

Perth and Kinross Council  
Planning & Development Management Committee – 01 August 2018  
Report of Handling by Interim Development Quality Manager (Report No.18/240)

**PROPOSAL:** Installation of underground tank and replacement of forecourt lighting (in retrospect).

**LOCATION:** Youngs Garage, Perth Road, Birnam, Dunkeld, PH8 0DN

Ref. No: 18/00719/FLL  
Ward No: P5- Strathtay

**Summary**

This report recommends approval of the application as the development is considered to comply with the relevant provisions of the Development Plan if conditional control is applied. There are no material considerations apparent which outweigh the Development Plan.

**BACKGROUND AND DESCRIPTION OF PROPOSAL**

- 1 This is a retrospective application which seeks consent for works to Young's Petrol Station on Perth Road in Birnam. The works included the installation of underground tank and replacement of forecourt lighting. The installation and upgrade of the garage has resulted in the applicant operating the site on a 24 hour basis.
- 2 The application has been submitted following an investigation by the Council's Planning Enforcement Team and the Council's Environmental Health Service due to concerns being raised by local residents relating to the increased activity at the site.
- 3 The site is within the settlement boundary of Birnam and fronts onto Perth Road the main street through Birnam. There are a number of residential premises surrounding the garage and fuelling station. The closest residential properties are some 10 metres distant to the north west of the site on Perth Road. There are also residential properties on the opposite side of Perth Road and residential scheme to the south east on Torlee Road.
- 4 The site is located within close proximity to the River Tay to the east which is designated as a Special Area of Conservation (SAC). The site is outwith the Birnam Conservation Area but within the River Tay (Dunkeld) National Scenic Area (NSA).

## **NATIONAL POLICY AND GUIDANCE**

- 5 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**

- 6 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**

- 7 The Scottish Planning Policy (SPP) was published in June 2014 and 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.
- 8 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

### **Planning Advice Notes**

- 9 The following Scottish Government Planning Advice Notes (PANs) and Guidance Documents are of relevance to the proposal:
- PAN 40 Development Management
  - PAN 51 Planning, Environmental Protection and Regulation

### **Creating Places**

- 10 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**

- 11 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**

- 12 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**

- 13 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:
- 14 *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.*

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

- 15 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.

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

- 16 The Local Development Plan (LDP) was adopted by Perth and Kinross Council on 3 February 2014. 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.”* It is the most recent statement of Council policy and is augmented by Supplementary Guidance.
- 17 The principal relevant policies are, in summary

### **Policy PM1A - Placemaking**

- 18 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**

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

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

- 20 In identified areas, residential amenity will be protected and, where possible, improved. Small areas of private and public open space will be retained where they are of recreational or amenity value. 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 ED3 - Rural Business and Diversification**

- 21 Favourable consideration will be given to the expansion of existing businesses and the creation of new business. There is a preference that this will generally be within or adjacent to existing settlements. Outwith settlements, proposals may be acceptable where they offer opportunities to diversify an existing business or are related to a site specific resource or opportunity. This is provided that permanent employment is created or additional tourism or recreational facilities are provided or existing buildings are re-used. New and existing tourist related development will generally be supported. All proposals are required to meet all the criteria set out in the policy.

### **Policy TA1B - Transport Standards and Accessibility Requirements**

- 22 Development proposals that involve significant travel generation should be well served by all modes of transport (in particular walking, cycling and public transport), provide safe access and appropriate car parking. Supplementary Guidance will set out when a travel plan and transport assessment is required.

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

- 23 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 EP5 - Nuisance from Artificial Light**

- 24 Permission will not be granted for proposals where the lighting would result in obtrusive and / or intrusive effects.

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

- 25 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 ER6 - Managing Future Landscape -Change to Conserve and Enhance the Diversity and Quality of the Area's Landscapes**

- 26 Development proposals will be supported where they do not conflict with the aim of maintaining and enhancing the landscape qualities of Perth and Kinross and they meet the tests set out in the 7 criteria.

### **Policy EP15 - Development within the River Tay Catchment Area**

- 27 Nature conservation in the River Tay Catchment Area will be protected and enhanced. To ensure that there are no adverse effects on the River Tay SAC.

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

- 28 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.
- 29 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.
- 30 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**

- 31 87/00316/FUL Installation of 6000 gallon underground petrol tank. Application Approved 16 April 1987.
- 32 17/02292/FLL Extension to established hours of operation and installation of lighting (in retrospect). Application Withdrawn 10 April 2018.

