

ANGUS COUNCIL

22 NOVEMBER 2022

PLANNING APPLICATION – LAND AT ELLIOT INDUSTRIAL ESTATE ARBROATH

GRID REF: 362227 : 739807

REPORT BY SERVICE LEADER – PLANNING & SUSTAINABLE GROWTH

**Abstract:** This report deals with planning application No [22/00288/FULM](#) by TJ Morris Ltd c/o Bennett Real Estate for the creation of retail units to include outdoor garden centre, a drive-thru restaurant unit, and a drive-to restaurant unit, with ancillary development including access, drainage, landscaping and other associated works on land at Elliot Industrial Estate, Arbroath. This application is recommended for approval subject to conditions.

**1. RECOMMENDATION**

It is recommended that the application be approved for the reasons and subject to the conditions given in Section 11 of this report.

**2. ALIGNMENT TO THE ANGUS LOCAL OUTCOMES IMPROVEMENT PLAN/CORPORATE PLAN**

This report contributes to the following local outcome(s) contained within the Angus Local Outcomes Improvement Plan and Locality Plans:

- Safe, secure, vibrant and sustainable communities
- A reduced carbon footprint
- An enhanced, protected and enjoyed natural and built environment

**3. BACKGROUND**

3.1 At its meeting on 17 October 2019, Angus Council resolved to grant planning permission for a retail development on land at Elliot Industrial Estate, Arbroath (appn [18/00975/FULM](#) refers). The planning permission was granted on 5 December 2019 following approval of conditions by Council. A plan showing the location of the site is provided at Appendix 1.

3.2 The approved development comprises food and non-food units (Class 1), drive thru units (Class 3 and Sui Generis) and ancillary development. It provides a total gross floor area (GFA) of 9313sqm (including an external sales area and a mezzanine floor) in units ranging from 139sqm to 2137sqm (GFA) in size. The permission allows for 2557sqm net of convenience floorspace and 4307sqm net of comparison floorspace. It includes the formation of a new vehicular junction on the A92 to provide access to and egress from a new car park that would serve the development. A copy of the decision notice relative to that permission is provided as Appendix 2 and a plan showing the approved layout is provided as Appendix 3.

3.3 The planning permission remains extant. However, the site has been acquired by another party. That party wishes to undertake the development in a different manner than previously approved. The current application has been submitted seeking permission for an amended development.

## **4. INTRODUCTION**

- 4.1 The applicant seeks full planning permission for the erection of five retail units selling convenience and comparison goods, along with one drive-thru and one drive-to restaurant units and associated development on land at Elliot Industrial Estate, Arbroath. A plan showing the proposed site layout is provided at Appendix 4.
- 4.2 The proposed development site measures around 3.35 hectares in area and sits between Elliot caravan park and the Westway retail park. It is a relatively flat brownfield site. A grassed landscape strip with a number of trees is located adjacent to the main road frontage and a stone wall forms the boundary to the A92. The site includes a section of upadopted road that runs along the eastern boundary of the neighbouring caravan site.
- 4.3 The proposal would provide a development with a GFA of 8460sqm (including an external sales area). The retail floorspace would measure 8150sqm (GFA) while the drive-thru and a drive-to restaurant units would have a combined floor area of 310sqm. The retail units would provide 2483sqm net convenience floorspace and 4132sqm net comparison sales floorspace. The five retail units would range from around 720sqm to 3025sqm (GFA) in size with the largest unit also accommodating an outdoor garden centre. The smaller drive-thru and drive-to restaurant units would be located towards the frontage of the site. Parking for 400 cars including disabled bays and electric vehicles is proposed along with provision for motorcycles and bicycles. The proposed development would involve the formation of a new signalised junction on the A92 which would provide access to and egress from the site. The existing junction serving the unadopted road would be stopped-up. Pedestrian routes are shown linking to the Dundee Road and it is indicated that an existing bus stop and shelter would be relocated along the site frontage. A 2.5m high timber acoustic fence is proposed as the boundary to the caravan site.
- 4.4 The application has been varied to reduce car parking spaces from 405 to 400 and to include 15 motorcycle parking spaces. The drawings have also been updated to reflect roads authority requirements at the new junction with the A92.
- 4.5 The application has been subject of statutory neighbour notification and was advertised in the press as required by legislation.

## **5. RELEVANT PLANNING HISTORY**

- 5.1 The planning history relevant to the site is set out in report 347/19 which is provided as Appendix 5.
- 5.2 However, of most relevance, is planning application [18/00975/FULM](#) which is discussed above at section 3. As indicated, that application sought permission for the erection of a large-scale retail development on this site. The application was approved by council at its meeting on 5 December 2019 and the permission remains extant.
- 5.3 A Proposal of Application Notice (ref: [21/00893/PAN](#)) in respect of a retail development, drive-thru commercial units and ancillary development including access, drainage, landscaping, car parking and other associated works at the site was considered by the Development Standards Committee at its meeting on 14 December 2021 ([Report No. 389/21 refers](#)). Committee agreed the report with the additional matters of the improvement of the A92 junction and potential for a vehicular link between the site and the existing retail park; and issues related to sustainability and sustainable design within the development, such as potential for renewable energy generation and provision for electric vehicle charging.

## 6. APPLICANT'S CASE

6.1 The following documents have been submitted in support of the application:

- Pre-application consultation report
- Design and access statement
- Economic impact statement
- Employment land audit
- Employment marketing statement
- Noise impact assessment (parts 1 - 3)
- Planning statement
- Retail statement
- Flood risk assessment
- Drainage strategy
- Ground investigations (Parts 1 – 5)
- Transport assessment and appendices 1 - 8
- Breeding birds – species protection statement
- Additional information has been provided that summarises matters relating to economic benefit and retail impact, and that indicates the applicant intends to retain an existing Home Bargains retail unit in the town centre.

