

Perth and Kinross Council  
Planning & Development Management Committee – 4 July 2018  
Report of Handling by Interim Development Quality Manager (Report No. 18/228)

**PROPOSAL:** Application under Section 42 of the Town and Country Planning (Scotland) Act 1997 to develop land without complying with Conditions 1 and 2 of Planning Permission 15/00240/IPM (modification of 07/00442/OUT)

**LOCATION:** Land at Pitdownies Farm, Manse Road, Milnathort

Ref. No: 18/00338/IPM  
Ward No: P8 - Kinross-shire

### **Summary**

This report recommends approval of the application for variation of Conditions 1 and 2 of permission 15/00240/IPM (modification of 07/00442/OUT for residential development) to allow additional time for the submission of applications for the approval of matters specified in conditions, and the commencement of development on land at Pitdownies Farm, Manse Road, Milnathort.

The development is considered to accord with the provisions of the Development Plan and is recommended for approval, subject to conditions.

### **BACKGROUND AND DESCRIPTION**

- 1 The site measuring 5.2 hectares is located at the western edge of Milnathort village with housing to the east and south-east, the M90 motorway to the north-west and Back Burn to the south-west. The site which currently provides grazing land is split into two distinct levels with access to the upper level via Manse Road and the lower level via Curlers Crescent.
- 2 In the Kinross Area Local Plan 2004 the site was located in the Milnathort Settlement Boundary as an allocated housing site. In the 2014 Perth and Kinross Local Development Plan (LDP), the sites allocation for residential use was continued under the reference H48. An in Principle permission (07/00442/OUT) for residential development was granted by the Council on 7 March 2008. Since the initial In Principle approval, the time limit has been varied and approved under subsequent applications 11/01537/IPM, 13/00436/IPM and 15/00240/IPM.
- 3 Under Condition1 of the 2007 permission the following matters were reserved for future approval: siting, design and external appearance of the development, landscaping, all means of enclosure, car parking and means of access to the site. The reserved matters were required, by condition 2(i) of the initial

permission to be submitted for approval not later than 3 years from the date of the planning permission (i.e. by 7 March 2011).

- 4 This submission represents the fourth application under Section 42 of the Town and Country Planning (Scotland) Act 1997 seeking to extend the period during which the associated matters specified by condition can be submitted and when development can be commenced.
- 5 There has been no significant change of circumstances in terms of the physical characteristics of the site but it should be noted that there have been changes to both National and Development Plan policy since the determination of the 2007, 2011, 2013 and 2015 applications. This assessment focuses primarily on how the renewal relates to the change in Development Plan policy in particular.

### **PRE-APPLICATION CONSULTATION**

- 6 Due to the size of the application site, which is over 2 hectares, this proposal is classed as a Major Application as defined in the Town and Country Planning (Hierarchy of Development) (Scotland) Regulations 2009. The amended Regulations, which came into force on the 30 June 2013, and removes the requirement for Pre-application Consultation for Section 42 applications (which relates to a 'major planning application') made on, or after the 3 February 2013. Accordingly there is not a requirement for the applicants to carry out a pre-application public consultation on this major application due to the inclusion of Regulation 49(5) in the above Regulations.

### **ENVIRONMENTAL IMPACT ASSESSMENT (EIA)**

- 7 Directive 2011/92/EU (the EIA Directive) requires the 'competent authority' (in this case Perth and Kinross Council) when giving a planning permission for particular large scale projects to do so in the knowledge of any likely significant effects on the environment. The Directive therefore sets out a procedure that must be followed for certain types of project before 'development consent' can be given. The EIA Directive was amended and updated in 2014 by Directive 2014/52/EU introducing new requirements on the developer and competent authorities. These changes are transposed in to the Scottish planning system through the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 (the 2017 Regulations) which largely replaces the 2011 EIA Regulations.
- 8 This procedure, known as Environmental Impact Assessment (EIA), is a means of drawing together, in a systematic way, an assessment of a project's likely significant environmental effects. This helps to ensure that the importance of the predicted effects, and the scope for reducing any adverse effects, are properly understood by the public and the relevant competent authority before it makes its decision.
- 9 A screening exercise was carried out in 2015. It was concluded that the development is not EIA development under the Town and Country Planning EIA (Scotland) Regulations 2011. As the site and surrounding circumstances

have not altered in the past 3 years, it is considered that a fresh screening will not be required in this instance.

## **NATIONAL POLICY AND GUIDANCE**

- 10 The Scottish Government expresses its planning policies through The National Planning Frameworks, the Scottish Planning Policy (SPP), Planning Advice Notes (PAN), Creating Places, Designing Streets, National Roads Development Guide and a series of Circulars.

### **National Planning Framework**

- 11 NPF3 is a long-term strategy for Scotland and is a spatial expression of the Government's Economic Strategy and plans for development and investment in infrastructure. Under the Planning etc. (Scotland) Act 2006 this is now a statutory document and material consideration in any planning application. The document provides a national context for development plans and planning decisions as well as informing the on-going programmes of the Scottish Government, public agencies and local authorities.

