

TCP/11/16(293)

**Planning Application 13/01546/FLL - Removal of condition
No 2 from planning consent 13/00159/FLL to enable
agricultural unit to be used to house livestock**

PAPERS SUBMITTED BY THE APPLICANT



Our Ref: ep402/let014/ds

30th January 2014

Local Review Body
Perth & Kinross Council
2 High Street
Perth
PH1 5PH

Dear Sir/Madam

13/01546/FLL – REVIEW REQUEST AGAINST THE APPOINTED OFFICER’S DECISION TO REFUSE AN APPLICATION FOR PLANNING PERMISSION TO REMOVE CONDITION NO. 2 FROM PLANNING APPLICATION REFERENCE NUMBER 13/00159/FUL RELATING TO A PROPOSED AGRICULTURAL BUILDING (PART RETROSPECTIVE) AT CAIRNFOLD FARM, BLAIRINGONE, BY DOLLAR FK14 7ND

We write on behalf of our client, Mr. W Shortreed of W Shortreed & Son to lodge an appeal against the Appointed Officer’s Decision to Refuse an application for Planning Permission to remove Condition No. 2 from Planning Application Reference Number 13/00159/FUL relating to a proposed agricultural building at Cairnfold Farm, Blairingone, By Dollar which was originally granted subject to the condition on 22nd May 2013. Copies of the Planning Application and the Appointed Officer’s subsequent decision are contained in **Appendices 1 & 2** respectively.

The condition which was the subject of the application for removal stated the following:

‘2. The agricultural store, hereby approved, should not be used for the housing of livestock.

Reason – In order to safeguard the residential amenity of the area.’

Circular 4/1998 on ‘*The Use of Conditions in Planning Permissions*’ sets out Scottish Government policy on the use of conditions in planning permissions. Paragraph 2 of Circular 4/1998 states that

‘Planning conditions should only be imposed where they are:-

- *necessary (Paragraph 13-17 of Annex A)*
- *relevant to planning (Paragraph 18-22 of Annex A)*
- *relevant to the development to be permitted (Paragraph 23-24 of Annex A)*
- *enforceable (Paragraph 25-28 of Annex A)*
- *precise (Paragraph 29-32 of Annex A)*
- *reasonable in all other respects. (Paragraph 33-39 of Annex A)’*

We are firmly of the opinion that Condition No. 2 fails to meet the terms of the strict tests outlined in Circular 4/1998 for the following reasons:

- (i) Your Council approved a prior notification application for the erection of an agricultural building on the site on 03rd April 2012 under Reference Number 12/00490/PN. Class 18 (4) (a) (i) of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 as amended, equivocally states that an application can be made to a planning authority *'for a determination as to whether the prior approval of the authority will be required to the siting, design and external appearance of the building.'*

Whilst we appreciate that the prior notification application submitted on behalf of our client had indicated that the agricultural building would be used for the storage of agricultural machinery, equipment, tools and fodder there are **NO** powers within the Order referred to which permit your Council to control the agricultural use to which that building can subsequently be put. It is therefore evidently clear that our client would have been permitted to use the agricultural building approved under Reference Number 12/00490/PN for housing livestock had that building been erected. In further support of that position we attach as **Appendix 3** a copy of a legal opinion from Mr. Craig Adamson of HBJ Gateley which states inter-alia the following:

'Were the building described in the PN Notice to have been erected and initially used for the purposes stated in the PN Notice I cannot therefore see that there would have been any bar in terms of planning law to its being used subsequently for the housing of cattle.'
(Para. 14.)

Whilst we do not dispute the fact that the building which was subsequently erected by our client was larger than that shown in the prior notification application, due regard should have been given in the appointed officer's determination of the application relating to the larger building (Planning Application Reference Number 13/00159/FLL), to the fact that permission existed for a building on the site with a floor area of 360 sq metres which could be lawfully used for the housing of livestock. In the circumstances described it seems most inappropriate that your Council has imposed a condition preventing the use of the larger building for housing livestock when the smaller building approved under Application Reference 12/00490/PN could have been legitimately used for such purposes.