6.2 The supporting information is available to view on the council's [Public Access](#) system and is summarised as appropriate within the report and at Appendix 6 below.

## 7. CONSULTATIONS

7.1 **Angus Council – Roads** – has indicated no objection to the application subject to conditions. It is indicated that traffic generated by the development can be accommodated on the public road network with no significant, detrimental impacts. It has also accepted that there could be practical difficulties with providing a through route for vehicles between the application site and the neighbouring Westway retail park. It is noted that the nearest bus stops are located on the A92 where a bus service operates to and from Arbroath and Dundee City Centre. It is indicated that improvements should be made to the public transport infrastructure to facilitate the use of these services from the proposed development. *No specific comment has been provided in relation to flooding and drainage. However, in relation to the previous application for similar development on the site the service confirmed no objection but indicated that additional information on surface water disposal should be sought if the application was approved.*

7.2 **Angus Council – Environmental Health** – has indicated no objection to the application in respect of amenity impacts subject to conditions. *No specific comment is provided in relation to land contamination. However, in relation to the previous proposal for similar development at this site, the service advised it was satisfied that the site did not pose a significant risk of harm from land contamination.*

7.3 **Scottish Water** – has stated no objection but has advised this does not confirm that the proposed development can currently be serviced by its infrastructure.

7.4 **Network Rail** – has indicated that it would object to the application unless four specified conditions related to safety of the adjacent railway line are attached to any planning permission that is granted.

7.5 No response was received from the council's economic development team, Scottish Enterprise, or the Community Council.

## 8. REPRESENTATIONS

8.1 Three representations have been received. The representations are provided at Appendix 7 and are available to view on the council's [Public Access](#) website.

8.2 The following matters have been raised and are discussed in the Planning Considerations section of this report below: -

- **Potential amenity impacts associated with construction and operation of the development**
- **Potential impact from anti-social use of car park areas**
- **Potential impact on nesting birds**
- **Potential impact on access to adjacent land use**
- **Request for a hatched yellow box to be provided at the entrance to the adjacent caravan park**

## 9. PLANNING CONSIDERATIONS

9.1 Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that planning decisions be made in accordance with the development plan unless material considerations indicate otherwise.

9.2 In this case the development plan comprises: -

- [TAYplan](#) (Approved 2017)
- [Angus Local Development Plan](#) (ALDP) (Adopted 2016)

9.3 The following development plan policies are relevant to the determination of the application and are reproduced at Appendix 8 of this report: -

TAYplan (Approved 2017): Policies 1, 2, 3 and 5

Angus Local Development Plan (ALDP): Policies DS1, DS2, DS3, DS4, TC14, TC17, TC19, PV1, PV3, PV5, PV7, PV12, PV15 and PV18

### **Preliminary matters**

9.4 The ALDP is more than 5-years old as it was adopted in September 2016. TAYplan was approved in October 2017 but Scottish Government has indicated that approved strategic development plans and any associated supplementary guidance will remain in force until the publication of NPF4. Issues associated with the age of the ALDP are addressed further below.

9.5 The primary issue in relation to this proposal relates to the acceptability of the principle of large-scale retail development at this location. That requires consideration of development plan policy, national policy and the sites planning history. It is also appropriate to consider if the proposal would deliver similar economic benefits as those that previously justified approval of development of this nature at the location, and to consider any change in likely retail impact on town centres.

### **Principle of development**

9.6 The principle of large-scale retail development on this site was considered in the determination of planning application 18/00975/FULM, and an assessment of the proposal in relation to relevant policies was provided in report 347/19 (Appendix 5). The report concluded that the principle of large-scale retail development at this location was significantly contrary to development plan policy for the following reasons: -

1. The proposal is contrary to policy DS1 of the Angus Local Development Plan as the land is safeguarded for employment uses, the proposal would not support delivery of the development strategy, and it is not in accordance with other policies of that Plan, specifically policies DS2, DS3, TC14, TC17 and TC19.
  2. The proposal is contrary to policy TC14 of the Angus Local Development Plan as it would result in the loss of land that it is important to retain for employment use by virtue of its size, serviced location and proximity to the strategic road network. It is also contrary to policy TC14 as the proposal is contrary to policy TC19.
  3. The proposal is contrary to TAYplan Policy 5 and policy TC19 of the Angus Local Development Plan because this is an out of centre location that has poor accessibility by means other than private car. The proposal is also contrary to TAYplan Policy 2 and policies DS2 and DS3 of the Angus Local Development Plan by virtue of its poor accessibility by foot, cycle and passenger transport.
  4. The proposal is contrary to policies TC17 and TC19 of the Angus Local Development Plan as it would have an adverse impact on the vibrancy, vitality and viability of the town centre. It is also inconsistent with the Arbroath development strategy as identified in the Angus Local Development Plan as it would not strengthen the role of the town centre and enhance its vibrancy, vitality and viability whilst improving the quality of the physical environment.
- 9.7 The approved and adopted development plans for the area have not changed in the intervening period and similarly the physical characteristics of the site and the wider area and the employment land situation have not changed materially in the period since report 347/19 was written. While the detail of the current proposal differs from that considered previously, the policy position in relation to the principle of large-scale retail development at this location remains largely unaltered. In summary terms, the application site is allocated and safeguarded for employment uses within classes 4, 5 and 6 of the Use Classes Order; it is an out of centre location; and it has poor accessibility other than by private car. In addition, large-scale retail development at an out of centre location has potential to adversely affect the vibrancy, vitality, and viability of Arbroath town centre. The principle of large-scale retail development on this site continues to raise tension with development plan policy for the same reasons as those set out above and detailed in report 347/19.
- 9.8 Notwithstanding the policy position, it is necessary to have regard to other material considerations. First and foremost amongst those is the extant planning permission that allows for the erection of a large-scale retail development at this location. That permission allows for a total gross retail floorspace of 8891sqm, with a net retail sales floorspace of 6864sqm. In addition, it provides for two drive-thru restaurants with a combined floor area of 422sqm. The permission was granted by council because it was considered to present a significant economic benefit to Arbroath and a welcome investment that justified a departure from the development plan.
- 9.9 In broad terms, information submitted in support of the previously approved retail application suggested that it would generate around 261 full time equivalent (FTE) jobs and 14 FTE construction jobs. It was estimated that, based upon the estimated FTE jobs, the development, once built, would provide a Gross Value Added (GVA) of £5.79m. The information also indicated that the development would have a construction value in the region of £11.39m and construction activity would generate a further GVA of £7.96m to the economy.
- 9.10 The current proposal involves a reduction in the retail floorspace with a GFA of 8150sqm and a net retail sales floorspace of 6615sqm. In addition, it provides for two restaurants one a drive-thru and one a drive-to destination with a combined floor area of 310sqm. Information submitted in support of this application indicates that the proposal would generate around 211 full time equivalent (FTE) jobs and 21 FTE construction jobs. It is suggested that, based upon the estimated FTE jobs, the

