

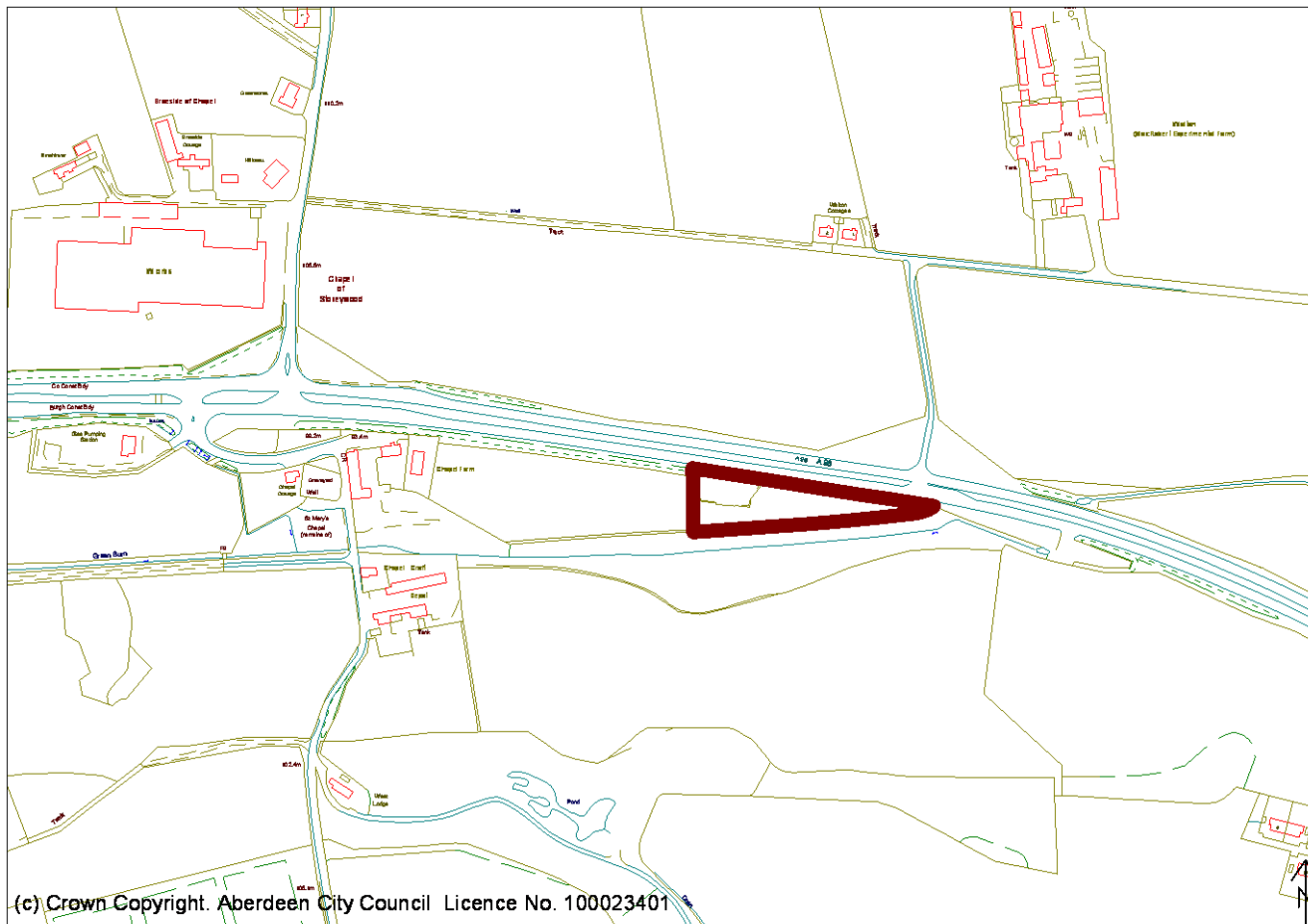
FORMER BUCKSBURN PETROL  
STATION, CHAPEL OF STONEYWOOD  
TO, FAIRLEY ROAD

CERTIFICATE OF APPROPRIATE  
ALTERNATIVE DEVELOPMENT (CAAD)  
FOR PETROL FILLING STATION WITH  
ASSOCIATED CLASS 1 RETAIL SHOP UP  
TO 103.5 SQM (1114 SQFT).