In the event of this review request being rejected our client would be quite within his rights to demolish the existing building and to erect a new agricultural building so that it corresponds with that permitted under Application Reference Number 12/00490/PN and to thereafter store cattle within that building. As noted in the legal opinion contained in **Appendix 3** the said building could *'be erected at any time before 19th March 2017.'* (Para 8). In the circumstances described it seems quite inappropriate that your Council should not agree to the removal of the condition so imposed. As described in the original application it would be akin to *'taking a sledge hammer to crack a nut'* or a *'punishment that does not fit the crime.'*

- (ii) It is imperative to point out in the context of this application that a very significant part of our client's income derives from the fattening of livestock in the agricultural building which has been erected by him. Whilst the agricultural building may be larger than the

one permitted under Application Reference Number 12/00490/PN the circumstances which led to the erection of the larger livestock building were tied up in bankruptcy proceedings associated with the company who erected it. In short, our client, having paid for the building in advance, had no choice but to erect the larger building or to lose the monies he had already paid for it. He did not consider for a moment that the Council, having not required prior approval for the erection of the smaller building would impose a condition preventing the housing of livestock in the larger building on grounds relating to odour and smell nuisance.

- (iii) We note that reference was made in your Environmental Health Manager's consultation response to Planning Application Reference Number 13/00159/FLL to the Code of Practice for the Prevention of Environmental Pollution from Agricultural Activity which recommends that new livestock buildings should not be within 400 metres of residential properties and where possible should be downwind of residential areas. Whilst your Environmental Health Manager recommended the imposition of the condition now being applied for removal due to the existence of nine residential properties within 100 metres of the site and the potential for odour and noise nuisance arising as a result of this we have learned that the same Department did not object to the formation of an equestrian business lying only 80 metres from the same residential developments under Planning Application Reference Number 11/01839/FLL. In that case they simply recommended conditions relating to noise and the submission of a waste management plan to control the storage and removal of manure. Given that our client's agricultural building is dry (bedded with straw) and that it will be cleaned out on a fortnightly basis with the waste being spread on another neighbouring farm would it not have been entirely appropriate to have dealt with it in a similar manner? Indeed serious questions must be asked of officials as to why both applications have not been dealt with in a similar manner.
- (iv) The application site is located within a rural area where there are a number of livestock based rural enterprises in existence all of which create smells and noises associated with such enterprises. People who live in the countryside are aware of this and choose to live with those characteristics in existence.

In light of the considerations described above it is respectfully requested that the Review Request be granted and that the condition preventing the use of the building for housing livestock be removed. Please acknowledge receipt and registration of the Request at your earliest convenience.

Yours faithfully



Derek Scott

cc. W Shortreed

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 MR. W. SHORTREED

Address W SHORTREED AND SON
CAIRNFOLD FARM
DOLLAR
CLACKMANNAN FK14 7ND

Postcode CLACKMANNAN FK14 7ND

Contact Telephone 1 —

Contact Telephone 2 —

Fax No —

E-mail* —

Agent (if any)

Name MR. DEREK SCOTT

Address DEREK SCOTT PLANNING
UNIT 9,
DUNFERMLINE BUSINESS CENTRE
12 ATT AVENUE
DUNFERMLINE KY11 3BZ

Postcode DUNFERMLINE KY11 3BZ

Contact Telephone 1 01383 620 300

Contact Telephone 2 07802 431 976

Fax No 01383 844999

E-mail* scott.planning@btconnect.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 AND KINROSS COUNCIL

Planning authority's application reference number

13/01546/FLL

Site address

CAIRNFOLD FARM, DOLLAR, CLACKMANNAN

Description of proposed
development

AGRICULTURAL BUILDING (REMOVAL OF CONDITION)

Date of application

20/08/13

Date of decision (if any)

28/11/13

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) ☐
2. Application for planning permission in principle ☐
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) ☒
4. Application for approval of matters specified in conditions ☐

Reasons for seeking review

1. Refusal of application by appointed officer ☒
2. Failure by appointed officer to determine the application within the period allowed for determination of the application ☐
3. Conditions imposed on consent by appointed officer ☐

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 ☒
2. One or more hearing sessions ☐
3. Site inspection ☐
4. Assessment of review documents only, with no further procedure ☐

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:

We reserve the right to comment on any third party submissions made in connection with this appeal.

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 REFER TO ATTACHED COVERING LETTER

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.

N/A

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.

PLEASE REFER TO ATTACHED COVERING LETTER

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



Date

30/01/14.



