

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

**Modification of conditions 2 and 3 of planning permission 07/00442/OUT to extend the time limit: Land at Pitdownies Farm, Manse Road, Milnathort**

Ref. No: 13/00436/IPM  
Ward No: 8 - Kinross-shire

**Summary**

This report recommends approval of an application for the modification of planning conditions 2 and 3 of 07/00442/OUT to extend the time limit for the submission of details in relation to an approved residential proposal for land at Pitdownies Farm. The development is considered to accord with the provisions of the Development Plan and environmental impacts in this location would be acceptable.

**BACKGROUND AND DESCRIPTION**

- 1 The site is located at the western edge of Milnathort village with housing to the east and south-east, the motorway to the north-west and Back Burn to the south-west. Currently the site is in agricultural use. It extends to approximately 5.2 ha, with 2.9ha of that being identified for residential development and the remainder for community woodland use.
- 2 The land is an allocated site in the adopted Kinross Area Local Plan 2004 as a proposal for housing (H8) and lies within the Milnathort Settlement Boundary.
- 3 A conditional permission in outline for residential development was issued by the Council in March 2008 under reference 07/00442/OUT. A Flood Risk Assessment; Noise Impact Assessment and concept masterplan supported that application.
- 4 That permission reserved by condition (condition1) the following matters for future approval; siting, design and external appearance of the development, landscaping, all means of enclosure, car parking and means of access to the site.
- 5 The reserved matters were required, by condition 2(i) of the initial permission to be submitted for approval not later than 3 years from the date of the planning permission (i.e. by 7 March 2011).
- 6 A subsequent application (11/01537/IPM) sought to vary that part of the condition to read 5 years instead of 3 – i.e.:

*The reserved matters 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 grant of outline planning permission.*

- 7 That application was approved and effectively required the submission of details by 7 March 2013. In all other respects the previous proposals and approval was to remain the same.
- 8 The current application (13/00436/IPM) seeks to further extend the period during which the matters reserved by condition can be submitted and when development can be commenced. No preferred time frame has been provided by the applicant.
- 9 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”.

### **Major Application**

- 10 Due to the size of the application site, which is over 2 hectares, this proposal is classed as a Major Application as defined in the Town and Country Planning (Hierarchy of Development) (Scotland) Regulations 2009. The amended Regulations, 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. It is no longer a requirement to carry out a pre-application public consultation exercise due to the inclusion of Regulation 49(5) in the above Regulations.

### **Environmental Impact Assessment (EIA)**

- 11 The proposed development, as an urban development project with a site area exceeding 0.5ha, falls under Schedule 2 (10(b)) of the Environmental Impact Assessment (Scotland) Regulations. An assessment of a project’s likely significant environmental effects is required to be made and this was not undertaken at the initial outline planning permission stage.
- 12 Accordingly, in relation to the 2011 application, the proposal was 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).
- 13 It was concluded that the development is not EIA development under the Town and Country Planning EIA (Scotland) Regulations 2011.

## **NATIONAL POLICY AND GUIDANCE**

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

Of specific relevance to this application are:

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

- 15 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 specific relevance to this application are:

- Paragraph 25: Determining planning applications
- Paragraphs 34 - 44 Sustainable Development and Climate Change
- Paragraph 66 Housing
- Paragraphs 77 -84 Location and design of new housing development
- Paragraphs 125 -148 Landscape and Natural Heritage
- Paragraphs 165 -180 Transport and Strategic Transport Network
- Paragraphs 196 – 198 Flooding and Drainage

### **PAN 44 Fitting new housing development into the landscape**

- 16 Identifies the importance of securing a satisfactory landscape fit when considering new residential proposals.

### **PAN 2/2010 Affordable Housing**

- 17 Identifies that exceptionally, a site may be unsuitable for affordable housing for a variety of reasons. It is advised that in such circumstances developers may provide the contribution through a commuted sum as long as the proposed alternative will help to meet an identified need in the same housing market area.

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

- 18 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.

- 19 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**

- 20 The Development Plan for the area consists of the Approved TAYplan 2012 and the Adopted Kinross Area Local Plan 2004.

