

TCP/11/16(287)
Planning Application 13/01482/FLL – Removal of
Conditions 2 and 3 (use of building and external storage)
of planning permission 11/01123/FLL at 3 Middleburn
Cottages, Kirkness, Cardenden

INDEX

- (a) Notice of Review and supporting documents (***Pages 115-138***)
- (b) Planning Decision Notice (***Pages 139-140***)
 - Report of Handling (***Pages 141-144***)
- (c) Representations (***Pages 145-146***)

NOTICE OF REVIEW

UNDER SECTION 43A(8) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED) IN
RESPECT OF DECISIONS ON LOCAL DEVELOPMENTS

THE TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND LOCAL REVIEW PROCEDURE)
(SCOTLAND) REGULATIONS 2013

THE TOWN AND COUNTRY PLANNING (APPEALS) (SCOTLAND) REGULATIONS 2008

**IMPORTANT: Please read and follow the guidance notes provided when completing this form.
Failure to supply all the relevant information could invalidate your notice of review.**

Use BLOCK CAPITALS if completing in manuscript

Applicant(s)

Name VERMICON

Address 3 MIDDLEBURN COTTAGES
KIRKNESS
CARDENDAL

Postcode KY5 0HH

Contact Telephone 1

Contact Telephone 2

Fax No

E-mail*

Agent (if any)

Name TR T HUTTON

Address 2 FACTORS BRAG
LINGKINS
FIFE

Postcode KY11 3HG

Contact Telephone 1 01382 872000

Contact Telephone 2 07881092659

Fax No N/A

E-mail* hutton874@btinternet.com

Mark this box to confirm all contact should be
through this representative: ☒ Yes ☐ No

* Do you agree to correspondence regarding your review being sent by e-mail? ☒ Yes ☐ No

Planning authority

PERTH & KINROSS

Planning authority's application reference number

13/01482/FLL

Site address

3 MIDDLEBURN COTTAGES
KIRKNESS

Description of proposed
development

REMOVAL OF CONDITIONS 2 & 3
ATTACHED TO PERMISSION 11/01123/FLL

Date of application

22.8.13

Date of decision (if any)

6.11.13

Note. This notice must be served on the planning authority within three months of the date of the decision notice or from the date of expiry of the period allowed for determining the application.

Nature of application

- | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|
| 1. Application for planning permission (including householder application) | <input type="checkbox"/> |
| 2. Application for planning permission in principle | <input type="checkbox"/> |
| 3. Further application (including development that has not yet commenced and where a time limit has been imposed; renewal of planning permission; and/or modification, variation or removal of a planning condition) | <input checked="" type="checkbox"/> |
| 4. Application for approval of matters specified in conditions | <input type="checkbox"/> |

Reasons for seeking review

- | | |
|-----------------------------------------------------------------------------------------------------------------------------|-------------------------------------|
| 1. Refusal of application by appointed officer | <input checked="" type="checkbox"/> |
| 2. Failure by appointed officer to determine the application within the period allowed for determination of the application | <input type="checkbox"/> |
| 3. Conditions imposed on consent by appointed officer | <input type="checkbox"/> |

Review procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may tick more than one box if you wish the review to be conducted by a combination of procedures.

- | | |
|-------------------------------------------------------------------|-------------------------------------|
| 1. Further written submissions | <input type="checkbox"/> |
| 2. One or more hearing sessions | <input type="checkbox"/> |
| 3. Site inspection | <input checked="" type="checkbox"/> |
| 4. Assessment of review documents only, with no further procedure | <input checked="" type="checkbox"/> |

If you have marked box 1 or 2, please explain here which of the matters (as set out in your statement below) you believe ought to be subject of that procedure, and why you consider further submissions or a hearing are necessary:

Site inspection

In the event that the Local Review Body decides to inspect the review site, in your opinion:

- | | Yes | No |
|--------------------------------------------------------------------------------------|-------------------------------------|--------------------------|
| 1. Can the site be viewed entirely from public land? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. Is it possible for the site to be accessed safely, and without barriers to entry? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

If there are reasons why you think the Local Review Body would be unable to undertake an unaccompanied site inspection, please explain here:

Statement

You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. Note: you may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

If the Local Review Body issues a notice requesting further information from any other person or body, you will have a period of 14 days in which to comment on any additional matter which has been raised by that person or body.

State here the reasons for your notice of review and all matters you wish to raise. If necessary, this can be continued or provided in full in a separate document. You may also submit additional documentation with this form.

PLEASE SEE SEPARATE STATEMENT

Have you raised any matters which were not before the appointed officer at the time the determination on your application was made?

Yes ☐ No ☒

If yes, you should explain in the box below, why you are raising new material, why it was not raised with the appointed officer before your application was determined and why you consider it should now be considered in your review.

List of documents and evidence

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review.

1. PHOTOGRAPH OVER APPLICATION SITE

Note. The planning authority will make a copy of the notice of review, the review documents and any notice of the procedure of the review available for inspection at an office of the planning authority until such time as the review is determined. It may also be available on the planning authority website.

Checklist

Please mark the appropriate boxes to confirm you have provided all supporting documents and evidence relevant to your review:

- ☒ Full completion of all parts of this form
- ☒ Statement of your reasons for requiring a review
- ☒ All documents, materials and evidence which you intend to rely on (e.g. plans and drawings or other documents) which are now the subject of this review.

Note. Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice from that earlier consent.

Declaration

I the applicant/agent [delete as appropriate] hereby serve notice on the planning authority to review the application as set out on this form and in the supporting documents.

Signed

R. T. Huma

Date

29.11.13

APPLICANT'S DOCUMENT 1

**VIEW OVER THE APPLICATION SITE TO THE WESTFIELD
PLANT BEYOND.**



**STATEMENT IN SUPPORT OF THE APPLICATION FOR REVIEW OF THE
DECISION TO REFUSE PLANNING PERMISSION FOR THE REMOVAL OF
CONDITIONS 2 AND 3 (USE OF BUILDING AND EXTERNAL STORAGE) OF
PLANNING PERMISSION 11/01123/FLL AT 3 MIDDLEBURN COTTAGES,
KIRKNESS, CARDENDEN.**

PERTH AND KINROSS COUNCIL REFERENCE: 13/01482/FLL.

