south-east corner adjacent to Heathfield Road. The lowest ground levels are located in the south-west corner of the site. The assessment states that the site is at little or no risk from fluvial sources. In terms of surface water, historical development (including the culverting of a land drainage ditch and the construction of bunds both within and outwith the site) have caused or exacerbated surface water flood risk by restricting overland flows from leaving the site. Surface water and groundwater flood risks to the site require management and consideration in the design of the site but do not preclude the development of the site – measures should be put in place to intercept the surface water and discharge it to a suitable location such as the existing 750mm culvert along the northern perimeter of the site. The report states that it is likely that suitable measures will need to be put in place to mitigate against the risk of rising groundwater to the development. This could include the tanking of foundations and similar measures.

Planning and Retail Statement (August 2021): The statement sets out the site, pre-application consultation, the proposed development, Lidl operation and considers the proposal relative to national and local planning policy and other material considerations. It is stated that Lidl provides a distinct offer to the main convenience retailers and that this was recognised by the Competition Commission in its 2008 'Grocery Market Investigation'. It is also stated that this difference has also been acknowledged by the Secretary of State and Planning Inspectors in a number of appeal decisions relating to Lidl stores. Reference is made to a Planning Inspector report in relation to the London Borough of Merton (APP/T5720/V/04/1171394) when the Reporter concluded that "The Lidl offer is materially different to that provided by mainstream food retailers". The statement asserts that non-food items are limited to 15-20% of store floorspace and that Lidl stores also differ from other convenience retailers by operating shorter trading hours and by not offering the following: fresh meat and fish counters, pharmacy, café, cheese counter, hot food counter, photographic counter, dry cleaning service, mobile phone counter, click and collect or post office services. It is stated that Lidl stores serve a relatively compact catchment area that broadly equates to a 0–5-minute drive time. The sequential assessment undertaken has found that there are no suitable or available preferable sites to accommodate the proposed development and that the proposal complies with the SPP requirement for a sequential site assessment to be undertaken for new retail development which is not situated within a defined retail area. A full retail impact assessment is not required as the proposed store would be under 2,500 square metres; however, an impact assessment is provided for indicative purposes. The report uses a 7-minute drive time catchment area and states that the proposal would not have a significant adverse impact on the vitality and viability of Prestwick Town centre or any other centre. The report goes on to contend that there is a shortfall in the 5-year supply of effective housing land in the South Ayrshire Council area which means that the presumption in favour of sustainable development is engaged in SPP. 30% affordable housing is proposed. (Note: this has later been raised to 33%).

Note: the document contains several 'cut and paste' errors but these do not impact on the ability to undertake a full assessment of the planning application.

Retail Statement (letter dated 17 February 2022): Noted that since the submission of the planning application, the Report of Examination has now been published on the Local Development Plan 2 and that this recommends the adoption of the Proposed Modified Local Development Plan 2 (PMLDP2) subject to making the modifications as requested by the Reporters. As such, the PMLDP2 can now carry significant weight prior to its adoption by the Council. The letter states that the approach in PMLDP2 is a continuation of the policy approach in the current LDP, with the reasoning justifying the proposed development in the original Planning and Retail Statement remaining valid. Whilst the Council's comments in respect of Heathfield Commercial Centre make clear that its preference is to retain the existing policy approach, it is stated that it will consider each proposal on their own merits, particularly in relation to employment generating proposals and that it is for the applicant to justify the merits of the proposed development. The letter goes on to justify the catchment area methodology outlined within the Planning and Retail Statement and to maintain that there is a differentiation between discount and 'mainstream convenience retailers. Finally, the letter concludes with proposed conditions intended to ensure the operation of the retail unit as a discount foodstore.

Retail and Affordable Housing (letter dated 28 February 2022): Letter states aware that the Report of Examination has now been issued and that no changes are required to the modified LDP2 in respect of Heathfield Strategy (meaning that the designation of the site from development plan context remains unchanged from current LDP – bulky good retail uses) and that there is not a shortfall in relation to allocated private housing but that there is a substantial shortfall in planned affordable housing to meet identified needs over the LDP2 plan period. Also notes concerns in respect of delivering allocated housing in SE Ayr and the letter states that whilst the Reporter has concluded that there isn't a housing shortfall – from the context of LDP2 Examination – this does not mean that the Council is in possession of an effective 5-year housing land supply from the perspective of determining planning applications, especially as the current LDP remains the adopted development plan. The letter also notes the flexibility around the consideration of alternative uses on the site and consideration of the net economic benefit of proposals where there is appropriate justification and material considerations to outweigh the provisions of the development plan. Finally, the letter states that the applicant are seeking to increase the proposed level of affordable housing to 33% of the total residential provision.

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:**

19 representations have been received, 8 of which object (5 of which are on behalf of ASDA stores) and 11 which support the proposed development. All representations can be viewed online at www.south-ayrshire.gov.uk/planning.

