

KEY INFORMATION

Ward Lochee

Proposal

Matters specified in conditions, erection of foodstore cafe and petrol filling station etc (09/00427/OUT - Conditions 31 and 32

Address

Former NCR (Scotland) Ltd
Kingsway West, Dundee

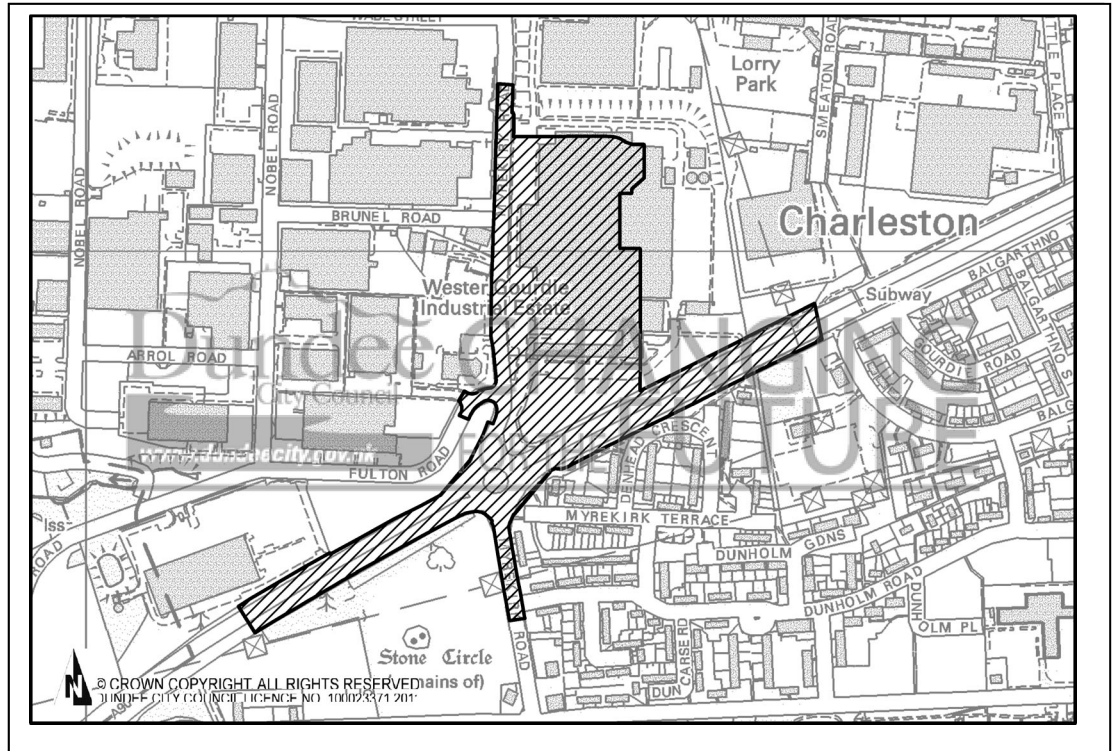
Applicant

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Registered 21 April 2011



Approval of Matters Specified in Conditions Linked to Permission In Principle for Foodstore on Former NCR Factory Site

Matters specified in conditions for Erection of Food Store Cafe and Petrol Filling Station etc (09/00427/OUT) Conditions 31 & 32 are **RECOMMENDED FOR APPROVAL** subject to conditions. Report by Director of City Development.

RECOMMENDATION

The application to approve matters specified in conditions 31 and 32 of planning permission in principle 09/00427/OUT is considered to be acceptable. There are no relevant Development Plan Policies in this instance and there are no material considerations of sufficient weight such as to justify refusal of the application. The application is therefore recommended for **APPROVAL** subject to conditions.

SUMMARY OF REPORT

- The application under consideration is to approve matters specified in the conditions of a planning permission in principle approval for the erection of a foodstore, cafe and petrol filling station, with associated car parking, landscaping and infrastructure (including access roads) at the former NCR site located to the north east of the junction of Myrekirk Road and A90 (T) Kingsway West. The planning permission in principle was approved on 18 January 2010 and so the principle of development is already established. Approval is sought in relation to 2 of the conditions at this time.
- The information submitted in relation to the conditions is considered to be acceptable and there are no relevant Development Plan Policies.
- No objections have been received in relation to the application.

DESCRIPTION OF PROPOSAL

The application under consideration is to approve certain matters specified in the conditions of an approved planning permission in principle for the erection of a foodstore, cafe and petrol filling station, with associated car parking, landscaping and infrastructure (including access roads) at the former NCR site located to the north east of the junction of Myrekirk Road and A90 (T) Kingsway West. The outline planning permission was approved on 18 January 2010 and so the principle of development is already established.

The application seeks approval of matters specified in two conditions in relation to the planning permission in principle. In total 35 conditions were attached to the approval of the outline permission. It is considered that those conditions which were attached to the permission fall into three categories; those which do not require further approval; those which require approval not sought at this time and those requiring approval for which approval is sought as part of this application and the other application on this agenda (10/00666/APPCON). It is therefore anticipated that the applicant will submit a further application for approval of the remaining conditions attached to the outline permission which require approval in the future.

