

WEST DUNBARTONSHIRE COUNCIL

Report by the Executive Director of Housing, Environmental and Economic Development

Planning Committee: 3 April 2012

Subject: Glasgow City Council planning application 10/02890/DC: Erection of non-food retail warehouse (50,000sq ft) and formation of associated parking – amendment of condition NC(b)(a) of planning permission 97/02406/DC to amend the restriction limiting sales from bulky goods only to the sale of any non-food items.

1. Purpose

- 1.1** This report advises the Committee of the decision of Glasgow City Council in respect of the above application to which West Dunbartonshire Council had objected, and seeks agreement of this Council's response to the issues arising from that decision.

2. Background

- 2.1** Great Western Retail Park (GWRP) is located on the edge of the City of Glasgow, between Drumchapel and Clydebank. The main retail park contains a Sainsbury's foodstore and a B&Q warehouse store linked by a row of 8 further retail units, all of which are considered to be "bulky goods" retailers. Detached from the main retail park on the opposite side of Allerdice Road are three restaurant/drive through units and a bingo club. Between the rear of the bingo club and Duntreath Avenue is a large vacant site, which is the subject of this report.
- 2.2** In 1999 Glasgow City Council granted full planning permission for a 4,645m² non-food retail development on the site, made up of five units, subject to a condition which limited the goods sold to DIY, furniture, carpets, soft furnishings, electrical, motoring products, gardening goods and sporting goods. Although the retail warehouses were never built, it is understood that the developer did build parts of the access road, and thus the development has legally commenced and the permission remains valid in perpetuity.
- 2.3** In December 2010, Minotaur SARL submitted an application to Glasgow City Council to remove the bulky goods condition, enabling the site to be developed for any non-food retail use. Following local press coverage of the application West Dunbartonshire Council contacted Glasgow City Council to request that we be consulted on the application, which duly took place and the matter was reported to this Council's Planning Committee on 6 September 2011. A copy of the report presented to Planning Committee is contained within Appendix 2.
- 2.4** The documents submitted in support of the application were entirely focussed on the relationship of the proposal to Drumchapel Local Town Centre (as defined in the

Glasgow City Plan 2). They did not give any consideration to whether sequentially preferable sites were available in or around Clydebank town centre, or quantify the retail impact upon Clydebank. On the basis of the information provided the proposal therefore failed to comply with the sequential test for the siting of retail development, and failed to demonstrate that the development would not have an adverse impact upon a town centre, both of which are required by national and Structure Plan policies. The Committee's decision was therefore to formally object to the application for these reasons, and this was intimated to Glasgow City Council accompanied by a letter from the Leader of the Council.

2.5 The owners of the Clyde Shopping Centre also submitted an objection to Glasgow City Council on 11 September 2011, however the City Council refused to entertain their objection as it was received after the expiry of their consultation period.

2.6 Whilst the removal of a restrictive condition from 4,645m² of retail floorspace which has already been approved may appear to be a relatively minor matter, the proposal had the potential to cause significant detrimental impacts for Clydebank Town Centre. The concerns below were the reasons behind the Council's objection to the application:

- At present the non-food elements within Great Western Retail Park function entirely as a "bulky goods" commercial centre, with a correspondingly limited impact on Clydebank Town Centre;
- The previous permission to expand the commercial centre was subject to a similar bulky goods restriction, and therefore would have had a limited further impact upon the nature and function of the retail park;
- The removal of the bulky goods restriction would allow the retail park to develop into a much more varied retail destination with a wider range of comparison goods stores, which would directly compete with Clydebank Town Centre;
- Whilst local press speculation about the retailers which might occupy the units is not a material consideration and should be treated with caution, two retailers mentioned as prospective tenants are both currently present in Clydebank. This illustrates that is a risk that if these or similar retailers locate at the Great Western Retail Park this will result in the closure of similar stores in Clydebank;
- A competing retail development at the Great Western Retail Park will make it more difficult to attract retailers to Clydebank Town Centre, which is a regeneration priority.

3. Main Issues

3.1 This Council was advised that the application was approved on 21 March 2012 under delegated powers, in accordance with the City Council's Scheme of Delegation which does not require local development applications to be approved by their Planning Applications Committee unless there are 3 or more objections. A copy of Glasgow City Council's Report of Handling is attached within Appendix 3.

