

Perth and Kinross Council
Planning & Development Management Committee – 14 December 2021
Report of Handling by Head of Planning & Development (Report No. 21/240)

PROPOSAL: S42 application to delete Condition 7 (Public Transport Infrastructure) of permission 19/02033/IPM

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

Ref. No: [21/01518/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. The application itself is related to a Planning Permission in Principle (PPP) 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 7) requires the provision of public transport infrastructure within the site, in the form of additional bus stops. The wording of Condition 7 is:

“Prior to the development hereby approved being completed or brought into use, new public transport infrastructure, suitable to serve buses in both directions on Ruthvenfield Road as well as two-way bus movements internally within the site, are to be provided and available for use to a design and specification to the satisfaction of Perth & Kinross Council as Planning Authority.

Reason - In the interests of public transport provision.”

- 3 The applicant is now seeking permission to remove Condition 7, thereby removing any obligation on the developer to provide public transport infrastructure within the site.
- 4 A separate S42 application (Ref: [21/01519/IPM](#)) has also been submitted by the applicant that seeks the removal of Condition 2, this relating to developer contributions and reported elsewhere on this Agenda.

ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

- 5 The development approved under 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 (19/02033/IPM). As this current S42 application relates to a specific matter that has no significant bearing on the outcome of 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

- 6 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

- 7 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

- 8 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

- 9 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.
- 10 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

- 11 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

- 12 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

- 13 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

- 14 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

- 15 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

- 16 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.”

- 17 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

Perth and Kinross Local Development Plan 2

- 18 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.
- 19 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 the provision of public transport infrastructure, the principal relevant policies in this instance are, in summary;
- Policy 7: Employment and Mixed Use Areas
 - Policy 60: Transport Standards and Accessibility Requirements

LDP2 Allocation

- 20 **E38 Ruthvenfield Road 23.6ha Employment uses (core)**

Site-Specific Developer Requirements

- A Masterplan setting out the phasing and the comprehensive development of the whole of this site is required at the time of any planning application.
- Facilities to enable expansion area to be connected to Perth’s bus network.

Other Policies

- 21 Tay Cities Region Economic Strategy 2019-2039.

- 22 Perth & Kinross Council's Developer Contributions and Affordable Housing Supplementary Guidance 2016.

Relevant Site History

- 23 [17/00551/SCRN](#) EIA Screening for development of site for business, industrial and storage use and associated works. Decision Issued May 2017 – EIA Required.
- 24 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.
- 25 [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.
- 26 [18/01958/SCRN](#) EIA Screening for employment development (Class 4, 6 and 6) and associated works. Decision issued November 2018 – EIA Required.
- 27 [19/02033/IPM](#) Employment use development (class 4, 5 and 6) and associated works (allocated site E38) (in principle). Approved January 2021.
- 28 [21/01519/IPM](#) S42 application to delete Condition 2 (Developer Contributions) of permission 19/02033/IPM. Recommendation to refuse reported elsewhere on this Agenda.

CONSULTATIONS

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

Internal

Transport Planning

- 30 Object to the removal of Condition 7. Maintain view that additional bus stop infrastructure should be required by condition.

Representations

- 31 No representations have been received.

ADDITIONAL STATEMENTS

32	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

- 33 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.
- 34 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.
- 35 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

- 36 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.
- 37 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 7 that requires the provision of new public transport infrastructure, suitable to serve buses in both directions on Ruthvenfield Road as well as two-way bus movements internally within the site. This condition was considered required to ensure that any future detailed proposals met the site-specific developer requirements of the sites allocation as LDP2 site E38 and to comply with Policy 60B. The requirement for the provision of public transport infrastructure is also supported by Policy 2 of TAYPlan 2016 and SPP 2014.

- 38 This application seeks the removal of Condition 7, thereby removing any requirement for public transport infrastructure within the site. 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 E38 and Policy 60B of LDP2, as well as the requirements of Policy 2 of TAYPlan 2016 and SPP 2014.

