

Perth and Kinross Council  
Development Management Committee – 13 November 2013  
Report of Handling by Development Quality Manager

**Modification of planning obligation (09/02126/FLM) to amend clause 1.1, 2.1 and 3.1 and delete clause 6 at United Auctions Ltd, Perth Agricultural Centre, East Huntingtower, Perth**

Ref: No: 13/01795/MPO  
 Ward No: 9 - Almond And Earn

### Summary

This report recommends approval of the modification of existing Planning Obligation to amend the wording of clauses 1.1 (revising the definition of Road Network Improvements), 2.1 and 3.1 and delete clause 6 as it relates to Planning Permission 09/02126/FLM.

### BACKGROUND AND DESCRIPTION

- 1 This application relates to the Section 75 Planning Obligation associated with planning permission 09/02126/FLM which granted planning permission to construct a retail superstore on behalf of Sainsbury's Supermarket Ltd and Perth City West LLP on the site of the previous auction mart site at the west of the city.
- 2 The proposal is three-part with the first element being to reword the definition attributed to "Road Network Improvements". The definition currently "**means the upgrading of roads infrastructure including the formation of slip roads, roundabouts, bridges, SUDS ponds, landscaping and diversion of culvert 450 metres north of the A9 and A85 junction in Perth described in planning permission reference 11/01579/FLL dated 31 May 2012 or such other similar road network improvements to the A9 and/or A85 as may be proposed by the Council to unlock development potential on the western edge of Perth, relieve current and forecasted congestion issues and resolve associated conflicts between local and strategic road users**".
- 3 The proposed definition "**means the upgrading of roads infrastructure including the formation of slip roads, roundabouts, bridges, SUDS ponds, landscaping and diversion of culvert 450 metres north of the A9 and A85 junction in Perth described in planning permission reference 11/01579/FLL dated 31 May 2012 or such other alternative transport measures comprising road network improvements to the A9 and/or A85 as may approved by the relevant roads authority to help unlock**

**development potential on the western edge of Perth, help relieve current and forecasted congestion issues and help resolve associated conflicts between local and strategic road users and/or sustainable transportation measures to help relieve current and forecasted congestion issues in the vicinity of the A9/A85 junction".**

4 Secondly it is proposed to delete Clause 6, which reads

**“6. Trading Restriction**

**6.1 The Retail Store shall not open for trading until such time as the Council has let the Construction Contract.”**

5 Finally, as Clauses 2.1 and 3.1 refer to **“Clauses 5 and 6”** of the Agreement, if Clause 6 is deleted, the references to said Clause also require to be deleted and therefore amendments are proposed to the affected Clauses with the revised reference being to **“Clause 5”** alone.

## **NATIONAL POLICY AND GUIDANCE**

### **Scottish Planning Policy (February 2010)**

6 This SPP is a statement of Scottish Government policy on land use planning and contains:

- the Scottish Government’s view of the purpose of planning,
- the core principles for the operation of the system and the objectives for key parts of the system,
- statutory guidance on sustainable development and planning under Section 3E of the Planning etc. (Scotland) Act 2006,
- concise subject planning policies, including the implications for development planning and development management and,
- the Scottish Government’s expectations of the intended outcomes of the planning system.

Of relevance to this application are:

- Paragraph 25: Determining planning applications
- Paragraph 33: Sustainable Economic Growth
- Paragraphs 45-48 : Economic Development
- Paragraphs 165-176: Transport
- Paragraph 255: Outcomes

### **Circular 3/2012: Planning Obligations and Good Neighbour Agreements**

7 This Circular sets out the circumstances in which planning obligations and good neighbour agreements can be used and how they can be concluded efficiently. It also provides clarification on the process of modification or discharge of a Planning Obligation.

## **DEVELOPMENT PLAN**

- 8 The Development Plan for the area comprises the Approved TAYplan 2012 and the Adopted Perth Area Local Plan 1995. The principal relevant policies are in summary: -

### **TAYPlan 2012**

#### **Policy 2: Shaping Better Quality Places**

- 9 This policy seeks to shape better quality places through requiring new development to be fit for place, supporting more sustainable ways of life for people and businesses.

