



Our Ref: OM01

Your Ref:

23 October 2019

FAO: Ruari Kelly
Angus Council
Communities – Planning and Place
County Buildings
Market Street
FORFAR
DD3 3LG

Dear Mr Kelly,

OBJECTION ON BEHALF OF DON & LOW LTD TO PLANNING APPLICATION REF 19/00707/FULM

Residential Development of 175 Dwellinghouses including Formation of Vehicular Access, Access Roads, Open Space, Landscaping, SUDS and Associated Infrastructure - Field Opposite Westfield Drive, Westfield Loan, Forfar

We act on behalf of Don & Low Ltd who operate from a factory based industrial estate fronting the A94, Glamis Road, to the south west of Forfar. The above planning application site is located directly opposite their premises, to the south east. The application site is an Allocated Housing Site in the Angus LDP. A map identifying Don & Lows site in the context of the proposed residential development is included as Appendix 1.

We have been instructed to submit an objection to the above planning application due to our client's concerns about the potential future impact of the proposals on their existing and future business operations.

The potential benefits to the community of new housing in the area are recognised, however it is critical that the planning authority assure itself the proposals adhere with statutory Local Development Plan policy, and will not unduly impact upon existing businesses in the immediate area. We believe that the proposals before the Council do not demonstrate this.

We therefore wish to object to the application, based on the current proposals' failure to meet the terms of LDP Policies DES4 Amenity and TC2 Residential Development, as well as PAN1/2011. This is set out as follows.

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Background

Don & Low Ltd is an internationally recognised manufacturer of woven and nonwoven polyolefin technical textiles. The wider company has a turnover of £60m and employs around 450 people. The company has a long history, established in 1792. Don & Low Ltd has been operating within Forfar for over 35 years. They are keen that their business interests at Glamis Road are fully protected, in terms of the existing 24 hour operations on site yet also regarding what the company might potentially seek to do in future within their Class 5 General Industrial Use. Don & Low Ltd's operation complies squarely with the statutory development plan. The Angus Local Development Plan (LDP) Forfar Inset Map identifies Don & Low Ltd's site as F9: an Existing Employment Site.

Deficient Noise Impact Assessment

The planning application was supported by a noise impact assessment (NIA) (by CSP Acoustics) to ensure that the proposals would be sufficiently attenuated to reduce noise risk. Our client appointed Paul Horsley Associates (PHA), an expert noise consultant, to review this technical document due to concerns that the assessment did not fully address or provide sufficient mitigation in regards to protecting the residential amenity of the proposed residential development. PHA's report is contained within Appendix 2 of this letter.

In summary, the key findings of PHA's report are as follows (**AY Emphasis**):

- The CSP Acoustics report has considered traffic noise and industrial noise **in isolation of each other**. Whilst this is an acceptable methodology, the cumulative effect of the 2 No sources will result in elevated noise exposure levels for the site.
- The **limited night time noise data presented cannot be relied upon either**, as it is an unknown as to exactly what plant was operational or activities were being executed at the time of the assessment. This lack of data produces a high level of potential error in the results presented.
- The assessment locations used within the BS4142:2014 are **not fully representative of the most exposed plots** on the proposed site and **do not even consider the plots closest to the Don & Low Ltd premises**.
- The recommended 2.2m high barrier along the northern boundary **is not specific and open to interpretation**. There is a possibility that the developer could install a 2.2m high wooden 'hit and miss' or palisade fence and still be compliant with the report recommendations
- The recommended **2.2m high barrier still does not achieve the required levels within the external areas**. It falls short by up to 3 dB, achieving an outdoor amenity noise level of up to 58 dB. This exceedance is likely to be significant and could result in complaints relating to noise from the incumbent residents. If the daytime industrial noise is audible above the traffic movements along Glamis Road, this **leaves the industrial premises liable for complaints against them from the residents**.
- The report has not, therefore, addressed the noise exposure along the northern elevation of the proposed development site satisfactorily leaving the industrial units noise output at risk of receiving justifiable complaints from the residents.
- This is an unacceptable situation for the industrial estate to be placed in as a consequence of the potential residential development that they have no influence over.

- The interpretation of the data gathered has been utilized to provide recommended mitigation proposals for the proposed plots on the site, however, **these recommendations are inadequate to ensure that the amenity of the incumbent residents will be protected** against the existing noise sources in the area. The conclusions within the report itself even confirm this with respect to the northern boundary barrier recommendations.
- The outcome of this is that if the development progresses, **the industrial activities and current noise output, may result in loss of amenity for the incumbent residents** in the future which could produce adverse reaction to the noise.

Departure from the Development Plan

Given the findings of the PHA report, we therefore consider that the proposals do not satisfactorily address the requirements of planning policy, particularly in regards to Policies DES4 Amenity, and TC2 Residential Development. We consider each of these in turn below.

Policy Des4 Amenity is a key consideration in regards to the proposal as it requires that *"All proposed development must have full regard to opportunities for maintaining and improving environmental quality. Development will not be permitted where there is an unacceptable adverse impact on the surrounding area or the environment or amenity of existing or future occupiers of adjoining or nearby properties."*

As identified by PHL's review of the submitted noise assessment, the proposals fail to provide sufficient mitigation from existing sources as to ensure that the proposed residential development would not be adversely impacted on by the existing environment. In this case, it relates to both D&L's existing operation, and from road noise from the A90, which has not been considered cumulatively, therefore the report proposes mitigation based on a flawed methodology.

It is therefore considered that the proposals fail to adequately address the requirements of DES4 and should therefore not be determined until this is properly and fully addressed.

The second relevant policy is TC2 Residential Development. The policy includes a variety of standards which all new residential development should comply with. This includes:

- *"be compatible with current and proposed land uses in the surrounding area;*
- *provide a satisfactory residential environment for the proposed dwelling(s);"*

As identified by the assessment undertaken by PHA, the proposals have not demonstrated that sufficient mitigation can be provided to provide a satisfactory residential environment, and therefore the proposals are not compatible with current land uses in the surrounding area, including that of D&L's existing operation. It is therefore contrary to the requirements of policy TC2 and should not be determined unless this matter is addressed.

Departure from Other Material Considerations

Planning Advice Note PAN 1/2011: Planning and Noise

PAN 1/2011 notes under paragraph 18, that the likely level of noise exposure at the time of the application and any increase that may reasonably be expected in the foreseeable

future are likely to be relevant. It is therefore necessary for the potential impacts from the existing general industrial operations at the Don & Low Ltd site to be considered upon the proposed new dwellings.

Scottish Planning Policy, 2014 (SPP)

SPP is clear on the requirements for information which is submitted to support planning applications. It states, '*Such information should **be proportionate and relevant to the development and sufficient for the planning authority requirements** on matters such as the number of jobs to be created, hours of working, transport requirements, environmental effects, **noise levels** and the layout and design of buildings.*' (paragraph 106) **(AY emphasis)**

As set out within PHA's technical review at Appendix 1, we consider that the submitted NIA is **not** proportionate or sufficient to allow noise impact to be fully assessed, in the terms set out in PAN1/2011.

Appeal Decisions PPA-170-2093 and PPA-250-2324

Angus Council should also take account of comments made by the Reporter for the appeal decision Ref. PPA-170-2093 (included at Appendix 3). This dismissed a residential development proposal adjacent to an industrial estate due to concerns that an unsatisfactory level of residential amenity could be achieved based on both the existing and potential future operations of the estate (paragraph 18 and 27). The resulting impact on the success of the industrial estate is also endorsed by the Reporter as a significant material consideration (paragraph 22), where they conclude that the residential proposal would have affected the industrial estate to such a degree as to fail policy and prejudice the local economy.

A second relevant appeal with reference PPA-250-2324 (included as Appendix 4) should also be considered by Angus Council. This appeal related to a similar proposal with a proposed residential development located adjacent to an industrial estate. The appeal was dismissed by the Reporter on the basis that acceptable noise levels could not be achieved within the proposed development, particularly regarding external areas. In this regard, the reporter stated at paragraph 11, "*I do not consider it reasonable in terms of amenity that residents should be subjected to potential noise levels in excess of WHO guidelines*" and therefore the proposals were considered to have failed the relevant policy tests in that case.

In addition, and specifically relevant to this case, the Reporter also found at paragraph 21, that because the proposed development would fail to meet the relevant standards, "*there is a reasonable risk that residents would complain to the Council about high noise levels*" from the neighbouring industrial property.

Both of these cases demonstrate that a failure by proposals to address or mitigate sufficiently against noise from existing developments is a significant material consideration and due weight should be attached to this in the determination of such applications.

Summary

As set out within PHA's review of the NIA, we consider the applicant has not provided sufficient mitigation to suitably attenuate the existing noise environment. As a result, the development plan policy requirements have not been met. This deficiency could likely lead

to residents complaining in future, therefore we urge Angus Council to properly address this matter now, through the planning process.

In conclusion, potential impacts on our client's operations as a result of this residential development could prejudice our client's existing and future operations at their Glamis Road industrial estate. These impacts need to be fully assessed, in accordance with PAN 1/2011, SPP, and take account of comments made by the Reporters for the appeal decisions referenced earlier.

In light of the above comments, we are therefore writing to request that these matters be assessed further and appropriate planning conditions considered, where necessary, to ensure that the positive aspects of the proposal are not outweighed by the potential for significant impacts on our client's operations. I trust that this representation will therefore be considered during your determination of the application.

We reserve our right to provide a further letter of representation (objection or otherwise) should further supporting information be submitted as part of this application.

I hope that this letter has been helpful to set out our client's position on the proposals and look forward to receiving recognition of receipt of this representation in due course. Please do not hesitate to contact me if you wish to discuss further.

Yours sincerely



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For and on behalf of
GVA Grimley Limited t/a Avison Young

Appendix 1



Key:

-  Application Boundary
-  Don & Low Main Facility

Acoustic Report

Review of the CSP Acoustics Noise Impact Assessment Report Relating to the Proposed Glamis Road, Forfar Residential Development on Behalf of Don & Low Ltd

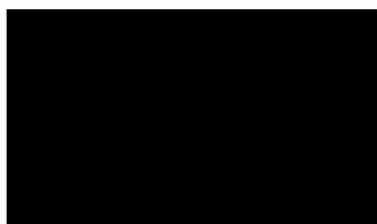
Our Reference – J2892

Review Date –22nd October 2019

Review by – Paul Horsley MIOA

Report compiled by: Paul Horsley MIOA

Date of Report: 22.10.19



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1.0 Agent

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2.0 Proposed Development Site

Land to the south of Glamis Road, Forfar.

3.0 Brief

Provide a review of the Noise Impact Assessment report completed by CSP Acoustics in support of the proposed residential development to the south of Glamis Road, Forfar with respect to the existing industrial estate positioned directly north of Glamis Road.

Advise on the validity of the report's content, assessment methodology and conclusions.


Provide further advice relating to the impact and potential restrictions the proposed development may have on the existing and future operations and activities of the Don & Low Ltd Industrial Estate.

4.0 CSP Acoustics Noise Impact Assessment Report Review

The following is assessment review of the CSP Acoustics Noise Impact Assessment report, completed in support of the proposed residential development by Muir Homes Ltd on Land to the south of Glamis Road.

The report was completed on 19th and 20th March 2018 and includes road traffic, ambient and industrial noise surveys.

The report is set out in 9 No section headings as noted below:-

Noise Impact Assessment Glamis Road Muir Homes Ltd		
Contents		
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9.00	Conclusion	19

Each section will be analysed and our comments provided with respect to the contents.

4.1 Section 1.0 Introduction

The introduction lays out the structure of the report that follows.

This is a standard format introduction and we have no further comments.

4.2 Section 2.0 Summary

The summary provides an overview of the noise assessment completed and the conclusions drawn from the report.

The summary section is concise providing an overview of the survey and does not provide specific details of the conclusions, other than to state that mitigation measures will be necessary to meet the internal levels of the agreed criteria.

We have no further comments relating to the summary section.

4.3 Section 3.0 Assessment Framework and Criteria

This section provides details of the Planning Policy relevant to the development of residential premises in Scotland. These include PAN 1/2011: Planning Advice Note (PAN) with accompanying Technical Advice Note (TAN). It provides 2 No tables setting out the criteria for assessing noise with respect to magnitude of noise impact and level of significance. Both these tables indicate receptor sensitivities to noise in the built environment.

The section also provides details on Standards and Guidance for assessing noise, including reference to BS8233:2014, WHO guidelines, and BS4142:2014. All these are relevant to the assessment of noise with respect to residential developments.

Additionally, Angus Council had been approached for their advice relating to limiting noise levels for the proposed residential development and Mr Ian Graham, Environmental Health Officer, provided internal noise limits to be achieved, with a specific assessment value for slightly open windows of 13 dB reduction as opposed to the accepted British Standard value of 15 dB. This reduced value is more onerous for the developer.

The assessment frameworks and criteria considered within the report are acceptable with respect to the proposed development. The use of these criteria in the noise impact assessment of the local environment should account for the noise levels present, including existing industrial noise.

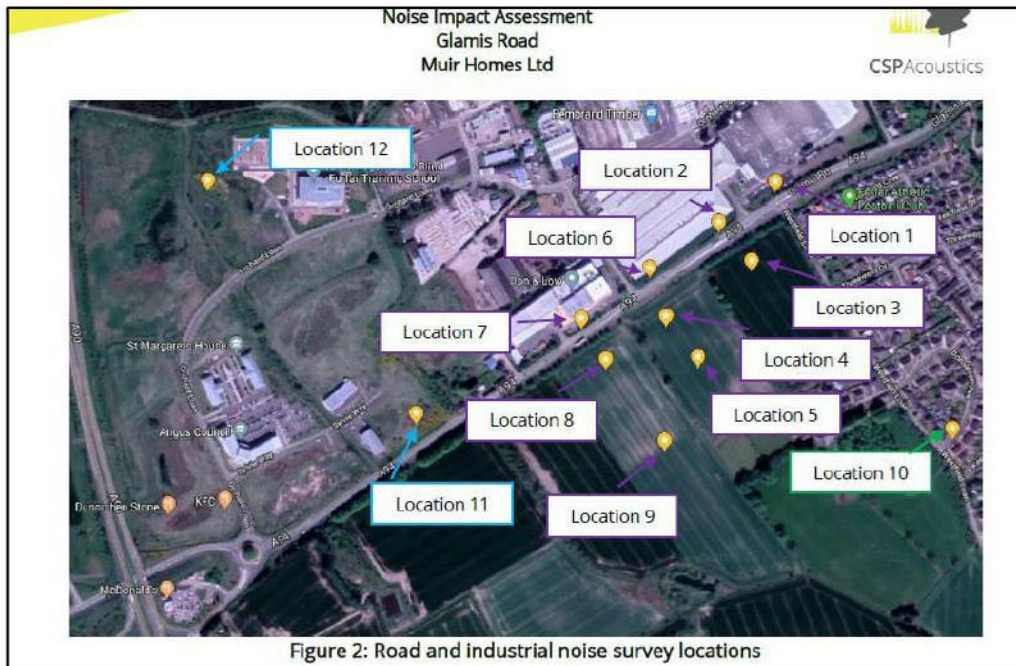
4.4 Section 4.0 Survey

The survey section provides details of the actual noise assessment completed for the development, detailing the 12 No positions and times the works were completed.

The traffic assessment was completed during the daytime of 19th March 2019 between 14.00 and 17.00 hours.

The industrial noise assessment was completed on 20th March 2019 at night between 01.00 and 03.00 hours, as detailed in 4.04 of the report. Any passing traffic movements were noted as being paused out of the results, thereby, the results relate only to industrial sources.

Below is a copy Figure 2 from the report indicating the noise assessment locations.



As can be seen the relevant locations relating to the industrial noise are 1, 2, 6 and 7 adjacent to the southern boundary of the Don & Low Ltd Industrial Estate. Consequently, location 3, 4 and 8 relate to the closest positions of the proposed residential premises.

The table of results, Table 5, show the results collected for the industrial assessment part of the survey. A copy is provided below for reference.

**Noise Impact Assessment
Glamis Road
Muir Homes Ltd**

Table 5: Industrial Noise measurement Results

Location	Measurement Period (5 min sample)	L _{Aeq} (dB)	L _{Amax} (dB) ⁽¹⁾	L _{A90} (dB)
1	01:01 to 01:06 hrs	50.9	53.4	50.1
2	01:07 to 01:12 hrs	52.6	55.0	52.0
3	01:14 to 01:19 hrs	49.0	52.1	48.4
4	01:25 to 01:30 hrs	49.0	53.8	47.8
5	01:34 to 01:39 hrs	46.2	52.6	44.5
6	01:43 to 01:48 hrs	55.0	60.1	54.7
7	01:49 to 01:54 hrs	47.8	55.1	46.0
8	02:00 to 02:05 hrs	48.5	55.8	44.8
9	02:10 to 02:15 hrs	46.6 ⁽¹⁾	57.5 ⁽¹⁾	42.3 ⁽¹⁾

⁽¹⁾ Measurements include both, industrial and road traffic noise on Glamis road

Our comments relating to the industrial assessment are as follows:

The results gathered indicate that a period of only 5 minutes for each location has been assessed and only nighttime periods have been considered.

This is a very short period of time for such a large industrial facility with all the possible noise sources that could be present. The southern façade of the Don & Low Ltd building alone is approximately 285m long, not including the adjacent industrial unit that adds another 260m to the southern façade of the industrial units overlooking the proposed residential site.

The fact that the noise assessment has only considered nighttime periods is problematic. Without knowing the precise production activities of the site, which operates 24 hours daily, or the specific plant and equipment used for each process, it is not possible to determine if the nighttime production is a reduced capacity operation. If it is, then the daytime noise climate may be increased significantly due to various plant or activities taking place that may not operate at night. The noise survey has not provided this evidence for later assessment purposes.

The noise survey completed by CSP Acoustics has failed to consider the specific daytime noise output from the various industrial sites, including the Don & Low Ltd premises. This could have significant consequences for the incumbent residents once the development has been completed. Any mitigation recommendations implemented, as a result of the report, may not be appropriate for the noise climate during daytime periods based upon the current industrial noise output for the area.

The report has considered ambient noise levels away from the industrial noise influence, Location 10. However, this again is considering only nighttime periods assessed for 3 No contiguous 5 minutes each. Again, a daytime assessment would provide further assessment data for inclusion within later analysis in the report.

4.5 Section 5.0 Road Traffic

This section deals with the road traffic assessment.

It makes use of the daytime results and utilises the methodology of Calculation of Road Traffic Noise, 1998 (CRTN'88) in the analysis. It also generates CadnA® noise mapping predictions of noise generation onto the site.

The above methodology is acceptable and we have no comments relating to this or the predicted results on the proposed residential development gained thereafter.

The results indicate that road traffic noise is likely to be produce an adverse impact on the development and further mitigation is required.

4.6 Section 6.0 Industrial Noise Assessment

The industrial noise assessment completed makes use of the rating methodology of BS4142:2014.

This is the appropriate method of rating the likely effect that industrial noise will have on a background when considered at a noise sensitive receptor location.

The background level, recorded away from the influence of the industrial activities, is a relevant position (Location 10) for executing such an assessment.

The report acknowledges that industrial noise will impact on the proposed development, see 6.04, and indicates the potential highest exposure positions of the development.

Below is a copy of the BS4142:2014 nighttime assessment rating for the most exposed proposed residential locations considered:

6.06 Detailed results determined from noise contour maps are shown in Appendix C.

Table 12: Proposed Development Night Time Noise Levels at Nearest Dwellings in dB			
Calculation Notes	North-east Plot 21	North-west Plot 48	South-east Plot 141
Don & Low Operational Noise Level, $L_{Aeq,1hr}$	50	54	35
Tonality correction (dB)	+0 ⁽¹⁾	+0 ⁽¹⁾	+0 ⁽¹⁾
Impulsivity correction (dB)	+3	+3	+3
Rating level (dBA)	53	57	38
Background Noise L_{A90} (dB)	37	37	37
Level above or below Noise Level (dB)	+16	+20	+1
Notes:			
⁽¹⁾ No tonal component apparent in site measurements			

There are several problems with the above assessment.

Firstly, the plots considered are not relevant for the full northern façade of the site. Plot 21 is positioned away from the industrial units at a distance of approximately 100m. The closest property to the industrial

premises at the north-east elevation would be Plot 37, approximately 55m from the industrial units. Plot 48 is relevant and closest to the north eastern industrial premises. However, there are no plots considered in the report relating to the Don & Low Ltd premises. Consideration of Plot 57 or 58 would need to be considered to accommodate the noise output from Don & Low Ltd, to determine the exposure of these premises.

Secondly, the data used in the assessment is based upon the contour values generated by CadnA® only. The recorded site data should have been used directly in this instance so that actual noise output is used, alleviating any errors that may be attributable to software use.

Thirdly, the BS4142:2014 assessment indicates that there is no tonality correction required as there is no tonal component apparent in site measurements, however, there is no frequency data provided to corroborate this assertion.

The results of the BS4142:2014 assessment indicate rating values up to +20 dB above background. This is a significant value and likely to result in justifiable complaints relating to noise from noise sensitive premises. If the rating were assessed for industrial development purposes against residential premises, significant mitigation measures would be required to reduce the noise at source.

The problem that could arise in the future is that once the proposed development premises are occupied, justifiable complaints could be forthcoming against the existing noise generated by the industrial activities.

The data is based upon only a snapshot of the current nighttime output recorded over 5 minute periods. This lack of recorded information, relating to the whole noise output from the industrial site, could have produced erroneous results for the existing noise climate for the area. Without additional long term data for the specific noise output from the site the results presented are subject to a high error factor that cannot be quantified presently.

The report does confirm that the industrial noise is likely to result in a significant adverse impact on the development, dependent upon context.

The context of the industrial noise is considered and concludes that traffic noise is likely to be more dominant than industrial sources. The context is also considered against Trigger Noise Levels for the Don & Low impact. The results of this context assessment still indicate a significant adverse impact due to industrial noise levels, as noted in Table 13.

Para 6.10 indicates that both daytime and nighttime average noise levels have been determined for industrial noise. This statement is incorrect. Limited nighttime noise is only presented in the report for the industrial noise. Therefore, the data presented in Table 13 cannot be used for daytime values.

The daytime noise assumptions are not valid with respect to noise output levels emanating from the industrial estate for reasons addressed within 4.4 above.

The recommendation concluded within 6.12 is that windows along the northern elevation of the proposed development should consider a strategy of closed windows along this elevation to mitigate against the industrial noise intrusion.

4.7 Section 7.0 Outdoor Amenity Area

Outdoor amenity is considered using the WHO Guidelines, where a noise exposure value limit of 55 dB LAeq dB is recommended.

The report concludes that the northern elevation of the proposed residential site will exceed this limit and recommends mitigation measures will be necessary in the form of an acoustic barrier.

We have no further comment relating to this conclusion.

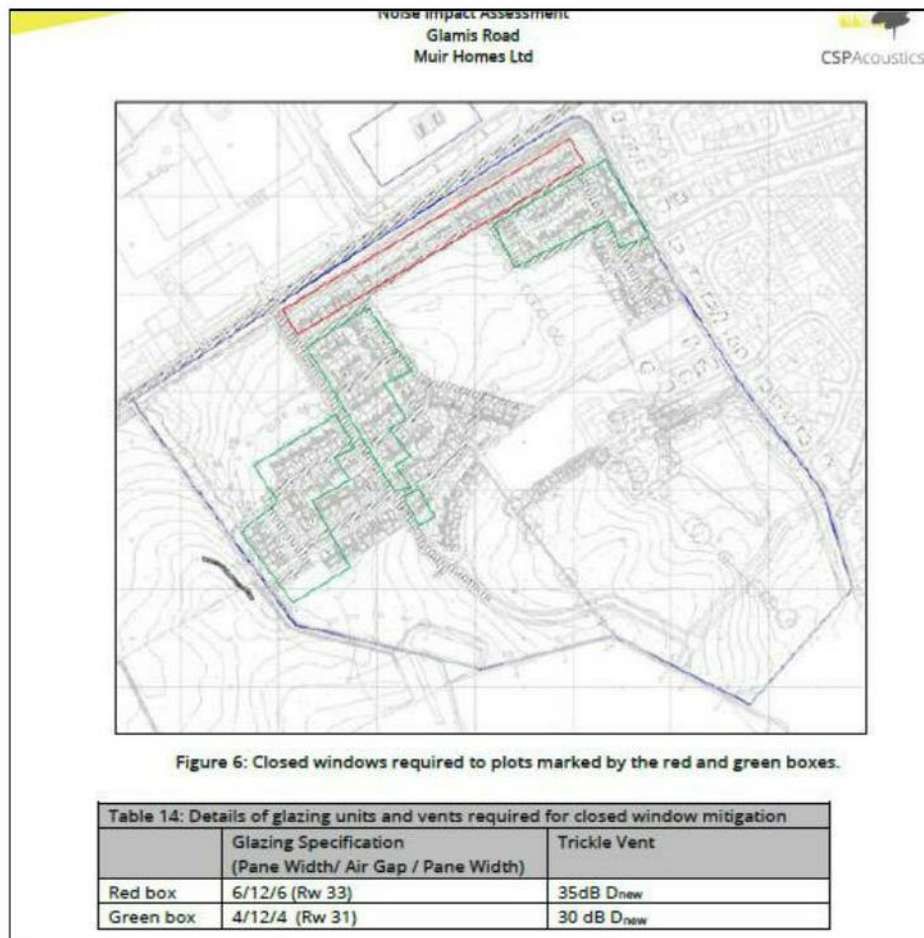
4.8 Section 8.0 Mitigation

CSP Acoustics have considered mitigation options and conclude that an acoustic barrier alone will not mitigate against noise intrusion into internal spaces. The specification of glazing and alternative ventilation will be necessary.

The section goes on to consider PAN 1/2011, stating that opening a window is not a necessity and internal noise levels and ventilation can be achieved using alternative methods.

Para 8.05 provides a table of glazing recommendations for the various locations on site, with a plot of specific locations where opening a window is not recommended.

Table 14 has been reproduced below for reference.



As can be seen the proposal is for closed window areas for the northern elevation of the site.

The data for the glazing specification only considers an Rw value. An Rw value alone does not accommodate the frequencies of noise ingress due to traffic or industrial sources. A relevant value would be Rw (C, Ctr) dB assessment rating. This rating level can be as much as -8 dB below the specific Rw value for sound transmission into a room.

If the correct glazing is not specified for the northern elevations of the development then noise ingress through the glass could still result in elevated noise levels and subsequently noise complaints relating to traffic or industrial noise sources.

Trickle vents are proposed as an alternative form of ventilation and supplier details provided. Again, if the correct trickle vent is not selected, elevated noise ingress can result.

Para 8.07 clarifies the situation that further calculations will be required and recommends this be conditioned through the planning process.

Para 8.08 considers outdoor amenity and recommends the use of a 2.2m high barrier is placed along the northern boundary of the site. The recommendation does not specify the acoustic properties of such a barrier. It doesn't even specify that it should be an acoustic barrier. This ambiguity could allow the developers to install a 'hit and miss' wooden fence or pallisade fence and still be in compliance with the acoustic report. Granted Appendix C CadnA® contour does indicate 'Noise Barrier', but provides no more details of the specification.

Para 8.08 concludes that noise levels within the outdoor spaces along the northern boundary is likely to be up to 58 dB, exceeding the limit set in WHO of 55 dB by 3 dB. This exceedance is likely to be significant and could result in complaints relating to noise from the incumbent residents. If the daytime industrial noise is audible above the traffic movements along Glamis Road, this leaves the industrial premises liable for complaints against them from the residents.

Remember, that daytime noise levels of the actual noise output from the industrial estate have not been completed as part of the survey.

The report has not, therefore, addressed the noise exposure along the northern elevation of the proposed development site satisfactorily leaving the industrial units noise output at risk of receiving justifiable complaints from the residents.

This is an unacceptable situation for the industrial estate to be placed in as a consequence of the potential residential development that they have no influence over.

4.9 Section 9.0 Conclusions

The conclusions of the report provide an overview of the methodology and survey completed, siting CTRN for traffic noise and BS4142 for industrial noise.

The conclusions indicate that the noise data gathered has been used to generate CadnA® noise maps for the proposed site.

The outcome concludes that a large proportion of the site does not require mitigation and that trickle vents accompanied by acoustic glazing is required as indicated.

It notes that a 2.2m high barrier is required along the northern boundary and that this will not fully mitigate against the noise levels present in the area.

This conclusion is a confirmation that noise is likely to be an issue with respect to an adverse impact on the proposed residential development at this specific site.

The report conclusions fail to fully mitigate against the potential for noise complaints that could arise following development and as such leaves the existing and future industrial estate activities at risk of unduly giving rise to elevated noise levels at the proposed residential development site.

The result of this failure could lead to potentially expensive and protracted mitigation measures being enforced upon the industrial estate noise output where none are required presently.

5.0 Report Review Conclusions

The CSP Acoustics report has provided a baseline noise survey in support of a proposed residential development on land to the south of Glamis Road.

Don & Low Ltd, an industrial premises is located on the northern side of Glamis Road, directly opposite the proposed development site.

The proposed development sits is currently open fields used for growing crops.

The CSP Acoustics report has considered traffic noise and industrial noise in isolation of each other. Whilst this is an acceptable methodology, the cumulative effect of the 2 No sources will result in elevated noise exposure levels for the site.

If we consider the industrial assessment, we find that limited 5 minute monitoring has been completed for the site, with only 3 No positions along over a 500m façade of industrial buildings. The assessment was only completed for nighttime periods. This is a total of 15 minutes out of a potential 8 hour nighttime period.

No daytime monitoring has been completed for the industrial noise output. The report provides an assessment of the noise output, including an assessment of daytime periods. The results presented can only be based upon assumptions of the noise output for the industrial area and as such the results cannot be relied upon as a representation of the actual noise climate for the area. Inspection of the input data used indicates that the day and night values will be identical.

The limited nighttime noise data presented cannot be relied upon either, as it is an unknown as to exactly what plant was operational or activities were being executed at the time of the assessment. This lack of data produces a high level of potential error in the results presented.

The data gathered has been presented as broad band single figure values. Whilst this provides a specific noise level for the area, it does not indicate the qualitative content of the sound, a full octave centre band frequency analysis of the noise climate would be required to determine this. A full sound spectrum would also allow for mitigation measures to be considered accordingly.

A BS4142:2014 rating of the industrial noise has been produced indicating up to a +20 dB value. This is significant and would result in justifiable complaints from noise sensitive location.

The assessment locations used within the BS4142:2014 are not fully representative of the most exposed plots on the proposed site and do not even consider the plots closest the Don & Low Ltd premises.

The mitigation recommendations proposed for the residential development are in the form of glazing, alternative methods of ventilation and a noise barrier.

The recommended glazing for the northern plots of the development, closest to the industrial estate, provide a recommendation for the double glazing. However, this recommendation is for achieving an R_w dB value only. It does not consider traffic or industrial noise sources with respect to noise ingress into the buildings. This should be specified using an R_w (C, Ctr) dB rating for the glazing system.

The specification for the recommended trickle ventilation is considered to be low at 35 dB $D_{n,ew}$.

The report does indicate that further calculations will be necessary and should be completed as part of a planning condition.

The recommended 2.2m high barrier along the northern boundary is not specific and open to interpretation. There is a possibility that the developer could install a 2.2m high wooden 'hit and miss' or pallisade fence and still be compliant with the report recommendations. A full acoustic barrier specification is required to ensure compliance.

That said, the recommended 2.2m high barrier still does not achieve the required levels within the external areas. It falls short by up to 3 dB, achieving an outdoor amenity noise level of up to 58 dB. This exceedance is likely to be significant and could result in complaints relating to noise from the incumbent residents. If the daytime industrial noise is audible above the traffic movements along Glamis Road, this leaves the industrial premises liable for complaints against them from the residents.

Remember, that daytime noise levels of the actual noise output from the industrial estate have not been completed as part of the survey.

The report has not, therefore, addressed the noise exposure along the northern elevation of the proposed development site satisfactorily leaving the industrial units noise output at risk of receiving justifiable complaints from the residents.

This is an unacceptable situation for the industrial estate to be placed in as a consequence of the potential residential development that they have no influence over.

The result of this failure to fully mitigate against the existing noise levels present could lead to potentially expensive and protracted mitigation measures being enforced upon the industrial estate noise output where none are required presently.

The noise impact assessment completed by CSP Acoustics has not provided the necessary evidence of the current noise climate in the vicinity of the northern elevation of the proposed development site.

The interpretation of the data gathered has been utilized to provide recommended mitigation proposals for the proposed plots on the site, however, these recommendations are inadequate to ensure that the amenity of the incumbent residents will be protected against the existing noise sources in the area. The conclusions within the report itself even confirm this with respect to the northern boundary barrier recommendations.

The outcome of this is that if the development progress, the industrial activities and current noise output, may result in loss of amenity for the incumbent residents in the future which could produce adverse reaction to the noise.

This may consequently expose the industrial premises to complaints relating to noise and may result in action being taken by the local authorities against the industrial premises should the development proceed accordingly based upon the recommended mitigation measures proposed for the residential development.

Appendix 3

Directorate for Planning and Environmental Appeals

Appeal Decision Notice

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Decision by Frances M McChlery, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-170-2093
- Site address: land between Herries Avenue and Catherinefield Industrial Estate (former college site), Heathhall, Dumfries
- Appeal by Story Homes Ltd against a decision by Dumfries and Galloway Council
- Application for planning permission reference 13/P/3/0236 dated 24 April 2013 refused by notice dated 1 April 2014
- The development proposed: Erection of 207 dwellinghouses, construction of roads, drainage, formation of landscaping and open space (approval of matters specified in conditions 3-9 and 11 of planning permission in principle 08/P/3/0175 including layout, design, external appearance, landscaping, noise assessment, affordable housing, boundary detail and road construction)
- Date of hearing: 11 November 2014
- Date of site visits by Reporter: 6 August 2014 and 11 November 2014

Date of appeal decision: 23 December 2014

Decision

I dismiss the appeal and refuse planning permission.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise.
2. Having regard to the provisions of the development plan, the main issue in this appeal is the impact of noise from the adjacent industrial estate on residential amenity.

Background to the appeal

3. The appeal application was for the planning authority's approval of a number of conditions imposed on planning permission in principle reference granted on 5 May 2010, for housing on the site. The appeal application was refused by the council for non-compliance with condition 7 of that permission. This stipulated how potential noise disturbance on the site was to be addressed, and was imposed 'to define the terms of the permission in principle and in order to preserve the residential amenity of properties'. I think the word 'preserve' could fairly be taken to mean 'protect'. This was necessary because the housing site is bordered on the south eastern boundary by the Catherinefield Industrial

Estate. The provision for the site (as DFS.H4) in the recently adopted development plan recognises a requirement to develop the site so as to give prospective residents a reasonable degree of acoustic comfort, notwithstanding the proximity of potentially noisy industrial activities.

4. A number of other conditions from the planning permission in principle were also addressed in the appeal application. These were considered by the council to have been satisfactorily met, but were not considered to be capable of self standing approval without condition 7. Approval of the compliance with other conditions was accordingly not granted, and so they were included in the appeal. The appellants have simplified the appeal process by advising that they do not seek approval of any of the other matters in the application, if the appeal against the refusal based on non-compliance with condition 7 is to fail.

5. Condition 7 states:-

“That, notwithstanding the terms of Condition 2 above, a noise assessment in accordance with the guidance provided within BS4142: 1997 shall be submitted as part of any further application in respect of the specific location, layout and design of residential units relative to Catherinefield Industrial Estate. Should the likelihood of noise complaints be identified as part of this assessment then suitable acoustic attenuation measures require to be identified and form part of any further application in respect of residential units on this site. Such attenuation measures as may be so approved shall be implemented on site prior to the occupation of any dwellings which would otherwise be adversely affected by noise levels from Catherinefield Industrial Estate and thereafter shall be retained in situ for the lifetime of the development.”

