

Relevant Date

The Relevant Date for the purpose of assessing CAAD applications is determined by reference to section 30(2) of the Land Compensation (Scotland) Act 1963, which provides that an interest in land shall be taken to be an interest proposed to be acquired by an authority possessing compulsory purchase powers in the following (but no other) circumstances;

- a) where, for the purpose of a compulsory acquisition by that authority of land consisting of or including land in which that interest subsists, a notice required to be published or served in connection with that acquisition.....has been published or served....; or
- b) where notice requiring the purchase of that interest has been served under any enactment, and in accordance with that enactment the authority are to be deemed to have served a notice to treat in respect of that interest; or
- c) where an offer in writing has been made by or on behalf of that authority to negotiate for the purchase of that interest.

The Relevant Date in the context of the above CAAD application is publication of the draft compulsory purchase order (i.e. 25 September 2007), this is therefore the date that Section 30(2)(a) was met. This same date is relevant for considering physical factors and planning policy. In previous cases involving a certificate for land being acquired by Scottish Ministers for road schemes, the Scottish Ministers have accepted the date of publication of the draft compulsory purchase order as the Relevant Date.

Assessment Approach

It is our understanding that for the purposes of assessing appropriate alternative development, it must be assumed that if the land forming the subject of the CAAD application was not to be used for the scheme for which it is being acquired, then it is to be assumed that no public road would be provided, altered or improved to meet the same or substantially the same need as would have been met by the provision. It is assumed that at the Relevant Date, the Aberdeen Western Peripheral Route does not exist.

Section 25(5) of the Land Compensation (Scotland) Act 1963 provides that where, in the opinion of the planning authority, planning permission would have been granted.... but would only have been granted subject to conditions, or at a future time, or both subject to conditions and at a future time, the certificate shall specify those conditions, or that future time, or both, as the case may be, in addition to the other matters required to be contained in the certificate.

In approaching the assessment of the CAAD application, we understand that three principle matters should be considered:

- Firstly, would planning permission have been granted at the Relevant Date for an alternative land use other than the purpose for which the land is to be acquired;
- Secondly, at the Relevant Date would permission have been granted for a alternative development at some point in the future;
- Thirdly, at the Relevant Date would development have been permitted at that time or in the future, but only subject to conditions or other general requirements such as appropriate planning gain contributions?

Appropriate Alternative Land Use

For the reasons set out in the enclosed letter which accompanies this letter, it is Transport Scotland's view that planning permission would not have been granted for the erection of a petrol station and associated retail at the former Bucksburn petrol filling station site at the Relevant Date of 25 September 2007 or at a point in the future given the lack of information provided by the applicant.

As such Transport Scotland is of the opinion a negative certificate would be appropriate for this CAAD application stating that planning permission would have been granted for the purpose for which the land is to be acquired, but would not have been granted for any other development.

I would be obliged if you could acknowledge receipt of the enclosed documentation and would be grateful if you could keep us updated as to the progress of the determination of the application. I am copying this submission to Ian Gallacher of GVA Consultants.

I hope this is of assistance.

Yours faithfully



Alasdair Graham
Head of Design Team 3

cc: Ian Gallacher, GVA, 206 St.Vincent Street, Glasgow, G2 5SG

7 June 2012

Our Ref: B1033200

For the attention of Mr Gordon Ramsay
Transport Scotland
Buchanan House
58 Port Dundas Road
Glasgow
G4 0HF

Dear Sirs,

Aberdeen Western Peripheral Route

The Land Compensation (Scotland) Act 1963

Application for Certificate of Appropriate Alternative Development Application) for a petrol filling station with associated Class 1 retail shop up to 4000sq ft. at the former Bucksburn Petrol Station, Chapel of Stoneywood to Fairley Road Bucksburn, Aberdeen (P/120374)

An application for a Certificate of Appropriate Alternative Development (CAAD) for a petrol filling station and associated retail up to 4,000 sq ft at the former Bucksburn Petrol Filling station Chapel of Stoneywood was submitted to Aberdeen City Council by GVA Consultants on behalf of Mrs Gray (Aberdeen City Council reference P/120374). The application was validated on the 14th March 2012. As the acquiring authority of the land for the AWPR scheme, Transport Scotland has an interest in the determination of the application, and as per your request, this letter provides our advice on the assessment of the application.

