

Perth and Kinross Council  
Development Management Committee – 14 May 2014  
Report of Handling by Development Quality Manager

**Modification to permission (11/00197/FLM) demolition of existing motorway services and petrol filling station and erection of new motorway services building and petrol station, 8 retail units, landscaping and junction improvements at MOTO Services, Kinross, KY13 0NQ**

Ref. No: 14/00403/FLM  
Ward No: 8 Kinross

### Summary

This report recommends approval of the application for the variation of Condition 1 (Time Limit); Condition 9 (Finished Floor Levels); Condition 17 (Delivery Hours); Condition 20 (Lettable Unit Definition) and Condition 21 (Use Classes) imposed on an extant planning consent (11/00197/FLM) for the demolition of existing motorway services and petrol filling station and erection of new motorway services building and petrol station, retail units, landscaping and junction improvements. The development is considered to accord with the provisions of the Development Plan.

### BACKGROUND

- 1 The existing Kinross Motorway Service Area (MSA) is located at Turfhill near Kinross, some 200m west of Junction 6 of the M90 Motorway. Access to the site is from the A977. Presently the site accommodates a lorry park, petrol filling station with shop, recreation/picnic area and amenities building offering the 'standard' services of restaurant/cafe, newsagents, entertainments and WC facilities. The amenities building is a single storey, pitched roof structure of modern construction (brick, concrete roof tile).
- 2 The application site is bounded to the east by the Motorway slip road, to the north by open countryside and to the west by Dobbies Garden Centre. Within the application site is a Travelodge building which is to be retained.
- 3 The site is outwith the settlement boundary of Kinross as identified in the Perth and Kinross Local Development Plan 2014. It is however allocated as an Opportunity Site (OP11) in the LDP for the improvement of the existing motorway services and facilities.
- 4 In 2011, the Council granted planning consent for the demolition of existing motorway services and petrol filling station and erection of new motorway services building and petrol station, retail units, landscaping and junction improvements.

### PROPOSAL

- 5 This planning application seeks to vary the standard time limit condition which was attached to the consent through a planning application made under

Section 42 of the Planning Act. The standard time limit condition of three years was imposed on the extant planning consent and is due to expire in July 2014.

- 6 The applicant has indicated that they seek to amend the condition to allow for a further five (5) years to commence development rather than the standard three (3) years.
- 7 The applicant has been unable to undertake the redevelopment works due to the economic downturn. The applicant has put forward several reasons to seek a five year extension. They are as follows:
  - The improving economic situation still needs to manifest itself in the roadside catering and retail industry.
  - The applicant will not be in a position to redevelop the site in the near future.
  - Sufficient time is required to identify tenants for the new site on a pre-let basis before committing to its redevelopment.
  - Applicant will be going through a period of refinancing at end of 2015 and the finance for this redevelopment will not be available until 2018 at the earliest.
- 8 In addition the application seeks to vary Condition 9 – Finished Floor Levels; Condition 17 Delivery Hours; Condition 20 – Definition of Lettable Unit and Condition 21- Use Classes of the extant planning permission. The proposed amendments are all relatively minor wording changes that were agreed prior to the determination of the 11/00197/FLM application. Unfortunately the agreed amendments were contained in the committee report but never applied to the decision notice.
- 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 with 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**

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

- 10 As a result of the scale of the development proposed, this planning application is a ‘major’ planning application, under the Town & Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009. In most cases, ‘Major’ planning applications must undertake the pre-application consultation process, however 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.

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

- 11 An Environmental Impact Assessment was submitted with the 11/00197/FLM application. Deciding whether or not an Environmental Statement should be submitted as a result of a change or modification to an approved development is a decision which is made by the relevant competent, determining authority, which in this case is the Council. As there are no statutory provisions or procedures on this subject, it is reasonable that the Council should make the decision on whether or not a new environmental statement is required after consideration of the following two questions.
- a) *Is the development proposed significantly different from the original proposal?*
- b) *Is the environmental effect of the development so significantly different as to change its impact on the environment?*
- 12 The site has not materially changed in terms of its sites characteristics and nor has the surrounding environs become any more (or less) sensitive to the development which is proposed. To this end, the answers to both questions, is 'no' and therefore it is the unequivocal view of the Council (as the component Authority) that an Environmental Statement is not required in this instance.

