TCP/11/16(471) – 16/01937/FLL – Erection of a dwellinghouse (in retrospect) on land at Hillview, Kinloch, Blairgowrie, PH10 6SD

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TCP/11/16(471) – 16/01937/FLL – Erection of a dwellinghouse (in retrospect) on land at Hillview, Kinloch, Blairgowrie, PH10 6SD

PAPERS SUBMITTED BY THE APPLICANT

Pullar House 35 Kinnoull Street Perth PH1 5GD Tel: 01738 475300 Fax: 01738 475310 Email: onlineapps@pkc.gov.uk

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100041649-001

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

Applicant or Agent Details

Are you an applicant or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application) ☐ Applicant ☒ Agent

Agent Details

Please enter Agent details

Company/Organisation:	Seath Planning Consultancy Ltd		
Ref. Number:		You must enter a Building Name or Number, or both: *	
First Name: *	ALAN	Building Name:	
Last Name: *	SEATH	Building Number:	88
Telephone Number: *	07731690473	Address 1 (Street): *	Scott Road
Extension Number:		Address 2:	
Mobile Number:		Town/City: *	Glenrothes
Fax Number:		Country: *	Scotland
		Postcode: *	KY6 1AE
Email Address: *	a_seath@sky.com		

Is the applicant an individual or an organisation/corporate entity? *

☐ Individual ☒ Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title:	Mr	You must enter a Building Name or Number, or both: *	
Other Title:		Building Name:	Hillview
First Name: *	George	Building Number:	
Last Name: *	Burke	Address 1 (Street): *	Kinloch
Company/Organisation	Appellant	Address 2:	
Telephone Number: *		Town/City: *	Blairgowrie
Extension Number:		Country: *	Scotland
Mobile Number:		Postcode: *	PH10 6SD
Fax Number:			
Email Address: *			

Site Address Details

Planning Authority: Perth and Kinross Council

Full postal address of the site (including postcode where available):

Address 1:	
Address 2:	
Address 3:	
Address 4:	
Address 5:	
Town/City/Settlement:	
Post Code:	

Please identify/describe the location of the site or sites

Northing	744943	Easting	314477

Description of Proposal

Please provide a description of your proposal to which your review relates. The description should be the same as given in the application form, or as amended with the agreement of the planning authority: *
(Max 500 characters)

Change of use of from existing agricultural shed to a 3 bedroom dwelling [changed by the planning authority to "Erection of a dwellinghouse (in retrospect)" without agreement of the Appellant]

Type of Application

What type of application did you submit to the planning authority? *

☒ Application for planning permission (including householder application but excluding application to work minerals).

☐ Application for planning permission in principle.

☐ Further application.

☐ Application for approval of matters specified in conditions.

What does your review relate to? *

☒ Refusal Notice.

☐ Grant of permission with Conditions imposed.

☐ No decision reached within the prescribed period (two months after validation date or any agreed extension) – deemed refusal.

Statement of reasons for seeking review

You must state in full, why you are a seeking a review of the planning authority's decision (or failure to make a decision). Your statement must set out all matters you consider require to be taken into account in determining your review. If necessary this can be provided as a separate document in the 'Supporting Documents' section: * (Max 500 characters)

Note: you are unlikely to have a further opportunity to add to your statement of appeal at a later date, so it is essential that you produce all of the information you want the decision-maker to take into account.

You should not however raise any new matter which was not before the planning authority at the time it decided your application (or at the time expiry of the period of determination), unless you can demonstrate that the new matter could not have been raised before that time or that it not being raised before that time is a consequence of exceptional circumstances.

See supporting 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 the new matter, why it was not raised with the appointed officer before your application was determined and why you consider it should be considered in your review: * (Max 500 characters)

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. You can attach these documents electronically later in the process: * (Max 500 characters)

See Appendix 1 in supporting statement

Application Details

Please provide details of the application and decision.

What is the application reference number? * 16/01937/FLL

What date was the application submitted to the planning authority? * 14/11/2016

What date was the decision issued by the planning authority? * 24/02/2017

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.

Can this review continue to a conclusion, in your opinion, based on a review of the relevant information provided by yourself and other parties only, without any further procedures? For example, written submission, hearing session, site inspection. *

☐ Yes ☒ No

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

Please select a further procedure *

Holding one or more hearing sessions on specific matters

Please explain in detail in your own words why this further procedure is required and the matters set out in your statement of appeal it will deal with? (Max 500 characters)

The handling of the planning application is the subject of a complaint. The Appellant and his representatives would wish to have the opportunity to explain all the circumstances and for the LRB to visit the site (see statement and document 1.4)

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

Can the site be clearly seen from a road or public land? * ☐ Yes ☒ No

Is it possible for the site to be accessed safely and without barriers to entry? * ☒ Yes ☐ No

If there are reasons why you think the local Review Body would be unable to undertake an unaccompanied site inspection, please explain here. (Max 500 characters)

No

Checklist – Application for Notice of Review

Please complete the following checklist to make sure you have provided all the necessary information in support of your appeal. Failure to submit all this information may result in your appeal being deemed invalid.

Have you provided the name and address of the applicant?. * ☒ Yes ☐ No

Have you provided the date and reference number of the application which is the subject of this review? * ☒ Yes ☐ No

If you are the agent, acting on behalf of the applicant, have you provided details of your name and address and indicated whether any notice or correspondence required in connection with the review should be sent to you or the applicant? * ☒ Yes ☐ No ☐ N/A

Have you provided a statement setting out your reasons for requiring a review and by what procedure (or combination of procedures) you wish the review to be conducted? * ☒ Yes ☐ No

Note: 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. 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.

Please attach a copy of all documents, material and evidence which you intend to rely on (e.g. plans and Drawings) which are now the subject of this review * ☒ Yes ☐ No

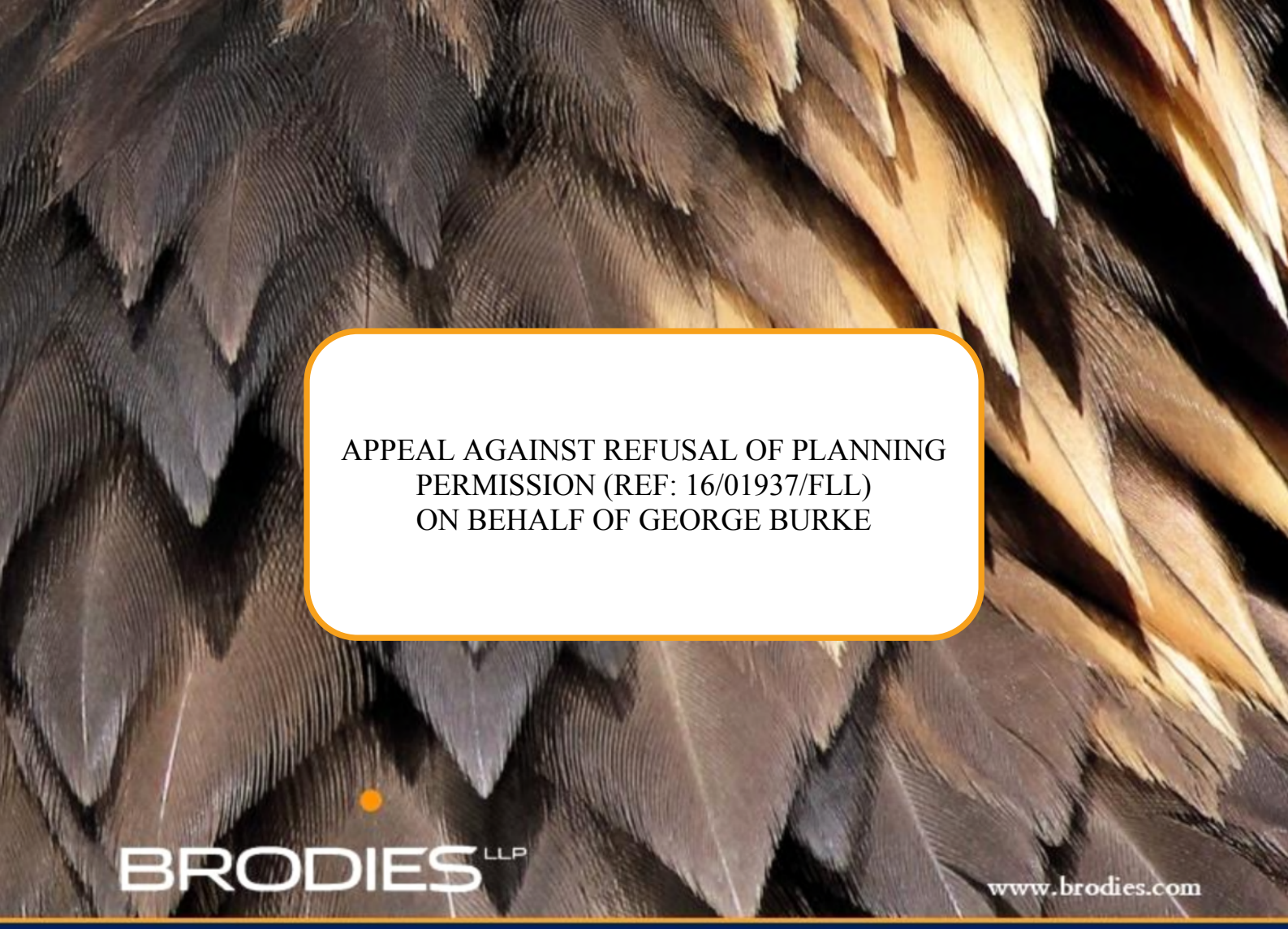
Note: Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number,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

Declare – Notice of Review

I/We the applicant/agent certify that this is an application for review on the grounds stated.

Declaration Name: Mr ALAN SEATH

Declaration Date: 19/05/2017



APPEAL AGAINST REFUSAL OF PLANNING PERMISSION (REF: 16/01937/FLL) ON BEHALF OF GEORGE BURKE

BRODIES LLP

www.brodies.com

APPEAL AGAINST REFUSAL OF PLANNING PERMISSION (REF: 16/01937/FLL)

- There are sound planning reasons for granting this planning appeal for erection of a dwellinghouse (in retrospect).

- This is an exceptional case because (1) due to an unfortunate set of circumstances Mr Burke had understood that the building and use of it as his home was acceptable to the Council; (2) if this appeal is refused Mr Burke will suffer significant economic hardship and be rendered homeless – the personal circumstances of the appellant are a material consideration in making this decision; (3) there are no objections – indeed, the only representations received support the development.

- The Supreme Court has previously confirmed that there will be circumstances when it is appropriate to grant planning permission contrary to the development plan – the present circumstances relating to Mr Burke's home are sufficient justification for the LRB to take this approach.

- Granting planning permission for Mr Burke's home would not operate as a precedent or justification for other new build homes in rural locations: there is no concept of binding precedents in the planning system and, in any case, the facts of the present appeal are pretty unique.

- Perth and Kinross Council has made clear that the building at this location is acceptable – through prior approval of the agricultural building. It follows that the dispute in this appeal is a narrow one – it is focused upon <u>use</u> as a dwelling house by Mr Burke and his family.

- In planning terms, residential use of a building in this location is acceptable – it sits within an existing cluster of dwellings with suitable access and no outstanding technical objections (as confirmed by the Report of Handling).

- It is very easy to talk about planning principles and planning policy but fundamentally this appeal is about whether or not Mr Burke and his family can continue to live in the building which has become their home.

- If this appeal is refused, Mr Burke and his family will lose their home; they have no other property to go to and limited means by which to secure any such alternative accommodation.

- As members of the Gypsy Traveller community, the Council was and continues to be under a duty to ensure that Mr Burke and his family are treated in a manner to ensure equality of opportunity. The Council's inconsistent actions and communications have prejudiced Mr Burke and contributed, at least in part, to the circumstances he now finds himself in.

- Understandably the uncertainty of the outcome of this appeal has already had a detrimental impact on the health of Mr Burke and his family for which they are receiving ongoing medical care and treatment.

Introduction

1.1 This is an appeal by Mr George Burke against refusal for an application for planning permission (ref: 16/01937/FUL) for erection of a dwellinghouse (in retrospect) at Hillview, Kinloch, Blairgowrie PH10 6SD.

1.2 Mr Burke and his family live in the property – it is their only residence – and have done so since September 2016.

1.3 The documents submitted in support of this appeal are set out in Appendix 1.

2 Background

2.1 In April 2012, the Council granted prior approval for the erection of an agricultural building at the application/appeal site under application reference 12/00544/PN.

2.2 The agricultural building was erected a short distance (approximately 4 metres) from the approved position within the application site. This is a very minor deviation from the approved position in the context of the site.

2.3 In good faith, Mr Burke erected the building at this position to minimise the visual impact of the development and to maximise parking and turning space in front of the building.

2.4 A building warrant and completion certificate were issued by the Council's Building Control Team to cover all related works.

2.5 Mr Burke and his family moved into the property in September 2016. He then submitted a planning application for change of use from an agricultural building to a dwellinghouse (in retrospect) to regularise this residential use at the request of the Council.

2.6 Subsequently, in November 2016, the case officer for the application, John Williamson, asked Mr Burke to alter the description of the 2016 Application from "change of use" to "erection of a dwelling" on the basis that the building is not authorised.

2.7 Mr Burke did not consent to this change and asked that the application proceed as submitted; notwithstanding the development description was altered by the planning officer in January 2017.

2.8 The application was then refused by the planning officer on 24 February 2017 on the grounds that it is contrary to the Perth and Kinross Local Development Plan 2014.

3 Grounds of Appeal

3.1 This appeal requires to be determined in accordance with the development plan unless material considerations indicate otherwise.

3.2 The material considerations that are critical in this appeal are:

3.2.1 The planning history of the site and the application/appeal; and

3.2.2 The personal circumstances of the appellant and his family.

3.3 Together these factors are sufficiently material that they can and should be regarded by the LRB as necessary justification to depart from the rigid policy position of the development plan.

4 Exceptional circumstances justify granting this appeal

4.1 The planning history of the development and Mr Burke's interaction with various personnel and departments at the Council during this time demonstrate why he reasonably believed the Council was accepting of him occupying the building as his home:

4.1.1 The Council accepted that built development in principle at the appeal site is acceptable – an agricultural building was approved under prior notification on 3 April 2012.

4.1.2 The agricultural building approved was 465 sq m in area and incorporated kitchen and toilet facilities – its capability for future conversion to a dwelling was clear yet the Council were content for construction to go ahead and placed no restrictions on the development.

4.1.3 The agricultural building was erected approximately 4 metres [not 10 metres as stated by the planning officer] from its approved location. In good faith, Mr Burke erected the building at this position to minimise the visual impact of the development and to maximise parking and turning space in front of the building.

4.1.4 Officers from the Council's planning and enforcement teams have previously advised Mr Burke that the actual position of the building, relative to the approved position, was not significant and so the Council did not require to take any enforcement action in relation to the matter. This position is acknowledged in the Council's Report of Handling at page 3.

4.1.5 During the construction period, planning and enforcement officers visited the site on approximately 8 occasions [4 by Building Standards, 3 by the Enforcement Officer and 1 by the Planning Officer], inspecting closely the progress and standard of works. At no point was any objection made regarding the works being carried up, or any related follow-up correspondence received from the Council.

4.1.6 The Council issued a building warrant (22 December 2015) and subsequently a completion certificate (12 January 2016) for the building as constructed.

4.1.7 The Council also sought, and Mr Burke has been paying Council Tax for the property since 8 November 2016 (for the period from 12 September 2016 to 31 March 2017 - £911.45).

4.2 Cumulatively, these actions indicate an awareness and acceptance by the Council as a corporate body of the use of the building as a domestic residence.

4.3 Mr Burke quite reasonably placed reliance on the earlier advice of the planning and enforcement officers, and the Council's actions in terms of issuing building control sign off and seeking payment of Council Tax, when he and his family moved into the property in September 2016.

4.4 He then submitted the present application for change of use to a residential dwelling, motivated by a desire to formalise what he believed to be the Council's acceptance of his use and occupation of the building in planning terms.

4.5 **Relative weight of factors in this appeal**

4.6 It is acknowledged in the Report of Handling: 'the view taken at the time was that it was not in the public interest to pursue formal enforcement action as there was considered to be limited planning harm in the revised location given the use of the building for agricultural purposes.'

4.7 It is clear that is use of the building, rather than the structure, that underpins the Council's refusal of the application.

4.8 Yet the residential use is acceptable in planning terms notwithstanding the Council's policies that limit new housing development in the countryside and other rural locations. The development is:

4.8.1 Situated within an existing cluster of residential dwellings so as not to be isolated;

4.8.2 Serviced by suitable access;

4.8.3 Surrounded be adequate amenity space and enjoys a south-facing aspect;

4.8.4 It has also reduced the need for retaining walls near the sloped land on which it is built;

4.8.5 **The suitability of the development and its use as a dwelling is confirmed by the fact that there are no outstanding technical objections in the Report of Handling. Neither have there been any neighbour objections; indeed, of the two letters of representation received from third parties, the letters support the development due to the improvement to the visual amenity of the area (as per page 6 of the Report of Handling).**

4.9 In this appeal, planning policy has the potential to operate as a blunt instrument so as to overlook that at stake in this appeal is a family's home and security.

4.10 The Supreme Court has previously confirmed that in certain circumstances it will be appropriate to grant planning permission contrary to the development plan.

4.11 In *Tesco Stores Ltd v. Dundee City Council* [2012] UKSC 13, Lord Reed stated:

4.11.1 '*The development plan is a carefully drafted and considered statement of policy, published in order to inform the public of the approach which will be followed by planning authorities in decision-making unless there is good reason to depart from it*'. [para 18]

4.12 His Lordship further remarked:

4.12.1 '*As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment*'. [para 19]

4.13 In the present appeal, the circumstances that justify granting planning permission even if the LRB finds that the development is contrary to policy are:

4.13.1 **The Council's acceptance of the structure at this location, as evidenced by their prior approval of the agricultural building.**

4.13.2 **The acceptance of residential use at this location, as emphasised by the factors set out at para 4.8 above.**

4.13.3 **Mr Burke's reliance, rightly or wrongly, on the indications from the Council (no enforcement proceedings taken following deviation from prior approval; collection of Council Tax etc) that his development and use as a dwelling was acceptable.**

4.13.4 **The implications of a refusal – Mr Burke and his family would be left homeless.**

4.14 Neither is there a danger that granting this appeal would somehow act as a justification for building homes in rural locations within Perth and Kinross Council area going forward. To be clear, there is no concept of binding precedents in the planning system so that every decision is made according to the individual facts and circumstances of each case against the relevant policy backdrop.

4.15 As the structure has already been erected, to the extent that this causes any harm, this harm has occurred. Even if the LRB is minded to refuse this appeal, the structure will not be removed because it was approved by the Council as an agricultural building.

4.16 Accordingly, while technically this appeal is about whether planning permission for a dwelling house should be granted, in practical terms the consideration is really about the acceptability of the use (as set out at para 4.8.) above on account of the structure remaining in place whether this appeal is granted or refused.

4.17 The facts of the present appeal are pretty unique and it is our position that they amount to the 'good reasons' that the Supreme Court identified as being necessary to support a decision contrary to a development plan, particularly when the long-term implications of the outcome of this appeal are considered.

5 Other material considerations

5.1 The personal circumstances of an applicant can be a material consideration so that it is relevant to take account of them in determining a planning application.

5.2 Mr Burke and his family are members of the Gypsy Traveller community[1]. Accordingly the Council and its staff are under a duty, in terms of the Equality Act 2010, to eliminate discrimination, advance equality of opportunity and foster good relations between people with a protected characteristic and people without.

5.3 In respect of Mr Burke's application, the planning, enforcement and building control departments have displayed a distinct lack of joined-up advice – on the one hand issuing building control documents to verify completion of the development and collecting Council Tax following Mr Burke's residential use of the property; only then to refuse the planning application when Mr Burke sought to regularise the use of the property as a dwellinghouse. A separate letter of complaint has been made to the Council regarding this issue – the letter submitted is included with the supported documents.

5.4 Rightly or wrongly, Mr Burke relied on the Council's previous actions and verbal discussions with planning and enforcement officers referred to at para 4.1.5 above. Mr Burke has confirmed that all of the officers that visited the site on 8 separate occasions were aware that the building was being constructed so as to form a house, as evidenced by the building control documentation.

5.5 It was incumbent on the Council to act and communicate with Mr Burke in a sufficiently clear and consistent manner so that he was fully aware of the Council's overall position regarding the development. This duty was heightened on account of Mr Burke's status as Gypsy Traveller.

5.6 In a further example of mismanagement, during the weeks prior to determination of the application, Mr Burke's agent contacted the case officer on more than one occasion to arrange a meeting to discuss matters (which requests were also supported by a local councillor) only for these to be declined by the case officer and a refusal notice issued directly.

5.7 As a result of the Council's inconsistency as an administration, Mr Burke has suffered significant prejudice so that he is now at risk of losing his home.

[1] Scottish Government guidance indicates that a member of the gypsy traveller community retains this protected status following any move by them into settled/permanent accommodation – see para 18, http://www.gov.scot/Publications/2017/04/6796/2

5.8 Understandably the uncertainty and implications surrounding the potential outcomes of this appeal have caused Mr Burke and his family significant distress and worry. Indeed both Mr Burke and his wife have been prescribed medication for high blood pressure and stress.

5.9 When this appeal is considered by LRB members, we would wish to emphasise the requirements and guidance set out for councillors in *Gypsy/Travellers and the Scottish Planning System – A Guide for Elected Members,* and in particular:

5.10 *Taken as a whole, the Code of Conduct requires Elected Members to not engage in or encourage racist or discriminatory behaviour and opinions, and also to challenge these where they exist and work to promote positive community relations. Elected Members have the power to make a positive difference to the lives of Gypsy/Travellers and enhance community relations through constructive engagement in planning for Gypsy/Traveller accommodation.* [Page 24]

6 Further Procedure

6.1 The applicant suggests that it would be appropriate for the Local Review Body to visit the application site, to allow for consideration of the development and the suitability of residential use in context.

7 Conclusion

7.1 Accordingly, this appeal should be allowed and planning permission granted.

APPENDIX 1

1.1 Decision Notice – 24 February 2017

1.2 Report of Handling

1.3 12/00544/PN – Floor Plan/Elevations

1.4 Letter of complaint to Perth and Kinross Council on behalf of Mr Burke – 14 March 2017

1.5 *Gypsy/Travellers and the Scottish Planning System – A Guide for Elected Members*

PERTH AND KINROSS COUNCIL

Mr George Burke c/o Alan Seath Planning Consultancy 88 Scott Road Glenrothes Fife KY6 1AE	Pullar House 35 Kinnoull Street PERTH PH1 5GD
	Date 24.02.2017

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT

Application Number: **16/01937/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 14th November 2016 for permission for **Erection of a dwellinghouse (in retrospect) Hillview Kinloch Blairgowrie PH10 6SD** for the reasons undernoted.

Interim Head of Planning

Reasons for Refusal

1 The proposal is contrary to Policy RD3 of the Local Development Plan 2014 and the Council's Housing in the Countryside Guide 2012, which is limited to category 3 - economic need and category 5 - conversions and replacements in the Lunan Valley Catchment Area. No economic need for the house has been identified as required by category 3 and the building is not of traditional character, has not been in place for a number of years and no evidence has been submitted that the agricultural building is now redundant as required by category 5.

Justification

The proposal is considered to contrary to the adopted Local Development Plan 2014. I have taken account of material considerations, including the Housing in the Countryside Guide and Supplmentary Planning Guidance relating to the Lunan Valley Catchment Area and to the personal circumstances of the applicant and the fact that he and his family are currently residing in the building but find none that would justify departing from the adopted Development Plan.

Informatives

1 The use of the building as a dwellinghouse shall cease. The applicant should be aware that the building remains unlawful and therefore a further application will be required to regularise the building as an agricultural store. This application should be submitted within six months of the date of this decision. Failure to do so may result in enforcement action.

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

16/01937/1
16/01937/2
16/01937/3
16/01937/4
16/01937/5

REPORT OF HANDLING

DELEGATED REPORT

Ref No	**16/01937/FLL**	
Ward No	**N3- Blairgowrie And Glens**	
Due Determination Date	**13.01.2017**	
Case Officer	**John Williamson**	
Report Issued by		**Date**
Countersigned by		**Date**

PROPOSAL: Erection of a dwellinghouse (in retrospect)

LOCATION: Hillview Kinloch Blairgowrie PH10 6SD

SUMMARY:

This report recommends **refusal** of the application as the development is considered to be contrary to the relevant provisions of the Development Plan and there are no material considerations apparent which justify setting aside the Development Plan.

DATE OF SITE VISIT: 1 December 2016

SITE PHOTOGRAPHS

BACKGROUND AND DESCRIPTION OF PROPOSAL

Full planning consent is sought for the erection of a dwellinghouse (in retrospect) at Hillview, Kinloch, located to the west of Blairgowrie. There is extensive planning history associated with this site which is considered to be very relevant to consideration of an application for a house on this site. A prior notification was granted in April 2012 (12/00544/PN) for the erection of a general purpose agricultural building. There has also been a previous refusal on the site for a holiday home (11/01988/IPL) and a withdrawn application for 2 dwellings (05/00703/FUL).

The agricultural building has been erected approximately 10m to the north of the position indicated in the PN. Therefore the building has not been erected in the correct location. The applicant's agent sought the Planning Authority's view on this matter in 2014 and were informed that a further planning application would be required to regularise the situation. No further application was received. This matter was discussed with PKC planning enforcement and the view taken at the time was that it was not in the public interest to pursue formal enforcement action as there was considered to be limited planning harm in the revised location given the use of the building for agricultural purposes.

It is now apparent that the agricultural building has been occupied as a dwellinghouse and we have subsequently received the retrospective change of use application. Initially the application was registered as a change of use, however, following consideration of the planning history of the site by the Planning Officer it was determined that a retrospective change of use was not appropriate given the unauthorised location of the building. Whilst the Planning Authority did not progress formal enforcement action in 2014, the location of the building remains unlawful and furthermore the planning circumstances have now changed as the applicant is living in the building and is seeking consent for a dwellinghouse. As such the use of the building is also therefore unlawful and the situation requires to be regularised (either via an approval or potentially through enforcement if refused).

The application as submitted originally was solely for a change of use of the building to a dwellinghouse. The approval of the application would not also implicitly authorise the building and therefore the application was not legally

competent and determination of the application would be ultra vires. As such the description of the application was altered to "Erection of a Dwellinghouse (in retrospect)" as this is considered to be an accurate description of the development proposed as is required by Section 32A of the Act and the Development Management Procedure Regulations. The application was subsequently re-advertised as required by the Act.

The applicant's agent disputes the revision to the description but given the facts outlined above it is considered entirely appropriate to revise the description of the application to ensure that the recommendation on the application is made based upon the correct legal procedure.