For: GVA

Application Ref. : P120374  
Application Date : 14/03/2012  
Officer : Frances Swanston  
Ward: Dyce/Bucksburn/Danestone(B  
Crockett/G Lawrence/N Macgregor/G  
Samarai)

Advert :  
Advertised on :  
Committee Date : 23 August 2012  
Community Council : No response received



**RECOMMENDATION:** That a Certificate of Appropriate Alternative Development is issued stating that in respect of the land in question, on the relevant date of 25 September 2007:

- (1) Planning permission would have been granted for a petrol filling station and associated shop (103.5 sqm), on 25 September 2007, and in principle, for non-residential agricultural or forestry buildings, or a horticulture and nurseries use, as listed in Policy GB 1 of the Aberdeen City-District Wide Local Plan.**
- (2) At the relevant date, planning permission would have been granted for a petrol filling station and associated shop (103.5 sqm), and in principle, for non-residential agricultural or forestry buildings, or a horticulture and nurseries use, as listed in Policy GB 1 of the Aberdeen City-District Wide Local Plan, at some point in the future.**
- (3) That at the relevant date and at a future date, a petrol filling station and associated shop (103.5 sqm), and in principle, for non-residential agricultural or forestry buildings, or a horticulture and nurseries use, as listed in Policy GB 1 of the Aberdeen City-District Wide Local Plan, would be granted planning permission subject to suitable conditions relating to:**
  - siting, design and external appearance of the buildings;**
  - suitable risk assessment following relevant guidance for filling stations;**
  - design, construction and operation;**
  - land contamination;**
  - Drainage;**
  - Access to and from the site; and**
  - Landscaping of the site.**
- (4) The certificate should not state, as would normally be the case with CAAD applications that planning permission would have been granted for the development for which the land is to be acquired (Aberdeen Western Peripheral Route) - This is because the Aberdeen Western Peripheral Route does not require planning permission as Scottish Ministers acting as trunk roads authority have made orders promoting the scheme**

## **BACKGROUND**

A Certificate of Appropriate Alternative Development (CAAD) has been submitted by GVA on behalf of the owner of the site, who in turn has been served a compulsory purchase order (CPO) by Transport Scotland relating to land to the east of Chapel of Stoneywood on the south side of the A96, 1km north of the Aberdeen Airport/A96 roundabout. The land is being acquired by Transport Scotland on behalf of Scottish Ministers to allow for the construction of the Aberdeen Western Peripheral Route (AWPR). The land was last in use as a petrol filling station, which closed in 1997.

The purpose of a CAAD is to determine which land uses would be appropriate for the site were it not to be compulsorily purchased. The District Valuer will then use the certificate to assist in establishing an appropriate amount of compensation to be awarded to the land owner.

The CPO was served on 25 September 2007 and as such this is considered the 'relevant date' on which the CAAD request should be assessed in terms of planning policy under the relevant legislation detailed below.

### **Legislative Background**

A CAAD is a method of establishing the value of land which is subject to compulsory purchase. The relevant legislation is the Land Compensation (Scotland) Act 1963 and the Planning and Compensation Act (Scotland) Orders 1991.

Where an interest in land is proposed for acquisition by an authority possessing compulsory purchase powers (in this instance Transport Scotland), then either that authority or the owner of the land in question may apply for a CAAD. CAADs consider hypothetical land uses for valuation purposes.

The applicant is required to make a statement as to the uses(s) which they believe the land could be put, were it not proposed to be acquired. Part IV, Section 25 (4) of the 1963 Act permits the Planning Authority to issue a CAAD stating:

- (a) that planning permission would have been granted for development of one or more classes specified in the certificate and for any development for which the land is being acquired, but would not have been granted for any other development; or
- (b) that planning permission would have been granted for any development for which the land is to be acquired, but would not have been granted for any other development.

Conditions that would have been applicable may also be specified by the Planning Authority.