## **CONSULTATIONS**

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

### **External**

#### **Dunkeld and Birnam Community Council**

- 34 Object. The proposal will result in an urban feel with the introduction of lighting despite the fact that it is proposed to be limited between 07:00 and 23:00. Do not consider that the development contributes positively to the surrounding built and natural environment contrary to Policy PM1A. Disturbance and noise from opening to 23:00 is contrary to Policies ED1A and ED3.

### **Internal**

#### **Environmental Health (Noise Odour)**

- 35 There are several residential properties adjacent to the application site; the closest residential receptor is located some 10 metres from the site. The hours of operation proposed are Monday to Sunday 07:00 to 23:00 hours. Environmental Health recommends that conditions be included on any given consent to protect existing residential amenity from light pollution.
- 36 Noise time periods are defined as day-time 07:00 to 23:00hrs and night-time 23:00 hrs to 07:00 hrs. The applicant now proposes to limit the hours of operations to within the day time period 07:00 to 23:00 hours. Environmental Health could not support the previous application (17/02292/FLL) due to loss of amenity to existing residential properties. They had concerns with regards to night time period and the likelihood of the L<sub>Amax</sub> level of 45dB for sleep disturbance being breached due to patrons using the petrol station during the night time period with car doors banging etc.

- 37 As such Environmental Health do not object to the proposals subject to the proposed forecourt lighting being restricted to 07:00 to 23:00 hours.

### **Transport Planning**

- 38 No objection

### **REPRESENTATIONS**

- 39 Ten representations were received including the community council. The Community Council's objection is summarised above and the following points were raised in the other representations:-
- Impact on residential amenity, disturbance, impact on sleep resulting in detrimental impact to physical and mental health.
  - Hours of 07:00 to 23:00 should be reduced to 07:00 to 21:00.
  - Light pollution.
  - Noise.
  - Out of character with the area.
  - Visual amenity.
  - Parking concerns.
  - Traffic Impact
- 40 These issues are addressed in the Appraisal section of the report.
- 41 The following matters are also raised in representation however they are not material planning considerations.
- Object to the site being unmanned, withdrawal of toilet facility and litter bins.
  - Concerns with fire, explosions, vandalism and dangerous behaviour on the site.

### **ADDITIONAL STATEMENTS**

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Environment Statement	Not Required
Screening Opinion	Not Required
Environmental Impact Assessment	Not Required
Appropriate Assessment	Not Required
Design Statement / Design and Access Statement	Not Required
Reports on Impact or Potential Impact	Not Required

## **APPRAISAL**

- 43 Sections 25 and 37(2) of the Town & Country Planning (Scotland) Act 1997 (as amended) require the determination of the proposal to be made in accordance with the provisions of the Development Plan, unless material considerations indicate otherwise. The adopted Development Plan comprises the TAYplan Strategic Development Plan 2016–2036 and the Perth and Kinross Local Development Plan 2014. The relevant policy considerations are outlined in the policy section above and are considered in more detail below.

### **Principle**

- 44 Proposed development is directed towards settlements in the LDP under Policy PM4 - Settlement Boundaries. In this case the proposed development complies with this requirement.
- 45 Policy ED1A identifies areas for employment uses which should be retained for such uses and any proposed development must be compatible with surrounding land uses. These zoned sites are generally located within or adjacent to the main settlements. In this case the proposed site is not within an area identified as an employment use. I note that the community council has referred to Policy ED1 in their objection but I consider that Policy RD1 and ED3 are the main applicable policies in this instance.
- 46 Policy RD1 identifies areas where residential amenity will be protected and, where possible, improved. 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.
- 47 Policy ED3 Rural Business and Diversification provides favourable consideration to the expansion of existing businesses and the creation of new business. While ED3 has a preference for proposals to be within or adjacent to existing settlements it confirms that proposals may be acceptable where they offer opportunities to diversify an existing business or are related to a site specific resource or opportunity when located outwith settlements.
- 48 In this case the assessment needs to take cognisance of the proposals relationship with the landscape, the compatibility of surrounding land uses, design/visual amenity issues, drainage as well as road capacity and access. I note from representations that the need for the facility is accepted however it is the recent changes to the site that has resulted in a detrimental impact on neighbouring land uses.
- 49 For reasons discussed under the headings below the principle of the development is considered to accord with Policy RD1 and Policy ED3.



