

ANGUS COUNCIL

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
(AS AMENDED)TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT
PROCEDURE) (SCOTLAND) REGULATIONS 2013

PLANNING PERMISSION - CONDITIONAL APPROVAL

REFERENCE : 22/00288/FULM



To: **TJ Morris Ltd, C/o Bennett Real Estate**
c/o Icen Projects
Pamela Wright
177 West George Street
Glasgow
G2 2LB

With reference to your application dated **27 April 2022** for planning permission under the above mentioned Acts and Regulations for the following development viz:-

Creation of retail units to include outdoor garden centre, a drive-thru restaurant unit, and a drive-to restaurant unit, with ancillary development including access, drainage, landscaping and other associated works at Land Elliot Industrial Estate Arbroath for TJ Morris Ltd, C/o Bennett Real Estate

The Angus Council in exercise of their powers under the above mentioned Acts and Regulations hereby **Grant Planning Permission (Full Council)** for the said development in accordance with the particulars given in the application and plans docketed as relative hereto in paper or identified as approved on the Public Access portal.

The permission is subject to the following conditions, namely:-

1. The development to which this permission relates must be begun not later than the expiration of three years from the date of its grant.
2. That, no development in connection with the planning permission hereby approved shall take place until the following details have been submitted to and approved in writing by the planning authority:
 - (a) A construction phasing plan. That plan shall include detail for the phasing and completion of the retail units, road improvements and all infrastructure and landscaping associated with the development, having regard to the breeding birds -species protection statement dated September 2022 by Wild Surveys Ltd. The infrastructure works, insofar as they relate to roads, access, public transport infrastructure, cycle, motorcycle and car parking, service areas, footpaths, landscaping, boundary treatments, acoustic barrier and drainage shall be completed prior to the occupation or use of any part of the development, or respective part of the development as may be approved in writing by the planning authority.
 - (b) Details of surface water disposal arrangements for the development along with details for their future maintenance. This should include detail of the direction of flood flows through the site in times of exceedance and evidence that there will be no increased flood risk to neighbouring land and property. Positive drainage falls should lead away from Network Rail land. Any Sustainable Urban Drainage Scheme must not be sited within 10 metres of the railway boundary and should be designed with long term maintenance plans which meet the needs of the development. The approved surface water disposal arrangements shall be provided in full prior to the occupation or use of any part of the development and maintained thereafter in accordance with the approved details.

- (c) A detailed levels survey of the site. The detailed drawings shall show finished ground and floor levels of the proposed development relative to existing ground levels, neighbouring land/properties, and a fixed ordnance datum point. Thereafter the development shall be carried out in accordance with the approved details.
- (d) Details of all boundary treatments and enclosures. This should include provision for a potential future pedestrian access between the application site and the neighbouring commercial centre to the east, and for the retention of the stone boundary wall to Arbroath Road and for its making good following construction of the new road junction. It should also include revised details for an acoustic barrier at the southwest boundary of the site and precise details of the acoustic barrier associated with the service area for unit 1. The information regarding the acoustic barrier shall include elevation and section drawings along with information to demonstrate that the barrier provides mitigation in accordance with the recommendations detailed in the Bureau Veritas Noise Impact Assessment dated 5 April 2022. Thereafter the boundary enclosures shall be provided in accordance with the approved phasing plan and specifically the acoustic barriers shall be formed prior to the occupation or use of any part of the development.
- (e) A scheme of hard and soft landscaping, including a schedule of plants to comprise species, plant sizes, numbers and density. The submitted scheme shall include all hard and soft landscaping works, boundary treatment(s), details of trees and other features which are to be retained, and a programme for the implementation/phasing of the landscaping in relation to the construction of the development. It shall also provide detailed proposals for the future management and maintenance of all hard and soft landscaped areas and for all unadopted infrastructure within the development hereby approved, including the acoustic barrier at the southwest boundary. Where trees/shrubs are to be planted adjacent to the railway boundary these should be positioned at a minimum distance from the boundary which is greater than their predicted mature height. Certain broad leaf deciduous species should not be planted adjacent to the railway boundary. Network Rail can provide details of planting recommendations for adjacent developments. All landscaping, including planting, seeding and hard landscaping shall be carried out only in full accordance with such approved details. All planting indicated on the approved plans shall be carried out in the first planting season following commencement of use of the car park or at earlier stages and any plants or trees which within a period of five years from the practical completion of the development die; are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of a similar size and species. Thereafter the landscaped areas and unadopted infrastructure shall be managed and maintained in accordance with the approved details in perpetuity.
- (f) A scheme for the provision of publicly accessible changing places toilet facilities within the development. A changing places toilet shall be available for public use before any retail unit hereby approved is open to the public and publicly accessible facilities shall be retained and available for use at all times thereafter when the retail units are open to the public.
- (g) A lighting scheme that provides detail of all proposed external lighting. Any lighting associated with the development including any floodlighting must not interfere with the sighting of signalling apparatus and/or train drivers' vision on approaching trains. The lighting scheme shall be carried out only in full accordance with the approved details.
- (h) A road safety audit which considers the road adjacent to the railway boundary and includes an assessment for vehicle incursion. Where a potential risk of vehicle incursion is identified, appropriate vehicle mitigation design and installation must be undertaken to ensure that there is no potential for vehicles to encroach on to the railway should they collide with the boundary fencing.
- (i) A scheme to mitigate impact of development on users of the private road and core path that run through the site. The scheme shall include measures for its rerouting during construction works and the roadway shall not be closed to public access until the alternative route has been formed and delineated in accordance with the approved details. Thereafter the approved route shall be available for public access at all times until the new roadway and associated footpath/cycleway is provided between Dundee Road and the original roadway to the northwest of the site that is to be retained.

