AGENDA

1. APOLOGIES FOR ABSENCE.

2. DECLARATIONS OF INTEREST - Members of the Committee are asked to declare any interest(s) in the particular items on the agenda and the nature of the interest(s) at this stage.


4. APPLICATIONS FOR DETERMINATION – Reports by the Head of Economy, Planning and Employability Services: -

   (a) 17/00059/LBC - Listed building consent for demolition of building including clearance of site - Land to north of Victoria Road, Kirkcaldy.

   (b) 17/00187/PPP - Erection of a dwelling house (renewal of application 13/03587/PPP) - Land to east of 158 Kinghorn Road, Burntisland.

   (c) 17/00306/FULL - Erection of DIY Store/Builders' Merchants, associated Garden Centre, 5 non-food retail units (demolition of 2 exiting non-food retail units), associated access, parking and service areas (Section 42 application to modify condition 2 of planning permission 06/00009/CFULL to remove the allowance for sports goods to be sold from these units) - Fife Central Retail Park, Chapel Park, Kirkcaldy.

   NOTE: Representations to the above applications are available to view on Fife Direct.

5. APPLICATIONS FOR PLANNING PERMISSION, BUILDING WARRANTS AND AMENDED BUILDING WARRANTS DEALT WITH UNDER DELEGATED POWERS - Lists of applications dealt with under delegated powers for the period 27th February to 24th March, 2017.

   NOTE: These lists are available to view with the Committee Papers on the Fife Direct website.
Linda Bissett,
Head of Democratic Services,
Finance & Corporate Services.

Fife House,
North Street,
Glenrothes,
Fife KY7 5LT

4th April, 2017.

If telephoning, please ask for:-
Elizabeth Mair, Committee Administrator, Fife House, Glenrothes
Telephone: 03451 555555 Ext. 442304 or E-mail: elizabeth.mair@fife.gov.uk

Agendas and papers for all Committee meetings can be accessed on
www.fifedirect.org.uk/committees
In the absence of the Chair, Councillor Altany Craik, as Vice-Chair, took the chair.

139. **MINUTE**

The Committee considered the minute of the Central Area Planning Committee of 15th February, 2017.

**Decision**

The Committee approved the minute as a correct record.

140. **APPLICATIONS FOR DETERMINATION**

The Committee considered reports by the Head of Economy, Planning and Employability Services, together with associated representations. The Committee noted that the Council’s decision to accept the Reporter’s recommendations on FIFEplan had been confirmed the previous day and that the status of the Plan was to be amended in the reports accordingly.

*(Councillor Morrison entered the meeting at this stage.)*

(a) **16/03024/FULL - Change of use to commercial livery stables, temporary residential use of existing caravan and formation of car park - Burnbank Stables, East End, Main Street, Star of Markinch.**

**Motion**

Councillor Beare, seconded by Councillor Craik, moved that the application be refused as detailed in the report.

**Amendment*/
Amendment

Councillor Kay, seconded by Councillor Morrison, moved that the application be approved for reasons of encouraging rural business and the need for 24 hour security on the site.

Vote

Amendment - 5
Motion - 5

The Chair used his casting vote in favour of the motion, which was accordingly approved.

Decision

The Committee agreed that the application be refused for the reason detailed in the report.

(b) 16/03293/PPP - Planning permission in principle for 30 affordable dwellings, creation of community gardens, community woodland and public open space (Section 42 application to vary Condition 2 of planning permission 12/00249/PPP to extend the time period for the commencement of development by an additional 3 years) – Land at Glen Albyn Drive, Kirkcaldy.

Decision

The Committee agreed that the application be approved subject to the 19 conditions detailed in the report.

(c) 16/03378/LBC - Listed building consent for installation of upvc windows and upvc door - Flat 1 Swan View, 554 Wellesley Road, Methil.

Decision

The Committee agreed that: -

(1) the application be refused for the reason detailed in the report; and

(2) appropriate enforcement action be taken with respect to the unauthorised activity.

(d) 16/03379/FULL - Installation of upvc windows and upvc door (retrospective) - Flat 1 Swan View, 554 Wellesley Road, Methil.

Decision/
Decision

The Committee agreed that: -

(1) the application be refused for the reason detailed in the report; and

(2) appropriate enforcement action be taken with respect to the unauthorised activity.

(e) 16/04033/FULL - Change of use from bank (Class 2) to ice cream parlour/coffee shop (Class 3) - 23 Main Road, East Wemyss.

Decision

The Committee agreed that the application be approved subject to the condition detailed in the report.

141. APPLICATIONS FOR PLANNING PERMISSION, BUILDING WARRANTS AND AMENDED BUILDING WARRANTS DEALT WITH UNDER DELEGATED POWERS - Lists of applications dealt with under delegated powers for the period 30th January to 24th February, 2017.

Decision

The Committee agreed to note the lists of applications.

___________________
ITEM NO: 4(a)

APPLICATION FOR LISTED BUILDING CONSENT  REF: 17/00059/LBC

SITE ADDRESS:  LAND TO NORTH OF VICTORIA ROAD KIRKCALDY

PROPOSAL :  LISTED BUILDING CONSENT FOR DEMOLITION OF BUILDING INCLUDING CLEARANCE OF SITE

APPLICANT:  UNITED INVESTMENTS CO LTD
            WARWICK HOUSE 5 WARWICK STREET MANCHESTER

WARD NO:  NW13
           Kirkcaldy East

CASE OFFICER:  David Shankland

DATE REGISTERED:  19/01/2017

REASONS FOR REFERRAL TO COMMITTEE

This application requires to be considered by the Committee because:

The previous application for listed building consent to demolish the listed building was considered by the Planning Committee.

SUMMARY RECOMMENDATION

The application is recommended for:

Conditional approval subject to clearance from Historic Environmental Scotland

ASSESSMENT AGAINST THE DEVELOPMENT PLAN AND OTHER MATERIAL CONSIDERATIONS

Under Section 14(2) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, in determining the application the planning authority should have special regard to the desirability of preserving a Listed Building or its setting or any features of special architectural or historic interest which it possesses.
1.0 BACKGROUND

1.1 Site Description

1.1.1 The application site relates to a vacant Category B Listed Victoria Power Station located within a well-established area of Kirkcaldy to the north east of the Town Centre on Victoria Road. Built to supply the local tramways, the building itself dates back to 1903 and was designed by local architect William Williamson. The vacant building sits within a larger site and, whilst being on the Building at Risk Register since 2000, still remains a building of substance and architectural merit. The site itself is situated on a prominent location along key transport corridors through the settlement of Kirkcaldy. In terms of the Adopted Mid Fife Local Plan (2012), the Category B Listed Building forms part of a mixed use site under proposal KDY47. The range of uses expected at the overall site, as defined by the Adopted Local Plan, are residential; and/or employment; and/or commercial uses. In respect to the application site, the Adopted Local Plan, under proposal KDY47, stresses that the redevelopment of the Category B listed building and enhancing its urban setting are priorities for this site. Vehicular access to the site is off Victoria Road.

