

**PROPOSED VARIATION TO CONDITION 7 TO PERMISSION 17/00002/FUL,
OVERBRIDGE TO NORTHWEST OF KERSE ROAD ROUNDABOUT, KERSE ROAD,
STIRLING – NETWORK RAIL – 17/00744/FUL**

1 SUMMARY

- 1.1 This application is being referred to the Planning & Regulation Panel by the Planning & Building Standards Manager, as the planning permission to which the Condition relates (17/00002/FUL) was determined by the Planning and Regulation Panel.
- 1.2 At the Special Planning & Regulation Meeting on 7 November 2017, the Panel agreed to withdraw the application from the agenda to allow for consideration of a new report to be presented at the Planning & Regulation Panel Meeting on 5 December 2017, to ensure that all parties will have sight of the proposed new Conditions.

2 OFFICER RECOMMENDATION(S)

The Panel agrees:

- 2.1 to grant planning permission for the variation of Condition 7 as part planning permission 17/0002/FUL subject to the Conditions set out in Appendix 1 of this report.

3 CONSIDERATIONS

The Site

- 3.1 The overbridge is located on Kerse Road, to the south east of Stirling Town Centre and the Craigs Roundabout. The bridge carries traffic on the Kerse Road (A905) over the Stirling to Larbert railway line. Surrounding adjoining land uses include, Class 1 (Shops) and Class 3 (Food and Drink) to the north and residential dwellings of Nelson Place to the south.

The Proposal

- 3.2 The proposed works will involve the removal of the existing bridge and the installation of new concrete wingwalls, abutments and deck with 1.85 metre high containment parapets and Rekli finish panels. The development proposal represents the complete replacement of the existing bridge in order to meet the clearance distances required for the electrification of the railway line and to address a number of defects identified with the existing structure.

Previous History

- 3.3 The application relates to previously granted and extant planning permission reference 17/00002/FUL which was approved by the Planning and Regulation Panel following a hearing on 29 August 2017.

Development Plan Policy and Other Material Considerations

- 3.4 Development Plan: The relevant development plan for the area is the Stirling Council Local Development Plan, September 2014. Policies of relevance include: Primary Policy 1: Placemaking, Policy 1.1: Site Planning, Policy 1.3: Green Network and Open Space.
- 3.5 The Stirling Local Development Plan: Proposed Plan, 2016 does not alter the above policies of the Local Development Plan.

Assessment

- 3.6 This application is submitted under the provisions of Section 42 of the Town and Country Planning (Scotland) Act 1997 (as amended). The applicant seeks planning permission to develop the land without complying with conditions subject to which a previous planning permission was granted, namely Condition 7 of planning permissions ref: 17/00002/FUL. The granted application relates to the complete replacement of the rail overbridge at Kerse Road, Stirling. Condition 7 which is subject of this application reads:

“Construction Phase - Noise: Unless otherwise agreed under the provisions of a Good Neighbour Agreement between the developer and a community body representing the residents of Nelson Place, construction works which are audible outwith the site boundary shall only be undertaken during normal working hours, viz: - 0800 to 1800 hours Monday to Friday, and 0900 to 1800 hours on Saturdays. No noisy works audible outwith the site boundary are permitted on Sundays or Bank Holidays.”

- 3.7 Please be advised, the applicant has lodged an appeal to the Directorate of Planning and Environmental Appeals (DPEA) against the imposition of Condition 7 (appeal reference PPA-390-2059).

