

Perth and Kinross Council
Planning & Development Management Committee – 20 November 2019
Report of Handling by Head of Planning and Development (Report No. 19/332)

PROPOSAL: Application under Section 42 of the Town and Country Planning (Scotland) Act 1997 to modify condition 5 (private access roads to adoptable standard) of planning permission 15/00150/FLL (erection of 4 dwellinghouses)

LOCATION: Land north of Cottown House, Cottown, Glencarse

Ref. No: [19/00511/FLL](#)

Ward No: 1 – Carse of Gowrie

Summary

This report recommends approval of an application made under section 42 of the Planning Act for the variation of a road and access condition (condition 5) which was on a detailed planning permission for the erection of four dwellings at Cottown, Glencarse (15/00150/FLL).

BACKGROUND AND DESCRIPTION OF PROPOSAL

- 1 This planning application seeks to amend a road and access related planning condition attached to an extant detailed planning permission for four dwellings within the small hamlet of Cottown, Glencarse. This current planning application has been made under section 42 of the Planning Act.
- 2 Condition 5 of planning permission 15/00150/FLL reads:

Prior to any works commencing on any dwellinghouse, the existing private access for the entire length to the public road shall be upgraded to an adoptable standard with adequate turning facilities for HGV, to the satisfaction of the Council as Roads & Planning Authority.
- 3 It is proposed to amend the condition to remove the reference to 'adoptable standard' as it is now unlikely that the private access will be adopted by the Council due to concerns about off-site flooding which could affect the road. The applicant does however still propose to improve the surface of the existing access and to ensure that it does not increase flood risk off site and that surface water drainage from the access is suitably managed. The applicant has also indicated that the surface of the access during the construction phase will be maintained to an acceptable standard.

NATIONAL POLICY AND GUIDANCE

- 4 The Scottish Government expresses its planning policies through The National Planning Frameworks, the Scottish Planning Policy (SPP), Planning Advice

Notes (PAN), Creating Places, Designing Streets, National Roads Development Guide and a series of Circulars.

National Planning Framework

- 5 NPF3 is a long-term strategy for Scotland and is a spatial expression of the Government's Economic Strategy and plans for development and investment in infrastructure. Under the Planning etc. (Scotland) Act 2006 this is now a statutory document and material consideration in any planning application. The document provides a national context for development plans and planning decisions as well as informing the on-going programmes of the Scottish Government, public agencies and local authorities.

Scottish Planning Policy 2014

- 6 The Scottish Planning Policy (SPP) was published in June 2014 and sets out national planning policies which reflect Scottish Ministers' priorities for operation of the planning system and for the development and use of land. The SPP promotes consistency in the application of policy across Scotland whilst allowing sufficient flexibility to reflect local circumstances. It directly relates to:
 - The preparation of development plans;
 - The design of development, from initial concept through to delivery; and
 - The determination of planning applications and appeals.
- 7 The following sections of the SPP will be of particular importance in the assessment of this proposal:
 - Sustainability: paragraphs 24 – 35
 - Placemaking: paragraphs 36 – 57

Planning Advice Notes

- 8 The following Scottish Government Planning Advice Notes (PANs) and Guidance Documents are of relevance to the proposal:
 - PAN 40 Development Management
 - PAN 68 Design Statements
 - PAN 75 Planning for Transport
 - PAN 77 Designing Safer Places

Creating Places 2013

- 9 Creating Places is the Scottish Government's policy statement on architecture and place. It sets out the comprehensive value good design can deliver. It notes that successful places can unlock opportunities, build vibrant communities and contribute to a flourishing economy and set out actions that can achieve positive changes in our places.

National Roads Development Guide 2014

- 10 This document supports Designing Streets and expands on its principles and is considered to be the technical advice that should be followed in designing and approving of all streets including parking provision.

Circular 4/1998 - The use of conditions in planning permission

- 11 The guidance establishes that conditions should meet the following six tests, requiring that they be: necessary, relevant to planning, relevant to the development, enforceable, precise and reasonable in all other respects.

Circular 3/2013 – Development Management Procedures

- 12 This circular provides advice on dealing with Section 42 applications in ‘Annex I: Applications for Planning Permission under Section 42 of the Act’. This confirms in paragraph 2a) that the effect of granting permission for a section 42 application is such that a new and separate permission will therefore exist for the development proposed with different (or no) conditions attached.