development, once built, would provide a Gross Value Added (GVA) of £5.24m. The information also suggests that the development would have a construction value in the region of £16m and construction activity would generate a further GVA of £11.2m to the economy.

- 9.11 While the figures provided above are not directly comparable because the base data and assumptions used to generate estimates are different, the current proposal continues to offer potential for economic benefits that are similar in scale to those identified in relation to the existing permission.
- 9.12 In terms of the impact of the proposed retail development on Arbroath town centre, council accepted in the grant of the existing permission that there was potential for adverse impact on its vitality and viability. The current application would reduce the overall retail floorspace in comparison to that previously approved, and notably the net floorspace would be reduced from 6864sqm to 6615sqm. Within that net floorspace the proportion allocated to comparison goods would reduce from 4307sqm to 4132sqm. Available information, including information in relation to the previous planning application, suggests that the town centre is likely to be less vulnerable to retail impact arising from diversion of convenience expenditure.
- 9.13 Information submitted with the current application suggests that the development allowed by the existing planning permission is estimated to have an 18% (£2.9m) impact on Arbroath town centre in terms of convenience expenditure. That information estimates that the development proposed by the current application would result in an impact of around 19% (£3.07m) on the town centre. That 1% increase is identified as being the result of an additional 65sqm convenience floorspace proposed by the current application, but that does not take into account the small pod unit approved by the extant permission. In reality, the retail impact on the town centre in relation to convenience expenditure arising from the approved and proposed schemes is unlikely to be materially different. The retail information submitted in relation to the previous application and the current application suggests that this impact would be focused on the Lidl store at Gravesend which it is claimed is overtrading and would continue to overtrade post development. However, other convenience retailers within the town centre would also likely be affected.
- 9.14 In relation to comparison expenditure, the submitted information suggests that the development allowed by the existing planning permission is estimated to have a 10% (£4.54m) impact on Arbroath town centre. The development proposed by the current application provides for a reduction in the net comparison floorspace of 175sqm and submitted information estimates an impact of around 8% (£3.87m) on the town centre. In overall terms, the current proposal is estimated to generate a combined turnover (convenience plus comparison) of around £45.5m in 2025 compared to the approved scheme which is estimated to generate around £48.2m using the same price year. However, comparison turnover of the current proposal is estimated to be around £3.9m lower than that associated with the extant permission.
- 9.15 Retail impact assessment is not a precise science, and the information provided represents the applicant's estimate of potential impact on town centres. Small variation in assumptions used to undertake this type of assessment can result in significant difference in the findings. As indicated in report 347/19, a specialist retail consultant engaged by the council identified concern regarding some of the assumptions used to inform the retail assessment undertaken at that time. The council's consultant advised that the potential impact on Arbroath town centre in particular could be higher than estimated. The consultant further observed that the performance of the town centre, particularly in terms of comparison turnover, was relatively poor based on the average turnover comparisons and other indicators, and the consultant suggested that the proposed development would weaken the town centre performance further.

