

Perth and Kinross Council
Planning & Development Management Committee – 14 December 2021
Report of Handling by Head of Planning & Development (Report No. 21/241)

PROPOSAL: S42 application to delete Condition 2 (Developer Contributions) of permission 19/02033/IPM

LOCATION: Land 150 metres South of Target House, Ruthvenfield Road, Inveralmond Industrial Estate, Perth

Ref. No: [21/01519/IPM](#)
Ward No: P11 - Perth City North

Summary

This report recommends refusal of the application, as the removal of the condition would fail to comply with the relevant provisions of the Development Plan and there are no material considerations apparent which would warrant departing from the Development Plan.

BACKGROUND AND DESCRIPTION OF PROPOSAL

- 1 The site comprises approximately 15 hectares (ha) of agricultural land, bordered primarily by Inveralmond Industrial Estate to the north (across Ruthvenfield Road) and to the east. The B993 Bertha Park link road defines the western boundary, this mainly serves the ongoing Bertha Park development further to the north. That road also forms part of the first phase of the Cross Tay Link Road (CTLR) project – the A9/85 junction. The A9 trunk road lies to the south. To the north-west, across Ruthvenfield Road is the Double Dykes Gypsy/Traveller site and beyond the proposed Almond Valley Village development area.
- 2 The application site forms the majority of the Local Development Plan 2 (LDP2) allocation known as 'E38' (23.6ha), which is identified for employment uses. Planning Permission in Principle (PPP) was also approved in January 2021 (Ref: 19/02033/IPM) to provide a mix of Class 4 (business), Class 5 (general industrial) and Class 6 (storage or distribution) uses and related access, landscaping, drainage and other infrastructure. One of the related planning conditions (Condition 2) requires that the Council's adopted Developer Contributions Guidance is applied to any future Approval of Matters Specified in Conditions (AMSC) application(s). The wording of Condition 2 is:

“Subject to the exemption referred to immediately hereafter, the development shall accord with the requirements of Perth & Kinross Council's Developer Contributions and Affordable Housing Supplementary Guidance 2016 in line with Policy 5: Infrastructure Contributions of the Perth & Kinross Local Development Plan 2 (2019) with regards to Transport Infrastructure. Notwithstanding these requirements, the Planning Authority will allow the first 10,000 sqm of Class 4, 5, or 6 of Gross Internal Area (as defined in the

Developer Contributions and Affordable Housing Supplementary Guidance 2016), approved as part of a future Approval of Matters Specified in Conditions application(s), to be exempt from these Developer Contributions.

Reason - To ensure that the development approved makes a contribution towards improvements of regional transport infrastructure, in accordance with the Development Plan policy and Supplementary Guidance relating to this application, but with appropriate mitigation to reflect economic conditions.”

- 3 It should be highlighted that this condition provides a substantial relaxation which exempts the first 10,000 sqm of the development, which equates to approximate one third of the entire development which may be accommodated by the site, from any requirement to pay transport infrastructure contributions. This relaxation was issued on the basis of the challenging economic circumstances and in order to allow the development of the site to progress in its early stages with certainty that contributions would not be required.
- 4 The applicant is now seeking permission to remove Condition 2, thereby removing any obligation to pay transport infrastructure contributions for the entirety of the development which may ensue via the PPP. For the avoidance of doubt, the applicant is only promoting the deletion of the condition and is not suggesting any other wording for an alternative condition nor to replace it with a legal agreement.
- 5 A separate S42 application (Ref: [21/01518/IPM](#)) has also been submitted by the applicant that seeks the removal of Condition 7, this relating to the provision of sustainable public transport provision within the site and reported elsewhere on this Agenda.

ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

- 6 The development approved by 19/02033/IPM is of a type listed within Schedule 2 of the EIA Regulations and has previously been subject of EIA screening (18/01958/SCRN). Through this screening opinion the Planning Authority adopted an opinion that the proposal is EIA development, and an EIA Report was duly submitted as part of the approved 2019 PPP. As this current S42 application relates to a specific matter that has no significant bearing on the matters assessed within the EIA Report, it is considered that an addendum to the EIA Report is not required in this instance.

