

The Scottish Government
Planning Directorate
Planning Decisions Division
Victoria Quay
Edinburgh
EH6 6QQ

Date: 28 January 2015

HSE Ref.: 4.2.1.4467

Your Ref.:

For the attention of Grainne Lennon

Dear Ms Lennon

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
THE TOWN AND COUNTRY PLANNING (NOTIFICATION OF APPLICATIONS
(SCOTLAND) DIRECTION 2009**

**PERTH & KINROSS COUNCIL PLANNING APPLICATION 10/01899/AMM:
ERECTION OF 5 STAR HOTEL AND ANCILLARY FACILITIES (APPROVAL OF
MATTERS SPECIFIED IN CONDITIONS) AT LAND SOUTH OF BURNFOOT,
KINFAUNS**

Thank you for your email of 19 January 2015 advising HSE that Perth & Kinross Council is minded to grant planning permission for the above development, contrary to HSE's advice. HSE has considered whether to recommend to Scottish Ministers that they should determine the application themselves, and the following gives HSE's view on that issue.

HSE is a statutory consultee for developments in the vicinity of major hazard sites by virtue of Regulation 25 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013. The proposed development lies within the consultation distance of two major accident hazard pipelines – the Shell St Fergus to Mossmorran NGL pipeline and the BP Forties pipeline.

HSE provides its land use planning (LUP) advice to enable the Planning Authority to comply with the objective of Article 12 of EC Directive 96/82/EC, (the Seveso II Directive – see addendum). Its objective is to control proposed development around designated sites that would increase the risk or consequences of a major accident.

As explained in paragraph 16 of Annex B of Circular 5/1993, HSE normally considers its role to be discharged when it is satisfied that the Planning Authority is acting in full understanding of the HSE's LUP advice received and of the consequences to public safety that could follow.

Hazardous Installations
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As also explained in that paragraph, the HSE will consider recommending call-in only in cases of exceptional concern or where important policy or safety issues are at stake. After careful consideration, HSE has decided that this case is not one which it would recommend to Scottish Ministers to call-in.

HSE notes the concerns expressed by the Development Quality Manager at Perth & Kinross Council in paragraphs 66-72 of the report on this application, particularly in relation to the inclusion of 'car parking and potential spill out areas' within the inner zones of the two pipelines. However, HSE considers that the proposed layout shown in the drawing entitled 'Proposed Block and Location Plan' (dated 08/10), with the areas closest to the pipelines being used for car parking, landscaping and open space, does accord with conditions 4(a) and 4(b) suggested by HSE and included in planning permission 05/02416/OUT, and that the transient presence associated with uses such as car parking, would comply with the intention of condition (b).

However, HSE's LUP advice, for the purposes of Article 12 of the Seveso II Directive, remains that there are sufficient reasons, on safety grounds, for advising against the granting of planning permission in this case, which involves the proposed erection of a 300 bedroom hotel within the middle zone of both pipelines, and HSE's decision does not mean that this advice is withdrawn. You may wish to note that the HSE normally publishes such cases on its website.

In coming to this conclusion HSE was mindful, among other factors, of the views expressed in Chapter 5 of the First Report of the Advisory Committee on Major Hazards (ACMH) and Chapter 4 of the Second Report of ACMH. In these reports it was stated that:

"... the siting of developments should remain a matter for planning authorities to determine, since the safety implications, however important, could not be divorced from other planning considerations." and

"... local authorities are well placed to take proper account of the full range of local factors, including safety issues, which are relevant to a planning decision."

The HSE acknowledges that the final decision on whether to grant planning permission rests with Perth & Kinross Council. We are satisfied that if planning permission is granted the Council will be acting in full understanding of the HSE's advice and the consequences that could follow should a major accident occur involving the major accident hazard pipelines.

Yours sincerely



Gerard Adderley
Major Accident Risk Assessment Unit

cc. Mr L Frissung, HSE, CEMHD1, Edinburgh

ADDENDUM

Land use planning requirements of the Seveso II Directive

Article 12 of the Directive requires land-use planning controls to apply to all establishments within the scope of the Directive; this includes major accident hazard pipelines:

1. *"Member States shall ensure that the objectives of preventing major accidents and limiting the consequences of such accidents are taken into account in their land-use planning and/or other relevant policies. They shall pursue these objectives through controls on:*

a. the siting of new establishments;

b. modifications to existing establishments covered by Article 10;

c. new developments such as transport links, locations frequented by the public and residential areas in the vicinity of existing establishments, where the siting or developments are such as to increase the risk or consequences of a major accident.

Member States shall ensure that their land use and/or other relevant policies and the procedures for implementing those policies take account of the need, in the long-term, to maintain appropriate distances between establishments covered by this Directive and residential areas, areas of public use and areas of particular natural sensitivity or interest, and, in the case of existing establishments, of the need for additional technical measures in accordance with Article 5 so as not to increase the risks to people.

2. *Member States shall ensure that all competent authorities and planning authorities responsible for decisions in this area set up appropriate consultation procedures to facilitate implementation of the policies established under paragraph 1. The procedures shall be designed to ensure that technical advice is available, either on a case-by-case or on a generic basis, when decisions are taken."*

