

REPORT TO: DEVELOPMENT QUALITY COMMITTEE – 6 DECEMBER 2004

REPORT ON: PLANNING APPLICATION 03/00708/OUT – REGENERATION OF DUNSINANE INDUSTRIAL ESTATE, DUNDEE

REPORT BY: DIRECTOR OF PLANNING & TRANSPORTATION

REPORT NO: 778-2004

1 PURPOSE OF REPORT

1.1 An appeal has been submitted to Scottish Ministers in respect of the Council's failure, within the statutory period, to determine planning application 03/00708/OUT. The views of the Committee are sought in order to establish the Council's position on the application in advance of a public inquiry into this appeal which will take place in April 2005.

2 RECOMMENDATION

2.1 It is recommended that the Council participate in the forthcoming Public Local Inquiry which will consider planning application 03/00708/OUT.

2.2 It is recommended that had the Council determined the application on the basis of the information submitted by the applicant, it would have refused the application for the following reasons:

- a the proposals are not in accordance with Employment Policy 2 of the Dundee and Angus Structure Plan 2001-2016, and Policies EU2 and EU3 of the Dundee Local Plan 1998 as the application site is identified as a prime industrial site reserved for the establishment of industrial and business development within Classes 4, 5 and 6 of the Town and Country Planning (Use Classes) (Scotland) Order 1992 and there are no material considerations which lead to the approval of the development contrary to these policies.
- b the proposals are not in accordance with Town Centre and Retail Policies 2 and 4 of the Dundee and Angus Structure Plan 2001-2016 and Policies S11 and S20 of the Dundee Local Plan 1998 which support Dundee's district centres as the focus for new retail development and set out the criteria for the consideration of new retail developments outwith existing centres and there are no material considerations which lead to the approval of the development contrary to these policies.
- c the proposals are not in accordance with Policy S27 of the Dundee Local Plan 1998 as they fail to meet the criteria for the granting of planning permissions for car and caravan sales and there are no material considerations which lead to the approval of the development contrary to these policies.
- d the proposals are not in accordance with Environmental Resources Policy 6 of the Dundee and Angus Structure Plan 2001-2016 and Policy BE30 of the Dundee Local Plan 1998 as the applicants have failed to adequately demonstrate that any site contamination has been comprehensively identified, and where it has, that mitigation measures are satisfactory.

- e the proposals are not in accordance with Policy H12 of the Dundee Local Plan 1998 in terms of the criteria required for the location of residential homes and nursing homes and there are no material considerations which lead to the approval of the development contrary to these policies.
- f the proposals are not in accordance with Transport Policy 4 of the Dundee and Angus Structure Plan 2001-2016 as the applicants have failed to adequately demonstrate that the development discharges the policy's minimum requirements and that the proposals can be satisfactorily accommodated within the existing road network and there are no material considerations which lead to the approval of the development contrary to this policy.
- g the proposals are not in accordance with the following policies of the Finalised Dundee Local Plan Review for the reasons specified below:
 - 1 Policy 10 - incompatible location for a nursing home (non mainstream housing).
 - 2 Policy 24 - the application site is designated as a Principal Economic Development Area where uses outwith Classes 4, 5 or 6 of the Use Classes Order will be resisted.
 - 3 Policy 27 - the range of uses proposed exceed the range of uses which are acceptable under the terms of this policy.
 - 4 Policy 30 - this policy presumes against the provision of additional hotel accommodation on or close to major routes through the city and particularly supports such accommodation within the city centre and central Broughty Ferry.
 - 5 Policy 45 - the city centre and district centres are the locations of first choice for new or expanded retail developments not already identified in the local plan. The applicants have failed to demonstrate that the application proposals meet the specified terms of when exceptions may apply to this policy.
 - 6 Policy 48 - seeks to incorporate measures, in major out of centre retail developments, to encourage convenient access by means other than the car. The information submitted fails to demonstrate that the criteria of this policy can be achieved.
 - 7 Policy 49 - this policy identifies specific sites other than the application site for the provision of new foodstores.
 - 8 Policy 75 - failure of the applicants to adequately demonstrate that the surface water predicted to be discharged by the development can be adequately accommodated by Sustainable Urban Drainage System designs and by other appropriate means and that any flood risk can be adequately mitigated.

