

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
AS AMENDED BY THE PLANNING ETC (SCOTLAND) ACT 2006
PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) (SCOTLAND) ACT 1997**

Index of applications under the above acts to be considered by Planning Applications Committee on 8th
October 2014

Reference No: 2014/0533/TP

Ward: 4

Applicant:

MPH Properties Commercial Ltd

Agent:

SJ Convery Architects
12 Lochnagar Drive
Bearsden
G61 4RP

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Site: Clarkston Carpet Centre, 63 to 65 Seres Road, Clarkston, East Renfrewshire, G76 7PG

Description: Sub division and change of use of part of retail unit to cafe/restaurant with associated alterations to shopfront

Reference No: 2014/0541/MDO

Ward: 5

Applicant:

Pinamar Limited
Burnfield House
4A Burnfield Avenue
Giffnock
G46 7TP

Agent:

TLT LLP
140 West George Street
Glasgow
G2 2HG

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Site: 86 Broom Road East, Newton Mearns, East Renfrewshire, G77 5SR

Description: Modification of part of Planning Obligation associated with the planning permission granted for a licensed restaurant and three shop units 1990/0033/TP that does not allow the restaurant or any buildings which may replace it to be used at any time for the sale of alcoholic liquor for consumption off the premises

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REPORT OF HANDLING

Reference: 2014/0533/TP

Date Registered: 15th August 2014

Application Type: Full Planning Permission

This application is a Local Development

Ward: 4 -Netherlee Stamperland Williamwood

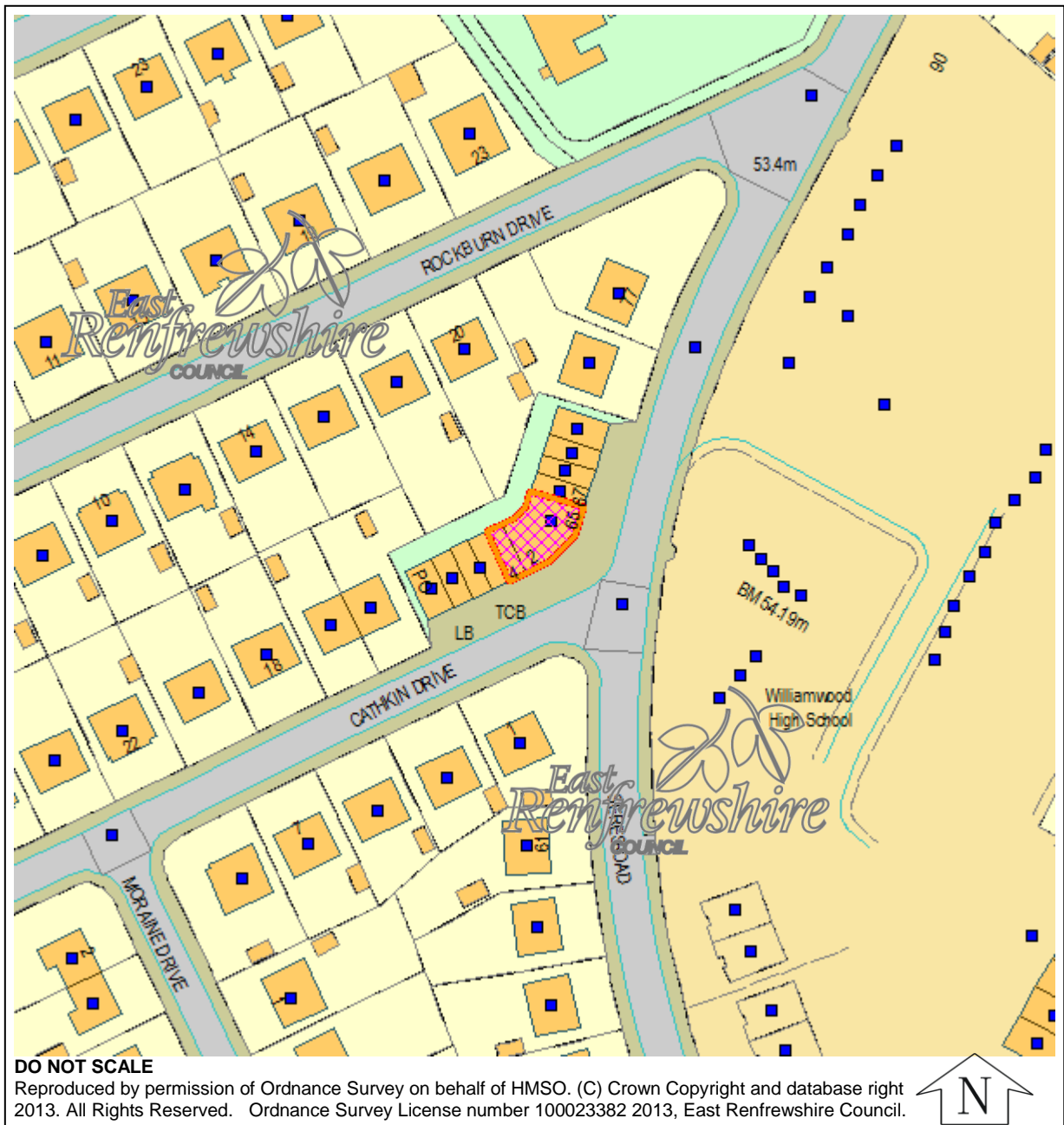
Co-ordinates: 256564/:657808

Applicant/Agent: Applicant:
MPH Properties Commercial Ltd

Agent:
SJ Convery Architects
12 Lochnagar Drive
Bearsden, G61 4RP

Proposal: Sub division and change of use of part of retail unit to cafe/restaurant with associated alterations to shopfront

Location: Clarkston Carpet Centre
63 to 65 Seres Road
Clarkston
G76 7PG



CONSULTATIONS/COMMENTS:

East Renfrewshire Council Environmental Health Service No objection subject to conditions.