## **NATIONAL POLICY AND GUIDANCE**

- 13 The Scottish Government expresses its planning policies through the National Planning Framework 1& 2, the Scottish Planning Policy (SPP) 2010 and Planning Advice Notes (PAN).
- 14 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.
- 16 Of specific relevance to this application are:
- Paragraph 25: Determining planning applications
  - Paragraph 45: Economic Development
  - Paragraph 52–56: Town centres and retailing

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

- 17 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.
- 18 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**

- 19 The Development Plan for the area consists of TAYplan Strategic Development Plan 2012 and the Perth and Kinross Local Development Plan 2014.

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

- 20 Whilst there are no specific policies or strategies specifically relevant to this proposal, as the application mainly relates to extending the time period of the consent, nevertheless, the overall vision of the Tay Plan should be noted.
- 21 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."*

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

- 22 The site is outwith the settlement boundary of Kinross as identified in the Perth and Kinross Local Development Plan 2014. It is however allocated as an Opportunity Site (Op11) in the LDP.
- 23 The allocation states that the motorway services at Turfhill should be the focus for motorway services and tourism related retailing and the Council will encourage improvements to such an existing facility and creation of tourism related retailing targeted to the travelling public using the strategic road network.
- 24 The principal relevant policies are:

### **RC4: Retail and Commercial Leisure Proposals**

- 25 The location of new retail and commercial leisure facilities should follow a sequential approach. Proposals of more than 1,500 sqm (or smaller at the discretion of the Council) outwith a defined town centre and not in accordance with the development plan will require a transport, retail or leisure impact assessment. Proposals that are on the edge of a centre, out of centre or in other commercial centres will only be acceptable where they satisfy the criteria set out.

### **RC5 Planning Obligations and Controls**

- 26 Proposals to modify planning obligations or other planning controls that control floorspace and / or the range of goods that can be sold must be justified by a health check, a retail impact assessment and where appropriate a transport assessment, and will only be acceptable where they are in accordance with the criteria set out.

### **TA1: Transport Standards and Accessibility Requirements**

- 27 Encouragement will be given to the retention and improvement of transport infrastructure identified in the plan.

### **EP2: New Development and Flooding**

- 28 There is a general presumption against proposals for built development or land raising on a functional flood plain and in areas where there is a significant probability of flooding from any source, or where the proposal would increase the probability of flooding elsewhere.

### **EP8: Noise Pollution**

- 29 There is a presumption against the siting of proposals which will generate high levels of noise in the locality of noise sensitive uses, and the location of noise sensitive uses near to sources of noise generation.

## OTHER POLICIES

30 None

## Other Planning Guidance

31 None

## SITE HISTORY

32 11/00197/FLM: Demolition of existing motorway services and petrol filling station and erection of new motorway services building and petrol station, retails units, landscaping and junction improvements – Approved 4 July 2011

## CONSULTATIONS

33 **SEPA:** No objections to the proposed amendments

34 **Scottish Water:** No comment.

35 **Transport Scotland:** No objections to the proposed amendments.

36 **Environmental Health:** Only Condition 17 (Delivery Hours) falls within their remit and they have no objections to the proposed modification.

## REPRESENTATIONS

37 None

## ADDITIONAL STATEMENTS

38	Environment Statement	Carried out as part of 2011 application
	Screening Opinion	Carried out as part of 2011 application
	Environmental Impact Assessment	Carried out as part of 2011 application
	Appropriate Assessment	Carried out as part of 2011 application
	Design Statement/Design and Access Statement	Not Required
	Report on Impact or Potential Impact	Planning & Retail Assessment; Transport Assessment carried out as part of 2011 application

## APPRAISAL

39 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.

### **Development Plan Policy**

- 40 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 determining issues here are whether the proposals comply with Development Plan policy or if there are other material considerations which justify a departure from policy. The most relevant policies of the Development Plan are contained within The Perth & Kinross Local Development Plan February 2014. Policies RD4; RD5; TA1; EP2 and EP8 are the most relevant.

