

TCP/11/16(259)
Planning Application 13/00280/FLL – Renewal of consent
(08/00315/FUL) Erection of a dwellinghouse and removal of
condition 9 (occupancy condition) Craigow, Milnathort,
Kinross, KY13 0RP

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(08/00315/FUL) Erection of a dwellinghouse and removal of
condition 9 (occupancy condition) Craigow, Milnathort,
Kinross, KY13 0RP**

**PAPERS SUBMITTED
BY THE
APPLICANT**

NOTICE OF REVIEW

Under Section 43A(8) Of the Town and Country Planning (SCOTLAND) ACT 1997 (As amended) In Respect
of Decisions on Local Developments

The Town and Country Planning (Schemes Delegation and Local Review Procedure) (SCOTLAND)
Regulations 2008

The Town and Country Planning (Appeals) (SCOTLAND) Regulations 2008

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

PLEASE NOTE IT IS FASTER AND SIMPLER TO SUBMIT PLANNING APPLICATIONS
ELECTRONICALLY VIA <https://eplanning.scotland.gov.uk>

1. Applicant's Details		2. Agent's Details (if any)	
Title	Mr and Mrs	Ref No.	
Forename	Patrick	Forename	Malcolm
Surname	Milne Home	Surname	Smith
Company Name		Company Name	TMS Planning Services
Building No./Name		Building No./Name	Balclune
Address Line 1		Address Line 1	32 Clune Road
Address Line 2		Address Line 2	Gowkhill
Town/City		Town/City	Fife
Postcode		Postcode	KY12 9NZ
Telephone		Telephone	01383 853066
Mobile		Mobile	07723320517
Fax		Fax	
Email		Email	tmsplanning@tiscali.co.uk
3. Application Details			
Planning authority	Perth and Kinross Council		
Planning authority's application reference number	13/00280/FLL		
Site address	<div style="border: 1px solid black; padding: 5px; min-height: 100px;"> Craigow, Milnathort, KY13 0RP </div>		
Description of proposed development	<div style="border: 1px solid black; padding: 5px; min-height: 50px;"> Renewal of consent (08/00315/FUL) for the erection of a dwellinghouse and removal of condition 9 (occupancy condition) </div>		

Date of application

11th February, 2013

Date of decision (if any)

10th April, 2013

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

4. Nature of Application

Application for planning permission (including householder application) ☐

Application for planning permission in principle ☐

Further application (including development that has not yet commenced and where a time limit has been imposed; renewal of planning permission and/or modification, variation or removal of a planning condition) ☒

Application for approval of matters specified in conditions ☐

5. Reasons for seeking review

Refusal of application by appointed officer ☐

Failure by appointed officer to determine the application within the period allowed for determination of the application ☐

Conditions imposed on consent by appointed officer ☒

6. Review procedure

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

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

Further written submissions ☐

One or more hearing sessions ☐

Site inspection ☐

Assessment of review documents only, with no further procedure ☒

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

7. Site inspection

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

Can the site be viewed entirely from public land? ☒

Is it possible for the site to be accessed safely, and without barriers to entry? ☒

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

8. Statement

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

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

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

See Attached Statement of Review

Have you raised any matters which were not before the appointed officer at the time your application was determined? Yes ☐ No ☒

If yes, please explain below a) why your are raising new material b) why it was not raised with the appointed officer before your application was determined and c) why you believe it should now be considered with your review.

9. List of Documents and Evidence

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review

Location Plan, Site Plan, layout/section plan and elevation plans.
Document 1 – Letter from the Scottish Government to all Heads of Planning dated 4th November 2011
Document 2 – Supporting Planning Statement submitted with planning application 13/00280/FLL - Renewal of consent (08/00315/FUL), Erection of a dwellinghouse and removal of condition 9 (occupancy condition) at Craigow Milnathort Kinross KY13 0RP
Document 3 – Decision Notice for Planning Permission 13/00280/FLL
Document 4 – Perth and Kinross Council Officers Report of Handling related to planning application 13/00280/FLL
Document 5 – Appeal decision by DPEA related to proposal at Falfield Bank, Kilconquhar to Peat Inn, Cupar, KY15 5LL (reference: PPA-250-2143).

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

10. Checklist

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

Full completion of all parts of this form ☒

Statement of your reasons for requesting a review ☒

All documents, materials and evidence which you intend to rely on (e.g. plans and drawings or other documents) which are now the subject of this review. ☒

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

DECLARATION

I, the applicant/agent hereby serve notice on the planning authority to review the application as set out on this form and in the supporting documents. I hereby confirm that the information given in this form is true and accurate to the best of my knowledge.

Signature:  Name: T Malcolm Smith Date: 19th June, 2013

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

**APPLICATION FOR REVIEW OF CONDITION 8 OF PLANNING
PERMISSION 13/00280/FLL RELATED TO A RESIDENTIAL OCCUPANCY
CONDITION AT CRAIGOW, BY MILNATHORT ON BEHALF OF MR AND
MRS PATRICK MILNE HOME – STATEMENT OF REVIEW**

1.0 BACKGROUND TO REVIEW

1.1 Planning permission for the erection of a dwellinghouse at Craigow was granted in September, 2009 (08/00315/FUL) subject to a number of planning conditions and to an agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended) related to drainage mitigation measures within the Loch Leven catchment area. Condition 1 of the planning permission required that *“The development shall be begun within a period of 5 years from the date of this consent”* while Condition 9 required that: -

“9. The occupation of the dwellinghouse shall be restricted to a person solely or last employed locally in the equestrian business at Craigow; as defined in Section 277(1) of the Town and Country Planning (Scotland) Act 1997 or a dependant of such a person residing with him or her (but including a widow or widower of such a person)”.

1.2 The reason given for condition 9 was: -

“9. The dwellinghouse has been approved as an essential house within the terms of the Planning Authority's Policy on Houses in the Open Countryside”.

1.3 The planning application for the house was submitted in light of the justified requirement for a dwellinghouse related to the management and operation of the equestrian business at Craigow. This case was supported by correspondence from the SAC Farm Business Services and was considered to be fully justified (and to remain relevant) as evidenced by the decision taken by Perth and Kinross Council to grant the house. The business remains operational and the requirement for the house related to its management and operation also remains. The need for a house related to the business is not disputed by council officers.

1.4 The residential occupancy restriction set out in condition 9 has made it all but impossible to secure the necessary funding for the operational dwellinghouse, a not uncommon position for such “tied” development. In light of this, plans to provide a smaller, albeit less satisfactory but cheaper, house were advanced and planning permission for this was granted for this in November, 2010. This planning permission contained the same occupancy restriction as that in the earlier consent and remained bound by the terms of the S75 agreement related to drainage mitigation.

1.5 However, despite this pragmatic response adopted by the applicants in an attempt to reduce build costs and therefore to ease the funding difficulties, this too has proved undeliverable in the present climate. Funding simply cannot be secured from financial institutions for “tied” property in light of its limited/lack of value on the open market.

1.6 The need for the house related to the management and operation of the equestrian business is fully established and accepted by Perth and Kinross Council officers. However, as indicated, we have a situation where the applicant is unable to deliver this necessary development in light of the perceived “valueless” nature of “tied” property. Removal of the occupancy restriction would allow the applicant to secure the required funding and therefore to progress with the house and to maintain/further develop the business. **The house would remain as an integral part of the business operation at Craigow even with the occupancy restriction removed.**

1.7 In 2011 the Scottish Government’s Chief Planner issued guidance to Planning Authorities related to the use of occupancy conditions for rural housing (refer Document 1). This position was later reinforced as Scottish Government Policy in 2012 in Circular 3/2012. In effect, the national policy requirement was stated as “**The Scottish Government believes that occupancy restrictions are rarely appropriate and so should generally be avoided**”, and “**where the authority is satisfied that an adequate case has been made, it should not be necessary to use formal mechanisms to restrict occupancy**”. The requirement set out at national level is clear – **occupancy restrictions should not be used.**

1.8 In light of the on-going difficulties with funding and the continued need for accommodation related to the equestrian business at Craigow and

in order to allow this operation to grow and develop, a planning application was submitted to Perth and Kinross Council in February, 2013 both to renew the planning permission for the erection of a house and to delete planning condition 9 of this permission imposing occupancy restrictions on the proposed house.

1.9 The planning application was submitted to Perth and Kinross Council with a full justification supporting the proposal (refer Document 2 – Supporting Planning Statement). This document addressed the terms of national policy set out above which states that occupancy restrictions are, in effect, inappropriate, and Perth and Kinross Council’s own Housing in the Countryside Policy which indicates that such a restriction “may” be required (it is not an underlying requirement to impose an occupancy restriction in order to meet the Council’s established policy). Therefore, the latest expression of policy by Perth and Kinross Council appears to indicate that a more flexible approach may (should) be taken, in that there is no intrinsic requirement for an occupancy restriction condition to be applied. As set out below, this appears to be completely misunderstood in the officer’s assessment of the planning application leading to the retention of an occupancy condition (Condition 8 – see below).