### **Scottish Planning Policy 2014**

- 12 The SPP is a statement of Scottish Government policy on land use planning. The following sections of the SPP will be of particular importance in the assessment of this proposal:-

- Sustainability : paragraphs 24 - 35
- Placemaking : paragraphs 36 – 57
- Affordable Housing: paragraphs 126 – 131
- Valuing the Natural Environment : paragraphs 193 – 218
- Maximising the Benefits of Green Infrastructure: paragraphs 219 – 233
- Managing Flood Risk and Drainage: paragraphs 254 – 268
- Promoting Sustainable Transport and Active Travel : paragraphs 269 - 291

- 13 The following Scottish Government Planning Advice Notes (PAN) are of relevance to the proposal:

- PAN 2/2010 Affordable Housing and Housing Land Audits
- PAN 1/2011 Planning and Noise
- PAN 51 Planning, Environmental Protection and Regulation
- PAN 60 Planning for Natural Heritage
- PAN 61 Planning and Sustainable Urban Drainage Systems
- PAN 63 Waste Management Planning
- PAN 65 Planning and Open Space
- PAN 67 Housing Quality
- PAN 68 Design Statements
- PAN 75 Planning for Transport
- PAN 79 Water and Drainage

### **Designing Streets 2010**

- 14 Designing Streets is the first policy statement in Scotland for street design and marks a change in the emphasis of guidance on street design towards place-making and away from a system focused upon the dominance of motor vehicles. It has been created to support the Scottish Government's place-making agenda and sets out Government aspirations for design and the role of the planning system in delivering these.

### **Creating Places – A policy statement on architecture and place for Scotland 2013**

- 15 Sets out the comprehensive value good design can deliver. It notes that successful places can unlock opportunities, build vibrant communities and contribute to a flourishing economy.

### **National Roads Development Guide 2014**

- 16 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.

### **DEVELOPMENT PLAN**

- 17 The Development Plan for the area comprises the TAYplan Strategic Development Plan 2016-2036 and the Perth and Kinross Local Development Plan 2014.

### **TAYPlan Strategic Development Plan 2016-2036**

- 18 TAYPlan sets out a vision for how the region will be in 2036 and what must occur to bring about change to achieve this vision. The vision for the area as set out in the plans states that:
- 19 *"By 2036 the TAYplan area will be sustainable, more attractive, competitive and vibrant without creating an unacceptable burden on our planet. The quality of life will make it a place of first choice where more people choose to live, work, study and visit, and where businesses choose to invest and create jobs."*
- 20 The following sections of the TAYplan 2016 are of particular importance in the assessment of this application.

### **Policy 1: Locational Priorities**

- 21 Seeks to focus the majority of development in the region's principal settlements. Milnathort is identified as a Tier 2 Settlement with the potential to make a major contribution to the regional economy but will accommodate a smaller share of the additional development.

## **Policy 2: Shaping Better Quality Places**

- 22 Seeks to deliver distinctive places by ensuring that the arrangement, layout, design, density and mix of development are shaped through incorporating and enhancing natural and historic assets, natural processes, the multiple roles of infrastructure and networks, and local design context.

## **Policy 4: Homes**

- 23 Seeks to ensure there is a minimum of 5 years effective housing land supply at all times. Land should be allocated within each Housing market Area to provide a generous supply of land to assist in the delivery of 25,020 units up to year 2028 and a further 16,680 by 2036.

## **Policy 6: Developer Contributions**

- 24 Seeks to ensure suitable infrastructure is in place to facilitate new development, developer contributions shall be sought to mitigate any adverse impact on infrastructure, services and amenities brought about by development. This may include contributions towards schools, the delivery of affordable housing, transport infrastructure and facilities (including road, rail, walking, cycling and public transport), green infrastructure and other community facilities in accordance with the Scottish Government Circular 3/2012: Planning Obligations and Good Neighbour Agreements.

## **Policy 8: Green Networks**

- 25 Seeks to protect and enhance green and blue networks by ensuring that:
- i. development does not lead to the fragmentation of existing green networks;
  - ii. development incorporates new multifunctional green networks (that link with existing green networks) of appropriate quantity and quality to meet the needs arising from the nature of the development itself; and,
  - iii. the provision of networks of green infrastructure is a core component of any relevant design framework, development brief or masterplan

## **Perth and Kinross Local Development Plan 2014**

- 26 The Local Development Plan (LDP) was adopted by Perth and Kinross Council on 3 February 2014. It is the most recent statement of Council policy and is augmented by Supplementary Guidance.
- 27 The LDP sets out a vision statement for the area and states that:  
*“Our vision is of a Perth and Kinross which is dynamic, attractive and effective which protects its assets whilst welcoming population and economic growth.”*
- 28 Under the LDP, the following policies are of particular importance in the assessment of this application.

### **Policy PM1A - Placemaking**

- 29 Development must contribute positively to the quality of the surrounding built and natural environment, respecting the character and amenity of the place. All development should be planned and designed with reference to climate change mitigation and adaption.