For the purposes of the current application, approval is now sought in relation to 2 of the conditions. These relate to the following and the numbering relates to the order of appearance on the permission in relation to 09/00427/OUT:

Condition 31 - that prior to the commencement of development a minimum 6 months monitoring of PM 10 (with 90% data capture) shall be undertaken in the vicinity of the application site in a location and in accordance with a methodology statement that has to be submitted to and approved in writing by the planning authority.

Reason - to provide baseline information to inform condition 32.

Condition 32 - prior to the commencement of development a revised Air Quality Assessment that

includes the results of the monitoring required by Condition 31 above, additional road counts, model files and scenario testing of alternative public vehicular access locations shall be submitted to and approved in writing by the planning authority.

Reason - to determine the impact of the development in air quality terms and inform the location of the access to the development from Myrekirk Road.

Condition 32 and its accompanying reason sought to determine the impact of the development and inform the



location of the access to the development. The details regarding the access to the development are the subject of a specific condition (No 16) which sought to ensure that an appropriate junction be formed to the development that would minimise the impact of pollution at the nearby nursery. Condition 16 is the subject of a separate application to approve matters specified in conditions which can be found elsewhere on this agenda.

As a result of this, there is a link between the requirements in Condition 32 for a revised Air Quality Assessment and the provision of a suitable access as required by Condition 16 of 09/00427/OUT.

Details have been submitted in relation to each of the above conditions. The general form and principles already established by the approval of 09/00427/OUT remain in place for development of the following:

- demolition of the existing building and the provision of a store of 4,880m² net floor area, 8,295m² gross internal floor area;
- car parking (approximately 570) located to the south of the

proposed store on the Kingsway West frontage;

- a petrol filling station in the south west corner of the site; and
- the principal access into the site being taken from Myrekirk Road to the west at a location approximately 200 metres north of Myrekirk Road/Kingsway West junction. Service vehicles would access the site from a second junction with Myrekirk Road located in the north west corner of the application site.

SITE DESCRIPTION

The site is located on the edge of Wester Gourdie Industrial Estate on the north east side of the junction of Myrekirk Road and Kingsway West. The application site forms part of a larger industrial site that accommodated the former NCR factory complex.

The existing building accommodates a one/two storey south facing brick frontage used

for administration purposes. To the rear of this is the former production/manufacturing area of the complex. The main access into the site is from the mini roundabout on Myrekirk Road to the west that leads to the car parking area located on the south side of the building. The service access is located on the north side of the site.

A landscape area is evident on the Kingsway frontage and protected cherry trees are evident on the south and west boundaries of the site.

The surrounding area is predominantly industrial in character with the exception of several uses including car dealerships, a children's nursery and a residential property. An established residential area (Charleston) is located to the south of the site on the south side of Kingsway West.

POLICY BACKGROUND

Dundee and Angus Structure Plan 2001-2016

There are no policies relevant to the determination of this application.

Dundee Local Plan 2005

There are no policies relevant to the determination of this application.

Scottish Planning Policies, Planning Advice Notes and Circulars

Planning Advice Note PAN 51 (Revised 2006): Planning, Environmental Protection and Regulation.

Non Statutory Statements of Council Policy

There are no non statutory Council policies relevant to the determination of this application.

SUSTAINABILITY ISSUES

There are no specific sustainability policy implications arising from this application.

SITE HISTORY

Proposals were submitted as a planning permission in principle application to this Council on 22nd July 2009. Planning permission in principle was granted on 18 January 2010 (09/00427/OUT). It established the principle of developing the site as a foodstore and petrol filling station, illustrating a layout, means of access and amendments to the road network. It is the subject of a legal challenge the outcome of which is outstanding at the time of writing this report.

Applications for outline planning permission relate to those made before 3 August 2009 but decisions issued after that date results in a grant/refusal of planning permission in principle in accordance with the new provisions in Section 59 of the Town and Country Planning (Scotland) Act 1997 as amended. For these reasons the current application takes the form of an Application for Approval of Matters Specified in Conditions of the decision relating to approval of application 09/00427/OUT.

PUBLIC PARTICIPATION

Although this application relates to a major class of development, it is purely to approve matters specified in the conditions of the planning

permission in principle permission. Statutory pre-application consultation was not required in this instance.

The Statutory Neighbour Notification procedure was carried out and the application was also advertised in the local press under the terms of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008.

No objections have been received.

CONSULTATIONS

Environmental Health and Trading Standards have previously advised that the method statement for the monitoring required by Condition 31 is acceptable.

They have also confirmed that the applicants have carried out an assessment of the air quality impacts of the proposed supermarket at 127 receptor locations close to roads that are likely to experience an increase in traffic as a result of the development. The impacts are described using the magnitude and significance descriptors in the Environmental Protection UK Guidance, "Development Control: Planning for Air Quality (2010)".

Discussion regarding the details of the findings of the Air Quality Assessment can be found in more detail in the Observations section of this report.