Pre-Application Consultation

- 7 Although the application relates to a Major development, as defined in the Town and Country Planning (Hierarchy of Development) (Scotland) Regulations 2009, Pre-Application Consultation (PAC) is not required for S42 applications.

National Policy and Guidance

- 8 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 2014

- 9 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. This is a statutory document and material consideration in any planning application. It 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

- 10 The Scottish Planning Policy (SPP) sets out national planning policies which reflect Scottish Ministers' priorities for operation of the planning system and for the development and use of land. The SPP promotes consistency in the application of policy across Scotland whilst allowing sufficient flexibility to reflect local circumstances. It directly relates to:

- The preparation of development plans;
- The design of development, from initial concept through to delivery; and
- The determination of planning applications and appeals.

- 11 The following sections of the SPP will be of particular importance in the assessment of this proposal:

- Sustainability: 24 – 35
- Placemaking: 36 – 57
- Promoting Sustainable Transport and Active Travel: 269 – 291.

Planning Advice Notes

- 12 The following Scottish Government Planning Advice Notes (PANs) and Guidance Documents are of relevance to the proposal:

- PAN 1/2011 Planning and Noise
- PAN 40 Development Management
- PAN 51 Planning, Environmental Protection and Regulation
- PAN 75 Planning for Transport
- PAN 77 Designing Safer Places
- PAN 83 Masterplanning.

Designing Streets 2010

- 13 Designing Streets is the policy statement in Scotland for street design and changes the emphasis of guidance on street design towards place-making and away from a system focused upon the dominance of motor vehicles. It was created to support the Scottish Government's place-making agenda, alongside Creating Places.

Creating Places 2013

- 14 Creating Places is the Scottish Government's policy statement on architecture and place. It 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 and set out actions that can achieve positive changes in our places.

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.

Development Plan

- 16 The Development Plan for the area comprises the TAYplan Strategic Development Plan 2016-2036 and the Perth and Kinross Local Development Plan 2019.

TAYPlan Strategic Development Plan 2016-2036

- 17 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:

“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.”

- 18 The following sections of the TAYplan 2016 are of particular importance in the assessment of this application;
- Policy 2: Shaping Better Quality Places
 - Policy 3: A First Choice for Investment
 - Policy 6: Developer Contributions

Perth and Kinross Local Development Plan 2

- 19 The Local Development Plan 2 (2019) (LDP2) 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.”* It is the most recent statement of Council policy and is augmented by Supplementary Guidance.
- 20 The 2019 PPP (19/02033/IPM) assessed the development against a broader range of policies. As there has been no material change in the planning issues or considerations covered by the remainder of the conditions there is no requirement in relation to this application to revisit each of the policies previously considered. As this proposed modification relates specifically to

developer contributions, the principal relevant policies in this instance are, in summary;

- Policy 5: Infrastructure Contributions
- Policy 7: Employment and Mixed Use Areas

LDP2 Allocation

21 E38 Ruthvenfield Road 23.6ha Employment uses (core)

Site-Specific Developer Requirements

- Perth Area contribution to road infrastructure (A9/A85 junction improvements required at commencement of development) (phasing details to be agreed).

Other Policies

- 22 Tay Cities Region Economic Strategy 2019-2039.
- 23 Perth & Kinross Council's Developer Contributions and Affordable Housing Supplementary Guidance 2016.