**R T HUTTON PLANNING CONSULTANT
NOVEMBER 2013.**

1.0 BACKGROUND.

1.1 In July 2011 Mr Iain Bruce applied to Perth and Kinross Council for change of use of garden ground to industrial storage and erection of a steel frame garage with lean to log store at 3 Middleburn Cottages, Kirkness. The application was partially retrospective, Mr Bruce having been advised by his contractor that the garage which was being erected did not require planning permission. The planning application was refused under delegated powers, and Mr Bruce then applied to the Local Review Body to review this decision.

1.2 The Local Review Body considered this application and approved the planning application subject to 6 conditions. However, members of the LRB were not aware when dealing with this application of the long history of commercial use of the site, and the impact that the conditions they imposed would have on a long established business. It was because of this impact that Mr Bruce applied to have conditions 2 and 3 removed, and in his application explained the established use of his site and why the concerns over residential impact could be addressed.

1.3 The conditions which were asked to be removed stated:

2. "This permission for the enclosed building element is for industrial storage purposes only. No repair or maintenance of machinery and equipment shall be undertaken from within the building or application site."
3. "There shall be no external storage of machinery, materials or equipment associated with the industrial/business use of the building."

1.4 Despite the explanations about the long term use of the site, the Council's development management staff considered that the circumstances did not merit removing the conditions imposed by the Local Review Body, and the planning application was refused because of concerns about impact on visual and residential amenity. Mr Bruce would now like to take the opportunity to present his case to the Review Body in the hope that they will accept that he can operate his business from his property in a way which will not have any significant adverse

impacts as anticipated by Council planners.

2.0 The Use of the Application Site.

2.1 Mr Bruce bought the property at Middleburn Cottages in 2000 and moved his residence and business, Vermicon, to the site at that time. Prior to his acquisition of the property it had been owned by a haulage contractor, Alexander Haulage, who had used it as their operating base. On the basis of this Mr Bruce assumed that there would be no difficulty in continuing with the commercial use of the site. He has operated his business from there since 2000 and documentary evidence of this can be provided, including vehicle operators licences; delivery notes from suppliers and invoices. However, the present difficulties came to light in 2011 when he submitted a planning application to erect a steel framed garage on his land.

2.2 The planning application submitted on his behalf by the garage supplier focussed entirely on the proposed new building and gave no background information about the long term commercial use of the site. It is considered that this information would have been pertinent to that application, and remains relevant and material to this current application for review. It is summarised below.

2.3 Mr Bruce established Vermicon in 1996 as a company specialising in pest control. However, since then the company has diversified and is now mainly involved with ground works, and local authorities are a major customer. The company currently employs 7 people who all live locally, and most of whom have been with Vermicon for a long period. The land at and around the application site is all owned by Mr Bruce, and comprises the house where he lives; an adjacent cottage which is let out on a short term lease; amenity ground for the houses, and land used in connection with the business.

2.4 It was in order to improve the appearance of the immediate area and to provide a better working environment that the new garage was built. External storage was to be limited to the area immediately behind the garage, with the garage used for the maintenance of the Vermicon vehicles and plant. The area proposed for storage is partly screened by the garage, and it is the intention to augment this with either a fence or conifer hedge around the remaining boundaries of the land. This would

ensure that the material stored within the area would not be visible from the public highway.

2.5 Vermicon own 4 cars; a forklift; a dumper; a mini digger; 2 lorries, and a chipper. These require regular maintenance, and it would be the intention that this should take place within the garage. The work undertaken would be limited to mechanical repairs, with no burning or welding taking place, and no repairs to bodywork. Such work could be carried on with the garage doors closed in order to minimise any noise transmission.

3.0 Comment on the Reason for Refusal.

3.1 The planning application was refused with the following reason given for the decision:

“The removal of Conditions 2 and 3 would be detrimental to the visual amenity and residential amenity of the area which would be contrary to Policy 2 of the Kinross Area Local Plan (2004) and Policy PM1A of the Proposed Local Development Plan 2012.”

Issues such as residential and visual amenity are matters of subjective judgement, and the assessment of the issues by the applicant differs from that of Council planners. We should like to examine each in turn in order to explain Mr Bruce’s view.

3.2 Turning first to the matter of residential amenity, it needs to be made clear that there are only 2 houses within the vicinity of the site, and both are owned by the applicant. The next nearest residential property is more than 300 metres away. The concerns of Council planners can therefore only be in connection with the houses which are under the control of the applicant. One of these is his family home and the other is rented on a short term lease. Whilst it is our view that the repair works proposed in the garage, if undertaken with the doors closed, will not result in any significant disturbance to the tenant of the cottage, Mr Bruce is prepared to accept a condition or a legal agreement requiring that both houses can only be occupied by himself and his immediate family. The agreement could also require that the 2 houses and the garage remain under a single ownership. Such an agreement

should give the Council the comfort that should the activities within the garage cause any nuisance, the only people being inconvenienced would be the applicant and his family.

3.3 With such a restriction in place there is no possibility that the residential amenity of any unrelated third could be affected by the proposed activities. On the basis of this we would suggest that the concerns over impact on residential amenity could be set aside.

3.4 The other concern expressed in the reason for refusal relates to visual amenity, and in connection with this matter we would make 2 points. The first has already been referred to at 2.4 above where the proposals to screen the storage area are outlined. The area is located to the rear of the garage and as such views of the area are limited from the south and west. From the south the cottages provide a screening of the site, and when viewed from the west the garage achieves the same. Views of the site can be obtained when travelling south on the B9097 from Loch Leven, but a fence or fast growing hedge would go along way to obscure any views into the area.