East Renfrewshire Council Roads And Transportation Service No objections.

PUBLICITY:

29.08.2014 Glasgow and Southside Extra Expiry date 12.09.2014

SITE NOTICES: None.

SITE HISTORY: None.

REPRESENTATIONS:

A total of 45 representations have been received from:

David And Hazel Osdin Flat 2/2 2 Seres Court Clarkston G76 7PL
Mr. And Mrs. Antliff 1 Rockburn Drive Clarkston East Renfrewshire G76 7PE
T. Field 90C Seres Road Clarkston East Renfrewshire G76 7QF
Mr. Michael Walsh 14 Rockburn Drive Clarkston East Renfrewshire G76 7PE
Mr. K.A. Rattray 13 Cathkin Drive Clarkston East Renfrewshire G76 7PB
Mrs Moira Barron 2 Moraine Drive Clarkston East Renfrewshire G76 7QJ
Mr. A. McCavehran 28 Cathkin Drive Clarkston East Renfrewshire G76 7PF
A MacRae 9 Lothian Drive Clarkston East Renfrewshire G76 7NA
Christine MacRae (No address given)
Neil Forber 57 Seres Road Clarkston East Renfrewshire G76 7QQ
A M Hodge 27 Seres Road Clarkston East Renfrewshire G76 7QG
Mr And Mrs G Maitland 15 Lothian Drive Clarkston East Renfrewshire G76 7NA
Maria And Irving Goldman 2 Seres Court Clarkston East Renfrewshire
Arthur J Miller 61 Seres Road Clarkston East Renfrewshire G76 7QQ
Sir Adrian Shinwell Flat 1-2 2 Seres Court Clarkston East Renfrewshire
Eileen Campbell Flat 2-1 2 Seres Court Clarkston East Renfrewshire
Mr. And Mrs. Gourlay 10 Lothian Drive Clarkston East Renfrewshire G76 7NF
Rhonda And Alex Riley 9 Rockburn Drive Clarkston East Renfrewshire G76 7PE
Mrs. I. Provan Flat 2-3 2 Seres Court Clarkston East Renfrewshire
Ms. Marlene McSporran Flat 2-1 1 Seres Court Clarkston East Renfrewshire
Mr. Ian Carmichael Flat 2-2 1 Seres Court Clarkston East Renfrewshire
Mr. James M. Dickson 7 Rockburn Drive Clarkston East Renfrewshire G76 7PE
Mr. James Shanks 3 Cathkin Drive Clarkston East Renfrewshire G76 7PF
Mr Roderick Robertson 103 Vardar Avenue Clarkston East Renfrewshire G76 7RR
Mr. Steven Spratt 59 Seres Road Clarkston East Renfrewshire G76 7QQ
Mr. Duncan Lavendale 22 Cathkin Drive Clarkston East Renfrewshire G76 7PF
Mr George Anderson 56 Dorian Drive Clarkston East Renfrewshire G76 7NR
Mr M G Shaikh 1 Cathkin Drive Clarkston East Renfrewshire G76 7PF
Des McGuinness 16 Rockburn Drive Clarkston East Renfrewshire G76 7PE
R.B. Muir 20 Rockburn Drive Clarkston East Renfrewshire G76 7PE
Joe And Margaret Magill 7 Cathkin Drive Clarkston East Renfrewshire G76 7PF
Mr. Andrew Robertson 4 Rockburn Drive Clarkston East Renfrewshire G76 7PE
Mr. Ian Bilsland 20 Cathkin Drive Clarkston East Renfrewshire G76 7PF
R. McLochlan 11 Rockburn Drive Clarkston East Renfrewshire G76 7PE
Ms. Esther Anderson Eat At E's 69 Seres Road Clarkston East Renfrewshire
Mr. Robin T. MacKay 12 Rockburn Drive Clarkston East Renfrewshire G76 7PE
Mrs. M. McLellan Flat G-3 2 Seres Court Clarkston East Renfrewshire

Mrs. S. McMillan 18 Rockburn Drive Clarkston East Renfrewshire G76 7PE
J.A. And W. Taylor 10 Rockburn Drive Clarkston East Renfrewshire G76 7PE
Mr. William Ralston 21 Rockburn Drive Clarkston East Renfrewshire G76 7PE
Mrs. Eileen Reilly 6 Rockburn Drive Clarkston East Renfrewshire G76 7PE
Shirley And Alan McKenna 15 Rockburn Drive Clarkston East Renfrewshire G76 7PE
D. Cochrane 19 Rockburn Drive Clarkston East Renfrewshire G76 7PE
Owner/Occupier 23 Rockburn Drive Clarkston East Renfrewshire G76 7PE
Anne M Reid 8 Lothian Drive Clarkston East Renfrewshire G76 7NF

Representations can be summarised as follows:

Loss of amenity including anti-social business hours, noise, litter and increased vermin and cooking odours
Increased traffic volumes and inadequate parking facilities
Proliferation of food and drink outlets in the area
Decreased property values
Non-local facility/would attract trade from outside immediate area
Previous refusals for similar applications
Contrary to Local Plan policies

DEVELOPMENT PLAN & GOVERNMENT GUIDANCE: See Appendix 1

SUPPORTING REPORTS: No reports have been submitted for consideration as part of this application.

