

Perth and Kinross Council  
Development Management Committee – 20 February 2013  
Report of Handling by Development Quality Manager

**Variation of time limit condition attached to planning permission 09/01311/IPM for erection of foodstore with associated landscaping, ancillary works, car parking and relocation of existing park and ride facility at Land 50 Metres North East Of Scone Park And Ride Car Park David Douglas Avenue**

Ref. No: 12/02018/FLM  
 Ward No: 2 - Strathmore

**Summary**

This report assesses the application for the variation of the time limit condition associated with the foodstore that was approved under planning permission 09/01311/IPM. The report recommends varying the condition to keep the permission alive thereby allowing further applications to be submitted to deal with conditions 2 to 14 imposed on the 2009 consent.

**BACKGROUND AND PROPOSAL**

- 1 The site which extends to about 2.3ha is located to the north east of Scone between the Angus Road (A94 Perth to Forfar public road) to the north and Balgarvie Farm to the south. A large part of the site is presently used as a park and ride facility. The surrounding land comprises open fields apart from a short section of the south western boundary which is shared with the Balgarvie housing development and a roundabout on the A94 designed to serve the housing and the park and ride facility.
- 2 In January 2010 Perth and Kinross Council granted outline planning permission for the foodstore development and ancillary works, application 09/01331/IPM refers.
- 3 This application seeks to vary the standard time limit condition through Section 42 which is attached to planning consent 09/01331/IPM which reads as follows:-

*Application for the approval required by a condition imposed on this Planning Permission in Principle shall conform with the requirements of Regulation 12 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 and of Section 59 (2) and (3) of the Town and Country Planning (Scotland) Act 1997 as amended by Section 21 of the Planning etc. (Scotland) Act 2006 and, in particular, must be made before whichever is the latest of the following:*

- (i) *the expiration of 3 years from the date of the grant of the planning permission in principle,*
- (ii) *the expiration of 6 months from the date on which an earlier application for the requisite approval was refused, or*
- (iii) *the expiration of 6 months from the date on which an appeal against such refusal was dismissed.*

- 4 Section 42 of the Town and Country Planning (Scotland) Act 1997 is a mechanism which allows for the submission of a planning application for the development of land without complying with conditions subject to which a previous planning permission was granted. Section 42 of the Act stipulates that in this type of application “the Planning Authority shall consider only the question of the conditions subject to which planning permission should be granted”.

## **PRE-APPLICATION CONSULTATION**

- 5 The proposed development is classed as a major development which requires pre-application consultation with the local community to be undertaken. A Proposal of Application Notice (PAN) was submitted to the Planning Authority as required by Regulation 6 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 and Section 35 B of the Planning Act. The content of the PAN was subsequently agreed.
- 6 The applicant has submitted documentation with the submission which details the extent of pre-application undertaken in the form of a pre-application consultation summary report. Having had the opportunity to take account of this correspondence and its relationship with the content contained within the PAN I am satisfied that the pre-application consultation activity is sufficient.

## **NATIONAL POLICY and GUIDANCE**

- 7 The Scottish Government expresses its planning policies through the National Planning Framework 1& 2, the Scottish Planning Policy (SPP) and Planning Advice Notes (PAN).

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

- 8 The 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 52 - 65 : Town Centres and Retailing
- Paragraphs 165 -181: Transport

## **Circular 4/1998 - The use of conditions in planning permissions**

- 9 Scottish Government planning Circular 4/1998 - The use of conditions in planning permissions states that conditions can enable many development proposals to proceed where it would otherwise have been necessary to refuse planning permission. The guidance establishes that conditions should meet the following six tests, requiring that they be: necessary, relevant to planning, relevant to the development, enforceable, precise and reasonable in all other respects.
- 10 The Circular also deals with the 'Renewal of permissions before expiry of time-limits' in para. 52. This states that developers who delay the start of development are likely to want their permission renewed, as the time-limit for implementation approaches. Under Article 5 of The Town and Country Planning (General Development Procedure) (Scotland) Order 1992 applications for such renewals may be made simply, referring to the existing planning permission, although the Planning Authority have power subsequently to require further information, if needed. As a general rule, such applications should be refused only where:
  - a. there has been some material change in planning circumstances since the original permission was granted (e.g. a change in some relevant planning policy for the area, or in relevant road considerations or the issue by the Government of a new planning policy which is material to the renewal application);
  - b. there is likely to be continued failure to begin the development and this will contribute unacceptably to uncertainty about the future pattern of development in the area; or
  - c. the application is premature because the permission still has a reasonable time to run.