6. I consider that the objective of this condition is to manage the development so that a good standard of residential amenity is achieved. Complaints are used in the condition as an indicator of disamenity. The prediction of human reaction to noise is difficult because it depends not only the experience of volume, which is also relative to the existing noise environment, but also on the nature or tonal quality of the noise, the regularity, or indeed irregularity, of the noise event, and context in which the noise is likely to be experienced. Guidance is available to planning authorities from a group of authoritative sources, including the World Health Organisation, and the British Standards mentioned above, which incorporates the WHO guidance. These allow a judgement to be made, based on evidence collected according to a recommended methodology, about when noise will degrade amenity to the extent that it gives rise to complaints. The application of this guidance to a planning decision should be made in accordance with the Scottish Government Planning Advice Note 1/2011 'Planning and Noise' and the Technical Advice Note which accompanies it, where these other authorities are usefully summarised.

7. It should be noted that the indicator here is avoiding complaints, as opposed to avoiding successful legal action against noise nuisance under environmental protection legislation. This is governed by different policy and legal criteria, and is always defined by the particular circumstances of the incident complained of. While the planning system can play its part in avoiding such conflict in future, it is not appropriate to attempt to use noise nuisance criterion as the measure of residential amenity in creating a new living environment.

Noise Impacts

8. During the application process the appellants worked through an iterative process with the council, carrying out a noise impact assessment based on BS 4142: 1997 of the noises generated by the industrial estate. It emerged from this that the operation within the Catherinefield Industrial Estate most likely to cause noise of a volume and type which could prejudice future residential amenity was the engineering company Kellwood Engineering Ltd. There were other noise generating activities on the estate, such as ventilation fans, but Kellwood was clearly noisiest, and the most likely to generate complaints. The noise impact assessment took measurements of Kellwood's operations during two periods over two days in August 2012. From this evidence it was established that the residents of the housing layout as initially proposed would experience noise to the extent that they would be likely to complain, and the council's environmental health service so advised. As required by the condition and in consultation with environmental health, the appellants used the information from their report to modify their layout. Their revised proposals incorporated the following features designed to attenuate noise from the industrial estate, namely :-

- The deletion of a number of plots from the original proposed layout, and reorientation of two houses.
- The use of a substantial area on the southern side of the site nearest the noisiest source as landscaped open space.
- The construction along part of the southern boundary of a 100 metre continuous noise barrier in the form of a bund 3.5 metres high from ground level, and with its apex 5 metres from the site boundary.
- The houses most likely to be affected by noise, notwithstanding the noise barrier, were identified to be a number to be constructed within 50 metres of the boundary of the site. The developer proposed to provide these with acoustic double glazing, giving the residents the option of closing their windows when disturbed by noise. If noisy periods and warm weather coincided, a further counter measure would also be available to occupiers in the form of mechanical ventilation.

9. The amendments to the scheme incorporating these measures were ultimately deemed sufficient by the council's environmental health service, who withdrew their objection. However, in the memorandum detailing the above attenuation measures, environmental health had advised their planning colleagues as follows:-

"I would wish to bring to your attention that compliance with the suggested levels of the British Standards does not provide silence. Noise from the operations of Kellwood engineering will still be audible in the gardens of some of the properties even with the acoustic attenuation measures in place. This noise will typically [be] from the fans which have no restrictions on operational hours, but may also include shorter louder noises e.g. metal banging as material is moved and machined, as the skip is emptied or the operation of the compressor for shot blasting. The assessment criteria allows an averaging of sound levels over a long period of time which removes these peaks from the final figure, however it is possible that these operations could cause noise levels that residents may find annoying."

10. They went on to highlight that Kellwood did not at that time normally operate beyond typical working hours, but that without imposing restrictions on them, Kellwood could work evening or night shifts. They commented that in assessing nighttime conditions, the

averaging methodology could allow a noise assessment to meet the levels suggested by the British Standard, but that could still mean that noises could occur which would disturb residents.

11. This advice was taken into account in the recommendation from the council's planning service for approval of the application, based on the modified layout including the attenuation. In the report to the planning committee, the planning service said that their recommendation in relation to meeting condition 7 was based on the noise currently generated by activities being carried out at the time of the study on the industrial estate. The officers took the view that it was inappropriate to attempt to base compliance with condition 7 on activities which might take place in the future, but about which there could be no certainty or measurable evidence. They took into account that if a different approach were taken, a large part of the housing area might be unable to be developed. The appellants understandably consider this to be the right approach to the planning decision.

12. Kellwood Engineering objected strongly to the application, and renewed their objections in the appeal. There were also a substantial number of objections along similar lines from other occupants of the industrial estate, and from the Dumfries and Galloway Chamber of Commerce, who also participated in the appeal.

13. Kellwood said that the appellant's noise impact assessment was seriously flawed because it had surveyed too small a sample of the noise generated by their processes. Because the sample was unrepresentative of the level of noise they might generate, the potential for complaints was understated. The noise assessment had also not sufficiently taken into account the type of noise generated, which could be impulsive, or tonally annoying. Nor did the assessment reflect that noise from Kellwood may happen during the evening or night, or at weekends, if Kellwood's current activities increased, as they were reasonably foreseeable to do. Kellwood submitted expert opinion that the attenuation measures would not result in the avoidance of complaints about industrial noise, even if that might only be from residents using their gardens.

14. Kellwood also said that the planning officers' approach of restricting the assessment to existing activities was incorrect. They should also have taken into account the noise which might be generated in future by operations on the industrial estate, so long as that noise was reasonably foreseeable.

15. Kellwood and other objectors also said that the approval of the application as it stood would blight the future success of Catherinefield Industrial Estate as the right place for Class 5, (general industrial) and Class 4, (light industrial activities). If housing was built as close to the estate as proposed, then industry on the estate would have to take into account the effect on neighbouring housing of their activities, when at present that was unnecessary. Disturbance of residential amenity, with complaints from future residents about noise from the industrial estate would become likely, and that would lead in due course to greater restrictions on how the industrial concerns conducted their operations. This had already happened to some extent, because recent planning applications for development on the industrial estate are being treated by the council planning officers as requiring noise conditions to avoid disturbance to the future occupants of the appeal site. The introduction of this constraint on future development would lead to a loss of confidence in Catherinefield Industrial Estate, restrictions to the ability of Catherinefield's present

occupants to respond to demand, additional cost, and a disincentive to investment in Catherinefield premises.

16. I inspected Kellwood's operations as part of the site visit. They are a small to medium enterprise with about 50 employees and a recent history of more intensive activity. They had relatively recently absorbed the operations of another company which had gone into receivership. They are a subcontractor, or supplier, of bespoke precision engineered tools and components, among other things. Their work involves the grinding and machining of metal, shot-blasting powered by an air compressor, banging, clanging and other metallic noises as metal is moved or stacked. Typical noise will include impulsive and tonally irritating noises such as the whine of grinding, and the roaring noises of shot-blasting. As Kellwood are responsive to irregular customer orders, the pattern of noise is unpredictable, and can be highly variable in nature. Much of their machining activity takes place indoors, but they also make extensive and varied use of their yard and exterior spaces. Past business had been affected by the recession years, but they expected their activity levels to continue to rise. I accept that as a reasonable expectation.

17. From the evidence submitted of the character and level of noise likely to be generated by Kellwood's operations, and when it may be generated, I consider that it is reasonably foreseeable that Kellwood or other industrial concerns on the north eastern boundary of the industrial estate will generate noise which would be irritating or disturbing to some of the residents of the new housing estate as proposed, and which will give rise to complaints.

18. I also consider, and take into account, that the noise impact assessment carried out by the applicants may understate the impact of the noise which has been, and could be, generated on the industrial estate by Kellwood in the future, because of the averaging effect, and because the information collected about existing noise levels is not sufficiently representative.

The development plan

19. The application was considered under the previous development plan, but the Dumfries and Galloway Local Development Plan was adopted by the council in September 2014, and so I must apply that plan to the appeal. Other than the policies which allocate the site for housing, and Catherinefield for industry, there are two directly relevant development control policies, OP1 and OP2.

20. Policy OP1: 'Development Considerations', is the general development management standards policy. Section a) 'General Amenity', requires that a development proposal should be compatible with the character and amenity of the area and should not conflict with nearby land uses. The balance of this policy section is less directly applicable, as it deals with the consideration of amenity problems, such as noise and vibration, odour and fumes, etc which may be caused by the new development, as opposed to problems for new development caused by existing development. I consider these references in the policy to be indicative of the type of land use conflicts which might arise and which should be avoided or managed. OP1: Section f) 'Sustainability', requires proposals to limit the impacts of climate change and promote sustainable development by assisting the development of the local economy through sustainable economic growth.

21. Policy OP 2: 'Design Quality of New Development' requires that development proposals should achieve high quality design contributing positively to a sense of place and local distinctiveness. The policy goes on to provide detailed guidelines designed to achieve good place-making through design. No other issue arises in connection with the detailed design for the houses and streets in the appeal layout, but I take this policy to include a broader commitment to the creation of a high quality, as opposed to sub-standard, living environment in all new development.

22. In my view, the development plan expectations have not been met. The current proposal offers a substandard residential environment. I also find the proposals to run counter to OP1: f) by prejudicing the economic development of the existing local economy, by reason of its likely effect on the current suitability of Catherinefield Industrial Estate as a general industrial location.

23. I consider that the attenuation measures proposed by the appellants will not meet the objectives of condition 7 in achieving a comfortable acoustic environment in the housing site, as was recognised in the reference to the site in the development plan. I consider that the noise impact assessment has not succeeded in demonstrating that complaints will not be made. Residents may be able to reduce the noise disturbance from time to time by using rooms at the back of their houses, but people should be able to make full use of their living space, rather than accepting restricted circumstances. The houses themselves will provide some noise attenuation to people in their gardens, which will be at the opposite side from the industrial estate, but in principle, it is important that people can use their outside space without an unsatisfactory noise environment. There appears to be adequate space available on this large site to create a reasonable acoustic environment, and no imperative to justify compromising development standards.

24. I therefore find the application to be contrary to the development plan.

Other considerations

25. Among the relevant material considerations which should be considered in addition to the development plan, PAN1/2011 is of central importance. This promotes the principles of good acoustic design and a sensitive approach to the location of new development. Paragraph 18 gives guidance on considering applications for new noise sensitive development close to an existing noise source. It says that the likely level of noise exposure at the time of the application and any increase that 'may reasonably be expected in the foreseeable future' are likely to be relevant. The extent to which it is possible to mitigate the adverse effects of noise should also be a consideration.

26. I considered the appellant's submissions that paragraph 16 should be read as permitting attenuation including double glazing and mechanical ventilation so that residents could achieve a reasonable noise environment by closing their windows. I note, however, that the PAN clearly states that being able to open your windows for ventilation is to be preferred. I do not consider the circumstances of this development, or its relationship with the industrial estate to amount to the 'last resort' envisaged by the PAN in which mechanical ventilation would be justified. My reading of the paragraph is that it permits such compromises where the development circumstances would not allow any other strategy. I do not consider that to be the situation here.

27. I disagree with the applicants and the council officers that only the existing activities on the estate should be used as the baseline for the judgement of what it is reasonable to expect new residents to tolerate. I consider this to be too narrow an approach, and not to accord with paragraph 18 of PAN1/2011. In my view, the frame of reference should be what the noise generator can do on their land without the need for compliance with planning conditions, or for a planning application. Thereafter the decision maker should aim to take an informed and reasonable approach, in making a judgement about what is likely to happen.

28. The context and the character of a neighbourhood are recognised by PAN1/2011 as relevant in making a judgement as to what expectations of amenity are reasonable. The appellants argued that the locality around the industrial estate had become established as a place where residents should expect to live in close proximity to industry, and to have adjusted their expectations of residential amenity accordingly. They referred to the existing housing adjacent to the east and south boundaries of the Catherinefield Industrial Estate, to Wellington Avenue being closest, and also to the Heathfield Primary School fairly recently built on the eastern boundary.

29. As to Wellington Avenue, it is certainly the case that the rear of the houses and the gardens appear very close to the looming bulk of the former aircraft hangars behind them, located in the southern section of the industrial estate. These buildings, however, are used as food storage, and are considered as Class 4 (light industrial) uses. There does not appear to be a pattern of noise problems caused to these residents, although there would appear to have been a few complaints from this area relating to refrigerated vehicles. The hangars nearest them are located on the quieter southern side of the Catherinefield estate and may also have an effect of shielding the residents on Wellington Drive from any noisier operations behind them. In any event, I do not consider the close proximity of these houses to the margins of the industrial estate to have created a satisfactory residential environment. I do not think that the environment of these houses are comparable to what would be expected by or acceptable to the new residents in the houses to the north, nor do I consider that it should be. A high quality place has not been created at this location, whereas there remains scope to do better on the appeal site.

30. As to the new school, it will presumably have been built to modern specifications and in accordance with the principles of PAN 1/2011 or its predecessor. It is also shielded by landscaping treatment, fencing, and some metres of distance from the industrial estate, and again will have some of the noisier activities blocked by the most northern Hangar. A primary school will be unlikely to be adversely affected by evening working. I do not consider that the construction of the school sets a precedent for lowered expectations of residential amenity.

31. Scottish Planning Policy is another important material consideration. It is clear that the national planning requirement is for high standards in development management, leading to quality development and good place-making. This objective should not be lightly compromised. The presumption should be in favour of good standards of amenity, as well as avoiding conflict.

32. At the hearing it emerged that the physical attenuation measures including the noise barrier bund were not accurately shown on the layout drawing of the housing site, as the dimensions of the bund supplied suggested that the base would be somewhat wider than was shown on the layout. The appellants advised that the details of the bund should be considered as indicative only, but that the eventual design of the noise barrier would allow it to be laid out in a smaller footprint without loss of performance, and it would achieve the height proposed. Had I considered that a satisfactory environment could be achieved by the proposed attenuation measures, I would have requested a further layout to be prepared to identify the precise spatial implications of the noise barrier, but in the circumstances I do not consider that to be necessary, since it was not suggested that the additional details of the bund which could be supplied would increase the effectiveness of the noise barrier.

33. I therefore conclude that the proposed development does not accord with the relevant provisions of the development plan and that there are no material considerations which would otherwise justify granting planning permission.

34. I have considered all the other matters raised, but there are none which would lead me to a different conclusion.

Frances M McChlery
Reporter

Appendix 4

Planning and Environmental Appeals Division

Appeal Decision Notice

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Scottish Government
Riaghaltas na h-Alba
gov.scot

Decision by Steve Field, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-250-2324
- Site address: land to north of Nairn Street, Kirkcaldy, Fife, KY1 2PB
- Appeal by Springfield Properties PLC against the decision by Fife Council
- Application for planning permission 18/01331/FULL dated 14 May 2018, refused by notice dated 2 April 2019
- The development proposed: erection of 152 affordable dwellings with associated infrastructure and landscaping
- Date of site visit by Reporter: 26 July 2019

Date of appeal decision: 7 August 2019

Decision

I dismiss the appeal and refuse planning permission.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The development plan that relates to this site is the FIFEplan Local Development Plan 2017 (LDP), read with the SESplan Strategic Development Plan 2013.

2. Having regard to the provisions of the development plan, the main issues in this appeal are whether the proposed development is acceptable in terms of:

- potential noise impact;
- the principle of development;
- school capacity;
- placemaking;
- privacy, sunlight and daylight;
- green infrastructure;
- trees, woodland and biodiversity;
- transportation and road safety;
- water, drainage and flood risk;
- air quality, contamination and ground conditions; and
- sustainability.

I consider each of these issues, in turn, below.



Potential noise impact

3. There are three potential noise issues arising from the proposed development: the impact of existing noise levels on the internal living accommodation of the proposed flats, the impact of existing noise levels on the external living accommodation of the proposed flats and the impact of the proposed construction of houses and flats on the existing industrial premises in the area. Existing noise levels are principally generated by the Forbo Flooring UK Ltd factory and railway to the north of the site and the roads to the south and east of the site.

4. FIFEplan Policy 10: Amenity indicates that development will only be supported if it does not have a significant detrimental impact on the amenity of existing or proposed land uses, including in relation to noise pollution and in relation to impacts on the operation of existing or proposed businesses or commercial operations. I consider below each of the three noise issues I have identified in relation to LDP policy.

(i) Internal noise levels

5. The Scottish Government's Technical Advice Note: Assessment of Noise, 2011 (TAN) advises that the World Health Organisation (WHO) Guidelines for Community Noise, 1999 'represents a consensus of expert opinion on the impacts of noise and recommends guideline values for avoidance of particular effects e.g. annoyance and sleep disturbance'. The council has used the WHO guidelines to establish benchmark noise levels appropriate to the proposed development. As the TAN is a supporting document to the Scottish Government's Planning Advice Note 1/2011: Planning and Noise, 2011 (PAN 1/2011), I consider this to be a reasonable approach. I note that, in principle, it is an approach accepted by the appellant.

6. In relation to levels inside dwellings, the WHO identifies 35 dB above which speech intelligibility and moderate annoyance may occur during the daytime and evening. The level above which sleep may be disturbed at night-time is 30 dB.

7. The appellant's noise impact assessment includes daytime noise modelling with development at a height of 1.5 metres (ground floor level) and four metres (first floor level). These show a range of values from greater than 45 dB in a small number of locations where where building façades would be screened from the main noise source, to levels greater than 70 dB where façades would face Nairn Street. Night-time noise modelling shows forecast levels at four metres of greater than 60 dB where properties would front onto a road, with levels of greater than 65 dB in some locations on the Nairn Street frontage. Levels elsewhere would be typically in the range of greater than 50 dB to 60 dB. There are some pockets where levels would be greater than 45 dB where that part of the site would be screened by development. Peaks when a train would pass the site at night-time could peak at more than 75 dB in the central part of the site with significantly higher levels through much of the site, other than on the southern edge of the site to the south of proposed buildings.

8. The noise impact assessment advises that the proposed indoor ambient noise level from the Royal Environmental Health Institute of Scotland (REHIS) guidance would not be

achievable for the majority of buildings within the development with the windows open. Paragraph 5.1 of the REHIS briefing note on Noise Guidance for New Developments, 2015 indicates guideline values for bedrooms in line with WHO guidelines. The noise consultant also advises that 'some of the most shielded façades will be able to achieve reasonable noise levels with the windows open' but, elsewhere, 'mitigation can be included within the building façade and ventilation strategy so that internal noise levels are below the adverse effects levels'.

9. The appellant proposes to achieve the necessary reduction in internal noise levels by using a combination of acoustic glazing and mechanical ventilation with heat recovery (MVHR). The appellant has produced a manufacturer's specification for acoustic laminated glass that, subject to thickness, claims that it can provide noise reduction of more than 40 dB. This would address glazing performance requirements shown in the noise impact assessment for the worst-case façades. However, the council argues that a typical sound reduction for a double-glazed unit is 30 dB. No specification is provided for the proposed MVHR system. As the appellant suggests, it would be possible to use planning conditions to require that the specifications of noise attenuation measures be agreed with the council prior to the start of development. However, the mitigation approach relies on a closed window approach.

10. PAN 1/2011 advises that 'it is preferable that satisfactory noise levels can be achieved within dwellings with the windows sufficiently open for ventilation'. The PAN also recognises that this may not always be achievable. Mechanical ventilation is regarded as a last resort. I accept the view expressed in the noise impact assessment that ventilation need not rely on open windows to provide a good internal environment. However, if that option is available, which it would require to be to meet building standards requirements for emergency egress, regardless of the technical specification of the MVHR system and advice on its benefits and how to use it, I consider it likely that residents will open windows. They may do this for various reasons: for 'purge ventilation', to use an expression from the appellant's grounds of appeal, to provide a connection to the outside, to borrow a phrase from the appellant's noise consultant (this might be to hear bird song, for example), monitor children's play or simply take in fresh air. Whatever the reason, ultimately the appellant can not control the actions of residents in this regard and I consider it reasonable that people behave in this way.

11. I do not consider it reasonable in terms of amenity that residents would not be able to open their windows. As closed windows would be the only way to meet acceptable internal noise levels, I find that the proposals would not meet the terms of Policy 10: Amenity in relation to noise.

(ii) External noise levels

12. Paragraph 16 of the PAN indicates that 'sound levels in gardens and amenity areas may also need to be considered in terms of enabling a reasonable degree of peaceful enjoyment of these spaces for residents'. WHO guidelines identify 50 dB as a level above which moderate annoyance may be caused in outdoor living areas during the daytime and evening and 55 dB as a level above which serious annoyance could be caused in the same environment at those times of the day.

13. I have summarised forecast noise levels provided as part of the noise impact assessment at paragraph 7 above. It is proposed to provide mitigation through the erection of a three metre high barrier on the site boundary closest to the industrial noise sources. Further mitigation, through the installation of 1.8 metres high acoustic fencing, is proposed around a number of gardens within the development. Notwithstanding these measures, the noise impact assessment advises that the lower WHO guidance value would only be achieved in a small number of gardens towards the centre of the development, even when the gardens are enclosed by acoustic fencing.

14. Figure 16 in the noise impact assessment shows that, with the three metre high barrier on the site boundary, only small parts of the site which are also screened from industrial noise by proposed buildings would experience noise levels under 50 dB. The joint effect of the proposed barrier and proposed development would also reduce some areas to under 55 dB but, elsewhere, levels of more than 55 dB would still be exceeded.

15. The noise impact assessment suggests that, where noise levels are not dominated by industrial sources, the levels are reasonable for external amenity spaces and similar to other residential properties nearby. The appellant's noise consultant also suggests that, as the WHO guidelines are based on the onset of health effects only a small proportion of the population will be annoyed or seriously annoyed at the levels recommended and, hence, the noise levels that would be encountered on the site following development.

16. Appendix 1 to the TAN provides a summary of the WHO guideline document. The third paragraph of that summary appears to support the appellant's interpretation of population impact at the levels indicated above. However, the relevant part of Chapter 4: Guideline Values of the WHO guidance reads as follows:

'To protect the majority of people from being seriously annoyed during the daytime, the outdoor sound level from steady, continuous noise should not exceed 55 dB on balconies, terraces and in outdoor living areas. To prevent the majority of people being moderately annoyed during the daytime, the outdoor sound level should not exceed 50 dB. Where it is practical and feasible, the lower outdoor sound level should be considered the maximum desired sound level for new development.'

17. In this context and, on the basis that the lower WHO guideline noise level could not be met on much of the appeal site and the higher guideline figure would also be exceeded in places, even with mitigation in place, I consider that the proposed development would not provide a reasonable external environment for residents throughout the site.

18. The appellant argues that an external noise level of 60 dB is equivalent to the noise in a busy office. This is borne out by the PAN. However, I do not accept that such a hubbub would make for a reasonable level of background noise in a garden. I also note that noise levels in excess of 60 dB would be experienced on the open ground associated with properties facing onto Nairn Street. Where these properties do not have their own gardens, it is inevitable that residents would wish to sit out in these areas in the summer months. However, noise levels would make these areas particularly inhospitable.

19. The appellant advises that, where gates are required in the acoustic fences, these can easily be designed to retain their noise reduction qualities when closed. This may be so but

if gates are left or wedged open, or broken, the functionality of the fence will be compromised, contributing to further loss of residential amenity.

20. I do not consider it reasonable in terms of amenity that residents should be subjected to potential noise levels in excess of WHO guidelines. As these levels would occur even with mitigation in place, I find that the proposals would not meet the terms of LDP Policy 10: Amenity in relation to noise.

(iii) Impact on existing industrial premises

21. As I have found that a number of homes within the proposed development would not meet WHO noise guidelines, either inside buildings or in outdoor living areas, in part because of factory noise, I consider that there is a reasonable risk that residents would complain to the council about the high noise levels from the Forbo Flooring UK Ltd premises. If the council was satisfied that this noise was prejudicial to health or constitutes a 'nuisance' it would be required to serve an abatement notice on the factory under the Environmental Protection Act 1990. This would have the potential to affect the productivity and profitability of the factory. I consider that this would be particularly unfortunate given the importance of linoleum production to Kirkcaldy's industrial heritage, and indeed, the previous use of the appeal site.

22. The appellant has produced a detailed prediction of garden noise levels for the 52 properties on the site where it would be proposed to provide garden ground. Of these, 10 properties would experience garden noise levels of more than 50 dB based on predicted noise levels arising from the Forbo factory alone. On the basis that 19.2% of residents in houses with gardens might be moderately annoyed by factory noise, I consider there is a reasonable chance that this may lead to complaints to the council about perceived noise nuisance. These figures do not include the potential for complaints arising from residents opening windows in houses where internal noise levels could not be met without mitigation, which would be the majority of homes within the proposed development.

23. The appellant points out that paragraph 4.5 of the Royal Environmental Health Institute of Scotland Briefing Note 017: Noise Guidance for New Developments sets out exceptional circumstances when satisfactory noise levels might be achievable with windows closed and other means of ventilation provided. These circumstances relate to reducing urban sprawl, reducing uptake of greenfield sites, promoting higher levels of density near transport hubs, town and local centres and meeting specific needs identified in the LDP. The appellant considers that these circumstances apply to the Nairn Street site. The council disagrees. Paragraph 2.3 of the briefing note also advises that 'where areas already have an unacceptable noise level it may not be possible to mitigate the adverse effects of noise' and 'in such circumstances, noise sensitive development may not be appropriate; in some cases there is a need to protect existing commerce and industry from complaints from residents of new housing developments'. Regardless of the interpretation of paragraph 4.5, I do not think there is any intention in the briefing note that this overrides the terms of paragraph 2.3. Therefore, I find that, on balance, the briefing note supports my conclusions on potential impact. However, the note is not a statement of government or council policy so I am only able to attach limited weight to it.

24. LDP Policy 5: Employment Land and Property safeguards existing and proposed employment areas for continued industrial and business use. As part of this the policy states that development for industry or business must not restrict the activities of existing or future business on the site or neighbouring sites. Although both parts of the appeal site are allocated for uses including business, as worded, Policy 5 does not apply to proposed residential development. However, I find the proposals are contrary to Policy 10: Amenity as it would have a significant detrimental impact on the operation of an existing business. I consider this finding addresses the concerns expressed in the representation submitted on behalf of Forbo Flooring UK Ltd.

Principle of development

25. The council describes Policy 1: Development Principles as the 'gateway policy' which it will use to assess the principle of development. Part A 1(b) of the policy states that development will be supported where it is in a location where the proposed use is supported by the LDP.

26. The appeal site is covered by two LDP designated sites: KDY 017 Factory Road/Nairn Street and KDY 044 Nairn Street. Preferred uses for site KDY 017 include high-density housing, along with business, leisure, trade counter and commercial uses. The estimated site capacity for housing is 68 units. The development requirements for the site include a statement that 'potential nuisance impacts from the railway and nearby industrial activities require to be explored so a noise impact assessment is required'. Preferred uses for site KDY 044 are the same as for site KDY 017, excluding residential use. The development requirements for the site include the same requirement for a noise impact assessment as site KDY 017. I note that the report of the examination into unresolved representations to the LDP found that the identification of preferred uses of site KDY 044 should not necessarily preclude development for housing but that any such proposal should be subject to a noise impact assessment.

27. Therefore, the proposed development has the potential to meet the terms of Policy 1 but full compliance requires that proposals also conform to the requirements of Parts B and C of the policy in relation to compliance with other policies of the plan. Part B 6. of the policy requires that proposals protect the amenity of the local community and businesses. As I have found above that the proposed development does not comply with Policy 10: Amenity in relation to potential noise nuisance, I find that it does not satisfy Part B of Policy 1 and, therefore, fails to comply with Policy 1 overall.

28. Policy 6 of the SESplan Strategic Development Plan, 2013 requires that each planning authority in the SESplan area shall maintain a five year effective housing land supply at all times. Paragraph 1 of LDP Policy 2: Homes states that housing development will be supported to meet strategic housing land requirements and provide a continuous five-year effective housing land supply on sites allocated for housing or on other sites, provided the proposal is compliant with the policies for the location and relevant site brief. Paragraph 2 of Policy 2 states that, where a shortfall in the five-year effective housing land supply is shown to exist within the relevant housing market area, housing proposals within that housing market area will be supported if they meet four criteria. The second criterion is that the development would not have adverse impacts which would outweigh the benefits of addressing any shortfall when assessed against the wider policies of the plan. LDP

Figure 2.3A Housing Land Requirements by Housing Market Area, 2009 – 2026 shows a housing land shortfall of 829 homes in the Kirkcaldy, Glenrothes and Central Fife Housing Market Area.

29. Paragraph 3 of Policy 2 requires that all housing proposals must meet requirements for the site included in the settlement plan tables and relevant site brief and include provision for appropriate screening or separation distances to safeguard future residential amenity and the continued operation of lawful neighbouring uses in cases where there is the potential for disturbance. Paragraph 4 of Policy 2 relates to the proposed development of affordable housing where there is an established and unmet local need and no alternative sites are available within the settlement boundary.

30. The proposed development has the potential to meet the terms of Policy 2 but, as I have found above that the proposals do not comply with Policy 10: Amenity in relation to noise, I find that it does not satisfy either paragraph 1, 2 or paragraph 3 of Policy 2 and, therefore, fails to comply with Policy 2 overall. Paragraph 4 does not apply to the appeal site which is potentially available for affordable housing subject to meeting the necessary policy requirements.

31. Overall, in relation to the principle of development on the site, I find that the proposed development is not compliant with either LDP Policy 1: Development Principles or Policy 2: Homes.

32. I appreciate that the Kirkcaldy Charette Area Green Infrastructure Masterplan, 2018 covers the appeal site. However, as I have found that the proposed development does not comply with LDP Policies 1 and 2, I have not found it necessary to examine consistency with the masterplan, which is a non-statutory document and not part of the development plan.

Schools capacity

33. LDP Policy 4: Planning Obligations sets out the policy framework for requiring developers to contribute to essential infrastructure provision arising from their proposals. Footnote 9 to the policy exempts affordable housing development from planning obligations. However, paragraph 3.8 of the council's Planning Obligations Framework Supplementary Guidance, 2017 indicates that a contribution may be sought if there is a critical capacity issue. The council's education service has advised that there are no critical capacity issues in this case. Consequently, no developer contributions to education capacity are required. I find that the proposals comply with Policy 4. I also find that the concern expressed in one representation on the proposals about school capacity is unfounded.

Placemaking

34. LDP policy on placemaking is set out principally through Policy 14: Built and Historic Environment. This requires developers to demonstrate how their proposals would take account of and meet each of the following six qualities: distinctive; welcoming; adaptable; resource efficient; safe and pleasant; and easy to move around and beyond. Making Fife's Places Supplementary Guidance, 2018 provides further advice on the council's

expectations. I consider below how the proposed development would address each of the six qualities of place.

35. As a large, cleared, former industrial area with the railway line and existing industrial premises to the north, the site presents something of a blank canvas in terms of creating a distinctive place. The key relationship would be with the existing properties on Nairn Street and Factory Road. In terms of the scale and density of the new buildings and their separation from the existing buildings, I consider that this relationship would be well managed. The four-story block proposed in the south-east corner of the site would create welcome punctuation on the north side of the long, straight thoroughfare of Nairn Street and mark its junction with Factory Road. The council has some concerns about boundary treatments within the site but I agree with its view that these could be dealt with by the use of planning conditions.

36. With the proposed direct frontage of a number of properties onto Nairn Street and the three metres wide spine footpath/cyclepath, communal parking and large play space, I consider that the proposed design does much to create a welcoming space which would be easy to navigate, including on foot, and would encourage residents and visitors to engage and interact.

37. In considering whether the proposed development would be adaptable, I find that the provision of 152 affordable homes would help to introduce greater variety and choice into the local housing stock. I also find that, although gardens are understandably modest in extent, where these would be provided, they would offer residents opportunities for food production. Following development, an area of vacant ground would remain to the north, outwith the site. Should circumstances change in relation to current industrial activity it would be possible to access this land for development from the appeal site, although the railway is likely to remain a long-term noise constraint.

38. The appellant's energy statement indicates that the development would achieve a higher standard of energy performance than that required by building standards. It also states that the development is not large enough to develop a viable stand-alone heat/energy system and that there does not appear to be any opportunity to connect into a district heat/energy network. There is no evidence to suggest that the Forbo factory would offer opportunities in this regard. The appellant also points out the significant constraint presented by the railway in making connections to the appeal site. I also note that the factory owners object to the proposed development. The council accepts the evidence presented in the energy statement but notes that it would be necessary to use planning conditions to ensure the claimed standards would be achieved. I also consider the appellant's evidence in relation to resource efficiency to be reasonable, subject to the caveat highlighted by the council.

39. The proposed layout of buildings is such that most public areas would be overlooked, providing an inherently good level of security. The design of the Nairn Road frontage of the site with buildings facing the road and thirteen points of pedestrian access, in addition to the two points of road access would provide an active frontage along the full length of the street. Public and private space would be defined clearly throughout. The provision of communal parking rather than private parking with garages would create large areas of hard standing but also facilitates the development of well designed, medium to high density

and affordable housing, which would more than compensate. The proposed layout of the internal road system would provide built-in traffic calming, although I accept the council's point that some refinement of the road layout around the open space would be beneficial. This could be dealt with by condition, along with the need to secure appropriate maintenance arrangements for communal areas. Overall, I consider that the proposals would provide a safe and welcoming place.

40. I have noted above the advantages of the proposed external footpath and cyclepath links to Nairn Street, which is a bus route. Some external connections, such as to the railway underpass to the north-west of the site, are limited by site ownership but there is an opportunity to link to the woodland to the west of the site. I have also noted the good internal connectivity that would be provided by the spine path and that the proposed road layout would, for the most part, ensure the development would not be dominated by vehicular movements. Generally, I consider that the development would be easy to move about and beyond.

41. In conclusion on placemaking, I find that the proposed development would, or through the use of conditions could, comply with Policy 14 and the associated supplementary guidance. I also find that this would address the representations made on the proposals in relation to density and design.

Residential amenity – privacy, sunlight and daylight

42. Concern has been expressed by some residents of properties on the south side of Nairn Street about the impact of the proposed development on their residential amenity. LDP Policy 10: Amenity requires that development proposals must demonstrate that they will not lead to a significant detrimental impact on amenity in relation to, amongst other things, the loss of privacy, sunlight and daylight.

43. In relation to privacy, the council's non-statutory Planning Policy Guidance: Minimum Distances Between Window Openings, 2011 and Garden Ground, 2016 provide advice. The former document indicates that there should be a minimum distance of 18 metres between directly facing windows. The latter document indicates that rear gardens should be at least nine metres long and, where two gardens back onto each other, there should be at least 18 metres between buildings. The distances between the proposed housing and existing housing in the vicinity of the site would exceed these guideline figures.

44. The council's non-statutory guidance on Daylight and Sunlight, 2018 provides guidance on potential overshadowing between buildings. Comparison of the shadow study within the appellant's Design and Access Statement with the council guidance shows that there would be no loss of sunlight or daylight to existing housing in the vicinity of the site. Some issues would arise within the proposed development. If I was minded to uphold the appeal and grant planning permission, these could be addressed through the use of planning conditions.

45. Overall, I am satisfied that the proposed development either complies with or, through the use of conditions, could be made to comply with Policy 10: Amenity as it relates to privacy, sunlight and daylight. I am also satisfied that the proposals would address the concerns of neighbours on these matters.

Green infrastructure

46. FIFEplan Policy 3: Infrastructure and Services requires proposed development to incorporate green infrastructure in line with Making Fife's Places Supplementary Guidance. By the council's calculation, the proposed usable open space falls well short of the guideline requirement (928 square metres proposed compared with the guideline figure of 9,120 square metres). However, the council considers that some relaxation is appropriate because of the constrained, brownfield nature of the site, the prevailing medium to high density of the adjoining part of the town and the presence of existing open space at Pathhead Sands to the south of Nairn Street. The council also makes a number of suggestions for enhancing the functionality of open space within the site. I consider that the flexibility offered by the council is reasonable in this case and that the improvements required to enhance the extent of usable open space on site could be required through the use of a planning condition in the event that I was minded to grant planning permission.