The application site is located on a rising hillside to the north of the A923, Blairgowrie to Dunkeld public road. The site, which can be viewed from the public road is open in nature, as part of a wider slope of fields, leading up to a ridge of trees on top of the slope. There is an existing grouping of buildings along the A923 and extending northwards, however the application site is considered to be remote from the established L shaped building group. Access to the site is proposed from the south west between two existing properties and onto the A923. The building on the site has a rectangular footprint and is single storey in scale. A total of 3 bedrooms are located within, together with two living areas, a kitchen, bathroom and utility area. The building is located at the northwestern end of the plot with a large parking and turning area to the south, together with the drainage system. It should also be noted that the site is located within the Lunan Valley Catchment Area. The Lochs Clunie and Marlee Site of Special Scientific Interest (SSSI) and Dunkeld Lochs Special Area of Conservation (SAC) is located approximately 273m to the south of the site.

SITE HISTORY

05/00703/FUL – Erection of 2 dwellinghouses and garages - Withdrawn

11/01766/IPL – Erection of holiday home - Withdrawn

11/01988/IPL Erection of holiday home (in principle) Refused Delegated Powers

12/00544/PN Erection of agricultural shed – Approved Delegated Powers

PRE-APPLICATION CONSULTATION

Pre application Reference: None

NATIONAL POLICY AND GUIDANCE

The Scottish Government expresses its planning policies through The National Planning Framework, the Scottish Planning Policy (SPP), Planning Advice Notes (PAN), Creating Places, Designing Streets, National Roads Development Guide and a series of Circulars.

DEVELOPMENT PLAN

The Development Plan for the area comprises the TAYplan Strategic Development Plan 2012-2032 and the Perth and Kinross Local Development Plan 2014.

TAYplan Strategic Development Plan 2012 – 2032 - Approved June 2012

Whilst there are no specific policies or strategies directly relevant to this proposal the overall vision of the Tay Plan should be noted. The vision states *"By 2032 the TAYplan region will be sustainable, more attractive, competitive and vibrant without creating an unacceptable burden on our planet. The quality of life will make it a place of first choice, where more people choose to live, work and visit and where businesses choose to invest and create jobs."*

Perth and Kinross Local Development Plan 2014 – Adopted February 2014

The Local Development Plan is the most recent statement of Council policy and is augmented by Supplementary Guidance.

The principal policies are, in summary:

Policy PM1A - Placemaking
Development must contribute positively to the quality of the surrounding built and natural environment, respecting the character and amenity of the place. All development should be planned and designed with reference to climate change mitigation and adaption.

Policy PM1B - Placemaking
All proposals should meet all eight of the placemaking criteria.

Policy RD3 - Housing in the Countryside
The development of single houses or groups of houses which fall within the six identified categories will be supported. This policy does not apply in the Green Belt and is limited within the Lunan Valley Catchment Area.

Policy EP6 - Lunan Valley Catchment Area
The nature conservation and landscape interest of the Lunan Valley Catchment Area will be protected and enhanced in accordance with the criteria set out. Policy RD3: Housing in the Countryside is restricted to economic need, conversions, or replacement buildings within the Lunan Valley Catchment Area.

Policy TA1B - Transport Standards and Accessibility Requirements

Development proposals that involve significant travel generation should be well served by all modes of transport (in particular walking, cycling and public transport), provide safe access and appropriate car parking. Supplementary Guidance will set out when a travel plan and transport assessment is required.

Policy NE1A - International Nature Conservation Sites
Development which could have a significant effect on a site designated or proposed as a Special Area of Conservation, Special Protection Area or Ramsar site will only be permitted where an Appropriate Assessment shows that the integrity of the site will not be adversely affected, there are no alternative solutions and there are imperative reasons of overriding public interest.

Policy NE1B - National Designations
Development which would affect a National Park, National Scenic Area, Site of Special Scientific Interest or National Nature Reserve will only be permitted where the integrity of the area or the qualities for which it has been designated are not adversely affected or any adverse impacts are clearly outweighed by benefits of national importance.

OTHER POLICIES

Housing in the Countryside Guide 2012

Lunan Valley Catchment Area Supplementary Guidance

CONSULTATION RESPONSES

INTERNAL

Contributions Officer – contribution of £6460 required toward education infrastructure

Local Flood Prevention Authority – no land raising should occur and drainage details required

Transport Planning – no objection

Environmental Health – comments made relating to potential contamination but no objection

EXTERNAL

Scottish Water – no response within statutory period

Scottish Environment Protection Agency – objection initially due to lack of information on phosphorus mitigation relating to Lunan Valley Catchment Area. Objection now withdrawn following receipt of additional information.

Scottish Natural Heritage – objection initially due to lack of information on phosphorus mitigation relating to Lunan Valley Catchment Area and potential impact on SAC and SSSI. Objection now withdrawn following receipt of additional information.

REPRESENTATIONS

Two letters of representation have been received both of which support the application due to the improvement to the visual amenity of the area.

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	Supporting Statement submitted
Report on Impact or Potential Impact eg Flood Risk Assessment	None submitted

APPRAISAL

Sections 25 and 37 (2) of the Town and Country Planning (Scotland) Act 1997 require that planning decisions be made in accordance with the development plan unless material considerations indicate otherwise. The Development Plan for the area comprises the approved TAYplan 2012 and the adopted Perth and Kinross Local Development Plan 2014.

The determining issues in this case are whether; the proposal complies with development plan policy; or if there are any other material considerations which justify a departure from policy.

Policy Appraisal

Policy RD3 of the Local Development Plan refers to Housing in the Countryside. It specifically refers to the requirement for all residential development in the countryside to comply with relevant Supplementary Planning Guidance, specifically the Housing in the Countryside Guide 2012. The guide outlines a number of categories upon which development will be

assessed against. Policy TA1B in relation to transportation, PM3 infrastructure contributions, PM1A and B placemaking are also relevant in the consideration of this application. Furthermore policy EP6 applies which relates to development within the Lunan Valley Catchment Area.

Principle/Housing in the Countryside

In this particular instance, given the location of the site within the Lunan Valley Catchment Area, the development of housing in the countryside is restricted to category 3- economic need and category 5 - renovation or replacement of buildings as outlined within Policy EP6 of the LDP.

It is considered that the proposed site fails to comply with any of the accepted categories of development within the Housing in the Countryside Guide. (3) New Houses in the Open Countryside (economic need) and (5) Conversion or Replacement of Redundant Non Domestic Buildings. An assessment of the proposal under category 5 is outlined below as this is considered to be the most relevant sections of the policy in this instance.
For the avoidance of any doubt on this issue, even if this site was located outwith the Lunan Valley Catchment Area the site fails to adhere to any of the other categories of development within the Housing in the Countryside Guide as it is remote from the adjacent building group, is not an infill site and is not a brownfield site. An assessment under category 3 and 5 are outlined below.

Category 5- Conversion or Replacement of Redundant Non Domestic Buildings

The applicant initially sought to apply for the building as a conversion of an existing agricultural building under category 5 of the Housing in the Countryside Guide. This allows for the conversion of redundant non domestic buildings. Category 5 makes it clear that the conversion of non domestic buildings refers to "redundant, traditional building complexes such as farm steadings". It makes no reference to the conversion of more modern recently erected agricultural buildings.

No information has been submitted by the applicant relating to the building being redundant. The policy states that a building will be classed as redundant where it "has not been in use for a considerable number of years, is no longer fit for purpose or is unsuited to the restructuring needs of the farm necessary to ensure a viable farm business". According the Building Standard's records, a warrant for the building was approved in January 2013 and works commenced on 21 May 2014. Therefore the building has been in place for less than 3 years. Given how recently the building was erected and the lack of any evidence on the redundancy of the building I do not consider the conversion of the building to meet the requirements of category 5. There is no evidence to suggest that the building is no longer fit for purpose and given how recently it was erected I cannot see a situation where any evidence of this could be looked upon favourably. In my view, category 5 of the guide has been worded to avoid situations where an individual can erect an agricultural building under prior notification and then apply to convert it into a

dwelling a few years later. Furthermore the building is not of traditional form as required by the wording of this category.

It would appear from the history of the application site that the applicant has been seeking to erect a dwelling on this site for a number of years. The evidence also appears to suggest that the applicant erected an "agricultural building" under the prior notification procedure in order to apply for a conversion at a later date, to circumvent planning policy on this site. It was also noted from review of the planning history that the applicant for the prior notification submission stated that the site formed part of an agricultural holding but that the application form for this submission states that the site is not an agricultural holding. The applicant's agent was asked to clarify this but no response has been received to date. Given the view outlined above I do not intend to investigate this further. Therefore the proposal fails to meet any of the criteria contained with category 5 relating to the conversion of non domestic buildings.

Category 3 - Economic Need

No evidence of any economic need for a dwelling in this location or association with an existing or proposed economic activity has been identified within the submission, as such the proposal is contrary to the criteria contained within category 3 of the guide where it refers to economic need.

As such, overall the application is not considered to comply with the relevant Housing in the Countryside categories and is therefore contrary to Policy RD3 of the LDP.

Lunan Valley Catchment Area/Drainage

The site is located within the Lunan Valley Catchment Area where policy EP6 of the LDP applies and refers to the Dunkeld-Blairgowrie Lochs Special Area of Conservation (SAC) and the Lochs Clunie and Marlee Site of Special Scientific Interest (SSSI). Policy NE1A and B are therefore relevant and seek to ensure that development does not have a significant effect or adversely affect the qualities for which the areas have been designated. The Lunan Valley Area Dunkeld Supplementary Guidance is also relevant. This states that the Council will protect the nature conservation and landscape interests of the catchment area. It states that there will be a presumption against built development, except within settlements, for renovations or alteration to existing buildings and developments necessary to economic need amongst others. In this case the site is not within a settlement and no economic need has been demonstrated. The policy does allow for renovations or alterations to an existing building, however in this case, as outlined above, an assessment of the proposal under the conversion category of the Housing in the Countryside Guide has been undertaken and the development fails to comply with this part of Policy RD3.

The policy goes on to state that total phosphorus from built development must not exceed the current level permitted by existing discharge consents and the

current contribution level from built development within the rural area of the catchment to ensure the protection of the SAC and SSSI. It requires all applicants to submit details of the method of phosphorus mitigation with the application. SNH and SEPA have been consulted on the application and have objected due to the lack of information submitted regarding phosphorus calculations. The submission indicates that the applicant intends to upgrade the current septic tank to a bio disc system and provides some detail on the type of discharge. The submission did not provide any further detail in relation to the requirements of policy EP6 of the LDP. Further information was subsequently submitted by the applicant's agent detailing the phosphorus mitigation and SNH and SEPA have now withdrawn their objection relating to the impact on the Lunan Valley Catchment Area.

SEPA have also expressed concern regarding the position of the foul soakaway as it is very close to a field drain. The soakaway requires to be located at least 10m from any drain.

Design, Scale and Layout

Policy PM1A and B refer to placemaking and require new development to contribute to the surround built and natural environment and to respect its surroundings in terms of appearance, height and scale. In this instance the rising hillside to the rear does provide some landscape backdrop to the building, however the building is clearly remote from the existing building group and in my view this results in the building being prominent when viewed from the public road. Nevertheless the erection of a building on this site, albeit slightly lower down the hill was allowed through the prior notification procedure and as such I do not consider the proposal to be contrary to policy PM1A and B.

Residential Amenity

Given how remote the site is from neighbouring dwellings I do not consider it to create any issues relating to overshadowing or overlooking to neighbouring properties. Overall I consider the development not result in any overriding concerns relating to residential amenity.

Developer Contributions

The Developer Contributions Supplementary Guidance requires a financial contribution towards increased primary school capacity in areas where a primary school capacity constraint has been identified. A capacity constraint is defined as where a primary school is operating, or likely to be operating following completion of the proposed development and extant planning permissions, at or above 80% of total capacity.

This proposal is within the catchment of Newhill Primary School which is considered at capacity currently and therefore a contribution of £6460 is required. The applicant has indicated that they wish to pay the contribution upfront.

There is no requirement for a contribution towards transportation infrastructure in this instance.

Access

The site is served by an existing private access which links to the A923 public road. The access is considered to be appropriate and accords with the requirements of Policy TA1B of the LDP. Transport Planning have offered no objection.

Personal Circumstances

It is noted that the applicant currently resides in this building with his family and is seeking to regularise a currently unauthorised situation and that some sympathy for the applicant could be given. In my view it would appear that the applicant may have known the circumstances which would be faced should he occupy the agricultural building as a dwelling. The Council has email correspondence to the applicant's original agent making it clear that the agricultural building had been erected not in accordance with the details outlined in the PN and that a planning application to regularise the location of the agricultural building would be required. No application was ever received for the new location and instead the applicant chose to occupy the building for residential purposes without obtaining planning consent.

It would appear that this application is an attempt to circumvent planning policy given the history of refusals for new development on this site in 2011 and the withdrawl of an application in 2005 for two houses. It is also noted that the applicant has applied for planning consent for housing elsewhere in Perth and Kinross and therefore should have some knowledge of the planning system and when planning consent is required. I therefore have little sympathy for the applicant's current situation. Whilst case law does demonstrate that personal circumstances can be considered in the determination of a planning application, I do not consider the personal circumstances, given the matters outlined above, to outweigh the fact that the proposal is contrary to the Local Development Plan.

Conclusion

In conclusion, the application must be determined in accordance with the adopted Development Plan unless material considerations indicate otherwise. In this respect, the proposal is considered to contrary to the adopted Local Development Plan 2014. I have taken account of material considerations, including the Housing in the Countryside Guide and Supplementary Planning Guidance relating to the Lunan Valley Catchment Area and to the personal circumstances of the applicant and the fact that he and his family are currently residing in the building but find none that would justify departing from the adopted Development Plan. On that basis the application is recommended for refusal. As such the applicant should cease occupation of the building as a residential dwelling and return it to agricultural storage and seek consent to

have the unauthorised location regularised through a separate planning application.

APPLICATION PROCESSING TIME

The recommendation for this application has been made outwith the statutory period due to the requirement to re-advertise the application due to the amended description.

LEGAL AGREEMENTS

None required.

DIRECTION BY SCOTTISH MINISTERS

Application requires to be referred to Scottish Ministers if approved due to objection from SEPA and SNH who are statutory consultees.

RECOMMENDATION

Refuse the application

Reasons for Refusal

1 The proposal is contrary to Policy RD3 of the Local Development Plan 2014 and the Council's Housing in the Countryside Guide 2012, which is limited to category 3 - economic need and category 5 - conversions and replacements in the Lunan Valley Catchment Area. No economic need for the house has been identified as required by category 3 and the building is not of traditional character, has not been in place for a number of years and no evidence has been submitted that the agricultural building is now redundant as required by category 5.

Justification

1 The proposal is considered to contrary to the adopted Local Development Plan 2014. I have taken account of material considerations, including the Housing in the Countryside Guide and Supplmentary Planning Guidance relating to the Lunan Valley Catchment Area and to the personal circumstances of the applicant and the fact that he and his family are currently residing in the building but find none that would justify departing from the adopted Development Plan.

Informatives

1 The use of the building as a dwellinghouse shall cease. The applicant should be aware that the building remains unlawful and therefore a further application will be required to regularise the building as an agricultural store. This application should be submitted within six months of the date of this decision. Failure to do so may result in enforcement action.

Procedural Notes

Not Applicable.

PLANS AND DOCUMENTS RELATING TO THIS DECISION

16/01937/1
16/01937/2
16/01937/3
16/01937/4
16/01937/5

Date of Report 27.01.2017

OUR REF NAC/VMS/BUR357.1
YOUR REF 16/01937/FLL

Customer Service Centre
Perth & Kinross Council
Pullar House
35 Kinnoull Street
Perth
PH1 5GD

14 March 2017

Dear Sirs

OUR CLIENT: MR GEORGE BURKE
SUBJECT MATTER OF COMPLAINT: PLANNING APPLICATION (REFERENCE 16/01937/FLL) FOR CHANGE OF USE FROM AGRICULTURAL BUILDING TO DWELLINGHOUSE (IN RETROSPECT) AT HILLVIEW, KINLOCH, BLAIRGOWRIE PH10 6SD

We act for Mr George Burke in relation to the above planning application. The application was refused by the Council on 24 February 2017. We are instructed by Mr Burke to lodge a formal complaint in relation to the Council's handling of the application.

Pre-Application History

In April 2012, the Council granted prior approval for the erection of the agricultural building under application reference 12/00544//PN. The agricultural building was erected a short distance (approximately 4 metres) from the approved position within the application site. This is a very minor deviation from the approved position. In good faith, Mr Burke erected the building at this position to minimise the visual impact of the development and to maximise parking and turning space in front of the building. Planning officers from the Council's planning enforcement team have previously advised Mr Burke that the actual position of the building, relative to the approved position, was not significant and so the Council did not require to take any enforcement action in relation to the matter. This position is acknowledged in the Council's Report of Handling.

Handling of the 2016 Application

In November 2016, Mr Burke submitted the above noted planning application (16/01937/FLL) for retrospective change of use from an agricultural building to a dwellinghouse.

The planning application did not extend to the building itself as the erection of an agricultural building at the site had already received prior approval from the Council. The Council had also issued a building warrant (22 December

2015) and subsequently a completion certificate (12 January 2016) for the building as constructed. The Council validated the application on 14 November 2016.

Subsequently, in November 2016, the case officer for the application, John Williamson, asked Mr Burke to alter the description of the 2016 Application from "change of use" to "erection of a dwelling" on the basis that the building is not authorised. This request was made in spite of the fact that: the application had already been validated as a change of use application; that the consultation period for the receipt of representations from the general public had ended and the building had already received sign off from the Council's building control department.

There was no basis for requesting that the application be altered to "erection of a dwelling". The minor deviation to the position of the building is no more than a technical discrepancy with no planning impacts arising. Mr Burke quite reasonably placed reliance on the earlier advice of the planning and enforcement officers when submitting the current planning application as a change of use of the building. Mr Burke advised the Council that he wished to proceed with the application as one for change of use and provided a legal opinion in support of this position (dated 22 December 2016).

Notwithstanding, the description of the application was then changed to 'erection of a dwellinghouse (in retrospect)' by the case officer in January 2017. This unilateral action was not competent in terms of statutory procedure. Section 32A permits variation of an application only if there is agreement with the planning authority on the matter. There was no agreement in this case, and Mr Burke had previously confirmed his position in writing, namely, that he wished to proceed with the application as one for change of use.

Determination of the Application

The Council validated the application as submitted by Mr Burke. The Council was obliged in terms of statute to determine the application in the form that it was presented – as an application for change of use only. The control of development and use are separate components of development management. An application for a change of use does not require authorised development as a pre-requisite. It was for the Council to determine the change of use application on its planning merits but they failed to do so.

The Council's awareness of the domestic use of the building

As indicated above, the Council has previously issued a building warrant and completion certificate for the building. The Council also sought, and Mr Burke has been paying Council Tax for the property since 8 November 2016 (for the period from 12 September 2016 to 31 March 2017 - £911.45). These actions indicate an awareness and acceptance by the Council as a corporate body of the use of the building as a domestic residence.

Grounds of Complaint

- The Council's planning and enforcement officers raised no concerns regarding the erection of the building and then its subsequent conversion to a residential dwelling (at November 2016). No planning enforcement action was or has been taken by the Council; in fact planning and enforcement officers had indicated that the deviation of the siting of the building from its approved position was not so significant as to give rise to enforcement action.

- Mr Burke placed reliance on this when submitting the application for change of use.

- If the Council had concerns about the position or use of the building, then it would have been appropriate to raise these concerns during the construction period or prior to issuing a completion certificate.

- The Council has allowed Mr Burke to lodge the present application before going on to validate it, incur planning fees and pay Council Tax for domestic use of the property. It is wholly unreasonably for the Council to seek to change their position on the matter and require Mr Burke to seek planning permission for erection of a dwellinghouse.

- As outlined above, the Council has no grounds to seek to alter the description of the application on a unilateral basis.

- The Council's lack of consistency on the matter has caused Mr Burke significant distress. Mr Burke and his family currently reside in the building and if the Council were to prevent residential use of the building in the future, Mr Burke and his family would be rendered homeless.

- As a member of the Gypsy/Traveller community, the Council and its staff are under a duty, in terms of the Equality Act 2010, to eliminate discrimination, advance equality of opportunity and foster good relations between people with a protected characteristic and people without. In respect of Mr Burke's application, the planning, enforcement and building control departments have fallen short in this duty due to a distinct lack of joined-up advice (as outlined above). As a result of this failure, Mr Burke's application has been significantly prejudiced and he now stands to lose his home.

- The Gypsy/Traveller Strategy for Perth and Kinross 2013 – 2018 sets out that its purpose is to 'improve and sustain community relations through action that can be supported by all parties (individuals, politicians, public authorities, representative organisations, Gypsy/Travellers and local communities) and in a manner underpinned by improved communication, respect and understanding'. With regard to Mr Burke's application, the aim of the strategy has not been met. A glaring example of this being in the weeks prior to determination of the application, Mr Burke's agent contacted the case officer on more than one occasion to arrange a meeting to discuss matters (which requests were also supported by a local councillor) only for these to be declined by the case officer and a refusal notice issued directly.

We would be most grateful if you would in the first instance acknowledge receipt of this letter as a formal complaint by Mr Burke and look forward to receiving a response in early course.

Yours faithfully

[redacted]

On behalf of Brodies LLP [redacted]

Gypsy/Travellers and the Scottish Planning System

A Guide for Elected Members

#3 in a series of 5

pas
building active citizenship

Gypsy/Travellers and the Planning System - 2015

This guide forms part of a series of five on Gypsy/Travellers and the Scottish planning system, as listed below:

#1 Gypsy/Travellers and the Scottish Planning System - A Guide for Gypsy/Travellers

#2 Gypsy/Travellers and the Scottish Planning System - A Guide for Local Authorities

#3 Gypsy/Travellers and the Scottish Planning System - A Guide for Elected Members

#4 Gypsy/Travellers and the Scottish Planning System - A Guide for Community Councillors

#5 Gypsy/Travellers and the Scottish Planning System - A Briefing for the Media

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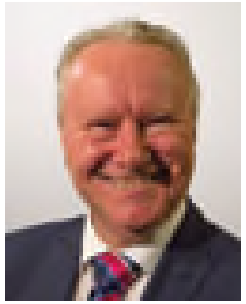
Acknowledgements

We would like to thank all those who contributed to this project and to the creation of this series of guides, in particular: PAS Associates and Volunteers (including Stewart Inglis, Dr Simon Ruston, Forbes Marr, Alan Seath, Irene Beautyman, Kathryn Hilditch and Brenda Clough), the Scottish Government (Directorate for Local Government & Communities, Directorate for Housing, Regeneration and Welfare), COSLA, SEPA, the four Local Authorities who engaged in this project (Perth & Kinross Council, Aberdeenshire Council, Fife Council and Inverclyde Council's Planning, Housing, Education and Environmental Health Departments), other Local Authorities who also contributed (Aberdeen City, East Lothian, South Lanarkshire), Article 12 in Scotland, MECOPP, the Equality and Human Rights Commission (EHRC), Damian Le Bas (Travellers' Times), representatives of the Gypsy/Traveller community, representatives from Community Councils in Fife and Aberdeenshire, Elected Members from Perth & Kinross and Aberdeenshire who participated in training sessions, Young Placemakers who took part in various training sessions (including young people from Mintlaw Academy, Peterhead Academy, Fraserburgh Academy and Kinross High School) and Young Placemaker volunteers (including Stephanie Simpson and Katy Rodger).

Funded by the Equality, Human Rights and Third Sector Division of the Scottish Government.

Ministerial Foreword



The Gypsy/Traveller community is an important Scottish community, with a long and proud history. Gypsy/Travellers have made, and continue to make, a significant contribution to Scotland.

Unfortunately, Gypsy/Travellers also face many challenges and barriers to accessing services and participating in society, in ways that most people take for granted. This includes securing good quality accommodation that meets their cultural needs and has the amenities that people need for everyday living.

The Scottish Government is fully committed to meeting the needs of Scotland's Gypsy/Travellers. Our role is to set a robust framework and promote good practice, so that those needs can be properly assessed and met at a local level. To this end, we are working to develop an overarching strategy and action plan for Gypsy/Travellers in Scotland.

As part of our work, we want to promote good practice in relation to Gypsy/Traveller sites. Dialogue is the best way of increasing trust, understanding and respect between our diverse communities. We have, therefore, been pleased to fund and support PAS in its Gypsy/Travellers as Young Change Makers project. The purpose of this project was to increase awareness and knowledge of the planning system and engagement between Gypsy/Travellers, planning professionals, elected members and community councillors.

These guides have been produced by PAS, and represent its advice and views on Gypsy/Travellers and planning in Scotland. Those views are, quite rightly, independent of the Scottish Government. The guides are the end product of the Gypsy/Travellers as Young Change Makers project and the result of engagement and wide ranging discussions. I hope the guides will be well-used and that they will give all concerned the information and knowledge to meet the needs of Scotland's Gypsy/Travellers.

Alex Neil MSP, Cabinet Secretary for Social Justice, Communities and Pensioners' Rights

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Photo: Forbes Marr Cover photo: Damian Le Bas

Foreword

This series of guides has been developed by PAS to help raise awareness of Scottish Gypsy/ Traveller culture, and how this impacts upon land use planning for their needs.

I believe Gypsy/Travellers' unique culture should be celebrated and recognised in Scotland.

I very much hope you enjoy reading this guidance. It sets out clear and realistic means of improving Community Councillors good practice when considering the accommodation needs and expectations of Gypsy/Travellers, as a recognised ethnic group, living in Scotland.

Councillor Harry McGuigan, COSLA Local Government Spokesperson for Community Wellbeing and Safety

Photo: Graham Noble

Elected Members and the planning system

Local Authority Elected Members have a range of responsibilities, including executive decision-making, political leadership, community representation and the overview and scrutiny of policy. Most importantly from a planning perspective, they are responsible for the adoption of the Local Development Plan and have key decision-making roles in determining certain applications for planning permission and in Local Review Bodies.

Planning aims to make housing, health, employment, education, other public services, shopping, leisure and recreational facilities available to all members of the community. The Scottish Government requires Local Authorities to make proper provision of accommodation for Gypsy/Travellers. Unfortunately, Scottish Gypsy/Travellers have all too often found that the planning system does not always provide their community with the service and outcomes due to them as citizens and as a recognised ethnic group.

Under the *Human Rights Act 1998* and the *Equality Act 2010*, public authorities must have due regard to human rights, equality and diversity when exercising their functions. It is important to note that Scottish Gypsy/Travellers are recognised as an ethnic group for the purposes of the *Equality Act 2010*[1], and as such the **Public Sector Equality Duty** (PSED) is of relevance[2]. This requires public authorities to have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations between people with a protected characteristic and people without. This duty covers Local Authorities, their staff and Elected Members.

1. Employment Tribunals (Scotland) Case No: S/132721/07 23rd June 2008
2. Equality Act 2010, Section 149

1 | Introduction

This guide aims to raise awareness of Gypsy/Traveller culture and how this impacts upon land use planning for their needs. It sets out the legislative and policy obligations that Local Authorities have to the Gypsy/Traveller community, and offers guidance for improving professional practice and decision-making in development planning and development management to meet the needs and expectations of Gypsy/Travellers living in Scotland.

