

Perth and Kinross Council
Planning and Placemaking Committee – 14 June 2023
Report of Handling by Head of Planning & Development
(Report No. 23/183)

PROPOSAL: Section 42 application to vary condition 12 (noise mitigation) of permission 19/00917/FLM

LOCATION: Land 300 metres northwest of Lathro Farm, Kinross

Ref. No: [23/00224/FLM](#)

Ward No: P8 – Kinross-shire

Summary

This report recommends approval of the application as the proposed amendment to condition 12 of 19/00917/FLM, and development which would result, is considered to comply with the relevant provisions of the Development Plan. Furthermore, there are no material considerations apparent which outweigh the Development Plan.

BACKGROUND AND DESCRIPTION OF PROPOSAL

1. The application relates to a 33 hectare site, known as Lathro Farm, which sits between Kinross to the south and Milnathort to the north. It has been designated for residential purposes for some time, initially via the Local Development Plan 2014 (LDP1). The parent planning permission (Planning ref: 19/00917/FLM) to which this application relates was granted on 22 January 2021 and allows for the erection of 169 dwellinghouses, formation of open space, landscaping and associated infrastructure as Phase 2 of a wider development.
2. The purpose of this Section 42 (S42) application seeks a revision to the requirement of Condition 12, which relate to noise mitigation measures. Condition 12 is currently worded as follows:

“Trickle ventilators shall be installed with passive extract ventilation systems to all habitable rooms within line of sight of the M90 trunk road and South Street, Milnathort; providing an acoustic attenuation of up to 42dBDn, e,w +Ctr as recommended in Section 9.5 ‘Lathro Farm, Kinross Noise and Vibration Impact Assessment’ document number 9. (Reason: in the interests of public health and to prevent adverse noise pollution.)”
3. Following a recent assessment of the acoustic profile of the site, this proposal seeks to amend the terms of Condition 12 to reflect the findings and recommendations of the supporting Residential Noise Mitigation Scheme (dated 12 August 2022), to allow a revised range of glazing solutions to control noise

impact into the approved houses. The applicant suggests the following reworded condition:

“The approved dwellings will be completed in strict accordance with the acoustic findings and recommendations of Residential Noise Mitigation Scheme (dated 12 August 2022) unless otherwise agreed by the planning authority. For the avoidance of doubt, all acoustic mitigation measures outlined within the scheme will be installed fully for each applicable individual residential unit within the development prior to the occupation of each unit.”

Pre-Application Consultation

4. Pre-Application Consultation (PAC) was undertaken in the submission of planning application 19/00917/FLM, with no procedural requirement for further PAC-in relation to this S42 application.

Development Plan

5. The Development Plan for the area comprises National Planning Framework 4 (NPF4) and the Perth and Kinross Local Development Plan 2 (2019) (LDP2). The National Planning Framework 4 (NPF4) was adopted on 13 February 2023 and has an Increased status over previous NPFs, being part of the statutory development plan.
6. The National Planning Framework 4 (NPF4) is the Scottish Government’s long-term spatial strategy with a comprehensive set of national planning policies. This strategy sets out how to improve people’s lives by making sustainable, liveable and productive spaces.
7. The Council’s assessment of this application has considered the following policies of NPF4:
 - Policy 1: Tackling the Climate and Nature Crises.
 - Policy 14: Design, Quality and Place.
 - Policy 15: Local Living and 20 Minute Neighbourhoods
 - Policy 16: Quality Homes.
8. The Council’s assessment of this application has considered the policies of NPF4 and it is considered that the development proposal accords with the intentions of this document

Planning Advice Notes

9. The following Scottish Government Planning Advice Notes (PANs) and Guidance Documents are of relevance to the proposal:
 - PAN 56: Planning and Noise.

Perth and Kinross Local Development Plan 2

10. The Local Development Plan 2 (2019) (LDP2) sets out a vision statement for the area and states that, “*Our vision is of a Perth and Kinross which is dynamic, attractive and effective which protects its assets whilst welcoming population and economic growth.*” It is the most recent statement of Council policy and is augmented by Supplementary Guidance. The relevant LDP2 policies are:
- Policy 1A: Placemaking
 - Policy 1B: Placemaking
 - Policy 1C: Placemaking
 - Policy 2: Design Statements
 - Policy 56: Noise Pollution

