

- a. a petrol filling station with ancillary retail up to 103.5sqm
 - b. for horticulture and nursery with a small-scale ancillary retail element (such as a farm-shop);
 - c. for non-residential agricultural or forestry buildings;
 - d. for telecommunications masts and ancillary equipment.

but would not have been granted for any other use.
2. that any planning permission described in (1) would have been granted subject to suitable conditions addressing the following matters –
 - a. layout, design and external appearance of buildings or structures;
 - b. mitigation of any contaminated land;
 - c. surface water and foul drainage;
 - d. access to the site;
 - e. landscaping of the site.
3. that because Scottish Ministers through Transport Scotland, made orders under the Roads (Scotland) Act 1984 promoting the Aberdeen Western Peripheral Route, which is the scheme for which the application land is to be acquired, it would not be appropriate to include planning permission for the scheme in the certificate as would normally be the case.

BACKGROUND TO CERTIFICATES OF APPROPRIATE ALTERNATIVE DEVELOPMENT

Where land is to be acquired using compulsory purchase powers the owner of the land or other person with an interest may apply to the planning authority for a certificate of appropriate alternative development (“CAAD”), which sets out the uses of the land for which planning permission would have been granted if the land was not been compulsorily acquired. This is in order to assist in establishing the value of the land and thereafter an appropriate amount of compensation to be awarded to the landowner by the acquiring authority.

A CAAD is not a planning application and must be assessed on a hypothetical basis and with reference to the planning policy and circumstances on the date which the compulsory purchase orders and notices were served (“the relevant date”).

The relevant legislation is the Land Compensation (Scotland) Act 1963 (“the 1963 Act”) and the Planning and Compensation Act (Scotland) Orders 1991.

When submitting a CAAD application, the applicant must state whether or not there are in the applicant’s opinion, any classes of development which either immediately or at a future time, would be appropriate for the land in question, if it were not proposed to be compulsorily acquired. The applicant must also state their grounds for holding that opinion.

In determining a CAAD application, the planning authority are required to issue a certificate stating that –

- a. planning permission would have been granted for development of one or more classes specified in the certificate (whether specified in the application or not) 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.

Section 25(5) of the 1963 Act allows where it is the opinion of the planning authority that planning permission would have only have been granted subject to certain conditions, or only at a future time, or both, to specify this in the certificate issued.

DESCRIPTION

The application site comprises an area of ground located immediately adjacent to the A96 trunk road, approximately 1km west of the Dyce Drive / A96 junction and 300m east of the Marshall Trailers site at Chapel of Stoneywood.

The site was previously occupied by a petrol station, which was closed in 1997 and subsequently demolished in 1999. Little visual evidence of the former petrol station remains.

The site comprises 4500m², is triangular in shape and has two access points onto the A96. A concrete area of approximately 950m² covers the western end of the site whilst the remainder comprises overgrown ground with grass and self seeded small shrubs. A tree belt, which the Greenburn passes through, encloses the site on its southern boundary. To the north is the A96 which at this point is dual-carriageway.

RELEVANT HISTORY

- Planning permission (1955/21/--/11) (“the original 1955 permission”) was granted for a petrol filling station at the site in 1955. The petrol station was built and the use continued until 1997 when it was closed.

- Planning permission (85/0654) to erect a garage workshop was refused in August 1985.

The reasons for refusal were that the proposal, if implemented, would be (1) detrimental to the amenity of the neighbourhood in general by reason of the sporadic type of development in the open countryside; (2) prejudicial to public safety by reason of (a) its location adjacent to a heavily trafficked length of Trunk Road, and (b) the shortage of parking and manoeuvring space which will remain when the Trunk Road is widened; and (3) contrary both to the Structure Plan and the City North Local Plan in so far as the establishment of new developments within the Green Belt is concerned.

- Planning permission (85/2125) to erect a filling station, garage workshop, small showroom, retail shop and managers dwelling house was refused in January 1986.

The reasons for refusal were that the that the proposal, if implemented, would be (1) detrimental to the amenity of the neighbourhood by reason of being a sporadic development in an area of open countryside; (2) prejudicial to public safety by reason of the development's location on a heavily-trafficked length on Trunk Road; and (3) contrary both to the Structure Plan and to the City North Local Plan in so far as the establishment of new developments within the Green Belt was concerned.