- 9 Policy 79 - failure of the applicants to adequately demonstrate that any existing ground contamination can be mitigated particularly on sites which are identified of non industrial or commercial uses.
- h the proposals fail to meet the criteria set out in Paragraph 45 of NPPG 8 (as revised 1998): Town Centres and Retailing in respect of the location of proposed retail developments.
- i the mixed use proposals are incompatible with the provisions of SPP2: Economic Development which encourages the redevelopment and reuse of brownfield sites, and particularly those in important strategic locations, for the retention of existing enterprises and the creation of new businesses.
- j the applicants have failed to adequately demonstrate that their proposals satisfy the requirements of SPP 7: Planning and Flooding and NPPG 17: Transport and Planning in terms of surface water drainage and sustainable transport measures respectively.
- k the applicants have failed to adequately demonstrate that their proposals can be accommodated on the application site without detriment to the environment in terms of air quality, noise, contaminated land and landscape impact.
- 2.3 It is recommended that the Council reserve the right to amend its position in this appeal in light of the Report of the Public Local Inquiry into objections to the Finalised Dundee Local Plan Review and in response to the submission of any additional supporting information by the applicant.

3 FINANCIAL IMPLICATION

- 3.1 The appeal will result in legal costs to the Council which cannot, as yet, be quantified. Provision for this expenditure will be included in the Planning and Transportation Department's Revenue Budget for 2005/2006.

4 LOCAL AGENDA 21 IMPLICATIONS

- 4.1 Key Theme 7 of the Council's Local Agenda 21 is relevant to the proposal. This key theme seeks to ensure access to facilities, services, goods and people is not achieved at the expense of the environment. On the basis of the information submitted the applicants have failed to demonstrate that the proposal achieves the aims of Key Theme 7.

5 EQUAL OPPORTUNITIES IMPLICATIONS

- 5.1 Equal opportunities policies cannot be taken into account in the determination of a planning application.

6 BACKGROUND

The Proposals

- 6.1 Planning application 03/00708/OUT is an outline planning application (accompanied by an illustrative masterplan) for the regeneration of Dunsinane Industrial Estate with

retailing, industrial and commercial uses including car showrooms, hotel, nursery, nursing home and community uses. The planning application was registered by the Council on 9 September 2003 and the appeal lodged on 26 October 2004. The timescale for the potential determination of this application and the lodgement of an appeal relates, in this case, to the statutory requirements surrounding the submission of an Environmental Statement. (See Para 9.12 below).

- 6.2 The illustrative masterplan and documentation accompanying the application indicates a range of proposed land uses and support infrastructure as follows:

Masterplan Reference	Land Use	Floorspace
ND1	Foodstore	8361 m ² (90,000 ft ²)
ND2	Non Food Retail	7432 m ² (80,000 ft ²)
ND3	Petrol Filling Station	279 m ² (3,000 ft ²)
ND4	Class 4 Business (1)	4460 m ² (48,000 ft ²)
ND4	Hotel (60 bedrooms)	2230 m ² (24,000 ft ²)
ND4	Restaurant	930 m ² (10,000 ft ²)
ND4	Shops	1490 m ² (16,000 ft ²)
ND5	Motor Vehicle Centre	930 m ² (10,000 ft ²)
ND6	Class 4 Business (2)	26,570 m ² (286,000 ft ²)
ND7	Class 4 Business (3)	930 m ² (10,000 ft ²)
ND8	Children's Nursery	1490 m ² (16,000 ft ²)
ND9	Nursing Home (60 beds)	5580 m ² (60,000 ft ²)
ND10-17	Class 5/6 Business (13 Units)	140,000 m ² (1,506,400 ft ²)
ND18	Community Use	1860 m ² (20,000 ft ²)
ND18	Class 4 Business (4)	5580 m ² (60,000 ft ²)
ND19-22	Car Showrooms (6 Sites)*	9151 m ² (98,465 ft ²)
Total		217,273 m²

Footnotes: Similar proposals to these contained in this application were submitted on 18 July 2003 in planning application 03/00596/OUT. These proposals include a skatepark. This application was subsequently withdrawn by the applicants and replaced by the current proposals.

** Includes the car showroom site already in operation at the Kingsway West/Kings Cross Road junction (see Para 8.16 below).*

- 6.3 In evidence to the Local Plan Inquiry the applicants indicated that the project is also intended to incorporate road junction improvements (Kings Cross Road and Coupar Angus Road); new and upgraded access roads, pavements, laybys and street lighting; Kingsway facade upgrades; traffic calming measures signage; sustainable urban drainage; car parking and landscaping.
- 6.4 The applicant's stated objective is to regenerate the estate through a phased 10 year programme of investment in land and property to stabilise existing employment levels and promote new employment. The applicants predict that the regeneration would re-establish Dunsinane as a premier employment location and bring social, community, visual and environmental benefits.