We note that whilst the application was validated on the 14th of March 2012 Transport Scotland was not informed of the application by the applicant as required under the terms of the Land Compensation Act 1963 until the 16th of May 2012.

Relevant Date

When assessing a CAAD application the proposal is assessed against the development plan framework that was adopted on the 'relevant date'. Under the terms of Section 30 (2) (a) of the Land Compensation (Scotland) Act 1963 the relevant date is the date when notice served in connection with the acquisition of the land was published. The draft compulsory purchase order for this plot (1007) was published on 25 September 2007, this is therefore the date that Section 30(2)(a) was met. In previous cases involving a certificate for land being acquired by Scottish Ministers for road schemes Ministers have accepted the date of publication of the draft CPO as the relevant date. Our assessment is based on this date in relation to the consideration of physical factors and planning policy.

Assessment Approach

It is our understanding that for the purposes of assessing appropriate alternative development, it must be assumed that if the land forming the subject of the CAAD application was not to be used for the scheme for which it is being acquired, then it is to be assumed that no public road would be provided, altered or improved to meet the same or substantially the same need as would have been met by the provision. It is assumed that at the Relevant Date, the scheme to construct the Aberdeen Western Peripheral Route is cancelled.

In approaching the assessment of this CAAD application, we understand that three principal matters should be considered:

- Firstly, would planning permission have been granted at the relevant date for an alternative land use other than the purpose for which the land is to be acquired?;
- Secondly, at the relevant date, would permission have been granted for an alternative development at some point in the future?; and
- Thirdly, at the relevant date would development have been permitted at that time or in the future, but only subject to conditions?

The Site and Surrounds

The former Bucksburn Petrol Station which is the subject of this CAAD is located at Chapel of Stoneywood on the A96 between Aberdeen and Inverurie. The area of the CAAD as shown shaded on the plan submitted with the application measures approximately 4,300m² and is derelict land.

The site is located approx. 2 km from the edge of the urban area at Bucksburn, Aberdeen. The A96 borders the site immediately to the north, and farming and agricultural properties lie to the west, south and east of the site. To the north of the site and the A96 lie farming and agricultural properties, an agricultural trailer business with Aberdeen Airport and the Kirkhall Industrial Estate beyond.

Beside the base slab there are presently no remains of the former petrol filling station. Since the station closed in 1997 the site has been cleared and all structures and equipment have been removed from the site. The concrete base slab is barely visible from the A96 and plants have self seeded and established.

It is assumed that these physical factors were similar at the relevant date in 2007.

Site History

The site has been subject to a number of applications during the 1980s and 90s for various developments associated with the former petrol filling station when it was operational (Aberdeen City Council planning reference no.s: 85/0654, 85/2125, 93/2458, 95/1287). Most of these proposals sought to extend the range of uses including a residential dwelling, a 60 seater restaurant and extended workshop facilities. All these applications were refused, with the main

reason being that they would introduce new uses into an area designated as countryside and Green Belt. Planning application 93/2458 for the refurbishment of the petrol filling station and erection of a new 60 seater restaurant was refused in 1994 and the applicant appealed the decision. The Secretary of State dismissed the appeal and in his decision letter he 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 in terms of the adverse effect on visual amenity and that the need for the development at this location was not proven.

In 1995 an application (ref 95/1332) to refurbish the petrol filling station was approved. This was for a like for like replacement of existing and then still operational facilities, however this permission was never implemented and the petrol filling station closed in 1997. An application (ref A0/1655) for the renewal of the planning consent (95/1332) for refurbishment of the petrol filling station was submitted and subsequently refused in 2001 on the basis that the building and other structures had been removed and the development constituted new development in the Green Belt. It was concluded that the development did not meet the criteria for exemptions to the Green Belt policy in the development plan.