ASSESSMENT:

This is a Local development under the terms the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009. However, as there have been more than 10 representations, the application has to be presented to the Planning Applications Committee for determination.

The application site is located on the west side of Seres Road, Clarkston where it adjoins Cathkin Drive. The site falls within the existing urban area and forms part of the identified Seres Road/Cathkin Drive Neighbourhood Centre as designated under the adopted East Renfrewshire Local Plan. Seres Road is characterised by existing residential units, neighbouring shop units, Clarkston Fire Station, Williamwood Health Centre and Williamwood Parish Church. The site is directly opposite the former Williamwood High School which is currently being developed as residential development.

The property sits within a parade of eight commercial units which form a loose curve fronting Seres Road and Cathkin Drive. The parade is predominantly single storey in height. It is served by a private access path running to the rear. The property forms the middle unit within the parade and is the largest of the units at 168.5 square metres. Historically the unit would have been divided, forming 2 or 3 units. The unit currently functions as a carpet shop which is considered to be a Class 1 Shop use. Other uses within the parade include a dentists (Class 2), dry cleaners/laundry (Class 1), sandwich shop (Class 1), barbers (Class 1), hair and beauty salon (Class 1), complimentary health clinic (Class 2) and newsagents (Class 1).

It is proposed to sub-divide the existing shop unit including a partial change of use. The unit would be sub-divided to create a Class 1 retail unit of approximately 63.7 sqm and a new Class 3 café/restaurant unit of 104.9 sqm. Indicative layouts show the Class 3 unit would incorporate a seating area, food preparation area and toilets. The Class 1 unit would include a sales area and staff toilet. A new door would be formed to the front of the Class 1 unit along with alterations to the existing entrance and shop frontage of both units. There are no details provided indicating an end user for the Class 3 unit, proposed opening times or number of covers. This information is not needed to determine the planning application.

The application has to be assessed against the development plan as well as any material planning considerations.

Policy S1 of the adopted Local Plan identifies Neighbourhood Centres such as this, to be the focus for new retail, leisure, community and other complimentary uses. Policy S1 states that appropriate non-retail proposals which help to sustain and enhance the economic and community role of the Centres will be encouraged. Policy DM1 seeks primarily to protect the character and amenity of the area. Policy S2 seeks to protect the retail function in Neighbourhood Centres and refers to four criteria that are to be met before a change of use can be accepted. As there is only a part change of use and a Class 1 retail unit will be retained it is considered that the criteria of the policy cannot be strictly applied in this instance.

Relevant policies in the proposed Local Development Plan include SG7, SG9 and D1. Policy SG7 again identifies Seres Road/Cathkin Drive as a Neighbourhood Centre. Policy SG9 is the equivalent to Policy S2 and again sets criteria for changes of use within a Neighbourhood Centre, through removes the requirement for premises to have lain vacant in excess of 6 months. Policy D1 sets similar requirements to Policy DM1.

The Council's Roads Service has been consulted and has no objections to the proposal commenting that there are no parking restrictions and sufficient carriageway width to allow on street parking. They have commented that while the café/restaurant may increase demand for parking, it is unlikely to cause any additional problems or road safety concerns.

Environmental Health has also been consulted and has commented that a suitable ventilation system should be installed and this must not cause nuisance to occupiers of nearby properties arising from cooking odours and noise. This can be addressed by a planning condition.

In terms of the objections that have been received the proliferation of food and drink outlets in the area and affect on property values are not material planning considerations.

The proposed change to a Class 3 use covers uses where food and drink is sold for consumption on the premises. It does not include public houses or hot food takeaways which fall within use classes of their own. The proposed Class 3 use would include, for example, a café or restaurant.

It should be noted that previous refusals within the parade of shops have been applications for hot food takeaways. These applications are considered materially different from the current application as they are for a different use class with different amenity considerations. They have also been determined under previous development plan policies.

In terms of the role of Neighbourhood Centres it is recognised that these centres make an important contribution to the local economy, provide employment and local services. It is considered that a change of use away from retail can still ensure continued viability and a complimentary use that adds to the vitality and vibrancy of such centres. A statement has been provided by the agent confirming the property has been marketed for retail use for a period of over two years with no take-up. It can be interpreted that this type and scale of retail unit is no longer viable at this location.

It is considered that the proposed sub-division and part change of use allows the same number of retail units, albeit at a smaller scale, to remain whilst creating an additional use which in turn facilitates the long term viability of the neighbourhood centre.

In terms of local trade, it can also be assumed that the carpet shop and other existing retail uses attract customers from a wider area than the immediate locality.

The Neighbourhood Centre is in an area of unrestricted parking and the Council's Roads Service has not objected to the proposal on parking or road safety grounds. It is also worth noting that the scale of the existing unit could accommodate a use such as mini-supermarket, should this have

been viable, leading to increased traffic and parking demand, without the requirement for planning permission.