47. Policy guidance on provision of garden ground is provided by the non-statutory Planning Customer Guidelines on Garden Ground, 2007. By this measure, some proposed gardens fall short of the recommendation that houses have at least 100 square metres of garden ground and flats have 50 square metres of garden ground. The council considers that the constrained, brownfield nature of the site, the number of terraced, as opposed to detached, homes proposed and the prevailing medium to high density of adjoining housing areas justify flexibility in applying the guidelines to this site. Subject to the imposition of the conditions I have suggested above to improve the amount of usable open space on the site, I consider that the council's approach on garden ground provision is reasonable in this instance.

48. Overall, I am satisfied that, through the use of planning conditions, the proposed development could be modified to comply with Policy 3 as it relates to green infrastructure. This approach would also address the concern expressed in representations on the proposals about potential loss of open space provision.

Trees, woodland and biodiversity

49. LDP Policy 13: Natural Environment and Access states that development proposals will only be supported where, amongst other things, they protect or enhance natural heritage assets, including woodlands and trees and hedgerows that have a landscape, amenity or nature conservation value; biodiversity in the wider environment; and protected and priority habitats and species. Specifically, the site is located within the Green Network Policy Area 'Kirkcaldy Dens'. The policy priorities as they relate to the appeal site seek the retention of the trees on the east boundary of the site with Factory Road and the creation of a high-quality landscaped edge to the railway.

50. The developer proposes to retain the majority of trees on the east boundary and adjoining the railway in the north-east corner of the site. There are few trees of note elsewhere on the site. The proposed development is sufficiently distant from trees to the north and west of the site that their wellbeing would not be compromised. The remaining part of the railway frontage is outwith the appeal site so it is not possible for the developer to advance tree planting proposals for that area.

51. The appellant's Extended Phase 1 Habitat Survey of the site records habitats and species typical of those found on suburban sites with no notable species identified.

52. Overall, I am satisfied that, with the use of planning conditions to ensure adequate protection of retained trees, detailed approval of the outline landscaping proposals submitted, appropriate replacement planting proposals, timing of site clearance to protect nesting birds and provision of small-scale measures to enhance biodiversity, the proposed development could be made to comply with Policy 13 as it relates to trees, woodland and biodiversity. This would also address, to a reasonable degree, the representations made on these matters by neighbours.

Transportation and road safety

53. FIFEplan Policy 3: Infrastructure and Services requires that proposed development provides local transport and safe access routes which link with existing networks, including for walking and cycling, in accordance with the Making Fife's Places Supplementary Guidance. As I have recorded above, I consider that the walking and cycling provision within the site is good with good external linkages. I have also noted that, with a minor adjustment to reduce vehicle speeds around the open space area, road safety has been designed into the layout. A proposed pedestrian crossing on Nairn Street would enhance road safety in the immediate environs of the site. The site is on a bus route where it is proposed to upgrade the existing stop and provide an additional stop further west on the site frontage. The site is within walking distance (approximately 2000 metres) from the station for residents who are reasonably active. I note that the appellant's transport assessment shows that there would be no anticipated issues in terms of network capacity were the development to go ahead. There is a minor shortfall in proposed car parking provision (257 proposed compared with 259 required) but I do not consider this to be a material shortcoming. Affordable housing is exempt from planning obligations for transport infrastructure, in line with LDP Policy 4.

54. I conclude that the proposals would comply with both Policy 3 and Policy 4 of the LDP as they relate to transportation and road safety and address adequately the concerns about road safety raised in a number of representations on the proposed development.

Water, drainage and flood risk

55. LDP Policy 3 requires proposed development to provide appropriate foul and surface water drainage, including sustainable urban drainage systems (SUDS). Policy 12: Flooding and the Water Environment seeks to ensure that new development does not create flooding or increase flood risk.

56. Scottish Water has advised that there is capacity in both the local water treatment works and waste-water treatment works to serve the proposed development. The Scottish Environment Protection Agency (SEPA) has no objection to the SUDS proposals. The council proposes that details of the drainage outfall and SUDS overflow route to the Den Burn be covered by condition and that the agreement of the landowner be secured prior to the start of any development. This latter requirement would require to be covered by a legal agreement. The site is not located in an area of medium to high flood risk and neither SEPA nor the council has any objection to the proposals in terms of flood risk

57. I consider that, were planning permission to be granted subject to a planning condition covering the matters outlined above and a suitable legal agreement, the proposals would comply with Policy 3 in terms of water and drainage provision and Policy 12 in terms of flood risk management.

Air quality, contamination and ground conditions

58. FIFEplan Policy 10: Amenity requires that development proposals must not lead to a significant detrimental impact on amenity, amongst other things, in relation to air quality and contaminated and unstable land.

59. The appellant's air quality assessment identifies traffic emissions as being, potentially, the primary long-term air quality concern. However, the study finds that there would be negligible change in the main potential pollutants of nitrogen dioxide and particulate matter when measured at public and residential areas in the vicinity of the site. This analysis is accepted by the council.

60. The appellant has submitted a ground investigation report and updated human health risk assessment and a part II intrusive investigation report in support of the proposals but not a remediation strategy. In line with the previous industrial use of the site, these documents show potentially unacceptable risks to human health from contamination, if the site was to be developed without appropriate remediation measures being put in place. These risks would potentially come from direct exposure to contaminants, vapour generation and inhalation, gas generation and impact on the water environment. The council suggests that such matters could be dealt with by the use of a planning condition in order to determine what specific remedial measures would be required to allow safe development of the site.

61. The Scottish Government's Planning Advice Note 33: Development of Contaminated Land, 2017 indicates that, 'where there is potentially only slight contamination, planning permission may be granted on condition that development will not be permitted to start until a site investigation and assessment has been carried out and the development itself will incorporate measures shown in the assessment to be necessary'. I do not consider the contamination described in the supporting documents to be minor in nature. Therefore, given the potential end use of houses with gardens and public open space, I have concerns about the council's approach on this issue. Had I not been minded to dismiss the appeal and refuse planning permission for other reasons, I would have sought more information from the parties on this issue before coming to a conclusion on matters of contaminated land.

62. The west part of the site is situated in a Development High Risk Area for coal mining due to the presence of abandoned, shallow mine workings. The mineral risk assessment which accompanied the planning application recommends that a programme of intrusive site investigations should take place to determine the precise nature of the ground conditions and to inform any mitigation measures required to ensure the safety and stability of the proposed development. The report recommends that this work could reasonably be undertaken post-planning, an approach supported by the council. I note that land south of Nairn Street affected by related mine workings has been successfully developed and, had I

been minded to uphold the appeal and grant planning permission, I would also consider this to be a reasonable approach.

63. Overall, I find that the proposals would conform to Policy 10 in relation to air quality, could be made to conform to Policy 10 in relation to ground conditions but, had I not dismissed the appeal for other reasons, I would have needed to seek additional information in regard to contaminated land before coming to a conclusion on that matter.

Sustainability

64. I have dealt with matters of sustainability at paragraph 19 above and am satisfied that the proposed development would comply with LDP Policy 11: Low Carbon and the associated Supplementary Guidance Low Carbon Fife, 2019

Conclusion

65. Although I have found that the proposed development would comply with or, by use of conditions, could be made to comply with a number of policies of FIFEplan, the conflict with Policy 10 in relation to noise, and the consequent conflict with Policies 1 and 2, is sufficient for me to find overall that it does not comply with the development plan.

66. I have also taken into account Scottish Planning Policy, 2014 (SPP) which is a material consideration in the determination of this appeal. Paragraph 125 of SPP states that 'where a shortfall in the five-year effective housing land supply emerges, development plan policies for the supply of housing land will not be considered up-to-date, and paragraphs 32-35 will be relevant'. I noted at paragraph 28 above that there is a housing land shortfall in the relevant housing market area. Therefore, paragraphs 32-35 of the SPP require to be considered.

67. Paragraph 33 of the SPP requires that 'where relevant policies in a development plan are out-of-date...the presumption in favour of development will be a significant material consideration'. This requires me to assume a presumption in favour of the proposed development. However, paragraph 33 goes on to say that 'decision-makers should also take into account any adverse impacts which would significantly and demonstrably outweigh the benefits when assessed against the wider policies in this SPP'. The policy principles underpinning the SPP are set out at paragraphs 28 and 29. Paragraph 28 states that 'the aim is to achieve the right development in the right place; it is not to allow development at any cost'. Paragraph 29 comprises a list of guiding principles including 'avoiding over-development, protecting the amenity of new and existing development'.

68. Given my findings on the noise issues that would arise from the proposed development, I consider that paragraph 33 of SPP, read with paragraphs 28 and 29 of SPP, supports my overall conclusion on the proposed development.

69. The appellant has referred me to a recent Notice of Intention for a residential development at Mossend. This is cited as an example of where an exception to the approach preferred in the PAN of seeking to achieve satisfactory noise levels with windows open has been found to be justified. Superficially similar cases are rarely directly comparable and I have not been able to consider the case in detail or visit the site.

However, it appears from the reporter's comments that the main issues in the Mossend case arise from night-time road and rail noise, rather than industrial noise, which is a determining factor in this appeal. Therefore, I do not consider it appropriate to take account of the Mossend decision in coming to a conclusion on this case.

70. I therefore conclude, for the reasons set out above, that the proposed development does not accord overall with the relevant provisions of the development plan and that there are no material considerations which would still justify granting planning permission.

71. I have considered all the other matters raised but there are none which would lead me to alter my conclusions.

Steve Field

Reporter



Our Ref: OM01

Your Ref: 19/00707/FULM

7 June 2022

FAO: Ruari Kelly
Angus Council
Communities – Planning and Place
County Buildings
Market Street
FORFAR
DD3 3LG

Dear Mr Kelly

**Representation on behalf of Don & Low Ltd to Planning Application Red: 19/00707/FULM
Residential Development of 136 Dwellings including Formation of Vehicular Access,
Access Roads, Open Space, Landscaping, SUDS and Associated Infrastructure**

At: Field Opposite Westfield Drive Westfield Loan Forfar

We act on behalf of Don & Low Ltd who operate from a factory based industrial estate fronting the A94, Glamis Road, to the south west of Forfar. The above planning application site is located directly opposite their premises, to the south east. The application site is an Allocated Housing Site in the Angus LDP.

This representation is made in direct response to the recently revised submission made by the applicant and follows useful dialogue directly with the applicant. Following a review of the revised submission, **Don & Low are now able to withdraw their objection to the proposals**, on the proviso appropriate conditions are included should the planning application be approved by Angus Council.

We also wish to remind Angus Council that following the original application submission in 2017, the Planning (Scotland) Act 2019 introduces the 'agent of change' principle, discussed further below.

Background

Don & Low Ltd is an internationally recognised manufacturer of woven and nonwoven polyolefin technical textiles. The wider company has a turnover of £60m and employs around 450 people. The company has a long history, established in 1792. Don & Low Ltd has been operating within Forfar for over 35 years. They are keen that their business interests at Glamis Road are fully protected, in terms of the existing 24 hour operations on site yet also regarding what the company might potentially seek to do in future within their Class 5 General Industrial Use. Don & Low Ltd's operation complies squarely with the statutory development plan. The Angus Local

Development Plan (LDP) Forfar Inset Map identifies Don & Low Ltd's site as F9: an Existing Employment Site.

On behalf of Don & Low we wrote to object to the application, as per our letter dated 23 October 2019. The objection was on the basis that a deficient Noise Impact Assessment had been submitted as part of the application. It was our view that the failure by the applicant to properly assess noise impact on new residential properties from an existing industrial operation could cause complaints from future residents. The full details of our objection were contained within our objection of 2019, a copy of which is available on the planning portal.

Revised Planning submission

Following the original planning application, the applicant has recently redesigned the scheme, including the preparation of a revised Noise Impact Assessment culminating in a revised planning application submission being made under the original application reference number, ref 19/00707/FULM.

To establish whether the revised submission continued to pose a threat to our clients operation, our client appointed Paul Horsley Associates (PHA), an expert noise consultant, to review this revised technical documentation due to our previous concerns that the original assessment did not fully address or provide sufficient mitigation in regards to protecting the residential amenity of the proposed residential development. PHA's report is contained as Appendix 1 to this letter.

The review of the updated Noise Impact Assessment found that due to scheme redesign, mitigation proposed, and that the assessment now considers a more accurate noise level from the surrounding area, including the Don and Low operation, it is unlikely that any adverse amenity impact on the proposed new residential properties would be had.

This position is on the proviso that appropriate conditions were included on any planning permission should Angus Council be minded to approve the application in due course.

For the avoidance of doubt, we consider that the following conditions (or similar appropriate wording) are therefore necessary:

- Details of glazing units and specification where mitigation (trickle vents) are required as demonstrated by figure 7 and table 23 as contained within the CSP Acoustics Report, document reference CSP/004/01 version 1267 004AH dates 16/03/2022.
- Delivery of a 3m earth bund with a 2m acoustic barrier atop the bund. This does not appear to be explicitly identified on the submitted planning drawings, however appears to be shown by the purple line on the Site Layout Plan, drawing reference 17.029.P.002 Rev R. It is also referred to within the CSP Acoustics Report as identified above but also at page 31 of 36 (as indicated) of the document, albeit we note this is PDF page 32.

Should these conditions be included if the Council are minded to approve the application, Don & Low would be able to remove their objection to the application.

Agent of Change Principle.

The Planning (Scotland) Act 2019 introduces the ‘agent of change’ principle at section 25, which is now national policy. In essence this puts the onus on developers of noise sensitive properties such as residential accommodation, to effectively deal with potentially problematic noise sources, rather than curtailing an existing noise.

The Act requires planning authorities to *“take particular account of whether the development includes sufficient measures to mitigate, minimise or manage the effect of noise between the development and any existing....businesses in the vicinity of the development”*.

Applying the principle to these proposals, it is for the applicant to ensure that their proposed residential development is not adversely impacted from a noise perspective from an existing source of noise, in this case the Don & Low facility opposite the application site.

We consider that based on the revised noise assessment completed by the applicant, that the way to achieve this on this scheme is through appropriate mitigation. Therefore, a need for this mitigation to be established through the planning process, or by condition, is necessary in this case.

Conclusions

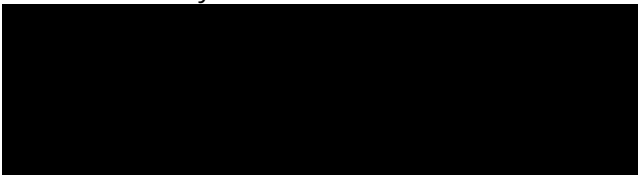
In light of the above comments, we are therefore writing to request that appropriate planning conditions as set out above are included should the planning application be approved, to ensure that the positive aspects of the proposal are not outweighed by the potential for significant impacts on our client’s operations. **This would allow Don & Low’s objection to the proposal to be removed.**

I trust that this representation will therefore be considered during your determination of the application.

We reserve our right to provide a further letter of representation (objection or otherwise) should further supporting information be submitted as part of this application.

I hope that this letter has been helpful to set out our client’s position on the proposals and look forward to receiving recognition of receipt of this representation in due course. Please do not hesitate to contact me if you wish to discuss further.

Yours sincerely



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For and on behalf of Avison Young (UK) Limited

Appendix 1

Paul Horsley Acoustics: Review of CSP Acoustic Noise Impact Assessment

Acoustic Report

Review of the CSP Acoustics Noise Impact Assessment Report Relating to the Proposed Glamis Road, Forfar Residential Development on Behalf of Don & Low Ltd

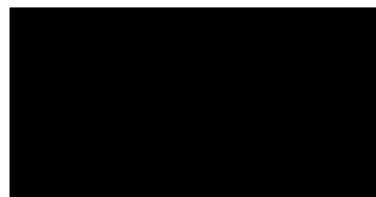
Our Reference – J3119

Review Date – 31.05.22

Review by – Paul Horsley MIOA

Report compiled by: Paul Horsley MIOA

Date of Report: 31.05.22



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1.0 Agent

Avison Young
40 Torphichen Street
Edinburgh
EH3 8JB

2.0 Proposed Development Site

Land to the south of Glamis Road (A94), Forfar.

3.0 Brief

Provide a review of the revised Noise Impact Assessment report completed by CSP Acoustics, reference No 1267 004 AH dated 16th March 2022, in support of the proposed residential development to the south of Glamis Road, Forfar with respect to the existing industrial estate positioned directly north of Glamis Road.

Advise on the validity of the report's content, assessment methodology and conclusions.


Provide further advice relating to the impact and potential restrictions the proposed development may have on the existing and future operations and activities of the Don & Low Ltd Industrial Estate.

4.0 CSP Acoustics Noise Impact Assessment Report Review

The following is assessment review of the revised CSP Acoustics Noise Impact Assessment report, reference 1267 004 AH, completed in support of the proposed residential development by Muir Homes Ltd on Land to the south of Glamis Road.

The original monitoring was completed on 19th and 20th March 2018 and included road traffic, ambient and industrial noise surveys. Additional surveys were completed on 26th – 27 February 2020 and 19th March 2020.

The report is set out in 10 No section headings, with accompanying Appendices, as noted below: -

Noise Impact Assessment Glamis Road, Forfar Muir Homes Ltd		 CSPAcoustics
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Each section will be analysed, and our comments provided with respect to the contents.

4.1 Section 1.0 Introduction

The introduction lays out the structure of the report that follows and indicates the amendments made to the original site layout from those appearing within the original 2019 report.

This is a standard format introduction, and we have no further comments.

4.2 Section 2.0 Summary

The summary provides an overview of the noise assessment completed and the conclusions drawn from the report. It indicates that additional noise monitoring was completed pre-pandemic and states that these values will still be relevant, post-pandemic.

The summary section is concise providing an overview of the surveys conducted and does not provide specific details of the conclusions, other than to state that mitigation measures will be necessary to meet the internal levels of the agreed criteria.

This section has not significantly altered from the original and as such we have no further comments relating to the summary section.

4.3 Section 3.0 Assessment Framework and Criteria

This section provides details of the Planning Policy relevant to the development of residential premises in Scotland. These include PAN 1/2011: Planning Advice Note (PAN) with accompanying Technical Advice Note (TAN). It provides 2 No tables setting out the criteria for assessing noise with respect to magnitude of noise impact and level of significance. Both these tables indicate receptor sensitivities to noise in the built environment.

The section also provides details on Standards and Guidance for assessing noise, including reference to BS8233:2014, WHO guidelines, and BS4142:2014 +A1:2019. All these are relevant to the assessment of noise with respect to residential developments.

Additionally, Angus Council had been approached for their advice relating to limiting noise levels for the proposed residential development and Mr Ian Graham, Environmental Health Officer, provided internal noise limits to be achieved, with a specific assessment value for slightly open windows of 15 dB reduction as accepted British Standard value of 15 dB. This now aligns the Angus Council requirements with the accepted British Standard value, which they opposed previously and recommended a lower ingress reduction of -13 dB.

The assessment frameworks and criteria considered within the report are acceptable with respect to the proposed development. The use of these criteria in the noise impact assessment of the local environment should account for the noise levels present, including existing industrial noise.

4.4 Section 4.0 Survey

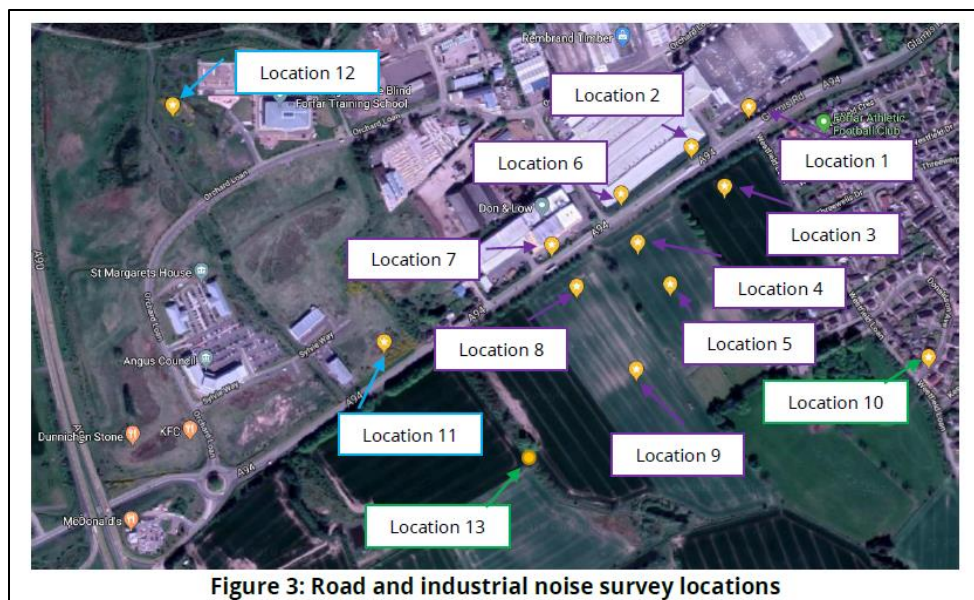
The survey section provides details of the actual noise assessment completed for the development, detailing the 13 No positions and times the works were completed.

The traffic assessment was completed during the daytime of 19th March 2019 between 14.00 and 17.00 hours. It is noted that these values are relevant irrespective of the passage of time. Since no major changes to the road network or significant development have taken place, we agree with this statement.

The original industrial noise assessment was completed on 20th March 2019 at night between 01.00 and 03.00 hours, as detailed in 4.05 of the report. Any passing traffic movements were noted as being paused out of the results, thereby, the results relate only to industrial sources.

It is also noted within 4.04 that additional more detailed measurements were completed on 26th and 27th February 2020. These updated noise monitoring sessions included relevant noise sources attributable to the site activities and operations of the Don & Low Ltd, which were not included within the original report.

Below is a copy Figure 3 from the report indicating the noise assessment locations.



The noise monitoring was completed at representative positions to account for the Don & Low Ltd activities.

The table of results, Table 5, show the results collected for the industrial assessment part of the survey. A copy is provided below for reference.

Noise Impact Assessment
Glamis Road
Muir Homes Ltd




Table 5: Industrial Noise measurement Results

Location	Measurement Period (5 min sample)	L _{Aeq} (dB)	L _{Amax} (dB) ⁽¹⁾	L _{A90} (dB)
1	01:01 to 01:06 hrs	50.9	53.4	50.1
2	01:07 to 01:12 hrs	52.6	55.0	52.0
3	01:14 to 01:19 hrs	49.0	52.1	48.4
4	01:25 to 01:30 hrs	49.0	53.8	47.8
5	01:34 to 01:39 hrs	46.2	52.6	44.5
6	01:43 to 01:48 hrs	55.0	60.1	54.7
7	01:49 to 01:54 hrs	47.8	55.1	46.0
8	02:00 to 02:05 hrs	48.5	55.8	44.8
9	02:10 to 02:15 hrs	46.6 ⁽¹⁾	57.5 ⁽¹⁾	42.3 ⁽¹⁾

⁽¹⁾ Measurements include both, industrial and road traffic noise on Glamis road

However, additional to the original monitoring results, the revised report includes Tables 9 to 14. These tables of results now account for the industrial noise levels associated with the Don & Low Ltd activities for both daytime and nighttime period, which was not present within the original report.

Our comments relating to the industrial assessment are as follows:

The revised noise assessment has now considered noise attributable to the Don & Low Ltd noise sources, including lorry movements, delivery activities in the service yard, with general noise assessed accordingly along the full length of the southern boundary of the Don & Low Ltd site.

The results presented within Tables 5 to 14 inclusive now provide representative results over relevant time periods that the site operates of specific activities and that are likely to be present when the incumbent occupants of the residential development take residence.

The results tables included within the report are now considered acceptable for use when considering the current noise climate within the area of the proposal site.

4.5 Section 5.0 Road Traffic

This section deals with the road traffic assessment.

It makes use of the daytime results and utilises the methodology of Calculation of Road Traffic Noise, 1998 (CRTN'88) in the analysis. It also generates CadnA® noise mapping predictions of noise generation onto the site.

The above methodology is acceptable, and we have no comments relating to this or the predicted results on the proposed revised layout residential development gained thereafter.

The results indicate that road traffic noise is likely to be produce an adverse impact on the development and further mitigation is required.

4.6 Section 6.0 Industrial Noise Assessment

The industrial noise assessment completed makes use of the rating methodology of BS4142:2014+A1:2019.

This is the appropriate method of rating the likely effect that industrial noise will have on a background when considered at a noise sensitive receptor location.

The background level, recorded away from the influence of the industrial activities, is a relevant position for executing such an assessment.

The report acknowledges that industrial noise will impact on the proposed development, see 6.04, and indicates the potential highest exposure positions of the development.

Below is a copy of the BS4142:2014+A1:2019 nighttime assessment rating for the most exposed proposed residential locations considered:

6.06 Detailed results determined from noise contour maps at 1.5m above local ground level are shown in Appendix C.

Table 18: Proposed Development Night-time Noise Levels at Nearest Dwellings in dB				
Calculation Notes	North-east Plot 22	North-east Plot 30	North-west Plot 39	North-west Plot 128
Don & Low Operational Noise Level, $L_{Aeq,1hr}$	42.3	44.2	40.2	34.2
Tonality correction (dB)	+0 ⁽¹⁾	+0 ⁽¹⁾	+0 ⁽¹⁾	+0 ⁽¹⁾
Impulsivity correction (dB)	+3	+3	+3	+3
Rating level (dBA)	45	47	43	37
Background Noise L_{A90} (dB)	37	37	37	37
Level above or below Noise Level (dB)	+8	+10	+6	+0
Notes: (1) No tonal component apparent in site measurements				

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CSP Acoustics LLP

The plots considered within the assessment above are based upon the revised site layout for the development and represent the most exposed dwellings along the northern site boundary of the development site, with potentially a direct line of sight of the Don & Low Ltd factory.

The monitored industrial noise levels from the Don & Low Ltd activities have been utilised within the subsequent assessment, however, this is only a single L_{Aeq} dB value, and no frequency content has been provided for inspection or corroboration to justify no tonal content to the characteristic.

The results of the BS4142:2014 assessment indicate rating values up to +10 dB above background. This is a significant value and likely to result in justifiable complaints relating to noise from noise sensitive premises. If the rating were assessed for industrial development purposes against residential premises, significant mitigation measures would be required to reduce the noise at source.

The problem that could arise in the future is that once the proposed development premises are occupied, justifiable complaints could be forthcoming against the existing noise generated by the industrial activities.

The revised report confirms that the industrial noise is likely to result in a significant adverse impact on the development, dependent upon context.

The context of the industrial noise is considered and concludes that traffic noise is likely to be more dominant than industrial sources during daytime periods. The context is also considered against Trigger

Noise Levels for the Don & Low impact. The results of this context assessment still indicate a significant adverse impact due to industrial noise levels, as noted in Table 20.

The recommendation concluded within 6.14 is that windows along the northern elevation of the proposed development should consider a strategy of closed windows along this elevation to mitigate against the industrial noise intrusion.

4.7 Section 7.0 Cumulative Noise Impact Assessment

This is a new section within the revised report and makes a collective impact assessment of both the traffic and industrial noise sources.

It compares the cumulative daytime and nighttime values with trigger values for the worst-case dwellings on the proposal site and includes an impact assessment table in accordance with TAN and PAN1/2011.

The results of the assessment indicate that there is likely to be moderate to large significance for the with respect to current noise sources of a traffic and industrial nature and that mitigation measures will be necessary to alleviate the impact upon the proposed development.

A copy of the Table 22 is included for reference

Table 22: TAN to PAN 1/2011 Assessment						
Location	Excess Over Daytime Trigger Level 50 dB L _{Aeq,16hr}	Excess Over Night-time Trigger Level 45 dB L _{Aeq,8hr}	Magnitude of Impact		Significance of Impact	
			Day	Night	Day	Night
Northeast Boundary (Plot 22)	9.9	6.8	Moderate	Moderate	Moderate / Large	Moderate / Large
Northeast Boundary (Plot 35)	7.8	6.1	Moderate	Moderate	Moderate / Large	Moderate / Large
Northwest Boundary (Plot 36)	8.9	5.3	Moderate	Moderate	Moderate / Large	Moderate / Large
Southwest Boundary (Plot 128)	5.0	0.0	Moderate	No Change	Moderate / Large	Neutral

This section provides adequate information and is acceptable therefore we have no further comments.

4.8 Section 8.0 Outdoor Amenity Area

Outdoor amenity is considered using the WHO Guidelines, where a noise exposure value limit of 55 dB LAeq dB is recommended.

The report concludes that the north-eastern elevation of the proposed residential site will exceed this limit and indicate mitigation measures in the form of fencing to the back gardens of the worst-affected dwellings.

We have no further comment relating to this conclusion.

4.9 Section 9.0 Mitigation

CSP Acoustics have considered mitigation options and conclude that an acoustic barrier alone will not mitigate against noise intrusion into internal spaces.

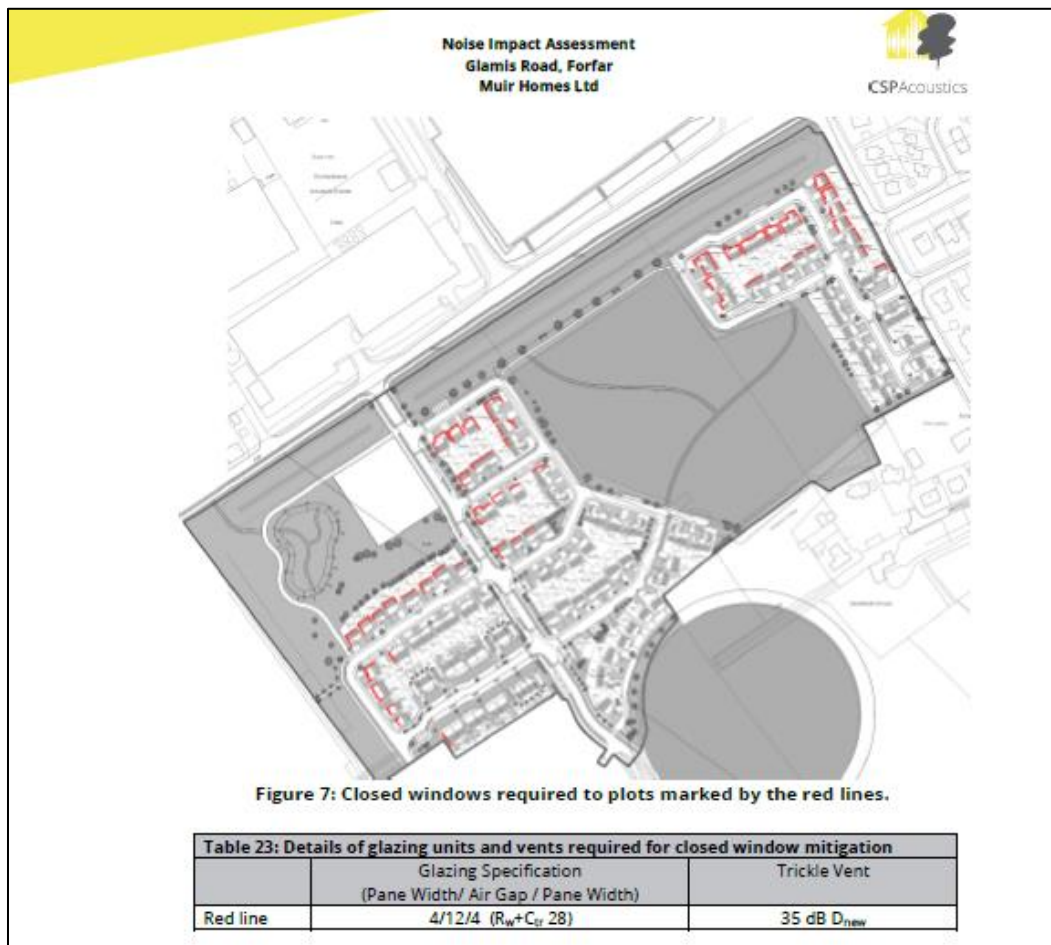
Section 9.01 details the fact that the site layout has been modified by the developer to incorporate a 3m high earth bund along the northern site boundary with a 2m high acoustic barrier atop the bund. The acoustic performance of this barrier inclusion has been utilised throughout the report by CSP Acoustics. However, it should be noted that, other than the results included within the electronic contour maps, no confirmation of the barrier correction value used has been provided within the report for verification purposes.

The report indicates that a specification of glazing and alternative ventilation method will be necessary.

The section goes on to consider PAN 1/2011, stating that opening a window is not a necessity and internal noise levels and ventilation can be achieved using alternative methods.

Para 9.07 provides a table of glazing recommendations for the various locations on site, with a plot of specific locations where opening a window is not recommended.

Figure 7 and Table 23 have been reproduced below for reference.



As can be seen the proposal is for closed windows primarily for the northern elevation of the site.

Trickle vents are proposed as an alternative form of ventilation and supplier details provided. Whilst trickle vents provide an alternative background ventilation, they do not address the requirements of a rapid purge ventilation scenario as an alternative to opening a window. This may require additional forced ventilation and we would recommend that the developer seek further information in this respect from the 'Acoustics Ventilation and Overheating, Residential Design Guide' publication, Jan 2020, Version 1.1.

Para 9.09 clarifies the situation that further calculations will be required and recommends this be conditioned through the planning process.

Whilst there is additional work required to verify that the amenity of the internal spaces for the residential premises can be achieved, this element can also be conditioned through the planning process and should not unduly impact upon the current or future activities of the Don & Low Ltd site.

4.10 Section 10.0 Conclusions

The conclusions of the report provide an overview of the methodology and survey completed, siting CTRN for traffic noise and BS4142:2014+A1:2019 for industrial noise.

The conclusions indicate that the noise data gathered has been used to generate CadnA® noise maps for the proposed site.

The outcome concludes that a large proportion of the site does not require mitigation and that trickle vents accompanied by acoustic glazing is required as indicated.

It does not clarify that a 3m high earth bund along the northern boundary, topped with a 2.0m high acoustic barrier, has been included within the evaluation of the proposed site noise exposure calculations.

This conclusion is a confirmation that noise is likely to be an issue with respect to an adverse impact on the proposed residential development at this specific site, however, with the mitigation measures proposed both the internal and external amenity of the incumbent residents will be preserved.

5.0 Report Review Conclusions

The CSP Acoustics revised report reference 1267 004 AH has provided baseline noise assessments in support of a proposed residential development on land to the south of Glamis Road.

Don & Low Ltd, an industrial premises is located on the northern side of Glamis Road, directly opposite the proposed development site.

The proposed development site is currently open fields used for growing crops.

The CSP Acoustics report has now considered traffic noise and industrial noise in isolation of each other and cumulatively.

The revised report includes for more extensive consideration of the Don & Low Ltd noise sources for both day and nighttime periods.

The data gathered has been presented as broad band single figure values. Whilst this provides a specific noise level for the area, it still does not indicate the qualitative content of the sound, a full octave centre band frequency analysis of the noise climate would be required to determine this. A full sound spectrum would also allow for mitigation measures to be considered accordingly.

A BS4142:2014+A1:2019 rating of the industrial noise has been produced indicating up to a +10 dB value. This is significant and would result in justifiable complaints from noise sensitive residential premises.

The assessment locations used within the BS4142:2014+A1:2019 are now fully representative of the most exposed plots on the proposed site and consider the plots closest the Don & Low Ltd premises.

The mitigation recommendations proposed for the residential development are in the form of glazing, alternative methods of ventilation and a noise barrier.

The recommended glazing for the northern plots of the development, closest to the industrial estate, provide a recommendation for the double glazing with a specification of the minimum R_w (C, Ctr) dB rating for the glazing system.

The specification for the recommended trickle ventilation is low at 35 dB $D_{n,eW}$ and may require review following a more in-depth assessment of the development as a whole.