1.2 Proposal

1.2.1 Listed building consent is sought for the demolition of the Category B listed building. In support of the application, a Supporting Statement, structural survey, surveyor’s development appraisal, information on the sale particulars and details of the press and television coverage carried out has been submitted which outlines the efforts that have been made to secure a positive future for the listed building.

1.3 Planning History

1.3.1 The relevant planning history for the site includes the following applications:

- An application for listed building consent is for the demolition of the Category B listed building was submitted in December 2013 (Planning Reference 13/03794/LBC). The application was presented to the Planning Committee in August 2014 which a recommendation for refusal due to the lack of information submitted to justify the demolition of the listed building. The recommendation was however overturned by members and approved subject to conditions. The application was however then called in by Scottish Ministers’ in 2015 as it was considered that every effort had not been made to save the listed building. The applicant however withdrew the application before a final decision was reached by Scottish Ministers; and

- An application for planning permission in principle for the erection of a care home with associated access and parking (Planning Reference 13/03793/PPP) was submitted in tandem with the aforementioned listed building application and was also presented to the Planning Committee in August 2014 with a recommendation for refusal due to the lack of information submitted to justify the demolition of the listed building. The recommendation was however overturned and subsequently obtain planning permission, subject to conditions, in November 2014.

1.4 Application Process

1.4.1 The Victoria Power Station building is B listed and therefore any decision to allow its demolition (or any other works) would require to be referred to Historic Scotland for ratification.
1.4.2 The application has been advertised in both the Fife Free Press and the Edinburgh Gazette as a development affecting the setting of a listed building and Conservation Area.

1.4.3 The modified proposed FIFEplan (Proposed Local Development Plan) 2017 is a material consideration but does not currently have the same status or carry the same weight at the current Development Plan. The application site continues to be defined as being located in the settlement envelope of Kirkcaldy that forms part of a mixed use site under proposal KDY 029.

2.0 ASSESSMENT

2.1 The issues to be assessed against the Development Plan and other guidance are as follows:

- Justification/ Impact Upon Listed Building

2.2 Justification/ Impact Upon Listed Building

2.2.1 SPP (Valuing the Historic Environment) advises that Planning Authorities, when determining applications for planning permission or Listed Building consent should have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Furthermore it states that there is a presumption against demolition or other works that will adversely affect a listed building or setting. With regards to reusing redundant listed buildings, the SPP states that planning authorities should support the best viable use that is compatible with the fabric, setting and character of the historic environment yet there should be a presumption against the demolition of Listed Buildings. The aim should be to find a new economic use that is viable over the long term with minimum impact on the special architectural and historic interest of the building or the surrounding area.

2.2.2 The Historic Environment Policy Statement reinforces the issues outlined in the SPP in relation to Listed Buildings and states that in the case of applications for the demolition of listed buildings it is Scottish Ministers policy that no listed building should be demolished unless it can be clearly demonstrated that every effort has been made to retain it. Planning authorities should therefore only approve such applications where they are satisfied that:

a. the building is not of special interest; or
b. the building is incapable of repair; or
c. the demolition of the building is essential to delivering significant benefits to economic growth or the wider community; or
d. the repair of the building is not economically viable and that it has been marketed at a price reflecting its location and condition

2.2.3 The Historic Environment Policy Statement also states that where proposals involve the demolition of a listed building the Planning Authority should involve Historic Environmental Scotland (formerly Historic Scotland). It also advises that no listed building should be demolished unless it can be clearly demonstrated that every effort has been made to retain it.

2.2.4 Historic Environment Scotland's guidance "Managing Change in the Historic Environment: Demolition" confirms the presumption against the demolition of a listed building and stipulates that listed building consent will only be granted in exceptional circumstances. In this regard,
applicants are required to show that they have made all reasonable efforts to retain the listed building. This can include:

- the significance of the building and its setting is fully understood;
- the condition of the building has been assessed by appropriate conservation professionals;
- repair is not economically viable;
- alternative sources of finance have been explored; and
- the property has been marketed for a reasonable period at a price reflecting its condition to potential restoring purchasers.

2.2.5 SESplan Policy 1B, states that Local Plans will ensure that there are no significant adverse impacts on the integrity of, amongst other matters, listed buildings.

2.2.6 Policy E8 of the Adopted Mid Fife Local Plan requires that Development affecting a listed building, or its setting, shall preserve the building, or its setting, or any features of special architectural or historic interest which it possesses.

2.2.7 Policy E9 of the Adopted Mid Fife Local Plan states that proposals for the total or substantial demolition of a listed building will only be supported where it is demonstrated beyond reasonable doubt that every effort has been exerted by all concerned to find practical ways of keeping it. This will be demonstrated by inclusion of evidence to the planning authority that the building:

- a - has been actively marketed at a reasonable price and for a period reflecting its location, condition and possible viable uses without finding a purchaser; and
- b - is incapable of physical repair and re-use through the submission and verification of a thorough structural condition report.

2.2.8 Policy 14 of the modified proposed FIFEplan states that development which protects or enhances buildings or other built heritage of special architectural interest will be supported. Proposals will not be supported where it is considered they will harm or damage Listed Buildings or their setting, including structures or features of special architectural or historic interest. It continues, like the currently Adopted Local Plan, that there is a presumption against the demolition of listed buildings, consistent with the Scottish Historic Environment Policy (now the Historic Environment Policy Statement), unless a case has been made under one of the prescribed grounds set out in Historic Scotland's Managing Change in the Historic Environment: Demolition, as detailed in section 2.2.4.

2.2.9 Historic Environmental Scotland in their consultation response of 2nd February 2017 stipulates from the outset that the Supporting Statement submitted with the application currently under consideration accurately provides a summary of their engagement in this site with the applicant since 2015, and outlines the efforts that have now been made to secure a positive future for the listed building. This is noted to include the applicant looking at a residential scheme which retains the front façade of the Power Station as a screen wall. Historic Environmental Scotland in their formal response has however confirmed their acceptance that such a scheme is unlikely to be viable and that the subsequent marketing process (with the asking price of £1) failed to find any significant interest in a reasonable period, and crucially, no offers were forthcoming. Historic Environmental Scotland continue that they provided detailed advice in the preparation of the marketing strategy, as detailed in section 1.2.1, and considered it was undertaken in an appropriate manner and meet the requirement of the demolition test d) contained within the Historic Environment Policy Statement. In conclusion, whilst Historic
Environmental Scotland regret the loss of a listed building and part of Kirkcaldy’s industrial heritage, they consider that the actions taken by the applicant have demonstrated to them that demolition test d), as aforementioned, have now been met. Historic Environmental Scotland do not therefore consider that the proposal would raise historic environment issues of national significance and therefore they do not object to the demolition of the listed building. Notwithstanding this, they have advised that the Planning Authority may wish to add a condition requesting the salvage of stone or materials and the possible salvage and reuse of architectural features from the building e.g. dressed stone doorway rustication and keystones, window and door architraves, pediments etc. The applicant has confirmed his client would be content with such a condition being included in any permission.

2.2.10 The Council's Built Heritage officer was consulted on the application and, after assessing the application, also concluded that the proposals meet the requirements of the demolition tests as detailed above. However, as the building to be demolished is of at least regional importance as an architectural and historical landmark, the Built Heritage Team has recommended that any permission should be subject to a detailed and appropriate salvage plan of important fabric and features, including carved masonry and ceramic tiles, and that demolition of such features should be carried out by hand and, thereafter, be incorporated into the design for any proposed development within the site.

