

**ANGUS COUNCIL**

**DEVELOPMENT STANDARDS COMMITTEE – 3 NOVEMBER 2015**

**PLANNING APPLICATION – LERA QUARRY, GLAMIS**

**GRID REF: 338473 : 745426**

**REPORT BY HEAD OF PLANNING AND PLACE**

**Abstract:**

This report deals with planning application No 15/00686/FULL for the change of Use from Quarry (now disused) to Wood Storage and Processing Yard for Mr Gavin Hill at Lera Quarry Glamis. This application is recommended for conditional approval.

**1. RECOMMENDATION**

It is recommended that the application be approved for the reason and subject to the conditions given in Section 10 of this report.

**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:

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

**3. INTRODUCTION**

3.1 The applicant seeks full planning permission for the change of use of a former quarry to form a wood storage and processing yard.

3.2 The application site is located to the southeast of Charleston and contains a disused quarry. The site measures approximately 12000sqm and is surrounded by agricultural land. The closest residential property is in the region of 160 metres from the proposed site access but the quarry floor is in the region of 220 metres from the nearest dwelling. The A928 runs to the north and west.

3.3 The proposal would involve the formation of a wood storage and processing yard within the former quarry, where the proposed use would take place on the quarry floor surrounded by high rock/soil faces. The proposed use would involve timber storage and the operation of a tractor, forklift and excavator for moving that timber. Lengths of round timber would be fed into a processing machine that would cut them to a set size before being fed into a log splitter for production of fire wood. Thereafter the logs would be conveyed into wooden storage boxes by a conveyor. This process would be powered by a generator. A chainsaw would be used to cut the timber down to a suitable size when it is too large to fit into the processor. There is an existing structure on the site which will be made wind and water tight and no new structures or buildings are proposed as part of this application. No sales would be made from the site. The existing access, taken from the east side of the A928, would be improved and utilised by the proposed operation.

3.4 The application has not been subject of variation.

3.5 The application was advertised in the Dundee Courier as required by legislation.

- 3.6 This application requires to be determined by the Development Standards Committee due to the recommendation of approval whilst being subject to more than five individual objections.

#### **4. RELEVANT PLANNING HISTORY**

None.

#### **5. APPLICANT'S CASE**

- 5.1 A Planning Supporting Statement was submitted by the agent alongside the application. The overreaching document summarises the proposal, the site particulars and context and the planning/site history and considers the development against relevant planning policies. The Statement concludes that the proposal would comply with relevant policies of the local plan, would contribute to economic growth within rural Angus and would result in the reuse of an existing brownfield site in a manner which would not result in the loss of amenity.
- 5.2 A Noise Impact Assessment, dated 30 September 2015 was submitted on 5 October 2015 in support of the application. The Assessment summarises the proposed operations to be carried out on the site and includes sound level predictions and actual operational measurements gathered from noise testing carried out on the site. The Assessment advises that noise impact associated with the proposed use would not be unacceptable subject to appropriate controls.
- 5.3 The agent has submitted a number of emails providing and confirming various details, including the size of the site, the equipment to be used, the alterations to be made to the existing building, the vehicles to be used in connection with the proposal, that no sales would be made from the site, and that no biomass plant or briquette making machinery is proposed as part of this application.
- 5.4 The agent also supplied a letter from Strathmore Estates which suggests the quarry has been used for wood storage and processing for a considerable number of years.
- 5.5 The supporting information is available to view on the Council's Public Access system.

#### **6. CONSULTATIONS**

- 6.1 **Angus Council – Roads (traffic)** – has no objections to the proposal subject to conditions being attached.
- 6.2 **Angus Council - Flood Prevention** – has not objected to the proposal in respect of potential flood risk.
- 6.3 **Angus Council Environmental Health** – has no objections to the proposal subject to conditions being attached.
- 6.4 **Scottish Water** – there was no response from this consultee at the time of report preparation.
- 6.5 **Glamis Community Council** – has made comments neither objecting to nor supporting the planning application. The comments note that the Community Council is aware of concerns raised to this application and asks that officers and elected members give due regard to these when determining the proposal.

