

FALKIRK COUNCIL

Subject: ERECTION OF 3 WAREHOUSE BUILDINGS AT BONDED WAREHOUSES,
GLASGOW ROAD, DENNYLOANHEAD, BONNYBRIDGE FK4 1QR FOR
DIAGEO SCOTLAND LTD - P/07/1185/FUL
Meeting: PLANNING COMMITTEE
Date: 22 September 2010
Author: DIRECTOR OF DEVELOPMENT SERVICES

Local Member: Councillor Jim Blackwood
Councillor John McNally
Councillor Martin David Oliver
Councillor Alexander John Waddell

Community Council: Banknock, Haggs and Longcroft

Case Officer: Brent Vivian (Senior Planning Officer), ext 4935

UPDATE REPORT

1. Members will recall that this planning application was considered at the meeting of the Planning Committee on 25 March 2009 (copy of previous report appended, Appendix 1), where it was agreed to continue the application to undertake a visit of the site. The site visit took place on 6 April 2009. The reason for the delay in referring this matter back to the Planning Committee has been due to the need for further consideration and the complexities of the relevant matters as detailed in this report. Further consideration of the black mould issue by the Environment and Community Safety Committee has also affected timescales.
2. The officers' report prepared for the Planning Committee meeting on 25 March 2009 indicated that no public representations had been received to the application and that the Banknock, Haggs and Longcroft Community Council had not made any representations. However, following preparation of the officers' report and prior to the Committee site visit on 6 April 2009, nine letters of objection or concern were received. One of these letters was from the Banknock, Haggs and Longcroft Community Council. A further letter raising concerns was received on 3 May 2009.
3. The concerns raised in the representations can be summarised as follows:
 - There is a link between the emission of ethanol vapour and the growth of warehouse staining fungus (black mould) on dwellinghouses in the area.
 - The development will exacerbate the existing problem of black mould affecting local dwellinghouses and the local environment.

- Health, financial and environmental impacts associated with black mould.
 - A distinct odour emanates from the site particularly in the evenings.
 - No development should take place until the findings and recommendations of the Health Protection Scotland study commissioned by Falkirk Council into the potential impacts of black mould on human health and property have been made public.
 - The draft Health Protection Scotland study does not disprove that Diageo is the cause of the proliferation of the mould or that there may be health implications.
 - An increase in the quantity of spirit (ethanol) stored may result in an unacceptable risk to public safety arising from explosions and fire.
 - The storage of spirit without the necessary Hazardous Substances Consent is flouting the regulations.
 - Water supply and water supply pressure are not sufficient for fire control and fire fighting.
 - There will be an increase in traffic on the already busy A803.
 - The development will adversely affect the general amenity of the area including the landscape and the setting of the Antonine Wall.
4. The site visit on 6 April 2009 was attended by Planning Committee Members, Local Members, relevant Council officers and local residents who made representations to the application. Local residents reiterated and expanded on the concerns raised in their representations. Members raised concerns at determining the application prior to the Health Protection Scotland study being considered by the Council. In addition, Members requested a copy of the Major Hazard Consultation Zone for the site, information in relation to the cost and effectiveness of the use of ethanol scrubbers/cling film to contain the ethanol vapour, and information on the reasons why spirit (ethanol) is being stored without the necessary Hazardous Substances Consent.
5. The Health Protection Scotland study was commissioned by Falkirk Council to consider the potential health impacts resulting from the presence of black mould on structures and vegetation near the Diageo site and, if possible, identify potential source(s) capable of facilitating the mould growth. The report concluded that: no direct link could be drawn between fungi identified within the Diageo warehouses and the surrounding properties or structures; the mould species identified on the sampled neighbouring properties are not considered a threat to normal, healthy individuals; and only common, ubiquitous fungi had been identified. The report was reviewed by NHS Forth Valley, who advised that it had an interest in reviewing the literature on the health impact of fungi in the quantities found on sites like the Diageo site in Dennyloanhead.

6. The findings of the Health Protection Scotland study and the comments of NHS Forth Valley were considered by the Environment and Community Safety Committee on 12 May 2009. This Committee agreed to continue the matter to allow an inspection of the bonded warehouses and neighbouring properties affected by the black mould. The Environment and Community Safety Committee further considered the matter on 5 June 2009 and agreed: (1) that a follow-up report be presented to Members if, following completion of NHS Forth Valley research, their relevant findings identify the need for further investigations to be carried out; (2) to authorise the Convener to write to the Scottish Government and local MSPs' to request a national investigation to fully examine the health and environmental effects of black mould in the vicinity of bonded warehouses; and (3) that officials investigate the use of Environmental Protection legislation to address the problem and provide a report back to a future meeting of the Environment and Community Safety Committee.
7. A response from the Scottish Government to the Council's request for a national investigation was received on 17 August 2009. In this response, the Government advised that it had sought further advice from Health Protection Scotland leading to Health Protection Scotland undertaking a comprehensive review of all available evidence and concluding that the absence of any published evidence relating to any specific health effect suggests that, if any effect does exist, it is likely to be of very low magnitude and very difficult to detect. The Government subsequently advised that it did not intend to commission a Scottish wide investigation into the health effects of black mould, and cited the questionable public benefit given the existing evidence available and the complex set of contributing factors that would have to be considered, which may give results that prove inconclusive or negligible.
8. A joint report by the Director of Development Services and the Acting Director of Law and Administration Services was considered at the August 2010 meeting of the Environment and Community Safety Committee concerning the presence of black mould on property, structures and vegetation in the vicinity of the Diageo site. This Committee agreed to instruct officers to contact other authorities who are experiencing similar problems, with a view to establishing a forum, for the purpose of having discussion and trying to address the problem as a group.
9. The issue of the potential health impacts linked to black mould is not considered to be a material planning consideration.
10. The aesthetic impact of black mould may be considered a material planning consideration with reference to its potential for visual disamenity. The remit of the Council commissioned study by Health Protection Scotland was explicitly concerned with the potential health impacts resulting from black mould in the area. Therefore there has been no specific study relating to the aesthetic issue in relation to the Diageo site.
11. The findings of the Health Protection Scotland study are, however, considered to be relevant to the aesthetic issue, insofar as the study concluded that no direct link could be drawn between fungi identified within the Diageo site and the surrounding properties.