### **TAYplan: Strategic Development Plan 2012-2032**

- 21 There are no specific policies of strategic importance, relevant to this particular proposal contained in the TayPlan.

### **Kinross Area Local Plan 2004**

- 22 The site lies within the settlement boundary for Milnathort as identified in the Kinross Area Local Plan 2004 (Map 2) and is an allocated site for housing (H8)

The principal relevant policies are in summary:

### **Policy 1 Sustainable Development**

- 23 Sets out a development strategy based on sustainable principles. The policy identifies that key considerations include the maintenance and improvement of the quality of the natural environment and the conservation of biodiversity.

### **Policy 5 Landscape**

- 24 Indicates that the Council will assess development proposals that may have a significant landscape impact against the principles of the Kinross-shire Landscape Character Assessment.

### **Policy 6 Design and Landscaping**

- 25 Identifies that the Council will require high standards of design for all developments and encouragement will be given to ensuring that new development fits its location.

### **Policy 8 Light Pollution**

- 26 Identifies that the Council will seek to limit unnecessary and intrusive light pollution when considering new development.

### **Policy 14 Surface Water Drainage**

- 27 Identifies that surface water drainage should accord with the management practices set out in SEPA's Sustainable Urban Drainage Systems Manual.

## **PERTH AND KINROSS PROPOSED LOCAL DEVELOPMENT PLAN 2012**

- 28 On the 30 January 2012 the Proposed Plan was published. The adopted Local Plan will eventually be replaced by the Proposed Local Development Plan. The Council's Development Plan Scheme sets out the timescale and stages leading up to adoption. It has recently undergone a period of representation; the Proposed Local Development Plan may be modified and will be subject to examination prior to adoption. This means that it is not expected that the Council will be in a position to adopt the Local Development Plan before December 2014. It is therefore a material consideration in the determination of this application, reflecting a more up to date view of the Council.
- 29 The site is located within the identified settlement boundary of Kinross/Milnathort. It is identified as part of a Housing proposal site (H48).
- 30 The principal relevant policy of this plan is:

### **Policy PMA1: Placemaking**

- 31 This policy requires that all development must contribute positively to the quality of the surrounding built and natural environment. All development should be planned and designed with reference to climate change, mitigation and adaptation. The design and siting of development should respect the character and amenity of the place and should create and improve links within and, where practical, beyond the site. Proposals should also incorporate new landscape and planting works where appropriate to the local context and the scale and nature of the development.

## OTHER POLICIES

- 32 Across Scotland local authorities are having difficulty maintaining and developing infrastructure in order to keep up with the pressures of new development. Additional funding sources beyond that of the local authority are required to ensure that infrastructure constraints do not inhibit sustainable economic growth.
- 33 **The Developer Contributions Guidance 2012: Incorporating Primary Education and Affordable Housing:** The Primary Education Contributions element of the Guidance is applicable to all new houses. Where proposed houses sit within specific primary school catchment areas where capacity of the school is likely to be breached, a financial contribution towards improved educational infrastructure provision is required, subject to the criteria set out in the policy.
- 34 The Affordable Housing element of the Guidance is applicable to all residential developments of 5 units and above. As this application seeks only to extend the time periods associated with the outline planning permission granted previously it is not possible to provide clear guidance to the applicant at this stage however it should be noted that the policy will apply to all qualifying residential units.

## SITE HISTORY

- 35 The planning history of this site is material to the consideration of the current application.
- 36 The site has a history of residential approval and is an allocated site for housing in the Local Plan. The previous planning permissions granted on this site are:
- 11/01537/IPM:- Modification of planning condition 2 (07/00442/OUT) to extend the time limit – approved 19.01.2012
  - 07/00442/OUT:- Proposed residential development with associated landscaping, car parking, infrastructure and community woodland with footpath links (in outline) – approved 07.03.2008

## CONSULTATIONS

- 37 **SEPA:** No objections to planning application. Comments in relation to application 07/00442/OUT remain applicable.
- 38 **Scottish Water:** No objections to the planning application.
- 39 **Health & Safety Executive:** Do not advise against development.
- 40 **BP:** No comments.
- 41 **Environmental Health** – no objection but conditions relating to detailed development recommended.