The issues of cooking odours can be controlled through compliance with Environmental Health regulations with the impact lessened through controlling opening hours. As discussed above, the Class 3 use is for consumption on the premises and as such litter from customers is likely to be small. The disposal and storage of waste from the operation of the premises can be addressed by a planning condition.

In conclusion, it is considered that the subdivision of the Class 1 unit to form a Class 1 and Class 3 unit does not represent a departure from Policy S1. The proposed development would not result in a significant loss of character or amenity to the area and it is therefore compliant with Policy DM1. In addition the proposed alterations to the frontage are considered to have a limited visual impact and are acceptable in their own right.

Accordingly, it is recommended that the application be approved subject to appropriate conditions restricting opening hours, installation of an appropriate ventilation system and arrangements for storage and disposal of waste.

RECOMMENDATION: Approve Subject to Conditions

PLANNING OBLIGATIONS: None

CONDITION(S):

1. The use hereby approved shall only be open between the hours of 8am and 8pm Monday to Saturday and 9am to 6pm on Sundays; unless otherwise agreed in writing by the Head of Environment (Planning, Property and Regeneration).

Reason: To protect local residents from noise/disturbance.

2. Exact details and specification of a ventilation system shall be submitted and approved in writing by the Head of Environment (Planning, Property and Regeneration) and thereafter shall be fully implemented prior to the commencement and use of the development.

Reason: To protect local residents from nuisance resulting from cooking odours.

3. The noise from any ventilation system must not exceed Noise Rating Curve 25 as measured from any neighbouring residential property.

Reason: To protect local residents from noise/disturbance.

4. Prior to the use hereby approved being brought into use details of the waste storage and management on site shall be submitted for the written approval of the Head of Environment (Planning, Property and Regeneration). Thereafter the agreed measures shall be fully implemented on site.

Reason: To ensure suitable arrangements are made for the safe storage and disposal of waste arising from the business activities.

ADDITIONAL NOTES:

The applicant is required to consult East Renfrewshire Council Protective Services regarding compliance with the provisions of the Health & Safety at Work Etc Act 1974 and the Food Safety Act 1990.

The display of advertisements (e.g. fascia signs, box signs) may require to be the subject of a separate application for advertisement consent.

ADDED VALUE:

Improvements to the proposal were achieved at the pre-application stage.

Conditions have been added that are necessary to control or enhance the development and to ensure the proposal complies with the Council's Local Plan policies.

BACKGROUND PAPERS:

Any background papers referred to in this report can be viewed at www.ercplanning.eastrenfrewshire.gov.uk/eplanning, where you can enter the Reference Number listed below. Any further information can be obtained from Ms Lynne McMenemy on 0141 577 3057.

Ref. No.: 2014/0533/TP
(LYMC)

DATE: 1st October 2014

DIRECTOR OF ENVIRONMENT

2014/0533/TP - APPENDIX 1

DEVELOPMENT PLAN:

Strategic Development Plan

This proposal raises no strategic issues in terms of the Glasgow and the Clyde Valley Strategic Development Plan and therefore the East Renfrewshire Local Plan is the relevant policy document

East Renfrewshire Local Plan (Adopted 14th February 2011)

Policy E1

General Urban Areas

Within the general urban area, as shown on the Proposals Map, there will be a presumption against significant new development or change of use not compatible with the character and amenity of the locality and its surrounding land uses.

Policy S1

Town and Neighbourhood Centres

The Town and Neighbourhood Centres (as identified on the Proposals Map and listed in Schedule S1) will be the focus for new retail, leisure, community and other relevant, complementary uses. New retail (class1) development will be expected to locate in the Town and Neighbourhood Centres. Retail and appropriate non-retail proposals which help to sustain and enhance the economic and community role of Centres and otherwise accord with the policies of this Local Plan, will also be encouraged. Housing and other appropriate uses above ground floor level will also be supported. Proposals for change of use away from retail within these centres require to comply with Policy S2 - "Protecting the Retail Function of the Town and Neighbourhood Centres".

All proposals require to comply with Policies Strat2, Assessment of Development Proposals and Policy DM1 - "Detailed Guidance for all Development".

Schedule S1

Neighbourhood Centres

Clarkston

S1.8 Seres Road / Cathkin Drive

Policy DM1

Detailed Guidance for all Development

Where the principle of development is deemed to be acceptable in terms of the other Policies contained within this

Local Plan, proposals for development will require to conform to the appropriate criteria below:

1. Not result in a significant loss of character or amenity to the surrounding area.
2. Be of a size, scale and density in keeping with the buildings in the locality and respect local architecture, building form, design, and materials.
3. Not constitute backland development without a road frontage.
4. Not impact adversely on the landscape character, involve a significant loss of trees or other Important landscape, greenspace or biodiversity features (see Policies E3 - "Protection of Natural Features", E6 - "Biodiversity" L1 - "Protection of Important Urban Greenspace", and L2- "Safeguarding the Local Greenspace Resource".
5. Ensure that landscaping is an integral element in layout design, taking account of existing physical features (e.g. trees, hedgerows, walls, etc.). Where appropriate, tree planting should augment the amenity and appearance of the site.
6. Ensure that the standards for 'Open Space' are satisfied see Policy L4 - "Open Space Provision in New Developments" and Appendix 1).