1.10 During the determination of the application approaches were made to the case officer in order to discuss any concerns related to the application. No issues/concerns were raised and therefore it was something of a surprise to receive the decision (dated 10th April, 2013) with the occupancy restriction applied, this time as condition 8 on the decision notice issued (refer Document 3). Condition 8 stated that: -

“8. The occupation of the dwellinghouse shall be restricted to a person solely or last employed locally in the equestrian business at Craigow; as defined in Section 277(1) of the Town and Country Planning (Scotland) Act 1997 or a dependant of such a person residing with him or her (but including a widow or widower of such a person)”.

1.11 The reason given for condition 8 was: -

“8. The dwellinghouse has been approved as an essential house within the terms of the Planning Authority's Policy on Houses in the Open Countryside”.

1.12 From this decision it is again clear that the essential nature of the proposed house related to the equestrian business at Craigow is accepted by the Council as is the precise siting and design of the proposed house.

1.13 In making this delegated decision it is incumbent on the appointed planning officer to set out clearly and in sufficient detail the reasoning for the decision taken on the planning application. This is required to be set out within the Report of Handling for the application (refer Document 4). Reference to the Report of Handling (Document 4) reveals a number of concerns/anomalies. These include the complete failure to consider current national policy as set out in the 2011 Chief Planners letter (Document 1) and Circular 3/2012 (which formally translates the terms of the 2011 letter into Scottish Government policy) and also to refer to the latest version of Perth and Kinross Council's own Housing in the Countryside Guide 2012. As advised by Perth and Kinross Council's Planning Policy Officers, the Housing in the Countryside Policy 2009 is now superseded by the 2012 Guide and therefore the former is no longer considered to be relevant to planning decisions.

1.14 In short, the decision taken by the appointed officer under delegated powers has patently failed to have proper regard to significant material considerations impacting on the decision, most notably, prevailing Scottish Government policy. While it is accepted that the Housing in the Countryside Guide 2012 largely restates the earlier 2009 policy, the terms of the policy are incorrectly quoted in the Report of Handling in that this fails to recognise that an occupancy restriction is not an underlying requirement in order for a new house to comply with this policy. Section 3 of the Housing in the Countryside Policy/Housing in the Countryside Guide, Part 3.3(a) states that "*Permission may be restricted by an occupancy condition...*". This gives a degree of discretion which, if properly considered in light of prevailing Scottish Government policy, would indicate that an occupancy restriction is not required/justified in this case.

1.15 Contact with the planning officer and senior planning officers in order to raise a number of these issues was made following the surprising determination of the planning application. This resulted in a meeting taking place and email exchanges but further demonstrates the entrenched views of officers and their lack of regard for Scottish Government policy.

2.0 SUPPORTING CASE

2.1 It is clear from the initial planning permission and the later amendment that Perth and Kinross Council acknowledge the need for the house related to this established rural business. It is also clear that there is underlying support for such development at all levels of the planning process, from Scottish Planning Policy through to the adopted Local Plan, the emerging Perth and Kinross Council Local Development Plan and Supplementary Planning Guidance.

2.2 Indeed, in Scottish Planning Policy 2010 (SPP), the Scottish Government sets out a strategy to achieve its central purpose of **increasing sustainable economic growth** throughout Scotland. SPP acknowledges that the planning system has a significant role in supporting sustainable economic growth in all rural areas, this being through the approval of appropriate forms of development. By taking a positive approach to new development, planning authorities can help to create the right conditions for rural businesses to flourish. The promotion of economic activity and diversification in all rural areas, including residential development linked to new/established business operations, is a key component of the planning process. *“New build housing which is linked to rural businesses”* is to be facilitated in order to support rural businesses and related economic growth.

2.3 It is clear from Perth and Kinross Council’s adopted Kinross Area Local Plan (2004) and from Perth and Kinross Council’s Housing in the Countryside Guide (2012) that underlying policy support for new houses in the countryside related to economic activity/operational need exists. Policy 64 of the adopted Local Plan and Part 3 of the Housing in the Countryside Guide confirm this position. While Policy 64 of the adopted Local Plan indicates the need for occupancy conditions, the Housing in the Countryside Guide indicates that such a restriction “may” be required. Therefore, the latest expression of policy by Perth and Kinross Council (2012) indicates that a more flexible approach may be taken, in that there is no intrinsic requirement for an occupancy condition to be applied.

2.4 As indicated above, further guidance on the contents of Scottish Planning Policy and on the use of *“Occupancy Restrictions and Rural Housing”* was set out by the Scottish Government’s Chief Planner in a letter

to all Heads of Planning in Scotland in November 2011 (Document 1) and later translated formally into Scottish Government policy by Circular 3/2012. The Chief Planner confirms that Scottish Planning Policy promotes a positive approach to rural housing and supports more opportunities for small scale housing development in all rural areas, including housing which is linked to rural businesses. It does not promote the use of occupancy restrictions. Indeed, the letter clearly states that ***“The Scottish Government believes that occupancy restrictions are rarely appropriate and so should generally be avoided”***. In effect, where a Planning Authority is satisfied that an adequate case has been made for a house in a rural area then it should not be necessary to use formal mechanisms to restrict occupancy. **The national policy position is clear, a position that is to be reflected through Local Development Plans and in decisions taken on planning applications.**

2.5 Despite all of the above, the consideration of Scottish Government policy played NO PART in the decision taken by the appointed officer in this case. Indeed reference to the officer’s Report of Handling (Document 4) confirms no mention of this as a material consideration and the only rationale for the imposition of the occupancy restriction (Condition 8) is the flawed assessment that *“With regard to the request to remove the occupancy condition, this is not considered to be acceptable in this case and would be contrary to the Council’s Housing in the Countryside Policy”*. As outlined above there is no such requirement in the Housing in the Countryside Policy (albeit the officer was referring to a policy that had been superseded at the point of the decision being taken) as this policy and the later Housing in the Countryside Guide merely state that *“Permission **MAY** be restricted by an occupancy condition....”*. The officers makes no attempt to justify the need for the condition, which, if it is required, should have been clearly set out in order to justify the decision taken. The officer has clearly mislead himself in reaching/seeking to justify the decision taken, not to mention completely failing to assess the most up to date and relevant guidance, that outlined by Scottish Government policy. This is a patently flawed decision and one unjustified by the relevant facts of the case.

2.6 All planning conditions imposed on the grant of planning permission require to meet all 6 specified tests as set out in Circular 4/1998 *“The use of Conditions in Planning Permissions”*. The circular sets out the six tests as (1) necessary, (2) relevant to planning, (3) relevant to the development to be permitted, (4) enforceable, (5) precise, and (6) reasonable in all other respects. This Circular also states that conditions should not place

unjustifiable burdens on applicants. Scottish Government policy (Document 1) clearly discourages the use of occupancy conditions for rural housing considering these to be unnecessary and unreasonable, thereby failing to meet 2 of the 6 tests and therefore being inappropriate in planning terms. In amplification of this point a recent appeal decision in Fife (Document 5) confirmed that: -

“The government is clearly of the view that where the environmental and sustainable development criteria permit housing in the countryside, and where it is justified by the needs of rural enterprises, occupancy restrictions are unnecessary to achieve the aims of the development plan”.

2.7 The reporter went on to confirm that the occupancy condition in that case, one related to essential worker housing (as in the application at Craigow), was *“neither necessary nor relevant to secure planning policy aims”*. He went on to conclude that: -

“The remaining Circular 4/1998 tests are; whether relevant to the development to be permitted, enforceable, precise, and reasonable in all other respects. There is in my view clear evidence that mortgage finance will not be forthcoming for this development whilst the occupancy restriction remains. The council take the view that financing the scheme is not strictly a planning issue, by implication, even if the development of the business will be put at risk. The inability to raise finance directly as a result of the planning condition renders the permitted development unlikely despite the council having agreed that it is essential. This places an unreasonable burden on the appellants” and constitutes “unreasonable interference with proprietary rights and contrary to Circular 4/1998.”

2.8 While, as indicated, this is a case in neighbouring Fife, there appear no comparable appeal cases in the Perth and Kinross Council to date to refer to. This may be due to the role in the “appeals” process exercised by the Local Review Body but whatever the reason, it is incumbent upon the Local Review Body to apply/fully consider national policy in their decisions. The Fife appeal decision clearly sets a template for the issues and reinforces the need to prioritise the economic benefits arising from development and to remove unnecessary obstacles from the delivery process. In effect, where an occupancy condition is preventing the delivery of bone-fide supported development, as at Craigow, in light of practical considerations related to mortgage finance, as at Craigow, then there is no

place in the planning process for occupancy restrictions which provide obstacles to delivery. In conclusion, the inclusion of the condition 8 occupancy restriction in this case fundamentally fails to comply with the 6 tests for conditions and is therefore inappropriate in planning terms.

