

Agenda Item	7.1
Report No	PLS-043-21

HIGHLAND COUNCIL

Committee: South Planning Applications Committee
Date: 15 June 2021
Report Title: 21/01364/PIP: Scotlog Sales Limited
12 Lotland Street, Inverness, IV1 1PA
Report By: Area Planning Manager – South

Purpose/Executive Summary

Description: Change of use to climbing gym with associated facilities
Ward: 16 – Inverness Millburn
Development category: Local
Reason referred to Committee: Manager's discretion

All relevant matters have been taken into account when appraising this application. It is considered that the proposal does not accord with the principles and policies contained within the Development Plan and is unacceptable in terms of applicable material considerations.

Recommendation

Members are asked to agree the recommendation to **REFUSE** the application as set out in section 11 of the report.

1. PROPOSED DEVELOPMENT

- 1.1 This proposal is for planning permission in principle to change the use of an existing building in the Longman Industrial Estate into a climbing gym with associated facilities. There will be no change to the external fabric of the building although it is assumed signage would be required. Planning permission was recently refused (20/04062/PIP) for the same development by Committee in February 2021, but the applicant has submitted further supporting information to address safety concerns relating to the Inverness Terminal fuel storage depot.
- 1.2 Planning permission was previously granted for a similar facility within a purpose-built building at Inverness Marina (17/04802/FUL). The applicant's supporting statement has indicated that due to COVID19 and financial uncertainty, this original site is currently not achievable. The applicant has indicated that the now proposed site offers an alternative opportunity for the facility within the immediate area. The original site (17/04802/FUL) is around 560m north of the now proposed site (21/01364/PIP).
- 1.3 Access is to the north of the site with car parking to the rear.
- 1.4 Pre-Application Consultation: None
- 1.5 Supporting Information: Risk Mitigation Plan; Report comparison with Buncefield Incident; Land Use Planning Arrangement; Response to HSE; Reasons for Re-application.
- 1.6 Variations: None

2. SITE DESCRIPTION

- 2.1 This is an existing former distribution warehouse building within the Longman Industrial Estate. The site is surrounded by industrial and commercial uses. To the west are self-storage units; southwest is the Inverness Terminal/Certas Energy UK fuel storage/distribution depot; and to the east to the opposite side of Lotland Street are a plant hire/storage compound, and tarpaulin hire. The site lies in close proximity to the Inverness Terminal petrol storage site.

3. PLANNING HISTORY

- | | | | |
|-----|-------------|---|-----------------------------|
| 3.1 | 01 Feb 2013 | 12/04395/FUL - Change of use from class 5 industrial to waste transfer station class 5/6 & erection of Portacabin | Planning Permission Refused |
| 3.2 | 09 Feb 2021 | 20/04062/PIP - Change of use to climbing gym with associated facilities | Planning Permission Refused |

4. PUBLIC PARTICIPATION

4.1 Advertised: Schedule 3 and Unknown Neighbour

Date Advertised: 02.04.2021

Representation deadline: 16.04.2021

Timeous representations: None

Late representations: None

4.2 It is noted that although there were no public comments on this application, there is a high level of public support for this application as demonstrated in previous applications. The applicant advised that they have not asked their Members to submit letters of support as it is acknowledged that the support is there, and the issue has been one of safety.

4.3 All letters of representation are available for inspection via the Council's eplanning portal which can be accessed through the internet www.wam.highland.gov.uk/wam.

5. CONSULTATIONS

5.1 **Transport Planning Team** requested a parking appraisal to support the proposal. The details of the actual parking could be set out in the MSC application.

5.2 **Environmental Health - Contaminated Land Team** advise that should planning permission be granted this would be subject to a condition relating to ensuring the site is safe from contamination.

5.3 **Development Plans Team** advise that there is a mix of uses in the Longman, including some leisure activities and although there is a need for more business/industrial units, there is no land-use policy preventing such use as a climbing centre.

5.4 **Health and Safety Executive** very strongly advises, on safety grounds, against the granting of planning permission. The location of the proposed climbing wall centre is directly adjacent to Certas Energy Ltd, a major operational fuel storage and distribution site. There are a range of potential major accidents that would encompass the whole proposed development possibly leading to multiple fatalities should a major incident occur.