### **Perth Area Local Plan 1995 (incorporating Alteration no.1 Housing Land 2000)**

- 10 The application site is not allocated for any particular use within the adopted Perth Area Local Plan 1995 and although a brownfield site it is currently outwith the defined city boundaries and west of the A9(T).

The principal relevant policies are in summary:

#### **Policy 1: General Policies**

- 11 Developments will be judged against the criteria which include the following:
- The site should have a good landscape framework within which the development can be set and, if necessary, screened completely.
  - In the case of built development, the scale, form, colour and design should accord with the existing pattern of building.
  - The development should be compatible with its surroundings in land use terms and should not cause unacceptable environmental impact.
  - The local road network should be capable of absorbing the development and a satisfactory access onto that network provided
  - There should be sufficient spare capacity in local services to cater for the development.
  - The site should be large enough to satisfactorily accommodate the development.
  - The need to accommodate development as part of ongoing requirements of existing commercial land uses in the countryside.

#### **Policy 2: General Policies**

- 12 There will be a presumption against consent for built development adjoining those settlements which are the subject of settlement maps.

## **Policy 46: General Shopping**

- 13 This policy identifies both major retail areas and neighbourhood shopping centres. Retail development of more than 1000m<sup>2</sup> gross outwith these areas will not be in accordance with the Local Plan.

## **Perth and Kinross Local Development Plan – Proposed Plan 2012**

- 14 On 30 January 2012 the Proposed Plan was published. The Council's current adopted Local Plans will eventually be replaced by the Local Development Plan. The Council's Development Plan Scheme sets out the timescale and stages leading to adoption. The Proposed Local Development Plan has undergone an Examination following which a report was published on 11 October 2013 containing the Reporter's recommendations. The Council has a three month period to consider the Reporter's recommendations and the modified Plan will be published by 11 January 2014. This will be the Plan that the Council intends to adopt, subject to agreement by Scottish Ministers. Prior to adoption, the Proposed Local Development Plan 2012 is a material consideration in the determination of this application, reflecting a more up to date view of the Council than those contained in the relevant adopted Local Plan.

The PDLP 2012 is a material consideration at this time where the policies below are relevant:

## **Policy RC4 Retail and Commercial Leisure Proposals**

- 15 Retail and commercial leisure facilities will be expected to locate in town and neighbourhood centres or other commercial centres.
- 16 Proposals for any retail and leisure development of 1,500 square metres or more gross floor space outwith a defined town centre boundary, and not in accordance with the development plan, will require a transport, retail or leisure impact assessment. Any detrimental effects identified in such an assessment will require mitigation.
- 17 Proposals for edge of centre or out of centre locations will only be acceptable where:
- (a) It can be demonstrated that a proposal helps to meet quantitative and qualitative deficiencies in existing provision
  - (b) It is supported by a favourable sequential assessment
  - (c) It is of an appropriate scale
  - (d) It provides improved distribution and accessibility of shopping provision
  - (e) It provides for accessibility to public transport and non car modes of transport
  - (f) Any detrimental effects identified in the transport assessment are mitigated
  - (g) It has been demonstrated that there will be no significant impact (individual or cumulative) on any centres within the network of centres

## **Policy ED1A: Employment and Mixed Use Areas**

- 18 Areas identified for employment uses should be retained for such uses. Within these areas any proposed development must be compatible with surrounding land uses. In addition the following criteria will apply:
- (a) The proposal should not detract from the amenity of adjoining, especially residential areas
  - (b) The local road network should be suitable for the traffic generated by the proposals
  - (c) There should be good walking, cycling and public transport links to the new employment uses
  - (d) Proposals for retail uses in employment areas will not generally be acceptable unless they are ancillary to an acceptable use on the site.

### **SITE HISTORY**

- 19 As mentioned above, planning permission for the erection of a retail superstore was approved by the Development Management Committee, on 30 May 2012, subject to the signing of a Section 75 Planning Obligation. The proposals involve the erection of a retail store of 9,533 sqm (102,615 sqft) and associated landscaping and engineering works. The decision notice was issued on 19 April 2013 after the Section 75 Planning Obligation was concluded.

