

Perth and Kinross Council
Planning and Placemaking Committee – 14 June 2023
Report of Handling by Head of Planning & Development
(Report No. 23/184)

PROPOSAL: Siting of container unit for use as hot food takeaway and formation of decking (for a temporary period)

LOCATION: Land 25 metres south-west of public convenience, Atholl Street, Dunkeld, PH8 0AX

Ref. No: [23/00167/FLL](#)
Ward No: P5 – Strathtay

Summary

This report recommends a temporary and conditional approval of a detailed planning application for the siting of a container for hot food takeaway on a site adjacent to the Atholl Street car park in Dunkeld, as the development is considered to comply with the relevant provisions of the Development Plan and there are no material considerations apparent which outweigh the Development Plan.

BACKGROUND AND DESCRIPTION OF PROPOSAL

1. This planning application seeks a temporary approval for the siting of a container on a site adjacent to the Atholl Street carpark in Dunkeld, and the use of a small area for outside seating, which comprises two wooden picnic tables. The location is within an existing opening in woodland, and no trees are proposed for removal. The container will be used for serving hot food and drinks and will have ancillary water containers and waste recycling provision. Access would principally be via foot, although public car parking would be available immediately to the east within the public car park.
2. The container is modest, measuring only 2.5m x 3.1m (7.75m²) in footprint, with a height of approx. 2.5m. A simple awning is proposed on the front elevation, above a window, and a single door to one side. The external walls will be painted 'forest green'. An area of decking area will be positioned below the principal container and the associated ancillary containers/bins with a small overhang. The outside seating area will not be subject to any decking, with the table's placed straight onto the existing ground. The applicant had initially proposed to provide decking over the entire area of outside seating, however after discussion with the

Council, this element has been removed, and the amended position has been reflected in amended plans.

3. The container to be used is currently sited and operating at Dunkeld Station (planning Ref: 22/00401/FLL and it is proposed to relocate the business to this new location due to the uncertainty related to the A9(T) dualling project. The site is located within the Conservation Area of Dunkeld, as well as being within the boundary of both the Historic Garden and Designed Landscape (HGDL) associated with Dunkeld House and the historic Battlefield associated with the battle of Dunkeld. To the south east of the site, is the boundary of a Scheduled Monument (Dunkeld Cathedral).

PRE-APPLICATION CONSULTATION

4. The proposed development is not classed as a Major development in terms of the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009, therefore the applicant was not required to undertake not any formal pre-application consultation with the local community.

DEVELOPMENT PLAN

5. The Development Plan for the area comprises National Planning Framework 4 (NPF4), the Perth and Kinross Local Development Plan 2 (2019) (LDP2) and statutory supplementary planning guidance (SPG).

National Planning Framework 4

6. The National Planning Framework 4 (NPF4) is the Scottish Government's long-term spatial strategy with a comprehensive set of national planning policies. This strategy sets out how to improve people's lives by making sustainable, liveable and productive spaces.
7. NPF4 was adopted on 13 February 2023. NPF4 has an increased status over previous NPFs and comprises part of the statutory development plan.
8. The Council's assessment of this application has considered the following policies of NPF4:
 - Policy 7 – Historic assets and places
 - Policy 26 – Business and Industry
 - Policy 30 – Tourism

Perth and Kinross Local Development Plan 2 – Adopted November 2019

9. The Local Development Plan 2 (LDP2) is the most recent statement of Council policy and is augmented by Supplementary Guidance.

10. The site is located within the settlement of Dunkeld within the LDP, and within the town's conservation area, where the following policies are applicable,

- Policy 1A: Placemaking
- Policy 1B: Placemaking
- Policy 5: Infrastructure Contributions
- Policy 17: Residential Areas
- Policy 26: Scheduled Monuments
- Policy 28: Conservation Areas
- Policy 29: Historic Gardens and Designed Landscapes
- Policy 30: Battlefields
- Policy 55: Artificial Light
- Policy 56: Noise Pollution
- Policy 57: Air Quality

Statutory Supplementary Planning Guidance

11. The following statutory SPGs are applicable,

- Developer Contributions & Affordable Housing (adopted in 2020)
- Placemaking (adopted in 2020)

OTHER PKC POLICIES

Non-Statutory Guidance

12. There is no specific non-statutory guidance which is relevant to this proposal.

NATIONAL PLANNING GUIDANCE

13. The Scottish Government expresses its planning policies through Planning Advice Notes, Creating Places, Designing Streets, National Roads Development Guide and a series of Circulars.