- 9.16 While concerns remain regarding the health of Arbroath town centre, the current application proposes less comparison floorspace than the extant permission and available information indicates that the associated comparison turnover would be reduced. The council's retail consultant previously identified particular concern regarding impact of new large-scale out of centre retail development on the town centres comparison goods sector. The reduced comparison goods floorspace proposed by the current application is likely to reduce impact on that sector in the town centre compared to the extant permission. The current proposals impact on the vitality and viability of Arbroath town centre, particularly in relation to the most vulnerable comparison retail sector, is likely to be less than might be experienced if the extant planning permission was implemented and it is broadly comparable with the level of impact anticipated by the council's retail consultant at that time. The overall development remains of sufficient scale that it may reduce some leakage of expenditure to other centres, particularly Dundee. Its location adjacent to the existing Westway retail park may encourage some linked trips with that location, but it is unlikely to result in any meaningful increase in linked trips with the town centre. Notwithstanding, the reduced floorspace and resultant potential for reduced retail impact on the town centre is a benefit.
- 9.17 Paragraph 33 of Scottish Planning Policy (SPP) states that where a development plan is more than five years old, the presumption in favour of development that contributes to sustainable development will be a significant material consideration. In this case TAYplan remains up to date, but the ALDP is more than 5-years old as it was adopted in September 2016. Paragraph 29 of SPP identifies sustainability principles that should be used to guide decisions.
- 9.18 In this case, while the proposal meets or does not give rise to significant issue in terms of many of the sustainability principles identified by SPP, previous decisions in relation to large-scale retail proposals at this general location, particularly in relation to food retail, have identified that it is not location that is, or can be made, easily accessible by a choice of transport modes. In addition, and consistent with the position set out in report 347/19, there remains concern regarding the overall impact of large-scale, out of centre, retail development on the vitality and viability of Arbroath town centre. While the retail impact is likely to be reduced in comparison to the extant permission, it is difficult to conclude that a development which would divert over £6m of expenditure from the town centre would support that town centre.
- 9.19 Council has previously determined that a similar proposal at this location represented a significant departure from development plan policy. As indicated above, development plan policy, the accessibility of the site, and the relative health of the town centre has not changed materially in the intervening period. Concern regarding the potential overall retail impact of the development on the vitality and viability of the town centre remains, albeit impact on the comparison sector may be reduced by virtue of reduced floorspace. Overall, the principle of the proposed development is considered to represent a significant departure from development plan policy. However, the existing planning permission that allows for a similar, if slightly larger, development on the site is a material planning consideration. While previous decisions should not be followed slavishly and are not binding, the permission remains extant. Available information suggests that the economic benefits that the proposal would deliver are at a similar level to those that council previously considered justified significant departure from the development plan. In addition, available information suggests that the proposal would result in reduced impact on the town centre in comparison to the extant permission. In these circumstances, the extant planning permission represents a significant material consideration, and it supports the grant of planning permission for the development proposed. Planning conditions that seek to control the nature of the retail development have been discussed and agreed with the applicant. In general terms, they are similar to the restrictions imposed on the existing permission and they would help minimise impact of unrestricted retail development on the town centre.

- 9.20 In circumstances where the principle of development is considered acceptable, it is necessary to have regard to other development plan matters, and in broad terms those relate to impacts on amenity; built and natural environment, including issues related to design; access and infrastructure, including issues related to flood risk and drainage.

### **Amenity**

- 9.21 The proposed site layout is broadly similar to that previously approved. The development proposed would be unlikely to give rise to significant issues in terms of the amenity of the neighbouring retail park. The land to the north comprises undeveloped raised beach with allocated employment land and existing employment uses located at an elevated level beyond. A section of core path that links Westway to Elliot is located to the north of the site, but the relationship between the path and the retail development would be similar to that which exists at present with the retail development to the east.
- 9.22 The caravan site to the west is more sensitive to new development as the amenity of occupants of caravans could be affected by the introduction of a retail development on this site. In this respect it is relevant to note that the application site was previously occupied by a factory and it is allocated in the ALDP for employment related uses, including general industrial use. The layout proposed by this application is similar to that previously approved by council when it granted permission for retail development on the site in 2019. However, it differs in that the previously approved layout identified a food retail unit and its associated serving facilities to be located close to the western boundary. The revised layout provides for an outdoor garden centre area to be located in that position. The outdoor garden centre would be separated from the caravan park by the roadway and would likely give rise to lesser amenity impact than the servicing area and plant associated with a food retail unit. At the southern extent of the site the existing planning permission provides for a small retail unit (139sqm) and its associated roadway and parking adjacent to the caravan site boundary. It provides for the roadway to be closest to the caravan site boundary and for the associated car parking to be located to the east of the roadway. The current application proposes a 143sqm drive to restaurant unit and its associated roadway and parking at this location. It provides for the car parking to be closest to the caravan site boundary and for the roadway to be located to the east of the car parking. The building itself would be around 27m from the caravan site boundary which is comparable to the separation distance between the drive-thru restaurants on the Westway retail park and its neighbouring caravan site. The application makes provision for a landscape area of at least 7m in width between the caravan site and the development at this location, and for a 2.5m high acoustic barrier along the boundary between the two sites.
- 9.23 The noise impact assessment submitted in support of the application assesses noise from plant equipment, car park and deliveries. In summary terms, it indicates that, with the provision of appropriate acoustic screens and barriers, and subject to appropriate restrictions on delivery times, the proposal should not give rise to significant adverse impact on the amenity of occupants of the neighbouring caravan site by virtue of noise. The environmental health service has reviewed the information submitted in support of the application and had regard to the letters of representation in so far as they relate to amenity matters. It has confirmed no objection to the application subject to provision of conditions as detailed below. In addition to matters related to noise, it has requested a condition that requires provision of a cooking odour assessment and associated odour mitigation scheme in relation to the proposed hot food uses.
- 9.24 Based on available information and having regard to the expert advice provided by the environmental health service, the proposal is unlikely to give rise to significant adverse impacts on the amenity of occupants of the neighbouring caravan park or on the amenity of the wider area, subject to the proposed planning conditions. Impacts



are likely to be similar to those that council found acceptable when it approved the retail development on this site in 2019. As indicated at that time, a 2.5m high acoustic fence along a significant portion of the boundary with the adjacent caravan park would not be a particularly attractive boundary. That remains the case with the current proposal, but an acceptable design solution could be secured by planning condition.