2.9 Perth and Kinross Council officer's concerns appear to be, from subsequent discussions/correspondence, the potential for a house at Craigow to be occupied by someone not related to the business should the occupancy condition not be applied. The Scottish Government was fully aware of this general issue (as are all participants in the planning process) prior to issuing policy direction on this matter (Document 1). It is patently clear that this negative approach (restricting occupancy) is an outdated and redundant position from which policy has moved forward. Pragmatism, a positive approach and common sense are the order of the day not planning for the worst case scenario as appears to be Perth and Kinross Council officer's present approach. Indeed, as outlined previously, there is no requirement in Perth and Kinross Council's own recent policy (the Housing in the Countryside Guide and the emerging Local Development Plan) to apply occupancy conditions only the option to do so. Should such an option be considered appropriate this would require to be clearly set out in each case – it is patently lacking in this case as indeed is the underlying justification for any such occupancy restriction for the Craigow house.

2.10 The siting and design of the proposed dwelling is such as to raise no material concerns related to its visual or environmental impacts and there remains a requirement for this established and potentially growing rural enterprise to have proper arrangements related to the management and operation of the equestrian business, in effect, the proposed house (with related office and other accommodation).

2.11 My client remains fully committed to her business at Craigow and wishes to be able to sustain and develop it over time. As indicated, the proposed house is a crucial part of this process/the business operation and in order to deliver the house the existing occupancy restriction requires to be removed. This is considered to be a fully justified and reasonable request.

3.0 CONCLUSIONS

3.1 It is clear that the requirement for a house in order to support the rural equestrian business at Craigow is well established by the earlier grant of planning permission(s) at the site. It is also clear that the present occupancy condition (Condition 8) effectively makes the house unmortgageable with the availability to secure other potential funding arrangements also not a realistic prospect.

3.2 Recognising the funding and other difficulties often experienced in these situations, the Scottish Government has made it clear that, in effect, where a new house related to a rural enterprise is justified (as in this case) there is no requirement for an occupancy restriction to be placed on the property. This is the most relevant and current expression of policy on this matter and should be afforded considerable weight in any determination. Additionally, it is noted that Perth and Kinross Council's Housing in the Countryside Guide (this policy representing the most relevant and recent Council policy) does not require an occupancy condition in such cases.

3.3 The basis of the appointed officer's decision in this case is fundamentally flawed. Not only has it failed to consider existing established Scottish Government policy, it refers to the superseded version of Perth and Kinross Council's own Housing in the Countryside Policy, fails to refer to Perth and Kinross Council's Housing in the Countryside Guide, and the policy interpretation given is misleading as, in effect, the officer states that without the occupancy condition the development would be "*contrary to the Councils Housing in the Countryside Policy*". That is patently incorrect for the reasons set out above. The use of an occupancy condition is discretionary and only where there is clear justification. It is not applicable in this case.

3.4 The removal of Condition 8 will allow this supported rural development to take place in an appropriate manner and in support of this established rural enterprise. The house will remain part (an important part) of the Craigow equestrian business as it is a fundamental requirement of this business going forward. The applicants therefore respectfully require that Condition 8 be deleted in order that that can make progress with the development and secure the future of the equestrian business.

DOCUMENTS

Document 1 – Letter from the Scottish Government to all Heads of Planning dated 4th November 2011 related to “*Occupancy Restrictions and Rural Housing*”

Document 2 – Supporting Planning Statement submitted with planning application 13/00280/FLL -Renewal of consent (08/00315/FUL), Erection of a dwellinghouse and removal of condition 9 (occupancy condition) at Craigow Milnathort Kinross KY13 0RP

Document 3 – Decision Notice for Planning Permission 13/00280/FLL - Renewal of consent (08/00315/FUL), Erection of a dwellinghouse and removal of condition 9 (occupancy condition) at Craigow, Milnathort, KY13 0RP

Document 4 – Perth and Kinross Council Officers Report of Handling related to planning application 13/00280/FLL - Renewal of consent (08/00315/FUL), Erection of a dwellinghouse and removal of condition 9 (occupancy condition) at Craigow, Milnathort, KY13 0RP

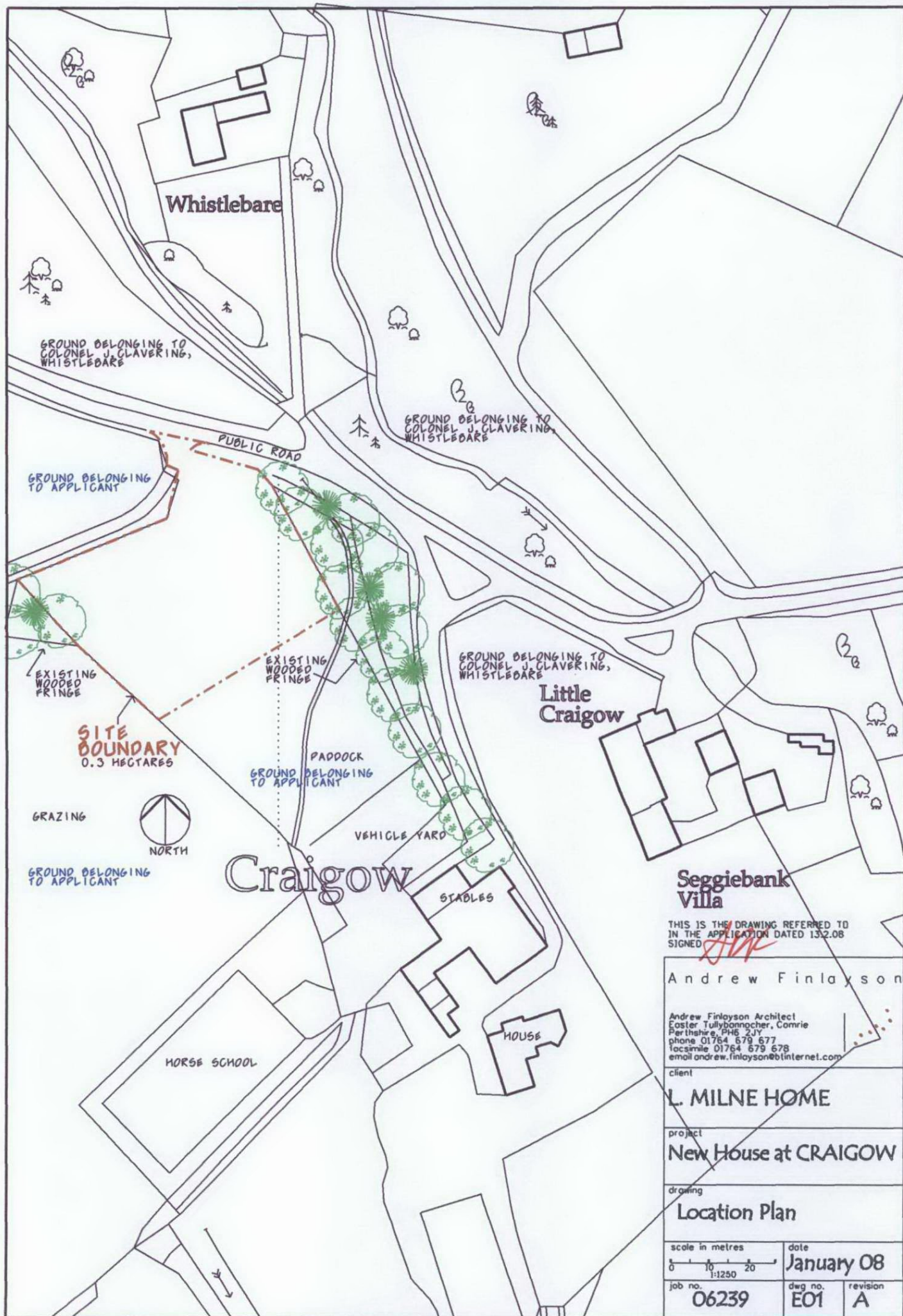
Document 5 – Appeal decision by Directorate for Planning and Environmental Appeals related to proposal at Falfield Bank, Kilconquhar to Peat Inn, Cupar, KY15 5LL (Planning appeal reference: PPA-250-2143).