### **Policy PM1B - Placemaking**

- 30 All proposals should meet all eight of the placemaking criteria.

### **Policy PM2 - Design Statements**

- 31 Design Statements should normally accompany a planning application if the development comprises 5 or more dwellings, is a non-residential use which exceeds 0.5 ha or if the development affects the character or appearance of a Conservation Area, Historic Garden, Designed Landscape or the setting of a Listed Building or Scheduled Monument.

### **Policy PM3 - Infrastructure Contributions**

- 32 Where new developments (either alone or cumulatively) exacerbate a current or generate a need for additional infrastructure provision or community facilities, planning permission will only be granted where contributions which are reasonably related to the scale and nature of the proposed development are secured.

### **Policy RD1 - Residential Areas**

- 33 In identified areas, residential amenity will be protected and, where possible, improved. Small areas of private open space to be retained changes of use away from ancillary uses such as local shops will be resisted unless supported by market evidence that the existing use is non-viable. Proposals will be encouraged where they satisfy the criteria set out and are compatible with the amenity and character of an area.

### **Policy RD4 - Affordable Housing**

- 34 Residential development consisting of 5 or more units should include provision of an affordable housing contribution amounting to 25% of the total number of units. Off-site provision or a commuted sum is acceptable as an alternative in appropriate circumstances.

### **Policy TA1A - Transport Standards and Accessibility Requirements**

- 35 Encouragement will be given to the retention and improvement of transport infrastructure identified in the Plan.

### **Policy CF1B - Open Space Retention and Provision**

- 36 Appropriate areas of informal and formal open space should be provided as an integral part of any new development where existing provision is not adequate. Where there is an adequate supply of open space a financial contribution towards improved open space may be acceptable. Opportunities should be to create, improve and avoid the fragmentation of green networks.

### **Policy CF2 - Public Access**

- 37 Developments will not be allowed if they have an adverse impact on any core path, disused railway line, asserted right of way or other well used route, unless impacts are addressed and suitable alternative provision is made.

### **Policy HE1B - Scheduled Monuments and Non Designated Archaeology**

- 38 Areas or sites of known archaeological interest and their settings will be protected and there will be a strong presumption in favour of preservation in situ. If not possible provision will be required for survey, excavation, recording and analysis.

### **Policy NE1A -International Nature Conservation Sites**

- 39 Development which could have a significant effect on a site designated or proposed as a Special Area of Conservation, Special Protection Area or Ramsar site will only be permitted where an Appropriate Assessment shows that the integrity of the site will not be adversely affected, there are no alternative solutions and there are imperative reasons of overriding public interest.

### **Policy NE1B - National Designations**

- 40 Development which would affect a National Park, National Scenic Area, Site of Special Scientific Interest or National Nature Reserve will only be permitted where the integrity of the area or the qualities for which it has been designated are not adversely affected or any adverse impacts are clearly outweighed by benefits of national importance.

### **Policy NE2A - Forestry, Woodland and Trees**

- 41 Support will be given to proposals which meet the six criteria in particular where forests, woodland and trees are protected, where woodland areas are expanded and where new areas of woodland are delivered, securing establishment in advance of major development where practicable.

### **Policy NE2B - Forestry, Woodland and Trees**

- 42 Where there are existing trees on a development site, any application should be accompanied by a tree survey. There is a presumption in favour of protecting woodland resources. In exceptional circumstances where the loss of

individual trees or woodland cover is unavoidable, mitigation measures will be required.

### **Policy NE3 - Biodiversity**

- 43 All wildlife and wildlife habitats, whether formally designated or not should be protected and enhanced in accordance with the criteria set out. Planning permission will not be granted for development likely to have an adverse effect on protected species.

### **Policy NE4 - Green Infrastructure**

- 44 Development should contribute to the creation, protection, enhancement and management of green infrastructure, in accordance with the criteria set out.

### **Policy EP2 - New Development and Flooding**

- 45 There is a general presumption against proposals for built development or land raising on a functional flood plain and in areas where there is a significant probability of flooding from any source, or where the proposal would increase the probability of flooding elsewhere. Built development should avoid areas at significant risk from landslip, coastal erosion and storm surges. Development should comply with the criteria set out in the policy.

### **Policy EP3B - Water, Environment and Drainage**

- 46 Foul drainage from all developments within and close to settlement envelopes that have public sewerage systems will require connection to the public sewer. A private system will only be considered as a temporary measure or where there is little or no public sewerage system and it does not have an adverse effect on the natural and built environment, surrounding uses and the amenity of the area.

### **Policy EP3C - Water, Environment and Drainage**

- 47 All new developments will be required to employ Sustainable Urban Drainage Systems (SUDS) measures.

### **Policy EP4 - Health and Safety Consultation Zones**

- 48 Full account will be taken of advice from the Health and Safety Executive in determining planning applications for development within the consultation zones identified on the proposals and inset maps.

### **Policy EP8 - Noise Pollution**

- 49 There is a presumption against the siting of proposals which will generate high levels of noise in the locality of noise sensitive uses, and the location of noise sensitive uses near to sources of noise generation.