Terminology

The official Scottish Government term for people in the Travelling community is **'Gypsy/Traveller'** and that is what is used throughout this guide[3]. Not all members of the Travelling community accept or identify with this term, which covers Scottish, English, Irish and Welsh Travellers. Many in Scotland choose to go by the terms 'Scottish Traveller', or simply 'Traveller'. It is important to understand that these are not a single group but a diverse set of communities, with differing identities, cultures, histories, lifestyles and languages[4].

Since 2008, the Gypsy/Traveller community has been recognised by the Scottish Government as an ethnic group, with consequent protection from discrimination[5].

Those outwith the Gypsy/Traveller community are referred to as the 'settled community'.

History

There is uncertainty around the origins of the Gypsy/Traveller community in Scotland. What is known is that there has been a Gypsy/Traveller presence in the country for several centuries. Twelfth century documents mention itinerant smiths who travelled looking for work, and dealing with metals remains a significant business activity for Gypsy/Travellers.

3. Scottish Government, accessed 28.10.14, *'Gypsy/Travellers'*, http://www.scotland.gov.uk/Topics/People/Equality/gypsiestravellers
4. Cadger, B. (2012) *'What A Voice'*, Article 12 in Scotland
5. Scottish Government, accessed 28.10.14, *'Gypsy/Travellers'*, http://www.scotland.gov.uk/Topics/People/Equality/gypsiestravellers

Unfortunately, legal discrimination of the community also has a long history, with laws passed from the 16th century onwards which persecuted Gypsy/Travellers. In 1609 the Scottish Parliament passed the *'Act against the Egyptians'*, which made it lawful to condemn, detain and execute people solely on the basis of them being known or suspected Gypsies. The process of repealing such laws only began in the late 18th century[6].

More positively, Gypsy/Travellers are justly proud of their part in Scottish history, especially the service of the community in the armed forces and home front in both world wars. This is in addition to their varied contributions to Scottish culture, art and music[7].

Population

The size of the Gypsy/Traveller population in Scotland is contested. In the 2011 Census, 4,200 people in Scotland identified themselves as 'White: Gypsy/Traveller'[8]. However, not all Gypsy/Travellers are willing to be identified as such. Organisations working with the Gypsy/Traveller community in Scotland have estimated the true figure to be in the order of 15,000-20,000 people, which may itself be an underestimate[9].

3 | Gypsy/Traveller culture

Members of the Gypsy/Traveller community are also members of the wider local community. They live and work in the same area, send their children to the same schools, drive on the same roads and use the same shops and GP surgeries. Many of the concerns of settled residents will be shared by the Gypsy/Traveller population.

Despite these common interests, Gypsy/Travellers present the planning system with a set of very specific needs. Various aspects of Gypsy/Traveller culture and an often difficult relationship with the settled community have an influence over planning and built environment matters.

Family

Family is highly important in Gypsy/Traveller culture, and it is common for extended families to live, work and travel together[10]. If they are to be of practical use then sites need to be able to accommodate these larger groups and their caravans, trailers and vehicles.

6. Cadger, B. (2012) *'What A Voice'*, Article 12 in Scotland
7. Equality and Human Rights Commission (2013) *'Gypsy Travellers In Scotland-A resource for the media'*
8. National Records of Scotland (2013) *'2011 Census: Key Results on Population, Ethnicity, Identity, Language, Religion, Health, Housing and Accommodation in Scotland – Release 2A'*
9. Equality and Human Rights Commission (2013) *'Gypsy Travellers In Scotland-A resource for the media'*
10. Cadger, B. (2012) *'What A Voice'*, Article 12 in Scotland

Education

Generally speaking, the Gypsy/Traveller community places emphasis on teaching practical and vocational skills to their children, which are usually passed on through practical learning and oral instruction[11].

This does not mean that Gypsy/Travellers are not interested in their children receiving mainstream education. There is an increased recognition of the value of formal learning and qualifications, but this desire for children to attend school has been frustrated by discrimination and bullying, and through uncertainty over accommodation. Gypsy/Traveller families who have no secure base or reliable stopping places are at continual risk of being moved on. As a result, children are often unable to attend school, or end up attending a string of schools in a short space of time. This severely disrupts their education and has a long-term negative impact on their skills and employment prospects[12].

Health & hygiene

Overcrowded and substandard sites, the stress associated with being moved on, and discrimination and harassment from the settled community all contribute to diminishing health. For many, a lack of suitable and secure accommodation limits regular access to GP surgeries and clinics, worsening conditions and contributing to Gypsy/Travellers suffering a disproportionate level of physical and mental health problems. As a result of these conditions, many are forced to cease travelling and move into bricks and mortar housing. Gypsy/Travellers have a life expectancy between 10 and 12 years lower than the settled community average[13] and higher than average infant mortality rates[14, 15].

Cleanliness is considered to be very important in Gypsy/Traveller culture, and this manifests itself in their accommodation. Toilets and bathing facilities are usually separated from kitchen and food preparation areas. This means that separate utility and bathroom units are a common feature of sites[16].

Employment

Self-employment is very prevalent among the Gypsy/Traveller community. Common occupations include construction, landscaping, gardening, and dealing in scrap metals and other goods[17, 18]. These businesses usually require vehicles and often plant and other equipment. Therefore, sites should provide adequate parking and storage space.

11. ibid.
12. Equality and Human Rights Commission (2009) *'Inequalities experienced by Gypsy and Traveller communities: A review'*
13. Lane, P., Spencer, S. and Jones, A. (2014) *'Gypsy, Traveller and Roma: Experts by Experience'*
14. Equality and Human Rights Commission (2009) *'Inequalities experienced by Gypsy and Traveller communities: A review'*
15. Cadger, B. (2012) *'What A Voice'*, Article 12 in Scotland
16. ibid.
17. ibid.
18. Lane, P., Spencer, S. and Jones, A. (2014) *'Gypsy, Traveller and Roma: Experts by Experience'*

Work is often seasonal, and employment opportunities are usually the reason behind the movement of Gypsy/Traveller families. Having secure accommodation ensures that they have somewhere to return when these periods are over, and can be sure of somewhere to safely store their vehicles and equipment.

Working patterns have evolved, and new sites are required in areas where there was perhaps less or no demand in the past. In the past, Gypsy/Travellers were well known for their seasonal agricultural work, but in recent years they have been largely displaced by mechanisation and other groups. Site provision needs to match these changed realities.

Discrimination

Unfortunately, discrimination has been an everyday fact of life for Gypsy/Travellers for centuries. While there have been some improvements, in many instances Gypsy/Travellers continue to be treated unequally. In the *Scottish Social Attitudes Survey* (2011), 37% of respondents said they would be unhappy with a close family member forming a relationship with a Gypsy/Traveller, while 46% felt that a Gypsy/Traveller would be unsuitable for the job of a primary school teacher[19]. Approximately 90% of Gypsy/Traveller children have suffered racial abuse, and nearly two thirds have been subjected to bullying or physically assault[20].

Even when no deliberate discrimination is intended, a lack of knowledge or understanding can be just as detrimental, especially when service providers work on the basis of assumptions and stereotypes.

Accommodation

A nomadic lifestyle is the most notable aspect of Gypsy/Traveller culture. Some Gypsy/Travellers are always on the move, while many may only have seasonal movement and a permanent base for the rest of the year. Others still for various reasons, such as age or health issues, have ceased to travel and reside full time in 'bricks and mortar' housing. It is worth stressing that, regardless of their current or future living arrangements, individuals should still be recognised as belonging to the Gypsy/Traveller community.

There are three principle types of Gypsy/Traveller site:

- **Permanent sites** provide residents with permanent accommodation. These can be run by Local Authorities or registered social landlords, or privately owned by their residents. Gypsy/Travellers typically stay on-site for the majority of the year, only travelling for a few weeks.
- **Transit sites** are permanent developments which are only used temporarily by their residents, usually when they are en route between more long-term locations. They provide more basic amenities than permanent sites.
- **Stopping places** are pieces of land where Gypsy/Travellers have traditionally stayed for short periods of time.

19. Scottish Centre for Social Research (2011) *'Scottish Social Attitudes survey 2010: Attitudes to discrimination and positive action'* (2011)
20. Lane, P., Spencer, S. and Jones, A. (2014) *'Gypsy, Traveller and Roma: Experts by Experience'*

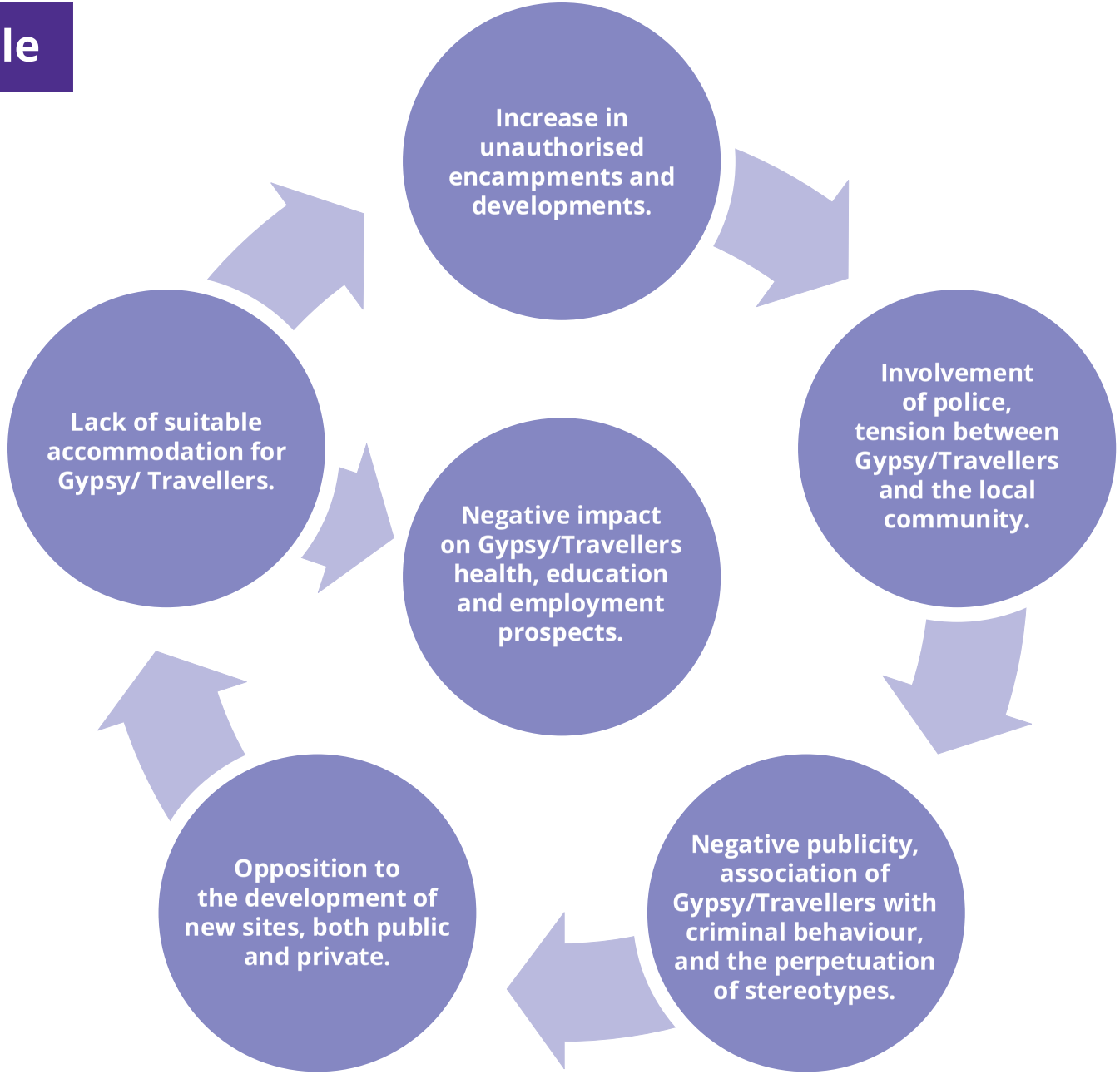
It is important to understand that Gypsy/Travellers pay for their accommodation. Public sites are not free, and in fact some Local Authorities charge more rent for Gypsy/Traveller pitches than they do for council houses. In 2012, the average pitch rental rate was £62 a week[21]. In some Local Authorities this sum includes council tax, while in others council tax is charged separately. In return for these payments, site residents get space to park their personal vehicle and caravan, and access to basic bathing and toilet facilities. Residents of private sites are also liable for council tax, and some also pay rent to the owners of their site.

Research has indicated that there is a general preference among Gypsy/Travellers for private sites, with the desire for self-sufficiency and independence often cited as reasons for this. Furthermore, private sites are seen as giving a level of security to their residents, allowing them to avoid potential conflict with other Gypsy/Traveller families, which can occur on public sites, and to ensure that future generations will have accommodation when they form their own families[22].

However, as with the settled community, the circumstances of individual Gypsy/Travellers vary, and not all can afford to develop their own sites or pay private rental rates. There needs to be a range of tenure available, and there is a role for socially rented sites.

21. Equality and Human Rights Commission (2013) *'Gypsy Travellers In Scotland-A resource for the media'*
22. Brown, P. (2015) *'Developing Successful Site Provision for Scotland's Gypsy/Traveller Community'*, EHRC

Vicious Circle



Accommodation is one of the most important issues faced by the Gypsy/Traveller community, and has an impact on a wide range of other issues. A lack of permanent sites (both public and private), and the blocking of many traditional stopping places, has contributed to a rise in unauthorised encampments on accessible but often unsuitable land. This has caused tension between Gypsy/Travellers and landowners, the settled community and the authorities. These tensions generate press coverage, usually negative, which creates and enforces an association of Gypsy/Travellers as a whole with criminality and antisocial behaviour. This builds upon existing prejudice and creates resistance to the development of suitable accommodation for Gypsy/Travellers and opposition to applications to develop such sites[23, 24].

If no legal alternatives are approved, unauthorised encampments and developments may continue to increase. An ongoing need will remain unsatisfied, and community tensions will continue to be generated. Furthermore, and most significantly, Gypsy/Travellers will continue to lose out on equal access to health, education, employment opportunities etc. (see **Vicious Circle** diagram on previous page).

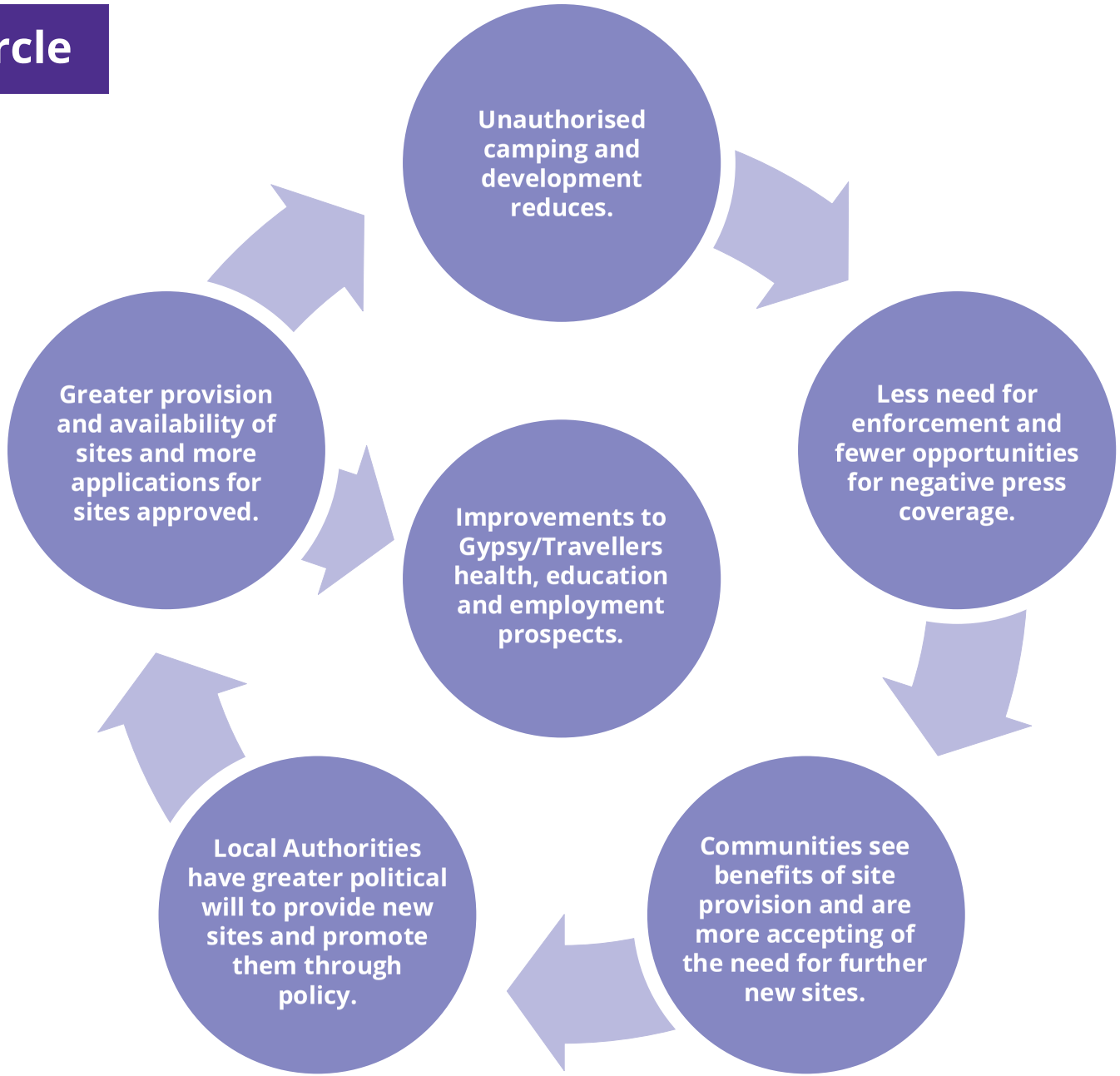
As a result of the under-provision of sites, whether public or private, there are ongoing issues with Gypsy/Travellers camping on land which they do not own (unauthorised encampments) or developing their own land without planning permission (unauthorised developments). When unauthorised sites are discovered, those resident will be asked to submit an application for Retrospective Planning Permission. Should this be refused, enforcement action including eviction proceedings may follow.

Dealing with such cases costs time, money and effort for all concerned: Local Authorities, landowners, the police, courts and Gypsy/Travellers themselves. It creates negative impressions of the Gypsy/Traveller community as a whole, a problem often exacerbated by media coverage. This fuels community tensions, and ensures that Gypsy/Travellers will continue to lose out on equal access to public services and opportunities in areas such as employment and education.

The solution is to increase the supply and range of authorised sites, both public and private. The most obvious benefits of this are to provide secure accommodation, which should result in a reduction in unauthorised sites, and with it the source of much of the ill-feeling directed at the Gypsy/Traveller community. The wider benefits are that secure accommodation allows Gypsy/Travellers access to public services, amenities and opportunities for work, education and recreation. In time this contributes to reducing inequality within society, narrowing the gap between the settled community and Gypsy/Travellers and providing overall improvements in community relations (See **Virtuous Circle** diagram on following page).

23. Equality and Human Rights Commission (2009) *'Inequalities experienced by Gypsy and Traveller communities: A review'*
24. Brown, P. (2015) *'Developing Successful Site Provision for Scotland's Gypsy/Traveller Community'*, EHRC

Virtuous Circle



As well as the very real improvements to community relations and equality of opportunity, investing in accommodation for the Gypsy/Traveller community can produce financial benefits. While public site provision presents some upfront construction and ongoing maintenance costs, it can also, in time, translate into significant savings for Local Authorities and police as enforcement, clean-up and other associated costs decline. By way of example, Bristol City Council used to spend an average of £200,000 per year on enforcement and clean-up. Following development of a residential and transit site, at a cost of £425,000, those enforcement costs declined dramatically to only around £5,000 per year[25]. The savings can then be used more productively and to the benefit of the local community. Furthermore, new sites can be a source of revenue, through payments for socially rented accommodation, and through council tax charges for private sites[26].

Policies for private site development allow demand to be met as and when it emerges, with the Local Authority acting as facilitator rather than provider. The costs to Local Authorities are therefore minimal. Furthermore, development of more private sites can free up space in public sites and therefore help to address overcrowding and excess demand.

25. Department for Communities and Local Government, *'Local authorities and Gypsies and Travellers: a guide to responsibilities and powers'* (2007)
26. Brown, P. (2015) *'Developing Successful Site Provision for Scotland's Gypsy/Traveller Community'*, EHRC

5 | The responsibilities of Local Authorities

Local Authorities are responsible for the delivery of a range of services, including housing, education, environmental health, and planning. Gypsy/Travellers are as entitled to benefit from these public services as the settled community.

In the field of planning, Local Authorities have a number of legislative duties and policy requirements in relation to planning for Gypsy/Travellers. Under the *Human Rights Act* 1998 and the *Equality Act* 2010, they must have due regard to human rights, equality and diversity when exercising their functions. It is important to note that Scottish Gypsy/Travellers are recognised as an ethnic group for the purposes of the *Equality Act* 2010[27], and as such the **Public Sector Equality Duty** (PSED) is of relevance[28]. This requires public authorities to have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations between people with a protected characteristic and those without. This duty covers Local Authorities, their staff and Elected Members.

Under Scottish Planning Policy (SPP) (2014), Local Authorities are required to plan for the current and future needs of the Gypsy/Traveller community, and involve the Gypsy/Traveller community in the process of planning and decision-making which impacts upon them.

In comparison to the wider housing needs of the settled community, the scale of the accommodation required by the Gypsy/Traveller community is small, but it cannot be overlooked. Decent homes are needed for any sustainable community, and Gypsy/Traveller individuals and their families are no exception to this principle. Dealing with the accommodation needs of Gypsy/Travellers is the most direct means of tackling wider problems of inequality and social cohesion[29].

6 | The responsibilities of Elected Members

The *Councillors' Code of Conduct* (2010)[30] sets out what is expected of Elected Members as they conduct the business of the local authority. It contains a number of Principles which are directly relevant to working towards the elimination of discrimination, advancing equality of opportunity and fostering good community relations. These include:

Duty. *You have a duty to uphold the law and act in accordance with the law and the public trust placed in you. You have a duty to act in the interests of the Council as a whole and all the communities served by it and a duty to be accessible to all the people of the area for which you have been elected to serve, and to represent their interests conscientiously.*

Accountability and Stewardship. *You are accountable for your decisions and actions to the public. You have a duty to consider issues on their merits, taking account of the views of others, and you must ensure that the Council uses its resources prudently and in accordance with the law.*

Respect. *You must respect all other councillors and all Council employees and the role they play, treating them with courtesy at all times. Similarly you must respect members of the public when performing duties as a Councillor.*

27. Employment Tribunals (Scotland) Case No: S/132721/07 23rd June 2008
28. Equality Act 2010, Section 149
29. Brown, P. (2015) *'Developing Successful Site Provision for Scotland's Gypsy/Traveller Community'*, EHRC
30. Scottish Government (2010) *The Councillors' Code of Conduct* (3rd Edition)

Openness. *You have a duty to be as open as possible about your decisions and actions, giving reasons for your decisions and restricting information only when the wider public interest clearly demands.*

Leadership. *You have a duty to promote and support these principles by leadership and example, and to maintain and strengthen the public's trust and confidence in the integrity of the Council and its councillors in conducting public business.*

Taken as a whole, the *Code of Conduct* requires Elected Members to not engage in or encourage racist or discriminatory behaviour and opinions, and also to challenge these where they exist and work to promote positive community relations. Elected Members have the power to make a positive difference to the lives of Gypsy/Travellers and enhance community relations through constructive engagement in planning for Gypsy/Traveller accommodation.

7 | Gypsy/Travellers and Development Planning

Scottish Planning Policy (SPP) (2014) considers Gypsy/Traveller accommodation under Specialist Housing Provision and Other Specific Needs, and states that:

'HNDAs [Housing Need and Demand Assessments] will also evidence need for sites for Gypsy/Travellers and Travelling Showpeople. Development plans and local housing strategies should address any need identified, taking into account their mobile lifestyles. In city regions, the strategic development plan should have a role in addressing cross-boundary considerations. If there is a need, local development plans should identify suitable sites for these communities. They should also consider whether policies are required for small privately-owned sites for Gypsy/Travellers, and for handling applications for permanent sites for Travelling Showpeople (where account should be taken of the need for storage and maintenance of equipment as well as accommodation). These communities should be appropriately involved in identifying sites for their use.' (Para. 133, pg. 32)

The following section considers in detail the individual requirements of this policy, as applied to development planning. Elected Members have a responsibility for ensuring that their involvement in development planning facilitates and supports these policy requirements:

1. Include Gypsy/Travellers in housing need and demands assessments.

The Local Development Plan is informed by Housing Need and Demand Assessments (HNDAs). While these are conducted by housing officers, close liaison with planning officers can help determine the scope and approach of the HNDAs to Gypsy/Travellers issues. Local Authorities have a responsibility to ensure that their HNDA process is effective and considers diverse needs and demands.

2. Address identified need in development plans and housing strategies.

Overcrowding and an increase in unauthorised encampments are both indicators of inadequate site availability. Therefore, built-in extra capacity is vital to meet both current requirements and any future growth. Local Housing Strategies need to recognise both the current and future accommodation needs of Gypsy/Travellers, and their aspirations for the type and location of that accommodation. The purpose of assessment is not just to obtain data but to establish whether further action is required. If there are identified shortfalls, there must be subsequent outcomes in the form of new allocations and/or appropriate policies in local development plans.

3. City regions should address need in strategic development plans.

Given the nomadic lifestyle of many Gypsy/Travellers, there needs to be a consideration of demand and provision that is fluid and not constrained by Local Authority borders. A regional, cross-authority approach to establishing population and demand levels could be beneficial. However, this should not be seen as a basis for Local Authorities to consolidate provision into fewer, larger sites. Doing so limits the accommodation choices of Gypsy/Travellers. Smaller, more numerous sites are generally preferable.

4. Local development plans should respond to identified need by making site allocations.

Local Authorities are required to adequately assess and make any necessary public provision for Gypsy/Travellers in their Local Authority areas, and should take proactive steps to facilitate private site development. Private site development presents Local Authorities with minimal costs. However, not all Gypsy/Travellers can afford to buy land and develop their own accommodation, so there is a continuing role for public provision.

Site allocations need to be realistic reflections of the needs of Gypsy/Travellers and provide a range of accommodation options, in terms of both site type and geography.

As noted in the ***Accommodation*** section above, there are three types of Gypsy/Traveller site: permanent sites, transit sites and stopping places. Problems have emerged from a lack of permanent sites, while many long-standing stopping places have been blocked off in the past couple of decades, which has coincided with the overall increase in unauthorised encampments.

Whether they are public or private developments, permanent sites need to be sustainable, to be reasonably close to essential services and transport links, and to work in basic planning terms. Among the key aspects to consider when identifying suitable sites are:

- ***Size of site/number of pitches.*** For public site provision, smaller, more numerous sites are generally preferable to larger sites. This offers a wider choice of accommodation and allows flexibility for different groups. Private sites tend to have 1-5 pitches and can accommodate one or two families. As extended family groups are common, sites need to be able to realistically accommodate residents.