APPENDIX 1



Our Ref: ep402/let013/ds

20th August 2013

The Development Quality Manager
The Environment Service
Perth & Kinross Council
Pullar House
35 Kinnoull Street
Perth
PH1 5DG

Dear Sir/Madam

**PLANNING APPLICATION TO REMOVE CONDITION NO. 2 FROM PLANNING APPLICATION
REFERENCE NUMBER 13/00159/FUL RELATING TO A PROPOSED AGRICULTURAL BUILDING
(PART RETROSPECTIVE) AT CAIRNFOLD FARM, BLAIRINGONE, BY DOLLAR FK14 7ND**

Further to our recent discussions with your Department's Enforcement Officer, Mr. Ray Short, please find attached for your attention an application to remove Condition No. 2 from Planning Application Reference Number 13/00159/FUL relating to a proposed agricultural building at Cairnfold Farm, Blairingone, By Dollar which was originally granted subject to the condition on 22nd May 2013. The said condition now sought for removal stated the following:

'2. The agricultural store, hereby approved, should not be used for the housing of livestock.

Reason – In order to safeguard the residential amenity of the area.'

Circular 4/1998 on 'The Use of Conditions in Planning Permissions' sets out Scottish Government policy on the use of conditions in planning permissions. Paragraph 2 of Circular 4/1998 states that

'Planning conditions should only be imposed where they are:-

- *necessary (Paragraph 13-17 of Annex A)*
- *relevant to planning (Paragraph 18-22 of Annex A)*
- *relevant to the development to be permitted (Paragraph 23-24 of Annex A)*
- *enforceable (Paragraph 25-28 of Annex A)*
- *precise (Paragraph 29-32 of Annex A)*
- *reasonable in all other respects. (Paragraph 33-39 of Annex A)'*

We are firmly of the opinion that Condition No. 2 fails to meet the terms of the strict tests outlined in Circular 4/1998 for the following reasons:

- (i) Your Council approved a prior notification application for the erection of an agricultural building on the site on 03rd April 2012 under Reference Number 12/00490/PN. As you will be aware Class 18 (4) (a) (i) of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 as amended, equivocally states that an application can be made to a planning authority *'for a determination as to whether the prior approval of the authority will be required to the siting, design and external appearance of the building.'* Whilst I appreciate that the prior notification application submitted on behalf of our client had indicated that the agricultural building would be used for the storage of agricultural machinery, equipment, tools and fodder there are **no** powers within the Order referred to which permit your Council to control the agricultural use to which that building can subsequently be put. It is therefore evidently clear that our client would have been permitted to use the agricultural building approved under Reference Number 12/00490/PN for housing livestock had that building been erected.

Whilst we do not dispute the fact that the building which was subsequently erected by our client was larger than that shown in the prior notification application due regard should have been given in the determination of the application relating to the larger building (Planning Application Reference Number 13/00159/FLL) to the fact that permission existed for a building on the site with a floor area of 360 sq metres which could be lawfully used for the housing of livestock. In the circumstances described it seems most inappropriate that your Council has imposed a condition preventing the use of the larger building for housing livestock when the smaller building approved under Application Reference 12/00490/PN can be legitimately used for such purposes. Our client could reduce the size of the existing building so that it corresponds with that permitted under Application Reference Number 12/00490/PN. Whilst that would leave your Council powerless in the set of circumstances described it really would be a case of *'taking a sledge hammer to crack a nut.'*

- (ii) It is imperative to point out in the context of this application that a very significant part of our client's income derives from the fattening of livestock in the agricultural building which has been erected by him. Whilst the agricultural building may be larger than the one permitted under Application Reference Number 12/00490/PN the circumstances which led to the erection of the larger livestock building were tied up in bankruptcy proceedings associated with the company who erected it. In short, our client, having paid for the building in advance, had no choice but to erect the larger building or to lose the monies he had already paid for it. He did not consider for a moment that the Council, having not required prior approval for the erection of the smaller building would impose a condition preventing the housing of livestock in the larger building on grounds relating to odour and smell nuisance. We attach in further support of the application a copy of a letter received from Mr. James Buchanan – SAC Consulting.
- (iii) We note that reference was made in your Environmental Health Manager's consultation response to Planning Application Reference Number 13/00159/FLL to the Code of Practice for the Prevention of Environmental Pollution from Agricultural Activity which recommends that new livestock buildings should not be within 400 metres of residential properties and where possible should be downwind of residential areas. Whilst your Environmental Health Manager recommended the imposition of the condition now being applied for removal due to the existence of nine residential properties within 100 metres