#### **7. REPRESENTATIONS**

- 7.1 Sixteen (16) letters of representation have been received. The letters of representation will be circulated to Members of the Development Standards Committee and a copy will be available to view in the local library or on the council's Public Access website.
- 7.2 The main points of objection are as follows:
- Negative amenity/noise impacts.
  - Negative landscape impacts - loss of mature trees at access.
  - Road safety concerns - unsuitable access and increased traffic movements through Charleston.

- Environmental impacts - oil pollution to ground, smoke and fumes emissions.
- Adverse privacy impacts.
- Excessive hours of operation.
- Unsuitable location.
- Inconsistency with policy.

Comment – The above matters are discussed under Section 8, Planning Considerations below.

- **Lack of consultation with residents** – the application was advertised in accordance with legislation. There are no premises within 20m of the application site and as such the proposal was advertised in the local press.
- **Inconsistency between documents with regards to proposed machinery to be used in connection with the development** – the additional machinery proposed within the most recent email from the agent (dated 30<sup>th</sup> July 2015), which differs from the supporting statement submitted alongside the application, has been included in the noise impact assessment and as such has been considered as part of the proposal.
- **The potential use of additional machinery not listed in supporting documents, i.e. machinery similar to those operated at former biomass production operation at Douglastown (12/00856/FULL)** – the introduction of fixed plant or machinery out with the building would require planning permission. The planning system cannot readily prevent the use of mobile plant, machinery or equipment at any site. However, the conditions proposed seek to establish noise limits that would apply to any use or activity at the site.
- **Lack of clarity in jobs to be provided** – the agent has indicated that three new full time foresters would be employed as a result of the development.
- **Lack of evidence of resultant noise impacts** – a noise impact assessment has been submitted since these objections were received, which considers likely noise outputs from the proposed operations on the site.
- **Lack of an Environmental Impact Assessment** – the application was screened for EIA on 6<sup>th</sup> of August where it was determined EIA would not be required.

## 8. PLANNING CONSIDERATIONS

8.1 Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that planning decisions be made in accordance with the development plan unless material considerations indicate otherwise.

8.2 In this case the development plan comprises:-

- TAYplan (Approved 2012)
- Angus Local Plan Review (Adopted 2009)

8.3 The development plan policies relevant to consideration of this application are provided in Appendix 2 and have been taken into account in the preparation of this report.

8.4 Angus Council is progressing with preparation of a Local Development Plan to provide up to date Development Plan coverage for Angus. When adopted, the Angus Local Development Plan (ALDP) will replace the current adopted Angus Local Plan Review (ALPR). The Draft Proposed Angus Local Development Plan was considered by Angus Council at its meeting on 11 December with a view to it being approved and published as the Proposed ALDP for a statutory period for representations. The Proposed ALDP sets out policies and proposals for the 2016-2026 period consistent with the strategic framework provided by the approved TAYplan SDP (June 2012) and Scottish Planning Policy (SPP) published in June 2014. The Proposed ALDP, as approved by Angus Council, will be subject to a 9 week period for representation commencing in February 2015. Any unresolved representations received during this statutory consultation period are likely to be considered at an Examination by an independent Reporter appointed by Scottish Ministers. The Council must accept the conclusions and recommendations of the Reporter before proceeding to adopt the plan. Only in exceptional circumstances can the Council choose not to do this. The Proposed ALDP represents Angus Council's settled view in relation to the appropriate use of land within the Council area. As such, it will be a material consideration in the determination of planning applications. The Proposed ALDP is, however, at a stage in the statutory process of

preparation where it may be subject to further modification. Limited weight can therefore currently be attached to its contents. This may change following the period of representation when the level and significance of any objection to policies and proposals of the plan will be known.