- 3.8 The applicant's supporting statement (Network Rail letter, 21 September 2017) sets out that the imposition of the Condition is problematic insofar as certain construction works require to be undertaken from the railway tracks, which can only be carried out under what is termed a 'possession of the railway'. The submitted 'Working in Railway Environment' statement, identifies that a possession of the railway is where a section of the railway is closed to train services in order to allow works to happen safely. Railway possession periods typically take place during night time hours, between 00:30 and 07:00 when there are no trains operating. In addition to this, the applicant has confirmed that works to demolish the existing bridge must take place over two possession periods of 54 hours in weekends during April/May 2018.
- 3.9 The issue for the applicant is that the current Condition makes it impossible to undertake the works that are necessary to complete the construction of the replacement bridge as they are restricted to undertaking construction works during day time periods when trains are in operation. The applicant (Network Rail) proposes the following Condition in order to address their concerns:
- "Unless otherwise agreed in writing with the Local Planning Authority, the construction works hereby permitted shall only operate between 07:00 and 19:00 with the exception of works which comprise start-up and close down activities, laying foundations, works involved with lifting in the proposed temporary bridge, piling works and other works which require the possession of the railway. In the case of these exceptions, works are not to be carried out for more than 60 hours within any 100 hour period."*
- 3.10 Such a Condition would allow for the majority of the construction works to be carried out during night-time periods. The difficulty here is that the majority of works would generate levels of noise that would give rise to significant adverse effects as evidenced by the information set out in the submitted Noise Impact Assessment, Morgan Sindall, November 2017 (NIA). The NIA sets out the noise levels associated with the main construction 'work phases' taking into account the noise sensitive receptors of Meadowforth Road, Nelson Place, and Stirling Islamic Centre. It identifies that the majority of demolition and reconstruction works will have an 'extremely significant impact' on noise levels. Thus, it is reasonably considered that the period during which construction works may be undertaken would be unduly harmful to amenity and quality of life due to the predicted increase in noise levels and the proximity of the surrounding neighbouring properties.
- 3.11 It is therefore considered necessary and reasonable to impose a Condition to limit the hours of demolition/construction. However, in considering whether to impose a restriction of working hours it is necessary to weigh the benefits to residential amenity against the dis-benefits of extending the construction process over a longer period, particularly given the potential impacts of the road closure on the transport network and local businesses.

- 3.12 Moreover, any Condition that would restrict hours of construction must comply with the '6 tests' for Conditions as set out in Circular 4/1998, 'The Use of Planning Conditions in Planning Permissions'. Of particular relevance is the test of 'reasonableness', which identifies that planning conditions can be deemed invalid on the grounds of unreasonableness if 'unduly restrictive'. Therefore, given the requirement to undertake certain works during night-time periods, it is accepted that any Condition which restricts the hours of construction/demolition should not be imposed if by doing so, it would effectively nullify the permission.
- 3.13 To that end, the Planning Authority accepts that in order to complete the development, certain works must be carried out during 'nightshift' periods as identified in the programme of works (Appendix G of the NIA, November 2017). Therefore, as set out in paragraph 2.2 above, the recommendation is to grant planning permission subject to Conditions differing from those subject to which the previous permission was granted. The amended Condition continues to specify the hours during which the majority of the development may be constructed but with the exception of the identified work phases which can only be carried out during 'possession of the railway' periods for safety reasons.

Objections

3.14 **Two objections have been submitted as summarised below:**

- (a) Concerns raised that the condition suggested by the applicant would effectively remove all restrictions on construction works which would have an adverse impact on local residents.

Response: The suggested Condition does not form part of the recommendation to grant the approval of the application as it is agreed that it would be unduly harmful to amenity. The recommendation imposes a restriction on construction hours for all works with the exception of any works that need to be undertaken to complete the granted development - please refer to the Assessment section above.

4 POLICY/RESOURCE IMPLICATIONS AND CONSULTATIONS

Policy Implications	
Equality Impact Assessment	No
Strategic Environmental Assessment	No
Single Outcome Agreement	No
Diversity (age, disability, gender, race, religion, sexual orientation)	No
Sustainability (community, economic, environmental)	No
Effect on Council's green house gas emissions	No Effect
Strategic/Service Plan	No
Existing Policy or Strategy	No
Risk	No
Resource Implications	
Financial	No
People	No
Land and Property or IT Systems	No
Consultations	
Internal or External Consultations	Yes

Equality Impact Assessment

- 4.1 This application was assessed in terms of equality and human rights. Any impact has been identified in the Considerations/Assessment section of this report.

Strategic Environmental Assessment

- 4.2 The application does not require a strategic environmental assessment.

Single Outcome Agreement

- 4.3 The recommendation does not apply to any of the 7 objectives of the single outcome agreement.

Other Policy Implications

- 4.4 None.

Resource Implications

- 4.5 None.

Risk

- 4.6 None.