The issues raised in the representations relate to the following points which have been grouped into subject matter:

Planning Policy

- Development is contrary to the South Ayrshire Local Development Plan, the Town Centre and Retail Local Development Plan (TCRLDP) and associated Supplementary Planning Guidance.
- TCRLDP designates site for “bulky goods and commercial leisure retailing” and LDP Policies: Heathfield and General Retail state that proposals for retail development at the site will be restricted to DIY, furniture, floor coverings, electrical and gardening goods.
- LDP Policy: General Retail states that if out of town retail proposed are agreed, then restrictions will be placed upon types of goods. When read with the site allocation of Heathfield – clear in the intent that food retail sales are not appropriate at this location.
- Planning and Retail statement is misleading – states that ASDA and The Food Warehouse are trading from Heathfield Commercial Centre (as outlined in TCRLDP) despite the restriction on food retail. However, The Food Warehouse operates from Site A which has a designation for 20% of the cumulative floorspace being available to sell ‘homeware goods’ and ASDA occupies Site B where food retail is permitted with restriction on comparison goods.
- Contrary to SPP as appropriate sequential retail test has not been undertaken – stated Lidl typically use 10-minute drive time but utilise 7-minute in this instance – no reasoning provided for this small catchment used, particularly given population which would drive from rural location. 10-minute drivetime represents a more appropriate catchment area.
- Ayr Town Centre should be included in sequential assessment as this is approximately 2km away.
- Applicant states sequential parameters for the site assessment should be a deep discount store but the application is for a Class 1 retail store.
- Applicant states that the site has no demand for restrictive retail; however, this is the policy position as taken forward in MLDP2.
- Applicant references relaxation of Units 2A, B and C to allow The Range to operate from Site A in the TCRLDP – Site A has allowance for food retail and Site C (application site) does not.
- Incorrect statement in applicant’s Planning and Retail Statement (paragraph 9.21) with it stated that as non-food retail floorspace is supported by existing policy at Heathfield, Class 1 retail is supported at the proposed site and the only justification required is in relation to supporting 80% convenience retail floorspace – the retail allocation is for bulky goods not convenience goods.
- Applicant suggests Lidl’s trading philosophy differs from a traditional supermarket by selling a limited core range – applicant has overstated the differences. If approved, the food retail floorspace could ultimately be occupied by any retailer.
- The site is not allocated for housing in either the adopted LDP or Modified Proposed Local Development Plan 2 (MPLDP2).

Noise / Inadequate Noise Assessment

- Acoustic Review uses incorrect methodology for assessing suitability of site for residential development – BS8233:2014 intended for the assessment of anonymous noise such as typical road traffic and general environmental noise, not suitable for assessment of the impact of industrial/commercial noise sources. Correct assessment methodology is BS4142:2014+A1:2019.
- BS4142:2014+A1:2019 confirms significant adverse impact from deliveries at night and home shopping activity.
- Original noise measurement location too far from ASDA service yard.
- Applicant's Acoustic Review (1) fails to consider existing ASDA noise sources and only considers proposed Lidl fixed plant and delivery activity.
- Acoustic Review relies on closed windows – against good acoustic design principles in latest guidance such as the 'Acoustics Ventilation and Overheating Residential Design Guide' published by the Association of Noise Consultants.
- Agent of change principle requires to be considered (responsibility of mitigating existing noise sources lies with proposed new development) – ASDA would not accept any future noise abatement action, 24-hour use of ASDA service yard is essential for ongoing operations.
- 2nd Acoustic Review does not provide sufficiently detailed information to allow meaningful evaluation of noise from night-time ASDA deliveries and home shopping operations on the proposed dwellings.
- Applicant's Acoustic Survey appears to have been unattended – no log of when activity taking place, for example, increased L_{Amax} levels each day between 05.00 to 06.00 hours but no comment on what caused this. Corresponds with start of home shopping,
- Based on activity noise levels at other ASDA stores and background noise levels established within the Acoustic Reports, ASDA delivery noise at night and home shopping operations will be sufficiently audible to risk future noise complaints.
- Bunds or solid boundary fences would not mitigate noise created at night due to bedrooms generally being located upstairs.
- The Environmental Health Officer (EHO) has misunderstood the nature of the application and has formed a view about windows being open that contradicts the applicant's position.
- The EHO states that if the noise standard when windows are open cannot be met then permission must be sought from the Planning Authority on a case by case basis. This negates the fact that through the grant of permission in principle, the issue of noise requires to be addressed now.

Traffic / Roads and Transportation

- Transport Assessment has not demonstrated that the site can be safely and suitably serviced without introducing road safety and highway maintenance issues – tracking shows HGV would cross centre line on the new access road and also appears to suggest it would overrun the splitter island at the new roundabout.
- No Saturday assessment has been provided in Transport Assessment, despite the proximity of Heathfield Retail Park and likely higher traffic flows – highway impact of the development has not been given due consideration.
- Access is only from Boundary Road Industrial Estate.
- Existing heavy traffic along Heathfield Road will be exacerbated and concerns expressed over child safety near the school.

11 representations in support of the application were received (including one from Ayrshire Housing) which state that the proposed development would be greatly beneficial as it would provide valuable and needed affordable homes in the short term, help to tackle the housing crisis and contribute to the Council's affordable housing ambitions, would make use of derelict/waste land, would increase retail choice at an affordable price, would provide direct and indirect employment, would fit in with the existing Heathfield Retail Park and that the proposed development includes walking and cycling provision.

A response to these representations is included within the assessment section of this report.

In accordance with procedures for the handling of planning applications the opportunity exists for either the applicant or those who have submitted representations to make further submissions upon the issue of this Panel Report, either by addressing the Panel directly or by making a further written submission. Members can view any further written submissions in advance of the Panel meeting at www.south-ayrshire.gov.uk/planning.