### **DESCRIPTION**

The application site comprises an area of ground to the south side of the A96 between the Blackburn roundabout to the west and the Aberdeen airport roundabout to the east, close to Chapel of Stoneywood and Marshall Trailers. The site is opposite the proposed park and ride site that was granted planning permission in 2010 (ref. 100771). The site was last in use as a petrol filling station, with a small shop and has an area of 4,500 square metres. Concrete slabs remain on site, but all filling station equipment, pumps and buildings have been removed. The site is bounded to the south by a tree belt and to the north by the A96 carriageway. The site has lain unused since 1997 when the petrol station closed and the remaining buildings demolished. Since then much of the site has become overgrown with grass and small shrubs. Little visual evidence of the former petrol station remains. The access and egress to the site are still visible.

## HISTORY

Planning permission was originally granted for a petrol filling station at the site in 1955 (ref. 1955/21/---/11). The site was developed as such and continued in operation until 1997. The applicant states that the reason for the closure in 1997 was due to the growing uncertainty over the compulsory purchase of the site for an upgrade to the A96.

The site was subject to a number of applications in the 1980s and early 1990s for various developments associated with the petrol station:

85/0654 – erection of garage workshop (refused).

85/2125 - erection of a filling station, garage workshop, small showroom, retail shop and manager's dwelling house (refused).

93/2458 – redevelopment of petrol filling station and erection of a 60-seater restaurant (refused).

The owner of the site applied in 1993 (ref. 93/2458) for the refurbishment of the filling station and the erection of a new restaurant. This was refused by the Planning Committee at a meeting in February 1994 where it was decided that *“the proposal if implemented would (1) be contrary to the Green Belt GB1 policy in the adopted City District-Wide Local Plan by virtue of the proposals involving the introduction of a restaurant a use which does not need to be located in the countryside and as it would represent an unacceptable intensification of buildings and use; (2) be visually intrusive to the detriment of the visual amenity of the Green Belt; and (3) set an undesirable precedent for applications of a similar nature, the cumulative effect of which would lead to an erosion of the Green Belt Policy”*.

This application was then appealed and the appeal dismissed. The Reporter in the decision stated that the main issue was not the redevelopment of the petrol filling station in itself, but that the introduction of the restaurant would be contrary to Green Belt Policy GB1 of the Aberdeen City District-Wide Local Plan in terms of the adverse effect on visual amenity and that the need for the development at this location was not proven.

A further application was submitted in 1995 (ref. 95/1332) solely for the refurbishment of the petrol filling station and associated shop (103.5 square metres) and this was approved on 13 October 1995. It was considered at this time that the refurbishment alone would be an intensification of an existing use and therefore acceptable under Part (xii) Existing Activities, of Policy GB1 of the Aberdeen City District-Wide Local Plan, which states *“where existing activities... are located within the Green Belt, proposals for expansion or intensification of such activities will be considered on their merits in the context of Green Belt policy taking account of the suitability of the use of the site and character of enlargement or intensification that is proposed...”*. Whilst the new buildings approved by this permission were not built, the buildings that existed on the site in 1995 were subsequently demolished in 1999 (demolition warrant B99/0727) after the petrol station closed in 1997.

In 2000 planning permission was sought for the renewal of the 1995 consent (ref. A0/1655). The renewal was refused in 2001. The planning officer's report stated that the application should be refused on the grounds that the petrol filling station *"could no longer be considered to be the intensification of an existing use. The use is not only no longer in operation... the physical structures have been removed from the site, leaving only the base slabs. The proposal therefore essentially consists of the introduction of a new use onto the site"*. Therefore the reasons stated in the refusal document were (1) *that the application proposal is contrary to green belt policy in the adopted Grampian Structure Plan, the Aberdeen City District-Wide Local Plan and the finalised Aberdeen and Aberdeenshire Structure Plan and to green belt and transportation policy in the finalised draft Aberdeen Local Plan, as it does not relate to an existing or established use, nor to a use which cannot be accommodated other than within the green belt, nor does it fall within any other category of use listed as exceptions to the general presumption against development in the green belt; and (2) that the proposed filling station would be highly prominent and detrimental to visual amenity within the green belt and on this trunk road which is a major arterial route into the city. The proposal is, thereby, unacceptable and contrary to policy 10.2.21 'Approaches to the City' in the adopted local plan."*

This application was not appealed and no further applications to date have been made for the site until the CAAD application in March this year.