Relevant Site History

- 24 [17/00551/SCRN](#) EIA Screening for development of site for business, industrial and storage use and associated works. Decision Issued May 2017 – EIA Required.
- 25 [17/00004/PAN](#) Proposal of Application Notice (PoAN) Commercial development (classes 1, 3, 4, 5, 6 and car showroom sui generis), landscaping, vehicular access and associated works. Approved May 2017.
- 26 [18/00006/PAN](#) Proposal of Application Notice (PoAN) Erection of industrial units (classes 4, 5 and 6), formation of SUDS, landscaping and associated works. Approved July 2018.
- 27 [18/01958/SCRN](#) EIA Screening for employment development (Class 4, 6 and 6) and associated works. Decision issued November 2018 – EIA Required.
- 28 [19/02033/IPM](#) Employment use development (class 4, 5 and 6) and associated works (allocated site E38) (in principle). Approved January 2021
- 29 [21/01518/IPM](#) S42 application to delete Condition 7 (Public Transport Infrastructure) of permission 19/02033/IPM. Recommendation to refuse reported elsewhere on this Agenda.

CONSULTATIONS

- 30 As part of the planning application process the following bodies were consulted:

External

Transport Scotland

31 No objection.

Scottish Water

32 No objection.

Internal

Strategy & Policy

33 Advise that the proposed modification to delete Condition 2 is contrary to the provisions of the Development Plan.

Developer Contributions Officer

34 The application falls within the identified Transport Infrastructure Supplementary Guidance boundary and a condition to reflect this should be attached to any planning application granted.

Transport Planning

35 Note comments provided by Contributions Officer regarding requirement to secure appropriate financial contribution towards the cost of delivering transport infrastructure improvements.

Environmental Health

36 No objection.

Perth & Kinross Heritage Trust

37 No objection. Removal of condition will have no impact on earlier recommendation given under 19/02033/IPM.

Representations

38 No representations have been received.

ADDITIONAL STATEMENTS

39	Screening Opinion	No addendum to EIA required.
	Environmental Impact Assessment (EIA): Environmental Report	Previously submitted with 2019 PPP application. Relevant documents transferred to current file,
	Appropriate Assessment	HRA Not Required AA Not Required
	Design Statement or Design and Access Statement	Supporting Statement provided
	Report on Impact or Potential Impact	None required

APPRAISAL

- 40 Section 42(1) of the Town and Country Planning (Scotland) Act 1997 relates to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.
- 41 Section 42(2) requires that the Planning Authority shall consider only the question of the condition(s) subject to which planning permission should be granted, and:
- (a) 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;
 - (b) 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.
- 42 The determining issues in this case are whether; the proposal complies with Development Plan policy, or if there are any other material considerations which justify a departure from that policy. Currently, the adopted Development Plan comprises the TAYplan Strategic Development Plan 2016–2036 and LDP2. The relevant policy considerations are outlined above and are considered below. In terms of other material considerations, this involves national policy and guidance; the Council's other approved policies, supplementary guidance, statutory consultees; and additional statements submitted.

Principle

- 43 The site is within the settlement boundary of Perth and is identified in TAYplan under Policy 3 as part of the West/North West Strategic Development Area (SDA), which is to provide over 50ha of employment land. It is also allocated in LDP2 as within site E38 for employment uses. This allocation in LDP2 is intended to support the growth and expansion of the existing Inveralmond Industrial Estate.
- 44 The principle of the development has also been established under the PPP granted in January 2021 (Ref: 19/02033/IPM) which approved a mix of Class 4 (business), Class 5 (general industrial) and Class 6 (storage or distribution) uses and related access, landscaping, drainage and other infrastructure. This permission was granted subject to a number of conditions, including Condition 2 that ensures that the requirements of Policy 5 of LDP2 and the Council's adopted supplementary Developer Contributions Guidance is applied to any future detailed application(s). The requirement for a developer contribution to achieve appropriate infrastructure improvements resulting from the development is also supported by Policy 6 of TAYPlan 2016.
- 45 This application seeks the removal of Condition 2, thereby removing any requirement to pay developer contributions in respect of transport

infrastructure. As discussed in greater detail below, the removal of this condition is not considered to be supported by the provisions of the Development Plan. Particularly it would result in a development that fails to comply with the requirements of Policy 5 'Infrastructure Contributions' of LDP2 and its associated supplementary developer contributions guidance, as well as the requirements of Policy 6 of TAYPlan 2016.