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), consultation responses received, representations received and the impact of the proposal on the amenity of the locality.

(i) **Development Plan**

Section 25 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. In this instance the development plan consists of the South Ayrshire Local Development Plan (hereafter referred to as LDP1) which was adopted in September 2014, its associated Supplementary Guidance and the adopted Town Centre and Retail Local Development Plan 2017 (hereafter referred to as TCRLDP).

The Scottish Government Department of Planning and Environmental Appeals Division (DPEA) concluded their Examination of the South Ayrshire Modified Proposed Local Development Plan 2 (hereafter referred to as LDP2) and issued their Examination Report on 10th January 2022. At a meeting on 10th March 2022, South Ayrshire Council considered and agreed to accept Modifications, as recommended by the DPEA. At the same meeting, the Council agreed to submit the Plan (including those recommended modifications) to Scottish Ministers as the Local Development Plan that it intends to adopt. LDP 2 now forms a substantial material consideration in the determination of planning applications.

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

Notwithstanding the above, it is first considered appropriate to assess the development proposal against the provisions of the adopted LDP due to the nature of the plan led system which is in place.

The development proposal can be considered as comprising two aspects, namely, detailed matters brought forward for the erection of a Class 1 retail store with associated works and planning permission in principle for the erection of up to 120 residential dwellings (of which 33% would be affordable). The site area is approximately 5.88 hectares and the proposed development would share a common access road, taken from a new roundabout junction on Heathfield Road. It is therefore considered appropriate to outline the assessment of the two elements separately below, firstly, the detailed matters brought forward for the proposed Class 1 retail foodstore and associated works.

Detailed matters brought forward for Class 1 foodstore, car parking access, landscaping and other works

Class 1 Retail foodstore development (Town Centre and Retail Local Development Plan 2017 – LDP Policy: Commercial Centres (Heathfield) and Policy: General Retail, LDP Policy: Spatial Strategy, LDP Policy: Sustainable Development, LDP Policy: Heathfield and LDP Policy: General Retail)

The proposed retail element of the development proposal relates to a foodstore (reasoned as a Lidl) of some 1,916 square metres gross floorspace (1,266 net floorspace), with a floorspace split of 80% for convenience goods and 20% comparison goods. The adopted policy provision is outlined in the Town Centre and Retail Local Development Plan, where policies use the sequential approach to guide proposals to the most appropriate location. In this context, it is noted that the Heathfield Commercial centre is a defined ‘third tier’ in South Ayrshire’s sequential approach, behind town centres and edge of centre locations and this is of particular importance in the assessment of the development proposal.

LDP Policy: Commercial Centres (Heathfield) is of particular relevance, with the application site identified as ‘Site C’ is the associated strategy map. The preferred uses for site C are listed as being ‘*proposals for retail development in the Heathfield area, which adjoin and integrate with the existing Heathfield Retail Park, as defined on the Heathfield Strategy Map, and which satisfy LDP Policy: General Retail, will be given preference, subject to the provision that the sale of goods will be restricted to DIY, furniture, floor coverings, electrical and gardening goods.*’ The development proposal does not comprise the type of store which rests comfortably within the definition of acceptable uses given in this policy. However, the policy provides further scope for consideration of the proposal under the provisions of the General Retail policy.

LDP Policy: 'General Retail' states that the Council will only consider retail at locations outside town centres if the development proposed is less than 1000 square metres gross floorspace and meets neighbourhood needs or where there are no other sites that would suit the sequential approach and:

- The scale, design and access arrangements are appropriate and there will be no significant negative effect on the vitality and viability of existing centres;
- The development site is well connected to public transport and walking and cycling networks; and
- Where there is clear evidence that the proposal will meet a qualitative or quantitative deficiency.

Paragraph 71 of Scottish Planning Policy (SPP) states: 'where development proposals in edge of town centre, commercial centre or out of town locations are contrary to the development plan, it is for applicants to demonstrate that more central options have been thoroughly assessed and that the impact on existing town centres is acceptable...'. In supporting information, the applicant asserts that the proposed retail foodstore would meet qualitative deficiencies in the local catchment relative to an assumption that discounter food retailing fulfils a particular niche and that there is a deficiency in this type of retailing within the locality. Numerous planning appeal determinations are provided by the applicant in supporting documentation in an attempt to assert the appropriateness of this assumed position. However, in terms of material considerations, the determination must be based on the physical requirements of a food retail store, the acceptability (or otherwise) of the proposal in policy and locational terms, the consideration of Scottish Planning Policy and any other material considerations. It is considered that the assumed occupier of the foodstore cannot be the determining factor of the planning application.

The applicant states that the Council should regard discount retailing as presenting a set of separate and unique characteristics and seeks to assert why the proposed development should be considered differently to any other form of class 1 food retailing. However, it is considered that the applicant has failed to provide satisfactory evidence to support this assertion, nor any mechanisms by which such a store could be conditioned to ensure such a use in perpetuity. With specific regard to the aforementioned, it is noted that the applicant has provided a set of conditions which they consider to be appropriate and to which they would be content to agree to, should the Council be minded to approve the application. However, it is considered that they do not adequately address the above concerns. Indeed, it is notable that none of the conditions seek to restrict the sale of items to a limited range of products, nor offer any definition as to what 'discount' means. The lack of such evidence lends considerable weight to the legitimate policy and practical terms mentioned above. It is considered that the applicant has failed to demonstrate why the store should be regarded as presenting a unique set of characteristics of such magnitude as to require a different approach to the assessment of the proposal. In terms of planning legislation and the Use Class (Scotland) Order, the store, once constructed, would be a Class 1 store with the simple condition relative to convenience goods and ancillary comparison.

