

**TCP/11/16(617) – 19/00652/FLL – Application under Section 42 of the Town and Country Planning (Scotland) Act 1997 to remove condition 3 (occupancy) of permission 10/00184/FLL (erection of dwellinghouse and agricultural shed, formation of new access road), Easter Comrie, Keltneyburn, Aberfeldy**

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**TCP/11/16(617) – 19/00652/FLL – Application under Section 42 of the Town and Country Planning (Scotland) Act 1997 to remove condition 3 (occupancy) of permission 10/00184/FLL (erection of dwellinghouse and agricultural shed, formation of new access road), Easter Comrie, Keltneyburn, Aberfeldy**

**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 OF DELEGATION AND LOCAL REVIEW PROCEDURE)  
(SCOTLAND) REGULATIONS 2013

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

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

Use **BLOCK CAPITALS** if completing in manuscript

## Applicant(s)

Name

Address

Postcode

Contact Telephone 1

Contact Telephone 2

Fax No

E-mail\*

## Agent (if any)

Name

Address

Postcode

Contact Telephone 1

Contact Telephone 2

Fax No

E-mail\*

Mark this box to confirm all contact should be  
through this representative: ☐

\* Do you agree to correspondence regarding your review being sent by e-mail?

Yes ☒ No ☐

Planning authority

Planning authority's application reference number

Site address

Description of proposed  
development

Date of application

Date of decision (if any)

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

**Nature of application**

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

**Reasons for seeking review**

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

**Review procedure**

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

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

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

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

**Site inspection**

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

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

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

## Statement

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

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

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

please see attached Summary Statement, Delegated Report and Review Statements

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

Yes ☒ No ☐

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

THE ADDITIONAL MATERIAL PROVIDED RESPONDS TO POINTS AND CONCLUSIONS MADE IN THE DELEGATED REPORT, AND FURTHER CLARIFIES THE SUPPORTING STATEMENT WHICH ACCOMPANIED THE APPLICATION.

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**List of documents and evidence**

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

SUPPORTING STATEMENT

REPORT OF HANDLING - DELEGATED REPORT

REVIEW STATEMENT

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

**Checklist**

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

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

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

**Declaration**

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

Signed

Date



## REVIEW STATEMENT: 10/00184/FLL

The applicant has provided additional material in response to points and conclusions made in the delegated report, and further clarifies the supporting statement provided with the application. This forms the content of the review statement below, following the decision to refuse the application by the planning officer.

### Material & Economical aspects:

Due to a series of unplanned and health related circumstances of the applicant's Mother, who died in 2017 and Father, who currently receives a care package involving community nurses and care assistant home visits, as detailed in the Summary Statement the remaining Farming Enterprise now consists of 155 acres let out to two separate parties for arable and sheep grazing and 20 acres around the site of original farmhouse (where the applicant's father resides).

The applicant's Father has now retired from all practical farming operations.

As such, the remaining Farming Enterprise has materially changed and it would not be economically viable for this to be the applicants sole income.

### Operational Need:

The applicant and his wife currently have no involvement commercially i.e. they do not earn money from the Farming Enterprise however, the applicant continues to aid practical operations, in particular:

1. Involvement in the management of the re-commenced Deer Stalking enterprise (on nearby Garth Estate part-owned by applicant), which had ceased in 2016 due the applicant's Fathers ill health.
2. Pest Control, Deer Management and general maintenance on leased land.

Despite the remaining Farming Enterprise significantly changing, required storage of equipment and farming vehicles at Easter Comrie, to facilitate the applicant's involvement with the Deer Stalking Enterprise, Pest Control, Deer Management and general maintenance is necessary.

### Practicalities:

The applicant and his family would like to improve, adapt and expand the current dwelling house at Easter Comrie, to accommodate more living space due to the addition of a third child since 2010 and the applicant's wife using one bedroom as an office.