## **Policy EP12 - Contaminated Land**

- 50 The creation of new contamination will be prevented. Consideration will be given to proposals for the development of contaminated land where it can be demonstrated that remediation measures will ensure the site / land is suitable for the proposed use.

## **OTHER POLICIES**

- 51 The following supplementary guidance and documents are of particular importance in the assessment of this application
- Developer Contributions and Affordable Housing Supplementary Guidance April 2016.
  - Flood Risk and Flood Risk Assessments – Developer Guidance June 2014.

## **Perth & Kinross Community Plan (2006 – 2020)**

- 52 Key aim - Create a vibrant and successful area through:
- A thriving economy including successful tourism and cultural sectors.
  - A positive image locally, nationally and internationally.
  - Improved infrastructure and transport links.
  - A sustainable natural and built environment.

## **Perth & Kinross Corporate Plan 2013-2018**

- 53 Corporate Plan Vision includes promoting a prosperous, inclusive and sustainable economy. Creating safe and sustainable places for future generations.

## **Proposed Perth and Kinross Local Development Plan 2 (LDP2)**

- 54 Perth & Kinross Council is progressing with preparation of a new Local Development Plan to provide up-to-date Development Plan coverage for Perth & Kinross. When adopted, the Perth & Kinross Local Development Plan 2 (LDP2) will replace the current adopted Perth & Kinross Local Development Plan (LDP). The Proposed Local Development Plan 2 was approved at the Special Council meeting on 22 November 2017. The Proposed LDP2 sets out a clear, long-term vision and planning policies for Perth & Kinross to meet the development needs of the area up to 2028 and beyond. The Proposed LDP2 is considered consistent with the Strategic Development Plan (TAYplan) and Scottish Planning Policy (SPP) 2014.
- 55 The Proposed LDP2, as approved by Perth & Kinross Council, was subject of a 9 week period of representation, which ended on 2 February 2018. Any unresolved representation to the Proposed Plan after this period is likely to be considered at an Examination by independent Reporter(s) appointed by the

Scottish Ministers. The Reporter(s) will thereafter present their conclusions and recommendations on the plan, which the Council must accept prior to adoption. It is only in exceptional circumstances that the Council can elect not to do this.

- 56 The Proposed Plan represents Perth & Kinross Council's settled view in relation to land use planning and as such it is a material consideration in the determination of planning applications. The Proposed Plan is, however, at a stage in the statutory preparation process where it may be subject to modification. As such limited weight can therefore currently be given to its content and the policies and proposals of the plan are only referred to where they would materially alter the recommendation or decision. The weight of the Proposed Plan may change following consideration of representation received during consultation, at which time the level of significance of any objection to strategy, policies or proposals within the plan will be known.

### **SITE HISTORY**

- 57 There have been a series of historic applications relating to this site. These include:

**04/02375/FUL:** Detailed application for the erection of 64 dwellinghouses. Application withdrawn 8 June 2005.

**07/00442/OUT:** In Principle application for a residential development with associated landscaping, car parking, infrastructure and community woodland and footpath links. Approved by the Development Management Committee 17 March 2008.

**11/00004/PAN:** A proposals of application notice (PAN), submitted for the modification of Condition 2 of planning consent 07/00442/OUT to extend the time limit for the submission of matters specified in conditions to five years. Content of PAN approved 15 April 2011.

**11/01537/IPM:** Section 42 application for the modification of planning Condition 2 (07/00442/OUT) to extend the time limit. Approved by Development Management Committee 20 January 2012.

**13/00436/IPM:** Section 42 application to modify Conditions 2 and 3 of planning permission 07/00442/OUT to extend the time limit. Approved by Development Management Committee 24 July 2013.

**15/00240/IPM:** Section 42 application to modify Conditions 2 and 3 of planning permission 07/00442/OUT to extend the time limit. Approved by Development Management Committee 9 April 2015.

## **CONSULTATIONS**

### **EXTERNAL**

#### **Scottish Environment Protection Agency (SEPA)**

- 58 No objection on the ground of flood risk but an updated Flood Risk Assessment will be required for the detailed submission. The layout will need to be designed in accordance with current flood information, methodologies and guidance at the time of application.

#### **Transport Scotland**

- 59 No objection.

#### **Scottish Water**

- 60 No objection in terms of water and foul connection.

#### **Milnathort Community Council**

- 61 Object to the proposal on the basis of increased volume of traffic and no supporting transport study.

#### **Health and Safety Executive (HSE)**

- 62 The HSE's online assessment tool (PADHI+) was utilised and recommended the operator (INEOS) of the nearby gas pipeline was consulted.

#### **INEOS**

- 63 No objection as the Forties Pipeline will not be affected by the proposal.

### **INTERNAL**

#### **Environmental Health**

- 64 No objection to the principle of the application on noise and contaminated land grounds but recommend conditional control.

#### **Transport Planning**

- 65 No objection.

#### **Developer Negotiations Officer**

- 66 No objection but recommends new conditions regarding affordable housing and primary education are applied.

