

**REGULATORY PANEL: 28 FEBRUARY 2024**

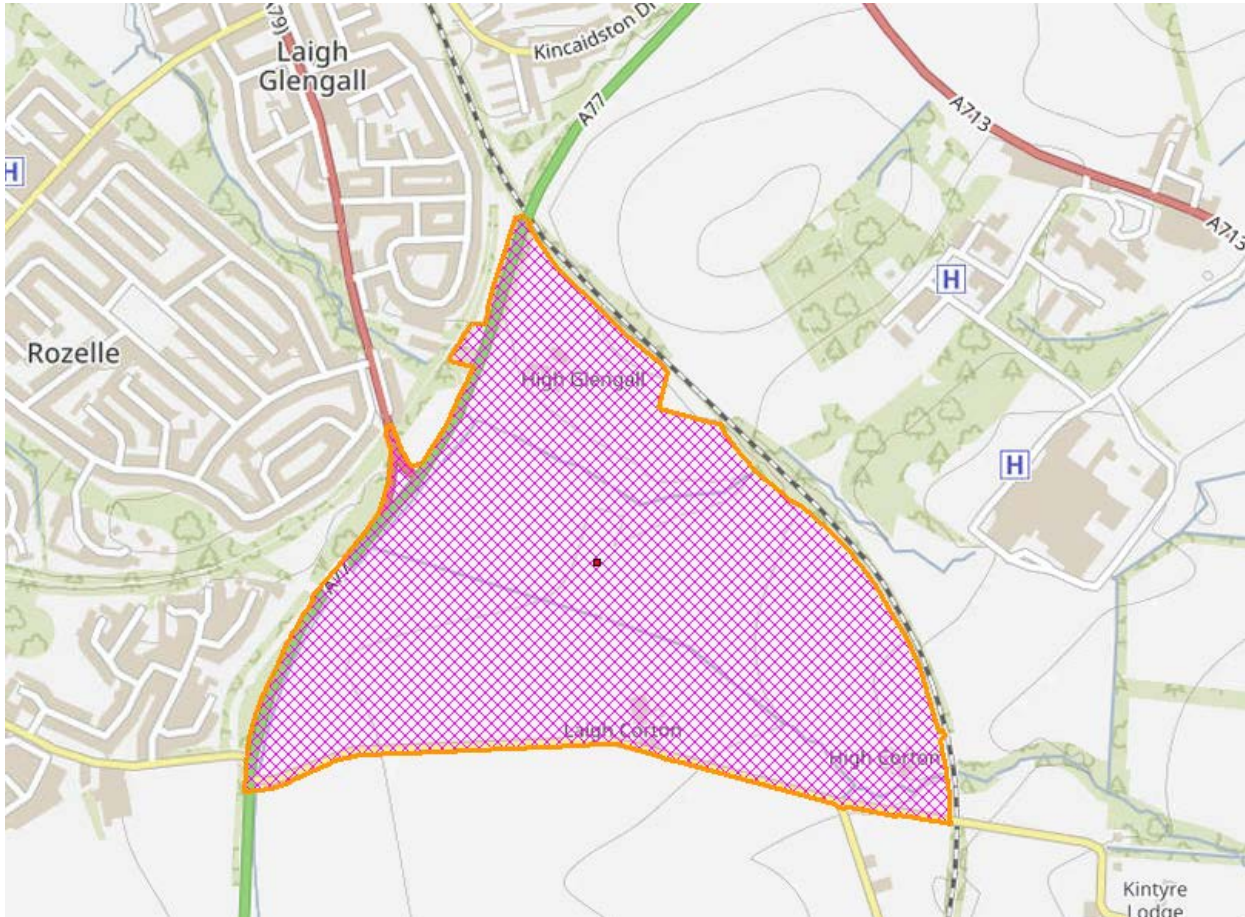
**REPORT BY HOUSING, OPERATIONS AND DEVELOPMENT**

**23/00261/FURM**

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

**Location Plan**

**APPLICATION SITE** 



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**Summary**

This application has been submitted under Section 42 of the Town and Country Planning (Scotland) Act 1997 as amended to modify and delete conditions attached to Planning Permission in Principle (Ref 14/00220/PPPM) for a mixed-use development within the Corton phase of the AYR4 housing allocation (also known as South East Ayr) in the Council's Adopted Local Development Plan 2 (LDP2).

The conditions which the applicant has sought to amend through the current Section 42 application are conditions 1, 4, 5, 6,9, 10, 11, 12, 14, 19, 20, 25, 33, 38, 40, 48, 57, 58, 62, 70. The conditions the applicant proposes to delete are 8, 15, 18, 21 and 29.

The revised proposals would see the replacement of the proposed large supermarket approved in 2014, with a smaller 2000 sqm Supermarket, an increase in housing from 750 units to 850 units including provision of 72 affordable housing units and the provision of a revised masterplan with voids. These proposals would see a significant reduction in the planning obligations secured within the original 2014 Planning Permission Ref. 14/0220/PPPM.

The Applicant has indicated that the separate planning application Ref. 23/00345/APPM for a retail park is intrinsically linked to this development, filling the void in the masterplan and has asked that they be considered at the same Regulatory Panel (Planning).

The applicant has provided a Development Viability Appraisal in support of the applications which demonstrates that this project is only financially viable if; the 2014 planning permission obligations are reduced, the affordable housing requirement is reduced from 25% to approximately 8.5%, an additional 100 houses are permitted, a retail park proposal (separate application Ref. 23/00345/APPM) is approved and the Council provides funding of approximately £17million over the next two and a half years. The applicant proposes that the provision of £17m from the Council is repaid through other future developments in South East Ayr.

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

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

Therefore, if Members are minded to approve this application, it cannot be based on the Council providing the approximate £17million initial funding as proposed and detailed within the applicant's Development Viability Appraisal. Independent expert legal advice advises that there is a significant risk that a court would find that it is irrational/perverse to grant planning permission relying on a viability case, when the evidence shows the development is not deliverable without significant forward funding from the Council and also shows that there is a strong likelihood of that funding not being available for legal and financial reasons.

It is considered that the revisions proposed to the original 2014 planning permission (Ref.14/00220/PPPM) within this section 42 application are unacceptable for the reasons specified in the report.

The principal reasons relate to the non-compliance of the retail element of the proposals with the relevant policies within NPF4 and LPD2, the inadequate and incomplete masterplan proposal which fails to appropriately plan for the entire application site and the non-compliance of the proposals to provide an adequate level of affordable housing in line with NPF4 and LDP2.

In coming to this conclusion, it was found that there were no material considerations which would outweigh the non-compliance of the proposals in relation to the National and Local planning policy position.

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

**REPORT BY HOUSING, OPERATIONS AND DEVELOPMENT**

**REGULATORY PANEL: 28 FEBRUARY 2024**

<b>SUBJECT:</b>	<b>PLANNING APPLICATION REPORT</b>
<b>APPLICATION REF:</b>	<b>23/00261/FURM</b>
<b>SITE ADDRESS:</b>	<b>Corton A77T From Bankfield Roundabout - B7034 Junction Ayr South Ayrshire</b>
<b>DESCRIPTION:</b>	<b>Application to modify conditions 1, 4, 5, 6, 9, 10, 11, 12, 14, 19, 20, 25, 33, 38, 40, 48, 57, 58, 62, 70 and to delete conditions 8, 15, 18, 21 and 29 of the existing planning permission (Ref: 14/00220/PPPM)</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 31.03.2023.
- The application was validated on 31.03.2023.
- The case officer visited the application site on 07.04.2023 and various other dates.
- 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 18.04.2023, 05.09.2023 and 08.12.2023.
- No site notice was required.
- A Public Notice, under Regulation 20 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 was placed in the Local Press on 25.04.23, 12.09.2023 and 12.12.2023.

**1. Proposal:**

**Site description:**

The site to which this application relates is located to the South East of Ayr on the eastern side of the A77 trunk road and it has an area of approximately 63 hectares. The site is broadly triangular in shape and bounded to the west by a 1km stretch of the A77, to the north by a 1.3km stretch of the Ayr to Stranraer railway line and to the south by a 1.2km stretch of the C39 public road. The red line site includes the A77 trunk road, the existing junction between the A77 and the Maybole Road (A79), the landfall area on the west side of the A77 (opposite the former High Glengall farm steading) and the C39 public road. The site is currently undulating agricultural land with fields, hedge field boundaries, steadings (including High Glengall, High Corton and Laigh Corton), embankments, some limited tree cover and is dissected by watercourses including the Slaphouse Burn.

**Development proposal:**

This application has been submitted under Section 42 of the Town and Country Planning (Scotland) Act 1997 as amended to modify conditions attached to Planning Permission in Principle (ref 14/00220/PPPM) for a mixed-use development within the Corton phase of the AYR4 housing allocation (also known as South East Ayr) in the Council’s Adopted Local Development Plan 2 (LDP2). If approved, the effect of the current Section 42 application would be to grant a new Planning Permission in Principle for Corton, subject to conditions which are different from those attached to Ref.14/00220/PPPM - hereafter referred to as ‘the original permission.’ Further details on the procedural matters surrounding Section 42 applications are captured under Section 2 below.

The conditions which the applicant has sought to amend through the current Section 42 application are conditions 1, 4, 5, 6,9, 10, 11, 12, 14, 19, 20, 25, 33, 38, 40, 48, 57, 58, 62, 70. The conditions the applicant proposes to delete are 8, 15, 18, 21 and 29.