### **CONSULTATIONS**

- 20 No external consultations have been undertaken though one party has been notified of the application as being an Interested Party.

### **REPRESENTATIONS**

- 21 No letters of representation has been received in respect of this application.

### **ADDITIONAL STATEMENTS**

22	Environment Statement	Not required
	Screening Opinion	Not required
	Environmental Impact Assessment	Not required
	Appropriate Assessment	Not required
	Design Statement / Design and Access Statement	Not required
	Report on Impact or Potential Impact:	Not required

## **APPRAISAL**

### **Legislation**

- 23 Section 75A(1) of the Town and Country Planning (Scotland) Act 1997 (as amended) sets out that, where a person against whom a planning obligation is enforceable wishes to modify or discharge the obligation, they have to apply (under section 75A(2)) to the planning authority seeking their agreement for the modification or discharge.
- 24 In determining an application submitted under Section 75A(2) the planning authority may, depending on whether the application is for the modification or discharge of the obligation, determine that the obligation be discharged or that the proposed modification to the obligation be made. The authority may also determine that the obligation should continue in its current form. The legislation does not permit the Planning Authority to determine that the obligation should be subject to any modification other than the modification, or modifications, as set out in the application.

### **Policy**

- 25 Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 are still applicable to this application and require that planning decisions be made in accordance with the Development Plan unless material considerations indicate otherwise. The adopted Development Plans that are applicable to this area are the TAYplan 2012 and the Perth Area Local Plan 1995.
- 26 The determining issues in this case are whether: - the proposal complies with Development Plan policy; or if there are any other material considerations which justify a departure from policy.

### **Clause 1.1 Definition**

- 27 In the supporting statement, the applicant explains the proposed change to the definition of "Road Network Improvements" is a means to provide the Council with additional flexibility on the way in which it, the Council, can spend elements of the Traffic Mitigation Sum. Although the applicant anticipates that the Council will continue to spend the full Traffic Mitigation Sum on the Road Network Improvements as envisaged by the Agreement, they acknowledge that the Council may for example wish, at the time of store opening, to put in place alternative short term traffic mitigation prior to letting the road construction contract. The applicant considers that the Council is best placed to make that judgement at the relevant time but their proposed modification would provide the Council with that opportunity.
- 28 If the Council was to utilise some of the Traffic Mitigation Sum for alternative short term mitigations this would reduce the available, committed funding for the larger long term scheme. However even if the wording were to be revised, the Council could still choose to utilise the full Traffic Mitigation Sum for the

purpose originally envisaged and the revised wording will not remove the responsibilities of the developer established through conditions 11 and 12 of planning permission 09/02126/FLM which require the provision of new or extended bus services to serve the development and its associated implementation.

- 29 The proposed change of wording to the definition has no impact on the policy assessment of the associated retail superstore development. On that basis this proposed change is not contrary to the development plan.

### **Clause 6 Deletion**

- 30 The applicant is seeking the deletion of Clause 6 which, in its current form, prevents the supermarket from opening for trading until the Council has let the Construction Contract for the design and build of the Road Network Improvements. At the time of finalising the legal agreement, it was envisaged that the Council would be in a position to let the Construction Contract by the end of 2013.

- 31 Although the applicant still requires some additional statutory consents, and to satisfy a number of suspensive conditions on the planning permission before work can commence, they are hopeful that they would be ready to start works on site by April 2014. This would give an expected store-opening time of Spring 2015. In the supporting statement it is asserted that development of the store would not commence where it was not certain that it would be able to commence trading immediately following completion of the store's construction. Sainsbury's remains keen to progress with the development of its Perth store and is looking to move forward in the acquisition of the land followed by the construction programme itself. As the applicant would not be willing to commence development of the store with the current trading restriction in place the outcome of this application to vary the planning obligation is fundamental to the approved project being taken forward.