TMS PLANNING AND DEVELOPMENT SERVICES LTD

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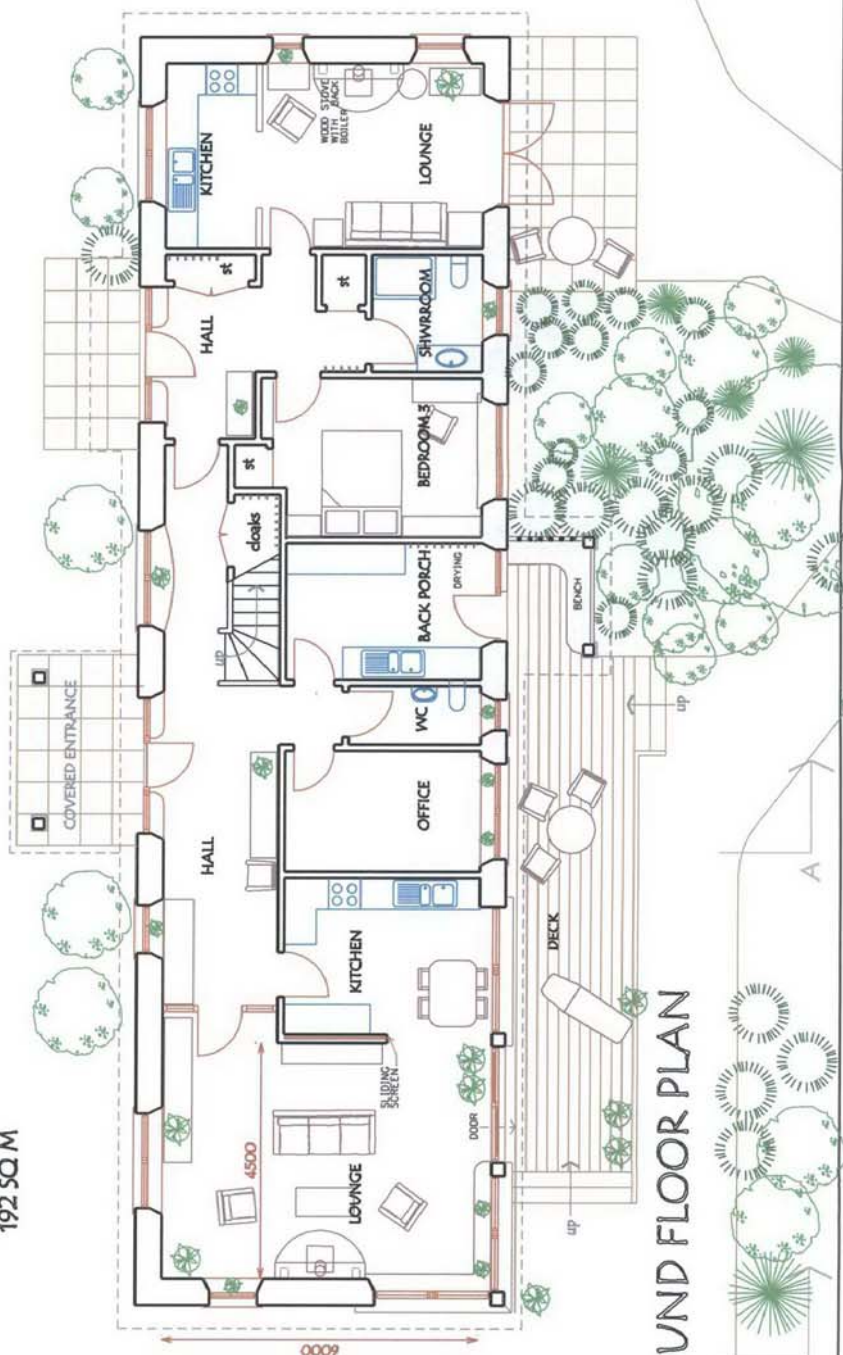
E-mail: tmsplanning@tiscali.co.uk



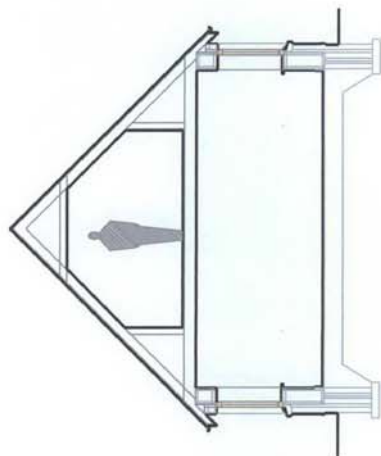


UPPER FLOOR PLAN

AREAS	
GROUND FLOOR	137 SQ M
UPPER FLOOR	55 SQ M
TOTAL	192 SQ M



GROUND FLOOR PLAN



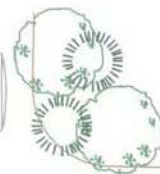
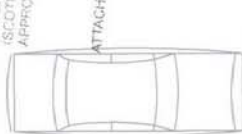
GENERAL SECTION

PERTH & KINROSS COUNCIL
APPLICATION No. 08/0035/FLC/5
APPROVED CONDITIONALLY/UNCONDITIONALLY
UNDER THE TOWN AND COUNTRY PLANNING
SCOTLAND ACTS AND REFERRED TO THE
APPROVAL OFFICE

18 SEP 2009

ATTACHED HERETO

DEVELOPMENT QUALITY MANAGEMENT



THIS IS THE DRAWING REFERRED TO
IN THE APPLICATION DATED 13.2.05
SIGNED *HM*

Andrew Finlayson

Andrew Finlayson Architect
c/o J. J. Jolly-Boninger, Conville

Fax (410) 679-6777
 Phone (410) 679-6777
 Toll-free (800) 679-6777
 Email info@wiley.com

client

L. MILNE HOME

project

New House at CRAIGOW

Buyer's name

Plans & Section

scale in metres	date
January 08	

job no.	06720	deg no.	144
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117	45700
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SOUTH ELEVATION

SCHEDULE OF MATERIALS
ROOF- NATURAL SLATE
WALLS- OFF-WHITE WET DASH RENDER
WINDOWS- PAINTED TIMBER

PERTH & KINROSS COUNCIL
APPLICATION NO. 08/003151/46
APPROVED CONDITIONALLY UNLESS THE TOWN AND COUNTRY PLANNING ACTS AND REFERRED TO IN THE APPROVAL DATES

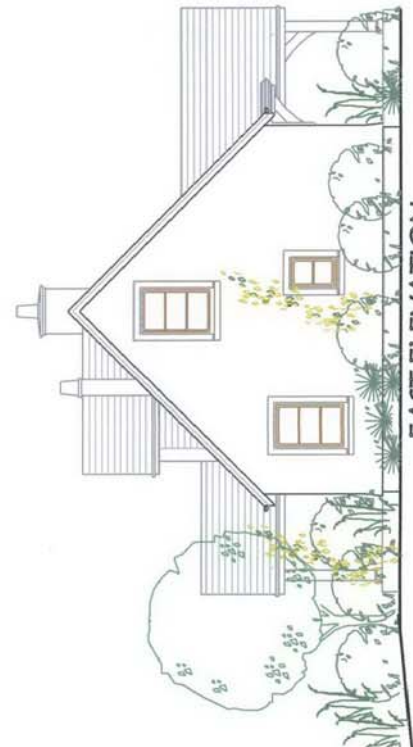
18 SEP 2009

ATTACHED HERETO

DEVELOPMENT QUALITY MANAGER



NORTH ELEVATION



EAST ELEVATION



WEST ELEVATION

THIS IS THE DRAWING REFERRED TO IN THE APPLICATION AND NOT SIGNED

Andrew Finloyson

Pauline Finloyson Architect
Partnership
101/103, 105, 107
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Email: pauline@paulinefinloyson.com

L MILNE HOME

PROJECT
New House at CRAIGOW

Elevations

scale in metres
date January 08
job no. 06239
drawing L12
revision

Heads of Planning



4 November 2011

Dear Sir/Madam

OCCUPANCY RESTRICTIONS AND RURAL HOUSING

I am writing to clarify the Scottish Government's views on the use of conditions or planning obligations to restrict the occupancy of new rural housing.

Occupancy restrictions are typically used in Scotland to limit the occupancy of new houses in the countryside either to people whose main employment is with a farming or other rural business that requires on-site residency, or to people with a local connection. Sometimes new houses are tied to particular land holdings, preventing them being sold separately. Such restrictions have been applied either through planning conditions or Section 75 planning obligations.

A number of issues have arisen with the use of occupancy restrictions, some of which have been exacerbated by the current economic situation. Some people have found it difficult to get a mortgage to buy a house with an occupancy restriction. Others have found it difficult to sell the house, or have the restriction lifted, when they are forced by necessity to move. While it may be possible to include provisions in the condition or obligation that attempt to address these issues, any use of occupancy restrictions introduces an additional level of complexity (and potentially expense) into the process of gaining consent for a new house. Occupancy restrictions can also be intrusive, resource-intensive and difficult to monitor and enforce.

Scottish Planning Policy promotes a positive approach to rural housing. It states that development plans should support more opportunities for small scale housing development in all rural areas, including housing which is linked to rural businesses. It does not promote the use of occupancy restrictions.

The Scottish Government believes that occupancy restrictions are rarely appropriate and so should generally be avoided.

In determining an application for a new house in the countryside, it may be appropriate for the planning authority to consider the need for a house in that location, especially where there is the potential for adverse impacts. In these circumstances, it is reasonable for decision-makers to weigh the justification for the house against its impact, for example on road safety, landscape quality or natural heritage, and in such circumstances it may be appropriate for applicants to be asked to make a land management or other business case. Where the authority is satisfied that an adequate case has been made, it should not be necessary to use formal mechanisms to restrict occupancy.

The Scottish Government believes that a vibrant populated countryside is a desirable objective and that new housing to realise this aim should be well sited and designed, and should not have adverse environmental effects that cannot be readily mitigated. In areas, including green belts, where, due to commuter or other pressure, there is a danger of suburbanisation of the countryside or an unsustainable growth in long distance car-based commuting, there is a sound case for a more restrictive approach. In areas where new housing can help to support vibrant rural communities or sustain fragile rural areas, planning authorities should seek to support suitable investment in additional provision, focussing on the issues of location, siting, design and environmental impact rather than seeking to place restrictions on who occupies the housing.

