

ANGUS COUNCIL

20 FEBRUARY 2024

PLANNING APPLICATION – LAND AT ELLIOT INDUSTRIAL ESTATE
ARBROATH

GRID REF: 362227 : 739807

REPORT BY SERVICE LEADER – PLANNING & SUSTAINABLE GROWTH

1. ABSTRACT

- 1.1 This report deals with planning application No [23/00353/FULL](#) by TJ Morris Ltd c/o Bennett Real Estate for the creation of one retail unit and one builders merchant unit (storage, distribution, trade counter, offices, tool hire and ancillary retail) with associated yard area, access, drainage, landscaping and other works on land at Elliot Industrial Estate, Arbroath. The application is recommended for approval subject to conditions.

2. RECOMMENDATION

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

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 land is at Appendix 1.
- 3.2 That permission has now expired and cannot be implemented. However, in summary terms, it provided for the erection of a retail development for the sale of convenience and comparison goods, restaurant/ drive thru units, and associated development, including 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 committee report relating to that application is at Appendix 2, the decision notice is at Appendix 3, and a plan showing the approved layout is at Appendix 4.
- 3.3 Subsequently, at its meeting on 22 November 2022, Council granted planning permission for the erection of five retail units selling convenience and comparison goods, along with two restaurant units, and associated development on the same site (appn [22/00288/FULM](#)). A copy of the decision notice for that permission is provided at Appendix 5 and a plan showing the approved site layout is provided at Appendix 6.
- 3.4 That planning permission remains extant, and information has been submitted to discharge the planning conditions. It has been indicated that construction is due to commence soon. In summary terms, the permission allows for the erection of five retail units as well as the erection of one drive-thru and one drive-to restaurant unit with a gross floor area (GFA) of 8150sqm. The retail units would provide 2483sqm net convenience floorspace and 4132sqm net comparison sales floorspace and range in size from around 720sqm to 3025sqm GFA with the largest unit also accommodating an outdoor garden centre. In addition, it provides for the formation of

a new signalised junction on the A92 which would provide access to and egress from the site; stopping-up of an existing junction serving an unadopted road at the west of the site; as well as car parking, pedestrian routes, and boundary enclosures.

- 3.5 The current application has been submitted seeking permission for an amendment to the development on part of the site. In broad terms, it seeks permission to re-size and relocate the previously approved convenience retail unit, and to replace three approved comparison goods units with a builders' merchant. For clarity, the applicant has indicated that the previously approved unit 1 and its associated garden centre, unit 6, unit 7 and the car parking areas in the immediate vicinity of those buildings would be formed under the terms of the existing planning permission; those elements do not form part of and are outwith the current application site boundary.

4. INTRODUCTION

- 4.1 The applicant seeks full planning permission for the construction of one retail unit and one builders' merchant unit (storage, distribution, trade counter, offices, tool hire and ancillary retail) with associated yard area, access, drainage, landscaping and other works on land at Elliot Industrial Estate Arbroath. A plan showing the proposed development layout is provided at Appendix 7.
- 4.2 The proposed development site measures around 1.9 hectares (ha) and sits between Elliot caravan park and the Westway retail park. It forms part of the larger site which has previously been granted planning permission for retail development as referenced at section 3 above.
- 4.3 The proposal seeks permission for two new buildings. One would accommodate a retail unit with 1809sqm GFA while the other would house a builders' merchant with 1226sqm GFA and associated external yard area. The retail unit would have 1298sqm net floorspace of which 1038sqm would be used for the sale of convenience goods and 260sqm used for the sale of comparison good. Parking for 130 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. These arrangements are identical to those that have previously been approved by the extant planning permission granted in 2022.
- 4.4 The current application has been varied during its consideration to remove a retail unit; increase the size of a retail unit; amend the appearance of buildings; and to revise the layout of the site, including car parking areas.
- 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 2.
- 5.2 In addition, attention is drawn to planning permission [22/00288/FULM](#) which is discussed above at section 3. As indicated, that permission provides for the erection of a large-scale retail development on land that encompasses the current application site. The application was approved by Council at its meeting on 22 November 2022 and the permission remains extant.

6. APPLICANT'S CASE

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

- Planning statement
- Design statement
- Retail statement
- Flood risk assessment
- Drainage strategy
- Ground investigations (Parts 1 – 5)
- Transport assessment and appendices 1 - 8
- Breeding birds – species protection statement

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 8.