Site History

11. [14/00493/SCRN](#) On 7 April 2014, a Screening Opinion was submitted for a proposed residential development. Opinion issued 7th April 2014.
12. [14/00004/PAN](#) On 16 May 2014, a Proposal of Application Notice was submitted for a residential development with associated open space, landscaping and infrastructure.
13. [14/01345/SCOP](#) On 8 September 2014, a Scoping Opinion was submitted for a residential development with associated access and landscaping.
14. [15/01512/FLM](#) Full planning permission (major) was approved on 31 March 2017 for the erection of 300 dwellinghouses, formation of open space, landscaping and associated infrastructure works.
15. [17/00759/FLL](#) An application for full planning permission was withdrawn on 5 October 2017 for the erection of 13no. dwellinghouses and associated works.
16. [17/00760/FLL](#) Full planning permission was approved on 28 May 2018 for the erection of 47no. dwellinghouses and associated works.
17. [17/00886/FLM](#) Full planning permission (major) was approved on 20 September 2017 under Section 42 of the Town and Country Planning (Scotland) Act 1997 to develop land and to modify conditions 8 (children's play area), 9 (access) and 11 (boundary treatment) of planning permission 15/01512/FLM to reflect change in implementation timescale.
18. [17/00893/FLL](#) Full planning permission was approved on 20 September 2017 for the erection of 6no. dwellinghouses, formation of open space, landscaping and associated infrastructure works for plots 1-6, relocation of SUDS basin, pump station and erection of substation (revised layout and design) (in part retrospect).

19. [17/01721/FLL](#) Full planning permission was approved on 28 May 2018 for the erection of 12no. dwellinghouses and associated works.
20. [17/01796/ADV](#) Advertisement consent was approved on 7 December 2017 for the display of a sign (in retrospect).
21. [17/02273/ADV](#) Advertisement consent was approved on 14 February 2018 for the display of a sign.
22. [18/01117/FLL](#) Full planning permission was approved on 17 April 2019 for the erection of 47no. dwellinghouses and associated works (change of house type to include sunrooms for plots 515-518, 522-527, 531-536, 540-546, 550-553 and 557-559).
23. [18/01118/FLL](#) Full planning permission was approved on 17 April 2019 for the erection of 12no. dwellinghouses and associated works (change of house type to include sunrooms for plots 509-512 and 700-707).
24. [18/00013/PAN](#) On 27 November 2018 a Proposal of Application Notice was submitted for a residential development.
25. [19/00917/FLM](#) Full planning permission (major) was approved on 25 January 2021 for the erection of 169 dwellinghouses, formation of open space, landscaping and associated infrastructure (Phase 2).
26. [21/00746/FLM](#) Full planning permission (major) was approved on 22 October 2021 for a S42 application to modify condition 7 (open space and parkland) of permission 17/00886/FLM.
27. [22/00623/FLL](#) Full planning permission was approved on 31 March 2023 for the erection of 16 dwellinghouses (revised design and change of house type).

CONSULTATIONS

28. As part of the planning application process the following bodies were consulted:

Internal

Environmental Health (Noise Odour)

29. No objection, subject to a revised condition regarding noise:

“Trickle ventilators shall be installed with passive extract ventilation systems inline with the recommendation within the approved ‘Residential Noise Mitigation Scheme’ report N79153-1r2 dated 19 August 2022. Figure 3 and 4 proposed glazing and sound insulation performance and ventilation strategy for Ground and 1st floors plans.”

Representations

30. Two representations were received. The main issues raised are:
- Lack of notification on previous applications associated to the overall development;
 - Noise from construction activities affecting existing properties;
 - Loss of open space associated to the inability to access a park; and
 - Contrary to LDP policy 36B (New Waste Management Infrastructure) part (k) and policy 56 (Noise Pollution).

These issues are addressed in the appraisal section of the report.

ADDITIONAL STATEMENTS

31.

Screening Opinion	No further EIA required
Environmental Impact Assessment (EIA): Environmental Report	An EIA covers the wider development and no further assessment is required.
Appropriate Assessment under Habitats Regulations	Not required
Design Statement or Design and Access Statement	Submitted
Report on Impact or Potential Impact e.g., Flood Risk Assessment	Not Required

APPRAISAL

32. Sections 25 and 37(2) of the Town & Country Planning (Scotland) Act 1997 (as amended) require the determination of the proposal to be made in accordance with the provisions of the Development Plan unless material considerations indicate otherwise. The Development Plan comprises NPF4 and the Perth and Kinross Local Development Plan 2019. The relevant policy considerations are outlined in the policy section above and are considered in more detail below. In terms of other material considerations, this includes considerations of the Council's other approved policies and supplementary guidance, and the updated information on noise.