## **DEVELOPMENT PLAN**

- 11 The Development Plan for the area consists of the Tayplan Strategic Development Plan 2012 – 2032 Approved June 2012 and the Adopted Perth Area Local Plan 1995 (Incorporating Alteration No.1 Housing Land 2000).

### **TAY plan Strategic Development Plan 2012**

- 12 The vision set out in the TAYplan states that:

*“By 2032 the TAYplan region 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 and visit and where businesses choose to invest and create jobs.”*

Under the SDP, the following principal policies apply:

- 13 **Policy 1: Location Priorities:** (a) focuses the majority of development in the region's principal settlements and (b) and prioritise land release for all principal settlements using the sequential approach in this Policy; and prioritise within each category, as appropriate, the reuse of previously developed land and buildings.
- 14 **Policy 7: Town Centres:** Local Development Plans should identify the specific boundaries for each centre and identify roles for 'other service centres' beneath the regional hierarchy; including 'commercial centres' for leisure, bulky goods and other retail; and, local centres for convenience and comparison retail, particularly in multi-centre settlements such as Dundee, Perth and Arbroath.
- 15 Planning decisions should be based on the justification of planning proposals combining this hierarchy (detailed in the Tayplan), the sequential approach in the Scottish Planning Policy (SPP) and other local considerations as appropriate.

#### **Perth Area Local Plan 1995**

- 16 The site is split and approximately half lies within the Scone village envelope with the remainder being in the landward area. The part within Scone is shown as being part of **housing site Alt H14** and has been developed as a park and ride facility.
- 17 **Policy 2** operates a presumption against consent for built development adjoining settlement such as Scone which is the subject of an inset map

#### **PERTH AND KINROSS COUNCIL LOCAL DEVELOPMENT PLAN - PROPOSED PLAN JANUARY 2012**

- 18 Members will be aware that on the 30 January 2012 the Proposed Local Development Plan was published. The adopted Local Plan will eventually be replaced by the Proposed Local Development Plan (LDP). The LDP has recently undergone a period of public consultation. The Proposed Local Development Plan may be modified and will be subject to examination prior to adoption. It is not expected that the Council will be in a position to adopt the Local Development Plan before December 2014. The Plan may be regarded as a material consideration in the determination of this application, reflecting a more up to date view of the Council.
- 19 Under the LDP, the site is identified as MU4 with uses detailed as Supermarket (Existing planning permission), Park and Ride and Employment.

#### **OTHER DOCUMENTS**

- 20 **Perth and Kinross Retail Study 2011** is also relevant in the determination of the application.

## PLANNING SITE HISTORY

- 21 09/01311/IPM Erection of a Class 1 food store with associated landscaping, ancillary works, car parking and relocation of existing park and ride facility 12 January 2010 Application Permitted.
- 22 12/00006/PAN Variation of time limit condition of existing permission (09/01311/IPM) content of PAN Agreed 12 September 2012.

## CONSULTATIONS

- 23 **Scone and District Community Council:** No comments received.
- 24 **Scottish Environment Protection Agency:** No objection if the previous condition on the 2009 consent which relates to SUDS is maintained.
- 25 **Scottish Water:** No comments received.
- 26 **Environmental Health:** Request that an updated Traffic Assessment to inform Air Quality be sought by the imposition of a condition.

## REPRESENTATIONS

- 27 The application has attracted one letter of objection. The issues raised by the objector are summarised as follows:-
- Visual Impact on Landscape
  - Reduction in property value, outlook and privacy
  - Design
  - Vehicular and pedestrian safety
  - Traffic Congestion
  - Noise
  - Impact on existing retail
  - Impact on capacity of Infrastructure (drainage, sewerage and water)
  - Impact on nature conservation
  - Light Pollution.

### **Response to issues**

- 28 As this is a Section 42 application the only matter which is required to be considered is the appropriateness and acceptability of varying the condition relating to the time of the consent which seeks to extend the period over which development can commence and this is addressed in the Appraisal section. The other issues raised by the sole objector are not relevant issues to be considered in this instance.