### **Condition 1 - Time Limit**

- 41 Taking the above regulations of Section 42 of the Planning Act into account, the assessment of this application primarily 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.
- 42 The determining issue as to whether or not the proposed time period should be extended to five years rather than the standard three years is ultimately whether or not the policy framework of the Council has materially changed for the Council to consider a different recommendation. Whilst there has been a material change in Council policy since the 2011 planning application with the adoption of the Local Development Plan in February 2014, the overall themes, aims and aspirations of Council policy has not.
- 43 Whilst it is acknowledged that the redevelopment of the motorway services has been significantly affected by the recent economic downturn, I consider that the provision of an additional five years through the Section 42 process to be inappropriate to help bring the redevelopment of the site forward. Five years does not provide any certainty to the Council that the redevelopment will come forward. It is not working practice of the Council to grant five years to applications made under the Section 42 process. It is also not working practice of the Council to grant three years to applications made under the Section 42 process and the usual extension tends to be for two years.
- 44 However, taking into account the timescale the applicant will require to identify tenants for the new site on a pre-let basis before committing to its redevelopment is that a two year extension is too short a timescale. A three year extension is considered appropriate for this application and the situation.

Current planning legislation automatically grants a 3 year extension and is therefore recommended as an informative rather than a condition. If the decision is to extend the consent for 5 years then that will require to be included as a condition rather than an informative.

### **Condition 9 Finished Floor Levels**

- 45 The request for the additional wording “*unless otherwise agreed in writing by the Council as Local Planning Authority*” raises no issues for the planning authority. SEPA have no objection to the proposed modification. If the finished floor levels are proposed to be below the prescribed levels within Condition 9 they will need to be supported by a revised flood risk assessment and details of post development surface water flows. The proposed modification will therefore comply with Policy EP2 New Development and Flooding of the Local Development Plan.

### **Condition 17 - Delivery Hours**

- 46 It is agreed that the proposed delivery hours’ condition would present difficulties for the existing business operations and should be just applied to the approved 8 new retail units as it is this element that will result in an intensification of the site.
- 47 Both Transport Planning and Environmental Health have no objection to the modification of the condition as it will not have any adverse impact on any of the neighbouring land uses or the nearest noise sensitive properties. The proposed modification will therefore comply with Policy TA1 Transport Standards and Accessibility and Policy EP8 Noise Pollution of the Local Development Plan.

### **Condition 20 - Definition of ‘Lettable Unit’**

- 48 The intention of Condition 20 is to secure the advanced agreement of the Council of each new user of the approved 8 new retail units. This is so that the Planning Authority retains control of the nature of retailing within each unit and ensures it will be tourist related retail that is unlikely to have an adverse impact on the vitality and viability of Kinross Town Centre.
- 49 The definition of what a ‘Lettable Unit’ within the condition is designed to exclude the communal area associated with each unit and the proposed modification will not have any impact on the Council’s ability to control the end users of each new retail unit. The proposed modification complies with LDP Policy RC4 Retail and Commercial Centre Proposals and RC5 Retail Obligations and Controls as there will be no change to the role or function of Kinross town centre.

### **Condition 21 - Use Classes**

- 50 The proposal to add ‘8’ before ‘new units’ makes it clear that the goods restriction does not apply to the rest of the units within the amenity building. It

is agreed that the existing condition could present difficulties for the existing business operations and should be just applied to the approved 8 new retail units as it is this element that will result in an intensification of the site.

- 51 The Planning Authority will still retain control of the nature of retailing within each unit and ensure it will be tourist related retail that is unlikely to have an adverse impact on the vitality and viability of Kinross Town Centre. The proposed modification complies with LDP Policy RC4 Retail and Commercial Centre Proposals and RC5 Retail Obligations and Controls as there will be no change to the role or function of Kinross town centre.

### **Economic Development**

- 52 Due to the significant nature of the proposal, it is likely that the development if implemented would have a significant and positive impact on the local economy, both during the construction phase and once completed.

- 53 Potential economic benefits identified include:

- Generation of approximately 115 new employment opportunities through new retail element;
- Delivery of new, and safer, road access from A977;
- Improved visitor and traveller facilities.

- 54 These benefits are acknowledged and may be recognised as consistent with Government objectives and Development Plan policy objectives.

### **LEGAL AGREEMENTS**

- 55 None required.

### **DIRECTION BY SCOTTISH MINISTERS**

- 56 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.

- 57 The Town and Country Planning (Notification of Applications) (Scotland) Direction 2009 also advises on the procedure for notification of planning applications to the Scottish Ministers for certain classes of developments. Development within the boundary of an existing Motorway Services Area is one of the prescribed categories of development requiring notification where an objection is raised by a government agency. In this case neither Transport Scotland nor SEPA raise an objection to the proposed modifications.