3.5 The second point in connection with visual amenity concerns the existing features which exist within the local landscape. The photograph submitted as applicant's document 1 is taken from the public road looking south towards the area proposed for storage. Whilst this is in the foreground, it is seen against the industrial background formed by the structures at the Westfield bio mass power station. The storage area is clearly visible, but with screening around the site a much improved visual situation could be achieved. Whilst it is obvious, we would point out that the landscape of the area is not one which is purely rural, but one where heavy industrial activities at the Westfield site have been undertaken for decades. It is within this context that the small scale commercial activity proposed by Mr Bruce should be assessed.

3.6 The area proposed for storage extends to approximately 350 square metres and is in a location which is not highly visible. The screening proposed would further mitigate any potential impact on visual amenity in an area where a major landscape feature is a large industrial plant. On the basis of this we would suggest that the concerns expressed in relation to visual amenity have been overstated and could be set aside.

4.0 Conclusions.

4.1 When Mr Bruce bought the application premises in 2000 it had an existing industrial use, and since that time he has run his business from there. Had he been better advised he may have applied for a Certificate of Lawfulness for this use prior to applying to erect the garage. The documentary evidence available to substantiate such a claim is strong, and does demonstrate that “on the balance of probability” the commercial use has been undertaken for longer than 10 years. This being the case, the appropriate certificate would have been granted to allow for his authorised use of the site.

4.2 When members of the Local Review Body considered his application in 2012 they were not aware of the long term use of the site and, in good faith imposed conditions which prevent the applicant from operating his business from there. The subsequent application to remove the conditions preventing the commercial use of the site was refused on the basis of perceived impact of residential and visual amenity. In the information contained above we have sought to show how both such impacts can be mitigated to an acceptable level, and on that basis would ask that the Local Review Body grant planning permission to remove the 2 conditions.

4.3 A third condition (number 1) reiterates the restrictions imposed by conditions 2 and 3, and should have been included in the planning application to seek its removal. However, if it is accepted that conditions 2 and 3 can be removed there would be no case for the Council to seek to enforce in terms of condition 1.

APPLICANT'S DOCUMENT 1

**VIEW OVER THE APPLICATION SITE TO THE WESTFIELD
PLANT BEYOND.**



APPLICATION FOR PLANNING PERMISSION

Town and Country Planning (Scotland) Act 1997
The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008

Please refer to the accompanying Guidance Notes when completing this application
PLEASE NOTE IT IS FASTER AND SIMPLER TO SUBMIT PLANNING APPLICATIONS
ELECTRONICALLY VIA <https://eplanning.scotland.gov.uk>

1. Applicant's Details		2. Agent's Details (if any)	
Title	Mr and Mrs	Ref No.	
Forename	Ian	Forename	
Surname	Bruce	Surname	
Company Name	Vermicon	Company Name	RT Hutton Planning Consultant
Building No./Name	3 Middleburn Cottages	Building No./Name	The Malt Kiln
Address Line 1	Kirkness	Address Line 1	2 Factors Brae
Address Line 2	Cardenden	Address Line 2	Limekilns
Town/City		Town/City	Fife
Postcode	KY5 0HH	Postcode	KY11 3HG
Telephone		Telephone	01383 872000
Mobile		Mobile	07781097659
Fax		Fax	N/A
Email		Email	hutton874@btinternet.com
3. Postal Address or Location of Proposed Development (please include postcode)			
Land at Middleburn Cottages, Kirkness, Cardenden. KY5 0HH			
NB. If you do not have a full site address please identify the location of the site(s) in your accompanying documentation.			
4. Type of Application			
What is the application for? Please select one of the following:			
Planning Permission	<input type="checkbox"/>		
Planning Permission in Principle	<input type="checkbox"/>		
Further Application*	<input checked="" type="checkbox"/>		
Application for Approval of Matters Specified in Conditions*	<input type="checkbox"/>		
Application for Mineral Works**	<input type="checkbox"/>		
NB. A 'further application' may be e.g. development that has not yet commenced and where a time limit has been imposed a renewal of planning permission or a modification, variation or removal of a planning condition.			
*Please provide a reference number of the previous application and date when permission was granted:			
Reference No:	11/01123/FLL	Date:	30.04.12

****Please note that if you are applying for planning permission for mineral works your planning authority may have a separate form or require additional information.**

5. Description of the Proposal

Please describe the proposal including any change of use:

Removal of conditions 2 and 3 attached to planning permission 12/01123/FLL

Is this a temporary permission?

Yes ☐ No ☒

If yes, please state how long permission is required for and why:

Have the works already been started or completed?

Yes ☒ No ☐

If yes, please state date of completion, or if not completed, the start date:

Date started: ongoing

Date completed:

If yes, please explain why work has already taken place in advance of making this application

The application site has been the operating base of Vermicon since 2000.

6. Pre-Application Discussion

Have you received any advice from the planning authority in relation to this proposal?

Yes ☐ No ☒

If yes, please provide details about the advice below:

In what format was the advice given?

Meeting ☐ Telephone call ☐ Letter ☐ Email ☐

Have you agreed or are you discussing a Processing Agreement with the planning authority? Yes ☐ No ☐

Please provide a description of the advice you were given and who you received the advice from:

Name:

Date:

Ref No.:

7. Site Area

Please state the site area in either hectares or square metres:

Hectares (ha):

Square Metre (sq.m.)

460

8. Existing Use

Please describe the current or most recent use:

Land is currently used for storage in connection with the operation of Vermicon

9. Access and Parking

Are you proposing a new altered vehicle access to or from a public road? Yes ☐ No ☒

If yes, please show in your drawings the position of any existing, altered or new access and explain the changes you propose to make. You should also show existing footpaths and note if there will be any impact on these.

Are you proposing any changes to public paths, public rights of way or affecting any public rights of access? Yes ☐ No ☒

If yes, please show on your drawings the position of any affected areas and explain the changes you propose to make, including arrangements for continuing or alternative public access.

How many vehicle parking spaces (garaging and open parking) currently exist on the application site?