3.2 As the planning authority for the application site, Glasgow City is of course entitled to take a different view to West Dunbartonshire in respect of the likely impact of development, or to decide that the benefits to their own area outweigh the disbenefits

to West Dunbartonshire. However the circumstances of this latest decision give rise to three areas of concern:

- Most importantly, this decision appears to have been reached without full consideration of the impact of the development on Clydebank or of its compliance with relevant strategic retail policies;
- The absence of a process for independent scrutiny of decisions where there is conflict between neighbouring planning authorities; and
- The use of delegated powers despite an objection from this Council

Each of these issues is addressed below.

Validity of the Decision

3.3 Based on the report of handling, it would appear that there were a number of significant errors and omissions in the City Council's consideration of this proposal. When this Council commented upon the application, part of our objection was that the supporting documents were inadequate and failed to justify the proposal in terms of the sequential approach to the siting of retail development or the impact of the development on Clydebank Town Centre. However, it seems that the necessary additional assessments were not provided and that these shortcomings were not addressed by the City Council prior to the application being granted. Additionally, the report of handling does not fully assess the application against all of the relevant local and national policies, or, insofar as it does address them, it appears not to apply them properly. In brief, the shortcomings of Glasgow's decision appear to include the following:

- Fundamentally, the report of handling does not explain why the bulky goods condition was applied in the first place or identify a planning rationale for allowing its removal, despite the fact that this was the sole purpose of the application, and the fact that the Structure Plan requires that consideration be given to limiting out of centre units to bulky goods only. It is therefore not clear why Glasgow City Council considered this application to be acceptable;
- The report relies upon the applicant's argument that they did not need to carry out a sequential assessment because they considered the trade draw to be limited, which is inconsistent with the approach required by all relevant national, strategic and local policies;
- The application does not appear to have been adequately assessed against the relevant structure plan policies, and in particular has evidently not been assessed against the criteria contained in Schedules 6(c)(i) and (ii), with which the proposal is inconsistent;
- The permission gives weight to the applicant's argument that the lack of sequentially preferable sites for large comparison retailers within Drumchapel Town Centre justifies provision of such facilities in the retail park, without assessing the application against Glasgow City Plan 2 policies SC1 or SC2, which identify Drumchapel as a local centre only and require that proposals which significantly change the role or function of centres be addressed as part of the development plan review process; and
- Notwithstanding a statement made early in the report to the effect that the application requires to be considered as a new proposal, the report places undue

reliance upon the previous bulky goods consent as justification for omitting to carry out a full assessment, which is incorrect.

- 3.4** It therefore appears that Glasgow City Council's decision to grant permission has made on the basis of an inadequate assessment of the proposal, and it may therefore be possible to overturn the decision by way of a judicial review. If the decision was overturned in this way, it would allow the case to be reconsidered, either by Glasgow City Council or by the Scottish Ministers, and it would be hoped that the impact of the development upon Clydebank would then be given an appropriate amount of weight. It is relatively uncommon for one planning authority to challenge the decision of another, and such a course of action would involve some financial risk (see Section 5 below). There is also no guarantee that even if a judicial review succeeds in overturning the decision, the application may not ultimately be approved when it is reconsidered. This is, however, the only means by which West Dunbartonshire Council could challenge the planning permission that has been granted. It should be noted that the timescale for judicial reviews is tight, as any such challenge is legally required to be lodged with the Court of Session without undue delay.

Conflicts between Planning Authorities

- 3.5** Planning authorities often have different and occasionally conflicting priorities, and there is obviously a temptation for any determining planning authority to prioritise its own area's interests, even where these cause problems for a neighbouring community. Until recently such conflicts were resolved by the referral of applications to the Scottish Ministers where an authority were minded to approve a development to which another authority had objected. The Scottish Ministers were then able to call in applications where they saw fit. Whilst the call in of applications was sometimes seen as undermining local democratic accountability, the process had an important role in determining such applications in an impartial manner, whilst giving due weight to wider strategic considerations. This procedure was abolished as part of the Planning Modernisation reforms, and the Ministers have reduced their involvement in planning applications other than those of national significance. It is considered this is a shortcoming of the current procedures, and it is recommended that the Council write to the Scottish Ministers to express concern at this situation and to request that it be addressed by future secondary legislation. Officers would also seek a meeting with senior Planning Division officials.