The manner of these significant changes that are proposed to the conditions would allow, if approved, for a different development than what was approved through the original permission, including:

Original 2014 Planning permission in principle consent (including legal agreement)	Current proposal
750 houses of which 25% is affordable (approximately 187 affordable homes)	850 houses of which 8.47% is affordable (72 affordable homes)
<p>Four stream primary school accommodating 868 pupils and approximately 240 early years pupils.</p> <p>Transfer of proposed Corton school site to the Council.</p> <p>Phased forward funding for education provision totalling £9,500,242 to be paid by the 400<sup>th</sup> house.</p>	<p>Three stream primary school accommodating 651 pupils and 180 early years pupils.</p> <p>Transfer of proposed Corton school site to the Council, in lieu of developer contributions.</p> <p>The Council will front fund the primary school based on the cost being recovered via a roof tax on houses constructed at South East Ayr. Process to be finalised via the Supplementary Guidance Design Brief, once approved.</p>
Community hall.	Community hall incorporated into primary school complex and community sports pitch.
Retail unit (‘ <i>Supermarket</i> ’) with up to 9404sqm gross and 5574 sqm net floor space and petrol filling station.	<p>Retail unit with up to 2000 sqm gross floor space and net sales area of up to 1500sqm and petrol filling station.</p> <p>(hereafter referred to as ‘<i>supermarket</i>’).</p>
Neighbourhood centre comprising hotel, restaurant, public house, and units to be used for Use Class 1, 2 and 3.	<p>Neighbourhood Centre comprising hotel, restaurant/public house and units to be used for Use Classes 1, (shops) 2 (financial and professional services) and 3 (food and drink for consumption on the premises) of the Town and Country Planning (Use Classes) (Scotland) Order 1997 as amended.</p> <p>*It should be noted that Use Classes 1 and 2 have been combined and are collectively now Class 1A as of 31 March 2023 (post submission of this application) following The Town and Country Planning (General Permitted Development and Use Classes) (Scotland) Miscellaneous Amendment</p>

Original 2014 Planning permission in principle consent (including legal agreement)	Current proposal
	Order 2023 coming into force. Hereafter, these units will be referred to as Class 1A for this reason.
Construction of Class 2 and Class 4 business/ office units with a total floor space of 2300 sqm.	Land for Class 2* and Class 4 business/office units with a total floorspace of 700 sqm.  *It should be noted that use Class 2 has been combined with Class 1 and are collectively now Use Class 1A as of 31 March 2023 following the Town and Country Planning (General Permitted Development and Use Classes) (Scotland) Miscellaneous Amendment Order 2023 coming into force.
Park and ride facility measuring circa 1.0 hectares with parking for 178 cars.	Park and ride facility measuring circa 1.2 hectares with parking for 178 cars.
A complete masterplan for the development of Corton.	A different and incomplete masterplan for the development of Corton.
Development Brief and Design Code for Corton	A different Development Brief and Design Code to reflect the changes proposed to the masterplan.
The supermarket was 'enabling' development and was required to fund and make key aspects of the development including infrastructure works, financially viable. Thus, removing the financial burden from other land owners.	In addition to the provision of additional retail and the reduction of affordable housing provision, the applicant proposes through their Development Viability Appraisal that the Council provides them with approximately £17 million* to fund their initial infrastructure works to enable and make their proposed development viable.  The applicant proposes that the provision of approximately £17 million* from the Council is repaid through other future developments in South East Ayr.  *The Council has not and cannot agree to this proposal.
Public Transport Provision for 10 years (subject to details)	Transport Contribution £250,000 over three years from the commencement of the development.
Financial contributions towards expansion of off-site primary and secondary schools	Financial contributions towards a revised list of off-site primary and secondary schools.

The original 2014 permission was the subject of a legal agreement under Section 75 of the Town and County Planning (Scotland) Act 1997 as amended. While the applicant has submitted indicative proposals to modify this legal agreement to include different heads of terms as set out under Section 7 of this report, it should be noted that the formal mechanism for applying to modify an existing Section 75 agreement is through a separate application under Section 75A of the Act.

It is noted that the revised Masterplan proposed within this Section 42 application contains three blank areas, one of which is the subject of planning application 23/00345/APPM for a retail park.

## **2. Procedural Matters and Approach to Assessment:**

### **Hierarchy of Development**

The proposed development it is classified as 'Major' development under the Town and Country Planning Hierarchy of Development Regulations 2009. Applications submitted under Section 42 of the Act are however exempt from the statutory requirement to undertake pre-application consultation (PAC) with the community and accordingly no PAC Report or other information associated with 'Major' development applications was required to be submitted with this application.

### **Environmental Impact Assessment**

The proposal falls within Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. An Environmental Impact Assessment (EIA) was undertaken in 2014, under the requirements of the previous 2011 Regulations, for the original application and this concluded that the development, subject to mitigation, will have no significant impacts on the environment. An EIA Screening Request under the 2017 regulations and relating to the current application was submitted in August 2022 and the Council issued a Screening Opinion on 16 November 2022 confirming no requirement for a further EIA.

### **Section 42**

The application has been submitted under Section 42 of the Town and Country Planning (Scotland) Act 1997, as noted above. Section 42(4) of the Act requires that such applications must be submitted prior to the expiry of time limit for commencement of the development. It is considered that the application was submitted timeously i.e., one day before the expiry date and is therefore competent. The effect of approving the application would be to create a new planning permission in principle for the development which is separate from the previous permission. It should be noted that since the date of submission of this application, the original planning permission has expired as the time period for implementation under Section 59 has passed and no development has commenced.

Section 42(2) of the Act requires that the Planning Authority consider only the question of the conditions subject to which the planning permission should be granted and the Scottish Government Circular 3/2022 'Development Management Procedures' provides further guidance on the assessment of Section 42 applications; this includes that in some cases it does not preclude the consideration of the overall effect of granting a new planning permission, primarily where the previous permission has since lapsed or is incapable of being implemented. Given the scope for interpretation within the legislation and guidance, the Planning Service sought independent expert legal advice on the legal interpretation of Section 42(2), the associated guidance and relevant case law for this application. Specifically, advice was sought on whether the Planning Authority's consideration is restricted to the matter of the conditions only or whether the principle and the detail of the proposed development can or should be reassessed. The advice received is summarised below:

- i. Changes in planning policy can be taken into account when determining a Section 42 application and can be given significant weight in the assessment.*
- ii. The acceptability of the supermarket should be taken into account having regard to changes in the development plan and any changes in the baseline conditions such as traffic and transportation and retail capacity.*

Considering this, the Planning Service has not only considered the proposed amendments and deletion of conditions but also the principle of the development against the current framework of planning policy and guidance together with material changes in circumstances since the granting of the original permission in principle.

## **Use of Conditions**

Circular 4/1998- Annex A 'The Use of Conditions in Planning Permissions' sets out Government guidance on the use of planning conditions. The guidance advises that conditions should only be imposed where they meet the six tests set out in the guidance: Necessary, relevant to Planning, relevant to the development to be permitted, enforceable, precise, and reasonable in all other respects. As part of the assessment of this application, all the conditions imposed on the original planning permission in principle have been re-evaluated to ensure that they continue to meet the tests.

### **Applicants request for the current S42 application and separate planning application Ref.23/00345/APPM for a retail development to be considered at the same meeting of the Regulatory Panel**

The applicant has asked the Planning Authority to consider the current Section 42 application and their separate application for retail development Ref.23/00345/APPM at the same meeting of the Regulatory Panel which has been accommodated, with the S42 application requiring to be considered first, before the retail park application.

While these two applications are separate and will result in separate decisions, the applicant, through their submission and supporting information, consider these applications to be related and inter-dependent in that the significant retail development proposed under planning application Ref.23/00345/APPM is required to 'enable' and help finance the development of land subject to the current S42 application (this is in addition to the applicant's proposal that the Council fund approximately £17 million towards the initial infrastructure works as detailed elsewhere in this report).

The Planning Service advised the applicant during the pre-application stage that a single application for the whole of Corton, bringing together all elements of their proposal, would, from a procedural and practical perspective, be advisable. The applicant did not take this advice and instead pursued their proposals for the development of Corton through the submission of a Section 42 application and separate application for a retail development.

The Section 42 application proposes significant variation and deletion of a number of conditions associated with the original permission, which would if approved, result in a substantially different development than was approved in 2014. If the separate retail application was also to be approved, the overall development of Corton would be fundamentally different from the original 2014 permission, particularly with respect to the extent and form of retail and commercial floorspace.

While the submission of the Section 42 application together with the retail application 23/00345/APPM is procedurally acceptable, it is the view of the Planning Service that this is nevertheless an elaborate and confusing approach to obtain permission for a very different development at Corton than was approved in 2014. It is very difficult for interested parties to be able to navigate and understand the composite proposals. In the interests of transparency and understanding the Planning Service advised against this approach and that to avoid these difficulties that the applicant should submit a single planning application covering all aspects of the Corton development.

There are significant concerns and implications regarding the mechanism of 'tying' any such permissions together to ensure that the planning objectives are met on this site in terms of delivering housing and this is considered elsewhere in this report. Independent legal advice has not been able to provide assurance on the long-term integrity of any such arrangement.

## **Determination Route**

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

If Members accept the recommendation of refusal, the determination route is via this Regulatory Panel. However, if Members are minded to grant permission, contrary to the officer recommendation, the combination of the application being significantly contrary to the development plan for the area and also being a development in which the planning authority has an interest means that the application must be notified to Scottish Ministers who may 'call-in' the application for their own determination under section 46(1) of the Town and Country Planning (Scotland) Act 1997. The 'interest' that the Council has in this application is considered to be the intended transfer/Sale of land to the Council for the erection of a primary school & community facility, the sale of land for the Park and Ride facility and the applicant's proposal that the Council makes monthly payments to a total of approximately £17 million to the applicant to fund their project.

## **Legal Implications**

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

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

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

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

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



### Public Subsidy Considerations

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

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

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

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

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

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

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

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

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

### **3. Background**

As can be seen from the Planning History below, the Corton Site is part of the South East Ayr Strategic Expansion location, which was identified in the Ayrshire Joint Structure Plan 2007 and the 2007 South Ayrshire Local Plan to provide a strategic housing growth area for Ayr. No development had occurred on the site and in 2014 planning permission Ref. 14/00220/PPPM was granted for a mixed-use residential development containing various elements including a large supermarket.

The provision of a supermarket at this location was not in accordance with the Development Plan and was considered to be significantly contrary. However due to the applicant providing justification that the supermarket would not significantly impact other retail in the area, and that the supermarket development was required to finance various infrastructure elements for South East Ayr, - tied in through a legal agreement ensuring that the retail development could not proceed without the housing development and the planning obligations being satisfied - the scheme was deemed by the Planning Authority to be an acceptable development. These proposals removed some of the financial development burden from other land owners in South East Ayr. Due to a change in the retail industry the supermarket development did not materialise and the site remains agricultural land with a residential allocation in the current Adopted LPD2.