2.2.11 Overall, whilst the loss of the Category B Listed Victoria Power Station, including the façade, is of great regret the applicant has evidently demonstrated within the submission the efforts that have been made to secure a positive future for the listed building which were proven to not be viable. An extensive subsequent marketing process with an asking price of £1 also failed to find any significant interest and crucially no offers were forthcoming. As a result, the proposed development meets the policy and guidance requirements of both national and local policies with respect to works to Listed Buildings.

**CONSULTATIONS**

| Historic Environment Scotland | Are satisfied that the proposal meets the requirements of national guidance relating to the demolition of listed buildings. |
| Built Heritage Team | Has recommended conditional approval. |

**REPRESENTATIONS**

1 letter of objection has been received from a 3rd party and a representative of the Architectural Heritage Society of Scotland concerning the following:

- Not clear that every effort has been made to secure the listed building;
- Insufficient marketing of the property; and
- Detrimental impact on the built environment on Victoria Road

As detailed in the main body of the report, Historic Environmental Scotland has confirmed that every reasonable effort has been made by the applicant to find a restoring purchaser but to no avail. These efforts included significant local press and television publicity. The acting agent has also confirmed under separate cover that not one community group or community group
representative approached the selling agent to enquire about any community backed scheme to retain the building throughout the 6 month marketing period.

In regard to the concern relating to the detrimental impact on the built environment on Victoria Road in consultation with Historic Environmental Scotland, they have confirmed they are satisfied that the proposals to demolish the listed building does not raise historic environmental issues of national significance. Notwithstanding this, a condition, in agreement with the agent, has been submitted that requires a savage plan to be submitted and approved in writing by the Planning Authority before any works start on site.

**CONCLUSIONS**

The proposal is acceptable in meeting the terms of Development Plan and relevant National Guidance. The applicant has provided adequate justification for the demolition of the listed building; has demonstrated that sufficient effort has been made to find a purchaser at a price reflecting the current condition of the listed building; and has demonstrated that every effort has been made to retain, at a minimum, the quality classically ashlar facade.

**RECOMMENDATION**

It is accordingly recommended that the application be approved subject to the following conditions and reasons:

1. **BEFORE ANY WORK STARTS ON SITE**, an appropriate plan for the salvage of stone, important fabric and features of the Listed building hereby approved to be demolished shall be submitted to and approved in writing by Fife Council as Planning Authority and shall thereafter be implemented in full. FOR THE AVOIDANCE OF DOUBT, the salvage plan shall include details of how the demolition of such architectural features will be carried out and, thereafter, how they will be reused into the design for any proposed development within the site boundary.

   Reason: In the interests of visual amenity; and to reserve the rights of the Planning Authority with respect to these details.

**STATUTORY POLICIES, GUIDANCE & BACKGROUND PAPERS**

In addition to the application the following documents, guidance notes and policy documents form the background papers to this report.

National Guidance
SPP - Scottish Planning Policy (2014)
Historic Environment Policy Statement (2016)
Historic Environment Scotland's guidance "Managing Change in the Historic Environment: Demolition"

Development Plan
SESplan (2013)
Adopted Mid Fife Local Plan (2012)

Other Guidance
The modified proposed FIFEplan (Proposed Local Development Plan) 2017

Report prepared by David Shankland, Case Officer and Chartered Planner
Report signed off by Bill Lindsay, Service Manager and Central Planning Committee Lead Officer on 21 March 2017.

Date Printed 16/03/2017
ITEM NO: 4(b)

APPLICATION FOR PLANNING PERMISSION IN PRINCIPLE  REF: 17/00187/PPP

SITE ADDRESS:  LAND TO EAST OF 158 KINGHORN ROAD BURNTISLAND

PROPOSAL :  ERECTION OF A DWELLINGHOUSE (RENEWAL OF APPLICATION 13/03587/PPP)

APPLICANT:  MR NATHAN FOSTER MURRAY
2 SCOONIE COURT LEVEN KY8 5TH

WARD NO:  NW10
Burntisland, Kinghorn And West Kirkcaldy

CASE OFFICER:  David Shankland

DATE REGISTERED:  24/01/2017

REASONS FOR REFERRAL TO COMMITTEE

This application requires to be considered by the Committee because:

more than 5 letters of objection have been received.

SUMMARY RECOMMENDATION

The application is recommended for:

Conditional approval

ASSESSMENT AGAINST THE DEVELOPMENT PLAN AND OTHER MATERIAL CONSIDERATIONS

Under Section 25 of the Planning Act the determination of the application is to be made in accordance with the Development Plan unless material considerations indicate otherwise.

1.0 BACKGROUND

1.1 Site Description
1.1.1 The application site is a triangular portion of undeveloped land of approximately 400 square metres in size fronting Kinghorn Road (A921). The application site is defined in the Adopted Mid Fife Local Plan (2012) as being located within the settlement envelope of Burntisland. To the south and east, the application site is bound by the East Coast main Railway Line; to the north the site bounds Kinghorn Road, adjacent to which are residential properties; and to the west the site is bound by a residential property. The immediate surrounding area is residential in nature.

1.2. Proposal

1.2.1 Planning permission in principle is sought for the erection of a dwellinghouse (renewal of application 13/03587/PPP). This application was submitted before the expiry of that 2013 application.

1.3 Planning History

1.3.1 The relevant planning history for the site includes the following applications:

- Planning permission in principle (Planning Reference 10/01046/PPP) for the erection of a dwellinghouse was approved with conditions by the Kirkcaldy Area Committee in November 2010;

- A subsequent application was then submitted in August 2013 for Approval Required by Condition (Planning Reference 13/02484/ARC) for the erection of a dwellinghouse. This application was however refused under delegated powers in January 2014 due to insufficient information in the form of an acoustic report;

- The applicant also submitted an application in November 2013 (Planning Reference 13/03587/PPP) for planning permission in principle for the erection of a dwellinghouse (renewal of application 10/01046/PPP). This application was approved subject to conditions at Committee in February 2014.

1.4 Application Process

1.4.1 The application, due to the size of the site, constitutes a "Local" application as defined by the Hierarchy of Developments Regulations and as such did not require to be the subject of a Proposal of Application Notice.

1.4.2 The modified proposed FIFEplan (Proposed Fife Local Development Plan) 2017 is a material consideration but does not have the same status or carry the same weight at the current Development Plan. The application site, consistent with the Adopted Local Plan, is still defined as being located within the settlement envelope of Burntisland.

2.0 PLANNING ASSESSMENT

2.1 The issues to be assessed against the development plan and other guidance are as follows:

- Principle of Development
- Renewal of Planning Permission

2.2 Principle of Development
2.2.1 The principle of development in this particular case has already been established with the approval of the original planning permission under planning reference 10/01046/PPP and the subsequent approval to renew the original planning permission under planning reference 13/03587/PPP. In addition, the application to renew the planning permission was submitted prior to the date that the existing consent was due to lapse on 27th February 2017.