12. In June 2009, due to the scope of the Health Protection Scotland study being restricted to the health issue, and the view that disamenity arising from black mould is a material planning consideration, the applicant was requested to undertake a detailed study into the potential link between the Diageo warehouse operation and black mould found on structures and vegetation in the local area. The applicant responded on 28 July 2009 by stating that there would not appear to be a legitimate basis for this request given the conclusions of the Health Protection Scotland study. A copy of the response letter is attached as Appendix 2.
13. The issue of the appearance of black mould on structures and vegetation close to the Diageo site relates to an existing phenomenon. Care should be taken to ensure that only the potential impacts associated with the development subject to this application (for 3 warehouse buildings) are considered in its determination. This approach is reflected in the Government's advice in Circulars 1/2010 (Planning Agreements) and 4/1998 (The Use of Conditions) which require planning conditions and agreements to be relevant to the proposed development. The Circulars also require planning conditions and agreements to be necessary and reasonable in the circumstances.
14. The planning history for the Diageo site provides an important context within which to consider this matter. The original planning permission for the erection of 16 bonded warehouses was granted in 1978 (ref: F/77/0723) and, to date, six of the warehouses approved under this permission have been erected. The reason that separate applications were made in 2005 (ref: 05/0581/FUL) and 2007 (ref: P/07/0208/FUL and ref: P/07/1185/FUL) was due to the location, size and design of the warehouses varying from the original grant. It is considered that Diageo should reasonably expect to be able to expand its operation to a scale similar to that previously approved, in the interests of its own business development and its contribution to the economy. The appropriateness of imposing constraints or burdens in response to a sensitive use (housing) which was established after the warehouse operation requires to be carefully balanced against the planning context and other planning considerations.
15. Whilst this Planning Service requested that Diageo undertake a study into the potential link between its site and black mould, the potential constraints and problems associated with such a study should be recognised. First, whilst a causative link has not to date been proven, if it were proven, it may be difficult, if not impossible, to quantify the specific impact of the warehouses subject to this application on the proliferation of the mould. As detailed in this report, the existing black mould phenomenon should not be a determining factor in this application. Second, defining the study area may be problematic as the range of fungi found on the properties subject to the Health Protection Scotland study were common ubiquitous fungi which have a widespread presence in the environment. Indeed, a similar range of fungi samples was collected from the Bonnybridge Community Centre, well away from the bonded warehouses. Third, the Scottish Government, in response to the request from Falkirk Council for a national investigation, recognises that a thorough investigation would require consideration of a complex set of possible contributing factors, of which the results may prove inconclusive.

16. The applicant has confirmed that they would not be prepared to consider any payment to clean black mould from dwellinghouses. It is considered that any requirement to do so by legal agreement or condition would not be reasonable within the terms of Circulars 1/2010 (Planning Agreements) and 4/1998 (The Use of Conditions) as a causative link between black mould and bonded warehouses has not been scientifically proven. Even if it were proven, the black mould issue relates to an existing phenomenon. It would be problematic to establish the specific impact of the warehouses which are the subject of this application on any proliferation of the black mould, in order to identify in a condition or legal agreement the dwellinghouses which require cleaning.
17. In relation to the other concerns raised in representations and by Members, the following comments can be made:
 - Consideration of financial implications associated with black mould is not a material planning consideration.
 - The potential for an increased risk of explosion and fire is a matter for consideration in assessment of the application for Hazardous Substances Consent.
 - The applicant has advised that the water storage tanks on the site are appropriate in size for the sprinklers and that the fire hydrant system has adequate capacity to supply the hydrants.
 - The applicant has advised that the proposed development would generate a minimal increase in traffic movements (2 to 3 vehicles per week) therefore the impact on the A803 would be negligible.
 - The landscape amenity and setting of the Antonine Wall have been affected at this location by the existing bonded warehouses. In recognition of this, Historic Scotland has not objected to the application. However, the colouring of the warehouses a dark colour (e.g. chocolate brown) and the provision of a planted bund along the southern boundary have been proposed in order to mitigate landscape and visual impact.
 - A copy of the Major Hazard Consultation Zone for the site is attached to the officers' report for the application for Hazardous Substances Consent.
 - The applicant has advised that it believed it had satisfied the necessary requirements by notifying the Health and Safety Executive of the new proposal, under the Control of Major Accidents Hazards (COMAH) Regulations. When the applicant became aware of the requirement for Hazardous Substances Consent, it submitted an application, partly retrospective, to cover 35,000 tonnes of ethanol stored in the three warehouses approved under planning application ref: 05/0581/FUL and P/07/0208/FUL.
 - The applicant considers that there is no justification for consideration of the use of cling film or ethanol scrubbers. The applicant has advised that the wrapping of the casks in cling film would affect the maturation process and spirit quality as it would prevent the casks from breathing.