of the site and the potential for odour and noise nuisance arising as a result of this we have learned that the same Department did not object to the formation of an equestrian business lying only 80 metres from the same residential developments under Planning Application Reference Number 11/01839/FLL. In that case they simply recommended conditions relating to noise and the submission of a waste management plan to control the storage and removal of manure. Given that our client's agricultural building is dry (bedded with straw) and that it will be cleaned out on a fortnightly basis with the waste being spread on another neighbouring farm would it not have been entirely appropriate to have dealt with it in a similar manner? Indeed serious questions must be asked of officials as to why both applications have not been dealt with in a similar manner.

- (iv) The application site is located within a rural area where there are a number of livestock based rural enterprises in existence all of which create smells and noises associated with such enterprises. People who live in the countryside are aware of this and choose to live with those characteristics in existence.

In light of the considerations described above it is respectfully requested that the current application is granted and the condition preventing the use of the building for housing livestock removed. We enclose for your attention 4 no. copies of the application forms and accompanying certificates, 4 no. copies of a location plan and a cheque for the sum of £192.00 made payable to Perth and Kinross Council. Please acknowledge receipt and registration of the application at your earliest convenience.

Yours faithfully



Derek Scott

cc. W Shortreed

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.	Ref No.	EP402
Forename	WILLIAM	Forename	DEREK
Surname	SHORTREED	Surname	SCOTT
Company Name	W SHORTREED & SON	Company Name	DEREK SCOTT PLANNING
Building No./Name	CAIRNFOLD FARM	Building No./Name	UNIT 9, DUNFERMLINE
Address Line 1	BY DOLLAR	Address Line 1	BUSINESS CENTRE,
Address Line 2	CLACKMANNAN	Address Line 2	12 ATT AVENUE
Town/City		Town/City	DUNFERMLINE
Postcode	FK14 7ND	Postcode	KY11 3BZ
Telephone	—	Telephone	01383 620 300
Mobile	—	Mobile	07802 431 970
Fax	—	Fax	01383 844 999
Email	—	Email	scott.planning@btconnect.com
3. Postal Address or Location of Proposed Development (please include postcode)			
CAIRNFOLD FARM, BLAIRINGONE, BY DOLLAR FK14 7ND			
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:	13/00159/FLL	Date:	22/05/13

****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 CONDITION NO 2 FROM PLANNING APPLICATION
REFERENCE NUMBER 13/00159/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: 2012

Date completed:

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

PERMISSION GRANTED UNDER PLANNING APPLICATION REFERENCE
NUMBER 13/00159/FLL

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: RAY SHORT

Date: 14/08/13

Ref No.:

7. Site Area

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

Hectares (ha):

Square Metre (sq.m.)

1787.5 m²

8. Existing Use

Please describe the current or most recent use:

AGRICULTURAL

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?

N/A

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)

N/A

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

☐

N/A

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)

☐

N/A

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:

AGRICULTURAL

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

Proposed gross floorspace (sq.m.):

600 m²

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

☒

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:

DEREK SCOTT PLANNING

Date:

20/08/13

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 myself 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:

Date:

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
	LAND OWNED BY APPLICANT MR. W SHORTREED	20/08/13

- (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: ☒

Name	Address	Date of Service of Notice
	NO AGRICULTURAL TENANTS. LAND OWNED AND FARMED BY MR. W. SHORTREED	20/08/13

CERTIFICATE C

Certificate C 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 it has not been possible to identify ALL or ANY owners/agricultural tenants.

- (1) I have been unable to serve 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. ☐
- or
- (2) I have been unable to serve notice on **any** person other than myself who, at the beginning of the period of 21 days ending with the date of the accompanying application, was owner of any part of the land to which the application relates. ☐
- (3) None of the land to which the application relates constitutes or forms part of an agricultural holding. ☐
- or
- (4) The land or part of the land to which the application relates constitutes or forms part of an agricultural holding and I have been unable to serve notice on any person other than myself who, at the beginning of the period of 21 days ending with the date of the accompanying application was an agricultural tenant. ☐
- or
- (5) The land or part of the land to which the application relates constitutes or forms part of an agricultural holding I have served notice on each of the following persons 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: ☐

Name	Address	Date of Service of Notice

- (6) I have taken reasonable steps, as listed below, to ascertain the names and addresses of all other owners or agricultural tenants and have been unable to do so.