2

How many vehicle parking spaces (garaging and open parking) do you propose on the site? (i.e. the total number of existing spaces plus any new spaces)

2

Please show on your drawings the position of existing and proposed parking spaces and specify if these are to be allocated for particular types of vehicles (e.g. parking for disabled people, coaches, HGV vehicles, etc.)

10. Water Supply and Drainage Arrangements

Will your proposals require new or altered water supply or drainage arrangements? Yes ☐ No ☒

Are you proposing to connect to the public drainage network (e.g. to an existing sewer?)

Yes, connecting to a public drainage network ☐
No, proposing to make private drainage arrangements ☐
Not applicable – only arrangement for water supply required ☐

What private arrangements are you proposing for the new/altered septic tank?

Discharge to land via soakaway ☐
Discharge to watercourse(s) (including partial soakaway) ☐
Discharge to coastal waters ☐

Please show more details on your plans and supporting information

What private arrangements are you proposing?

Treatment/Additional treatment (relates to package sewer treatment plants, or passive sewage treatment such as a reed bed) ☐
Other private drainage arrangement (such as a chemical toilets or composting toilets) ☐

Please show more details on your plans and supporting information.

Do your proposals make provision for sustainable drainage of surface water? Yes ☐ No ☒

Note:- Please include details of SUDS arrangements on your plans

Are you proposing to connect to the public water supply network?

Yes ☐ No ☒

If no, using a private water supply, please show on plans the supply and all works needed to provide it (on or off site)

11. Assessment of Flood Risk

Is the site within an area of known risk of flooding?

Yes ☐ No ☐

If the site is within an area of known risk of flooding you may need to submit a Flood Risk Assessment before your application can be determined. You may wish to contact your planning authority or SEPA for advice on what information may be required.

Do you think your proposal may increase the flood risk elsewhere? Yes ☐ No ☒ Don't Know ☐

If yes, briefly describe how the risk of flooding might be increased elsewhere.

12. Trees

Are there any trees on or adjacent to the application site?

Yes ☐ No ☒

If yes, please show on drawings any trees (including known protected trees) and their canopy spread as they relate to the proposed site and indicate if any are to be cut back or felled.

13. Waste Storage and Collection

Do the plans incorporate areas to store and aid the collection of waste? (including recycling)

Yes ☐ No ☒

If yes, please provide details and illustrate on plans.

If no, please provide details as to why no provision for refuse/recycling storage is being made:

14. Residential Units Including Conversion

Does your proposal include new or additional houses and/or flats?

Yes ☐ No ☒

If yes how many units do you propose in total?

Please provide full details of the number and types of units on the plan. Additional information may be provided in a supporting statement.

15. For all types of non housing development – new floorspace proposed

Does your proposal alter or create non-residential floorspace?

Yes ☐ No ☒

If yes, please provide details below:

Use type:

If you are extending a building, please provide details of existing gross floorspace (sq.m):

Proposed gross floorspace (sq.m.):

Please provide details of internal floorspace(sq.m)

Net trading space:

Non-trading space:

Total net floorspace:

16. Schedule 3 Development

Does the proposal involve a class of development listed in Schedule 3 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008?

Yes ☐ No ☒ Don't Know ☐

If yes, your proposal will additionally have to be advertised in a newspaper circulating in your area. Your planning authority will do this on your behalf but may charge a fee. Please contact your planning authority for advice on planning fees.

17. Planning Service Employee/Elected Member Interest

Are you / the applicant / the applicant's spouse or partner, a member of staff within the planning service or an elected member of the planning authority?

Yes ☐ No ☒

Or, are you / the applicant / the applicant's spouse or partner a close relative of a member of staff in the planning service or elected member of the planning authority?

Yes ☐ No ☒

If you have answered yes please provide details:

DECLARATION

I, the applicant/agent certify that this is an application for planning permission. The accompanying plans/drawings and additional information are provided as part of this application. I hereby confirm that the information given in this form is true and accurate to the best of my knowledge.

I, the applicant/agent hereby certify that the attached Land Ownership Certificate has been completed

X

☐

I, the applicant /agent hereby certify that requisite notice has been given to other land owners and /or agricultural tenants

Yes ☐ No ☐ N/A ☐

Signature:

Name:

Date:

Any personal data that you have been asked to provide on this form will be held and processed in accordance with the requirements of the 1998 Data Protection Act

LAND OWNERSHIP CERTIFICATES

Town and Country Planning (Scotland) Act 1997
Regulation 15 of the Town and Country Planning (Development Management Procedure) (Scotland)
Regulations 2008

CERTIFICATE A, B, C OR CERTIFICATE D MUST BE COMPLETED BY ALL APPLICANTS


CERTIFICATE A

Certificate A is for use where the applicant is the only owner of the land to which the application relates and none of the land is agricultural land.

I hereby certify that -

- (1) No person other than the applicant was owner of any part of the land to which the application relates at the beginning of the period of 21 days ending with the date of the application. ☒
- (2) None of the land to which the application relates constitutes or forms part of agricultural land. ☒

Signed:



On behalf of:

Mr & Mrs Bruce t/s Vermicon

Date:

22.2.13

CERTIFICATE B

Certificate B is for use where the applicant is not the owner or sole owner of the land to which the application relates and/or where the land is agricultural land and where all owners/agricultural tenants have been identified.

I hereby certify that -

- (1) I have served notice on every person other than myself who, at the beginning of the period of 21 days ending with the date of the application was owner of any part of the land to which the application relates. These persons are: ☐

Name	Address	Date of Service of Notice

- (2) None of the land to which the application relates constitutes or forms part of agricultural land ☐

or

- (3) The land or part of the land to which the application relates constitutes or forms part of agricultural land and I have served notice on every person other than myself who, at the beginning of the period of 21 days ending with the date of the application was an agricultural tenant. These persons are: ☐

R T HUTTON

PLANNING CONSULTANT

The Malt Kiln
2 Factors Brae
Limekilns
Fife KY11 3HG
01383 872000
0788 1097659
hutton874@btinternet.com
Our ref:13/08/RTH

Development Management,
Perth and Kinross Council,
Pullar House,
35 Kinnoull Street,
Perth.