7. Meet the parking and access requirements of the Council and provide Appropriate mitigation to minimise the impact of new development (see Policies T3 - "New Transport Infrastructure" and T5 -"Other Traffic Management and Calming Measures).
8. Not prejudice the amenity of neighbouring properties by unreasonably restricting sunlight or privacy.
9. Seek to create safe and secure environments and reduce the scope for anti-social behaviour and fear of crime.
10. Be designed to meet disability needs and include provision for disabled access within public areas.
11. Minimise the extent of light pollution caused by street and communal lighting and any flood lighting forming part of, or associated with, development.
12. Be designed to include provision for the recycling, storage, Collection and composting of waste materials.
13. Be designed to retain on-site, for use as part of the development, as much as possible of all waste material arising from construction of the development.
14. Be designed where applicable to take into account the legacy of former mining activity.

Proposed Local Development Plan

The Proposed Local Development Plan (LDP) has been sent for Examination to the Scottish Government. The LDP outlines the Council's most up to date statement of planning policy.

Policy SG7

Town and Neighbourhood Centre Uses

The town and neighbourhood centres, as shown on the Proposals Map and listed in Schedule 14, will be the focus for new retail (Class 1 use), leisure, community and other relevant, complementary uses in accordance with the sequential approach to site selection. Proposals will be supported where of an appropriate scale and design quality, in order to contribute to the quality of the environment and the role and function of the centre.

Proposals for change of use away from retail within these centres require to comply with Policy SG9.

Proposals for new retail (Class 1 use) and leisure development outwith the town and neighbourhood centres will be assessed against Strategic Policy 2 and the following criteria:

- A sequential approach to site selection has been followed. Proposals must demonstrate why more sequentially preferable sites have been discounted as unsuitable or unavailable;
- There will be no significant individual or cumulative adverse impact on the vitality and viability of any town and neighbourhood centre;
- The proposal will help to meet identifiable qualitative and quantitative deficiencies in existing provision; and
- The proposal is of scale which is commensurate with the size of the local community.

Policy D1

Detailed Guidance for all Development

Proposals for development should be well designed, sympathetic to the local area and demonstrate that the following criteria have been considered, and, where appropriate, met. In some cases, where the criteria have not been met, a written justification will be required to assist with assessment.

1. The development should not result in a significant loss of character or amenity to the surrounding area;
2. The proposal should be of a size, scale, massing and density that is in keeping with the buildings in the locality and should respect local architecture, building form,

- design, and materials;
3. The amenity of neighbouring properties should not be adversely affected by unreasonably restricting their sunlight or privacy. Additional guidance on this issue is available in the Daylight and Sunlight Design Guide Supplementary Planning Guidance;
 4. The development should not impact adversely on landscape character or the green network, involve a significant loss of trees or other important landscape, greenspace or biodiversity features;
 5. Developments should incorporate green infrastructure including access, water management, landscaping, greenspace, water management and Sustainable Urban Drainage Systems at the outset of the design process. Where appropriate, new tree or shrub planting should be incorporated using native species. The physical area of any development covered by impermeable surfaces should be kept to a minimum to assist with flood risk management. Further guidance is contained within the Green Network Supplementary Planning Guidance;
 6. Development should create safe and secure environments that reduce the scope for anti-social behaviour and fear of crime;
 7. Developments must be designed to meet disability needs and include provision for disabled access within public areas;
 8. The Council will not accept 'backland' development, that is, development without a road frontage;
 9. Parking and access requirements of the Council should be met in all development and appropriate mitigation measures should be introduced to minimise the impact of new development. Development should take account of the principles set out in 'Designing Streets';
 10. Development should minimise the extent of light pollution caused by street and communal lighting and any floodlighting associated with the development;
 11. Developments should include provision for the recycling, storage, collection and composting of waste materials;
 12. As much as possible, all waste material arising from construction of the development should be retained on-site for use as part of the new development;
 13. Where applicable, new development should take into account the legacy of former mining activity;
 14. Development should enhance the opportunity for and access to sustainable transportation, particularly walking and cycle opportunities including cycle parking and provision of facilities such as showers/lockers, where appropriate. The Council will not support development on railways solums or other development that would remove opportunities to enhance pedestrian and cycle access unless mitigation measures have been demonstrated;
 15. The Council requires the submission of a design statement for national and major developments. Design statements must also be submitted in cases where a local development relates to a site within a conservation area or Category A listed building in line with Planning Advice Note 68: Design Statements.

Policy D2 General Urban Areas

Development will be supported within the general urban areas, as defined on the Proposals Map, where compatible with the character and amenity of the locality and surrounding land uses and where it complies with other appropriate policies of the Proposed Plan.

GOVERNMENT GUIDANCE:

Scottish Planning Policy on Promoting Town Centre indicates that planning for town centres should be flexible and proactive, enabling a wide range of uses which bring people into town centres. The planning system should: apply a town centre first policy when planning for uses which attract significant numbers of people, including retail and

commercial leisure, offices, community and cultural facilities; encourage a mix of uses in town centres to support their vibrancy, vitality and viability throughout the day and into the evening; ensure development plans, decision-making and monitoring support successful town centres; and consider opportunities for promoting residential use within town centres where this fits with local need and demand.