- Planning permission (93/2458) for the redevelopment of the petrol filling station and for the erection of a restaurant with a seating capacity of 60 was refused in March 1994.

The reasons for refusal were that the proposal would be (1) contrary to the Green Belt policy (GB1) as contained in the City District-Wide Local Plan by reason of (a) the introduction within the redevelopment scheme of a restaurant, a use which does not need to be located in the countryside; and (b) the unacceptable intensification of buildings and use which the proposal would represent; (2) be visually obtrusive, 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.

An appeal to the Secretary of State against the decision was lodged by the applicant, which was subsequently dismissed. The reporter 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 planning application (95/1332) (“the 1995 permission”) solely for the refurbishment of the petrol filling station and associated shop (103.5m²) was approved subject to conditions by the Planning Committee in October 1995.

Although the description stated 'refurbishment' the application did in fact involve the demolition and rebuilding of the petrol station.

It was considered at the 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 stated "*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...*".

The planning permission was never implemented.

- The petrol filling station was closed in 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.
- A building warrant (B99/0727) was granted in 1999 and the petrol filling station was subsequently demolished and site cleared in the same year.
- A planning application (A0/1655) for the renewal of the 1995 planning permission (95/1332) to rebuild the petrol station was refused by the Planning Committee in September 2001.

In evaluating the proposal the case officer's report stated that the proposal "*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*".

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.*"

PROPOSAL

An application for a CAAD has been submitted by GVA on behalf of AJ Gray, who have been served a compulsory purchase order relating to land described above.

The land is being acquired by Transport Scotland on behalf of Scottish Ministers, to allow for the construction of the Aberdeen Western Peripheral Route (“the AWPR”) scheme.

In this instance the draft compulsory purchase order was published on the 25th September 2007 and therefore for the purpose of assessing the CAAD, this is the relevant date. It must also be assumed that that at the relevant date and at any future date, that the AWPR scheme did not exist.

It is the opinion of the applicant that on the relevant date, had the site not been subject of compulsory purchase, the following land uses would have been appropriate –

- Petrol filling station with ancillary retail up to 103.5sqm; (herein known as the “petrol station”);
- Sale of agricultural vehicles and equipment
- Garden centre and nursery

The main grounds which the applicant has for this opinion is that the original 1955 planning permission for the petrol station was implemented and has not been abandoned. It is contested that there is no provision in planning law which prevents the original 1955 permission from continuing to have effect. Therefore although now almost 60 years has past since the original planning permission was implemented and petrol station constructed, the planning permission could be utilised again and a new petrol station constructed.

Whilst the applicant is principally relying on the above to support the CAAD application, they are also of the view that the 1995 planning permission (95/1332) was implemented through the demolition which took place in 1999 and is thus is still a live planning permission.

However as there was a failure to discharge a suspensive condition relating to submission of a landscaping scheme prior to the commencement of work, there is doubt over whether the 1995 planning permission was implemented lawfully and therefore capable of implementation.

Supporting Documents

All drawings and the supporting documents listed below relating to this application can be viewed on the Council’s website at – <http://planning.aberdeencity.gov.uk/PlanningDetail.asp?120374>. On accepting the disclaimer enter the application reference quoted on the first page of this report. A number of supporting statements have been received from GVA in support of their applicant’s case.

REASON FOR REFERRAL TO SUB-COMMITTEE

The application has been referred to the Sub-committee because the determination of certificates of appropriate alternative development are not included within the scope of the Council's Scheme of Delegation.

CONSULTATIONS

No consultation is required for a CAAD application.

REPRESENTATIONS

It is Transport Scotland's view, as the acquiring authority with compulsory purchase powers, that planning permission would not have been granted for the erection of a petrol station and associated retail on the relevant date or any future date, predominately because it would be contrary to the development plans policies on the green belt, retailing and the location of petrol filling stations. The planning history of the site is also relevant and indicates that the introduction of new uses in the green belt would not to be acceptable.