- ***Location.*** A number of existing local development plan policies concern themselves with location, usually with regards to how close sites can be to settlements. It is important that these policies are realistic about access to essential services. A good degree of flexibility is required given the cost of development land in built-up areas.
- ***Type of land.*** Sites should not be on or near contaminated land or sites at risk of flooding. In some Local Authority areas Green Belt land forms a significant amount of available land. Serious consideration should be given as to whether the benefits of granting permission for sites on Green Belt land outweigh the purpose of the designation.
- ***Water, electricity and sewage.*** Sites need to be able to be supplied with all the essential services. There should be flexibility with regards to connections to public supplies and networks if self-contained solutions exist. Public sites should include amenity blocks for toilets, bathing, utilities and cooking facilities, bearing in mind cultural sensitivities around the separation of cooking, bathing and living spaces.
- ***Roads and access.*** Safe and easy access for vehicles is important. Sites should be easy to reach from main roads, but usually not right beside them. They should avoid causing significant volumes of additional traffic. Layout and parking arrangements should reflect Gypsy/Travellers' everyday lives. Given the nature of many occupations and businesses, there should be enough parking for work vehicles in addition to caravan stances and cars. In light of seasonal movement, consideration should be given to allocating enough space for both permanent and touring caravans, and potentially also for those of visitors.

- ***Character and Appearance.*** Sites should not cause significant harm to the character and appearance of their surroundings. If necessary, this can be achieved through landscaping, although there should be no requirement for sites to be 'hidden'.
- ***Residential amenity.*** There should be no significant harm to the residential amenity of site residents or neighbouring properties.
- ***Access to public services and amenities.*** It should be possible for residents to reach vital facilities such as schools, hospitals, shops and recreation facilities. Proximity to public transport would also be highly beneficial, although Local Authorities should be realistic about the availability of alternatives to the car in accessing local services.

Transit sites and stopping places should provide basic facilities, e.g. water, electricity, rubbish collection and washing and sanitation facilities. They do not require the same level of proximity to services and amenities as permanent sites. Consideration should be given to upgrading traditional stopping places, which are already established as part of the network of known locations used by Gypsy/Travellers when on the move.

5. Consider if criteria-based policies are required for small privately owned sites.

Successful private sites will contain some or all of the aspects listed above. There is no requirement to establish a general need for Gypsy/Traveller site when determining applications for private sites. Criteria-based policies for private site development enable a flexible approach, allowing demand to be met as and when it emerges, with the Local Authority acting as facilitator rather than provider.

An example of good policy is that of the East Ayrshire Local Plan (2010):

'Policy RES 32: Travellers' Sites

The Council will assess any applications for small, privately owned Travellers' Sites on their own merits and will support the development of such sites where all of the following criteria can be met:

(i) the site is in a location readily accessible to the main strategic road network;

(ii) the site does not adversely affect or impact on any areas of recognised nature conservation and built heritage interest, sites of significant landscape quality and any existing surrounding uses;

(iii) the site can be accessed and serviced to the standards of the Council's Roads Division and other service providers;

(iv) the site is adequately screened and landscaped to the satisfaction of the Council; and

(v) the site does not cause any unacceptable damage or detriment to the amenity of residents of surrounding properties.

Proposals which do not meet all these criteria will not be supported by the Council.'

This policy focuses on the practical aspects of accessibility and public services, and the safeguarding of protected sites, landscape quality and residential amenity. As such it forms a straightforward set of criteria to assess applications, makes explicit the consideration of individual merits and does not try and apply a homogeneous approach to site developments.

6. Engage with the community in identifying sites.

Gypsy/Travellers must be meaningfully involved in the development planning process if the resulting plans and policies are to be fit for purpose. There are a number of different groups working with Gypsy/Travellers, with activities as diverse as youth groups and employment training schemes. Any existing relationships between these external organisations and the Local Authority should be utilised. Such relationships may be spread across different departments, e.g. housing, education, social work, so liaison between these departments is essential. Gypsy/Traveller Liaison Officers (GTLOs) could act as intermediaries and facilitate consultation and engagement. Local Authorities should not restrict themselves to these established relationships, and should seek to engage with as broad a constituency as possible.

The *Councillors' Code of Conduct* (2010)[31] details the role of Elected Members in the creation of the development plan, stating that they are 'fully entitled to express [their] views or advocate proposals for the making, approval or amendment of the development plan, including supplementary planning guidance published by the planning authority both relating to general policies for the authority's area and to briefs and masterplans prepared for specific sites in anticipation of planning applications' (Councillors Code of Conduct (2010) Section 7.1). Elected Members therefore have a significant opportunity to make a positive difference to the lives of Gypsy/Travellers. Through proactive engagement with the development planning process, they can help ensure that Local Authority plans and policies are robust and appropriate to meet the challenge of developing accommodation for Gypsy/Travellers.

31. Scottish Government (2010) *The Councillors' Code of Conduct* (3rd Edition)

Photo: East Lothian Council

Elected Members as decision-makers

Elected Members act as decision-makers in a number of different contexts:

- as members of committees dealing generally with decisions on planning applications;
- in certain cases, as members of committees where applications are subject to a pre-determination hearing;
- as members dealing with applications referred to the full Council for determination; and
- as members of Local Review Bodies dealing with reviews where officers acting under delegated authority have refused planning permission or granted it subject to conditions which the applicant does not agree with or of non-determination of the application by the officer; or have not dealt with the application within the prescribed timescale.

Elected Members do not need to be experts in planning, but they have a responsibility under the *Code of Conduct* to lead by example and conduct the decision-making process in a fair and balanced fashion. Planning can be contentious and there can be differences of opinion. Elected Members with decision-making responsibilities need to consider the opinions of constituents, but they must also act to ensure that they focus on relevant matters and not encourage inaccurate or discriminatory opinions.

Prejudices and stereotypes

There may be existing prejudices or stereotypes about Gypsy/Travellers held by some within the local community, which can be expressed in opposition to proposals or applications for sites. At times, that opposition can spiral into outright hostility. Of course, not all members of the settled community are prejudiced or opposed to Gypsy/Traveller sites, but there is always the potential for an active and vocal minority to overwhelm a passive or accepting majority.

Certain themes commonly emerge in opposition to Gypsy/Traveller sites. It is worth considering these in more detail, and directly addressing the inaccuracies that often form the basis of them:

Public services. One issue that is sometimes raised is that the development of Gypsy/Traveller sites can be linked to an increase in pressure on public services, such as local health and education. Such concerns are equally applicable to the development of mainstream housing. Research suggests that local schools usually adapt successfully to new intakes of Gypsy/Traveller children[32].

Law and order. The fear of crime is not a material consideration. The notion that the presence of Gypsy/Travellers in an area will result in an increase in violence, street crime and/or burglary can be common. However, this is simply not supported by the evidence. Police records demonstrate that Gypsy/Travellers are no more or less prone to criminal behaviour than any other section of the public, and that there is no change in the crime rate following the development of sites[33].

Taxation. Gypsy/Travellers are often accused of not contributing financially to society. On the contrary, Gypsy/Travellers do pay tax, and many operate successful businesses. As mentioned in the ***Accommodation*** section above, Gypsy/Traveller sites are not free and their residents pay council tax on their pitches.

Fear vs. reality

Research has been conducted which compares the opinions of residents on the proposed development of a Gypsy/Traveller site in their neighbourhood with their views and experiences post-construction. It found that subsequent experiences had not matched initial fears, with many commenting that Gypsy/Travellers were good neighbours and that the sites were discreet. Most neighbours had no specific complaints and there was an acknowledgement that envisioned problems had not materialise[34].

Living on a permanent site enables Gypsy/Travellers to settle into an area and become a part of the local community. This closer relationship can break down barriers and challenge prejudices. There is a known correlation between positive and negative attitudes to minority groups and how much personal experience individuals have of their members[35].

32. Duncan, T. (1997) *'Gypsy sites in their neighbourhood'*, Planning Exchange
33. Duncan, T. (1997) *'Gypsy sites in their neighbourhood'*, Planning Exchange
34. ibid.
35. Scottish Centre for Social Research (2011) *'Scottish Social Attitudes survey 2010: Attitudes to discrimination and positive action'*

The role of the media

The media can play a powerful role in determining whether or not sites are successfully developed. At times the reporting of such applications has compromised the planning process. Reporting can be inaccurate and sensationalist, and can place considerable pressure on planning officers and Elected Members[36]. Elected Members should avoid being drawn into such contentious media coverage. If asked for comment they should take the opportunity to challenge fears and prejudices.

Material considerations

In dealing with the views of the community, Elected Members should bear in mind what is and what is not relevant to determining an application for planning permission. Decisions are made in accordance with the Local Development Plan/Local Plan, unless material considerations indicate otherwise. There are two main aspects to a material consideration: it should be related to planning, i.e. concerning the development and use of land, and it should fairly and reasonably relate to the application in question.

The *Planning (Scotland) Act* 1997 requires planning applications to be determined in accordance with the Development Plan unless material considerations indicate otherwise. The Scottish Government *Circular 6/2013 Development Management* notes that statements in the following documents may be material considerations to be taken into account in development management decisions:

- National Planning Framework
- Scottish Planning Policy
- Creating Places

- Designing Streets
- Circulars

In addition to these, relevant matters of law and case law are also material considerations. It is worth going over some of the main examples of what may be material considerations for Gypsy/Traveller applications in particular:

- Relevant legislation, including the *Human Rights Act* 1998, *Equality Act* 2010 and *Children (Scotland) Act* 1995.
- *Scottish Planning Policy* (2014) Paragraph 133 policies on Gypsy/Traveller sites.
- Local Development Plan/Local Plan policies on Gypsy/Traveller sites, including policies in any emerging plans.
- In the absence of any policies at the Local Authority level, the following guidance documents:
  - The Secretary of State's Advisory Committee on Scotland's Travelling People (ACSTP) *Guidance Notes on Site Provision for Travelling People* (1997).
  - ACSTP's *9th and Final* Report (2000).

It is also worth going over what are <u>not</u> material considerations. These include:

- The impact of development on property prices.
- Loss of views.

36. Equality and Human Rights Commission (2013) *'Gypsy Travellers In Scotland-A resource for the media'*

- Fear of crime.
- Moral or religious objections.
- Political beliefs or ideological objections.

Some more detailed information on material considerations can be found at: www.pas.org.uk/planning-information/

Racist representations

Some objections may be not only irrelevant but also illegal. Racist representations are comments, letters or emails whose content applies pressure to discriminate on racial grounds, is racially abusive or insulting, which could stir up racial hatred or contempt, or which is likely to be offensive to a particular racial or ethnic group. Unfortunately, these can be a significant feature of applications for Gypsy/Traveller sites.

The Local Authority, its staff and Elected Members have a legal responsibility to take measures against racist material. Racist correspondence should be returned if possible with an explanation that its content may be unlawful and, as such, ineligible for consideration[37]. If an individual continues to send racist representations, then the matter may be referred to the police. Elected Members should likewise return any racist correspondence that they receive, as they have a duty not to spread such material.

If racist verbal comments are made to planning officers or Elected Members, then the speaker should be informed that such pressure to discriminate on racial grounds is not acceptable and that their comments will have no bearing on the consideration of an application.

If the Local Authority organises any public events to discuss Gypsy/Traveller proposals or applications, it should be made clear to participants that threatening or racist language will not be tolerated. It may be beneficial to work with small groups, rather than large public meetings which can become heated and generate adverse publicity.

Communicating with Gypsy/Traveller members of the community

Gypsy/Travellers are also members of the local community, and their views are just as important as the settled community. However, it is important to recognise that for Gypsy/Travellers, past experiences with public bodies and the settled community may have been largely negative. There are concerns that an application from a Gypsy/Traveller is not considered in the same way as one from a member of the settled community. These feelings are exacerbated by racist representations which may be made during consultations.

Elected Members may be contacted or approached by Gypsy/Traveller applicants or other members of the Gypsy/Traveller community in relation to applications for Gypsy/Traveller sites. Alternatively, Elected Members may wish to contact Gypsy/Traveller groups or individuals for their advice or opinions. Gypsy/Travellers generally prefer direct and personal forms of communication, meeting people face-to-face and presenting information orally. Some also have issues with literacy. Therefore, Elected Members seeking to engage effectively with Gypsy/Travellers need to be approachable.

37. Equality and Human Rights Commission (2013) *'Gypsy Travellers In Scotland-A resource for the media'*

Photo: Damian Le Bas

9 | Summary

This guide has attempted to increase awareness of Gypsy/Traveller culture and how it impacts upon the planning system. It has considered the range of issues that Gypsy/Travellers face and the considerable benefits to society as a whole which can result from a greater consideration of their needs. It has also looked at the legal and policy obligations of Local Authorities, and the important responsibilities of Elected Members in both Development Planning and Development Management. In doing so, it has sought to demonstrate how Elected Members can take a positive and constructive approach to that role, and in doing so improve relations between the settled community and the Gypsy/Traveller community.

Useful Contacts

PAS

3rd floor, 125 Princes Street
Edinburgh
EH2 4AD

Planning advice: 0845 603 7602

Email: office@pas.org.uk

Website: www.pas.org.uk

Other organisations who work with Gypsy/Travellers

Article 12 in Scotland

PO Box 7182
Montrose
DD10 9WW

Phone: 01674 674086

Email: respond@article12.org

Website: www.article12.org

MECOPP

172 Leith Walk
Edinburgh
EH6 5EA

Phone: 0131 467 2994

Email: info@mecopp.org.uk

Website: www.mecopp.org.uk

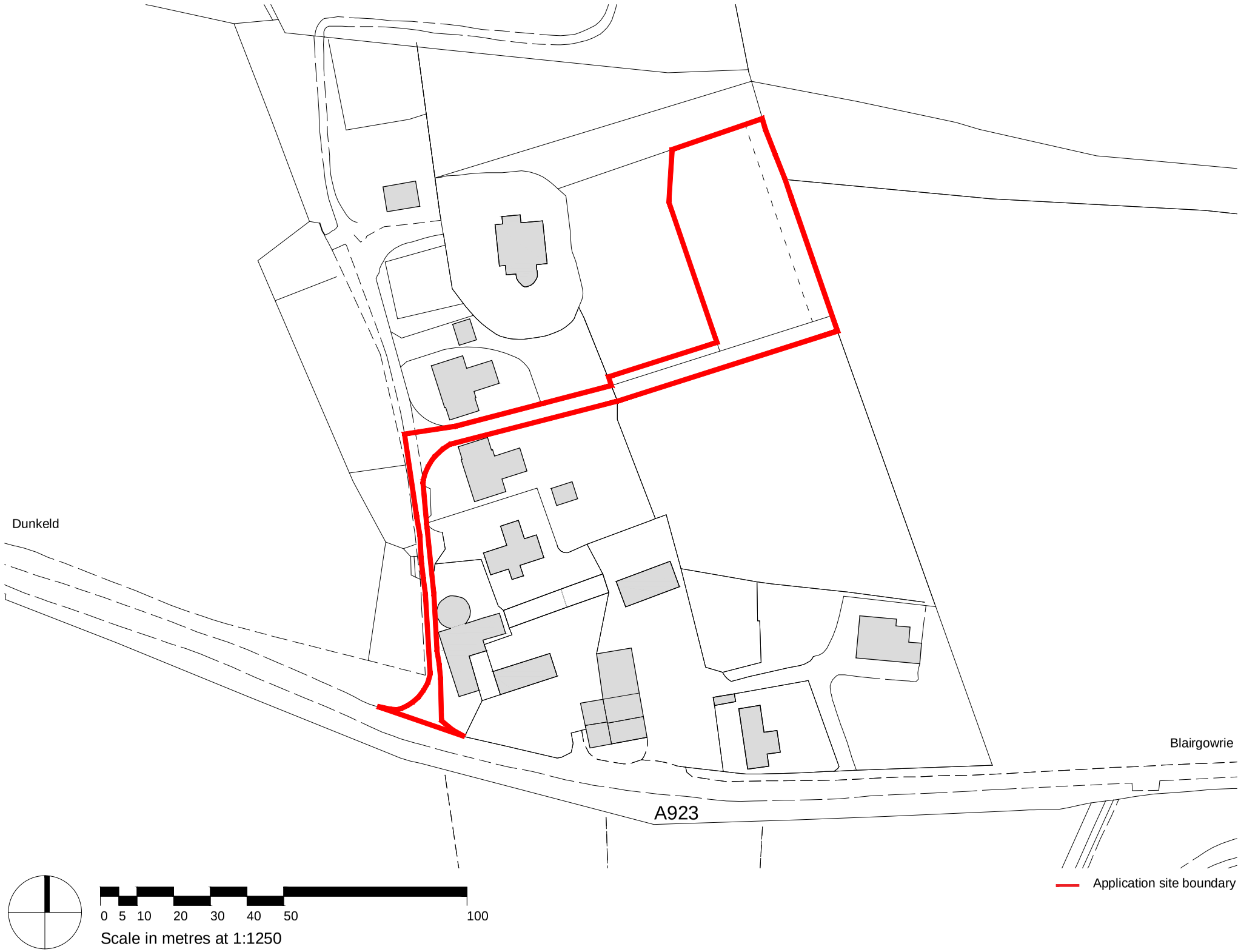
Planning Aid for Scotland, known as PAS. Registered Office: 3rd floor, 125 Princes St, Edinburgh EH2 4AD. Registered in Scotland SC143209. Registered Charity SC021337.

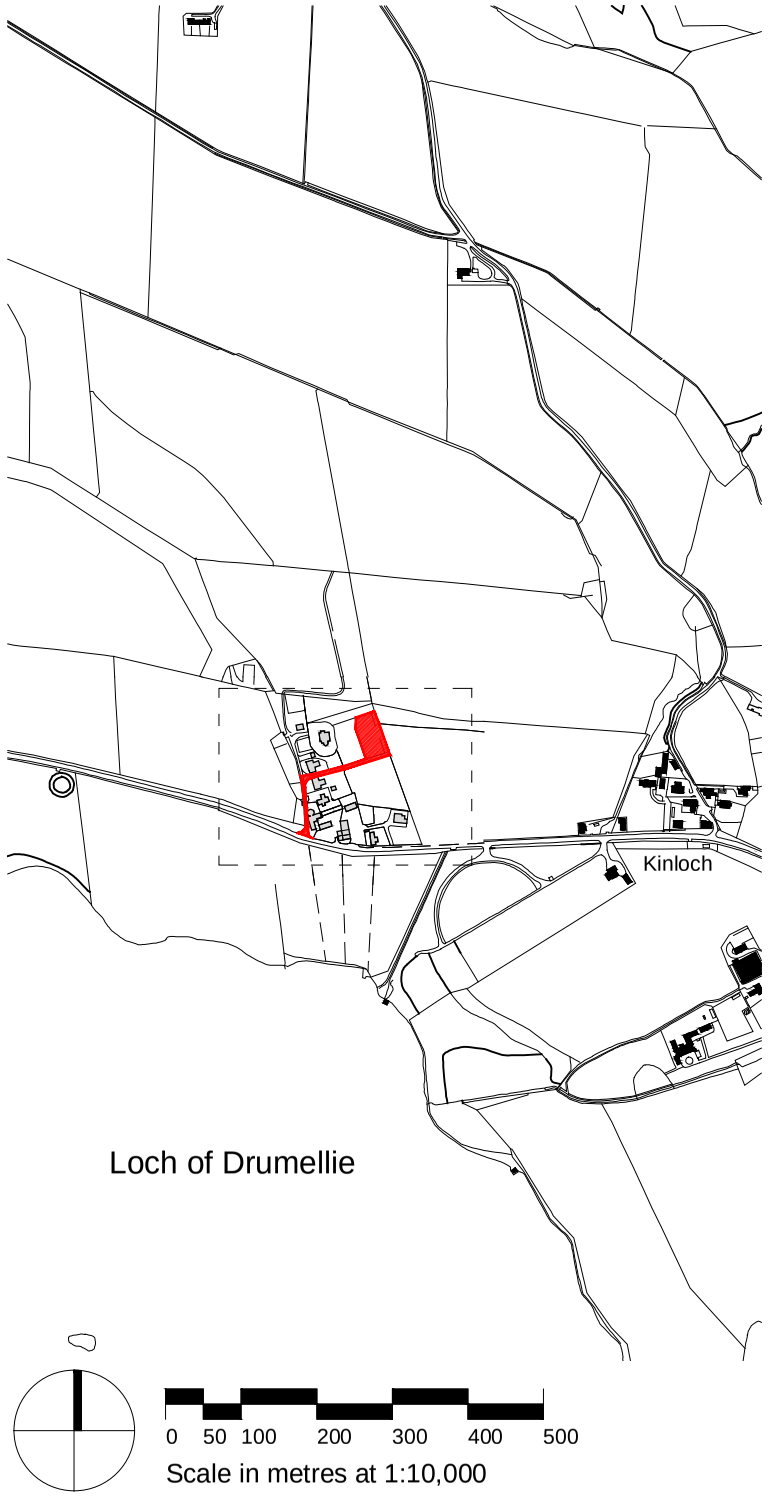
TCP/11/16(471) – 16/01937/FLL – Erection of a dwellinghouse (in retrospect) on land at Hillview, Kinloch, Blairgowrie, PH10 6SD

PLANNING DECISION NOTICE *(included in applicant's submission, see pages 181-182)*

REPORT OF HANDLING*(included in applicant's submission, see pages 183-194)*

REFERENCE DOCUMENTS





Location Plan

PLANNING

Rev.
•

LEADINGHAM JAMESON ROGERS + HYND
C H A R T E R E D A R C H I T E C T S
18 South Tay Street Dundee DD1 1PD Tel: 01382 200511 Fax: 01382 225226 e-mail: admin@LJRH.co.uk

Job Name	Job No.	Series	Drwg. No.
• Change of use from Agricultural Shed to Dwelling	• 2954	• PL	• 01
Drwg Title	Scale	Date	Rev.
• Location Plan	• As Noted @A3	• Oct' 16	•

Change of use from Agricultural Shed to Dwelling at Balcairn by Kinloch, Blairgowrie

02

0 5 10 15 20 25 35

Scale in metres at 1:500

Application site boundary

PLANNING

Rev.
●

LEADINGHAM JAMESON ROGERS + HYND

C H A R T E R E D A R C H I T E C T S

18 South Tay Street Dundee DD1 1PD Tel: 01382 200511 Fax: 01382 225226 e-mail: admin@LJRH.co.uk

Job Name	Job No.	Series	Drwg. No.
● Change of use from Agricultural Shed to Dwelling	● 2954	● PL	● 02
Drwg Title	**Scale**	**Date**	**Rev.**
● Proposed Site Layout	● 1:500 @A3	● Oct' 16	●

Proposed Site Layout

Change of use from Agricultural Shed to Dwelling at Balcairn by Kinloch, Blairgowrie

03

Room Areas:

Ground Floor Total Area: 153.6m²

Living/Kitchen/Dining:	36.3m²
Vestibule:	4.6m²
Utility:	5.8m²
Bathroom:	6.4m²
Bedroom 1:	10.4m²
Bedroom 2:	13.8m²
En-suite:	4.3m²
Bedroom 3:	15.7m²
Sitting Room:	17.8m²

0 1 2 3 4 5

Scale in metres at 1:100

Rev.
Drawn:

LEADINGHAM JAMESON ROGERS + HYND
C H A R T E R E D A R C H I T E C T S
18 South Tay Street Dundee DD1 1PD Tel: 01382 200511 Fax: 01382 225226 e-mail: admin@LJRH.co.uk

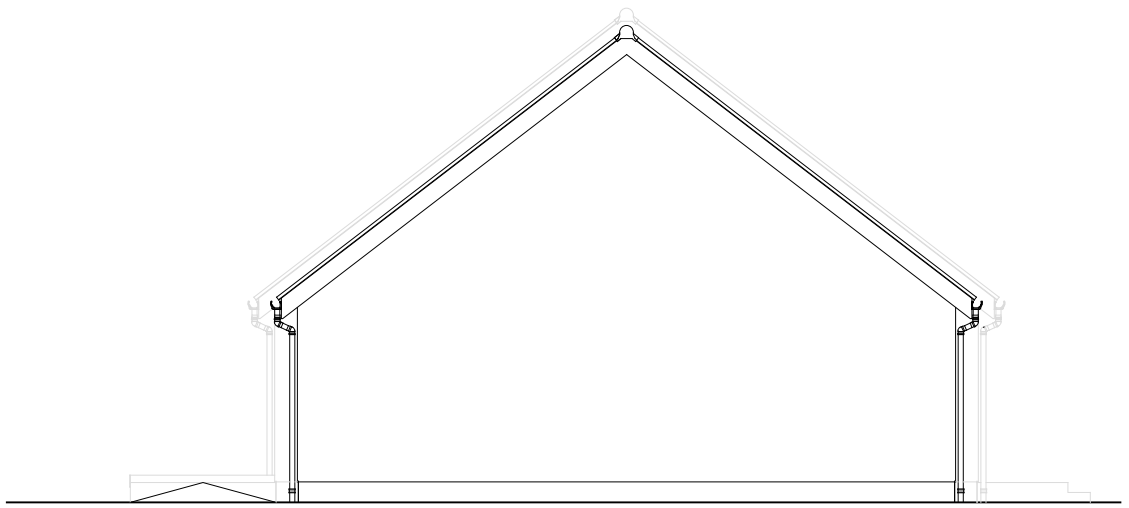
Job Name	Job No.	Series	Dwg. No.
• Change of use from Agricultural Shed to Dwelling	• 2954	• PL	• 03
Dwg Title	**Scale**	**Date**	**Rev.**
• Proposed Layout	• 1:100 @ A3	• Oct 16	•

Proposed Layout

Change of use from Agricultural Shed to Dwelling at Balcairn by Kinloch, Blairgowrie

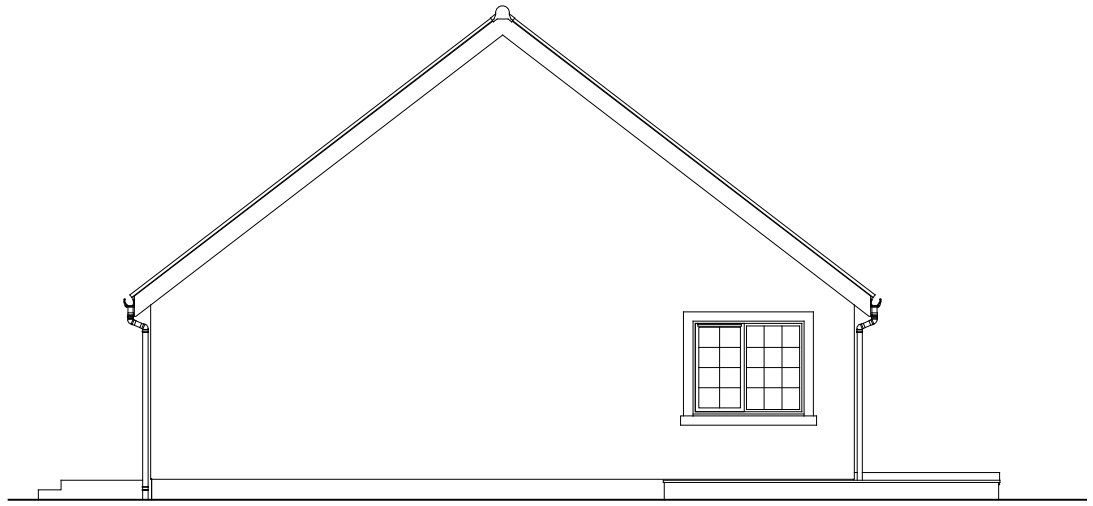
04

South East Elevation



North East Elevation

North West Elevation



South West Elevation

External Use of Materials:

Roof:	Natural Scots Slate *Colour: Grey*
Rainwater Goods:	'Marley' uPVC or similar *Colour: White*
Windows & Doors:	Double Glazed uPVC Units *Colour: White*
Walls:	Wet Dash Roughcast *Colour: Buff*

0 1 2 3 4 5

Scale in metres at 1:100

Rev.
Drawn:

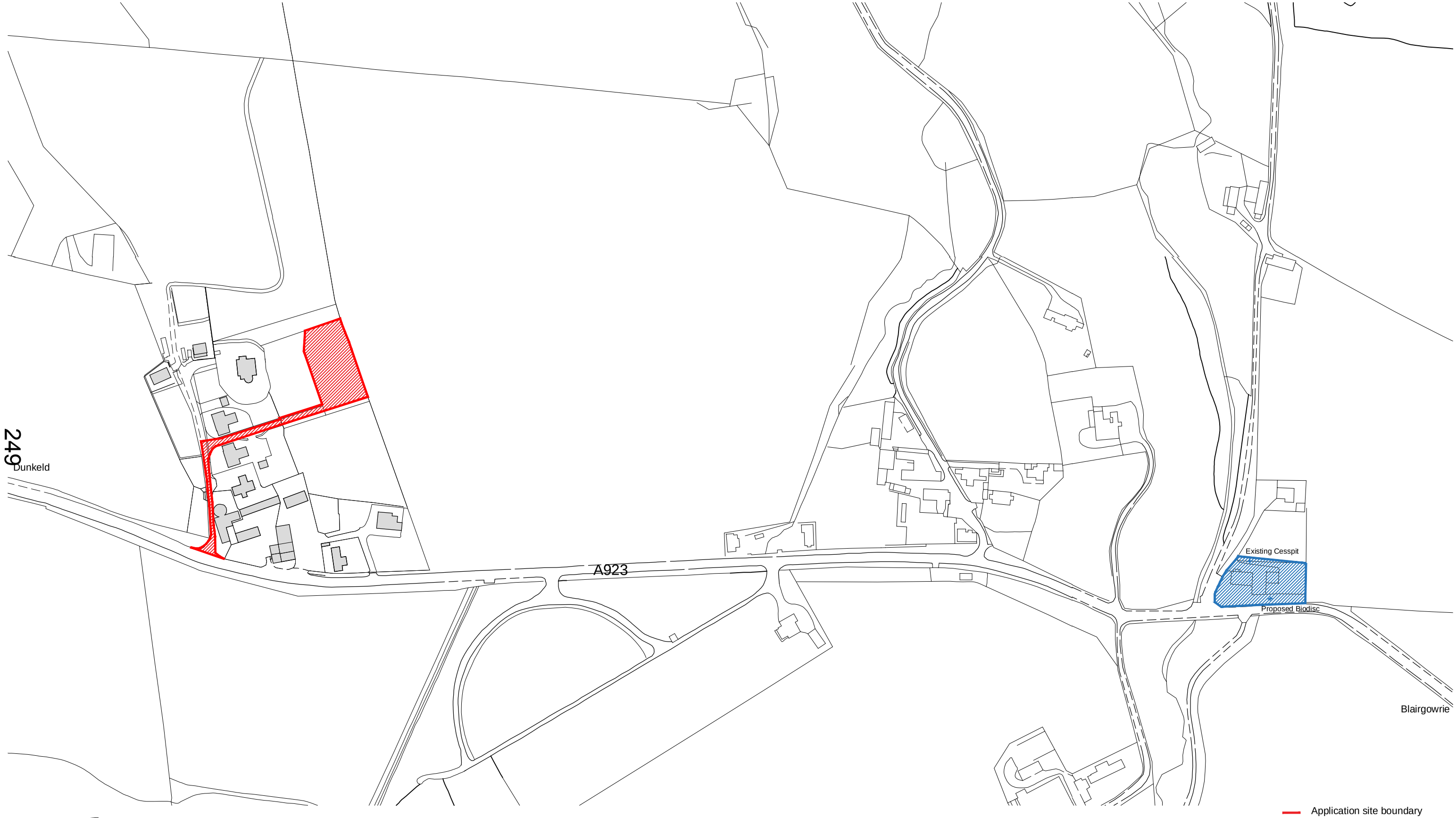
LEADINGHAM JAMESON ROGERS + HYND
C H A R T E R E D A R C H I T E C T S
18 South Tay Street Dundee DD1 1PD Tel: 01382 200511 Fax: 01382 225226 e-mail: admin@LJRH.co.uk

Job Name	Job No.	Series	Dwg. No.
Change of use from Agricultural Shed to Dwelling	2954	PL	04
Dwg Title	**Scale**	**Date**	**Rev.**
Proposed Elevations	1:100 @ A3	Oct 16	

Proposed Elevations

Change of use from Agricultural Shed to Dwelling at Balcairn by Kinloch, Blairgowrie

05a



Application site boundary

Cesspit/Biodisc at Chestnut View

0 50 100 150

Scale in metres at 1:2500

PLANNING

Rev. a - Site boundary revised

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C H A R T E R E D A R C H I T E C T S

18 South Tay Street Dundee DD1 1PD Tel: 01382 200511 Fax: 01382 225226 e-mail: admin@LJRH.co.uk

Job Name	Job No.	Series	Drwg. No.
Change of use from Agricultural Shed to Dwelling	2954	PL	05
Drwg Title	**Scale**	**Date**	**Rev.**
Location Plan	1:2500 @A3	Oct' 16	a

Location Plan

Houses at Balcairn by Kinloch, Blairgowrie

1

PERTH AND KINROSS COUNCIL

DRAWING REF: 12/00534/1

1:1250 0 10 20 30 40 50

PLANNING

Rev.
•

LEADINGHAM JAMESON ROGERS + HYND
CHARTERED ARCHITECTS
18 South Tay Street Dundee DD1 1PD Tel: 01382 200511 Fax: 01382 225226 e-mail: admin@LJRH.co.uk

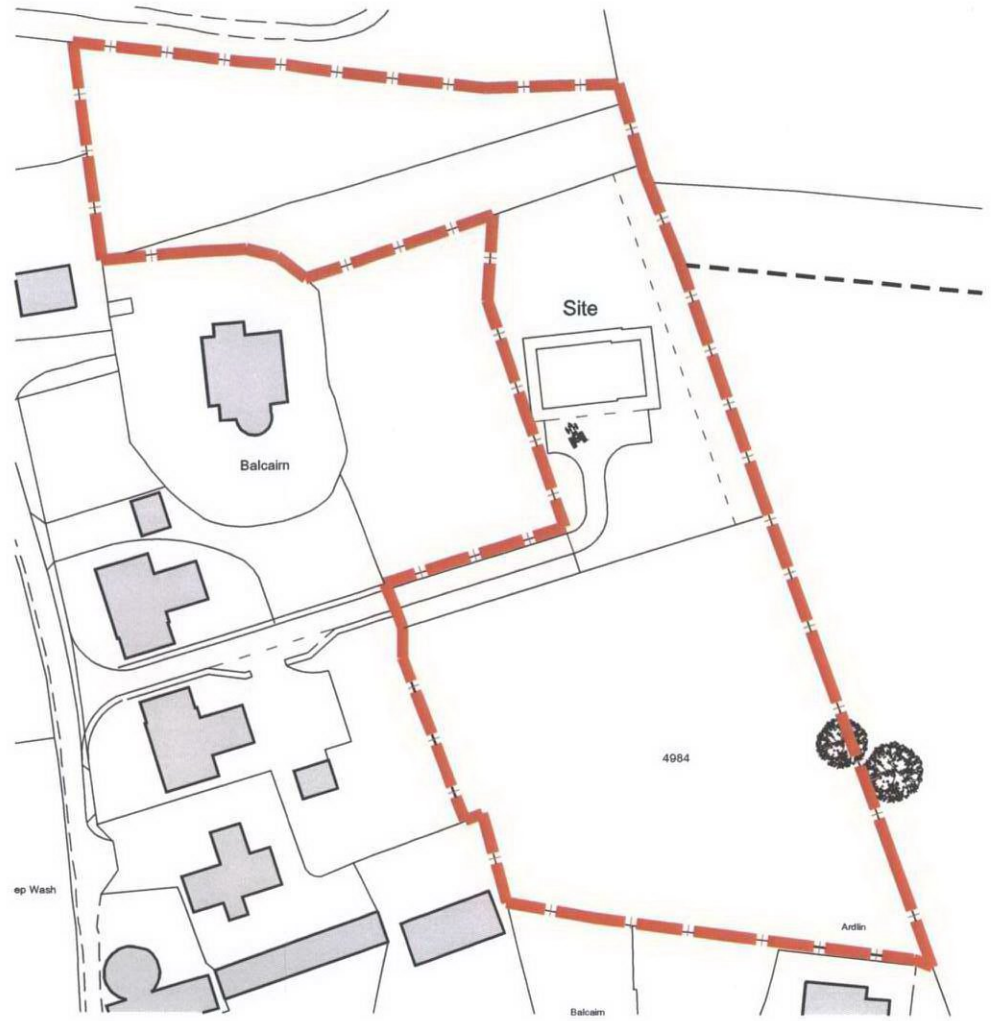
Job Name	Job No.	Series	Drwg. No.
• Houses at Balcairn by Kinloch, Blairgowrie	• 2954	• S	• 1
Drwg Title	Scale	Date	Rev.
• Site Location Plan	• 1:1250/10000@A3	• June 09	•

Site Location Plan

New Shed, Balcairn by Kinloch, Blairgowrie

01

Proposed Site Plan - 1:500



Proposed Location Plan - 1:1250

PERTH AND KINROSS COUNCIL

DRAWING REF: 12/00544/2

1:1250 0 10 20 30 40 50

1:500 0 5 10 15 20 25

Rev.
Drawn:

LEADINGHAM JAMESON ROGERS + HYND

CHARTERED ARCHITECTS

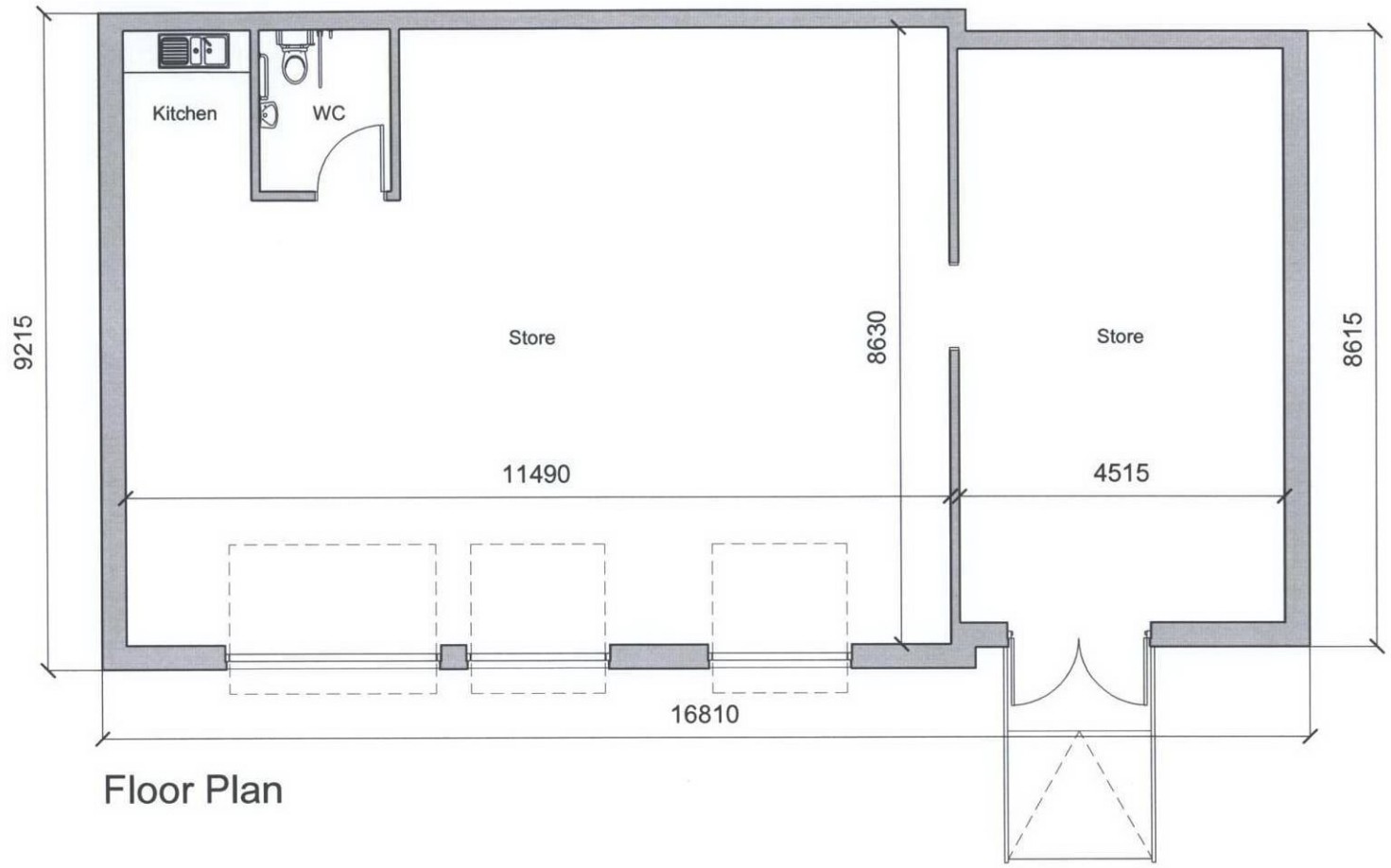
18 South Tay Street Dundee DD1 1PD Tel: 01382 200511 Fax: 01382 225226 e-mail: admin@LJRH.co.uk

Job Name	Job No.	Series	Dwg. No.
• New Shed, Balcairn by Kinloch, Blairgowrie	• 2954	• D	• 01
Dwg Title	Scale	Date	Rev.
• Proposed Site Plan/Location Plan	• 1:500 @ A3	• Feb' 12	•

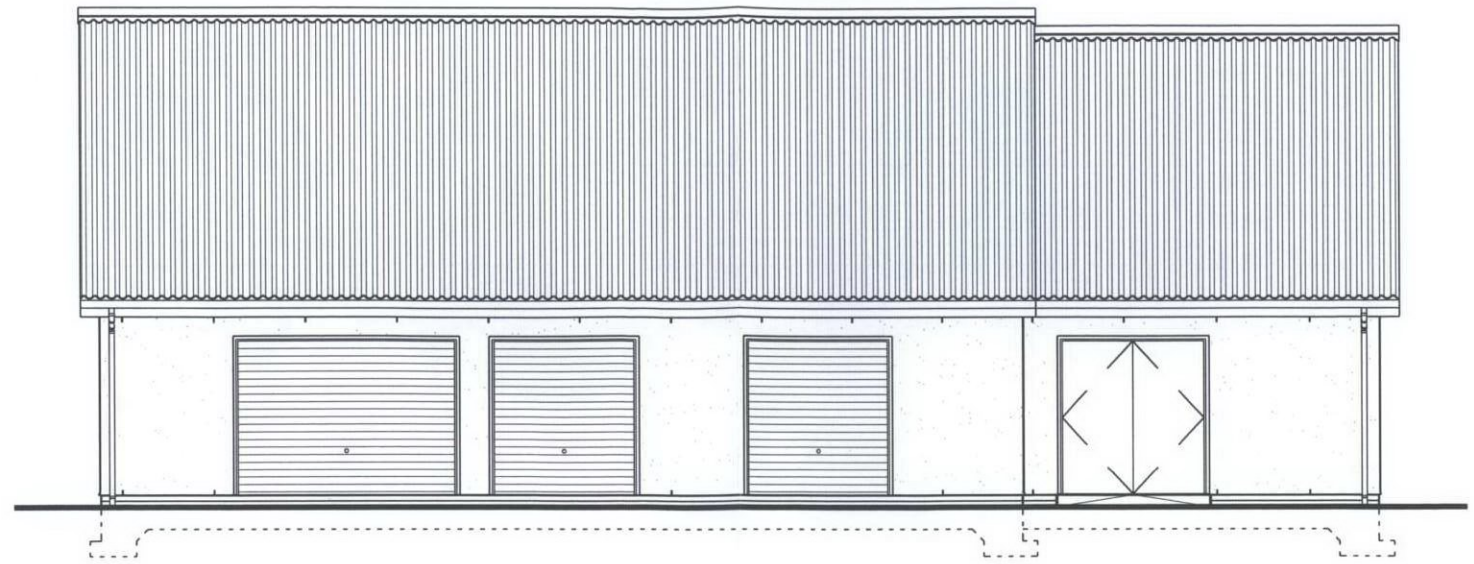
Proposed Site Plan/Location Plan

New Shed, Balcairn by Kinloch, Blairgowrie

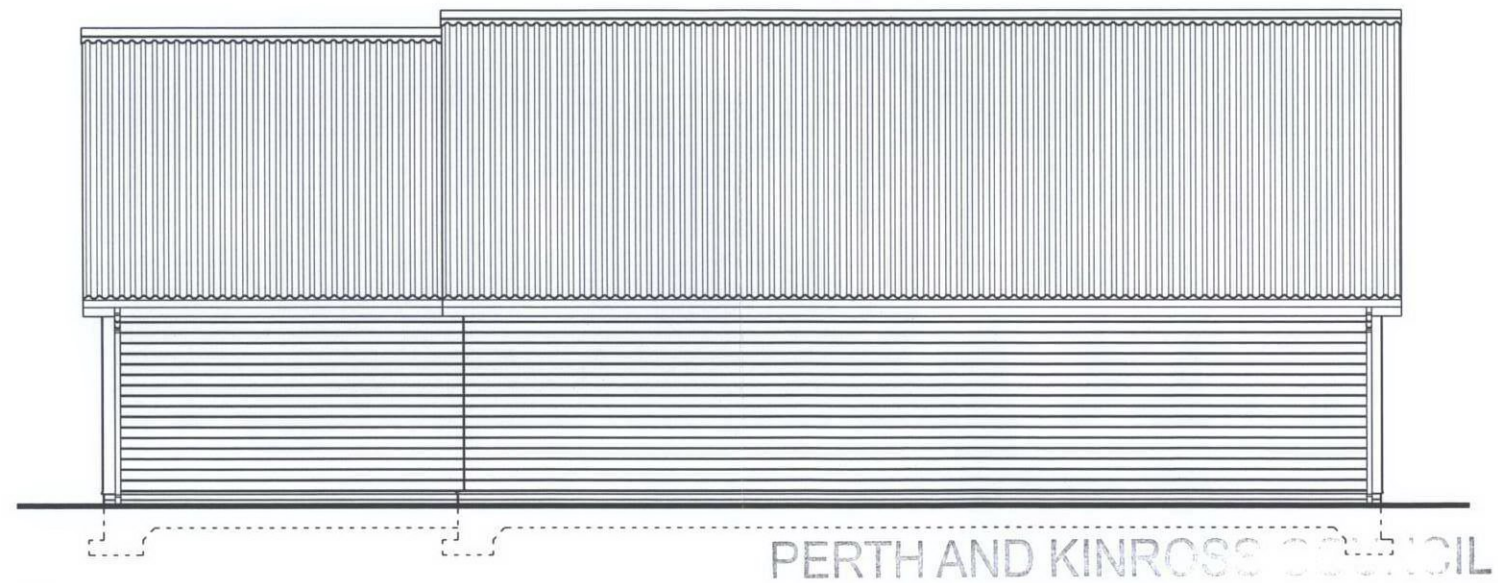
02



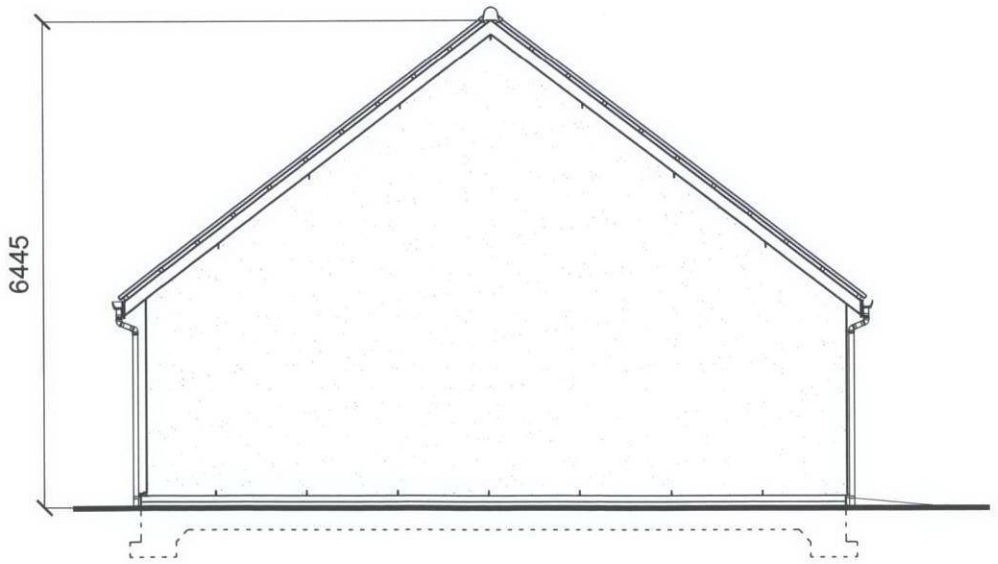
Floor Plan



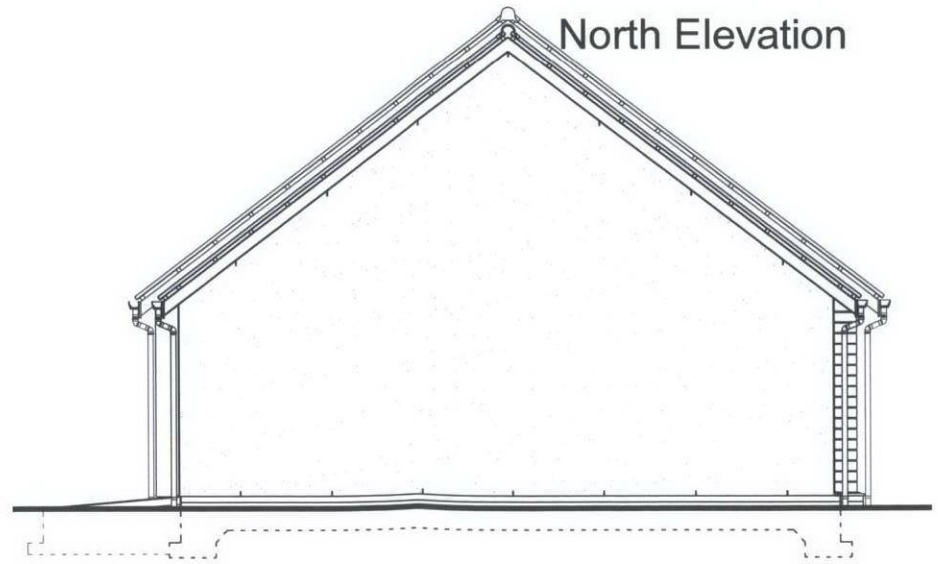
South Elevation



North Elevation



West Elevation



East Elevation

Proposed Plan & Elevations

PERTH AND KINROSS COUNCIL

DRAWING REF: 12/00544/3

External use of materials:

Roof: To be Tin Profiled Sheet Cladding: colour grey
Walls: To be harled and painted. Colour: Light Grey
Doors: to be Timber panelled doors. Colour: Dark Grey

1:100 0 1 2 3 4 5

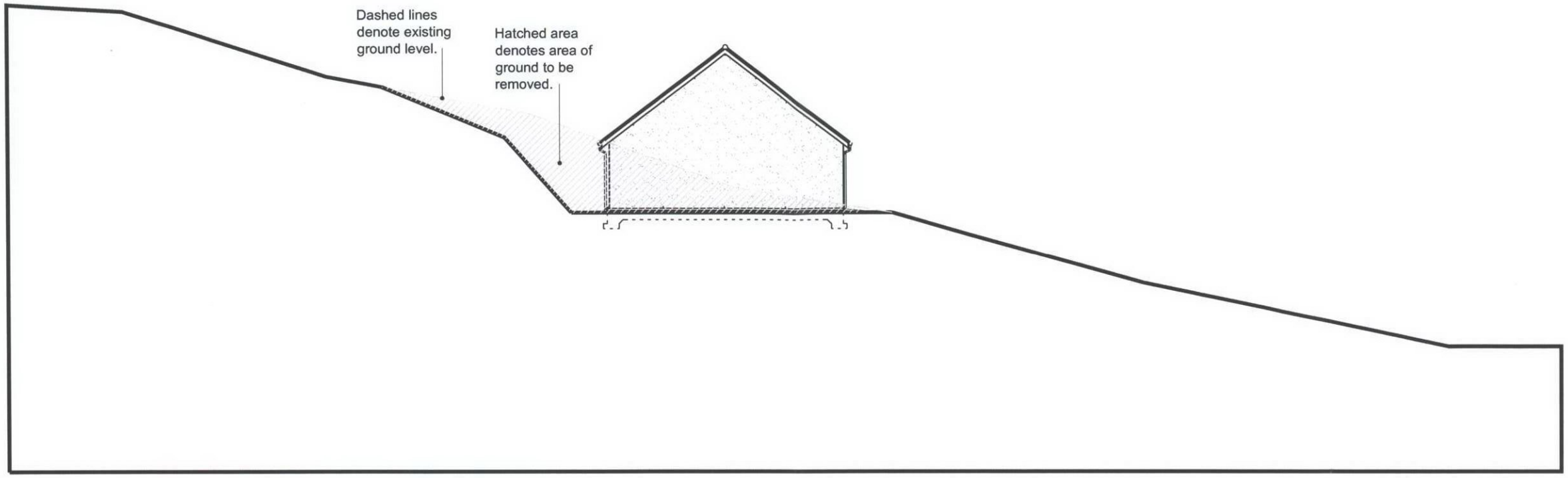
Rev.
Drawn:

LEADINGHAM JAMESON ROGERS + HYND
CHARTERED ARCHITECTS
18 South Tay Street Dundee DD1 1PD Tel: 01382 200511 Fax: 01382 225226 e-mail: admin@LJRH.co.uk

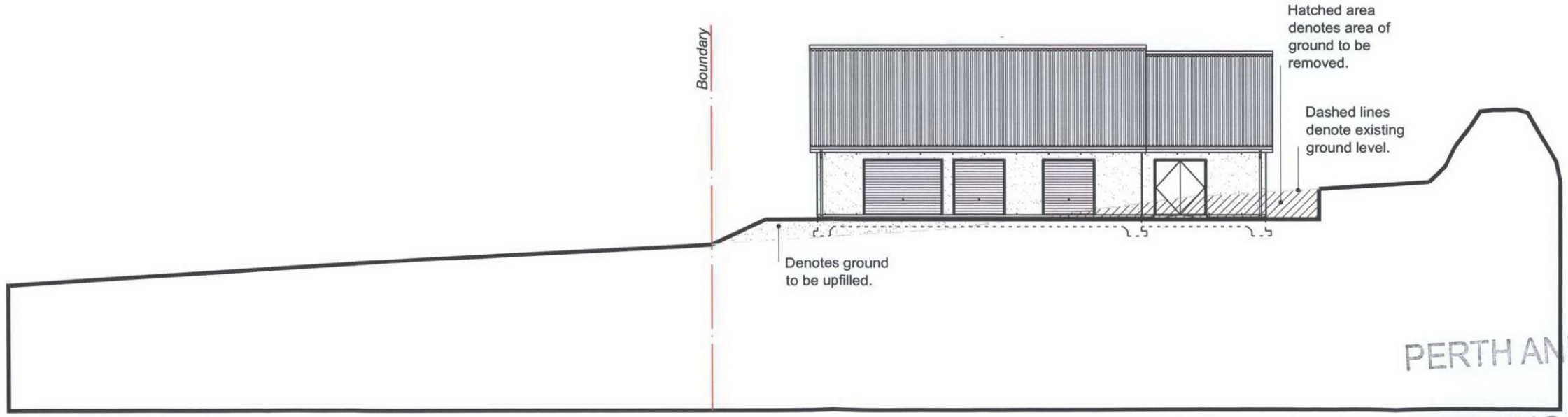
Job Name	Job No.	Series	Dwg. No.
• New Shed, Balcairn by Kinloch, Blairgowrie	• 2954	• D	• 02
Dwg Title	Scale	Date	Rev.
• Proposed Plan & Elevations	• 1:100 @ A3	• Feb' 12	•

New Shed, Balcairn by Kinloch, Blairgowrie

03



Section A-A



Section B-B

PERTH AND KINROSS COUNCIL
DRAWING REF: 12/00544/4

1:200 0 2 4 6 8 10

Rev.
Drawn:

LEADINGHAM JAMESON ROGERS + HYND
CHARTERED ARCHITECTS
18 South Tay Street Dundee DD1 1PD Tel: 01382 200511 Fax: 01382 225226 e-mail: admin@LJRH.co.uk

Job Name	Job No.	Series	Dwg. No.
New Shed, Balcairn by Kinloch, Blairgowrie	2954	D	03
Dwg Title	**Scale**	**Date**	**Rev.**
Site Sections	1:200 @ A3	Feb' 12	

Site Sections

2954 Change of Use from Agricultural Building to Dwelling House (in Retrospect), Hillview, Kinloch, Blairgowrie PH10 6SD
Planning Ref: 16/01937/FLL

Supporting Statement

The above Application is retrospective, to change the use of the existing building to a dwelling house. The building was initially designed to facilitate ease of conversion to a house at a later date, should Planning Permission for a change of use be considered acceptable. However, the Applicant was approached and asked if he would be prepared to sell his house privately. This accelerated the conversion of this building, to provide alternative accommodation for the Applicant and his family.