Planning Advice Notes

14. The following Scottish Government Planning Advice Notes (PANs) and Guidance Documents are of relevance to the proposal:
- PAN 40 Development Management
 - PAN 51 Planning, Environmental Protection and Regulation
 - PAN 61 Planning and Sustainable Urban Drainage Systems
 - PAN 68 Design Statements

National Roads Development Guide 2014

15. This document supports Designing Streets and expands on its principles and is considered to be the technical advice that should be followed in designing and approving of all streets including parking provision.

SITE HISTORY

16. None relevant to this proposal.

CONSULTATIONS

17. As part of the planning application process the following bodies were consulted:

External

18. **Scottish Water** – No objection to the proposal.
19. **Historic Environment Scotland** – Consulted in relation to the Battle of Dunkeld Battlefield, and the HGDL and have opted not to make any specific comment.

Internal

20. **Structures and Flooding**- No objection in terms of flooding or drainage matters.
21. **Environmental Health**- No objection in terms of noise, external lighting and odours, subject to conditions.

REPRESENTATIONS

22. 25 letters of representations were received. 18 of these offered support and 7 objected. The main issues raised within objections are,

- Conflict with the Development Plan
- Impact on Visual Amenity
- Impact on Conservation Area / Historic Environment
- Lack of Parking Provision
- Over provision of food and drink options locally
- Impact on red squirrels / ecology
- Noise
- Public health issues due to onsite storage of food waste
- Erosion of Open Space
- Impact on residential amenity

23. These issues are addressed in the Appraisal section of the report.

24. In terms of the letters of support, these focus on the economic benefits the proposal would bring, the suitable location and the need and demand for such a facility.
25. In addition to the public letters of representation, a representation from the local Community Council was received, which was stated as being neutral, but wished to raise some points of concern. The principal issues raised by the Community Council relate to parking issues, visual impact, impact on the historic sensitivities and impact on residential amenity.

ADDITIONAL STATEMENTS

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Screening Opinion	EIA Not Required
Environmental Impact Assessment (EIA): Environmental Report	Not applicable
Appropriate Assessment under Habitats Regulations	AA Not Required
Design Statement or Design and Access Statement	Not Required
Report on Impact or Potential Impact eg Flood Risk Assessment	Not Required

APPRAISAL

27. Sections 25 and 37(2) of the Town & Country Planning (Scotland) Act 1997 (as amended) require the determination of the proposal to be made in accordance with the provisions of the Development Plan, unless material considerations indicate otherwise. The Development Plan comprises NPF4, the Perth and Kinross Local Development Plan 2019, and statutory supplementary planning guidance.
28. The relevant policy considerations are outlined in the policy section above and are considered in more detail below. In terms of other material considerations, this involves compliance with Section 64(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 which requires planning authorities to pay special attention to the desirability of preserving or enhancing the character or appearance of the designated conservation area.

Policy

29. In terms of relevant land use policies, there are a number of policies which are applicable across the Development Plan. Within the LDP2, the site is located within the settlement boundary of Dunkeld, but outwith the designated town

centre. The site is not specifically identified for any specific use, nor has it been identified as an area of open space.

30. To this end, Policy 17 (residential areas) is applicable and this looks to ensure that all new developments (within settlements) are compatible with the existing uses (including residential), and states that in general terms encouragement will be given to proposals which fall onto one or more listed categories. One of those categories (d) offers specific encouragement to developments which promote tourism and business.
31. LDP2 Policies: 55 (Artificial Light), 56 (Noise) and 57 (Air Quality) all emphasise the requirements of Policy 17, insofar as protecting existing residential amenity from various sources of nuisance.
32. In addition, LDP2 Policy 1 (Placemaking) seeks to ensure that all proposals do not have an adverse impact whilst Policies 26A (Scheduled Archaeology), 28A (Conservation Areas), 29 (Historic Gardens and Designed Landscapes) and 30 (Battlefields) all look to protect our various cultural and built heritage assets from inappropriate new developments.
33. In terms of NPF4, Policy 7 (Historic Assets and Places) looks to protect our historic assets, Policy 26 (Business and Industry) supports new business in suitable locations and Policy 30 (Tourism) encourages tourism growth.
34. In terms of relevant statutory supplementary planning guidance, the Placemaking Guide 2020 offers guidance on expected design standards for all new developments.

