

Perth and Kinross Council
Development Management Committee – 24 May 2017
Enforcement Report by Interim Head of Planning

Formation of five permanent gypsy/travellers pitches at Crookmoss, Crook of Devon,
Kinross-shire

Ref. No: 12/00546/FLL
Ward No: 8 – Kinross-shire

Summary

Enforcement update on alleged Breach of Conditions 9, 10, 11, 12, 13 and 14 for the formation of 5 gypsy/travellers pitches.

BACKGROUND AND DESCRIPTION

- 1 This application was previously considered by this Committee at its meetings on 16 September 2015, 13 January 2016 and 11 May 2016 in respect of an update on the enforcement position in relation to conditions attached to the permission. It was remitted to report back to this committee after a further 12 month period. Development Management Committee report of 11 May 2016 is appended to this report for ease of reference (Appendix 1).
- 2 Members, in requesting a further update were concerned over the conditions relating to the following areas:
 - (i) Noise (Conditions 12 and 13)
 - (ii) Drainage (Conditions 14 and 16)
 - (iii) Water supply (Conditions 10 and 11)
 - (iv) Access (Conditions 3, 4 and 5)
 - (v) Landscaping (Condition 15)
- 3 Appended to this report is a copy of the decision notice ref 12/00546/FLL (Appendix 2).
- 4 All other issues in relation to the application and conditions remain the same.

CONSULTATIONS

- 5 Further consultations and discussions have taken place with the Scottish Water, Scottish Environment Protection Agency (SEPA) and the Council's Environmental Health.

REPRESENTATIONS

- 6 As no re-notification has been required to be carried out at this stage there have been no further representations received during the 12 months period. All representations associated with the original application are as detailed in the original Committee Report.

APPRAISAL

Noise

- 7 No further complaints have been received from neighbouring residential properties. With regards to the siting of the electricity generators, all the occupied pitches now have acoustic housing units for their respective generators. The alternative solution of a mains electricity supply, while being prohibitively expensive, is currently being pursued by the residents with assistance from Perth and Kinross Council. Conditions 12 and 13 are currently in compliance.

Drainage

- 8 Scottish Water were contacted in respect of the likelihood of a mains sewer connection being available to serve the 5 pitches. A flow and load survey has been completed by Scottish Water which revealed current infrastructure is being overwhelmed by surface water infiltration which must be resolved. Scottish Water's 5 Growth Criteria was initiated by the occupants seeking resolution to the restriction on Drum Wastewater Treatment Works. Scottish Water has since lifted the embargo on 'new connections' and the residents have completed the Technical Approval process required by Scottish Water and as such a foul connection should be forthcoming.

Water supply

- 9 Mains water supply will be forthcoming at a time when foul treatment is in place. In line with paragraph 7 this is being currently costed by the residents with a view to connection to the mains. The occupants are using bottled water for consumption with a single private water supply for washing.

Access

- 10 We are satisfied Conditions 3 and 4 have been implemented.

Landscaping

- 11 Landscaping for the wider site is complete. This relates principally to the perimeter planting, which is more of a priority for the external appearance of the site. Individual pitch landscaping is also underway where pitches are occupied. Site landscaping is being monitored to ensure that it is maintained to satisfy condition 15.

ADDITIONAL INFORMATION

Paddock

- 12 The Planning Application submitted for the area of ground between the consented pitches and the road frontage under ref; 15/02078/FLL for change of use from paddock to form 3 gypsy/traveller pitches and erection of a fence (in retrospect) was refused on 9 March 2016. The applicant did not appeal the planning decision and the enforcement notice remains in place. The paddock area has once again changed hands and a meeting is being sought with the new owner to discuss intentions going forward.
- 13 Concerns have been raised with regard to general tidiness and litter in and around the site. This is not a planning matter but I have asked our enforcement officer to raise this with the residents to ensure appropriate waste facilities are in place.

CONCLUSION AND RECOMMENDATION

- 13 Key areas of concern in relation to compliance with the conditions attached to the permission have progressed and we are now moving towards resolution of the outstanding matters.
- 14 It is recommended that a closing report be submitted to committee once all planning matters have been resolved.

