

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 10 MAY 2016

PLANNING APPLICATION - FORMER MONTROSE AIRFIELD CHARLETON ROAD MONTROSE

GRID REF: 372507 : 760023

REPORT BY HEAD OF PLANNING AND PLACE

Abstract:

This report relates to planning application No. 14/00480/EIAM for the formation of a Business Park (class 4, 5 and 6) including office accommodation and facilities to support offshore renewable energy developments for John Lawrie Group at the Former Montrose Airfield, Charleton Road, Montrose. The application was recommended for conditional approval at the meeting of 16 February 2016. At the meeting, Members resolved to grant planning permission in principle subject to the deletion of Condition 10 that was contained in Report No 67/16. The application has subsequently been notified to the Scottish Ministers who have directed that the planning authority and other relevant parties are now required to consider whether an alternative condition that has been suggested by Ministers is acceptable or to express a view on why they consider that such a condition need not be imposed.

1. RECOMMENDATION

It is recommended that Committee consider the Ministerial Direction attached at Appendix 1 to this report and determine a response to that Direction in terms of one of the following options: -

- (i) advise Scottish Ministers of the intention to attach the condition as detailed in the Direction;
- (ii) advise Scottish Ministers that the condition proposed in the Direction, or an alternative condition of the nature detailed in the Direction is unnecessary;
- (iii) advise Scottish Ministers of the intention to attach an alternative condition of a similar nature to that detailed in the Direction.

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

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

- We have a sustainable economy with good employment opportunities
- Our natural and built environment is protected and enjoyed
- Our communities are developed in a sustainable manner
- Our communities are safe, secure and vibrant

3. INTRODUCTION

- 3.1 At its meeting of 16 February 2016, Committee considered Report No: 67/16 which recommended that planning permission in principle be granted for the formation of a Business Park (class 4, 5 and 6) including office accommodation and facilities to support offshore renewable energy developments for John Lawrie Group at the Former Montrose Airfield, Charleton Road, Montrose.

- 3.2 Committee resolved to approve that application for the reasons and subject to the conditions as detailed in Section 10 of the Report. However, Committee also determined to delete Condition 10 as proposed in Report No: 67/16 as it was considered that the safety and efficiency of the trunk road network in the vicinity of the site would not be adversely affected by the proposed development.
- 3.3 In resolving to grant planning permission in principle without Condition 10 as detailed in Report No: 67/16, the application became a notifiable application under the provisions of the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009. The application was duly notified to Scottish Ministers.
- 3.4 In considering whether or not to call-in the application for Ministerial determination, Scottish Ministers have directed under powers conferred to them by Regulation 33 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, that the planning authority are required to consider whether an alternative condition is acceptable, in discussion with relevant parties, which could lead to the potential withdrawal of Transport Scotland's extant objection.
- 3.5 The condition proposed by the Scottish Government reads:

"No development shall be undertaken unless and until a detailed phasing programme setting out the phasing of the construction of buildings and formation of open space and road infrastructure across the entire application site has been submitted to, and approved in writing by the planning authority, in consultation with Transport Scotland. The development must be undertaken in accordance with the approved phasing programme.

Reason: To ensure that the safety and efficiency of the trunk road is not adversely affected by the proposed development"

- 3.6 If the planning authority are minded to grant planning permission for the Development, they must (unless the Direction is withdrawn) not do so without first satisfying the Scottish Ministers that consideration has been given to the imposition of a condition as specified and that such a condition either will be imposed or need not be imposed.

4. COMMENTS FROM OTHER RELEVANT PARTIES

- 4.1 **Transport Scotland (TS)** confirm that in making its own response to Scottish Ministers on 11 March 2016 they highlighted that, to date, no supporting information had been submitted by the applicant that demonstrated the impact of the proposed development, either in full or in phases, on the A90/A937 Laurencekirk South Junction. As a consequence, this led them to recommend the original suspensive condition.

Notwithstanding this, TS state that a suspensive planning condition precluding development to proceed until such times as there is a phasing programme, that requires to be agreed by Transport Scotland could, in principle, address their concerns relating to this development.

TS highlight that in practical terms, as is presently the case, the absence of an appropriate transport assessment of development impact on the existing A90/A937 Laurencekirk South junction means that they are unable to confirm whether or not there is any scale of development that could be considered acceptable and what mitigation might be required as a consequence. It must therefore be recognised that, if such a condition is practical, the potential remains that it may not be possible to demonstrate that any scale of development can be accommodated at the A90/A937 junction prior to its upgrading to a grade separated junction.