Land Use Acceptability

35. The site is located within the settlement boundary of Dunkeld, where new development is generally encouraged providing it does not impact adversely on residential amenity, and other existing environment sensitivities – which for this site, includes historic and cultural assets. In addition, both the LDP2 and the NPF4 are supportive of the creation and expansion of businesses – but only in locations which are suitable, and do not cause unacceptable environmental harm.
36. Accordingly, there is an acceptance of the principle of the proposed land use however its acceptability is ultimately a question of whether or not the details of the proposal at this location are appropriate or not. The various issues are broken down and considered below.

Visual Amenity, Design and Layout

37. The principal visual impacts are intrinsically linked to the sensitivity of the site in terms of its cultural and built heritage designations. This aside, all other design and layout matters are considered acceptable subject to some additional controls via conditions.

Cultural/Built Heritage Considerations

Conservation Area

38. The site is within the Conservation Area (CA) of Dunkeld, as such new proposals therein must either preserve or improve the character and appearance of the CA. In this regard the location for the container is within an established woodland setting and it would not be overly prominent. No trees are to be removed, and the 'tucked away' positioning within a woodland setting is indicated to have been a key consideration by the applicant. The nature of containers can often mean that they are visually obtrusive in the wrong location and with inappropriate external finishes. In this case, the combination of the woodland setting, not being in a prominent location and a recessive external colouring is considered to result in a neutral impact on the character and appearance of the Conservation Area, as opposed to being negative or adverse. It should also be noted that the container as proposed, was considered appropriate next to the 'A' listed Dunkeld Station.
39. Conditions are recommended to ensure that the external appearance is maintained, and that the permission is only for a temporary period of 5 years. In the event that use ceases, the container and all other development will be required to be removed. Such limitations being standard practice for temporary structures and buildings (such as containers) to retain longer term control. Conditions 1 (time) and 8 (finishes) relate to this.

Scheduled Monument

40. The boundary of the Scheduled Monument associated with Dunkeld Cathedral stretches into to a field close to the southwest. This historic asset is not physically affected by the proposal, nor is its setting. The wider historic setting of the Cathedral (as an 'A' listed Building) is also not affected by this proposal by virtue of the small scale and contained setting of the proposal.

Battlefield

41. The boundary of the battlefield site associated with the Battle of Dunkeld incorporates the application site, as well as the majority of Dunkeld on the north side of Dunkeld Bridge. In light of the temporary nature of the proposal, and the lack of any invasive works to the ground and relative visual containment within the treed area, the proposal raises no issues in terms of the battlefield assets.

Historic Garden and Designed Landscape (HGDL)

- 42. The site is just within the eastern edge of the HGDL that is associated with Dunkeld House. The combination of the location, temporary nature and scale of the proposal means again that there will be negligible impact on the integrity of the HGDL.
- 43. In all, the proposal therefore raises no issues with the relevant cultural and built heritage policies of the LDP2 or the NPF4.

Residential Amenity

- 44. The location of the proposal is such, that it would not directly impact on any existing residential amenity in terms of overlooking or loss of privacy. The closest residential properties are approximately 50m eastwards from the site and are located across the public carpark. In terms of noise and odours arising from cooking, these can be controlled via standard conditions to ensure operation in line with acceptable recognised standards. Conditions 4 (noise), 5 (ventilation) and 6 (lighting) are recommended. The applicant has provided no details concerning the proposed opening times and / or deliveries to the site. In order to have some control over the operating times, it is therefore recommended that a generic operation plan is submitted to the Council for further approval, which will include more specific details of the opening times and that of deliveries and will allow for a review of the operations in the event of a justified complaints. Condition 12 relates to this. Environmental Health have been consulted and have no objections, subject to the aforementioned conditions.

Roads and Access

- 45. The proposal raises no concerns in terms of parking or access provision.
- 46. Users of the facility will either walk to the facility or use existing parking provision nearby, such as the adjacent public car park. That car park at an access point to the core path. Whilst it is noted that concerns have been raised regarding existing parking issues in the area, the site is centrally located within Dunkeld and close to the core path network. It is also unlikely that this facility would independently generate a significant additional level of visitors to the area, and therefore in isolation it is not considered a proposal which would unacceptably affect the parking provision of the existing car park. It is more likely that users of the public car park would be coming to the town for other reasons i.e. visiting the Cathedral, and then may 'opt' to use the facility proposed. In addition, high levels of car parking provision can discourage use of more sustainable modes of transport, such as walking, cycling and public transport (bus and train) - all assisting in reducing congestion and greenhouse gas emissions, as well as encouraging exercise.