REPORT OF HANDLING

Reference: 2014/0541/MDO

Date Registered: 14th August 2014

Application Type: Modification/Discharge of a Planning Obligation

Ward: 5 -Newton Mearns South

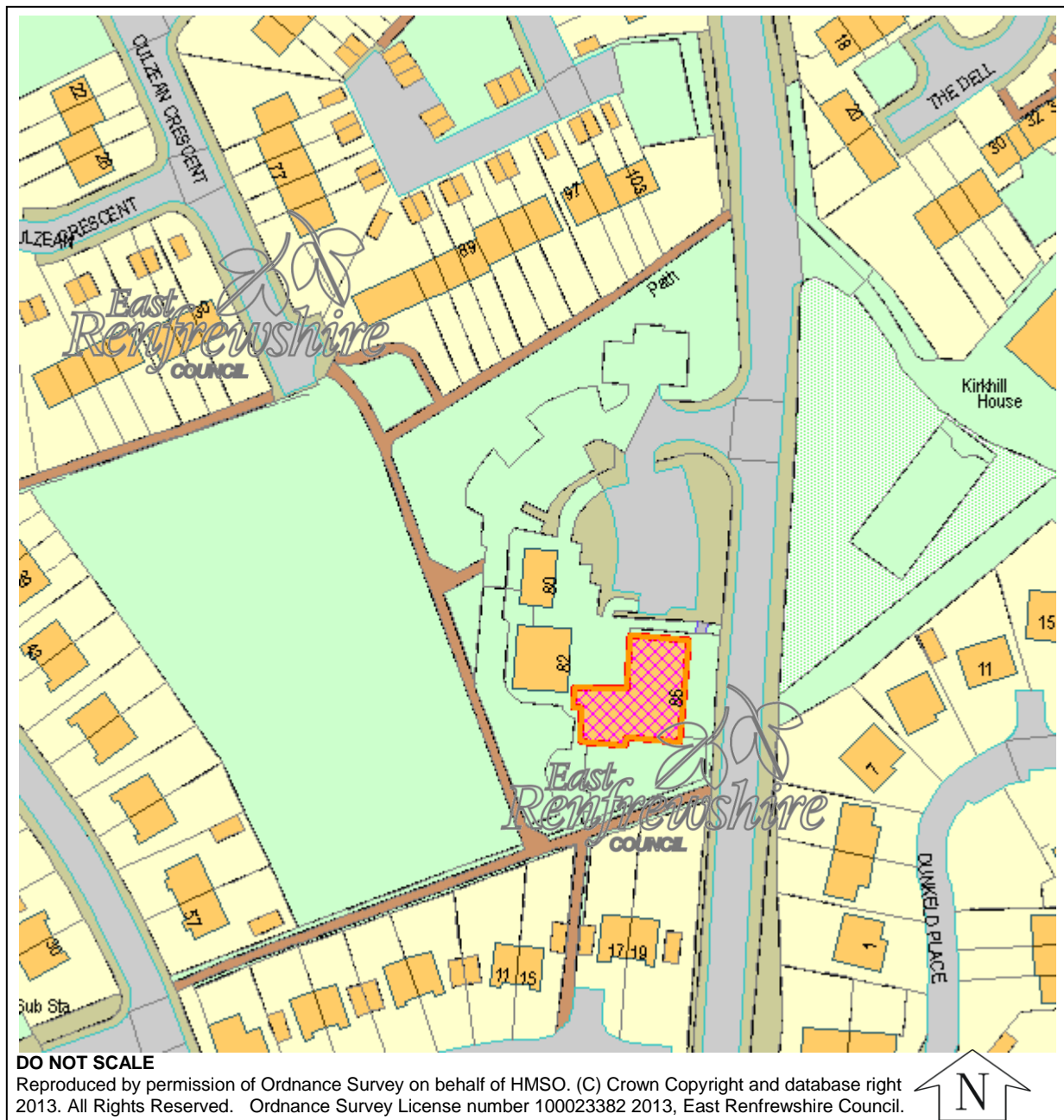
Co-ordinates: 255508/:655831

Applicant/Agent: Applicant:
Pinamar Limited
Burnfield House
4A Burnfield Avenue
Giffnock,G46 7TP

Agent:
TLT LLP
140 West George Street
Glasgow
G2 2HG

Proposal: Modification of part of Planning Obligation associated with the planning permission granted for a licensed restaurant and three shop units 1990/0033/TP that does not allow the restaurant or any buildings which may replace it to be used at any time for the sale of alcoholic liquor for consumption off the premises

Location: 86 Broom Road East, Newton Mearns, G77 5SR



CONSULTATIONS/COMMENTS: None.

PUBLICITY: None.

SITE NOTICES: None.