As a requirement of the LDP2 process, the Planning Authority is expected to prepare Supplementary Guidance for allocated housing sites within LDP2. To that end, the Planning Authority has been carrying out a consultation process to bring forward a Supplementary Guidance Design Brief document for the South East Ayr allocated housing site, **AYR4 in LDP2**, which includes Corton. As detailed below, that process has not been concluded and the document is at a draft stage, awaiting conclusion of the Transport Assessment that is being undertaken with respect to the A77. No agreement has been reached with relevant landowners about how common infrastructure costs are identified, apportioned or finance provided. As the document is only at draft stage it currently has no planning status.

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

#### 4. Consultations

- **Transport Scotland (Trunk Roads)** - do not object subject to the retention and rewording of condition 21 and rewording of 25.
- **Ayrshire Roads Alliance (traffic)** - Do not object to the general proposals however would recommend alterations of the wording of some of the conditions and the retention of other conditions. ARA also note concern that the proposals will result in an overdesigned project.
- **Network Rail (Railtrack Property)** - has no objection.
- **Strathclyde Passenger Transport** - do not support the proposed modifications to conditions 17 and 33.
- **Scottish Water** - do not object.
- **Scottish Environment Protection Agency** - do not object.
- **Ayrshire Roads Alliance (Flood Officer)** - no objection
- **NatureScot** - did not offer any formal comments on the application.
- **South Ayrshire Council Education Services:** - do not object to the proposed modifications to conditions 4, 14, 33 and 40.
- **South Ayrshire Council Housing Policy and Strategy Service** - Has not responded.
- **South Ayrshire Council Environmental Health Service** – has no objection.
- **Alloway, Doonfoot & St Leonards Community Council** - has major concerns over the capacity of the A77 trunk road and the design of the proposed bridge over the A77 in respect to the ability to dual this stretch of the A77 in the future.
- **Coylton Community Council** - has not responded.
- **Belmont And Kincaidston Community Council** - has not responded.

#### 5. Planning History

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

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

Ref. 14/00220/PPPM - Planning Permission in Principle for mixed use development at Corton was granted on 23 June 2014. Condition 1 of that permission requires that all applications for approval of matters specified in conditions (AMSC) should be submitted within eight years of the date of approval and that the development must be commenced within two years of the date of approval of the last AMSC application. The permission would have expired on 23 June 2022, however, the emergency powers implemented through the Coronavirus (Scot) Regulations 2022 extended the period for submission of AMSCs to 31 March 2023. The current application was submitted one day prior to the expiry of the permission and is considered to be competent in this regard.

The Section 75 Legal agreement relevant to this permission included the following obligations for the developer:

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

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

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

Ref. 20/00462/APP - Planning permission for the overbridge was subsequently approved on 08/01/2021.

Ref. 22/01019/FUR - Planning permission for the overbridge was subsequently approved on 07/03/2023.

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

Ref. 15/01039/MSCM – Approval of Matters Specified in Conditions for erection of Supermarket, Petrol Filling Station, etc was granted on 20/05/2016.

Ref. 15/01040/MSCM – Approval of Matters Specified in Conditions for Design Review and Development Brief/Design Code (including approval of indicative masterplan for Corton) approved on 16/12/2015.

Ref. 15/01042/MSCM - Approval of Matters Specified in Conditions for business unit was granted on 20/05/2016.

Ref. 16/00120/MSCM - Approval of Matters Specified in Conditions for railway crossings approved 20/05/2016.

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

Ref. 23/00345/APP – Planning permission for retail led mixed use development comprising 5 retail units, 3 drive-thru food outlets and petrol filling station. This proposal aims to be located within white hole area on the Masterplan submitted with 23/00261/FURM (this current Section 42 application) This retail park development application will be presented before the Regulatory Panel (Planning) on the 28<sup>th</sup> February 2024. The applicant has indicated that this retail application 23/00345/APP is financially linked to this current Section 42 application 23/00261/FURM. As part of the submission the applicant has included a Development Viability Appraisal.

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

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

As part of the Section 42 planning application the applicant has submitted the following documents and where necessary these are considered in greater detail in the material considerations section of the Report below:

**Applicant's Supporting Statement (March 2023 & July 2023)** - The applicant indicates that there are no constraints to the development of the site arising from natural or built cultural heritage designations within or adjacent to the site and the potential flooding issues have been addressed. South East Ayr (SEA) has been allocated for a period spanning multiple development plans and is the largest strategic development land release. It is important in delivering the spatial strategy for LDP2.

The applicant suggests that the proposals will provide all the policy outcomes for NPF4 Policy 15 - Local Living and 20 Minute Neighbourhoods including key local infrastructure including schools, community centres, local shops, greenspaces, health and social care, digital and sustainable transport links and employment.

The applicant considers that these associated and consented land uses act as a **local centre** in the terms described by NPF4 with further support for these land uses promoted in the draft Supplementary Guidance Site Design Brief: South East Ayr. The local centre will not only serve the new community established within SE Ayr (2700 homes) but will also provide improved range of services for existing residents (around 3000 homes on the south and east side of the town).

### Modification of Condition 4 Increase housing numbers

The application seeks approval to increase the number of **residential units from 750 to 850**. It is not proposed to alter the area of the site to be used for residential as shown on the indicative masterplan approved under the original planning permission in principle and the increase will be achieved by increasing the density of development from circa 25-30 units per hectare to up to 30-35 units per hectare net based on current market requirements. The increase in traffic and environmental impacts resulting from the increase in housing numbers will be offset by the reduction in the proposed non-residential floorspace.

### Reduce Business/Office Floorspace

The updated masterplan seeks to incorporate the business units within the neighbourhood centre. It is proposed to reduce the provision of business/office space to 700 sqm, reflecting market conditions post-pandemic. Market demand analysis demonstrates that market trends and demand do not support the need for more than three business units.

### Amend Primary School/Community Hall

Agreement has been reached that the four-stream primary school envisaged previously through the original permission can be reduced to a three-stream school. The developer has agreed a concept for the primary school that incorporates three streams together with a nursery, additional community facilities including a community hall and a community pitch serving all residents of SEA.

### Amend Neighbourhood Centre

The applicant indicates that the neighbourhood centre will continue to accommodate most of the non-residential uses (hotel, pub/restaurant and small retail units) authorised by the original Planning Permission in Principle, with the exception of the community hall and with the inclusion of business units.

### Amend Park and Ride

The park and ride can either provide the serviced land for supporting infrastructure for the railway station or become a park and ride acting as a transport or mobility hub, supporting local bus services. The land is to be transferred to the Council but it requires to include servitude rights to maintain access to the neighbouring land owned by Springfield Homes.

### Reduce size of supermarket

The applicant indicates that the supermarket approved on the site was a single retailer (Sainsbury) and the building extended to 9,404 sqm gross internal. There is no longer any retail demand for this size of single supermarket. It is proposed to modify the floorspace to meet current demand from retail operators. The petrol filling station element will be retained. The supermarket was previously approved contrary to the development plan because it addressed a known retail deficiency in the south and east of Ayr plus it would have met the shopping needs of SEA. The supermarket also helped the viability of the delivery of the Corton Phase as it created a significant capital investment to fund the up-front infrastructure at an early stage of Corton's development. The requirement to assist the viability of Corton has not changed in the interim. The scale and range of land uses proposed means that the surrounding community in SE Ayr, including south and east of Ayr, can meet most of their daily needs within a reasonable walking distance of their home, by walking, cycling, wheeling or cycling or using sustainable transport options.

### Deletion of Condition 21

It is proposed to delete the requirement to contribute towards the cost of upgrading the A77 trunk road. The traffic surveys upon which earlier schemes for improvements to the A77 are now considerably out of date and current surveys are required to assess traffic flows on the Holmston-Whitletts link. It is known that travel patterns and flows have changed post pandemic and are lower. In accordance with Circular 3/2012, planning obligations should not be used to resolve existing deficiencies in infrastructure provision or to secure contributions to the achievement of wider planning objectives which are not strictly necessary to allow development to be granted. Importantly, because this condition is based on traffic surveys and an impact assessment which are significantly out of date it is no longer relevant or necessary, as traffic flows in 2014 indicate that the Holmston-Whitletts link was already operating over capacity. Current flows on this link capacity need to be examined and tested against an updated capacity of the single carriageway. If it is established that this link is operating under capacity the imposition of this existing condition is contrary to NPF4 and should be deleted.

### Deletion of Condition 29

Requires submission of details for arrangements required to secure the retention and upgrading of the three existing railway crossings. Discussions between the Council and Network Rail have revealed that the Council will need to apply for a public right of access across all three of the railway crossings. The railway crossings will remain in the ownership of Network Rail and any works to improve the crossings to adoptable standard will need to be defined, costed and undertaken by the Council, funded through financial contributions sought from the connecting phases of SE Ayr. The Corton developer will be responsible for ensuring active travel links are formed up to the crossings and this is covered by the amendments to condition 5.

### Modification of Condition 33

The applicant is seeking to reduce the frequency of the bus service to 30 minutes and to reduce the period for payment of the subsidy. This proposed modification reflects discussions with a bus operator. The applicant is also seeking to delete the requirement to provide details of the arrangements for maintenance of the park and ride facility as they do not intend to build and operate the park and ride.

### Amended Indicative Masterplan

The applicant indicates that as a consequence of the proposed modifications it has been appropriate to make a series of proposed modifications to the illustrative masterplan for the site, which will replace the existing approved illustrative masterplan. It has also been necessary to update the associated *Corton: Development Brief and Design Code* (DB/DC).

The applicant states that the proposed illustrative Masterplan will continue to set the spatial framework and guiding principles for development at Corton. Areas of land are shown in this Illustrative Masterplan as future development by others, subject to separate planning applications (land use to be determined).

The site would continue to be accessed from the A77 via a new roundabout. Residential development is to be focussed on the eastern and southern portions of the site and therefore the location has not changed significantly. The density of development within the residential pods is proposed to be increased from the previous iteration of the masterplan. The non-residential pods continue to be focussed along the western edge of site adjacent to the A77. Collectively these form the Corton Local Centre, comprising park & ride, primary school, neighbourhood centre (incorporating business uses), supermarket and petrol filling station and further land identified for future development – to be determined through separate planning application. An important change is that the former Development Pod RET 2 no longer accommodates a Sainsbury's supermarket. An alternative supermarket will be substantially smaller on this Pod and, consequently, there will be land available for future development of land uses within the local centre. Further changes include an increase in the width of the active travel routes to 4.0 m which has necessitated changes to the detail of the road layout; revision to the bridleway linking Corton Road to the proposed bridge over the A77, which will accommodate equestrians as well as cyclists and pedestrians and changes to the landscaping proposals in the vicinity of the former supermarket site.