2.3 Renewal of Planning Permission

2.3.1 Circular 4/1998 - The Use of Conditions in Planning Permissions states that as a general rule applications for the renewals of permission before expiry of time limits should be refused only where there has been some material change in planning circumstances since the original permission was granted; there is likely to be continued failure to begin the development and this will contribute unacceptably to uncertainty about the future pattern of development in the area; or the application is premature because the permission still has a reasonable time to run. These 'tests' will be considered individually in the following paragraphs.

2.3.2 Since the original planning application was approved, and as detailed in paragraph 1.4.2, there have been changes to the Development Plan with the modified proposed FIFEplan 2014 now being considered a material consideration in the determination of planning applications. The modified proposed FIFEplan does however carry less weight than the Adopted Mid Fife Local Plan (2012) at this stage. As well as this, Making Fife's Places - Planning Policy Guidance (2015) is now a material consideration in the determination of applications. This Planning Policy Guidance however does carry less weight than both the Adopted Local Plan and the modified proposed FIFEplan. Having regard to this, it is noted that the current relevant policy is similar to the policy which was relevant within the Adopted Local Plan at that time and is not sufficient to suggest that there should be any reconsideration of the decision to approve this proposal. In terms of neighbouring land uses and development it is again noted that there has been no significant change in circumstances since the original application was approved. On this basis this application would pass the first relevant test.

2.3.3 Given the scale and nature of the proposal it is not considered that approval for the erection of a single dwellinghouse for a further 3 years would cause any significant uncertainty to the future pattern of development in the area. It is therefore considered that the development would pass the second test for an appropriate renewal.

2.3.4 As the 2013 planning permission in principle was close to expiry at the point this application was submitted, it is not considered that this application is premature and therefore the proposal would also pass the final test. Overall, the development complies with the tests as set out within Circular 4/1998 - The Use of Planning Conditions in Planning Permissions and therefore this application would not warrant refusal on this basis.

2.3.5 In this instance there are no new material considerations that would outweigh the presumption in favour of development. It is noted however that conditions have been recommended for attachment by the Public and Environmental Protection Team and the Land & Air Quality Team. These replicate those which would be reattached from the previous permission. The Transportation Development Management Team has again confirmed that the proposal is capable of complying with road safety criteria subject to conditions. Again the majority of these conditions replicate those attached to the 2013 planning permission in principle (Planning Reference 13/03587/PPP), however, it is noted in the Transportation Development Management Team's response that additional traffic features have been installed on the A921...
since the 2013 approval was granted. As a result, the required 1.8 metre wide footpath along the full site frontage will have to tie in between the extents of the existing footpath to the west and the new road-narrowing build-out and bus stop on the eastern extent of the site frontage. Network Rail were not consulted as part of the 2013 planning permission in principle for the site, however, they have provided comments regarding this application for renewal. In this particular case, Network Rail has recommended the application for approval subject to the inclusion of two conditions to address possible excavation of the adjacent embankment which support the railway. These conditions have therefore been attached to this recommendation. In addition, appropriate advisory notes, as recommended by Network Rail, have also been attached to the guidance notes of the planning decision notice for the developer.

2.3.6 In light of the above, the application, subject to conditions, continues to meet the relevant policy requirements (e.g. land use compatibility, amenity, road safety etc) as set out in the committee report for application 13/03587/PPP.

**CONSULTATIONS**

<table>
<thead>
<tr>
<th>Land And Air Quality - EPES</th>
<th>Has recommended the application for approval subject to the inclusion of the same condition attached to planning permission in principle 13/03587/PPP.</th>
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<tbody>
<tr>
<td>Network Rail</td>
<td>Has recommended conditional approval.</td>
</tr>
<tr>
<td>Public and Environmental Protection Team</td>
<td>Has recommended the application for approval subject to the inclusion of the same condition attached to planning permission in principle 13/03587/PPP.</td>
</tr>
<tr>
<td>Transportation Development Management Team</td>
<td>Has recommended conditional approval.</td>
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**REPRESENTATIONS**

A total of 7 letters of objection have been received from 3rd parties in relation to this renewal application. The concerns raised include:

- Road and pedestrian safety
- Stability of land/structural integrity of site
- Proximity to railway line
- Design would be out keeping with pattern of development including building lines
- Residential amenity
- Planning permission was refused a number of years ago for dwellinghouse in site
- Private legal matter
The concerns raised above regarding road and pedestrian safety, proximity to railway line, residential amenity and design were all considered under the previous application. This application is to renew the previous application for a further three years and is for the same development with no changes proposed. The above concerns were, therefore, considered in the original committee report and there have been no new material changes in circumstances since the original application was approved.

The concerns relating to noise have been addressed earlier in this report with the necessary condition relating to the submission of an acoustic report with any detailed planning application being re-inserted into the recommendation. The objectors concerns regarding design and impact on the streetscape are not material planning considerations in determining this application to renew the planning permission in principle as detailed drawings would be submitted with any future approval required by condition application. In addition, Network Rail has also been consulted with the renewal application under consideration and has recommended the application for approval subject to the inclusion of 2 conditions which are attached to the recommendation.

Lastly, private legal matters are not a material consideration in the assessment of planning applications.

CONCLUSIONS

The renewal of this permission is considered acceptable in meeting the terms of planning legislation and the Development Plan. The proposal would still be compatible with the Development Plan in terms of its land use and no other changes in circumstances have occurred within the local area since the previous granting of planning permission that would affect the original decision.

RECOMMENDATION

It is accordingly recommended that the application be approved subject to the following conditions and reasons:

1. A further application(s) for certain matters (Approval of Matters Required by Condition) shall be submitted for the requisite approval of this Planning Authority, together with the detailed plans which shall include:

(a) A location plan of all the site to be developed to a scale of not less than 1:2500, showing generally the site, any existing trees, hedges, walls (or other boundary markers) layout of the roads and sewers, and the position of all buildings;
(b) A detailed plan to a scale of not less than 1:500 showing the site contours, the position and width of all proposed roads and footpaths including public access provision, the siting of the proposed dwellinghouse, finished floor levels, garden ground, new walls and fences and details of proposed landscape treatment;
(c) Detailed plans, sections and elevations of all buildings proposed to be erected on the site, together with details of the proposed method of drainage and the colour and type of materials to be used externally on walls and roofs;
(d) An acoustic report prepared by a suitably competent person which shall determine the impact of noise levels on the proposed use and, if required, shall detail the attenuation/design measures necessary to protect the amenity of the occupants of the dwellinghouse.
No work shall be started on site until the written permission of this Planning Authority has been granted for these proposals, or such other details as may be acceptable.

Reason: To be in compliance with Section 59 of The Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc (Scotland) Act 2006.

2. The indicative drawings and layout plans accompanying the application are hereby not approved.

Reason: The details shown on the drawings submitted are not regarded as necessarily the only or best solution for the development of this site.

3. The detailed plans required by condition 1 of the planning permission in principle shall include details and the construction of any retaining walls, excavation works and any temporary works required to ensure the stability of the railway embankment within the site boundary during the construction works. These details shall be submitted for approval in writing by the Planning Authority in consultation with Network Rail and shall be carried out only in full accordance with such approved details.