- (j) Precise details of all external material finishes, including details of colour. This should make provision for all external facing brick to be coloured red.
3. That before occupation or use of any part of the development, the following alterations and improvements to the public road shall be completed in accordance with details approved by Angus Council: -
- a. provision of a new signalised junction between the site and the A92. That junction shall include Toucan crossing facilities to accommodate both pedestrians and cyclists and that section of the A92 cycle track to be diverted via the traffic signals shall be formed to a minimum width of 3.0 metres;
 - b. permanent closure and removal of the existing junction between the A92 and the private road on the west boundary of the site before the new signalised junction is brought into use;
 - c. relocation of the bus shelter on the north side of the A92 Dundee Road;
 - d. formation of a footway on the south side of the A92 Dundee Road between the proposed traffic signals at the site access and the closest westbound bus stop on Dundee Road;
 - e. provision of a yellow box junction on the A92 carriageway at the entrance to the Elliot caravan site.
4. The total gross retail floorspace of the development shall not exceed 8150sqm, of which the net retail sales floorspace shall not exceed 6651sqm. None of the retail units hereby approved shall be sub-divided or enlarged (including by inclusion of a mezzanine) without the grant of planning permission following submission of an application to the planning authority. No retail unit shall have a gross external floorspace that is smaller than 720sqm or a net retail sales area less than 540sqm.
5. The total net convenience retail sales floorspace of the development shall not exceed 2483sqm. The total net comparison retail sales floorspace shall not exceed 4132sqm. For the purposes of this permission, convenience goods are defined as food and drink, including alcohol; tobacco; newspapers and magazines; and non-durable household goods all as defined by Pitney Bowes Retail Expenditure Guide 2017/2018. Comparison goods are defined as products that are not convenience goods in terms of the foregoing definition.
6. The non-food retail units (identified as units 2, 3 and 4 on the approved plan) hereby approved shall be used solely for the sale of and display of the following goods, DIY and home improvement supplies, major household appliances (electric or not), audio-visual equipment, household textiles and furnishings, furniture and floor coverings, garden furniture and equipment and plants. None of the non-food retail units hereby approved shall be used for the sale of convenience goods, or for the sale of comparison goods comprising clothing and footwear, jewellery, silverware, watches and clocks, toys and sports goods.
7. Within unit 1 as identified on the plans hereby approved, the sale and display is permitted of convenience goods up to a maximum of 1431 sqm (net) and comparison goods up to a maximum of 1883 sqm (net), including a 929sqm garden centre. Sales of goods comprising clothing and footwear, or toys and sports goods are permitted up to a combined maximum of 400sqm, subject to an absolute maximum sales area of 200sqm for each individual category. The sale of goods comprising jewellery and silverware, and watches and clocks, is not allowed other than in an ancillary capacity which shall not exceed a combined total of 50sqm of the net comparison sales area.
8. Within unit 5 as identified on the plans hereby approved, the sale and display is permitted of convenience goods up to a maximum of 1052sqm (net) and comparison goods up to a maximum of 263sqm (net). Sales of comparison goods comprising clothing and footwear, jewellery and silverware, watches and clocks, toys and sports goods is permitted subject to no individual category exceeding 50sqm.
9. That there shall be no loading or unloading of heavy goods vehicles at unit 7 as identified on the approved plans between 2300hrs and 0700hrs.
10. That noise from the development shall not exceed the noise rating levels stated below at any residential property or caravan when measured and corrected in accordance with BS4142:2014: -

- LAeq 1 hour of 50dB between 0700hrs and 2300hrs; and,
- LAeq 15 Minutes of 40dB between 2300hrs and 0700hrs.