**Supporting Statement – Development Brief and Design Code** - The document sets out the reasoning and justification for a required new Development Brief and Design Code (DBDC) for the development at Corton to replace the version approved through permission reference 15/01040/MSCM.

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

**Ecology Update** - The report provides an update to the current ecological status of the Corton site as of February 2023 following site monitoring through 2022 it raised no issues.

**Environmental Noise Assessment** - The assessment considers how noise from the proposed retail centre contained in the separate application, as yet undetermined reference 23/00345/APPM (i.e., petrol filling station, three drive-thru restaurants, two supermarkets and three other retail units) has the potential to affect adjacent proposed residential uses and also considers the effect of noise from the A77 trunk road on the residential amenity of the housing contained within the current application. The proposed mitigation includes erection of a substantial acoustic bund/barrier around the service yard, restriction of deliveries/dispatch in the service yards to the south of the retail units in the evening and at night, expected at docking bays, the specification of maximum sound power levels for fixed plant and the inclusion of layout and other design measures within any new housing. Subject to the mitigation measures set out in Section 6 of the report, the residual impact is predicted to be of Neutral/Slight Adverse significance.

**Flood Risk Assessment (July 2023 and September 2023)** - The FRA has been updated to take account of policy changes since 2014 including increased requirements relating to climate change. The conclusion of the study is that provided the measures specified within the study are implemented, the site can be developed without unacceptable risk of flooding within the site and without increasing the risk of flooding elsewhere.

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

**Retail Impact Assessment** - The retail impact assessment (RIA) sets out information in support of a proposal for either a discount food store or a regular supermarket retail development at Corton. The Assessment demonstrates a low impact on existing retail would be anticipated at: Ayr Town Centre between 2-5%, Maybole zero impact, Heathfield between 4 - 5%. The applicant's RIA believes that the proposed development would not result in a significant adverse impact on the vitality or viability of nearby town centres or other retail locations.

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

**Transport Assessment** - The applicant submitted this document with the intention to establish if the agreed junction improvements on the A77 remain appropriate. The study concludes that the total trip generation of the proposed development is less than the total trip generation of the previous proposal.

**Public Transport Strategy Report** - This report looks to justify the applicant's proposal for a revised reduced public transport strategy.

**Development Viability Appraisals - Confidential version & Public version (October 2023)** - The applicant has provided a Development Viability Appraisal, in support of this Section 42 planning application and their retail application 23/00345/APPM. This was submitted in two forms, the first the applicant designated as commercially sensitive and therefore confidential and the second was a version that could be uploaded for public scrutiny. The Development Viability Appraisal outlines the development costs, including land purchase, and the income generated for the potential sale of the site. This document indicates that Corton cannot provide necessary common infrastructure for SE Ayr such as the provision of serviced sites for a new primary school, park and ride and neighbourhood park, without the required proportionate landowner financial contributions, and without which SE Ayr would be unable to proceed. The consequence of providing the common infrastructure is that the applicant, Allanvale Homes (Prestwick)Ltd [AHPL] requires to deliver additional works beyond what is required for Corton only. As is demonstrated by this report, the development would not be viable due to the costs of infrastructure that would normally be required to support its delivery. It is therefore necessary for the applicant to seek a reduction in contributions previously agreed and there is a need to include various mixed uses (including major retail and commercial development) within the proposals to ensure it can be delivered.

The Development Viability Appraisal also indicates that the applicant, AHPL would anticipate the revised Section 75 legal agreement to reflect the following;

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

The Report indicates that Option 3 is the only viable proposal for the applicant AHPL. This option incorporates land for 8.47% affordable housing and 102,400ft<sup>2</sup> Commercial land.

This Option indicates that **outgoings** are:

- £20.6 million - Site acquisition costs & Development Costs
- £56.4million - Infrastructure costs and Retail construction costs
- £20.5million - Financing Costs
- **£97.5 million Total Expenditure**

While the expected **income** for the development is:

- £48.0 million - Residential land value development
- £ 40.3million - Commercial Main Retail, restaurants and neighbourhood centre
- £17million - Section 75 / Supplementary Guidance proportionate recovery via Council
- **£105.3million - Total Income**
- **£7.78million Developers Return**



The Confidential Development Viability Appraisal indicates that approximately £17million of the income from Section 75 / Supplementary Guidance – Contribution Calculations would be draw down at infrastructure Practical Completion from SAC (assumed to be South Ayrshire Council) monthly at a rate of £595,007. The Spreadsheet indicates that this drawdown would occur monthly over the period from 2023-24 to period 2025-26. It is noted that subsequent correspondence with the Council dated 20<sup>th</sup> December 2023 indicates that the applicant does not consider this provision of funds from the Council to be public subsidy.

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

## **7. Section 75 Obligations**

In assessing and reporting on a Planning application the Council is required to provide a summary of the terms of any Planning obligation entered into under Section 75 of The Town and Country Planning (Scotland) Act 1997 in relation to the grant of Planning permission for the proposed development.

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

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

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

This Section 42 application proposes significantly different legal obligations This current Section 42 application proposes significantly different legal obligations:

- Transport interventions - No allowances for upgrade works to the trunk network other than specific Corton roundabouts
- Subsidy to Public Transport Services - a contribution of £250,000
- Primary School Education - £50,000 for Corton and a contribution toward interim capacity at Kincaidston Primary School. AHPL will pay a proportionate share land value as per all landowners and a proportionate share of common infrastructure works to serve the school
- Secondary Education – £2,117,713 contribution over the development period
- Affordable Housing – land will be provided for 72 houses (approximately 8.47% of 850 units)

The applicant has been made aware that these proposed Heads of Terms for a legal agreement are unacceptable to the Planning Service as the proposals fail to comply with the Development Plan, are reliant on assumed future planning permissions with legal agreements by third parties providing funding, and a Planning Authority Supplementary Guidance document which is currently in draft form. Thus, the proposals are unacceptable and premature.

If Members were minded to grant the current Section 42 application and the separate retail park application Ref.23/00345/APPM, both would require planning conditions and a legal agreement (provided conditions and a legal agreement can be justified on planning grounds in relation to each individual application) tying them together to link the timing of the implementation of the separate permissions (together with other matters). While not detailed in the Heads of Terms of the Development Viability Appraisal document the request from the applicant for financial assistance from the Council would also require to be legally controlled via a section 75 legal agreement.

The ability to be able to impose conditions and a legal agreement to tie the permissions together would be crucial to the overall delivery of this development otherwise there is a significant risk, that the profitable elements of the development are implemented without delivering the overall development project.

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

It would only become clear if a robust mechanism is indeed possible when the details are brought forward but the applicant has not provided any supporting information in respect to this, and the Council has serious concerns about how this could be achieved.

The applicant's development viability document provides for a draw down at infrastructure Practical Completion from SAC (assumed to be South Ayrshire Council) monthly at a rate of £595,007. This proposal does not relate the provision of this money to any phase of development. To ensure that obligations are delivered s75s usually require developer obligations in relation to phases of development. For example, provision of affordable housing by the time 100 commercial houses are complete. Instead, the applicant is proposing payment of money on a monthly basis unrelated to any obligation for the developer to provide housing development or other development, including the provision of infrastructure. The provision of money unrelated to the phasing of development carries a very significant risk that development and infrastructure will not be provided. Whilst a s75 could be developed to tie the provision of money to development it is difficult to envisage how that is possible in the absence of relating this money to development phases rather than simple monthly payments unrelated to development that is planned or can feasibly take place. For clarity this money does not relate to the provision of the Primary School.

Any decision by Members to approve the current and/or separate retail application would not be able to be issued until such time as a schedule of conditions are agreed and until the terms of a S75 agreement are concluded. As noted above, there are serious legal and planning concerns in this regard. There are also other significant concerns with respect to this application as set out within this report and reasons for refusal.

## **8. Scottish Ministers Directions:**

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

There are none pertaining to this application.

## 9. Representations

3 representation(s) have been received, 1 of which objects to the proposed development. All representations can be viewed online in full at [www.south-ayrshire.gov.uk/planning](http://www.south-ayrshire.gov.uk/planning) but for the purposes of this report, these are summarised in *italics* below and responded to in **bold**.

- *The major concern is the impact on capacity of the A77 from this development and others in the area*  
**The Council is currently carrying out a LDP2 Proportionate Transport Appraisal, in relation to the existing and newly allocated housing sites in LDP2 to identify what works are required on the A77 to facilitate development.**
- *Plans should be made public for the dualling of the A77*  
**The Planning Authority is not aware of any plans being considered in relation to the dualling of the A77 at this location.**
- *Is there space below the new bridge to allow for dualling of the A77.*  
**As indicated, there are no current proposal for the dualling of the A77 and therefore it is not feasible to answer this question.**
- *Why was my property not neighbour notified?*  
**The objector's property is over 20m from the boundary of the application site and therefore would not be neighbour notified of the planning application. Notwithstanding, the objector is aware of the application by virtue of their submission.**

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

## 10. Assessment

### Development Plan

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 LDP 2, therefore NPF4 will prevail in the event of any incompatibility.

The effect of granting a Section 42 planning application would be to grant a new permission in principle for mixed use development at Corton. The assessment has been undertaken on this basis and takes account of the significant policy changes that have occurred since the previous planning application was determined in 2014.

This Section 42 planning application is seeking to modify a substantial number of the conditions attached to the previous permission relevant to the size of development, to secure approval for a revised masterplan and a revised Development Brief and Design Code document and to modify other conditions such that there is greater flexibility in the detail and timing of some aspects of the development.

This section of the assessment considers the compatibility of the proposed land uses with the current development plan (NPF4 and LDP2).

## NPF4 Aims

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

## **Residential Use**

The application site lies within an area allocated for residential development (AYR4) under LDP2 and the principle of residential development is consistent with NPF4 Policy 16 (Quality Homes) and LDP2 Policy: maintaining and protecting land for housing. This use accords with the Development plan.