The Site

- 6.5 The application site includes the area bounded on the north by A90 Kingsway West; on the east by Kings Cross Road; on the south by Lundie Avenue and Kilspindie Road. The western site boundary is irregular and is described to include a portion of Coupar Angus Road but excludes the Lyndhurst Grid Sub-station and those units on Dunsinane Avenue immediately to the south. The gross site area extends to 36.4 hectares (90 acres). The applicants intend that the redevelopment proposals should take place within the site's existing road pattern.
- 6.6 The application site is largely in either industrial or commercial use incorporating supporting services and a number of vacant and derelict sites. The submitted masterplan identifies those businesses which are to be retained within the surrounding redevelopment framework.

Site History

- 6.7 The most relevant items of site history are as follows:
- 1992 : Change of use from vacant industrial unit to children's nursery (D17529; refused; 01/10/1992)
 - 1993 : Change of use from offices to form extension to children's nursery (D17949; approved; 26/4/93)
 - 1996 : Foodstore, petrol filling station, car parking (D20243; refused after call in by Tayside Regional Council; subsequent appeal withdrawn)
 - 1999 : Change of use from office/industrial units to children's day care nursery (D23814; approved; 19/4/1999)
 - : Change of use of former industrial unit to cafe (D24176; approved; 28/9/1999)
 - : Invalid outline application for food superstore, fast food outlets, filling station and car parking (D24059; withdrawn; 11/4/01)
 - 2002 : Change of use from forecourt to car wash area (02/00058/COU; withdrawn; 09/07/2002)
 - : Change of use from former industrial unit to cafe (continuation) (02/00666/COU; approved (temporary) with restricted hours; 04/11/02)
 - 2003 : Change of use from forecourt to car wash area (03/00047/COU; refused; 31/3/04)
 - : Change of use from forecourt to car wash area (03/00841/FUL; refused; 23/2/04)
 - : Erection of car showroom/workshop and commercial vehicle workshop and associated car parking (02/00886/FUL; approved; 25/8/03)
 - 2004 : Change of use from workshop to storage and sales (04/00574/COU; refused; 01/9/04; at appeal)

Publicity and Consultations

- 6.8 The applicants carried out statutory Neighbour Notification and the proposal was advertised as a departure from the Dundee and Angus Structure Plan 2001-2016 and the Dundee Local Plan 1998 and under Section 34 of the Act as a Bad Neighbour Development. One letter of objection was received from a business currently operating within Dunsinane. The main grounds of objection were that the proposal would result in the loss of the building that the objector is currently operating in and therefore the financial implications of relocation and investment and that the proposal is contrary to Policies EU2 and EU3 of the Dundee Local Plan as well as corresponding policies of the Finalised Dundee Local Plan Review. The objector also considered that the retail use proposed was unjustified and was concerned about the potential impact retail use would have on current amenities and in particular on Lochee High Street.
- 6.9 A number of technical documents have been submitted in respect of the application. These include:
- i Planning Policy Report (D G Coutts Associates, July 2003)
 - ii Regeneration Report (Ryden, July 2003)
 - iii Transportation Assessment (Dougal Baillie Associates, September 2003)
 - iv Air Quality Impacts (IOM Consulting, October 2003)
 - v Noise Assessment (Hamilton and McGregor Acoustics Division, October 2003)
 - vi Risk Assessment (Enviro Centre, October 2003)
 - vii Retail Assessment (DTZ Piedad, November 2003)
 - viii Landscape Assessment Strategy (D G Coutts Associates, December 2003)
 - ix Development Drainage Strategy Proposal (ARUP Scotland, December 2003)
 - x Environmental Statement (Farrar Consultants, March 2004)
- 6.10 Consultation with Council Departments and external bodies has been undertaken. These consultations indicated that further clarification and information was necessary before further analysis of the submitted technical information was possible. This information was requested in October 2003 and again in August 2004. The appellants have indicated to Scottish Ministers that the required documentation including that which will supplement the Environmental Statement will be lodged as productions for the forthcoming inquiry.
- 6.11 Accordingly at this stage in the decision-making process it is considered that the applicants/appellants have failed to demonstrate that their proposals are capable, as a package, to discharge relevant land use and environmental policy requirements.

Related Appeals

- 6.12 As Members will be aware several planning applications have been submitted to the Council for the development of, amongst other land uses, food superstores at various sites throughout the City. These applications are:
- a Asda Stores Ltd at South Road, Myrekirk Road
 - b Tesco Stores Ltd at South Road
 - c Wm Morrisons Supermarkets plc at the former Linlathen High School site, Forfar Road
 - d Bassell UK Limited at Land to the West of Camperdown Leisure Park, Dayton Drive.

- 6.13 The applications at South Road/Myrekirk Road and Forfar Road were both recommended for approval by the Council but were subsequently called in by Scottish Ministers. Bassell UK Ltd and Tesco Stores Ltd have appealed against non-determination of their applications and they have also been called-in by Scottish Ministers. These proposals along with this proposal by James Keiller Estates Ltd are to be considered at a series of sequential Public Inquiries commencing on 1 March 2005.