## **Flood Risk and Structures**

- 67 No objection. It is advised that the risk of flooding from the Fochy Burn is considered during the detailed design of the development and that any proposed structures are built outwith SEPA's 1 in 200 year flood envelope.

## **Community Waste Advisor**

- 68 No response received.

## **REPRESENTATIONS**

- 69 Four letters of representation including one from the Community Council have been received and the following issues have been raised;
- Contrary to Development Plan
  - Over intensive development
  - Flood risk
  - Traffic congestion and road safety
  - Adverse impact on trees
- 70 The above issues are addressed in the Appraisal section of this report.

## **ADDITIONAL STATEMENTS**

71

Environment Statement	Not required.
Screening Opinion	Undertaken in 2015
Environmental Impact Assessment	Not required
Appropriate Assessment	Not applicable
Design Statement / Design and Access Statement	Not applicable
Reports on Impact or Potential Impact	Undertaken for previous application.

## **APPRAISAL**

### **Policy Appraisal**

- 72 Sections 25 and 37(2) of the Town & Country Planning (Scotland) Act 1997 (as amended) requires the determination of the proposal to be made in accordance with the provisions of the Development Plan, unless material considerations indicate otherwise. The adopted Development Plan consists of the TAYplan Strategic Development Plan 2016 – 2036 and the Perth and Kinross Local Development Plan 2014.
- 73 Section 42 of the Town and Country Planning (Scotland) Act 1997 enables the determination of applications to develop land without compliance with conditions previously attached. The legislation specifies that on such an application the Planning Authority shall consider only the question of the

conditions subject to which planning permission should be granted, and if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly. If they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.

- 74 The determining issues in this case are whether: the development without compliance with part of the condition in contention would be consistent with the relevant provisions of the Development Plan; or if an exception to these provisions is justified by other material considerations.
- 75 This application seeks variation of Conditions 1 and 2 which relate to the timescales of the In Principle permission.
- 76 The applicant's supporting statement justifies the reason for the application to extend the permission is because they recently relaunched the site with refreshed marketing details attracting fresh interest from the development industry. The applicant considers that a valid planning permission will make the site attractive to potential purchasers and help facilitate its sale enabling a purchaser to move forward with a detailed application and develop the site.
- 77 The applicant is seeking an additional period of 3 years (this would be 13 years in total from the date of the grant of the In Principle planning permission 07/00442/OUT) in which to submit the details required for approval of matters specified by condition, as well as additional time in which to commence development.

### **Principle**

- 78 Since the approval of the 2007 application there has been Development Plan changes from the Kinross Local Plan 2004 to the adoption of TAYplan 2016-2036 and the Perth and Kinross Local Development Plan 2014. Notwithstanding these changes the principle of residential development is still maintained under housing allocation H48 in the LDP. Accordingly the proposed variation of the conditions to extend the time to commence development is considered to accord with the updated Development Plan.
- 79 Whilst the primary purpose of the Section 42 application is to modify the time conditions, the Town and Country Planning (Scotland) Act 1997, paragraph 59 states that every In Principle planning permission granted will automatically be deemed to have a 3 year time limit for submission of the Associated Matters Specified by Condition (AMSC) application. As a consequence it is no longer necessary to apply conditional control on the duration of consent and this can now be added as an informative. (Informative No.1)
- 80 In addition the 2007 permission has a number of conditions that are now regarded as out of date. It is considered good practice to update the conditions

to meet current regulations and requirements especially with a change in the Development Plan.

### **Site Specific Developer Requirements**

- 81 The 2014 LDP does require a number of site specific requirements to be adhered to in the development of the site;
- A mix of housing types and sizes including low cost housing.
  - Flood Risk Assessment.
  - Water margin enhancement along Back Burn.
  - Road access to be formed from both Manse Road and Curlers' Crescent.
  - Provision of woodland screen planting along the western edge of Milnathort.
  - Noise attenuation measures.
  - Provision of a multi-user core path through woodland planting.
- 82 All of the above requirements will be addressed through the Associated Matters Specified by Condition (AMSC) application following In Principle permission. This is when the exact details of the development will come forward in terms of number of dwellings, location and design and will deal with the site specific developer requirements listed above.

### **Site Circumstances**

- 83 Whilst there has been no change to the sites physical circumstances since the previous planning permission, concern has been expressed regarding the sites effectiveness and interest to the development industry. The site has In Principle planning permission in place for 10 years without being developed.
- 84 The applicants supporting statement clarifies they require additional time to market the site but there was new interest in it from the development industry. The applicant's agent has since provided evidence of confirmed interest by a national housebuilder to purchase and develop the site. It is considered that this confirmation provides sufficient evidence that the site remains effective and developable. However it is considered that this should be the last time an extension of the In Principle permission should be granted for this site.
- 85 I have taken account of the applicable policies of the Development Plan which relate to residential amenity, traffic and transport, noise, contaminated land and flood risk. I have not received any objections from any of the statutory consultees and these matters have been satisfactorily addressed via earlier applications. It is considered that the development accords with the current Development Plan.