Condition 2 – Developer Contributions

- 46 The Council's Development Contributions Officer has again confirmed that, in line with the supplementary developer contributions guidance, the proposed development requires contributions for transport infrastructure associated to the local road network. However, as the application is only in principle, it is not possible to determine at this stage the precise level of contributions.
- 47 It is therefore considered that there is clearly a need to retain Condition 2 in order to ensure that any detailed proposals demonstrate compliance with the requirements of Policy 5 'Infrastructure Contributions' of LDP2 and its associated supplementary developer contributions guidance. If the condition is removed and no alternative mechanism introduced i.e. S75, the Planning Authority would have no way to legitimately secure any contribution towards transport infrastructure.
- 48 As such, the removal of Condition 2 would be contrary to the requirements of Policy 5 'of LDP2 and the supplementary developer contributions guidance.

Circular 4/1998 – The use of conditions in planning permissions

- 49 Planning Circular 4/1998 provides guidance on the use of conditions in planning permissions and sets out the six 'tests' that should be applied to ensure that conditions are exercised in a manner which is fair, reasonable and practicable. These 'tests' seek to ensure that conditions are:
- Necessary
 - Relevant to planning
 - Relevant to the development to be permitted
 - Enforceable
 - Precise
 - Reasonable in all other respects
- 50 The supporting statement suggests that Condition 2 fails the requirements of Circular and is ultra vires as its wording lacks the necessary precision for the applicant to be able to ascertain what he must do to comply with it. On that basis the applicant is simply seeking to remove the condition and thereby remove any obligation to pay a financial contribution towards transport infrastructure.
- 51 In response to these suggestions, it is the Council's view, in discussion with Legal Services, that the wording of Condition 2 is sufficiently precise to meet the requirements of the Circular. The existing permission, by its very nature, simply secures the principle of development and does not provide any certainty regarding the precise uses and floor areas of each unit. It is therefore not

possible to calculate or secure any specified financial contribution at this stage as there are no detailed proposals upon which to base the calculation. In such instances it is commonplace and appropriate to apply conditions that ensure compliance with certain policy requirements at later stage, as part of any future AMSC. The wording of Condition 2 simply seeks to ensure that the requirements of Policy 5 'Infrastructure Contributions' of LDP2 and its associated supplementary guidance are applied appropriately upon the submission of any future application(s) for AMSC. This position was clearly set out in the committee report for the 2019 PPP.

- 52 The wording of Condition 2 clearly states that, with the exception of the first 10,000 sqm, the development shall comply with the requirement of the Council's adopted supplementary developer contributions guidance. This provides clear certainty for the applicant that the first 10,000 sqm of the development can be developed without any requirement for a contribution, but thereafter the supplementary developer contribution guidance will be applied. It is also important to highlight the supplementary guidance document clearly and precisely sets out the parameters of how the transport infrastructure contributions are calculated, so there should be no difficulty for the applicant to determine the eventual contribution amount based on the final detailed scheme for the entire site or even individual units.
- 53 In respect of the question of securing the required payment of any future contributions, this would be agreed upon the submission of relevant AMSC application(s). On larger strategic sites such as this it would be anticipated that the contribution would be secure via a s75 legal agreement.
- 54 It is also noted that the applicant highlights that the contributions guidance was updated in 2020 and that the guidance referred to in the condition is now superseded, which leads to uncertainty regarding the level of contribution that will be applied. For clarity, Condition 2 refers specifically to compliance with the 2016 supplementary guidance, and it is this document that will be used to calculate any contributions associated with future AMSC application(s) associated with the 2019 PPP. As such, there should therefore be no confusion or ambiguity as to the contribution rates as these are stated in the guidance document.
- 55 It is the Council's view that the wording of Condition 2 is sufficiently precise to ensure that the applicant understands the obligation being placed on any future detailed scheme and also ensures that the Planning Authority has a legitimate way to secure any contribution towards transport infrastructure.