18. Whilst it is acknowledged that the aesthetic effect of the black mould is a matter of concern to local residents, drawing together the relevant considerations as detailed in this report it is considered that, on balance, the application can be supported. The previous recommendation is therefore re-iterated as follows:

19. RECOMMENDATION

It is recommended that the Committee grant planning permission subject to the following conditions:-

- (1) The development to which this permission relates must be begun within three years of the date of this permission.**
- (2) Notwithstanding the approved plans, before any work starts on site, details of the specification and colour of the proposed external finishes shall be submitted to and approved in writing by this Planning Authority. Thereafter, the development shall be carried out in accordance with the approved details.**
- (3) Before any work starts on the site, a contaminated land assessment shall be submitted to and approved in writing by this Planning Authority. Before the proposed development is brought into use, any necessary remedial works to make the ground safe shall be completed in accordance with an approved remediation strategy and any necessary remediation completion reports/validation certificates shall be submitted to and approved in writing by this Planning Authority.**
- (4) Before any work starts on site, the following details shall be submitted to and approved in writing by this Planning Authority:-**
 - (i) The precise details for the height, profile and location of the proposed berm indicated on the approved plans.**
 - (ii) A schedule of the plants to be planted on the proposed berm, to comprise the species, plant sizes and proposed numbers/density.**
 - (iii) A maintenance schedule for all planting.**
- (5) All approved bunding and landscaping works shall be completed by the end of the first planting and seeding season following the completion of the first building.**

Reason(s):

- (1) To accord with the provisions of Section 58 of the Town and Country Planning (Scotland) Act 1997.**
- (2,4-5) To safeguard the visual amenity of the area and the setting of scheduled monuments (the Antonine Wall and the Forth and Clyde Canal).**
- (3) To ensure the ground is suitable for the proposed development.**

Informative(s):

- (1) For the avoidance of doubt, the plans to which this decision refers bear our online reference numbers 01, 02, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21.

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Director of Development Services

Date: 15 September 2010

LIST OF BACKGROUND PAPERS

1. Approved Falkirk Council Structure Plan.
2. Adopted Bonnybridge and Banknock Local Plan.
3. Falkirk Council Local Plan Finalised Draft (Deposit Version) as amended by the Final Proposed Modifications (June 2010)
4. Letter of Objection received from Banknock, Haggs and Longcroft Community Council, FAO A Little, 287 Glasgow Road, Longcroft, Bonnybridge on 1 April 2009
5. Letter of Objection received from Councillor Billy Buchanan, Ufocouncillor@aol.com on 2 April 2009
6. Letter of Objection received from Derick Ramsay, Derick@woodleagrange.freemove.co.uk on 2 April 2009
7. Letter of Objection received from Garry Robb, GarryRobb@aol.com on 2 April 2009
8. Letter of *** received from Alan Brown, Albroon@hotmail.co.uk on 2 April 2009
9. Letter of Objection received from Stacie Buchanan, Buchananstacie@hotmail.com on 2 April 2009
10. Letter of Objection received from Mr. Steven Monaghan, 16 Jubilee Way, Bonny bridge FK4 1GE on 3 May 2009
11. Letter of Objection received from Adam Tarbet, Adam.tarbet@btopenworld.com on 6 April 2009
12. Letter of Objection received from Jim McMurtrie, Jim.mcmurtrie@cetco.co.uk on 3 April 2009
13. Letter of Objection received from Jeff Reynolds, Jeffreynolds71@gmail.com on 2 April 2009

Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504935 and ask for Brent Vivian (Planning Officer).

FALKIRK COUNCIL

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GLASGOW ROAD, DENNYLOANHEAD, BONNYBRIDGE FOR DIAGEO
SCOTLAND LTD - P/07/1185/FUL
Meeting: PLANNING COMMITTEE
Date: 25 March 2009
Author: DIRECTOR OF DEVELOPMENT SERVICES

Local Member: Councillor Jim Blackwood
Councillor John McNally
Councillor Martin Oliver
Councillor Alex Waddell

Community Council: Banknock, Longcroft and Haggs

Case Officer: Brent Vivian (Planning Officer), ext 4935

1. DESCRIPTION OF PROPOSAL / SITE LOCATION

- 1.1 The application seeks detailed planning permission for the erection of three warehouse buildings.
- 1.2 The application site consists of an existing bonded warehouse facility to the south of Bonnybridge Road and Glasgow Road (the A803). Within the proximity of the site is housing at Dennyloanhead and Longcroft. The Bonny Water, the Forth and Clyde Canal and the Antonine Wall lie to the south of the site.
- 1.3 The existing facility consists of nine, large scale, warehouses, an office building, a car park and a Sustainable Urban Drainage System (SUDS) pond. The warehouses are used for whisky maturation. Vehicular access to the site is from Glasgow Road.
- 1.4 The proposed additional warehouses would be located to the south of the existing warehouse complex. A planted bund is proposed to be extended at the southern-west corner of the site, to screen the extended facility from the countryside. The new warehouses would be of a similar scale to those existing.

- 1.5 The application was originally for the erection of four warehouses and a replacement office building. However, following an objection to the application from SEPA, proposed Warehouse 13 and the replacement office building have been deleted from the application. The reason for the objection was because proposed Warehouse 13 lies within a potential overland flow route for water at risk of backing up at an inlet culvert for the Dennyloanhead Burn. This was identified in the Flood Risk Assessment (FRA) submitted with the application. The applicant may submit a future application for proposed Warehouse 13 and the office building that includes the required design detail for flood mitigation. The options detailed in the FRA are de-culverting of the watercourse or increasing the capacity of the overflow channel.

2. REASON FOR CONSIDERATION BY COMMITTEE

- 2.1 The application has been called in by Councillor William Buchanan.