22nd August 2013.

Dear Sir,

Planning application to remove conditions attached to permission for the erection of a shed on land adjacent to Middleburn Cottages, Kirkness, Cardenden.

On 30th April 2012 the Perth and Kinross Local Review Body granted detailed planning permission to Mr I Bruce for the erection of an industrial storage shed subject to 6 conditions. Mr Bruce runs a long established business from this site, and two of the conditions imposed create difficulties which are having an impact on his business operations. He therefore now seeks removal of these conditions.

The conditions in question are:

2. This permission for the enclosed building element is for industrial storage purposes only. No repair or maintenance of machinery and equipment shall be undertaken from within the building or application site.
3. There shall be no external storage of machinery, materials or equipment associated with the industrial/business use of the building.

Both of these conditions were imposed to safeguard local amenity and the amenity of the immediately adjoining residences.

In seeking the removal of these conditions we wish to explain the background to the long term use of the site; the difficulties they create for Mr Bruce's business, and why we believe their removal would not lead to any significant loss of amenity.

Mr Bruce acquired the land and buildings at Middleburn in 2000, and prior to his occupation of the premises it had been owned and used by Alexander Haulage as the base for their business. When Mr Bruce moved into the site, his business, Vermicon, was established, and the land at Middleburn Cottages became the operating base for the company. Vermicon, who carry out grounds works, have operated from the site since then and we can provide documentary evidence to substantiate this. The site has operated in a somewhat ad hoc manner, with materials stored around the cottages. However, it was the

intention when the shed was erected to rationalise how the land around the cottages is used, with storage to the front removed and the land behind the shed screened and used for all the company's storage needs.

The conditions imposed by the Local Review Body mean that Mr Bruce's intentions for rationalisation can no longer be achieved, and in fact his business cannot operate from the site it has used for the last 13 years. This will have significant implications for the business and its employees in this time of recession. However, it is clear from the report of handling relating to the planning application for the shed and use of the adjoining land, that the main concern was the shed, both in terms of its landscape impact and effect on neighbours. Given that the shed has been approved and is in place, the issue of external storage can be considered in this new context. The report points out that the shed is only 16m from a dwelling and would have the potential to adversely affect its amenity. As you will be aware both of the cottages at Middleburn are owned by Mr Bruce and his wife, and they occupy one and the other is let out. However, should you consider that the amenity of the cottage occupied by a third party would be so affected as to justify refusal of the application, Mr Bruce is prepared to have the premises vacated. He would also be prepared to enter a legal agreement with the Council under the terms of which the shed and adjoining land must remain in the same ownership as the cottages, in order to ensure that the occupant of the houses can control the use of the shed and adjoining land.

The land to the rear of the shed where it is proposed to store material could be screened by either raising the height of the boundary markers or by tree planting. At this time we have not shown any proposal but would be happy to discuss what arrangement the Council consider would be most effective. We would point out that this area is directly behind the house occupied by the applicant and his family, and so its use would have little impact on the occupier of the other cottage. As part of the process to rationalise how the site operates it is intended to remove all storage from the front of the cottages, and we would suggest that this will lead to an improved situation for the tenants of the cottage.

Development Plan policies support the provision of rural employment, with the Perth and Kinross Structure Plan giving support to developments that will maintain or enhance employment opportunities. The application site is in a rural area and has, for more than 10 years been the base for a company providing local employment. Should this application be refused the company would be forced to relocate which would have very serious financial costs which Vermicon may not be able to absorb. Local employment would be lost and there would be less spend in the local supply chain. Planning policies clearly seek to maintain local employment, and in this situation with the shed in place and the land for external storage significantly reduced, there will be no adverse impact on local amenity, so we draw support for the application proposals.

At the present time the machinery used by Vermicon is repaired either at the site or in garages off site at additional expense. Allowing repair works within the workshop would allow more efficient and cost effective working. Conditions could be applied requiring the door to remain closed when repair work is being carried out, only the company's own vehicles and machinery could be repaired and maintained, and to limit the hours when such work can take place. With such restrictions in place amenity would be protected, and the nearest house not owned by the applicant is more than 300 metres away, it is highly unlikely that neighbours would even be aware of the activity within the shed.

The planning permission granted by the Local Review Body allowed the shed to be constructed, and clearly this was the most controversial element of the planning application so far as the planning case officer was concerned.. With this shed now in place, the environment within which external storage is proposed is changed from that which existed at the time of the planning application. With suitable planning conditions and, if considered necessary, a legal agreement as discussed above put in place, the potential for any adverse environmental impact is significantly decreased to a level where approval can be given to this application.

Should you require any further information please do let me know. In the meantime we enclose the completed application forms, site plan and payment for the application fee, and look forward to receiving your confirmation that the application has been registered.