### **Built and natural environment**

- 9.25 The general layout of the site and design of the proposed buildings is broadly similar to that previously approved. The buildings comprising the proposed retail units would be located towards the north of the site in a similar manner to the neighbouring retail development. The design would be typical of that found in modern out of centre retail locations and would generally be in-keeping with the buildings on the existing retail park. A mixed palette of materials is proposed, including buff coloured facing brick. While the materials are generally acceptable, a red coloured facing brick would be more appropriate in an area characterised by red sandstone and a condition regarding this is proposed. Car parking would sit between the buildings and the A92 along with two smaller restaurant/ café units. Detailed matters relating to design and layout, including issues related to landscaping and boundary enclosures could be addressed by planning condition, but the proposal does not give rise to any unacceptable direct impact on the built environment, and it is broadly compatible with the council's design quality and placemaking supplementary guidance. It is not evident from the submitted information that the proposal would make provision for changing places facilities and that is now a requirement for developments of this nature and scale. A condition is proposed that requires appropriate provision.
- 9.26 The site is not designated for any natural heritage reasons. A breeding birds – species protection statement has been provided by the applicant following reported presence of nesting birds on the site. That statement sets out measures that could be deployed to avoid impact of the development on nesting birds. A condition is proposed to require the development to be undertaken in accordance with the species protection statement. Subject to compliance with such condition, the proposal is unlikely to give rise to any unacceptable impact on natural heritage interests or the natural environment. Existing trees that run parallel to the site frontage would be removed, but they are not of special value and replacement planting can be secured by planning condition.

### **Access and infrastructure**

- 9.27 The general access arrangements for the site are broadly similar to those previously approved. A new light-controlled junction with left and right turning lanes would be formed on the A92 Dundee Road to provide access to and egress from the site. An existing bus stop on the site frontage would need to be relocated. The existing junction that serves an unadopted roadway on the western extent of the site would be stopped up and the roadway realigned within the site. Existing core path 152 which links the A92 and Peasiehill would be relocated within the site and would follow new footways. A pedestrian linkage would be provided to the neighbouring retail development and that would utilise the footway associated with the A92 and existing pedestrian access points serving the neighbouring development. The submitted transport assessment indicates that the development would not have a detrimental impact upon the operational capacity or road safety of the surrounding road network.
- 9.28 The roads service has reviewed the transport assessment and the proposed access arrangements. It has confirmed no objection subject to several matters being addressed through planning conditions, including the detail and timing of road improvement works. The stopping-up and realignment of the existing roadway and core path at the west of the site would have potential to affect those that use it, and a condition is proposed that requires mitigation to ensure maintenance of access during development works.

- 9.29 The proposal does not make provision for a direct connection through the site to the neighbouring retail development. However, the proposed layout is such that there is potentially scope for provision of a direct pedestrian connection between the two developments in the future, and provision is made for formal pedestrian connectivity via the A92 footway. While direct vehicular and pedestrian connection would be desirable, the applicant has indicated that there are practical difficulties associated with such an approach. Such difficulties would not in themselves prevent the council from potentially requiring connection if that was deemed necessary; it could potentially be required by means of a negative suspensive planning condition. However, there is no information to demonstrate what the impact of a direct vehicular connection would be on the local road network, including the Westway retail park junction, and it is significant to note that the permission previously granted by council does not provide for or require such connection. In this circumstance, while such connection might be seen as desirable, it would be unreasonable to attach a planning condition requiring its provision. Overall, the proposal does not give rise to any unacceptable impacts in terms of road safety and general accessibility.
- 9.30 The proposal does not give rise to any significant issues in terms of drainage or flood risk and relevant matters can be addressed by planning condition.
- 9.31 Network Rail has provided comment due to the proximity of the development to the railway line and has requested a number of planning conditions. Those conditions relate to the safety and integrity of the railway line and should not create significant issue for delivery of the development.
- 9.32 The proposal does not give rise to significant issues in terms of other infrastructure provision.
- 9.33 While the principle of large-scale retail development on the site is contrary to development plan policy, the detail of the proposal is compatible with relevant policy and guidance subject to certain matters being addressed by planning conditions.

#### **Other material considerations**

- 9.34 In addition, to development plan considerations it is necessary to have regard to other material considerations. In this case those are the planning history of the site, SPP, representations submitted in relation to the proposal, and draft NPF4.
- 9.35 The planning history of the site and issued associated with SPP are discussed above in relation to the principle of the development. As indicated, the extant planning permission represents a significant material consideration that lends support to the current proposal.
- 9.36 In relation to the representations that have been received, available information indicates that potential amenity impacts associated with the proposal should not be unacceptable subject to the proposed planning conditions. The general layout is similar to that previously approved by council, and the provision of a 2.5m high acoustic barrier between the proposed development and the adjacent caravan site should mitigate impacts associated with noise and general activity.
- 9.37 A condition is proposed that requires development to be undertaken in accordance with the breeding birds – species protection statement.
- 9.38 The proposal would result in the realignment of the existing roadway on the western boundary of the site. That could impact the amenity of persons that rely upon that route and a condition is proposed preventing closure until an alternative route is provided. It should be noted that the grant of planning permission will not affect any legal right of access that may exist.

- 9.39 The access arrangements proposed by this application are similar to those previously approved by council. The roads service has confirmed that the proposed arrangements are acceptable subject to conditions, and those include a requirement for the provision of a yellow box junction on the A92 at the entrance to the adjacent caravan site.
- 9.40 NPF4 has been laid before parliament and once approved it will form part of the statutory development plan. Policy 28 of that document deals with retail development and amongst other things, it states that new retail proposals will not be supported in out of centre locations, other than proposals for new small scale neighbourhood retail development, in rural areas and development proposals for shops ancillary to other uses. The current proposal is not consistent with that policy. However, NPF4 has not been approved by parliament and may still be subject of change. While it is a material consideration, the weight that should be attached to it is limited, and in the circumstances of this case, it is not considered to outweigh those factors that lend support to the proposal.

