

Perth and Kinross Council  
Development Control Committee – 7 April 2010  
Report of Handling by Development Quality Manager

**Change of use from agricultural unit to storage and distribution (Class 6) in retrospect at Caerlaverock Farm, Muthill, Crieff, PH5 2BD.**

Ref No: 09/02196/FLL  
Ward No: N7 -Strathallan

**Summary**

This report recommends refusal of the above application as the development is contrary to Policies 1, 2(c), 3 and 53 of the Strathearn Area Local Plan. The development also fails to meet Scottish Planning Policy (SPP). The information submitted in support of a storage and distribution use on this site is not considered to be sufficiently robust to support this application as a departure from the Development Plan.

**BACKGROUND**

- 1 Retrospective planning consent is sought for the change of use of an agricultural shed at Caerlaverock Farm, near Muthill. There is considerable planning history to this site. There have been two retrospective applications for this site to date (08/00619/FUL) and (08/02105/FUL). The details of these applications are discussed in more detail below. 08/00619/FUL was registered on 8 May 2008 but subsequently withdrawn on 24 October 2008, the reasons for this are explained below. A fresh application (08/02105/FUL) was registered on 14 November 2008 and was referred to the Development Control Committee on 11 February 2009 with a recommendation for approval. This was subsequently overturned and the application was refused due to the detrimental impact on residential amenity, road safety and that it was considered an unsustainable rural development contrary to SPP15. The Council then served an Enforcement Notice on 21 February 2009 requiring the unauthorised use to cease within 90 days. This refusal decision and enforcement notice were both subsequently appealed to the Scottish Government Directorate of Planning and Environmental Appeals on 26 March 2009. The conjoined appeal was subsequently dismissed on 24 June 2009. The compliance period for the Enforcement Notice to cease operations on the site was extended to 24 December 2009. This application was subsequently submitted on 21 December 2009 hoping to prevent the requirement to comply with the Enforcement Notice. The applicant has committed an offence by continuing operations on site out with the compliance period and the Council's Enforcement Officer is currently preparing a report to the Procurator Fiscal in that regard.
- 2 There has been some discussion regarding whether or not this building was always used for storage and distribution in association with Haggarts Potato Growers to the north and whether this means that an application for change of use was never required in the first instance. Information in this regard has been submitted and has been considered and rejected by this department.

- 3 The applicant currently operates a Storage and Distribution business, unauthorised from Caerlaverock Farm. They also have a site at Castlemains Farm to the north of Auchterarder which has a certificate of lawfulness for storage and distribution use (04/00867/LAW) but storage and distribution no longer occurs on this site. The applicant's house is also located at Castlemains. The applicant also has a Vehicle Operating Centre (VOC) at a yard on the main route east west through Auchterarder, the A824 (Feus). This site is used for vehicle maintenance and the parking of HGVs. The submission states that there is an operational requirement for any new storage and distribution building to be located within 5 miles of this VOC.

The applicant has indicated from an early date in the planning process that the intention was to re-locate the VOC to Caerlaverock, on the north side of the public road if any planning consent was granted for the storage and distribution use. This would be subject to a separate application.

### **SITE DESCRIPTION**

- 4 The application site is bound to the west by a row of residential properties and to the east by a further two residential units, one of which is occupied by the applicant's son. The northern boundary of the site is the C457 public road, and beyond that is Haggarts Potato yard and to the south are open fields.
- 5 The current access to the site is from the north west corner adjacent to the neighbouring residential property, Kildonan House. The HGVs enter a door on the west elevation of the building about half way down the site. The previous two applications both showed the use of this access as the principal access for HGVs into the building. The proposal now is to move the access into the building to the east side. The submitted plans show the front garden of the house to the east (Caerlaverock Farmhouse), which is in the applicant's son's ownership, is to be removed and replaced with a "haulage yard". An opening is proposed on the eastern elevation of the building and this will act as the main entrance into the building.

### **APPEAL DECISION**

- 6 The Scottish Government Appeal Reporter's dismissal of the appeal stated the following:
- The change of use was not considered to be agricultural diversification, in the sense of supporting agricultural operations.
  - The operations as described in the appellant's submission did not require a countryside location and could be equally well situated in a nearby settlement.
  - the use as storage and distribution was not considered to be compatible with its countryside surroundings or its former agricultural use.