### **Traffic and Transport**

- 86 No concerns have been expressed by Transport Scotland or Transport Planning regarding accessibility, congestion or road safety and access

continues to be available from Manse Road and Curlers Crescent. For any detailed application it is expected that a Transport Statement will be submitted in support of such an application.

- 87 Condition 7 of the 2007 consent requires a scheme to be submitted detailing improvement measures of the junction between Manse Road and North Street. It is considered that this condition is still relevant but has been updated. (See Condition 5)

### **Structures and Flooding**

- 88 Whilst neither SEPA nor Structures and Flooding have any objection to the proposal both highlight that detailed work on flooding and drainage will be required to be submitted with any detail application. A Flood Risk Assessment (FRA) was submitted with the 2007 application and an updated FRA will be required to be submitted with any detailed application to ensure it complies with the Site Specific Developer Requirements and current standards. (Condition 7)
- 89 SEPA have advised that the detailed application will need to be designed in accordance with current flood information, methodologies and guidance at the time of submission. Structures and Flooding have advised that the risk of flooding from the nearby Fochy Burn is considered during the design of the development and any proposed structures are built outwith the SEPA 1 in 200 year flood envelope.

### **Noise**

- 90 Noise from the adjacent M90 will need to be mitigated at the detailed application stage. Environmental Health have reiterated their comments and conditions with regards to noise from the previous approved applications and they are included with this proposed permission. (Condition 2)

### **Contaminated Land**

- 91 Environmental Health (Contaminated Land) has provided advice in relation to the previous applications for this site. There are two potential areas of filled ground within the proposed site. The first of these is the old curling pond which lies mainly under Curlers Crescent, but extends under the eastern edge of the development site. In addition, historic maps indicate an area of boggy ground containing a pond to the west of Curlers Crescent. The origin and nature of the material used to infill these areas are not known nor the levels of pollutants that are potentially present.
- 92 In view of the presence of potential contamination conditional control continues to be required and dealt with as part of the detailed application. (Condition 3)

### **Trees**

- 93 Concern has been expressed regarding the potential impact of the development on trees and properties near the site boundary. There are trees of

varying condition and size along the perimeter of the site and one of the site specific requirements within the LDP allocation is for the provision of woodland screening along the western edge. A detailed tree survey along with a landscape plan will be required to be submitted with any detailed application. (Condition 6 and 12)

### **Developer Contributions**

- 94 This is the fourth time limit extension sought for this site and will increase the timescale for the consent to be implemented. Paragraph 3.6 of the Councils Developer Contributions and Affordable Housing Supplementary Guidance sets out that where renewal of planning consent is sought then the application should be considered against Appendix 5 of the Guidance. In doing so it is identified that the standard conditions in relation to developer contributions and affordable housing should be applied to any consent. A new affordable housing condition should replace condition 14 of the 07/00442/OUT permission. (Condition10).
- 95 In terms of primary education, the Council's Developer Contributions Supplementary Guidance requires a financial contribution towards increasing primary school capacity in areas where a constraint has been identified. A capacity constraint is defined as where a primary school is operating, or likely to be operating following completion of the proposed development and extant planning permissions, at or above 80% of total capacity. This site lies within the catchment of Milnathort Primary School and in comparison to the previous applications a capacity issue has been identified. Conditional control will be required to ensure this contribution towards primary school provision is met. (Condition 11)

### **Economic Impact**

- 96 The construction of the residential development would provide opportunities for local trades and tradesmen to become involved in the construction phase. Additionally, there would also be a positive economic impact on the local area associated with the increase of population of Milnathort.

### **LEGAL AGREEMENTS**

- 97 None required at this stage.

### **DIRECTION BY SCOTTISH MINISTERS**

- 98 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**

- 99 To conclude, the application must be determined in accordance with the Development Plan unless material considerations indicate otherwise. In this respect, account has been taken of the updated policy position and explored how this relates to the previous assessments associated with the proposal.
- 100 The proposed variation of conditions associated with the commencement of development is compliant with the updated policy position subject to adherence to an updated set of conditions including a condition regarding primary school provision will be required as a capacity issue has now been identified.
- 101 Accordingly the variation should be granted as it complies with the Development Plan and there are no other material considerations that would justify refusing the application.