11. Noise from any fixed plant or equipment shall not exceed NR curve 35 between 0700hrs and 2300hrs and NR curve 25 at all other times as measured within any neighbouring residential property or caravan, with windows slightly open for ventilation.
12. Noise associated with the construction of the development including the movement of materials, plant and equipment shall not exceed the noise limits shown in table A below for the times shown. At all other times noise associated with construction operations shall be inaudible at any sensitive receptor. For the avoidance of doubt sensitive receptors includes all residential properties, caravans, hospitals, schools and office buildings.

Table A: Construction Noise Limits Day Time Average Period Noise Limit

Day	Time	Noise Limit
Monday – Friday	0700 – 0800	60 dBA Leq (1hr)
Monday – Friday	0800 – 1800	70 dBA Leq (10hrs)
Monday – Friday	1800 – 1900	60 dBA Leq (1hr)
Saturday	0700 – 0800	60 dBA Leq (1hr)
Saturday	0800 – 1300	70 dBA Leq (5hrs)

13. Vibration levels associated with the construction of the development shall not exceed the following limits: -
 - (a) 1mms-1 PPV at existing residential or educational properties.
 - (b) 3mms-1 PPV at existing commercial or industrial properties.

The above vibration limits relate to maximum PPV ground borne vibration occurring in any one of three mutually perpendicular axes. Vibration is to be measured on the foundation or on an external façade no more than 1m above ground level or on solid ground as near the façade as possible.

14. That unit 6 and unit 7 as identified on the approved plans shall not be brought into use unless a cooking odour air quality assessment and cooking odour mitigation scheme relevant to the respective unit has been submitted to and approved in writing by the planning authority. The cooking odour assessment shall be in accordance with the guidance in the EMAQ + 2018 update to the 2004 report prepared by NETCEN for DEFRA on the control of odour and noise from commercial kitchen exhaust systems and the proposed cooking odour mitigation scheme shall include.
 - o scale drawings showing the location of all kitchen extraction equipment,
 - o design specifications of all proposed abatement equipment, and
 - o calculations to demonstrate an appropriate efflux velocity is achieved at the flue outlet.

Thereafter the approved scheme shall be installed and operational before each respective unit is brought into use and the equipment shall be operated and maintained in accordance with the approved detail while each unit is in use.

15. The development shall be undertaken in accordance with the breeding birds - species protection statement dated 26 September 2022 by Wild Surveys Ltd.

The foregoing conditions are imposed by the Council for the following reasons :-

1. In order to clarify the duration of this permission in accordance with the requirements of the Town and Country Planning (Scotland) Act 1997 (as amended) and to ensure that it will lapse if not implemented within that period.
2. In order that the planning authority may control the specified details in the interests of amenity, environmental quality, promotion of sustainable modes of transport, and road and railway safety; and to ensure the development is undertaken and maintained in accordance with the approved details, and in the manner that is capable of delivering the benefits that justified approval contrary to development plan.

3. In order to ensure the provision of the necessary road junction and infrastructure in a timely manner and in the interests of road safety.
4. In order to clarify the terms of this permission and to ensure that the retail impacts remain within the terms under which the application has been approved in order to minimise adverse impact on the vitality and viability of Arbroath town centre.
5. In order to clarify the terms of this permission and to retain control over the format of the retail development at the site in order to minimise adverse impact on the vitality and viability of Arbroath town centre.
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9. In order that the amenity of occupants of nearby premises is adequately safeguarded.
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15. In order to minimise potential for adverse impact on breeding birds.

The reason(s) for the foregoing decision by the Council are as follows:-

1. The proposal represents a significant departure from development plan policy, but approval of the application contrary to the provisions of the development plan is justified because there is an extant planning permission that allows for development of a similar nature and scale at this location. The proposal would improve retail offer in the town providing increased opportunity for residents to shop locally. The retail impact of the development on the town centre is estimated to be reduced compared to the extant planning permission, but it would continue to deliver significant economic benefit for the area. The layout and design of the development does not give rise to unacceptable impacts in terms of amenity, built and natural environment, access and infrastructure. Planning conditions can mitigate impacts associated with the development. There are no material considerations that justify refusal.

Dated this **22 November 2022**

Jill Paterson

Service Lead

Planning and Sustainable Growth

Angus Council

Angus House

Orchardbank Business Park

Forfar DD8 1AN

The decision was based on the following amendment(s): -