- 8.5 Policy S1 (b) indicates proposals for new developments on sites outwith development boundaries, i.e. in the countryside, will generally be supported where they are of a scale and nature appropriate to the location and are in accordance with the relevant policies of the Local Plan. This application relates to the formation of a Wood Storage and Processing Yard within the ground of Lera Quarry located to the southeast of Charleston. I will return to this policy having considered other relevant policy tests.
- 8.6 This proposal falls to be primarily considered against Policy SC19: 'Rural Employment'. Policy SC19 is generally supportive of rural employment opportunities subject to a number of considerations. In that respect the proposal would see new investment in a rural business that would occupy a redundant brownfield site. The applicant has indicated that the proposal would create 3 new full time forester jobs. There is no evidence to demonstrate that, subject to suitable amenity controls, the proposal would have an adverse impact on existing businesses in the area, and on this basis I am satisfied that the provision of investment in the site would make a positive contribution to the rural economy. The proposal relates to a timber storage and processing operation and it is not unusual to find activities of that nature located in rural areas. I do not consider an activity of that nature an inappropriate use for a former quarry in a rural area. The scale of the development would, in part, be restricted by the physical size of the site which is contained by the steep faces of the quarry. In that respect the site is visually well contained and activities would not be readily visible from public areas. According, in general terms, the proposal is compatible with Policy SC19. However, amenity considerations which are also relevant to considering the appropriateness of the nature and scale of the proposal are addressed below.
- 8.7 Policy S6 requires amongst other things that the amenity of occupants of existing or proposed properties should not be affected by factors including smells, fumes, noise, vibration or other emissions or pollutants. Policy ER11: 'Noise Pollution' states, amongst other things, that development which adversely affects health, the natural or built environment or general amenity as a result of an unacceptable increase in noise levels will not be permitted unless there is an overriding need which cannot be accommodated elsewhere. In this case Environmental Health colleagues are satisfied that, by virtue of the nature of operations and the relative distance of the site to nearby property, the proposal is unlikely to adversely affect amenity by virtue of smells, fumes, vibration or other emissions or pollutants. In terms of potential noise impacts it is relevant to note that the application site is surrounded on all side by the 6-12m high walls of the former quarry. These walls would provide noise attenuation for operations carried on the quarry floor. The closest residential properties are located in the region of 160 metres from the site access but in excess of 200 metres from the quarry floor where operations would take place. A Noise Impact Assessment (NIA) has been submitted by the agent in support of the application. As part of assessment process the main machines to be used in connection with the proposal were positioned and operated within the site for a short period of time to imitate the proposed operations and record potential noise emissions. Officers from the Environmental Health Service were on site during the noise testing included in the NIA. The NIA concludes that the proposal would not result in any unacceptable levels of noise impact subject to restrictions on chainsaw operation. The Environmental Health Service has reviewed the NIA and is satisfied that the proposal could be accommodated on the site without unacceptable impacts on amenity, subject to conditions. These conditions would restrict hours of operation, impose noise limits on the operation and require the submission of a noise management plan. In addition a condition is proposed that would seek to restrict the use approved at the site to that proposed by the applicant in order that any subsequent material change in the nature of that use could be subject of further consideration. The concerns raised by third parties regarding the potential amenity impacts of the development are noted. However, on the basis of the information available and the conditions proposed, I am satisfied that the proposed use should not have a significant adverse impact on the amenity of occupants of nearby property or the area in general.
- 8.8 Policy S6 requires consideration of other matters including visual impact, impact on farming activities, roads, parking and access, landscaping, biodiversity, drainage and flood risk. As indicated above the site is visually well contained within the existing quarry and visual impact would not be significant. The proposed use within the confines of the existing quarry should

not give rise to significant impacts on existing farming activities. Access would be taken from an existing track running from the A928. The Roads Service has reviewed the proposal and has indicated no objection subject to conditions requiring improvement of the access track and detail and subsequent provision of on-site parking and turning space. A number of concerns have been raised regarding potential increased traffic movements through Charleston and potential resultant road safety issues. The applicant has indicated that the development is likely to generate 4 small vehicles a day and one larger vehicle once a week. Direct access to the site would be taken from the A928 with the public road through Charleston providing a less direct route. It is not possible to guarantee that the development would not generate some additional traffic through Charleston and equally the planning system cannot readily control routing on the public road from a development of this scale. However, the Roads Service is satisfied that traffic associated with this development will not have a significant adverse impact on road traffic or pedestrian safety. Equally, I am satisfied that any increase in traffic movement through Charleston associated with this development would not be of a scale that would significantly adversely affect the amenity of residents of the village. Concern has also been raised regarding the potential impact of any improvement to the junction of the access track with the A928 on an adjacent mature tree. At present there is no indication that the tree would require to be removed and it is not subject to any statutory protection under the Planning Acts. In any case I do not consider that potential loss of that tree would be grounds to justify refusal of a proposal that would provide an economically beneficial use for a redundant brownfield site. The proposal does not give rise to any other significant issues in terms of landscaping, biodiversity, drainage or flood risk.