- The manoeuvring of HGV and unloading/loading operations so close to a neighbouring house has caused significant loss of amenity to its occupants.
- Careful consideration was given to the submitted Noise Impact Assessment and noted that noise levels within Kildonan House would be within the recommended day time range of 35-40 dB.
- Considered the numerous conditions which were recommended by the Planning Officer and the Council's Environmental Health Department to control operations would be difficult to monitor and enforce. The requirement of these conditions presents a basic incompatibility between this use and the residential use of the adjoining property.
- Although operations take place on the site on a sporadic basis, the sporadic use of the site can make it difficult to investigate complaints regarding breaches of conditions as the circumstances will not necessarily be replicated when monitoring takes place.
- Whilst the applicant has sought to address the impact of noise on Kildonan House, the very close proximity of HGVs to the boundary would affect the enjoyment of their outdoor space and the visual impact of large vehicles above the boundary fence serves to draw attention to operations on the site.
- Taking a long term view, the continuation of the use of the site for storage and distribution would have the potential to cause significant conflict with local residents and is not persuaded that planning conditions which seek to control day to day operations would be sufficient to alleviate this situation.
- The Planning Authority would have no control over the intensification of use which may lead to increased traffic levels and activity on the site.
- In general, the traffic associated with this development would not adversely affect road safety but states that whilst the local road network may be able to accommodate this traffic in technical terms it does not mean that it is inherently desirable in planning and environmental terms to encourage the use of such roads by additional HGVs.
- Although there are other vehicles such as this serving existing agriculture and local requirements this does not imply that it is appropriate to site a use at this location where there is no local need and which will inevitably increase the use of country roads by large vehicles.
- Whilst the company may be able to control its own drivers it will have no control over drivers from other companies. It cannot therefore be

discounted that drivers will pass through Muthill village, along Station Road, which has sharp bends, a relatively narrow width and is restricted by parked vehicles. The fact that existing HGVs already use this road does not provide a justification for potentially adding to this by approving a development, for which no functional requirement has been demonstrated for its location.

- The development is not farm diversification and therefore not supported by Policy 46. It conflicts with Policy 2(c) being not compatible with its surroundings in land use terms and would result in a significant loss of amenity to the local community. He concludes that it is not consistent with the aims of Policy 1 in regard to Sustainable Development as no functional or locational requirement has been demonstrated.
- No evidence has been presented to suggest that the building is redundant and not suitable for agricultural use and therefore he considers the development contrary to Policy 53.
- Other material considerations support the development, SPP2 Economic Development and SPP 15 Planning for Rural Development support diversification of the rural economy in general but they seek to do so in sustainable locations.
- No evidence has been presented to indicate that a search for alternative sites or premises in the area, nor has there been any evidence that failure to operate at Caerlaverock would threaten the continued existence or viability of the appellant's business or the employment it provides.
- Expansion of the business, in general, would be welcomed, but there was an absence of evidence to suggest that this could not take place in a more sustainable location, and it was not considered that it outweighs the conflict between this development and the provisions of the development plan.

## **NEW APPLICATION**

- 7 Subsequent to the appeal the applicant's agent contacted the Planning Officer prior to the expiry of the Enforcement Notice compliance period to determine the possibility of submitting a revised application in an attempt to address the issues which the reporter raised in his statement. The agent stated that there was scope to provide evidence which indicated that there had been a considerable search of alternative sites in the area and they could provide evidence that the closure of the business at Caerlaverock would be significantly detrimental to the business and employment. They also indicated that there would be scope to alter the location of the access to the east (opposite side) of the building. This, in the agent's opinion, would be sufficient to justify an approval on this site as a departure from the development plan.

- 8 Section 39 (1) (a) (b) of the Town and Country Planning (Scotland) Act 1997 states that the Planning Authority may decline to determine an application, within the proceeding 2 years since refusal, for planning permission if there has been no significant change since the dismissal of a previous application. It was considered that the change to access arrangements and additional information regarding site searches elsewhere resulted in an application which was materially different from the previous application to allow the Planning Authority to choose to determine it.

This submission includes:

- Location Justification Report
- Transport Statement
- Noise Impact Assessment

The appraisal below will consider the above in more detail.

## **NATIONAL POLICY AND GUIDANCE**

### **The Scottish Planning Policy 2010**

- 9 This SPP is a statement of Scottish Government policy on land use planning and contains:

- the Scottish Government's view of the purpose of planning,
- the core principles for the operation of the system and the objectives for key parts of the system,
- statutory guidance on sustainable development and planning under Section 3E of the Planning etc. (Scotland) Act 2006,
- concise subject planning policies, including the implications for development planning and development management, and
- the Scottish Government's expectations of the intended outcomes of the planning system.

Of relevance to this application are

- Paragraphs 45 -51 : Economic Development
- Paragraphs 165 -181: Transport

### **PAN 56 – Planning and Noise**

- 10 Provides guidance on matters relating to noise issues and sets out the range of noise issues that planning authorities need to be aware of in formulating development plans, making decisions on planning applications and in taking enforcement action.

## **DEVELOPMENT PLAN**

- 11 The Development Plan for the area comprises the Approved Perth and Kinross Structure Plan and the Adopted Strathearn Area Local Plan 2007.

### **Perth and Kinross Structure Plan 2003**

- 12 The principal policy of relevance is:

#### **Sustainable Economy Policy 3**

- 13 Support will be given to measures which promote an integrated flexible and innovative approach to rural development which encompass economic, social and environmental considerations and which:

- maintain or enhance local employment opportunities.
- promote diversification.
- help sustain viable rural communities and services.
- introduce new technologies to rural areas (including information and telecommunications technology and renewable energy schemes.)

### **Strathearn Area Local Plan 2001**

- 14 Under the Local Plan the site lies outwith any defined settlement and therefore countryside policies prevail.