### Future Farming Enterprise

The applicant, stated in the Supporting Statement that the agricultural need which justifies the approval of the dwelling house in the first instance, no longer exists, however he is keen to emphasis that this refers to the re-leasing of the land, a significant portion of the farm being sold and the inferred unnecessary essential worker associated with the farm. As the applicant's Father is now retired, but resides in the main farmhouse, the applicant is employed full time outwith farming whilst continuing to aid the practical operations as outlined above and is essential to the Farming Enterprise now and in the future.

The applicant's dwelling house and agricultural shed is intrinsic to the future of the Farming Enterprise, and the more detailed explanation provided demonstrates that whilst meeting the relevant provisions and agricultural need as per the Development Plan and justification for planning approval granted in 2010, the current situation has materially and significantly changed. The agricultural need still exists, but the necessity for a co-worker is now irrelevant given that the Farmer is retired and the applicant is 'in-situ' to support remaining operations.

To enable the applicant to remain close to his Father, continue to aid the remaining Farming Enterprise operations whilst re-commencing some commercial aspects (e.g. Deer Stalking), extend the current dwelling house to more fully and practically accommodate a family of 5 and to remain part of both the local and wider community in which they both work, volunteer and contribute, a mortgage is sought to facilitate the raising of capital to fund this and hence the application to remove the occupancy condition.

### Policy Appraisal

The following additional notes have been added to the policy appraisal by the applicant, to reflect the fuller explanation of events:

- In 2012, 155 acres of the farm was re-leased on a long term let to 2 separate parties to raise funds and focus on healthcare needs of the applicant's Mother.
- Following this, the Farmer maintained the Deer & Deer Stalking enterprise with the support from the applicant, until the applicants Mother became housebound and required a live-in carer in 2015, the applicant's Father also took ill at this time.
- The Deer enterprise comprising of 170 acres was then sold in 2016 to help pay for 24-7 care for the applicant's Mother. The applicant's father has retained 20 acres and resides at the original farmhouse which is located 1.2km to the northwest.
- The current situation has resulted from both the need to finance care for the applicant's Mother and the Farmer's health deteriorating and therefore the applicant did not consider the opportunity to review the occupancy situation in 2012 when the land was leased and in 2016 when the Deer enterprise was sold. Throughout all this time, the applicant continued to support the operations, which varied and were dictated by the need of the applicant's Father and his varying health.
- There is still a need for the applicant's dwelling house and agricultural shed 'Easter Comrie' at the farm, other than that of the retired farmer, as outlined above.
- The dwelling house and surrounding land belongs to the applicant, therefore the agricultural justification is part of his family's lifestyle – helping, supporting and advising on the remaining farming activities and what may be developed in the future, and the proximity to the farm and additional shed storage is both necessary and operationally attached.
- The agricultural justification relating to the economic activity in 2010 was greater than it is now, but it has not been removed, just significantly altered due to the now retired farmer, applicant's Mother dying and the continued involvement of the applicant with the remaining operations that exist – both in practice and with necessary storage space.

- The request for the removal of the occupancy tie is purely to facilitate a mortgage application to improve and alter the current dwelling, underpinning the applicant and his families desire to continue to be involved with the past, present and future farming by improving their home for the long term.
- The applicant's dwelling house and agricultural shed are not detached from the farm holding, geographically is 1.2km from where the existing farm house is situated, however practically and materially the application site is very much attached and integral to the farm holding – necessary for the applicant's ongoing involvement in the remaining Farm Enterprise operations.
- The report states that 'In light of the above the applicant may wish to dissolve the lease on the rented land and bring this under the control of the dwelling in line with the original approval', however as explained the remaining Farming Enterprise has materially changed and would not be economically viable for this to be the applicants sole income.

### Precedent

The applicant continues to be involved with the operation of Farming Enterprise (although not for his own employment), as explained above, and therefore the applicant considers the range and quantity of examples in the Supporting Statement provide sufficient evidence to support this appeal statement and promote the decision to remove the occupancy condition.