## **PROPOSAL**

An application has been made to Aberdeen City Council to issue a Certificate of Appropriate Alternative Development (CAAD) for a petrol filling station and associated shop (103.5 square metres) at the above site. When the application was first submitted a shop with an area of 4000 sq ft was proposed, but this has since been amended to accord with the size of shop that was approved by the 1995 permission. The supporting statement submitted by the applicant proposes that a petrol filling station use with associated shop would have been an appropriate use at the site in 2007 and that planning permission would have been granted for such a use, had it not been subject to compulsory purchase.

The applicant requests a CAAD be issued for a petrol filling station use (sui generis) with ancillary shop and no other use(s).

## **REASON FOR REFERRAL TO SUB-COMMITTEE**

Applications for Certificates of Appropriate Alternative Developments (CAADs) do not fall within the agreed Scheme of Delegation and in addition, Transport Scotland has objected to the application.

## **CONSULTATIONS**

**ROADS SECTION** – The Roads Engineer states that Transport Scotland is the Roads Authority in this case and would be required to make the necessary comments.

**ENVIRONMENTAL HEALTH** – The Environmental Health Senior Officer advises that (1) Any proposed petrol filling station will need to be risk assessed, designed and constructed following the Guidance for Design, Construction, Modification, Maintenance and Decommissioning of Filling Stations, (2) Drawings of the proposed arrangements petrol filling station including the design, construction and mode of operation would need to be sent to Environmental Health for approval prior to any works commencing, and (3) An application for a Petroleum Licence under the Petroleum (Regulation) Acts 1928 & 36 will also be required. The application will need to be approved by the Environmental Services Head of Service prior to a licence being issued and any petroleum spirit being stored.

**COMMUNITY COUNCIL** – No comments received.

**LEGAL & DEMOCRATIC SERVICES** – The Council Solicitor advises that demolition, in terms of Section 27 of the Town and Country Planning (Scotland) Act 1997, constitutes ‘development’ and as such the demolition of the existing structures on site in 1999 meant that the implementation of the planning approval from 1995 had started as development had taken place, therefore there is still a ‘live’ planning permission for a petrol station on the site and that the existing use for the site is as a petrol station with associated shop.

## **REPRESENTATIONS**

A letter of objection was received from Transport Scotland. Transport Scotland is of the view that a Certificate should be issued stating that planning permission would not have been granted on 25 September 2007 for a number of reasons, but in summary, that the granting permission for a petrol station and associated shop in 2007 would have been contrary to Policy 28 of NEST Structure Plan, and Policy GB1 of the Aberdeen City District Wide Local Plan in that at petrol filling station would be a use not supported by the policies contained within these plans and the information provided by the applicant is insufficient to assess the development fully. A copy of their letter of objection is submitted with this report.

## **PLANNING POLICY**

Planning policies relevant to the CAAD are the planning policies in place at the time the CPO was served (“the relevant date”), which is 25 September 2007.

**North East Scotland Together (NEST) Aberdeen & Aberdeenshire Structure Plan 2001-2016 (2001)**

## **Aberdeen City-District Wide Local Plan (ACDWLP) (Adopted 1991)**

- Policy GB1 – Green Belt
- Policy 10.2.21 Approaches to the City

## **The Green Spaces, New Places Finalised Aberdeen City Local Plan (FACLP) Written Statement (August 2004) As Modified.**

The FACLP was at an advanced stage of development in September 2007 before its final adoption in June 2008, and as such would have been a material consideration in the determination of an application in 2007.

- Policy 27 Green Belt
- Policy 28 Green Space Network

## **Scottish Planning Policy (SPP) 17 'Planning for Transport' (2005)**

Paragraph 78 states that on other trunk and strategic roads *“travellers will have greater opportunities to stop en route or make a short diversion to find fuel, refreshment and rest. There is therefore less justification for dedicated service provision adjacent to the road.”* Paragraph 81 states that *“On the general trunk road network new fuel facilities may be provided subject to general road safety considerations. Where feasible such facilities should be combined with other services to travellers, and not be stand-alone... Enhancement of existing facilities rather than proliferation will fulfil sustainability criteria provided other policy requirements in this SPP can be achieved. Planning authorities should apply planning policies relating to siting and design.”*

The retail use of the proposal is considered ancillary to the main petrol filling station function and as such listing the retail policies of the above documents is not considered relevant to the determination of this CAAD.