#### **Policy 1 Sustainable Development**

- 15 All development must be carried out in a manner in keeping with the goal of sustainable development

#### **Policy 2 Development Criteria**

- 16 All developments will be judged against a series of criteria including siting, appearance, access and drainage.

#### **Policy 3 Landscape**

- 17 Developments should conserve landscape features and strengthen and enhance landscape character.

#### **Policy 46 Rural Land Uses**

- 18 Encouragement will be given to farms wishing to diversify their business, particularly where this will generate additional permanent local employment, provide additional tourist facilities or accommodation, or re-use existing buildings, provided proposals are compatible with other Landward Area policies and specific criteria.

### **Policy 53 Business and Commercial uses**

- 19 Encouragement will be given to proposals to re-use redundant buildings for business, industrial or tourist-related development.

### **OTHER POLICIES**

- 20 None.

### **SITE HISTORY**

- 21 An application was registered on 8<sup>th</sup> May (08/00619/FUL). The application stated that the HGVs would enter the site from the west and then leave the site from an existing door to the north of the building, allowing the HGVs to enter and leave in a forward gear at all times. This application was subsequently presented to the Development Control Committee on 30 July 2008 with a recommendation for approval. The Committee chose to defer this application to:
- Allow further consideration to be given to an alternative access from the east of the site
  - The submission of a noise assessment for the proposal.
- 22 A noise assessment was subsequently submitted which was considered satisfactory by the Council's Environmental Health Officer and recommended conditions including the erection of a fence on the western boundary of the site to reduce noise implications on neighbours to the west.
- 23 The applicant's agent also stated that there was no scope to access the site from the east due to the narrowness of the access which would not allow large lorries to enter and leave the site correctly, however no exact details in terms of a full assessment of this access were submitted, the applicant simply stated that this access was not feasible. This application was due to go back to the Development Control Committee with a further recommendation for approval. At that point the developer realised that an error had been made on the submitted plans in that the proposed access (entering from the east and leaving from the north) could not be physically achieved due to the restricted internal arrangements. The applicant therefore required to alter the access to one single access which involved the HGVs having to reverse within the site to allow them to leave in a forward gear, as is currently the case during unauthorised operations.
- 24 This change to the access arrangements was considered a key material change to the application given the likely impact on the neighbours to the west and the applicant was therefore asked to withdraw the (08/00619/FUL) application and re-submit a revised proposal. The revised application (08/02105/FUL) with an access solely on the western side of the site in close proximity to Kildonan House was referred to Development Control Committee on 11 February 2009 with a recommendation of approval but was refused by Committee and dismissed on appeal, as described in more detail above. A copy of the Committee Report's for both of these applications and a copy of

the Scottish Government Appeal Reporter's decision notice are available to view in the Member's lounge. The previous refusal by Committee, dismissal of the appeal and additional information submitted by the applicant regarding a change to the access and a search of alternative sites are key material considerations in this instance.

## **CONSULTATIONS**

- 25 Muthill and Tullibardine Community Council object on the grounds of traffic/road safety and effect on residential amenity.
- 26 Environmental Health have also commented on the Noise Impact Assessment submitted by the applicant and have indicated concerns regarding the information contained within and the type of assessment of noise which has been carried out. They have also raised concerns regarding the inability to sufficiently control operations through planning conditions.

## **REPRESENTATIONS**

- 27 A total of 149 letters of representation have been received. 93 are supporting the application and 48 objecting. There has also been one letter from Muthill and Tullibardine Community Council who object to the development. The objections were on the following grounds:

- Noise/Residential Amenity (moved from west to east of site)
- Dust
- Road/traffic safety issues
- Light pollution
- Vibration from HGVs
- Effect on visual amenity
- Littering
- Timescales
- VOSA License
- Infringement of Human rights
- Contrary to Development Plan
- Fails to address reasons for refusal of previous application
- Fails to address concerns of Scottish Government Reporter appeal dismissal
- Planning conditions not sufficient to protect amenity
- Location justification not sufficient
- Accuracy of submission

The letters of support raised the following issues:

- Well established local business would be lost
- Loss of employment
- Site serves local businesses
- Impact on local roads is negligible given other road users
- Sheds at Caerlaverock have been used for similar purposes in the past

- Economic climate and general support for local business.
- Business provides essential service to farmers and other business/individuals

28 Where relevant, the issues of representation are addressed in the Appraisal Section of this report.

## ADDITIONAL STATEMENTS

29

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
Report on Impact or Potential Impact	Not required
Noise Impact Assessment	Submitted
Transport Assessment	Submitted

## APPRAISAL

### Policy

- 30 Section 25 of the Town and Country Planning (Scotland) Act, 1997 requires the application to be determined in accordance with the provisions of the Development Plan, unless material considerations indicate otherwise. In this instance the appropriate Local Plan policies are Policy 2 'Development Criteria', Policy 46 'Rural Land Uses' and Policy 53 'Business and Commercial Uses'.
- 31 Policy 2 assesses all development against criteria including siting, appearance, access, drainage and affect on local amenity.
- 32 Policy 3 sees the conservation of landscape features and to strengthen and enhance landscape character.
- 33 Policy 46 identifies that the Council will look to encourage and support agricultural diversification provided the proposed use is compatible with other Landward Area policies.
- 34 Policy 53 encourages the re-use of redundant buildings for business, industrial or tourist related development.
- 35 The submitted additional documentation of a Location Justification Report, Transport Statement and Noise Impact Assessment are all material considerations in this instance.