Timing and policy changes outwith the control of the applicant seem to have created a disadvantage compared to recent applications that have been approved that have sought removal of the occupancy condition to fund the building which has been justified as necessary to the farming operations e.g.

Reference	19/01139/FLL
Address	Nether Blelock Farm Bankfoot
Proposal	Erection of a dwellinghouse (S42 to delete condition 3 (occupancy) of permission 16/02152/FLL)
Decision	Approve the application
Decision Issued	Thu 05 Sep 2019

### Conclusion

In conclusion, 'Easter Comrie'; comprising of the applicant's family dwelling house and necessary agricultural shed was justified and continues to be justified, complying with Policy RD3 and the Housing in the Countryside Guide 2012.

Occupancy should no longer be restricted, as per the Chief Planners letter, thereby easing the applicant and his family's dwelling house 'future proofing' plans and enabling the applicant to be considered for a mortgage.



# REPORT OF HANDLING

## DELEGATED REPORT

Ref No	19/00652/FLL	
Ward No	P4- Highland	
Due Determination Date	23.06.2019	
Report Issued by		Date
Countersigned by		Date

**PROPOSAL:** Application under Section 42 of the Town and Country Planning (Scotland) Act 1997 to remove condition 3 (occupancy) of permission 10/00184/FLL (erection of dwellinghouse and agricultural shed, formation of new access road)

**LOCATION:** Easter Comrie Keltneyburn Aberfeldy PH15 2LS

### 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:** 21 May 2019

### SITE PHOTOGRAPHS



## **BACKGROUND AND DESCRIPTION OF PROPOSAL**

The dwelling secured planning permission in 2010 ref 10/00184/FLL and the dwelling was completed in 2011/12. Condition 3 of the planning permission restricts the occupancy of the house to a person solely or last employed in agriculture at Comrie Farm. The application is for deletion of the condition.

The original approval was justified on the need for an additional dwelling as the farm extended to 350 acres with approximately 250 acres of arable land and 100 acres of permanent pasture. At this time 270 acres of the farm were let out to other parties who operated farms elsewhere in the area. The information submitted in support of the original application stated that the current farmer (the applicant's father) could no longer operate the farm on his own. The leased land was to be returned to the applicant and the current steel portal farm building which is located next to the existing farm house (where the applicant's father lives) was not considered sufficient to facilitate taking the entire farm back. The applicant (the current farmer's son) was therefore seeking permission for a new dwellinghouse as an essential worker associated with the farm and an agricultural building to serve the entire farm area when the lease was returned to the owner of the farm. A letter at this time was received from the farmer's solicitor which confirmed that notice had been served on the tenant of the land ending on the 31st December 2010 and that vacant possession of the land is required from that date. Permission at the time was granted on this basis.

A series of personal circumstances of the applicant and his father has led to a substantial reduction of the farming enterprise and operations. The agent has confirmed that in 2012 (just as the dwelling was completed) they recommenced the leasing of 155 acres of the land and subsequently sold the 170 acre Deer enterprise in 2016. It is stated that the applicant now works out with farming and requires removal of the condition to obtain a mortgage to fund the extension of the dwelling. The dwelling as built in accordance with the approved plans has four bedrooms.

The agent states that the change of circumstances which justified the need for the house in the first instance no longer exists and the condition should be removed.

## **SITE HISTORY**

10/00183/PN Erection of agricultural building 11 February 2010 Application Withdrawn

10/00184/FLL Erection of dwellinghouse and agricultural shed, formation of new access road 4 May 2010 Application Approved

## **PRE-APPLICATION CONSULTATION**

Pre application Reference: N/A

## **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 2016-2036 and the Perth and Kinross Local Development Plan 2014.