3. SITE HISTORY

- 3.1 Planning application ref. F/77/0723 was granted in 1978 for the erection of 16 bonded warehouses, each of approximately 8,900 square metres in area. To date, six of these warehouses have been constructed.
- 3.2 Deemed Hazardous Substances Consent ref. H/2000/0004 was granted in 2000 for the storage of 90,000 tonnes of ethanol/water mixture (established presence).
- 3.3 Planning application ref. 05/0581/FUL was granted in November 2005 for the erection of a bonded warehouse building. This warehouse is now completed and in use.
- 3.4 Planning application ref. P/07/0208/FUL was granted in May 2007 for the erection of two bonded warehouse buildings. These warehouses are now completed and in use.
- 3.5 An application for Hazardous Substance Consent for storage of ethanol (180,070 tonnes) – P/09/0085/HAZ is currently invalid.

4. CONSULTATIONS

- 4.1 The Roads and Development Unit has advised that sufficient on-site car parking is available to serve the proposed expanded facility.
- 4.2 The Environmental Protection Unit has advised that an adequate contaminated land assessment has been undertaken subject to the submission of satisfactory remediation validation information. The Environmental Protection Unit has also advised that specialist consultants were appointed to investigate complaints from local residents in relation to black mould deposits (attributable to the bonded warehouse) affecting residential properties in the vicinity of the site. The conclusions of this report and a subsequent assessment of the report by Forth Valley Health Board have not identified any risks to the health of the local population from the operation of the bonded warehouses.
- 4.3 Scottish Water has no objections to the application.

- 4.4 SEPA has withdrawn its objection to the application in response to proposed Warehouse 13 being deleted from the application. This matter is explained in paragraph 1.5.
- 4.5 Historic Scotland accepts that the setting of the Antonine Wall and the Forth and Clyde Canal have already been compromised at this location by the existing warehouses, nonetheless the proposed development would extend the facility closer to these monuments. However, Historic Scotland does not consider that the impact would be so adverse as to raise an objection, therefore it does not object to the application.
- 4.6 The Health and Safety Executive does not advise, on safety grounds, against the granting of planning permission. In addition, the Health and Safety Executive has advised that it has been notified by the applicant under the COMAH (Competent Authority under the control of Major Accident Hazards) Regulations to increase the inventory of hazardous substances from 90,000 tonnes to 180,070 tonnes. This increase in the inventory will also require a Hazardous Substance Consent. As stated at paragraph 3.5 an application has been submitted but has not been determined and is currently invalid.

5. COMMUNITY COUNCIL

- 5.1 The Banknock, Longcroft and Haggs Community Council has not made any representations.

6. PUBLIC REPRESENTATION

- 6.1 There have been no public representations in respect of this application.

7. DETAILED APPRAISAL

When determining planning applications, the status of the Development Plan is emphasised in Section 25 of the Town and Country Planning (Scotland) Act 1997. This requires that:

“the determination shall be made in accordance with the plan unless material considerations indicate otherwise”.

Accordingly,

7a The Development Plan

Approved Falkirk Council Structure Plan

- 7a.1 The proposed development does not have any strategic implications, therefore the policies of the approved Falkirk Council Structure Plan are not considered to be relevant.

Adopted Bonnybridge and Banknock Local Plan

7a.2 The application site lies outwith the urban limits as defined in the adopted Bonnybridge and Banknock Local Plan. However, the adopted local plan identifies the site as a proposed whisky warehouse maturation complex (Proposal 15). To date, 9 warehouses have been erected on the site. The proposed development, for an additional three whisky maturation warehouses, accords with this proposal.

7a.3 Policy BON 9 states:

“That along the Antonine Wall, there will be a general presumption against proposals for development which would adversely affect the line, setting and amenity of the wall. However, there will be a general presumption in favour of proposals which would lead to sympathetic use of the wall for tourism, local recreation and interpretation. (Figure 1).”

7a.4 As detailed in paragraph 4.5, Historic Scotland has not objected to the proposed development as it accepts that the setting of the Antonine Wall has already been compromised at this location by the existing warehouse complex. Nonetheless the proposed development would extend the facility closer to the Wall. The views of Historic Scotland are supported in this instance. A Landscape Mitigation Statement submitted in respect of planning application ref. P/07/0208/FUL (for the erection of two warehouses) recommended that these buildings be coloured a dark colour (e.g. chocolate brown) and a 2.4 to 3 metre high bund, planted in local species, be provided along the southern boundary of the site. The proposed warehouses in this instance would have the same colour and the bund would be extended to screen the additional warehouse buildings. In light of these comments and the proposed mitigation, it is considered that the proposed development would not adversely affect the setting of the Antonine Wall, and therefore accords with this policy.

7a.5 Accordingly, the proposed development accords with the Development Plan.

7b Material Considerations

7b.1 The material considerations in respect of this application are the Falkirk Council Local Plan Finalised Draft (Deposit Version), the planning history for the site and the consultation responses.

Falkirk Council Local Plan Finalised Draft (Deposit Version)

7b.2 The application site lies outwith the urban limits, within the countryside and the Antonine Wall Buffer Zone, under the Falkirk Council Local Plan Finalised Draft (Deposit Version). In addition, part of the application site falls within a Major Hazard Consultation Zone as defined in this Plan. The Deposit Version has been amended, in April 2008, to reflect Proposed Pre-Inquiry Modifications.