## **RECOMMENDATION**

### **A Approve the application subject to the following conditions:**

#### **Conditions:**

- 1 No works in connection with the development hereby approved shall take place until full details of the siting, design, external appearance and landscaping of the development and the means of access serving the development (hereinafter referred to as the 'Matters Specified in Condition') have been submitted to and approved in writing by the Planning Authority. The specified matters include:
- (i) a detailed phasing plan;
  - (ii) a detailed levels survey (existing and proposed) and cross sections showing proposed finished ground and floor levels of all buildings forming part of the development phase, relative to existing ground levels and a fixed datum point;
  - (iii) the siting, design, height and external materials of all buildings or structures;
  - (iv) the details of all roads, footpaths, cycleways, core path connections throughout the development;
  - (v) details of any screen walls/fencing to be provided (including any acoustic barriers);
  - (vi) measures to maximise environmental sustainability through design, orientation and planting or any other means;
  - (vi) details of all landscaping, structure planting and screening associated with the development of the site;
  - (vii) the lighting of all streets and footpaths;
  - (viii) the layout of any open space or play areas and the equipment to be installed;
  - (ix) Flood Risk Assessment
  - (x) full details of the proposed means of disposal of foul and surface water from the development;

- (xi) Full details of the disposal of surface water from the development by means of a Sustainable Urban Drainage System for during construction and for the completed development.
- (xii) details of car charging points to be provided within the development; and
- (xiii) details of bin storage locations.
- (xiii) A detailed Construction Management Plan which includes monitoring and mitigation measures for the control of noise, dust and vibration.

Reason - This is a Planning Permission in Principle under Section 59 of the Town and Country Planning (Scotland) Act 1997 as amended by Section 21 of the Planning etc. (Scotland) Act 2006.

- 2 No development shall take place unless and until a scheme for protecting the new housing development from M90 road traffic noise has been submitted to and approved in writing by the Planning Authority.

All such works that form the approved scheme shall be completed before the dwellings are brought into use to ensure that the development is adequately soundproofed against externally generated noise in the interests of the amenity of future occupiers of the development.

Reason - In the interests of residential amenity.

- 3 Development should not begin until a scheme to deal with the contamination on the site has been submitted to and approved in writing by the planning authority. The scheme shall contain proposals to deal with the contamination to include:

- I. the nature, extent and type(s) of contamination on the site
- II. measures to treat/remove contamination to ensure the site is fit for the use proposed
- III. measures to deal with contamination during construction works
- IV. condition of the site on completion of decontamination measures

Before any residential unit is occupied the measures to decontaminate the site shall be fully implemented as approved by the planning authority.

Reason - In the interests of residential amenity and human health.

- 4 Prior to the development hereby approved being completed or brought into use, all matters regarding access, car parking, road layout, design and specification, including the disposal of surface water, shall be in accordance with the standards required by the Council as Roads Authority.

Reason - In the interests of pedestrian and traffic safety and in the interests of free traffic flow.

- 5 Prior to the commencement of development a scheme shall be submitted for the approval of the Council as Roads Authority detailing improvement

measures of the junction between Manse Road and North Street. The agreed detail shall thereafter be implemented prior to the completion of development.

Reason – In the interests of road safety.

- 6 In pursuance of Condition 1vi), schemes of hard and soft landscaping works shall be submitted as part of the matters specified by condition application for the development. Details of the scheme shall include:-
- a) Existing and proposed finished ground levels relative to a fixed datum point.
  - b) Existing landscape features and vegetation to be retained.
  - c) Existing and proposed services including cables, pipelines, substations.
  - d) The location of existing and new boundary woodland, trees, shrubs, hedges, grassed areas and water features.
  - e) A schedule of plants to comprise species, plant sizes and proposed numbers and density.
  - f) The location, design and materials of all hard landscaping works including walls, fences, gates, any other means of enclosure, street furniture and play equipment.
  - g) An indication of existing trees, shrubs and hedges to be removed and retained.
  - h) A programme for the completion and subsequent maintenance of the proposed landscaping.
  - i) Proposed woodland screen planting and core path along the western edge of site.
  - j) a woodland management plan.

All soft and hard landscaping proposals shall be carried out in accordance with the approved scheme and shall be completed during the planting season immediately following the commencement of the development on that part of the site or such other date as may be agreed in writing with the Planning Authority.

Any planting which, within a period of 5 years from the completion of the development, in the opinion of the Planning Authority is dying, has been severely damaged or is becoming seriously diseased, shall be replaced by plants of similar size and species to those originally required to be planted.

Reason - To ensure the implementation of satisfactory schemes of landscaping which will help to integrate the proposed development into the local landscape in the interests of the visual amenity of the area.

- 7 Further to Condition 1ix) , an updated Flood Risk Assessment (FRA) shall be submitted as part of the specified matters requiring to be the subject of a further formal planning application for the approval of the Council as Planning Authority. The FRA shall consider flood risk from all sources and shall be developed in accordance with the relevant technical guidance published by the Scottish Environment Protection Agency (e.g. Technical Flood Risk Guidance

for Stakeholders) and the Council's Flood Risk and Flood Risk Assessment Developer Guidance.

Reason - This is a Planning Permission in Principle under Section 59 of the Town and Country Planning (Scotland) Act 1997 as amended by Section 21 of the Planning etc. (Scotland) Act 2006 and there is a known issue relating to flooding and/or surface water.

- 8 In pursuance of condition 1x), and prior to the commencement of any works, full details of the finalised foul drainage scheme shall be submitted for the written approval of the Planning Authority, in consultation with SEPA and Scottish Water. All work must be capable of connection with the main drainage system and shall be carried out in accordance with the approved scheme.

Reason - In the interests of public health and to prevent pollution.

