

Perth and Kinross Council  
Development Management Committee – 17 July 2013  
Report of Handling by Development Quality Manager

**Modification of existing consent (09/01277/IPM) condition 1(i) - extend the time limit of the consent for a further 3 years at the Horn Farm, Errol, Perth, PH2 7SR**

Ref. No: 13/00394/IPM  
 Ward No: 1 - Carse

### Summary

This report recommends approval of an application for the variation of the time limit condition associated (condition 1) imposed on an extant planning permission for a new road side services at the Horn Farm, Errol (09/01277/IPM).

### BACKGROUND AND PROPOSAL

- 1 The site extends to approx 8.5ha of agricultural land located adjacent on the southern side of the Inchmichael grade separated junction on the A90 - Perth to Dundee Road. The site is fairly flat and is contained to the west by the slip road which leads off the interchange to serve the Horn Milk Bar and Perthshire Caravans and to the south by Errol Station Road. The site has good vehicular access via the interchange to both carriageways of the A90.
- 2 In February 2010, the Council granted outline planning permission for the development of roadside services on the site. That consent followed a long planning history stretching back to 1990 when the first planning consent was granted for a roadside service centre. That consent was subsequently renewed in 1995, and again in 2005. The 2005 consent expired in January 2009; however a subsequent consent (09/01277/IPM) reinstated the permission on the site. That consent expired in March this year.
- 3 This planning application seeks to vary the standard time limit condition which was attached to the 2009 consent through a planning application made under Section 42 of the Planning Act. The standard time limit condition which is imposed on the 2009 planning consent (condition 1) read:-

*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”.

## **PROCEDURAL MATTERS**

### **Expiry of 09/01277/IPM**

5 As stated previously, planning application 09/01277/IPM formally expired on the 3 March 2013. However as this planning application was submitted and registered by the Council before that date, I consider it competent to proceed to determine this application which is obviously intrinsically linked to a now expired consent.

### **Pre-application Consultation (PAC)**

6 The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 which came into force on the 30 June 2013, removes the requirement for Pre-application Consultation for Section 42 applications (which relates to a ‘major planning application’) made on, or after the 3 February 2013.

### **Environment Assessment**

7 As the proposed development is an urban development project with a site area exceeding 0.5ha, falls under Schedule 2 (10(b)) of the Town & Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011, it must be screened under those regulations to determine whether any likely significant environmental effects arising from this development in this location would require examination through Environmental Impact Assessment (EIA). A screening opinion has been carried out which concluded that the development is not EIA development under the 2011 regulations.

## **NATIONAL POLICY and GUIDANCE**

8 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**

- 9 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 is

- Paragraphs 45 -51, which relate to Economic Development

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

- 10 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.
- 11 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

- 12 The Development Plan for the area consists of the Tayplan 2012 and the Adopted Perth Area Local Plan 1995 (Incorporating Alteration No.1 Housing Land 2000).

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

- 13 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.”*

- 14 Whilst there are no specific policies or strategies specifically relevant to this proposal, the overall vision of the Tay Plan should be noted.

### **Perth Area Local Plan 1995 (Incorporating Alteration No1, Housing Land 2000)**

- 15 Within the local Plan, the site has been specifically identified (**RF1**) for new comprehensive roadside services where **Proposal 5** states that the Council will support a comprehensive roadside services facility being developed on the site.

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

- 16 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.

- 17 Under the LDP, the site lies within the landward area of the plan and is not identified for any specific land uses. However, within the LDP support is offered for rural businesses and for the diversification of rural businesses through **Policy RD3 (Rural Business and Diversification)**

## PLANNING SITE HISTORY

- 18 An original outline planning consent on the site was obtained in 1990 (PK90/01045) for the development of Roadside Services. That consent was never implemented and was subsequently renewed in 1995, and then in 2005.

The 2005 consent expired in January 2009, however a further consent in 2010 (09/01277/IPM) reinstated the outline permission on the site.