The report does indicate that further calculations will be necessary and should be completed as part of a Planning Conditioning process.

The report indicates that the redesign completed by the developer Muir Homes, now includes for a 3m high earth bund along the northern site boundary, with a 2m high acoustic barrier atop. The acoustic properties provided by this mitigation are used throughout the report for the assessment of exposure levels by CSP Acoustics, however, there are no sound reduction values attributable to this mitigation method provided for verification. A full acoustic barrier specification is still required to ensure compliance with the sound reduction values used by CSP Acoustics and those provided by the final installation barrier, and this should be included within any Planning Condition relating to the mitigation measures.

The report has now addressed the noise exposure along the northern elevation of the proposed development site satisfactorily for both traffic and industrial units noise output when considered at the residential premises.

The noise impact assessment completed by CSP Acoustics has now provided additional information indicating the necessary evidence of the current noise climate in the vicinity of the northern elevation of the proposed development site.

The outcome of this is that if the development progresses the industrial activities and current noise output, has now been considered and should no longer result in loss of amenity for the incumbent residents in the future and should not produce adverse reaction to the noise.

This conclusion should give the necessary assurances to the industrial premises that complaints relating to noise and should not result in action being taken by the local authorities against the industrial premises, should the development proceed, based upon the recommended mitigation measures proposed for the site and the due process of the planning condition procedures available.

Our Ref ELI/1007/7/AOS/FCloss
Your Ref 19/00707/FULM

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Angus Council
Angus House
Orchardbank Business Park
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DD8 1AN

25 November 2020

Dear Sirs

APPROVAL OF MASTERPLAN FOR THE LOCAL DEVELOPMENT PLAN ALLOCATED SITE F4 AT WESTFIELD, FORFAR

We act for Elite Homes (Tayside) Limited. Our clients have objected to an application for planning permission for a residential development of 175 dwellinghouses at Westfield, Forfar (19/00707/FUL) (“the Westfield Application”).

Our clients have raised concerns with planning officers regarding Angus Council’s approach to agreeing the Masterplan for allocated site F4, as an internal part of the determination of the Westfield Application.

We understand from the processing agreement between the Council and the applicant (dated 18 February 2020) that the applicant will submit a finalised draft Masterplan for the Development Standards Committee’s approval as a material consideration “*in the consideration of planning application 19/00707/FULM and any future applications at site F4.*”

We also understand from correspondence with planning officers that the Council is applying its process for Consultation Procedures for Development Briefs & Development Guidance (Development Standards Committee Report No. 11/18).

We consider the approach being taken to agreeing the Masterplan as part of the Westfield Application is deeply problematic and inappropriate, for both the Westfield Application itself and the proper masterplanning of the F4 site as a whole.

We consider the Westfield Application premature. The Masterplan should be agreed as a separate process following proper consultation before any application is submitted for development of any part of the F4 site.

Masterplan Consultation

It is our understanding from the Processing Agreement that the Masterplan area extends beyond the red line boundary of the Application. It extends to both the F4 allocated site for existing housing and the F4 safeguarded site. Approving the Masterplan as part of a process internal to the Westfield Application denies stakeholders the proper opportunity to comment and input into the process, and prevents proper consultation.

It appears from the processing agreement that the Council and the Applicant are applying the Council's Consultation Procedures for Development Briefs and Development Guidance (Report No 11/18). It is clear from that guidance that development briefs should be agreed in consultation with outside agencies and the public before any application for planning permission is made. Indeed, public consultation is so important that there is a requirement to engage in pre-application consultation with the community to demonstrate how the principles set out in the development brief have been applied even if the proposal is not for a major application. Pre-application consultation is clearly an important feature where a development brief applies.

The Westfield Application has not been informed by an approved Masterplan. The public has not been consulted in relation to the Masterplan. The processing agreement requires the Applicant to amend the Westfield Application to take account of the Masterplan, and thereafter undertake community consultation on the approved Masterplan to demonstrate how its principles have informed the revised development. The correct process to be followed would be for the Masterplan to be subject to proper consultation with stakeholders, allowing them to feed into the process, prior to any application being submitted.

The extent of the Masterplan across the F4 allocated site is of real concern, particularly the extent to which it is proposed to cover the F4 safeguarded land. Policy F4 of the Council's Local Development Plan confirms that:

- “ Additional land is safeguarded for further residential development in the period beyond 2026. The scale of further land release in the period beyond 2026 will be determined by a future Local Development Plan and may also include:
- provision of a new Primary School.
 - an area of land south of Glamis Road for further business / employment development.”

The land release of the safeguarded element of allocated site F4 is clearly to be dealt with under a future local development plan and as such the land should not be covered by a Masterplan under the current LDP.

Policy F4 further states:

“No development will be allowed until a full assessment of the potential impact on the A90 junctions (including Lochlands) is completed and any resulting mitigation is agreed with Angus Council and Transport Scotland.”

To date there does not appear to have been any assessment of the potential impact on the A90 junctions. There are clear infrastructure constraints on the site at present which renders the site ineffective.

The Masterplan will be a material consideration for all planning applications submitted within the Masterplan area. This is a process which should be completed outwith the determination of a planning application; it should not form part of a live planning application for part only of the Masterplan area.

We consider that it is contrary to the Council’s own guidance, and in any event wholly inappropriate for the Masterplan for site F4 to be agreed in this manner.

Material consideration

We consider there is a fundamental issue with Council agreeing the Masterplan as a material consideration in the determination of the Westfield Application as an internal process in the determination of the same application. The Council is essentially prejudging and pre-determining the application. Any decision that attaches weight to the Masterplan, or the Westfield Application’s compliance with the Masterplan, will be susceptible to challenge.

For the reasons set out above, we consider the Council’s process for approving the Masterplan is wholly inappropriate and poses a real problem for the lawful determination of the Westfield Application.

We suggest the Westfield Application should be withdrawn to allow for proper consultation on the Masterplan before any application is made.

Yours faithfully

A black rectangular redaction box covering the signature of Alasdair Sutherland.

Alasdair Sutherland

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23rd October 2019

Ruari Kelly
Planning Service
Angus Council
Angus House
Orchardbank Business Park
Forfar
DD8 1AX

Dear Mr Kelly,

19/00707/FULM Residential Development of 175 Dwelling houses including Formation of Vehicular Access, Access Roads, Open Space, Landscaping, SUDS and Associated Infrastructure Field Opposite Westfield Drive Westfield Loan Forfar

We refer to the abovementioned application and wish to this opportunity to register our formal **objection** to the proposal. Although we recognise that the Westfield site is an allocated site for development, and therefore part of the strategy of the adopted LDP 2016, development is not to be at the cost of natural and built heritage on the site. We consider that insufficient information or investigation has been carried out to allow the Council to determine the proposals as submitted. The basis for our objection is as follows:

1. Premature Timing of Application - As you will be aware the site is allocated as site F4 Housing – Westfield within the extant Angus LDP 2016. The wording of the allocation confirms 38.8 Ha of land west of Westfield Loan is allocated for residential development of around 300 dwellings in the second phase of the plan (2021 – 2026). The Design and Access statement lodged in support of the application indicates that *“Commencement of the construction of the proposed development is in envisaged in mid 2020”*. Clearly this intended start is contrary to the adopted plan allocation and the related policy. It has not been demonstrated in accordance with the terms of Policy TC1 that an earlier release is appropriate.

2. Adequate Land Supply - Angus Housing Land Audit 2019 identifies that there is currently a generous effective land supply of housing in the West Angus HMA. As such there is absolutely no requirement to bring forward development of the land at Westfield in advance of the phasing as stated within the allocation. Therefore, at this time we consider the application should be refused as it is premature and contrary to Policy TC1. However, should this application be approved, we would request a condition be attached confirming no development pursuant to the consent is permitted to commence on site until after 1st January 2021.

3. Impact on Roads Network A90 and West Port Junction- The adopted F4 housing allocation F4 confirms that *“No development will be allowed until a full assessment of the potential impact on the A90 junctions (including Lochlands) is completed and any resulting mitigation is agreed with Angus Council and Transport Scotland.”* Furthermore Policy DS2 Accessible Development requires development proposals to demonstrate that the development (amongst other things) is or can be made accessible to existing or proposed public transport networks and are located where there is

adequate local road network capacity or where capacity can be made available. We note that Transport Scotland has lodged a holding objection which states that an updated Transport Assessment (TA) will require to be submitted. It is clear that at this point Transport Scotland are querying the sufficiency of the TA information provided in support of the application. Elite homes have always considered that this development will have a significant and unacceptable impact on the surrounding roads network. We request the opportunity to make further detailed comment once the updated TA has been submitted.

4. Education- we are aware that the Forfar Academy and Langlands Primary School are both operating over the 80% accepted capacity. As the current proposal is a major development which may result in further housing within the Westfield area the matter of school capacity should be addressed before any consent is issued. At the present time Forfar includes a primary school to the west of the town, Langlands, to the centre of the town, Strathmore and to the east of the town, Whitehills. There is no primary school local to the north of the town and therefore, any new school should be located to the north of the town adjacent to the community campus, benefiting from cross use of facilities and ensuring safe walk routes to schools for the younger children. The allocation of site F4 refers to the additional land beyond 2026 being required to accommodate the provision of a new primary school. No such considerations are shown in the supporting information lodged with the application. The requirement for a masterplan has not been met. It is not clear therefore that the terms of Policy DS5 Developer Contributions has been met.

5. Contamination-It is acknowledged that a Contamination Report has been lodged in support of the application, which acknowledges that a historical anthrax burial site forms part of the application site requires further investigation (Table 4/5A). At Para 1.3.1 the Report author confirms the limitations of the document stating

“Our interpretations of the ground conditions are based primarily on the information retrieved from the exploratory pits and bores sunk at the site during the investigations. While we have carried out some interpretation of the ground conditions between the exploratory locations, it should be recognised that soil and groundwater conditions can vary from point to point. As such, ground conditions at variance with those indicated by the exploratory pits/bores may exist in areas not investigated.”

We have significant concerns with regard to the proximity of proposed new houses to the known area of anthrax ash burial remains. Para 3.3.3 of the Contamination Report confirms that *“Following discussions with Angus Council, it was agreed that no excavations would be undertaken within 30m of the known copse of mature trees that demarcate the area of anthrax ash burial.”*

From our experience on other sites within Angus the suggested exclusion area seems inadequate. Angus Council have previously required a separation distance of 400 metres between residential properties and an intensive livestock unit. While a cordon sanitaire of 100 metres is required between a proposed residential development and a small waste water treatment plant.

With the prevailing winds in the area from the west any disturbance of anthrax remains on site could present a very real public health risk for all residents of Forfar. Given the very real danger to human life from disturbing an anthrax burial site we suggest a much greater separation distance between a known anthrax burial sites and proposed residential properties requires to be imposed than is suggested in the Contamination Report. Furthermore even if nothing is to be built in the contaminated area, given the historic contamination the area affected and the trees nearby cannot count towards useable open green space. It is not clear that the requirements of Policy PV2 Open space provision

can still be met when the historic contamination is considered and that the requirements of Policy DS4 on Amenity can be satisfied.

At this time, we have very serious concerns that the issue of anthrax remains at Westfield has not been fully considered. Therefore, we would request sight of all information provided to the elected members at the time this site was included within the draft Local Development Plan, and confirmation that this information was then passed to the Reporter as part of the Examination of the Local Development Plan in 2016. To be clear we can find no mention of the issue of anthrax in the Report on the Examination of the LDP and as such we have very real concerns that this very serious matter of anthrax was not fully considered at the time the site was allocated within the Angus LDP.

Further, we seek an absolute guarantee from Angus Council to reassure the elected members and the residents of Forfar that any proposed development at Westfield will not result in any dispersion of live anthrax spores and that there is no potential risk to the Health and Safety of the people of Forfar should consent for the development of this site be granted.

6. Archaeology- This was a matter which was raised as a significant area of concern at the time the land was considered for inclusion within the ALDP 2016. At that time the concerns of Elite Homes were totally ignored. We are pleased to note that the Archaeology Service have submitted an objection to the proposal. It is clear from their comments that the applicants have no real understanding of the Scheduled Ancient Monuments (SAMs) on the site and have not undertaken any pre-application discussions. As a result, the submitted scheme does not respect and protect the SAMs. The objection requires material changes to the layout to ensure no detrimental impact on the SAMs. The application is contrary to Policy PV8 Built and Cultural Heritage. We request a further opportunity to make comment on the proposal is provided as any necessary amendments will have an impact on how the proposed site will connect to Forfar.

7. Affordable Housing – We note that the Council’s Housing Service have already commented on the application and advise that the proposal is not in accordance with the requirements for provision of affordable housing which is required in the area. Policy TC3 requires provision of 25% affordable housing, rather than the suggested 20% in the Housing Service response. Given the changes and further information provided, which may impact on the layout of the proposed development, it is not clear if the requirements of Policy TC3 can be met.

8. Other technical information – We note that despite the application being for planning permission, no details of the energy efficiency (low and zero carbon buildings) measures are provided nor are details of waste management for the proposed housing. The application therefore fails to comply with the requirements of both Policies PV11 and 18 respectively.

9. Environmental Impact Assessment-We note that Angus Council have determined that an EIA is not required in this instance. As a Schedule 2 development the determining factor is whether the proposal is likely to have a significant effect on the environment. In determining 'significance' the key question to consider is whether the particular project, by virtue of factors such as its "nature, size or location" is likely to have significant effects on the environment.

Elite Homes would submit that the scale of development in isolation or in combination with a possible expansion to the west is such that impacts on the environment are likely to be significant. The proposal forms part of a potentially significant and more substantial development which will result in an extension to the settlement. The site includes 2 large scheduled ancient monuments and will have an impact on the surrounding roads network, including the A90 trunk road, which impacts do not appear to have been assessed correctly based on the information submitted. There are areas

of contamination which may result in air borne pollution, as yet uninvestigated . For these reasons to is not clear on what basis the Council has been able to determine in accordance with their duties and responsibilities under the Environmental Impact Regulations that the proposed scheme will not have a “significant” impact on the environment. In light of the issues noted in this letter, an EIA should be required.

10. Provision of full information - We would wish to highlight that development at Westfield, of which this application forms part, has been repeatedly supported by Angus Council over the past 20 years, spanning a number of local plan processes. At the time of the 2009 Angus Local Plan the Scottish Government Reporter removed the allocation at Westfield concluding amongst other issues that the accessibility was not ideal, impacts on wider traffic implications required detailed assessment and fundamentally that the “visual impact would be significantly adverse and the landscape setting of Forfar would be reduced to an unacceptable extent.”

As part of the ALDP 2016, the Reporter concluded “I can see no reason not to allocate Westfield”

To be clear, this did not say there were *no* reasons, but only that he could *see* no reasons.

It is a matter of some concern to Elite Homes that despite many unresolved concerns continually being highlighted during the Local Development Plan process, any of which in isolation may render the site ineffective including the fact the site was removed from previous local development plans due to the concerns on the unacceptable impact on the landscape setting of Forfar, Angus Council has been single minded in its determination to support development at Westfield. Scottish Planning Policy requires the delivery of housing through the development plan to support the creation of sustainable mixed communities which depends on a generous supply of appropriate and *effective* sites. Given these many unresolved issues remain, and no supporting information provided with the current application, it is clear that there are very real doubts whether this site is effective and therefore land at Westfield should not have been allocated until these material planning matters had been resolved. As experienced developers within Angus we can say with certainty that should any of our sites had any of the problems highlighted, it would not have been allocated. Therefore, it is with significant concern that we would question why a site with so many unresolved issues were allocated for housing development in the first place.

Finally, we note Angus Council and Muir (Hermiston Securities Ltd) have been in a joint agreement for the development of Orchardbank Business Park since around 2000. Given this partnership we would be grateful if Angus Council can confirm there is no conflict of interest which would render them unable to determine the current application.

The Council will be aware of their obligations under the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009 which provides guidance on the circumstances in which planning authorities must notify Scottish Ministers prior to granting planning permission. Given the financial interest of the Council in the proposal and that, in light of the lack of supporting information, the proposal could be considered to be a significant departure from the development plan, in addition to the objections from a government agency (Transport Scotland) then we consider that the application should be notified to Scottish Ministers if it is proposed to grant consent.

Conclusion

The allocation of site F4 Housing Westfield contains a number of requirements. Based on the foregoing it is quite clear that the proposal does not meet a number of the identified aspects of the allocation. We have summarised in brief terms the requirements and the reason for the failure below::

- No development will be allowed until a full assessment of the potential impact on the A90 junctions (including Lochlands) is completed and any resulting mitigation is agreed with Angus Council and Transport Scotland **Response- Insufficient information provided in support of application**
- Development should be in accordance with a masterplan prepared for the site. **Response- no such masterplan accompanies the application and only vague reference has been made to the Framework prepared in 2013 and the Council's development brief for the site.**
- design and site layout which takes account of the existing landscape character, pattern of development and character of neighbouring uses and buildings; **Response- Until a full understanding of the anthrax remains and the SAMs has been understood a layout cannot be agreed**
- the protection of scheduled ancient monuments within the site and how these will be managed; Application does not adequately address the SAM's, **Response- no preapplication discussions, SAMs not respected or protected as part of the proposed scheme layout requires to be reconsidered**
- a landscape framework, preserving existing woodland and hedges and setting out structural planting and landscaping within and around the site to enhance biodiversity and to create an appropriate town edge; **Response- Until a full understanding of the anthrax remains and the SAMs has been understood a layout cannot be agreed. Little landscaping information has been submitted beyond that included in the Framework dated from 2013.**
- appropriate developer contributions, towards education infrastructure; **Response- the current application forms part of a potentially much larger scheme. As such the impacts on education provision within Forfar as a whole require to be fully assessed and the best possible solution for the long term determined in full consultation with the people of Forfar.**
- the potential for a new distributor road linking Dundee Road and Westfield Loan with Glamis Road, taking account of any potential impact on the A90 junctions (including Lochlands) in conjunction with Angus Council, TACTRAN and Transport Scotland; **Response- Insufficient supporting information provided, updated TA required, possible mitigation agreed with Transport Scotland**
- the provision of open space and SuDS as necessary; **Response- Until a full understanding of the anthrax remains and the SAMs has been understood a layout cannot be agreed. The impact of the anthrax contamination has not been fully investigated and as such the provision of and compliance with the requirements for useable open space on the site cannot be determined.**
- opportunities for active travel through improved linkages with the existing path/Green Network; **Response- Until a full understanding of the anthrax remains and the SAMs has been understood a layout cannot be agreed**
- supporting information including a Flood Risk Assessment, Drainage Impact Assessment, Sustainable Drainage and Surface Water Management Plan, Contaminated Land Investigation Report and a Transport Assessment which should include assessment of the West Port junction and analysis of the traffic flows and junctions along East and West High Streets. **Response- whilst certain of the reports have been submitted with the application, it is clear that further work is required in terms of contamination and the TA.**

It is clear for the above that insufficient information has been lodged in support of the application to allow its determination. Given the lack of supporting information, and for the reasons stated in this letter, the application requires to be refused. Should further information be submitted, the application requires to be re-notified and re-advertised to allow all parties interested in the proposal a chance to re-evaluate and a further opportunity provided to make comment to allow for proper consultation and consideration of all relevant factors.

We trust that the points raised in this letter will be taken into account when determining the application in due course. Our client reserves the right to expand on the points mentioned herein should further information be submitted by the Applicant. Our client would also request an opportunity to address the Members should the application proceed to Committee.

Kindly acknowledge safe receipt of this letter.

Your sincerely


Elite Homes (Tayside) Ltd





Chapelark House, 17 Academy Street, Forfar DD8 2HA • Tel: 01307 460011 • Fax: 01307 460022
enquiries@elite-homes-tayside.co.uk • www.elite-homes-tayside.co.uk

19 December 2019

Ruari Kelly
Planning Service
Angus Council
Angus House
Orchardbank Business Park
Forfar
DD8 IAX

Dear Mr Kelly,

19/00707/FULM Residential Development of 175 Dwelling houses including Formation of Vehicular Access, Access Roads, Open Space, Landscaping, SUDS and Associated Infrastructure Field Opposite Westfield Drive Westfield Loan Forfar

We refer to the abovementioned application and to our previous objection dated 23rd October 2019 at which time we requested the opportunity to make a further detailed objection at the time additional information had been received. All comments in our earlier objection are maintained however we would now make the following additional comments

1. Adequate Land Supply and Premature Timing of Application — We note the consultee response from Local Development Plan Team dated 24th October 2019 confirms that there is currently an adequate supply of land for housing development to meet the requirements for the West Angus Housing Market Area and there is no evidence requiring the early release of housing land from the Westfield site at this time. Therefore, the granting of planning consent at this time would be contrary to Policy TCI.

2. Impact on Roads Network A90 - The adopted F4 housing allocation F4 confirms that "No development will be allowed until a full assessment of the potential impact on the A90 junctions (including Lochlands) is completed and any resulting mitigation is agreed with Angus Council and Transport Scotland. "

We note Transport Scotland have requested an updated TA be lodged, this has still to be submitted we maintain our request to make further representations once this has been received.

We further note the Roads Service of Angus Council have yet to make comment on the application, again we would reserve our right to make further representation once this has been received.

Meantime, Elite Homes (Tayside) Ltd instructed Dougall Baillie Associates to review the TA as currently submitted, a copy of their detailed comments is attached to this letter. They have highlighted a number of deficiencies in the TA which can be summarised as follows

- 1) the actual, practical level of accessibility of all dwellings to bus services requires further consideration;
- 2) the safety of proposed site access junctions, these appear to have been designed as priority crossroads, but provided with visibility standards for much higher speeds are therefore not consistent with Designing Streets policy;
- 3) the TA junction check analysis should be updated to represent a practicable build date for residential development on this scale that is consistent with the Local Development Plan;
- 4) the TA must be updated to representatively model the impact of Westfield development traffic on the A90 / A926 /Westport signalised cross-roads; and
- 5) the TA must address the obvious road safety implications of increased queuing at the A90 / A932, Dundee Road trunk road priority junction, given its continuing safety issues.
- 6) A full assessment of the potential impact on the A90 junctions (including Lochlands) has yet to be completed and any resulting mitigation is agreed with Angus Council and Transport Scotland.

Therefore, at the present time the proposal is contrary to Policy F4.

3. Flood Risk- we note SEPA have lodged an objection to the proposal as the site may be at risk of flooding. We consider this matter must be fully considered and resolved. We note from the SEPA flood maps that much of Orchardbank Business Park is currently at high risk of flooding as such any development at Westfield must consider the potential impact on this area.

4. Design and Layout- Elite Homes has appointed OPEN, Optimised Environments, who have reviewed the application, a copy of their detailed comments is attached. There are a number of legitimate and very real constraints to the development layout as submitted including the following

- 1) two Scheduled Ancient Monuments, which further require a 10-metre buffer which has not been incorporated,
- 2) known anthrax burial site to the east of the application site, which we would suggest requires a cordon sanitaire to ensure no remains are disturbed during development, and
- 3) Halfpenny Burn, again which requires a standoff to ensure no risk of flooding, and
- 4) Area effectively sterilised for development due to noise from the adjacent road and neighbouring 24-hour industrial operations, and
- 5) 90 metre AOD beyond which the Reporter at the time of the adopted ALDP 2016 confirmed no development should be permitted.

These constraints have been annotated on the attached plan. It is clear that these legitimate constraints have a significant impact on the developable area and will impact on the opportunities to create a cohesive and considered development, OPEN highlight there are several issues with the layout, these being:

- Legitimate noise constraints are likely to ensure there is no frontage on Glamis Road and land to the south of it is effectively sterilised;
- The layout does not constitute good placemaking in terms of how it relates to Forfar: the development does not consolidate the urban edge and will be disparate and feel divorced from the existing settlement;
- This is reinforced by a poor approach to connectivity. A lack of connections allowing easy access to bus stops, paths and cycling options will compound with a sense of isolation and will foster car driving as a default position in direct contravention of Scottish Government Policy;
- The level of constraint makes it hard to achieve an appropriate form and density, with the appropriate levels of usable open space. The layout within the application demonstrates this;
- The constraints are almost impossible to mitigate: the location of the northern SAM constrains mitigating noise issues from the factory, and there are significant risks to human health in relocating anthrax diseased burial areas;

- Inefficient use of land, disturbance to protected areas, lack of usable space, incoherent layout and putting the car first; these all flaunt the need to design sustainably and to consider climate change impacts.

Policy F4 is clear in that any development proposal should be in accordance with an approved masterplan which covers a number of matters including the design and site layout, the protection of scheduled ancient monuments, design of a landscape framework, preserving existing woodland and hedges and setting out structural planting and landscaping within and around the site to enhance biodiversity and to create an appropriate town edge, the potential for a new distributor road linking Dundee Road and Westfield Loan with Glamis Road, taking account of any potential impact on the A90 junctions (including Lochlands) in conjunction with Angus Council, TACTRAN and Transport Scotland, the provision of open space and SuDS as necessary, opportunities for active travel through improved linkages with the existing path/Green Network.

No such Masterplan document has been prepared or lodged in support of the proposal as such the application is contrary to Policy F4.

5. Noise We note that the frontage of the application site lies to the south of the Glamis Road, a busy main distributor road to the north of which is located the Don and Low factory, the largest industrial operation and significant employer in Forfar which legitimately operates 24 hours a day. The applicants have lodged a Noise Assessment which confirms that there are large areas of the proposed development site which will experience unacceptable levels of noise disturbance both internally and in the outdoor amenity space as a result of these existing uses. The report therefore recommends a strategy of closed windows and an acoustic barrier both of which are neither practical or appropriate. It is clear that the existing industrial premises and the busy adjacent distributor road will result in noise disturbance to an unacceptable level and there is no way to effectively and appropriately mitigate this noise disturbance.

It is worth highlighting that the industrial operator, Don and Low, a long-term industrial function in Forfar and a major employer, has objected as they have serious concerns that the noise will lead to complaints which will in turn lead to restrictions on operations. A totally unacceptable situation for both the established industrial operator and the prospective residents. Elite Homes fully support these concerns, it is imperative that Don and Low, as a major employer within Forfar, are not impeded in any way in their operation and ability to provide employment by a proposed new housing development at Westfield. We further note these concerns have been reiterated by the Environmental Health Service who have objected to the current proposal.

As such at present the proposal is contrary to Policy DS4 Amenity of the ALDP.

6. Contamination We note that a consultation response has been received from the Environmental Protection Officer dated 22 November 2019 in which he states: 'I am satisfied this site does not pose a significant risk of harm to the proposed use from land contamination' and confirms no objection to the current application. Such a statement makes no reference to human health instead it only confirms that there is no 'significant' risk of the site being impacted by contamination. We would consider it relevant for the Environmental Protection Officer to consider whether the proposed use poses an, no matter how small, risk to human health given its proximity to a known anthrax burial site.

An area of known anthrax burial remains is located to the east of the application site within the immediate environs of the application site. It would appear from documentation received as part of a recent Freedom of Information Request dated 4th November 2019 that there is some question over the exact location of the anthrax burial site and what the remains comprise.

In a letter dated the 15th April 1999, Letter from consultant in Public Health to Webster Contracts (previous owners of the site), confirms the risk from "alleged carcasses burial being sited near to your proposed housing development site is negligible". This is information, which is over 30 years old, confirms the risk to be "negligible", not non-existent as is surely required to ensure public safety. Elite Homes would submit on a matter with such potential to impact public health the risk to human health must be confirmed as non-existent.

The letter goes on "The Scottish Office letter implies, the infected animals were disposed of by incineration and burial of the ashes with quicklime". Again, no certainty exists on how the carcasses

were treated and where the infected carcasses were buried. This is further confirmed in an e mail exchange dated 28th March 2007 from a Senior planner to EHO which states that the site is a known anthrax burial site. The correspondence goes on

"our difficulty is that we have no certainty regarding the accuracy of the assessment of the extent of the burial area. This makes it difficult to confirm that the burial area does not encroach into the proposed development area and therefore difficult to confirm that the development would not potentially disturb the burial area."

Elite Homes (Tayside) Ltd sought our own advice on this issue from EnviroSurvey who reviewed the submitted Contamination Report, a copy of their detailed comments is attached. This concluded that significantly more information should be obtained on the anthrax area. This is an issue of the upmost concern for the health and safety of the people of Forfar and as such a full desk-based element risk assessing the anthrax issue should be undertaken. In EnviroSurvey's considerable experience, and after discussion with other Local Authorities throughout Scotland, there appears to be no precedent of new residential development in such proximity to a recognised anthrax burial site. It is clear that a cordon sanitaire is required around the known anthrax burial site, the standard cordon sanitaire around an intensive livestock operation, slurry or sewage store is 400m (UK Planning Circular, 2/2015), this is to protect against odour but also airborne disease, we would suggest a similar buffer would be appropriate to protect public health at Westfield.


Therefore, on the basis of this additional information we would reiterate our request that Angus Council Planning Service provide an absolute and evidence based guarantee to reassure the elected members and the residents of Forfar that any proposed development at Westfield will not result in any dispersion of live anthrax spores and that there is no potential risk to the Health and Safety of the people of Forfar should consent for the development of this site be granted.

It is clear from all the above that insufficient information has been lodged in support of the application to allow its determination. Given the lack of supporting information, and for the reasons stated in this letter, the application must therefore be refused. Should further information be submitted, the application requires to be re-notified and re-advertised to allow all parties interested in the proposal a chance to re-evaluate and a further opportunity provided to make comment to allow for proper consultation and consideration of all relevant factors.

We trust that the points raised in this letter will be considered when determining the application in due course. We reserve the right to expand on the points mentioned herein should further information be submitted by the applicant. We would also request an opportunity to address the Members should the application proceed to Committee.

Kindly acknowledge safe receipt of this letter.

Your sincerely



Elite Homes (Tayside) Ltd

KellyR

From: enquiries@elite-homes-tayside.co.uk
Sent: 09 January 2020 12:12
To: KellyR
Subject: Fwd: Application 19/00707/FULM Residential Development of 175 Houses, Field opposite Westfield Loan, Forfar
Attachments: E Mail Response M Park 27-12-19 .docx; E Mail Elite HOmes to APHA 12-12-19.docx

Dear Mr Kelly,

We refer to the abovementioned application currently pending consideration with Angus Council and to our previous objections which amongst other matters expressed concerns with regard to the known anthrax burial site located east of the application site. Please find attached a copy of an e mail from Michael Park, Veterinary Lead, Scotland, Animal and Plant Health Agency (APHA). This confirms that as there is no register of historical animal burial sites the Animal & Plant Health Agency is not in a position to provide reassurance with respect to the suitability of the land for development. It is worth noting that that Mr Park did not guarantee the health of the people of Forfar if anthrax spores were dispersed as a result of development works as requested in our e mail of the 12th December 2019, copy attached.

He further confirms that anthrax was diagnosed in livestock on Westfield Farm, Forfar, in 1944 and, while usual the practice in 1944 would have been to burn and then bury the carcasses, APHA do not have access to how carcasses were handled on Westfield in 1944. It is possible they were not buried, possible that they were burned and buried, and possible that they were buried without being burned.

On the basis of this information we would submit that it is clearly essential that a suitable cordon sanitaire is provided around the known anthrax burial site. It is our information is that the standard cordon sanitaire around an intensive livestock operation, slurry or sewage store is 400m (UK Planning Circular, 2/2015), this is to protect against odour but also airborne disease, we would suggest a similar buffer would be appropriate to protect public health at Westfield.

Further, it is worth highlighting the limitations and caveats contained within the Report on Site Investigations completed by Mason Evans on behalf of Muir Homes Ltd and lodged in support of the application, these are as follows:

Para 1.3 Limitations

"1.3.1 Our interpretations of the ground conditions are based primarily on the information retrieved from the exploratory pits and bores sunk at the site during the investigations. While we have carried out some interpretation of the ground conditions between the exploratory locations, it should be recognised that soil and groundwater conditions can vary from point to point. As such, ground conditions at variance with those indicated by the exploratory pits/bores may exist in areas not investigated.

1.3.2 It should be recognised that this report is prepared in accordance with current recommended practice and existing legislation. It is written in the context of a residential development with garden areas.

Should there be any alternative end-use, it would be prudent to consult MEP further to ensure the continued pertinence of the recommendations advised."

In relation to Site History the Report confirms in Para 2.2.2

"It should be noted, however, that considerable periods of time elapsed between successive Ordnance Survey map editions and the possibility that further land uses occurred in the intervening years and were not therefore recorded by the maps, cannot be discounted. In these circumstances, while we have tried to ascertain the complete record of the site history, the possibility that other significant land uses occurred, while considered unlikely, cannot be discounted."

Summary of Ground investigations, Para 3.3.1 confirms

"The scope and location of the works was determined by Mason Evans, where access permitted."

Para 3.3.3

"Following discussions with Angus Council it was agreed that no excavations would be undertaken within 30m of the known copse of mature trees that demarcate the area of anthrax ash burial."

Para 10.3.1 "No elevated concentrations of toxic or phytotoxic contaminants were encountered within the tested soil samples. In addition, no asbestos fibres were recorded in any of the samples tested.

The additional testing carried out in the vicinity of the conjectured site of historic anthrax burial recorded no detection of Bacillus Anthrax. It was therefore considered the risk posed by the shallow soils to ground workers and future site users was low."

Para 103.8 Construction/Maintenance Workers- All site staff should remain vigilant to the possible risk of encountering isolated areas of unrecorded contaminated material. Should such materials be encountered, further testing may be required to assess the risk to health and safety of the site workers and the environment.

The above limitations and caveats appear to clearly confirm that Mason Evans, like Angus Council, are in no position to guarantee the location of the anthrax spores and as such the future health of the people of Forfar.

We trust you will take this information into consideration in the determination of the current application and ensure that public health of the people of Forfar is protected at all times.

Yours sincerely
Elite Homes (Tayside) Ltd

E mail issued 12/12/19

Dear Sir,

We write to you in your capacity as a Senior Veterinary Inspector and animal health specialist.

We are currently involved with a potential development site at Westfield Farm, Forfar located to the west of the town with winds prevailing from the west across the town around 90% of the time. Westfield Farm includes a known anthrax burial site or sites.

A planning application is currently pending with Angus Council for a large residential development and there is concern that anthrax spores could be released as a result of these works and spread by contact/become wind borne across the town. We understand anthrax spores can remain live in the soil for 100 years or more and humans can be infected by these spores with significant and possibly fatal consequences.

We have serious concerns that development at Westfield Farm may result in disturbance of these anthrax remains and pose a very real risk to public health in Forfar.

We have discussed this matter with specialist environmental consultants who are unaware of residential development ever being considered anywhere in the United Kingdom in such close proximity to an anthrax burial site.

We wonder if in your professional capacity in animal health you, or indeed any other professional person or organisation you would know of, would be in a position to guarantee the health of the people of Forfar if anthrax spores were dispersed as a result of development works.

It is our understanding that the required standard cordon sanitaire around an intensive livestock operation, slurry or sewage store is 400m (UK Planning Circular 2/2015) to protect residents from odour and airborne disease.

As an expert in animal health we would be grateful if you could confirm whether, in your opinion, if such a cordon sanitaire would be an appropriate form of mitigation in this instance to guarantee to public health for Forfar.

Many thanks in anticipation of receiving your assistance.

Elite Homes (Tayside) Limited

Thank you for your email enquiry regarding potential notifiable disease burial sites.

There is no register of historical animal burial sites to assist with your query, consequently the Animal & Plant Health Agency is generally not in a position to provide reassurance with respect to the suitability of the land for development.

However, I am aware that anthrax was diagnosed in livestock on Westfield Farm, Forfar, in 1944 . The usual practice in 1944 would have been to burn and then bury the carcasses but we do not have access to how carcasses were handled on Westfield in 1944. It is possible they were not buried, possible that they were burned and buried, and possible that they were buried without being burned.