7b.3 Policy EP5 'Business and Industrial Development in the Countryside' states:

"New business and industrial development in the countryside will only be permitted in the following circumstances:

- (1) Areas specifically identified for business and industrial development on the Proposals Map;*
- (2) Business/industrial development where the need for a countryside location is demonstrated and the proposal could not more appropriately be accommodated within the Urban or Village Limits;*
- (3) Proposals involving the reuse of vacant industrial, commercial or institutional land or premises, or the conversion of farm or other buildings for business use where the scale and nature of the activity is compatible with the location;*
- (4) Limited extensions to existing established businesses in the countryside which can be accommodated without any additional adverse impact on the rural environment; or*
- (5) Proposals for the processing of secondary materials including construction and demolition wastes at existing mineral sites in addition to industrial sites;*
- (6) Appropriate leisure and tourism development that accords with Policy EP16.*

Proposals will be subject to rigorous assessment of their impact on the rural environment, having particular regard to Local Plan policies protecting natural heritage (EQ19-EQ30) and built heritage (EQ12-EQ18)."

7b.4 The proposed development provides an additional three warehouses to an existing facility which has nine warehouses and access from the heavily trafficked A803 (Glasgow Road). As such, it is considered that the proposed development could be accommodated without any additional adverse effects on the rural environment. In particular, the scale and appearance of the additional warehouses would match the recently constructed warehouses approved under planning permission ref. P/07/0208/FUL, and the applicant has advised that the proposed development would generate a minimal increase in traffic movements (2 to 3 vehicles per week). Compliance with this policy is subject to rigorous assessment of the proposed development against policies EQ19 to EQ30 (natural heritage) and policies EQ12 to EQ18 (built heritage). The relevant natural and built heritage policies in this instance are EQ16 (Sites of Archaeological Interest), EQ17 (Antonine Wall), EQ19 (Countryside) and EQ24 (Ecological Sites and Features) and the proposed development has been found to accord with these policies, as detailed in this report. The proposed development therefore accords with Policy EP5.

7b.5 Policy EQ16 'Sites of Archaeological Interest' states:

- "(1) Scheduled ancient monuments and other identified nationally important archaeological resources shall be preserved in situ, and within an appropriate setting. Developments which have an adverse effect on scheduled monuments or the integrity of their setting shall not be permitted unless there are exceptional circumstances;*
- (2) All other archaeological resources shall be preserved in situ wherever feasible. The Council will weigh the significance of any impacts on archaeological resources and their settings against other merits of the development proposals in the determination of planning applications; and*
- (3) Developers may be requested to supply a report of an archaeological evaluation prior to determination of the planning application. Where the case for preservation does not prevail, the developer shall be required to make appropriate and satisfactory provision for archaeological excavation, recording, analysis and publication, in advance of development."*

7b.6 The proposed development potentially affects the setting of the Forth and Clyde Canal, which is a scheduled ancient monument. As detailed in paragraph 4.5 of this report, Historic Scotland does not object to the proposal as it accepts that the setting of the Forth and Clyde Canal has already been compromised at this location by the existing warehouse facility, nonetheless the proposed development would extend the facility closer to the Canal. In relation to this, proposed mitigation measures are detailed in paragraph 7a.4. In light of these comments and the proposed mitigation, it is considered that the proposed development would not adversely affect the setting of the Forth and Clyde Canal and therefore accords with this policy.

7b.7 Policy EQ17 ‘Antonine Wall’ states:

“The Council will seek to retain, protect, preserve and enhance the Antonine Wall, its associated archaeology, character and setting. Accordingly:

- (1) There will be a presumption against development which would have an adverse impact on the ‘Frontiers of the Roman Empire (Antonine Wall) World Heritage Site’ as defined on the Proposals Map;*
- (2) There will be a presumption against development within the ‘Frontiers of the Roman Empire (Antonine Wall) World Heritage Site’ buffer zones, as defined on the Proposals Map, which would have an adverse impact on the Site and its setting, unless mitigating action to the satisfaction of the Council in consultation with Historic Scotland can be taken to redress the adverse impact, and there is not conflict with other Local Plan policies; and*
- (3) The Council, in association with partner Councils and Historic Scotland, will prepare Supplementary Planning Guidance on the criteria which will be applied in determining planning applications for development along the line, or within the setting, of the Antonine Wall as defined on the Proposals Map.”*

7b.8 The impact of the proposed development on the setting of the Antonine Wall has been assessed in paragraph 7a.4 in relation to Policy BON 9 of the adopted Bonnybridge and Banknock Local Plan. The proposal has been assessed as complying with Policy BON 9, and it is similarly considered that the proposed development accords with Policy EQ17.

7b.9 Policy EQ19 - ‘Countryside’ states:

- “(1) The Urban and Village Limits represent the desirable limit to the expansion of settlements for the period of the Local Plan. Land outwith these boundaries is designated as countryside and will be subject to the detailed policies for specific uses indicated in Table 3.3. Development proposals in the countryside for uses not covered by these policies will only be permitted where:*
 - it can be demonstrated that they require a countryside location;*
 - they constitute appropriate infill development; or*
 - they utilise suitable existing buildings.*
- (2) In circumstances where development meets the relevant countryside policy criteria, the scale, siting and design of development will be strictly controlled to ensure that there is no adverse impact on the character of the countryside. In particular:*
 - the siting should be unobtrusive, making use of natural features to integrate development into the landform and avoiding skylines;*

- *building design should be sympathetic to vernacular building styles and comply with the design principles contained within the Council's 'Design Guide for Buildings in the Rural Areas'; and*
- *boundary and curtilage treatments should be sympathetic to the rural area, with a preference for stone walling and hedging using native species."*

7b.10 The detailed criteria to be met in this instance are set out in Policy EP5, which the proposed development is considered to comply with, for the reasons detailed in paragraph 7b.4. Criterion 1 of Policy EQ19 is therefore satisfied. With regard to Criterion 2, it is considered that the proposed mitigation measures would ensure that the additional impact of the warehouse facility on the character of the countryside, as a consequence of the proposed development, would be acceptable. The proposed development is therefore considered to accord with this policy.