## 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

## APPRAISAL

- 30 Section 42 of the Town and Country Planning (Scotland) Act 1997 enables the determination of applications to develop land without compliance with conditions previously attached. The legislation specifies that on such an application the Planning Authority shall consider only the question of the conditions subject to which planning permission should be granted, and if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly. If they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application. Taking the above into account the assessment only relates to the time limit stipulated in condition no. 1 of the original planning permission 09/01331/IPM and whether or not to allow the time period in which development can commence to be extended. Therefore Environmental Health's request to impose a condition which does not relate to the time limit assessment would fall outwith the scope of the issue in contention. However, I am willing to add an Informative to any consent to highlight the potential requirement for an updated Traffic Assessment and an Air Quality Assessment at the detailed stage.
- 31 Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that planning decisions be made in accordance with the development plan unless material considerations indicate otherwise. The Development Plan consists of the TAYplan 2012 and the Perth Area Local Plan 1995. The Perth and Kinross Council Local Development Plan – Proposed Plan January 2012 is a material consideration in the determination of the application.
- 32 The determining issues in this case are whether: - the development without compliance with the condition in contention would be consistent with the relevant provisions of the adopted Development Plans; or if an exception to these provisions is justified by other material considerations.

### Policy

- 33 The need for a supermarket/convenience provision to the East Side of the River Tay was detailed in Perth and Kinross Retail Studies and integrated into the Councils Structure Plan (2003) that was approved by the Scottish Ministers as well as the now abandoned Draft Local Plan (2004). The assessment of the

2009 application placed considerable weight on the Structure Plan and Retail Studies which outweighed Policy 2 of the ageing adopted Local Plan which operates a presumption against built development adjoining defined village envelope.

- 34 Following the approval of the 2009 application a new Strategic Development plan (Tayplan) has been adopted. This plan does not have a specific allocation for this site. Instead through Policy 1 and Policy 7 it recognises the need for the appropriate siting of development and for retail to be consistent with the Scottish Governments SPP and the Council's Local Plan.
- 35 The Council has published the Proposed Local Plan which is now a material consideration, the application site is covered by zoning MU4 which includes supermarket retail provision.
- 36 The need for convenience provision to the east side of the Perth Core Area remains. It is noted that the applicant has been unable to progress with a detailed design due to the economic downturn. I consider that the provision of an additional two years through the section 42 process to be appropriate to bring the detailed elements of this site forward.

#### **LEGAL AGREEMENTS**

- 37 None required.

#### **DIRECTION BY SCOTTISH MINISTERS**

- 38 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 REASONS FOR RECOMMENDATION**

- 39 Whilst the use of the site for a superstore fails to adhere to the outdated Local Development Plan there is sufficient weight in the form of the planning history associated with the site, retail studies as well as the emerging policy framework which sets out the vision and spatial strategy to recommend approval.

#### **RECOMMENDATION**

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

- 1 The conditions contained in planning permission notice ref. 09/01311/IPM dated 06 January 2010 in respect of erection of a class 1 foodstore with associated landscaping, ancillary works, car parking and relocation of existing park and ride facility at Land 50 Meters North East Of Scone Park And Ride Car Park, David Douglas Avenue remain in full force and effect, except only insofar as expressly modified by Condition No. 2 attached to this planning permission notice.

- 2 The reserved matters relating to planning approval 09/01311/IPM shall be submitted for the approval of the Planning Authority in the form of a written application accompanied by detailed plans not later than:-
- (i) the expiration of 5 years from the date of the original grant of outline planning permission dated the 06 January 2010.
  - (ii) the expiration of 6 months from the date on which an earlier application for such approval was refused, or
  - (iii) the expiration of 6 months from the date on which an appeal against such refusal was dismissed;
- whichever is the latest.

**Reason:**

- 1 For clarification purposes and for the avoidance of any possible misunderstanding.
- 2 In accordance with the terms of Section 59 of the Town and Country Planning (Scotland) Act 1997 as amended by Section 21 of the Planning etc (Scotland) Act 2006.

**B JUSTIFICATION**

There are sufficient material considerations that justify a departure from current adopted Development Plan.

**C PROCEDURAL NOTES**

None

**D INFORMATIVES**

The applicant should be aware that the issue of air quality will need to be addressed through an updated Traffic Assessment as part of any submission for approval of conditions.