Connected to the above, the applicant's supporting documentation seeks to assert that there is capacity relative to food retail expenditure based on an assumption that a discounter store's catchment model uses a population of some 15,000 and that the local catchment is some 38,000. It is considered that this statement confuses the requirements of the operator's business model with available retail expenditure and dismisses the full extent of discount supermarkets operating within the stated catchment drive time (which should include Ayr). It is also noted that although the catchment draw of the store is given as between 0 and 10 minutes drivetime, the supporting statement does not include Ayr town centre within that drive time, and consequently also fails to consider sites in Ayr relative to the sequential approach.

Furthermore, it is considered that the supporting documentation presents a simplistic approach which seeks to diminish the impact of additional floorspace based on the assumed trading model of a potential occupant (by, for example stating that the operator only stocks a small range of goods) rather than the impact of additional floorspace per-se. In so doing, the documentation asserts that the proposed store will not divert trade from Prestwick town centre and is again silent on any potential impacts on Ayr Town Centre. It is also of relevance that the proposal seeks 20% floorspace allowance for comparison goods. No assessment is provided on any potential impacts on town centre trading in this regard.

It is considered that there is reasonable doubt as to the validity of an asserted qualitative deficiency, particularly as this assertion conflates the issues of available capacity in food spending / impact on town centres with the operational model and the catchment defined by a particular prospective occupant. However, it is nonetheless pertinent to note that the policies of the Plan do not specifically require a retail impact assessment for a store of the size proposed... only assurances that there will be 'no significant negative effect on the vitality and viability of existing centres'. It is considered that the applicant has not undertaken a necessary sequential assessment of alternative locations – specifically relative to Ayr town centre. The applicant also relies on the potential operator's business model to dismiss concerns in relation to the impact on Prestwick town centre. The applicant was offered the opportunity to submit further information in respect of undertaking an appropriate sequential assessment; however, the applicant confirmed that the approach outlined in the submitted Retail and Planning Statement would not be added to.

Place Making (LDP Policy: Sustainable Development and LDP Policy: Residential Policy within Settlements, Release Sites and Windfall Sites)

A key component of the LDP is ensuring that all development supports the principles of sustainable development, therefore LDP Policy: Sustainable Development is of importance. This policy outlines a number of tests which will be applicable in all circumstances in order to ensure that the principles of sustainable development are enshrined in the decision-making process. Of particular relevance to the considerations associated with this proposal is whether the proposed development is appropriate in terms of its layout, scale, massing and design in relation to its surroundings. As aforementioned, as the retail development proposal is considered contrary to retail policies, it can be stated that this proposed element is not fully in accordance with the principles of sustainable development. However, it is considered that the scale, design and layout of the proposed retail element is acceptable and it is noted that the Council's Landscape Officer offers no objection in relation to the proposed landscaping scheme, subject to the introduction of some tree planting. The policy also covers the acceptability of a development in respect of road safety, transportation implications and accessibility considerations. In addition, the policy also requires that the development includes sustainable urban drainage and avoids increasing risks of or from all forms of flooding. It is noted that Transport Scotland, the Ayrshire Roads Alliance, SEPA and Scottish Water offer no objection to the proposed development subject to conditions.

Impact on Flood Risk and the Water Environment (LDP Policy: Flooding and Development and LDP Policy: Water Environment)

LDP Policy: Flooding and Development states that development should avoid areas which are likely to be affected by flooding or if the development would increase the likelihood of flooding elsewhere. The policy also states that development proposals must include Sustainable Urban Drainage Systems (SUDS) and that flood risk management plans will be considered when determining development proposals. It is noted that ARA (as Flood Authority) and SEPA offer no objection to the proposed development in this respect.

LDP Policy: Water Environment states that we will not support development if it poses an unacceptable risk to the quality of controlled waters (including ground water and surface water) or would harm the biodiversity of the water environment. It is noted that SEPA and the ARA (as Flood Authority) offer no objection to the proposed development in this regard.

Impact on Traffic and Transportation (LDP Policy: Land Use and Transport)

The application is supported by a Transport Assessment which states that the proposed access strategy will remove the existing priority junction and introduce a 32m roundabout which it is stated as having been designed to accommodate the proposed development and background traffic levels. It is outlined that the proposed spine road will provide access to both the proposed retail and residential elements but will be a segregated route designed to be suitable to accommodate both land uses. The submitted Transport Assessment also states that the proposed development site will be accessible by sustainable modes of travel and will integrate effectively with the existing transport network following the introduction of additional non-car promoting measures. In addition, it is outlined that the site can be accessed safely from the adjacent road network by private vehicles without compromising the safety or efficiency of existing road users, thereby satisfying all policy requirements. It is noted that Transport Scotland and the Ayrshire Roads Alliance offer no objection to the proposed development subject to conditions. As such, the development proposal is considered to be in accordance with this policy.

Active Travel and Recreational Walking Routes (LDP Policy: Outdoor Public Access and Core Paths)

This policy states that we will aim to improve and protect all core paths and other significant routes. Development sites should include appropriate facilities for active travel and development next to or near the core paths network should provide suitable links to the network where appropriate. The site does not have any core paths or recorded rights of way through it and it is noted that provision is allocated for active travel modes of transport.