Condition 7 – Public Transport Provision

- 39 As identified in the site-specific requirements set out in LDP2 and associated to opportunity site 'E38', facilities are to be provided to enable the expansion of the bus network through the site. This was reflected in Condition 7 of the PPP which requires new public transport infrastructure, suitable to serve buses in both directions on Ruthvenfield Road as well as two-way bus movements internally within the site, the details of which would be confirmed within future detailed applications.
- 40 The applicant is now seeking the removal of this condition as they consider that there is no requirement for additional public transport infrastructure within and around the site, due to sufficient existing provision out with the site.
- 41 The supporting statement correctly states that both SPP 2014 and Policy 60B of LDP2 require that sites such as this should be no more than 400m walking distance from public transport services, hence the reason that the Condition was applied. It is the applicant's contention that the condition is unnecessary as the site is within 400m of four existing bus stops on Ruthvenfield Road and two other existing bus stops on Ruthvenfield Avenue. However, the way that the applicant has presented this argument is considered flawed and therefore not accepted. To explain, the 400m distance stated in the SPP and Policy 60B relates to walking distance, however the applicant's calculations have been based a radius of 400m from each existing bus stop rather than via a reasonable walking route and is thus misleading. Analysis of the indicative masterplan layout sees calculations of walking routes indicate that three of the units will be over 500m from the nearest bus stop and a further two will be over 400m away.
- 42 Furthermore, Transport Planning also has concerns regarding the existing standard of bus stop infrastructure in the immediate vicinity of the site and are of the view that they are not suitable to accommodate increased demand, resulting from the development of this site. Contrary to comments within the supporting statement, during the assessment of the 2019 PPP the Transport Planning Team commented that there is the potential for a requirement for the provision of bus stop infrastructure within the site, to support future new bus services. This was detailed within the consultation response from Transport Planning and within the report to this Committee.
- 43 It is therefore considered that there is a clear and justified need for additional public transport infrastructure and that the requirement for Condition 7 remains necessary in order to ensure that any detailed proposals can comply with the requirements of both Policy 60B of LDP2, and the site-specific developer

requirements set out for this site within LDP2. Furthermore, the Condition also ensures that the development can meet with the requirements of Policy 2 of TAYPlan 2016 and SPP 2014, both of which seek to ensure that large scale developments such as this are served by adequate sustainable transport links to improve accessibility and reduce reliance on car travel.

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

- 44 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
- 45 The supporting statement suggests that Condition 7 fails the requirements of Circular as: it is not necessary as there are bus stops with 400m of the site; that it is not required to make the development acceptable; its wording is lacking the necessary precision; and the condition is unduly onerous and unreasonable.
- 46 In response to these suggestions, it is the Council’s view that the wording of Condition 7 meets all of the six tests of the Circular. As outlined in greater detail above, based on the indicative masterplan, there is a high likelihood that much of the development within the site will be over 400m walking distance from any existing bus stops. As such, there is a clear need for additional public transport provision within the site in order to meet the site-specific developer requirements of E38 and to comply with Policy 60B of LDP2. SPP 2014 also aligns with the need for additional public transport provision to service this proposed development. Therefore, the condition is necessary to ensure that there is adequate provision for public transport within the site and is relevant with respect to planning as it relates to the provision of public transport infrastructure specifically required to serve the proposed development. Furthermore, the condition is relevant to the development to be permitted, as without the condition imposed the development would not comply with the requirements of SPP 2014, the specific developer requirements of E38 and Policy 60B of LDP2. Without that condition the application may have been refused.
- 47 In respect to the final three tests, the requirements of the condition are quite basic and simply seek to ensure provision of appropriate public transport provision within the site. This is reflected in the wording of the condition, which is both clear and concise, setting out the precise requirements that will need to be met at the detailed planning stage and thereafter during the construction of the development. As such, the requirement of the condition is not unduly onerous and compliance with the condition is considered to be both reasonable and could be enforced should the requirements not be delivered.

48 As such, the condition is considered to meet with all six tests of the Planning Circular 4/1998.

Design and Layout

49 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 7 is not anticipated to have any impact on the general layout as represented within the masterplan.

Landscape and Visual Impact

50 Landscape and visual amenity was considered as part of the assessment of the 2019 PPP. The proposed modification to remove Condition 7 will have no impact on the landscape or visual amenity as no physical changes are being proposed.