7 PLANNING POLICY FRAMEWORK

- 7.1 All applications for planning permission are to be determined in accordance with the Town and Country Planning (Scotland) Act 1997 (Section 25) which states:

“When making any determination under the planning Acts, regard is to be had to the Development Plan, the determination shall be in accordance with the Plan unless material considerations indicate otherwise”.

The Development Plan in this instance comprises:

- i The Dundee and Angus Structure Plan 2001-2016 (approved by Scottish Ministers in October 2002).
- ii The Dundee Local Plan 1998 (adopted 1 April 1998).

The third component of the Development Plan, The Urban Nature Conservation Subject Local Plan 1995 (adopted 1995) is not relevant to this appeal.

Development Plan

- 7.2 The following policies and proposals are of relevance to the consideration of this application.

Dundee and Angus Structure Plan 2001-2016

- i Employment Policy 2: Existing Employment Areas
- ii Town Centres and Retailing Policy 2: District Centres
- iii Town Centres and Retailing Policy 4: Out of Centre Retailing
- iv Transport Policy 4: Development Location
- v Environmental Resources Policy 6: Design and Urban Renewal

Dundee Local Plan 1998

- i Employment Uses Policy EU2: Prime Industrial Estates
- ii Employment Uses Policy EU3: The Kingsway West Corridor
- iii Employment Uses Policy EU17: Business Developments
- iv Retailing Policy S20: Out of Centre Shopping
- v Retailing Policy S27: Car and Caravan Sales
- vi Housing Policy H10 and Appendix: Design of New Housing
- vii Housing Policy H12: Residential Homes and Nursing Homes
- viii Social, Community and Education Facilities Policy SCE2: Provision of New Facilities
- ix Social, Community and Education Facilities Policy SCE4: Day Nurseries and Private Nursery Schools
- x Built Environment Policy BE30: Contaminated Land

Relevant Material Considerations

7.3 The following material considerations are also relevant:

Finalised Dundee Local Plan Review

- i Policy 1: Vibrant and Sustainable Communities
- ii Policy 10: Non Mainstream Residential Uses
- iii Policy 19: Private Day Nurseries
- iv Policy 24: Principal Economic Development Areas
- v Policy 25: Dunsinane Revitalisation*
- vi Policy 27: Ancillary Services within Economic Development Areas
- vii Policy 30: Visitor Accommodation
- viii Policy 45: Location of New Retail Developments
- ix Policy 48: Accessibility of Out of Centre Retail Developments
- x Policy 49: New Out Centre Food Stores
- xi Policy 57: Visual Impact on Major Routes
- xii Policy 75: Sustainable Drainage Systems
- xiii Policy 79: Contaminated Land

* *The Council resolved to delete this policy prior to the Public Local Inquiry. Nevertheless its terms are material to the determination of this application.*

Scottish Planning Policies, Planning Advice Notes and Circulars

- i NPPG 8 (Revised 1998) Town Centres and Retailing
- ii NPPG 17: Transport and Planning
- iii SPP1: The Planning System
- iv SPP2: Economic Development
- v SPP7: Planning and Flooding
- vi PAN33: Development of Contaminated Land
- vii PAN38: Environmental Impact Assessments
- viii PAN51: Planning and Environmental Protection
- ix PAN56: Planning and Noise
- x Circular 15/1999: The Environmental Impact Assessment (Scotland) Regulations 1999

The Report of the Public Local Inquiry into Objections to Finalised Dundee Local Plan Review and the Council's Response

7.4 This Report and the Council's response will be material considerations in the determination of this proposal. It is intended that a Report be submitted to the Planning and Transportation Committee in January 2005 on this matter.

8 ASSESSMENT OF PROPOSALS AGAINST THE PROVISIONS OF THE DEVELOPMENT PLAN

8.1 The proposal is for the regeneration of Dunsinane Industrial Estate including retailing, industrial and commercial uses including car showrooms, hotel, nursery, nursing home and community uses. Each of these uses will be assessed in terms of the relevant development plan policies.