Yours faithfully,



R I Hutton BSC(Hons) MRTP1

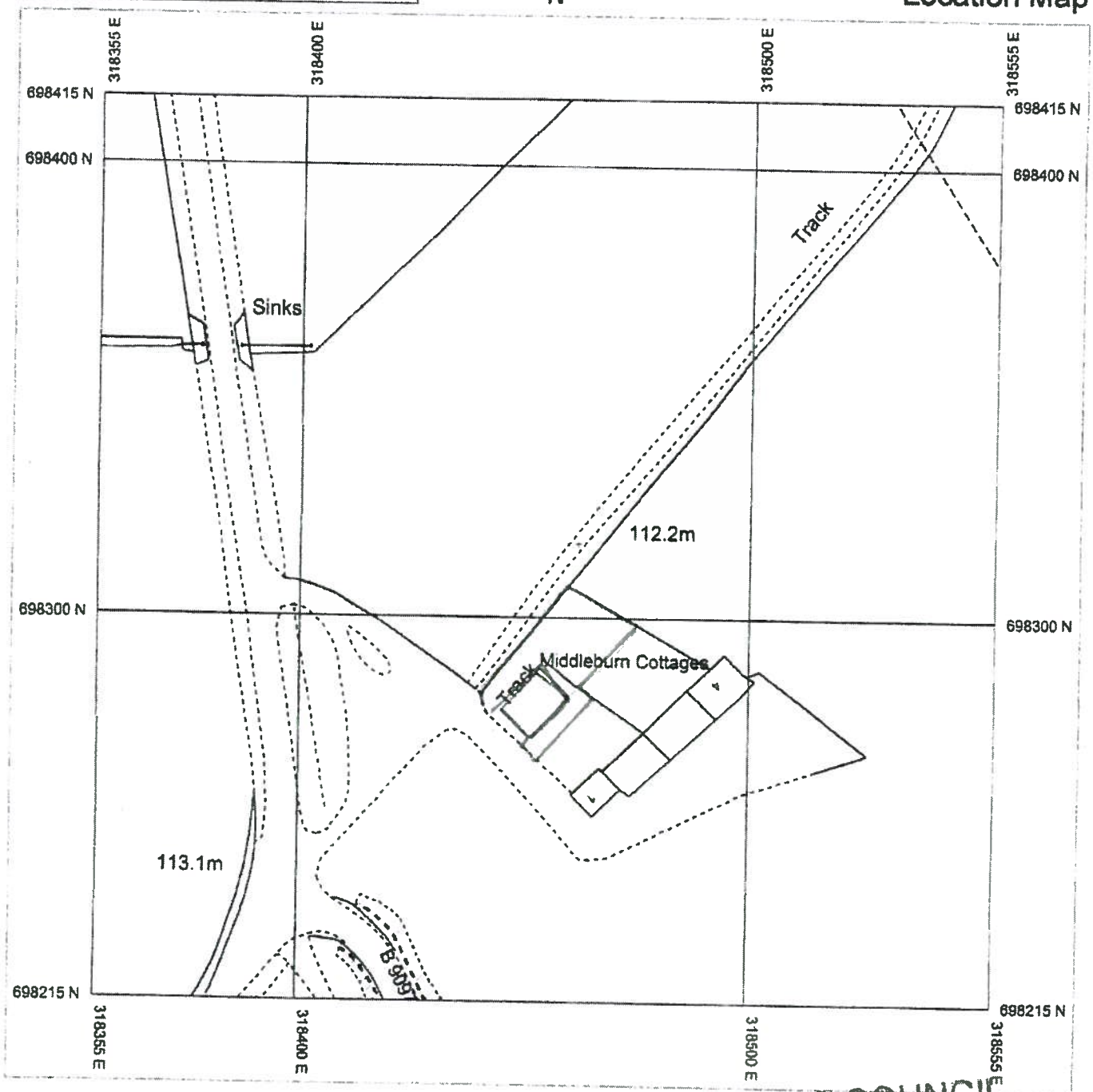
cc Mr I Bruce

Mapping
sourced from

OS Ordnance
Survey



Location Map



PERTH AND KINROSS COUNCIL

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of a property boundary.