This proposal for a change of use of an industrial building to one involving members of the public, including the young, in a location of very high hazard, is of very serious concern to HSE.

HSE advise that when tanks of this nature are overfilled the cascade leads to the generation of a large flowing flammable vapour cloud which when ignited gives rise to a fire/explosion over a wide area. There are also many other major accident hazard scenarios that could impact on the proposed development with catastrophic consequences.

The applicant has put forward technical arguments as to why HSE's advice is cautious, that risks are low and acceptable and that HSE's advice should be set

aside. HSE strongly disagree with the applicant's supporting information. HSE consider that the information supplied by the applicant regarding assessment of Buncefield type incidents is wrong, it presents an incomplete assessment of the risks while ignoring other significant hazards, and focus on only one peripheral research report, omit more recent research and ignores widely available and accepted published, peer reviewed assessments without justification. HSE recommend that no weight is placed on the supporting information.

Detailed advice, explanation and rebuttal of the applicant's submissions is provided in the Annex to HSE's letter (full text of which will be circulated separately).

The Scottish Government's Planning Circular 3/2015, – Planning controls for hazardous substances (para F36) states that in *"Determining the planning application.....: in view of their acknowledged expertise in assessing the risks presented by the use of hazardous substances, any advice from HSE (or ONR and SEPA) that planning permission should be refused for development at or near to a hazardous installation or pipeline, should not be overridden without the most careful consideration."*

HSE has offered, in the event that Committee decide to refuse planning permission on grounds of safety, that it will provide the necessary support to its advice in the event of an appeal.

If, nevertheless, Committee is minded to grant permission, HSE draw our attention to the Direction in the Annex to Scottish Planning Circular 3/2009. This instructs that the Scottish Ministers must be automatically notified:

"where a planning authority proposes to grant planning permission for development falling within any of the descriptions of development listed in the Schedule to this Direction". This includes "Development which has been the subject of consultation with the Health and Safety Executive where the Health and Safety Executive has advised against the granting of planning permission or has recommended conditions which the planning authority does not propose to attach to the planning permission."

The planning authority is required to notify the Scottish Ministers and cannot grant planning permission before the expiry of a period of 28 days beginning with the date notified to them by the Scottish Ministers as the date of receipt by them of the information which the planning authority are required to submit under the Direction. The Scottish Ministers may within that period, or an extended period, call in the application for their determination or clear it back to the planning authority.

6. DEVELOPMENT PLAN POLICY

The following policies are relevant to the assessment of the application

6.1 Highland Wide Local Development Plan 2012

- 4 - Longman Core
- 28 - Sustainable Design
- 29 - Design Quality & Place-making
- 30 - Physical Constraints
- 34 - Settlement Development Areas
- 41 - Business and Industrial Land

56 - Travel

6.2 Inner Moray Firth Local Development Plan 2015

No specific policies apply.

6.3 Highland Council Supplementary Planning Policy Guidance

Physical Constraints (March 2013)

7. OTHER MATERIAL POLICY CONSIDERATIONS

7.1 Scottish Government Planning Policy and Guidance

SPP parking standards (para 281)

Circular 3/2015 – Planning controls for hazardous substances

7.2 Health and Safety Executive

Land use planning advice around large scale petrol storage sites
SPC/TECH/GENERAL/43

8. PLANNING APPRAISAL

8.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

Determining Issues

8.2 This means that the application requires to be assessed against all policies of the Development Plan relevant to the application, all national and local policy guidance and all other material considerations relevant to the application.

Planning Considerations

8.3 The key considerations in this case are:

- a) compliance with the development plan and other planning policy
- b) physical constraints/public safety
- c) siting and design
- d) access and parking
- e) any other material considerations.

Development plan/other planning policy

8.4 The proposed site is located within the Longman Industrial Estate. The key policy in relation to land-use for this application is Policy 41 of the Highland wide Local Development Plan (HwLDP) which relates to Business and Industrial Land. This policy seeks to safeguard strategic business and industrial land. The Inner Moray Firth Local Development Plan provides no further policy context.