Industrial/Business Classes 4, 5 and 6

- 8.2 The Dundee and Angus Structure Plan Employment Policy 2 safeguards and promotes land in the Kingsway corridor for employment use (specifies Class 4, 5 and 6 of the Use Classes Order).
- 8.3 The site is designated within the Dundee Local Plan 1998 under Employment Use Policies EU2 and EU3. EU2 identifies the site as a Prime Industrial Estate and seeks to encourage the establishment and retention of industrial and business uses as defined by Class 4, 5 and 6 and wholesaling of a type, which does not generate large amounts of customer traffic. The masterplan shows that approximately 63% of the site will be retained or developed with Class 4, 5 and 6 land use. The rest of the site is proposed for retailing or commercial use which are likely to lead to a significant increase in traffic generation within the area.
- 8.4 The policies of both the approved Structure Plan and the adopted Local Plan set clear strategic and detailed land use planning contexts for development and redevelopment of Dunsinane Industrial Estate for industrial and other business uses, thereby taking advantage of its prime and prominent location adjacent to the Kingsway. This is supported by the National Planning Framework (see Paras 9.19-9.21 below).
- 8.5 In accordance with national policies, the development plan prioritises the use and reuse of brownfield sites for business development in an effort to minimise pressures for the release of greenfield sites. In this way, the benefits of existing transport links and workforce accessibility are maximised in the interests of promoting sustainable development.
- 8.6 It is considered that, by the proposed introduction of significant amounts of non conforming land uses, the applicants are in material breach of the relevant development plan policies.
- 8.7 Accordingly, it is considered that the proposal is contrary to Employment Policy 2 of the Dundee and Angus Structure Plan 2001-2016 and Employment Use Policies EU2, EU3 of the Dundee Local Plan 1998 because the masterplan proposes that a significant amount of land be developed for uses outwith Classes 4, 5 and 6 of the Use Classes Order. As a consequent, the proposals fail to safeguard the site for industrial and business uses.

Retailing

- 8.8 The application under consideration includes a food superstore of 8,361 sq metres gross floor area and 7,432 sq metres of Class 1 comparison goods floor area. The application site is not designated within the adopted Dundee Local Plan 1998 for food or non food retailing. The proposal, therefore, raises issues for consideration in terms of the retailing policies of both the Dundee and Angus Structure Plan 2001-2016 and the Dundee Local Plan 1998.
- 8.9 Both the Dundee and Angus Structure Plan 2001-2016 through Town Centres and Retailing Policy 4: Out of Centre Retailing and the Dundee Local Plan 1998 Retailing Policy S20: Out of Centre Shopping, set out the criteria for the consideration of new retail developments outwith existing centres. Structure Plan Town Centres and Retailing Policy 2 : District Centres seeks to support Dundee's district centres as a

focus for new retail development in the interests of the enhancement of their vitality and viability. Dundee Local Plan 1998 Retailing Policy S11 identifies criteria in support of district and local centres. New floorspace which does not meet these criteria will not be acceptable. The application site is not located in or near a district or local centre and therefore the proposals fail to comply with the terms of these policies.

- 8.10 It is considered that, given the location of the site it would not improve the distribution and accessibility of either convenience or comparison shopping provision within the city. The site is located in close proximity to the existing Kingsway West Retail Park which is in the process of major expansion including the recent provision of significantly increased food and non-food floorspace.
- 8.11 In light of this it is considered that the proposed development is not in accordance with Town Centres and Retailing Policy 2 and Town Centres and Retailing Policy 4 of the Dundee and Angus Structure Plan 2001-2016 and Retailing Policy S11 and Policy S20 of the Dundee Local Plan 1998.

Commercial

- Hotel; Restaurant; Shops

- 8.12 No reasonable justification has been given for locating a hotel within the Dunsinane Industrial Estate and in its proposed location (Site ND4) surrounded by existing and proposed Class 5 or 6 business uses is likely to potentially be subjected to noise and other environmental impacts. The proposal is likely also to divert demand from more preferred locations which are in conformity with the development plan. Similar arguments may be used in relation to the proposed restaurant and shops on the same site.

- Day Nursery

- 8.13 The proposal raises issues for consideration in terms of Social, Community and Education Policy SCE 4 of the Dundee Local Plan 1998 regarding the provision of Day Nurseries and Private Nursery schools. The policy does allow for a site in or close to a commercial or industrial area providing that there is adequate outdoor play area, parking and access arrangements are adequate and that sound insulation meets requirements. Given that this is an outline application there are inadequate details to fully assess compliance with the criteria set out in this policy.

- Nursing Home

- 8.14 The proposal raises issues for consideration in terms of Housing Policy H12 of the Dundee Local Plan 1998 in terms of Residential Home and Nursing Homes. The policy requires that proposals should be detached buildings, providing more than 5 bed spaces with wheelchair access to grounds and building, adequate parking and garden ground, accessible locations close to bus routes and in attractive residential locations close to bus routes and in attractive residential or parkland surroundings. This policy is supported by the Appendix to Policy H10 which sets out criteria for the detailed planning of nursing home developments. The proposal appears to be for a detached building. However given the proposal's location within an industrial area it is considered that this is an inappropriate location for such a use and subsequently it can be considered that the proposal is contrary to Policy H12.