### **TAYplan Strategic Development Plan 2016 – 2036 - Approved October 2017**

Whilst there are no specific policies or strategies directly relevant to this proposal the overall vision of the TAYplan should be noted. The vision states *“By 2036 the TAYplan area will be sustainable, more attractive, competitive and vibrant without creating an unacceptable burden on our planet. The quality of life will make it a place of first choice where more people choose to live, work, study and visit, and where businesses choose to invest and create jobs.”*

### **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.

### **Proposed Perth and Kinross Local Development Plan 2 (LDP2)**

Perth & Kinross Council is progressing with preparation of a new Local Development Plan to provide up-to-date Development Plan coverage for Perth

& Kinross. When adopted, the Perth & Kinross Local Development Plan 2 (LDP2) will replace the current adopted Perth & Kinross Local Development Plan (LDP). The Proposed Local Development Plan 2 (LDP2) was approved at the Special Council meeting on 22 November 2017.

The representations received on the Proposed LDP2 and the Council's responses to these were considered at the Special Council meeting on 29 August 2018. The unresolved representation to the Proposed Plan after this period is likely to be considered at an Examination by independent Reporter(s) appointed by the Scottish Ministers, later this year. The Reporter(s) will thereafter present their conclusions and recommendations on the plan, which the Council must accept prior to adoption. It is only in exceptional circumstances that the Council can elect not to do this.

The Proposed LDP2 represents Perth & Kinross Council's settled view in relation to land use planning and as such it is a material consideration in the determination of planning applications. It sets out a clear, long-term vision and planning policies for Perth & Kinross to meet the development needs of the area up to 2028 and beyond. The Proposed LDP2 is considered consistent with the Strategic Development Plan (TAYplan) and Scottish Planning Policy (SPP) 2014. However, the outcome of the Examination could potentially result in modifications to the Plan. As such, currently limited weight can be given to its content where subject of a representation, and the policies and proposals of the plan are only referred to where they would materially alter the recommendation or decision.

## **OTHER POLICIES**

Developer Contributions Guidance

Housing in the Countryside Supplementary Guidance 2012

## **CONSULTATION RESPONSES**

No consultations required

## **REPRESENTATIONS**

No letters received

## **ADDITIONAL INFORMATION RECEIVED:**

Environmental Impact Assessment (EIA)	Not Required
Screening Opinion	Not Required
EIA Report	Not Required
Appropriate Assessment	Not Required



Design Statement or Design and Access Statement	Submitted
Report on Impact or Potential Impact eg Flood Risk Assessment	Not Required

## **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 2016 and the adopted Perth and Kinross Local Development Plan 2014.

In terms of other material considerations, these include consideration of the site's previous history, consideration of the HITCG 2012 and also acknowledgment of the position made by the Chief Planner of the Scottish Government in 2011 regarding the use of planning conditions and legal agreements to secure occupancy - which is now incorporated into circular 3/12.

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**

Under category 3.3 of the Council's Housing in the Countryside Guide 2012 support is given for the provision of a house or group of houses on the basis of economic activity for a local or key worker associated with either a consented or an established economic activity. It further states that permission may be restricted by an occupancy condition in order to ensure that the house remains as essential worker housing in perpetuity. In this instance under the original consent the applicant successfully demonstrated that the house was required under operational need associated with the operation of the farm business.

Comrie Farm originally extended to 350 acres. At the time of the 2010 application 270 acres of the farm were let out to other parties who operated farms elsewhere in the area. A letter submitted with this application from the farmer's solicitor which confirmed that notice had been served on the tenant of the land ending on the 31st December 2010 and that vacant possession of the land is required from that date. Permission at the time was granted on this basis that the leased land was to be returned.

However in 2012 around the time the dwelling was completed and two years after this approval 155 acres of the farm was re-leased on a long term let to 2 separate parties. The Deer enterprise comprising of 170 acres was then sold in 2016. The applicant's father has retained 20 acres and resides at the

original farmhouse which is located 1.2km to the northwest. The dwelling, shed and its curtilage form the only land owned by the applicant.