7. CONSULTATIONS

7.1 **Angus Council – Roads** – has indicated no objection to the application subject to conditions. The roads service is dealing with a road construction consent application related to the development and changes to the road network and associated infrastructure will be addressed through that process. Conditions are proposed that would ensure alignment between the road construction consent and the planning permission. *No specific comment has been provided in relation to flooding and drainage. However, in relation to previous applications 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** – no formal comment has been submitted. However, the service has offered no objection to previous proposals for redevelopment of the site either in relation to amenity impacts or land contamination. *Conditions requested by the service to safeguard amenity in relation to recent proposals are proposed where relevant to the current application.*

7.3 **Scottish Water** – has indicated 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 no objection but has suggested that issues regarding the proximity to the railway line are brought to the developers attention and properly considered.

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

8. REPRESENTATIONS

8.1 No representations have been received.

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: -

- [National Planning Framework 4](#) (NPF4) (Published 2023)
- [Angus Local Development Plan](#) (ALDP) (Adopted 2016)

- 9.3 The development plan policies relevant to the determination of the application are reproduced at Appendix 9 and have been taken into account in preparing this report. The ALDP was adopted in September 2016 while NPF4 was adopted on 13 February 2023. Planning legislation indicates that where there is any incompatibility between the provision of the national planning framework and a provision of a local development plan, whichever of them is the later in date is to prevail.

Principle of development

- 9.4 The land subject of this application is identified in the ALDP as an existing employment site. Policy TC14 of the ALDP indicates that within such areas, planning permission will be granted for uses that fall within class 4 (business), class 5 (general industry), and class 6 (storage or distribution), as defined by the Use Classes (Scotland) Order 1997. It further indicates that other uses may be supported in specific circumstances, including where the proposed use is complimentary or ancillary to an existing or proposed employment use. NPF4 Policy 26 states amongst other things that development proposals for business and industry uses will be supported where they are compatible with the primary business function of the area. It goes on to state that other employment uses will be supported where they will not prejudice the primary function of the area and are compatible with the business/industrial character of the area.
- 9.5 The builders' merchant proposed by this application includes a range of activities and uses, including storage, wholesale, equipment hire, and office space. As such, it does not fall within class 4, 5 or 6 use and is considered a specific use in its own right (*sui generis*). However, it is not unusual for uses of this nature to be located on land that is safeguarded for employment use; there are other similar businesses located elsewhere on Elliot Industrial Estate and they coexist with other employment uses.
- 9.6 The builders' merchant is a use that could coexist with other employment and retail uses in the area. It would include an ancillary element of retail sales, but the extant planning permission allows for use of the approved comparison goods units for sale of DIY and similar bulky goods. Given the nature of the goods likely to be sold from the builders' merchant, impact on the town centre is likely to be limited. There are other builders' merchants and DIY retailers at other locations outwith the town centre, but they do not benefit from protection through planning policy. The principle of a builders' merchant use at this location is broadly compatible with development plan policy.
- 9.7 The principle of large-scale retail development on this site was considered in the determination of planning applications 18/00975/FULM and 22/00288/FULM, and an assessment of the proposal in relation to policies relevant at that time was provided in report 347/19 (Appendix 2). The report concluded that 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.
- 9.8 TAYplan is no longer part of the statutory development plan; it has been replaced by NPF4. TAYplan therefore has no relevance in the determination of this application. However, the ALDP is part of the statutory development plan and the policy conflict identified above remains in relation to the retail element of the proposal. 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 conflict with the ALDP for the same reasons as those set out above and detailed in report 347/19.
- 9.9 The NPF4 policies that are relevant to the proposal are reproduced at Appendix 9. For similar reasons to those identified in relation to the ALDP, the retail element of the application gives rise to conflict with national planning policies. The proposal is likely to increase reliance on the private car contrary to Policy 13. There is limited walk-in catchment and it cannot reasonably be considered consistent with the 20-minute neighbourhood principle established by Policy 15. It is an out of centre location which is not consistent with the town centre first approach, and it is unlikely to support the vitality and viability of the town centre. As such the proposal gives rise to conflict with Policies 27 and 28. Policy 28 states that new retail proposals will not be supported in out of centre locations, other than in limited circumstances which this proposal does not meet. In broad terms, this policy conflict raises tension with NPF4 Policies 1 and 2 which seek to tackle the climate crisis and deal with climate mitigation.
- 9.10 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 and which encompasses the current application site. That permission allows for a total gross retail floorspace of 8150sqm, with a net retail sales floorspace of 6651sqm. The permission was granted by Council for the following reason: -
- 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.*
- 9.11 In broad terms, information submitted in support of the previously approved retail application suggested that it would generate around 211 full time equivalent (FTE) jobs and 21 FTE construction jobs. It was indicated that, based upon the estimated

FTE jobs, the development, once built, would provide a Gross Value Added (GVA) of £5.24m. The information also suggested 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.