## **Affordable Housing**

The proposal is to provide a total of 850 houses of which only 72 units are proposed to be affordable. Policy 16 of NPF 4 and LDP2 Policy Affordable (including specialist) Housing expect in these circumstances that of 25% of the 850 homes would be affordable which would be approximately 212 units. The proposal is therefore significantly short of the policy requirements and fails to satisfy the objectives of the local development plan allocation of a sustainable new housing development.

### NPF4 Policy 16 extract:

*“Proposals for market homes will only be supported where the contribution to the provision of affordable homes on a site will be at least 25% of the total number of homes, unless the LDP sets out locations or circumstances where: i. a higher contribution is justified by evidence of need, or ii. a lower contribution is justified, for example, by evidence of impact on viability, where proposals are small in scale, or to incentivise particular types of homes that are needed to diversify the supply, such as self-build or wheelchair accessible homes. The contribution is to be provided in accordance with local policy or guidance...”*

It is noted that LDP2 does provide the opportunity for applicants to justify a reduction in the affordable housing units provided. The applicant has indicated in their Development Viability Appraisal that to provide 25% affordable housing would render the scheme unviable. However, it is noted that the applicant also indicates that the viability of the overall scheme is also reliant on:

- Smaller scale supermarket
- The Council front funding the primary school
- a significant retail park development (separate application Ref 23/00345/APPM) and;
- Approximately £17 million financial support from the Council

As detailed in the material considerations section of this Report of Handling it is considered that the Development Viability Appraisal is fundamentally flawed and therefore also the viability of the scheme. It is considered that the proposals do not comply with Policy 16 of NPF4 nor the affordable homes policy in LDP2 and there are no material considerations that would justify a departure of this position. Therefore, the Service does not accept a reduction in affordable housing provision is justified.

It should also be noted that no statement of community benefit as required under part B of Policy 16 of NPF4 has been provided.

Furthermore, it is noted that the Council's draft Local Housing Strategy (published in August 2023) highlights that demand for social housing in South Ayrshire is high, with recent figures showing more than 3,000 people on the Council's housing list. In addition, pressure for affordable housing has increased recently due to the cost-of-living crisis.

In considering the above, the proposals do not comply with Policy 16 of NPF4 nor the affordable homes policy in LDP2 and there are no material considerations that would justify a departure from this position.

## **Neighbourhood Centre**

The land uses contained within the proposed neighbourhood centre are hotel, family restaurant/bar, and class 1A, and 3 units (shops, financial and professional services and food for consumption on the premises Permitted change to Class 4 – business use, if the building or building unit is 300 sqm or less). LDP2 Policy: small town centres and local neighbourhood centres requires the Council to prepare Supplementary Guidance which identifies land for a local neighbourhood centre and community facilities within phase 1 of the SE Ayr development (Corton) to serve the local catchment. The principle of the proposed neighbourhood centre is, accordingly, consistent with LDP2. The principle of the proposed land uses contained within the neighbourhood centre are also consistent NPF4 Policy 15 (local living and 20-minute neighbourhoods) which supports proposals for mixed-use neighbourhoods which integrate housing with employment, shopping, health & social care, etc. These uses accord with the Development Plan.

## **Business/Office Use**

NPF4 Policy 26 (Business and Industry) seeks to encourage, promote, and facilitate business development and industry uses and to enable alternative ways of working, such as home working, live-work units, and micro-businesses. The policy supports proposals for business and industry uses on sites allocated for those uses in the LDP. A general exception is made for home working, live-work units, and micro businesses. The site is not allocated for business and industrial use under LDP2. However, the previous Site Design Brief, which formed statutory planning guidance under the previous LDP1 and before that the South Ayrshire Local Plan, allowed the provision of land and buildings for business and light industrial use, as part of the AYR4 housing allocation. In accordance with the development plan, the two previous Planning Permission in Principles granted for mixed use development at Corton included land and buildings for business/light industrial use. A key aim of NPF4 is to address the causes of climate change, including emissions arising from transportation. Reducing the need for travel is a key objective and NPF4 Policy 15 (local living and 20-minute neighbourhoods) supports proposals for mixed-use neighbourhoods which integrate housing with employment opportunities. This use accords with the Development plan.

## **Park & Ride/Railway Use**

The inclusion of land reserved for a future railway station and a park and ride facility are, in principle, consistent with NPF4 Policy 13 (sustainable transport) and LDP Policy: rail investment and raise no conflicts with the surrounding land uses. Strathclyde Partnership for Transport (SPT) have expressed reservations over the location of the park and ride facility away from the edge of the A77 and its effectiveness in encouraging drivers to use it as an alternative to driving into Ayr or travelling further along the A77 corridor. The issues SPT refer undermine the potential provision of a feasible Park and Ride. In such a scenario, it would be open to the landowner to seek an alternative use in the future through the Supplementary Guidance Design Brief process or via a planning application. It should be noted that the £17m fund sought by the applicants from the Council is, in part, in lieu of the land value for this site. Should this site not be developed as a Park and Ride, which on current information is a likely outcome, then the Council will have paid money to the developer for this land value with no Park and Ride forthcoming. There would also be inability to seek to reclaim this money from future developers. This proposed use accords with the Development plan.

## **Primary School Use**

LDP2 Policy: delivering infrastructure requires a new primary school to be provided at SE Ayr and the principle of a primary school within Corton is consistent with LDP2. The community hall to be included within the school campus is also a requirement of LDP Policy: delivering infrastructure. The co-location of the school and community hall reflect current practice in school campus developments, in terms of best use of resources, and is acceptable to Education Services. The principle of the primary school and community hall are consistent with NPF4 Policy 18 (Infrastructure First) and LDP2 Policy: delivering infrastructure. This use accords with the Development plan.

## Retail Use ('Supermarket')

The inclusion of retail floorspace within the neighbourhood centre is considered in the section above on the neighbourhood centre. This part of the report assesses the compatibility of the proposed "supermarket" (Class 1A of the Use Classes (Scotland) Order 1997 (as amended) with the Development Plan, which is in addition to and physically separate (approximately 300 metres when measured from the indicative masterplan) from the retail floorspace proposed within the "neighbourhood centre". The previous permission in principle permitted a large format 'supermarket' with a gross internal area of 9,404 sqm. Condition 4(iii) of the previous permission (Ref.14/00220/PPPM) stipulated the overall gross and net floor areas and the proportions of the floor area that could be used for sale of convenience and comparison goods. The applicant is now seeking permission in principle for a smaller retail unit with a Gross Internal Area of up to 2000 sqm and the net sales area to 1,500 sqm.

The proposed supermarket requires to be assessed against two main policy themes within the development plan. Firstly, the proposals require to be assessed against the policies relating to retail and secondly, against the policies relating to protection of land allocated for housing.

### Assessment Against Retail Policy

NPF4 Policy 28 (Retail) partially supersedes LDP2 Policy: *general retail* in respect to the "retail outside of town centres" section of the policy, as this aspect of the LDP policy is incompatible with NPF4 Policy 28. NPF4 Policy 28 marks a significant shift in national government policy in relation to retail outside of town centres/edge-of-town centres since the granting of the original planning permission in principle (Ref.14/00220/PPM) to which this Section 42 application relates.

Policy 28 of NPF4 states:

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

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

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

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

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

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

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

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

Under the previous Scottish Planning Policy, new retail development outside of a town centre could be considered consistent with the development plan where the applicant could demonstrate (through a Retail Impact Assessment) that there were no suitable alternative sites/buildings available within a town centre or edge-of-centre location and the development would not harm the vitality and viability of town centres retail. As detailed above, NPF4 now requires a strict application of the town centre first approach and directs all retail development to city/town centres, commercial centres and local centres, only. Part (A) of Policy 28 states that retail proposals are not supported in out of centre locations (other than those meeting Policy 28(c) or 28 (d)). Therefore, the historic policy 'exception' case that could be made for proposals that demonstrate no sequentially preferable sites and no harm to the vitality and viability of town centres is no longer available.

In respect of Policy 28 part (A), the supermarket site is:

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

Members should note that the network of centres identified in LDP2 does not contain any '*local centres*'. The term 'local centre' is a new designation introduced by NPF4. NPF4 was approved after the adoption of LDP2 and consequently, LDP2 does not contain such a designation. 'Local Centre' is not defined within NPF4 nor has the Scottish Government issued any guidance that would assist planning authorities on how to interpret this new term. Notwithstanding the applicant's supporting statement, the local neighbourhood centre supported at Corton aligns with the type and scale of retailing supported by NPF4 policy 28 (C) (see below) and as such cannot be considered a 'local centre' as referenced in NPF4 Policy 28 (A).

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

NPF4 Policy 15 Local Living and 20 Minute Neighbourhoods provides further guidance on the scale and form of retail that should be supported under Policy 28(C). The intent of the policy is to create connected and compact neighbourhoods where people can meet the majority of their daily needs within a reasonable distance of their home by non-motorised transport or sustainable transport options. The policy outcomes include that places are planned together with homes and the key local infrastructure, including local shops. The concept of "20 Minute Neighbourhood" is defined within the Glossary. This refers to achieving connected and often compact neighbourhoods designed in such a way that people can meet the majority of their daily needs within a reasonable distance of their home preferably by sustainable and active travel methods. It is noted that the emphasis is on meeting "daily" needs and not all needs. In relation to retail, the Planning Service interpret this as the provision of retail floorspace that is sufficient to meet daily shopping requirements, primarily for convenience goods. The applicant's Retail Impact Assessment and supporting statement demonstrate that the size of retail unit proposed is suited to meeting weekly shopping needs (main weekly food and grocery shop) and is likely to attract trade from a catchment area that extends beyond SEA to include the south and east of Ayr and surrounding rural areas. The size of retail unit proposed through this application is, therefore, larger than required to meet the daily shopping needs of the future residents of SEA. It is, therefore, concluded that the proposed 'supermarket', having regard to its size in the context of SEA, is not consistent with scale and nature of retail development supported by NPF4 Policy 28 part (C). Having regard to the foregoing it is concluded that the standalone supermarket is not consistent with NPF4 Policy 28 (C).