Where sites are considered unsuitable for new housing, more acceptable locations will often exist elsewhere on the same landholding or nearby, and planning authorities can assist applicants by advising where these are.

Yours faithfully



JAMES G MACKINNON

RENEWAL OF PLANNING PERMISSION FOR THE ERECTION OF A HOUSE (08/00315/FUL) AND DELETION OF PLANNING CONDITION 9 OF PLANNING PERMISSION 08/00315/FUL RELATED TO OCCUPANCY RESTRICTIONS BOTH AT CRAIGOW, BY MILNATHORT

SUPPORTING PLANNING STATEMENT

1.0 BACKGROUND TO APPLICATION

1.1 Planning permission for the erection of a dwellinghouse at Craigow was granted on 18th September, 2009 (08/00315/FUL) subject to a number of planning conditions and to an agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended) related to drainage mitigation measures within the Loch Leven catchment area. Condition 1 of the planning permission required that *“The development shall be begun within a period of 5 years from the date of this consent”* while Condition 9 of required that: -

“9. The occupation of the dwellinghouse shall be restricted to a person solely or last employed locally in the equestrian business at Craigow; as defined in Section 277(1) of the Town and Country Planning (Scotland) Act 1997 or a dependant of such a person residing with him or her (but including a widow or widower of such a person)”.

1.2 The reason given for condition 9 was: -

“9. The dwellinghouse has been approved as an essential house within the terms of the Planning Authority's Policy on Houses in the Open Countryside”.

1.3 The planning application was submitted in light of the justified requirement for a dwelling house related to the management and operation of the equestrian business at Craigow. This requirement was set out in correspondence from the SAC Farm Business Services and was considered to be fully justified as evidenced by the decision taken by Perth and Kinross Council. The business remains operational and the requirement for the house related to its management and operation also remains.

1.4 The residential occupancy restriction set out in condition 9 has made it all but impossible to secure the necessary funding for the operational dwellinghouse, a not uncommon position for such “tied” development. In light of this, plans to provide a smaller, albeit less satisfactory but cheaper, house were advanced and planning permission for this was granted by Perth and Kinross Council on 8th November, 2010 under planning reference 10/01668/FLL. This planning permission contained the same occupancy restriction as that in the earlier consent and remained bound by the terms of the S75 agreement.

1.5 However, despite this pragmatic response adopted by the applicants in an attempt to reduce build costs and therefore to ease the funding difficulties, this too has proved undeliverable in the present climate.

1.6 As indicated there is no diminution of the need for the house related to the management and operation of the equestrian business, rather we have a situation where the applicant is unable to deliver this necessary development in light of the perceived “valueless” nature of “tied” property. Removal of the occupancy restriction would allow the applicant to secure the required funding and therefore to progress with the house and to develop the business. The originally approved house is that best suited to the applicants/business needs and therefore it is this one that is being furthered at this time.

2.0 SUPPORTING CASE

2.1 There are 2 parts to the application presently being promoted. Firstly, the time extension of the planning permission, and secondly, the removal of the restrictive occupancy condition. I trust that the former is uncontentious in light of the previously set out and presently maintained rationale for the development, and the continuity of the policy context for assessment.

2.2 In terms of the second issue, the occupancy condition, it is clear from the initial planning permission and the later amendment that Perth and Kinross Council acknowledge the need for the house related to this established rural business. It is also clear that there is underlying support for such development at all levels of the planning process, from Scottish Planning Policy through to the adopted Local Plan and the emerging Perth and Kinross Council Local Development Plan.

2.3 Indeed, in Scottish Planning Policy 2010 (SPP), the Scottish Government sets out a strategy to achieve its central purpose of **increasing sustainable economic growth** throughout Scotland and states that a properly functioning planning system is essential to achieving this. SPP acknowledges that the planning system has a significant role in supporting sustainable economic growth in all rural areas. By taking a positive approach to new development, planning authorities can help to create the right conditions for rural businesses to flourish. The promotion of economic activity and diversification in all rural areas, including residential development linked to new/established business operations, is a key component of the planning process. “*New build or conversion housing which is linked to rural businesses*” is to be facilitated in order to support rural businesses and related economic growth.

2.4 It is clear from Perth and Kinross Council’s adopted Kinross Area Local Plan (2004) and from Perth and Kinross Council’s Housing in the Countryside Policy (2009) that underlying policy support for new houses in the countryside related to economic

activity/operational need exists. Policy 64 of the adopted Local Plan and Part 3 of the Housing in the Countryside Policy confirm this position. Where an economic justification/case is made for a house, planning permission is often (as in this case) accompanied by an occupancy restriction. While Policy 64 of the adopted Local Plan indicates the need for such an occupancy condition, the Housing in the Countryside Policy indicates that such a restriction “may” be required. Therefore, the latest expression of policy by Perth and Kinross Council (2009) appears to indicate that a more flexible approach may be taken, in that there is no intrinsic requirement for an occupancy condition to be applied.

2.5 Further guidance on the contents of Scottish Planning Policy and on the use of “*Occupancy Restrictions and Rural Housing*” was set out by the Scottish Government’s Chief Planner in a letter to all Heads of Planning in Scotland in November 2011 (copy attached). The Chief Planner confirms that Scottish Planning Policy promotes a positive approach to rural housing and supports more opportunities for small scale housing development in all rural areas, including housing which is linked to rural businesses. It does not promote the use of occupancy restrictions. Indeed, the letter further states that “***The Scottish Government believes that occupancy restrictions are rarely appropriate and so should generally be avoided***”. In effect, where a Planning Authority is satisfied that an adequate case has been made for a house in a rural area then it should not be necessary to use formal mechanisms to restrict occupancy. The advice is clear.

2.6 The siting and design of the proposed dwelling is such as to raise no material concerns related to its visual or environmental impacts and there remains a requirement for this established and potentially growing rural enterprise to have proper arrangements related to the management and operation of the equestrian business, in effect, the proposed house (with related office and other accommodation).

2.7 For the reasons set out above, it is respectfully suggested that Condition 9 of the extant planning permission is no longer required/relevant and that this occupancy restriction is presently posing an immovable obstacle to the delivery of sustainable rural economic development which is supported by the planning system at all levels. The need for an on-site presence in the management and operation of the equestrian business remains and unless the occupancy restriction is lifted in order to allow the development to be funded (as per the Chief Planner’s letter) this beneficial development is unlikely to be delivered. This would be contrary to the central purpose of Scottish Planning Policy related to increasing sustainable economic growth and would be a failure of the planning process. The house remains key to the business and its long term operation in this location.

2.8 My client remains fully committed to her business at Craigow and wishes to be able to sustain and develop it over time. As indicated, the proposed house is a crucial part of this process/the business operation and in order to deliver the house the existing occupancy restriction requires to be removed. This is considered to be a fully justified and reasonable request.

3.0 CONCLUSIONS

3.1 It is clear that the requirement for a house in order to support the rural equestrian business at Craigow is well established by the earlier grant of planning permission(s) at the site. It is also clear that the present occupancy condition (Condition 9) effectively makes the house unmortgageable with the availability/cost of securing other potential funding arrangements also not a realistic prospect.

3.2 Recognising the funding and other difficulties often experienced in these situations, the Scottish Government has made it clear, in effect, that where a new house related to a rural enterprise is justified (as in this case) there is no requirement for an occupancy restriction to be placed on the property. This is the most relevant and current expression of policy on this matter and should be afforded considerable weight in any determination. Additionally, it is noted that Perth and Kinross Council's Housing in the Countryside Policy (this policy representing the most relevant and recent Council policy) despite the terms of Policy 64 of the adopted Kinross Area Local Plan, does not require an occupancy condition in such cases.

3.3 It is clear that there is an established and potentially expanding rural economic enterprise at Craigow which requires to be operated and managed in a suitable and sustainable basis. A key part of this is the proposed new house and it is patently clear that this cannot be funded/delivered with the present occupancy restriction in place.

3.4 There is a clear and cogent case to have this occupancy condition (Condition 9) removed, particularly in light of the Chief Planner's clearly stated position in his November 2011 letter to Heads of Planning.

3.5 My client therefore respectfully requests that the present planning permission be extended in time and that Condition 9 be deleted in order to remove the present occupancy restriction.

TMS PLANNING AND DEVELOPMENT SERVICES LTD

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PERTH AND KINROSS COUNCIL

Mr And Mrs P Milne Home
TMS Planning Services
Balclune
32 Clune Road
Gowkhill
Dunfermline
KY12 9NZ

Pullar House
35 Kinnoull Street
PERTH
PH1 5GD

Date 10 April 2013

Town and Country Planning (Scotland) Acts.

Application Number **13/00280/FLL**

I am directed by the Planning Authority under the Town and Country Planning (Scotland) Acts currently in force, to grant your application registered on 11th February 2013 for planning permission for Renewal of consent (08/00315/FUL) Erection of a dwellinghouse and removal of condition 9 (occupancy condition) Craigow Milnathort Kinross KY13 0RP subject to the undernoted conditions.