## CONSULTATIONS

- 19 **Errol Community Council** have commented on the planning application to restate their concerns to the extant consent.
- 20 **Transport Scotland** have commented on the planning application and raised no concerns.
- 21 **Scottish Water** have commented on the planning application and raised no concerns.
- 22 **Environmental Health** have commented on the planning application and raised no concerns.

## REPRESENTATIONS

- 23 None received.

## ADDITIONAL STATEMENTS

Environment Statement	Not required
Screening Opinion	Yes
Environmental Impact Assessment	Not required
Appropriate Assessment	Not required
Design Statement / Design and Access Statement	Not required
Report on Impact or Potential Impact	None

## APPRAISAL

- 24 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.
- 25 Taking the above into account the assessment of this application only relates to the time limit stipulated in condition no. 1 of the extant planning permission and whether or not to allow the time period in which development can commence to be extended.

- 26 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 (Incorporating Alteration No1, Housing Land 2000), whilst the Local Development Plan 2012 is a significant material consideration in the determination of the application.
- 27 To this end, the determining issue as to whether or not the time period should be extended is ultimately whether or not the policy framework of the Council has materially changed enough for the Council to consider a different recommendation. For reasons stated below, I do consider there to be a material change in Council policy and therefore ultimately recommend that the time period be extended.

### **Policy**

- 28 The assessment of previous planning applications on this site, placed considerable weight on the fact that both the then current strategic plan (the Structure Plan) and the adopted Local Plan promoted this site for a new roadside facility development. However since the approval of the 2009 planning application a new Strategic Development plan (Tayplan) has been adopted and removes all specific reference to the development of this site.
- 29 Whilst acknowledging that at a strategic level, the site is now not part of the current framework via the Tay Plan key priorities, the acceptability (in land use terms) for a new, comprehensive roadside facility on this site is still nevertheless firmly established by the sites allocation in the current adopted Local Plan. As the current adopted plan is dated, slightly less weight should be given to this document particularly in the knowledge that the proposed LDP is now at an advanced stage at examination with the Scottish Ministers. It is acknowledged that the site has not been specifically identified for this use within the proposed LDP, however the general thrust of the LDP would nevertheless offer support for the proposal, namely through Policy ED3.
- 30 It is noted that the applicant has been unable to progress this development due to the economic downturn, and in such circumstances I consider that the provision of an additional three years through the section 42 process to be appropriate to help bring the detailed elements of this site forward.

### **LEGAL AGREEMENTS**

- 31 None required.

### **DIRECTION BY SCOTTISH MINISTERS**

- 32 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**

- 33 As the proposal is still consistent with Council policy, I have no objections to the extension of time to allow the development to commence.

## **RECOMMENDATION**

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

- 1 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 6 years from the date of the original grant of outline planning permission dated the 3 March 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 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**

The proposal accords with the Development Plan and there are no material reasons which justify refusal of the application.

### **C PROCEDURAL NOTES**

None

### **D INFORMATIVES**

- 1 The conditions contained in planning permission notice ref. 09/01277/IPM dated 3 March 2010 in respect of erection of the development of roadside services at The Horn Farm, Errol, Perth, PH2 7SR remain in full force and effect, except only insofar as expressly modified by Condition No. 2 attached to this planning permission notice.
- 2 Applicants are advised that should their application for Approval of Matters specified be refused and/or their appeal against such refusal dismissed outwith the three year time limit they are entitled to submit a revised application for

Approval of Matters specified within six months after the date of refusal of the earlier application or of the dismissal of an appeal against such refusal.