With regard, to the condition as proposed by the Scottish Government, TS recommend an amendment to ensure that the condition more adequately addresses their requirements. TS highlight that the condition as written only relates to internal site matters and makes no specific reference to the need to assess the impact of each proposed phase of development on the existing A90/A937 Laurencekirk South junction nor to a requirement to identify and implement

appropriate mitigation in the event that any impacts are shown to have a detrimental effect on the safe and efficient operation of the junction.

TS propose that the condition be amended to include the following:

“The phasing programme shall include an assessment of the impact of each proposed phase development on the operation of the A90/A937 Laurencekirk South Junction and where necessary will identify appropriate measures to mitigate any adverse impact and the means by which these measures will be delivered. Thereafter the agreed measures shall be implemented prior to the commencement of that particular phase. If it is not possible to identify suitable phasing and mitigation for each proposed phase development, if such mitigation is necessary, then development shall not proceed until a scheme of grade separation is in place.”

TS has subsequently reviewed the applicant’s agents response to the consultation and appear to acknowledge that the above additional wording could potentially be addressed through any subsequent application. However, they consider it appropriate to specifically highlight the possibility that development may not be able to proceed at present if further information demonstrates unacceptable road safety impacts associated with phasing proposals.

- 4.2 **The Applicant’s Agent** states that their project team has looked closely at the suggested condition from Scottish Government and have also looked at the condition as suggested by Transport Scotland. The applicant’s agent has indicated that he is content with the condition as suggested by the Scottish Government.

In respect of the condition as suggested by Transport Scotland, the applicant’s agent has indicated that he considers that the additional clauses suggested would not be required as what they seek to achieve would be picked up through the Approval of Matters Specified in Conditions (AMSC) process. The agent highlights that an AMSC application would have to be submitted to discharge the Scottish Government condition which would require further consultation with Transport Scotland.

The agent indicates that the applicant’s transport consultant is currently working on the additional traffic information that would be required to enable any phase of development to proceed.

5. PLANNING CONSIDERATIONS

- 5.1 The Scottish Ministers have issued a Direction in exercise of the powers conferred on them by Regulation 33 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 and all other powers enabling them to do so that.
- 5.2 The Direction requires Angus Council to consider whether the condition as proposed by the Scottish Government is acceptable, in discussion with relevant parties, which could lead to the potential withdrawal of Transport Scotland’s extant objection.
- 5.3 Unless the Direction is withdrawn by Ministers, Angus Council cannot grant planning permission without first satisfying Scottish Ministers that such consideration has been given and that such a condition either will be imposed or need not be imposed.
- 5.4 In considering how to respond to the Direction there appear to be three main options: -
1. Attach the condition proposed by Scottish Ministers in its Direction;
 2. Advise Scottish Ministers that a condition is not considered necessary;
 3. Propose an alternative condition along the lines suggested by Transport Scotland or as otherwise considered appropriate.

Option 1

- 5.5 Agreeing to attach the condition proposed by Scottish Ministers as an additional specified matter in condition 1 as proposed in Report 67/16 would potentially result in Scottish Ministers withdrawing the Direction. This would enable the planning authority to grant conditional planning

permission in principle as per the resolution of 16 February 2016 with the additional condition attached in place of Condition 10 as detailed in Report Number 67/16. This would enable development phasing and traffic impacts arising from any agreed phase to be considered in consultation with Transport Scotland at the AMSC stage. The applicant's agent has indicated a degree of support for this approach. However, it is not entirely clear that Transport Scotland would withdraw its objection if this condition was attached. It is also relevant to note that, as cautioned by Transport Scotland, there is a possibility that development may not be able to proceed at present if further information demonstrates unacceptable road safety impacts associated with phasing proposals.

Option 2

- 5.6 The Direction provides scope for Committee to consider the condition proposed by Scottish Ministers but to determine that such a condition is not necessary. Committee should be aware that in this scenario it would likely be necessary to demonstrate that the development would not result in a materially increase in vehicular traffic at the A90 (T)/ A937 Laurencekirk South interchange. In this respect it should be noted that the applicants submitted transport information identifies that the A90 (T)/ A937 Laurencekirk South interchange would experience a 132% increase in predicted north bound (right turn) traffic over and above predicted evening peak flows arising directly as a result of the development. If this option is pursued Transport Scotland is unlikely to withdraw its objection to the application. Scottish Ministers may not withdraw its Direction and it will not be possible to issue a planning permission. The application may be called in for Ministerial determination which could involve a Public Inquiry and in this scenario there is no certainty regarding the outcome of the application or the nature of any conditions that may be attached. This course of action would likely further delay the issue of any planning permission.