- 8.5 The proposed use is a leisure use. It would therefore appear to be incompatible with the requirements of Policy 41 of HwLDP. Having said that, it is accepted that on several occasions, planning permission has been granted for alternative uses such as retail, non-retail and leisure uses, including small gyms, within Longman. While the bulk of these have been within and adjacent to the Longman Core, the area that straddles the A82 closest to the City Centre as identified by Policy 4 of HwLDP, some leisure and retail development does exist outwith this.
- 8.6 The Development Plans Team suggest that, notwithstanding the need for business and industrial land within Inverness, given the existing composition of uses within the area it would be difficult to continue to support an agenda of safeguarding Longman specifically for business and industrial use.
- 8.7 In addition to Policy 41, the development needs to be considered against other policies within the development plan. Of most relevance in this case is Policy 28 of HwLDP which outlines a list of criteria which applications need to be considered against, of which the requirement for the proposal to be compatible with public service provision and demonstrates sensitive siting and a high-quality design in keeping with local character are key aspects, Policy 30 with regard to physical constraints, and Policy 56 that requires applications involving travel generation to consider the likely on and off-site transport implications with the view to incorporating an appropriate level of parking provision and looking at opportunities encouraging walking, cycling and use of public transport.
- 8.8 These aspects are considered within the following paragraphs.

Physical Constraints/Public Safety

- 8.9 The site lies adjacent to Certas Energy UK's Inverness Terminal fuel storage/distribution depot, considered by the Health and Safety Executive (HSE) as a hazardous installation under the Control of Major Accident Hazards Regulations (COMAH). This therefore falls within a category, in the context of Policy 30 of HwLDP, of 'physical constraint'. As such, consideration needs to be given to the compatibility of the proposal with the nearby hazardous installation.
- 8.10 The Physical Constraints Supplementary Guidance does state that the presence of a physical constraint need not preclude development but that it is for developers to demonstrate compatibility and/or identify appropriate mitigation measures. The developer has provided information that attempts to address this. However, in this case, the issue is that the increased number of people likely to be attracted to such a development, including young people, compared to how the building has been used in the past.
- 8.11 The Health and Safety Executive (HSE) has very strongly advised, on safety grounds, against granting planning permission in this instance. HSE has highlighted there are a range of potential major accidents that would encompass the whole proposed development possibly leading to multiple fatalities should a major incident occur. It identifies that a change of use of an industrial building to one involving members of the public including the young, in a location of very high hazard, is of

serious concern. The mitigation measures and explanations provided by the applicant's advisers are also of concern to HSE.

- 8.12 In its review of the submission, and in particular to the applicant's supporting statement, HSE strongly disagree with the applicant's position. It highlights that the information regarding assessment of Buncefield type incidents is incorrect and that an incomplete assessment of the risks is advanced that focuses on only one peripheral research report, omits more recent research and ignores widely available and accepted published, peer reviewed assessments without justification. HSE has advised that no weight should be placed on this supporting information.
- 8.13 The proposed development is entirely within the development proximity zone (DPZ) of the Certas site. The DPZ is an area of extreme hazard and consequence should a major accident occur. HSE advises against all new development within a DPZ other than development that is not normally occupied. (e.g. outdoor storage, etc.)
- 8.14 The proposed development for indoor use by the public at this scale is a sensitivity level 2 development in HSE's methodology and would need to be located outside the DPZ and inner zone for HSE not to advise against the granting of planning permission.
- 8.15 HSE has also considered the applicant's comments comparing this site with other fuel depots in Scotland. It should be noted that these all have individual physical characteristics, and different quantities and types of fuel storage; these sites are not comparable in HSE's view to the application site due to these differences.
- 8.16 HSE notes that the supporting information provided by the applicant does not distinguish between workers, members of the public or the more vulnerable in society. HSE consistently advises against new development in DPZs around Great Britain unless those developments would be not normally occupied.
- 8.17 HSE has provided detailed technical consideration and rebuttal of matters highlighted by the applicant in relation to research work, vapour cloud size, and overpressure calculation. It notes that the submission does not appear to have assessed the risk from pool fire. In the event of a catastrophic tank failure, the building will be standing in the overtopped gasoline pool. If people are present in the building courtyard, it would be assumed all exposed would be killed upon ignition.
- 8.18 Advice from HSE is that separation is the most effective form of mitigation for a development. This is because other forms of mitigation such as emergency procedures and physical barriers can degrade over time as ownership changes and the reasons for the additional measures fade. Furthermore, HSE considers that the applicant has provided misleading risk comparisons.
- 8.19 Regarding the applicant's explanation of HSE's land use planning methodology, HSE has advised that this is incorrect. It notes that the purpose of government policy to control land use surrounding major hazard sites is to ensure that if an incident does occur, the consequences are kept low and does not result in large numbers of people being harmed or killed.