Drainage and Flooding

47. The proposal raises no issues in terms of drainage or flooding matters. The area covered by the decking for the container and other elements is small. Surface water will essentially therefore drain to the surrounding ground, which will act as a natural soakaway. Engineered SUDS is not considered appropriate and standard rainwater goods to direct the water to the ground is considered acceptable.

Waste Collection

48. Collection of commercial waste and recycling will take place at the edge of the public car park, and Condition 9 relates to this. Food waste will be stored onsite in a sealed container and be subject to regular commercial servicing and controls through Environmental Health legislation. Condition 10 also emphasises the requirement to comply with recognised standards.

Trees and Biodiversity

49. The proposal is located within a woodland clearing and it is likely that there will be some degree of root spread over the area where the container and associated storage items will be located. However, in the absence of any invasive activities into the soil, the impact would likely be low and be limited to minor pressure on roots and more management on discharge of rainwater – via downpipes, rather than direct to open ground.
50. Bearing in mind the scale of the container and the lack of foundations, appropriate mitigation measures to address impact on trees and drainage are deliverable and will be secured via conditions before the siting of the container takes place. Condition 3 relates to this. It is also noted that the applicant does not propose any underground services to the site, which will again reduce the potential for root damage. The initially proposed decking area over the outside seating area has been removed to reduce the potential impact on tree roots.
51. A condition which requires tree protection during the delivery of the container is also recommended (Condition 8).
52. In terms of impact on ecology, it is noted that red squirrels have been raised within some of the letters of representation. Whilst the presence of the container may have an impact on some wildlife, the lack of any tree works and the small nature of the development would not result in a significant impact on ecology. It would be the case that via the core path, there is unrestricted human activity already. Controls over noise and odours for the interest of residential amenity would also help to mitigate any adverse, and significant biodiversity impacts.

Public Access

53. To the south of the site, there is an existing Core Path route (DUNK/25) which runs from the car park towards the Cathedral. The proposal will not obstruct or affect this route in any way, and its closeness to the route would be advantageous to the business. A standard condition in relation to no obstructions either during siting or upon operation is nevertheless attached for completeness. Condition 11 relates to this.

Open Space

54. Within the letters of representation, it has been suggested that the site is part of an area identified as open space within the LDP2, and which are protected under the terms of Policy 14A of the LDP2.
55. This site is not identified within the LDP2 as area of existing open space or public park which has value to community for either recreational or amenity purposes.

Existing over-provision of food/drink outlets

56. Within some of the letters of representations, concerns have been raised that the Dunkeld area is already over provided for in terms of food and drink outlets. There is no specific policy in relation to this within the Development Plan, and it is not normal for planning to become involved in safeguard personal interests – with the exception of the larger retail proposals which have the potential to have a significant negative impact on a whole local community. The scale of what is proposed here is not likely to impact on the whole community and will ultimately provide for a degree of choice which judging by the level of representations offering support – would be welcomed by a proportion of the local community.

Developer Contributions

57. The proposal does not require any developer contributions.

Economic Impact

58. The proposal could have a positive impact on the local economy, albeit perhaps a localised one.

VARIATION OF APPLICATION UNDER SECTION 32A

59. The planning application has been varied by the omission of the decking area over the outside seating area.

PLANNING OBLIGATIONS AND LEGAL AGREEMENTS

60. None required.

DIRECTION BY SCOTTISH MINISTERS

61. Under the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, regulations 30 – 33 there have been no directions by the Scottish Government in respect of an Environmental Impact Assessment screening opinion, call in or notification relating to this application.

CONCLUSION AND REASONS FOR RECOMMENDATION

62. To conclude, the application must be determined in accordance with the Development Plan unless material considerations indicate otherwise. In this respect, the proposal is considered to comply with NPF4, the adopted Local Development Plan 2 (2019) and statutory supplementary planning guidance.
63. Account has been taken of the relevant material considerations and nothing has been found that would justify overriding the Development Plan.
64. Accordingly, the proposal is recommended for approval subject to the following conditions.

RECOMMENDATION

Approve the application, subject to the following conditions.

1. Planning permission is hereby granted for a temporary period until 30 June 2026. Prior to this date, all development shall be removed from the site, and the use shall cease. If the use of the site ceases prior to this date for a continuous period of 6 months, then all development shall be removed from site within a period of 2 months from the date of a formal notification by the Council as Planning Authority.