Development Quality Manager

Conditions Referred to Above

1. The proposed development must be carried out in accordance with the approved drawings and documents, unless otherwise provided for by conditions imposed on the planning consent.
2. The vehicular access shall be formed in accordance with the Council's Roads Development Guide Type B Figure 5.6 access detail to the satisfaction of the Council as Planning Authority.
3. The gradient of the access shall not exceed 3% for the first 5.00 metres measured back from the edge of the carriageway and the access shall be constructed so that no surface water is discharged to the public highway.
4. Turning facilities shall be provided within the site to enable all vehicles to enter and leave in a forward gear to the satisfaction of the Council as Planning Authority.
5. Two off-street car parking spaces shall be provided within the curtilage of the site to the satisfaction of the Planning Authority prior to the occupation of the dwelling.
6. Visibility splays of 2.50m x 70.00m measured from the centre line of the new access shall be provided in both directions along the nearside channel of the public road prior to the occupation of the development and thereafter maintained free from any obstruction of a height exceeding 1.05 metres above the adjacent road channel level.

7. A fully detailed landscaping plan, including details of all hard and soft surface and boundary treatments and all planting including new planting to the northern boundary shall be submitted and approved in writing by the Planning Authority before work is commenced on site.
8. The occupation of the dwellinghouse shall be restricted to a person solely or last employed locally in the equestrian business at Craigow; as defined in Section 277(1) of the Town and Country Planning (Scotland) Act 1997 or a dependant of such a person residing with him or her (but including a widow or widower of such a person).

Reasons for Conditions

1. To ensure that the development is carried out in accordance with the plans approved.
- 2-6. In the interests of pedestrian and traffic safety and in the interests of free traffic flow.
7. In the interests of visual amenity; to ensure a satisfactory standard of local environmental quality.
8. The dwellinghouse has been approved as an essential house within the terms of the Planning Authority's Policy on Houses in the Open Countryside.

Justification

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

Notes

- 1 This planning permission will last only for three years from the date of this decision notice, unless the development has been started within that period. (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).
- 2 Under section 27A of the Town and Country Planning (Scotland) Act 1997 (as amended) the person undertaking the development is required to give the planning authority prior written notification of the date on which it is intended to commence the development. A failure to comply with this statutory requirement would constitute a breach of planning control under section 123(1) of that Act, which may result in enforcement action being taken.
- 3 As soon as practicable after the development is complete, the person who completes the development is obliged by section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended) to give the planning authority written notice of that position.
- 4 The applicant is advised that in terms of Sections 56 of the Roads (Scotland) Act 1984 he must obtain from the Council as Roads Authority consent to open an existing road or footway prior to the commencement of works. Advice on the disposal of surface water must be sought at the initial stages of design from Scottish Water and the Scottish Environmental Protection Agency.
- 5 No work shall be commenced until an application for building warrant has been submitted and approved.
- 6 The applicant is advised that the Executive Director of Education & Children's Services can give no guarantee that any school age children arising from this development application can be accommodated at Milnathort Primary School. This will result in such children being placed in the nearest school with capacity to accommodate them.

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

08/00315/FUL/1

08/00315/FUL/2

08/00315/FUL/3

08/00315/FUL/4

08/00315/FUL/5

08/00315/FUL/6

REPORT OF HANDLING

DELEGATED REPORT

Ref No	13/00280/FLL
Ward No	N8- Kinross-shire

PROPOSAL: Renewal of consent (08/00315/FUL) Erection of a dwellinghouse and removal of condition 9 (occupancy condition)

LOCATION: Craigow Milnathort Kinross KY13 0RP

APPLICANT: Mr And Mrs P Milne Home

RECOMMENDATION: APPROVE THE APPLICATION

SITE INSPECTION:

OFFICERS REPORT:

Brief Description

The application site is a 0.3 hectare piece of rough grazing ground which is situated to the north west of Craigow House and associated steading buildings. Access would be taken off the public road to the north of the site. There is existing woodland to the east and western edges of the site. The site slopes downhill from north to south.

Planning consent was granted for a single dwellinghouse in 2009 under 08/00315/FUL on the basis of operational need in order to run an equestrian business where there is a requirement for a full time employee. There is no existing accommodation for this employee. A Supporting Statement has been submitted by SAC as justification for the proposed house. Consent was issued following the completion of a Section 75 Agreement for phosphorus mitigation in the Loch Leven Catchment.

The proposed house is 3 bedroomed, single storey with accommodation in the roof space. The house would have a southerly aspect and would be situated approximately 40m from the public road to the north. It was considered that the house, given it's height would sit comfortably on the south facing slope of the field and it is screened from the wider area to the west and east. Further planting on the northern boundary would reinforce the setting and it would not have an adverse impact on the visual amenity of the area or on the appearance of the wider AGLV.

The supporting justification was acceptable provided the house is tied to the business by condition. The proposal was considered to be in accordance with the Council's Housing in the Countryside Policy in terms of it's justification and siting criteria.

Planning consent was granted in November 2010 for a smaller house type on the site with the same occupancy restriction.

This application is for a renewal of the 08/00315/FUL consent and for the removal of condition 9 which tied the occupancy of the house with the equestrian business. A Supporting Statement has been submitted by the applicant's agent and the main reason for the removal of the occupancy restriction, being that the applicant is fully committed to the business at Craigow and requires the condition to be removed in order to secure funding for the house. It is not considered 'mortgageable' with the occupancy restriction attached.

Assessment

It is considered that the renewal of the consent is acceptable. With regard to the request to remove the occupancy condition, this is not considered to be acceptable in this case and would be contrary to the Council's Housing in the Countryside Policy. The original justification for the house was based on a labour requirement for the equestrian business of one full time employee. Without this then the proposed new house in the countryside would not be acceptable in principle against the Council's Housing in the Countryside Policy. The occupancy condition is therefore recommended to remain attached to any renewal consent.

DEVELOPMENT PLAN

Kinross Area Local Plan 2004.

The application site is within the landward area.

Policy 1: Sustainable Development

Policy 2: Development Criteria

Policy 6: Design

Policy 11-12: Loch Leven Drainage

Policy 54: Area of Great Landscape Value

Policy 64: Housing in the Countryside

Perth and Kinross Proposed Local Development Plan (PLDP) 2012

RD3: Housing in the Countryside

Other Policies

Perth & Kinross Council Housing in the Countryside Policy 2009.

Perth & Kinross Council Education Contribution Policy 2009

SITE HISTORY

89/00589/FUL EXTENSION TO DWELLINGHOUSE AT 23 May 1989
Application Permitted

07/00190/FUL Erection of a dwellinghouse and car port 14 March 2007
Application Withdrawn

08/00315/FLL Erection of dwellinghouse 22 September 2009 Application
Permitted

10/01664/FLL Change of house type (modification of existing consent
08/00315/FLL) 8 November 2010 Application Permitted

CONSULTATIONS/COMMENTS

Environmental Health No objection

Scottish Natural Heritage No objection

Scottish Water No objection

Education And Children's No objection
Services

TARGET DATE: 11 April 2013

REPRESENTATIONS RECEIVED:

Number Received: 0

Additional Statements Received:

Environment Statement
Not required
Screening Opinion
Not required

Environmental Impact Assessment
Not required

Appropriate Assessment
Not required

Design Statement or Design and Access Statement
Not required

Report on Impact or Potential Impact eg Flood Risk Assessment
Not required

Legal Agreement Required:
Not required

Direction by Scottish Ministers
None

Conditions:-

- 1 The proposed development must be carried out in accordance with the approved drawings and documents, unless otherwise provided for by conditions imposed on the planning consent.
- 2 The vehicular access shall be formed in accordance with the Council's Roads Development Guide Type B Figure 5.6 access detail to the satisfaction of the Council as Planning Authority.
- 3 The gradient of the access shall not exceed 3% for the first 5.00 metres measured back from the edge of the carriageway and the access shall be constructed so that no surface water is discharged to the public highway.
- 4 Turning facilities shall be provided within the site to enable all vehicles to enter and leave in a forward gear to the satisfaction of the Council as Planning Authority.
- 5 Two off-street car parking spaces shall be provided within the curtilage of the site to the satisfaction of the Planning Authority prior to the occupation of the dwelling.
- 6 Visibility splays of 2.50m x 70.00m measured from the centre line of the new access shall be provided in both directions along the nearside channel of the public road prior to the occupation of the development and thereafter maintained free from any obstruction of a height exceeding 1.05 metres above the adjacent road channel level.

- 7 A fully detailed landscaping plan, including details of all hard and soft surface and boundary treatments and all planting including new planting to the northern boundary shall be submitted and approved in writing by the Planning Authority before work is commenced on site.
- 8 The occupation of the dwellinghouse shall be restricted to a person solely or last employed locally in the equestrian business at Craigow; as defined in Section 277(1) of the Town and Country Planning (Scotland) Act 1997 or a dependant of such a person residing with him or her (but including a widow or widower of such a person).