The conversion appears to comply with a number of the policies contained in the current Local Plan. Particularly relevant to this Application is Policy RD3 : Housing in the Countryside. This advises that the Council will support proposals for the creation of a dwelling, through conversion, which complies with at least one of the stated categories. As can be seen from the drawings, the building is already in existence and forms part of an existing building group. Policy RD3(A). The conversion of redundant non-domestic buildings, may also be relevant. The Policy also advises that housing in the Lunan Valley catchment area is limited to economic need, conversions, or replacement buildings. As the Policy also states that no development must result in an adverse affect on the Dunkeld/Blairgowrie Loch system, a separate drainage analysis is included.

Drainage

Policy EP6 : Lunan Valley Catchment Area requires that any new proposal will have no adverse impact on the environmental assets of the area. At present, the existing building is served by a Klargester BA Biodisc. This is then connected into a soakaway. It was felt that the drainage systems in the area could be improved, by the replacement on existing cess pit system, currently serving a four bedroom house, Chestnut View, to the west. The position of this house is shown on the attached location plan. The intention is to replace this cess pit with a Klargester BA Biodisc, as recommended by the manufacturers, as this greatly assists phosphorous reduction.

Summary

To summarise, Scottish Planning Policy identify that Planning Authorities need to adopt a flexible approach to ensure any change in circumstances are accommodated for new opportunities to be realised. As can be seen from the figures supplied by the Biodisc Manufacturer, there is a considerable betterment of the existing drainage systems in the area, should this Application be approved.

LJR+H 17 November 2016

TCP/11/16(471) – 16/01937/FLL – Erection of a dwellinghouse (in retrospect) on land at Hillview, Kinloch, Blairgowrie, PH10 6SD

REPRESENTATIONS

M e m o r a n d u m

To	Development Quality Manager	From	Regulatory Service Manager
Your ref	PK16/01937/FLL	Our ref	LJ
Date	24 November 2016	Tel No	(4)75248

The Environment Service **Pullar House, 35 Kinnoull Street, Perth PH1 5GD**

Consultation on an Application for Planning Permission

PK16/01937/FLL RE: Change of use from agricultural building to dwellinghouse (in retrospect) Hillview Kinloch Blairgowrie PH10 6SD for Mr George Burke

I refer to your letter dated 17 November 2016 in connection with the above application and have the following comments to make.

Contaminated Land (assessment date – 24/11/2016)

Recommendation

The application is for change of use from an agricultural building to a dwellinghouse in retrospect. Agricultural buildings can have contamination issues, for example from spills or leaks of chemicals stored or from machinery. In this instance as the agricultural building has only been there for a relatively short period of time the risk of contamination is reduced. However the applicant should satisfy themselves that the site is suitable for an end use of residential with garden.

Comments to the Development Quality Manager on a Planning Application

Planning Application ref.	16/01937/FLL	**Comments provided by**	Euan McLaughlin
Service/Section	Strategy & Policy	**Contact Details**	**Development Negotiations Officer:** Euan McLaughlin [redacted]
Description of Proposal	Change of use from agricultural building to dwellinghouse (in retrospect)		
Address of site	Hillview, Kinloch, Blairgowrie, PH10 6SD		
Comments on the proposal	**NB: Should the planning application be successful and such permission not be implemented within the time scale allowed and the applicant subsequently requests to renew the original permission a reassessment may be carried out in relation to the Council's policies and mitigation rates pertaining at the time.** THE FOLLOWING REPORT, SHOULD THE APPLICATION BE SUCCESSFUL IN GAINING PLANNING APPROVAL, MAY FORM THE BASIS OF A SECTION 75 PLANNING AGREEMENT WHICH MUST BE AGREED AND SIGNED PRIOR TO THE COUNCIL ISSUING A PLANNING CONSENT NOTICE. **Primary Education** With reference to the above planning application the Council Developer Contributions Supplementary Guidance requires a financial contribution towards increased primary school capacity in areas where a primary school capacity constraint has been identified. A capacity constraint is defined as where a primary school is operating, or likely to be operating following completion of the proposed development and extant planning permissions, at or above 80% of total capacity. This proposal is within the catchment of Newhill Primary School.		
Recommended planning condition(s)	**Summary of Requirements** Education: £6,460 (1 x £6,460) **Total: £6,460** **Phasing** It is advised that payment of the contribution should be made up front of release of planning permission. This is a retrospective application and the property is already being occupied therefore the use of a Section 75 Agreement would not be appropriate.		
Recommended informative(s) for applicant	**Payment** **Before remitting funds the applicant should satisfy themselves that the**		

	payment of the Development Contributions is the only outstanding matter relating to the issuing of the Planning Decision Notice. **Methods of Payment** On no account should cash be remitted. **Scheduled within a legal agreement** This will normally take the course of a Section 75 Agreement where either there is a requirement for Affordable Housing on site which will necessitate a Section 75 Agreement being put in place and into which a Development Contribution payment schedule can be incorporated, and/or the amount of Development Contribution is such that an upfront payment may be considered prohibitive. The signed Agreement must be in place prior to the issuing of the Planning Decision Notice. **NB:** The applicant is cautioned that the costs of preparing a Section 75 agreement from the applicant's own Legal Agents may in some instances be in excess of the total amount of contributions required. As well as their own legal agents fees, Applicants will be liable for payment of the Council's legal fees and outlays in connection with the preparation of the Section 75 Agreement. The applicant is therefore encouraged to contact their own Legal Agent who will liaise with the Council's Legal Service to advise on this issue. **Other methods of payment** Providing that there is no requirement to enter into a Section 75 Legal Agreement, eg: for the provision of Affordable Housing on or off site and or other Planning matters, as advised by the Planning Service the developer/applicant may opt to contribute the full amount prior to the release of the Planning Decision Notice. **Remittance by Cheque** The Planning Officer will be informed that payment has been made when a cheque is received. However this will require a period of 14 days from date of receipt before the Planning Officer will be informed that the Planning Decision Notice may be issued. Cheques should be addressed to 'Perth and Kinross Council' and forwarded with a covering letter to the following: Perth and Kinross Council Pullar House 35 Kinnoull Street Perth PH15GD **Bank Transfers** All Bank Transfers should use the following account details; **Sort Code:** 834700 **Account Number:** 11571138 Education Contributions For Education contributions please quote the following ledger code: 1-30-0060-0001-859136

	Direct Debit The Council operate an electronic direct debit system whereby payments may be made over the phone. To make such a payment please call 01738 475300 in the first instance. When calling please remember to have to hand: a) Your card details. b) Whether it is a Debit or Credit card. c) The full amount due. d) The planning application to which the payment relates. e) If you are the applicant or paying on behalf of the applicant. f) Your e-mail address so that a receipt may be issued directly. **Indexation** All contributions agreed through a Section 75 Legal Agreement will be linked to the RICS Building Cost Information Service building Index. **Accounting Procedures** Contributions from individual sites will be accountable through separate accounts and a public record will be kept to identify how each contribution is spent. Contributions will be recorded by the applicant's name, the site address and planning application reference number to ensure the individual commuted sums can be accounted for.
Date comments returned	25 November 2016

Comments for Planning Application 16/01937/FLL

Application Summary
Application Number: 16/01937/FLL
Address: Hillview Kinloch Blairgowrie PH10 6SD
Proposal: Change of use from agricultural building to dwellinghouse (in retrospect)
Case Officer: John Williamson

Customer Details
Name: Miss Kirsty Walker
Address: Chestnut View, Kinloch, Blairgowrie PH10 6SD

Comment Details
Commenter Type: Member of Public
Stance: Customer made comments in support of the Planning Application
Comment Reasons:
Comment:I believe this application will be of benefit and enhance the area and I fully approve with this application

Scottish Natural Heritage
Dualchas Nàdair na h-Alba
All of nature for all of Scotland
Nàdar air fad airson Alba air fad

Mr Nick Brian
Development Quality Manager
Perth and Kinross Council
Pullar House
35 Kinnoull Street
PERTH
PH1 5GD

7 December 2016

Our ref: SIT/SAC/Dunkeld-Blairgowrie Lochs/ASS
SIT/SSSI/Lochs Clunie and Marlee/ASS

Your ref: 16/01607/FLL

Dear Mr Brian

Town and Country Planning (Scotland) Act 1997

Change of use from agricultural building to dwellinghouse (in retrospect), Hillview, Kinloch, Blairgowrie, PH10 6SD

Thank-you for your consultation of 17 November seeking our comments in respect of the above planning application.

Summary

This proposal could be having serious impacts on the protected features of the Dunkeld-Blairgowrie Lochs Special Area of Conservation (SAC) and Lochs Clunie and Marlee Site of Special Scientific Interest (SSSI) due to nutrient enrichment of the lochs as a result of foul drainage from the property. We, therefore, object to this proposal until further information is provided. This will enable us to carry out an appraisal of these effects and help you determine this proposal.

Appraisal of the Impacts of the proposal and advice

Dunkeld-Blairgowrie Lochs Special Area of Conservation (SAC)

The proposed development lies within the catchment of the Dunkeld-Blairgowrie Lochs SAC. The site's status means that the requirements of the Conservation (Natural Habitats, &c.) Regulations 1994 (the "Habitats Regulations"), as amended, apply. A summary of Scottish Government policy can be found on our website: (http://www.snh.gov.uk/docs/A423286.pdf).

In our view, this proposal is likely to have a significant effect on the clearwater lochs, slender naiad and mire interests of the SAC. This type of water body, and the slender naiad, are now rare and threatened in the UK as a result of nutrient enrichment from man-made sources, including housing developments and agriculture. Consequently, Perth and Kinross Council is required to carry out an appropriate assessment in view of the site's conservation objectives

for its qualifying interests. To help you do this, we propose to carry out an appraisal to inform your appropriate assessment.

To enable us to carry out this appraisal, the following information is required:

- As per the Supplementary Guidance for the Dunkeld-Blairgowrie Lochs SAC, http://www.pkc.gov.uk/CHttpHandler.ashx?id=37576&p=0 the applicant is required to provide phosphorus mitigation calculations to demonstrate that the total phosphorus loading from the existing property can be reduced by at least 125% of the phosphorus loading likely to be generated by the new development (PolicyEP6*)*

Annex 1 contains full details and reasoning of these requirements.

If you are minded to grant planning permission against our advice, you should notify the Scottish Ministers.

European Protected Species – Slender Naiad

Please note that Slender Naiad is also a European Protected Species (EPS), and is therefore afforded further protection under the Habitats Regulations. Further information is available on our website http://www.snh.gov.uk/protecting-scotlands-nature/species-licensing/european-species-licensing/

Lochs Clunie & Marlee SSSI

The lochs and associated botanical interest of the SSSI are also likely to be adversely affected by the proposal for the reasons outlined above for the SAC interest.

The contact for this consultation is Nicki McIntyre, email nicki.mcintyre@snh.gov.uk or telephone 01738 458591.

I would be grateful if you could let us know of your Council's decision in due course or of any further changes to the proposal which would be relevant to our interests.

Yours sincerely

(via email)

Gavin Clark
Operations Manager
Tayside and Grampian
Gavin.clark@snh.gov.uk

Annex 1 - SNH Appraisal of the Proposals

Appraisal of the likely impacts to the Dunkeld-Blairgowrie Lochs Special Area of Conservation (SAC)

Information regarding the SAC qualifying features and Conservation Objectives are available on the Sitelink section of our website at http://gateway.snh.gov.uk/sitelink/index.jsp.

Dunkeld-Blairgowrie Lochs SAC

The site's SAC status means that the requirements of the Conservation (Natural Habitats, &c.) Regulations 1994 as amended, (the 'Habitats Regulations') apply. Further details of the legislative requirements can be found at: http://www.snh.gov.uk/docs/A423286.pdf.

The proposal is not directly connected with, or necessary to, conservation management of the site.

This is a retrospective application for the conversion of an agricultural building to a dwellinghouse. The mitigation for the development will see the cesspit at Chestnut View, a remote property, upgraded.

The planning application does not provide the phosphorous mitigation calculations required under EP6, therefore, in our view, as Hillview is already being occupied by the applicant, this proposal is likely to be having a significant effect on the qualifying interests of the site. As a consequence, Perth and Kinross Council is required to undertake an appropriate assessment in view of the site's conservation objectives for its qualifying interests.

It is likely that the proposal is currently having a significant indirect effect on the qualifying interests of the SAC due to the increase in phosphorus released into the catchment. Eutrophication, which leads to deterioration in water quality, has been an issue in these lochs for a considerable length of time. These problems result in higher pH, phosphate and nitrate levels and increased turbidity through suspended algal growth. The combination of these factors leads to decreased water clarity and reduced photosynthesis, resulting in a serious decline in the botanical interest of the SAC, including the slender naiad population. Slender naiad monitoring in September 2007 found a healthy slender naiad population in Loch of the Lowes, two plants in Marlee Loch and none in Lochs Craiglush, Butterstone and Clunie, overall, a considerable crash in population from the 2004 survey. The plant was monitored this year, and, whilst we do not have the full results as yet, it is our understanding that the position has further deteriorated with no plants being found in any of the lochs. Any further increase in the phosphorus loading to the lochs further reduces any chance of the slender naiad population recovering.

Research work by the Scottish Environment Protection Agency (2004) and Edinburgh University (2005) has demonstrated that the two most significant contributions to the increased phosphorus loads in the catchment are run-off from agricultural land and septic tanks. To address this issue we introduced a catchment management scheme in 2004 to reduce phosphate pollution from farming. Due to reductions of run-off from agricultural land the lochs showed early signs of recovery, however, recent excessively wet winters have reversed this trend, demonstrating how fragile the recovery had been.

Nutrient enrichment arising from the foul drainage associated with housing tends to be long lasting and difficult to reverse. It is, therefore, essential that any proposed development demonstrates that there would be no net increase in phosphorus loading to the lochs. The drainage strategy for this development is currently increasing the phosphorous loading to the catchment, if Chestnut View is not upgraded to an appropriate drainage strategy this unacceptable impact to the SAC will continue.

Comments to the Development Quality Manager on a Planning Application

Planning Application ref.	16/01937/FLL	**Comments provided by**	Niall Moran
Service/Section	Transport Planning	**Contact Details**	[redacted]
Description of Proposal	Change of use from agricultural building to dwellinghouse (in retrospect)		
Address of site	Hillview Kinloch Blairgowrie PH10 6SD		
Comments on the proposal	Insofar as the Roads matters are concerned I do not object to the proposed change of use.		
Recommended planning condition(s)			
Recommended informative(s) for applicant			
Date comments returned	7 December 2016		

SEPA
Scottish Environment Protection Agency
Buidheann Dìon Àrainneachd na h-Alba

Our ref: PCS/150087
Your ref: 16/01937/FLL

If telephoning ask for:
Silvia Cagnoni-Watt

8 December 2016

John Williamson
Perth and Kinross Council
Pullar House
35 Kinnoull Street
Perth
PH1 5GD

By email only to: DevelopmentManagement@pkc.gov.uk

Dear Mr Williamson

Town and Country Planning (Scotland) Acts
Planning application: 16/01937/FLL
Change of use from agricultural building to dwellinghouse (in retrospect)
Hillview Kinloch Blairgowrie PH10 6SD

Thank you for your consultation email which SEPA received on 17 November 2016. We understand that you have consulted SEPA due to the development being in the Lunan Valley Catchment area.

Advice for the planning authority

We **object** to this planning application on the grounds of lack of information. We will review this objection if the issues detailed in Section 1 below are adequately addressed.

1. Phosphorous mitigation

1.1 The updated Lunan Valley Area Dunkeld – Blairgowrie Lochs Special Area of Conservation supplementary guidance (SG) was adopted in October 2016. The SG requires that information is submitted with Full or Approval of matters specified by condition (AMM) planning applications for new developments to provide details of proposed phosphorous (P) mitigation

1.2 The reason for this is to ensure that development accords with Local Development Plan Policy EP6: Lunan Valley Catchment Area which requires that total phosphorous from built development must not exceed the current level, to ensure no reduction in water quality in the Lunan Lochs due to the fact that the catchment has an issue with elevated nutrient levels. Given that this application does not provide any details of required P mitigation we **object** to this application due to lack of information.

1.3 In addition, looking at the site plan the foul soakaway appears to be very close to a field drain. Any soakaway should be at least 10 metres from any drain. We need to see this demonstrated in site plan.

Detailed advice for the applicant

2. Phosphorous mitigation

2.1 Relevant information with regards forms of phosphorous mitigation proposals are contained within the SG. We recommend that the applicant contacts the SEPA Local Regulatory team for further information (see details in section 4 below).

3. The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended)

3.1 The applicant should be aware that they will need to apply for a licence under The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended (CAR)) for the discharge of foul effluent from the development. It should also be noted that any mitigating property will also require authorisation from us under CAR. Contact should be made with the Perth Regulatory Team, details below, regarding this issue.

3.2 The provision of phosphorous mitigation to ensure that total phosphorous from built development does not exceed the current level is a separate issue to the CAR licence. The approval of submitted phosphorus mitigation details through the planning process is therefore made without prejudice to any CAR licence application and does not infer that the CAR licence application(s) will be approved. Conversely it is at the applicant's commercial risk if the CAR license application is progressed in advance of approval of P mitigation details.

Regulatory advice for the applicant

4. Regulatory requirements

4.1 Details of regulatory requirements and good practice advice for the applicant can be found on the Regulations section of our website. If you are unable to find the advice you need for a specific regulatory matter, please contact a member of the regulatory team in your local SEPA office at:

Broxden Business Park, Lamberkine Drive, PERTH, PH1 1RX, Tel: 01738 627989

If you have any queries relating to this letter, please contact me by telephone on 01786 452430 or e-mail at planning.se@sepa.org.uk.

Yours sincerely

Silvia Cagnoni-Watt
Senior Planning Officer
Planning Service

ECopy to: Michael Rogers, LJR+H Architects, admin@ljrh.co.uk ;
Copy to: Mr George Burke, Hillview, Kinloch, Blairgowrie, PH10 6SD

Disclaimer
This advice is given without prejudice to any decision made on elements of the proposal regulated by us, as such a decision may take into account factors not considered at this time. We prefer all the technical information required for any SEPA consents to be submitted at the same time as the planning or similar application. However, we consider it to be at the applicant's commercial risk if any significant changes required during the regulatory stage necessitate a further planning application or similar application and/or neighbour notification or advertising. We have relied on the accuracy and completeness of the information supplied to us in providing the above advice and can take no responsibility for incorrect data or interpretation, or omissions, in such information. If we have not referred to a particular issue in our response, it should not be assumed that there is no impact associated with that issue. For planning applications, if you did not specifically request advice on flood risk, then advice will not have been provided on this issue. Further information on our consultation arrangements generally can be found on our website planning pages.

Comments to the Development Quality Manager on a Planning Application

Planning Application ref.	16/01937/FLL	**Comments provided by**	Deniz McAndrew
Service/Section	TES – Flooding	**Contact Details**	[redacted]
Description of Proposal	Change of use from agricultural building to dwellinghouse (in retrospect)		
Address of site	Hillview Kinloch Blairgowrie PH10 6SD for Mr George Burke		
Comments on the proposal	The site entrance is within close proximity to the SEPA 1 in 200 surface water flood maps therefore, we would advise no land raising at this point. Details of drainage should be supplied for our records.		
Recommended planning condition(s)	DR01		
Recommended informative(s) for applicant			
Date comments returned			

Comments for Planning Application 16/01937/FLL

Application Summary
Application Number: 16/01937/FLL
Address: Hillview Kinloch Blairgowrie PH10 6SD
Proposal: Erection of a dwellinghouse (in retrospect)
Case Officer: John Williamson

Customer Details
Name: Mr Isaac Mckenzie
Address: Springfield house, Kinloch, Blairgowrie Ph10 6sd

Comment Details
Commenter Type: Neighbour
Stance: Customer made comments in support of the Planning Application
Comment Reasons:
Comment:After viewing the planning application and viewing the development I can confirm that I believe mr George Burke has indeed improved what was previously unused land and the area now benefits from the pleasent house that has been built upon what was previously an eyesore to the hamlet of Kinloch.
His planning applications have my full support as I am sure is in common with the rest of the local community having spoken to my neighbours

TCP/11/16(471) – 16/01937/FLL – Erection of a dwellinghouse (in retrospect) on land at Hillview, Kinloch, Blairgowrie, PH10 6SD

FURTHER INFORMATION

- Written submission from Building Standards, dated 14 July 2017
- Written submission from Planning, dated 18 July 2017
- Written submission from Complaints, dated 19 July 2017
- Written submission from Agent, dated 27 July 2017
- Response to written submission from Planning, dated 7 August 2017
- Email from SEPA, dated 15 August 2017, confirming withdrawal of previous objection

CHX Planning Local Review Body - Generic Email Account

From: Gordon Lindsay
Sent: 14 July 2017 16:57
To: CHX Planning Local Review Body - Generic Email Account
Subject: TCP/11/16 (471)
Attachments: Enquiry re Balcairn Kinloch July 2017.doc

Please find attached my response to the Building Standards related questions raised by the Local Review Body.

Regards
Gordon

Gordon J Lindsay
Building Standards Manager
The Environment Service
Perth & Kinross Council
Pullar House
35 Kinnoull Street
PERTH
PH1 5GD
[redacted]

www.pkc.gov.uk/buildingstandards

M e m o r a n d u m

To:	Licensing Paralegal Perth and Kinross Licensing Board	From:	Building Standards Division
Your Ref:	TCP/11/16 (471)	Our Ref:	12/01315/NDOM9
Date:	14 July 2017	Tel. No:	[redacted]

Environment Service **Pullar House 35 Kinnoull Street Perth**

Contact: Gordon Lindsay Extn 75361

Town & Country Planning (Scotland) Act 1997
The Town & Country Planning (Schemes of Delegation & Local Review Procedure) (Scotland) Regulations 2013
Application Ref: 16/01937/FLL – Erection of a dwellinghouse (in retrospect) on land at Hillview, Kinloch, Blairgowrie, PH10 6SD – Mr G Burke

I refer to your e-mail of 14 July 2017 regarding the Local Review Body meeting on 27 June 2017 where a number of points relating to Building Standards were raised.

I have copied the points below and provided information which I assume will be sufficient.

(a) the Building Warrant (reference 12/01315/NDOM9) for the agricultural building at Balcairn by Kinloch, Blairgowrie;
The building warrant was applied for in September 2012. The applicant was Mr J McBey per Leadingham James Rogers & Hynd architects (LJRH). The description was "Erection of agricultural storage shed at Balcairn by Kinloch Blairgowrie". The warrant was granted on 15 January 2013.

(b) the amendment (15/01004/AMDOM9) to the building warrant issued on 22 December 2015 for the same building;
The amendment of warrant application was submitted on 9 July 2015. The applicant was George Burke per LJRH. The description was "Amendment to drainage layout, internal layout and external façade". The amendment was issued on 22 December 2015.

(c) the completion certificate issued on 17 July 2016 for the same building; and
(d) clarification on whether the building warrant and completion certificate for 12/01315/NDOM9 had been issued for an agricultural shed or a domestic residence;

The completion certificate was submitted by George Burke per LJRH on 7 January 2016. The acceptance of Completion Certificate we issued on 23 February 2016 was for "Erection of agricultural storage shed at Balcairn Farm Kinloch Blairgowrie PH10 6SD".

Should you require any additional information please do not hesitate in contacting me.

Gordon Lindsay
Building Standards Manager

CHX Planning Local Review Body - Generic Email Account

From: Gordon Lindsay
Sent: 18 July 2017 11:52
To: CHX Planning Local Review Body - Generic Email Account
Subject: RE: TCP/11/16 (471)
Attachments: Plans of garage adjacent to store for LRB.docx; Balcairn Kinloch - plans of store building for LRB.docx

Good afternoon

We have limitations on the copying and viewing of plans under the Building (Scotland) (Procedure) Regulations 2004. On this basis I have over-marked the plans to make it clear the plans must not be copied or given out to a third party.