- 8.20 In respect of other land use in the area, HSE has commented that its understanding is that the Council have, in general, pursued low density developments close to the Certas Energy Ltd installation. This proposal is for a significantly greater intensification and includes an aspect of use by younger members of society.
- 8.21 It is suggested that the detailed commentary contained within the consultation response from HSE presents a significant obstacle to this change of use application for a climbing wall.

Siting and Design

- 8.22 The existing buildings on the site have recently been used as vehicle workshops/distribution facility. They comprise a mix of modern portal frame/steel clad/block harl and brick finishes. The buildings are of varying heights, with the largest workshop building to the northwestern part of the site, with smaller administration and workshop buildings to the southeast of this. The height, massing and scale of buildings steps down from northwest to south east and is typical of the industrial and commercial buildings found within the harbour area.
- 8.23 While the application is in principle only, indicative visualisations have been submitted showing how some of the internal building space could be laid out with bespoke designed climbing walls. It should be noted that as the application is in principle, a further detailed (MSC) application would be required to confirm all the details of the development although no external changes have been suggested on the indicative plans. The re-use of the building is considered to comply with the relevant elements of Policy 28 Sustainable Design in that it ensures that an existing building, that is fully serviced in terms of access, water and sewerage, drainage and electricity, is re-purposed and brought back into use rather than building on a greenfield site.

Access and Parking

- 8.24 This type of leisure development is assessed on merit. To demonstrate that the proposed parking provision is appropriate for the scale of development, including when hosting events, Transport Planning would require a Parking Appraisal to be submitted as part of any MSC application. The Parking Appraisal should cover coach parking, overspill parking and how accessible the site is for non-motorised users. It would also be necessary to demonstrate on the Site Plan that parking spaces are sized in accordance with Council guidelines, including disabled parking, and that the first space is a distance of 15m minimum from the site entrance.

Other material considerations

- 8.25 There are no other material considerations.

Non-material considerations

- 8.26 There are no non-material planning considerations.

Matters to be secured by Section 75 Agreement

8.27 None

9. CONCLUSION

- 9.1 There is a clear aspiration to develop a large modern climbing centre within Inverness and while there have been no comments submitted in support of this application the volume of comments made on the previously refused application seem to indicate a clear demand. The applicant has indicated that the facility would be the largest indoor climbing wall in the Highlands. Having already been granted permission for such a proposal at Inverness Marina, financial pressures have resulted in the need to look at other opportunities to still deliver a purpose built climbing and adventure sports centre. Considerable work has however been undertaken in securing funding for the fitting out of a centre to national standards since 2017 with a variety of funding streams being secured.
- 9.2 The delivery of the centre would bring a very welcome all year round and all-weather indoor climbing facility to Inverness, making the sport more easily accessible to the urban population base within both the city and wider Inner Moray Firth. In addition, it would also provide a further attraction for visitors to the Highlands.
- 9.3 The applicant has also suggested that the proposal would result in 46 FTE jobs, and would have an annual economic impact of £1M to the local economy.
- 9.4 While removing a building from an industrial/business use, it is considered that the principle of the proposal could be supported due to its very positive impact on the health, wellbeing and economy of the Highland people, and visitors to it. However, due to the location of the proposal adjacent to the large-scale Inverness Terminal/Certas Energy UK fuel storage/distribution depot, regard must be taken of the consultation advice received from the HSE with regard to public safety.
- 9.5 The submission has been accompanied by supporting information which has been considered and assessed in detail by HSE. This assessment very clearly sets out the safety risks to the proposal in relation to the adjacent Inverness Terminal/Certas Energy UK fuel storage/distribution depot. HSE's position is that it very strongly advises against the granting of planning permission on safety grounds.
- 9.6 Highland wide Local Development Plan Policy 30 - Physical Constraints requires the Planning Authority to consider the compatibility of the proposal with the physical constraint. In this instance, it is not considered that the proposal accords with Policy 30 as the developer is unable to demonstrate compatibility with the constraint or outline appropriate mitigation measures to be provided; admittedly a difficult task given the circumstances.
- 9.7 Unfortunately, no pragmatic solution to the issue can be achieved and therefore the only option is to recommend that the application be refused planning permission.
- 9.8 Should members wish to support the proposal, against the advice of HSE, then Scottish Ministers would require to be notified of the decision to grant planning permission with an opportunity to 'call in' the application for final determination.