In addition, The FMD 2001 Anderson Report (2002) is publicly available and a source of information relating to the 2001 FMD outbreak. This can be found here and may assist you:

http://webarchive.nationalarchives.gov.uk/20100809105008/http://archive.cabinetoffice.gov.uk/fmd/fmd_report/report/index.htm

If burial sites are disturbed, there may be implications under the Control of Pollution Act 1974 and in this respect then the responsible person should contact the applicable local authority.

In the event that animal remains are discovered in the course of land excavation, work should cease immediately and the occurrence or suspicions should be reported to this office. An exhumation licence will be required under the above legislation to enable the excavation and subsequent disposal of the remains in compliance with the Animal By-Products Regulations.

I have enclosed a copy of the Guidelines for Exhumation and Disposal of Animal Carcasses for your information.

Please don't hesitate to contact me if you require further assistance

Kind regards

Michael Park BVMS, PhD, MRCVS

Veterinary Lead, Scotland

Field Services, Scotland

Animal and Plant Health Agency (APHA)

Telephone: 020841 52428 | Mobile: [REDACTED] | Email: michael.park@apha.gov.uk

Website: www.gov.uk/apha | Twitter: [@APHAgovuk](https://twitter.com/APHAgovuk) | Facebook: [APHAgov](https://www.facebook.com/APHAgov)

Address: Galashiels Field Services, Cotgreen Road, Tweedbank, Galashiels, TD1 3SG

My email address has changed. 'gsi' has been removed from my email address. My new email address is Michael.Park@apha.gov.uk I will still receive emails with the old address until March, but please update my email address in your address book. Thank you

Department for Environment, Food and Rural Affairs (Defra) This email and any attachments is intended for the named recipient only. If you have received it in error you have no authority to use, disclose, store or copy any of its contents and you should destroy it and inform the sender. Whilst this email and associated attachments will have been checked for known viruses whilst within Defra systems we can accept no responsibility once it has left our systems. Communications on Defra's computer systems may be monitored and/or recorded to secure the effective operation of the system and for other lawful purposes.



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Ruari Kelly
Planning Officer
Planning & Sustainable Growth
Vibrant Communities
Angus Council

30th May 2022

Dear Mr. Kelly,

Planning Application Ref 19/00707/FULM Residential Development of 136 Dwellinghouses including Formation of Vehicular Access, Access Roads, Open Space, Landscaping, SUDS and Associated Infrastructure, Field Opposite Westfield Drive Westfield Loan Forfar

We refer to the abovementioned planning application validated on 26 September 2019, the amended plans and additional information dated 30 March 2022, the associated Masterplan Framework dated March 2022, and to our previous comments dated 23 October 2019, 19 December 2019, 9 January 2020, and 19 May 2021.

We have reviewed the amended plans, additional supporting information and the submitted Masterplan Framework dated March 2022. Notwithstanding our concerns regarding the validity of the approach being taken to the application and the Masterplan Framework which our solicitors Shoosmiths have highlighted in a letter dated 25 May 2022, we take this opportunity to provide our comments on both the additional planning application documents and to the Masterplan Framework March 2022.

Considering these matters in turn:

Process for approving the Masterplan

Firstly, and as we have consistently stated since submission of the current application in September 2019, the submission of any application on the site allocated as F4 Housing - Westfield is premature as a masterplan for the whole of the site has not been approved by Angus Council. The applicants have now formally submitted a Masterplan Framework dated March 2022 for the site F4 - Housing Westfield and, within the covering information, have confirmed that they are not seeking the approval of the Council to it. Therefore, it is unclear what purpose this document serves.

Angus Council have on several occasions confirmed that any masterplan should follow the procedures as set out in Consultation Procedures for Development Briefs and Development Guidance, Report 11/18.

This requires that development briefs adhere to the following procedures:

Elite Homes (Tayside) Limited

Directors: N. McLagan, M. Guild, W.G. Beattie

Company Registration No. SC214985 • Registered Office: Whitehall House, 35 Yeaman Shore, Dundee DD1 4BJ • VAT Reg. No. 774 6293 91



1. Draft Development Brief/Development Guidance prepared setting out the key design and development principles pertinent to the site.
2. Circulate to and consult local Ward Members
3. Finalise Development Brief and report to Development Standards Committee for agreement as a material consideration in guiding development proposals and consideration of planning applications.
4. Issue approved development brief to landowner/developer and local Community Council. Publish approved Development Brief on Angus Council website
5. Requirement for developer to undertake community consultation to demonstrate how the principles set out in the development brief have been applied to the development of their proposal prior to the submission of a planning application.

There appears to have been two masterplan framework documents lodged, the first in October 2021 and the second in March 2022. To date, neither has been formally circulated to members, neither have been reported to the Development Standards Committee, and neither have been approved by that committee. The documents have not been published and no community consultation has been undertaken on the final submitted version of the document (dated March 2022).

The Council has recently indicated that the Consultation Procedures may now not be followed but that the masterplan will be consistent with PAN 83. If the masterplan is not subject to any formal process with proper consultation on the final document followed by a consideration of the acceptability of the masterplan by the Council, then we do not see how it can be consistent with PAN 83. Page 20 of PAN 83 clearly says that there are three ways to embed a masterplan in the planning system – adoption as SPG, endorsement as a material consideration, or forming the basis of a planning application. In each case approval of the masterplan is required. The approach taken by the applicant does not align with any of these options. PAN 83 also says that the parties should be clear about the process prior to engaging in the masterplanning process. It seems to us that there has been no clarity at all on the process by any of the parties.

Therefore, the masterplan has not undergone the required scrutiny and has not been approved by Angus Council.

We are aware that the applicant now considers that the masterplan can be submitted as part of the planning application process. However, given that the Masterplan is required for the whole F4 allocation together with the safeguarded land at Westfield it still appears to us to be necessary that the masterplan, as a strategic document, is approved first, prior to the submission of any planning application which would obviously need to be compliant with that approved masterplan. The issues that the applicant is facing are likely to be a result of not adopting this approach. If the masterplan is to apply to the entire F4 site (allocated and safeguarded) then it makes sense that it is approved in connection with that larger site, rather than coming forward in relation to only a small part of that site as part of a discreet planning application.

Requirements of Policy F4 Housing Westfield - Policy F4 for the Masterplan

However, setting aside the issue of procedures, the submitted Masterplan Framework March 2022 does not fulfil the requirements of Policy F4 Housing - Westfield and the repeated advice provided by Angus Council Planning Service in terms of the content and the required supporting information for a masterplan.

It is clear in that the adopted policy requires that:

1. No development will be allowed until a full assessment of the potential impact on the A90 junctions (including Lochlands) is completed and any resulting mitigation is agreed with Angus Council and Transport Scotland.
2. Development proposals to be in accordance with a masterplan prepared for the site.

These requirements were set out by the Reporter at the time of the Examination of the ALDP and were confirmed by Angus Council in the adopted Angus LDP 2016. The Reporter set out his reasoning for these requirements on page 244 of the Examination Report, in recognising the many outstanding issues on the site he confirmed:

“A range of issues are highlighted in the development of this large area to the southwest of Forfar including the need for a long-term view and master planned approach which considers the combined impact of residential, industrial and agricultural traffic on nearby road junctions.”

The applicant’s agents in their emails dated 3 and 21 March 2022 consider that the information provided in the submitted Masterplan Framework March 2022 is sufficient and that the detail of the proposal will come forward as part of the various individual phased planning applications.

In an email dated 17 March 2021 Angus Council confirmed that a TA for the whole allocation of 300 houses must be assessed in advance stating *“it is not appropriate for transport impacts to be assessed on a piecemeal basis through individual planning applications.”* In an email dated 24 June 2021 Angus Council confirmed that a TA is required for the allocated site and the safeguarded site, therefore it is clear a TA which covers the allocated and safeguarded sites must be submitted as part of the Masterplan document.

This was further confirmed in an email of 7 February 2022 from Angus Council to the applicant’s agents at which time it was noted that no Transport Assessment had been submitted (contrary to the requirements of the Local Development Plan), and that the TA is necessary to establish the impact of the proposed scale of development (including the potential future scale of development in the safeguarded area) on the A90 junctions and the town network including the West Port traffic lights. Angus Council’s letter (24 June 2021) confirmed that Transport Scotland had indicated this was necessary and that there was no technical reason such an assessment should not be possible.

The latest TA dated March 2022 considers the current proposal and tests the 300-house development but does not consider the wider safeguarded site. The TA recognises the issues surrounding the Lochlands junction and Para 9.23 confirms that *“mitigation at Lochlands requires further discussion.”*

The TA goes on:

“9.24 The contents of this report illustrate that there are no outstanding transport related issues associated with the proposals, save for addressing the Lochlands junction on the A90 which continues to exist as a longstanding issue which Angus Council and Transport Scotland have over the years sought to address from as far back as 2008.

9.35 Whilst it is recognised that this requires further dialogue, suggestions have been made above that could offer a way forward to enable development at Westfield to take place in early course.”

In Appendix 5 Statement on Access and Impact on Existing Junctions of the Masterplan Framework the applicant states that *"the performance and safety issues associated with the Lochlands junction exist and as noted above Angus Council and Transport Scotland have not come up with a solution to the problem."*

Therefore, as the necessary full assessment of the potential impact on the A90 junctions (including Lochlands) has not been completed and the resulting mitigation has not been agreed with Angus Council and Transport Scotland (in fact, it has not even been identified) the Masterplan Framework March 2022 does not meet the requirements of Policy F4.

This outstanding fundamental issue has now been confirmed by Transport Scotland in their consultation response dated 12 May 2022. This correspondence confirms that while the updated TA accepts that there is an issue at the Lochlands junction, no scheme to address the impact on the Lochlands junction, as required by Policy F4, has been identified. Transport Scotland confirm that the options promoted by the applicant would be neither appropriate nor acceptable and that further discussion is required between the applicant and Angus Council.

This issue is further confirmed by the Roads Service of Angus Council in their consultation response dated 20 May 2022, which confirms that the issue surrounding the impact of the development on the Lochlands junction requires further dialogue with Transport Scotland.

Therefore, it is clear that all parties agree with the policy position that there is an existing issue at the Lochlands junction, and that the proposed development will further increase the traffic burden at that junction to an unacceptable level. However, no solutions or mitigation have been proposed by the applicant, none have been agreed, and indeed no party wishes to take responsibility for the required improvements. Therefore the issue appears at an impasse with no progress likely in the near future.

Further, the Masterplan Framework March 2022 fails to meet the requirements set out by the Examination Reporter and confirmed by Angus Council in Policy F4 - Housing Westfield for the following reasons:

- Policy F4 Requirement: 38.8 Ha of land west of Westfield Loan is allocated for residential development of around 300 dwellings in the second phase of the plan (2021 – 2026).

Elite Homes' Response: The Masterplan Framework March 2022 proposes a number of development blocks including the immediate delivery of circa 170 units by Muir Homes (current application Ref 19/00707/FULLM now reduced to 136 units) in the period 2022-25 and 165 units to be delivered by Scotia Homes in the period 2023-26. Additional development blocks are confirmed and demonstrated in Figure 9: The Concept Masterplan of the Masterplan Framework March 2022. As a result, the total number of units within the current allocated site will significantly exceed the site allocation to double its indicated capacity, with the developer suggesting a figure of around 600 units.

The landowners and their agents have been informed previously by Angus Council in an email dated 17 March 2021 that the level of development of 300 units stated in Policy F4 was decided considering the site characteristics, topography, landscape features, watercourses, core paths and SAMs and that the Policy does not refer to a phased development. The email goes on to confirm that *"we [Angus Council] are unable to support a masterplan that more than doubles the number of units."* This was further reiterated in an email dated 24 June 2021 where once again Angus Council confirmed the scale of

development proposed in the draft masterplan to be unacceptable. In a further email of 7 February 2022, the scale of development was once again raised as an issue, highlighting that the Draft Masterplan Framework (October 2021) continued to indicate a development scheme for the allocated area of in excess of 600 units, with pockets of development split across the different ownerships to provide around 335 units to 2026, leaving other pockets within the allocated site 'to be considered by a future LDP'. This approach continued to ask Angus Council to determine that double the site allocation is appropriate and accept a piecemeal approach to development which was considered unacceptable.

Therefore, as the Masterplan Framework March 2022 continues to provide for development blocks which will significantly exceed the allocated 300 units, the Masterplan does not meet the requirements for a masterplan for Westfield, that are set out in Policy F4.

- **Policy F4 Requirement:** The development should commence at the north of the site with access from Glamis Road. No development will be allowed until a full assessment of the potential impact on the A90 junctions (including Lochlands) is completed and any resulting mitigation is agreed with Angus Council and Transport Scotland.

Elite Homes' Response: As discussed, a satisfactory TA which fully assesses the issues at the A90 junctions including Lochlands and provides agreed mitigation has not been submitted. The policy is clear that no development should be "allowed" until this is done which, in our view, means that no development should be authorised. There is a deliberate contrast in language used in this part of the policy. It refers to the "commence" of development in the first sentence of the second paragraph of Policy F4. Similar language could have been used in relation to the A90 junctions (i.e. "no development will commence until...") but the Council and Reporter chose to make it clear that "no development will be allowed until...". It is therefore a necessary step on the way to securing planning permission that a full assessment of the proposals on the A90 junctions is carried out, and that any necessary mitigation is agreed with the Council and Transport Scotland. It is not an issue that can, or should, be passed down to planning conditions. Granting planning permission without addressing these points would breach the policy requirements and would ultimately grant permission without resolving a known constraint.

- **Policy F4 Requirement:** appropriate developer contributions, towards education infrastructure.

Elite Homes' Response: the masterplan has not been supported with an Education Impact Assessment to assess the impact that the entire site will have on the education infrastructure for Forfar and thus provide adequate mitigation through financial contributions or through provisions to accommodate this within the site itself.

- **Policy F4 Requirement:** the potential for a new distributor road linking Dundee Road and Westfield Loan with Glamis Road, taking account of any potential impact on the A90 junctions (including Lochlands) in conjunction with Angus Council, TACTRAN and Transport Scotland;

Elite Homes' Response: As above. The masterplan does not address this fundamental issue suggesting this is for Angus Council and Transport Scotland to deal with. While recognising that there is an issue at the Lochlands junction, the updated TA fails to provide any form of acceptable mitigation. Policy F4 is clear that this is an issue to be addressed in advance of any development as part of the masterplan process.

In addition to the masterplan not adhering to the specific requirements of Policy F4, the masterplan framework fails to understand or chooses to ignore the landscape capacity of the site. The Reporter and the Council's Landscape Strategy confirms that the landscape capacity should not extend beyond the 90 AOD with the Reporter commenting:

"The council's landscape capacity study concludes that the area of Westfield, north towards Glamis Road, is of low visual sensitivity whereas sensitivity increases on higher ground above 90 AOD (above ordnance datum) and has greater landscape value. I agree with this overall assessment and that the development of the allocated area, which avoids the higher ground, would relate well to the existing urban area."

Angus Council confirmed in correspondence dated 4 May 2021, 24 June 2021 and most recently in a letter of 7 February 2022, that the draft layout, which included development blocks above the 90 AOD, did not conform with the ALDP 2016 and asked the applicant to reconsider development above the 90 AOD.

The Masterplan Framework March 2022 continues to include proposed development blocks above the 90 AOD and as such the Masterplan does not accord with the ALDP, the Reporters findings or the advice of Angus Council.

Therefore, for the reasons set out above the Masterplan Framework March 2022 does not comply with Policy F4. Previous advice from Angus Council has been largely ignored by the applicant. This means that those comments remain outstanding and, because of this, our conclusion is that the masterplan as it stands is neither agreed nor acceptable. The required masterplan process has not been completed and as such any planning application on the site allocated as F4 Housing - Westfield is premature. As we have mentioned in previous correspondence, the process could be resolved if the applicant (and other landowners at Site F4) were, prior to submitting a planning application, to prepare a masterplan following the Council's advice, addressing all the matters that are clearly set out in Policy F4, consult on the terms of that masterplan, and then subject it to an approval process within the Council. Once the outcome of that masterplan process was known, planning applications could then be submitted for the various parcels of land within Site F4. At that stage it would be clear whether those development proposals were in accordance with the masterplan which, having been properly prepared, would be a relevant material consideration.

Additional Information

As mentioned above, amended plans were lodged in support of application Ref 19/00707/FULM on 30 March 2022. The amended plans have significantly altered the proposed development with, among other things, a notable reduction in the proposed number of houses from 175 to 136. Further, the layout of the development has altered with housing removed from the north boundary a new noise barrier introduced along the northern boundary, and a change in the house types, with five new house types introduced. This means that the updated development is effectively a new proposal. Additional information has also been lodged in the form of an amended Transport Assessment, Drainage Assessment, Flood Risk Assessment, Noise Assessment, and Design and Access Statement.

The amended information has now been the subject of review by the necessary statutory consultees and it is clear that there remains considerable outstanding issues and the need for further information, with further amendments identified as possible requirements by those consultees.

To date we would highlight our following objection to the proposal:

Roads

An updated TA has been lodged in support of the application. Elite Homes have sought an independent review of that document by Dougall Baillie Associates, see enclosed letter dated 24 May 2022. This letter highlights many deficiencies in the TA and outstanding issues which must be addressed before any permission can be granted. Most notably these include the following:

- 1) the actual, practical level of accessibility of all dwellings to bus services should be identified, including true walking distances to dwellings furthest from public transport services, and new bus stops provided on Glamis Road, on the development frontage;
- 2) the applicant should provide physical improvements to facilities for crossing of roads adjacent to the development site, namely Glamis Road, where new crossings are identified on the site layout plan, but no details provided, and Westfield Loan, where no meaningful measures are proposed;
- 3) the applicant should address the low number of bus services adjacent to the site, and provide new bus stops to address substandard walking distances to suitable public transport services (existing bus services are not accurately presented in the updated TA);
- 4) the safety of proposed site access junctions, which are designed as priority cross-roads, but provided with visibility standards for higher speeds that are not consistent with Designing Streets policy, and to address the clear conflict with commercial traffic at the site access on Glamis Road (Don & Low access immediately opposite);
- 5) the TA must be updated to representatively model the impact of Westfield development traffic on the Westport traffic signals; and
- 6) the TA must identify adequate traffic impact mitigation at the Lochlands junction, properly assessing a realistic distribution of development traffic to Lochlands and must analyse the impact on the local road network of any redistribution of traffic away from Lochlands in the event that banning of traffic movements forms part of the mitigation of development traffic impact.

Both Transport Scotland and Angus Council Roads Service share these outstanding concerns regarding some of the methodology and calculations used in the amended TA and fundamentally, they maintain their concerns with regard to the potential impact of the development on the A90 junctions, specifically the Lochlands junction. Transport Scotland acknowledge that this is an issue which was highlighted as part of Policy F4 which requires that *"No development will be allowed until a full assessment of the potential impact on the A90 junctions (including Lochlands) is completed and any resulting mitigation is agreed with Angus Council and Transport Scotland."*

Transport Scotland confirm that whilst the TA now acknowledges that an issue exists at Lochlands junction, it does not appear that matters have moved on from previous discussions with them and that there is still no scheme identified to address the impact at Lochlands or a mechanism in place to secure its delivery. Transport Scotland confirm that it is their view that the assessment of the impact on the Lochlands junction as a result of the development and identification of the necessary mitigation lies primarily with the applicant and Angus Council.

Angus Council Roads Service agree that the TA fails to address the Lochlands junction on the A90(T) which continues to be a longstanding issue. However, they consider that further dialogue is required with the trunk road authority to resolve the matter.

We fully concur with the comments of Transport Scotland and the Roads Service. Policy F4 is clear that any development proposal must fully assess the potential impact on the A90 junctions (including Lochlands) and resulting mitigation is agreed with Angus Council and Transport Scotland. This has not been completed.

Noise

An updated Noise Assessment has been lodged in support of the application. We have sought an independent review of this document by Vibrock, please see the letter enclosed with this submission dated 25 May 2022. In summary, Vibrock have highlighted various queries with regard to the methodologies and assumptions made in the NIA, concluding that the assessment for road traffic and industrial commercial noise is likely to underestimate the significance of effect for plots in the north-east and north-west of the development site. Where the NIA predicts effects of moderate/large in the cumulative assessment, when taking into consideration the highlighted uncertainties in the model predictions and industrial commercial noise predictions, it is likely that in fact effects of large/very large significance exist for daytime and night-time periods for north-east through to north-west areas of the site.

Further, the NIA fails to explore all mitigation options in its appraisal of mitigation. Contrary to PAN 1/2011 (Planning and Noise), the NIA makes recommendations for a suitable glazing specification and alternative ventilation to an open window, without exploring options such as layout design, building orientation and internal room layouts. National planning advice in Scotland is clear that all other options should be explored in the mitigation appraisal with glazing and alternative ventilation as an option of last resort.

As a result of the uncertainties presented in the NIA, the resulting magnitude of impact and significance of effects cannot be relied upon to present a robust assessment of noise at the development site. As a result, effects of large/very large significance cannot be ruled out. The advice in PAN 1/2011 and the associated Technical Advice Note for effects of 'large/very large' are as follows:

"Very Large: These effects represent key factors in the decision-making process. They are generally, but not exclusively, associated with impacts where mitigation is not practical or would be ineffective."

Therefore, it appears to us that a significant area to the north of the development site is likely to experience unacceptable levels of noise disturbance from the road and industrial/commercial operations and that there is no possible mitigation which would reduce the impacts to an acceptable level. Therefore, the north section of the site is effectively sterilised from any possible development due to noise.

Design and Layout

Policy DS3: Design Quality and Placemaking, supported by Supplementary Guidance on Design Quality and Placemaking, requires:

"Development proposals are required to deliver a high design standard and draw upon those aspects of landscape or townscape that contribute positively to the character and sense of place of the area in which they are to be located. Development proposals should create buildings and places which are:

- *Distinct in Character and Identity: Where development fits with the character and pattern of development in the surrounding area, provides a coherent structure of streets, spaces and buildings and retains and sensitively integrates important townscape and landscape features.*
- *Safe and Pleasant: Where all buildings, public spaces and routes are designed to be accessible, safe and attractive, where public and private spaces are clearly defined, and appropriate new areas of landscaping and open space are incorporated and linked to existing green space wherever possible.*
- *Well Connected: Where development connects pedestrians, cyclists and vehicles with the surrounding area and public transport, the access and parking requirements of the Roads Authority are met, and the principles set out in 'Designing Streets' are addressed.*
- *Adaptable: Where development is designed to support a mix of compatible uses and accommodate changing needs.*
- *Resource Efficient: Where development makes good use of existing resources and is sited and designed to minimise environmental impacts and maximise the use of local climate and landform."*

The proposed layout includes a 3-metre bund with a 2-metre acoustic fence, in total a 5-metre boundary. This is to be located along the full length of the Glamis Road frontage. We believe this is necessary in an attempt to ensure noise from the neighbouring factory does not cause a nuisance to prospective residents. However, this blank frontage is contrary to the advice contained in Policy DS3 and the associated supplementary guidance, which looks to ensure that development contributes positively to the public realm. Boundaries that abut public spaces and routes are required to be attractive. Large areas of fencing or blank elevations are not acceptable where they form a public/private interface.

In the current circumstances the proposed development will result in a blank frontage the full length of the Glamis Road. This is not considered appropriate on this frontage and will not contribute towards a development which adheres to the six qualities of successful places.

A recent planning application, Ref 21/00781/PPPM Residential development (Major) including formation of vehicular access, access roads, open space, landscaping, SUDS and associated Infrastructure Field 50M North Victoria Street Monifieth, included an acoustic fence of only 1.7m in height along the boundary of the site with a public road. In the Report to Committee the Planning Service confirmed that: "A wall or fence of that height and length adjacent to the dual carriageway would not be acceptable. No information has been provided to demonstrate that a barrier could be provided in a manner that would be appropriate for a highly prominent location that provides the transition between town and country."

Further, the Countryside Officer has confirmed that many of his original comments and concerns remain outstanding, as such further information and amendments to the design and layout may be required

Archaeology

The layout plan indicates that there are Scheduled Ancient Monuments within the proposed areas of open space, with walking routes and additional landscaping indicates within the identified SAM area. The advice from both Historic Environment Scotland and the Archaeology Service is that no planting is permitted in the SAM area. Both consultees maintain their objection to the amended proposal on that basis.

Further, Angus Council Landscape Services recommend that a 10 metre stand off from the SAM should be incorporated into the layout to ensure the buildings and road infrastructure are embedded into the landscape. The inclusion of this required 10m buffer will have a knock-on impact on the housing layout requiring further amendments.

Contamination

We maintain our concerns that the development site is within an area of known and potentially unknown anthrax remains. We refer to comments made within our previous objection dated 19 December 2019. Consideration of any planning application which is in close proximity to an anthrax burial site must be undertaken with extreme caution. Given the risks posed if anthrax remains are disturbed in any way, we consider that a significant stand off from the anthrax burial site is warranted. Previously we have suggested a standoff of a minimum 400metres is appropriate, similar to that imposed for intensive livestock uses.

Flood Risk

Both SEPA and Angus Council Roads - Flood Risk and Structure confirm that the information supplied with the planning application is insufficient to allow them to determine the potential impacts. Therefore, SEPA maintain their holding objection.

Objection

In conclusion, for the reasons stated above we consider that the Masterplan Framework 2022 does not accord with the requirements set out in Policy F4 Housing Westfield of the Angus LDP 2016. Further, this document has not been subject to the necessary scrutiny and, in its current form, cannot be approved or adopted by Angus Council.

In terms of the application ref 19/00707/FULM, despite having nearly 3 years since lodging the application and 6 years since the original allocation of the site, the applicant has still not provided a satisfactory layout and the submitted supporting information does not address the requirements of Policy F4 of the Angus Local Development Plan 2016, or other issues raised by consultees (many of which were identified when the application was first consulted upon in 2019). Fundamentally, and as clearly set out in Policy F4, while there is agreement that the proposed development will have an unacceptable impact on the capacity of the Lochlands junction, no acceptable solution has been provided and the necessary mitigation has not been agreed. There also appears to be no agreement regarding who is responsible for this work, with all parties passing the responsibility on to each other.

No justification has been provided to set aside the requirements of the ALDP and therefore we cannot see now how the masterplan can be considered acceptable, or how the application can be competently approved.

The consultation responses received to date indicate that significant work is still required in terms of assessing the site, particularly in relation to the impact of any development on the road network. At this stage it is also unknown whether the masterplan will be subject to an approval process. Given the outstanding issues identified by consultees, it is also not known what the final version of the masterplan might look like. In the absence of that, it is not possible to have any idea at this stage as to whether the development proposals are in accordance with the masterplan.

We trust these comments will be taken into consideration and the appropriate action taken.

Yours sincerely

A solid black rectangular redaction box covering the signature area.

Elite Homes (Tayside) Ltd

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SH/RCMD/22123let01

24 May 2022

Karen Clark,
Elite Homes (Tayside) Ltd,
17 Academy Street,
Forfar,
Angus, DD8 2HA

Dear Karen,

Westfield Development, Forfar
Planning Application 19/00707/FULM
Updated Transportation Assessment

In December 2019, DBA reviewed the Transport Assessment and planning documents associated with Planning Application 19/00707/FULM for the development of 175 residential units on the Westfield site in Forfar. Specific issues with the content of the TA were identified that resulted in DBA concluding that the TA did not adequately consider certain traffic and transport impacts of the proposed development, and that the application did not provide sufficient transport infrastructure or mitigation of certain transport impacts.

Update Transport Assessment, TPL, March 2022

DBA note that an updated Transport Assessment has been submitted, and also that a Masterplan Framework has been prepared for the wider allocated Phase 1 of the LDP site F4 Land at Westfield Loan. The following comments refer to the updated TA lodged on the Council's website in three parts, and dated March 2022.

DBA's comments are referenced to the updated TA by way of a bracketed paragraph number, e.g. (2.6). Conclusions are highlighted in **Bold**. Plan extracts are provided within this response to highlight certain issues referred to, for ease of reference. These extracts are taken from the JFC development layout plan submitted with the application, reference 17.029.P.002 (Revision R).

1. (1.22) The structure shown does not reflect that of the report itself. **This should be updated to assist review of the TA report.**
2. (2.5) Appendix A, Figure 2 does not provide an accurate representation of travel distance from the application site, as circular isochrones do not reflect the actual path of the traveller. This is not, in practice, a straight line from the centre of the site, and will always be longer, and therefore reach less far from the site in the relevant time. **Travel isochrones should be updated to better reflect travel times.**
3. (2.6) There are no existing footways on any frontage of the application site, either on Glamis Road or on Westfield Loan. The only footway provision is on the opposite (north) side of Glamis Road and the opposite (east) side of Westfield Loan). There is only one designed pedestrian crossing point on Glamis Road in the vicinity of the site, but not on its frontage, which is of poor standard, requiring pedestrians to cross the equivalent of four lanes of traffic with no priority.

- a. It is noted that the development proposals include the provision of a new remote footway on the south side of Glamis Road (Plan Extract A, below) over the length of the development frontage, however no such provision is proposed on Westfield Loan, despite the development relying on the use of bus stops on Westfield Loan for its accessibility to public transport.
- b. It is identified on the site plan that two new crossing points will be installed on Glamis Road (Plan Extract A, below), however no reference is made to what infrastructure will be provided to address pedestrian safety issues given the speed of traffic on this road, and the significant crossing width for pedestrians, and that fact that these crossings are shown at the access to Don & Low to the north, which incorporates a flared radius which significantly increases crossing distance on the east side of the junction.



Plan Extract A



Image 1, sole existing crossing of Glamis Road (source: Google Streetview)

- c. The proposed facilities, and the absence of proposals in some areas, are inadequate to serve development on the scale proposed, and new pedestrian facilities should be provided along the eastern frontage of the site, even if remote, to provide adequate direct routes for pedestrians walking to and from the development, for reasons of road safety, particularly that of vulnerable road users. Clarification must be provided as to the design intention for the new pedestrian crossings of Glamis Road, as indicated on the proposed site plan (Extract A, above). The importance of this cannot be overstated. At present only one pedestrian crossing of doubtful utility exists away from the frontage of the application site (Image 1, above).

4. (2.13) The footways on Dundee Road to the south of the site are characterised as “wide footways on both sides of the carriageway”. This is clearly not the case (Image 2, below), even from examination of the images in the TA itself. The image referred shows an isolated section of footway tapering sharply at a priority junction and presumably provided for local visibility purposes. The term “wide” cannot be used to describe the majority of footways on both sides of Dundee Road, which appeared to fall below a standard of 2.0m width over many sections. The typical range of footway width measurement along Dundee Road (minima and maxima) should be provided if the term ‘wide’ is to be included, or this could mislead those determining the application.



Image 2, footways on Dundee Road (source: Google Streetview)

5. (2.16) Core paths - It is notable from the TA map extract that Westfield Loan is not identified as a core path by the Council. This is considered to indicate the point above (3.) that significant improvement to the pedestrian infrastructure on Westfield Loan should be provided by the developer in order to bring that route up to a standard that it can provide reasonable pedestrian accessibility to a development on the scale proposed.
6. (2.19) Schools - The TA identified Langlands Primary as accessible from the site, however, this involves young children crossing Westfield Loan, where there are no pedestrian facilities on the development (west) side of the road, and no crossing facilities on Westfield Loan. Either a detour would be required via Glamis Road, or, as is more likely, some parents may choose to cross Westfield Loan in the absence any site-side pedestrian facilities, or crossing facilities. As noted in Point 3., above, the developer should provide a footway on the west side of Westfield Loan, to cater for pedestrian demand from this significant development.
7. (2.20) Walking to Forfar Academy is likely to generate pedestrian movement using the poor standard pedestrian crossing facility on Glamis Road in the vicinity of Westfield Loan. The applicant should provide improved pedestrian crossing facilities of Glamis Road to address and mitigate pedestrian and road safety issues associated with significant additional demand for crossing of Glamis Road as a result of the proposed development.
8. (2.21) The updated TA acknowledges there are no identified and maintained cycle routes in the vicinity of the development site. There are some local facilities, but these are discontinuous and of only limited benefit in cyclists seeking to make journeys on the local road network. Largely, cyclists to and from the development site would be required to share busy roads with vehicles. A development on this scale, and generating the level of cycle activity that can be expected, should contribute to the upgrading and/or provision of new cycle facilities on the local

road network, in the interests of encouraging sustainable travel and of road safety.

9. (2.24-2.28) The TA describes walking distances from the nearest bus stops to the edges of the site. This is misleading and does not represent the actual accessibility of the site to public transport services. The stops on Dundee Road to the south are over some 900 metres from the closest residential unit within the development layout, according to the site layout lodged with the application. Also, no footpath link would be provided as part of this application, therefore these stops can be discounted as contributing to accessibility for this application.
 - a. Furthermore, the stops on Westfield Loan / Threewells Drive, which are some 600m from the furthest unit, have a poor frequency for the purposes of serving residential development and encouraging sustainable travel, providing only one bus per hour. Clearly, a significant number of units in the application layout would lie outwith the accepted 400m walking distance to public transport services. The same applies to the stops on the A94 to the west, although these have better frequency during peak hours. The conclusion of the updated TA in 2.30 that a “good volume (sic) of bus routes” service stops on Westfield Loan and Threewells Drive is manifestly not the case.
 - b. Also, the latest timetable information on the Stagecoach website confirms that the 27 service does not operate to Westfield Loan and Threewells Drive stops during the day (Timetable extract, below), and therefore this service provide little benefit to the accessibility of the development site. The updated TA implies that the development relies on this service to achieve what is characterised as a good level of public transport accessibility. The developer should therefore be required to enter negotiation with Stagecoach to secure the servicing of the Westfield Loan and Threewells Drive stops during the day before any units in the Phase 1a development are occupied.