- 32 Since the signing of the original Planning Obligation, projected timings for the road improvement scheme have slipped due to difficulties mainly in relation to discussions regarding the necessary land acquisition and potential complexities of the compulsory purchase order. There are also some significant design changes being considered presently in relation to the section of new route behind McDiarmid Park. It is now envisaged that the design and build contract may not be awarded until December 2015. This would mean that the road would potentially open in June 2017. If however the land acquisition process is unchallenged by land owners it would be possible that the construction of the road improvement scheme could commence in advance of the supermarket commencing trading. The worst case scenario would be that if a public enquiry were to be required in respect of objections to a compulsory purchase order, the supermarket could be open and trading before the Council learns whether or not the compulsory purchase order was approved or rejected by the Scottish Ministers. Obviously if the compulsory purchase order was rejected the road improvement scheme could not be progressed.

- 33 The proposed deletion of Clause 6 has no impact on the policy assessment of the land use aspect of the associated retail superstore development. The proposed development remains the same. However, the deletion of Clause 6 would potentially extend the period of time additional traffic generated by the retail store opening would impact on the road network prior to the road improvements being completed. Existing Clause 6 allows for the retail store to open when the road improvement contract is let. It is therefore already accepted that the retail store can open before the road improvements are completed. The deletion of Clause 6 would extend the period additional traffic would impact on the road network by allowing the retail store to open prior to the road improvement contract being let. It is, however, considered that the impact on the road network, whilst that may be significant, will be temporary and for a period of some 27 months rather than the more limited period originally envisaged. Whilst this increase in time is disappointing it is understandable that the developer does not wish to be held back from developing their store due to the difficulties associated with the Council's attempts to bring forward the associated road improvement scheme. The risk of the road improvement scheme not going ahead appears to be limited. There is confidence the scheme will be delivered. The road improvement plan is now in the Council's Capital Budget Plan and is part of the strategic transport policy of the emerging Proposed Local Development Plan. It should be noted that, although the on-line road improvement works required as part of the superstore planning permission would have some immediate benefit in the area between Tulloch Terrace and the Sainsbury's supermarket site, these alone will not resolve the issues in the wider area. I therefore consider this element would not be significant in terms of the assessment of relevant policies within the Development Plan and conclude therefore that the deletion of Clause 6 would not be contrary to the Development Plan.

### **Clauses 2.1 and 3.1 Revision**

- 34 If the deletion of Clause 6 is agreed then it is appropriate housekeeping to revise the wording of these clauses. There is no impact on the integrity of the Obligation nor the associated planning permission.

### **LEGAL AGREEMENTS REQUIRED**

- 35 This application relates to the modification of the existing Section 75 Obligation that controls the commencement of trading of the store and the payment of a financial contribution towards a scheme of road network improvements. If this request to modify the existing Section 75 is agreed then the existing legal obligation will need to be amended to accommodate the modification.

### **DIRECTION BY SCOTTISH MINISTERS**

- 36 Under the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008, regulations 30 – 32 there have been no directions by the Scottish Government in respect of an Environmental



Impact Assessment screening opinion, call in or notification relating to this application.

## **CONCLUSION AND REASONS FOR RECOMMENDATION**

- 37 On the basis of the above the current proposal does not impact on the principle of the wider development as considered under the original planning permission application. The impact the proposed modifications will have on the local road network, whilst they may be significant, will be temporary and for a period of some 27 months rather than the more limited period originally envisaged. Whilst this increase in time is disappointing it is understandable that the developer does not wish to be held back from developing their store due to the difficulties associated with the Council's attempts to bring forward the associated road improvement scheme.
- 38 It is therefore concluded that the proposed modification to allow the rewording of a definition, the deletion of a clause and the revision of two further clauses will assist in the bringing forward of a further supermarket, hopefully improving the future economic competitiveness of Perth. On that basis the current request to vary the terms of the legal agreement should be approved.

## **RECOMMENDATION**

**A Approve the proposed Modification of existing Planning Obligation to allow the change to the definition of "Road Network Improvements", the deletion of Clause 6 and the re-wording of Clauses 2.1 and 3.1.**

### **B JUSTIFICATION**

- 1 The requested modifications are considered to be acceptable as the potential impact on the local road network would be for a temporary period only, even though this would be for a longer period of time than originally envisaged, and that flexibility would be afforded to the Council to utilise the financial contribution in alternative ways if required to ensure the local road network is not compromised unduly.