- 8.9 Returning to Policy S1 (b), the proposal would be compatible with relevant policies of the local plan and would be of a scale and nature appropriate to the location. As such the proposal would comply with Policy S1.
- 8.10 The letters submitted in relation to the proposal by third parties are material to the determination of the application. However, the substantive issues are addressed in the policy discussion above. It is also noted that the agent has submitted a letter from Strathmore Estates suggesting the quarry has been used for wood storage and processing for a considerable number of years. However, no evidence to support that assertion has been provided and there is no suggestion that such use would be lawful at this site.
- 8.11 In conclusion, the proposal provides for the reuse of a redundant quarry for a new business activity. The nature and scale of the proposed use are considered appropriate for a rural location. The quarry floor is reasonably well screened and would provide some natural attenuation of emissions from the development. Overall the proposed use is considered compatible with relevant planning policies subject to the detailed conditions which seek to safeguard the amenity of the area and ensure suitable and safe access. There are no material considerations that justify refusal of the application.

## **9. OTHER MATTERS**

### **HUMAN RIGHTS IMPLICATIONS**

The recommendation in this report for grant of planning permission, subject to conditions, has potential implications for neighbours in terms of alleged interference with privacy, home or family life (Article 8) and peaceful enjoyment of their possessions (First Protocol, Article 1). For the reasons referred to elsewhere in this report justifying this recommendation in planning terms, it is considered that any actual or apprehended infringement of such Convention Rights, is justified. The conditions constitute a justified and proportional control of the use of the property in accordance with the general interest and have regard to the necessary balance of the applicant's freedom to enjoy his property against the public interest and the freedom of others to enjoy neighbouring property/home life/privacy without undue interference.

### **EQUALITIES IMPLICATIONS**

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

## 10. CONCLUSION

It is recommended that the application be approved for the following reason, and subject to the following condition(s):

### **Reason(s) for Approval:**

The proposal would provide rural employment opportunities of a scale and nature appropriate to the location and in a manner that complies with relevant policies of the development plan subject to conditions. There are no material considerations that justify refusal of the planning application contrary to the provisions of the development plan.

### **Conditions:**

1. That, prior to the commencement of the use hereby approved, a scheme for the improvement of the access track shall be submitted to and approved in writing by the Planning Authority. The scheme shall include provision for the track to be of a bituminous construction over a 10 metre distance extending from the junction with the A928 public road. The approved scheme of improvements to the access track shall thereafter be completed prior to the commencement of the use hereby approved.

*Reason: To provide a safe and suitable access in the interests of road traffic safety.*

2. That, prior to the commencement of the use hereby approved, a plan demonstrating the provision and location of seven vehicle parking spaces and the provision of a turning area within the site shall be submitted to and approved in writing by the Planning Authority. Thereafter the approved vehicle parking spaces and turning area shall be provided before the use commences and the turning area shall be retained for that purpose and free of obstruction at all times.

*Reason: To ensure the provision of adequate on site vehicle parking and turning space and to ensure that vehicles can exit the site in a forward gear in the interests of road traffic safety.*

3. That prior to the commencement of any works to the existing buildings located within the site, a detailed specification of those works, including drawings to show any physical alterations, shall be submitted to and approved in writing by the Planning Authority. Thereafter the works shall be undertaken in accordance with the approved details unless otherwise agreed in writing with the Planning Authority.

*Reason: In order that the Planning Authority may verify the acceptability of any proposed alterations to the existing buildings in the interests of the amenity and biodiversity of the area.*

4. That prior to the commencement of the use hereby approved, a detailed noise management plan shall be submitted to and approved in writing by the Planning Authority. The noise management plan shall, without prejudice to other matters, include the following: -

- A noise complaints procedure.
- A timescale (which shall be at least biennial) and procedure for the review of the noise management plan in order to ensure it is kept up to date and reflects any changes in plant or procedures that are necessary.