### **Conclusion**

- 9.41 Council has previously determined that large-scale retail development at this location represents a significant departure from development plan policy. However, council has also previously determined that large-scale retail development at this location is acceptable as it would improve the retail offer in Arbroath and as it would deliver significant economic benefit. In making that determination council granted planning permission for a development and that permission remains extant.
- 9.42 The current application is similar to the existing permission but provides for reduced floorspace compared to the existing permission. Notwithstanding the reduced floorspace, the proposal is contrary to development plan policy. However, available information suggests that it would offer potential for economic benefits that are similar in scale to those identified in relation to the existing permission. The development remains substantial in size, and it would improve the retail offer available in the town offering potential to reduce expenditure leakage to other areas. Importantly, available information suggests that the reduced and reconfigured retail floorspace would reduce retail impact on the town centre compared to impacts experienced if the extant planning permission was implemented. In these circumstances, and having regard to all relevant matters, the principle of the proposed development is considered acceptable.
- 9.43 The detailed layout and design of the proposed development does not give rise to any significant issues with development plan policy and its associated design guidance. Relevant consultation bodies have offered no objection and matters raised by those making representation have been considered, and where appropriate, conditions are proposed to deal with detailed matters and to achieve appropriate mitigation.
- 9.44 In conclusion, the proposal represents a significant departure from development plan policy, but approval of the application contrary to the provisions of the development plan is justified because there is an extant planning permission that allows for development of a similar nature and scale at this location. The proposal would improve retail offer in the town providing increased opportunity for residents to shop locally. The retail impact of the development on the town centre is estimated to be reduced compared to the extant planning permission, but it would continue to deliver significant economic benefit for the area. The layout and design of the development does not give rise to unacceptable impacts in terms of amenity, built and natural environment, access and infrastructure. Planning conditions can mitigate impacts associated with the development. There are no material considerations that justify refusal.

## 10. OTHER MATTERS HUMAN RIGHTS IMPLICATIONS

The recommendation in this report for grant of planning permission, subject to conditions, has potential implications for neighbours in terms of alleged interference with privacy, home or family life (Article 8) and peaceful enjoyment of their possessions (First Protocol, Article 1). For the reasons referred to elsewhere in this report justifying this recommendation in planning terms, it is considered that any actual or apprehended infringement of such Convention Rights, is justified. The conditions constitute a justified and proportional control of the use of the property in accordance with the general interest and have regard to the necessary balance of the applicant's freedom to enjoy his property against the public interest and the freedom of others to enjoy neighbouring property/home life/privacy without undue interference.

## 11. CONCLUSION

It is recommended that the application be approved for the following reason and subject to the following conditions:

### **Reason(s) for Approval:**

The proposal represents a significant departure from development plan policy, but approval of the application contrary to the provisions of the development plan is justified because there is an extant planning permission that allows for development of a similar nature and scale at this location. The proposal would improve retail offer in the town providing increased opportunity for residents to shop locally. The retail impact of the development on the town centre is estimated to be reduced compared to the extant planning permission, but it would continue to deliver significant economic benefit for the area. The layout and design of the development does not give rise to unacceptable impacts in terms of amenity, built and natural environment, access and infrastructure. Planning conditions can mitigate impacts associated with the development. There are no material considerations that justify refusal.

### **Conditions:**

1. The development to which this permission relates must be begun not later than the expiration of three years from the date of its grant.

*Reason: In order to clarify the duration of this permission in accordance with the requirements of the Town and Country Planning (Scotland) Act 1997 (as amended) and to ensure that it will lapse if not implemented within that period.*

2. That, no development in connection with the planning permission hereby approved shall take place until the following details have been submitted to and approved in writing by the planning authority:
  - (a) A construction phasing plan. That plan shall include detail for the phasing and completion of the retail units, road improvements and all infrastructure and landscaping associated with the development, having regard to the breeding birds -species protection statement dated September 2022 by Wild Surveys Ltd. The infrastructure works, insofar as they relate to roads, access, public transport infrastructure, cycle, motorcycle and car parking, service areas, footpaths, landscaping, boundary treatments, acoustic barrier and drainage shall be completed prior to the occupation or use of any part of the development, or respective part of the development as may be approved in writing by the planning authority.