Background Papers: None  
Contact Officer: Andy Baxter, Ext 75346  
Date: 17 June 2013

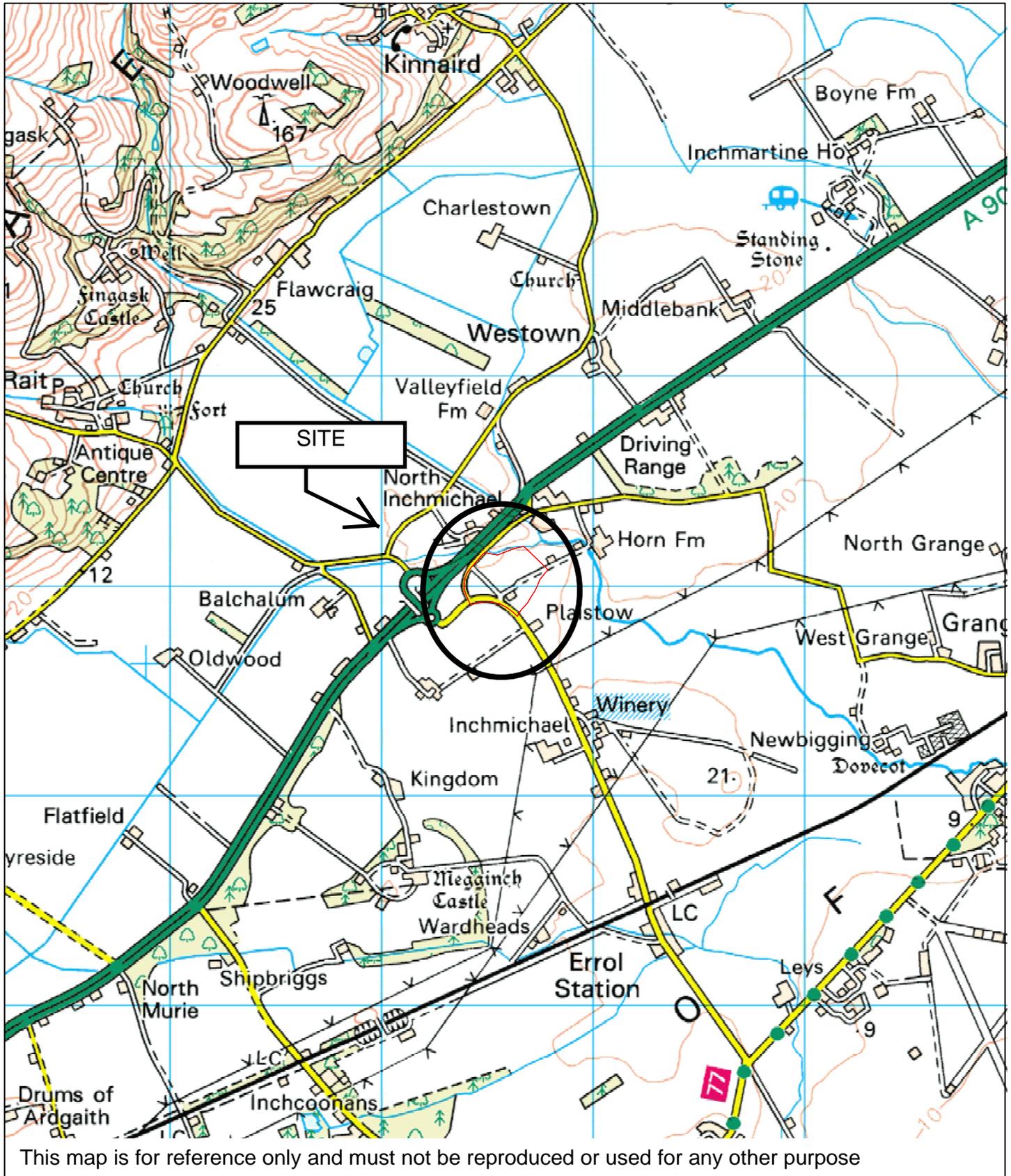
**Nick Brian**  
**Development Quality Manager**