Background Papers: 1 Letter of representation

Contact Officer: John Russell Ext 75346

Date: 5 February 2013

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

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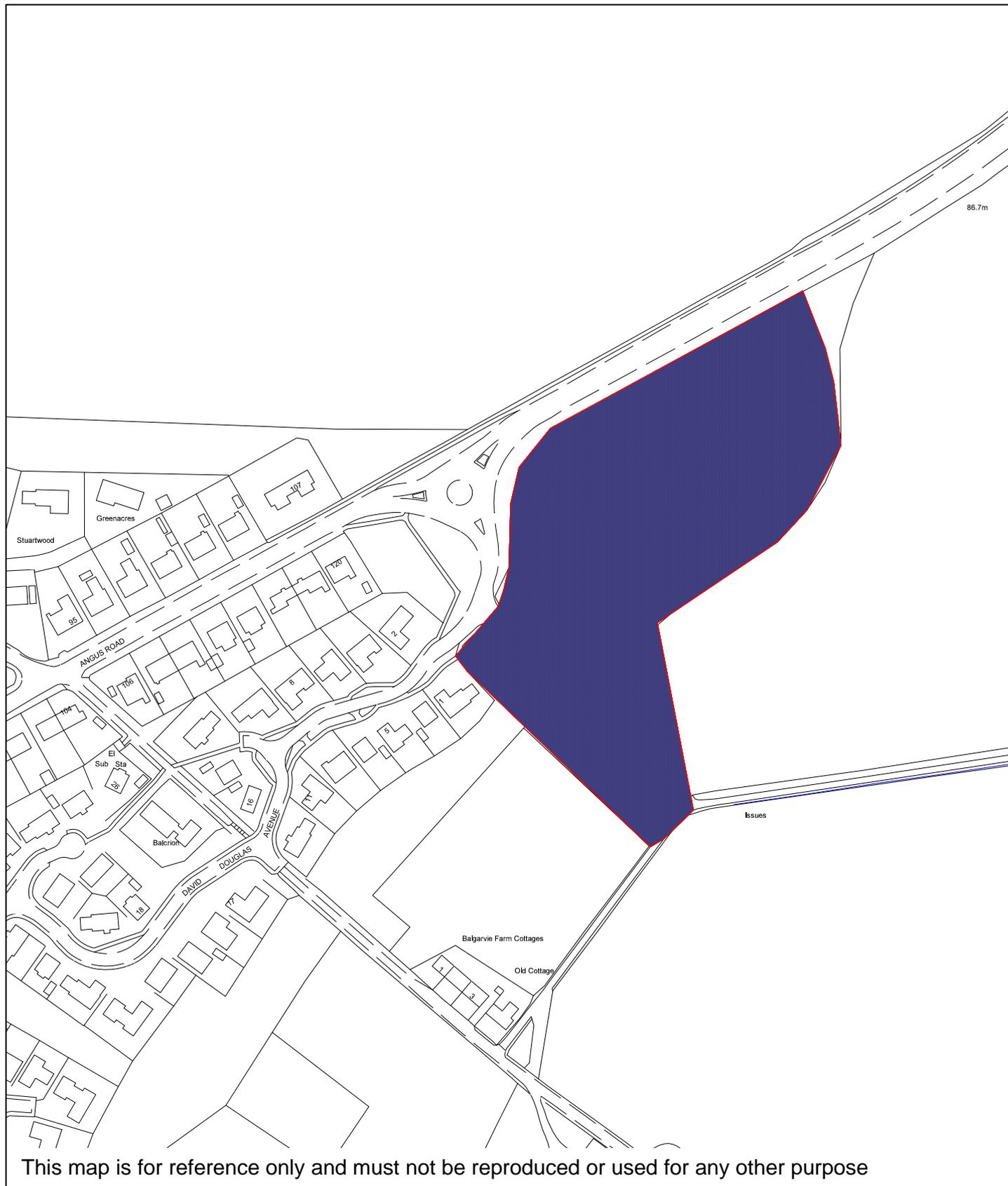
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# Perth & Kinross Council

## 12/02018/FLM

### Land NE of Scone Park & Ride, David Douglas Ave, Scone

#### Variation of time limit condition attached to planning permission 09/01311/IPM



↑ Scale  
1:2500