Background papers: None
Contact Officer: Eddie Jordan – Ext 75341
Date: 5 May 2017

NICK BRIAN
INTERIM HEAD OF PLANNING

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Perth and Kinross Council
Development Management Committee – 11 May 2016
Enforcement Report by Development Quality Manager

Formation of five permanent gypsy/travellers pitches at Crookmoss, Crook of Devon,
Kinross-shire

Ref. No: 12/00546/FLL
Ward No: 8 – Kinross-shire

Summary

Enforcement update on alleged Breach of Conditions 9, 10, 11, 12, 13 and 14 for the formation of 5 gypsy/travellers pitches

BACKGROUND AND DESCRIPTION

- 1 This permission was previously considered by this Committee at its meetings on 16 September 2015 and 13 January 2016 in respect of an update on the enforcement position in relation to conditions attached to the consent and it was remitted to report back again to this Committee at this meeting. The previous Committee reports together with a copy of the planning consent notice, setting out the full terms of the conditions, are attached to this report.
- 2 Members, in requesting a further update were concerned over the conditions relating to the following areas:
 - Noise
 - Drainage
 - Water supply
 - Access
 - Landscaping
- 3 All other issues in relation to the permission and conditions remain the same.

CONSULTATIONS

- 4 Further discussions have taken place with the Scottish Water and the Council's Environmental Health Officer.

REPRESENTATIONS

- 5 There have been no further representations received as a result of the further review period. All representations associated with the original application are as detailed in the original Committee Report.

APPRAISAL

Noise

- 6 No further complaints have been received from neighbouring residential properties. With regards to the siting of the electricity generators, all the occupied pitches now have acoustic housing units for their respective generators. The alternative solution of a mains electricity supply is prohibitively expensive and as such, the occupants have decided to focus their resources, at this time, on other matters. Conditions 12 and 13 are currently in compliance.

Drainage

- 7 Following the September and January Committees, Scottish Water were contacted in respect of the likelihood of a mains sewer connection being available to serve the 5 pitches. In terms of an interim connection to the public sewer, the subject of a flow and load survey, has been assessed by Scottish Water. At this time there is no opportunity for an interim connection. Scottish Water infrastructure is being overwhelmed by surface water infiltration which must be resolved prior to further connections being offered. No specific time has been given for resolving surface water ingress and therefore we have been advised that the occupants should seek resolution to Scottish Water's '5 Growth Criteria'.

Water supply

- 8 Mains water supply will be forthcoming at a time when foul treatment is in place. The occupants are using bottled water with a single private water supply.

Access

- 9 The access has been completed and as such, conditions 3 and 4 could be discharged.

Landscaping

- 10 Landscaping for the wider site is complete. This relates principally to the perimeter planting, which is more of a priority for the external appearance of the site. Individual pitch landscaping is also underway where pitches are occupied. Site landscaping is being monitored to ensure that it is maintained to satisfy condition 15.

ADDITIONAL INFORMATION

Paddock

- 11 The Planning Application submitted for the area of ground between the consented pitches and the road frontage under ref; 15/02078/FLL for change of use from paddock to form 3 gypsy/traveller pitches and erection of a fence (in retrospect) was refused on 9 March 2016. The applicant has 3 months from the date of decision for appeal therefore our position on enforcement is held in abeyance until the end of this period.

Alleged Pitch 6

- 12 As a result of the planning application mentioned at para 11, a 'Pitch 6' had been neighbour notified. Pitch 6 should not have been neighbour notified as an address for this pitch does not exist on the Council's address gazetteer. Further investigation has revealed a Council Tax assessment carried out in 2012 considered there to be 6 pitches rather than 5. Generally, previous experiences relating to neighbour notification has meant that the Planning Authority take a cautious approach to neighbour notification to ensure all affected residents are notified. Pitch 6 does not exist now and has never existed.

CONCLUSION AND RECOMMENDATION

- 13 Whilst significant progress in key areas of concern in relation to compliance with the conditions attached to the consent has been made, the issue of drainage remains to be resolved. I am aware that Committee will be concerned about the current position and that the timescales for drainage compliance could be extended significantly. However, I am of the view that further enforcement action would not be appropriate in respect of conditions regarding drainage. As we have served formal notices under Section 145 of the Act the development will not become lawful through passage of time. My recommendation is that the action we have taken to date is sufficient and no further enforcement action is necessary.
- 14 An Enforcement Notice in these circumstances would not, in my opinion, be appropriate use of our enforcement powers. An Enforcement Notice could not be used to secure delivery of drainage infrastructure and as such there would be no positive outcome to be gained from service. An Enforcement Notice could be used, as has been suggested, to clear the site and return it to its former use. To be able to do that, though, we would be required to demonstrate 'planning harm' in relation to a notice which achieves this outcome. As described in the paragraphs above, there is no injury to residential or visual amenity, roads matters have been addressed and SEPA have again confirmed that there are no environmental concerns with the site. Therefore, 'planning harm' is not demonstrated in relation to this development and as such an Enforcement Notice would be unlikely to succeed.