Option 3

- 5.7 Transport Scotland has suggested a possible revision to the condition proposed by Scottish Ministers as detailed at paragraph 4.1 above and it is open to Committee to accept that proposed revision. The applicant's agent has indicated that he considers the wording proposed by Transport Scotland to be unnecessary as the matters raised would have to be considered in the discharge of the condition proposed by Scottish Minister. In addition Committee is reminded that any planning condition must be consistent with the requirements of Planning Circular 4/1998: The Use of Conditions in Planning Permissions. Of particular relevance in this scenario is the test of Reasonableness contained within the Circular. In this respect the Circular states:

'Particular care needs to be taken over conditions which require works to be carried out on land in which the applicant has no interest at the time when planning permission is granted. If the land is included in the site in respect of which the application is made, such conditions can in principle be imposed..... If the land is outside that site, a condition requiring the carrying out of works on the land cannot be imposed unless the authority are satisfied that the applicant has sufficient control over the land to enable those works to be carried out.'

The Transport Scotland condition clause requires the developer to identify mitigations and measures for implementation of such mitigation as yet unknown on land that is outwith the developer's control and on that basis it is questionable whether it would be consistent with Circular 4/1998. Whilst this approach is likely to result in Transport Scotland withdrawing its objection to the application, the Council could be exposed to a claim for expenses if it knowingly attached an unreasonable restriction to a planning permission.

- 5.8 In conclusion, the attached Ministerial Direction prevents the permission from being issued without first satisfying the Scottish Ministers that consideration has been given to the imposition of a condition as specified in the Direction and that such a condition either will be imposed or need not be imposed. Committee is required consider the matter and indicate whether it intends to impose the condition proposed in the Direction (or an alternative condition of that nature) or whether it wishes to provide evidence to demonstrate that such a condition need not be imposed. Thereafter officers will advise Scottish Ministers of the Council's response to the Direction.

9. OTHER MATTERS

HUMAN RIGHTS IMPLICATIONS

The Human Rights implications associated with this matter are set out in Report 67/16.

EQUALITIES IMPLICATIONS

The issues contained in this report fall within an approved category that has been confirmed as exempt from an equalities perspective.

NOTE: No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973, (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.

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APPENDIX 1 - THE TOWN AND COUNTRY PLANNING (BUSINESS PARK AT THE FORMER MONTROSE AIRFIELD, CHARLETON ROAD, MONTROSE) DIRECTION 2016

APPENDIX 1

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATIONS 2013 THE TOWN AND COUNTRY PLANNING (BUSINESS PARK AT THE FORMER MONTROSE AIRFIELD, CHARLETON ROAD, MONTROSE) DIRECTION 2016

The Scottish Ministers, give the following Direction in exercise of the powers conferred on them by Regulation 33 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 and all other powers enabling them to do so.

General

1. This Direction is given to Angus Council.
2. This Direction may be cited as the Town and Country Planning (Business Park at the former Montrose Airfield, Charleton Road, Montrose) Direction 2016.

Interpretation

4. In this Direction—

“the Development” means the formation of a business park (class 4, 5 and 6) including office accommodation and facilities to support offshore renewable energy developments at the former Montrose Airfield, Charleton Road, Montrose; and

“the planning authority” means Angus Council.

Proposed condition

5. If the planning authority is minded to grant planning permission for the Development, the planning authority must consider imposing the following condition—

“No development shall be undertaken unless and until a detailed phasing programme setting out the phasing of the construction of buildings and formation of open space and road infrastructure across the entire application site has been submitted to, and approved in writing by the planning authority, in consultation with Transport Scotland. The development must be undertaken in accordance with the approved phasing programme.

Reason: To ensure that the safety and efficiency of the trunk road is not adversely affected by the proposed development”

Restriction on grant of planning permission

5. If the planning authority are minded to grant planning permission for the Development, the planning authority must (unless this Direction is withdrawn) not do so without first satisfying the Scottish Ministers that consideration has been given to the imposition of a condition as specified in paragraph 4 and that such a condition either will be imposed or need not be imposed.

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