Community Facilities

- 8.15 The proposal raises issues for consideration in terms of Dundee Local Plan 1998 Social, Community and Education Policy SCE2 for the Provision of New Community facilities. The policy seeks to ensure the suitable location of community facilities within major housing developments. The application provides no detail as to what community uses consuming 20,000 ft² of floorspace is intended nor what kind of business use (60,000 ft²) is intended for the same site (ND18). The proposed location within an industrial area is not considered to adequately serve the residential area to the west and south given that the facility is physically detached from the communities it presumably aims to serve.

Car Showrooms

- 8.16 The proposal raises issues for consideration in terms of Retailing Policy S27: Car and Caravan Sales of the Dundee Local Plan 1998, which seeks to ensure such a use is only granted on industrial land, which is not prime industrial, or business land. Dunsinane has been identified as a prime industrial area and therefore in accordance with this policy car sales should not be permitted in this area. However on 25 August 2003 car sales were granted permission within the site as this use was seen as a catalyst to ensure regeneration of the area. It is considered however that the number of car sales proposed within the master plan is disproportionate to the number of units that are proposed for industrial and business use. Accordingly it is considered that the proposals breach the terms of Policies S27, EU2 and EU3 of the Dundee Local Plan 1998 in this respect.

Environmental Issues

- 8.17 The proposals raise issues for consideration in terms of Environmental Resources Policy 6 of the Dundee and Angus Structure Plan 2001-2016 which indicates that any site being considered for redevelopment that is known or suspected to be contaminated by a previous use will be subject to a detailed assessment. Policy BE30 of the Dundee Local Plan 1998 is expressed in similar terms (see also Para 9.13 below).

Although the applicants have provided supporting information (see Para 6.9) further information and clarification has been requested but at the time of the appeal this had not been provided for further detailed assessment.

Accordingly the applicants have failed to satisfy the Council that the terms of these policies could be satisfactorily discharged.

Conclusion

- 8.18 In conclusion, for the reasons outlined above the proposals do not comply with the provisions of the development plan.

9 ASSESSMENT OF THE PROPOSALS AGAINST OTHER MATERIAL CONSIDERATIONS

Finalised Dundee Local Plan Review

Dunsinane Revitalisation

- 9.1 Policy 25 of the draft plan review proposed some limited flexibility in the range of uses which may be permitted on a restricted number of specific sites allocated on the Proposals Map at Dunsinane Avenue (former Valentine's site) and along Kings Cross Road. "Higher value" economic development uses such as car showrooms and wholesaling may be acceptable. The remaining portion of the Dunsinane estate would be protected for Class 4, 5 and 6 uses under Policy 24 (see below). Retailing would not be an acceptable use and legal agreements would be required to guide the delivery of a masterplan to guide the regeneration and improvement of the remainder of the estate.
- 9.2 Prior to the Local Plan Review Public Inquiry the Council resolved, in September 2003, to delete this policy from the plan because it considered that the policy was not working in this area as the proposals being advanced by James Keiller Estates Ltd included retailing uses in direct violation of the policy together with amounts of community/leisure uses totally disproportionate to the objectives of the policy. The Council considered that it would be more productive to pursue an alternative regeneration strategy using the potential of European and other funding mechanisms in compliance with its core land use planning policies for Dunsinane.

Industrial/Business Uses (Classes 4, 5 and 6)

- 9.3 The application site is identified within the Finalised Dundee Local Plan Review under Policy 24 as a Principal Economic Development Area, which seeks to ensure that the site is safeguarded for industrial and business uses. The policy resists uses outwith Class 4, Class 5 and Class 6 of the Use Classes Order. This policy reflects Policies EU2 and EU3 of the Dundee Local Plan 1998 and Employment Policy 2 of the Dundee and Angus Structure Plan. Therefore, for the reasons given previously, it is considered that the proposal is contrary to the Policy 24.
- 9.4 Policy 27: Ancillary Services within Economic Development Areas provides a basis to develop ancillary services within an industrial area if it can be demonstrated that the proposal meets the needs of employees and complements the existing businesses within the industrial area. The policy sets out criteria for determining compliance. The proposals for a nursing home, community and leisure uses are incompatible with the terms of this policy and it is unclear, given its scale, whether the proposed nursery is a compliant land use. Accordingly, it is considered that the proposals are contrary to Policy 27.

Nursing Home

- 9.5 Policy 10: Non-Mainstream Residential Uses. The criteria contained in this policy reflects that of Policy H12 of the Dundee Local Plan 1998 and therefore for the reasons given previously it is considered that the proposal is contrary to Policy 10.