Report of Examination on LDP2

LDP2 carries over the principles of the Town Centre and Retail Local Development Plan with no material change in policy intent relative to the development of the Heathfield Commercial Centre for the proposed use. However, the applicant seeks to assert that Strategic Policy 1 of LDP2 lends support to the proposal (the inference being that this relates specifically to the retail element of the proposal). In seeking to justify the proposal on the grounds of Strategic Policy 1: Sustainable Development, the applicant wishes to draw comfort from the consideration of 'Net economic benefit'. However, with no indication of assessment as to the implications of additional retail floorspace relative to the impacts on town centre vitality and viability, it is considered that this cannot be substantiated. Furthermore, and within the above context, the Strategy Section of LDP2 (the Strategic Policies of which are the culmination of a set of principles within that section) states that the Council will prioritise the regeneration of town centres following the sequential approach to development (Core principle B4 in particular). It is considered that while it may be the case that the applicant could potentially demonstrate that preferable sites are not available; no comprehensive evidence has been submitted with the application submission to support such a position. The applicant also offers no explanation as to why an 'as the crow flies' distance from the application site to Prestwick town centre is stated but refers to a distance via main road when considering the distance from the application site to Ayr town centre.

In light of the aforementioned, it is considered that the principle of the retail element of the proposed development is contrary to the provisions of the adopted LDP, adopted TCRLDP and Report of Examination on LDP2.

Planning permission in principle for erection of residential development

Principle of residential development (LDP Policy: Spatial Strategy, LDP Policy: Sustainable Development, LDP Policy: Heathfield and LDP Policy: Residential Policy within Settlements, Release Sites & Windfall Sites)

A second component of the application seeks an in-principle determination for the erection of a residential development of up to 120 units, 33% of which would be affordable. As aforementioned, access to the site would be taken via a common access road, which would be taken from a new roundabout on Heathfield Road. The proposed residential development would have no 'road frontage', being as it is located to the north (rear) of the proposed retail unit/associated parking area and pre-existing commercial and business/industrial uses.

The application site is covered by retail / commercial policies as defined in the Town Centre and Retail Local Development Plan. Evidently, the proposed development is not in accordance with the preferred uses of the Heathfield Commercial Centres as defined in the TCRLDP; however, the relevant residential policies which govern alternative uses for sites are contained within the adopted Local Development Plan.

LDP policy 'Residential policy within settlements, release sites and windfall sites states: '*we will normal allow residential development within settlements subject to certain criteria, inter alia:*

- a. *The site has adequate access for vehicles, which is separate from other property and which directly connects to the public road network;*
- b. *The layout, density, scale, form and materials of any proposed development do not detract from the character of the surrounding buildings and the local area;*
- c. *It does not affect the privacy and amenity of existing and proposed properties;*
- d. *The site does not form an area of maintained amenity or recreational open space unless it is already part of the established land supply;*
- e. *the site provides a suitable residential environment; and*
- f. *it provided appropriate private and public open space in accordance with the requirements of LDP policy: open space, and our open space guidelines.*

We expect windfall sites to also meet the conditions above and comply with policies within the local development Plan'

Of the above stated conditions, criterion (e) is of particular significance in respect of determining the principle of residential development at the site. Other criteria are pertinent but are more appropriately considered in terms of detailed proposals. As stated above, the proposed residential site would not have any immediate access to a road frontage, being located to the rear of a range of commercial and industrial activities, including light and general industry uses. The site is consequently isolated from any other residential development and is surrounded by commercial and business uses.

It is notable that the **Heathfield Strategy Map within LDP Policy: Heathfield** identifies the land to the north and east of the application site as comprising land considered suitable for general industry and storage/ distribution uses. **LDP Policy: Business and industry** states that proposals for business and industrial uses within such areas must not have 'an unacceptable level of air or noise pollution'. The consideration of acceptability of noise generation (in particular) within an industrial area, compared to a location adjacent to housing may be fundamental in determining the acceptability of future industrial proposals. It is considered that residential development may therefore compromise the growth and development of the already established business / industrial area(s). Clearly, whilst it is not appropriate to prejudge or pre-empt any development proposal that may be advanced within the adjacent industrial area – or any potential restrictions on that industrial area that may arise as a consequence of being located adjacent to a residential area, the residential amenity afforded to the proposed new dwellings and conflict between those land uses is nonetheless relevant. The 'agent of change' principle is also of importance, which reasons that restrictions should not be placed on existing uses in an area as a result of a proposed development.

In respect of Housing Land Supply, the Council acknowledges and accepts that there was previously a shortfall in Housing Land Supply provision; however, matters have since altered and the Scottish Government's Report of Examination on LDP2 has determined that there will not be a shortfall in Housing numbers for the Plan period. The residential element of the development proposal relative to the Report of Examination on LDP2 is referenced following the assessment against LDP1.