### **C PROCEDURAL NOTES**

None.

### **D INFORMATIVES**

None.

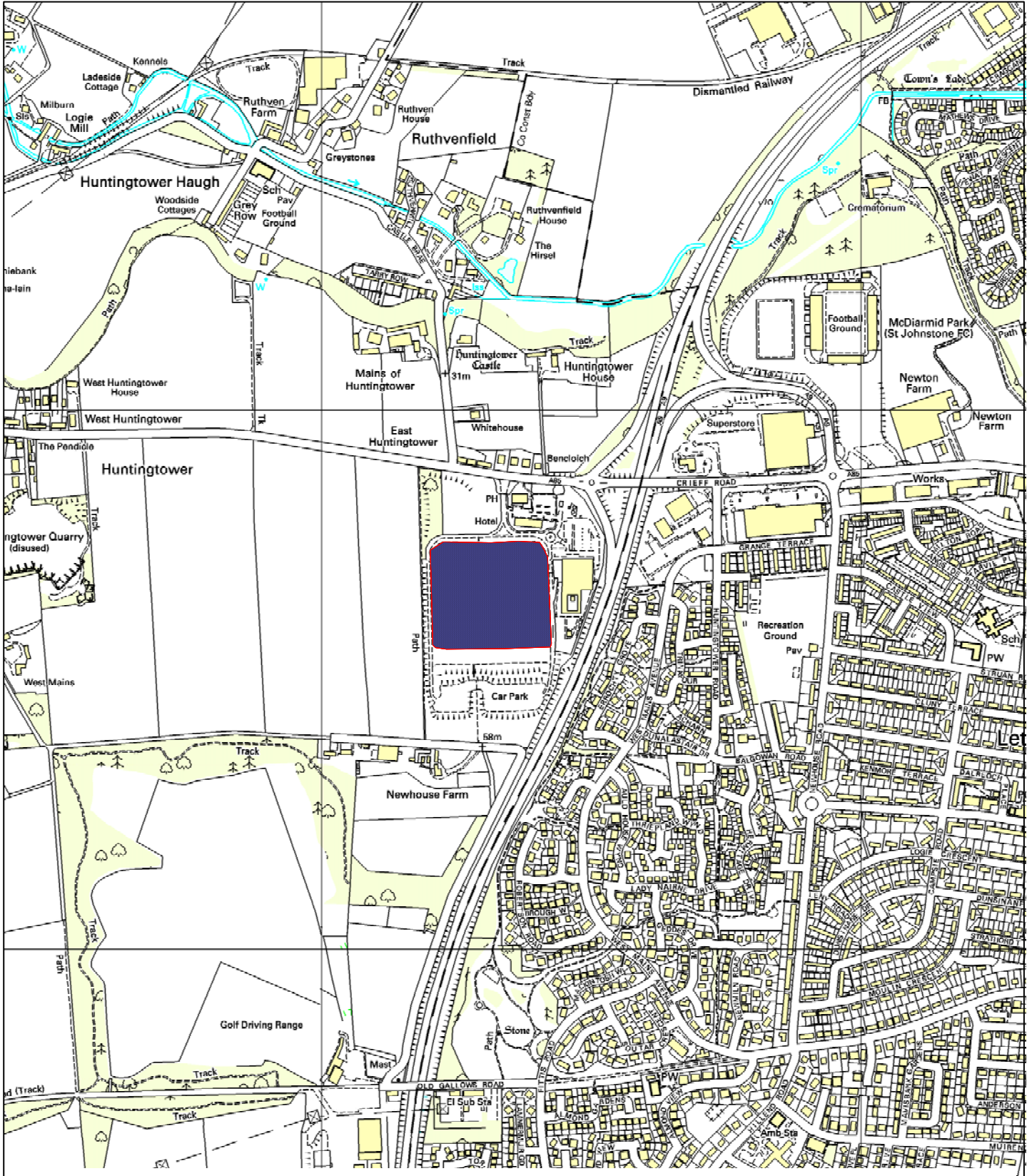
Background Papers: None  
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Date: 23 October 2013

