

ANGUS COUNCIL

8 DECEMBER 2016

**PLANNING APPLICATION - FIELD 250M SOUTH OF PITSKELLY FARM PITSKELLY
CARNOUSTIE**

REPORT BY HEAD OF PLANNING AND PLACE

ABSTRACT

This report deals with planning application No 14/00573/PPPM for Planning Permission In Principle for Housing Development Including Landscaping and Associated Works (Use Class 9) and Industrial Estate Comprising Uses Within Use Class 4 (Business), Use Class 5 (General Industry) and Use Class 6 (Storage And Distribution) Including Landscaping and Associated Works for DJ Laing Homes Ltd and K&D Henderson at Land at Pitskelly Farm Carnoustie.

1. RECOMMENDATION(S)

It is recommended that the Council:

- (i) Note the outcome of legal challenge;
- (ii) Note the change in circumstances since December 2014; and
- (ii) Agree the proposed revised conditions detailed in Appendix 1.

**2. ALIGNMENT TO THE ANGUS COMMUNITY PLAN/SINGLE OUTCOME
AGREEMENT/COPORATE PLAN**

This report contributes to the following local outcome(s) contained within the Angus Community Plan and Single Outcome Agreement 2013-2016:

- Our communities are developed in a sustainable manner
- Our natural and built environment is protected and enjoyed

3. BACKGROUND

The application for planning permission in principle for Housing Development Including Landscaping and Associated Works (Use Class 9) and Industrial Estate Comprising Uses Within Use Class 4 (Business), Use Class 5 (General Industry) and Use Class 6 (Storage And Distribution) Including Landscaping and Associated Works on a site covering 20 hectares or thereby at Pitskelly Farm, Carnoustie was considered at the Special Angus Council meeting on 18 December 2014 (Report 511/14 refers)

At that meeting, Angus Council resolved to grant planning permission for the development, subject to conditions and a Section 75 agreement. At their meeting on the 12 February 2015 Angus Council agreed conditions and heads of terms of the Section 75 agreement (Report 65/15 refers).

Members were advised in terms of Report 139/15 to Angus Council on 26 March 2015 that an application for Judicial Review against the decision made in December 2014 was submitted to the Court of Session on the 6 February 2015. Report 52/16 gave a further update on the legal challenge to Angus Council at its meeting on 11 February 2016. The report sets out that the original date for a Hearing was fixed for October 2015, however the Petitioners asked the Court to adjourn the case and set further dates in the future. A further date was set for the Judicial Review Hearing in the first week in May 2016.

4. CURRENT POSITION

The Judicial Review Hearing took place between the 3 and 6 May 2016. The petition was heard by Lady Paton. Following the hearing, the opinion of Lady Paton was received by the Council on the 13th October 2016.

Lady Paton sets out in her opinion that, on the information available to the councillors (including the reports, discussions, local knowledge of the sites, information obtained from the meeting on the 11 December 2014, and the councillors' knowledge of how housing land supply works, including the issue of phasing), the councillors were entitled to take the view that the grant of the Monifieth application alone would not necessarily solve the 5-year effective housing land supply shortfall.

Lady Paton continued that Councillors were entitled, on the information they had, to work on the basis that given phasing and potential delivery at Monifieth and Strathmartine a further grant or grants in relation to land at Ashludie or Pitskelly might be necessary to ensure that there was a "generous supply of land for house building...always enough effective land for at least five years" (SPP paragraph 123).

Lady Paton concluded that:

- The obligation to resolve the shortfall in the 5-year effective housing land supply was a "material consideration" entitling the councillor to make the decisions they did.
- The Council was entitled to treat the existing LDP as out-of-date and therefore, while bearing in mind the issue of prematurity (specifically raised in the reports) to take the decision it did on 18 December 2014 with a view to resolving the shortfall.
- The decision taken on the material available to the Councillors was not irrational or unreasonable.
- The councillors were well-informed. They knew about many matters including the location and nature of the areas concerned; the need to address the 5-year effective housing land supply shortfall; the nature and content of the four applications before them; the nature and content of various reports; the head of planning's recommendations, particularly in the context of the shortfall in the 5-year effective housing land supply. The Councillors also had before them information about phasing and build rates and information about the previous grant of employment land at Carlogie, followed by a lack of activity at that site for about five years. In the circumstances it cannot be suggested that the councillors were unaware of the issues involved.
- The reasons given for the Council's decision to grant the Pitskelly application were intelligible and adequate. The reasons left the informed reader and the court in no real and substantial doubt as to what the reasons were and what were the material considerations which were taken into account.