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

Having regard to the designation of Corton as a local neighbourhood centre, the proposed supermarket, which is separate from and in addition to the retail units contained within the proposed neighbourhood centre shown on the submitted masterplan, requires to be assessed against LDP2 Policy: small town centres and local neighbourhood centres. The policy supports proposals for new shops where they provide extra services for local communities and otherwise comply with the retail policies in the LDP. The LDP2 Glossary defines "local neighbourhood centre" as "small groupings of shops, typically comprising a general grocery store, a sub-post office, occasionally a pharmacy and other small shops, offices or facilities of a local nature". The Glossary also defines "local neighbourhood needs" as "retailing of convenience goods with a local catchment profile".

As noted above, the applicant's supporting information indicates that the proposed 'supermarket' is expected to draw trade from a catchment wider than SE Ayr and extending to the south and east of the existing town and surrounding rural areas. The 'supermarket' by virtue of its size and potential catchment is, therefore, not considered to be consistent with the scale of retail supported by LDP Policy: small town centres and local neighbourhood centres.

Under the 'assessment' section of this report is 'material considerations' relevant to this application which require to be considered and ultimately whether they justify taking a different approach to the Development Plan. With respect to the above assessment on the supermarket element of the proposal, the other material considerations are the original 2014 permission which granted a much larger supermarket in principle and the Retail Impact Assessment submitted by the applicant. Following an assessment of these material considerations, it has been concluded that these do not provide sufficient justification for a departure from policy 28 of NPF4 or the retail policies of the Local Development Plan.

**Therefore, it is considered that the proposed supermarket is contrary to NPF4 Policy 28 and LDP2 Policy: small towns centres and local neighbourhood centres.**

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

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

NPF4 Policy 15 (Local Living and 20-Minute Neighbourhoods) seeks to encourage, promote and facilitate the application of the *place principle* and create connected and compact neighbourhoods where people can meet the majority of their daily needs within a reasonable distance of their home, preferably by walking, wheeling or cycling. The scale of retailing proposed, having regard to the extensive range of products that the proposed retail unit will be able to stock, is considered to exceed what is required to meet the daily needs and more suited to weekly shopping trips. As evidenced by the applicant's own Retail Impact Assessment the scale of retail unit proposed will attract customers from a wide catchment, including the south and east of Ayr, to undertake weekly shopping trips.

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



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

**Considering the above, the proposal is not supported under policy 13(d) as there are alternative and more sustainable options available.**

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

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

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

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

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

The applicant's supporting statements indicate that the development of a supermarket at Corton will result in economic benefit to South Ayrshire through the creation of direct and indirect employment during the construction phase and potentially as a result of spending on local supplies of building materials. However similar benefits would also be found during the construction of a residential development. In addition, given the specialist nature required for the construction and fitting out of the Retail development it is more likely that transient construction workers would be utilised for such specialist construction. Thus, earnings would be less likely to be retained within Ayrshire. Whereas housing developers tend to have regional workforces i.e., residents of Ayrshire, who work and live in the same geographic area, thus retaining their earnings within the local economy, in line with Community Wealth Building principles. During the operational phase, the supermarket will create direct employment and potentially indirect employment through the use of local suppliers. It is the Planning Service's opinion that the economic benefits associated with the development are not unique to the site at Corton and could also arise if the new retail floorspace were to be sited in the town centre, for example.

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

The applicant has not provided sufficient justification to justify a non-residential use within the housing allocation.

### **Masterplan and Development Brief/Design Code**

The provision of an illustrative Masterplan and Development Brief/Design Code by the applicant has implications for several conditions within this Section 42 application therefore it is considered appropriate to address it in this section of the Report of Handling before addressing each impacted condition individually.

The previous Planning Permission in Principle required the applicant to enter into a design review with Architecture and Design Scotland (Condition 7) and the submission of a revised Development Brief/Design Code, informed by the Design Review (Condition 8).

The applicant has submitted a revised Illustrative Masterplan for Corton and a revised Development Brief/Design Code and is seeking approval of these documents. The applicant has also applied to delete Condition 8 in recognition of the submission of these documents. The applicant has not however applied to delete Condition 7 and it is unclear whether it remains their intention to engage with Architecture and Design Scotland.

With regards to the overall layout proposed within the masterplan the burn corridors and high-pressure gas pipeline route continue to form the strategic framework within which the built elements are positioned. The route of the main spine road and position of the residential and non-residential land uses have not been altered in any significant way. The revised plan is more schematic in nature and whereas the previously approved plan provided indicative layouts for the housing, school, neighbourhood centre, etc this proposed plan is less detailed.

A key difference, however, is the omission of three land parcels from the proposed 'master plan' that the applicant has submitted. The omitted areas are the triangular shaped area of land in the northernmost corner of the site (bounded by the A77, the railway line and the school site), an area in the southeast corner of the site (area surrounding the farmhouse and steadings at High Corton) and part of the area which contained the previously approved large supermarket located in the southwestern part of the site.

No detail is provided for these areas in this Masterplan. The reasons for these areas being left out of the masterplan is not explained within the applicant's supporting information. It is noted however that the areas in the northern corner and the southeast corner are not in the applicant's ownership, whereas the land forming part of the site of the previously approved large supermarket that is subject to the separate application (ref 23/00345/APP) for planning permission for a mixed-use retail park is within the applicant's ownership.

It is considered unacceptable that a revised 'masterplan' has been produced for the entire Corton application site area which does not contain information or proposals for all of the land contained within the application site boundary. While the plan indicates that three parcels of land are connected to the road network, the plan fails to indicate what uses will take place on these sites nor how they interrelate to the rest of the Corton Development. While two parcels of land are outwith the applicant's control, the area of the former supermarket is wholly in applicant's control. As a result of one of the blank areas on the masterplan, the proposed supermarket, would require having a long access road across an unidentified land use. Therefore, it is impossible to understand the master planning of the site in its entirety which results in improper planning and uncertainty for the development approach to the overall site which is unacceptable for a strategic site allocation.

It is considered that a cohesive design is needed in developing large, strategic sites meaning that every part of the site is considered from the bigger-picture perspective. When elements are thought about separately, and in isolation from one another, as in this case, the overall design becomes fragmented which limits the potential of spaces and results in challenges in properly planning and connecting these spaces.

As noted earlier in the Report, the Corton area of land is part of the AYR 4 allocated Housing site within the LDP2. While there is an unimplemented 2014 consent for a mixed-use development on the site, its primary planning designation is as an allocated housing site. As noted above, the failure of the masterplan to identify uses for land within an allocated housing site, especially in areas of land under the applicants' control is flawed as it fails to provide detail of what is proposed to occur within the application site leading to improper planning that is contrary to good placemaking principles and ultimately leads to uncertainty. As a result of these omissions fail to address the requirements of Condition 8 which it proposes to replace.

Finally, the applicant's proposed masterplan does not result in an equal scheme to the previous 2014 masterplan in terms of quality planning or a betterment and for this reason also, the proposed change is unacceptable.

**As a result of the omissions from the masterplan it is considered that the proposals fail to demonstrate that it accords with Policy 14 of NPF4 relating to Design quality and place.**

The applicant has applied to vary a number of conditions to change the reference to the previously approved indicative masterplan to the proposed indicative masterplan submitted with this application. The affected conditions are 4, 9, 10, 11, 12, 14, 57, 58 and 70. Having regard to the foregoing assessment of the revised indicative masterplan, it is considered that the proposed revisions to these conditions to change the reference from the previously approved indicative masterplan to the proposed revised indicative masterplan are unacceptable.

#### **Other Proposed Amendments to Conditions**

**Condition 4 (ii) - Neighbourhood Centre:** The applicant has applied to vary the wording of condition 4(ii) to amend the uses and floorspace restrictions included in the neighbourhood centre. These amendments include the deletion of the community hall/centre and a change from reference to a specific number and size of Class 1A and 3 units and a maximum floorspace per unit of 100 sqm. The applicant also seeks to place a maximum floorspace cap on the neighbourhood centre of 1000 sqm whereas the previous condition only sought to restrict the total amount of retail floorspace to 1000 sqm. The applicant has also sought to introduce text requiring "marketing and letting arrangements" to be reported to the Planning Authority on an annual basis. These modifications are not accepted in so far as they relate to the requirement for a restriction on the total floor space of the neighbourhood centre and the submission of marketing and letting information which serves no planning purpose unless used to support a case in the future to demonstrate that there is no market demand for such units; this is speculative and does not meet the test of conditions and is unacceptable on this basis. and the restriction on the total floorspace of the neighbourhood centre.

**Condition 14 - Education Mitigation:** As detailed above, the Council has agreed in principle to fund the phased provision of the Primary school at SEA based on the cost being recovered via a roof tax on houses constructed at South East Ayr. The detail of that process has yet to be agreed and formalised through the adoption of Supplementary Guidance Design Brief for South East Ayr by SAC. Therefore, the significant amendment of this condition removing requirement for educational provisions is premature, thus unacceptable and would fail to adhere to Policy 18 of NPF4 and LDP2 Policy: delivering infrastructure.

**Condition 29 - Railway Crossings:** A key requirement of the original 2014 planning permission in principle was to ensure that the three existing railway crossing were retained and upgraded to active travel standard to ensure that all phases in SE Ayr could connect to the primary school, neighbourhood centre and community facilities within the Corton phase and to ensure that future Corton residents can access the hospitals and other areas of SE Ayr by active travel means. The applicant has applied to delete condition 29 on the basis that the crossings will require public rights of access to be granted by Network Rail. It has been established, through discussions with Network Rail and the Planning Service that only the Council can apply for public right of access. On this basis, the applicant considers that it is the responsibility of the Council to undertake the work to design, cost and undertake the works required to upgrade the crossings, with financial contributions being sought from the developers for the connecting phase of SE Ayr. The developers within the Corton phase will be responsible for providing connections to the railway crossings as part of the detailed design of their layouts. It is the Planning Services view that the crossings are common infrastructure, the costs of which should be shared by all the landowners, including Corton. It is considered that a condition is essential to ensure that the crossings are provided. If Members are minded to grant this application, further consideration will be required on a suitable wording for condition 29 that reflects the fact that the Council will require to apply for the public rights of access. Deleting the condition, as proposed, is therefore not acceptable as it would be contrary to NPF4 Policy 1, 2, 13, 14 and 15 and Land Use and Transport policy of LDP2.