## **Noise/Residential Amenity/Change of Access Location**

- 36 The previous application was refused due to the detrimental impact to the residential amenity of the neighbouring property by reason of noise creation and hours of operation. This refusal reason was backed by the Scottish Government Reporter which stated that the use was incompatible with its surroundings and contrary to Policy 2(c) of the Strathearn Area Local Plan 2001. The applicant has attempted to address this detrimental impact on neighbouring properties to the west by moving the main access to the building to the eastern side of the building. This requires the front garden area of Caerlaverock Farm house (which is currently occupied by the applicant's son) to be removed in its entirety to allow a pull in area for vehicles to be formed. A new entrance will then be formed on the eastern gable elevation of the shed. This means that no vehicles will be utilising the access to the west of the site to enter the building next to Kildonan House. The applicant has indicated a willingness for the existing Caerlaverock Farmhouse to be tied to the business by a legal agreement to prevent any concerns regarding impact on the residential amenity of this property in the future.
- 37 This revised access arrangement will still result in HGV movements in relatively close proximity to residential properties, namely Cluanie to the east. The newly extended haulage area to the east of the shed extends to the boundary with Cluanie and therefore I am concerned that this change in access is simply moving the problem of impact upon residential amenity to another location. Whilst it is appreciated that the applicant is proposing what he considers to be an improved access, I am not convinced that this revision is enough to address the previous reasons for refusal and concerns raised by the Reporter. In my view, given the previous decisions made, there is a basic incompatibility between the uses here. The moving of the access does not alter this view.
- 38 Environmental Health have also commented on the Noise Impact Assessment submitted by the applicant and have indicated concerns regarding the information contained within and the type of assessment of noise which has been carried out. They have also raised concerns regarding the inability to sufficiently control operations through planning conditions.
- 39 The previous recommendation of approval for this site included a number of conditions to control operations on the site, which include the restriction of hours of operation, ensuring all audible reversing alarms on vehicles are operated only when necessary and using infrared alarms. They also stated that all plant and equipment should be operated according to manufacturer's recommendations, including servicing and the provision of satisfactory exhaust systems to ensure noise is minimised and that records of this should be kept on site. A condition controlling noise from the site was also proposed to ensure all plant and equipment associated with the development meets specific noise ratings both during the day and at night. The Noise Impact Assessment submitted again suggests that noise levels could be suitably controlled using these types of conditions. The view of the Scottish Government Reporter was that conditions such as these are often difficult to

monitor and enforce. In this instance, given the applicant's consistent disregard for planning rules and regulations and continuing current operation of the use on site, after the expiry of the Enforcement Notice compliance period, I am inclined to agree with the reporter in this case that the inclusion of conditions such as those above would be very difficult to enforce and monitor on this particular site. Therefore it is likely that the use would continue to detrimentally impact upon the residential amenity of the neighbouring properties and now, in particular Cluanie to the east.

- 40 Furthermore, although the current operations on site could be considered to be relatively modest with an average of six HGVs per day (12 round trips) the Planning Authority would have no effective control over the expansion or intensification of the use on the site, which would result in increase traffic levels and activity on the site all to the detriment of the residential amenity of the neighbours. This is specifically raised in the Reporter's Planning Appeal decision and is not addressed in the applicant's submission.
- 41 Given the lack of support from Environmental Health and the likely difficulty in controlling operations on this site with conditions I am not convinced that the revision to the access addresses the previous concerns regarding detrimental impact on residential amenity. I therefore consider the revised proposal still fails to meet the criteria of Policy 2 of the Strathearn Area Local Plan 2001.

### **Traffic Safety/Roads**

- 42 The Council's Roads Engineers have been consulted on the application with regard to impact upon road safety. The Local Area Roads Superintendent for the area who is aware of the current situation (the business being in operation for 2 years unauthorised) has no record of any significantly increased problems in terms of road damage or accidents created by the unauthorised use of the site. However there is evidence from letters of representation of damage to road verges, however.
- 43 I understand that the use of the site requires an HGV operator's license which is issued by VOSA (Vehicle and Operator Services Agency). I am advised that an application for this is currently pending with VOSA. In this regard, concern has been raised by the police partly due to the loading and unloading of vehicles on the public road. Whilst, the granting of this license is not a matter for the Planning Authority to consider, the implications on road safety are a matter for the Local Authority.
- 44 The potential problem would appear to be the HGVs manoeuvring on the public road and loading and unloading outside the site. Photographic evidence of HGVs reversing into the site and blocking the public road and the presence of forklift trucks on the public road has been provided with letters of representation. This requires to cease to ensure the safety of road users. The current application proposes to create a turning area within what is currently the front garden of Caerlaverock Farmhouse. The Transport Statement submitted states that this will allow all vehicles to enter and leave the site in a forward gear. Whilst this is considered detrimental to residential

amenity(which is discussed elsewhere in the report), does meet the Council's Roads Engineers technical requirements for all vehicles to be able to enter and leave the site in a forward gear and is therefore considered acceptable on road safety grounds. Whilst the proposal is considered suitable in technical terms, as was identified in the Reporter's Appeal decision, this does not mean it is inherently desirable in planning and environmental terms to encourage the use of such roads by additional HGVs. Letters of support for the application state that there will be no increase in HGV activity from current operations. In my view, this is irrelevant as the existing HGV movements associated with this site are being carried out in an unauthorised manner.