OBSERVATIONS

Statutory Requirements

The Development Plan

There are no relevant policies of the development plan relevant to the determination of this application.

Other Material Considerations

Air Quality

Air Quality is a material consideration in determining applications for planning permission when the development may give rise to air quality issues.

The main air quality issue identified at the time of the determination of the planning permission in principle 09/00427/OUT was the location of the proposed access roundabout to the supermarket. This is located outside a nursery. It was considered that the

greatest pollution impact would be in the vicinity of some of the most vulnerable receptors.

The applicants prepared and submitted an Air Quality Assessment to accompany their planning permission in principle application. This was submitted prior to all the input parameters to the model having been agreed between all parties, in particular the traffic figures and the junction layout. The resulting Air Quality was unsatisfactory.

As a result of this, it was considered appropriate that certain conditions be attached to any grant of planning permission in principle that require, prior to the commencement of development, specific actions be undertaken which include a minimum 6 months monitoring of fine particulate matter (PM10) in the vicinity of the site (Condition 31), the submission of a revised Air Quality Assessment (Condition 32) and submission of amended access details relating to Condition 16 which is the subject of a separate application (10/00666/APPCON) which can be found elsewhere on this agenda.

Environmental Health and Trading Standards have previously advised that the method statement for the monitoring required by condition 31 is acceptable.

As discussed under the terms of the consultation advice received from the Environmental Health and Trading Standards Department, the applicants carried out an assessment of the air quality impacts of the proposed supermarket at 127 receptor locations close to roads that are likely to experience an increase in traffic as a result of the development.

The whole of Dundee has been declared an Air Quality Management Area (AQMA) for Nitrogen Dioxide and PM10 (Annual mean standards). Best practice guidance advises that not all planning applications for developments inside or adjacent to AQMAs should be refused, even if the development would result in a deterioration of local air quality, as such an approach could sterilise development. Rather, it means that greater weight must be given to the consideration of air quality impacts and their mitigation. As part of this mitigation, it is judged to be acceptable to consider off-setting.

Part of the mitigating measures put forward by the applicant relate to the fact that the proposed layout of the carriageway which increases the available lanes at the roundabout from 2 to 3 delivers traffic management benefits across the roundabout.

As a result, it is considered by the submitted Air Quality Assessment that the layout of the accesses, including at the location close to affected receptors identified to be the worst affected, provides mitigation by enabling smoother traffic flows and more turning options to improve traffic management in the area.

In addition to the above put forward by the applicant, it is considered that additional mitigation measures, such as electric vehicle charging points should be incorporated into the development scheme. It is considered that conditions in this respect should be attached to any approval of matters specified in Conditions 31 and 32. With this proviso, it is considered that the impact of the access proposed is acceptable in terms of air quality.

It is therefore considered that the information submitted in terms of Conditions 31 and 32 is acceptable in terms of the guidance and good practice advice contained in PAN 51 and the Councils Non Statutory Planning Advice on Air Quality and Land Use Planning and as there are no Development Plan Policies these material considerations support the approval of the application.

Existing Planning Permission in Principle

Proposals for a food store and petrol filling station were submitted as an outline planning application to this Council on 22 July 2009. Planning permission in principle was granted on 18 January 2010 (09/00427/OUT). This application established the principle of developing the site as a foodstore and petrol filling station, illustrating a layout, means of access and amendments to the road network.

The permission (09/00427/OUT) is the subject of a legal challenge which is outstanding at the time of writing this report. The effect of Tesco Stores Ltd's appeal being successful would be that the Council's decision and the planning permission would be quashed. There would be no basis for this application in relation to the

approval of matters specified in conditions because there would be no planning permission in principle.

However the decision to grant planning permission in principle (09/00427/OUT) remains valid unless and until it is successfully challenged and there is therefore no restriction on the Committee considering the current application.

Design

There are no design issues associated with this application which seeks approval of two conditions in relation to air quality matters only.

CONCLUSION

It is concluded from the foregoing that the details provided are acceptable such as to approve the matters specified in Conditions 31 and 32 attached to 09/00427/OUT subject to two conditions. There are no relevant Development Plan Policies associated with the details provided.

RECOMMENDATION

It is recommended that approval be GRANTED subject to the following conditions:

- 1 Prior to the occupation and trading from the store, a scheme to provide electric vehicle charging points or other forms of mitigation as otherwise agreed in writing shall require to be submitted to and approved in writing by the Council. For the avoidance of doubt the details shall include a timetable for implementation. The development shall thereafter be carried out in complete accordance with the agreed details.
- 2 Prior to occupation of any part of the development, a scheme for post-development air quality monitoring and air dispersion modelling, shall be required to be submitted to and approved in writing by the Council. Air quality monitoring and air dispersion modelling shall thereafter be carried out in complete accordance with the details of the agreed scheme.

Reasons

- 1 In order to reduce the predicted pollutant concentration at relevant receptors.
- 2 In order to determine the post-development air quality concentrations (NO2 and PM10) at relevant receptors.