I would like to make it clear that in our dealings with this project questions of use were raised but we are obliged to deal with proposals as they are described by the applicant. You will note that the plans, which formed part of the amendment, thus are the final layout, include solar panels. These were required once it became apparent a boiler had been installed for the very reason that it was a non-domestic building.

I trust this is of assistance.

Regards
Gordon

Gordon J Lindsay
Building Standards Manager
The Environment Service
Perth & Kinross Council
Pullar House
35 Kinnoull Street
PERTH
PH1 5GD
[redacted]

CUSTOMER SERVICE EXCELLENCE CSE

www.pkc.gov.uk/buildingstandards

CHX Planning Local Review Body - Generic Email Account

From: John Williamson - TES
Sent: 18 July 2017 13:13
To: CHX Planning Local Review Body - Generic Email Account
Cc: Anne Condliffe; Christine Brien
Subject: RE: TCP/11/16(471), 16/01937/FLL – Erection of a dwellinghouse (in retrospect) on land at Hillview, Kinloch, Blairgowrie, PH10 6SD – Mr G Burke
Attachments: Site and Location Plan PN.pdf; Elevations PN.pdf; Sections PN.pdf; Form.pdf; FAO John Williamson/Silvia Cagnoni-Watt 2954 Hillview, Balcairn, Kinloch Planning Ref 16/01937/FLL; SEPA Ref PCS/150087; RE: FAO John Williamson/Silvia Cagnoni-Watt 2954 Hillview, Balcairn, Kinloch Planning Ref 16/01937/FLL; SEPA Ref PCS/150087; RE: FAO Silvia Cagnoni-Watt 2954 Hillview, Balcairn, Kinloch Planning Ref 16/01937/FLL; SEPA Ref PCS/150087

Dear Sir/Madam

I refer to your email below and attached letter seeking more information relating to the above case from the Interim Head of Development Management.

1) I have attached a copy of the relevant plans and form associated with the 12/00544/PN. Unfortunately the letter confirming the building was permitted development was not scanned onto our electronic system and we no longer have the paper file, nevertheless the Council confirmed that the agricultural building was permitted development on 3 April 2012.
2) In terms of phosphorus mitigation I have attached an email received from the applicant's agent detailing the proposed mitigation.
3) A copy of SNH and SEPA's email responses confirming withdrawl of their objections is attached.

I trust the above is sufficient and covers the matters required from Development Management. Should you require anything further please let me know.

Kind Regards

John Williamson
Planning Officer
Development Management
Perth and Kinross Council
Pullar House, 35 Kinnoull Street
Perth
PH1 5GD

☎ [redacted]
✉ [redacted]
e www.pkc.gov.uk

Houses at Balcairn by Kinloch, Blairgowrie

1

PERTH AND KINROSS COUNCIL
DRAWING REF: 12/00534/1

1:1250 0 10 20 30 40 50

PLANNING

Rev:

LEADINGHAM JAMESON ROGERS + HYND
CHARTERED ARCHITECTS
18 South Tay Street Dundee DD1 1PD Tel: 01382 200511 Fax: 01382 225226 e-mail: admin@LJRH.co.uk

Job Name	Job No.	Series	Drwg. No.
Houses at Balcairn by Kinloch, Blairgowrie	2984	S	1
Drwg Title	Scale	Date	Rev.
Site Location Plan	1:1250/10000@A3	June 09	

Site Location Plan

New Shed, Balcairn by Kinloch, Blairgowrie

01

Proposed Site Plan - 1:500

Proposed Location Plan - 1:1250

PERTH AND KINROSS COUNCIL

DRAWING REF: 12/00544/2

1:1250 0 10 20 30 40 50

1:500 0 5 10 15 20 25

Rev.
Drawn:

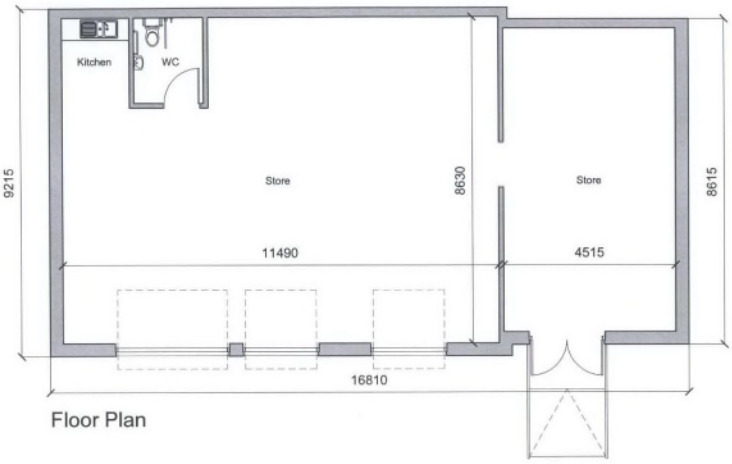
LEADINGHAM JAMESON ROGERS + HYND
CHARTERED ARCHITECTS
18 South Tay Street Dundee DD1 1PD Tel: 01382 200511 Fax: 01382 225226 e-mail: admin@ljrh.co.uk

Job Name	Job No.	Series	Dwg. No.
New Shed, Balcairn by Kinloch, Blairgowrie	2664	D	01
Dwg Title	**Scale**	**Date**	**Rev.**
Proposed Site Plan/Location Plan	1:500 @ A3	Feb '12	

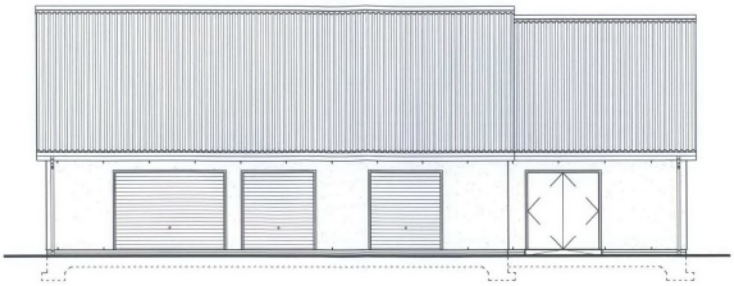
Proposed Site Plan/Location Plan

New Shed, Balcairn by Kinloch, Blairgowrie

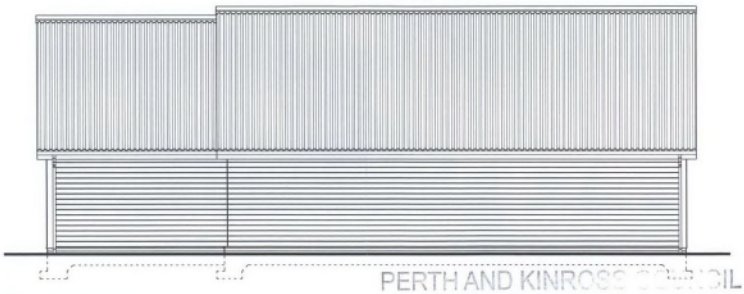
02



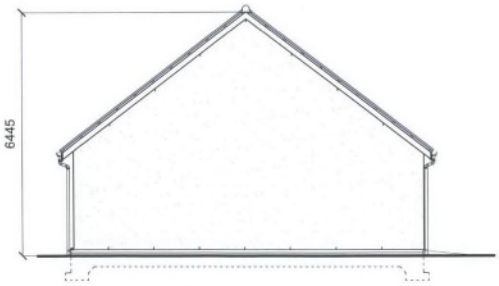
Floor Plan



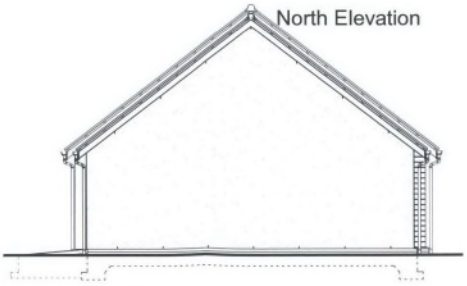
South Elevation



North Elevation



West Elevation



East Elevation

Proposed Plan & Elevations

PERTH AND KINROSS COUNCIL

DRAWING REF: 12/00544/3

External use of materials:

Roof: To be Tin Profiled Sheet Cladding: colour grey
Walls: To be harled and painted. Colour: Light Grey
Doors: to be Timber panelled doors. Colour: Dark Grey

1:100 0 1 2 3 4 5

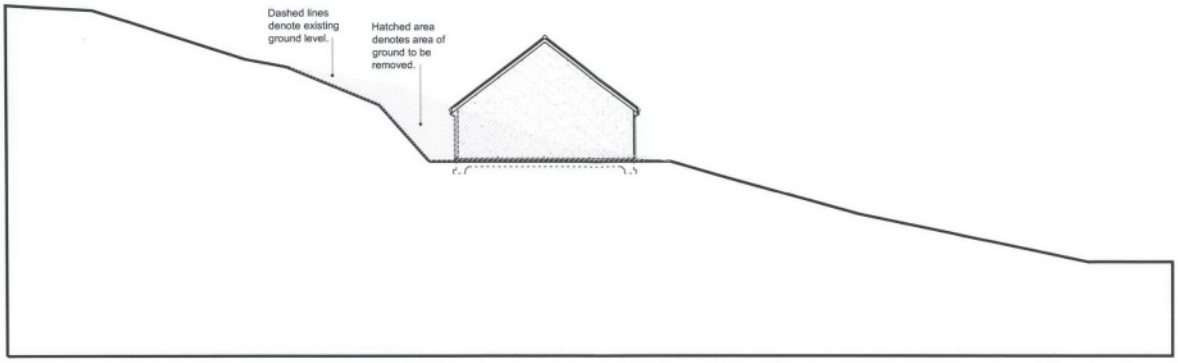
Rev.
Drawn

LEADINGHAM JAMESON ROGERS + HYND
CHARTERED ARCHITECTS
18 South Tay Street Dundee DD1 1PD Tel: 01382 200511 Fax: 01382 225226 e-mail: admin@LJRH.co.uk

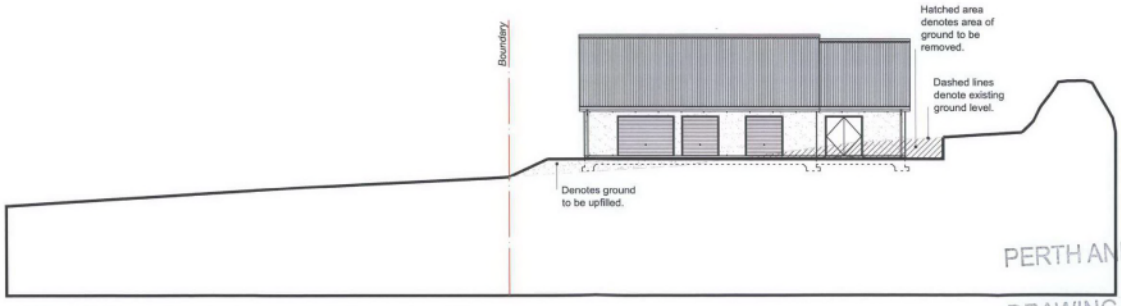
Job Name	Job No.	Series	Dwg. No.
New Shed, Balcairn by Kinloch, Blairgowrie	2954	0	02
Dwg Title	Scale	Date	Rev.
Proposed Plan & Elevations	1:100 @ A3	Feb' 12	

New Shed, Balcairn by Kinloch, Blairgowrie

03



Section A-A



Section B-B

PERTH AND KINROSS COUNCIL
DRAWING REF: 12/00544/4

1:200 0 2 4 6 8 10

Rev.
Drawn:

LEADINGHAM JAMESON ROGERS + HYND
C H A R T E R E D A R C H I T E C T S
18 South Tay Street Dundee DD1 1PG Tel. 01382 200511 Fax: 01382 225226 e-mail: admin@LJRH.co.uk

Job Name	Job No.	Series	Dwg. No.
New Shed, Balcairn by Kinloch, Blairgowrie	2664	0	03
Dwg Title	Scale	Date	Rev.
Site Sections	1:200 @ A3	Feb' 12	

Site Sections

PERTH & KINROSS COUNCIL

Planning & Transportation

Prior Notification Form

The Town and Country Planning
(General Permitted Development)
(SCO) Order 1992, Schedule 1, Parts 6 & 7

For Official Use Only	
Ref No	12/00544/PN
Receipt	£61-00
Received	27/03/12
28 Day Deadline	

Please detach the Notes for Guidance before completing this form, and returning it to: 22739

Head of Development Control, Planning & Transportation, Perth & Kinross Council, Pullar House, 35 Kinnoull Street, PERTH PH1 5GD

Do not start work until you have received approval from the authority or until 28 days after the Council as Planning Authority has received this form.

1 The Site

(a) Name and address of person(s) submitting this notification:

Mr. J. McBey

c/o Leadingham Jameson Rogers + Hynd

18 South Tay Street, Dundee, DD1 1PD Tel 01382 200 511

(b) Name and address of farm and occupier (if different from (a) above):

Balcairn by Kinloch, Blairgowrie

Tel

2 The Proposed Building *(please enclose elevation drawings and site. location maps)*

(a) Use of Building

Agricultural Shed.

(b) Method of Construction

Concrete Blockwork, Concrete Floor Slab, Slate roof.

(c) Dimensions *(m's)*

length	*breadth*	*height to eaves*	*height to ridge*
16.8	9.2	2.7m	6.4m

(d) Walls

Materials	*External Colour*
Dry Dash Roughcast.	Ashton Cream.

(e) Roof

Materials	*External Colour*
Natural Slate	Dark Grey.

3 Fee

Please confirm you have enclosed your fee of £61 by ticking this box ☑

☑ I am the owner/lessee/agent of the agricultural unit known as Balcairn farm

☑ The agricultural unit's official registration number is 667/0010

☑ The total area of land within the above unit is 0.7 hectares

☑ The development will take place on land which is solely used for agricultural purposes

I certify that, to the best of my knowledge and belief, the statements made in this form and in the supporting information are true and the information is correct.

Signature [redacted] for Leadingham Jameson Rogers + Hynd Date 23 March 2012

Name *(in block capitals)* M. J. Rogers.

CHX Planning Local Review Body - Generic Email Account

From: admin@ljrh.co.uk
Sent: 14 February 2017 16:19
To: Development Management - Generic Email Account; planning.se@sepa.org.uk
Cc: 'Alan Seath'; John Williamson - TES; George Burke
Subject: FAO John Williamson/Silvia Cagnoni-Watt 2954 Hillview, Balcairn, Kinloch Planning Ref 16/01937/FLL; SEPA Ref PCS/150087
Attachments: 2954 Phoshorus mitigation calculations 2017-02-14.xls; 2954 Klargester emailin 2016-12-12 proposals for balcairn.pdf; 2954 Klargester emailin 2016-12-11 proposals for chestnut view.pdf; 2954_SK001_-_Site Plan.pdf

Dear Sirs,

We attach for your information Phosphorus Mitigation Calculations for the above property, in support of the current Planning Application, together with the named mitigation properties and related Klargester specifications.

Should you require any further clarification or information please do not hesitate to contact this office.

Yours faithfully,

Michael J Rogers DA RIBA ARIAS

LEADINGHAM JAMESON ROGERS + HYND
C H A R T E R E D A R C H I T E C T S

LJR+H Architects
18 South Tay Street
Dundee DD1 1PD
Tel: 01382 200511
http://www.ljrh.co.uk/

THE DRUM SCOTTISH DESIGN AWARDS
AWARD WINNER 2018

2954 Proposed House at Hillview, Balcairn for G Burke

Phosphorus mitigation calculations based on British Water Code of Practice.

Background	
Average amount of water per person per day	= 150 litres
Primary Treatment (Septic Tank - standard discharge)	= 10mg P/litre
Daily discharge of phosphorus (per person) form primary treatment	= 1500mg P
Secondary treatment (package treatment plant)	= 2mg P/litre
Daily discharge of phosporus (per person) from secondary treatment	**= 300mg P**
Proposed Development	
3 bedroom house (Hillview, Balcairn)	= 5 P.E.
Secondary treatment to be installed	= 2mg P/litre
Daily discharge of phoshorus = 300mg P x 5 P.E.	**= 1500mg P/day**
Phoshorus Mitigation	
Mitigation requires a reduction of 125% of the amount of phosphorus to be discharged from the new development = 125% x 1500mg P/day	**= 1875mg P/day**
Mitigation is proposed by upgrading a septic tank for 2 x3 bedroomed properties to a secondary treatment plant	
2 x 3 bedroom houses (Chestnut View, Balcairn and Wood Acre, Balcairn)	= 10 P.E.
Existing discharge	= 15000mg P/day
Discharge after upgrade to 2mg/l P = 300mg P x 6 P.E.	= 3000mg P/day
Mitigation offered is 15000 - 3000	**= 12000mg P/day**
	which is in excess of the requirements

Bob Hynd
LJR+H Architects
18 South Tay Street
Dundee
DD1 1PD

Project
Change of use: Agricultural Store to Dwelling House
Balcairn by Kinloch
Blairgowrie

Basis of Design

We understand the site consists of 1 x 3 bedroom property. We are proposing upgrading our BioDisc system which offers unrivalled efficiency and effluent qualities. The BioDisc's unique Managed Flow Systems ensure consistently high effluent quality even at high load periods

Please check these figures for accuracy and provide details of any changes you envisage.
All the loading figures stated have been taken from the 2009 British Water Code of Practice, which provides figures for use in sizing small waste treatment systems.

Proposal

Line	Product Code	Price	Qty	Total Price
1	**BA BioDisc Packaged Sewage Treatment Plant** • 450/750mm Invert (TBC) • Loss of Rotation Alarm • Gravity Outlet • 6 Population Equivalent	£3069.00	1	£3069.00
2	**Chemical Dosing Assembly** Chemicals supplied by others	£330.00	1	£330.00
3	**Sample Chamber to suit above unit**	£110.00	1	£110.00

KINGSPAN ENVIRONMENTAL LTD
College Road North, Aston Clinton
Aylesbury, Buckinghamshire HP22 5EW

+44 (0) 1296 633000
+44 (0) 1296 633001
info@klargester.com
klargester.com

Company Reg. No. 3888183

Effluent Quality – EN12566 tested

BOD 20mg/L
Suspended Solids 30mg/L
Ammoniacal Nitrogen 20mg/L
Ortho Phosphate 2mg/L

This should be acceptable for discharge to a watercourse or sub surface irrigation system, but would however, be subject to formal permit/consent from SEPA. This permit/consent may require that the above effluent figures be varied.

Benefits Summary

- The latest *Klargester* Design Development
- Unique Managed Flow System
- Low Profile securable Covers
- Low Running costs, we are confident that you will not find a more economical unit.
- For a full technical electrical specification – see Installation and Operational Guideline attached
- The treatment plant requires desludging, the frequency is based on the type of application. For expert guidance contact the undersigned
- No Compressors or air lift pumps, hence, economical to operate and almost silent in use
- Service and Maintenance: Maintenance is a requirement for all treatment systems. Maintenance schemes covering all aspects of service are available from *Kingspan Service*

VAT: Excluded
Delivery: Paid to Site UK mainland or dock.
Offloading is client's responsibility
Payment: By agreement
Validity: 60 Days
Delivery Period: 7-10 working days

Full Terms & Conditions are available on request

KINGSPAN ENVIRONMENTAL LTD
College Road North, Aston Clinton
Aylesbury, Buckinghamshire HP22 5EW

+44 (0) 1296 633000
+44 (0) 1296 633001
info@klargester.com
klargester.com

Company Reg. No. 3888183

IMPORTANT: When installing the *BioDisc* sewage treatment plant you should ensure that all surface water is excluded from the foul drain, as the *BioDisc* is not designed to accept any form of ground/rain water. This proposal assumes that waste disposal units will not be used.

Please find enclosed our data sheet numbered TDS0002, which must be read in conjunction with our proposals to ensure that due consideration is given to all relevant design and installation criteria.

Where there is the use of commercial catering facilities on site, we would recommend the use of a grease trap. This unit is designed to be fitted to the waste line from the kitchen (outside), to separate grease from the wastewater flow, preventing the ingress of fats and grease to the *BioDisc*. This avoids treating wastewater, which is contaminated with fats, thus minimizing associated maintenance and environmental problems.

Additional Products and services

For the full range of our products and services including all technical data please contact us or visit our website at www.kingspanklargester.com

The site contains full details of our range of Rainwater Harvesting Systems

Please note all Klargester products are made under a BS EN ISO 9001:2000 Quality Management Accreditation.

We trust our comments and enclosures are sufficient for your immediate needs. Please do not hesitate to contact us if we can be of any further assistance.

Kind Regards

Ross Stewart
Area Sales Manager

KINGSPAN ENVIRONMENTAL LTD
College Road North, Aston Clinton
Aylesbury, Buckinghamshire HP22 5EW

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Bob Hynd
LJR+H Architects
18 South Tay Street
Dundee
DD1 1PD

Project
Chestnut View + Wood Acre
Balcairn by Kinloch
Blairgowrie

Basis of Design

We understand the site consists of 2 x 3 bedroom properties. We are proposing upgrading the current septic tank to our BioDisc system which offers unrivalled efficiency and effluent qualities. The BioDisc's unique Managed Flow Systems ensure consistently high effluent quality even at high load periods

Please check these figures for accuracy and provide details of any changes you envisage.
All the loading figures stated have been taken from the 2009 British Water Code of Practice, which provides figures for use in sizing small waste treatment systems.

Proposal

Line	Product Code	Price	Qty	Total Price
1	**BB BioDisc Packaged Sewage Treatment Plant** • 450/750mm Invert (TBC) • Loss of Rotation Alarm • Gravity Outlet • 12 Population Equivalent	£3902.00	1	£3902.00
2	**Chemical Dosing Assembly** Chemicals supplied by others	£330.00	1	£330.00
3	**Sample Chamber to suit above unit**	£110.00	1	£110.00

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	Effluent Quality – EN12566 tested BOD 20mg/L Suspended Solids 30mg/L Ammoniacal Nitrogen 20mg/L Ortho Phosphate 2mg/L This should be acceptable for discharge to a watercourse or sub surface irrigation system, but would however, be subject to formal permit/consent from SEPA. This permit/consent may require that the above effluent figures be varied.			
	Benefits Summary • The latest *Klargester* Design Development • Unique Managed Flow System • Low Profile securable Covers • Low Running costs, we are confident that you will not find a more economical unit. • For a full technical electrical specification – see Installation and Operational Guideline attached • The treatment plant requires desludging, the frequency is based on the type of application. For expert guidance contact the undersigned • No Compressors or air lift pumps, hence, economical to operate and almost silent in use • Service and Maintenance: Maintenance is a requirement for all treatment systems. Maintenance schemes covering all aspects of service are available from *Kingspan Service*			
	VAT: Excluded Delivery: Paid to Site UK mainland or dock. Offloading is client's responsibility Payment: By agreement Validity: 60 Days Delivery Period: 7-10 working days Full Terms & Conditions are available on request			

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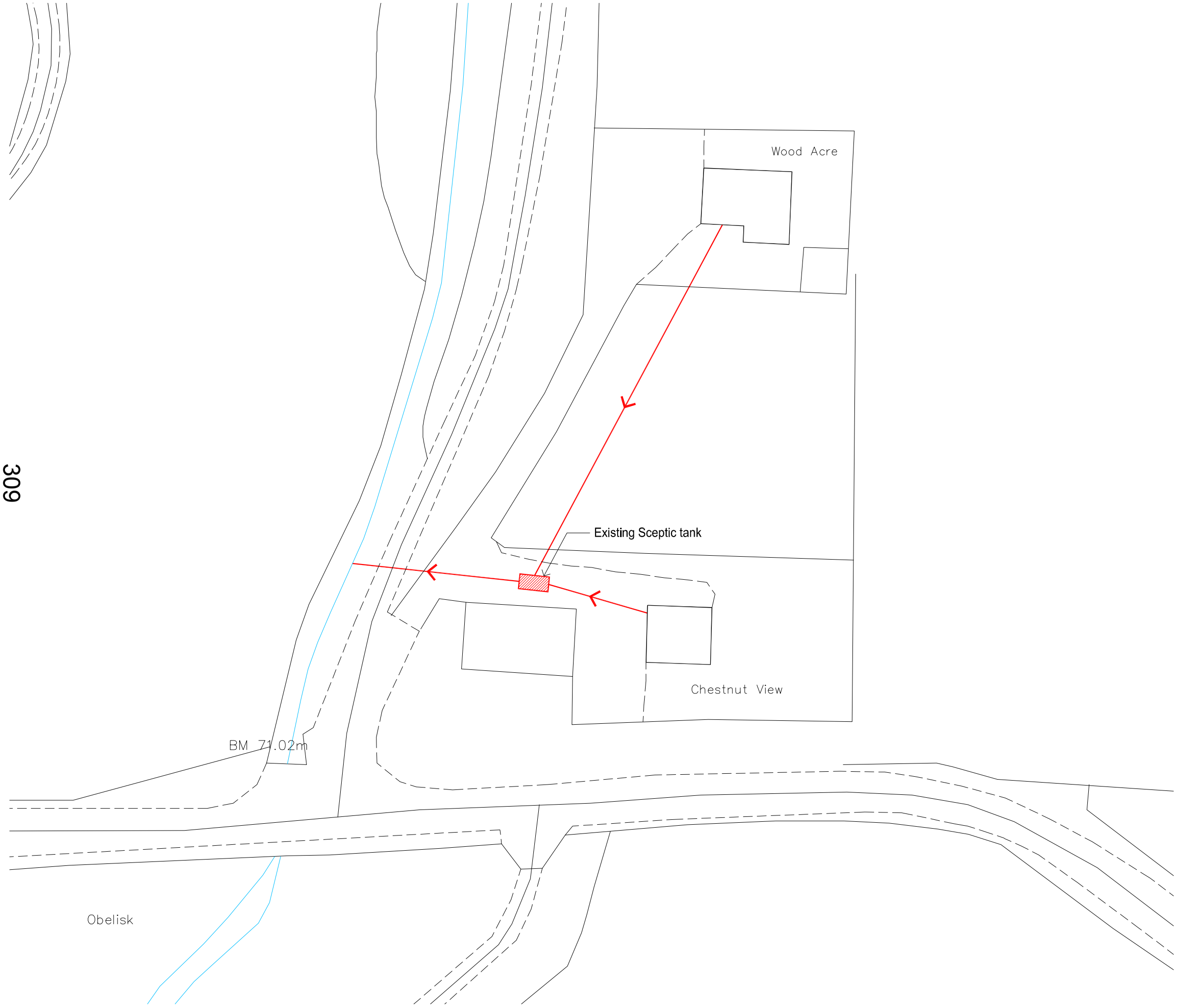
New House, East Lochran, Blairdam, Kelty



0 5 10 15 20 25 35

Scale in metres at 1:500

Revision :

Information

Rev.
Drawn: CH

LEADINGHAM JAMESON ROGERS + HYND

C H A R T E R E D A R C H I T E C T S

18 South Tay Street Dundee DD1 1PD Tel: 01382 200511 Fax: 01382 225226 e-mail: admin@LJRH.co.uk

Job Name	Job No.	Series	Dwg. No.
• Chestnut View + Wood Acre	• 2954	• SK	• 001
Dwg Title	Scale	Date	Rev.
• Site Plan	• 1:500 @ A3	• Dec 2016	• -

CHX Planning Local Review Body - Generic Email Account

From: Nicki McIntyre [redacted]
Sent: 16 February 2017 16:47
To: John Williamson - TES
Cc: Alan Seath
Subject: RE: FAO John Williamson/Silvia Cagnoni-Watt 2954 Hillview, Balcairn, Kinloch Planning Ref 16/01937/FLL; SEPA Ref PCS/150087

Dear John

Thank-you for sending through the additional information. This information satisfactorily addresses our outstanding objection regarding the drainage strategy for the development. We are now content to withdraw our objection.