**Nick Brian**  
**Development Quality Manager**

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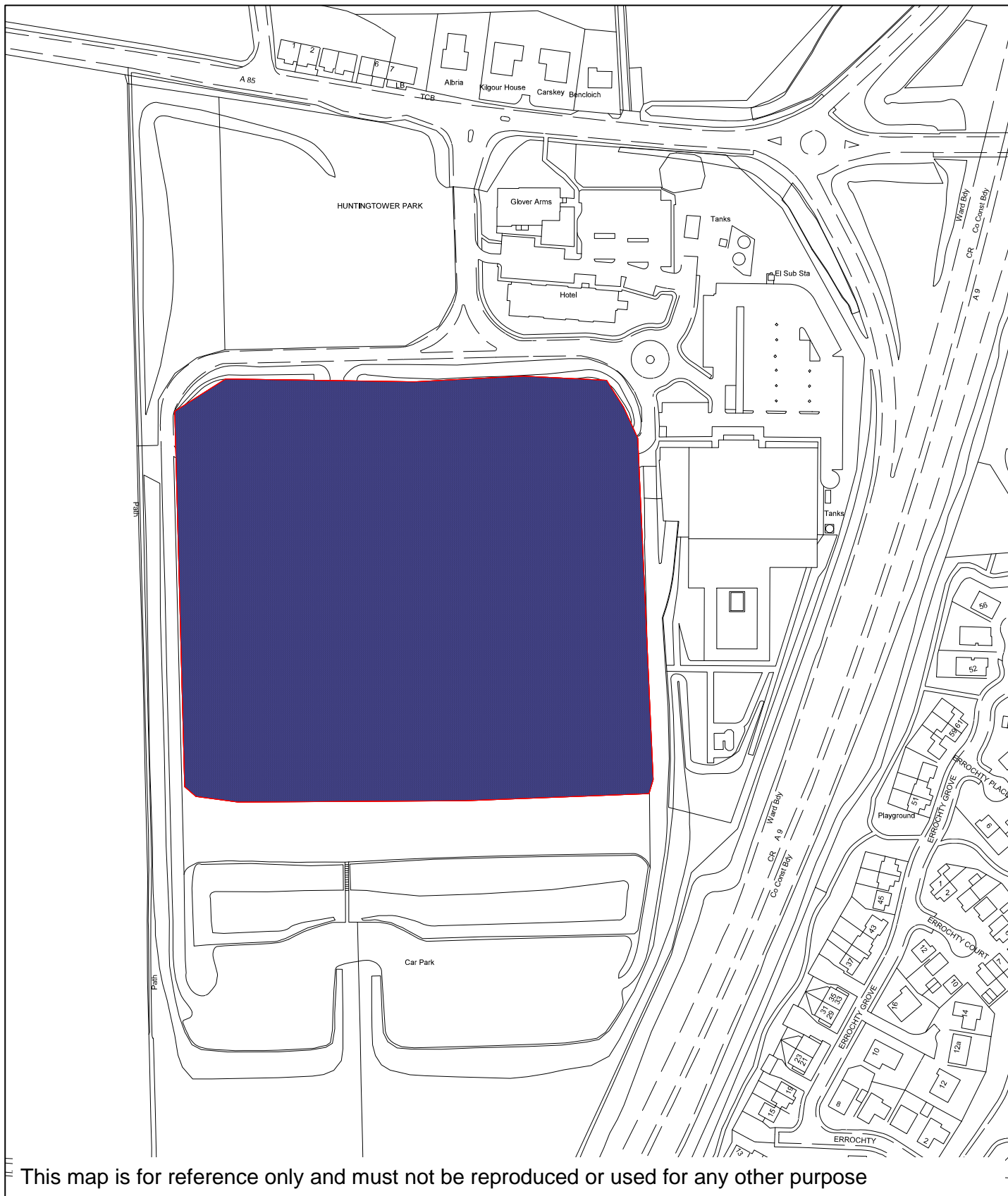


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