Consultations

- 4.7 **Environmental Health:** Recommend the imposition of a restriction of construction hour's condition for non-essential night-time working.

5 BACKGROUND PAPERS

5.1 Planning Application file 17/00002/FUL. File can be viewed online at:

<http://pabs.stirling.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=OJBF6QPIJ7J00>

6 APPENDICES

6.1 Appendix 1 – Conditions and Reasons.

Author(s)

Name	Designation	Telephone Number/E-mail
Mark Laird	Planning Officer	01786 233678, lairdm@stirling.gov.uk
Christina Cox	Service Manager - Planning & Building Standards	01786 233682, coxc@stirling.gov.uk

Approved by

Name	Designation	Signature
Brian Roberts	Senior Manager - Infrastructure	

Date 29 November, 2017

Service Reference 17/00002/FUL

**PROPOSED VARIATION TO CONDITION 7 ATTACHED TO PERMISSION
17/00002/FUL AT OVERBRIDGE TO NORTH WEST OF KERSE ROAD
ROUNDAABOUT, KERSE ROAD, STIRLING - NETWORK RAIL - 17/00744/FUL**

Approve, subject to the following conditions:

- 1 **Construction Noise Mitigation Measure - Communication Plan:** No works in connection with the permission hereby granted shall take place unless a communication plan, which identifies all noise sensitive properties and includes an ongoing public communication strategy, to cover the full period of the demolition/construction works and operations has been submitted for the written approval of the Planning Authority.

- 2 **Control of Hours of Demolition and Construction:** Unless otherwise agreed in writing by the Planning Authority, all construction/demolition works, associated operations, and deliveries in connection with the permission hereby granted shall only be carried out during the hours, 07:00 to 19:00 hours Monday to Saturday, and 09:00 to 18:00 hours on Sunday, with the exception of the work phases assigned to 'nightshift' periods as identified in the 'Noise Impact Assessment & Noise Management Plan, (Morgan Sindall, October 2017) and set out below:
 - a) Temporary Service Bridge: Any works associated with the installation and removal of the temporary service bridge.

 - b) Railway Infrastructure Works: Lift and shift signal and track cables; relocate greaser mechanism; lift and stack track panels.

 - c) Removal of Existing Bridge and Associated Works: Demolition of existing bridge deck and abutments; erection of site hoardings.

 - d) Installation of New Bridge and Associated Works: Parapet works; strip shutters - north and south wing walls; installation of east and west abutments; installation of beams and seal gaps; installation of temporary walkways cantilevers (top side and underside).