- 45 The majority of the letters of representation raise issues in regard to the movement of HGVs through Muthill and past Muthill Primary School. Letters in support state that these roads are already in use by buses and other large vehicles, including those serving Haggarts to the north of the site. The roads through Muthill are all public roads and the Planning Authority has no control over the use of public roads. Furthermore Transport Planning has no objection to the proposal. The Local Area Roads Superintendent expressed a preference that vehicle movements be from the Muthill direction. The Reporter's decision on dismissing the appeal does attach weight to this issue stating that the fact that the roads around the site are already in use by other vehicles serving existing agriculture and other local requirements, and by buses, "does not imply that it is appropriate to site such a use at this location, for which there is no local need, but which inevitably increases the use of country roads in the area by large vehicles". As stated elsewhere in this report I do not believe that the justification provided offers clear enough evidence to show that this particular location is imperative to the operation of the business. This location is identified as the most suitable, in my opinion, simply due to operations currently taking place at the site.
- 46 The Transport Statement indicates that parking for 10 HGVs and 10 cars would adequately meet the applicants needs however no indication of this has been given on the submitted plans. I would also question how an HGV, if it wished to park at the site, can access the rear (south) of the application site, where I would suggest is the only feasible place to park HGVs, without requiring to use the western access to the site which again would lead to concerns regarding the detrimental effect on the residential amenity of Kildonan House.
- 47 The Council's E & I Committee approved a Planning Guidance Note in regard to Developer Contributions towards the Auchterarder Area A9 Junction Improvements in August 2009. Transport Scotland highlighted in a report that the Loaninghead and Shinafoot junctions would require improvement to address road safety problems.
- 48 This application site is located out with the above policy boundary. However the policy also states that any site, which has required a Transport Assessment, and is within the Strathearn Local Plan area, will require to make a contribution proportionate to the scale of development. This development does not meet the thresholds for a formal Transport Assessment and

therefore there would be no requirement for a contribution if the Committee chooses to approval the application.

### **Vibration**

- 49 The Planning Authority has no control over vehicles slowing and accelerating on public roads adjacent to residential properties and therefore I do not consider that the Planning Authority has sufficient powers to control the level of vibrations from vehicles slowing adjacent to residential properties, however I appreciate that this issues would cause concern to local residents.

### **Visual Amenity**

- 50 The proposed revised access arrangements will result in the complete removal of the attractive mature front garden area of Caerlaverock Farmhouse and its replacement with a large area of hardstanding. The application forms states that there are trees on the application site but these have not been marked on the submitted plans. There are two large mature trees in the north east corner of the garden area which will require to be removed. Whilst the area is generally characterised by large areas of hardstanding, both adjacent to the existing farm building and on the north side of the road at Haggarts, I believe every effort should be made to retain this attractive mature garden within a rural area. I would suggest that the requirement to entirely remove this garden area and the attractive mature trees within it would be to the detriment of the visual amenity of the area and therefore presents a concern which was not apparent with the previously refused access arrangements. This revised application has a significantly greater impact on the visual amenity of the area than the previously refused proposals.

### **Littering**

- 51 Any littering from staff on the site is not considered a material planning consideration.

### **VOSA (Vehicle Operation Licensing Authority)**

- 52 I understand that an application for a license to operate the site has also been submitted to VOSA and it is my understanding that the outcome of the assessment of this license application has been deferred awaiting a decision on the planning application. This license application has been pending for some time due to the planning history of the site. This license application is an entirely separate issue and has no bearing on my recommendation made on this planning application.

### **Core Path Network/Public Access**

- 53 The proposed core path network does not run through the application site and therefore it is not considered that the proposal will have any impact on the promotion or use of the path network or on public access in general. The

Council's Access Officer indicates that the core path generally follows the line of the former railway to the east of the application site.

### **Other Material Considerations (Sites)**

54 The applicant's submission includes a lengthy Location Justification Report which identifies 20 alternative sites within relatively close proximity to the current application which the applicant has considered could be utilised for this use. The document indicates the various requirements of the business:

- The site requires to be at least 1.5 acres (0.61 hectares) to allow for HGV manoeuvring and space for required storage shed.
- Shed requires to be 25000 sq ft (2322 sqm)
- Site requires to be relatively flat due to nature of use
- Site requires to be within 5 miles of two existing business premises in Auchterarder as business operator and employees travel between premises up to six times per day. Any greater distance would increase cost of fuel and time spent travelling between locations.
- Site requires to be readily accessible from public road network
- Any site requires to be available for use. The applicant has indicated a preference to purchase a property rather than lease as any lease offer less certainty.