SITE HISTORY:

1990/0033/TP	Erection of licensed restaurant and three shop units (in outline)	Approved subject to conditions	28.05.1991
1993/0085/TP	Erection of licensed restaurant and three shop units	Approved subject to conditions	20.04.1993
2000/0353/TP	Extension to restaurant	Approved subject to conditions	19.09.2000
2002/0255/TP	Erection of side conservatory	Approved subject to conditions	20.08.2002
2003/0122/TP	Erection of side conservatory to form extension to restaurant	Approved subject to conditions	15.04.2003

REPRESENTATIONS:

A total of 28 representations have been received as well as a petition containing 112 names from:

Mrs Karine Burns 7 Blair Atholl Gate Newton Mearns G77 5UP
Fiona Mason 10 Blair Atholl Crescent Newton Mearns G77 5UH
Ms. Katie Walker 62 Broom Road East Newton Mearns East Renfrewshire G77 5SR
Mrs Kirsten Harkness 18 Rigghead Stewarton KA3 3DH
Ms Linda Paterson 82 Broom Road East Newton Mearns East Renfrewshire G77 5SR
Mrs Susanne Convery 42 Broom Road East Newton Mearns East Renfrewshire G77 5SR
Mrs Theresa ODonnell 11 Troon Place Newton Mearns East Renfrewshire G77 5TQ
Mrs Nicola Steel 37 Greenwood Road Clarkston East Renfrewshire G76 7AL
Mrs Olga Morton 5 Scone Place Newton Mearns East Renfrewshire G77 5UJ
Mrs Muriel Moira Blair 15 Stobo East Kilbride Glasgow G74 3HH
Mrs Marjorie Murphy 64 Broom Road East Newton Mearns East Renfrewshire G77 5SR
Mr Gordon Young 7 Dunkeld Place Newton Mearns East Renfrewshire G77 5UB
Ken And Jane Burnside 8 Scone Place Newton Mearns East Renfrewshire G77 5UJ
Suzanne White 17 Troon Place Newton Mearns East Renfrewshire G77 5TQ
Mr Craig Miller 6 Scone Place Newton Mearns East Renfrewshire G77 5UJ
Mrs Elaine Grant 7 Glendoick Place Newton Mearns East Renfrewshire G77 6XT
Ms. Susan Hamill 19 Islay Drive Newton Mearns East Renfrewshire G77 6UD
Ms. Karen Murphy 52 Broom Road East Newton Mearns East Renfrewshire G77 5SR
Ms. Mary Cattell 15 Troon Place Newton Mearns East Renfrewshire G77 5TQ
Mr. Mike Rose 19 Troon Place Newton Mearns East Renfrewshire G77 5TQ
Ms Linda Paterson Et Al Kirkhillgait Nursery School Broom Castle 82-84 Broom Road East
Mr Kevin Milmore 27 Cherrybank Gardens Newton Mearns East Renfrewshire G77 6TX
Mr Aravind Basavaraju 1 Scone Place Newton Mearns East Renfrewshire G77 5UJ
James Sandeman 3 Scone Place Newton Mearns East Renfrewshire G77 5UJ
Mr. And Mrs. Neeson 7 Troon Place Newton Mearns East Renfrewshire G77 5TQ
Rosalind Cahif, Ms. Emma Shearer, Ms. Sara Cahif and Suzanne White (by email)

Representations can be summarised as follows:

Proximity to nursery school/safety of nursery school children
Increase in litter
Graffiti
Loitering/anti-social behaviour/disturbance
Alcohol misuse
Increase in traffic/traffic and pedestrian safety
Shops in area already sell alcohol/no need for more

SUPPORTING REPORTS: No reports have been submitted for consideration as part of this application.

ASSESSMENT:

It should be noted at the outset that this is not an application for planning permission however is an application made under Section 75A of the Planning Act 1997 to modify/discharge a planning obligation. The Director of Environment has decided that this application should be presented for determination by the Planning Applications Committee because of the volume of objections that have been received.

The application site is a single storey restaurant building located at 86 Broom Road East, Newton Mearns which is located in the Broom Road East Neighbourhood Centre (identified under Schedule S1.23 of the adopted East Renfrewshire Local Plan). There is also a nursery in the Centre. The restaurant has a conservatory constructed on its south elevation with an area enclosed with a wall between the restaurant and the south boundary of the site.

Outline planning permission was granted on 28 May 1991 under 1990/0033/TP for the erection of a licensed restaurant and three shop units at a site at this location.

There is a Legal Agreement (Section 50 under the terms of the then 1972 Planning Act, now Section 75 under the 1997 Planning Act) associated with the abovementioned planning permission/development. The Report of Handling on planning application 1990/0033/TP indicated that it had been envisaged that there would be 4 or 5 units at this location and although the proposal for three shops accorded with the spirit of the Local Plan, there was concern regarding the proposed restaurant and the possible use of the shop units as an off-licence or hot food takeaway because of the proximity to nearby residents and the resultant effect on amenity. The Report of Handling goes on to indicate that in order to alleviate any anxieties regarding the possible sale of hot food and alcohol, the applicant expressed a willingness to enter into a legal agreement prohibiting the use of the shop units for the sale of hot food and alcohol and the exclusion of a hot food carry out service from the restaurant. The recommendation on planning application 1990/0033/TP was to approve the development subject to conditions and the conclusion of the abovementioned legal agreement.

The Section 50 applies to the whole of the development site ("the subjects" referred to in the agreement). The Section 50 contains a number of clauses and it is the Clause Third that is being applied to be discharged. This Clause states:

Third - The said restaurant and any buildings which may replace it on the said subjects shall not now or at any time in the future be used for the sale of alcoholic liquor for consumption off the premises.

This application has been made under Section 75A of the 1997 Planning Act as amended by the 2006 Planning Act to discharge a planning obligation and specifically to discharge Clause Third of the legal agreement as it relates to the restaurant building. It should be noted again that this application is not an application for planning permission.

In terms of background there have been a number of planning applications at this location and it is of note that the full planning permission for the restaurant and three shops (1993/0085/TP) and planning permissions for a conservatory onto the restaurant (2002/0255/TP and 2003/0122/TP) have conditions that do not allow the garden area to be used at any time for the sale or consumption of food and drink.