For the reasons set out Lady Paton sustained the Council's pleas-in-law, repelled the petitioners' pleas-in-law and refused the petition. An application for expenses has now been made.

The Council is therefore able to issue the Decision Notice relating to the application.

5. CHANGES IN CIRCUMSTANCE

Since the determination of the application in December 2014, the Angus Local Development Plan (ALDP) has been published for a nine week Period of Representation (beginning in February 2015). The draft ALDP has been subject to independent examination (between December 2015 and June 2016). The Angus Local Development Plan was adopted by Angus Council on the 23 September 2016 (Report 277/16 refers). The adopted Plan allocates the sites that are the subject of planning application 14/00573/PPPM at Pitskelly for housing and employment development (sites C1 and C7 respectively).

In support of the Angus Local Development Plan a number of Supplementary Guidance Documents have also been prepared. Three documents were agreed as drafts by Angus

Council in April 2016 and were subject to a 6 week consultation. The Developer Contributions Supplementary Guidance was agreed following amendments as a result of the consultation by Angus Council at their meeting on the 8 September 2016 (Report 331/16 refers) and the Council notified Scottish Government of their intention to adopt the document. A Direction was received from Scottish Government to amend the document before adoption. This amendment has been made and the document is to be brought before the Angus Council meeting on the 8 December 2016 for agreement before adoption.

The Developer Contributions Supplementary Guidance sets out appropriate levels of contribution per unit based on an assessment of the proposed development identified in the Local Development Plan and capacity of existing infrastructure. In relation to the current application, there has been a change in the level of contribution required towards education provision. This reflects a more detailed assessment of the required mitigation for addressing capacity at Burnside Primary which is based on new build options.

In the period since Council resolved to grant permission for the Pitskelly development a number of other planning permissions have been granted for housing development in the South Angus Housing Market Area. Those permissions augment the housing land supply. In addition, a number of proposals for further new housing development are currently under consideration, including an appeal in relation to a proposed housing development on land to the west of Carlogie Road at Carnoustie. Notwithstanding that, and as indicated above, the land at Pitskelly which comprises the current application site is now allocated in the Angus Local Development Plan for housing and employment land development. Those allocations reinforce Council's resolution to grant planning permission in principle for the proposed development at Pitskelly.

6. PROPOSALS

The changes in circumstance since December 2014 are not considered to make a material difference to the decision made on the application. It is considered that the changes in circumstance would reinforce the decision made in December 2014 as the sites are now allocated in the adopted ALDP.

It is considered appropriate, however to revisit the conditions approved for the Pitskelly site on 12 February 2015 to ensure the changes in circumstances are reflected, most notably the publication of the Draft Supplementary Guidance on Developer Contributions. Any changes to the conditions have to be reasonable and fair and for good reason.

The conditions reflect issues identified during the consultation process associated with the planning application. Taking into account the updated guidance in the Developer Contributions Supplementary Guidance and updated practice in relation to Section 75 Planning Obligations, the conditions set out in Appendix 1 are proposed. The proposed conditions were shared with the applicants at the time of preparation of Report 65/15 and no significant issues were raised at that time. The revised education contribution requirement reflects the Council's updated requirements.

6. FINANCIAL IMPLICATIONS

The financial implications are set out in Report No 139/15. An application for costs in relation to the Judicial Review has been submitted.

NOTE: The background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) which were relied on to any material extent in preparing the above report are:

- Report 511/14 Planning Application 14/00573/PPPM – Field 250M South of Pitskelly Farm, Pitskelly, Carnoustie, Angus Council, 18 December 2014
- Report 65/15 South Angus Planning Applications: Proposed Planning Obligations Heads of Terms and Conditions, Angus Council 12 February 2015
- Report 139/15 South Angus Housing Market Area Planning Applications – Judicial Review, Angus Council 25 March 2015

- Report 52/16 South Angus Housing Market Area Planning Applications – Judicial Review Update, Angus Council 11 February 2016
- Report 180/16 Proposed Angus Local Development Plan Draft Supplementary Guidance and Advice Note, Angus Council 26 April 2016
- Report 277/16 Angus Local Development Plan Post Examination Modification and Adoption, Angus Council 4 August 2016
- Report 331/16 Angus Local Development Plan Supplementary Guidance, Angus Council 8 September 2016
- [Court of Session Opinion of Lady Paton](#) 13 October 2016