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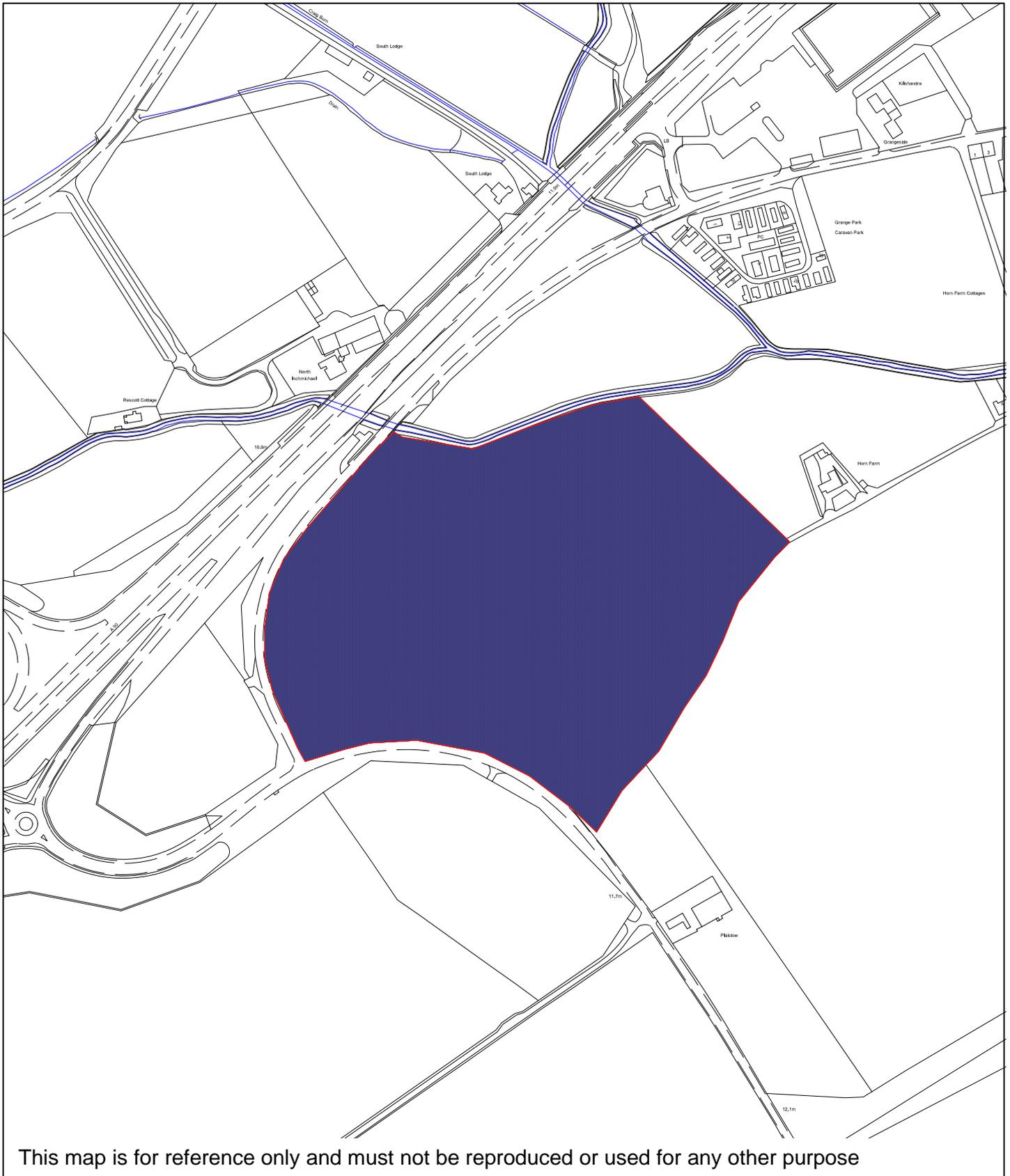


Council Text Phone Number 01738 442573

Modification of (09/01277/IPM) extend time limit of the consent for a further 3 years



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