42 **Access and Infrastructure** – Core path route to be safeguarded.

43 **Local Flood Prevention Team** – No objection.

44 **Milnathort Community Council** – No response at time of report.

## REPRESENTATIONS

45 No representations have been received in respect of this application.

## ADDITIONAL STATEMENTS

46	Environment Statement	Not required
	Screening Opinion	Previously Completed
	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

### Policy

47 Sections 25 and 37(2) of the Town & Country Planning (Scotland) Act 1997 (as amended) require the determination of the proposal in accordance with the provisions of the Development Plan, unless material considerations indicate otherwise. The adopted Development Plan is the TAYplan 2012 and the Kinross Area Local Plan 2004.

48 The determining issues in this case are whether the proposal to use the land for housing continues to comply with Development Plan policy or if there are any other material considerations, which justify a departure from policy.

### Development Plan

49 Although there have been material changes to the Development Plan since the original planning approval, nevertheless the support offered to the principle of the development remains constant. From the review of planning policy it may be noted that the principle of a housing use of the site would still accord with the Development Plan.

### Housing Land Availability

50 The current Local Plan Strategy seeks to identify sufficient land within the Plan area to meet Structure Plan requirements. As an allocated site for housing (Proposal H8 of the Local Plan) the site makes a key contribution towards meeting a defined housing need and a 5 year housing land supply.

### **Site Circumstances**

- 51 This is an application which seeks only to extend the period for submission of details pursuant to a planning permission which has established the principle of a housing use of the site (07/00442/OUT).
- 52 There have been no changes to site circumstances since that previous planning approval.

### **Period of Extension**

- 53 The agent's supporting statement has indicated that the extension to the time frames associated with this application is necessary due to the effect of the economic downturn which has taken hold since the original planning permission was granted in 2008. This argument was accepted in the determination of the earlier application and remains valid in principle at this time. It should be noted that there may come a time when it is more appropriate to consider the application afresh.
- 54 As mentioned previously, the applicant has not indicated what period of extension to the time restrictions is being sought. The previous permission which varied the time frame (11/01537/IPM) allowed a further two years to the period for submission of the reserved matters, extending the period from three years to five years. I consider the same period of extension to be reasonable in this current case and therefore recommend revising the time periods as set out in the conditions recommended below.

### **Education**

- 55 Since the original grant of outline planning permission the Council has approved The Developer Contributions Guidance 2012.
- 56 This Guidance sets out the circumstances where a financial contribution towards primary infrastructure improvements in areas of constraint, will be sought to address specific capacity issues generated by any new residential development proposal. The determination of an appropriate contribution, if required, would be based on the status of the school when the application incorporating detailed proposals is received by the Council.
- 57 Members may note that previously an informative was applied to the original outline planning permission advising that a financial contribution would be sought at the later, reserved matters application stage and this would remain effective in the event that this current application is approved and condition 2(i) only is modified.

### **Consultee comments**

- 58 It is noted that a number of consultees raise detailed comments in respect of the potential layout of the housing site. These matters fall to be considered and fully assessed at the detailed planning stage.

## **LEGAL AGREEMENTS**

59 None required.

## **DIRECTION BY SCOTTISH MINISTERS**

60 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**

61 The application to vary the date for the submission of details is a valid submission and there have been no material changes in planning circumstances in relation to the site or policy since the original approval. Section 25 of the Act requires that determination of the proposal should be made in accordance with the provisions of the Development Plan unless material considerations indicate otherwise and the site's use for housing remains consistent with the objectives of the Development Plan. The proposals would not be contrary to the vision or wider spatial strategy of the Development Plan and would deliver key Local Plan objectives. As a consequence, the proposal to vary the time limit is considered to be acceptable.

## **RECOMMENDATION**

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

1. The reserved matters relating to planning approval 07/00442/out 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 7 years from the date of the grant of that outline planning permission.
  - (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.
2. The development to which this permission relates must be begun not later than:-
  - (i) Seven years from the date of the permission; or
  - (ii) Two years from the date of the final approval of all reserved matters.

**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.
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**

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**

- 1 The applicant is reminded of the conditions and informatives set out in outline planning approval 07/00442/OUT which remain in force and form an important part of this multi-stage planning consent.