PLANNING POLICY

For the purposes of assessing the CAAD application, the relevant planning policies are those which were in place on the relevant date (25th September 2007) –

Aberdeen City and Shire Structure Plan (North East Scotland Together) (2001)

Policy 28 (Development Within the Green Belt) – No development will be permitted in the green belt for purposes other than those essential for agriculture, forestry, recreation, mineral extraction or restoration or landscape renewal.

Aberdeen City Wide District Local Plan (1991)

Policy GB1 (Green Belt) – 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. It should be noted that existing non-conforming uses, or valid planning permissions, within the green belt are not affected by the adoption of this green belt Policy.

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 xi specifically deals with horticulture and nurseries and states that “*where the prime function is the production of foodstuffs or flowers for sale, or the raising of plants for sale or replanting, are legitimate uses within the green belt. In association with such use a small-scale retail element, such as a farm shop, is also acceptable, but a garden centre will not normally be permitted within the green belt because of the level of traffic generation and the concentration of buildings, car parking and other activities necessary for the successful operation of a garden centre. Such a use is more appropriately located in the built –up area, or if attached to a nursery, in the immediate rural fringe surrounding the rural area*”.

10.2.21 (Approaches to the City) – The City Council will expect high visual standards in the treatment or development of the main traffic corridors or approaches to the City.

Finalised Aberdeen City Local Plan (Green Spaces | New Places) – Modified Written Statement) (August 2004)

Due to it’s advanced stage, the Finalised Aberdeen City Local Plan (as modified) would have been a significant material consideration in the determination of any planning applications in 2007 as it represented the Council’s most up-to-date statement of planning policy.

Policy 27 (Green Belt) – In the Green Belt there will be an embargo against all development unless uses for which a countryside location is essential;

- Agriculture, forestry, outdoor recreation, mineral extraction or restoration and landscape renewal
- Expansion of existing activities within existing site boundaries, which will be treated on their merits and in the context of green belt policy;
- Indoor sports and institutional uses on specific identified sites;
- Infrastructure development that cannot be accommodated other than in the green belt and is wholly compatible with the development plan.

Policy 28 (Green Space Network) – Development that destroys or erodes the character and function of the Green Space Network will not be permitted.

EVALUATION

Each of the three groups of uses proposed in the CAAD application will be assessed in turn. Thereafter any other potential uses and material considerations which have not been included by the applicant within the application will be considered.

Petrol filling station with ancillary retail up to 103.5sqm

It is first necessary to determine whether a valid planning permission for a petrol existed at the site on the relevant date.

The applicant claims that both the original 1955 planning permission and the 1995 permission for rebuilding the petrol station were valid permissions which

they could have benefited from on the relevant date. There are three questions which must be asked in order to determine if this is the case.

1. *Was the original 1955 permission still capable of being implemented in September 2007 or any subsequent date?*

The original 1955 permission was implemented when the petrol station was originally built. It is understood to have operated for 42 years until 1997 when it was closed and thereafter it was demolished in 1999.

The applicant contests that the original 1955 permission was in September 2007, and still is, capable of being implemented again, in order to construct a new petrol station. Whilst it is the case that a valid permission capable on its own terms of being implemented cannot be abandoned (*Pioneer Aggregates (UK) Ltd. v Secretary of State for the Environment (1985)*), this is in contrast to existing use rights which are being discussed in this instance.

In *Cynon Valley Borough Council v Secretary of State for Wales (1986) 280 EG 159*, it was ruled that once a material change of use is implemented, the permission which granted that change becomes spent. The permission only authorises a single change of use and cannot have continuing effect in allowing a recommencement of the original use at a later date. Although that particular case was in relation to change of use, it follows that the same principle would apply to operational development. This is the principle which is commonly applied throughout the planning system and is what will be applied in this case.

During the demolition in 1999 the building, supporting structures and pumps were removed with no apparent intention to resume the use, resulting in what could be described as nil-use of the land. It therefore follows that as the site was no longer being used as a petrol station, any new use or recommencement of the petrol station use would be operational development and therefore would require planning permission. If this were not the case then a single planning permission could in theory be used repeatedly to build, demolish and rebuild the same development in perpetuity.

Taking the foregoing into account, it is considered that the argument that the original 1955 permission is still capable of being implemented is a flawed. Any potential development which took place based on that permission would at the relevant date or at any time in the future be unlawful and constitutes a breach of planning control.