The approved noise management plan shall be implemented upon commencement of use and the site shall be operated in accordance with the approved plan, or any approved procedure, thereafter.

*Reason: To ensure suitable noise management provisions are put in place to protect the amenity of the area.*

5. Noise emissions from activities associated with the use hereby approved, including noise from all fixed and mobile plant and equipment, unless otherwise specified in conditions of this permission, shall not exceed the rating level specified below, as measured and/or calculated in accordance with the procedures in BS4142:2014 method for rating and assessing industrial and commercial sound.

- 40 dBA Leq (1hr) at any noise sensitive premises lawfully existing at the date of this planning permission

*Reason: To ensure the proposal would not result in unacceptable noise impacts and to protect the amenity of the area.*

6. The hours of operation of the site, including (but not limited to) the delivery and dispatch of materials and the use of powered equipment shall be limited to:

- 0700 – 1900hrs, Monday to Friday
- 0800 – 1300hrs, Saturday.

Operation outwith the stated hours is not permitted.

*Reason: To restrict hours of operation on the site in the interest of amenity.*

7. The hours of operation of chainsaws shall be limited to:

- 0900 – 1700hrs, Monday to Friday
- 0900 – 1300hrs, Saturday

Operation of chainsaws on site outwith the stated hours is not permitted.

*Reason: To restrict the hours of operation of chainsaw use on the site in the interest of amenity.*

8. No burning of materials shall take place within the site.

*Reason: To ensure the proposal would not result in unacceptable smoke emissions to the detriment of the amenity of occupants of nearby residential property.*

9. That, notwithstanding the provisions of any Development Order, the use hereby approved shall be limited to the storage of timber and the cutting or splitting of timber to form fire wood.

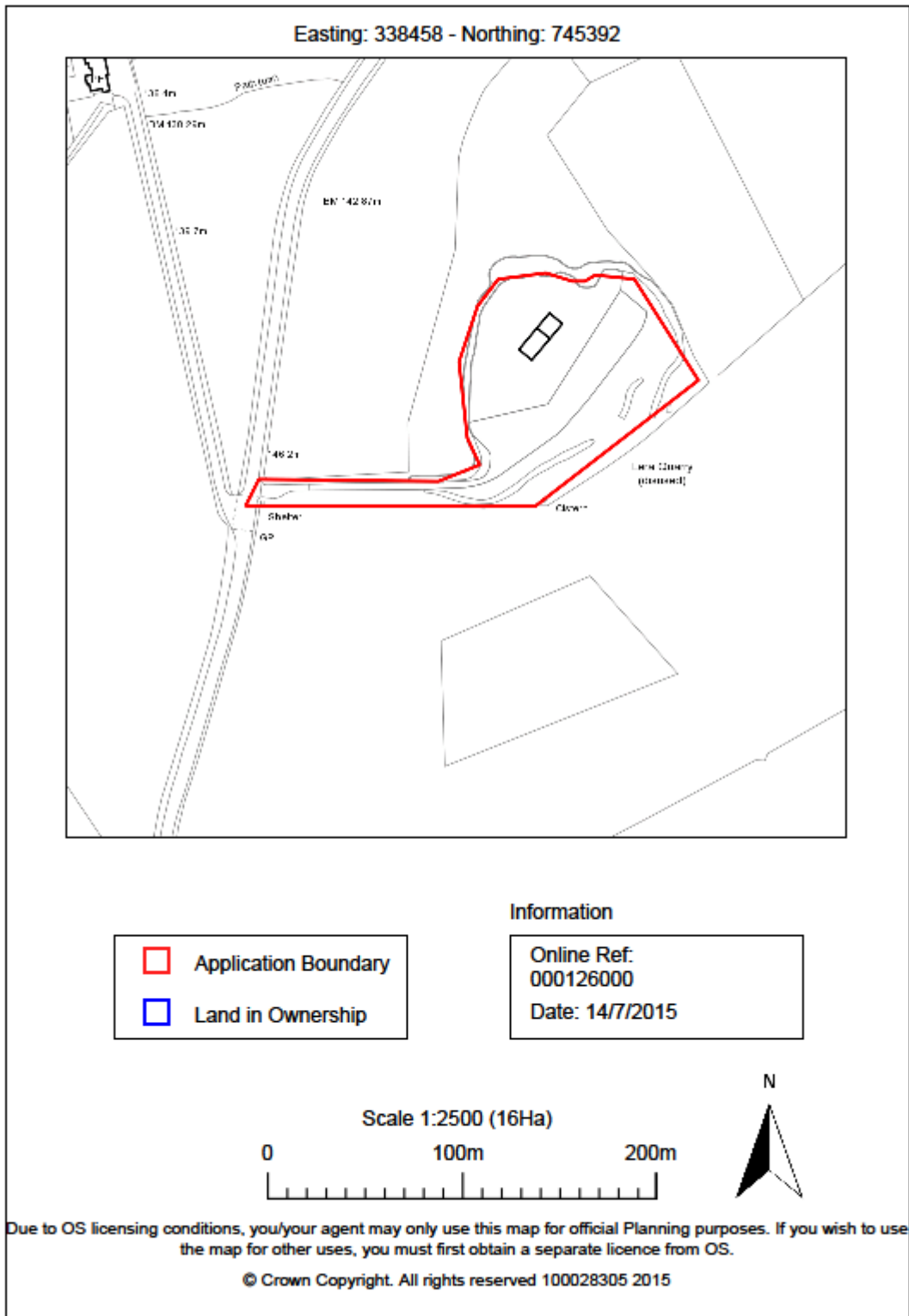
*Reason: In order to clarify the terms of the use hereby approved and to limit the use to that which has been assessed in the determination of this application in the interests of safeguarding the amenity of the area.*

