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**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
APPLICATION FOR APPROVAL OF MATTERS SPECIFIED BY CONDITION FOR
ERECTION OF 159 DWELLINGHOUSES WITH ASSOCIATED ROADS,
DRAINAGE AND LANDSCAPING AT LAND TO THE NORTH OF A912 AT
OUDENARDE, BRIDGE OF EARN, PERTSHIRE (REFERENCE 16/02156/AMM)**

1. I should be grateful if you could make arrangements to process this case and submit a report with recommendations to Scottish Ministers for their consideration and determination in connection with the above mentioned proposal (please see Annex A attached). The application documentation notified to Scottish Ministers is contained in the eRDM file to which DPEA have access. However I enclose the Council's letter of 4 April 2018 and the USB stick which was enclosed with that letter which contains the same documentation. During our consideration of the application an e-mail was received from the Forestry Commission Scotland about work on the site. This e-mail is saved on the objective file but I know that DPEA do not, always, look at the documentation dealt with by PAD so I enclose a copy of that communication and request that they be included in the 3rd party list.

2 If this case is to proceed by any method other than written submissions please let me know and I will prepare a minute of appointment upon receipt of the Reporter's details.

3 Please note also that all documents produced by DPEA should be saved to the eRDM file.

4. Thank you for your assistance in this matter.

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ANNEX A

**CASEWORK NOTE FROM PLANNING AND ARCHITECTURE DIVISION (PAD)
TO PLANNING AND ARCHITECTURE APPEALS DIVISION (DPEA)**

1. Please find attached details of a called-in application for the erection of 159 dwelling houses with associated roads, drainage and landscaping on land to the north of A912 at Oudendarde, Bridge Of Earn (Phase 2), which we are passing to DPEA. We would ask that you appoint a reporter to consider the application and to provide a recommendation to Ministers.

Preliminary matters

2. We consider that before the merits of the application are considered that certain preliminary matters need to be resolved. These centre around the nature of the application which is before Ministers for determination and whether or not an environmental impact assessment is needed.
3. The application (reference 16/02156/AM) dated 15 December 2016 bears to be an application for approval of matters specified in conditions under planning permission Number 02/01482/IPM dated 8 September 2016 (“the 2016 planning permission”). The application relates to the “erection of 159 terraced, semi-detached and detached dwellings with associated roads, drainage and landscaping”. The area of the site is stated to be 8.41 hectares.
4. Despite being referred to as an application for approval of matters specified in conditions under the 2016 planning permission it is not at all clear what approvals required by the 2016 planning permission are being sought by the application. It is therefore not clear whether the application is in fact an application for matters specified in conditions or is properly to be considered as an application for detailed planning permission. We consider that this matter should be resolved as a preliminary issue as it is of considerable significance for the manner in which the application can be dealt with.
5. If the application is, properly considered, an application for detailed planning permission then as it is an application for the construction of 159 houses, which would be a major development, pre-application consultation (PAC) would be required. If this is the case then, since PAC has not been carried out, in terms of section 39(1A) of the Town and Country Planning (Scotland) Act 1997 Ministers (or indeed the planning authority) must decline to determine the application.
6. If the application is, properly considered, an application for approval of matters specified in conditions by the 2016 planning permission, how do the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 apply to it? In particular is the application an application for multi-stage consent? From the information we have it would not appear that the 2016 planning permission was subject to EIA and it is not clear whether or not a screening opinion was adopted in respect of the development.

Background

7. Ministers have called in the application in light of Transport Scotland concerns relating to the lack of mitigation of impacts on the trunk road. The 2016 planning permission was granted following an application for outline planning permission (02/01482/OUT) for the formation of residential, commercial and industrial development including up to 1200 residential units. As no decision had been made on this application before 3rd August 2009 it fell to be treated as an application for planning permission in principle in terms of article 11 of the Planning etc. (Scotland) Act 2006 (Development Management and Appeals) (Saving, Transitional and Consequential Provisions) Order 2009. In 2002, during Perth and Kinross Council's (PKC) consideration of this application, Transport Scotland recommended conditions be attached requiring mitigation works to the trunk road in the interests of maintaining road safety.
8. When PKC finalised the decision notice (dated 8 September 2016) for the 2016 planning permission and related section 75 agreement, conditions which had been recommended by Transport Scotland were not attached. We understand that the omission was due to procedural errors by the Council.
9. Transport Scotland was unaware of the omission until they were consulted on the called-in application in January 2017. In October 2017 PAD facilitated discussions between Transport Scotland and PKC at which Transport Scotland brought the omission to the planning authority's attention having previously raised the matter in January. To rectify this situation PKC subsequently formed the intention at committee on 18 October 2017 to attach a condition proposed by Transport Scotland to the approval they proposed to grant pursuant to the current application
10. Following this, and having received subsequent correspondence from the developer, the Council sought legal advice which indicated that such a condition was not valid and should be removed. This is based on the legality of appending a condition that does not relate to a matter specified in the 2016 planning permission. The planning authority made Transport Scotland aware on 8th January that they proposed to take the application back to committee to remove the condition on 17th January.
11. The applicant is aware of the mitigation obligations and has a Minute of Agreement with Transport Scotland for these works. The Minute of Agreement does not, however, oblige the applicant to implement works but rather sets out how they are to be done if implemented..

Consideration of application

12. Following consideration of the issues above, it may be concluded that DPEA can proceed to substantive consideration of the application. In this case, we would ask the Reporter to bear in mind that in calling in the application, Ministers were concerned about the potential adverse impacts of the proposal on the trunk road network in light of Transport Scotland's representations. We would therefore invite the reporter to focus consideration on whether in the context of this application it is open to Ministers to require measures to be taken to mitigate the impact of the proposals on the trunk road to address Transport Scotland's concerns and if so what those measures should be.

I trust you will find this helpful.