7b.11 Policy EQ24 'Ecological Sites and Features' states:

- "(1) Development likely to have a significant effect on Natura 2000 sites (including Special Protection Areas, Special Areas of Conservation, and Ramsar Sites) will be subject to an appropriate assessment. Where an assessment is unable to conclude that a development will not adversely affect the integrity of the site, development will only be permitted where there are no alternative solutions; and there are imperative reasons of overriding public interest, including those of a social or economic nature. These can be of a social or economic nature except where the site has been designated for a European priority habitat or species. Consent can only be issued in such cases where the reasons for overriding public interest relate to human health, public safety, beneficial consequences of primary importance for the environment or other reasons subject to the opinion of the European Commission (via Scottish Ministers)..*
- (2) Development affecting Sites of Special Scientific interest will not be permitted unless it can be demonstrated that the overall objectives of the designation and the overall integrity of the designated area would not be compromised, or any adverse effects are clearly outweighed by social or economic benefits of national importance.*
- (3) Development affecting Wildlife Sites, Sites of Importance for Nature Conservation, Local Nature Reserves, wildlife corridors and other nature conservation sites of regional or local importance will not be permitted unless it can be demonstrated that the overall integrity of the site will not be compromised, or any adverse effects are clearly outweighed by social or economic benefits of substantial local importance.*
- (4) Development likely to have an adverse effect on species which are protected under the Wildlife and Countryside Act 1981, as amended, the Habitats and Birds Directives, or the Protection of Badgers Act 1992, will not be permitted.*
- (5) Where development is to be approved which could adversely affect any site of significant nature conservation value, the Council will require mitigating measures to conserve and secure future management of the site's natural heritage interest. Where habitat loss is unavoidable, the creation of replacement habitat to compensate for any losses will be required along with provision for its future management.*
- (6) The Council, in partnership with landowners and other relevant interests, will seek the preparation and implementation of management plans for sites of nature conservation interest."*

7b.12 An initial ecology appraisal, based on a walkover on 28 March 2008, has been submitted with the application. This initial appraisal has concluded that there is no justification for detailed ecological surveys, that the proposed development would have little effect on species or habitat within the site, and there would appear to be no risk to protected species. An existing area of scrub would be lost, however this would be more than compensated for in the long term by proposed native

tree planting on the bund and to the north of the SUDS. These conclusions are accepted. Accordingly, it is considered that the proposed development would not have any adverse effects on protected species or any site of significant nature conservation value and therefore accords with this policy.

7b.13 Policy EP18 - 'Major Hazards' states:

"Within the Major Hazard and Pipeline Consultation Zones identified on the Proposals Map, proposals will be judged in relation to the following criteria:

- (1) The increase in the number of people exposed to risk in the area, taking into account the advice of the Health and Safety Executive, any local information pertaining to the hazard, and the existing permitted use of the site or buildings; and*
- (2) The extent to which the proposal may achieve regeneration benefits, which cannot be secured by any other means."*

7b.14 Part of the application site lies within a Major Hazard Consultation Zone associated with the use of the site as a bonded warehouse facility. The advice of the Health and Safety Executive is detailed in paragraph 4.6. The impact of the use of the site for the storage of ethanol/water mixture additional to the authorised 90,000 tonnes would be assessed as part of a further application for Hazardous Substances Consent. This assessment would take into account the advice of the Health and Safety Executive. Granting the current application would only give permission to construct the warehouse buildings, and not to use them for the storage of hazardous substances. In summary, assessment of the storage aspect of the proposed development against this policy would occur in respect of an application for Hazardous Substances Consent to increase the authorised storage quantity.

7b.15 Policy EP19 - 'Hazardous Substance Consent' states:

"There will be a general presumption against applications for hazardous substance consent which would extend the hazard consultation zones within urban areas beyond their present coverage or prejudice the development of sites allocated in the Local Plan."

7b.16 The impact of the use of the site for additional hazardous substances storage on the existing Hazards Consultation Zone would not be known until the Health and Safety Executive review the existing Hazard Consultation Zone. This would occur as part of a further application for hazardous substances consent. The policy generally presumes against an extension of a Hazard Consultation Zone within an urban area. As already stated in paragraph 7a.2. the application site lies outwith the urban limits as defined in the adopted Bonnybridge and Banknock Local Plan.

Planning History

7b.17 The planning history for the site is detailed in paragraph 3 of this report. Six of the 16 warehouses approved under the original planning permission in 1978 have been erected and three additional warehouses have been approved under subsequent applications. The current proposal would increase the number of warehouses to 12, which would still be less than the number approved under the original planning permission. However the quantity of storage of hazardous substances on the site is currently restricted to 90,000 tonnes, as detailed in this report.

Consultation Responses

- 7b.18 The consultation responses are detailed in Section 4. Comments from Historic Scotland are addressed in paragraph 7a.4. SEPA has withdrawn its objection as a consequence of proposed warehouse 13 being deleted from the application. The reason for this deletion is explained in paragraph 1.5 of this report.

7c Conclusion

- 7c.1 This application, for the erection of three bonded warehouses, is considered to accord with the Development Plan, for the reasons detailed in this report. The main issues identified as material considerations are the policies of the Falkirk Council Local Plan Finalised Draft (Deposit Version) relating to the storage of hazardous substances. The acceptability of hazardous substances storage beyond the quantity permitted by the existing consent (ref: H/2000/0004), and therefore potential compliance with these policies will not be known until an application to amend the existing consent is assessed in consultation with the Health and Safety Executive. On this basis, the application is recommended for approval subject to relevant conditions.