Steps taken:

CERTIFICATE D
Certificate D

Certificate D is for use where the application is for mineral development.

- (1) No person other than myself _____ was an 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 accompanying application. ☐

or

- (2) I have _____ served notice on each of the following persons other than myself who, at the beginning of the period of 21 days ending with the date of the accompanying application, was to the applicant's knowledge, the owner, of any part of the land to which the application relates. These persons are: ☐

Name	Address	Date of Service of Notice

- (3) None of the land to which the application relates constitutes or forms part of an agricultural holding. ☐

or

- (4) The land or part of the land to which the application relates constitutes or forms part of an agricultural holding and I have _____ served notice on each of the following persons other than myself who, at the beginning of the period of 21 days ending with the date of the application, was an agricultural tenant. ☐

- (5) Notice of the application as set out below has been published and displayed by public notice ☐

Signed: _____

On behalf of:*

Mr. W. SHORTREE

Date:

20/08/13

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

PERTH AND KINROSS COUNCIL

W Shortreed And Son
Derek E Scott Planning
Unit 9 Dunfermline Business Centre
Izatt Aveue
Dunfermline
KY11 3BZ

Pullar House
35 Kinnoull Street
PERTH
PH1 5GD

Date 22 May 2013

Town and Country Planning (Scotland) Acts.

Application Number **13/00159/FLL**

I am directed by the Planning Authority under the Town and Country Planning (Scotland) Acts currently in force, to grant your application registered on 25th January 2013 for planning permission for Erection of an agricultural building (partly in retrospect) Cairnfold Farm Blairingone subject to the undernoted conditions.


Development Quality Manager

Conditions Referred to Above

1. The proposed development must be carried out in accordance with the approved drawings and documents, unless otherwise provided for by conditions imposed on the planning consent.
2. The agricultural store, hereby approved, should not be used for the housing of livestock.

Reasons for Conditions

1. To ensure that the development is carried out in accordance with the plans approved.
2. In order to safeguard the residential amenity of the area.

Justification

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

Notes

- 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 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 No work shall be commenced until an application for building warrant has been submitted and approved.
- 4 The Coal Authority's records indicate that there is a mine entry within close proximity to the application site. In the event that any evidence of the mine entry is found during the proposed development, development works should cease and The Coal Authority should be contacted. Under the Coal Industry Act 1994 any intrusive activities, including initial site investigation boreholes, and/or any subsequent treatment of coal mine workings/coal mine entries for ground stability purposes require the prior written permission of The Coal Authority, since such activities can have serious public health and safety implications. Failure to obtain permission will result in trespass, with the potential for court action. Application forms for Coal Authority permission and further guidance can be obtained from The Coal Authority's website at: www.coal.gov.uk/services/permissions/index.cfm

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

13/00159/1



Mr. Derek Scott
Derek Scott Planning
Unit 9
Dunfermline Business Centre
Izatt Avenue
Dunfermline
Fife
KY 12 ONJ

1st Floor Sandpiper House
Ruthvenfield Road
Inveralmond Industrial Estate
PERTH PH1 3EE

t: +44 (0)1738 636611
f: +44 (0)1738 627860
e: James.Buchanan@sac.co.uk
w: www.sruc.ac.uk

Our Ref: JB

19th August 2013

Dear Mr. Scott

Agricultural Building at Cairnfold Farm, Blairingone, By Dollar FK14 7ND

I have been asked by Mr W Shortreed to comment on the condition imposed by the planning department that his building should not be used for the housing of livestock in order to protect the residential amenity of the area. The area in question within which the agricultural building exists is largely open countryside where agricultural and equine activities and the smells associated with each take place. Those who choose to live in open countryside areas should be aware of these considerations prior to making the decision of doing so.