There is also a variation to the Agreement signed in June 2006 that altered Clause Fourth of the original Legal Agreement to allow ancillary hot and cold food take away facilities to operate from the restaurant between 6pm and 11.30pm.

In the information accompanying this application it has been indicated that previous restaurant businesses have failed at the premises and the current tenant's restaurant business is also struggling financially. It has been indicated that re-letting for a restaurant use is likely to be difficult given its location and previous track record of unsuccessful restaurants. The applicant's agent has indicated that should the current restaurant tenant wish to leave the premises, the premises has the potential to provide retail floor space in a neighbourhood centre that currently has none.

The applicant's agent considers this part of the planning obligation should be discharged as it is not necessary to make the property acceptable in planning terms; it no longer serves a planning purpose and it is not reasonable. The applicant's agent also considers that given its location in a neighbourhood centre and it is not in a problem area for alcohol related crime/violence it is unlikely that such a restriction would be imposed should planning permission be granted for the development today. The applicant's agent has also expressed the opinion that it seems almost inconceivable for a neighbourhood centre to be prevented from including a small-scale licensed convenience store.

In terms of the opinions given by the applicant's agent it should be noted that a restaurant can change its use to a shop/retail unit without requiring planning permission (Class 10 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended)). Should the premises change to a shop it would be the choice of the shop owner as to whether off-sales would be provided. In addition a separate Licence would have to be granted for off-sales, which may or may not be forthcoming. Notwithstanding, off-sales are considered to fall within a "shop" use and the provision of off-sales from a shop does not require planning permission in its own right.

Should the restaurant use remain in place there is a degree of control through planning conditions attached to planning permissions 1993/0085/TP, 2002/0255/TP and 2003/0122/TP which does not allow the garden area to be used for the sale or consumption of food and drink. These conditions are slightly different to the legal agreement in that they restrict the use of the outdoor space rather than the restaurant building.

Whether there is a change to a shop or if the restaurant use remains in place it has to be determined whether it is appropriate and necessary for the part of the legal agreement that is being applied for to remain.

Scottish Government Circular 3/2012 gives the most up-to-date advice on the use of planning obligations and this application has to be assessed against this advice. It was considered that there was good reason to require the legal agreement at the time planning application 1990/0033/TP was determined, as indicated in the Report of Handling for that application. When the legal agreement was concluded it pre-dated the advice given in Circular 3/2012.

The Circular indicates that planning obligations made under Section 75 of the Planning Act should only be sought where they meet all of the following tests: necessary to make the development acceptable in planning terms; serve a planning purpose; relate to the development; fairly and reasonably relate in scale and kind to the development; and reasonable in all other respects. The Circular also goes on to indicate that planning conditions should be considered before using a planning obligation.

When planning application 1990/0033/TP was determined the principle of a restaurant at this location was considered acceptable in planning/land use terms. The planning obligation appears to have been used to address a perceived problem and this was done at a time when Newton Mearns was considered to be a "dry area".

Should a planning application for a restaurant at this location be determined now such an obligation would not be used as it is not considered that such an obligation is necessary to make the restaurant acceptable in planning/land use terms. The application fails the first test in Circular 3/2012. As a consequence it is not necessary to assess the application against the other four tests set out in Circular 3/2012. It is also considered that the appropriate mechanism to deal with off-sales from the premises is through a separate licensing application. It will be for the Licensing Board to decide whether such a licence will be granted or not, whether this is for the restaurant or any future retail store in the premises.

The various grounds of objection have been noted (the majority of which relate to a licensed use not being suitable in close proximity to a children's nursery, as well as litter and antisocial behaviour) however the application that has been made has to be assessed against the advice given in Circular 3/2012. The assessment against this advice is that the planning obligation is not necessary in planning terms and it is therefore recommended that the application is approved.

RECOMMENDATION: Grant the discharge of the planning obligation.

REASON:

1. It is considered acceptable to discharge Clause Third of the existing planning obligation as this clause is not necessary in order to make the existing use or future use of the premises acceptable in planning terms.

PLANNING OBLIGATIONS: None

ADDITIONAL NOTES:

The applicant is reminded that the modification of the planning obligation is to be recorded in the Register of Sasines or registered in the Land Register of Scotland. Registration requirements for registering modification or discharge of planning obligations are as follows:

- Reference to the appropriate section of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc (Scotland) Act 2006 should be narrated in the body of the document and include reference to the date of registration of the planning obligation.
- Documents should be of self proving status as provided for in the Requirements of Writing (Scotland) Act 1995 and should be accompanied by appropriate application form and fee. Further details are available from www.ros.gov.uk.
- Documents to be recorded in the General Register of Sasine should describe the property affected sufficiently to identify it. Documents to be registered in the Land Register should narrate the title number(s) of the property affected.

ADDED VALUE: None

BACKGROUND PAPERS:

Any background papers referred to in this report can be viewed at www.ercplanning.eastrenfrewshire.gov.uk/eplanning, where you can enter the Reference Number listed below. Any further information can be obtained from Mr Sean McDaid on 0141 577 3339.

Ref. No.: 2014/0541/MDO

(SEMC)

DATE: 1st October 2014

DIRECTOR OF ENVIRONMENT