Development Plan

At the relevant date the development plan for the site comprised of the approved Aberdeen and Aberdeenshire Structure Plan (NEST – North East Scotland Together) 2001-2016 (NEST 2001) and the adopted Aberdeen City District Wide Local Plan 1991. The Local Plan was adopted in 1991 and at the relevant date did not conform to the Structure Plan (which was approved by Scottish Ministers in December 2001). The Finalised Aberdeen City Local Plan "Green Spaces – New Places published in August 2004 had been prepared to conform to the Structure Plan and would have been a material consideration at the relevant date.

Assessment of the CAAD Application

A CAAD application should not be determined solely on the basis of the terms of the development plan, however the development plan is a material consideration in the determination of the CAAD application. Given that the test of a CAAD application is whether planning permission would be granted, we are of the view that it is appropriate that Section 25 of the Town and Country Planning (Scotland) Act 1997 is used as a guide. This requires that decisions are taken in accordance with the development plan unless material considerations indicate otherwise.

Appropriate weight should be attached to those policies of the development not competently disregarded in terms of section 25(7) of the Land Compensation (Scotland) Act 1963 (which are policies relating to the use for which the land is to be acquired). In this case, at the relevant date the development plan did not include any policies identifying the CAAD site for AWPR use, and therefore there is no need to disregard any of the development plan policies in this assessment.

Development Plan

At the relevant date the CAAD site was located in the Green Belt area of Aberdeen, as defined within NEST 2001 Structure Plan. Policy 28 (Development in the Green Belt) in NEST 2001 states that no development will be permitted in the Green Belt for purposes other than those essential for agriculture, forestry, recreation, mineral extraction or restoration and landscape renewal. The policy continues to state that sites may be identified in local plans for sport, recreation and countryside uses appropriate to a rural character where specific locational or operational criteria mean they can not be accommodated within the urban area.

The site is also within the designated Green Belt (Policy GB1) in the adopted Aberdeen City District Wide Local Plan 1991 (ACDW Local Plan 1991) and has not been allocated for any particular use. This Green Belt policy states that there will be an embargo against all development, unless for uses which must be located in the countryside or those already existing in the Green Belt. The petrol filling station was closed in 1997 and subsequently all structures and equipment had been removed from the site. As such it can be concluded that the petrol filling station was not an 'existing' use at the relevant date. In addition, none of the types of development listed in Policy 28 and Policy GB1 as possibly being appropriate within the Green Belt refer to petrol filling stations.

The applicant states in their submission that at the time of the ACDW Local Plan 1991 being adopted the petrol filling station was still operational and that the green belt policy is not relevant as a result. However, the Town and Country Planning (Scotland) Act 1997 requires decisions to be made in accordance with the Development Plan unless material considerations indicate otherwise. As the petrol filling station had ceased to exist at the relevant date it can therefore only be concluded that the Green Belt policy GB1 is applicable and that the development of a new petrol filling station is to be regarded as new use for the site for which Policy 28 and Policy GB1 do not provide an exemption. It is also noted above that the Council refused several planning applications in the early 1990's when the petrol filling station was still operational and after the ACDW Local Plan 1991 was adopted, so this line of argument would appear inconsistent with the Council's interpretation of the development plan policy relevant to the site.

Policy 10.2.21 (Approaches to the City) states that there is an expectation for high visual standards in the development of the traffic routes and approaches to the city. In terms of visual impact the Committee Report that accompanied the application (ref A0/1655) for the renewal of the planning consent (95/1332) for refurbishment of the petrol filling station stated that the proposed petrol filling station, its canopy and ancillary building would have a significant detrimental effect on the green belt at this location. The site is located along a busy main arterial route into the city and is as such important in terms of first impressions of the city, especially for visitors. The applicant has not submitted any design information which would allow any further assessment against this policy or to show how these visual effects can be mitigated. There is no information to demonstrate this is an essential use at this location, and it was not an existing use at the relevant date. Therefore there is no information to justify an exception to this policy.