Reasons:-

- 1 To ensure that the development is carried out in accordance with the plans approved.
- 2 In the interests of pedestrian and traffic safety and in the interests of free traffic flow.
- 3 In the interests of pedestrian and traffic safety and in the interests of free traffic flow.
- 4 In the interests of pedestrian and traffic safety and in the interests of free traffic flow.
- 5 In the interests of pedestrian and traffic safety and in the interests of free traffic flow.
- 6 In the interests of pedestrian and traffic safety and in the interests of free traffic flow.
- 7 In the interests of visual amenity; to ensure a satisfactory standard of local environmental quality.
- 8 The dwellinghouse has been approved as an essential house within the terms of the Planning Authority's Policy on Houses in the Open Countryside.

Justification

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

Notes

- 1 This planning permission will last only for three years from the date of this decision notice, unless the development has been started within that period. (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).
- 2 Under section 27A of the Town and Country Planning (Scotland) Act 1997 (as amended) the person undertaking the development is required to give the planning authority prior written notification of the date on which it is intended to commence the development. A failure to comply with this statutory requirement would constitute a breach of planning control under section 123(1) of that Act, which may result in enforcement action being taken.
- 3 As soon as practicable after the development is complete, the person who completes the development is obliged by section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended) to give the planning authority written notice of that position.
- 4 The applicant is advised that in terms of Sections 56 of the Roads (Scotland) Act 1984 he must obtain from the Council as Roads Authority consent to open an existing road or footway prior to the commencement of works. Advice on the disposal of surface water must be sought at the initial stages of design from Scottish Water and the Scottish Environmental Protection Agency.
- 5 No work shall be commenced until an application for building warrant has been submitted and approved.
- 6 The applicant is advised that the Executive Director of Education & Children's Services can give no guarantee that any school age children arising from this development application can be accommodated at Milnathort Primary School. This will result in such children being placed in the nearest school with capacity to accommodate them.

Appeal Decision Notice

T: 01324 696 400
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Decision by Don Rankin DipTP MRTPI, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-250-2143
- Site address: Falfield Bank, Kilconquhar to Peat Inn, Cupar, KY15 5LL
- Appeal by Mr Neil Skene (FBE Trust) against the decision by Fife Council
- Application for planning permission reference 12/01677/FULL, dated 2 May 2012, to carry out the development without compliance with condition 6 imposed in the grant of planning permission 12/00434/PPP dated 12 April 2012
- The development proposed: removal of condition 6 of planning permission in principle Ref. 12/00434/PPP
- Date of site visit by Reporter: 30 November 2012

Date of appeal decision: 10 January 2013

Decision

I allow the appeal and grant planning permission for removal of condition 6 of planning permission Ref. 12/00434/PPP in accordance with application 12/01677/FULL dated 2 May 2012 without compliance with condition 6 previously imposed but subject to the other conditions imposed, so far as they are still subsisting and capable of taking effect.

Reasoning

1. The determining issues in this appeal are whether planning permission 12/00434/PPP without the imposition of condition No.6, to limit occupancy to agricultural workers of Falfield Bank Estate and to tie subsequent sale or letting to that estate is; (1) contrary to Scottish Planning Policy (SPP), Tayplan and the Adopted St Andrews and East Fife Local Plan (2012) - policy E16 and Fife Council's Customer Guidelines on Housing Development in the Countryside (2010); (2) whether condition 6 is appropriate and reasonable in the light of the tests in Circular 4/1998: The use of Conditions in Planning Permissions; and (3) whether removal or retention of condition 6 is justified by other material considerations.

Policy considerations

2. Scottish Planning Policy, Tayplan and the Adopted St Andrews and East Fife Local Plan all seek to prevent sporadic development in open countryside. Specifically policies E15 and E16 of the local plan relevant to this appeal emphasise that new housing in the countryside will only be permitted where it is required for the operational needs of a rural



business. Fife Council's Planning Customer Guidelines on Housing Development in the Countryside (2010) makes clear that such housing needs to be justified by the operational needs of agriculture/forestry or other rural business, and if so justified will be subject to a restrictive occupancy condition to ensure its continued link to that justified activity.

3. It is therefore clear from the development plan and related guidance that there will be an expectation of restricted occupancy conditions or legal agreement for new housing in the countryside. Weighed against that is the need for sustainable rural development and diversification. In particular SPP sets out the role for planning in creating the right conditions for rural businesses to flourish.

4. Although advice rather than policy I also note the Chief Planner for Scotland's letter to planning authorities relaying the government's view that restrictive occupancy conditions are proving to be ineffective by restricting legitimate rural enterprises' ability to raise mortgage finance and develop a flexible approach to asset management in the longer term. They are becoming a burden on rural business unjustifiable outwith green belt and other areas subject to unsustainable commuter development pressure. This view is further developed in Circular 3/2012 Planning Obligations and Good Neighbour Agreements which although dealing largely with S75 legal agreements reiterates the government view that restrictive occupancy conditions are usually inappropriate.

5. There is therefore a balance between protecting the countryside from inappropriate development and nurturing sustainable rural enterprise. The government views the assessment of need for on-site worker housing as the key element of policy implementation rather than restrictive occupancy conditions.

Circular 4/1998 The use of conditions in Planning Permissions: tests

6. Circular 4/1998 The use of Conditions in Planning Permissions states that conditions should not be imposed unless they are both necessary and effective, and do not place unjustifiable burdens on applicants. The circular sets out six tests, namely that conditions should only be imposed where they are necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise, and reasonable in all other respects.

7. The appellant presented a business case for the two agricultural workers cottages in the form of a Scottish Agricultural Commission Report (SAC). The council accepted the need for the accommodation as part of the on-going business planning of an appropriate rural enterprise engaged in agriculture and forestry and I see no reason to disagree with this conclusion. The proposal however, was viewed by the council as only acceptable in the context of local plan policies E15 and E16 if essential to the continuation and growth of that rural enterprise. The occupancy was therefore restricted not just to agricultural workers, but specifically to gamekeepers and forestry workers of the Falfield Bank Estate. The houses would by implication be tenanted by such workers or their family members or dependants as they could not be sold or let separately from the Falfield Bank Estate. As the council notes in their submission the use of such occupancy restrictions is standard Fife Council practice.

8. Turning first to whether the condition was necessary and relevant to planning policy on housing development in the countryside the council have accepted the Falfield Bank Estate business case for on-site workers, rather than off-site location in more sustainable locations in nearby villages. In giving permission in principle for the development of two

houses on the estate they have accepted that the development is essential for the development of the Falfield Bank Estate and its role within the rural community. The key element in the decision to give planning permission in principle, in compliance with local plan policies E15 and E16, was the business justification and the SAC report.

9. The government is clearly of the view that where the environmental and sustainable development criteria permit housing in the countryside, and where it is justified by the needs of rural enterprises, occupancy restrictions are unnecessary to achieve the aims of the development plan. Each case is considered on its merits therefore I do not accept that absence of occupancy or resale restrictions would encourage further inappropriate development pressure. Each proposal would have to be similarly justified and the council could take previous permissions to the Falfield Bank Estate into consideration were a proposal for further houses to be made.

10. The relative proximity to St Andrews and the Dundee travel to work area could make the area subject to pressure for commuter housing though, notwithstanding the established need for Falfield Bank Estate to maintain estate worker housing, the proposed location within the estate would discourage such non-agricultural occupation. In the light of the above paragraphs I consider, on this occasion, that the condition is neither necessary nor relevant to secure planning policy aims.

11. The remaining Circular 4/1998 tests are; whether relevant to the development to be permitted, enforceable, precise, and reasonable in all other respects. There is in my view clear evidence that mortgage finance will not be forthcoming for this development whilst the occupancy restriction remains. The council take the view that financing the scheme is not strictly a planning issue, by implication, even if the development of the business will be put at risk. The inability to raise finance directly as a result of the planning condition renders the permitted development unlikely despite the council having agreed that it is essential. This places an unreasonable burden on the appellants. Although the condition is precise its control of resale is inflexible and could significantly reduce the effective asset management of the estate in the longer term. Circular 4/1998 accepts that when the agricultural need has ceased it may be appropriate to remove such restrictive conditions anyway. In particular the long term restriction of resale other than as part of the estate is in my view an unreasonable interference with proprietary rights and contrary to Circular 4/1998.

Conclusion

12. For the reasons given above and having regard to all other matters raised I consider that the loss of condition No.6 of planning permission 12/00434/PPP would not be contrary to the aims of SPP and local plan policy and that the condition is contrary to the guidance in Circular 4/1998. I conclude therefore that permission should be granted for the development in planning permission 12/00434/PPP without condition 6 but subject to the other conditions imposed. I therefore allow the appeal.