- 9.12 The previously approved units 1, 6, and 7 are unaffected by this proposal and any benefit associated with them would be largely unchanged. Within the application boundary, the proposal involves a reduction in the total GFA from 4519sqm to 3035sqm and a reconfiguration of the site such that three non-food retail units are replaced with a builders' merchant, and the previously approved convenience retail unit is re-sized and repositioned. Information provided by the applicant suggests that there would be 25 jobs associated with the builders' merchant and 92 jobs associated with the convenience retail unit. It is suggested that, based upon the estimated FTE jobs, the development subject of this application would provide a GVA of £3.2m. It is further suggested that the resultant overall development of the wider site would continue to deliver a GVA in the region of £5.24m. In addition, construction activity would generate further GVA to the economy.
- 9.13 It should be noted that these figures are estimates derived from information provided with the 2022 planning application. The GVA would be affected by variable factors, including the number of FTE jobs that arise from the development and any displacement caused by adverse impact on other businesses. However, using similar assumptions as the 2022 application, the current proposal continues to offer potential for economic benefits that are similar in scale to those identified in relation to the existing permission.
- 9.14 In terms of Arbroath town centre and its vitality and viability, council accepted in the grant of the previous permissions that the proposed retail development had potential to result in adverse impact. The existing planning permission allows 4519sqm of retail floorspace on the site of the current application. The proposal would reduce the retail floorspace to 1809sqm with the net comparison sales floorspace reducing from 2249sqm to 260sqm (this excludes floorspace associated with the builders' merchant). Available information, including information in relation to the previous planning applications, suggests that the town centre is likely to be less vulnerable to retail impact arising from diversion of convenience expenditure. Accordingly, reduction in comparison floorspace may reduce adverse impact on the town centre.
- 9.15 The extant planning permission (for the larger development on the entire site) is estimated to have a 19% (£3.07m) impact on Arbroath town centre in terms of convenience expenditure. The current proposal would see a small reduction in convenience floorspace but the retail impact on the town centre is unlikely to be materially different. The retail information 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.
- 9.16 In relation to comparison expenditure, the submitted information suggests that the development allowed by the existing planning permission is estimated to have an 8% (£3.87m) impact on Arbroath town centre. The development proposed by the current application would see the total approved net comparison floorspace across the larger site reduced from 4132sqm to 2143sqm. Information derived from the submitted retail statement estimates that the resultant development would have an impact of around 4% (£2.01m) on the town centre, excluding any impact that might arise from retail sales associated with the builders' merchant. In overall terms, the resultant retail use (residual of 2022 permission plus the current proposal) is estimated to generate a combined turnover (convenience plus comparison) of around £40.7m in 2025 compared to the approved scheme which is estimated to generate around £45.5m using the same price year. Comparison turnover is estimated to be around £4.8m lower than that associated with the extant permission.

- 9.17 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.
- 9.18 The retail offer associated with the overall development would be reduced compared to the extant permission, and that may affect its ability to reduce expenditure leakage to other centres. If the new retail development generates its expected turnover but does not prevent expenditure leakage to other areas, a greater element of its trade would likely be drawn from the town centre. However, the current application proposes significantly less comparison floorspace than the extant permission and available information indicates that the associated comparison turnover would be reduced. This would likely reduce impact on that sector in the town centre compared to the extant permission. The resultant 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. The 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 would be a benefit.
- 9.19 Council has previously determined that proposals for large-scale retail development at this location are a significant departure from development plan policy. The ALDP policy framework, the accessibility of the site, and the health of the town centre have not changed materially in the intervening period. NPF4 reinforces the policy presumption against large-scale retail development in out of centre locations, particularly where reliance upon travel by private car would be increased. The proposed builders' merchant is broadly compatible with policy, but the principle of the proposal remains a significant departure from the development plan for reasons set out above because it includes large-scale convenience retail at an out of centre location. However, the existing planning permission, which includes the current site, is a material planning consideration and it provides for a convenience retail unit of similar size at this location. While previous decisions should not be followed slavishly and are not binding, the permission remains extant and could be implemented. Available information suggests that the economic benefits the proposal would deliver are at a similar level to those Council previously considered justified significant departure from the development plan. In addition, the proposal would likely result in reduced impact on the town centre compared to the extant permission. In these circumstances, the extant planning permission represents a significant material consideration, and it supports the principle of the development at this location. Planning conditions that seek to control the nature of the retail development have been discussed and agreed with the applicant. In general terms, they would help to 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.