As the owner of the agricultural land surrounding the building Mr Shortreed has the ability to keep cattle or other livestock. The majority of cattle are housed at some point during the calendar year. The current planning conditions are denying him this right and therefore this will have a negative effect on the welfare of his cattle and the business that Mr Shortreed is operating, not to mention a far greater negative effect on the amenity of the area, if they are not allowed to be housed.

I would suggest that Mr Shortreed could carry out agricultural activity on his land which could have far greater detriment to the amenity of the area than the current practise of keeping livestock in a building. I would therefore have no hesitation in supporting Mr Shortreed's application to remove the condition which prevents him from housing livestock in the agricultural building.

Yours sincerely

James Buchanan
Farm Business Consultant

SAC Consulting is a division of SRUC

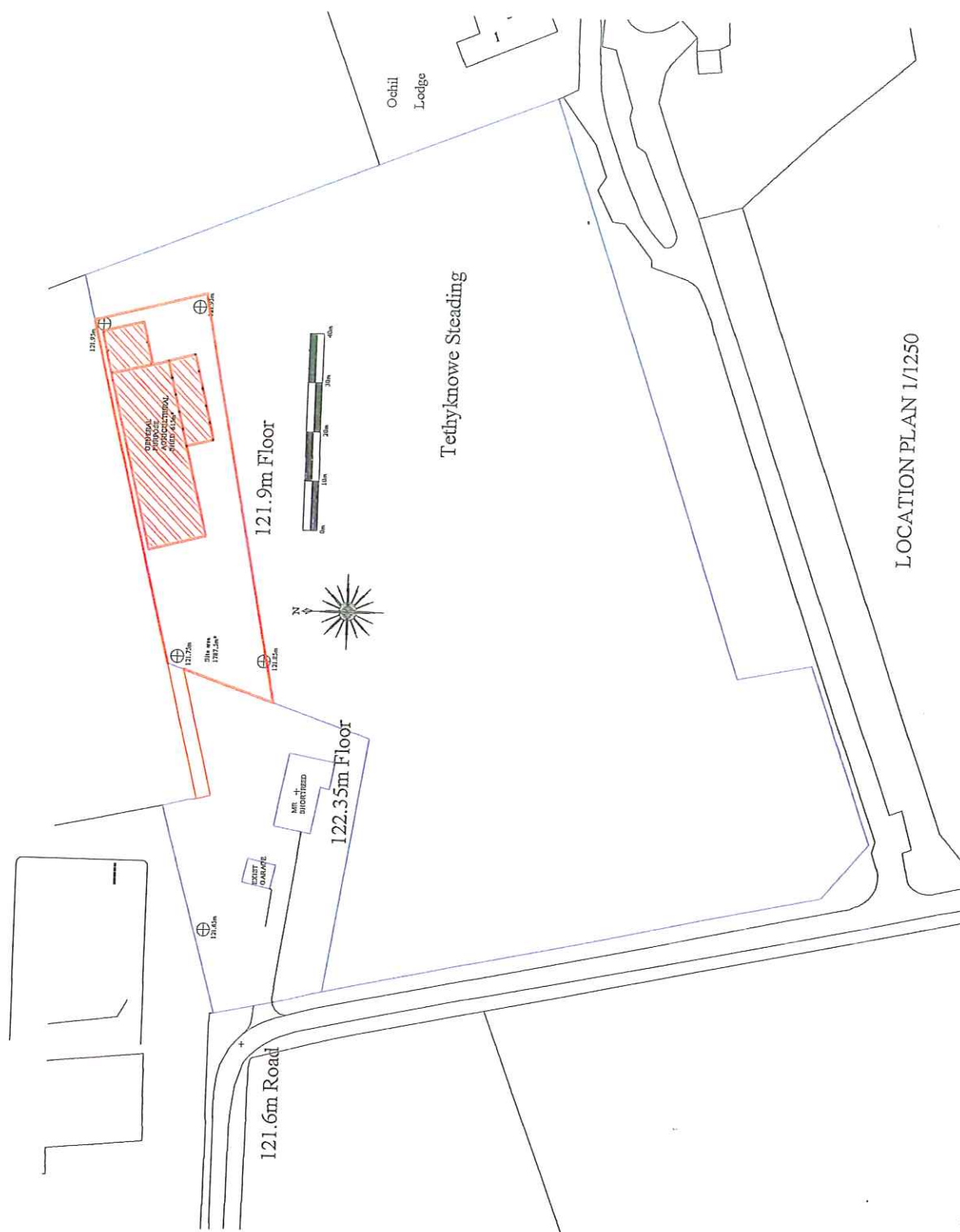
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SAC Commercial Limited: An SRUC company. Registered in Scotland. Company Number: SC14884. Registered Office: Peter Wilson Building, Kings Buildings, West Mains Road, Edinburgh EH9 3JG.