Place Making (LDP Policy: Sustainable Development, LDP Policy: Open Space, Supplementary Guidance on Open Space and Designing New Residential Developments and LDP Policy: Residential Policy within Settlements, Release Sites and Windfall Sites)

A key component of the LDP is ensuring that all development supports the principles of sustainable development, therefore LDP Policy: Sustainable Development is of importance. This policy outlines a number of tests which will be applicable in all circumstances in order to ensure that the principles of sustainable development are enshrined in the decision-making process. Of particular relevance to the considerations associated with this proposal is whether the proposed development is appropriate in terms of its layout, scale, massing and design in relation to its surroundings. The policy also covers the acceptability of a development in respect of road safety, transportation implications and accessibility considerations. LDP Policy Residential Policy within Settlements, Release Sites and Windfall Sites highlights particular need for a site to provide a suitable residential environment. As the residential element of the development proposal is seeking permission in principle, no layout has been provided in this respect. However, as reasoned elsewhere within this report, there is significant concern regarding the suitability of the site for residential development and as such, the proposal is considered to be at odds with the provisions of these policies.

Impact on adjoining land uses (LDP Policy: Sustainable Development, LDP Policy: Air, Light and Noise Pollution and LDP Policy: Residential Policy within Settlements, Release Sites and Windfall Sites)

Noise, vibration and dust arising during the construction phase have the potential impact on the amenity of the residential properties that adjoin the site. It is accepted that noise vibration and dust could be reasonably mitigated through planning conditions; however, noise requires further detailed consideration in this case. The applicant submitted an Acoustic Review in support of the application; however, it was considered that the sample location was limited and did not consider the existing commercial/industrial noise receptors which adjoin the application site, only considering the proposed Lidl fixed plant and delivery activity upon the proposed residential properties. As such, the applicant was offered the opportunity to undertake a further noise assessment from a location closer to the service yard of the adjacent ASDA store. The applicant subsequently submitted an Addendum to the Acoustic Review, the selected location further to north-west of the site reasoned by the applicant as representing the closest proposed residential property to the adjacent ASDA service yard. The Addendum concludes that the application site is appropriate for residential development subject to mitigation measures that would be considered in designing the layout of the proposed dwellings. While the Council's Environmental Health Service offer no objection to the proposed development subject to conditions, there is concern in respect of the application site offering an appropriate level of residential amenity – particularly in respect of the 'agent of change' principle which was referenced earlier. The effect of the 'agent of change' principle is that developers proposing to develop a site for residential purposes should build into any planning application, a recognition that there are existing noise generating uses in the area (e.g. in this case the existing ASDA service yard) and mitigate within their own application, the impact of noise from those activities. Although the matter of noise mitigation would be considered within any future detailed approval of matters specified in conditions application (should this application be approved), the mitigation that will be required is unspecified and unknown at this time and there is the possibility that any mitigation measures in respect of noise could result in the erection of a very high fence or bund, for example, which in itself would have the potential of being to the detriment of visual and residential amenity. Further, and as discussed in more detail below, the Scottish Government's Report of Examination on LDP2 has determined the site to be unsuitable for residential development stating that "the sub area 'Boundary Road' which lies immediately to the north of Site C (the application site) is identified for general industrial use and trade retail. Such uses are unlikely to be compatible with an adjoining residential environment and I agree that introducing residential development may impact on the principle objective of directing commercial, business and industrial uses to the Heathfield area". It is therefore considered that it has not been evidenced satisfactorily that the proposed development meets with the provisions of the aforementioned policies.

Impact on Education (LDP Policy: Delivering Infrastructure)

The LDP Policy: Delivering Infrastructure requires development proposals to meet or contribute to the cost of providing or improving facilities or infrastructure required as a result of the development. The Council's Schools and Service Support anticipate that the catchment area primary schools relative to the proposed development, St John's Primary School and Heathfield Primary School would be able to accommodate children from a 120-dwelling development on Heathfield Rd. However, it is also stated that the associated secondary school, Prestwick Academy, is currently at capacity and that there are some concerns over where secondary age pupils arising from the development would be accommodated. Education contributions would therefore be required from the developer, should the application be approved. In view of the above, it can reasonably be concluded that the development proposal is potentially in accordance with this policy.

Affordable Housing (LDP Policy: Affordable Housing)

The Affordable Housing policy sets out a target contribution of 25% affordable housing from all new housing developments of 15 units or more, or a site size equal to or more than 0.6 hectares. In this instance the applicant has indicated that it is their intention to provide in excess of the 25% contribution on site, namely 33% or 40 units. In the case where planning consent is granted there would be an obligation for the applicant to enter into a S75 agreement before planning permission could be issued. This would provide the detail of the delivery mechanisms for Affordable Housing in a sequential manner with onsite provision of social rented at the top. If the principle of the proposed development was considered to be acceptable, it would be possible to secure the 33% affordable housing proposed by the applicant through a Section 75 legal agreement.

Low and Zero Carbon Buildings (LDP Policy: Low and Zero Carbon Buildings)

The Council has not yet prepared the supplementary guidance outlined within this policy. The building warrant process will ensure that the necessary buildings standards requirements are met.

Report of Examination on LDP2

In terms of LDP2, the applicant acknowledges in the submission that there is now not a shortfall in relation to allocated private housing but states that there is a substantial shortfall in planned affordable housing to meet identified needs over the LDP2 plan period. The applicant also notes concerns in respect of delivering allocated housing in South East Ayr and states that whilst the Reporter has concluded that there isn't a housing shortfall – from the context of LDP2 Examination – this does not mean that the Council is in possession of an effective 5-year housing land supply from the perspective of determining planning applications, especially as the current LDP remains the adopted development plan. In response to this matter, South Ayrshire Council has recently given notice to the Scottish Government of its intention to adopt LDP2. The applicant also notes the flexibility around the consideration of alternative uses on the site and consideration of the net economic benefit of proposals where there is appropriate justification and material considerations to outweigh the provisions of the development plan. However, the Report of Examination has determined that the application site is not an appropriate location for residential development and that the continued identification of the site as defined in LDP1 is appropriate.