The agent has noted that the current situation has resulted from the need to finance care for a family member. Whilst this is noted and we are sympathetic it cannot be a justification to set aside policy. The applicant has had to opportunity to review the occupancy situation in 2012 when the land was leased and in 2016 when the Deer enterprise was sold.

The application cannot be considered under Category 3 of the Housing in the Countryside Guide/Policy as there is no longer a need for the house. In considering the proposal against other categories as the site is isolated it does not meet categories 1) Building Groups, 2) Infill Sites, 4) Renovation or Replacement of Houses, 5) Conversion or Replacement of Redundant Non-Domestic Buildings and 6) Rural Brownfield Lands.

In taking cognisance of the Chief Planners letter we no longer restrict occupancy where the need for the dwelling has been sufficiently justified under Category 3 of the Housing in the Countryside Policy/Guide. However in this case the agricultural justification related to the economic activity has been removed and the site when considered as submitted as a standalone dwelling would not comply with the policy.

It is therefore considered that the detachment of the application site from the farm holding removed the key fundamental economic justification under Category 3 of the Housing in the Countryside Policy/Guide and in this instance the siting of a dwelling on this site without that justification would not comply with any other part of the policy. It is also considered that there are also no other material considerations present which outweigh the Development Plan.

In light of the above the applicant may wish to dissolve the lease on the rented land and bring this under the control of the dwelling in line with the original approval.

### **Precedent**

The agent has submitted a list of planning approvals for the removal of occupancy conditions. I have reviewed these and find none of which that can be directly compared with the applicant's current situation. Those that have been originally approved on the basis of agricultural need can be justified under other parts of the policy and that the removal of the occupancy condition does not dilute the economic justification for the proposed houses as they are still associated with the operation of the land which is still a key fundamental requirement regardless of the occupancy condition. Therefore I do not consider the examples provided to sufficiently outweigh my considerations highlighted above in the policy section.

## **Residential Amenity**

The house is located within a rural setting with no neighbouring properties within the immediate vicinity. As such the proposal is not considered to impact on residential amenity.

## **Visual Amenity**

There will be no change to visual amenity as a result of the removal of the occupancy condition.

## **Roads and Access**

The proposal raises no issues in terms of roads or access related matters.

## **Drainage and Flooding**

The proposal raises no issues in terms of drainage or flooding matters.

## **Developer Contributions**

The removal of the occupancy condition raises no issues in terms of Developer Contributions.

## **Economic Impact**

The economic impact of the proposal would be in the loss of a dwelling which was justified as being required under agricultural need for a local worker.

## **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 not considered to comply with the approved TAYplan 2016 and the adopted Local Development Plan 2014; in particular it fails to comply with Policy RD3 and the Housing in the Countryside Guide 2012 due to the lack of economic justification for the dwellinghouse.

I have taken account of material considerations and find none that would justify overriding the adopted Development Plan. On that basis the application is recommended for refusal.

## **APPLICATION PROCESSING TIME**

The recommendation for this application has not been made within the statutory determination period.

## **LEGAL AGREEMENTS**

None required.

## **DIRECTION BY SCOTTISH MINISTERS**

None applicable to this proposal.

## **RECOMMENDATION**

### **Refuse the application**

### **Reasons for Recommendation**

1 The proposal is contrary to Policy RD3 of the Local Development Plan 2014 and the Council's Housing in the Countryside Guide 2012 as the proposal fails to comply with category (3) New Houses in the Open Countryside as the agricultural land holding which justified the need for the house has been separated from the dwelling unit. Furthermore the site also fails to comply with categories (1) Building Groups, (2) Infill Sites, (4) Renovation or Replacement of Houses, (5) Conversion or Replacement of Redundant Non Domestic Buildings, or (6) Rural Brownfield Land.

### **Justification**

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

### **Informatives**

None

### **Procedural Notes**

Not Applicable.