Day Nursery

- 9.6 Policy 19: Private Day Care Nurseries. The criteria contained in this policy reflects those of Policy SCE 4 and therefore with reference to the previous justification, given the lack of details given at this stage the proposal cannot be fully considered to be consistent with the terms of Policy 19.

Hotel/Restaurant/Shops

- 9.7 Policy 30: Visitor accommodation supports the provision of high quality visitor accommodation and conference facilities in and close to the City Centre. There is a presumption against hotel accommodation on or close to major routes through the city. Given the proposed location within an industrial area and on a major route it is considered that the proposal is contrary to Policy 30.

Retailing

- 9.8 The Finalised Dundee Local Plan Review sets out, through Policy 45, criteria for the consideration of the location of new retail developments. This policy reflects the guidance and criteria set out in the Dundee and Angus Structure Plan 2001-2016 and the adopted Dundee Local Plan 1998. For the reasons already outlined above it is considered that both the food and non-food elements of the proposal are not in accordance with the provisions of this policy.

Policy 48: Accessibility of Out of Centre Retail Developments is also relevant to the consideration of this application. The Transport Assessment submitted was considered unacceptable and the applicant was asked to either resubmit or substantially amend the existing assessment. The information submitted fails to demonstrate that the criteria of this policy can be achieved.

Policy 49: New Out of Centre Foodstores, is relevant to the consideration of this application. This policy advises that the Council supports the principles of new foodstore provision at South Road and at the former Linlathen High School sites as a means of improving the accessibility of foodstore provision in the north and west of the city subject to certain criteria being met. The application site is not one of the locations identified by Policy 49 of the Finalised Dundee Local Plan. It is considered that the food element of the proposal would jeopardise the aims of this policy and is, therefore, considered not to be in accordance with its provisions.

Environment

- 9.9 Policy 75: Sustainable Drainage Systems is also relevant. The evidence provided by the applicant was found to be insufficient to allow for a full discharge of the terms of this policy.
- 9.10 Policy 79: Contaminated Land, reflects Policy BE30 of the Dundee Local Plan 1998. The information supplied by the applicants has proved to lack the specific detail required for the Council to undertake the full assessment required to discharge the terms of this policy.

Transportation Issues

- 9.11 The applicant was requested to submit a Transport Assessment in support of their proposed development. A Transport Assessment has been received. However substantial additional information has been requested. This additional information has not been submitted. Accordingly, in order that a comprehensive appraisal of all transportation issues can be undertaken. The applicant has yet failed to demonstrate the adequacy or otherwise of proposed access, traffic management, public transport, cycling and pedestrian facilities.

Environmental Issues

- 9.12 The Council considered, and the applicant agreed, that the submission of a formal Environmental Statement (ES) was required under Schedule 2 of the Environmental Impact Assessment (Scotland) Regulations 1999. The proposals were likely to have significant effects on the environment by virtue of their size, location and nature. The applicants were advised to submit for discussion and agreement with the Council, a "scoping opinion" which would set out those issues on which the ES would focus. No such opinion was submitted.
- 9.13 The ES was formally submitted on 8 June 2004. Statutory consultations were undertaken and as a consequence further information was formally requested from the appellants. The environmental issues of particular concern include air quality, land contamination, noise impact, the environmental impacts of traffic, landscaping, surface water disposal and health and safety issues. A request to extend the time period for the determination of the application to allow for these proper assessment of the new information was declined by the applicants and at the date of the appeal the requested information had not been provided. However, prior to determining the appeal Scottish Ministers will be required to take into consideration the information contained in the ES including any further information supplied and the consultation responses required in respect of all this information.
- 9.14 Accordingly had the Council been in a position to determine this planning application it could only have concluded that the applicants had failed to adequately demonstrate that all potential environmental impacts of their proposals could be mitigated to the satisfaction of the Council.

National Planning Policy Guideline 8 (Revised 1998) Town Centres and Retailing

- 9.15 The guidance within NPPG8 advises that where proposals are not consistent with the development plan the developer must demonstrate why an exception to the policy should be made and the proposal should be rigorously assessed by the planning authority against the criteria set out in NPPG8 and refused if all the criteria are not met. Paragraph 45 of NPPG8 sets out the criteria for assessing this type of development. The proposed site was not identified by the adopted Dundee Local Plan 1998 as a location for retail development. Paragraph 45 generally reflects the criteria set out in the Dundee and Angus Structure Plan Policy Town Centres and Retailing 4 and Policy S20 of the Dundee Local Plan 1998. For the reasons set out above it is considered that there is insufficient information yet available to properly assess the proposal against the guidance set out in Paragraph 45 of NPPG8.