The Scottish Government's Report of Examination represents a key material consideration in the assessment of the application and the Report further concludes that there is no requirement to identify any additional land for residential development to meet requirements in the period of the Plan and that any shortfall in affordable housing provision will likely be met through the operation of the affordable housing policy within the context of the effective and established housing land supply. This is the position at the time of writing this report and the application must be assessed in such a manner at this moment in time. In light of the aforementioned, it is considered that the application site does not represent a suitable location for residential development and is contrary to the provisions of the soon to be adopted LDP2.

Conclusions on Assessment Against Development Plan

The foregoing assessment against the relevant local development plan policies indicates that the proposals are not fully consistent with the Development Plan, therefore it is recommended that the application be refused.

The provisions of the Adopted South Ayrshire Local Plan 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.

As with the assessment against LDP1, the proposal is considered to be contrary to the principles of LDP2, as expressed within the Scottish Government's Report of Examination.

(ii) Other Policy Considerations (including Government Guidance)

Scottish Planning Policy (SPP): This policy notes that the planning service should be plan led, with plans being up to date and relevant. In this instance the development plan consists of the South Ayrshire Local Development Plan, which was adopted in September 2014, the Town Centre and Retail Development Plan (adopted 2017) and the materially significant Report of Examination on Local Development Plan 2. Paragraph 71 of Scottish Planning Policy (SPP) states: 'where development proposals in edge of town centre, commercial centre or out of town locations are contrary to the development plan, it is for applicants to demonstrate that more central options have been thoroughly assessed and that the impact on existing town centres is acceptable...'. As reasoned elsewhere within this report, it is not considered that the applicant has sufficiently evidenced that sequentially preferable sites are not available and relies on a potential operator's business model rather than carrying out an appropriate sequential assessment – particularly in respect of the potential impact to Ayr town centre.

Paragraph 28 of SPP states that "the aim is to achieve the right development in the right place; it is not to allow development at any cost". A key element in the assessment of the application is whether it aligns with the overarching provision of policies within LDP1 and the Report of Examination on LDP2. For the reasons already outlined, it is considered that the proposals fundamentally do not accord with policy provision and that the development proposal is therefore deemed not in accordance with SPP.

Creating Places

Creating Places is the Scottish Ministers' policy statement on architecture and place, which contains policies and guidance on the importance of architecture and design. It considers 'place' to comprise: the environment in which we live, the people that inhabit these spaces and the quality of life that comes from the interaction of people and their surroundings and states that architecture, public space and landscape are central to this. While the creation of a successful place results from the interaction of a wide range of factors, in this case, the proposed residential development at the site is considered to be at odds with this Government advice due to the Report of Examination on LDP2 stating that the application site is not an appropriate location for residential development.

Designing Streets

Designing Streets is the Scottish Ministers' policy statement putting street design at the centre of placemaking. It contains policies and guidance on the design of new or existing streets. New developments should demonstrate the 6 qualities of successful places; distinct identity, safe and pleasant, easy to move around (especially on foot), sense of welcome, adaptability and sustainable (i.e. make good use of resources). It is considered that the proposed residential development would not meet all the qualities of a successful place. The proposed development is therefore considered contrary to this advice.

(iii) Consultation Responses

Whilst it is noted that Environmental Health offer no objection to the proposed development, the Council as Planning Service raised concerns with the applicant, from a planning perspective, in respect of the originally submitted Acoustic Review. An addendum to this review was submitted by the applicant which considered an additional location for noise monitoring within the application site. Environmental Health were also consulted on this additional Acoustic Review and offer no objections. An objection letter raises concerns over the 2nd Environmental Health consultation response stating that *'all properties should be able to meet the noise standard when windows are open'*. While the objector reasons this to mean that the Environmental Health Officer is stating that all proposed dwellings will meet the standard, it is rather the position that the word 'should' could be replaced by 'require to', i.e. there is a need to meet the standard. Notwithstanding, the Planning Service is of the opinion that it has not been satisfactorily shown that the proposed residential development would not be subject to adverse noise from existing adjacent receptors to the detriment of residential amenity, particularly in respect of the 'agent of change' agenda. The other consultees have either not responded or have responded to the effect that they have no objection subject to conditions.

(iv) Representations Received

It is considered that the material planning issues raised in the letters of objections are addressed in the Assessment Section of this report, however a summary response is provided below.

Planning Policy: Issues relating to planning policy and housing supply are fully assessed under Section 7(i) of this report. It is considered that the development proposal is contrary to the provisions of the adopted Local Development Plan and soon to be adopted Local Development Plan 2.

Noise / Inadequate Noise Assessment: Issues relating to noise and the acoustic reviews are fully assessed under Section 7(i) and Section 7(iii) of this report.