## **PLANS AND DOCUMENTS RELATING TO THIS DECISION**

10/00184/FLL/1  
19/00652/1

### **Date of Report**

27/06/19

## Supporting Statement

**Planning Application: Removal of Condition 3 from Planning Consent; 10/00184/FLL – Construction of a dwellinghouse at Easter Comrie, Keltneyburn, Aberfeldy**



**KEIR+CO**  
PLANNING



## 1.0 Introduction

The Applicant; Neil McAdam along with his wife; Mairi McAdam and three children (aged 11, 9 and 4) are the occupants of the family dwellinghouse built in 2011/12 at Comrie Farm, having secured planning consent in 2010 (10/00184/FLL).

Planning Condition 3 (of the planning consent; 10/00184/FLL), restricts the occupancy of the house to a person solely or last employed in agriculture at Comrie Farm;

***'The occupation shall be restricted to a person solely or last employed locally in agriculture at Comrie Farm, Keltneyburn; as defined on Section 277(1) of the Town and Country Planning (Scotland) Act 1997 or a dependent of such a person residing with him or her (but including a widow or widower of such person'.***

Initially helping to run and further diversify the farm since moving into the property in 2012; a series of circumstances and events following the deterioration of both the Applicant's Father and Mother's health, has led to a substantial reduction of the farming enterprise and operations. The Applicant's Mother passed away in January 2017 and the Applicant's Father; Harry McAdam's health has deteriorated significantly, and he has now retired (much earlier than he had intended).

The Applicant seeks the removal of Planning Consent Condition 3, to facilitate raising of capital through a mortgage to fund the extension of his house to accommodate his large family. At present, the occupancy condition is prohibiting the Applicant from securing any finance. Extending the house, will allow the family to remain close to the Applicant's Father - who following the Applicant's Mothers worsening ill health in 2012, required to lease land for arable and sheep grazing use and lease a further half of the farmland for Deer rearing, to pay for 24-7 homecare, leaving minimal agricultural operations in place.

Since the granting of planning consent in 2010, the circumstances at Comrie Farm have materially and significantly changed and the agricultural need which justified the approval of the house in the first instance, no longer exists.

## 2.0 Comrie Farm – current premises and land use/ownership

Comrie farm extends to 350 acres and is a mixed unit. It comprises approximately 250 acres of arable land and 100 acres of permanent pasture. Approximately 155 acres are currently let out to two separate parties for arable and sheep grazing. The Deer Enterprise (comprising of approximately 170 acres) is now owned by a separate party and approximately 20 acres is retained by the Applicant's Father (Harry McAdam).

The existing houses and farm buildings (at Comrie Farm) include:

- the original farmhouse (currently occupied by the Applicant's Father)
- a steel portal frame shed which now used by the owner of the Deer Enterprise for machinery, feedstuff storage, cold room and livestock (deer)
- the traditional farm steading was sold off and converted into 8 privately owned units approximately 25 years ago.

Easter Comrie house (occupied by the Applicant, his wife Mairi and 3 children since 2012), is situated on the East side of Comrie Farm. Adjacent to the house is a steel frame shed. The house and shed are set within approximately 2 acres – all of which are in the sole ownership of the Applicant (not the Applicant's Father or part of Comrie Farm).

Satellite Image of Easter Comrie showing house and shed in red, and Applicant's land ownership in yellow. The access road is visible:





Easter Comrie house sits naturally in the existing landscape framework. It lies within a hallow and is surrounded by rising topography, mature broadleaf trees and a coniferous woodland. The traditional and non-imposing style of the house is set in a backdrop of rising topography and woodland. Whilst visible from the B846 Westbound, the property is accessed from the Kenmore to Comrie Bridge road.