Days of Operation	Monday to Friday														Commencing 10-08-2020			
Service Number	S027_Ar																	
Service Description	Forfar - Arbroath																	
Service No.	27	27A	27	27	27	27	27A	27B	27	27	27	27	27	27	27	27	27	
	Col		NCol				FNS	MTS								F	NF	F
Kirriemuir Bank Street	-	0740	0740	-	then	-	Until	-	-	-	-	-	-	-	-	-	-	-
Orchardbank opp council offices	-	0752	0752	-	at	-	-	-	-	-	-	-	-	-	-	-	-	-
Orchardbank council offices	-	-	-	-	these	-	-	-	-	1645	-	-	-	-	-	-	-	-
Forfar Community Campus	-	-	-	-	times	-	-	1555	-	-	-	-	2005	2025	2125	-	-	-
Don Street opp Tesco	-	-	-	-	each	-	-	-	-	-	-	-	-	2027	2127	2227	2227	-
Whitehills HCCC entrance	-	-	-	-	hour	-	-	-	-	-	-	-	-	2031	2131	2231	2231	-
Forfar opp bus depot	-	-	-	-	-	-	-	-	-	-	-	-	-	2033	2133	2233	2233	-
Forfar East High St opp Arbroath	-	-	-	-	-	-	-	-	-	-	-	-	-	2035	2135	2235	2235	-
Orchardbank roundabout	-	-	-	-	-	-	-	-	-	-	-	-	-	2039	2139	2239	2239	-
Westfield Threewells Drive	-	-	-	-	-	-	-	-	-	-	-	-	-	2041	2141	2241	2241	-
Glenshade Glenclova Terrace	-	-	-	-	-	-	-	-	-	-	-	-	-	2047	2147	2247	2247	-
Forfar New Road opp Arbroath	-	-	-	-	-	-	-	-	-	-	-	-	-	2053	2153	2253	2253	-
Forfar East High St Royal Bank	-	0757	0757	-	-	-	-	-	1650	-	-	-	2010	2054	2154	2254	2254	-
Forfar East High St Royal Bank	0647	0802	0805	0905	05	1505	1550	-	1653	1755	1845	2010	-	2155	2300	2300	2300	-
Restenneth Drive	0650	-	0808	0908	08	1508	-	-	1656	1758	1848	2013	-	2158	2303	2303	2303	-
Kingsmair old school	0653	0806	0811	0911	11	1511	1554	1604	1659	1801	1851	2016	-	2201	2306	2306	2306	-
Dunnichen	-	-	-	-	-	-	-	-	1607	-	-	-	-	-	-	-	-	-
Craichie village	0658	0811	0816	0916	16	1516	1559	-	1704	1806	1856	2021	-	2206	2311	2311	2311	-
Letham West Hemming Street	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2318
Letham West Hemming Street	0704	0817	0822	0922	22	1522	1605	1610	1710	1812	1902	2027	-	2212	2317	-	-	-
Guthrie village	0713	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Frickheim bus stance	0720	0828	0833	0933	33	1533	1616	1620	1721	1823	1912	2037	-	2222	2327	-	2329	
Colliston opp Inn	0726	0834	0839	0939	39	1539	1622	1626	1727	1829	1918	2043	-	2228	-	-	2335	
Keptie Road Angus College	-	0841	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Arbroath bus station	-	0848	0848	0948	48	1548	1631	1635	1736	1838	1927	2052	-	2237	-	-	2344	
Arbroath bus station 4	0735	-	-	-	-	-	-	-	-	-	-	-	-	1928	-	-	-	-
Arbroath High Street Gala Bingo	-	-	-	-	-	-	-	-	-	-	-	1930	-	-	-	-	-	-

Image 3, Extract from Stagecoach timetable, Service 27

- c. Considering walking distances in greater detail, there are only two pedestrian access points shown on the proposed site layout plan. These are located at the vehicular accesses on A94 Glamis Road, and on Westfield Loan opposite Threewells Drive. Discounting the bus stops on Westfield Loan due to their infrequent service which, it is considered, is inadequate for commuting purposes, the average distance from the A94 stops to the main site entrance is some 355m, leaving a walking distance of only 45m within the site to reach units. This results in a significant majority of units being outwith the 400m walking distance identified in transport policy. This is considered a poor level of accessibility to public transport.
 - d. **The applicant should be required to install new bus stops on the A94 Glamis Road frontage of the development to bring a much higher proportion of the development within suitable walking distance of public transport services. Furthermore, if reliance is placed on the bus stops on Westfield Loan, the applicant should be required to take suitable actions to ensure that the frequency of services at these stops is increased to a level adequate to service and be attractive to demand from the development. Any new bus stops, or existing stops that do not have them, should be provided with bus shelters at the expense of the applicant to increase the attraction of public transport to commuters to and from the development.**
10. (2.35/2.36) Conclusions are drawn by the update TA that (a) the development is *“located in close proximity to well established pedestrian and cycle routes”*, (b) *“bus stops are located close to the site”* (without characterising their suitability, or level of service), and (c) *“These facilities provide a wide range of non-car travel opportunities covering a range of key destinations”*. These conclusions however are, it is considered, not supported by the assessment of actual accessibility of the site, and quality of public and sustainable transport facilities available. **This underlines the importance of the applicant being required to invest in the improvement of pedestrian, cycle and bus facilities and services in the area.**
11. (3.4) The latest site layout plan lodged with the application (JFC plan reference 17.029.P.002, Revision R), shows no meaningful new footway on the west side of Westfield Loan. Thus, the proposed development layout is contrary to the TA’s assessment of sustainable transport access requirements, which states that *“new footway provision / crossing points along the western side of Westfield Loan”*. **The applicant should be required to include in the proposals new footway provision on and crossing(s) to the west side of Westfield Loan in order that the development proposals are consistent with the findings of the updated TA.**
12. (3.6/3.7) The TA’s conclusions on accessibility of the development are demonstrably not the case, as walking distances are not accurately measured, and only measured to the boundary of the site, not the furthest unit within the proposed development, and no new bus stops or services are proposed. Also, benefit is taken from certain bus stops that are considerably in excess of the 400m distance specified in transport policy guidance.
13. (3.8-3.10) The TA identifies the creation of two new cross-roads priority junctions for the purposes of providing vehicular access to the development. For many years, the use of priority cross-roads junctions was not permitted due to the inherent road safety risks and poor safety performance of such junctions. Designing Streets policy has reintroduced the use of priority cross-roads junctions, but only in low speed environments, within development, with attendant appropriate design of streetscape, road alignment, etc. to reinforce and ensure low vehicle speeds.

- a. The proposals for access junctions illustrated in the TA clearly are not founded on the principles of Design Streets, which provides for maximum visibility splays of 43m long (Y-distance) at junctions, reflecting the intended low speed environment. The access proposals for this development reflect much higher vehicles speeds by catering for splays of 120m on Glamis Road, which appears nowhere in Designing Streets, but in which location the applicant proposes new pedestrian crossing facilities (see plan Extract A, above).
 - b. **The applicant should be required to provide physical road safety measures to deliver expectations for design speeds within Designing Streets, and show how traffic speeds will be controlled in the vicinity of development site access junctions, particular on Glamis Road (a 40mph road), opposite a business where heavy goods vehicles regularly access, and where many large commercial vehicles use the A94 Glamis Road to access Forfar from the A90 trunk road.**
14. (7.25) Trip Distribution - While the approach taken to assessing vehicle trip distribution may reasonably apply to development car trips in the northern part of the site, such as are contained within the 175-unit development subject to the current planning application, development to the south, near A932 Dundee Road, would be expected to exhibit much higher proportions of commuting car trips using the A90(T) / A932 Lochlands priority junction, in this respect therefore, the TA is considered to underestimate the Trunk Road impact of the proposed development. **The updated TA should be revised to reflect a more realistic trip distribution for the 300-unit development test of the traffic impact of Westfield, Phase 1.**
15. (8.49) Notwithstanding the above, even the updated TA's distribution pattern is shown to have an adverse operational impact on the capacity of the A90(T) / A932 Lochlands junction.
 - a. Table 8.8 does not provide analysis results for the 2023 AM/PM +Com +175 units development scenario. As such, the traffic impact of the current application on the Lochlands trunk road junction is not presented in the TA. **The updated TA should be revised to show the impact of the Phase 1a current planning application on the Lochlands junction, as the impact is shown for all other junctions, regardless of the percentage impact of Phase 1a development traffic at Lochlands, which is a discretionary measure of significance.**
 - b. Table 8.8 shows the Lochlands junction operating beyond the limiting RFC value of 0.750 for high-speed roads in the 2023 PM base scenario, and again in the 2023 AM and PM peak scenarios with committed development traffic included. Clearly, both the Phase 1a, and complete Phase 1 developments comprised in the F4 allocation at Westfield will impact adversely on this base situation. **The applicant must be required to identify mitigation, analyse in the TA, and contribute to measures for the mitigation of their development traffic impact at the Lochlands junction. Updated junction analysis of mitigation measures should be provided, including the impact of any localised traffic rerouting as a result of banning traffic movements at Lochlands, should that be part of the traffic impact mitigation identified.**
 - c. The Lochlands trunk road junction is the site of some 25 injury accidents over a 23-year period, including 1 Fatal; 10 Serious and 13 Slight (Image 4, below). **As a result, there is an obligation on the Roads Authorities to ensure that the impact of the Westfield development on the junction is**

mitigated, and that Westfield development traffic does not cause a detrimental impact on the capacity and safety (due to increased queuing).

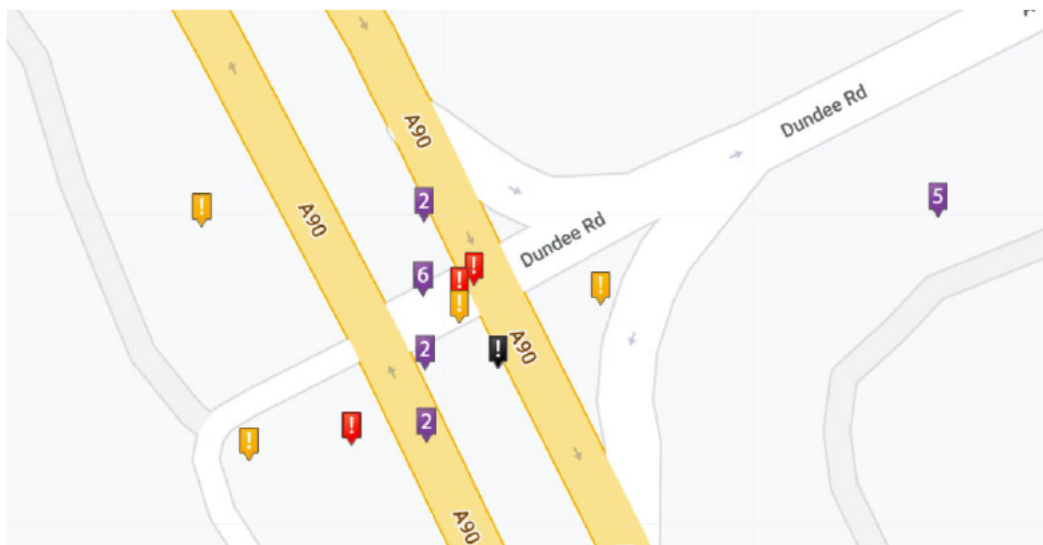


Image 4, A90(T)/A932 Lochlands Junction, accidents 1999-2021
(source: CrashMap.co.uk)

16. (8.24) With respect to the junction analysis, the modelling of the traffic signal junction of the A94 Glamis Road / A926 Craig O'Loch Road / West High Street (Westport) has issues that will tend to exaggerate the capacity of the junction. All lanes have been modelled in LINSIG as infinitely long. The right turn lanes on the A94 Glamis Road and A926 Craig O'Loch Road exceed 60m in length (circa 10/11 Passenger Car Units, PCUs) which is a reasonable approximation for modelling purposes. However, the right turn lane on the A926 Dundee Loan is only 5 PCUs in length and in addition has a 'KEEP CLEAR' zone which further restricts queuing space. Since, in the Weekday PM peak, the predicted queue in the Straight and Left lane significantly exceeds 5 PCU's in length, this approach to the junction will not function as it has been modelled, and more representative analysis results will be worse than those presented in the TA. **The analysis of this junction should be updated to more correctly model operation of the junction in the design year, and therefore more accurately and representatively model the impact of Westfield development traffic at this junction.**

Angus Council, Roads - response to Updated TA (memo, 20-5-22)

17. The memorandum from AC, Roads reviewing the updated TA simply replicates large sections of text from the TA document itself and does not, it is considered, assess the conclusions of the TA against actual conditions and transport facilities on the ground. This letter identifies above numerous shortcomings of the updated TA, and impacts of the proposed development that are not addressed in the TA, or the applicant's proposals.
18. DBA fully support AC Roads requirement that details of the new access junction arrangement on Glamis Road must be provided, and would wish to review those details when they are submitted. These details must include measures to pedestrians crossing A94 Glamis Road. Furthermore, these measures should be the subject of a Road Safety Audit, as there must be significant concern over the mixing in close proximity of cars, goods vehicles and pedestrians by having a residential development accessed opposite an accessed used continuously by Heavy Goods Vehicles.

19. DBA also fully support AC Roads' requirement that a footway be provided on the west side of Westfield Loan along the entire development frontage.

Transport Scotland - response to Updated TA (letter, 12-5-22)

20. In their letter reviewing the updated TA, Transport Scotland identify what they consider a critical aspect of their consideration, i.e. the "unrealistic" distribution applied to the traffic impact test of the 300 units of Phase 1 development at Westfield Loan. DBA fully support this conclusion, and consider that further updating of the traffic impact assessment is required.
21. As noted by Transport Scotland, neither does the updated TA analyse the effectiveness of any mitigation of development traffic impact at Lochlands, or identify a solution. It should be a requirement of any consent for Phase 1a development at Lochlands that a considered approach is taken the mitigation of development of the allocated and safeguarded sites. Piecemeal development of this area could have a significantly adverse impact of road network operation, in terms of capacity and road safety.
22. Transport Scotland's response notes that any access to the allocated development area from Westfield Loan would be expected to have an adverse impact on the Lochlands junction. DBA would note that the Masterplan Framework identifies a core access road and four access junction on Westfield Loan, therefore any development of F4 Westfield must be considered as having an adverse impact on Lochlands junction that requires mitigation.

In conclusion, it is clear that there are several issues that have not been adequately examined in the updated TA for this planning application, chief among which are:

- 1) the actual, practical level of accessibility of all dwellings to bus services should be identified, including true walking distances to dwellings furthest from public transport services, and new bus stops provided on Glamis Road, on the development frontage;
- 2) the applicant should provide physical improvements to facilities for crossing of roads adjacent to the development site, namely Glamis Road, where new crossings are identified on the site layout plan, but no details provided, and Westfield Loan, where no meaningful measures are proposed;
- 3) the applicant should address the low number of bus services adjacent to the site, and provide new bus stops to address substandard walking distances to suitable public transport services (existing bus services are not as presented in the updated TA);
- 4) the safety of proposed site access junctions, which are designed as priority cross-roads, but provided with visibility standards for higher speeds that are not consistent with Designing Streets policy, and to address the clear conflict with commercial traffic at the site access on Glamis Road (Don & Low access immediately opposite);
- 5) the TA must be updated to representatively model the impact of Westfield development traffic on the Westport traffic signals; and
- 6) the TA must identify adequate traffic impact mitigation at the Lochlands junction, properly assessing a realistic distribution of development traffic to Lochlands, and must analyse the impact on the local road network of any redistribution of traffic away from Lochlands in the event that banning of traffic movements forms part of the mitigation of development traffic impact.

In our assessment, these matters require to be addressed, and the Transport Assessment further updated accordingly, before any planning permission can be granted. Also,

appropriate mitigation measures and accessibility improvements should be attached as conditions to any planning approval.

Yours faithfully,
for Dougall Baillie Associates



Stuart Harrow
stuart.harrow@dougallbaillie.com

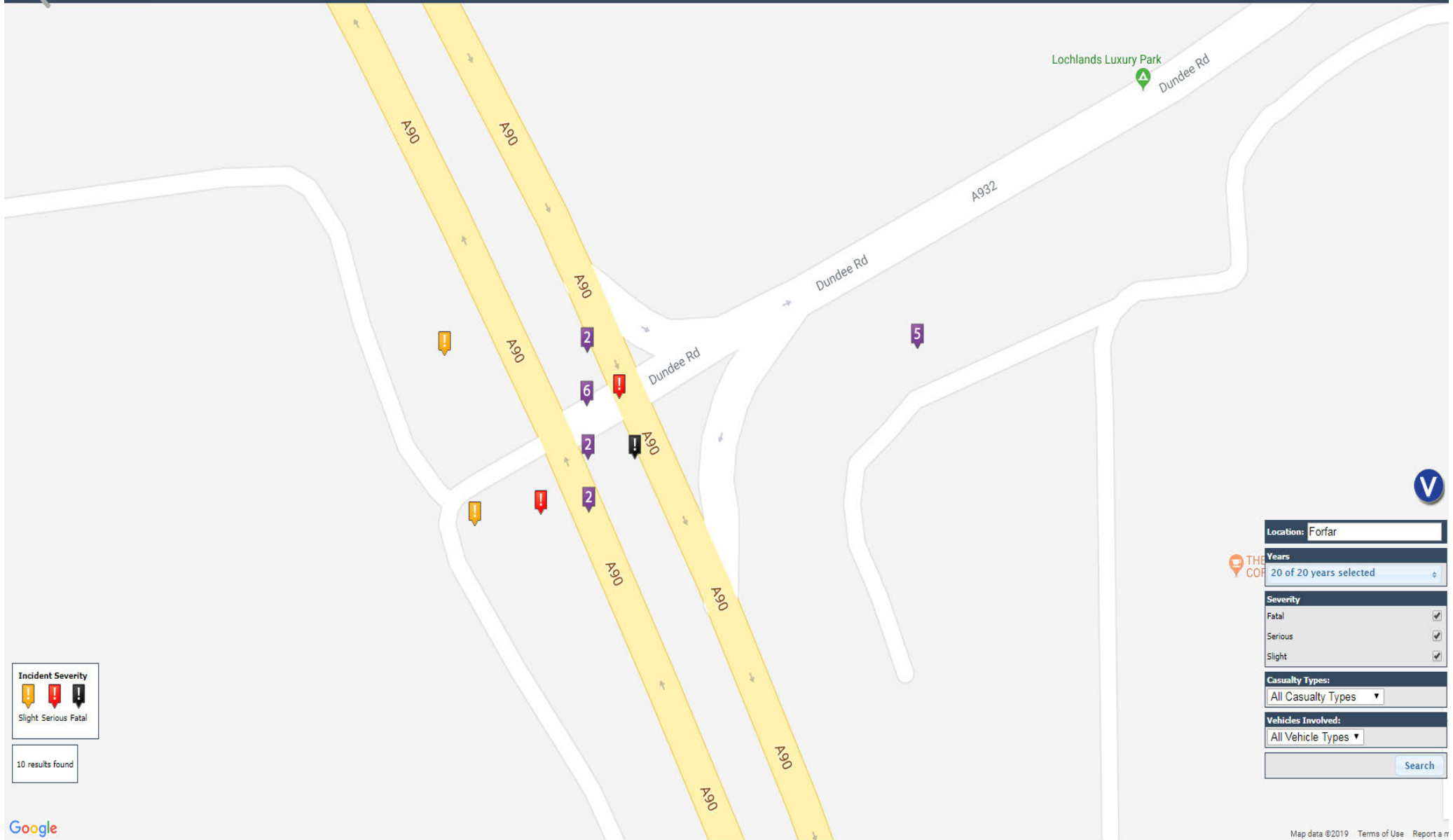


Diagram 19304/1 – 20-year Accident record (Source: Crashmap.co.uk, details should be confirmed with official record)



Diagram 19304/2 – A926 Dundee Loan approach to A90 /A926 signals (Source: Google Streetview, not for publication)

25 May 2022

Our Ref: R22.11531/1/IK/Let1

e-mail to: developmentplanning@guild-homes.co.uk
debbie@guild-homes.co.uk



Guild Homes (Tayside) Ltd
Chapelark House
17 Academy Street
Forfar
DD8 2HA

Dear Guild Homes

**Re: Planning Reference: 19/00707/FULM - Noise Impact Assessment Peer Review,
Westfield Loan**

Please find below our review of a Noise Impact Assessment (NIA) Glamis Road Forfar (Reference: 1267 004) produced by CSP Acoustics as supporting documentation for the planning application 'Field 280 metres West Of Westfield House, Westfield Loan Forfar' (Planning reference: 22/00295/PAN).

The introduction and summary sections state the NIA is required as part of the planning application and that the latest revision takes account of previous assessments dated 30 March 2018 and 28 August 2019. To inform the assessments, noise measurement data from historical noise surveys (March 2018 & February March 2020) have been utilised. Discussion of whether the measurement data is still representative of the current ambient noise climate is presented in the report. The NIA takes account of noise from existing sources in the vicinity of the site including road traffic noise and noise from the various industrial/commercial uses located to the north of the site.

Standards and guidance including Calculation of Road Traffic Noise (CRTN), BS8233:2014 and BS4142:2014 are referenced for the various assessments. Noise predictions have been undertaken utilising CadnaA acoustic 3D modelling software the results of which indicate that mitigation would be required to ensure internal and external noise criteria can be met.

The latest assessment is based on the masterplan 'Site Layout Plan – Phase 1' (Drawing number 17.029.P.002) which indicates a total housing allocation of 135 units.

A review has been undertaken of the assessment methodology, the scope of the baseline noise survey, the 3D acoustic model, associated data and outputs and any proposed mitigation.

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Please find the results of the review presented below. For ease of reference, heading numbers refer to the reviewed document, rather than the structure of this letter.

3.00 Assessment Framework and Criteria

The NIA references PAN 1/2011 Planning and Noise and the accompanying Technical Advice Note (TAN) as the relevant Planning Policy. Table 1 presents the noise level change categories adopted to define the magnitude of noise impact for the various assessments. The example noise level change scales define Major Adverse impact as an excess of 10 dB or more over the agreed criteria. The scales adopted are consistent with other NIAs undertaken across Angus for similar developments and existing noise sources.

3.13 Angus Council

This section summarises the consultation undertaken with Iain Graham, Environmental Health Officer at Angus Council. Paragraph 3.14 states that the assessment is to be undertaken having regard to an open window scenario and that the sound reduction afforded by an open window is 15 dB. Clarification is presented that a reduction of 15 dB is typically given in British Standards and guidance. The Standard or guidance document is not referenced or that the 15 dB reduction quoted is typically given as the reduction from an external façade noise level rather than a free field noise level. In our experience Angus Council typically agree a free field noise level reduction across an open window of between 10-13 dB, or 15 dB for a façade level.

This is an important point where 3D noise modelling software such as CadnaA is adopted. Unless coded to predict a façade level noise level, predictions in CadnaA at a building location, even where the receiver is set to a façade location will predict to free field conditions. Therefore, the sound level reductions applied for an open window to the predicted noise levels from the CadnaA model should be 10-13 dB.

5.00 Road Traffic

It is stated that the assessment of road traffic noise was undertaken using the methodology in CRTN and acoustic prediction software CadnaA. A statement regarding the application of 2.5 dB for a façade reflection is mentioned and it is not clear whether this has been applied through correction within the model or not.

This point will be referred to later in this letter as it forms a significant degree of uncertainty to all of the predictions and resulting significance of effect presented in the NIA.

5.06 Road Traffic Noise Assessment

This section presents the findings of the road traffic noise assessment and begins by presenting the external trigger levels derived by adding the noise level reduction of 15 dB across an open window to the internal noise criteria. As stated earlier, the open window reduction of 15 dB would be acceptable if the predicted noise levels from CadnaA are façade levels.

5.09 and Table 17

The table presents the TAN to PAN 1/2011 assessment including the magnitude of impact and significance of effect. For day and night-time periods the significance of effect for plots at the north east boundary are predicted to be moderate/large. For the daytime only the significance of effect for plots at the north-west and south-west boundaries is predicted to be moderate/large. If the predicted road traffic noise levels from CadnaA are free field noise levels then the trigger level will shift to 47 dB $L_{Aeq,T}$ for day and 42 dB $L_{Aeq,T}$ for night-time. The resultant significance of effect will be large/very large for day and night-time periods for some areas of the site.

6.00 Industrial Noise Assessment

This section describes the methodology and assessment of industrial and commercial noise. It is stated the assessment has been undertaken in accordance with BS4142:2014 considering the more onerous night-time period. Predictions of noise have been undertaken using CadnaA with the industrial noise sources having been calibrated into the model using the L_{A50} statistical parameter. Whilst not a common approach, it is stated that this method was preferred to address the contributions from road traffic at the application site. The continuous equivalent noise level or $L_{Aeq,T}$ would be the preferred parameter. This because the statistical L_{A50} parameter is the noise level exceeded for 50% of the measurement period. It is conceivable therefore that in a 15-minute measurement period, 7.5 minutes of activity from the site are ignored. For example, an HGV unloading for 7 minutes at Don and Low would not necessarily be captured in the final statistical value. With the $L_{Aeq,T}$ parameter this event will be included as the energy equivalent value over the entire measurement period. It is likely that the industrial commercial noise sources calibrated within the CadnaA model are underpredicting at the application site.

6.06 and Table 18

It is not obvious how the acoustic correction of 0 dB for tonality has been arrived at. A footnote to Table 18 states that "*No tonal component apparent in site measurements*". This implies that an objective rather than subjective method for establishing presence of tonality has been undertaken. As there is no presentation of one third octave band centre frequency data for the industrial noise measurements or discussion of other reference methods used, it is difficult to arrive at the same conclusions presented within the NIA regarding tonality. Without this information the addition of a 2-4 dB correction for tonality which is just audible or clearly perceptible within the application site cannot be discounted.

The industrial commercial assessment predicts significant adverse impacts for plots in the north-east of the development site during the night-time. The predictions are for a nominal receiver set to 1.5 metres above local ground level. However, during the night-time and where plots are of 2-storeys, predictions should be presented for first floor i.e., 4 metres above local ground. This is representative of bedrooms and where future residents will sleep.

6.11

It is incorrectly stated that *“the BS4142 assessment completed is for outdoor noise...Consequently external noise levels become less relevant for the assessment of impact.”* In fact, BS 4142:2014 assumes the magnitude of impact to be the same indoors as it is outdoors. As such, no account of the sound insulation afforded by the façade of a dwelling is taken into consideration in the BS 4142 assessment process. Where the impacts are predicted during the night-time when residents are likely to be indoors resting, BS 4142 indicates that other Standards may be of more relevance in the assessment process and to add context to the overall assessment of impact. The NIA does not address the subject of context as described within BS 4142 and attempts to under value the magnitude of the adverse impact in the assessment outcome.

6.12 and Table 20

This section presents the industrial commercial noise as an absolute noise level against external the trigger levels derived for road traffic noise. As for road traffic noise the significance of effect at plots in the north-east of the site have been predicted to be slight/moderate for daytime and moderate/large during night-time periods. If the predicted noise levels from CadnaA are in fact free field noise levels then the trigger level will shift to 47 dB $L_{Aeq,T}$ for day and 42 dB $L_{Aeq,T}$ for night-time. The resultant significance of effect will be moderate / large for both daytime and night-time periods for some areas of the site.

6.13

If the CadnaA model is predicting free field noise levels and assuming an open window affords 10-13 dB reduction rather than 15 dB for a façade level, the resultant noise contour plots would illustrate larger areas of the site within the red contour.

6.14

It is stated that mitigation in the form of a closed windows strategy will be required to address the excess of the agreed noise criteria. This is presented without exploration of other mitigation options as is required within PAN 1/2011. The sound insulation afforded by the fabric of the building in the mitigation appraisal should be considered as a last resort once all other options have been exhausted.

7.00 Cumulative Noise Impact Assessment

This section presents an assessment of the cumulative impact of road traffic and industrial commercial noise sources. As stated above the same uncertainty remains over the CadnaA model predicting free field or façade noise levels and the application of the appropriate open window noise level reductions.

There is also uncertainty within the prediction of industrial commercial noise sources and how these have been calibrated using the L_{A50} parameter. Taking these uncertainties into account the final cumulative noise level is likely to be some 3-6 dB greater than those presented in the NIA. The resulting significance of effect will be large/very large for daytime and night-time periods for north-east through to north-west areas of the site. The noise contour plots are therefore likely to illustrate large areas of the site within the red contour.

9.00 Mitigation

The NIA presents a mitigation appraisal to address the excess of the agreed noise criteria at the worst affected plots. This includes a proposal for a 5-metre-high acoustic bund/fence combination and a requirement for glazing and alternative ventilation to an open window to address the excess of the internal noise levels. There is no appraisal of other mitigation options, such as layout design, building orientation and room layouts to achieve the objectives as required in Scottish Planning Policy for noise.

The NIA discusses the statement within PAN 1/2011, where achieving internal noise levels with an open window is 'preferable' rather than being an absolute requirement. However, the mitigation section does not explore the statement in PAN 1/2011 which requests "practicable mitigation solutions should be explored" which the NIA reproduces in full and with emphasis.

Conclusion

There is uncertainty over the CadnaA model predicting free field or façade noise levels and the application of the appropriate open window noise level reductions.

Due to the approach used to calibrate the industrial commercial noise sources within the 3D acoustic model predictions of industrial noise are likely to be underestimated.

The NIA does not present how tonality has been determined from the survey measurement results in accordance with the methodology presented in BS 4142:2014.

In the assessment of industrial commercial noise, the NIA attempts to contextualise the magnitude of the assessment outcome through inaccurate statements of the situations where BS 4142:2014 will apply. The qualitative text attempts to underestimate the significance of the magnitude of the impact.

The assessment outcome for road traffic and industrial commercial noise is likely to be underestimating the significance of effect for plots in the north-east and north-west of the development site. Where the NIA predicts effects of moderate/large in the cumulative assessment, when considering the uncertainties in the model predictions and industrial commercial noise predictions it is likely that effects of large/very large significance exist for daytime and night-time periods for north-east through to north-west areas of the site.

The NIA does not explore all mitigation options in its appraisal of mitigation. Contrary to Scottish Planning Policy for noise, the NIA makes recommendations for a suitable glazing specification and alternative ventilation to an open window, without exploring options such as layout design, building orientation and internal room layouts. Planning Policy in Scotland is clear, all other options should be explored in the mitigation appraisal with glazing and alternative ventilation as an option of last resort.

As a result of the uncertainties presented in the NIA the resulting magnitude of impact and significance of effects cannot be relied upon to present a robust assessment of noise at the development site. Effects of large /very large significance cannot be ruled out of the assessment at the future noise sensitive aspects of the site. On this basis, the mitigation proposals presented in the NIA are likely to be ineffective in adequately addressing all impacts. Advice in PAN 1/2011 and TAN for effects of 'large/very large' are as follows:

“Very Large: These effects represent key factors in the decision-making process. They are generally, but not exclusively, associated with impacts where mitigation is not practical or would be ineffective.”

Scottish Planning Policy is clear in this situation that mitigation measures are likely to be ineffective at reducing the overall magnitude of impact, without impacting upon other considerations such as thermal comfort or having to keep windows closed at all times to aid sleep. The TAN adds a qualitative description for this major magnitude of impact:

“Noticeable (Very disruptive): Significant changes in behaviour and/or an inability to mitigate effect of noise leading to psychological stress or physiological effects, e.g. regular sleep deprivation/awakening; loss of appetite, significant, medically definable harm.”

These effects should be considered of significant importance in the decision-making process.

If you have any questions in relation to the matters above, please do not hesitate to contact me directly.

Yours sincerely



Iain Kelly
Consultant



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Ruari Kelly
Planning Officer
Planning & Sustainable Growth
Vibrant Communities
Angus Council

27th July 2022

Dear Mr. Kelly,

Planning Application Ref 19/00707/FULM Residential Development of 136 Dwellinghouses including Formation of Vehicular Access, Access Roads, Open Space, Landscaping, SUDS and Associated Infrastructure, Field Opposite Westfield Drive Westfield Loan Forfar

We refer to the abovementioned planning application validated on 26 September 2019, and the further additional information and covering letter from Jacqueline Forbes Consultancy which was uploaded to the public access file on the 1 July 2022.

We have set out our concerns regarding this application on a number of previous occasions most recently in our letter dated the 30 May 2022. We have no wish to restate our objections, all of which remain valid despite the additional information that the applicant has submitted. However, we do wish to highlight our continuing concerns regarding the applicant's stance to the preparation of a masterplan.

As you will be aware Policy F4 Housing- Westfield requires:

- No development will be allowed until a full assessment of the potential impact on the A90 junctions (including Lochlands) is completed and any resulting mitigation is agreed with Angus Council and Transport Scotland.
- Development proposals to be in accordance with a masterplan prepared for the site.

These requirements were set out by the Reporter at the time of the Examination of the ALDP and were confirmed by Angus Council in the adopted Angus LDP 2016. Such requirements formed the basis of the allocation and both Angus Council and the applicant appeared to have no issue with these requirements at the time of the Examination or the adoption of the LDP and, as such, we cannot understand why these requirements are not being fully adhered to now.

The Reporter set out his reasoning for these requirements on page 244 of the Examination Report, in recognition of the many outstanding issues on the site he confirmed:

"A range of issues are highlighted in the development of this large area to the southwest of Forfar including the need for a long-term view and master planned approach which considers the combined impact of residential, industrial and agricultural traffic on nearby road junctions."

We are aware that the applicant is now suggesting the masterplan can be submitted as part of the planning application process. However, given that the Masterplan is required for the whole F4 allocation together with the safeguarded land at Westfield it still appears to us to be necessary that the masterplan, as a strategic document, is approved first, prior to the submission of any planning applications for the F4 site, which would then obviously need to be compliant with that approved masterplan.

The Council and the applicant have indicated that it is their intention to deal with the masterplan as an internal part of the planning application. We have previously set out our concerns with this approach in a letter from our legal representatives, Shoosmiths, dated 25 May 2022 and we maintain these legal concerns.

The most recent letter from Jacqueline Forbes Consulting states under Paragraph 8 that:

“Whilst Transport Scotland have given a full and informative consultation response to the proposed changes much of the detail relates to the F4 Westfield masterplan and not to the Muir planning application being considered here. The Applicant understands that Transport Scotland have some wider concerns to be addressed through the masterplan process but that the specifics of this planning application they do not object.”

Once again this fails to understand the necessity to address the strategic matters as part of a masterplan prior to approval of any planning application.

The issue of the Lochlands junction is highlighted in Policy F4 as a specific issue which must be addressed as part of a masterplan process before any development is allowed. This is a clear and unequivocal requirement of Policy F4, identified by the Examination Reporter and confirmed by Angus Council through their adoption of the LDP. Both Transport Scotland and the Roads Service agree that any development proposal must fully assess the potential impact on the A90 junctions (including Lochlands) and resulting mitigation must be agreed with Angus Council and Transport Scotland. For the applicant to dismiss this requirement relying on the matter to be addressed by some future masterplan demonstrates a failure to understand and comply with the policy requirements of the Angus Local Development Plan.

We would submit that as a masterplan has not been approved and the required full assessment of the potential impact on the A90 junctions (including Lochlands) has not been completed, and any resulting mitigation has not even been identified, let alone agreed, with Angus Council and Transport Scotland, the current application cannot meet the requirements of Policy F4 of the Local Development Plan. Further, the applicants has not provided any justification to set aside these fundamental elements of Policy F4.

We also note that there are outstanding objections and issues that have been raised by SEPA, Historic Environment Scotland, and the Council's Environment Health Officers. This continues to suggest that the existing planning application has not dealt with all relevant planning matters, and that it is clearly not yet in a position to be determined.

We trust these comments will be taken into consideration during the determination of the current application.

Yours sincerely

[REDACTED]
Elite Homes (Tayside) Ltd





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Ruari Kelly
Planning Officer
Planning & Sustainable Growth
Vibrant Communities
Angus Council

17th August 2022

Dear Mr. Kelly,

Planning Application Ref 19/00707/FULM Residential Development of 136 Dwellinghouses including Formation of Vehicular Access, Access Roads, Open Space, Landscaping, SUDS and Associated Infrastructure, Field Opposite Westfield Drive Westfield Loan Forfar

We refer to the abovementioned planning application validated on 26 September 2019, and the undated additional information submitted by Muir Homes posted on the Public Access file on 14 July 2022 in response to the Environmental Health Officers comments of 21 June 2022.

We have set out our concerns regarding this application on a number of previous occasions most recently in our letter dated the 27 July 2022. We have no wish to restate our objections, all of which remain valid despite the additional information that the applicant has submitted. However, we do wish to highlight our continuing concerns regarding the issue of noise.

Technical Noise Matters

As you will be aware the site is located adjacent to the A94 and in close proximity to the Don and Low factory, a 24 hour industrial operation. The holding objection from the EHO confirmed that in their opinion the impact of noise on the prospective residents from existing noise sources had been under-estimated. In addition, the EHO confirmed that the proposed windows closed mitigation strategy was not acceptable. For these reasons the EHO maintained their continuing objection.

Muir Homes has now responded to these comments. However, our specialist noise consultants Vibrock, have highlighted a number of outstanding technical issues with the NIA, namely:

- The NIA states that the industrial noise has been assessed against BS412:2014. This and the latest revision of BS4142:2014+A1:2019 presents a methodology for undertaking measurements of the specific noise level (i.e., industrial noise source). It is important to be sure that the sound pressure levels for which the industry contribute to are differentiated from other sources of noise. For this reason, BS4142 advises that where it is not possible to discern between the residual sound level (industry off) and the ambient sound level (all sound sources) then measurement closer to the source is preferable. In some cases, calculation of the industrial noise alone may be a practical solution provided the calculations are robust and include all significant noise sources. The adoption of using statistical (L_{AN}) values such as the L_{A50} to predict the industrial noise at the assessment site does not accord

with the methodology in BS4142:2014+A1:2019 and therefore the NIA is misleading in its statement in this regard.