**Condition 33 - Public Transport Strategy:** Condition 33 requires submission of details of a public transport strategy detailing the frequency and routing of amended bus services. The current strategy is to include a local bus service with a 15-minute frequency between the site and the centre of Ayr, the costs of which shall be met by the developer for ten years from the opening of the supermarket or occupation of the first house or the completion of the final phase of the development (whichever is the sooner). The applicant is seeking to reduce the frequency of the bus service to 30 minutes and to reduce the period for payment of the subsidy from 10 years from the opening of the supermarket (or completion of the final phase of the development) to completion and adoption of the primary road network which accommodates the bus service. This proposed modification reflects discussions that applicant has had with a bus operator and as the applicant does not consider it reasonable to require subsidisation of the bus service until the final phase of the development has been completed. The applicant is also seeking to delete the requirement to provide details of the arrangements for maintenance of the park and ride facility as they do not intend to build and operate the park and ride. The applicant has submitted further supporting information in the Public Transport Strategy Report.

Strathclyde Partnership for Transport have advised that the proposed reduction in frequency will reduce the potential attractiveness of the route as an alternative to private car. A 15 min frequency provides certainty of experience and confidence for the users and provides a level of convenience on par with car use. SPT advise against the amendment to the commencement point and end point for the service proposed by the applicant. SPT have also advised that the applicants proposed amendment to the condition to allow the developer to agree the cost of any subsidy directly with a named operator (Stagecoach) will not provide the planning authority with the certainty over the service provision required.

Having regard to the advice of SPT, it is considered that the applicant's proposal is unacceptable and is contrary to the intention of NPF4 Policy 13 (sustainable transport). Condition 33 should not be amended.

**Condition 40 - Travel Plan:** This amendment to the condition proposes to move the responsibility to provide a School Travel Plan from the developer to the Education Authority. This is considered unreasonable as the purpose of the travel plan relates to how new residents travel to school from their home - a matter which is outwith the control of the Education Authority. In addition, this is considered unacceptable as it moves the duty to fulfil the terms of the condition from the applicant to the Council, as Education Authority, thus making the condition unreasonable. For these reasons the request to amend the condition is unacceptable.

**Condition 58 - Play Area Provision:** It is proposed to delete the requirement to comply with the Council's guidance for Open Space and Designing New Residential Developments and to replace this with a requirement to comply with the submitted DB/DC. The quantity of play area space is proposed to increase in line with the increase in the number of houses and are in accordance with the Council's guidance for open space provision in new residential development. However, the consolidation of the play areas into four locations in place of the previous six locations will leave some residential areas too distant from an equipped play and the reduction in the number of equipped play areas is inappropriate. In addition, the proposed changes to Condition 58 are reliant on the Illustrative Master Plan and the new Development Brief and Design Code being acceptable, as detailed above, due to the omissions from the Illustrative Masterplan it fails to properly Masterplan the area thus the proposed changes to this Condition are unacceptable.

### **Development Brief/Design Code (DB/DC)**

The purpose of the DB/DC is to provide master planning and design guidance for the delivery of the infrastructure and the development pods within Corton. It sets site-wide principles to be incorporated in the preparation of detailed design proposals in each development pod. The Development Brief and Design Code (DBDC) has been updated to reflect the changes to the illustrative masterplan. The DBDC continues to provide more detailed guidance for the design of development within the individual development pods. The requirements and specifications for streets and landscaping has been updated but is less detailed and as a consequence less prescriptive. The document sets out guidance for the design of the landscape framework, open space and play areas, legibility and character, movement hierarchy and accessibility, street types, communal infrastructure, and common elements. The principles identified within this document are acceptable, however, as it encompasses the flawed Master plan it is deemed to be unacceptable as it fails to properly plan the application site. As a result of the omissions from the masterplan it is considered that the proposal fails to demonstrate that it accords with Policy 14 of NPF4 relating to Design quality and place.

## **11. Material Considerations**

### **Applicants Supporting Information**

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

### **Development Viability Appraisal**

The Applicant has provided a Development Viability Appraisal demonstrating why in their opinion from a financial perspective, the Corton development does not require to meet the NPF4 policy 16 requirement for 25% affordable housing and why the previous Supermarket should be replaced with a smaller supermarket, plus additional retail provision and three drive through restaurants, (detailed in separate Planning application (Ref. 23/00345/APP) effectively creating an out of centre retail park.

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

#### *Funding from the Council*

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

**For the avoidance of doubt this funding proposal has not been suggested, encouraged, or agreed by Council Officials or the Council. Senior Officials have advised the applicant in writing that the Council would not and could not support such proposals.**

### Future Developers

The assessment indicates that South Ayrshire Council will recoup this financial outlay as set out above from other future developers of the rest of the South East Ayr Development i.e. not Corton. There are currently no mechanisms in place, nor any planning permissions in place at South East Ayr for the Council to have any certainty that they would be able to recoup the funding from future developers. Such a mechanism may emerge between the landowners of South East Ayr following the conclusion of the Supplementary Guidance Design Brief process. In addition, there is no evidence that the repayment of this money by the other developers would not undermine the development viability of the other sites in South East Ayr. Without such evidence there can be no confidence that any other developer will be able or willing to provide this money in the future. To this end, the development viability appraisal is considered to be fundamentally flawed being based on assumption and lack of evidence of viability impacts on other developers of South East Ayr.

### Land Value

The assessment indicates that the site acquisition and development costs are approximately £20 million. However, given the site is allocated for housing and not retail and the existing retail planning consents are not attractive to the retail market at this time, no information has been provided to justify why this purchase price was considered representative of the land value of the site. As stated above, the site is allocated for residential use, however the applicant indicates that the land values are at a retail rate for part of the site yet the commercial changes impacting on large scale supermarket development were known at the time of site acquisition. It appears that no account has been taken of the outlay required for the significant planning gain required as part of the 2014 consent. The current proposals 23/00345/APPM & 23/00261/FURM (either separately or combined) are unable to fund any of the required planning requirements of the 2014 consent. The planning requirements of the 2014 consent remain relevant.

Therefore, on the proposals presented, this Development Viability Appraisal demonstrates that even with a significant retail park development being proposed (through application Ref. 23/00345/APPM), affordable housing requirements significantly below the required National and Council standards and the primary school is front funded by the Council this project still requires to be financially supplemented by approximately £17million from the Council. Therefore, there is a £17million shortfall in the applicant's development viability case (£17m that cannot be committed by the Council), and the conclusion is that the scheme is unviable.

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

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

### **Funding from the Council for the primary school**

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

The provision of education in Scotland is the responsibility of local authorities who are under a statutory duty to ensure that there is adequate and efficient provision of school education in their area to serve existing and anticipated populations. It can also be secured via condition and legal agreement that work does not begin on the school until the housing has commenced, thereby minimising risk to the Council.

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

### **Draft Supplementary Guidance Design Brief**

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

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

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

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

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

## **Original 2014 Planning Permission in Principle and Retail Impact Assessment**

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

### Original 2014 Planning Permission in Principle

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

The circumstances are now materially different for the following reasons:

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

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

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

- Smaller scale supermarket
- 25% affordable housing to be provided in 2014 (187 affordable homes) to under 9% affordable housing (72 affordable homes) through the current application
- A separate and significant retail park development as proposed through application Ref.23/00345/APPM. Although this development provides for a reduced scale of retail provision it proposes uses that will impact directly with the town centre.
- Approximately £17 million of front funding support from the Council
- Council to front fund the primary school

The current Section 42 application does not provide the full range of benefits which the 2014 planning permission was obligated to deliver.

In the case of this application, the supermarket is also significantly contrary to the development plan. This is because with the current application, the proposed reduction in affordable housing is also contrary to the Development Plan. Furthermore, the separate retail park development proposals through application Ref. 23/00345/APPM are also contrary to the development plan. Both individually and collectively, the impact of the proposals are unacceptable in policy terms. In addition, the Council has not agreed to the upfront funding of approximately £17 million towards the infrastructure works.



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

**In conclusion, the supermarket, while contrary to policy at that time, was approved and justified as part of the original 2014 permission as an 'enabling development' whereas it has been demonstrated that the current application does not enable the delivery of housing and could potentially also undermine the ability to deliver housing in the wider South East Ayr area.**

### Retail Impact Assessment

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

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

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

### **Representations**

The issues raised by Representees which primarily include matters of the A77, and neighbour notification process are captured and responded to in Section 10 of this report. While they have been considered and taken account of in the assessment of this application, they do not raise matters of material overriding concern or factor in the reasons for the recommendation of refusal of this application.

### **Planning History**

The relevant planning history of the site, detailed above, is noted and recognised in the consideration of this application.

### **Consultees**

The views of the consultees have been noted and recognised where relevant in the consideration of the proposed conditions, below.

## **12. Conclusion**

In Conclusion, it is considered that the revisions proposed to the original 2014 planning permission (Ref.14/00220/PPPM) within this section 42 application are unacceptable for the reasons specified in the report and the reasons for refusal as captured in Section 13 of this report, below.

The principal reasons relate to the non-compliance of the retail element of the proposals with the relevant policies within NPF4 and LPD2, the inadequate master plan proposal which failed to appropriately plan for the entire application site and the non-compliance of the proposals to provide an adequate level of affordable housing in line with NPF4 and LDP2.

In coming to this conclusion, it was found that there were no material considerations which would outweigh the non-compliance of the proposals in relation to the National and Local planning policy position.

## **13. Recommendation**

It is recommended that this Section 42 application which seeks to amend Conditions 1, 4, 5, 6, 9, 10, 11, 12, 14, 19, 20, 25, 33, 38, 40, 48, 57, 58, 62, 70 and delete conditions 8, 15, 18, 21 and 29 from Planning Permission in Principle Ref.14/00220/PPPM is refused for the following reasons:

### **Reasons for Refusal**

**Reason 1** - The proposed deletion of Condition 15 and reduction in the percentage of housing units that are to be affordable, from 25% to 8.47%, is contrary to NPF4 - Policy 16 (e) as the development is for more than 50 market homes and the proposed lower contribution has not been justified in terms of the criteria set out in the Adopted South Ayrshire Local Development Plan Policy: affordable (including specialist) housing, specifically with reference to the failure of the applicant to demonstrate to the Council's satisfaction that the reduction in affordable housing will result in the proposed development being economically viable; for this reason, the proposal is also contrary to Local Development Plan Policy: affordable (including specialist) housing. The proposed deletion of condition 15 and proposed reduction in affordable housing requirements is therefore unacceptable. Additionally, no Statement of Community Benefit as required by NPF4 Policy 16 (b) has been submitted.