Reason: To protect the safety and stability of the existing rail network.

4. BEFORE ANY WORKS COMMENCE ON SITE, the developer must provide a suitable trespass proof fence of at least 1.8 metres in height adjacent to network Rail's boundary and provision for the fence's future maintenance and renewal must be made. Details of the proposed fencing shall be submitted to the Planning Authority for approval in writing in consultation with Network Rail before development is commenced and the development shall be carried out in accordance with such approved details and maintained in perpetuity.

Reason: In the interests of public safety.

5. The detailed plans required by condition 1 of the planning permission in principle shall include the design and specification of the proposed turning area suitable for use by a car to a scale not less than 1:500. The turning area shall be formed outwith the parking areas and shall be completed in accordance with the approved details PRIOR TO THE OCCUPATION OF THE DWELLINGHOUSE and shall thereafter be retained through the lifetime of the development.

Reason: In the interests of road safety; to ensure that all vehicles taking egress from the site can do so in a forward gear.

6. PRIOR TO THE OCCUPATION OF THE DWELLINGHOUSE, a new 1.8 metre wide footway and its ancillary vehicular crossing shall be provide along the total frontage of the site lying in between the existing 1.8 metre wide footway directly to the west of the site frontage and the nib build-out and bus stop at the eastern extents of the site frontage. These works shall be in accordance with the current Fife Council Transportation Development Guidelines. For the avoidance of doubt, the footway must be provided within the extents of the existing roadside verge/application site boundary and no encroachment into the adjoining public road is permissible.

Reason: In the interests of road safety; to ensure the provision of an adequate design layout and construction.
7. PRIOR TO THE OCCUPATION OF THE DWELLINGHOUSE, all access driveways shall be constructed at a gradient not exceeding 1 in 10 (10%) and shall have appropriate vertical curves to ensure adequate ground clearance for vehicles. The first two metre length of the driveway to the rear of the public footway shall be constructed in a paved material (not concrete slabs).

    Reason: In the interest of road safety; to ensure the provision of an adequate design layout and construction.

8. PRIOR TO THE OCCUPATION OF THE DWELLINGHOUSE, visibility splays 2.4m x 43m shall be provided and maintained clear of all obstructions exceeding 600mm in height above the adjoining road channel level, at the junction of the vehicular access and the public road, in accordance with the current Fife Council Transportation Development Guidelines. The visibility splays shall be retained through the lifetime of the development.

    Reason: In the interest of road safety; to ensure the provision of adequate visibility at the junctions of the vehicular access with the public road.

9. PRIOR TO THE OCCUPATION OF THE DWELLINGHOUSE, off street parking shall be provided in accordance with the current Fife Council Parking Standards contained within the Transportation Development Guidelines. The parking spaces shall thereafter be retained through the lifetime of the development.

    Reason: In the interest of road safety; to ensure the provision of adequate off-street parking facilities.

10. PRIOR TO THE OCCUPATION OF THE DWELLINGHOUSE, the front door of any garage adjacent to the dwellinghouse shall be located at least 6 metres from the road boundary.

    Reason: In the interest of road safety; to ensure the provision of adequate space for vehicles to stand clear of the public road.

11. In the event that contamination not previously identified by the developer prior to the grant of this planning permission is encountered during the development, all works on site (save for site investigation works) shall cease immediately and the Planning Authority shall be notified in writing within 2 working days. Unless otherwise agreed in writing with the Planning Authority, works on site shall not recommence until either (a) a Remediation Strategy has been submitted to and approved in writing by the Planning Authority or (b) the Planning Authority has confirmed in writing that remediation measures are not required. The Remediation Strategy shall include a timetable for the implementation and completion of the approved remediation measures. Thereafter remediation of the site shall be carried out and completed in accordance with the approved Remediation Strategy.

    Following completion of any measures identified in the approved Remediation Strategy a Validation Report shall be submitted to the local planning authority. Unless otherwise agreed in writing with the Planning Authority, no part of the site shall be brought into use until such time as the whole site has been remediated in accordance with the approved Remediation Strategy and a Validation Report in respect of those works has been approved in writing by the Planning Authority.

    Reason: To ensure all contamination within the site is dealt with.
12. The dwellinghouse proposed on the site shall be used solely as a residence for (a) a single person or by people living together as a family; or, (b) not more than 5 unrelated residents living together in a dwellinghouse. For the avoidance of doubt the dwellinghouse hereby approved shall not be used for Housing in Multiple Occupation.

   Reason: In the interests of maintaining a mixed and balanced housing stock as required by Policy H3 of the Mid Fife Local Plan 2012.

STATUTORY POLICIES, GUIDANCE & BACKGROUND PAPERS

In addition to the application the following documents, guidance notes and policy documents form the background papers to this report.

National Guidance
SPP - Scottish Planning Policy (2014)

Development Plan
SESplan (2013)
Adopted Mid Fife Local Plan (2012)

Other Guidance
Modified Proposed FIFEplan (Proposed Fife Local Development Plan) 2017

Report prepared by David Shankland, Case Officer and Chartered Planner. Report signed off by Bill Lindsay, Service Manager and Central Planning Committee Lead Officer on 21 March 2017.

Date Printed 16/03/2017
17/00187/PPP

Land to East of 158 Kinghorn Road, Burntisland

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Legend

Application Boundary

Economy, Planning & Employability Services
ITEM NO: 4(c)

APPLICATION FOR FULL PLANNING PERMISSION  REF: 17/00306/FULL

SITE ADDRESS:  FIFE CENTRAL RETAIL PARK CHAPEL PARK KIRKCALDY

PROPOSAL :  ERECTION OF DIY STORE/BUILDERS MERCHANTS, ASSOCIATED GARDEN CENTRE, 5 NON FOOD RETAIL UNITS (DEMOLITION OF 2 EXISTING NON FOOD RETAIL UNITS), ASSOCIATED ACCESS, PARKING AND SERVICE AREAS (SECTION 42 APPLICATION TO MODIFY CONDITION 2 OF PLANNING PERMISSION 06/00009/CFULL TO REMOVE THE ALLOWANCE FOR SPORTS GOODS TO BE SOLD FROM THESE UNITS)

APPLICANT:  HAMMERSON (KIRKCALDY) LTD
            KING’S PLACE 90 YORK WAY LONDON

WARD NO:  NW11
            Kirkcaldy North

CASE OFFICER:  William Shand

DATE REGISTERED:  16/02/2017

REASONS FOR REFERRAL TO COMMITTEE

This application requires to be considered by the Committee because:

The application would involve the amendment to a condition attached to a Major Development and therefore the proposal is classed as a Major Development under the Scottish Government's Hierarchy of Developments.

SUMMARY RECOMMENDATION

The application is recommended for:

Conditional Approval
Under Section 25 of the Planning Act the determination of the application is to be made in accordance with the Development Plan unless material considerations indicate otherwise.