**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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**DATE: 27 OCTOBER 2015**

Appendix 1 : Location Plan  
Appendix 2 : Development Plan Policies

Appendix 1 : Location Plan





## **Appendix 2 : Development Plan Policies**

### **Angus Local Plan Review 2009**

#### **Policy S1 : Development Boundaries**

(a) Within development boundaries proposals for new development on sites not allocated on Proposals Maps will generally be supported where they are in accordance with the relevant policies of the Local Plan.

(b) Development proposals on sites outwith development boundaries (i.e. in the countryside) will generally be supported where they are of a scale and nature appropriate to the location and where they are in accordance with the relevant policies of the Local Plan.

(c) Development proposals on sites contiguous with a development boundary will only be acceptable where there is a proven public interest and social, economic or environmental considerations confirm there is an overriding need for the development which cannot be met within the development boundary.

#### **Policy S6 : Development Principles (Schedule 1)**

Proposals for development should where appropriate have regard to the relevant principles set out in Schedule 1 which includes reference to amenity considerations; roads and parking; landscaping, open space and biodiversity; drainage and flood risk, and supporting information.

##### Schedule 1 : Development Principles

###### Amenity

(a) The amenity of proposed and existing properties should not be affected by unreasonable restriction of sunlight, daylight or privacy; by smells or fumes; noise levels and vibration; emissions including smoke, soot, ash, dust, grit, or any other environmental pollution; or disturbance by vehicular or pedestrian traffic.

(b) Proposals should not result in unacceptable visual impact.

(c) Proposals close to working farms should not interfere with farming operations, and will be expected to accept the nature of the existing local environment. New houses should not be sited within 400m of an existing or proposed intensive livestock building. (Policy ER31).

###### Roads/Parking/Access

(d) Access arrangements, road layouts and parking should be in accordance with Angus Council's Roads Standards, and use innovative solutions where possible, including 'Home Zones'. Provision for cycle parking/storage for flatted development will also be required.

(e) Access to housing in rural areas should not go through a farm court.

(f) Where access is proposed by unmade/private track it will be required to be made-up to standards set out in Angus Council Advice Note 17 : Miscellaneous Planning Policies. If the track exceeds 200m in length, conditions may be imposed regarding widening or the provision of passing places where necessary.