**Reason 2** - The proposed amendment to condition 4 for a proposed separate single retail unit with gross floorspace of 2000 sqm (Class 1A of the Use Classes (Scotland) Order 1997 (as amended)) is contrary to National Planning Framework 4 Policy 28 (A). The proposed location and scale of the retail unit are not consistent with the town centre first principle as the development is not located in an existing city, town or local centre and is not in an edge-of-centre area or a commercial centre allocated through the Local Development Plan. Additionally, the application site is in an out-of-centre location where NPF4 Policy 28(C) only supports proposals for new small scale neighbourhood retail development which contributes to local living, including 20-minute neighbourhoods and/or can be demonstrated to contribute to health and wellbeing of the local community. Having regard to the size of the retail unit proposed and the extent of its likely market area, the proposal is significantly larger than required to meet the daily shopping needs of the future residents of South East Ayr. It is, therefore, concluded that the proposed separate single retail unit, is not consistent with scale and nature of retail development supported by NPF4 Policy 28 part (C) and the proposed modification to condition 4 is therefore unacceptable.

**Reason 3** - The principle of the separate single retail unit with gross floorspace of 2000 sqm (Class 1A of the Use Classes (Scotland) Order 1997 (as amended)) is not supported by the South Ayrshire Local Development Plan Policy: small town centres and local neighbourhood centres as it is physically separated from the local neighbourhood centre as identified on the proposed masterplan. Furthermore, the physical size of retail unit proposed significantly exceeds the size of retail development supported under this policy and will function as a destination for weekly shopping trips for a catchment likely to extend significantly beyond South East Ayr. The scale and nature of this form does not accord with the Glossary definitions of retail supported under the Local Development Plan. The proposed modification to condition 4 is therefore unacceptable.

**Reason 4** - The proposal to include a separate single retail unit with gross floorspace of 2000 sqm (Class 1A of the Use Classes (Scotland) Order 1997 (as amended)), in addition to the proposed retail floorspace within the 'neighbourhood centre' is premature in advance of the finalisation and adoption by the Council of the Supplementary Guidance: Site Design Briefs (Part 2) South East Ayr, which will provide policy guidance on the amount and configuration of retail floorspace that the Council considers is appropriate within the Corton phase of South East Ayr. The proposed modification to condition 4 is therefore unacceptable.

**Reason 5** - The proposed separate single retail unit with gross floorspace of 2000 sqm (Class 1A of the Use Classes (Scotland) Order 1997 (as amended)) is not supported by National Planning Policy 15 (Local Living and 20 – Minute Neighbourhoods) as the size of retail unit proposed is not consistent with the *place principle*. The scale of retail unit proposed is likely to attract customers from existing residential areas in the south and east of Ayr in addition to the proposed neighbourhoods within Corton and the wider South East Ayr area. The proposal is likely therefore to encourage consumers to make longer trips to meet their shopping needs, which are beyond convenient walking, wheeling, and cycling distance. The proposed modification to condition 4 is therefore unacceptable.

**Reason 6** - The proposal is contrary to National Planning Framework Policy 13 as the proposed separate single retail unit with gross floorspace of 2000 sqm (Class 1A of the Use Classes (Scotland) Order 1997 (as amended)) does not encourage, promote, and facilitate development that prioritises walking, wheeling, cycling and public transport for everyday travel and reduce the need to travel unsustainably and has the potential to lead to an increase in the number of journeys made by private car from parts of the south and east of Ayr and surrounding rural area to Corton, contrary to the outcomes of Policy 13.

**Reason 7** - The inclusion of the proposed separate single retail unit with gross floorspace of 2000 sqm (Class 1A of the Use Classes (Scotland) Order 1997 (as amended)) within the proposed development is contrary to National Planning Framework Policies 1 (climate change and nature crises) and Policy 2 (climate mitigation and adaptation) as the proposal is likely to encourage private car use as a result of the attraction of customers from established residential areas in the south and east Ayr who may otherwise shop in Ayr town centre. The existing residential areas in the south and east of Ayr are linked to Ayr town centre by an established network of sustainable transport modes, whereas Corton is poorly connected to these areas by established public transport networks.

**Reason 8** - The application site lies within the AYR4 housing allocation wherein South Ayrshire Local Development Plan Policy: maintaining and protecting land for housing only permits non-residential uses which will have environmental, economic, or social benefits or encourage regeneration. The applicant has not demonstrated sufficient environmental, economic, or social benefits related to the proposed separate single retail unit with gross floorspace of 2000 sqm (Class 1A of the Use Classes (Scotland) Order 1997 (as amended)) and accordingly the inclusion of this aspect of the proposed mixed-use development is contrary to the LDP policy.

**Reason 9** - The proposed "illustrative Corton masterplan" (drawing reference no. 21022-MPDF-P004-B) is contrary to National Planning Framework Policy 14 relating to design quality and place due to the omission of details for three significant land parcels contained within the application site. The proposed Development Brief/Design Code, as a result of the fact that it incorporates the masterplan shown on drawing 21022-MPDF-P004-B, is also contrary to Policy 14.

**Reason 10** - The proposed modifications to Condition 1 are not considered acceptable as the removal of the time limit for submission and approval of matters specified in conditions would result in an open-ended permission which is not in the interest of the proper planning for the area.

**Reason 11** - The proposed modification to Condition 4 to change the reference to the revised masterplan submitted with the application is not acceptable as the revised masterplan fails to properly masterplan the area due to the omission of details for three significant land parcels contained within the application site and is considered to be contrary to National Planning Framework Policy 14. The revised masterplan does not result in an equal scheme to the previous 2014 masterplan in terms of quality planning or a betterment and for this reason also, the proposed modification is unacceptable.

**Reason 12** - the proposed modifications to Condition 4 part (ii) to restrict the total floorspace within the neighbourhood centre to 1000 sqm and to introduce a requirement for marketing data are not acceptable. The proposal to restrict the overall amount of floorspace is considered to be unnecessary and, in relation to retail specifically, premature in advance of the finalisation and adoption by the Council of Supplementary Guidance: Site Design Brief Part 2 South East Ayr, which is at draft stage. The proposal to introduce a reporting requirement for marketing and letting would not serve a planning purpose and does not meet the tests for conditions set out in Circular 4/1998 Annex A.

**Reason 13** - the proposed deletion of condition 8 and modifications to conditions 9, 10, 11 and 12 are not acceptable. All five conditions are reliant on the Illustrative Master Plan and the new Development Brief and Design Code being acceptable. Due to the omissions from the Illustrative Masterplan of three areas of land, it fails to properly Masterplan the area thus the proposed changes to these conditions are unacceptable and contrary to National Planning Framework Policy 14. It remains necessary to require the submission of a revised Development Brief/Design Code which is based upon and incorporates an acceptable masterplan.

**Reason 14** - The proposed deletion of condition 14 is contrary to NPF4 Policy: 18 and LDP2 Policy: delivering infrastructure both of which require that new development proposals include measures to ensure the provision of any off-site infrastructure which is necessary to accommodate the proposed development without placing an extra burden on existing communities. In addition, the proposed changes to Condition 14 are reliant on the Illustrative Master Plan being acceptable. Due to the omissions from the Illustrative Masterplan it fails to properly Masterplan the area thus the proposed changes to this Condition are unacceptable.

**Reason 15** - The proposed deletion of condition 29 is contrary to NPF4 Policy 1, 2, 13, 14 and 15 and South Ayrshire Local Development Plan 2 policy: land use and transport. The three railway crossings are considered to be essential to the integration of Corton with the adjoining parts of the AYR4 housing allocation and to ensure that sustainable travel links are provided between the community and commercial facilities that are to be provided within Corton and the remaining parts of the AYR4 housing allocation. The proposal deletion of condition 29 is unacceptable for these reasons.

**Reason 16** - The proposed amendments to Condition 33 are unacceptable. The proposed reduction in frequency of service and reduced period over which the subsidy is proposed to be provided would not provide sufficient certainty of experience and confidence of users of the proposed services and will thus reduce the potential attractiveness of the route as an alternative to private car, contrary to the intention of NPF4 Policy 13 and Local Development Plan Policy: land use and transport.

**Reason 17** - The proposed amendments to Condition 40 are unacceptable. The responsibility for producing an active travel plan for occupants of the proposed new housing for school travel properly lies with the developer. Furthermore, the proposed amended wording would fail the test of 'reasonableness' in terms of Circular 4/1998: the use of conditions in planning permissions, as it would rely upon another Council department fulfilling the requirements of the condition, which is outwith the control of the applicant.

**Reason 18** - The proposed changes to Condition 57 are unacceptable as they are reliant on the Illustrative Master Plan and the new Development Brief and Design Code being acceptable. Due to the omission of three areas of land from the Illustrative Masterplan it fails to properly Masterplan the area thus the proposed changes to this Condition are unacceptable.

**Reason 19** - The proposed changes to condition 58 are unacceptable due to its reliance on the Illustrative Master Plan and the new Development Brief and Design Code being acceptable. Due to the omission of three areas of land from the Illustrative Masterplan it fails to properly Masterplan the area thus the proposed changes to this Condition are unacceptable. Furthermore, the consolidation of equipped play areas into four locations would result in some parts of the residential pods being too distant from an equipped play area. The proposal is therefore not fully compliant with the Council's published guidance for Open Space and Designing New Residential Developments.

**Reason 20** - The proposed changes to condition 70 are unacceptable as they are reliant on the Illustrative Master Plan and the new Development Brief and Design Code being acceptable. Due to the omission of three areas of land from the Illustrative Masterplan it fails to properly Masterplan the area thus the proposed changes to this Condition are unacceptable.

**List of Determined Plans:**

Drawing - Reference No (or Description): 21022-PLBD-P001 Application Boundary

Drawing - Reference No (or Description): 21022-MPDF-P004 Illustrative Corton Masterplan B

Drawing - Reference No (or Description): 21022-MPDF-P005 Cockhill Overbridge footpath connection

Other - Reference No (or Description): Development Brief \_ Design Code Part 1

Other - Reference No (or Description): Corton Development Brief \_ Design Code Part 2

Other - Reference No (or Description): Supporting Statement

Other - Reference No (or Description): Supporting Statement Development Brief \_ Design Code

**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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