Don Rankin
Reporter

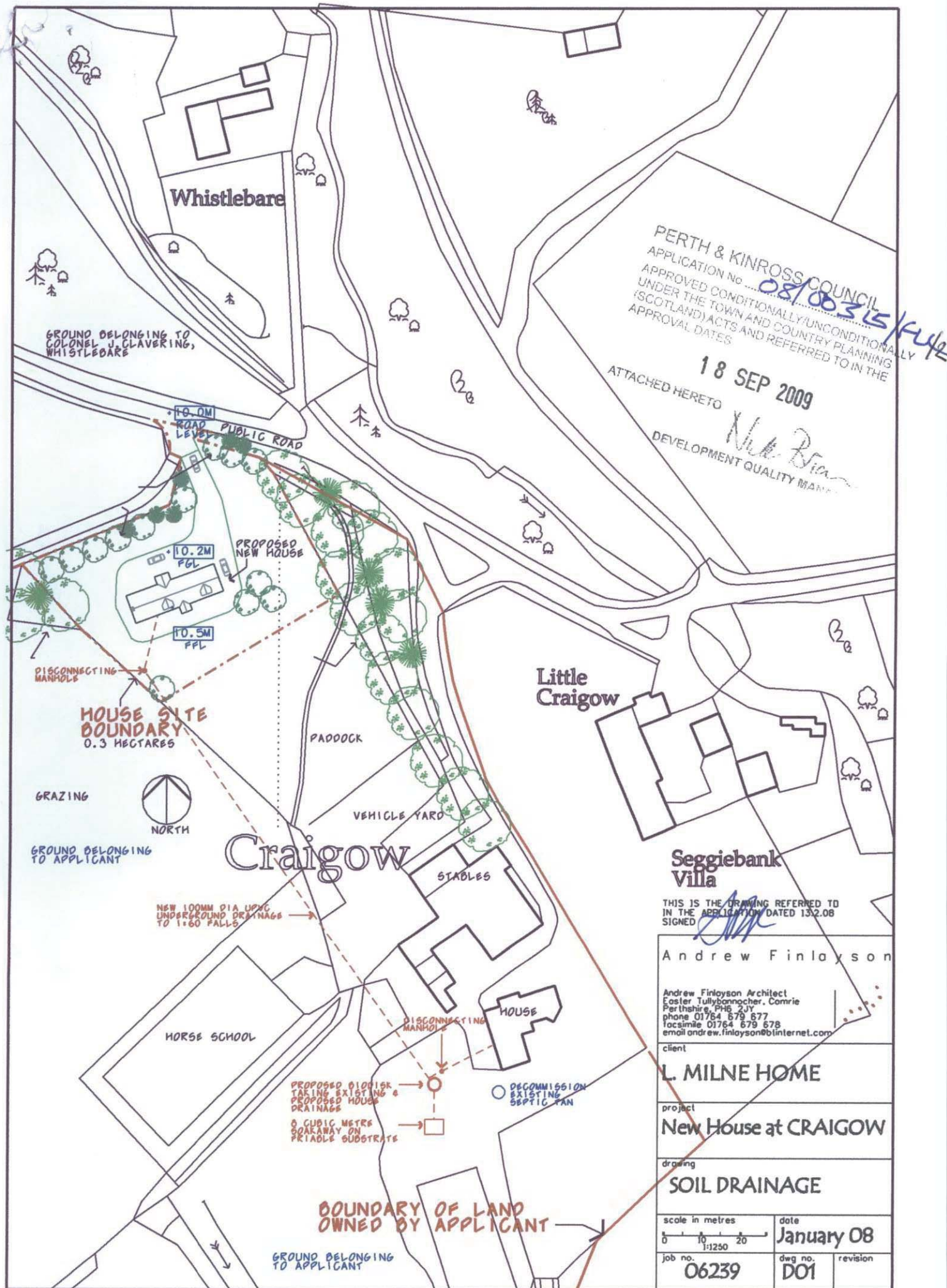
TCP/11/16(259)

**Planning Application 13/00280/FLL – Renewal of consent
(08/00315/FUL) Erection of a dwellinghouse and removal of
condition 9 (occupancy condition) Craigow, Milnathort,
Kinross, KY13 0RP**

PLANNING DECISION NOTICE

REPORT OF HANDLING

REFERENCE DOCUMENTS



**Proposed Development of New House at
Craigow, Milnathort
Kinross-shire, KY13 0RP**

Calculation of Phosphorus Levels

Population equivalent (P.E.) is based on British Water Code of practice, Flows and Loads – 2

- One person per bedroom, with a minimum occupancy of 5 persons.
- Discharge of waste water is 200 litres/person/day for a dwelling.
- Phosphorus load from a septic tank is based on 10mg/litre
- Phosphorus load from a treatment plant is based on 2mg/litre

Existing House

5 bedrooms – p.e. = 5

Current Discharge

Phosphorus = Discharge volume x p.e. x phosphorus level
= 200 x 5 x 10 (existing septic tank)
= 10,000 mg/day

Revised discharge using Treatment Plant

= 200 x 5 x 2
= 2,000 mg/day

Reduction to discharged phosphorus is 8,000 mg/day

Total output from Present and Proposed Additional House

2 houses, with 5 and 3 bedrooms respectively
Minimum occupancy per house of 5+5 = 10 p.e.

Phosphorus = 200 x 10 x 2 (treatment plant)
= 4,000 mg/day

Reduction in Discharge, from present situation, following construction of 2nd house.

Present Discharge via septic Tank	= 10,000 mg/day	
Two Houses via Treatment Plant	= 4,000 mg/day	
Overall improvement	= 6,000 mg/day	= 60%

PERTH & KINROSS COUNCIL
APPLICATION NO. 08/00315/44/3
APPROVED CONDITIONALLY/UNCONDITIONALLY
UNDER THE TOWN AND COUNTRY PLANNING
(SCOTLAND) ACTS AND REFERRED TO IN THE
APPROVAL DATES
18 SEP 2009
ATTACHED HERETO
DEVELOPMENT QUALITY MANAGER
Nick Brown

Supporting 1

TCP/11/16(259)

Planning Application 13/00280/FLL – Renewal of consent (08/00315/FUL) Erection of a dwellinghouse and removal of condition 9 (occupancy condition) Craigow, Milnathort, Kinross, KY13 0RP

REPRESENTATIONS

- Representation from Education and Children's Services, dated 19 February 2013
- Letter to applicant re. vehicular access at Craigow, Milnathort, Kinross, dated 9 May 2013

Memorandum

To	Nick Brian Development Quality Manager	From	Gillian Reeves Assistant Asset Management Officer
Your ref	13/00280/FLL	Our ref	GR/CW
Date	19 February 2013	Tel No	(4) 76395

Education & Children's Services

Pullar House, 35 Kinnoull Street, Perth PH1 5GD

Planning Application Ref No 13/00280/FLL

This development falls within the Milnathort Primary School catchment area.

Based on current information this school will reach the 80% capacity threshold.

Approved capacity	257
Highest projected 7 year roll	213
Potential additional children from previously approved applications	27
Possible roll	240
Potential % capacity	93.4%

Therefore I request that the Finalised Primary Education and New Housing Contributions Policy be applied to this application.

Please do not hesitate to contact me should you require any further information.

Support Services is committed to providing a high level of customer service designed to meet the needs and expectations of all who may come into contact with us. Should you have any comments or suggestions you feel may improve or enhance this service, please contact ecssupportservices@pkc.gov.uk

Delayed Office Opening for
Employee Training
*This Office will be closed from 8.45 am –
11.00 am on the 1st Thursday of each
month commencing 6 February 2003.*

Mr and Mrs P Milne Home
TMS Planning Services
Balclune
32 Clune Road
Gowkhall
Dunfermline
KY12 9NZ

Planning and Regeneration **VA2**
Head of Service David Littlejohn

Pullar House, 35 Kinnoull Street, Perth, PH1 5GD
Tel 01738 476500 Fax 01738 476510

Contact Tony Maric Ext 75329
Direct Dial (01738) 475329
E-mail amaric@pkc.gov.uk
Website www.pkc.gov.uk

Our ref TM / D8 / 1 VA 9092

Your ref 13/00280/FLL

Date 09 May 2013

Dear Sir and Madam

VEHICULAR ACCESS AT CRAIGOW MILNATHORT KINROSS

I refer to your recent planning approval (13/00280/FLL) for a vehicular access at the above address and have pleasure in granting permission subject to the following conditions: Please note that failure to comply with the conditions detailed below could result in a fine, in accordance with the Roads (Scotland) Act 1984, of up to £1000.

- 1) Before it is used the access shall be constructed in accordance with **Type B, Fig 5.6** access detail as shown on the attached plan and **Type B** construction details as shown in the attached specification.
- 2) The contractor carrying out the construction work must obtain a * **Consent to Execute Works in a Road** (Road Opening Permit) from the Construction and Maintenance Manager at the address overleaf, prior to the commencement of work. Advice should also be sought at this stage for dealing with drainage, street lighting and statutory undertaker's plant.
(*Application forms enclosed, to be returned enclosing cheque for £58.00)
- 3) The work is carried out to the satisfaction of the Council as Roads Authority.
- 4) Where the access is to be formed on private property the permission of the owner is obtained.

I am notified when the work is completed using the tear off slip at the foot of this notice. You are responsible for the maintenance of the access for one year from the date of completion. Thereafter, provided the construction is satisfactory, it will be adopted and maintained by the Council as Roads Authority.

Yours faithfully

pp Head of Planning and Regeneration

VA 9092

Date

The vehicular access at.....
Has been completed in accordance with the conditions and specification and is ready for inspection.

NAME AND ADDRESS.....

(In block letters).....

Signed.....