Traffic / Roads and Transportation: It is noted that Transport Scotland and the Ayrshire Roads Alliance offer no objection to the proposed development. The ARA recommend conditions in respect of the following: submission of a Travel Plan (targeting both customers and staff), new roads infrastructure top adoptable standards, access construction, discharge of water, parking bay dimensions, off road parking provision (minimum of 117 off road spaces – 114 proposed within submission), cycle parking provision, submission of a Servicing Management Plan, wheel washing facilities, submission of a Construction Traffic Management Plan, bus stop (RTPI upgrades), submission of a Residential Travel Pack, turning areas, vehicle swept path analysis, bin collection points and .SUDS. Both Transport Scotland and the ARA recommend a condition limiting the residential element to 120 dwellings. In respect of no Saturday assessment having been undertaken within the Transport Assessment, in view of no objection having been received from either Transport Scotland nor the ARA, it is considered that the proposed development does not create any significant traffic or transport issues. In respect of the objection which states that there is only access from Boundary Road, access to the site is proposed from Heathfield Road.

The 11 representations in support of the proposed development are noted (including from Ayrshire Housing). The representations in support of the application state that the proposed development would be greatly beneficial as it would provide valuable and needed affordable homes in the short term, help to tackle housing crisis and contribute to the Council's affordable housing ambitions, would make use of derelict/waste land, would increase retail choice at an affordable price, would provide direct and indirect employment, would fit in with the existing Heathfield Retail Park and that the proposed development includes walking and cycling provision. These points do not alter the terms of the policy assessment of this application.

(v) Impact on the Locality

It is considered that the application should be considered in the context of a plan led system, as advocated in Scottish Planning Policy, and in line with the policies which form part of the adopted local development plan. The principle of development of this land for retail foodstore purposes has not been justified and the site is not considered to be appropriate for residential development, as confirmed in the Report of Examination for LDP2.

8. Conclusion:

The proposed development is contrary to the South Ayrshire Local Development Plan (LDP1), Town Centre and Retail Local Development Plan (TCRLDP), Report of Examination on LDP2 and Scottish Planning Policy. Given the above assessment of the proposal and having balanced the applicant's right against the general interest, the application is recommended for refusal.

9. Recommendation:

It is recommended that the application is refused for the reasons noted below.

Reasons:

Principle of Development – Retail foodstore

1. The proposed development is contrary to the Town Centre and Retail Local Development Plan 2017 – LDP Policy: Commercial Centres (Heathfield) and Policy: General Retail, LDP Policy: Heathfield and LDP Policy: General Retail and Scottish Planning Policy by reason that the applicant has not undertaken and demonstrated an appropriate sequential retail assessment in respect of the proposed foodstore. There are no over-riding reasons to depart from the policies as detailed in the South Ayrshire Local Development Plan or the Report of Examination of LDP2.

Principle of Development – Residential

2. That the proposal is contrary to South Ayrshire Local Development Plan Policy: Sustainable Development, LDP Policy: Heathfield, LDP Policy: General Retail, LDP Policy: Residential Policy within Settlements, Release Sites and Windfall Sites, Town Centre and Retail Local Development Plan, Report of Examination on LDP2, the Scottish Government's 'Designing Streets and 'Creating Places' Guidance and Scottish Planning Policy by reason that the application site does not represent a suitable location for residential development.

List of Determined Plans:

Drawing - Reference No (or Description): 2408_301 Rev A – Site Location Plan

Drawing - Reference No (or Description): 2408_302 – Proposed Masterplan PPP

Drawing - Reference No (or Description): 2408_302 – Extent of Full Planning and PPP Elements

Drawing - Reference No (or Description): 2408_303 Rev A – Proposed Site Layout (Store)

Drawing - Reference No (or Description): 2408_304 – Proposed Building Plan

Drawing - Reference No (or Description): 2408_305 – Proposed Elevations

Drawing - Reference No (or Description): 2408_306 – Proposed Roof Plan

Drawing - Reference No (or Description): 2408_307 Rev A – Proposed Surface Finishes

Drawing - Reference No (or Description): 2408_308 Rev A – Proposed Boundary Treatments (Store)

Drawing - Reference No (or Description): R/2478/1A – Landscape Details

Drawing - Reference No (or Description): SQ4S-PV-LIDL-ECOS-P1951-R-A Revision A – PV – Roof Layout

Other - Reference No (or Description): Pre-Application Consultation Report

Other - Reference No (or Description): Planning and Retail Statement (Aug 2021)

Other - Reference No (or Description): Retail Statement Letter (17 Feb 2022)

Other - Reference No (or Description): Retail and Affordable Housing Letter (28 Feb 2022)

Other - Reference No (or Description): Design Statement

Other - Reference No (or Description): Report on Site Investigations (1) – March 2021

Other - Reference No (or Description): Report on Site Investigations (2) – May 2021

Other - Reference No (or Description): Tree Survey

Other - Reference No (or Description): Acoustic Review

Other - Reference No (or Description): Acoustic Review Addendum (Feb 2022)

Other - Reference No (or Description): Transport Assessment

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

Other - Reference No (or Description): Preliminary Ecological Appraisal

Background Papers:

1. Application form, plans and submitted documentation
2. Consultation responses
3. Representations
4. Adopted South Ayrshire Local Development Plan
5. Adopted Town Centre and Retail Local Development Plan
6. Report of Examination on Local Development Plan 2
7. Scottish Planning Policy
8. Scottish Government Guidance 'Creating Places'
9. Scottish Government Guidance 'Designing Streets'
10. Agent of Change: Chief Planner Letter February 2018
11. Proposal of Application Notice 21/00241/PAN

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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