Use of Delegated Powers

- 3.6** Whilst it appears that the determination of this application under delegated powers was in accordance with statutory requirements and with Glasgow City Council's Scheme of Delegation, it is to be regretted that the City Council chose to handle an objection from another council in this manner, particularly as our objection represented the agreed position of this Council's Planning Committee and the Leader of the Council. It is recommended that the Committee agrees to write to Glasgow City Council to formally express West Dunbartonshire Council's displeasure at the delegation of this manner, and to request that any future objection from West Dunbartonshire Council is properly considered by the appropriate committee. If it is

decided not to seek a judicial review of the permission, such letter could also set out this Council's concerns about the decision itself.

4. People Implications

- 4.1 None.

5. Financial Implications

- 5.1 Should the Council pursue a judicial review, the Council would potentially be liable for significant legal costs if the case was lost. Such costs are difficult to estimate precisely, but £50,000 is considered to be a reasonable estimate. In the event that a judicial review was successful it is likely that the costs would be met by the other parties and that the cost to West Dunbartonshire Council would be minimal.
- 5.2 In view of the financial risk it would be appropriate to seek expert legal advice from a Queen's Counsel prior to initiating any judicial review, and only to proceed in the event that the advice was that the Council had a very strong likelihood of winning the case. In the event that consultation with a Queen's Counsel took place but did not lead to a judicial review being pursued, the Council would incur the costs of consulting the QC, which may be in the region of £5,000.

6. Risk Analysis

- 6.1 The approval of this application by Glasgow City Council risks having an adverse impact upon the vitality and viability of Clydebank Town Centre.
- 6.2 If the Committee decides to authorise the pursuit of a judicial review of the decision, there would be significant financial risks as outlined in Section 5 above. However, it is recommended that a judicial review would only be pursued if it appeared that the Council was likely to win the case, which would serve to minimise the risk.

7. Equalities Impact Assessment (EIA)

- 7.1 It is not considered that the situation or recommendations give rise to any equalities issues.

8. Strategic Assessment

- 8.1 The Council has identified four main strategic priorities for 2011/2012, namely (1) Social & Economic Regeneration, (2) Financial Strategy, (3) Asset Management Strategy; and (4) Fit for Purpose Services. In respect of these:
1. It is considered that the approval of this planning permission has undermined efforts to secure the regeneration of Clydebank Town Centre, and seeking to overturn the decision would contribute to that strategic priority;
 2. Whilst there is a risk of a judicial review resulting in significant legal costs, it is considered that the risk would be minimised as a judicial review would only be pursued where there appeared to be a very strong likelihood of success;
 3. There are no asset management implications;

4. There are no implications for service provision.

9. Conclusions and Recommendations

9.1 Glasgow City Council's decision to grant planning permission for this development raises the possibility that the expansion of Great Western Retail Park will detract from the vitality and viability of Clydebank Town Centre, and would undermine this Council's efforts to regenerate the town. From consideration of the report of handling it would appear that the decision is based on an unsatisfactory assessment of the application. The decision has however been issued, and the only way to challenge it would be to pursue a judicial review, which would have significant financial risks and may not necessarily result in the permission being revoked. The case has also highlighted procedural issues both in relation to how national procedures address conflicts between neighbouring authorities, and how such objections are handled by Glasgow City Council.

9.2 It is therefore recommended that the Committee:

- (a) Notes the decision of Glasgow City Council to approve this application;
- (b) Authorises the Head of Regeneration and Economic Development to write to the Scottish Ministers expressing concern at the lack of independent and strategic oversight of decisions where there is a conflict between neighbouring planning authorities;
- (c) Authorises the Leader of the Council to write to Glasgow City Council, expressing this Council's displeasure at the delegation of this application; and
- (d) Considers the issues discussed in paragraph 3.4 and Section 5, and either:
 - i. Authorise the Head of Regeneration and Economic Development to seek expert legal advice on the potential for a judicial review of the permission, and subject to such advice suggesting that there is a strong likelihood of such a review being successful, authorise the pursuit of such a judicial review; or
 - ii. Determines not to seek a judicial review, but to include the Council's concerns about the shortcomings of the decision in the aforementioned letter to Glasgow City Council

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Appendices:

1. Copy of report to 6 September 2011 Planning Committee;
2. Copy of letter to Glasgow City Council;
3. Copy of Glasgow City Council Report of Handling;
4. Location Plan

Background Papers:

1. Glasgow and Clyde Valley Joint Structure Plan 2008;
2. Glasgow City Plan 2

Wards Affected: All