Other Statements of National Policy Guidance

- 9.16 In terms of SPP 2: Economic Development, this statement of national planning policy encourages the redevelopment and reuse of previously developed sites rather than the creation of new businesses in industrial areas on greenfield land. Dunsinane has the potential to make a major contribution to the achievement of this objective. However, this requires compliance with the Council's development plan policies and for the reasons specified above, the application proposals fail in this regard.

- 9.17 Amongst other requirements NPPG 17: Transport and Planning, indicates that planning permission should not normally be granted for major travel generating uses in locations where links to walking, cycling and public transport networks are inadequate; which would encourage reliance on the private car; and which would be likely to have a detrimental effect on the capacity of the trunk road network. Transport Assessments are expected to discharge these matters and include satisfactory mechanisms for meeting sustainable transport requirements. The Council is not satisfied in terms of the transport assessment supplied by the applicants that the terms of NPPG 17 have yet been discharged. A formal view of Scottish Ministers as the Trunk Roads Authority awaits the outcome of a full analysis of a comprehensive transport assessment.
- 9.18 Regarding SPP 7: Planning and Flooding, the Council is required to satisfy itself in consultation with Scottish Water and SEPA that the application proposals can be adequately drained and that any flood risk has been assessed and, if necessary, mitigated. These issues and the practicability of employing Sustainable Urban Drainage Systems are relevant in an extensive area such as the application site where there is potential for a significant increase in impermeable areas such as new buildings and car parking areas.

Although, as indicated above, a drainage strategy has been supplied by the applicants, they have yet to submit a full assessment of sustainable methods for dispensing of predicted volumes of surface water resulting from the completion of the project.

National Planning Framework for Scotland

- 9.19 This framework's purpose is to guide the spatial development of Scotland to 2005 and is a material consideration in framing planning policy and making decisions on planning applications. It will be taken into account by the Scottish Executive and its agencies in policy and spending decisions.
- 9.20 At Para 20 of the document, locational preferences of business and industry are identified. Clustering of activity around transport modes and arteries is listed with specific mention of Dundee Kingsway.
- 9.21 It is considered that this material consideration supports the Council's case that the application proposals are unacceptable as outlined in this report.

Conclusion on Other Material Considerations

- 9.22 It is concluded from the foregoing that insufficient weight can be accorded to other material considerations sufficient to justify a grant of planning permission contrary to the provisions of the development plan.

10 CONCLUSION

- 10.1 The purpose of this Report is to update the Committee with the circumstances of Planning application 03/00708/OUT, to place it in its policy context, examine material considerations and to make recommendations as a basis for the Council's case at the forthcoming Public Inquiry.

- 10.2 As specified in detail above, the Retailing and Employment Policies of the Dundee and Angus Structure Plan 2001-2016, and the Retailing, Employment, and Community Facilities, and Environmental Policies of the Dundee Local Plan 1998 are considered to be contravened. In addition, the applicants have also failed to demonstrate that the proposals are in accordance with the relevant policies of the Finalised Dundee Local Plan and with the terms of relevant statements of national planning policy.
- 10.3 The applicants have failed to provide the additional information in support of the submitted Environmental and Transport Assessments. As such it has not been possible to carry out a thorough assessment of the potential impacts that the proposal could have on the site and surrounding area. Accordingly, the applicants have failed to adequately demonstrate the feasibility and environmental acceptability of their package of proposals and that any proposed mitigation measures are adequate.
- 10.4 It is therefore concluded that had the Council determined the application on the basis of the information submitted by the applicant it would have been recommended that the application be refused for the reasons specified in Para 2.2 above.
- 10.5 The Council would, however, wish to reserve the right to amend its position in light of any additional supporting information that may be submitted by the applicant, prior to the Inquiry and in the light of the findings of the Local Plan Inquiry Reporter and the Council's consideration of it.

11 CONSULTATIONS

- 11.1 The Chief Executive, Depute Chief Executive (Support Services), Depute Chief Executive (Finance) and Assistant Chief Executive (Community Planning) have been consulted and are in agreement with the contents of this report.

12 BACKGROUND PAPERS

Planning application 03/00596/OUT – Regeneration of Dunsinane Industrial Estate to provide mixed use development including business, industrial, commercial and retail uses, relocation of existing nursery and motor services operations, hotel – Application Withdrawn on 13 October 2003.

Planning application 03/00708/OUT, Regeneration of Dunsinane Industrial Estate with retailing, industrial and commercial uses including car showrooms, hotel, nursery, nursing home and community uses. The submitted illustrative masterplan and all submitted supporting documentation and consultation responses.

All plans, reports and decisions mentioned throughout this report.

Mike Galloway
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Head of Planning

IAR/JR/RJ
Dundee City Council

26 November 2004