Note

Sheds constructed in steel frame
with timber cladding



LOCATION PLAN 1/1250

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APPENDIX 2

PERTH AND KINROSS COUNCIL

W Shortreed And Son
c/o Derek Scott Planning
FAO Derek Scott
Unit 9
Dunfermline
Business Centre
IZATT Avenue
Dunfermline
KY11 3BZ

Pullar House
35 Kinnoull Street
PERTH
PH1 5GD

Date 28th November 2013

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT

Application Number: **13/01546/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 condition No 2 from planning consent 13/00159/FLL to enable agricultural unit to be used to house livestock Cairnfold Farm Blairingone** for the reasons undernoted.


Development Quality Manager

Reasons for Refusal

1. Removal of condition 2 would be detrimental to residential amenity contrary to Policy 2 of the Kinross Area Local Plan 2004.

Justification

2. 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

13/01546/FLL



APPENDIX 3

Derek Scott Planning
Unit 9 , Dunfermline Business Centre
Izatt Avenue
Dunfermline
KY11 3BZ

Date 27 January 2014
Our ref: SCO.389.1/CA
Your ref: Blairingone
Direct tel: +44 (0) 131 222 9474
Direct fax: +44 (0) 131 222 9800
E-mail: CAdamson@hbjgateley.com

Dear Sirs

**Cairnfold Farm – Blairingone
Prior Notification 12/00490/PN – Proposed Agricultural Building**

In connection with your intention to lodge an application seeking review of the refusal by Perth and Kinross Council ("the Council") of planning application 13/01546/FLL you have approached my firm and asked for a Legal Opinion regarding prior notification reference 12/00490/PN and in particular on the development authorised in terms of that prior notification process.

Experience and Qualifications

I would confirm that my name is Craig Adamson. I am a solicitor practising principally in land use planning law and related areas and I have been employed since January 2008 by the law firm HBJ Gateley to advise on such matters.

I was admitted to the Law Society of Scotland in 1990 and now have well over twenty years experience of providing advice on planning legislation and procedure. I obtained an LLB (Hons) Degree and the Diploma in Legal Practice from Edinburgh University and was previously employed as an in-house solicitor by East Lothian District Council (1991 – 1996), East Lothian Council (1996 – 2004 and City of Edinburgh Council (2004 – January 2008) in which capacity I specialised in the provision to those authorities of legal advice concerning land use planning matters. I am currently accredited as a planning law specialist by the Law Society of Scotland and I also a member of the Law Society of Scotland's Planning Law Sub-Committee.

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www.hbjgateley.com

I have a good deal of previous experience of advising on permitted development rights under the Town and Country Planning (GPDO) Order (Scotland) 1992 as amended ("the 1992 GPDO").

Opinion

I have reviewed the prior notification application documentation and the Council's response and I have also considered these documents against the applicable legislative provisions. We have also discussed this case.

My Opinion, based on the information with which you have provided me, is as follows : -

1. The Town and Country Planning (Scotland) Act 1997 ("the 1997 Act") provides that agricultural use of land and the use for such purposes of any building occupied together with land so used does not constitute development (*Section 26 of 1997 Act*). The term "agriculture" has a very broad meaning in the 1997 Act. It is defined in the following terms :-

"agriculture" includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly;

2. The erection of a new building on agricultural land however constitutes development requiring planning permission (whether by way of express permission or by way of permitted development rights) and so it is therefore necessary next to consider the permitted development rights conferred by the 1992 GPDO.

3. Paragraph (1) of Class 18 of the 1992 GPDO grants permitted development rights in respect of the following development : -

(1) The carrying out on agricultural land comprised in an agricultural unit of-
(a) works for the erection, extension or alteration of a building;
(b) the formation, alteration or maintenance of private ways; or
(c) any excavation or engineering operations,
requisite for the purposes of agriculture within that unit.