0 20 40

Scale 1:1250

Supplied By: **R T Hutton Planning**

Serial number: 001092501

Plot Centre Coordinates: 318455, 698315

DRAWING REF: 13/01482/1

Perth & Kinross Council

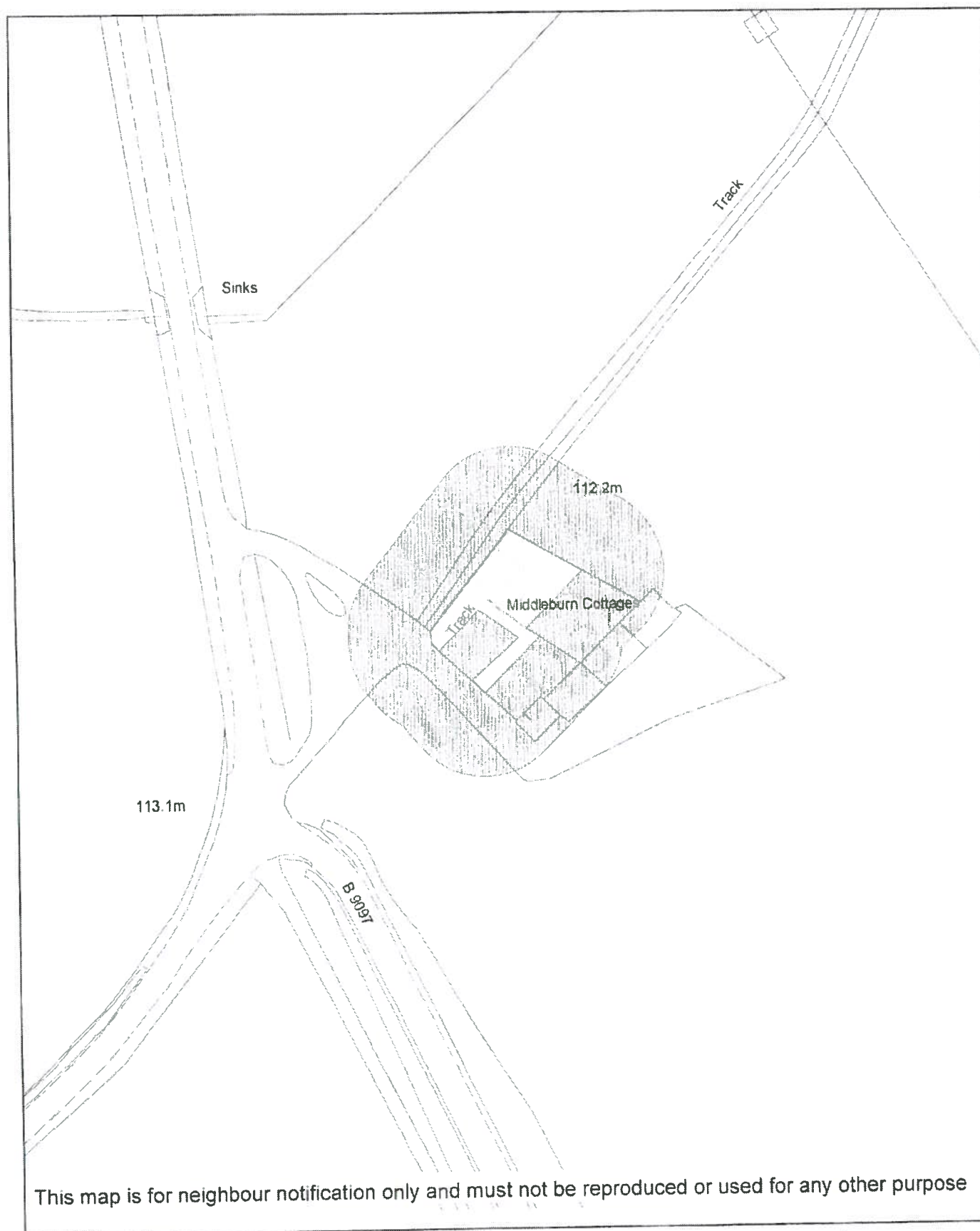
NEIGHBOUR NOTIFICATION

Location Plan showing planning application site



PERTH &
KINROSS
COUNCIL

The Environment
Service



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Planning and Regeneration
Head of Service David Littlejohn

Pullar House
35 Kinnoull Street, PERTH
PH1 5GD
Tel 01738 475300 Fax 01738 475310

Vermicon
c/o RT Hutton Planning Consultant The Malt
Kiln
2 Factors Brae
Limekilns
Fife
KY11 3HG

Telephone 01738 475300
Ref No 13/01482/FLL
Date 29th August 2013

Dear Sir / Madam,

Town and Country Planning (Scotland) Act, 1997 as amended by the Planning etc (Scotland) Act 2006

Payment Required for Advertisement Fee re Removal of conditions 2 and 3 (use of building and external storage) planning consent 11/01123/FLL at 3 Middleburn Cottages Kirkness Cardenden Lochgelly KY5 0HH

I refer to the above application. The Council has advertised this application as required by the Town and Country Planning (Development Management Procedure)(Scotland) Regulations 2008.

Under the Town and Country Planning (Charges for Publication of Notices)(Scotland) Regulations 2009 the cost of this advert must be paid by the applicant. In this case the **cost is £61.10**

Under these Regulations the payment must be made within **21 days** of this notification being received. The Council cannot determine the application until this payment has been received.

Payment, to Perth and Kinross Council, can be made:

- by post to this address using a cheque
- in person at this address using cheque, cash or debit or credit card
- by telephoning 01738 475300 and using debit or credit card

Please quote the reference number of your application when paying.

If the fee is not paid within 21 days we will treat the application as withdrawn. If the application is withdrawn, the application fee will not be returned. Under the Planning Fee regulations, the original applicant may submit a second similar application for the same site without paying a further planning application fee, providing that the second

PERTH AND KINROSS COUNCIL

Vermicon
c/o RT Hutton Planning Consultant
The Malt Kiln
2 Factors Brae
Limekilns
Fife
KY11 3HG

Pullar House
35 Kinnoull Street
PERTH
PH1 5GD

Date 6th November 2013

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT

Application Number: **13/01482/FLL**

I am directed by the Planning Authority under the Town and Country Planning (Scotland) Acts currently in force, to refuse your application registered on 22nd August 2013 for permission for **Removal of conditions 2 and 3 (use of building and external storage) planning consent 11/01123/FLL 3 Middleburn Cottages Kirkness Cardenden Lochgelly KY5 0HH** for the reasons undernoted.

Development Quality Manager

Reasons for Refusal

1. The removal of Conditions 2 and 3 would be detrimental to the visual amenity and residential amenity of the area which would be contrary to Policy 2 of the Kinross Area Local Plan (2004) and Policy PM1A of the Proposed Local Development Plan 2012.

Justification

The proposal is not in accordance with the Development Plan and there are no material reasons which justify departing from the Development Plan

Notes

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

13/01482/1

REPORT OF HANDLING

DELEGATED REPORT

Ref No	13/01482/FLL
Ward No	N8- Kinross-shire

PROPOSAL: Removal of conditions 2 and 3 (use of building and external storage) planning consent 11/01123/FLL

LOCATION: 3 Middleburn Cottages Kirkness Cardenden Lochgelly KY5 0HH

APPLICANT: Vermicon

RECOMMENDATION: REFUSE THE APPLICATION

SITE INSPECTION: 13 September 2013

OFFICERS REPORT:

The application is for the removal of conditions 2 and 3 (use of building and external storage) of planning consent 11/01123/FLL at 3 Middleburn Cottages, Kirkness, Cardenden. The previous application 11/01123/FLL for the Change of use of garden ground to industrial storage and erection of a steel frame garage with lean-to log store was refused by the Planning Authority. The applicant then appealed to the Local Review Body where the decision to refuse was overturned subject to conditions.

This application is to remove conditions 2 and 3;

Condition 2 This permission for the enclosed building element is for industrial storage purposes only. No repair or maintenance of machinery and equipment shall be undertaken from within the building or application site.

Condition 3 There shall be no external storage of machinery, materials or equipment associated with the industrial/business use of the building.

Additional information has been submitted regarding the historical use of the site and why the removal of the conditions would not lead to any significant loss of amenity.

Appraisal

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 as amended require that planning decisions are made in accordance with the development plan unless material considerations indicate otherwise. The adopted development plans that are applicable to this area are TAYplan 2012 and the Kinross Area Local Plan (KALP) 2004. The Proposed Local Development Plan (PLDP) 2012 is also a material consideration.

The considerations of this application are whether the removal of these conditions would have a detrimental impact on local amenity and the amenity of the immediately adjoining residences.

It is considered that the deletion of these conditions would be contrary to Policy 2 of the KALP as the policy seeks to ensure that development is compatible with its surroundings in land use terms and should not result in a significant loss of amenity to the local community. The proposal is also contrary to PLDP Policy PM1A which seeks to ensure that the siting of development should respect the amenity of the place.