1.0 BACKGROUND

1.1 Site

1.1.1 The application site is approximately 3.5 hectares in area and comprises phase 2 of the Central Retail Park. The site includes 6 retail units with 5 joined in a terraced row and the 6th somewhat detached due to an intervening garden centre/ storage area. The site also includes the internal access roads associated with the retail park. The Central Retail Park operates as an existing Retail Park with 13 retail units set in a row along its northern boundary and a Boots and Sainsburys (with petrol station) in the southern area of the site. There are also three class 3 units within the south west corner of the retail park. This site relates to the north-east corner of the retail park and this part of the retail park includes B&Q, PC World, Mothercare, Argos, Harveys and Toys R Us. Access to the retail park can be taken from the east at Robert Adam Roundabout off Ostlers Way and to the west from Chapel Park. The site is bordered by business land to the north, the rest of the Retail Park to west and residential properties to the east. There is vacant land to the south with residential properties beyond this. There is a band of trees to the north which separates the site from the neighbouring land.

1.1.2 The site is within the Fife Central Retail Park which is identified within the Adopted Mid Fife Local Plan (2012) as a Commercial Centre.

1.2 Planning History

1.2.1 The history of the retail park is considerable and spans the last 20 years. There are both significant and minor developments that have all contributed to the form of the retail centre that now exists. Setting aside minor applications for alterations and signs the main retail decisions relevant to this application can be summarised as follows.

1.2.2 The key outline planning permission (93/K/0264) from 1995 is for a "mixed retail development and business park (including food & non-food retail, garden centre, restaurant, petrol filling station and business units). Planning permission was granted following an appeal that resulted in 3 competing retail sites being assessed at a public inquiry. This was the successful application and the permission and its conditions are embodied within the Reporters decision on the case. No maximum floor space figure was set by the decision, either within the description of the development or the terms of the conditions. The consent also did not restrict the goods which could be sold from the site beyond defining that the retail units which could be for used for food and non-food retailing and restricting the amount of floorspace for clothing and footwear. The detailed consent for phase 1 was approved through planning permission 96/00354.

1.2.3 The phase of the retail park which is subject of this application (phase 2) was given planning permission through 06/00009/CFULL and includes a DIY store/builders merchants and associated garden centre, 5 non-food retail units (demolition of 2 existing non-food units), associated parking and service areas. The goods sold from these units is controlled and the key condition states:
"The permission hereby granted shall be restricted as follows:

a. The DIY store, builders merchants and garden centre shall be operated as a single retail unit and shall not be disintegrated in any way.
b. The DIY unit shall be used for the sale of DIY goods and for no other purposes, including any other uses which may otherwise be permitted in terms of Class 1 (shops) as defined in the Town and Country planning (Use Classes) (Scotland) Order 1997, or in any statutory instrument revoking and re-enacting that Order. It shall not be used primarily for the sale of other "bulky goods", including furniture, carpets or electrical goods.
c. The garden centre shall be restricted to the display and sale of plants and other garden related products.
d. The builders yard shall be restricted to the display and sale of building and DIY materials.
e. Subject to the detailed provisions herein the following categories of goods shall not be sold from the non-food retail units.

i. No food and drink, other than limited ancillary sales of confectionary and other similar items displayed and purchased at a sales point.

ii. No clothing and footwear goods to be sold in units solely or predominantly selling those goods.

iii. No jewellery or silverware to be sold in units solely or predominantly selling those goods.

iv. No books, CD's, DVD's or tapes to be sold in units solely or predominantly selling those goods.

v. Sports goods, including sports clothing and footwear shall be permitted subject to a limit of only one retail unit selling those goods.

f. No expansion to the retail floor space, including the formation of mezzanine levels, or reduction/subdivision of the retail floor space shall occur without the express written consent of this Planning Authority."

1.2.4 Planning application 16/00164/FULL for the redevelopment of the existing Homebase Unit to form 5 No. new retail units (Class 1), improvement to facades, reconfiguration of car park, amendments to access roads and formation of 2 No. pod units (Class 3) was refused on 15 June 2016. The decision was appealed, (PPA-250-2268) and the appeal was upheld on 13 October 2016. The appeal was approved subject to the following condition (condition 1) restricting the goods that can be sold from the units:

The non-food retail warehouse units shall be limited to the sale and display of the following goods:

Bulky Goods including:

(i) Furniture and floor coverings.

(ii) Household textiles and soft furnishings,

(iii) DIY and home improvement supplies,

(iv) Major tools and equipment,

(v) Major household appliances (electric or not) and

(vi) Major audio-visual equipment

(vii) Garden Furniture and Equipment and plants'

and such other goods as are ancillary to one of the permitted sales uses and for no other purposes, including any other uses which may otherwise have been permitted in terms of Use Class I as defined in the Schedule to the Town and Country Planning (Use Classes) (Scotland) Order 1997 or in any statutory instrument revoking and re-enacting that Order. Any ancillary
retail of other goods within a retail unit, shall be limited in total to 10% of the total net sales area of any individual unit.

For avoidance of doubt the net sales area for any use shall be calculated on the basis of any area within the shop or store which is visible to the public and to which it has access, including fitting rooms, checkouts, the area in front of checkouts, serving counters and the area behind used by serving staff, areas occupied by retail concessionaires, customer services areas, and internal lobbies in which goods are displayed; but not including customer toilets.

1.2.5 Following refusal of application 16/00164/FULL, the applicant also submitted an amended planning application at the same time as they submitted an appeal. This application (16/03020/FULL) was later withdrawn following the success of the appeal.

1.2.6 During the appeal outlined in section 1.2.4, the applicant had requested that one unit for the retail of sports goods be allowed within the development. The applicant indicated that this would be transferred from Phase 2 of the retail park. While the Reporter concluded that this would have no detrimental impact, they did not consider there to be a mechanism through the appeal to implement this. Consequently an application (16/03607/FULL) was made under section 42 of the Planning Act to amend condition 1 outlined in section 1.2.4 to include the allowance for one unit to sell sports goods. This was approved on 19 January 2017 subject to a unilateral planning obligation. The planning obligation set out three requirements:

1) That within 3 months of the approval of that application, a further section 42 application would be made to delete the sports goods allowance from Phase 2 of the retail park;
2) That within 2 weeks of the approval of any application noted in 1), the applicant would submit a Notice of Initiation to confirm that this is the new planning permission for phase 2;
3) Only one unit within these two sites would be used for sports goods retail until points 1) and 2) were complete.

1.2.7 This application has been made in accordance with point 1) above and seeks to amend the condition restricting the goods that can be sold which is outlined in section 1.2.3

1.3 Proposed Amendment to Approved Development

1.3.1 The applicant seeks to vary the terms of condition 2 attached to planning permission 06/00009/CFULL. Condition 2 is outlined in section 1.2.3 of this report.

1.3.2 This application is essentially the follow up application following approval of the application to allow the sports goods allowance from phase 2 to be transferred to the recently approved redevelopment of the Homebase unit. This application would see the sports goods allowance being deleted from phase 2 in accordance with the Unilateral agreement within planning permission 16/03607/FULL. To refuse this application would result in there being an allowance for the sale of sports goods from one unit within the Homebase redevelopment site and phase 2 of the retail park.