- 15 Key considerations by a Reporter, if dealing with an Enforcement Notice appeal, would be: firstly, as stated above, has planning harm resulted, and, secondly, have all possible options been explored to resolve the issue I am of the view that the option to deliver mains drainage has not been fully exhausted as an option and still remains open.
- 16 I appreciate that Members could reasonably require an update to our position after a given period. However, given the circumstances set out in this Report I consider that it is not necessary for future reports to be referred back to this Committee. To this end, I would recommend that future updates be directed to the affected Local Members and Convenor in separate, regular meetings in the future until matters have been resolved.
- 17 In conclusion therefore it is recommended that the option of connection to the mains drainage continues to be pursued with the applicants and Scottish Water and that progress on this be reported back directly to the affected Local Members and Convenor.

Background papers: None
Contact Officer: Eddie Jordan – Ext 75341
Date: 28 April 2016

NICK BRIAN
DEVELOPMENT QUALITY MANAGER

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PERTH AND KINROSS COUNCIL

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Pullar House
35 Kinnoull Street
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PH1 5GD

Date 10 October 2013

Town and Country Planning (Scotland) Acts.

Application Number **12/00546/FLL**

I am directed by the Planning Authority under the Town and Country Planning (Scotland) Acts currently in force, to grant your application registered on 27th March 2012 for planning permission for Formation of five permanent gypsy/traveller pitches (partly in retrospect) Land 300 Metres South East Of Fossoway Garage Fossoway subject to the undernoted conditions.

Development Quality Manager

Conditions Referred to Above

1. The proposed development must be carried out in accordance with the approved drawings and documents, unless otherwise provided for by conditions imposed on the planning consent.
2. Prior to any further work taking place on the site and within 2 months of the date of this planning consent, the applicant shall submit details of a suitable SUDS scheme, to be implemented alongside the foul drainage infrastructure, all for the approval of the Planning Authority.
3. Within 2 months of the date of this planning consent the vehicular access shall be formed and permanently maintained in accordance with specification Type C, Fig 5.7 access detail to the satisfaction of the Planning Authority.
4. Within 2 months of the date of this planning consent the access shall be provided with a bitumenously bound surface and maintained as so to the satisfaction of the Planning Authority
5. The gradient of the access shall not exceed 3% for the first 5 metres measured back from the edge of the carriageway and the access shall be constructed so that no surface water is discharged to the public road.

6. Within 2 months of the date of this consent turning facilities shall be provided within the site to enable all vehicles to enter and leave in a forward gear and shall be permanently maintained so to the satisfaction of this council as planning authority.
7. Within 2 months of the date of this consent a minimum of 2 No. car parking spaces per pitch shall be provided within the site and shall be permanently maintained so to the satisfaction of this council as planning authority.
8. The area of land directly adjacent and to the north of the application site which is within the applicants' ownership and indicated as a paddock area, shall remain as such and shall not be used for any other purpose unless otherwise agreed in writing with the Planning Authority.
9. The wastewater treatment facility and associated drainage, storage and pumping installations shall be designed, operated and maintained such that noise and/or odour, therefrom, are not perceptible in any nearby domestic property.
10. A water supply complying with the appropriate British Standard and in accordance with Scottish Water Byelaws currently in force, or where applicable the Private Water Supply (Scotland) Regulations 2006, shall be provided on the site as soon as practicable. Water supply to caravans shall be supplied through pipes not less than 12.5mm in diameter and approved by the Planning Authority.
11. With regard to the residential caravans, a supply of pure and wholesome water complying with the Water Supply (Water Quality) Regulations 2000, or where applicable the Private Water Supply (Scotland) Regulations 2006, shall be provided and shall be connected to all washing and sanitary facilities within the residential caravans as soon as is practicable to the satisfaction of the Planning Authority. Adequate precautions shall be taken (or cause to be taken) to protect all service water pipes between the connection to the water main and fittings within the caravans, all to the satisfaction of the Planning Authority.
12. All plant or equipment associated with operation of the site shall be so enclosed, attenuated and/or maintained such that any noise therefrom shall not exceed Noise Rating 35 between 0700 and 2300 hours daily, or Noise Rating 20 between 2300 and 0700 hours daily, within any neighbouring residential premises, with all windows slightly open, when measured and/ or calculated and plotted on a rating curve chart.
13. Each of the five gypsy/traveller pitches should have in place a suitably enclosed and acoustically insulated fixed housing unit in which to install any generator brought onto site to the satisfaction of the Planning Authority. This should be installed within 3 months of the date of this consent unless otherwise agreed in writing with the Planning Authority.
14. The private waste water treatment plant and surface water discharge proposals shall be carried out in accordance with Resource & Environmental Consultants Ltd Drainage Assessment dated May 2013 and carried out within the timescale indicated under condition 16 of this consent, that is only after the foul drainage infrastructure has been installed at Harelaw Farm, all to the satisfaction of the Planning Authority.
15. The landscaping proposals including tree and hedge planting shall be implemented within 6 months of the date of this consent or within the first planting season and thereafter maintained to the satisfaction of the Planning Authority.