## **EVALUATION**

Before assessing the application against the relevant policies, since the application was submitted in March this year, the Council's Solicitor has advised that the 1995 permission (ref. 95/1332) for the refurbishment of the petrol filling station and associated shop was in fact implemented, in part, with the demolition of the existing structures on site. Aberdeen City Council issued a demolition warrant for the works in 1999. Under Section 27 of the Town and Country Planning (Scotland) Act 1997, demolition constitutes 'development'. Section 27(1) (a) confirms that development is considered to be commenced when material operations are undertaken. Section 27 (4) (b) explicitly includes "any work of demolition of a building" as a material operation that constitutes a commencement of development.

As a consequence the site had and still has a valid use as a petrol filling station with associated shop. This means that an application for a petrol filling station in 2007 on the site would have been considered to comply with planning policy, because it was an existing use, the fact that the applicant already had a valid permission means that there was and is an accepted 'existing' use on the site and the applicant would not have needed to apply for planning permission in 2007 for the development detailed in the CAAD, and if they had applied in 2007, planning permission would have been recommended for approval.

There was no mention of this fact in the application for the renewal of the 1995 permission in 2000. This was omitted by both parties in the submission and assessment of the application; therefore the validity of the existing use was not considered when that application was determined. Had it of been, the application should have been recommended for approval. The Council's solicitor advises that demolition work does constitute development and therefore the Council has to accept that the demolition of the existing structures in 1999 meant that the 1995 permission had begun, thus giving the applicant an authorised use on the site.

The statutory requirements of a local authority for CAAD applications require an assessment of the planning policies in place at the time that the CPO was served and the relevant polices are assessed below in full.

### **Development Plan Evaluation**

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 (as amended) requires planning applications to be determined in accordance with the provisions of the development plan unless material considerations indicate otherwise.

On the relevant date (25 September 2007) the two documents comprising the development plan for Aberdeen City were the North East Scotland Together (NEST) Aberdeen & Aberdeenshire Structure Plan 2001-2016 (approved in December 2001) and the Aberdeen City-District Wide Local Plan (adopted 1991). The Green Spaces, New Places Finalised Aberdeen City Local Plan (FACLP) was at an advanced stage of development and would have been a material consideration.

### **North East Scotland Together (NEST) Aberdeen & Aberdeenshire Structure Plan 2001-2016 (2001)**

The purpose of the NEST Structure Plan was to set out a shared strategic statement about the future use of land in the North East. It did not provide site specific policies or proposals. The application site was allocated as Green Belt in 2007 and as such Policy 27 Green Belt and Policy 28 Development in the Green Belt applied.

Policy 27 of NEST states that the area of Aberdeen Green Belt will be maintained as set out in the Key Diagram. Local plans will set the detailed boundaries so that:



- The landscape setting and identify of urban areas is protected and enhanced and coalescence prevented
- Degraded land can be restored and opportunities are created for landscape renewal.

Policy 28 of NEST states that *“no development will be permitted in the Green Belt for the purposes other than those essential for agriculture, forestry, recreation, mineral extraction or restoration of landscape renewal”*.

It is apparent under Policy 28 of the NEST Structure Plan that a petrol filling station and associated shop would not fall under agriculture, forestry, recreation, mineral extraction or restoration of landscape renewal therefore approval of an application for a petrol filling station would be contrary to Policy 28 of the NEST Structure Plan. Therefore whilst a petrol filling station and associated shop on the site would not be in strict accordance with NEST, the Adopted Local Plan at the time of the relevant date lists certain exceptions.