Background Papers: None

Contact Officer: Christine Brien – Ext 75359

Date: 24 June 2013

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

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



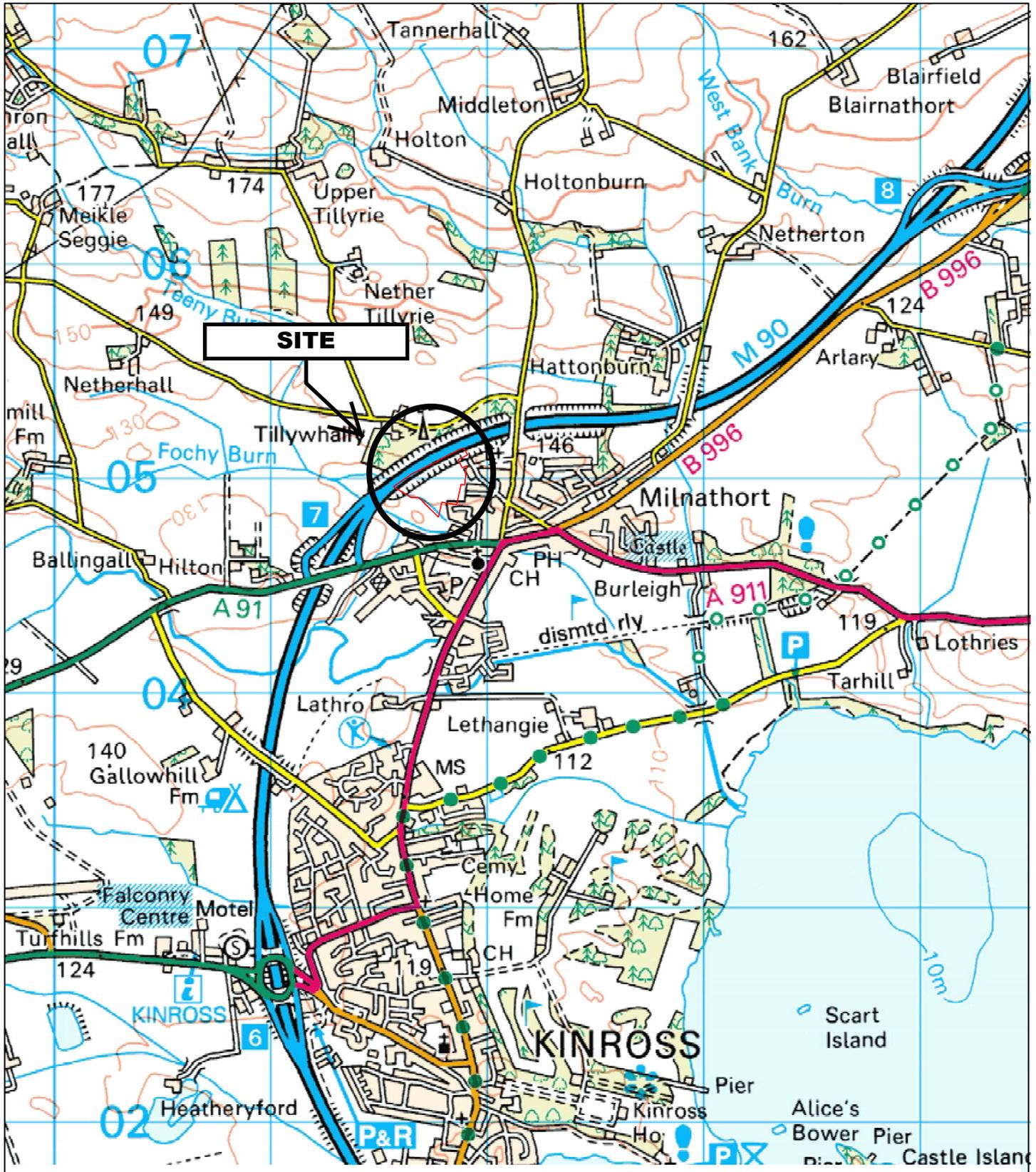
Council Text Phone Number 01738 442573

# Perth & Kinross Council

13/00436/IPM