Residential Amenity

51 Residential amenity was considered as part of the assessment of the 2019 PPP. The modification to delete Condition 7 will have no impact on the residential amenity of the area as no physical changes are being proposed.

Natural Heritage and Biodiversity

52 All matters regarding Natural Heritage and Biodiversity were fully considered as part of the EIA Report submitted with the previous PPP. The proposed deletion of Condition 7 will not result in change in the conclusions and recommendations set out in the previously approved Habitat Survey.

Cultural Heritage

53 A Cultural Heritage Assessment, including for Archaeology, was submitted as part of the previous EIA Report. The proposed deletion of Condition 7 will have no impact on the conclusions and recommendations of that assessment.

Flood Risk and Drainage

54 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 7 will have no impact on the conclusions and recommendations of the FRA or DIA.

Developer Contributions

55 The modification to delete Condition 7 will have no impact on the developer contributions requirements, specifically in relation to transport infrastructure, that are secured under Condition 2 of the 2019 PPP. However, as noted earlier in this report, the applicant has submitted a separate application seeking the removal of Condition 2 relating to the application of Policy 5 'Infrastructure Contributions' and its associated supplementary guidance.

Economic Impact

- 56 The accessibility and incorporation of public transport infrastructure within large employment sites is essential to ensuring that good public transport links are provided, to promote less reliance on cars and more sustainable modes of accessing the site. Improved public transport provision will also improve the economic viability of the site by providing viable alternative methods of access.
- 57 The deletion of Condition 7 would remove any requirement to provide sustainable transport provision within the site, which would be detrimental to the economic viability of the site. The applicant predicts that the site will provide 443 jobs, many of which will rely on the provision of good public transport links and the failure to incorporate improved facilities will have a negative impact on the ability of workers to access the site.

PLANNING OBLIGATIONS AND LEGAL AGREEMENTS

- 58 None required at the PPP application stage.

DIRECTION BY SCOTTISH MINISTERS

- 59 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

- 60 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 will result in the removal of any requirement to provide improved sustainable transport infrastructure for the site which is considered contrary to Policy 2 'Shaping Better Quality Places' of the approved TAYplan 2016, as well as Policy 60B 'Transport Standards and Accessibility Requirements' and the site-specific developer requirements stated within the adopted Perth and Kinross Local Development Plan 2 (2019). Furthermore, the modification would also be considered contrary to Scottish Planning Policy (2014), as it would result in a development that fails to achieve an acceptable standard of access to local facilities via public transport networks.
- 61 Account has been taken of the relevant material considerations and none has been found that would justify overriding the adopted Development Plan.
- 62 Accordingly, the proposal is recommended for refusal.

A RECOMMENDATION

Refuse the application for the following reasons:

1. The proposal is contrary to Policy 60B 'Transport Standards and Accessibility Requirements' of Perth and Kinross Local Development Plan 2 (2019), as the proposed modification would result in a development that fails to provide any facilities to enable the development to be connected to Perth's bus network which will limit accessibility to sustainable public transport and thereby increase reliance on car travel.
2. The proposal is contrary to the site-specific requirements set out in Perth and Kinross Local Development Plan 2 (2019) under opportunity site 'E38', as the proposed modification would remove any requirement to provide sustainable transport provision within the site.
3. The proposal is contrary to Policy 2 'Shaping Better Quality Places' of TAYPlan (2016) as the proposed modification would remove any requirement to provide improved sustainable transport provision which would increase the need to travel by car and reduce accessibility to the site by means of public transport.
4. The proposal is contrary to 'A Connected Place – Promoting Sustainable Transport and Active Travel' of Scottish Planning Policy (2014), as the proposed modification would result in a development that would increase reliance on the car and fail to achieve an acceptable standard of access to local facilities via public transport networks.

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

Contact Officer: David Niven

Date: 2 December 2021

DAVID LITTLEJOHN
HEAD OF PLANNING & DEVELOPMENT

If you or someone you know would like a copy of this document in another language or format, (on occasion, only a summary of the document will be provided in translation), this can be arranged by contacting the Customer Service Centre on 01738 475000.

You can also send us a text message on 07824 498145.

All Council Services can offer a telephone translation facility.