Principle

33. The principle of the overall development approved by the parent application has been previously established, ultimately through the approval of the extant planning permission (19/00917/FLM). That planning permission being a significant material consideration and therefore well-established and not required to be reviewed through this S42 application. In this instance, works are underway

via the 2021 parent permission, therefore, planning permission is partially implemented.

34. In a wider context it is noted that since the original planning permission decision, There has been a change to the Development Plan, through firstly TAYplan 2016, LDP2 In 2019 and most recently NPF4 in February 2023. The changes within the Development Plan do not significantly change the way in which the overall development should be considered.
35. The technical amendment of Condition 12, to allow for the recent Residential Noise Mitigation Scheme to be implemented, is not in itself considered contrary to the general terms of the Development Plan. Nevertheless, consideration must be given to the specific characteristics of the amendments and representation points raised, including:
The design and layout, landscape and visual impact, residential amenity set within the context of the application site and whether any adverse impacts are identified.

Noise and Residential Amenity

36. The proposed modification to Condition 12 is designed to appropriately protect the long-term residential amenity, in terms of noise impact from road traffic on the M90 and South Street, of the development currently approved by 19/00917/FLM. In terms of residential amenity, and with consideration of the approved residential layouts, the proposals are considered to address the relevant policies of LDP2. In this instance, and in terms of noise and residential amenity, the most relevant part of LDP 2 is Policy 56: Noise Pollution.
37. An objection has been submitted that the proposed revision of Condition 12 is contrary to LDP2 Policies 36B (New Waste Management Infrastructure) part (k) and policy 56 (Noise Pollution). However, in this instance, Policy 36B (New Waste Management) is not a relevant consideration in the assessment of this application, as it relates only to new waste management facilities and not residential developments. In terms of Policy 56: Noise Pollution, it is stated that there will be a presumption against the siting of development proposals which will generate high levels of noise in the locality of existing or proposed noise sensitive land uses and similarly against the locating of noise sensitive uses near to sources of noise generation. In this case the condition seeks to protect future residents from noise associated to traffic using the M90 and South Street. Furthermore, the Council may use conditions attached to the granting of planning consent, or if necessary, planning agreements, in order to control noise levels. In this instance, it is proposed to revise the wording of Condition 12 to reflect the proposed noise mitigation measures set out in the Residential Noise Mitigation Scheme. This being the case, this application is considered to be in accordance with LDP2 Policy 56: Noise Pollution, given those recommendations would adequately protect the amenity of future residents from noise impact associated to traffic using the aforementioned roads.

38. One of the public comments has raised the issue of noise from construction works affecting existing properties on site. However, this does not have any bearing on the assessment of this Section 42 application. A further public comment relates to lack of green space and inability to access a local park. However, again, this issue is not relevant in the assessment of this application, as it is not proposed to alter arrangements associated to green space or the local park, and no significant, alternative construction is being proposed. Rather, it is proposed to alter the mitigation measures in terms of noise to include a range of glazing solutions to protect residential amenity, as set out in the supporting Residential Noise Mitigation Scheme. Perth and Kinross Council's Environmental Health team have been consulted and accept that the measures identified are appropriate.

Developer Contributions

39. The amendment of the condition does not change the level or nature of developer contributions set out in the S75 and that agreement accounts for future planning applications including any Section 42 application. On this basis, it does not require to be updated.

DIRECTION BY SCOTTISH MINISTERS

40. Under the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, regulations 30 – 33 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.

OTHER MATTERS

41. As part of this application, it is appropriate to consider and review other material considerations and associated conditions in the extant planning permission (19/00917/FLM). There were 17 planning conditions, and it is good practice, where seeking to approve a S42 application, to review and update conditions to meet current regulations and requirements. Similarly, any conditions that still require to be addressed or adhered to, should remain. The original suite of conditions has therefore been reviewed and updated reflective of the ongoing nature of the development. The updated condition 12, now condition 13, represented in the recommendation section below. As a result of a background and ambient noise survey, which was conducted at six locations on site, mitigation measures have been put in place to ensure that internal ambient noise levels within the proposed properties, are achieved in line with British Standard 8233:2014 criteria. The new mitigation measures that form part of the wording of the new condition are as recommended in the "Residential Noise Mitigation Scheme Report."