### **Aberdeen City-District Wide Local Plan (ACDWLP) (Adopted 1991)**

The ACDWLP identifies the site as Green Belt. Policy GB 1 states that *“in these areas there will be an embargo against all development, unless it concerns uses which must be located in the countryside, those directly related to nature conservation ...or to uses already existing in the Green Belt”*. The policy then goes on to list acceptable development in the green belt: non-residential agricultural or forestry buildings, new houses for established local needs, certain recreational uses, institutional uses, rehabilitation or conversion of historic or architectural important buildings, replacement of existing houses, mineral workings, provision of utilities, land infill and reclamation, mineral workings, provision of utilities, landfill and reclamation, burial grounds, horticultural and nurseries, existing activities and nature conservation. Part (xii) Existing Activities of Policy GB1 states that *“where established activities...are located within the Green Belt, proposals for expansion or intensification of such activities will be considered on their merits in the context of the Green Belt, taking account of the suitability of the use of the site and character of enlargement or intensification that is proposed.”*

Policy GB1 states that only certain uses will be permitted in the green belt. In 1993 and in 1995 the applications for the refurbishment of the petrol filling station were assessed under Part (xii) Existing Activities of Policy GB1 thus in principle allowing the expansion or intensification of the existing petrol station use. In 2001 it was deemed that the site could no longer be considered an ‘existing use’ as the petrol station had closed in 1997 and the buildings on site had been demolished in 1999, when a further application for development of the site was refused.

By 2001 the application site had no physical structures of the original petrol filling station remaining. The site had become substantially over grown and apart from the concrete slabs and the entrance and egress onto the A96, it was considered at that time (as detailed in the History section of this report) that an application for a new petrol filling station and shop would have been a new use introduced in the green belt and was not considered an existing use. With the benefit of hindsight, it is now considered that there was a valid, existing use for the site.

Policy 10.2.21 Approaches to the City states that The City Council will expect high visual standards in the treatment of development of the main traffic corridors or approaches into the City. In terms of the design and appearance of the petrol filling station, the Planning Officer's report from 1995 states that the main issue was the visual impact that the refurbishment scheme would have on the landscape setting of the greenbelt. It was concluded that the buildings proposed in 1995 would have been marginally more visually intrusive than the then existing buildings. It was however considered in 2001 that a petrol station would be highly prominent and detrimental to visual amenity within the green belt, contrary to this policy. This view would have been the same in 2007.

### **The Green Spaces, New Places Finalised Aberdeen City Local Plan (FACLP) Written Statement (August 2004) As Modified.**

As stated above the (FACLP) would have been a significant material consideration in the determination of the application in 2007 due to its advanced stage of development and that it represented the Council's most up-to-date statement of planning policy. In the FACLP (As Modified) the site falls within the Green Belt and the Green Space Network as defined by the Plan. Policy 27 Green Belt states that *"there will be an embargo against all development unless it concerns uses for which a countryside location is essential;*

- 1) *Agriculture, forestry, outdoor recreation, mineral extraction or restoration and landscape renewal.*
- 2) *Expansion of existing activities within existing site boundaries, which will be treated on their merits and in the context of green belt policy."*

Policy 28 Green Space Network states that *"Development that destroys or erodes the character and function of the Green Space Network will not be permitted"*.

Under Policy 27, there was scope for the expansion of existing facilities within existing site boundaries and as detailed above in 2001 the Council took the view that the petrol filling station was not an existing facility and approval of a petrol filling station would have been contrary to policy. With the benefit of hindsight it is now considered that there was a valid, existing use for the site.

### **Other material considerations**

#### **SPP 17 Planning for Transport**

SPP17 would not have added great support to the provision of a new petrol filling station on the site as it states that there is *"less justification for dedicated service provision adjacent to the road"* because trunk and strategic road travelers will have greater opportunities to stop en route or make a short diversion to find fuel, refreshment and rest. The petrol station would also be a stand-alone development, which was not encouraged by SPP 17.

## **Transport Scotland's Letter of Objection**

In terms of the letter of objection submitted by Transport Scotland, Transport Scotland has an interest in the CAAD application as server of the 2007 CPO. The policies referred to in the letter supporting the reasons for why a negative Certificate should be issued are not in dispute if it is assumed that there had not been a valid consent dating from 1995. However the fact that the 1995 planning permission was valid in 2007 means that there was and still is a partly implemented planning permission on the site for a petrol filling station and associated shop.