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List of Appendices:

Appendix 1 – Proposed revised conditions

APPENDIX 1

PLANNING CONDITIONS

Planning Application 14/00573/PPPM

Field 250 M South of Pitskelly Farm, Pitskelly, Carnoustie

Planning Conditions:

1. That plans and particulars of the matters listed below shall be submitted for consideration by the planning authority. No work shall begin on the Housing Zone or the Employment Zone until the matters relative to that particular Zone, and the matters relative to the Whole Site have been approved in writing by the planning authority. The development shall be carried out in accordance with that approval. The matters are:

(a) Whole Site:

- (a) (i) the overall layout of the site, including the distribution of uses and the provision of strategic landscaping;
- (a) (ii) The provision of public transport infrastructure, including bus shelters, raised kerbs to facilitate easier boarding and alighting and facilities for a bus to enter and leave the site or respective parts of the site in a forward gear;
- (a) (iii) Evidence of a legally binding agreement between the developer and an appropriate bus operating company relating to the provision of a local bus service at the developers expense to serve the development for a period of three years commencing upon the completion of the one hundred and twenty fifth housing unit within the site. The scheme shall include details of the proposed frequency and nature of the bus service along with details of the proposed financial provisions for the funding of the service and a bond or similar arrangement to cover the funding of the service in the event that the developer is unable to fulfil their obligations in this respect all to be agreed in writing with the planning authority in consultation with the local transport authority;
- (a) (iv) the means of drainage for the development. For the avoidance of doubt the foul drainage from the development will be directed to the public sewage system and surface water shall be disposed of by Sustainable Urban Drainage System (SUDS). No development shall commence until evidence is provided to the planning authority to demonstrate that the public sewer has capacity to accommodate development of the entire site. All water retention/detention features shall be designed to minimise danger to the public and shall be fully landscaped and fenced where necessary to achieve this purpose;
- (a) (v) a scheme for the phasing of the entire development.

(b) Housing Zone (to south of Pitskelly Farm track):

- (b) (i) the layout of the site, including the number of residential units to be provided (not to exceed 250 dwellings), road layout, car parking, turning space, open space, landscaping and facilities for waste/recycle storage and collection;
- (b) (ii) a phasing plan for the housing development, including the timing and number of dwelling units to be released in each phase; details of the provision of infrastructure; road construction; provision of street lighting; open space areas; landscaping; drainage infrastructure; and the formation of the new pedestrian/cycle connections;
- (b) (iii) the siting, design and external appearance of all buildings;
- (b) (iv) the existing and proposed ground levels and finished floor levels of houses relative to a fixed ordnance datum;
- (b) (v) the precise details of the means of accesses to the development, including visibility splays; specification of all roads, lighting and road drainage car parking provision and garage layouts;
- (b) (vi) all boundary enclosures;
- (b) (vii) the provision of open space, at a minimum of 2.43 hectares per 1000 head of population, including play equipment, and a scheme for its provision and ongoing maintenance in perpetuity;
- (b) (viii) a legally binding scheme for the provision of 25% affordable housing or suitable alternative provision in accordance with the Angus Local Development Plan, Developer

Contributions and Affordable Housing Finalised Supplementary Guidance, September 2016, or any subsequent policy or guidance that replaces it;

- (b) (ix) a public access plan that provides full details of all proposed pedestrian and cycle paths within the site, linkages to the existing wider network and details of their long term maintenance. The plan shall have regard to the existing core paths within and adjacent to the site, or suitable alternative provision, remaining accessible to the public at all times, including during the construction period(s).

(c) Employment Zone (to north of Pitskelly Farm track):

- (c) (i) the overall layout of the site, including plot subdivisions and internal site landscaping;
- (c) (ii) road layout including the precise details of the means of accesses to the development, including visibility splays; specification of all roads, lighting and road drainage and provision for pedestrian and cyclist access;
- (c) (iii) the landscaping of the site including:-
- A detailed levels survey of the site and cross sections showing existing and proposed finished ground levels relative to a fixed ordnance datum point;
 - Boundary treatments and strategic planting, including details of the phasing of planting;
 - maintenance and management of all landscaped areas;
 - Cycle and pedestrian linkages;
 - Provision of a landscape buffer zone to the south of the application site.