## **Landscape**

- 50 The existing filling station is within the River Tay National Scenic Area. I consider that the upgrades to the filling station can be accommodated within the landscape to comply with Policy NE1B and criterion (b) of LDP Policy ED3 but I note that the lighting will have an impact on the experience of the night sky in this less developed area of Perth and Kinross, see criterion (g) of Policy ER6. However the site is within the settlement boundary of Birnam and there are street lights in operation around the site. I consider illumination can be accepted at the site but this should be restricted to set times to preserve residential amenity which is discussed in greater detail below. With conditional control the application would comply with Policy ER6.

## **Residential Amenity**

- 51 Policy EP5 of the LDP relates to light pollution, seeking to prevent statutory nuisance from occurring due to artificial lighting.
- 52 Policy EP8 of the LDP relates to noise. The planning system has an important role to play in preventing and limiting noise pollution. Although the planning system cannot tackle existing noise problems directly, it has the task of guiding development to the most suitable locations and regulating the layout and design of new development. The noise implications of development can be a material consideration in determining applications for planning permission.
- 53 It is clear from the representations received that the installed lighting and the way it has been operated to date has had a detrimental impact on surrounding residential properties and their occupants. A consultation with Environmental Health confirms that if the installed lights are not on during the hours the site is closed for business, they would have no objection. They recommend conditional control to limit the hours of operation associated with the lights and they also recommend that the lights are aligned in a manner to avoid excessive light spillage beyond the boundaries of the site to ensure that amenity of neighbouring land is not affected. With this conditional control in place (See condition 1 and 2) the proposal complies with Policy EP5.
- 54 Environmental Health has been investigating the use of the site on a 24 hour basis. They note that noise time periods are defined as day-time 07:00 to 23:00hrs and night-time 23:00 hrs to 07:00 hrs. Environmental Health has concerns with the night time operation of the site and the likelihood of the LAmax level of 45dB for sleep disturbance being breached due to patrons using the petrol station during the night time period with car doors banging etc. This disturbance is noted in letters of representation.

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Environmental Health has confirmed if the site is operated to within the day time period 07:00 to 23:00 hours they would have no objection. In this case the control of the lighting can be utilised to effectively limit hours of operation at the site and this would avoid noise issues arising that would conflict with Policy EP8.

### **Design/Visual Amenity**

- 56 With conditional control applied to limit the extent of lighting I do not consider that the proposed alterations to the existing garage under this application results in an inappropriate design or impact on visual amenity. There is no conflict with Policy PM1A, RD1 or ED3

### **Drainage and Flooding**

- 57 Policy EP2 relates to flooding and states that 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 possibility of flooding from any source. There are no flooding or drainage concerns.
- 58 The installation of the interception tank at the site will deal with petrol spills and/or contaminated surface water thus avoiding pollutants entering the River Tay SAC. There is no conflict with Policy EP15.

### **Roads and Access**

- 59 Paragraph 271 of SPP 2014 requires development plans and development management decisions to take account of the implications of development proposals on traffic, patterns of travel and on road safety. Policy TA1B of the LDP requires the impact of the development to pedestrian and traffic safety to be assessed.
- 60 The proposal will utilise the same access arrangements to the filling station and in this instance I am of the view that there will be no impact on the road network, access or egress or parking associated with the undertaken at the site. Furthermore no objection is offered by Transport Planning.
- 61 In so far as roads matters are concerned, the proposed development does not conflict with Policy TA1B.

### **Developer Contributions**

- 62 The Developer Contributions Guidance is not applicable to this application and therefore no contributions are required in this instance.

## **Economic Impact**

- 63 It is acknowledged that there will be some economic benefits associated with expanding the operation of the site.

## **LEGAL AGREEMENTS**

- 64 None required.

## **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, I have taken account of the Local Development Plan and material considerations and in this case I am content that the development proposed does not conflict with the Development Plan.
- 67 Accordingly the proposal is recommended for approval subject to the following conditions.

## **RECOMMENDATION**

### **Approve the application**

### **Conditions and Reasons for Recommendation**

- 1 The hours of operation of the external lighting (apart from lighting on the pay terminal) shall be restricted to between 07:00 and 23:00 hours.

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

- 2 All external lighting shall be sufficiently screened and aligned so as to ensure that there is no direct illumination of neighbouring land and that light spillage beyond the boundaries of the site is minimised to a degree that conforms to requirements to meet the Obtrusive Light Limitations for exterior Lighting Installations for Environmental Zone –E2 contained within Table 2 of the

Institute of Light Engineers Guidance Notes for the Reduction of Obtrusive Lighting, GN01, dated 2011.

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.

**D INFORMATIVES**

None.

Background Papers: 10 letters of representation  
Contact Officer: John Russell 01738 475346  
Date: 19 July 2018

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

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