### **Conclusion**

In conclusion, taking into account the planning policies that applied to the site in 2007, but more importantly in this case, the fact that (with the value of hindsight) the 1995 permission had commenced in part with the demolition of the existing structures, thus validating the use of the site as a petrol filling station, it is recommended that a Certificate of Appropriate Alternative Development is issued stating in respect of the land in question, on the relevant date of 25 September 2007, (as required under Section 25(5) of the Land Compensation (Scotland) Act 1963) that:

- (4) Planning permission would have been granted for a petrol filling station and associated shop (103.5 sqm), on 25 September 2007, and in principle, for non-residential agricultural or forestry buildings, or a horticulture and nurseries use, as listed in Policy GB 1 of the Aberdeen City-District Wide Local Plan.
- (5) At the relevant date, planning permission would have been granted for a petrol filling station and associated shop (103.5 sqm), and in principle, for non-residential agricultural or forestry buildings, or a horticulture and nurseries use, as listed in Policy GB 1 of the Aberdeen City-District Wide Local Plan, at some point in the future.
- (6) That at the relevant date and at a future date, a petrol filling station and associated shop (103.5 sqm), and in principle, for non-residential agricultural or forestry buildings, or a horticulture and nurseries use, as listed in Policy GB 1 of the Aberdeen City-District Wide Local Plan, would be granted planning permission subject to suitable conditions relating to:
  - siting, design and external appearance of the buildings;
  - suitable risk assessment following relevant guidance for filling stations;
  - design, construction and operation;
  - land contamination;
  - Drainage;
  - Access to and from the site; and
  - Landscaping of the site.

- (7) The certificate should not state, as would normally be the case with CAAD applications that planning permission would have been granted for the development for which the land is to be acquired (Aberdeen Western Peripheral Route) - This is because the Aberdeen Western Peripheral Route does not require planning permission as Scottish Ministers acting as trunk roads authority have made orders promoting the scheme.

## **RECOMMENDATION**

**That a Certificate of Appropriate Alternative Development is issued stating that in respect of the land in question, on the relevant date of 25 September 2007:**

- (8) **Planning permission would have been granted for a petrol filling station and associated shop (103.5 sqm), on 25 September 2007, and in principle, for non-residential agricultural or forestry buildings, or a horticulture and nurseries use, as listed in Policy GB 1 of the Aberdeen City-District Wide Local Plan.**
- (9) **At the relevant date, planning permission would have been granted for a petrol filling station and associated shop (103.5 sqm), and in principle, for non-residential agricultural or forestry buildings, or a horticulture and nurseries use, as listed in Policy GB 1 of the Aberdeen City-District Wide Local Plan, at some point in the future.**
- (10) **That at the relevant date and at a future date, a petrol filling station and associated shop (103.5 sqm), and in principle, for non-residential agricultural or forestry buildings, or a horticulture and nurseries use, as listed in Policy GB 1 of the Aberdeen City-District Wide Local Plan, would be granted planning permission subject to suitable conditions relating to:**
- **siting, design and external appearance of the buildings;**
  - **suitable risk assessment following relevant guidance for filling stations;**
  - **design, construction and operation;**
  - **land contamination;**
  - **Drainage;**
  - **Access to and from the site; and**
  - **Landscaping of the site.**
- (4) **The certificate should not state, as would normally be the case with CAAD applications that planning permission would have been granted for the development for which the land is to be acquired (Aberdeen Western Peripheral Route) - This is because the Aberdeen Western Peripheral Route does not require planning permission as Scottish Ministers acting as trunk roads authority have made orders promoting the scheme.**

## **REASONS FOR RECOMMENDATION**

That planning permission was granted in 1995 (application 95/1332) for the refurbishment of the petrol filling station, which involved the demolition of the then existing structures and the redevelopment of the site for a new petrol filling station, with associated shop. The demolition works approved and carried out in 1999 constitute 'development' under the terms of the Planning (Scotland) Act 1997 and as such there has been and still is an existing and valid permission for a petrol filling station and associated shop.

**Dr Margaret Bochel**

Head of Planning and Sustainable Development.