42. As a result of this, it is proposed to apply the revised Condition 13:

“Trickle ventilators shall be installed with passive extract ventilation systems in line with the recommendation within the approved 'Residential Noise Mitigation Scheme' report N79153-1r2 dated 19 August 2022, Figure 3 and 4 proposed glazing and sound insulation performance and ventilation strategy for Ground and 1st floors plans.

Reason: in the interests of public health and to prevent adverse noise pollution.”

CONCLUSION AND REASONS FOR RECOMMENDATION

43. To conclude, the application must be determined in accordance with the development Plan unless material considerations indicate otherwise. In this respect, the proposal is considered to comply with NPF4 policies: 1. Tackling the Climate and Nature Crises, 14. Design, Quality and Place, 15. Local Living and 20 Minute Neighbourhoods and 16. Quality Homes. In this instance, the relevant policies of the adopted Local Development Plan 2 (2019) are 1A. Placemaking, 1B. Placemaking, 1C. Placemaking, 2. Design Statements and 56. Noise Pollution. Account has been taken account of other relevant material considerations and none has been found that would justify overriding the Development Plan.
44. Accordingly, the proposal is recommended for approval subject to the following conditions.

RECOMMENDATION

Approve the application.

Conditions and Reasons for Recommendation

1. This planning permission will last only for three years from the date of this decision notice unless the development has been lawfully started within that period.

Reason: This is a Planning Permission in terms of Section 58 of the Town and Country Planning (Scotland) Act 1997, as amended by Section 32 of the Planning (Scotland) Act 2019.

2. The development hereby approved must be carried out in accordance with the approved drawings and documents, unless otherwise provided for by conditions imposed by this decision notice.

Reason: To ensure the development is carried out in accordance with the approved drawings and documents.

3. The development shall be completed in accordance with the delivery plan confirming the phased delivery of the site and construction works, submitted 23/04/21. Drawing No. 19/00917/133.

Reason: In order to ensure the implementation and completion of the development components of the proposal coincide with key infrastructure delivery requirements.

4. The development shall be completed in accordance with the updated Construction Environment Management Plan (CEMP). Submitted 20/09/21. Doc ID – 1695603 of permission 19/00917/FLM relate.

Reason: In the interest of protecting environmental quality and of biodiversity.

5. The development shall be completed in accordance with the Construction Traffic Management Scheme as included in the Construction Environment Management Plan (CEMP). Submitted 20/09/21. Doc ID – 1695603 of permission 19/00917/FLM relate.

Reason: In the interests of pedestrian and traffic safety and in the interests of free traffic flow throughout the construction period.

6. The development shall be finished in accordance with the Invasive Species Management Plan and Biodiversity Action Plan, submitted 23/04/21. Drawing No's - 19/00917/136 and 19/00917/137.

Reason: In the interests of protecting environmental quality and promoting biodiversity

7. No removal of hedgerows, trees or shrubs that may be used by breeding birds shall take place between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check of vegetation for active birds' nests immediately before the vegetation is cleared or building affected, and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. Any such written confirmation should be submitted to the planning authority.

Reason: In the interests of employing best practice ecology and to ensure there is no adverse impact on any protected species as identified under the Wildlife and Countryside Act (1981)

8. All existing trees and hedgerows shall be retained and protected by suitable fencing in accordance with BS5837 2012 (Trees in Relation to Construction), unless otherwise agreed in writing by the planning authority. The details of the protective fencing and its location shall be as set out and agreed in the Construction Environmental Management Plan (CEMP) subject of Condition 3 of this planning permission. No materials, supplies, plant, machinery, soil heaps,

changes in ground levels or construction activities shall be permitted within the protected areas without the written consent of the planning authority.

Reason: To ensure adequate protection for the trees on the site during the construction, in the interests of the visual amenity of the area

9. The detailed landscaping and planting scheme (plans 19/00917/74) which is hereby approved shall be implemented concurrently with development and be completed within the first available planting season (October to March) after the completion of the development. The approved scheme shall thereafter be maintained, with any planting failing to become established within five years being replaced in the following planting season with others of a size and species as previously approved.

Reason: In the interests of visual amenity and to ensure the satisfactory implementation of the proposed planting scheme.

10. The development shall be completed in accordance with the finished detail of the required Sustainable Urban Drainage (SuDS) pond, submitted 23/04/21. Drawing No. 19/00917/136.