55 The 20 alternative sites identified were all dismissed for various reasons, these included:

- Proximity to housing/proposed housing
- Lack of compliance with Development Plan
- Inability to purchase or lease land
- Distance from existing operating centre in Auchterarder/costs involved
- Site currently in active use by another party
- Set up costs of building new shed
- Inadequate size of shed on site
- Poor access arrangements
- Poor topography
- Junction improvement requirements on A9
- High land values
- Constraint in size of site and ability for expansion
- Constrained by current lease on land
- Problems with PKC Property Services in bringing land forward
- Legal agreement with neighbouring developers not to use land for storage and distribution purposes
- Sites have been developed for alternative uses since applicant's original inquiry
- Cost of lease of land being considerably more than Caerlaverock
- Inadequacy of road network serving the site

A copy of the report is available to view in the Councillor's Lounge

## Summary of Alternative Sites

- 56 A number of the sites identified have similar planning constraints as Caerlaverock Farm due to the proximity to neighbouring dwellings; however Caerlaverock is identified as the preferred site, in my view, simply because that is where the applicant currently operates. In my view, the fact the applicant operates from the site in an unauthorised manner has little weight in this consideration, particularly when the planning history of Caerlaverock, including a refused application and dismissed appeal, provide a very robust justification for this site not being the most suitable site for this use. Whilst the applicant has demonstrated a considerable effort to seek alternative premises for this use, I do not believe this provides sufficient justification to allow a storage and distribution use at Caerlaverock.
- 57 No evidence has been provided to back up the claim that a site which is further from the current VOC in Auchterarder would be significantly detrimental to business operations. During pre-application discussions I advised the applicant's agent to submit details of the additional fuel costs and time considerations of the alternative locations but this has not been provided in detail. I am therefore not convinced by the information submitted that this additional travelling distance and the cost involved would be significantly detrimental to justify approving Caerlaverock as a departure from the Development Plan, particularly given the refusal of permission and dismissal of that refusal on appeal which currently exists.
- 58 The statement also identifies that some sites are restricted due to the inadequacy of the local road network to serve the use. Whilst this is not disputed, I would suggest that given the Reporter's decision, which stated that "whilst the local road network may be able to accommodate this traffic in technical terms, this does not mean it is inherently desirable in planning and environmental terms to encourage the use of such roads by additional HGVs" that the new submission fails to address this aspect of the Reporter's decision and in fact the applicant's submission backs this up by identifying this problem in association with sites which they wished to discount.
- 59 No robust functional requirement for the business at this particular location has been provided. This is referred to briefly in the applicant's submission, which states that the site is "ideal for the company as it is close to the A9 for larger deliveries but it also close to the more frequently visited farms across rural Perthshire". No detail has been provided in regard to those local farms which are visited. In any case, given the relatively close proximity of the other alternative sites to Caerlaverock I would apportion very little weight to the statement that Caerlaverock is the best site in terms of functional requirement as the other sites would also be able to serve this purpose. In my view there is no strict functional requirement for the use in this location and this site is being supported by the applicant's submission solely because of convenience and the fact that the use currently operates, in an unauthorised manner, from that location.

- 60 The information provided states that the business has a requirement to be within 5 miles of the existing VOC in Auchterarder and that a 25000sqft building is required. No information has been provided to back this requirement up. It would seem that these are simply the requirements as that is what is currently provided at Caerlaverock. The applicant has failed to clearly justify why there is a requirement for a 25000sqft building in terms of the operation of the business and has also failed to explain why being within 5 miles of the existing VOC is a strict requirement in terms of operational costs and timescales. No details of the additional cost implications from locating elsewhere have been provided. The submission does state that employees travel up to six times a day between the VOC and Caerlaverock but that is the only information provided to back this up which I would give little weight due to its very general nature.
- 61 The information provided would, in my view, also suggest that there may be scope to investigate the amalgamation of all 3 of the applicant's current sites into one operation on a site which is suitable in planning terms and I believe this is an option which should be investigated. The justification provided in the submission focuses on the requirement to be close to other sites which the applicant operates at Castlemains and Feus in Auchterarder. The applicant does have the opportunity in planning terms to continue operations at Castlemains Farm, albeit to a lesser extent, as there is a certificate of lawful use for storage and distribution use, however the applicant chose to voluntarily enter into a legal agreement with the neighbouring house builder to cease operations prior to obtaining planning permission for suitable alternative premises for his business. It is also my understanding that the neighbouring land, where there was potential scope to expand the storage and distribution business at Castlemains, was previously owned by the applicant but was sold to a house builder which therefore removed any possibility to expand his business in this location. There is an application (08/01279/FLM) from Muir Homes for the erection of 147 houses on this site which is currently under consideration by the Council.
- 62 The applicant has therefore had opportunities in the past to obtain or continue to use a suitable site but has chosen not to do so.
- 63 I would therefore suggest that it would be more prudent for the developer to attempt to amalgamate all operations into one more suitable site away from residential properties and therefore remove the requirement for the storage and distribution building to be located within 5 miles of Auchterarder.
- 64 Caerlaverock is shown to have a number of the same problems as other sites in the area which have been dismissed as not suitable in the applicant's report, and I am not convinced that because the applicant occupies the site currently that this is a sufficient reason to justify a departure from the development plan in this instance and to disregard the concerns of the neighbours which have been identified in letters of representation and complaints to the Council's Enforcement Officer. In my view, the other sites have been dismissed simply because the applicant does not wish to relocate the business elsewhere. If the applicant was willing to compromise in terms