- 9.21 The proposed development has been designed such that it would integrate with the extant planning permission. There are no issues in terms of compatibility of proposed uses. The development 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 and would be similar to that previously approved.
- 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 development in this area. 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 road layout proposed by this application is similar to that previously approved by Council when it has granted permission for retail development at this location. In addition, the nature of activity and movement associated with the proposal should not be materially different from that anticipated in relation to the previous permissions or the land allocation. The buildings proposed by this application would be separated from the caravan park by the roadway and a retail unit with its associated outdoor garden centre area approved by the extant planning permission.
- 9.23 Based on available information and having regard to the expert advice provided by the environmental health service in relation to the extant planning permission, 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 previously approved development in this area in 2019 and 2022.
- 9.24 The general layout of the site and design of the proposed buildings is broadly similar to that previously approved. The buildings would be located towards the north of the site on similar alignment to the building approved by the extant planning permission and 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 neighbouring retail park and industrial estate. A mixed palette of materials is proposed, including red coloured facing brick which has been indicated as desirable in relation to previous proposals at the site given the area is characterised by red sandstone. Car parking would sit between the buildings and the A92. 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. The applicant has indicated that a changing places toilet would be provided within unit 1 approved by the extant planning permission. The proposal would not give rise to any unacceptable impact on built or cultural heritage interests and similarly does not give rise to any unacceptable impacts in terms of built environment considerations.
- 9.25 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. The 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 and that is consistent with the position taken in respect of the extant permission. 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.

- 9.26 The proposed access arrangements are the same as those previously approved by Council in relation to the extant planning permission. 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 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.
- 9.27 The roads service has reviewed the transport assessment and the proposed access arrangements. It has also considered a road safety audit submitted in support of an application for road construction consent. It has confirmed no objection subject to several matters being addressed through planning conditions, including the detail and timing of road improvement works. The roads service has advised that, on the basis of the road safety audit, the proposed mini roundabout within the development site should be replaced with a simple priority junction giving priority to traffic entering and leaving the main customer parking area. In addition, they have advised that the relocation of the bus stop on the northbound carriageway should involve provision of a bus layby. An existing bus layby and shelter are located around 200m from the site entrance on the southbound carriageway and are served by a light controlled crossing. 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, but it is the same arrangement previously approved, and a condition is proposed that requires mitigation to ensure maintenance of access during development works.
- 9.28 The proposal does not make provision for a direct connection through the site to the neighbouring retail development, but that is the case with the extant permission previously approved by council. As with the previously approved scheme, there is potential 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. The application includes provision of a vehicular access to the yard area serving the builders' merchants from the proposed carpark. The applicant has confirmed that this would only be used for customer collection and would not be used by HGV's or for servicing of the unit. A condition is proposed to clarify this limited use to avoid potential conflict between HGV's, service traffic, and those using the customer car park. In addition, the drawings show provision of a facility adjacent to the entrance to the builders' merchant yard which would ultimately be associated with the bottle return scheme. Provision for that is desirable, but the proposed position would not facilitate ready pedestrian movement in the area, particularly given its proximity to a pedestrian crossing. A condition is proposed that requires proposals for its re-siting. However, in general terms, and subject to the proposed conditions, the proposal does not give rise to any unacceptable impacts in terms of road safety and general accessibility.
- 9.29 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.
- 9.30 Network Rail has provided comment due to the proximity of the development to the railway line but has offered no objection. Conditions it requested in relation to the

2022 planning permission which relate to the safety and integrity of the railway line are proposed but should not create significant issue for delivery of the development.

- 9.31 The proposal does not give rise to significant issues in terms of other infrastructure provision.
- 9.32 While the principle of large-scale retail development on the site is contrary to development plan policy, the detail of the proposal is generally compatible with relevant policy and guidance subject to certain matters being addressed by planning conditions. The proposed builders' merchant use is broadly compatible with the development plan.