2. *Did the demolition of the petrol station in 1999 constitute the initiation of development and therefore implementation of the 1995 permission to rebuild the petrol station?*

In order to determine whether the demolition of the petrol station in 1999 constitute the initiation of development and therefore implementation of the 1995 permission to rebuild the petrol station, it is necessary to look at the definition of the initiation of development.

Section 27 (Time when development begun) of the Town and Country Planning (Scotland) Act 1997 (as amended) explains what constitutes an initiation of development in terms of implementation of a planning permission and explains that if the development consists of the carrying out of operations, then development is initiated at the time when those operations are begun. The 1997 act goes on to explicitly confirm in s.27(4)(b) that a material operation includes “*any work of demolition of a building.*”

As previously mentioned the petrol station was demolished in 1999. Whilst it is debatable whether the applicant’s intention at the time was to ever continue with the construction of the petrol station, following the judgement in the case of *East Dunbartonshire Council v Secretary of State for Scotland and MacTaggart & Mickel Ltd.* [1999] 1 PLT 53, it is clear that the test which must be applied is an objective one and not a subjective assessment of the applicant’s intentions. The Court held that Parliament had laid down precisely what was required to be done on a site to keep a planning permission alive, and that was all that was required, no more and no less.

There is no dispute that the demolition took place in 1999, which was within the 5 year (at the time) period within which a planning permission must be commenced.

With no requirement for the applicant to demonstrate any particular intention, it is apparent that the simple act of the demolition constituted a commencement of the development of the 1995 permission.

3. *Did the failure to discharge a suspensive condition attached to the 1995 permission render the commencement of development unlawful?*

Although the 1995 permission was implemented, it has come to light that there was a failure by the applicant to discharge a suspensive condition which required a landscaping scheme to be submitted and agreed with the planning authority before development commenced.

The general principle (known as the *Whitley* Principle after the case of *FG Whitley & Sons Co Ltd. v Secretary of State of Wales [1990]* [JPL 678] is that works which commence without addressing a suspensive condition cannot be taken as lawfully commencing development.

However the courts have ruled more recently in the case of *R (on the application of Hart Aggregates Ltd) v Hartlepool Borough Council [2005] EWHC 840 (Admin)*, that this principle does not apply to all conditions, but only to those which ‘go to the heart of the permission’. It is therefore necessary to consider the scope and nature of the condition and the reasons why it was attached to the permission. If the condition is not central to the development, or relates only to minor aspects or one particular aspect of the development, then any breach of the condition would not result in the development having commenced unlawfully and the permission would remain live.

The condition in this instance states *“that no development pursuant to this planning permission shall take place unless there has been submitted to and approved in writing for the purpose by the planning authority a scheme of landscaping for the site, which scheme shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development, and the proposed areas of tree / shrub planting including details of numbers, densities, locations, species, sizes and stage of maturity a planting - in the interests of the amenity of the area.”*

Other than in the specific condition, the evaluation within the committee report for the 1995 permission provides very little discussion on the matter of the landscaping of the site. The report explains that *“the visual impact that the refurbishment scheme would on the landscape setting of the green belt”* would be the main consideration in assessing the application. After describing the differences between the existing petrol station and the one proposed, the reports states that although it would be marginally more visually intrusive and despite the intensification of the use, that on balance the new petrol station would be acceptable in terms of visual amenity. No specific mention is made of a landscaping scheme or the landscaping of the site.

Given that a petrol station existed on the site already, its integration into the landscape would have been of less significance than if the application were to establish a completely new use within the green belt. From the photos supplied by the applicant of the petrol station when it was open prior to 1997, it is apparent that there the landscaping around the building and forecourt was sparse and was comprised of little more than a few small shrubs and bushes spread sparingly throughout the site.

Therefore taking the foregoing into account, it is difficult to see how the landscaping condition could be considered to ‘go to the heart’ of the planning permission, especially given that it is not mentioned in the assessment of the application.

Therefore, despite the breach of condition, the implementation of the 1995 permission through the demolition of the petrol station is considered to have been lawful.

There is no time limit within which a development must be completed, therefore on the relevant date and at any time in the future, work could have recommenced to complete the petrol station approved under the 1995 permission.