Regards

Nicki

Nicki McIntyre | Operations Officer | Tayside & Grampian Area | Scottish Natural Heritage | Battleby | Perth | PH1 3EW | Direct Dial 01738 458591 | Switchboard 01738 444177

From: John Williamson - TES [redacted]
Sent: 14 February 2017 16:58
To: Nicki McIntyre
Subject: FW: FAO John Williamson/Silvia Cagnoni-Watt 2954 Hillview, Balcairn, Kinloch Planning Ref 16/01937/FLL; SEPA Ref PCS/150087

Dear Nicki

I refer to your consultation on the above application dated 7th December 2016. I have now received the attached additional information from the applicant and would appreciate if you could consider this and let me know whether it addresses your objection.

If you could provide me with a rough timescale for a response I would greatly appreciate it.

Thanks very much.

Kind Regards

John Williamson
Planning Officer
Development Management
Perth and Kinross Council
Pullar House, 35 Kinnoull Street
Perth
PH1 5GD

☎ [redacted]
✉ [redacted]
e www.pkc.gov.uk

From: admin@ljrh.co.uk [mailto:admin@ljrh.co.uk]
Sent: 14 February 2017 16:19

To: Development Management - Generic Email Account; planning.se@sepa.org.uk
Cc: 'Alan Seath'; John Williamson - TES; George Burke
Subject: FAO John Williamson/Silvia Cagnoni-Watt 2954 Hillview, Balcairn, Kinloch Planning Ref 16/01937/FLL; SEPA Ref PCS/150087

Dear Sirs,

We attach for your information Phosphorus Mitigation Calculations for the above property, in support of the current Planning Application, together with the named mitigation properties and related Klargester specifications.

Should you require any further clarification or information please do not hesitate to contact this office.

Yours faithfully,

Michael J Rogers DA RIBA ARIAS

LEADINGHAM JAMESON ROGERS + HYND
C H A R T E R E D A R C H I T E C T S

LJR+H Architects
18 South Tay Street
Dundee DD1 1PD
Tel: 01382 200511
http://www.ljrh.co.uk/

THE DRUM SCOTTISH DESIGN AWARDS
AWARD WINNER 2018

This e-mail and any attachments may contain confidential and privileged information. If you are not the intended recipient, please notify the sender immediately by return e-mail, delete this e-mail and destroy any copies. Any dissemination or use of this information by a person other than the intended recipient is unauthorized and may be illegal.

CHX Planning Local Review Body - Generic Email Account

From: Planning South East <Planning.SE@SEPA.org.uk>
Sent: 24 February 2017 11:09
To: John Williamson - TES
Cc: 'admin@ljrh.co.uk'; a_seath@sky.com
Subject: RE: FAO Silvia Cagnoni-Watt 2954 Hillview, Balcairn, Kinloch Planning Ref 16/01937/FLL; SEPA Ref PCS/150087

John,

We previously objected on the basis of lack of information for this development (see our response of the 8 December 2016 (our ref: PCS/150087).

Following receipt of the Phosphorus mitigation calculations from the agent on the 14 February 2017, we confirm that we can now **remove our objection.** This is because the calculations exceed the mitigation required and we had confirmation of a low Phosphorus plant to be installed.

Please do not hesitate to contact me for any further clarification

Regards

Silvia

Silvia Cagnoni Watt

Senior Planning Officer

SEPA, Strathallan House , Castle Business Park, Stirling, FK9 4TZ

tel: ***01786 452430***

email: ***silvia.cagnoni@sepa.org.uk***

working hours: ***Monday, Wednesday, Friday: morning only; Tuesday, Thursday: full day***

From: John Williamson - TES [redacted]
Sent: 14 February 2017 17:00
To: Planning South East
Subject: FW: FAO Silvia Cagnoni-Watt 2954 Hillview, Balcairn, Kinloch Planning Ref 16/01937/FLL; SEPA Ref PCS/150087

Dear Silvia

I note that you have been copied into the above, however for the avoidance of any doubt I would appreciate your comments on the attached information and whether this is sufficient to allow you objection to be removed.

I would also appreciate if you could provide me with a timescale for a response.

Thanks very much.

Kind Regards

John Williamson
Planning Officer
Development Management
Perth and Kinross Council
Pullar House, 35 Kinnoull Street
Perth
PH1 5GD

☎ [redacted]
✉ [redacted]
e www.pkc.gov.uk

From: admin@ljrh.co.uk [mailto:admin@ljrh.co.uk]
Sent: 14 February 2017 16:19
To: Development Management - Generic Email Account; planning.se@sepa.org.uk
Cc: 'Alan Seath'; John Williamson - TES; George Burke
Subject: FAO John Williamson/Silvia Cagnoni-Watt 2954 Hillview, Balcairn, Kinloch Planning Ref 16/01937/FLL; SEPA Ref PCS/150087

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Yours faithfully,

Michael J Rogers DA RIBA ARIAS

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THE DMUK SCOTTISH DESIGN AWARDS
AWARD WINNER 2018

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Delayed Office Opening for Employee Training
This office will be closed from 8.45am - 11.00am on the first Thursday of each month.

PERTH & KINROSS COUNCIL

Nick Brian
Interim Head of Planning

Pullar House, 35 Kinnoull Street, PERTH PH1 5GD
Tel 01738 475000

Contact Lucy Sheldon
[redacted]
www.pkc.gov.uk

Our ref 2149949

Your ref

Date 27 April 2017

Mr Alan Seath
Seath Planning Consultancy Ltd

By email: a_seath@sky.com

Dear Mr Seath

Complaint Reference No: 2149949
Investigation Response Letter

I have commissioned an investigation into the circumstances surrounding your complaint and am now in a position to respond to you. Firstly I would like to apologise for the length of time that it has taken to respond to this particular complaint and thank you for your patience in this matter.

Your Complaint

Your complaint concerns the handling of Planning Application 16/01937/FLL. I understand you, as planning agent for the application, are acting on behalf of the applicant, Mr George Burke. Initially a complaint was submitted by Brodies LLP on behalf of Mr Burke however, further discussions led to you coming forward as the main point of contact and the complaint was logged in your name. A signed mandate giving permission from Mr Burke for you to act on his behalf was received by the Council on 23 March 2017.

I understand you agreed with Lucy Sheldon, Complaints and Communications Officer, that the eight points below would be investigated. In order to come to a conclusion on these eight points, I asked Lucy to review all previous correspondence and documentation in relation to this case and, where necessary, to speak with relevant parties.

Our Findings

1. **The Council's Planning Officers and Enforcement Officers raised no concerns regarding the erection of the building and then its subsequent conversion to a residential dwelling (at November 2016). No planning enforcement action was or has been taken by the Council; in fact Planning Officers and Enforcement Officers had indicated that the deviation of the siting of the building from its approved position was not so significant as to give rise to enforcement action.**

I do not agree with your view. Full consideration of all the relevant circumstances is outlined in the Report of Handling Delegated Report 16/01937/FLL (see Attachment 1) and is reiterated below.

A prior notification was granted in April 2012 (12/00544/PN) for the erection of a general purpose agricultural building. There has also been a previous refusal on the site for a holiday home (11/01988/IPL) and a withdrawn application for two dwellings (05/00703/FUL).

The agricultural building has been erected approximately 10m to the north of the position indicated in the Planning Notice. Therefore the building has not been erected in the correct location. The applicant's agent sought the Planning Authority's view on this matter in 2014 and was informed that a further planning application would be required to regularise the situation. No further application was received. This matter was discussed with the Council's Planning Enforcement Team, and the view taken at the time, was that it was not in the public interest to pursue formal enforcement action as there was considered to be limited planning harm in the revised location given the use of the building for agricultural purposes.

It is now apparent that the agricultural building has been occupied as a dwellinghouse and the Council subsequently received a retrospective change of use application. Initially the application was registered as a change of use, however, following consideration of the planning history of the site by the Planning Officer, it was determined that a retrospective change of use was not appropriate given the unauthorised location of the building. Whilst the Planning Authority did not progress formal enforcement action in 2014, the location of the building remains unlawful. Furthermore, the planning circumstances have now changed as the applicant is living in the building and is seeking consent for a dwellinghouse. As such, the use of the building is also therefore unlawful and the situation requires to be regularised either via an approval or potentially through enforcement if refused.

The application as submitted originally was solely for a change of use of the building to a dwellinghouse. The approval of the application would not also implicitly authorise the building and therefore the application was not legally competent and determination of the application would be ultra vires. For these reasons, the description of the application was altered to "Erection of a Dwellinghouse (in retrospect)" as this is considered to be an accurate description of the development proposed as is required by Section 32A of the Town and Country Planning (Scotland) Act 1997 and the Development Management Procedure Regulations. The application was subsequently re-advertised as required by the Act.

I understand you disputed the revision to the description but given the facts outlined above, I agree that it was entirely appropriate of the Case Officer to revise the description of the application to ensure that the recommendation on the application was made based upon the correct legal procedure.

Therefore I do not uphold this complaint point.

2. **Mr Burke placed reliance on the issues contained in 1 above when submitting the application for change of use.**

   This was addressed in the Report of Handling Delegated Report 16/01937/FLL (Attachment 1) and also in point one above and I do not believe there is anything further to add.

   Therefore I do not uphold this complaint point.

3. **If the Council had concerns about the position or use of the building, then it would have been appropriate to raise these concerns during the construction period or prior to issuing a completion certificate.**

   The completion certificate that was accepted for this building was for an agricultural storage shed, not a house. This is reinforced by documentation which supported the completion submission and confirmed it to be a non-domestic building. The building warrant and planning legislation are entirely separate areas of legislation. The applicant should have satisfied himself that he had the correct consents in place before choosing to occupy the building as a dwelling.

   Therefore I do not uphold this complaint point.

4. **The Council has allowed Mr Burke to lodge the present application before going on to validate it, incur planning fees and pay Council Tax for domestic use of the property. It is wholly unreasonably for the Council to seek to change their position on the matter and require Mr Burke to seek planning permission for erection of a dwelling house.**

   I do not agree that the Council changed their position on the matter; the applicant chose to occupy the building as a dwelling without the proper consents in place.

   The validation and payment of fees for Mr Burke's application in no way indicated a Council position on the matter, other than it was considered a valid application based on the information available at the time. The Council's guidance note "What Happens to My Planning Application? A Guide for Applicants" (see Attachment 2 and which is also published on the Council's website) clearly explains that changes or further information may be required in order to fully assess an application.

   Council Tax and Planning Permission are two separate things. It is possible for you to be charged Council Tax without planning permission to be living there. Payment of Council Tax does not indicate any position in relation to planning permission or enforcement.

   In terms of the Council Tax legislation the dwelling was properly entered in the list. Section 70 and subsequent sections of the Local Government Finance Act 1992 detail the liability to pay council tax. The sections also define a chargeable dwelling. Rating legislation and case law does not consider legal right but actual use. If you require

further clarification then you may wish to contact the Tayside Assessor. Contact details are available on the website at the following address:
https://www.tayside-vjb.gov.uk/pages/contactus.html

Therefore I do not uphold this complaint point.

5. **As outlined in 4 above (and in the letter of complaint), the Council has no grounds to seek to alter the description of application on a unilateral basis.**

   As previously explained to you (see Attachment 3) the Council did have grounds to seek to alter the description, and this was done to ensure that the recommendation on the application was made based upon the correct legal procedure.

   Therefore I do not uphold this complaint point.

6. **The Council's lack of consistency on the matter has caused Mr Burke significant distress. Mr Burke and his family currently reside in the building and if the Council were to prevent residential use of the building in the future, Mr Burke and his family would be rendered homeless.**

   I do not agree that there has been a lack of consistency. The Council has email correspondence to the applicant's original agent making it clear that the agricultural building had been erected not in accordance with the details outlined in the Planning Notice, and that a planning application to regularise the location of the agricultural building would be required. No application was ever received for the new location, and instead, the applicant chose to occupy the building for residential purposes without obtaining planning consent.

   Mr Burke's personal circumstances were addressed in the Report of Handling Delegated Report 16/01937/FLL (Attachment 1) and the Case Officer did not consider the personal circumstances, given all the matters outlined in the report, to outweigh the fact that the proposal is contrary to the Local Development Plan.

   Therefore I do not uphold this complaint point.

7. **As a member of the Gypsy/Traveller community, the Council and its staff are under a duty, in terms of the Equality Act 2010, to eliminate discrimination, advance equality of opportunity and foster good relations between people with a protected characteristic and people without. In respect of Mr Burke's application, the planning, enforcement and building control departments have fallen short in this duty due to a distinct lack of joined-up advice (as outlined above). As a result of this failure, Mr Burke's application has been significantly prejudiced and he now stands to lose his home.**

   Having examined the evidence, I do not consider there to be any issue of lack of joined up advice or prejudice. Mr Burke and the planning professionals, who acted on his behalf, were informed at an early date of the requirement for a planning application and

that the occupation of the building for residential use was unauthorised and required planning consent.

The Case Officer has confirmed he is fully aware of the Act which you refer to and that his decision on the application was based solely upon an assessment of planning policy and for the reasons outlined in the Report of Handling Delegated Report 16/01937/FLL (see Attachment 1). I also do not consider the handling of this application to be contrary to the requirements of this Act. As explained in point six above, Mr Burke's personal circumstances were addressed and considered. I can find no evidence that Mr Burke's application has been prejudiced and I consider the outcome and handling of the application to be entirely appropriate.

Therefore I do not uphold this complaint point.

8. **The Gypsy/Traveller Strategy for Perth and Kinross 2013 – 2018 sets out that its purpose is to 'improve and sustain community relations through action that can be supported by all parties (individuals, politicians, public authorities, representative organisations, Gypsy/Travellers and local communities) and in a manner underpinned by improved communication, respect and understanding'. With regard to Mr Burke's application, the aim of the strategy has not been met. A glaring example of this being in the weeks prior to determination of the application, Mr Burke's agent contacted the case officer on more than one occasion to arrange a meeting to discuss matters (which requests were also supported by a local councillor) only for these to be declined by the Case Officer and a refusal notice issued directly.**

Having examined the evidence available to me I can find no evidence to uphold this complaint point. The applicant used planning professionals (including you) to assist him through the planning process. There is clear evidence that the Case Officer communicated on numerous occasions the circumstances which could be faced should the applicant choose to occupy the agricultural building as a dwelling.

The Case Officer was in regular contact with the applicant's planning professionals and, in terms of the meeting request, the Case Officer has confirmed that he spoke directly to Councillor Shiers regarding the request for a meeting and indicated to her the circumstances associated with the application and that the proposal was clearly contrary to Local Development Plan policy. On that basis, a meeting was not considered to be an efficient use of Council resources as the only outcome for the application, given the planning policy associated with this location, would be a recommendation of refusal. I can find no evidence of discrimination and I consider the outcome and handling of the application to be entirely appropriate.

Therefore I do not uphold this complaint point.

I understand that this may not be the outcome you had hoped for but my conclusions have been made based on the evidence available to me. I would also like to take this opportunity to remind you that Mr Burke has a right of appeal. Information on how to appeal was provided with the Decision Notice. An appeal or request for a review must

be made within 3 months of the date of the decision. Information about appeals is also published on the Council's website at the following link:
http://www.pkc.gov.uk/media/3533/What-Happens-to-My-Planning-Application/pdf/What_Happens_to_My_Planning_Application

The Council's Complaints procedure has now been completed. If you remain dissatisfied with the outcome of your complaint, you have the option of contacting the Scottish Public Services Ombudsman (SPSO). The SPSO is the final stage for complaints about most organisations providing public service in Scotland. Their service is independent, free and confidential.

The SPSO cannot normally look at:

- a complaint that has not completed our complaints procedure
- events that happened, or that you became aware of, more than 12 months ago
- a matter that has been or is being considered in court.

The SPSO's contact details are:

SPSO
4 Melville Street
Edinburgh
EH3 7NS

or

Freepost SPSO

Freephone: 0800 377 7330
Online contact www.spso.org.uk/contact-us
Website: www.spso.org.uk
Mobile site: http://m.spso.org.uk

Yours sincerely

Nick Brian
Interim Head of Planning

SPC Seath Planning Consultancy Ltd

Date: 27 July 2017

Gillian A. Taylor,
Clerk to the Local Review Body,
Perth and Kinross Council,
County Building,
2 High Street,
Perth,

Our ref: AS/053
Your Ref: TCP/11/16 (471)

Dear Ms. Taylor

Subject: Town & Country Planning (Scotland) Act 1997 The Town & Country Planning (Schemes of Delegation & Local Review Procedure) (Scotland) Regulations 2013 Application Ref: 16/01937/FLL – Erection of a dwellinghouse (in retrospect) on land at Hillview, Kinloch, Blairgowrie, PH10 6SD – Mr G Burke

With reference to your letter dated 14 July 2017 following consultation with Mr Burke I submit the information as requested.

(vi) I attach information relating to the as exiting biodisc; the phosphorous mitigation calculation; and SEPA's email to the planner Mr. Williamson, withdrawing their objection. Mr Burke has asked me to advise you that prior approval (building warrant) has been granted for the existing drainage system at Hillview.

I cannot open the SNH response dated 17 February on the Council's planning portal withdrawing the objection. I also note that there is a response from SEPA (24 February) also on the planning portal which I cannot access.

(vii) A letter from the owner of Chestnut View is submitted with this letter. This gives Mr Burke permission (from Mr Marc MacBey) for the installation and update of a new treatment plant if required.

(viii) The Appellant has advised me that he does not own any other land in the area.

(ix) A copy of the legal opinion dated 22 December 2016 from Brodies LLP Solicitors accompanies this letter.

Yours sincerely,

A Seath

Alan Seath DipTP MRTPI

Seath Planning Consultancy Ltd, 88 Scott Road. Glenrothes, Fife KY6 1AE Company Registration No. SC557070

email: a_seath@sky.com

Telephone: 01592 304188 or Mobile: 07731690473

Bob Hynd
LJR+H Architects
18 South Tay Street
Dundee
DD1 1PD

Project
Chesnut View
Balcairn by Kinloch
Blairgowrie

Basis of Design

We understand the property consists of 3 bedrooms. We are proposing upgrading the current septic tank to our BioDisc system which offers unrivalled efficiency and effluent qualities. The BioDisc's unique Managed Flow Systems ensure consistently high effluent quality even at high load periods

Please check these figures for accuracy and provide details of any changes you envisage.
All the loading figures stated have been taken from the 2009 British Water Code of Practice, which provides figures for use in sizing small waste treatment systems.

Proposal

Line	Product Code	Price	Qty	Total Price
1	**BA BioDisc Packaged Sewage Treatment Plant** • 450/750mm Invert (TBC) • Loss of Rotation Alarm • Gravity Outlet • 6 Population Equivalent	£3069.00	1	£3069.00
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	Effluent Quality – EN12566 tested BOD 20mg/L Suspended Solids 30mg/L Ammoniacal Nitrogen 20mg/L			

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Company Reg. No. 3888183

	This should be acceptable for discharge to a watercourse or sub surface irrigation system, but would however, be subject to formal permit/consent from SEPA. This permit/consent may require that the above effluent figures be varied.			

	Benefits Summary • The latest *Klargester* Design Development • Unique Managed Flow System • Low Profile securable Covers • Low Running costs, we are confident that you will not find a more economical unit. • For a full technical electrical specification – see Installation and Operational Guideline attached • The treatment plant requires desludging, the frequency is based on the type of application. For expert guidance contact the undersigned • No Compressors or air lift pumps, hence, economical to operate and almost silent in use • Service and Maintenance: Maintenance is a requirement for all treatment systems. Maintenance schemes covering all aspects of service are available from *Kingspan Service*			
	VAT: Excluded Delivery: Paid to Site UK mainland or dock. Offloading is client's responsibility Payment: By agreement Validity: 60 Days Delivery Period: 7-10 working days Full Terms & Conditions are available on request			

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Company Reg. No. 3888183

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Please find enclosed our data sheet numbered TDS0002, which must be read in conjunction with our proposals to ensure that due consideration is given to all relevant design and installation criteria.

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Additional Products and services

For the full range of our products and services including all technical data please contact us or visit our website at www.kingspanklargester.com

The site contains full details of our range of Rainwater Harvesting Systems

Please note all Klargester products are made under a BS EN ISO 9001:2000 Quality Management Accreditation.

We trust our comments and enclosures are sufficient for your immediate needs. Please do not hesitate to contact us if we can be of any further assistance.

Kind Regards

Ross Stewart
Area Sales Manager

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2954 Proposed House at Hillview, Balcairn for G Burke

Phosphorus mitigation calculations based on British Water Code of Practice.

Background	
Average amount of water per person per day	= 150 litres
Primary Treatment (Septic Tank - standard discharge)	= 10mg P/litre
Daily discharge of phosphorus (per person) form primary treatment	= 1500mg P
Secondary treatment (package treatment plant)	= 2mg P/litre
Daily discharge of phosporus (per person) from secondary treatment	**= 300mg P**
Proposed Development	
3 bedroom house (Hillview, Balcairn)	= 5 P.E.
Secondary treatment to be installed	= 2mg P/litre
Daily discharge of phoshorus = 300mg P x 5 P.E.	**= 1500mg P/day**
Phoshorus Mitigation	
Mitigation requires a reduction of 125% of the amount of phosphorus to be discharged from the new development = 125% x 1500mg P/day	**= 1875mg P/day**
Mitigation is proposed by upgrading a septic tank for 2 x3 bedroomed properties to a secondary treatment plant	
2 x 3 bedroom houses (Chestnut View, Balcairn and Wood Acre, Balcairn)	= 10 P.E.
Existing discharge	= 15000mg P/day
Discharge after upgrade to 2mg/l P = 300mg P x 6 P.E.	= 3000mg P/day
Mitigation offered is 15000 - 3000	**= 12000mg P/day**
	which is in excess of the requirements

Chestnut View
Kinloch
Bliairgowrie
Perthshire
PH10 6SD
25.07.2017

To Whom it May Concern,

I Marc MacBey the owner of the above address here by give permission for the instillation and update of a new treatment plant (septic tank), for the above property.

Your Sincerely

Marc MacBey

[redacted]

OUR REF NAC/VMS
YOUR REF 16/01937/FLL

John Williamson
Development Management
Perth and Kinross Council
Pullar House
35 Kinnoull Street
Perth
PH1 5GD

22 December 2016

Dear John

APPLICATION FOR CHANGE OF USE FROM AGRICULTURAL BUILDING TO DWELLINGHOUSE (IN RETROSPECT)
REF: 16/01937/FLL
APPLICATION SITE: HILLVIEW, KINLOCH, BLAIRGOWRIE PH10 6SD

We act for Mr George Burke ("the Applicant") in relation to the above application.

Prior approval was granted by Perth and Kinross Council for the erection of an agricultural building (ref: 12/00544/PN) in April 2012.

The Applicant accepts that the agricultural building was erected a short distance (approximately 4 metres) from the approved position within the Application Site.

The Applicant is not aware of, nor has the Council indicated, any material difference or effect attributable to the deviation from the approved location within the Application Site.

From a practical perspective, the building is sited approximately 4 metres to the north of the approved location in an attempt to minimise the visual impact of the development and to maximise parking and turning space in front of the building.

The Applicant is not aware of, nor has the Council identified, any planning reason that may have prevented prior approval from being granted had the plans shown the agricultural building in its position as constructed.

This minor deviation therefore amounts to a technical discrepancy only. Planning officers, including Mr Kettles from the Council's enforcement team, have previously advised our client that the siting of the building was not significant so as to give rise to any further action by the Council.

The Applicant submitted an application for change of use from an agricultural building to a dwellinghouse, which

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DX ED10, EDINBURGH-1

was validated by the Council on 14 November 2016.

This application requires to be determined by the Council on the planning merits. The following legal and factual circumstances also provide relevant context:

- Having validated the application as submitted, the Council is now obliged to determine it in its present form;
- The regulation of development and use are separate components of development management;
- As a matter of fact, there is a building on the site. It is therefore appropriate for the application to seek permission for a change of use of that existing building;
- An application for change of use does not require authorised development as a pre-requisite;
- If the Council was concerned about the building as erected, it could have initiated enforcement proceedings. We understand that the no steps towards enforcement action have been taken by the Council at this time; the Applicant has also discussed the matter with planning officers who have previously advised that the built development does not give cause for further action to be taken by the Council;
- The Council issued a building warrant and completion certificate for the building. The Council also sought, and the Applicant has been paying Council Tax since 8th November 2016, (for the period from 12 September 2016 to 31 March 2017 - £911.45). These actions indicate an awareness and acceptance by the Council as a corporate body of the use of the building as a domestic residence.

In submitting the present application, the Appellant simply wishes to regularise the use of the building as a residential dwelling for him and his family.

Yours sincerely

Neil A Collar
Partner/Head of Planning Law Department
On behalf of Brodies LLP
Direct Line: 0131 656 0125
E-mail: neil.collar@brodies.com

CHX Planning Local Review Body - Generic Email Account

From: John Williamson - TES
Sent: 07 August 2017 15:46
To: CHX Planning Local Review Body - Generic Email Account
Cc: Anne Condliffe; Christine Brien
Subject: RE: TCP/11/16(471)

Dear Sir/Madam

Thank you for forwarding the attached information to me. I write to advise that I have no further comments to make on the attached information as the previously requested information from Development Management has already been forwarded. A response to the letter dated 22 December 2016 from Brodies is included within the Report of Handling for the application.

Kind Regards

John Williamson
Planning Officer
Development Management
Perth and Kinross Council
Pullar House, 35 Kinnoull Street
Perth
PH1 5GD

[redacted]
[redacted]
e www.pkc.gov.uk

CHX Planning Local Review Body - Generic Email Account

From: Cagnoni, Silvia <Silvia.Cagnoni@sepa.org.uk>
Sent: 15 August 2017 16:03
To: CHX Planning Local Review Body - Generic Email Account
Subject: FW: TCP/11/16(471)

Gillian,

I confirm that the SEPA response by email of the 24 February 2017 11:09 (also reported in the document TCP-11-16 (471) -17.07.18 – Written Submission from Planning) is our latest response withdrawing our previous objection and we have no more comments to make in relation to phosphorus mitigation.

Regards

Silvia

Silvia Cagnoni Watt

Senior Planning Officer

SEPA, Strathallan House , Castle Business Park, Stirling, FK9 4TZ

tel: ***01786 452430***

email: ***silvia.cagnoni@sepa.org.uk***

working hours: ***Monday, Wednesday, Friday: morning only; Tuesday, Thursday: full day***