- The L_{A50} is not comparable to the L_{Aeq} parameter which is normally associated with the 'ambient sound level' descriptor in BS4142. As stated in our previous response, the L_{A50} would exclude sounds which exceed a certain level for periods shorter than 50% of the measurement period. The L_{Aeq} parameter would integrate these shorter periods of high energy sounds in a way that certain L_{AN} values do not. This would result in a higher L_{Aeq} value than the L_{A50} value. In summary, any change in noise level during a measurement period will always cause a change in the L_{Aeq} and may not necessarily change the L_{AN} values.
- The statement by CSPA would indicate that the industrial noise does not have frequent instantaneous events. However, it goes on to state that where these did occur, short measurement durations ensured these were captured. Using the L_{A50} parameter as described above would very likely underpredict the impact of these events at the Application site.
- CadnaA does not present its values using the Building Evaluation tool as a façade level. They are always free field (i.e. 2.5 dB lower than 'façade' for road traffic noise). Reflections are only included in the predictions when using receivers and when the receiver is within the minimum distance from façade to the receiver setting value. Can CSP Acoustics confirm if building evaluations have been used to present the noise levels at each plot? Can CSP also provide the configuration settings for their acoustic model to confirm whether the model settings have allowed for this, where receivers have been used?

We would be grateful for your views (and those of the applicant's consultants) in response to these technical issues. In our view, it is not possible to properly assess the impact of noise until these (and other) issues have been addressed.

Proposed Mitigation

Overall, the development still requires a significant number of houses to have a closed window solution to ensure a satisfactory internal amenity can be achieved, it is clear that this is not acceptable to the Environmental Health Service.

Further, a fundamental requirement in response to the issue of noise is the construction of a 3m bund with a 2 metre acoustic fence, in total a 5 metre barrier which will run the full length of the A94. We have two principal concerns with this. Firstly, no details of this barrier seem to have been provided. Secondly, and as we have stated previously, this blank frontage is contrary to the advice contained in Policy DS3: Design Quality and Placemaking, supported by the Supplementary Guidance on Design Quality and Placemaking, which looks to ensure that development contributes positively to the public realm. The guidance confirms that boundaries that abut public spaces and routes are required to be attractive. Angus Council advice states that large areas of fencing or blank elevations are not acceptable where they form a public/private interface.

In the current circumstances, if this mitigation were to be approved, the proposed development would result in a blank frontage the full length of the Glamis Road. This is not considered appropriate on this frontage and will not contribute towards a development which adheres to the six qualities of successful places.

The unacceptability of a barrier of this scale and nature was confirmed by Angus Council in response to a recent planning application Ref 21/00781/PPPM Residential development (Major) including formation of vehicular access, access roads, open space, landscaping, SUDS and associated

Infrastructure Field 50M North Victoria Street Monifieth, which included a much lower acoustic barrier of only 1.7m in height along the boundary of the site with a public road. In the Report to Committee the Planning Service confirmed that: *"A wall or fence of that height and length adjacent to the dual carriageway would not be acceptable. No information has been provided to demonstrate that a barrier could be provided in a manner that would be appropriate for a highly prominent location that provides the transition between town and country."*

We trust these comments will be taken into consideration during the determination of the current application. We look forward to hearing from you on the queries raised in relation to the applicant's further noise submission.

Yours sincerely

[Redacted signature]

Elite Homes (Tayside) Ltd

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Dougall Baillie Associates



SH/RCMD/19304let01

18 December 2019

Karen Clark,
Elite Homes (Tayside) Ltd,
17 Academy Street,
Forfar,
Angus, DD8 2HA

Dear Karen,

**Westfield Development, Forfar
Planning Application 19/00707/FULM
Transportation Assessment**

DBA have reviewed the attached list of material associated with Planning Application 19/00707/FULM for the development of 175 residential units on a site in Forfar. Specific issues with the content of the TA or implications and impacts of the proposed development are numbered (consecutively), and referenced to the TA by way of a bracketed paragraph number, e.g. (2.6). Conclusions are highlighted in **Bold**.

DBA note the TR/NPA/1A response from Transport Scotland which indicates that a revised TA will require to be submitted. The following comments refer to the first TA lodged (in four parts) on the Council's website, dated September 2017. DBA will require to review any subsequent TA produced to examine the relevant issues.

1. (2.6) There are no existing footways on any frontage of the site, either on Glamis Road or on Westfield Loan. The only footway provision is on the opposite (north) side of Glamis Road and the opposite (east) side of Westfield Loan). There is only one designed pedestrian crossing point on Glamis Road in the vicinity of the site, which is of poor standard, requiring pedestrians to cross the equivalent of four lanes of traffic with no priority. **These facilities are inadequate to serve development on the scale proposed, and new pedestrian facilities should be provided on the boundary of the site, and within it, to provide adequate routes for pedestrians walking to and from the development, for reasons of road safety, particularly that of vulnerable road users.**
2. (2.12) The footways on Dundee Road to the south of the site are characterised as "*wide footways on both sides of the carriageway*". This is clearly not the case, even from examination of the images in the TA itself. The image referred shows an isolated section of footway tapering sharply at a priority junction and presumably provided for local visibility purposes. **The term "wide" cannot be used to described the majority of footways on both sides of Dundee Road, which appeared to fall below a standard of 2.0m width over many sections.**
3. (2.21) The TA's review of cycle facilities acknowledges that there are no identified and maintained cycle routes in the vicinity of the development site. There are some local facilities, but these are discontinuous and of only limited benefits in cyclists seeking to make journeys on the local road network. **A development on this scale, and generating the level of cycle activity that can be expected, should contribute**

to the upgrading and/or provision of new cycle facilities on the local road network, in the interests of encouraging sustainable travel and of road safety.

4. (2.24-2.28) The TA described walking distances from the nearest bus stops to the edges of the site. This is misleading and does not represent the actual accessibility of the site to public transport services. The stops on Dundee Road to the south are over 900 metres from the closest residential unit within the development layout, according to the site layout lodged with the application. Furthermore, no footpath link would be provided as part of this application, therefore these stops can be discounted as contributing to accessibility for this application.

Furthermore, the stops on Westfield Loan / Threewells Drive, which are some 600m from the furthest unit, have a poor frequency for the purposes of serving residential development and encouraging sustainable travel, of only 1 per hour, and it appears that services do not start until after 8.00am and stop before 6.00pm. Clearly, a significant number of units in the application layout would be outwith the accepted 400m walking distance to public transport services. The same applies to the stops on the A94 to the west, although these have better frequency at circa 20 minutes, on average, and operate at suitable times. The conclusion of the TA assessment in 2.30 that a “*good volume of bus routes (sic)*” service stops on Westfield Loan and Threewells Drive is manifestly not the case.

Considering walking distances in greater detail, there are only two pedestrian access points shown on the proposed site layout plan. These are located at the vehicular accesses on A94 Glamis Road, and on Westfield Loan opposite Threewells Drive. Discounting the bus stops on Westfield Loan due to their infrequent service which, it is considered, is inadequate for commuting purposes, the average distance from the A94 stops to the main site entrance is some 355m, leaving a walking distance of only 45m within the site to reach units. This results in only three units being within the 400m walking distance identified in transport policy guidance.

The Westfield Loan access is located on average some 265m from the bus stops on Glamis Road, leaving some 135m walking distance to reach units within the development. This results in 28 units being within the 400m walking distance identified in transport policy guidance.

Thus, it is apparent that only 31 of the proposed 175 residential units are within the 400m walking distance identified in transport policy guidance, which equates to only 18% of the development. This is a very poor level of accessibility to public transport. **The applicant should be required to install new bus stops on the A94 Glamis Road frontage of the development to bring a much higher proportion of the development within suitable walking distance of public transport services.** Furthermore, if reliance is placed on the bus stops on Westfield Loan, the applicant should be required to take suitable actions to ensure that the frequency of services at these stops is increased to a level adequate to service and be attractive to community demand from the development. Any new bus stops, or existing stops that do not have them, should be provided with bus shelters at the expense of the applicant to increase the attraction of public transport to commuters to and from the development.

5. (2.32) It is clear that no reliance can be placed on rail services for the purposes of travel to and from the development.
6. (2.35) Reference is made to the development being “*located in close proximity to well established pedestrian and cycle routes*”, this conclusion however is contradictory to 2.21, which states that “*There are no national or local cycle routes*

in the immediate vicinity of the application site, although there are some shared footway/cycleways, particularly along the A94 Glamis Road. Otherwise cyclists require to share the carriageway with other road users". This underlines the importance of the conclusions above in relation to Issues 1, 3 and 4, above, that the applicant should be required to invest in the improvement of pedestrian, cycle and bus facilities in the area.

7. (3.3) The site layout plan lodged with the application (JFC plan reference 17.029.P.002, Revision C), shows no new footways on the west side of Westfield Loan. Thus, the proposed development is contrary to the TA's assessment of sustainable transport access requirements, which states that *"new footway provision / crossing points along the western side of Westfield Loan"*. **The applicant should be required to include in the proposals new footway provision on and crossing(s) to the west side of Westfield Loan in order that "Pedestrians will be able to access the development site making use of the existing off site footway and footpath network on the surrounding streets and new planned linkages that will connect with these" as stated in the TA.**
8. (3.6) The TA states that *"The site is therefore located within walking distance of existing public transport services and these can be reached using existing and planned foot and cycle links."* This is demonstrably not the case, as this assessment demonstrates that only 18% of units within the proposed development (Phase 1) would be within 400m walking distance of existing bus stops, and no new bus stops or services are proposed.
9. (3.7-3.9) The TA identifies the creation of three new cross-roads priority junctions for the purposes of providing vehicular access to the site. For many years, the use of priority cross-roads junctions was not permitted due to the inherent road safety risks and poor safety performance of such junctions. Design Streets policy has reintroduced the use of priority cross-roads junctions, but only in low speed environments, within development, with attendant appropriate design of streetscape, road alignment, etc. to reinforce and ensure low vehicle speeds.

The proposals for access junctions illustrated in the TA clearly are not founded on the principles of Design Streets, which provides for maximum visibility splays of 2.5m by 43m at junctions, reflecting the low speed environment. The access proposals for this development reflect much higher vehicles speeds by catering for splays of 120m (50mph) on Glamis Road, and 90m (40mph) on Westfield Loan. This implies that there is an expectation of higher than permitted speeds on Glamis Road (speed limit, 40mph) and Westfield Loan (speed limit, 30mph).

10. (6.4) It is stated that traffic surveys were undertaken in June 2016, however 6.13 indicates the traffic growth factors have been development and applied from 2017 to 2021. As a result, it appears that the application of growth factors is incorrect, and would underestimate growth in background traffic levels within the Traffic Impact Analysis. Examination of scoping correspondence in Appendix C however suggests that the survey date quoted is incorrect. **It should be confirmed that design year traffic flows are correctly growthed.**
11. (6.9) The TA states a year of opening assumed to be 2021. However, the email from Systra to TPL notes that the designated Westfield site (F4 in the Angus LDP of September 2016) identifies that the development is planned as being phased between 2021 and 2026. Thus, the year of completion can reasonably be deemed to be 2026. Transport Scotland's Transport Assessment Guidance states (paragraph 2.9) that *"The assessment years will be year of opening or completion for developments with short construction periods (say up to 2 years), and year of opening (or first full*

year) plus year of completion for developments which are phased over 3 or more years.” Clearly, the F4 release at Westfield is identified in the Angus LDP as having a five-year build period, and therefore a year of completion assessment at 2026 should be undertaken or the TA will not comply with Transport Assessment Guidance. Therefore, the Transportation Assessment should be updated accordingly to bring it into compliance with TA guidance representing a practicable build rate for residential development on this scale.

12. It is noted that (in TA Appendix C) Systra (for Transport Scotland) accept the analysis year of 2021, however they only do this on the basis that all units are occupied in 2021. Clearly, this would not be the case, as no builder reasonably would construct and complete 300 units on a single site in one year. The Council acknowledge this in their response to the TA scoping, requesting a year of assessment of 2027. This has not been examined.
13. (7.15-7.16) The approach taken to assessing vehicle trip generation is considered reasonable. In terms of the distribution, while the utilised pattern may reasonably apply to development car trips in the northern part of the site, such as are contained within the 175-unit development subject to planning application 19/00707/FULM, development to the south, near A932 Dundee Road, would be expected to exhibit higher proportions of commuting car trips using the A90 / A932 priority junction, in this respect therefore, the TA is considered to underestimate the impact of Westfield Development traffic at the A90 / A932 trunk road junction.
14. Notwithstanding this, even the existing distribution pattern is shown in the TA to have an adverse operational impact on the capacity of the A90 / A932 junction. This trunk road junction is the site of some 17 injury accidents over a 20-year period, including 1 Fatal; 8 Serious and 8 Slight (see attached Diagram 19304/1). As a result, there is an obligation on the Roads Authorities to ensure that the impact of the Westfield development on the junction is mitigated, and that Westfield development traffic does not cause a detrimental impact on the capacity and safety (due to increased queuing).
15. With respect to the junction analysis in general, we take no issue with the modelling of any of the individual roundabout and priority junctions. The modelling of the traffic signal junction of the A94 Glamis Road / A926 / West High Street has issues that will tend to exaggerate the capacity of the junction. All lanes have been modelled in LINSIG as infinitely long. The right turn lanes on the A94 Glamis Road and A926 Craig O’Loch Road exceed 60m in length (circa 10/11 Passenger Car Units, PCUs) which is a reasonable approximation for modelling purposes. However, the right turn lane on the A926 Dundee Loan is only 5 PCUs in length and in addition has a ‘KEEP CLEAR’ zone which further restricts queuing space (see attached Diagram 19304/2). Since, in the Weekday PM peak, the predicted queue in the Straight and Left lane exceeds 5 vehicles in length, this approach to the junction will not function as it has been modelled, and more representative analysis results will be worse than those presented in the TA. The analysis of this junction should be updated to more correctly model operation of the junction in the design year, and therefore more accurately and representatively model the impact of Westfield development traffic at this junction.

In conclusion, it is clear that there are several issues that have not been adequately examined in the TA for this planning application, chief among which are:

- 1) the actual, practical level of accessibility of all dwellings to bus services;

- 2) the safety of proposed site access junctions, which are designed as priority cross-roads, but provided with visibility standards for much higher speeds that are not consistent with Designing Streets policy;
- 3) the TA junction analysis should be updated to represent a practicable build date for residential development on this scale that is consistent with the Local Development Plan;
- 4) the TA must be update to representatively model the impact of Westfield development traffic on the A90 / A926 signalised cross-roads; and
- 5) the TA must address the obvious road safety implications of increased queuing at the A90 / A932 trunk road priority junction, given its continuing safety issues.

In our assessment, these matters require to be addressed, and the Transportation Assessment updated accordingly, before any planning permission is granted. Also, appropriate mitigation measures and accessibility improvements should be attached as conditions to any planning consent granted.

Yours faithfully,
for Dougall Baillie Associates



Stuart Harrow
stuart.harrow@dougallbaillie.com

Enc.

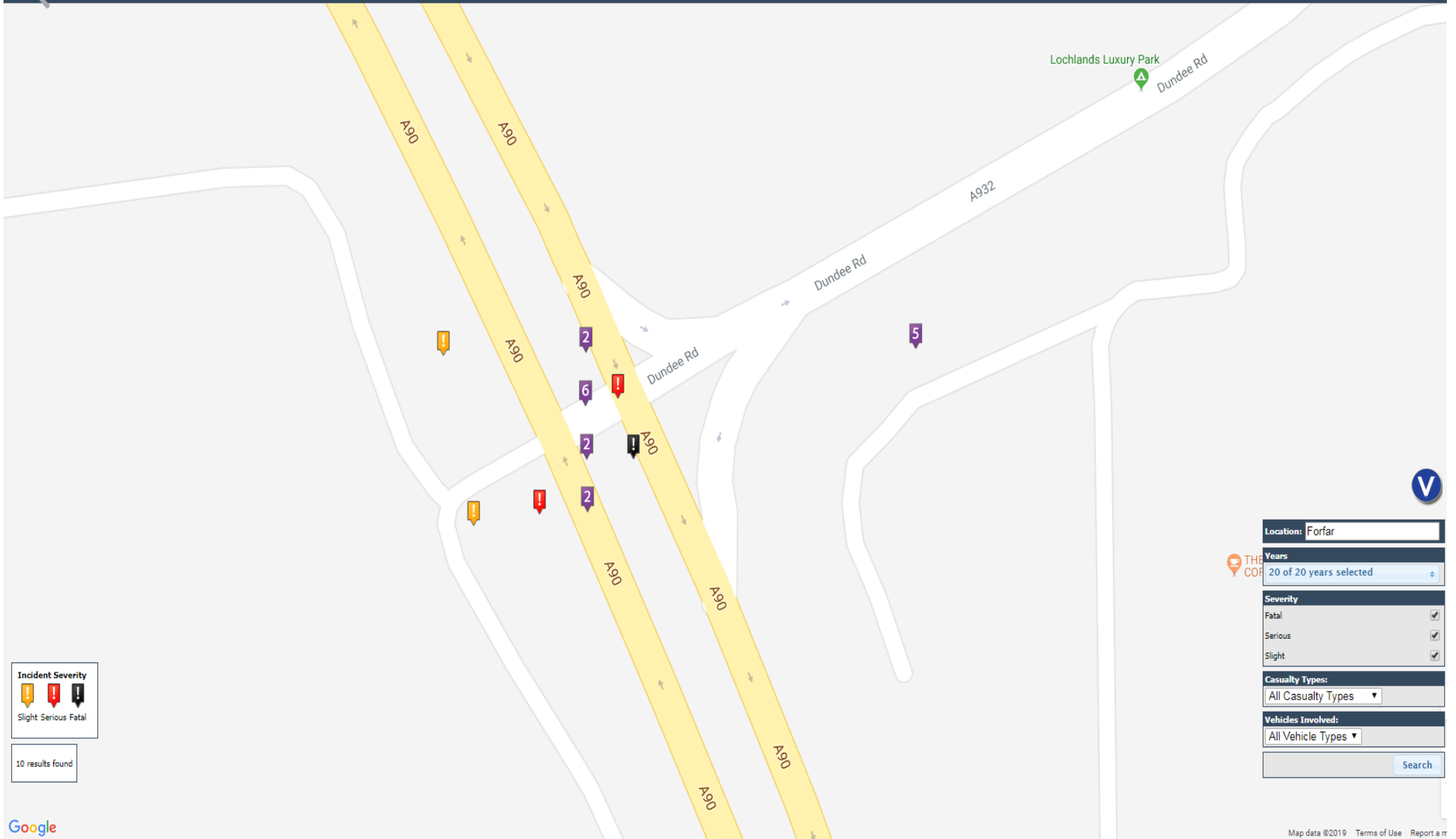


Diagram 19304/1 – 20-year Accident record (Source: Crashmap.co.uk, details should be confirmed with official record)



Diagram 19304/2 – A926 Dundee Loan approach to A90 /A926 signals (Source: Google Streetview, not for publication)

Comments on the Westfield Application

19/00707/FULM

1 Accompanying drawing

The accompanying drawing prepared by OPEN shows the following:

- full allocated site together with the extent of the safeguarded land area;
- the application site boundary (although see comments on this)
- the contaminated land area, suspected as anthrax, together with 3 suggested levels of cordon sanitaire;
- the Core Path;
- the 2 Scheduled Ancient Monuments plus a 10m buffer area as indicated (note these are accurate from HES shapefiles);
- the 90m contour line;
- residual land area calculation based on the allocation, abstracting the middle cordon extent land, and the SAM areas.

This drawing has been referenced in assessing the proposals.

2 Comment on the application

The Design and Access Statement should be the central document to the application, describing the proposal, setting it in context, and referring to technical studies as appropriate. However it is short on detail and disconnected from the rest of the application submissions. Some notable errors and contradictions (described; there are no page numbers):

- It's hard to tell what the application area is. A Location Plan marked "Planning" is provided with the planning application; this then doesn't align with the red line drawing accompanying "Site" in the opening pages of the DAS and further on in "Design Solution" an area in the new corner is marked up as "subject to a separate application" but no context for this is set out anywhere;
- The text within the DAS isn't followed through into the layout; good connectivity is described yet there are no path connections allowing easy access to the bus stops on Glamis Roads except those along the roads which are far apart. This will discourage public access use;
- Reference is made to Core Path links, but these aren't shown on the drawing nor (despite what is said) are they well-connected into the development layout;
- Reference is made to play; I assume this is the central area shown on the landscape drawing in the middle of the SAM which isn't marked up and which completely differs from the paths and planting shown on the SAM on the DAS;
- The DAS refers to the Scottish Executive (long gone!) and to PAN 76 New Residential Streets which has long been replaced by Designing Streets;

optimised environments Ltd

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- The Tree Protection Plan shows development within the Root Protection Areas; this is disingenuous;
- Also disingenuous is how noise protection measures will impact on the layout or the physical environment; a 2.2m acoustic fence along Glamis Road appears to be proposed which further segregates the development from the town;
- Reference to National Monuments doesn't reflect Scottish policy where we call them Scheduled Ancient Monuments;
- Paths and planting and, I suspect, a play area is all proposed for the SAM. In our experience none of these would be acceptable to HES;
- I agree with the comments of the landscape officer "A new public landscaped space will be provided over the railway tunnels and a toddlers play area is located centrally within the development.' It could not be ascertained where the play area is to be located or where the position of the railway tunnels is within the site."

3 Comments on the Layout

The development form poorly addresses Glamis Road; there are properties which address the road along it and there are good bus links. A strategy which addressed the road, albeit behind a landscaped area and secondary road would be much preferable.

However there are difficulties in achieving this; the edge of the SAM is 37m from the road and accounting for the additional 10m buffer around the SAM would leave 27m. Guidance for noise mitigation will accept higher limits for front facing development as the buildings themselves form the noise shield and allow more acceptable limits within back gardens- this is an option here, especially as the gardens would be south facing. If the existing trees were removed and plot depth was 18m, then there would be space for a 4m private access road and a new verge with replacement tree planting. This would be subject to detailed topographical information.

There is also the issue of the Don & Low Ltd factory (one of Forfar's largest employers) across the road, and it is noted that both Don & Low and Angus Council Environmental Health object to all properties along the northern edge on grounds of 24-hour noise. This would negate a substantial swathe of the housing proposal which would then combine with the land sterilised by the SAM to create isolated pockets of development, visually and physically separated from the settlement. What this would serve to do is give a perception of the site being further from the town centre than it actually is hence forcing most traffic movements to be car borne.

The other alternative is that the applicant pursues development along the front and mitigates noise through a bund and acoustic fence; this would be intrusive in landscape and visual terms, effectively creating a barrier along Glamis Road, one of the main entries into the town.

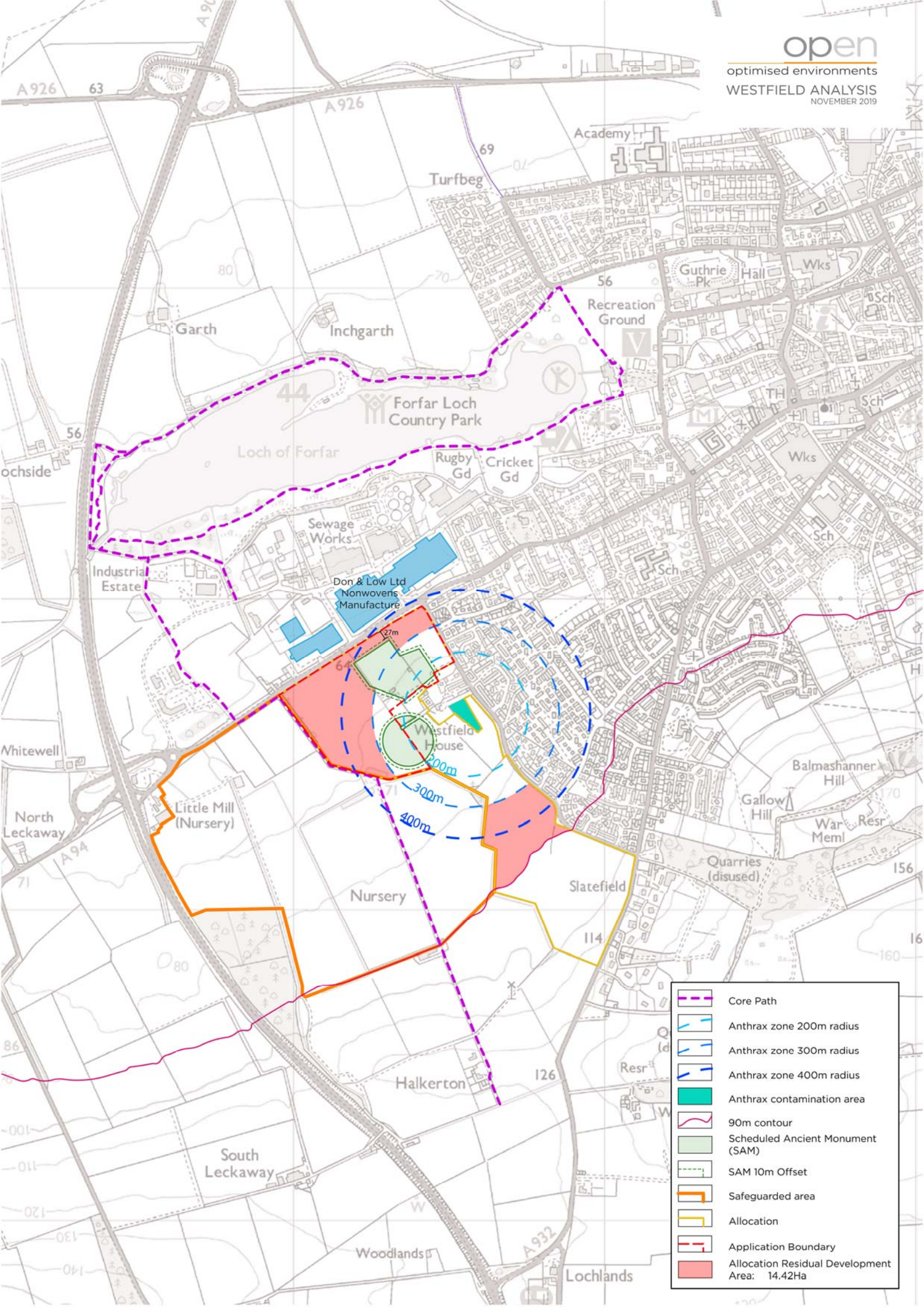
The SAM is a major constraint to achieving acceptable urban form in this location. Not only does it sterilise land, there are normally constraints around land-raising within the vicinity of them. The applicant doesn't seem to provide detailed topography plan showing existing and proposed landform so the proposed platforming can't be assessed; maintaining levels within these areas will prove difficult.

The Council state that 1.06 ha of usable open space is required here. The conclusion would be that the SAMs do not constitute open space, and the developer will need to reduce development further to accommodate it. The proposal overall is lacking in an open space strategy or in any contextual approach to design, and overall the development doesn't offer a good fit with the western edge of Forfar.

4 Summary

In summary there are several issues with the layout:

- Legitimate constraints are likely to ensure there is no frontage on Glamis Road and land to the south of it is effectively sterilised;
- It is clear from the objection made by Don & Low that the current layout cannot meet with the minimum noise mitigation along Glamis Road. As proposals already currently entail a 2.2m acoustic fence there are limited means for achieving mitigation without removing development;
- It is likely that whichever acoustic treatment is applied to a revised development form, this will either entail a barrier or moving development further south thus further isolating the new development from the town;
- The layout does not constitute good placemaking in terms of how it relates to Forfar: the development does not consolidate the urban edge and will be disparate and feel divorced from the existing settlement;
- This is reinforced by a poor approach to connectivity. A lack of connections allowing easy access to bus stops, paths and cycling options will compound with a sense of isolation and will foster car driving as a default position in direct contravention of Scottish Government Policy;
- The level of constraint makes it hard to achieve an appropriate form and density, with the appropriate levels of usable open space. The layout within the application demonstrates this;
- The constraints are almost impossible to mitigate: the location of the northern SAM constrains mitigating noise issues from the factory, and there are significant risks to human health in relocating anthrax diseased burial areas;
- Inefficient use of land, disturbance to protected areas, lack of usable space, incoherent layout and putting the car first; these all flaunt the need to design sustainably and to consider climate change impacts.





TAYSIDE HEALTH BOARD

Your Ref:

Our Ref: MR/AU/TD12

Enquiries to: [REDACTED] Communicable Diseases Dept

Direct Dial: 01382 596888

E-mail: [REDACTED]

15 April 1999

[REDACTED]
Webster Properties (Tayside) Ltd
Kingsmuir
FORFAR
DD8 2NS

21 JUN

Dear [REDACTED]

GROUND FOR HOUSING DEVELOPMENT AT WESTFIELD, FORFAR

Thank you for your letter of 11 June 1999. It is my view that the risk to human health of the alleged carcass burial being sited near to your proposed housing development is negligible. If, as the Scottish Office letter implies, the infected animals were disposed of by incineration and burial of the ashes with quicklime, this should have destroyed any anthrax spores that were present in the animals' tissues. Even if there were any present, the fact that you are not planning to carry out digging near the suspected burial site means that no-one would be coming into contact with anthrax spores.

In summary, I do not think that there is any threat to human health from what you are proposing to do at Westfield. I think it is important to re-iterate the advice contained in the Scottish Office letter to the effect that, if you do come across any areas during development which would suggest that it is a burial site of some description then the work should stop immediately and both the Scottish Office and myself should be informed. If, however, your maps are accurate then this should not occur.

I hope that this provides reassurance, both to your company and to the prospective buyers of the new houses.

With thanks.

Yours sincerely

[REDACTED]

MilneAJ

From: [REDACTED]
Sent: 09 April 2007 14:30
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Westfield Forfar

[REDACTED]
Having reviewed your summary of our discussions below I have the following comments:

1. An intrusive assessment needs to be completed prior to a planning decision that clearly defines the extent of the burial area.
2. It would be helpful if this survey included tests to define whether any material remained active for Anthrax.
3. Having spoken to various sources the expertise does exist locally to sample, transport and test this type of potential contaminant.
4. Before undertaking any intrusive work a detailed risk assessment and method statement is required to ensure protection of public health or the spread of contaminants into the environment which may be prejudicial to human health, as defined in Section 79 of the Environmental Protection Act 1990.
5. I agree with the general assumption that no development will be permitted on the burial area itself, however an additional remediation statement for any proposed development will still be required to clarify the precautions that will be in place in case of finding other suspect material.

[REDACTED] – Please could you let [REDACTED] have any extra comments if necessary. Thanks

Regards

[REDACTED]
Contaminated Land Officer

Environmental & Consumer Protection
Town House, High Street
Montrose, DD10 8QL
Tel: 01674 664130
Fax: 01674 671117

Angus Council - Infrastructure Services
Director [REDACTED]

-----Original Message-----

From: [REDACTED]
Sent: 28 March 2007 12:29
To: [REDACTED]
Subject: Westfield Forfar

[REDACTED]
I refer to our telephone conversation today and to our previous discussion on the above planning application and attach a copy of the policy from the Angus Local Plan which deals with contaminated land. This states that: -

Policy ENV 61: Contaminated Land

Development will only be permitted on, or in the vicinity of land that is known to be, or may be unstable, contaminated or affected by landfill gas where Angus Council is satisfied that the actual or potential risk can be overcome. All development proposals will require to be supported by appropriate survey information, detailing the extent and nature of ground instability/ contamination, the resultant implications for site development and possible remedial measures. Where necessary Angus Council will require appropriate remedial

measures to be undertaken to overcome any identified problems prior to the commencement of development.

In this case we know that land in the vicinity of the site was historically used as an anthrax burial area and this would trigger the requirements of the policy. I understand that you have spoken to various parties regarding this matter and in this respect you consider that potential risk at the site could be overcome by avoiding any development on the anthrax burial site itself. In this respect the proposal could potentially be compatible with the first requirement of the above policy.

In relation to the second aspect of the policy, the survey work appears to comprise a desk top study which provides an indication of the likely extent of the burial area. The inference from this is that the development would not occur within the suspected extent of the burial area. However, our difficulty is that we have no certainty regarding the accuracy of the assessment of the extent of the burial area. This makes it difficult to confirm that the burial area does not encroach into the proposed development area and therefore difficult to confirm that development would not potentially disturb the burial area.

However, the current planning application is seeking to establish the acceptability of the principle of housing development on this area of land. My understanding from our discussions is that, if anthrax was found to be present within the development area itself, the appropriate strategy could be to avoid development within that area. This clearly has implications in terms of the acceptability of the principle of development on this area.

As we discussed, with other forms of contamination it might be appropriate to attach planning conditions requiring assessment and remediation as part of the ongoing development on the basis that remediation measures would not prohibit development of the site or part thereof. However, if we were to grant planning permission on this basis in this case, we could have a situation whereby we would have granted planning permission for houses on an area where we would, subsequent to the commencement of development, be indicating should not be developed. We agreed that this would not be appropriate.

On this basis, and in light of the terms of the above policy, you indicated that it would be appropriate to require the applicant to undertake further survey work in order to confirm the location and extent of the burial area in advance of the planning application being determined.

I would be grateful if you could confirm that the above reflects our discussion and represents an accurate indication of your position in relation to the requirement for additional information.

Thanks in anticipation.

██████████
Senior Development Control Officer
Angus Council, Infrastructure Services Dept.
Planning & Transport Division
St James House, St James Road, Forfar, DD8 2ZP
Tel: 01307 473502 Fax: 01307 461895
E-mail: ██████████

[REDACTED]

From: [REDACTED]
Sent: 15 January 2007 12:28
To: [REDACTED]
Subject: RE: Enquiry re Anthrax

Hi [REDACTED]
The contacts for environmental anthrax sampling are the Health Protection Agency at Porton Down (01980 612100) they should be able to advise on sampling and logistics and have probably had experience of similar problems with building applications. The Government Decontamination Service <http://www.gds.gov.uk> is more concerned with CBRN (terrorist release) or HAZMAT accidental release but they may be able to offer advise on who to contact.

Regards

[REDACTED]
VLA Weybridge
Statutory and Exotic Bacteria Department

From: [REDACTED]
Sent: 15 January 2007 11:32
To: [REDACTED]
Subject: Enquiry re Anthrax

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[REDACTED]

Thanks again for your call.

Please can I ask you to supply the contact details as discussed.

Regards

[REDACTED]
Contaminated Land Officer
Angus Council
Infrastructure Services
Environmental & Consumer Protection
Town House
High Street
MONTROSE
DD10 8QL

Veterinary Laboratories Agency (VLA)

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04/07/2007

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[REDACTED]

From: [REDACTED]
Sent: 12 January 2007 14:56
To: [REDACTED]
Subject: Anthrax reference laboratory.

Dear Mr. [REDACTED]

Following our telephone conversation earlier today regarding sending soil samples to test for spores of anthrax I can confirm that the Veterinary Laboratories Agency in Weybridge, England is UK's reference laboratory for the diagnosis of Anthrax. I would advise before sending any samples contacting the laboratoy to know the appropriate procedures in conditioning such samples, although the spores are quite resistant to pretty much any kind of transport conditions you impose, the laboratory will probably have security procedures in handling sampling with potential biological hazard such as these. If you have any other queries regarding this matter or any other please do not hesitate to contact our office.

Best regards.

[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: 11 January 2007 17:46
To: [REDACTED]
Subject: 06/01598/OUT - Westfield Loan Forfar

[REDACTED]

I refer to our consultation request to you dated 15 November 2006 regarding the above planning application.

As you may have noticed from the Public Access system correspondence has been received regarding anthrax at the site location. I am sure you are considering this matter but it would be helpful if your comments could deal specifically with this matter and identify any investigation or further consultation that may be required in relation to this matter.

Thanks in anticipation.

[REDACTED]
Senior Development Control Officer
Angus Council, Infrastructure Services Dept.
Planning & Transport Division
St James House, St James Road, Forfar, DD8 2ZP

[REDACTED]

Date: 7th November 2019

Subject: Review of development at Westfield Drive, Forfar covered by application 19/00707/FULM.