DEVELOPMENT PLAN

- 13 The Development Plan for the area comprises the TAYplan Strategic Development Plan 2016-2036 and the Perth and Kinross Local Development Plan.

TAYPlan Strategic Development Plan 2016-2036

- 14 TAYPlan sets out a vision for how the region will be in 2036 and what must occur to bring about change to achieve this vision.
- 15 The vision for the area as set out in the plans states that:

“By 2036 the TAYplan area will be sustainable, more attractive, competitive and vibrant without creating an unacceptable burden on our planet. The quality of life will make it a place of first choice where more people choose to live, work, study and visit, and where businesses choose to invest and create jobs.”

- 16 There are no specific policies within the TAYPlan which are specifically relevant to this proposal.

Perth and Kinross Local Development Plan 2014

- 17 The Local Development Plan (LDP) was adopted by Perth and Kinross Council on 3 February 2014. The LDP 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.

Within the LDP the site lies within the settlement boundary of Cottown/Chapelhill, where the following policies are applicable,

- Policy PM1A - Placemaking
- Policy PM1B - Placemaking
- Policy EP2 – New Development and Flooding
- Policy EP3 – Water Environment and Drainage
- Policy EP13 - Contaminated Land
- Policy PM3 - Infrastructure Contributions
- Policy CF2 – Public Access
- Policy RD1 - Residential Areas

Proposed Perth and Kinross Local Development Plan 2 (LDP2)

- 18 The Proposed LDP2 2017 represents Perth & Kinross Council's settled view in relation to land use planning and is a material consideration in determining planning applications. The Proposed LDP2 is considered consistent with the Strategic Development Plan (TAYplan) and Scottish Planning Policy (SPP) 2014. The Council approved the Proposed LDP (as so modified by the Examination Report) on 25 September 2019. The Council is progressing the Proposed Plan towards adoption, with submission to the Scottish Ministers. It is expected that LDP2 will be adopted by 28 November 2019. In relation to this proposal, there are no policies or proposals contained within the LDP2 which are materially different from those contained in the current LDP.

OTHER COUNCIL POLICIES

- 19 None which are directly applicable to matters arising from this specific s42 application.

SITE HISTORY

- 20 [15/00150/FLL](#) Detailed permission for the erection of four dwellings. Decision issued 1 March 2017.

CONSULTATIONS

- 21 The following parties have been consulted:

EXTERNAL

- 22 **Scottish Water** - No objection to the proposal.

INTERNAL

- 23 **Transport Planning** - No objection to the proposed removal of the adoption standard requirement. Confirmed that the existing access is private and will remain private.

- 24 **Structures & Flooding** - No objection to the proposal. Clarification of the final details concerning the surface water drainage associated with the access improvements should be agreed before any works to the access takes place.

REPRESENTATIONS

- 25 Six letters of representations have been received, all of which are objecting to the proposal. The main issues raised within the representations are:
- Condition of the existing access
 - Condition of the access during construction
 - Surface water drainage associated with the access
 - Flooding concerns
 - Impact on Right of Way
- 26 These issues are addressed in the Appraisal section of the appraisal.

ADDITIONAL STATEMENTS

27	Environment Statement	Not Required
	Screening Opinion	Not Required
	Environment Impact Assessment	Not Required
	Appropriate Assessment	Not Required
	Design Statement / Design and Access Statement	Not Required
	Reports on Impact or Potential Impact	Supporting statement

APPRAISAL

- 28 Section 42 of the Town and Country Planning (Scotland) Act 1997 enables the determination of applications to develop land without compliance with conditions previously attached. The legislation specifies that on such an application the Planning Authority shall consider only the question of the conditions subject to which planning permission should be granted, and if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly. If they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.
- 29 Taking the above into account, the assessment of this planning application is limited to an assessment of the terms of condition 5 of the extant planning permission, and whether the variation proposed is acceptable.
- 30 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 the TAYplan Strategic Development Plan 2016–2036 and the Perth and Kinross Local Development

Plan 2014. The relevant policy considerations are outlined in the policy section above and are considered in more detail below.

- 31 In terms of other material considerations, consideration of the site planning history and the current position in terms of the likelihood of the Council adopting any improved access are material considerations.