Thereafter there shall be no development or use of any plot or plots until the written approval of the authority has been given for the following matters:

- (c) (iv) the layout and specific use of that plot, the means of access, drainage, landscaping, design and external appearance of the building(s) and detail of the car parking within that plot curtilage;
- (c)(v) a detailed levels survey of the site and cross sections showing existing and proposed finished ground levels relative to a fixed ordnance datum point;

The measures that are approved shall be implemented in their approved form unless otherwise detailed in conditions attached to this permission or in a subsequent approval of matters specified in conditions.

Reason: To ensure that the matters referred to are given full consideration and are acceptable to the planning authority.

2. That any application for approval of Matters Specified in Condition 1 above shall be accompanied by the following supporting information for the further written approval of the planning authority:

(a) A Masterplan for the entire application site which shall include: -

- (i) a Design and Access Statement in accordance with the requirements of Part 3 Regulation 13 (5) of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013;
- (ii) an overall design rationale for the layout of the site, dwellings and employment related buildings within the site taking account of building orientation, building height, landscape considerations, use of materials, and a palate of colours and textures to be used in the construction of dwellings and employment related buildings;
- (iii) road access and construction of roads to the standards set by the Roads Authority having regard to Designing Streets;
- (iv) provision of access by pedestrian, cycle and public transport;
- (v) a strategy for the drainage of foul and surface water;
- (vi) details for the provision structure planting and landscaping within and around the site, including the phasing and timing of the provision of new planting along with details of existing trees to be retained and measures for their protection during development.

(b) A Transport Assessment scoped to include the means of access from the public road network by all modes of travel;

- (c) A Travel Plan that shall have regard to the provision for walking, cycling and public transport access to and within the site and shall identify the measures to be provided for the management, monitoring, reviewing, reporting and duration of the plan;
- (d) A Drainage Impact Assessment undertaken in accordance with an agreed methodology with the planning authority in consultation with the flood prevention authority;
- (e) A Flood Risk Assessment.

Upon the planning authority giving written approval that the foregoing supporting information is acceptable, the development shall thereafter be undertaken to incorporate any identified necessary mitigation or measures within the approved studies and within timescales contained therein.

Reason: In order to ensure that development within the site takes place in accordance with an overall design concept and to enable the planning authority to fully consider the matters detailed in Condition 1.

- 3. No works shall take place within the development site until the developer has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the planning authority. Thereafter the developer shall ensure that the programme of archaeological works is fully implemented and that all recording and recovery of archaeological resources within the development site is undertaken to the satisfaction of the planning authority in agreement with the Aberdeenshire Council Archaeology Service or such other party as may be appropriate.

Reason: To safeguard and record the archaeological potential of the area.

- 4. Prior to the commencement of any development comprising of any of the following activities, namely biomass combustion of greater than 50kw capacity, food manufacture, waste management, shot blasting or coating processes, an air quality impact assessment including odour assessment shall be submitted to and approved in writing by the planning authority. The air quality assessment shall be based on a methodology which is agreed in advance with the planning authority. Any mitigation measures specified by the approved air quality assessment as being necessary for the control of emissions shall be fully implemented, maintained and operational at all times when discharges to atmosphere are being made.

Reason: In order that any atmospheric residential amenity impacts associated with biomass combustion, food manufacture, waste management, shot blasting or coating processes can be considered and mitigated as necessary in the interests of residential amenity.

- 5. Prior to the commencement of any development a noise survey shall be carried out in accordance with a methodology agreed in advance in writing by the planning authority and the results of the aforementioned noise survey shall be reported for the written approval of the planning authority.

Thereafter, prior to the commencement of any residential development a detailed noise impact assessment shall be submitted and approved in writing by the planning authority. The aforementioned noise impact assessment shall consider both road traffic noise from existing roads and noise from the existing farm. Where the approved noise impact assessment proposes any noise mitigation measures these shall be implemented in full before any residential property is occupied and shall be maintained for the life of the development.

Noise from any class 5 or 6 use (as defined in the Town and Country Planning (Use Classes) (Scotland) Order 1997) forming part of the development shall not exceed the noise limits shown in table A below.