- It is now apparent that the submission by the applicant and the assessment by the planning authority of the refused planning application for rebuilding the petrol station in 2000 overlooked the potential for the 1995 permission to still be live and capable of implementation. Had the true situation been appreciated, the planning authority would have had to accept that a live permission existed for the site and that it was capable of being implemented.

Therefore it is likely that application A0/1655 would have been recommended for approval by planning officers. The benefit of hindsight must be used in the assessment of the CAAD application and the fact that the 2000 application was refused should not be taken into account.

In summary, with respect to whether planning permission would have been granted for a petrol filling station with ancillary retail up to 103.5sqm on the relevant date, it is concluded that the original 1955 permission is not capable of implementation.

However, the 1995 planning permission was implemented lawfully in 1999 when the original petrol station was demolished, despite the fact that the suspensive condition relating to submission of a landscaping scheme was not discharged.

With the existence of a live planning permission on the site for a petrol station and ancillary retail, it is concluded that on the relevant date in 2007 if the planning authority were presented with a planning application for petrol station and ancillary retail it would have found itself in the position whereby there would be no option other than to accept the principle of a petrol station use at the site.

Sale of agricultural vehicles and equipment

The site was located in the green belt the Aberdeen City Wide District Local Plan (1991). Whilst one might naturally expect a use for the sale of agricultural vehicles and equipment to be found in the green belt, the use does not fall within any of the categories of development permitted by Policy GB1. Although there are examples of such uses being located within the green belt (e.g. Marshall Trailers are short distance away), there appears to be no fundamental requirement for the use to be located within the green belt. The sale of agricultural vehicles and equipment could equally take place from an industrial estate on the edge of the city but within the urban area or beyond the green belt within a smaller settlement. It is considered that in principle neither location would have significant impact on the ability of someone in that business to successfully operate.

In summary, on the relevant date in 2007 if the planning authority were presented with a planning application for the sale of agricultural vehicles and equipment at the application site, planning permission would not have been granted.

Garden centre and nursery

Part xi of Policy GB1 (Green Belt) specifically states that garden centre use will not normally be permitted within the green belt because of the level of traffic generated and the concentration of buildings, car parking and other activities necessary. Such uses are more appropriate in built up areas or if accompanied by a nursery, in the immediate rural fringe around an urban area.

A garden centre would not have been supported at this location in principle and the site is not located adjacent to the urban fringe. Therefore, on the relevant

date, the planning authority would not have granted planning permission for a garden centre and nursery.

Notwithstanding this, Part xi of Policy GB1 (Green Belt) does allow horticulture and nursery use where the prime function is the production of foodstuffs or flowers for sale, or the raising of plants for sale or replanting. A small-scale retail element, such as a farm shop, is also acceptable.

Therefore although a garden centre and nursery would not have been supported, horticulture or nursery use accompanied small scale ancillary retail on its own would have been granted planning permission.

Other Proposed Uses

It is appropriate to consider other types of development which may have been acceptable at the application site on the relevant date. To make this assessment it is considered appropriate to take each of the uses mentioned in Policy GB1 (Green Belt Areas) in turn –

- **(i) Non-Residential Agricultural or Forestry Building** – In principle the use of the land for agricultural or forestry buildings would be acceptable within the green belt. However, permitted development rights for such buildings would not have applied because the site is located within 25m of a trunk road.
- **(ii) New Houses for Established Local Needs** – Planning permission for a new house required for an essential agricultural or forestry worker would not have been granted at this site. The policy permits such housing only where a worker must be located immediately adjacent to their place of employment and where there is a proven economic need. The site is not associated with any agricultural or forestry land and therefore it appears that it would have been difficult to justify such a proposal.
- **(iii) Certain Recreation Uses** – Open air recreational uses which are normally located outwith urban areas and require large amounts of open space were permitted by part (iii) of the policy. Given the small size of the site it would not be possible to meet the criteria set out in this part of the policy. Furthermore the site's prominent position on the trunk road, would not allow it to be utilised for such uses without detriment to visual impact. Therefore planning permission would not have been granted
- **(iv) Institutional Uses, (v) Rehabilitation or Conversion of Historic or Architecturally Important Buildings (vi) Replacement of Existing Houses, (vii) Mineral Workings**

The site would not be capable of benefiting from any of the above categories of development in terms set out in the policy.