(g) Development should not result in the loss of public access rights. (Policy SC36)

###### Landscaping / Open Space / Biodiversity

(h) Development proposals should have regard to the Landscape Character of the local area as set out in the Tayside Landscape Character Assessment (SNH 1998). (Policy ER5)

(i) Appropriate landscaping and boundary treatment should be an integral element in the design and layout of proposals and should include the retention and enhancement of existing physical features (e.g. hedgerows, walls, trees etc) and link to the existing green space network of the local area.

(j) Development should maintain or enhance habitats of importance set out in the Tayside Local Biodiversity Action Plan and should not involve loss of trees or other important landscape features or valuable habitats and species.

(k) The planting of native hedgerows and tree species is encouraged.

(l) Open space provision in developments and the maintenance of it should be in accordance with Policy SC33.

###### Drainage and Flood Risk

(m) Development sites located within areas served by public sewerage systems should be connected to that system. (Policy ER22)

(n) Surface water will not be permitted to drain to the public sewer. An appropriate system of disposal will be necessary which meets the requirements of the Scottish Environment Protection Agency (SEPA) and Angus Council and should have regard to good practice advice set out in the Sustainable Urban Drainage Systems Design Manual for Scotland and Northern Ireland 2000.

(o) Proposals will be required to consider the potential flood risk at the location. (Policy ER28)

(p) Outwith areas served by public sewerage systems, where a septic tank, bio-disc or similar system is proposed to treat foul effluent and /or drainage is to a controlled water or soakaway, the consent of SEPA and Angus Council will be required. (Policy ER23).

(q) Proposals should incorporate appropriate waste recycling, segregation and collection facilities (Policy ER38)

(r) Development should minimise waste by design and during construction.

#### Supporting Information

(s) Where appropriate, planning applications should be accompanied by the necessary supporting information. Early discussion with Planning and Transport is advised to determine the level of supporting information which will be required and depending on the proposal this might include any of the following: Air Quality Assessment; Archaeological Assessment; Contaminated Land Assessment; Design Statement; Drainage Impact Assessment; Environmental Statement; Flood Risk Assessment; Landscape Assessment and/or Landscaping Scheme; Noise Impact Assessment; Retail Impact Assessment; Transport Assessment.

### **Policy SC19 : Rural Employment**

Employment opportunities throughout rural Angus will be supported where they make a positive contribution to the rural economy and are of a scale and nature appropriate to the location. Proposals which reuse existing buildings and sites and those which assist diversification of an existing rural business will be encouraged. There may also be scope for mixed use developments incorporating staff accommodation and/or home/work units.

### **Policy ER5 : Conservation of Landscape Character**

Development proposals should take account of the guidance provided by the Tayside Landscape Character Assessment and where appropriate will be considered against the following criteria:

(a) sites selected should be capable of absorbing the proposed development to ensure that it fits into the landscape;

(b) where required, landscape mitigation measures should be in character with, or enhance, the existing landscape setting;

(c) new buildings/structures should respect the pattern, scale, siting, form, design, colour and density of existing development;

(d) priority should be given to locating new development in towns, villages or building groups in preference to isolated development.

### **Policy ER6 : Trees, Woodlands and Hedgerows**

Trees, woodlands and hedgerows which have a landscape, amenity and/or nature conservation value will be protected from development. Development that would result in the loss of or damage to ancient or semi-natural woodlands will not be permitted. Tree Preservation Orders will be promoted to protect groups of trees or individual significant trees of importance to the amenity of a surrounding area where such trees and woodland are under threat. Management Agreements will be introduced, where appropriate, to ensure the establishment of new and replacement planting. Tree planting initiatives such as Community Woodland proposals and other amenity planting will continue to be supported and encouraged.

### **Policy ER11 : Noise Pollution**

Development which adversely affects health, the natural or built environment or general amenity as a result of an unacceptable increase in noise levels will not be permitted unless there is an overriding need which cannot be accommodated elsewhere.

Proposals for development generating unacceptable noise levels will not generally be permitted adjacent to existing or proposed noise-sensitive land uses. Proposals for new noise-sensitive development which would be subject to unacceptable levels of noise from an existing noise source or from a proposed use will not be permitted.