Design and Layout

- 56 As this relates to a PPP, no detailed plans in relation to the design or layout have been approved at this stage. Nevertheless, the proposed modification to remove Condition 2 is not anticipated to have any impact on the general layout as represented within the masterplan.

Landscape and Visual Impact

- 57 Landscape and visual amenity was considered as part of the assessment of the 2019 PPP. The proposed modification to remove Condition 2 will have no impact on the landscape or visual amenity as no physical changes are being proposed.

Residential Amenity

- 58 Residential amenity was considered as part of the assessment of the 2019 PPP. The modification to delete Condition 2 will have no impact on the residential amenity of the area as no physical changes are being proposed.

Roads and Access

- 59 Roads and access related matters were fully considered within the detailed Transport Assessment that formed part of the EIA Report submitted with the previous 2019 PPP. The removal of Condition 2 will not have any direct impact on the proposed development, but it will result in the potential loss of funding that is required to deliver important improvements to transport infrastructure.

Natural Heritage and Biodiversity

- 60 All matters regarding Natural Heritage and Biodiversity were fully considered as part of the EIA Report submitted with the previous 2019 PPP. The proposed deletion of Condition 2 will not result in change in the conclusions and recommendations set out in the previously approved Habitat Survey.

Cultural Heritage

- 61 A Cultural Heritage Assessment, including for Archaeology, was submitted as part of the previous EIA Report. The proposed deletion of Condition 2 will have no impact on the conclusions and recommendations of that assessment.

Flood Risk and Drainage

- 62 A Flood Risk Assessment (FRA) and Drainage Impact Assessment (DIA) was submitted as part of the previously approved EIA Report. The proposed deletion of Condition 2 will have no impact on the conclusions and recommendations of the FRA or DIA.

Economic Impact

- 63 The deletion of Condition 2 would remove any requirement for the applicant to pay transport infrastructure contributions. This in turn would result in the loss of funding that is required to deliver important improvements to transport infrastructure which are required for the release of all development sites and to support the growth of Perth and Kinross.

PLANNING OBLIGATIONS AND LEGAL AGREEMENTS

- 64 None required at the PPP application stage. Condition 2 highlights that a transport infrastructure contribution will be required after the first 10,000sqm are constructed.

DIRECTION BY SCOTTISH MINISTERS

- 65 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

- 66 To conclude, the application must be determined in accordance with the adopted Development Plan unless material considerations indicate otherwise. In this respect, the proposed modification would remove any requirement to pay developer contributions in respect to Transport Infrastructure and as such is considered contrary to Policy 6 'Developer Contributions' of TAYPlan 2016 and Policy 5 'Infrastructure Contributions' of the adopted of Perth and Kinross Local Development Plan 2 (2019) and its associated adopted supplementary Developer Contributions Guidance. Account has been taken of the relevant material considerations and none has been found that would justify overriding the adopted Development Plan.
- 67 Accordingly, the proposal is recommended for refusal.

A RECOMMENDATION

Refuse the application for the following reasons:

1. The proposal is contrary to Policy 5 'Infrastructure Contributions' of Perth and Kinross Local Development Plan 2 (2019) and the associated adopted supplementary Developer Contributions Guidance, as the proposed modification would remove any requirement to pay developer contributions in respect to Transport Infrastructure.
2. The proposal is contrary to Policy 6 'Developer Contributions' of TAYPlan 2016 which seeks to ensure that developer contributions are sought for appropriate infrastructure, services and amenity requirements resulting from the development.

B JUSTIFICATION

The proposal is not in accordance with the Development Plan and there are no material reasons which justify departing from the Development Plan.

C PROCEDURAL NOTES

None required.

D INFORMATIVES

None required.

Background Papers: 19/02033/IPM Report of Handling

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Date: 02 December 2021

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