Adoption Requirements

- 32 Planning permission was granted in 2015 for the erection of 4 dwellings. During the consideration of the 2015 permission, there was an ongoing request, led by the applicant, to bring the existing private access up to a standard which would allow the Council to consider it for adoption. At that time, there was also public funding available to assist in financing the improvements – both of which influenced the previous imposition of the condition.
- 33 Since then, the Council's concerns regarding off-site flooding within the area have increased, as has the potential for the access to be adversely affected by flood waters. The current position of the Council is therefore that regardless of any geometric, surfacing and drainage improvements that are undertaken to the access itself, it will remain vulnerable to flood waters and it would not be an acceptable asset for the Council to consider for potential adoption under the terms of the Roads (Scotland) Act 1984. For this reason, the public funding for this project has been withdrawn and is no longer available.
- 34 The imposition of a planning condition that requires the applicant to bring the existing access up to an 'adoptable standard' does suggest that the Council will eventually adopt the new road. Due to the information now available, it is no longer considered appropriate to impose such a condition as it would fail to meet the tests of a reasonable condition. It is also questionable as to whether a four dwelling development in itself would justify such a financial investment, particularly bearing in mind the number of existing users of the existing private access.
- 35 It is therefore recommended that condition 5 of 15/00150/FLL is reworded so that satisfactory improvements to the existing access are undertaken but not to the standard that would be required by the Council for potential adoption. There will be a requirement for the final details of the work to be submitted to the Council for the further approval in writing. Such details must include the arrangements for surface water drainage to ensure that any works to the access do not result in an increase in flood risk off site. It should be made clear that it is not the intention of the amended condition to require the applicant to resolve all the ongoing flooding / surface water drainage issues in the area, but to simply ensure that the existing position is not made worse by improvements to the access. Condition 5 is therefore proposed to be reworded to reflect this.
- 36 It is clear from the letters of representations that there remains local concern over the state of the existing access and the impact that construction traffic may have on it. Whilst the existing access is private, considering its current condition and the number of properties which use the route, it is considered reasonable for the

Council to seek control over its condition during the construction phase (Condition 6).

Remaining conditions

- 37 As indicated previously, the Act stipulates that when considering an application made under section 42 of the Act, the Planning Authority shall consider only the question of the condition(s) subject to which planning permission should be granted. Nevertheless, it is the case that a permission relating to an application made under Section 42 is considered to be a new permission in its own right, and the need to impose other conditions / advisory notes on the decision notice remains. Consequently, the other conditions and informatives which were attached to the previous permission in relation to finishes, drainage/SUDS, right of way, noise and contaminated land and landscaping / boundary treatments are proposed to be re-attached to this permission to ensure the development accords with the relevant LDP policies. In light of the existing access remaining private, an additional condition has been added to this permission in relation to clarification of details regarding the waste/recycling provision for the new units (condition 11).
- 38 It is noted that Scottish Water have indicated in their consultation response that there is no public drainage within the area. Condition 2 has therefore been amended from 15/00150/FLL to take into account the need for a private foul system to be introduced.

Developer Contributions

- 39 Developer Contributions for both Primary Education and Transport Infrastructure are secured through an extant legal agreement. The terms and conditions of this agreement will remain enforceable against this new permission.

Economic Impact

- 40 The proposal will have little impact on the local economy except during the period of construction.

LEGAL AGREEMENTS

- 41 The existing Section 75 legal agreement remains in place.

DIRECTION BY SCOTTISH MINISTERS

- 42 None.

CONCLUSION AND REASONS FOR RECOMMENDATION

- 43 To conclude, the planning application must be determined in accordance with the adopted Development Plan unless material considerations indicate otherwise. The Local Development Plan and other material considerations

have been fully considered and it is recommended that subject to amended conditions, the application should be approved.

RECOMMENDATION

A Approve the planning application, subject to the following conditions,

1. The proposed development must be carried out in accordance with the approved plans, unless otherwise provided for by conditions imposed on the planning consent.

Reason - To ensure that the development is carried out in accordance with the plans approved.

2. Prior to the commencement of the development, precise details of the proposed foul drainage arrangement shall be submitted to and agreed in writing by the Council as Planning Authority. The agreed details shall thereafter be implemented in full, and prior to the occupation of each dwelling.

Reason - In order to ensure that the site is adequately drained.

3. Prior to the commencement of any development on site, precise details of the proposed SUDS system shall be submitted to and agreed in writing by the Council as Planning Authority. The agreed details shall be implemented in full prior to the first house occupation.

Reason - In order to ensure that the site is adequately drained.