of business operations I believe that some of the sites identified are more suitable in planning terms and that there may be scope to utilise one site for all 3 operations. However this is not an issue I intend to cover in any more detail in this report.

- 65 Some other sites have also been dismissed due to the problem with junction improvements on the A9 at Auchterarder. As stated elsewhere in this report there is now a policy in place which allows a proposed business to pay a contribution towards the junction improvement to allow development to proceed. Therefore I consider this issue can be successfully addressed if another site was to be investigated.

### **Impact on Business Operations**

- 66 The applicant's submission states that the business provides an important service to farms and rural businesses within rural Perthshire and many beyond and this is backed up by the various letters of support which have been received from local businesses. It also states that the location offers relatively quick access to the A9 for longer more remote destinations but is also well placed for distribution to local area. The information goes on to state that a considerable search for alternative premises (discussed above) has taken place and there are no suitable alternative sites. It states that if no consent is given for this use at Caerlaverock the company will have no base to meet their business needs and would likely cease to operate, resulting in staff being made redundant. Whilst I have sympathy for the staff of the business in this circumstance particularly in this economic climate, this situation has arisen due to occupation and operation of a use within a building by the applicant without obtaining the required planning permission, this is despite being made aware of the planning implications of this type of use, particularly in the granting of a certificate of lawfulness at their previous site at Castlemains. If the applicant had sought the correct permission before utilising the building for this use then this situation would never have arisen. Furthermore, whilst the site at Castlemains has been identified in the submitted document as unsuitable due its size, the fact that it has an established and permitted storage and distribution use would suggest to me that this could be utilised on a temporary basis, albeit at a lesser scale, until the applicant has sought alternative premises and has investigated the possibility of amalgamating all three sites which he currently operates into one in a more appropriate location away from any residential units. The fact that the applicant has entered voluntarily into a legal agreement with a neighbouring house builder to cease storage and distribution operations is not a planning consideration.

### **DIRECTION BY SCOTTISH MINISTERS**

- 67 Under the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008, regulations 30 – 32 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 REASON FOR RECOMMENDATION**

- 68 Whilst I note that the countryside does provide for these types of businesses in certain circumstances and the local plan does support business in general, these require to be in the correct location. I agree with a number of the letters of support to this application that the haulage business is a well established local business in the area, however I do not consider the site in which operations are currently taking place to be a suitable site for this type of use. If the applicant had chosen to discuss this site in the first instance with the Planning Authority prior to operating from the building then the situation regarding the creation of a problem for this local business would not have arisen.
- 69 The proposal is contrary to Policy 2(c) of the Strathearn Area Local Plan 2001 as the use is not compatible with its surroundings in land use terms and would result in a significant loss of amenity to the local surroundings. I am still not convinced that this proposal complies with Policy 1 in regard to Sustainable Development as I do not consider that information submitted regarding the functional and locational requirement of the use in this location is sufficiently robust.
- 70 I remain unconvinced that the additional information which has been submitted to address the concerns of the Scottish Government Reporter and the above reasons for refusal are sufficient to justify an approval on this site contrary to the Development Plan.
- 71 Furthermore I am not convinced that placing conditions if any planning consent was given would be sufficient to control day to day operations on the site in order to protect the amenity of neighbouring properties. As the Reporter stated these conditions are often difficult to monitor and enforce and I have particular concern in this instance due to the applicant's lack of regard to planning rules and regulations in the past. The application is therefore recommended for refusal.

## **RECOMMENDATION**

### **A Refuse the application for the following reasons:**

- 1 The development conflicts with Policy 1 Sustainable Development of the Strathearn Area Local Plan 2001 as the information submitted to justify the functional and location requirement of the storage and distribution centre in this location as opposed to another alternative location is not considered to be robust enough to justify the use being the most sustainable option.
- 2 The development is contrary to Policy 2(c) of the Strathearn Area Local Plan as the development is not compatible with its surroundings in land use terms and would result in a significant loss of amenity to the local community. The change to the access arrangements is not considered to sufficiently address this matter as the proposed access will now detrimentally affect a neighbour to the east of the site. The functional and locational justification is also not

considered robust enough in terms of its detail to merit a departure from this policy.