Easter Comrie from the Kenmore Road:



Easter Comrie Access from the North, Comrie Bridge/B846:

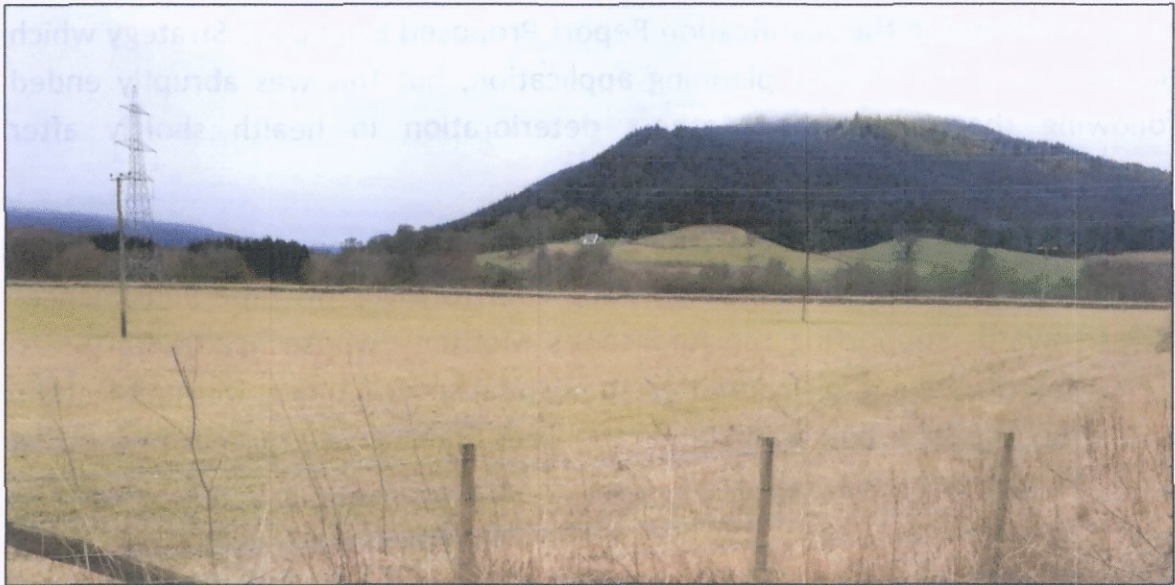


Easter Comrie Access from the South, Kenmore:





Easter Comrie, from B846 showing its traditional and non-imposing style and presence with respect to Drummond Hill and surrounds:



Easter Comrie, from B846 (zoomed in) to show the natural house position and design in the context of the existing landscape framework:



### 3.0 Circumstantial changes and events

The Applicant and his wife initially took on and set out to further diversify the farm as laid out in the Justification Report Proposed Enterprise Strategy which accompanied the original planning application, but this was abruptly ended following the Applicant's Mother's deterioration in health shortly after commencement, resulting in:

- The Applicant's Father decided in 2012 to recommence leasing of the 155 acres of arable and sheep grazing land to focus his time and finances towards supporting the Applicant's Mother - whose health started to deteriorate and was admitted to hospital several times. During this time the Applicant helped maintain the Deer Stalking Enterprise and Sporting Enterprise.
- The Applicant's wife, now having less requirement to the farm, started to look for a job locally but the lack of childcare for their 2 year old and 4 year old led her to open and run her own childminding business (2012-2014).
- The planning permission for 3 chalets expired, as outlined in the Justification Report Proposed Enterprise Strategy. The Applicant's Father has recently gifted this site to the Applicant's half-sister – who intends to reapply for planning consent.
- The Deer Stalking and Sporting Enterprise decreasing to a minimum in 2014 due to the Applicant's Father's deteriorating health and ability to manage this.
- The Applicant deciding to accept a promoted role, with long term employer SSE plc, as a result of reduced need for his input in the farms operations.
- The Applicant's Father decided to sell the 170 acre Deer Enterprise in 2016, in order to fund home based 24/7 care for the Applicant's Mother.
- The commercial Deer Stalking enterprise ceasing due to the Applicant's Father's admission to hospital in 2016 and subsequent requirement for a care package involving community nurses and care assistant home visits twice a day.