Given the CAAD application includes for an associated Class 1 Retail use it is relevant to consider the terms of retail policy in the development plan. NEST 2001 Structure Plan Policy 15 (Retailing and Town Centres) sets out structure plan policy on new retail developments and states that local plans should identify appropriate opportunities for retail, leisure, entertainment and other town centre uses. There are no opportunities for convenience retail identified in the ACDW Local Plan 1991 (which predates the NEST 2001 Structure Plan). It also requires that retail proposals must demonstrate that the sequential approach to choosing sites has been followed and that there is consistency with other structure plan policies. There is no evidence provided by the applicant to suggest that the sequential approach has been followed or that retail development can be justified under the terms of the policy. The only exception may be convenience retail of a small scale to serve a localised need or ancillary to the sale of fuel. The policy requires that development must be consistent with other structure plan policies and retail development at this location would not be consistent with Policy 28 (Green Belt).

Emerging Development Plan

At the relevant date the CAAD site is also part of the Aberdeen Green Belt and the Green Space Network within the emerging local plan, the Finalised Aberdeen City Local Plan "Green Spaces – New Places (FACLP). In this document Policy 22 (Filling Stations and Service Areas) states that there will be a general presumption against the provision of petrol filling stations and service areas in Green Belt locations. Those services that are provided must primarily meet the need of travellers and be of a scale consistent with these needs and *'only in exceptional circumstances for which a need can be demonstrated will they be allowed in a Green belt location'*.

The site is located approximately 2 km from the edge of the urban area of Bucksburn. There are at least 6 petrol filling stations situated on and near the A96 and within a short distance from the proposed site. It would seem unlikely that a justification could be provided that another petrol filling station is necessary in this location. The applicant does not provide any evidence to demonstrate that the proposed development could comply with this policy at this location. There are no specific locational or operational criteria which demonstrate that the petrol filling station should be located at this site within the Green Belt.

Policies 65A (Sequential Approach) and 65B (Out of Centre Proposals) of the FACLP relate to the retail policies set out in the NEST 2001 Structure Plan. Proposals must meet the sequential approach, the requirements for out of centre proposals as well as all other relevant policies of the local plan including green belt policies. As concluded above the application would not comply with Green Belt policies and the applicant has not provided evidence that suggest the sequential approach test could be met. In addition, the development is not justified in terms of meeting an identified deficiency.

Other Material Considerations

Scottish Planning Policy No.17 "Planning for Transport" (2005) (SPP17) would have been a material consideration in determining an application for a petrol filling station development at the relevant date. In paragraph 78 the document states that on trunk and strategic roads, other than motorways, 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. The scale and frequency of the provision of dedicated service areas is also affected by existing services in wayside and bypassed communities. The SPP also states that road users should have opportunities at least every 50 kilometres to stop for rest and to obtain essential services.

As noted above, the finalised local plan did not propose to release the CAAD site for any development, instead it seeks to maintain its Green Belt allocation. We do not therefore consider that SPP 17 would provide support for granting a CAAD for a petrol filling station at this site.

Policy guidance for retail development was provided in Scottish Planning Policy 8 Town Centres and Retailing (2006) (SPP8) which would have been a material consideration for the retail element of the proposal. SPP8 explains that planning authorities should adopt a sequential approach to selecting sites for all retail and commercial uses. SPP8 states that out-of-centre locations should be considered only if it can be demonstrated that all other options in the sequential test have been thoroughly assessed and discounted as unsuitable development of the scale proposed is appropriate. Paragraph 39 describes that proposals that are not consistent with the development plan should demonstrate it addresses qualitative or quantitative deficiencies and that the proposal does not conflict with the objectives of the development plan. As stated previously, the applicant has not provided evidence that suggests the application is acceptable under the terms of the sequential test nor that it seeks to address a deficiency in the retail offer in the location. That being the case, retail development would not be in accordance with the provisions of SPP8 as a stand alone use. It could only be permitted as an ancillary use to the petrol filling station.