8. RECOMMENDATION

It is recommended that the Committee grant planning permission subject to the following conditions:-

- (1) The development to which this permission relates must be begun within five years of the date of this permission.
- (2) Notwithstanding the approved plans, before any work starts on site, details of the specification and colour of the proposed external finishes shall be submitted to and approved in writing by this Planning Authority. Thereafter, the development shall be carried out in accordance with the approved details.
- (3) Before any work starts on the site, a contaminated land assessment shall be submitted to and approved in writing by this Planning Authority. Before the proposed development is brought into use, any necessary remedial works to make the ground safe shall be completed in accordance with an approved remediation strategy and any necessary remediation completion reports/validation certificates shall be submitted to and approved in writing by this Planning Authority.
- (4) Before any work starts on site, the following details shall be submitted to and approved in writing by this Planning Authority:-
 - (i) The precise details for the height, profile and location of the proposed berm indicated on the approved plans.
 - (ii) A schedule of the plants to be planted on the proposed berm, to comprise the species, plant sizes and proposed numbers/density.
 - (iii) A programme for completion and subsequent maintenance.

- (5) All approved bunding and landscaping works shall be completed by the end of the first planting and seeding season following the completion of the first building.

Reason(s)

- (1) To accord with the provisions of Section 58 of the Town and Country Planning (Scotland) Act 1997.
- (2,4-5) To safeguard the visual amenity of the area and the setting of scheduled monuments (the Antonine Wall and the Forth and Clyde Canal).
- (3) To ensure the ground is suitable for the proposed development.

.....
For Director of Development Services

Date: 17 March 2009

LIST OF BACKGROUND PAPERS

1. Approved Falkirk Council Structure Plan.
2. Adopted Bonnybridge and Banknock Local Plan.
3. Falkirk Council Local Plan Finalised Draft (Deposit Version).

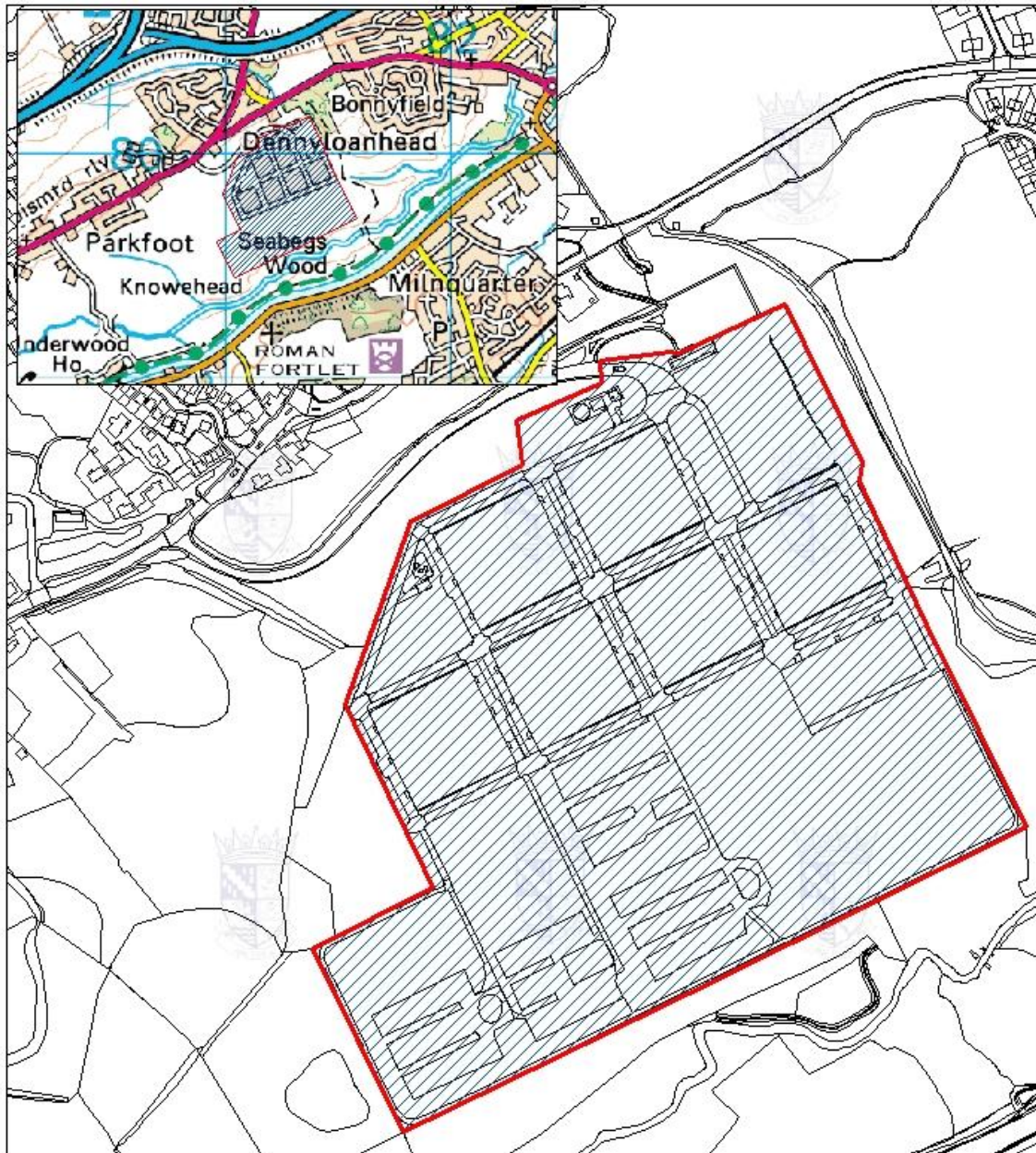
Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504935 and ask for Brent Vivian (Planning Officer).