- 3 The development is contrary to Policy 3 of the Strathearn Area Local Plan 2001 which seeks to conserve landscape features and strengthen and enhance landscape character. The proposed “haulage area” results in the removal of an attractive well established residential garden and the removal of two mature trees.
- 4 The development is contrary to Policy 53 which allows for the re-use of redundant buildings for business as it fails to meet criteria (c) which states that a proposal should not conflict with any other policies contained in the plan.
- 5 The development is contrary to Scottish Planning Policy (February 2010) which supports diversification of the rural economy in sustainable locations. The information submitted in support of the storage and distribution use on this site is not considered robust enough to consider this site to be the most appropriate in terms of sustainability and is not considered to provide sufficient information to explain why an alternative site is not more suitable.

**B JUSTIFICATION**

The development is contrary to the Development Plan and the material consideration apparent in this instance is not considered robust enough to justify a departure from the Development Plan.

**C PROCEDURAL NOTES**

None.

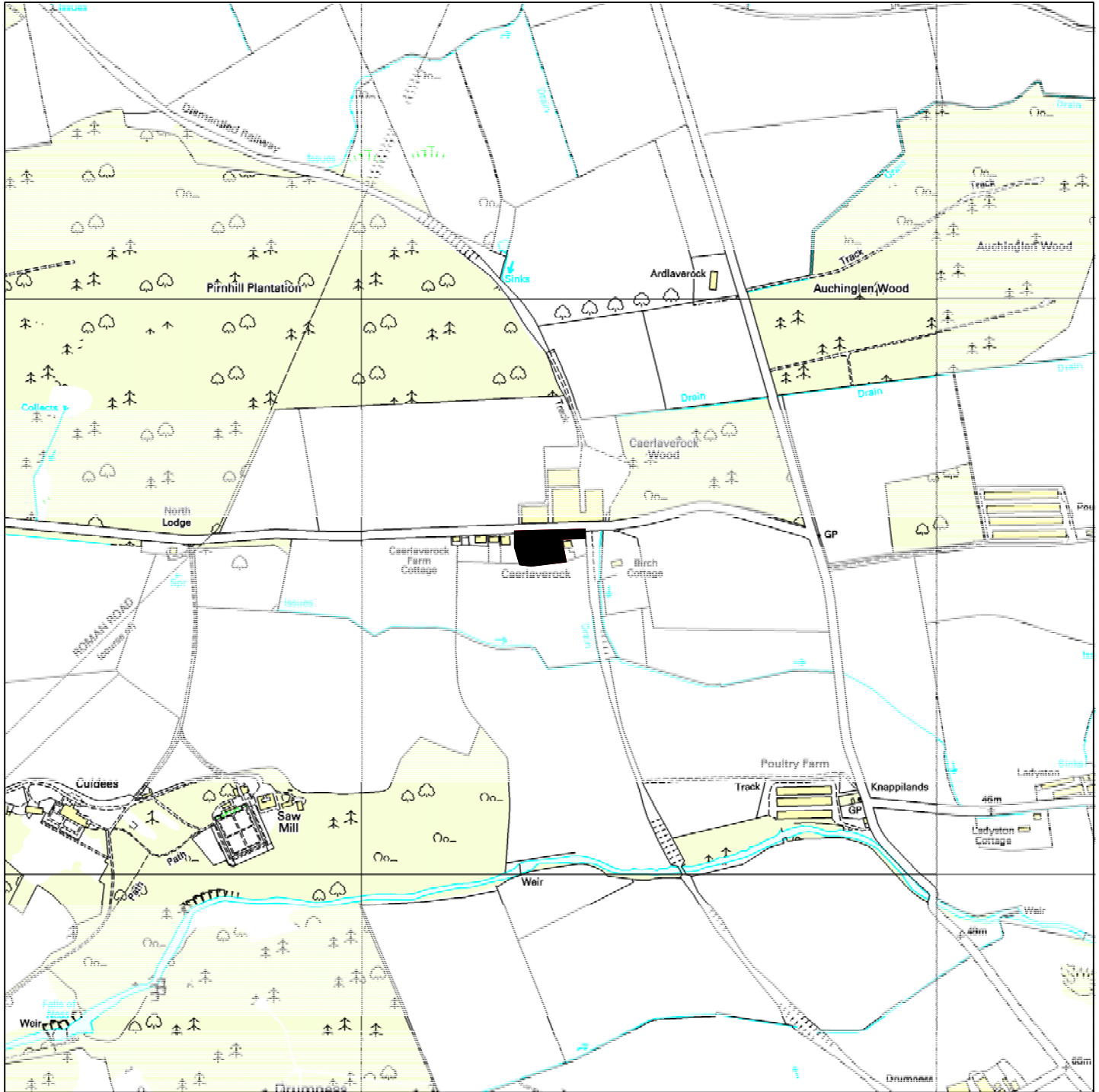
**D INFORMATIVES**

None.

Background Papers:	149 letters of representation both objecting to and support application and 1 letter from Muthill and Tullibardine Community Council
Planning Officer:	John Williamson – Ext 75360
Date	15 March 2010

**Nick Brian**  
**Development Quality Manager**





Scale : 1:10000

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<b>Organisation</b>	Perth & Kinross Council
<b>Department</b>	Planning
<b>Comments</b>	
<b>Date</b>	12 March 2010
<b>SLA Number</b>	100013289