The planning history of the site, including the previous refusal of permission for the renewal of the planning consent (95/1332) for refurbishment of the petrol filling station in 2001 (ref A0/1655) are relevant considerations, and we do not consider that the circumstances that led to these refusals had changed at the relevant date such that planning permission might have been granted.

The applicant states that principle of the development at this location is supported on the basis that the petrol filling station operated in this location from 1955 until its closure in 1997. At the time of its closure the petrol filling station was an existing use located in an area designated as Green Belt. However, the use of the site at the time of the application is applicable to the assessment of the application and at the relevant date the site had been cleared of all development for 10 years; even the concrete base slab is barely visible. As such the development of the petrol filling station would have constituted new development.

Conclusion

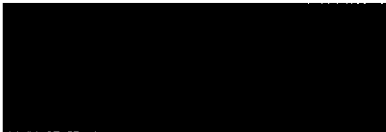
In terms of the three principal matters referred to within the assessment approach above, we have concluded that:

1. At the relevant date of 25 September 2007, it is considered that planning permission would not have been granted as the proposed development would be contrary to the development plan and emerging development plan, in particular Policy 28 (Development in the Green Belt) in the NEST 2001 Structure Plan, Policy GB1 in the adopted Aberdeen City District Wide Local Plan 1991 and Policy 22 (Filling Stations and Service Areas) in the Finalised Aberdeen City Local Plan (FACLP). The proposed development can also not be justified under the terms of retail policies NEST 2001 Structure Plan Policy 15 (Retailing and Town Centres), Policies 65A (Sequential Approach) and 65B (Out of Centre Proposals) of the FACLP or SPP8. In addition, no information has been provided to support a positive CAAD certificate on the basis of other material considerations. The planning history of the site is a relevant material consideration, and the fact that planning permission had previously been refused on several occasions for the development of ancillary services to the existing petrol filling station in 1985, 1993 and 1995 on the basis of introducing new uses into the Green Belt is of particular interest. In addition an application (ref A0/1655) for the renewal of the planning consent (95/1332) for refurbishment of the petrol filling station was submitted and subsequently refused in 2001 on the basis that the former structures had been removed and the development constituted new development in the Green Belt and the development did not meet the criteria for exceptions to the Green Belt policy. At the relevant date the development plan context that led to those refusals had not changed and in our view it would have been highly unlikely that the Council would have granted planning permission for the proposed development at the site in 2007.
2. At the relevant date, there was no information to suggest that planning permission might have been granted in the future. Based on the information available at the time, particularly the emerging Finalised Aberdeen City Local Plan 'Green Spaces – New, there was no indication that the site was being considered for any type of development. The finalised local plan continued to retain the site within the Green Belt and Green Space Network for land outwith the city boundary. No evidence is provided to demonstrate that the development could comply with Policy 28 of the Structure Plan or Policies GB1 in the adopted local plan and Policy 22 in the finalised local plan and as such it cannot be concluded that the proposed development would have been granted planning permission in the future. The finalised local plan is the best indication, at the relevant date, of the future evolution of local planning policy. It is not relevant to consider the CAAD application in the context of policy documents published after the relevant date.
3. As previously identified, there is no information to suggest that the principle of petrol filling station development would have been granted subject to conditions at the relevant date or in the future with the information available at the time. However if planning permission were to be granted we would suggest that conditions likely to have been appropriate would include those relating to the approval of a detailed design layout including information on landscaping, drainage, access, contaminated land and pollution prevention measures. It would be appropriate to restrict the gross floor area of the retailing space. In the absence of any information to justify the extent of retail floor space required, should the CAAD application be permitted then the conditions should restrict retail floor space to 4,000 square feet as a maximum.

Given the above assessment and conclusions, we are of the opinion that a negative certificate would be appropriate for this CAAD application, stating that at the relevant date of the 25 September 2007, planning permission would not have been granted for alternative land use at this site, other than the purpose for which the land has been acquired.

If you have any queries please do not hesitate to contact me on or

Yours faithfully



Gillian Nisbet MA(Hons) MRTPI

Technical Director

cc: John Wilson (AWPR Managing Agent)