Historical Use

The agent has stated that there is a history of industrial uses on the site although no planning consent exists in relation to the proposed use. The submission of the planning application in 2011 has clarified the current use of the site and this application must be related to what has been granted (which is the building only).

Storage Shed

The previous consent was limited to the erection of the storage shed only the agent argues however that as the shed has been approved the external storage can be considered in its new context; however the approval of the shed was to provide storage and therefore remove the need for external storage which was considered to affect the amenity of the area.

Residential amenity

The agent has also suggested a S75 to ensure that the dwellings and business are retained within the same ownership however this would not overcome the issues related to visual amenity. The agent has also suggested conditions to control the repair work to be undertaken but this would not satisfy Environmental Health.

Environmental Health

Environmental Health objected to the original proposal but did note that should consent be granted conditions should be added requiring all plant and equipment to be stored inside the building and that no repair or maintenance work to be carried out at any time. They see no justification in the removal of these conditions which although do not remove their amenity concerns, do go a limited way towards minimising the effects of use and operation on near neighbours.

Economic Benefits

The agent states in the supporting information that the inclusion of these conditions is having a detrimental impact on the applicants established business and mean that the business as run for 13 years from this site can no longer continue (no original planning permission for the use at the site exists).

Conclusion

I consider that there has no significant change in the circumstances pertaining to this application site the previous approval although limiting was seen to be improving the visual amenity by removing the external storage of materials and limiting operations

within the building to protect residential amenity. Without these conditions the proposal would not be acceptable.

I must also highlight that only conditions 2 and 3 have been requested for deletion and condition 1 would remain. Condition 1 states that

Condition1 Notwithstanding the description of proposed development and the submitted site plan, the change of use of garden ground to industrial storage shall be limited to the footprint of the new building- i.e. the concrete pad within the new structure only.

This condition therefore still limits the consent to the footprint of the building which would still prohibit external storage.

DEVELOPMENT PLAN

Kinross Area Local Plan 1995

K_002 Kinross Development Criteria

All developments within the Plan area will be judged against the following criteria:

a The site should have a landscape framework capable of absorbing, and if necessary, screening the development, and where appropriate opportunities for landscape enhancement will be sought.

B In the case of building development, regard should be had to the scale, form, colour and density of development within the locality.

C The development should be compatible with its surroundings in land use terms and should not result in a significant loss of amenity to the local community.

D The local road and public transport network should be capable of absorbing the additional traffic generated by the development and a satisfactory access onto that network provided.

E Where applicable, there should be sufficient spare capacity in drainage, water and education services to cater for the new development.

F The site should be large enough to accommodate the impact of the development satisfactorily in site planning terms.

G Buildings and layouts for new development should be designed so as to be energy efficient.

H Built development should, where possible, be located in those settlements which are the subject of inset maps.

Proposed Local Development Plan 2012

On the 30 January 2012 the Proposed Plan was published. The Council's current adopted Local Plans will eventually be replaced by the Local Development Plan. The Council's Development Plan Scheme sets out the timescale and stages leading to adoption. The Proposed Local Development Plan underwent a period of representation ending in April 2012 and is currently the subject of an examination, but it not expected that the Council will be in a position to adopt the Local Development Plan before December 2014. The Proposed Local Development Plan 2012 is a material consideration in the determination of this application, reflecting a more up to date view of the Council than those contained in the relevant adopted Local Plan.

The principal relevant policy is PM1A which seeks to ensure that the siting of development should respect the amenity of the place.

OTHER POLICIES

None specific

SITE HISTORY

00/01654/FUL --Extension to house and replacement of roof tiles at 21 November 2000

07/00470/FUL Extension to dwellinghouse 22 October 2007

11/01123/FLL Change of use of garden ground to industrial storage and erection of a steel frame garage with lean-to log store 14 September 2011 Application Refused

CONSULTATIONS/COMMENTS

Environmental Health	Cannot support the application due to loss of amenity arising from nearby/neighbouring land use.
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TARGET DATE: 22 October 2013

REPRESENTATIONS RECEIVED:

Number Received:	No letters received
Summary of issues raised by objectors:	N/A
Response to issues raised by objectors:	N/A

Additional Statements Received:

Environment Statement	Not required
Screening Opinion	Not required
Environmental Impact Assessment	Not required
Appropriate Assessment	Not required
Design Statement or Design and Access Statement	Not required
Report on Impact or Potential Impact eg Flood Risk Assessment	Not required

Legal Agreement Required:	No
Summary of terms	N/A
Direction by Scottish Ministers	No

Reasons:-

- 1 The removal of Conditions 2 and 3 would be detrimental to the visual amenity and residential amenity of the area which would be contrary to Policy 2 of the Kinross Area Local Plan (2004) and Policy PM1A of the Proposed Local Development Plan 2012.

Justification

The proposal is not in accordance with the Development Plan and there are no material reasons which justify departing from the Development Plan

Notes

Memorandum

To Development Quality Manager From Regulatory Service Manager

Your ref 13/01482/FLL

Our ref MP
Tel No 01738 476415

Date 28 October 2013

The Environment Service

Pullar House, 35 Kinnoull Street, Perth PH1 5GD

Consultation on an Application for Planning Permission

**RE: Removal of conditions 2 and 3 (use of external storage) planning consent 11/01123/FLL
3 Middleburn Cottages Kirkness Cardenden Lochgelly KY5 0HH**

Recommendation

I cannot support the application due to loss of amenity arising from nearby/neighbouring land use.

Comments

Condition 2 of application 11/01123/FLL states *"This permission for the enclosed building element is for industrial storage purposes only. No repair or maintenance of machinery and equipment shall be undertaken from within the building or application site."* This implies that the applicant wants to use this building as a workshop which is inherently more noisy than a storage facility.

Given that the closest noise sensitive dwelling is less than 20 metres from this site I cannot support this application. If you are minded to approve it I would recommend the applicant should employ a suitably qualified consultant to carry out a noise impact assessment to evaluate noise arising from this proposal and suggest suitable mitigation measures such that residential amenity is not lost.