Planning Committee

Planning Application Location Plan

P/07/1185/FUL

This plan is for location purposes only. It should not be interpreted as an exact representation of the application site.



Falkirk Council

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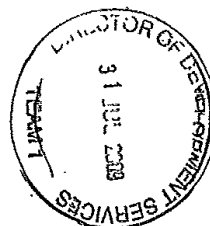
APPENDIX 2



SHEPHERD+ WEDDERBURN

OUR REF D2574.1/EXP/CWI
YOUR REF P/07/1185/FUL
26 July 2009

Mr Brent Vivian
Development Services
Falkirk Council
Municipal Building
West Bridge Street
Falkirk
FK1 5RS



Dear Mr Vivian,

Diageo Limited
Planning Application P/07/1185/FUL – Erection of three warehouses, Dennyloanhead
Investigation of Black Mould in Bonnybridge

We act for and on behalf of Diageo Limited. As you will be aware, your Environmental Health colleague Graeme Webster, has requested that our client commission a report on the potential link between ethanol and other substances emitted from the bonded warehouses at the site and the prevalence of black mould (at certain residential properties at Corona Crescent and Dickburn Crescent). We cannot agree with your colleague's assertion that such a report is in fact appropriate and essential. On the contrary, for the reasons set out below, there appears to be no legitimate basis for the request.

As you are aware, our client has submitted the above planning application for the erection of bonded warehouses at Dennyloanhead in November 2007. The proposal would, on implementation, represent an extension of the existing bonded warehouse facilities at the site, some of which have only been granted permission by the Council in the very recent past. The current application was recommended for approval in your report dated 17th March 2009 but determination was deferred pending the outcome of a site visit.

In the report to the Environment and Community Safety Committee dated 12 May 2009, members were advised of the findings of a Report on Investigations of Black Mould on Properties, Structures and Vegetation in Bonnybridge, conducted by Health Protection Scotland ("the HPS Report"). That report considered the existing, specific relationship between my client's operational warehouse facility at Dennyloanhead and black mould present at Corona Crescent and Dickburn Crescent. Members were invited to note the terms of that report and highlighted its conclusions, namely that:

- No direct link could be drawn between fungi identified within the Diageo warehouse and the surrounding properties or structures;
- That the mould species identified on some neighbouring properties have little impact on human health; and
- That only common, ubiquitous fungi had been identified.

Of particular note, the Director of Development highlighted the HPS Report recommendation that no further, more detailed investigation was required at this time.

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D2574.1 9/07/2008_1 Letter to Falkirk Council. CML

As the Director noted in her report to the Environment Committee, HPS were commissioned to conduct an independent investigation into the moulds present on structures and vegetation in the area, review scientific literature and report on the potential impacts of the moulds on public health. The remit of the HPS Report was purposively broad and the investigation undertaken on an independent basis.

While Forth Valley Health Board (FVHB) has expressed an interest in undertaking additional investigative works on the perceived relationship between bonded warehouses and presence of mould, there is no indication that the FVHB study might produce additional information of relevance to the planning authority's determination of our client's application. No timescale has been provided for the completion of the FVHB study should it be undertaken.

The Report of 12th May to the Environment Committee raised no concerns in relation to the content or quality of the HPS Report, which relates specifically to the existing Diageo facility, which is the subject of the current planning application. Moreover, there has been no suggestion that the HPS Report should be regarded as anything but robust in its methodology, assessment and conclusions. On this basis, it is difficult to understand what further relevance a general study by FVHB might have to determination of our client's planning application. On the basis of the HPS investigation and report, you will no doubt agree that our client is entitled to expect that a further study would simply produce results which are consistent with those already obtained and which the Council has accepted. Put simply, there is no information available which would entitle the Council as planning authority to take a contrary view. In our opinion, the study is not required to allow the Council as planning authority to deal with the application. Nor is it required as evidence supporting any information accompanying the application itself. The request cannot therefore be considered as a legitimate Direction for further information in terms of 13 of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992. Were there any doubt on this matter we note that the request for the study did not originate from a planning official.

Given the suggested terms of reference for the further investigation by FVHB and the report requested directly from our client's, it does seem that the Council is determined to establish a relationship between ethanol in the air and the presence of mould despite the conclusions of the HPS report to the contrary.

It is perfectly understandable that local residents have concerns about the aesthetic effects of the mould on their properties. We may assure you that our client has every sympathy with those members of the public. However, we are nonetheless obliged to point out that the HPS Report has concluded unequivocally that there is no causal link to demonstrate that the mould is attributable to or exacerbated by Diageo Limited's bonded warehouses. The current "association" between ethanol and mould is simply not proven. On this basis there is no legitimate basis on which to request that our client's undertake the study requested by your colleague and no legitimate basis to defer consideration of our client's application, which has entered what is a costly hiatus.

We are aware of no reasonable planning justification for the requirement for a further investigation into black mould on properties, structures and vegetation in Bonnybridge to be undertaken to enable our client's application to be determined.

In the circumstances, we should be grateful if you would confirm in writing that no further investigation into this matter is in fact required from a planning point of view and that you will now proceed to refer the application back to the Planning Committee for determination. As the application was previously recommended for approval and given the terms of the HPS Report, we assume that the application will, once again, be recommended for approval.

Kindly acknowledge receipt of this letter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Moray Thomson', with a long, sweeping horizontal line extending to the right.

Moray Thomson
For and on behalf of Shepherd and Wedderburn LLP

moray.thomson@shepwedd.co.uk
DL: 0141 566 7269

CC Director of Development