We were instructed by Elite Homes (Tayside) Ltd to carry out an independent review of the information relating to potential risk from anthrax-impacted material which is known to be buried within a stand of mature trees in close proximity to a proposed new housing development at Westfield Drive, Forfar. We understand that the area is allocated for future housing in the Local Development Plan. An application by Muir Homes for 175 homes in this area has included an environmental review by Mason Evans with an intensive site investigation. We understand that there is a recommendation that there be no disturbance within 30m of the known buried anthrax-contaminated ash.

The following are our observations/comments on this matter:

- Anthrax is a fatal infectious disease, caused by *Bacillus Anthracis* when spores are released. It is very rare now however, but is a Notifiable Disease.
- The Mason Evans report is comprehensive for the site; but the area of historic anthrax burial is not identified on any plan, nor is any detail given on whether this is ash or carcasses, or when the burial took place. **Crucially** there is no information on where any burning of carcasses took place- the Anthrax Order 1991 states carcasses should be burnt on site, and then the ash incinerated. It is imperative that further information is obtained relating to this. The photographic record in Appendix A of the report does not identify any location on the large site and it is unclear what the woodland looks like where the anthrax material is buried. Will this be readily accessible to nearby residents walking their dogs for example?
- The area of investigation by Mason Evans is much larger than that shown in the planning site outline. This suggests the intention may have been to develop this SE corner originally but that this has changed.
- DEFRA Science Advisory Committee report (March 2017) relating to burial of carcasses infected by Foot & Mouth also repeatedly discusses the risk of anthrax spores. Their recommendation is that an area of ash or carcass burial should not be disturbed as there is a low risk of releasing anthrax spores.
- We acknowledge that disturbance of the area where anthrax ash is buried is not included in the development plan, so consideration is given to a suitable cordon sanitaire to prevent/minimise any impact from air-borne spores.
- The standard *cordon sanitaire* around an intensive livestock operation, slurry or sewage store is 400m (UK Planning Circular, 2/2015). This is to protect against odour but also airborne disease.

- HOPS (Head of Planning Scotland) in April 2017 recommended that should a building be built on a farm, for farm use, where intensive livestock operations take place, there should be a minimum 200m *cordon sanitaire* to any other non-farm owned housing.
- Public Health England produced a Guidance on assessing risk of anthrax on Building land in 2014. This relates primarily to sampling methodology and types of industry relating to potential risk however.

It is our opinion that further information needs to be acquired relating to the timing of anthrax-impacted burial, the quantity of the material buried, what depth it was buried at, was this before the trees were planted (bearing in mind mature tree roots can cause significant ground disturbance), was it ash or carcasses that were buried, where did burning take place? All of these will form the basis of a strong risk assessment on the potential impact of anthrax to this development.

As the proposed development is residential, and therefore the highest sensitivity for impact, we recommend that a much larger *cordon sanitaire* is applied to the site, with a minimum of 200m being considered. The nature of a housing development means children will wander to woodland with friends to play, and locals will walk their dogs in the area- all leading to potential exposure or disturbance unless information can be obtained to rule this out. Consideration of secure fencing around the woodland should also be reviewed.



Dr. Fiona Moore

EnviroSurveying Ltd, The Willows, Frain Drive, Laurencekirk, Aberdeenshire, AB30 1HJ
Tel/Fax: 01561 376108, Mob: [REDACTED]
email: info@envirosurveying.co.uk
<http://www.envirosurveying.co.uk>
Vat reg. no: 925 2367 24
Company registration no: SC335464

Letter received from John Gordon Webster, The Bothy, West Ingliston, Forfar DD8 1TJ received on 17 January 2020 reads as follows:-

RESIDENTIAL DEVELOPMENT OF 175 DWELLINGHOUSES INCLUDING FORMATION OF VEHICULAR ACCESS, ACCESS ROADS, OPEN SPACE, LANDSCAPING, SUDS AND ASSOCIATED INFRASTRUCTURE - FIELD OPPOSITE WESTFIELD DRIVE, WESTFIELD LOAN, FORFAR - 19/00707/FULM

Dear Sir/Madam

“Having read most of the press coverage of this matter I would like you to be aware of my (and others) views.

I know nothing of planning rules etc. but make the following general observations:-

1. Why is the development even being considered? Clearly Forfar does not need several hundred extra new houses (most of which will be unaffordable to the average local resident) on top of the hundreds of others built around the town in recent years.
2. I regard the anthrax scare a “red herring” and has more to do with which developer is given the right to desecrate the environment.
3. Will the Council not be satisfied until every inch of land in Angus is covered in concrete? We already have a serious reduction in bird and animal populations. In the last 20 years there has been a huge reduction in numbers and species of birds in particular.
4. Building on ever more agricultural land is likely to increase the risk of flooding because there is nowhere for rainfall to go (at least not without huge public expenditure on prevention measures).

I could go on but am trying to make a general point of principal rather than a specific objection. Developments such as these are to do with money. Money for the developers, money for the Council, money for the landowners. No consideration appears to be given to anything else. It is time to call a halt to large scale housing schemes on farmland around Forfar”.

Yours faithfully

John Gordon Webster

Comments for Planning Application 19/00707/FULM

Application Summary

Application Number: 19/00707/FULM

Address: Field Opposite Westfield Drive Westfield Loan Forfar

Proposal: Residential Development of 175 Dwellings including Formation of Vehicular Access, Access Roads, Open Space, Landscaping, SUDS and Associated Infrastructure

Case Officer: Ruari Kelly

Customer Details

Name: Mr Jonathan Adlum

Address: 57 Westfield Loan Forfar DD8 1JN

Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: Dear Sir/Madam,

My parents moved into their new house on Westfield Loan some 35 years ago when the site was developed under the assumption and protection (greenbelt land) of a truly stunning view of the Forfar valley from their front window.

For the last 30 years they have spent more time watching this view than looking at their TV. This view, the calm and the quiet is truly what makes this area special for all who live here, or walk their dogs or simply drive through this location.

Only you can truly advise on the need for more dwellings and whether or not the community, roads, school and overall infrastructure can support this growth.

However, what I can advise you with great confidence is that by building yet another batch of generic new builds on this land (aren't there enough already) you are destroying a truly beautiful place and angering people who love being in Forfar.

My final concern on this build would be the dangerous increase in traffic on already busy roads in the area with its associated rise in injury, deaths and the short term and longer term impacts on the environment from a noise and emissions standpoint.

I hope you continue to think hard and ultimately decide against the location of this project.

Kind Regards

Jon

Comments for Planning Application 19/00707/FULM

Application Summary

Application Number: 19/00707/FULM

Address: Field Opposite Westfield Drive Westfield Loan Forfar

Proposal: Residential Development of 136 Dwellings including Formation of Vehicular Access, Access Roads, Open Space, Landscaping, SUDS and Associated Infrastructure

Case Officer: Ruari Kelly

Customer Details

Name: Miss Sonja Ferrier

Address: 1 Burn Place, Halfpennyburn Angus Forfar

Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: Forfar is struggling enough as it is with resources such as doctors surgeries! Adding more properties in a green belt will put further strain on the town! Also there is question against the access road leading into the development as the Glamis road is saturated by traffic causing access and exit issues for the properties adjacent the planned development being submitted!

Concern over the water table and diversions that will impact the Halfpenny burn which crosses one of the residential properties that lie on the side of Don & Low factory and apparently are forgotten about as the 5 residential properties sit on the industrial estate side of Glamis road.

Another development site needs to be looked at outwith Forfar as the impact these phases will have during building and after will cause stress on the resources Forfar currently have not to mention the impact environmentally and on the existing dwellings when the access point becomes operational! I myself have sat waiting on leaving my drive onto the Glamis road for near 20 minutes or longer waiting on exiting into the Glamis road from Halfpenny burn.

The fact that this application is now for less than 200 is clearly to gain permission to then after submit further phases that Forfar as a town cannot cope with and the destruction of wildlife habitat and losing adequate green belt to ensure access into Forfar remains a reasonable traffic footprint!

Comments for Planning Application 19/00707/FULM

Application Summary

Application Number: 19/00707/FULM

Address: Field Opposite Westfield Drive Westfield Loan Forfar

Proposal: Residential Development of 175 Dwellinghouses including Formation of Vehicular Access, Access Roads, Open Space, Landscaping, SUDS and Associated Infrastructure

Case Officer: Ruari Kelly

Customer Details

Name: Mr James Anderson

Address: Not Available

Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: I feel the continuous expansion of housing development outwards from the perimeter of Angus burghs will come at the cost of creating empty town centres.

This development along with others in Forfar will remove good farming land from use, land that is also occupied by wildlife that will not use the park areas that are planned enclosed by housing.

With reference to the road layout, if the development goes ahead, can a roundabout be provided on Glamis Road at the factory entrance to assist traffic movement from the new road. This is a very busy road, and the road layout implies further development to the south of the current proposal.

On a similar item, can the new access road onto Westfield Loan not be granted, as the road is a rat run for traffic (including heavy lorries), and it would be beneficial for the existing area to direct all new traffic up off Glamis Road.

Comments for Planning Application 19/00707/FULM

Application Summary

Application Number: 19/00707/FULM

Address: Field Opposite Westfield Drive Westfield Loan Forfar

Proposal: Residential Development of 136 Dwellinghouses including Formation of Vehicular Access, Access Roads, Open Space, Landscaping, SUDS and Associated Infrastructure

Case Officer: Ruari Kelly

Customer Details

Name: Mr John Webster

Address: The Bothy forfar

Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment:I have objected to proposed development on this site before and my reasons have not changed.They are basically to do with the destruction of the environment and natural habitat leading to the all too obvious decimation of all forms of wildlife.

Why should the Council even consider allowing houses to be built on green sites?If there is a need for housing for local people,which I doubt,then developers should be forced to use brownfield sites or convert old disused property eg the old academy development.

Muir Homes have been allowed to build hundreds of houses on the Kirriemuir road.Whatever the quality, it amounts to environmental vandalism and should not be repeated to the west of town.

Comments for Planning Application 19/00707/FULM

Application Summary

Application Number: 19/00707/FULM

Address: Field Opposite Westfield Drive Westfield Loan Forfar

Proposal: Residential Development of 175 Dwellinghouses including Formation of Vehicular Access, Access Roads, Open Space, Landscaping, SUDS and Associated Infrastructure

Case Officer: Ruari Kelly

Customer Details

Name: Mr Thomas OBrien

Address: 65 glenmoy terrace forfar

Comment Details

Commenter Type: Member of Public

Stance: Customer made comments neither objecting to or supporting the Planning Application

Comment Reasons:

Comment: While they may be a need for new houses in Forfar, a lot more social housing is needed. Also Again the town infrastructure such as transport, health and education provision is not catered for in this development. No consideration for 20 min neighbourhoods or impact on school rolls and doctors surgeries. This mainly means the town becomes a hub and people will not use the shops etc in the town, also no local shop provision in the plan from the council or developer.

Comments for Planning Application 19/00707/FULM

Application Summary

Application Number: 19/00707/FULM

Address: Field Opposite Westfield Drive Westfield Loan Forfar

Proposal: Residential Development of 175 Dwellinghouses including Formation of Vehicular Access, Access Roads, Open Space, Landscaping, SUDS and Associated Infrastructure

Case Officer: Ruari Kelly

Customer Details

Name: Mr Thomas O'Brien

Address: 65 Glenmoy Terrace Forfar

Comment Details

Commenter Type: Member of Public

Stance: Customer made comments neither objecting to or supporting the Planning Application

Comment Reasons:

Comment: There are issues with any development in this area, these are education provision, health care provision such as doctors. There are also transport issues with extra traffic putting pressure on the Lochlands and Glamis Road junctions. Also we need more social housing in the area and this may have an effect on the town centre as the development may become a satellite for Dundee and Aberdeen. There is no consideration for 20min neighbourhoods or any provision for shops etc.

Comments for Planning Application 19/00707/FULM

Application Summary

Application Number: 19/00707/FULM

Address: Field Opposite Westfield Drive Westfield Loan Forfar

Proposal: Residential Development of 175 Dwellinghouses including Formation of Vehicular Access, Access Roads, Open Space, Landscaping, SUDS and Associated Infrastructure

Case Officer: Ruari Kelly

Customer Details

Name: Ms Eleanor Feltham

Address: 92 St. Ninians Road Padanaram Padanaram by Forfar

Comment Details

Commenter Type: Member of Public

Stance: Customer made comments neither objecting to or supporting the Planning Application

Comment Reasons:

Comment:Transport: I noted that Roads have requested an updated Transport Assessment and i totally agree that the Glamis Road junction/A90 slip road especially southward direction needs special attention and totally inadequate for current traffic far less future traffic created by many factors. Housing: I agree that the current house building trend on mass is overwhelming current every day services. Scotland's population is aging and decreasing and the appropriate household size build is vital. Land: again loss of yet more prime agricultural lands and wildlife corridors where natural habits are being destroyed. Flooding especially noted if walking down the Network Path from this area to the Forfar Loch at specific flooding events, spill over the exisiting paths. The run offs of all this flooding despite SUDS in the areas to Padanaram cause localised flooding. Building in the 'Bowl of Forfar' will notably increase pluvial flooding to the extent as seen around Padanaram, fields of water near road networks. This is current observations without anymore developments surrounding Forfar.

FAO: Ruari Kelly
 Angus Council
 Angus House
 Orchard Bank Business Park
 FORFAR
 DD8 1AN

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 Edinburgh
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 T +443700 86 8172

Our Ref FZM/S-00091599
 Date 19 May 2021

Dear Sirs

**SITE F4 - WESTFIELD, FORFAR
 PLANNING APPLICATION 19/00707/FULM**

We act on behalf of Elite Homes (Tayside) Limited. Burness Paull advises our client on other planning matters and previously submitted a letter of objection, on our client's behalf, in connection with planning application reference 19/00707/FUL ("**the Westfield Application**"). This letter expands on the issues raised in the Burness Paull objection.

1. Objection

In our view, the Council's stated approach to determining the Westfield Application (as set out in the processing agreement entered in between the Council and Muir Homes on 18 February 2020) is flawed. It fails to take into account the policy requirement for a masterplan to be prepared for the site before the submission of a planning application in relation to any part of Site F4.

We have set out below the detailed reasons for considering the Council's approach to be flawed.

2. Angus Local Development Plan Policy F4

Policy F4 of the Angus Local Development Plan 2016 ("**the 2016 LDP**") sets out the policy relating to development proposals for Site F4. Site F4 is made up of two adjacent areas identified on the Forfar Proposals Map (Inset Map 4 in the Written Statement of the 2016 LDP) as the Allocated Housing Site and the Safeguarded Site. The Westfield Application relates to only part of Site F4. The Forfar Proposals Map contains the wording: "*This proposals map should be read in conjunction with the Written Statement*".

The third paragraph of Policy F4 clearly states that:

"Development proposals should be in accordance with a masterplan prepared for the site."

The site in this context is both the Allocated Housing Site and the Safeguarded Site.

The terms of Policy F4 naturally mean that a masterplan should be prepared before a planning application is submitted. The reason for this is straightforward. In order for a planning application to be in accordance with a masterplan, the applicants must first know the terms of that masterplan. Logically there is no other way to determine, at the point at which the planning application is formulated, whether it is in accordance with the masterplan.

It should also be noted that the meaning of this part of Policy F4 is clear. It relates to development proposals, and those development proposals should be in accordance with a masterplan prepared for the site. The term "prepared" is deliberately expressed in the past tense. It does not relate to a masterplan "to be prepared". The preparation of a masterplan must therefore pre-date the submission of a development proposal (i.e. a planning application).

The applicant has submitted a planning application in the absence of a masterplan having been prepared. Therefore, the planning application is in breach of this policy requirement. The Council's approach to accepting, assessing and determining the planning application is therefore flawed.

3. Interpretation of Policy

In the case of *Tesco Stores Limited v Dundee City Council*¹, the Supreme Court set out its opinion that the interpretation of development plan policy is a matter of law for the Court to decide, and that the application of policy is a matter of planning judgment for the planning authority to exercise. When interpreting policy, the Court said: "*policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context*". Further, it made it clear that: "*planning authorities do not live in the world of Humpty Dumpty: they cannot make the development plan mean whatever they would like it to mean.*"

In our view, in dealing with this application, the Council has failed to interpret Policy F4 objectively or in its proper context. Policy F4 is clear in its terms. However, the Council has sought to make the policy mean something else.

It should be noted that during the Examination of the LDP, the Reporter confirmed that: "*The large area of land release at Westfield warrants a masterplanned approach*"². The meaning of the policy was therefore made clear prior to the adoption of the plan.

In our view, the Council's interpretation of Policy F4 is therefore irrational.

4. Processing Agreement

The processing agreement purports to "*set out the information required to process the application and also identifies key milestones*". Section 3 of the agreement is entitled "*Masterplan Process*". It sets out a timetable from February 2020 until July 2020 that deals with the submission of an outline scope of the proposed masterplan, the approval of the masterplan and, lastly, "*community consultation on the approved masterplan to demonstrate how the principles set out in the document have informed the revised development*".

¹ [2012] UKSC 13, paragraphs 18 to 20

² Examination Report, page 244 (paragraph 23)

The agreement envisaged the masterplan being approved on 19 June 2020 with revised plans and supporting information being submitted by the applicant to the Council by 1 July. Section 4 of the agreement says that:

“The Planning Authority confirm that following committee approval of a masterplan; planning application 19/00707/FULM requires to be amended to take into account of [sic] the masterplan and matters raised by the Planning Authority. The amended development proposal must also address matters raised by consultees and third parties to the initial submission. Information identified below is required in order to allow the planning application to be progressed to determination.”

The “*information identified below*” is contained in a table in Section 4 of the agreement. It comprises, in effect, an entirely new planning application.

The terms of the processing agreement indicate that the Council has fundamentally misinterpreted its own policy. Policy F4 makes the submission of a planning application suspensively conditional upon a masterplan first being prepared. By contrast, the terms of the processing agreement indicate that the Council has interpreted the policy as one which provides for the following three-stage approach to the submission and determination of a planning application for any part of Site F4:

- (i) The first stage is to allow the submission of a planning application for any part of Site F4 in the absence of an approved masterplan;
- (ii) The second stage is to pause the consideration of that application and delay its determination in order to allow a masterplan to be submitted to and approved by the Council; and
- (iii) The third stage is to require the applicant to amend all of the detailed plans and supporting information submitted with the planning application to reflect the terms of the approved masterplan.

That is clearly not what is set out in Policy F4. The Council's interpretation of the policy places the cart before the horse. The policy does not, on any objective reading, support that approach. In our view, the Council's interpretation of Policy F4 is irrational.

Further, in the final row of the table in Section 3 of the processing agreement, there is a requirement to “*Undertake community consultation on approved Masterplan to demonstrate how the principles set out in the document have informed the revised development*”. This is contrary to the Council's own Consultation Procedures for Development Briefs and Development Guidance approved by the Development Standards Committee in January 2018. Figure 1 of those Consultation Procedures contains a: “*Requirement for developer to undertake community consultation to demonstrate how the principles set out in the development brief have been applied to the development of their proposal prior to the submission of a planning application*”. This is of sufficient importance that the Consultation Procedures go on to make it clear that: “*The requirement to undertake consultation will apply to all proposals where the requirement for a development brief is identified in the LDP, even if the proposal is not identified as a major application.*” We understand that the Council's Consultation Procedures are intended to be used for masterplans as well as development briefs and development guidance.

5. Pre-Application Consultation

It is a clear requirement of Policy F4 that before a planning application comes forward for a development proposal on any part of Site F4, a masterplan must be approved. The reason for this is straightforward. Site F4 has the capacity for 300 housing units on the allocated portion of the site alone. The site is not in unitary ownership. There are strategic issues that affect the site, in particular contaminated land and the impact of residential development of the scale proposed on the trunk road network. These issues require a site-wide approach to resolve them. The requirement for a masterplan is therefore a necessary step in the planning process.

The national policy basis for masterplans is set out in paragraph 57 of Scottish Planning Policy 2020. This refers to a masterplan as a “*tool for making better places*”. The table in paragraph 57 refers to masterplans as being:

- a) For a specific site that may be phased so able to adapt over time.
- b) To describe and illustrates how a proposal will meet the vision and how it will work on the ground.
- c) May include images showing the relationship of people in place.

It then refers to Planning Advice Note 83: Masterplanning (“**PAN 83**”). In reference to a masterplan, page 6 of PAN 83 provides that: “*most commonly, it is a plan that describes and maps on overall development concept, including present and future land use, urban design and landscaping, built form, infrastructure, circulation and service provisions. It is based upon an understanding of place and is intended to provide a structured approach to creating a clear and consistent framework for development.*”

Page 7 provides that an effective masterplan “*should explain how a site, or series of sites, will be developed, describing and illustrating the proposed urban form in the three dimensions. It should show how that form will achieve the intended vision for the place, and how and distinct and appropriate character will be created. It should also describe how the project will be implemented through a delivery strategy which sets out phasing, timing and funding.*”

If the terms of the PAN are adhered to in the preparation of a masterplan (as they should be), then the masterplan will contain a significant amount of detail. It will provide a framework that will assist in the formulation of development proposals.

Therefore, the purpose of the masterplan for Site F4 would be to guide the development proposals. In the absence of the masterplan, the applicant had no way of knowing at the time the planning application was submitted what the wider framework will be (and that remains the case). This is no doubt the reason for the processing agreement requiring the submission of amended plans and supporting information once the masterplan is approved.

However, this requirement cannot cure the procedural flaws that arise as a result of the Council's interpretation of Policy F4. In particular, the Council's approach would subvert pre-application consultation – a cornerstone of the planning system in Scotland since 2009. Pre-application consultation is required before an application for a major development is submitted. The 1997 Act and the related Regulations require a proposal of application notice to be submitted a minimum of 12 weeks before the related planning application is made. Within this twelve-week period the applicant is required to carry out a series of consultation events with community councils and the public. The purpose of the pre-application consultation is to ensure that members of the public have an opportunity to fully understand the development proposals and provide their comments on them. The applicant can then take those comments into account when formulating their planning application.

The Council's approach to Policy F4 means that the public were denied proper pre-application consultation on the Westfield Application. In order to fully understand the terms of the application, the terms of the masterplan must be known. The masterplan is intended to provide a framework that will shape the planning application. The Council and the applicant clearly anticipate that an approved masterplan will result in significant changes to the Westfield Application. The processing agreement requires the submission of an amended version of every detailed plan and every item of supporting information that forms part of the Westfield Application once the masterplan is approved. In effect, it requires the submission of a new planning application. However, these amended plans will not be subject to pre-application consultation. Furthermore, the pre-application consultation that was carried out will have been in connection with an entirely different development proposal.

Therefore, if the terms of the processing agreement are adhered to, the applicant and the Council will deny the public its statutory right to properly participate in pre-application consultation. The process is therefore fundamentally flawed and cannot be remedied by re-consulting on the amended application documents. The error in approach in accepting the Westfield Application in the absence of an approved masterplan infects all that follows. In our view, the error cannot be cured. Any decision taken to approve the Westfield Application would therefore be vulnerable to legal challenge.

We note that Scotia Homes Limited submitted a proposal of application notice on 19 January 2021 (reference 21/00035/PAN) for another area, unconnected to the Westfield Application site, within the allocated F4 site. The notice indicated that a virtual public event was planned for 25 March 2021. Our understanding is that this event did not take place and that the pre-application consultation process has not proceeded. We would be grateful if you could confirm your understanding of the reason for this.

6. Conclusion and Next Steps

Before a planning application is competently made for any part of Site F4, the policy requires that a masterplan should be approved for the site. The Westfield Application has been made before a masterplan has been approved. It therefore does not adhere to the clear requirements of Policy F4 and, if it were to be progressed, it would inevitably breach procedural requirements in connection with pre-application consultation. In our view any decision to approve the Westfield Application would be unlawful and vulnerable to legal challenge.

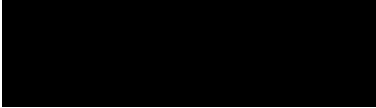
In terms of dealing with the Westfield Application, it is our view that the following steps should be taken:

- (i) The applicants should be invited to withdraw the Westfield Application. In the event that the applicants refuse to do so, the Westfield Application should be refused.
- (ii) The applicants, together with other interested parties, should submit a masterplan to the Council in respect of the entirety of Site F4. The Council should consider that masterplan in accordance with the terms of PAN 83 and the Council's own Consultation Procedures for Development Briefs and Development Guidance.
- (iii) Once the Council has approved the masterplan, or adopted it as supplementary planning guidance, a new application for any part of Site F4 may be submitted. That application must be in accordance with the terms of the masterplan.

We would be grateful if you could acknowledge receipt of this letter and confirm, within 21 days, that the steps outlined in Section 6 will be followed.

This letter is written without prejudice to our client's whole rights and pleas in law, which are reserved, and shall not be relied upon in any future proceedings without our client's express consent.

Yours faithfully



Fraser Mitchell
Partner
SHOOSMITHS LLP

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Sent: By email to
planning@angus.gov.uk

Our Ref FZM/S-00091599
Date 25 May 2022

Dear Angus Council

**MUIR HOMES LIMITED
PLANNING APPLICATION 19/00707/FULM
WESTFIELD, FORFAR**

We have been instructed by, our client, Elite Homes (Tayside) Limited to raise two key issues in relation to planning application 19/00707/FULM. These issues are fundamental to the consideration of the planning application. It would be helpful at this stage, and as a matter of urgency, to understand the Council's intended approach to dealing with them.

Background

By way of background, we are aware that a suite of new supporting documents has been submitted by Muir Homes in support of the application. The letter from Jacqueline Forbes Consulting (Muir Homes' planning consultant) to the Council dated 28 March 2022 identifies the documents that have been submitted as follows:

1. Revised Architectural Layout
2. Updated Design & Access Statement
3. Updated Surface Water Management Plan & Drainage Proposals
4. Updated Level Proposals
5. Updated House Type Plans & Elevations
6. Updated Landscape Layout and Planting Plans
7. Updated Noise Report
8. Updated Transport Assessment
9. Updated Flood Risk Assessment responding to SEPA's comment
10. Specification for Areas of Architectural Interest / Ancient Monuments
11. Updated Ecology Report
12. Update Construction Environmental Management Plan
13. Masterplan Document

The changes to the application also include a reduction in the number of residential units being sought, from 175 to 136 as well as a change to the redline boundary of the application site.

Legal Framework

Section 32A of the Town and Country Planning (Scotland) Act 1997 sets out the framework for varying a planning application.

Section 32A(1) contains the general rule that an application may be varied with the agreement of the planning authority. Section 32A(2) contains the qualification to that general rule, which provides that: “*if the planning authority consider the variation to be such that there is a substantial change in the description of the development for which planning permission is sought, they are not to agree to the variation.*”

Substantial Variation

Our client has reviewed the new supporting information. It is their conclusion that the new information, in effect, constitutes a new planning application and that substantial changes have been made to the existing application. Our understanding of these changes include:

1. The number of proposed residential units has significantly reduced, with 39 fewer units now being sought (a reduction of over 20%).
2. The redline boundary of the application site has changed, with the removal of a significant parcel of land from the south west and the loss of open space to the south.
3. The internal layout of the site has changed. Residential units have been removed from the frontage of the Glamis Road along the northern boundary of the site. The layout now comprises two unconnected development sites. In addition, five new house types have been introduced.
4. Along the frontage of the site facing the Glamis Road it is now proposed to have a three-metre high bund together with a two-metre high fence. This will provide a five-metre high visual barrier between the site and the road. This significant new mitigation was not anticipated in the original application.
5. A masterplan has now been lodged in support of the application. This includes reference to a wide range of matters that, as far as our client is aware, have not been fully addressed.

It appears to our client that these component changes may individually constitute a substantial change to the application and that, in any event, cumulatively it is highly likely that the changes are a substantial change. The nature and extent of the changes means that, in planning terms, there are significant new matters to be assessed and issues to be addressed. The development that is now proposed is not the same as that contained in the original application.

Connected to this, we are aware that Muir Homes has submitted a fresh proposal of application notice (reference 22/00295/PAN) for residential development over the same area as the original (now superseded) site plan. Whilst doing so is a matter for the applicant, it may indicate a concern on their part that the new information that has been submitted does substantially change the current application and that a new application will be required. In any event, the submission of a PAN indicates that a fresh application will be submitted in due course.

We would therefore be very grateful if you could confirm the Council's position on the submitted changes to the application. If the changes are substantial, as our client believes they are, then it would not be competent for the Council to accept them as a variation to the application. To do so in those circumstances would mean that any subsequent determination of the application would be vulnerable to legal challenge.

Masterplan

We have previously set out our client's view that the appropriate way to authorise development at Site F4 is to first approve a masterplan for the entire site, and then bring forward planning applications that are in accordance with that approved masterplan. Muir Homes has indicated that they disagree with that view and the Council has indicated that the masterplan will be dealt with as an internal part of the planning application. It is unclear whether the masterplan will be subject to an approval process.

Our understanding is that up until recently the Council's position was that the masterplan process would follow the procedures as set out in the Council's Consultation Procedures for Development Briefs and Development Guidance 2018. This position was reflected in the processing agreement entered into by the Council and Muir Homes in 2020 and, we understand, in advice provided to Muir Homes.

However, in a letter to us dated 10 May 2022, the Council's Service Leader (Planning and Sustainable Growth) advised that:

"PAN83 provides different mechanisms for how a masterplan might be embedded as part of the planning process. Those with an interest in the site have chosen to submit the masterplan as part of a planning application. In this circumstance the adequacy of the masterplan and the weight attached to it will be considered through the planning application process. If you wish to make comment on the matter I would suggest that you do so through submission of formal representation on the planning application."

Approval of the Current Masterplan

If the approach outlined above is followed, it is likely to give rise to an issue in relation to the competence of the masterplan and any permission subsequently granted pursuant to Muir Homes' application.

The Council and the applicant have made it clear that they intend to deal with the masterplan as an internal part of the planning application. However, the masterplan covers the entire allocated area of Site F4 and also refers to the safeguarded area whereas the planning application site forms only part of it (roughly one third of the allocated part of Site F4). The masterplan area is therefore significantly larger than the red line boundary of the application site. If it is the intention to approve the masterplan as an internal part of the planning application, then an issue around the competency of that decision will arise.

To explain, the Council only has the statutory power to approve development (or indicative development) within the redline boundary area of a planning application. Therefore, if the masterplan is to be approved as an internal part of the current planning application (i.e. in the same way as an approved plan), that approval will not attach to any parts of Site F4 that are located out with the redline boundary of the application site. Therefore, it appears to us that this approach cannot result in the competent approval of the masterplan.

If it is the intention to approve the masterplan as part of the planning application, can you explain how this issue will be addressed?

Muir Homes' agents have previously indicated that a masterplan is commonly dealt with as an internal part of a planning application by planning authorities throughout Scotland. It is our view that that is likely only to be the case where the red line boundary of the application site aligns with the area to be covered by the masterplan. To give an example, that approach may be taken where policy supports it, where one application for planning permission (most likely a planning permission in principle) is made with the intention of bringing development forward in separate phases, and a supporting masterplan is submitted over the same site. The masterplan may be considered as an internal part of the application in those circumstances where, crucially, it would apply to the same site and indicate where and in which order development would come forward. That could give the masterplan relevance and weight in the decision making process, and make it a binding part of the planning permission. For a planning permission in

principle, it would set out the parameters within which approval of matters applications could be made. In our view, that is different to the current circumstances where the application seeks permission for only a fraction of the land that is intended to be bound by the masterplan.

In our view, contrary to the view of the Council, the current approach being taken is not one that is recognised by PAN 83.

Failure to Approve a Policy-Compliant Masterplan

If the Council does not intend to approve the masterplan for the entire site before the planning application is determined, then there may be further issues in relation to the relevance and weight of the masterplan, the reasons for granting permission, and the reasonableness of that decision. We consider that the following specific issues may arise if a policy-compliant masterplan is not approved prior to the determination of any planning application for site F4:

1. The determination process in connection with the planning application will, in our client's view, not be in accordance with Policy F4. We accept that the Council and the applicant do not share that view. However, if the planning application is determined as a departure from policy it must be justified by clear and intelligible reasons. Failure to provide those reasons would render any decision to grant planning permission vulnerable to legal challenge. In setting aside the requirements of Policy F4, the Council would have to explain why those requirements are not important or relevant to the application site.
2. It would remain difficult to see how the masterplan would have the status of a material consideration in the determination of the planning application (and any other applications for Site F4). If it is not subject to any approval process, the masterplan will not have been subject to any material scrutiny by the Council. It will essentially be an expression of the applicant's preferred approach to development at the application site and over the wider F4 site. It would not be a masterplan as envisaged by Policy F4 and as recommended by the Examination Reporter. In those circumstances, it will not have a status equivalent to supplementary guidance, a development brief, or any other document that is intended to inform and guide development proposals as a material consideration. Even if it were considered to be relevant to the determination of the application, in the absence of an approval process it would attract only limited weight for the reasons noted in this paragraph.
3. Further to point 2 above, if the masterplan is not approved, the likelihood is that the requirements set out in Policy F4 will not be fully addressed. The most recent consultation responses indicate that there are a significant number of matters that have not been dealt with. Even if these matters are dealt with, the masterplan will not be binding on any other part of Site F4 other than the application site. The masterplan for Site F4 should provide a coherent layout and design for the entire site, provide assessments in relation to a range of important strategic issues that must be carried out in order to understand the practical impact of the development, and set out the mitigation that will be required. These practical issues are of real importance in the consideration of development proposals across the entire site, and the wider Forfar area (particularly in relation to roads). If the masterplan is not approved and these matters are not addressed, an issue will arise in relation to the reasonableness of any decision to grant planning permission for any part of Site F4. Again, any such decision taken in those circumstances would be vulnerable to legal challenge.

We would be very grateful if you could explain how these points relating to the masterplan will be reconciled and addressed by the Council.

We look forward to hearing from you as a matter of urgency.

Yours faithfully



Fraser Mitchell
Partner
SHOOSMITHS LLP

Comments for Planning Application 19/00707/FULM

Application Summary

Application Number: 19/00707/FULM

Address: Field Opposite Westfield Drive Westfield Loan Forfar

Proposal: Residential Development of 175 Dwellinghouses including Formation of Vehicular Access, Access Roads, Open Space, Landscaping, SUDS and Associated Infrastructure

Case Officer: Ruari Kelly

Customer Details

Name: Mrs Sonja McIntosh

Address: 1 Burn Place Halfpenny Burn Forfar DD8 1TE

Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: I would like to object to the proposed development at field opposite Westfield drive, Westfield loan. I would like a representative to possibly consider and take on board suggestions to alleviate any concerns I am about to raise. Please consider the increased traffic which affects the residence of Halfpenny burn. It is difficult at the best of times to exit driveways onto the Glamis road due to heavy traffic flow both ways. The increased noise in the area along with road safety that poses a threat during and after completion. Currently the visual appearance and surroundings do not cause any concern however the proposed development will bring high volumes of traffic to the area along with noise pollution and an impact on the environment. There is a risk of possible flooding which would flow into the properties of Halfpenny burn due to developing the area with the amount of properties suggested, The reduction of an adequate green belt along with the interference of technology issues by blocking transmitters and Satellite dishes as currently growing vegetation has an impact until they are trimmed down or removed, building houses directly off the Glamis road section of Halfpenny Burn would greatly affect the residence on the Halfpenny burn side unless a green belt is between the Glamis road and the new development of a considerable distance to help reduce noise and interference pollution along with a vehicle access point away from the residence area of Halfpenny burn due to the high volumes of traffic that will appear should the development have approval. Concern over the water table as a natural burn runs diagonally down between the residence of Halfpenny Burn, excessive development would possibly cause this water table to divert further towards the residence causing damage to foundations and property alike due to the high ground level which runs from the Dundee road point towards Glamis road.