4. Prior to the commencement of any development on site, a detailed landscaping and boundary treatment plan (including timescales for implementation) shall be submitted to and agreed in writing by the Council as Planning Authority. The agreed details shall be implemented in full as the development progresses.

Reason - In the interest of proper site management and to ensure that the visual amenity of the area is protected.

5. Prior to the commencement of the development, precise details of the proposed design and specification of the proposed surfacing works (including surface water drainage) to the existing private access and details of the turning areas shall be submitted to and agreed in writing by the Council as Planning Authority. The agreed details shall be implemented in full prior to the occupation of the last dwelling.

Reason - In the interests of pedestrian and traffic safety and in the interests of free traffic flow, and to ensure that works to the road do not adversely affect any existing property via flood risk.

6. For the duration of the construction phase, the existing private access shall be maintained to a standard which is comparable to the condition prior to construction works commencing. Prior to the commencement of the development, a photographic record of the condition of the existing access shall

be submitted to the Council as Planning Authority. If any damage occurs during the construction phase, the developer shall remedy the damage within 14 days, all to the satisfaction of the Council as Planning Authority.

Reason - In the interests of pedestrian and traffic safety and in the interests of free traffic flow.

7. Prior to the commencement of any development on site, full details of the colour of the wet dash render shall be submitted to and agreed in writing by the Council as Planning Authority. The scheme as agreed shall be implemented in full prior to the occupation of each of the dwellings.

Reason - In order to protect existing residential amenity.

8. All plant or equipment associated with any air source heat pump shall be so enclosed, attenuated and/or maintained such that any noise therefrom shall not exceed Noise Rating 30 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.

Reason - In order to protect existing residential amenity.

9. Prior to the commencement of any development on site, an evaluation for the potential of the site to be affected by contamination by a previous use shall be undertaken and as a minimum, a Preliminary Risk Assessment (Phase 1 Desk Study) shall be submitted to and agreed in writing by the Council as Planning Authority. If the preliminary risk assessment identifies the need for further assessment, an intrusive investigation must be undertaken to identify;

- The nature, extent and type(s) of contamination on the site
- Measures to treat/remove contamination to ensure the site is fit for the use proposed
- Measures to deal with contamination during construction works
- Condition of the site on completion of decontamination measures.

Prior to the occupation of any dwelling, the agreed measures to decontaminate the site shall be fully implemented, as approved by the Council as Planning Authority. Validation that the scheme has been fully implemented shall be submitted to and agreed in writing by the Council as Planning Authority prior to the occupation of any dwelling.

Reason - In order to ensure that any land contaminates are adequately dealt.

10. Prior to the commencement of any development on site, detailed plans of the proposed works to the existing Right of Way shall be submitted to and agreed in writing by the Council as Planning Authority. The detailed plans must detail the route of the right of way between Dalreach (cottage) and the track south of Cottown House, the surfacing and any furniture thereon (e.g. gates), how the path links into other parts of the route to the north and south, and must show a path a minimum of 2.5m wide and of similar distance and of a similar or

improved surface to that of the original path. The agreed details must be completed and made available for the public to use prior to the commencement of any other development on site.

Reason - In order to protect the existing Right of Way.

11. Prior to the commencement of the development, precise details of the proposed bin/recycling collections facilities shall be submitted to and agreed in writing by the Council as Planning Authority. The agreed details shall thereafter be implemented in full, prior to the occupation of the first dwelling.

Reason – In order to clarify the terms of this permission.

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. This planning permission will last only for three years from the date of this decision notice, unless the development has been started within that period. (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).
2. 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.
3. 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.
4. An application for Building Warrant will be required.
5. The applicant should be advised that in terms of Section 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 Environment Protection Agency
6. With regard to the terms of Condition 10 of this decision notice, the applicant

is advised to make early contact with the Council's Access Officers regarding the Right of Way to ensure it is not adversely affected by the development proposed. For the avoidance of doubt, any changes to the alignment of the path should not be onto another owner's land. The applicant should also be aware that any temporary restrictions to public access required during the construction of the dwellinghouses must be agreed in writing (and in advance of the restriction) with the Council as Planning Authority.

- 7 There is a Section 75 legal obligation associated with this planning permission, which relates to Primary Education and Transport Infrastructure contributions. A copy is available to view on the Council's Public Access portal.

Background Papers: 6 letters of representations
Contact Officer: Andy Baxter
Date: 7 November 2019

DAVID LITTLEJOHN
HEAD OF PLANNING AND DEVELOPMENT

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