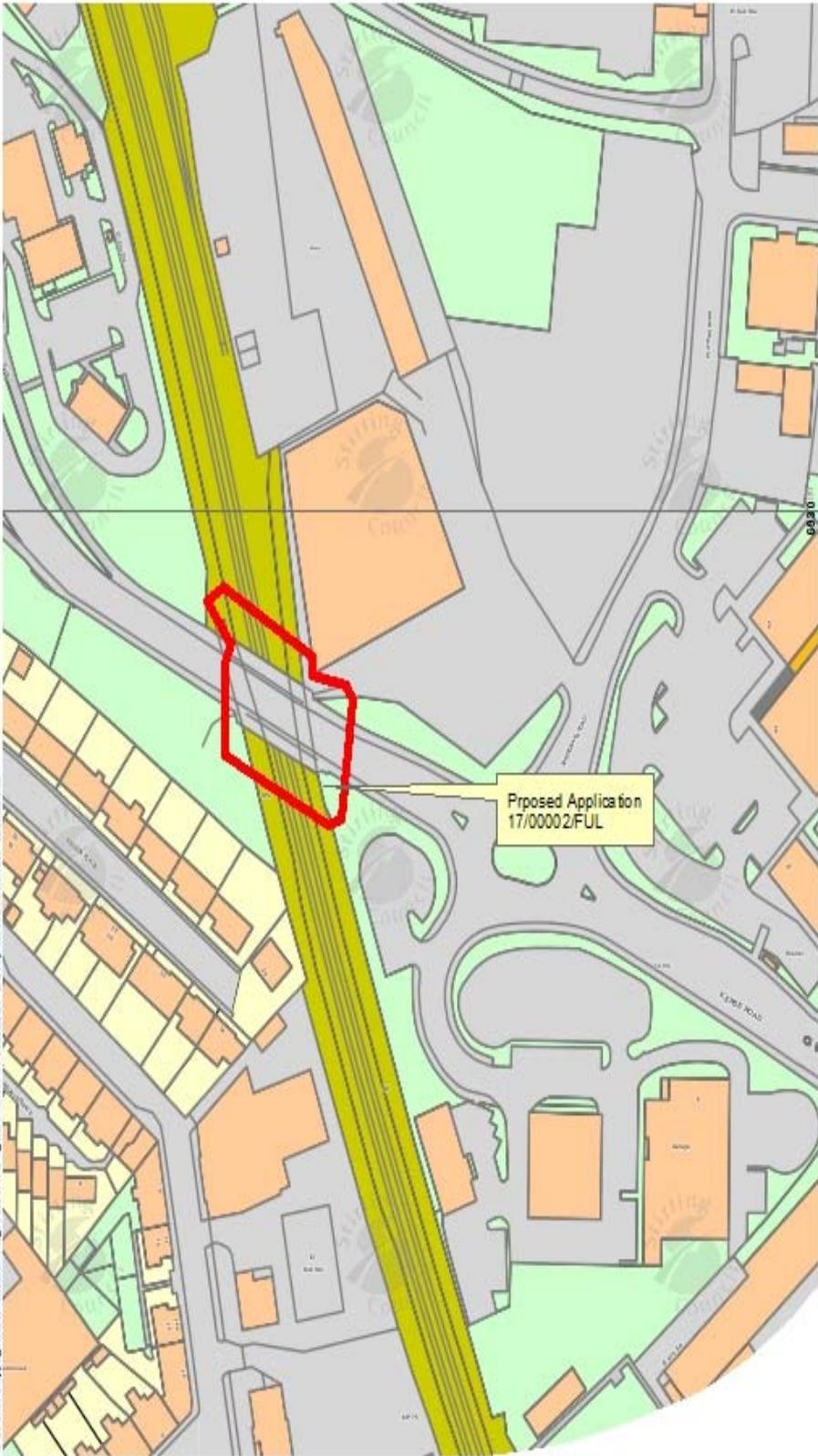
 - e) Post Construction Works: Removal of temporary walkways cantilevers (top side and underside); east abutment - reinstatement of power line; west abutment - reinstatement of cables and testing; removal of site hoardings.

All 'nightshift' working periods shall be restricted to a maximum of 6 consecutive days within any 7 day period. No construction works and associated operations shall be carried out outwith the hours 07:00 to 19:00 hours Monday to Saturday, and 09:00 to 18:00 hours on Sundays, unless written evidence/documentation has been submitted to the Planning Authority to confirm that all noise sensitive residential properties have been notified of the proposed demolition/construction works in accordance with the agreed communication plan (Condition 1, above) and not less than 7 days prior to the commencement of any such works.

- 3 **Mitigation Measures - Demolition/Construction Noise Mitigation Measures:** The recommendations for noise mitigation and management measures contained within the Noise Impact Assessment & Noise Management Plan (November 2017, Morgan Sindall) or any updated version thereof, shall be implemented in full throughout the period of demolition/construction and related operations.
- 4 **Mitigation Measures – Noise Monitoring:** That no works in connection with the permission hereby granted shall take place unless a noise monitoring strategy to cover the full period of demolition/construction, including a noise recording/data collection exercise and reporting to the Local Planning Authority, has been submitted for the written approval of the Planning Authority in consultation with Environmental Health. Thereafter, the noise monitoring strategy shall be complied with in complete accordance with the agreed details.

Reasons:

- 1 In order to ensure that all properties likely to be affected by noise are given timeous forewarning of night time working as part of a mitigation strategy in the interest of residential amenity.
- 2 In order to safeguard the reasonable amenities of the adjoining site occupiers from construction related noise impacts.
- 3 In order to ensure that noise is mitigated by best practical means in the interests of residential amenity.
- 4 In order to inform the Council of noise levels associated with the demolition/construction works associated from the approved development and to assess the effectiveness of the mitigation measures such that remedial measures could be planned and actioned.



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