### **CONCLUSION AND REASONS FOR RECOMMENDATION**

- 58 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. It is clear that an intention of both the Development Plan and national policies is to promote sustainable economic development.

- 59 It is considered that the proposed modifications would not be contrary to the vision or wider spatial strategy of the Development Plan and would deliver key Local Development Plan objectives.

## **RECOMMENDATION**

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

- 1 Finished floor levels of the new amenity building shall be set no lower than those of the existing buildings on the site (121.6 mAOD to 122.3 mAOD) unless otherwise agreed in writing by the Council as Local Planning Authority.
- 2 The delivery of goods to the 8 new retail units hereby approved shall take place between 7am to 9pm Mondays to Saturdays and at no other time.
- 3 Prior to the occupation of any of the 8 Lettable Retail Units having a Gross Internal Area of 288 square metres, or less, an Occupancy Notice and a Schedule of Occupancy shall be submitted to and approved in writing by the Council. The permitted uses shall strictly accord with those details approved. For the purposes of this condition the following definitions should be noted:

#### Definitions

"Permitted Uses" means the retail sale of goods and any further use or uses which might subsequently be approved by the Council as Planning Authority.

"Schedule of Occupancy" means a schedule detailing the location of each lettable Unit within the Agreement Subjects; the location and the amount of Gross Retail Floor Space allocated to lettable Units for the sale of Adult Clothing and Footwear and Tourism-related Goods; and the location and Gross Internal Area of each lettable Unit.

"Occupancy Notice" means a notice identifying the lettable Unit with a Gross Internal Area of less than, or equal to, 288 square metres.

"Lettable Unit" means any unit of accommodation (other than car parking areas or any sub-station) which is, or is reasonably intended to be, or is designed from time to time to be, the Subject matter of a lease and shall, for the avoidance of doubt, exclude any common parts of the Agreement Subjects.

"Gross Internal Area" means the Gross Internal Area ascertained in accordance with the Code of Measuring Practice of the Royal Institution of Chartered Surveyors and the Incorporated Society of Valuers and Auctioneers, Fifth Edition dated 2001 as amended from time to time and current at the date of measurement.

"Gross Retail Floor Space" means the total floor area within buildings which is occupied exclusively by a retailer or retailers.

- 4 Notwithstanding the terms of the Town & Country Planning (Use Classes)(Scotland) Order 1997 (or any order revoking and re-enacting the Order with or without modification) retailing from the 8 new units hereby approved shall be limited to the retail sale and display of comparison goods only and comprise tourism-related goods, products, and services in the following main range: outdoor clothing and footwear; jewellery, silverware, watches and clocks, books, stationary, cd's and ancillary goods, sports and outdoor goods. Any food and convenience goods shall be limited to an ancillary element only of the tourism-related retail sales operation.

**Reasons:**

- 1 To clarify the extent of the permission for the avoidance of doubt and to protect people and property from flood risk.
- 2 To clarify the extent of the permission for the avoidance of doubt and in the interests of amenity.
- 3-4 To clarify the extent of the permission for the avoidance of doubt and to safeguard the vitality and viability of the existing Kinross Local Centre.

**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 This planning permission will last only for three years from the date of this decision notice, unless the development has been started within that period. *(See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).*
- 2 The conditions contained in planning permission notice ref. 11/00197 /FLM dated 4 July 2011 in respect of the planning consent for the demolition of existing motorway services and petrol filling station and erection of new motorway services building and petrol station, retails units, landscaping and junction improvements at MOTO Services, Kinross, remain in place, except only insofar as expressly modified by Condition No. 1; 9; 17; 20 and 21 attached to this planning permission notice.
- 3 Under Section 27A of the Town and Country Planning (Scotland) Act 1997 (as amended) the person undertaking the development is required to give the Planning Authority prior written notification of the date on which it is intended to

commence the development. A failure to comply with this statutory requirement would constitute a breach of planning control under section 123(1) of that Act, which may result in enforcement action being taken.

- 4 As soon as practicable after the development is complete, the person who completes the development is obliged by section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended) to give the Planning Authority written notice of that position.
- 5 This development will require the 'Display of notice while development is carried out', under Section 27C(1) of the Town and Country Planning Act 1997, as amended, and Regulation 38 of the Development Management Procedure (Scotland) Regulations 2008. The form of the notice is set out in Schedule 7 of the Regulations and a draft notice is included for your guidance. According to Regulation 38 the notice must be:
  - Displayed in a prominent place at or in the vicinity of the site of the development
  - Readily visible to the public
  - Printed on durable material.
- 6 No work shall be commenced until an application for building warrant has been submitted and approved.
- 7 The applicant is advised to contact Scottish Water prior to the commencement of site works to determine whether Scottish Water assets may be affected by development and the need for any separate consent from that Authority.