Table A: Noise limits

Day	Time	Average Period (t)	Noise limit	Notes
Monday-Sunday inclusive	0700-1900	12 hour	55 dBA Leq t	1,2,5
Monday-Sunday inclusive	0700-1900	1 hour	Existing ambient Leq t	1,2,4,5
Monday-Sunday inclusive	1900-2300	4 hour	50 dBA Leq t	1,2,5
Monday-Sunday inclusive	1900-2300	1 hour	Existing ambient Leq t	1,2,4,5
Monday-Sunday inclusive	2300-0700	8 hour	45 dBA Leq t	1,2,5
Monday-Sunday inclusive	2300-0700	5 minutes	Existing ambient Leq t	1,2,4,5
Monday-Sunday inclusive	2300-0700	N/A	45 dBA Lmax fast response	3,5

Notes for Noise Condition

1. The assessment location shall be free field within the exterior amenity space of any noise sensitive receptor. For the avoidance of doubt sensitive receptors includes all residential properties, hospitals, schools and office buildings or any other similar premises.
2. As measured and rated in accordance with BS4142:1997 – Method for Rating Industrial Noise Affecting Mixed Residential and Industrial Areas as amended.
3. The assessment location shall be within a bedroom with a window open 50mm for natural ventilation.
4. The noise limit shall be the relevant ambient noise level referred to in the approved noise survey report required by paragraph 1 of this condition.
5. Where the noise measurement position is not the same as the assessment location the received noise levels shall be predicted using an appropriate methodology.

Reason: In the interest of the amenity of existing and prospective occupiers of noise sensitive properties within and around the site.

6. Noise associated with construction works including the movement of materials, plant and equipment shall not exceed the noise limits shown in table B below unless agreed in writing by the planning authority. At all other times noise associated with construction or demolition operations shall be inaudible at any sensitive receptor. For the avoidance of doubt sensitive receptors includes all residential properties, hospitals, schools and office buildings or any other similar premises.

Table B: Construction Noise limits

Day	Time	Average Period (t)	Noise limit
Monday-Friday	0700-1900	12 hour	70 dBA Leq t
Saturday	0700-1300	6 hour	70 dBA Leq t

Reason: In the interest of the residential amenity of nearby noise sensitive properties.

7. That the roads and access clauses given at Condition 1 above shall be subject to the following requirements:

- (a) Visibility splays to be provided at the junction of the proposed housing land access road with the classified, Monikie – Barry Road giving a minimum sight distance of 120 metres in each direction, at a point 4.5 metres from the nearside channel line of the Monikie – Barry Road prior to the commencement of development;
- (b) Visibility splays shall be provided at the junction of the proposed employment land access road with the classified, Monikie – Barry Road giving a minimum sight distance of 120 metres in each direction, at a point 4.5 metres from the nearside channel line of the Monikie – Barry Road prior to the commencement of development;
- (c) That, within the visibility splays described above, nothing shall be erected or planting permitted to grow to a height in excess of 875mm above the surface level of the adjacent cycle track;
- (d) That, parking spaces for bicycles and motorised vehicles shall be provided within the site/each plot curtilage, in accordance with the National Roads Development Guide (SCOTS);
- (e) That, within 60 days of the occupation of the penultimate dwelling house, all details relating to access, road layout design, specification and construction, including the provision of street lighting and surface water drainage shall be fully completed within the respective housing development site.

Reason: All in the interests of the free flow of traffic and road safety.

- 8. That, prior to the commencement of development, the speed limit on the Monikie – Barry Road shall be reduced to 40mph between the existing 30mph limit at Carnoustie and the south side of the its junction with the south slip road leading to/from the A92 Dundee-Arbroath Road.

Reason: In the interests of road safety.

- 9. Prior to the commencement of any works, full details of the finalised SUDS scheme, including details of phasing shall be submitted for the written approval of the planning authority, in consultation with SEPA, and all work shall be carried out in accordance with the approved scheme.

Reason: To ensure adequate protection of the water environment from surface water runoff.

- 10. The development permitted by this planning permission shall not be initiated by the undertaking of a material operation as defined in section 26(4)(a)-(f) of the Town and Country (Scotland) Planning Act 1997 in relation to the development, until a planning obligation pursuant to s.75(1)(a) of the said Act relating to the land has been registered in the Land Register of Scotland or recorded in the General Register of Sasines, as appropriate, to the written satisfaction of the planning authority. The said planning obligation will provide that:

- a) A sum of £5,915 per dwelling unit (excluding affordable housing and single-bedroom units) will be paid to the planning authority for the purpose of the provision of primary school educational facilities.

Reason: To ensure that the proposed development does not put undue pressure on the existing local education facilities and to ensure provision of a contribution towards the improvement of the local primary school estate that will mitigate any direct impact from the development.