Reason: In the interests of visual amenity, enhancing biodiversity opportunities and in pursuance of satisfying placemaking policy criteria of the LDP

11. The development shall be completed in accordance with the finished design details of the proposed children's play area. Submitted 23/04/21. Drawing No. 19/00917/135

Reason: In the interests of residential amenity and to ensure the satisfactory provision and implementation of a children's play area.

12. Construction work shall be limited to Monday to Friday 0700 hours to 1900 hours and Saturday 0800 hours to 1300 hours with no noisy works out with these times or at any time on Sundays.

Reason: In the interests of residential amenity; to ensure a satisfactory standard of local environmental quality during the construction period.

13. Trickle ventilators shall be installed with passive extract ventilation systems in line with the recommendation within the approved 'Residential Noise Mitigation Scheme' report N79153-1r2 dated 19 August 2022, Figure 3 and 4 proposed glazing and sound insulation performance and ventilation strategy for Ground and 1st floors plans.

Reason: In the interests of public health and to prevent adverse noise pollution.

14. Within 2 months of the date of this planning permission, detailed designs and specification of the following road infrastructure improvements shall be submitted to and approved in writing by the planning authority:
- a) hard standing areas to facilitate bus stops on the North and South sides of Gallowhill Road in the vicinity of the development's new access; and
 - b) delivery of bus shelters on both sides of the A922, in the vicinity of the development access (near Lathro Cottage).

Thereafter, the approved details for both schemes shall be completed by or on behalf of the developer and made available for use to the satisfaction of the planning authority, within 4 months of the date of this planning permission.

Reason: In the interests of pedestrian and traffic safety; ensuring provision and encouraging use of suitable public transport measures.

15. The development shall be completed in accordance with the Travel Plan, aimed to encourage more sustainable means of travel, submitted 23/04/21. Drawing No. 19/00917/141.

Reason: In the interests of road safety; to seek sustainable means of travel to and from the site.

16. Within 4 months of the date of this planning permission, the vehicular access at Gallowhill Road shall be formed in accordance with Perth & Kinross Council's Road Development Guide, Type C Figure 5.7 access detail, of Type B Road construction detail, delivered and opened at a time as agreed in association with satisfying the delivery plan required by condition 3.

Reason: In the interests of road safety; to ensure the provision of adequate visibility of the vehicular access.

17. Within 2 months of the date of this planning permission, a scheme for the introduction of traffic signal control at the junction of The Muirs and C495 and associated road infrastructure works shall be submitted to and approved by the planning authority in writing. Thereafter the approved scheme shall be implemented by or on behalf of the developer prior to the occupation of the ninety seventh dwellinghouse on the development hereby approved, to the satisfaction of the planning authority.

Reason: In the interests of road safety.

18. Within 2 months of the date of this planning permission, a scheme for the extension of the existing 30 mph traffic regulation order beyond the proposed new development access junction on Gallowhill road and associated road infrastructure works shall be submitted to and approved by the planning authority in writing. Thereafter the approved scheme shall be implemented at a time as

agreed in association with satisfying the delivery plan required by Condition 3, to the satisfaction of the planning authority.

Reason: In the interests of road safety.

19. The development shall be finished in accordance with the design details of the mini glass recycling point. Submitted 23/04/21. Drawing No. 19/00917/135.

Reason: in the interests of sustainability, seeking to reduce carbon footprint and encourage household recycling

B JUSTIFICATION

The proposal is in accordance with the Development Plan and there are no material reasons which justify departing from the Development Plan.

C PROCEDURAL NOTES

None

D INFORMATIVES

1. Under Section 27A of the Town and Country Planning (Scotland) Act 1997 (as amended) the person undertaking the development is required to give the Planning Authority prior written notification of the date on which it is intended to commence the development. A failure to comply with this statutory requirement would constitute a breach of planning control under section 123(1) of that Act, which may result in enforcement action being taken.
2. 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.
3. 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 2013. 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:
 - Displayed in a prominent place at or in the vicinity of the site of the development.
 - Readily visible to the public.
 - Printed on durable material.

4. There is a continued requirement for a Section 75 legal obligation covering the wider site, which includes Open Space provision and maintenance. A copy is available to view on the Council's Public Access portal.

Background Papers: Three letters of representation
Date: 2 June 2023

DAVID LITTLEJOHN
HEAD OF PLANNING & DEVELOPMENT

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