- **(viii) Provision of Utilities** – Green belt policy allowed for the provision of utilities if as part of their normal operation they could not be located anywhere

other than the green belt. Most utilities benefit from permitted development rights and therefore would not have required planning permission.

However telecommunications masts and equipment would have required planning permission. National and local policy supported the expansion of telecommunications networks and therefore subject to siting and design the principle of new telecommunications equipment within the green belt would be acceptable.

- **(ix) Landfill and Reclamation, (x) Burial Grounds** – Given the small size of the site and its prominent position on the trunk road, planning permission would not have been granted for landfill, reclamation or waste disposal use or as a burial ground.
- **(xiii) Nature Conservation** – The establishment of nature reserves and provision of appropriate facilities for interpretation, enjoyment and study are permitted by green belt policy. Given the small scale of site, lack of any natural heritage designation, such a use would seem unlikely.

The Finalised Aberdeen City Local Plan (Green Spaces | New Places) – Modified Written Statement) (August 2004) was at an advanced stage in September 2007 and therefore would have been a significant material consideration in the determination of any planning application. However the green belt policy included within this plan was more restrictive than Policy GB1 of the 1991 plan. Furthermore the site was included within the green space network, which provided an additional layer of protection to open and green spaces.

For these reasons, there is nothing within the 2004 Finalised Plan which would suggest that any of the above or any other uses would have been granted planning permission.

Other Material Considerations

- As the acquiring authority, Transport Scotland has an interest in the outcome of the CAAD application. The arguments offered in the representation from Transport Scotland as to why a new petrol filling station would not have been acceptable are generally accepted, had it not been for the existence of the live planning permission from 1995. The construction of the petrol station would not have been a new use in the green belt and therefore the assessment is rendered largely irrelevant.
- Section 25(4) of the 1963 Act requires the planning authority to state that planning permission would be granted for any development for which the land is being acquired. However, Scottish Ministers through Transport Scotland made orders under the Roads (Scotland) Act 1984, promoting the AWPR, which is the scheme for which the application land is to be acquired. Therefore no planning permission is required for the AWPR and consequently it would not be appropriate to include planning permission for the scheme in any certificate issued as would normally be the case.

Conclusion

In conclusion, planning permission was granted in 1995 for the redevelopment of the site to rebuild the petrol filling station and ancillary retail. The planning permission was implemented in 1999 when the original petrol filling station was demolished. Although the development was never completed the permission was still live on the relevant date and to this day is capable of being completed.

Therefore on the relevant date of 25th September 2007, because a live planning permission existed on the site, if the planning authority received a planning application for a petrol station and ancillary retail at the site, then the principle of petrol station use at the site would have been accepted and planning permission granted.

Planning permission would also have been granted for –

- horticulture and nursery with a small scale ancillary retail element (such as a farm-shop);
- non-residential agricultural or forestry buildings;
- telecommunications masts and ancillary equipment;

RECOMMENDATION

That a certificate of appropriate alternative development is issued stating –

1. that in respect of the land which is subject of the application, on the relevant date of 25th September 2007 or at a future time, planning permission would have been granted for –

- a. a petrol filling station with ancillary retail up to 103.5sqm**
- b. for horticulture and nursery with a small-scale ancillary retail element (such as a farm-shop);**
- c. for non-residential agricultural or forestry buildings;**
- d. for telecommunications masts and ancillary equipment.**

but would not have been granted for any other use.

2. that any planning permission described in (1) would have been granted subject to suitable conditions addressing the following matters –

- a. layout, design and external appearance of buildings or structures;**
- b. mitigation of any contaminated land;**

- c. surface water and foul drainage;
 - d. access to the site;
 - e. landscaping of the site.
3. that because Scottish Ministers through Transport Scotland, made orders under the Roads (Scotland) Act 1984 promoting the Aberdeen Western Peripheral Route, which is the scheme for which the application land is to be acquired, it would not be appropriate to include planning permission for the scheme in the certificate as would normally be the case.

Dr Margaret Bochel

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