- (b) Details of surface water disposal arrangements for the development along with details for their future maintenance. This should include detail of the direction of flood flows through the site in times of exceedance and evidence that there will be no increased flood risk to neighbouring land and property. Positive drainage falls should lead away from Network Rail land. Any Sustainable Urban Drainage Scheme must not be sited within 10 metres of the railway boundary and should be designed with long term maintenance plans which meet the needs of the development. The approved surface water disposal arrangements shall be provided in full prior to the occupation or use of any part of the development and maintained thereafter in accordance with the approved details.
- (c) A detailed levels survey of the site. The detailed drawings shall show finished ground and floor levels of the proposed development relative to existing ground levels, neighbouring land/properties, and a fixed ordnance datum point. Thereafter the development shall be carried out in accordance with the approved details.
- (d) Details of all boundary treatments and enclosures. This should include provision for a potential future pedestrian access between the application site and the neighbouring commercial centre to the east, and for the retention of the stone boundary wall to Arbroath Road and for its making good following construction of the new road junction. It should also include revised details for an acoustic barrier at the southwest boundary of the site and precise details of the acoustic barrier associated with the service area for unit 1. The information regarding the acoustic barrier shall include elevation and section drawings along with information to demonstrate that the barrier provides mitigation in accordance with the recommendations detailed in the Bureau Veritas Noise Impact Assessment dated 5 April 2022. Thereafter the boundary enclosures shall be provided in accordance with the approved phasing plan and specifically the acoustic barriers shall be formed prior to the occupation or use of any part of the development.
- (e) A scheme of hard and soft landscaping, including a schedule of plants to comprise species, plant sizes, numbers and density. The submitted scheme shall include all hard and soft landscaping works, boundary treatment(s), details of trees and other features which are to be retained, and a programme for the implementation/phasing of the landscaping in relation to the construction of the development. It shall also provide detailed proposals for the future management and maintenance of all hard and soft landscaped areas and for all unadopted infrastructure within the development hereby approved, including the acoustic barrier at the southwest boundary. Where trees/shrubs are to be planted adjacent to the railway boundary these should be positioned at a minimum distance from the boundary which is greater than their predicted mature height. Certain broad leaf deciduous species should not be planted adjacent to the railway boundary. Network Rail can provide details of planting recommendations for adjacent developments. All landscaping, including planting, seeding and hard landscaping shall be carried out only in full accordance with such approved details. All planting indicated on the approved plans shall be carried out in the first planting season following commencement of use of the car park or at earlier stages and any plants or trees which within a period of five years from the practical completion of the development die; are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of a similar size and species. Thereafter the landscaped areas and unadopted infrastructure shall be managed and maintained in accordance with the approved details in perpetuity.
- (f) A scheme for the provision of publicly accessible changing places toilet facilities within the development. A changing places toilet shall be available

for public use before any retail unit hereby approved is open to the public and publicly accessible facilities shall be retained and available for use at all times thereafter when the retail units are open to the public.

- (g) A lighting scheme that provides detail of all proposed external lighting. Any lighting associated with the development including any floodlighting must not interfere with the sighting of signalling apparatus and/or train drivers' vision on approaching trains. The lighting scheme shall be carried out only in full accordance with the approved details.
- (h) A road safety audit which considers the road adjacent to the railway boundary and includes an assessment for vehicle incursion. Where a potential risk of vehicle incursion is identified, appropriate vehicle mitigation design and installation must be undertaken to ensure that there is no potential for vehicles to encroach on to the railway should they collide with the boundary fencing.
- (i) A scheme to mitigate impact of development on users of the private road and core path that run through the site. The scheme shall include measures for its rerouting during construction works and the roadway shall not be closed to public access until the alternative route has been formed and delineated in accordance with the approved details. Thereafter the approved route shall be available for public access at all times until the new roadway and associated footpath/cycleway is provided between Dundee Road and the original roadway to the northwest of the site that is to be retained.
- (j) Precise details of all external material finishes, including details of colour. This should make provision for all external facing brick to be coloured red.

*Reason: In order that the planning authority may control the specified details in the interests of amenity, environmental quality, promotion of sustainable modes of transport, and road and railway safety; and to ensure the development is undertaken and maintained in accordance with the approved details, and in the manner that is capable of delivering the benefits that justified approval contrary to development plan.*

- 3. That before occupation or use of any part of the development, the following alterations and improvements to the public road shall be completed in accordance with details approved by Angus Council: -
  - a. provision of a new signalised junction between the site and the A92. That junction shall include Toucan crossing facilities to accommodate both pedestrians and cyclists and that section of the A92 cycle track to be diverted via the traffic signals shall be formed to a minimum width of 3.0 metres;
  - b. permanent closure and removal of the existing junction between the A92 and the private road on the west boundary of the site before the new signalised junction is brought into use;
  - c. relocation of the bus shelter on the north side of the A92 Dundee Road;
  - d. formation of a footway on the south side of the A92 Dundee Road between the proposed traffic signals at the site access and the closest westbound bus stop on Dundee Road;
  - e. provision of a yellow box junction on the A92 carriageway at the entrance to the Elliot caravan site.

*Reason: In order to ensure the provision of the necessary road junction and infrastructure in a timely manner and in the interests of road safety.*

4. The total gross retail floorspace of the development shall not exceed 8150sqm, of which the net retail sales floorspace shall not exceed 6651sqm. None of the retail units hereby approved shall be sub-divided or enlarged (including by inclusion of a mezzanine) without the grant of planning permission following submission of an application to the planning authority. No retail unit shall have a gross external floorspace that is smaller than 720sqm or a net retail sales area less than 540sqm.

*Reason: In order to clarify the terms of this permission and to ensure that the retail impacts remain within the terms under which the application has been approved in order to minimise adverse impact on the vitality and viability of Arbroath town centre.*

5. The total net convenience retail sales floorspace of the development shall not exceed 2483sqm. The total net comparison retail sales floorspace shall not exceed 4132sqm. For the purposes of this permission, convenience goods are defined as food and drink, including alcohol; tobacco; newspapers and magazines; and non-durable household goods all as defined by Pitney Bowes Retail Expenditure Guide 2017/2018. Comparison goods are defined as products that are not convenience goods in terms of the foregoing definition.

*Reason: In order to clarify the terms of this permission and to retain control over the format of the retail development at the site in order to minimise adverse impact on the vitality and viability of Arbroath town centre.*

6. The non-food retail units (identified as units 2, 3 and 4 on the approved plan) hereby approved shall be used solely for the sale of and display of the following goods, DIY and home improvement supplies, major household appliances (electric or not), audio-visual equipment, household textiles and furnishings, furniture and floor coverings, garden furniture and equipment and plants. None of the non-food retail units hereby approved shall be used for the sale of convenience goods, or for the sale of comparison goods comprising clothing and footwear, jewellery, silverware, watches and clocks, toys and sports goods.