1.3.3. The applicant has proposed that the condition be revised in the following way:

The permission hereby granted shall be restricted as follows:
a. The DIY store, builders merchants and garden centre shall be operated as a single retail unit and shall not be disintegrated in any way.
b. The DIY unit shall be used for the sale of DIY goods and for no other purposes, including any other uses which may otherwise be permitted in terms of Class 1 (shops) as defined in the Town and Country planning (Use Classes) (Scotland) Order 1997, or in any statutory instrument revoking and re-enacting that Order. It shall not be used primarily for the sale of other "bulky goods", including furniture, carpets or electrical goods.
c. The garden centre shall be restricted to the display and sale of plants and other garden related products.
d. The builders yard shall be restricted to the display and sale of building and DIY materials.
e. Subject to the detailed provisions herein the following categories of goods shall not be sold from the non-food retail units.
   i. No food and drink, other than limited ancillary sales of confectionary and other similar items displayed and purchased at a sales point.
   ii. No clothing and footwear goods to be sold in units solely or predominantly selling those goods.
   iii. No jewellery or silverware to be sold in units solely or predominantly selling those goods.
   iv. No books, CD's, DVD's or tapes to be sold in units solely or predominantly selling those goods.
   v. No sports goods, including sports clothing and footwear, to be sold in units solely or predominantly selling those goods.
f. No expansion to the retail floor space, including the formation of mezzanine levels, or reduction/subdivision of the retail floor space shall occur without the express written consent of this Planning Authority.

1.3.4 Essentially the applicant has removed any reference to one unit of sports goods being allowed, and moved sports goods into the items that cannot be sold from the units.

1.4 Application Process

1.4.1 An application to vary a planning condition is made under section 42 of the principle Planning Act (1997). A section 42 application which relates to a major development is also categorised as a major development however the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 states that applications made under Section 42 of the Town and Country Planning (Scotland) Act 1997 do not require to be preceded by the submission of a Proposal of Application Notice (PAN). In this case, the application has been treated as a major development but did not require the submission of a PAN.

1.4.2 Under Fife Council’s Scheme of Delegation (Local Developments) Planning Etc (Scotland) Act 2006 all applications for major developments need to be considered and determined by the appropriate Committee. This application is therefore being presented to the Planning Committee on this basis.

1.4.3 The application was advertised in the local press on 23 February 2017 for neighbour notification purposes.

1.5 Emerging Local Development Plan

1.5.1 The examination of the Proposed FIFEplan Local Development Plan is now complete and the modified Proposed FIFEplan has been agreed by Executive Committee. Following approval by the Executive Committee, the emerging Local Development Plan is now described as the modified Proposed Plan (2017). The modified Proposed Plan is not yet adopted and remains a significant material consideration but at the current stage in the process which leads to adoption
of the plan it does not have the same status or carry the same weight as the current Development Plan.

1.5.2 The site remains allocated as a Commercial Centre within the Proposed Local Development Plan.

2.0 ASSESSMENT

2.1 The key issues relevant to an assessment of this application are the following:

- Section 42 of the Town and Country Planning Act (Scotland) 1997 as amended
- Retail Considerations
- Implementation

2.2 Section 42 of the Town and Country Planning Act (Scotland) 1997 as amended

2.2.1 This application has been submitted under Section 42 of the Town and Country Planning (Scotland) Act 1997 (as amended). Section 42 of this Act states that:

'On such an application, the Planning Authority shall consider only the question of the conditions subject to which planning permission should be granted, and: if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly however if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous planning permission was granted, they shall refuse the application.'

2.2.2 These types of applications therefore do not generally revisit the principle of development on the site but only consider the appropriateness of the conditions attached to the previous consent. In assessing whether any condition is still relevant there would be the requirement to consider certain aspects of the development. Although Section 42 does not require the developer to specify which condition(s) they are looking to change or remove, the developer must support the application with sufficient information to identify and justify conditions for amendment or removal. In this instance the applicant has indicated that condition 2 should be amended, however should the application be approved the nature of the legislation would require all conditions to be revisited as they may be linked or connected to this specific condition. The proposed revised condition is outlined in section 1.3.3 of the report.

2.2.3 The main matters for consideration are whether the proposed amendments to the conditions would undermine the reason for the condition or the Development Plan position and if the application does undermine either, whether there are material considerations which would outweigh these considerations. The condition relates primarily to restricting the goods sold and therefore the main issue for consideration would be specific to retail policy and impact on the town centre.

2.3 Retail Considerations

2.3.1 The SPP (Promoting Town Centres) sets key criteria for the delivery of a "town centre first principle" and this should be applied when planning for uses which attract significant numbers of people, including retail and commercial leisure, offices, community and cultural facilities. At the same time the SPP indicates that plans should identify a network of centres and explain how
they can complement each other. Emerging or new centres designated within key new developments or land releases should also be shown within the network of centres.

2.3.2 SESplan (2013) Policy 3 Retail supports retail and commercial development in strategic town centres and gives priority to town centre then edge of centre locations, then established commercial centres and finally out of centre locations for retail and commercial leisure developments. It seeks to protect these centres when assessing development proposals. Kirkcaldy Town Centre is considered a strategic location.

2.3.3 Policy R1 of the Adopted Local Plan states that within the network of centres, proposals for retail floorspace in the form of new development, extensions or redevelopment will be supported providing that they are located in town centres or identified in a settlement statement in this local plan. A retail impact assessment will not normally be required for these proposals. For other locations, a retail impact assessment will be required for developments of 1,000 square metres gross floorspace or more. For all locations outwith town centres, the sequential approach will be applied. The application has been accompanied by a Retail Impact Assessment.

2.3.4 The modified Proposed Plan (Fife Local Development Plan) 2017 is a material consideration. The town centre first principle is set out within the proposed Local Development Plan through Policy 6. This states that:

Town centres will be the first choice for uses likely to attract a large number of people including retail, offices, leisure, entertainment, recreation, cultural and community facilities. Development proposals including these uses will be supported where they:

1. Comply with the sequential approach within the relevant catchment area shown in Figure 6.1;
2. Comply with the respective uses and roles of the defined network of centres;
3. Will have no significant adverse effect on the vitality and viability of the town centres and the local economy; and
4. Are appropriate for the location in scale and character and will not adversely impact on residential amenity or negatively impact on adjacent uses.

This policy also states that retail development with a gross floorspace over 2,500sqm will require a retail impact analysis to demonstrate that it will address a deficiency in the quantity and quality of retail floorspace when assessed against the latest Fife Retail Capacity Study.

The sequential approach set out within the policy is as follows:

- Town centre (within defined boundary)
- Edge of town centre
- Local Centre
- Other commercial centres identified in the local development plan (see paragraph 10 in "Applying Policy 6" below)
- Out-of-centre locations that are, or can be, made easily accessible by a choice of transport modes.

2.3.5 The proposed amendment to condition 2 would result in the deletion of the allowance for one unit within phase 2 to sell sports goods. Unusually this would see the removal of retail which could potentially impact on the vitality and viability of the town centre from this phase of the retail park. The proposal in itself is therefore of a benefit to the town centre. The reason for the condition was to control the nature of the development and seek to minimise impact on the town
centre. The amendment to the condition would not undermine the reason for the condition and is considered to be in compliance with the Development Plan and modified Proposed Plan.