In this case we are considering development in terms of paragraph (1)(a) of Class 18 – i.e. works to erect a new building.

4. Paragraph (2) of Class 18 sets out the circumstances in which the permitted development rights afforded by paragraph (1) of Class 18 will not apply. Examples of development which would not be permitted would be where the development proposed comprises the erection, extension, or alteration of a dwelling or, for example, where the development would result in the height of any part of a building, structure or works within 3 kilometres of the perimeter of an aerodrome exceeding 3 metres.

5. Erection of an agricultural building not exceeding 465 square metres in size, which building is requisite for the purposes of agriculture within the unit and the erection of which building is otherwise not in contravention of the restrictions contained in paragraphs (a) to (h) of paragraph (2) of Class 18 of the 1992 GPDO qualifies as permitted development provided the developer complies with the prior notification procedure set out in sub-paragraphs (a) (i) to (v) of paragraph (4) of Class 18 of the 1992 GPDO. In terms of the prior

notification procedure the planning authority is given the opportunity to control, by virtue of further approval, the siting, design and external appearance of the building proposed.

6. In this case prior notification was given to the Council in respect of the proposed erection of an agricultural building of an area of 360 square metres to be constructed in accordance with the details which accompanied your letter of 15th March 2012 ("the PN Notice"). My understanding, on the basis of our discussions, is that the building referred to in the PN notice is indeed located on agricultural land comprised in an agricultural unit and that its construction would not be in contravention of the restrictions set out in sub-paragraphs (a) to (h) of paragraph (2) of Class 18 of the 1992 GPDO.

7. I note that in response to the PN Notice the Council confirmed by way of letter dated 3rd April 2012 that it was not the Council's intention to request additional information, that erection of the "buildings" (sic) proposed was therefore permitted development and that no further consent was required. Presumably the Council was satisfied that the proposed building was requisite for the purposes of agriculture within the unit. I am not aware of any reason why the permitted rights afforded by the 1992 GPDO should not apply at this location in relation to the development proposed. There is, I am advised, no Article 4 Direction in force which would have the effect of disapplying Class 18 and, on the basis of the information available to me, it is most unlikely that the development proposed would have invoked a requirement for an Environmental Impact Assessment exercise to be carried out.

8. Paragraph (4)(a)(v) of Class 18 of the 1992 GPDO applies a 5 year time limit for carrying out the erection of the building referred to in the PN Notice. In this case the 5 year period started to run from the date on which the Council were given the information which you sent under cover of your letter dated 15th March 2012. I understand that this letter was received by the Council on 19th March 2012. The building could therefore be erected at any time before 19th March 2017.

9. Were such a building to have been built and initially brought into use for the purpose stated in the PN Notice the only restriction on subsequent use of that building (because it lies within 400m of "protected buildings" - see next paragraph) would have been the condition imposed by paragraph (3)(a) of Class 18 of the 1992 GPDO. That condition is to the effect that the building could not be used for housing pigs, poultry, rabbits or animals bred for their skin or fur.

10. The term "protected building" is defined in the 1992 GPDO as meaning any permanent building which is normally occupied by people or would be so occupied if it were in use for the purposes for which it is apt but which does not include any building within the agricultural unit or and dwelling or other building on another agricultural unit which is used for or in connection with agriculture.

11. My understanding is that in this case protected buildings are located within 400 metres of the building described in the PM Notice and therefore the condition imposed by paragraph (3)(a) of Class 18 of the 1992 GPDO does indeed apply.

12. I understand that your clients wish to keep cattle (for fattening purposes) within the building the erection of which was subsequently consented at this location.

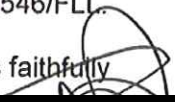

13. My view is that such cattle are not commonly understood to be "animals bred for their skin or fur". I am however not aware of any caselaw on this particular point.

14. Were the building described in the PN Notice to have been erected and initially used for the purposes stated in the PN Notice I cannot therefore see that there would have been any bar in terms of planning law to its being used subsequently for the housing of cattle.

I trust this deals with the issues at hand.

Please note that this Opinion is provided solely for your use in connection with your intended application for review in respect of the Council's refusal of application 13/01546/FLL.

Yours faithfully



Craig Adamson
Head of Planning Scotland