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

Background Papers: None

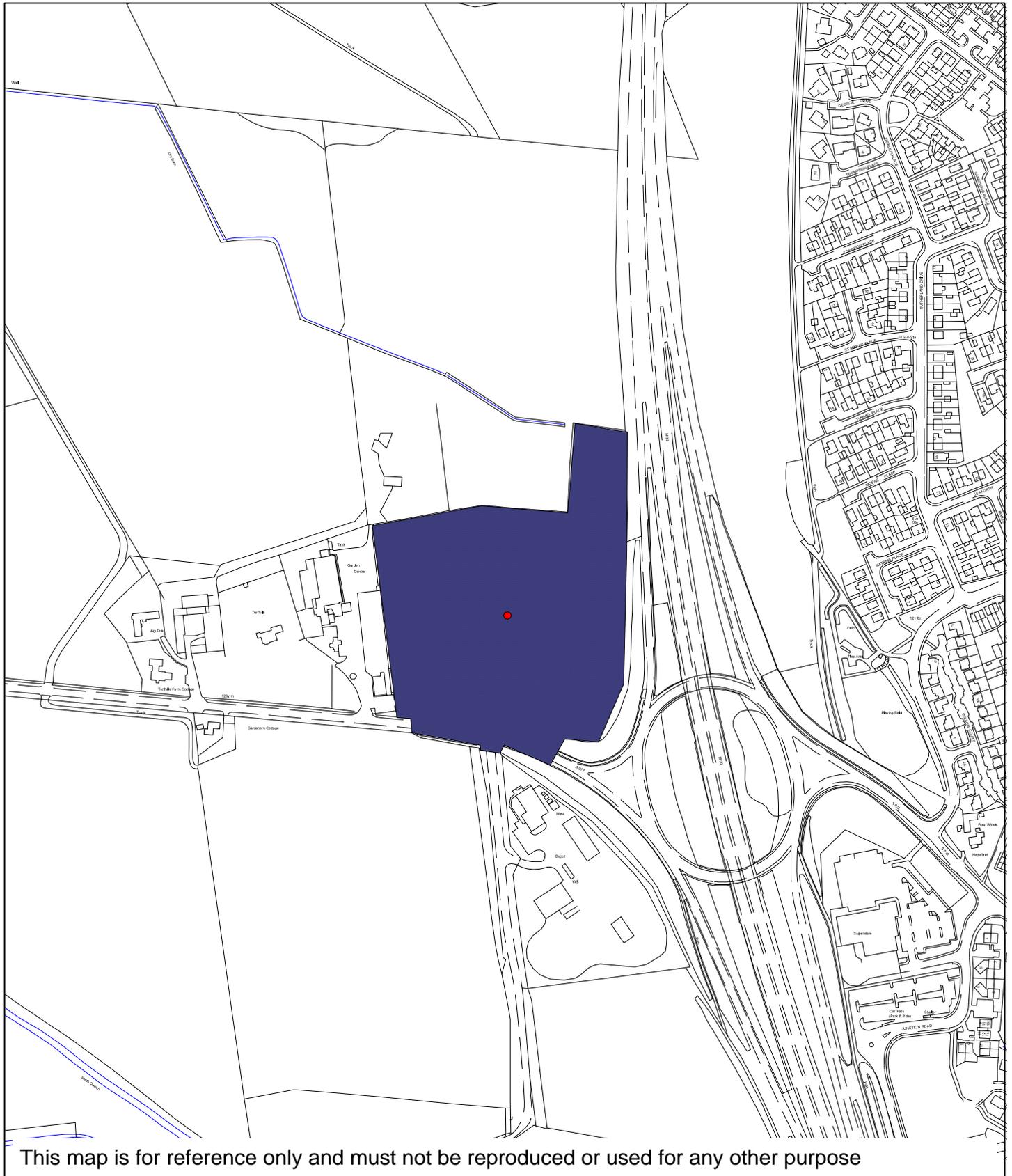
Contact Officer: Steve Callan Ext 75337

Date: 25 April 2014

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