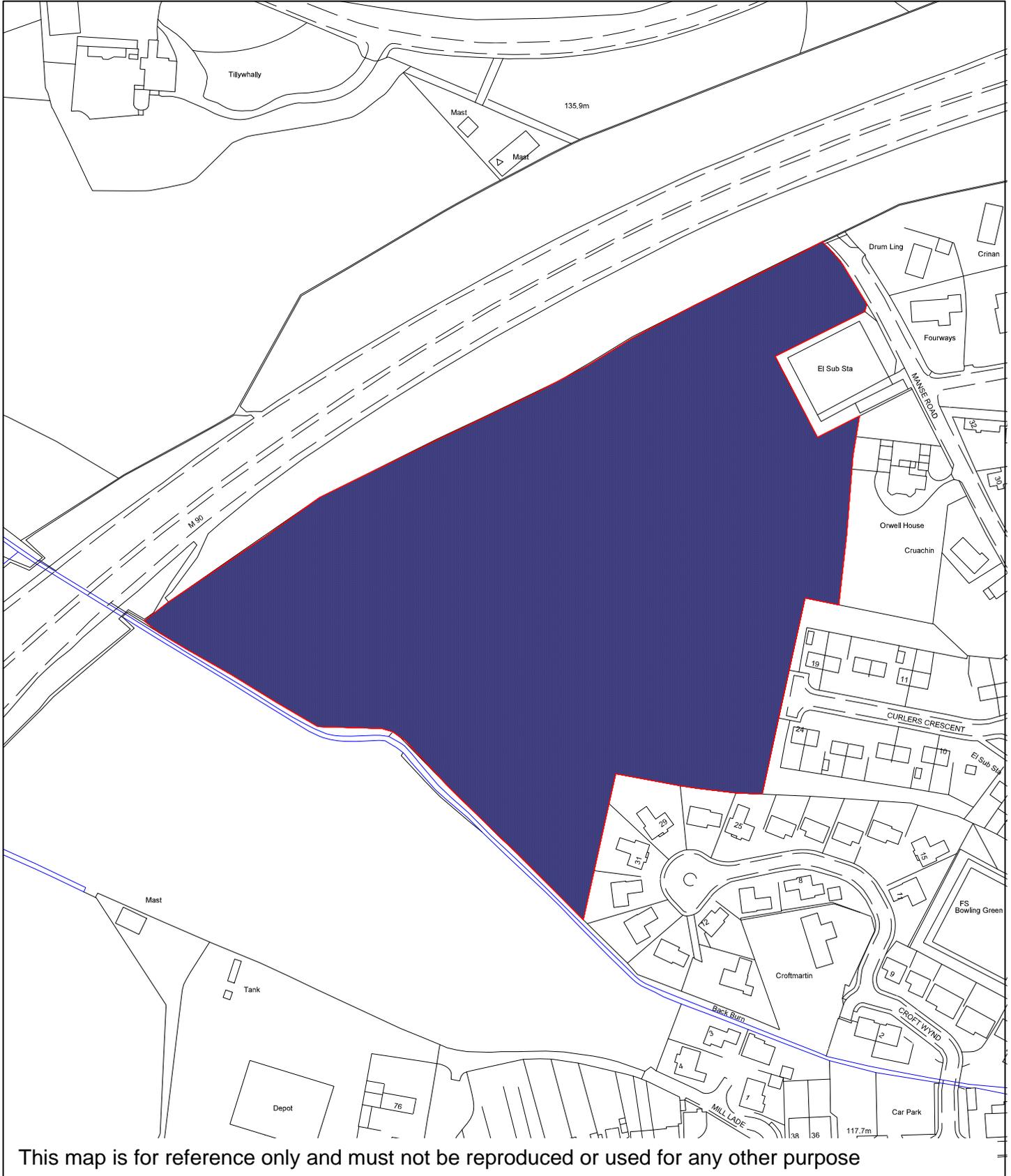
Land at Pitdownies Farm Manse Road Milnathort

Modification of conditions 2 & 3 of 07/00442/OUT to extend time limit of consent



This map is for reference only and must not be reproduced or used for any other purpose

↑ Scale  
1:25000



↑ Scale  
1:2500