*Reason: In order to clarify the terms of this permission and to retain control over the format of the retail development at the site in order to minimise adverse impact on the vitality and viability of Arbroath town centre.*

7. Within unit 1 as identified on the plans hereby approved, the sale and display is permitted of convenience goods up to a maximum of 1431 sqm (net) and comparison goods up to a maximum of 1883 sqm (net), including a 929sqm garden centre. Sales of goods comprising clothing and footwear, or toys and sports goods are permitted up to a combined maximum of 400sqm, subject to an absolute maximum sales area of 200sqm for each individual category. The sale of goods comprising jewellery and silverware, and watches and clocks, is not allowed other than in an ancillary capacity which shall not exceed a combined total of 50sqm of the net comparison sales area.

*Reason: In order to clarify the terms of this permission and to retain control over the format of retail development at the site in order to minimise adverse impact on the vitality and viability of Arbroath town centre.*

8. Within unit 5 as identified on the plans hereby approved, the sale and display is permitted of convenience goods up to a maximum of 1052sqm (net) and comparison goods up to a maximum of 263sqm (net). Sales of comparison goods comprising clothing and footwear, jewellery and silverware, watches and clocks, toys and sports goods is permitted subject to no individual category exceeding 50sqm.

*Reason: In order to clarify the terms of this permission and to retain control over the format of retail development at the site in order to minimise adverse impact on the vitality and viability of Arbroath town centre.*

9. That there shall be no loading or unloading of heavy goods vehicles at unit 7 as identified on the approved plans between 2300hrs and 0700hrs.

*Reason: In order that the amenity of occupants of nearby premises is adequately safeguarded.*

10. That noise from the development shall not exceed the noise rating levels stated below at any residential property or caravan when measured and corrected in accordance with BS4142:2014: -

- LAeq 1 hour of 50dB between 0700hrs and 2300hrs; and,
- LAeq 15 Minutes of 40dB between 2300hrs and 0700hrs.

*Reason: In order that the amenity of occupants of nearby premises is adequately safeguarded.*

11. Noise from any fixed plant or equipment shall not exceed NR curve 35 between 0700hrs and 2300hrs and NR curve 25 at all other times as measured within any neighbouring residential property or caravan, with windows slightly open for ventilation.

*Reason: In order that the amenity of occupants of nearby premises is adequately safeguarded.*

12. Noise associated with the construction of the development including the movement of materials, plant and equipment shall not exceed the noise limits shown in table A below for the times shown. At all other times noise associated with construction operations shall be inaudible at any sensitive receptor. For the avoidance of doubt sensitive receptors includes all residential properties, caravans, hospitals, schools and office buildings.

**Table A: Construction Noise Limits Day Time Average Period Noise Limit**

Day	Time	Noise Limit
Monday – Friday	0700 – 0800	60 dBA Leq (1hr)
Monday – Friday	0800 – 1800	70 dBA Leq (10hrs)
Monday – Friday	1800 – 1900	60 dBA Leq (1hr)
Saturday	0700 – 0800	60 dBA Leq (1hr)
Saturday	0800 – 1300	70 dBA Leq (5hrs)

*Reason: In order that the amenity of occupants of nearby premises is adequately safeguarded.*

13. Vibration levels associated with the construction of the development shall not exceed the following limits: -
- (a) 1mms-1 PPV at existing residential or educational properties.
  - (b) 3mms-1 PPV at existing commercial or industrial properties.

The above vibration limits relate to maximum PPV ground borne vibration occurring in any one of three mutually perpendicular axes. Vibration is to be measured on the foundation or on an external façade no more than 1m above ground level or on solid ground as near the façade as possible.



*Reason: In order that the amenity of occupants of nearby premises is adequately safeguarded.*

14. That unit 6 and unit 7 as identified on the approved plans shall not be brought into use unless a cooking odour air quality assessment and cooking odour mitigation scheme relevant to the respective unit has been submitted to and approved in writing by the planning authority. The cooking odour assessment shall be in accordance with the guidance in the EMAQ + 2018 update to the 2004 report prepared by NETCEN for DEFRA on the control of odour and noise from commercial kitchen exhaust systems and the proposed cooking odour mitigation scheme shall include.
- scale drawings showing the location of all kitchen extraction equipment,
  - design specifications of all proposed abatement equipment, and
  - calculations to demonstrate an appropriate efflux velocity is achieved at the flue outlet.

Thereafter the approved scheme shall be installed and operational before each respective unit is brought into use and the equipment shall be operated and maintained in accordance with the approved detail while each unit is in use.

*Reason: In order that the amenity of occupants of nearby premises is adequately safeguarded.*

15. The development shall be undertaken in accordance with the breeding birds – species protection statement dated 26 September 2022 by Wild Surveys Ltd.

*Reason: In order to minimise potential for adverse impact on breeding birds.*

**NOTE:** No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973, (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.

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**DATE: 15 NOVEMBER 2022**

APPENDIX 1: LOCATION PLAN  
APPENDIX 2: PLANNING PERMISSION 18/00975/FULM DECISION NOTICE  
APPENDIX 3: PLANNING PERMISSION 18/00975/FULM SITE LAYOUT PLAN  
APPENDIX 4: PROPOSED SITE LAYOUT PLAN  
APPENDIX 5: ANGUS COUNCIL REPORT 347/19  
APPENDIX 6: SUMMARY OF APPLICANTS SUPPORTING INFORMATION  
APPENDIX 7: LETTERS OF REPRESENTATION  
APPENDIX 8: DEVELOPMENT PLAN POLICIES  
APPENDIX 9: PLANNING SERVICE PRESENTATION