9.9 All relevant matters have been taken into account when appraising this application. It is considered that the proposal does not accord with the principles and policies contained within the Development Plan and, notwithstanding the positive benefits that the development would bring, such material considerations do not outweigh the matters raised regarding public safety.

10. IMPLICATIONS

- 10.1 Resource: Not applicable
- 10.2 Legal: Not applicable
- 10.3 Community (Equality, Poverty and Rural): Not applicable
- 10.4 Climate Change/Carbon Clever: Not applicable
- 10.5 Risk: Not applicable
- 10.6 Gaelic: Not applicable

11. RECOMMENDATION

Action required before decision issued	Y	(if decision is to grant)
Notification to Scottish Ministers	Y	
Conclusion of Section 75 Obligation	N	
Revocation of previous permission	N	

Subject to the above, it is recommended to **REFUSE** the application for the following reasons:

Reasons for Refusal

1. The application is contrary to the provisions of Policy 30 of the Highland-wide Local Development (Physical Constraints) and its related Supplementary Guidance as the development site lies within the Development Proximity Zone of a Health and Safety Executive Major Accident Hazard site and therefore poses an unacceptable risk to human health and safety.

REASON FOR DECISION

All relevant matters have been taken into account when appraising this application. It is considered that the proposal does not accord with the principles and policies contained within the Development Plan and is unacceptable in terms of applicable material considerations.

Signature: David Mudie
Designation: Area Planning Manager – South
Author: Elaine Watt

Background Papers: Documents referred to in report and in case file.

Relevant Plans: Plan 1 - 2019 036-001 Rev A Site Location Plan
Plan 2 - 01 Visuals
Plan 3 - 011 Visuals
Plan 4 - 013 Visuals

Site arrangement

1 : 500

LOTLAND STREET

Detailed parking and access arrangements will be factored into a future detailed planning application.

To demonstrate that the proposed parking provision is appropriate for the scale of development including when hosting events. Detailed appraisal will include a Parking Appraisal discussing coach parking, overspill parking and how accessible to site is for non-motorised users.



Access point from public road

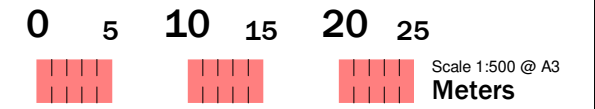
3.3m

El Sub Sta

Location

1 : 2500

TOTAL SITE AREA = 5080m²



Existing workshop / distribution building

Existing office and admin block

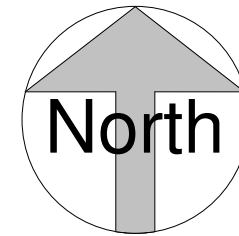
Bunded wall to boundary

Existing workshop

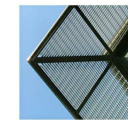
Certas Energy UK facility

Tank

LOTLAND STREET



PIP APPLICATION



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No.	Description	Date
A	Parking layout added.	23.10.20

The Ledge
 Conversion of industrial building to Climbing Gym

Site and Location plan	
Date	22.03.21
Drawn by	WJR
Scale	As indicated
2019 036 - 001	

1. Protected by copyright, no reproduction without express permission from architect.
 2. Contractor is responsible for checking all dimensions prior to construction.
 3. Discrepancies to be referred to architect for decision.
 4. Must be read in conjunction with written specification and engineers/sub contractors construction information.