16. The foul drainage infrastructure capable of achieving not less than 125% phosphorus mitigation as outlined in the Drainage Assessment attached to this consent carried out by REC and dated May 2013 and confirmed by SEPA and SNH as satisfactory shall be installed at Harelaw Farm prior to the foul drainage infrastructure becoming operational at the development site and within 3 months of the date of this consent. For the avoidance of doubt the installed drainage infrastructure at the development site as approved shall be retained thereafter all to the reasonable satisfaction of the Planning Authority.
17. Prior to the drainage infrastructure becoming fully operational at the development site the applicant shall submit to the Planning Authority an approved CAR licence under the Water Environmental (Controlled Activities)(Scotland) Regulations 2011 for the drainage infrastructure associated with this project and that the Planning Authority has confirmed receipt of this licence in writing.

Reasons for Conditions

1. To ensure that the development is carried out in accordance with the plans approved.
2. In the interests of environmental quality and surface water mitigation
- 3-7. In the interests of traffic and pedestrian safety.
8. In the interests of visual amenity; to ensure a satisfactory standard of local environmental quality.
- 9-12. In the interests of residential amenity.
13. In the interests of environmental quality.
- 14-15. In the interests of environmental quality and visual amenity.
16. To ensure appropriate drainage arrangements are installed and retained to remove phosphorus from the Loch Leven Catchment Area thereby ensuring compliance with the Kinross Area Local Plan 2004 and Enterprise and Infrastructure Committee Resolution of 28 August 2013.
17. To ensure appropriate drainage arrangements are installed and retained to remove phosphorus from the Loch Leven Catchment Area thereby ensuring compliance with the Kinross Area Local Plan 2004 and Enterprise and Infrastructure Committee Resolution of 28 August 2013

Justification

The proposal is considered to comply with the Development Plan and there are material considerations available which add weight to a recommendation of approval.

Notes

- 1 As soon as practicable after the development is complete, the person who completes the development is obliged by section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended) to give the planning authority written notice of that position.

- 2 This development will require the 'Display of notice while development is carried out', under Section 27C(1) of the Town and Country Planning Act 1997, as amended, and Regulation 38 of the Development Management Procedure(Scotland) Regulations 2008. The form of the notice is set out in Schedule 7 of the Regulations and a draft notice is included for your guidance. According to Regulation 38 the notice must be :
 - o Displayed in a prominent place at or in the vicinity of the site of the development
 - o Readily visible to the public
 - o Printed on durable material
- 3 The application site will require a caravan site licence in terms of the Caravan Sites and Control of Development Act 1960.
- 4 A Building Warrant will be required for this proposal.
- 5 The applicant is advised that in terms of Sections 56 of the Roads (Scotland) Act 1984 he must obtain from the Council as Roads Authority consent to open an existing road or footway prior to the commencement of works. Advice on the disposal of surface water must be sought at the initial stages of design from Scottish Water and the Scottish Environmental Protection Agency.

The plans relating to this decision are listed below and are displayed on Perth and Kinross Council's website at www.pkc.gov.uk "Online Planning Applications" page

Plan Reference

12/00546/1

12/00546/2

12/00546/3

12/00546/4