- 9 In pursuance of condition 1x) and prior to the commencement of any works, full details of the finalised SUDS scheme for both during construction operations and for the completed development shall be submitted for the written approval of the Planning Authority, in consultation with SEPA. All work shall be carried out in accordance with the approved scheme.

Reason - To ensure adequate protection of the water environment from surface water run-off.

- 10 The development shall be in accordance with the requirements of Perth & Kinross Council's Developer Contributions and Affordable Housing Supplementary Guidance 2016 in line with Policy RD4: Affordable Housing of the Perth & Kinross Local Development Plan 2014 or such replacement Guidance and Policy which may replace these.

Reason – To ensure that the development approved makes a contribution towards provision of affordable housing, in accordance with Development Plan Policy and Supplementary Guidance.

- 11 The development shall be in accordance with the requirements of Perth & Kinross Council's Developer Contributions and Affordable Housing Supplementary Guidance 2016 in line with Policy PM3: Infrastructure Contributions of the Perth & Kinross Local Development Plan 2014 with particular regard to primary education infrastructure or such replacement Guidance and Policy which may replace these.

Reason – To ensure that the development approved makes a contribution towards increasing primary school provision, in accordance with Development Plan Policy and Supplementary Guidance.

- 12 Any detailed application shall be accompanied by a tree survey carried out by a qualified and independent arborist indicating the type, age, condition, location and accurate canopy spread of all the trees on and affected by the site and including a tree management report with details of the tree protection measures

to be employed during construction in accordance with BS 5837 2012: Trees in Relation to Design, Demolition and Construction.

Reason - In the interests of residential amenity; to ensure a satisfactory standard of local environmental quality.

## **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 required at this stage.

## **D INFORMATIVES**

- 1 Application for the approval of matters specified in conditions shall be made before the expiration of 3 years from the date of the grant of planning permission in principle, unless an earlier application for such approval has been refused or an appeal against such refusal has been dismissed, in which case application for the approval of all outstanding matters specified in conditions must be made within 6 months of the date of such refusal or dismissal.

The approved development shall be commenced not later than the expiration of 3 years from the date of grant of planning permission in principle or 2 years from the final approval of matters specified in conditions, whichever is later.

- 2 The applicant is advised that to enable some of the negative suspensive conditions to be fulfilled works which are operational development may have to be undertaken outwith the application site. These works themselves may require the submission of a planning application.
- 3 The applicant is advised that in terms of Section 56 of the Roads (Scotland) Act 1984 he must obtain from the Council as Roads Authority consent to open an existing road or footway prior to the commencement of works. Advice on the disposal of surface water must be sought at the initial stages of design from Scottish Water and the Scottish Environment Protection Agency.
- 4 The applicant is advised that in terms of Section 21 of the Roads (Scotland) Act 1984 they must obtain from the Council as Roads Authority consent to construct a new road prior to the commencement of roadworks. Advice on the disposal of surface water must be sought at the initial stages of design from Scottish Water and the Scottish Environment Protection Agency.
- 5 The applicants are advised that they must apply to the Roads Authority for construction consent to form a new street. Please contact The Construction and Maintenance Manager, The Environment Service, Perth and Kinross Council, Pullar House, Perth.

- 6 The applicant is advised that the granting of planning consent does not guarantee a connection to Scottish Water's assets. The applicant must make a separate application to Scottish Water Planning & Development Services team for permission to connect to the public wastewater system and/or water network and all their requirements must be fully adhered to.
- 7 The applicant is advised that the works may need a license under the Water (Controlled Activities) Regulations 2005 (CAR). The applicant should contact SEPA's Perth Environmental Protection and Improvement Team (Tel: 01738 627989) in regard to this. The applicant should ensure that all works on site comply with the best practice guidelines laid out in SEPA's published Pollution Prevention Guidance, found at [www.sepa.org.uk](http://www.sepa.org.uk)
- 8 The Council's Community Waste Adviser in the Environment Service should be contacted to clarify the bin storage and recycling requirements for the development.
- 9 The applicant is reminded that, under the Wildlife and Countryside Act 1981, as amended, it is an offence to remove, damage or destroy the nest of any wild birds while that nest is in use or being built. Planning consent for a development does not provide a defence against prosecution under this act.
- 10 The applicant is reminded that, should any protected species be present a licence may be required from Scottish Natural Heritage to disturb a protected species. Failure to obtain a licence may constitute a criminal act under the Habitats Regulations and penalties are severe for non-compliance.
- 11 The applicant is advised that any structures & all walls/embankments that act singly or together to support a carriageway or footpath & retain over 1.5m fill will require Technical Approval.
- 12 Please consult the Street Naming and Numbering Officer, The Environment Service, Perth and Kinross Council, Pullar House, 35 Kinnoull Street, Perth PH1 5GD.

Background Papers: 3 letters of representation. Decision Notice  
07/00442/IPM  
Contact Officer: Steve Callan – Ext 75337  
Date: 21 June 2018

**ANNE CONDLIFFE**  
**INTERIM DEVELOPMENT QUALITY MANAGER**

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