2.3.6 While the application in itself is a betterment, it should be noted that this application is part of the facilitation of the allowance for a sports goods unit to be included in the redevelopment of the Homebase unit. It has already been agreed that one sports goods unit can operate from that development however that decision was taken on the provision that the allowance from phase 2 was removed. This is the aim of this application. The result, would mean that there would be no net gain of sports goods units across the two sites should this application be approved. It should be noted however, that should this application be refused then this would allow for both phase 2 and the redevelopment site to have a sports goods unit.

2.3.7 Overall, the proposed modification to the condition would be acceptable as it would remove the allowance for sports goods retailing from phase 2 which would not cause any significant retail impact. This would be in compliance with the Development Plan, the reason for the condition and the Planning Obligation attached to planning permission 16/03607/FULL.

2.4 Implementation

2.4.1 It is important to consider whether the six tests of a planning condition can still be met as set out within planning Circular 4/2008 "The Use of Conditions in Planning Permission". The six tests are need, relevance to planning, relevance to the development, enforceability, precision and reasonableness in all other regards. It is noted that the current condition is not precisely worded in that it appears to have double negatives. While the focus and intent of the condition is clear, written in its current form it is open to challenge. It is therefore proposed to change the condition to below:

The permission hereby granted shall be restricted as follows:

- The DIY store, builders merchants and garden centre shall be operated as a single retail unit and shall not be disintegrated in any way.
- The DIY unit shall be used for the sale of DIY goods and for no other purposes, including any other uses which may otherwise be permitted in terms of Class 1 (shops) as defined in the Town and Country planning (Use Classes) (Scotland) Order 1997, or in any statutory instrument revoking and re-enacting that Order. It shall not be used primarily for the sale of other "bulky goods", including furniture, carpets or electrical goods.
- The garden centre shall be restricted to the display and sale of plants and other garden related products.
- The builders yard shall be restricted to the display and sale of building and DIY materials.
- Subject to the detailed provisions herein the following categories of goods shall not be solely or predominantly sold from the non-food retail units:
  - Food and drink, other than limited ancillary sales of confectionary and other similar items displayed and purchased at a sales point.
  - Clothing and footwear.
  - Jewellery or silverware.
  - Books, CD's, DVD's or tapes.
  - Sports goods, including sports clothing and footwear.
- No expansion to the retail floor space, including the formation of mezzanine levels, or reduction/subdivision of the retail floor space shall occur without the express written consent of this Planning Authority.
It is considered that the proposed condition 2 as amended would meet the six tests of a planning condition.

2.4.2 Annex 1 of Circular 3/2013 (Development Management Procedures) states that the effect of granting permission for a section 42 application is such that a new and separate permission exists for the development with different (or no) conditions attached. The previous planning permission remains unaltered by, and is not varied by, the decision on the section 42 application. The approval of this application would therefore create a new planning permission and as this site is operational, any conditions which were added as pre-start conditions of the previous consent or which have been sufficiently discharged should not be carried over to this consent. On this basis, it is considered that some conditions should be amended to reflect this new permission while others should be deleted.

2.4.3 Starting with the conditions to be deleted, conditions 1, 3, 4, 5, 6, 7, 8, 9, 10, 13, 16, 17, 18, 19, 20 and 21 are all pre-start conditions or instructive conditions on how the development should be constructed. From the file it appears that these have been discharged or accorded with and therefore are not necessary for any new planning permission. These are proposed to be deleted. The result of this would be that the condition which is subject of this application becomes condition 1 of the new consent.

2.4.4 It is proposed for condition 11 (now condition 2) to be retained but to be amended to remove any reference to completion of the development. The new condition 3 is retained from the previous consent. This condition should be retained in perpetuity. Conditions 22 and 23 (now 4 and 5 respectively) have been amended to be required in perpetuity only.

2.4.5 With the proposed changes to the conditions, the planning permission would meet the six tests of planning conditions.

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<td>The proposed variation to condition 2 of planning permission 06/00009/CFULL is considered acceptable in principle in that it would comply with the reason given for the condition and would have no significant impact on the vitality or viability of the town centre. The condition as proposed has been amended further so that it would comply with six tests of a planning condition. The proposed change to the condition is considered also to comply with the Development Plan, SPP and modified Proposed Plan (2017). Planning permission can therefore be approved with the amended condition.</td>
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<th>RECOMMENDATION</th>
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It is accordingly recommended that the application be approved subject to the following conditions and reasons:

1. The permission hereby granted shall be restricted as follows:

a. The DIY store, builders merchants and garden centre shall be operated as a single retail unit and shall not be disintegrated in any way.

b. The DIY unit shall be used for the sale of DIY goods and for no other purposes, including any other uses which may otherwise be permitted in terms of Class 1 (shops) as defined in the Town and Country planning (Use Classes) (Scotland) Order 1997, or in any statutory instrument revoking and re-enacting that Order. It shall not be used primarily for the sale of other "bulky goods", including furniture, carpets or electrical goods.

c. The garden centre shall be restricted to the display and sale of plants and other garden related products.

d. The builders yard shall be restricted to the display and sale of building and DIY materials.

e. Subject to the detailed provisions herein the following categories of goods shall not be sold from the non-food retail units:

   i. Food and drink, other than limited ancillary sales of confectionary and other similar items displayed and purchased at a sales point.
   ii. Clothing and footwear.
   iii. Jewellery or silverware.
   iv. Books, CD's, DVD's or tapes.
   v. Sports goods, including sports clothing and footwear.

f. No expansion to the retail floorspace, including the formation of mezzanine levels, or reduction/subdivision of the retail floorspace shall occur without the express written consent of this Planning Authority.

   Reason: In order to control the nature of the development hereby approved in accordance with the details submitted and further seek to minimise impact on the town centre.

2. There shall be no open space storage of materials or goods on the site, other than in purpose built enclosures which must be built to the satisfaction of this Planning Authority.

   Reason: In the interests of visual amenity; to ensure appropriate boundary enclosure and storage.

3. The parking and service areas shall only be used for the parking and manoeuvring of vehicles. There areas shall not be used for the display or sale of any goods.

   Reason: To ensure the appropriate use of the parking and servicing areas.

4. All roadside boundary markers shall be maintained at a height not exceeding one metre above the adjacent road channel level.
Reason: In the interests of road safety; to ensure the provision and maintenance of adequate visibility at junctions and accesses.

5. A one metre verge shall be retained along the north side of the shared cycle/pedestrian link.
   
   Reason: To allow a safe distance between cyclists and any retaining structures.

### STATUTORY POLICIES, GUIDANCE & BACKGROUND PAPERS

In addition to the application the following documents, guidance notes and policy documents form the background papers to this report.

Scottish Planning Policy (SPP) (2014)
Circular 3/2013 (Development Management Procedures)
Circular 4/2008 (The Use of Conditions in Planning Permission)
SESPlan Strategic Development Plan (2013)
Adopted Mid Fife Local Plan (2012)
Modified Proposed Plan (Proposed FIFEplan Local Development Plan) (2017)

Report prepared by William Shand, Chartered Planner and Case Officer.
Report signed off by Bill Lindsay, Service Manager and Central Planning Committee Lead Officer on 21 March 2017.

Date Printed 13/03/2017