Reason: This is a temporary planning permission.

2. The development hereby approved must be carried out in accordance with the approved drawings and documents, unless otherwise provided for by conditions imposed by this decision notice.

Reason: To ensure the development is carried out in accordance with the approved drawings and documents.

3. Prior to the commencement of the development hereby approved, precise details of the proposed base of the container and other ancillary storage containers shall

be submitted to and agreed in writing by the Council as Planning Authority. The details must ensure that a) pressure on the roots is not excessive and b) suitable drainage to the ground beneath can take place. The agreed details shall thereafter be implemented in full.

Reason: In order to safeguard surrounding trees.

4. All plant or equipment shall be so enclosed, attenuated and/or maintained such that any noise therefrom shall not exceed Noise Rating 35 between 0700 and 2300 hours daily, or Noise Rating 25 between 2300 and 0700 hours daily, within any neighbouring residential property, with all windows slightly open, when measured and/ or calculated and plotted on a rating curve chart.

Reason: In order to protect existing residential amenity.

5. Prior to the development hereby approved being completed or brought into use, an effective ventilation system commensurate with the nature and scale of cooking to be undertaken shall be installed and operated such that cooking odours are not exhausted into or escape into any neighbouring buildings. Thereafter the system shall be maintained as per the manufactures specifications.

Reason: In order to protect existing residential amenity.

6. All external lighting shall be sufficiently screened and aligned so as to ensure that there is no direct illumination of neighbouring land and that light spillage beyond the boundaries of the site is minimised to a degree that it does not adversely affect the amenity of the neighbouring land.

Reason: In order to protect existing residential amenity.

7. The container shall be finished in the agreed colour on all four sides, and the external finish thereafter maintained yearly.

Reason: In order to protect the visual amenity of the area.

8. Prior to the delivery of the container, all trees on site and those which have Root Protection Areas which fall within the site shall be retained and protected. Protection methods shall be strictly in accordance with BS 5837 2012: Trees in Relation to Design, Demolition and Construction. Protection measures, once in place, shall remain in place for the duration of installation phase.

Reason: In order to protect existing trees from unnecessary damage during the delivery of the container.

9. Prior to the commencement of the development hereby approved, detailed drawings showing all waste and recycling facility enclosures or waste and recycling facility storage areas and associated locations for bin presentation shall be submitted to and agreed in writing by the Council as Planning Authority. The agreed details shall thereafter be implemented in full after commencement.

Reason: In order to clarify the terms of this planning permission.

10. The onsite refuse storage area for these premises shall be operated and maintained such that detriment is not caused to the amenity of the area or any neighbouring premises.

Reason: In the interest of proper site management.

11. The asserted core path (DUNK/25) must not be obstructed during building works or on completion of the development. Any damage done to the route and/or the associated signage during building works must be made good before the development is completed or brought into use, whichever is the earlier.

Reason: In order to protect public access rights.

12. Prior to the commencement of the development hereby approved, an Operational Management Plan shall be submitted to and agreed in writing by the Council as Planning Authority. The Plan must include opening hours, details of means of deliveries and timing, a procedure for dealing with onsite anti-social behaviour and a review procedure. The approved plan shall be implemented in full.

Reason: In order to protect residential amenity

B JUSTIFICATION

The proposal is in accordance with the Development Plan and there are no material reasons which justify departing from the Development Plan.

C PROCEDURAL NOTES

None.

D INFORMATIVES

1. Under section 27A of the Town and Country Planning (Scotland) Act 1997 (as amended) the person undertaking the development is required to give the Planning Authority prior written notification of the date on which it is intended to commence the development. A failure to comply with this statutory requirement would constitute a breach of planning control under section 123(1) of that Act, which may result in enforcement action being taken.

2. As soon as practicable after the development is complete, the person who completes the development is obliged by section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended) to give the Planning Authority written notice of that position.
3. Records indicate that at least part of the proposed development site lies within a radon affected area where the measurement/monitoring of radon gas and the installation of mitigation measures may be required.
4. Further information on radon gas and the associated reports that can be obtained is available at www.ukradon.org and at <http://shop.bgs.ac.uk/georeports/>.

Background Papers: 25 letters of representation

Date: 2 June 2023

DAVID LITTLEJOHN
HEAD OF PLANNING & DEVELOPMENT

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