Conclusion

- 9.33 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 deliver significant economic benefit. In making that determination Council has now granted a number of planning permission for such development at this general location, and the most recent of those permissions remains extant.
- 9.34 The current application seeks to amend the nature and distribution of uses on part of the previously approved site. The revised proposal would see the previously approved convenience retail unit resized and relocated. Three comparison goods retail units would be replaced by a builders' merchant which would occupy an area adjacent to the eastern boundary of the site. The remainder of the previously approved development would be largely unaltered by the current proposals. The builders' merchant use is broadly compatible with development plan policy but the convenience retail element of the proposal remains significantly contrary to the development plan, including retail policies provided by NPF4. Notwithstanding that, there is an extant planning permission that allows for convenience retail development at this general location, and that permission could be implemented irrespective of the outcome of this application. This proposal provides for a significant reduction in comparison goods retail floorspace and this is likely to reduce retail impact on that sector in the town centre compared to what might be experienced if the extant planning permission was implemented. Information submitted by the applicant suggests that the resultant overall development would still offer potential for economic benefits that are similar in scale to those associated with the existing permission. In these circumstances, and having regard to all relevant matters, the principle of the proposed development is considered acceptable.
- 9.35 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 where appropriate, conditions are proposed to deal with detailed matters and to achieve appropriate mitigation.
- 9.36 In conclusion, the retail element of the proposal represents a significant departure from the development plan, 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 retail development of a similar nature and scale at this location. The proposal would improve retail offer in the town and the retail impact of the development on the town centre is estimated to be reduced compared to the extant planning permission. The proposed builders' merchant use is broadly compatible with the development plan and the overall development would deliver 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. HUMAN RIGHTS IMPLICATIONS

- 10.1 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

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

Reason(s) for Approval:

The retail element of the proposal represents a significant departure from the development plan, 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 retail development of a similar nature and scale at this location. The proposal would improve retail offer in the town and the retail impact of the development on the town centre is estimated to be reduced compared to the extant planning permission. The proposed builders' merchant use is broadly compatible with the development plan and the overall development would deliver 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 buildings, 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 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. Thereafter the boundary enclosures shall be provided in accordance with the approved phasing plan.
- (e) A scheme of hard and soft landscaping, including a schedule of plants to comprise species, plant sizes, numbers and density and measures to ensure that the development results in an enhancement to the biodiversity value of the site having regard to NatureScot Developing with Nature Guidance. 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. 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 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.

- (g) 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.
- (h) 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 re-routing 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.
- (i) Precise details of all external material finishes, including details of colour. This should make provision for all external facing brick to be coloured red.
- (j) Revised proposals for the location of the facility identified as 'GX' on the block plan drawing G2997 AL(0)201 Rev P5.

Thereafter, the development shall be undertaken in accordance with the detail as approved.

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 and formation of a new bus stop layby;
 - d. replacement of the internal mini-roundabout junction with a priority junction giving priority to vehicles entering the customer car parking area in accordance with details approved by Angus Council;
 - e. provision of a yellow box junction on the A92 carriageway at the entrance to the Elliot caravan site which shall extend over the northbound lane only.

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 net retail sales floorspace within the application site shall not exceed 1298sqm. Any retail sales within unit 5 as identified on the plans hereby approved shall be ancillary to the primary use of the building as a builders' merchant and shall be limited to hardware and supplies directly related to the building or construction industry and shall not exceed 10% of the gross external floor area of the building.

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.

5. Within unit 2 as identified on the plans hereby approved, the sale and display is permitted of convenience goods up to a maximum of 1038sqm (net) and comparison goods up to a maximum of 260sqm (net). The sales of specific categories of comparison goods are restricted with no individual category permitted to exceed 50 sqm. This restriction specifically applies to clothing and footwear, jewellery and silverware, watches and clocks and toys and sports goods. For the avoidance of doubt, all other categories of comparison goods are permitted to be sold. 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 retail development at the site in order to minimise adverse impact on the vitality and viability of Arbroath town centre.

6. The retail unit hereby approved shall not 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.

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.

7. 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.

8. 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.

9. 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.

10. 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.

11. That all HGV traffic associated with the servicing of the units hereby approved shall use the dedicated service access and associated service areas to the north of the buildings. For the avoidance of doubt, no HGV access or egress will be permitted to the yard or service areas associated with the builders' merchants through the customer car park.

Reason: To ensure the development is operated in accordance with the detail upon which it has been assessed and to reduce potential for conflict between HGV and service traffic and those using the customer car park.

12. 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: 13 FEBRUARY 2024

APPENDIX 1: LOCATION PLAN
APPENDIX 2: ANGUS COUNCIL REPORT 347/19
APPENDIX 3: PLANNING PERMISSION 18/00975/FULM DECISION NOTICE

APPENDIX 4: PLANNING PERMISSION 18/00975/FULM SITE LAYOUT PLAN
APPENDIX 5: PLANNING PERMISSION 22/00288/FULM DECISION NOTICE
APPENDIX 6: PLANNING PERMISSION 22/00288/FULM SITE LAYOUT PLAN
APPENDIX 7: PROPOSED SITE LAYOUT PLAN
APPENDIX 8: SUMMARY OF APPLICANTS SUPPORTING INFORMATION
APPENDIX 9: DEVELOPMENT PLAN POLICIES