

**WRITTEN REPRESENTATIONS FOR DAWN DEVELOPMENTS LIMITED**  
**in respect of**  
**REQUEST TO CONJOIN RETAIL PLANNING APPLICATIONS – EAST KILBRIDE**  
**to be considered at**  
**THE PLANNING COMMITTEE TO BE HELD ON 7 SEPTEMBER 2010 at 10.00 am**

Council Ref: MMcG/EK/10/0110

**1 Introduction and Summary**

- 1.1 These representations are lodged on behalf of Dawn Developments Limited ("Dawn").
- 1.2 At this stage, Dawn invites the Council to proceed in a way which is practical, fair and in accordance with the Council's legal obligations.
- 1.3 Dawn is seeking to have its application determined at the same time as JHAG's application. However, as the Ediston application was only registered some 4 weeks ago, and for the other reasons mentioned below, it would not be appropriate for either the Dawn or JHAG application to be substantially held back to allow this application to "catch up".
- 1.4 Dawn's position is that the Dawn and JHAG applications should be conjoined and heard together at Planning Committee.

**2 Timing of Applications**

- 2.1 The Dawn and JHAG applications were lodged just 5 weeks apart.
  - Dawn's pre-application notice for a superstore at West Mains Road, East Kilbride was lodged in December last year.
  - JHAG's application for development of a garden centre and superstore was lodged on 18 February and registered on 25 February 2010.
  - Dawn's application was lodged on 29 March and registered on 6 April 2010.

- 2.2 Both the Dawn and JHAG applications are ready for determination. There are no good reasons why they should not now be heard together (nor would a decision to hear one before the other either be fair or lawful).
- 2.3 The Ediston application was only registered with the Council on 26 July 2010. As yet, Ediston have not lodged any reports in support of their application. For example there is currently no retail impact assessment or transport assessment. So far only Scottish Water and Scotland Gas Networks have responded to the application.
- 2.4 In addition to the timing issues identified, which may be indefinite, there are the following major issues with the Ediston application:
- (a) Atholl House, the proposed site for development in terms of the Ediston application, has an occupational tenant who will be in occupation until 2016, which period is outside the bounds of reasonable practicability in planning terms.
  - (b) In order for the Ediston application site to achieve a 70,000sq.ft superstore there is an overdevelopment of the site, this results in a reduced car parking provision, only 290 spaces, compared to a permitted maximum of 464 spaces plus disabled provision. Inadequate car parking on-site can be expected to result in overspill parking on local streets to the detriment of their safety and capacity. The development in its current form is unlikely to appeal to a superstore operator.
  - (c) The Atholl House site has a left in/left out only vehicle access arrangement. This will result in a high proportion of the traffic making a U-turn around one of the two terminal roundabouts, either on the way in or the way out. One of those roundabouts is on the trunk road and is therefore the responsibility of Transport Scotland.
- 2.5 Although this is not the appropriate forum to debate the merits (or otherwise) of the Ediston application, the issues raised above make it clear that substantial challenges stand in the way of this site in the short to medium term at least and as such, it would be unfair for the retail position in East Kilbride to be sterilised for a prolonged period to await developments. On that basis, we do not propose to deal with the matter of conjoining the Ediston application further in these representations, and will instead focus on the issue of whether the Dawn and JHAG applications should be conjoined and heard together at Planning Committee.

### 3 **Planning justification**

- 3.1 It is critical that the Council identify the potential retail capacity in the relevant catchment area(s) so that the Members can then go on to decide how that need can the best be met in the interests of the local community. However, decisions on these matters will not be taken until meetings of the Committee take place. Accordingly, any such Committee requires to have before it full information on available options to meet that need.
- 3.2 In determining the applications by JHAG and Dawn, it is of the utmost materiality that the Planning Committee have an opportunity of considering the options available to them as to where any retail development should take place. Should the Members determine either application without also having before them the other application, they would inevitably fail to take account of an essential consideration (or alternatively would effectively pre-determine the other application without having it before them). The Planning Committee ought properly to have the opportunity to consider the competing merits of the sites to meet retail need, and will not be in a position to do so if one application proceeds to committee alone. Failure to consider the competing merits would be *ultra vires*. No authority properly directing itself as to its legal duties under the Town & Country Planning Acts could reasonably conclude that determining the one application without an opportunity also to consider the other would be an appropriate step.
- 3.3 In any event, the determination of one application in advance of the other application would be unfair and detrimental to consideration of whichever application is held over. Whatever precise assessment might be made on retail impact, they are both major developments intended to function in the same catchment area. Both have implications for local plan policy, for the use of industrial land (in the case of the JHAG applications strategic industrial land) and for the major road network in the area. Transport Scotland has advised that in light of the significance of each of the applications, consideration requires to be given, both separately and together, to the applications in transport terms. The applications may require alterations or additions to the road network. Consideration requires to be given as to what these alterations ought properly to be in the public interest, how they ought to be provided and indeed, whether they can be provided.
- 3.4 Whilst it is noted that the proposed hearing before the Planning Committee on 7 September 2010 is not to determine the merits of either application, Dawn will, of course, wish to maintain that their site is preferable as a location for meeting any retail need in the area. That can issue can only properly be considered if both applications are before the Committee together.

#### 4 **Legal justification**

- 4.1 Although the legal position is clear, the well-known case of *Lakin Ltd v Secretary of State for Scotland* 1988 SLT 780 provides convenient authority for the proposition that in assessing one application, a Council cannot take into account another application without having that second application before them. Lakin concerned two competing applications for superstores in Stirling – a development at Corbiewood, and a development of Broadley Farm. Corbiewood was refused and thereafter subject of appeal. The Secretary of State considered whether to call in the Broadley Farm application but did not and the application was granted. The central issue in the Corbiewood appeal was which site would be preferred and the comparative merits of the two applications would have to be considered. As the Broadley Farm application had already been granted, there was no option but to refuse the Corbiewood appeal; the issues having been predetermined by the grant of permission to Broadley Farm. What had been unlawful was that in exercising his discretion the Secretary of State clearly had taken into account the comparison factors in determining whether or not to call in. This is exactly what the Council should not do here; weigh up the factors which arise due to one application in considering the other without having all the salient details before it to reach a view that is beyond reproach on natural justice grounds.

#### 5 **Public justification**

- 5.1 Should the Dawn and JHAG applications be dealt with together, public and elected Members can clearly see the options that are available for the area and Members can make an informed decision based on the relative planning merits.
- 5.2 This approach will also avoid any suggestion of predetermination, which is a relevant factor to be considered when the Council have had numerous letters from various quarters asking them to proceed fairly in the circumstances.
- 5.3 The East Kilbride public and the Local Community Councils in East Kilbride are of the view that the Dawn and JHAG applications should be dealt with together.

**6 Previous practice of SLC**

- 6.1 In Larkhall, Asda's application is being held back to ensure it is determined alongside a Tesco proposal.
- 6.2 In Lesmahagow the Council has sought to determine competing retail applications, in the same catchment, together.
- 6.3 While a decision in one case is not binding in another these approaches recognise the essential fairness of hearing competing applications at the same time.

In all of the circumstances, the Dawn and JHAG applications should be heard together.