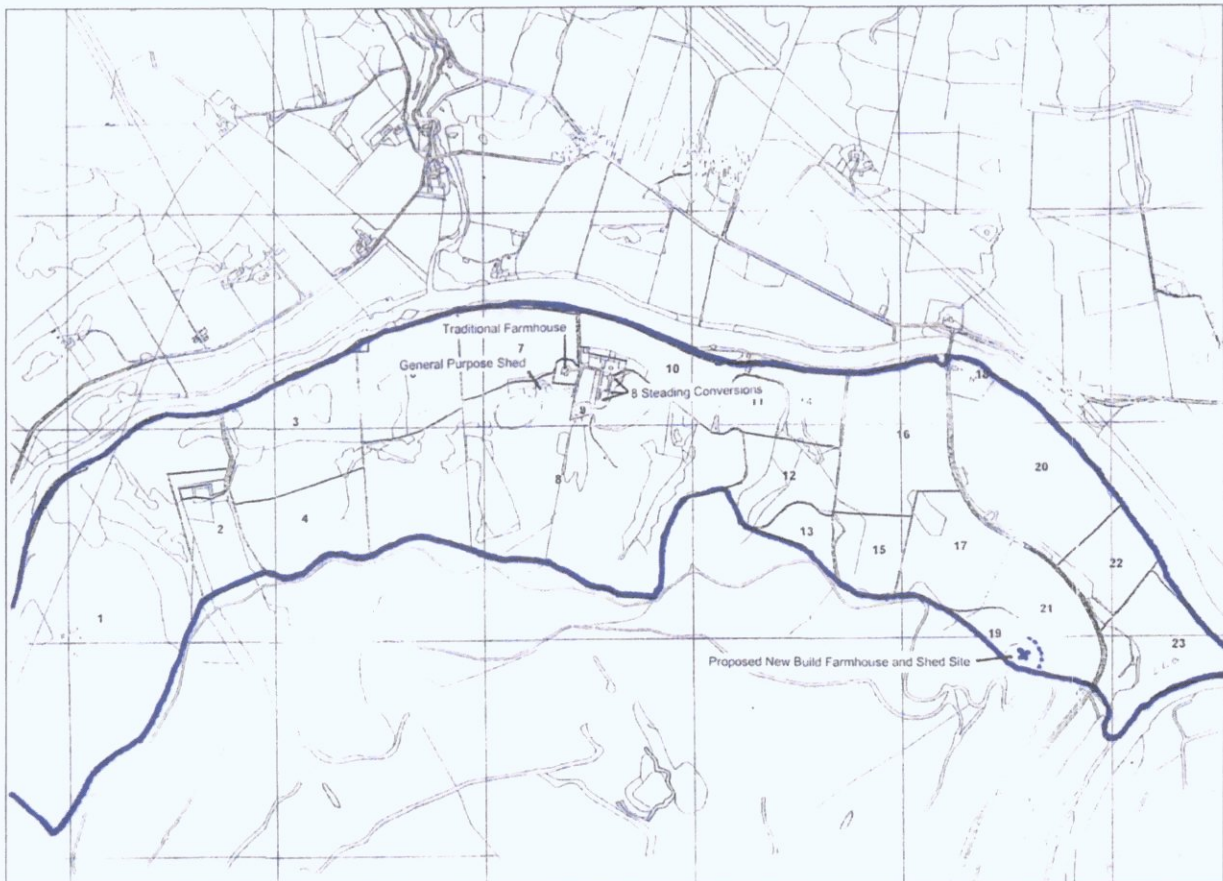
This series of circumstances and events, has led to:

- The 155 acres of arable and sheep grazing land now not easily taken back in hand, existing on a long term let basis with 2 separate parties.

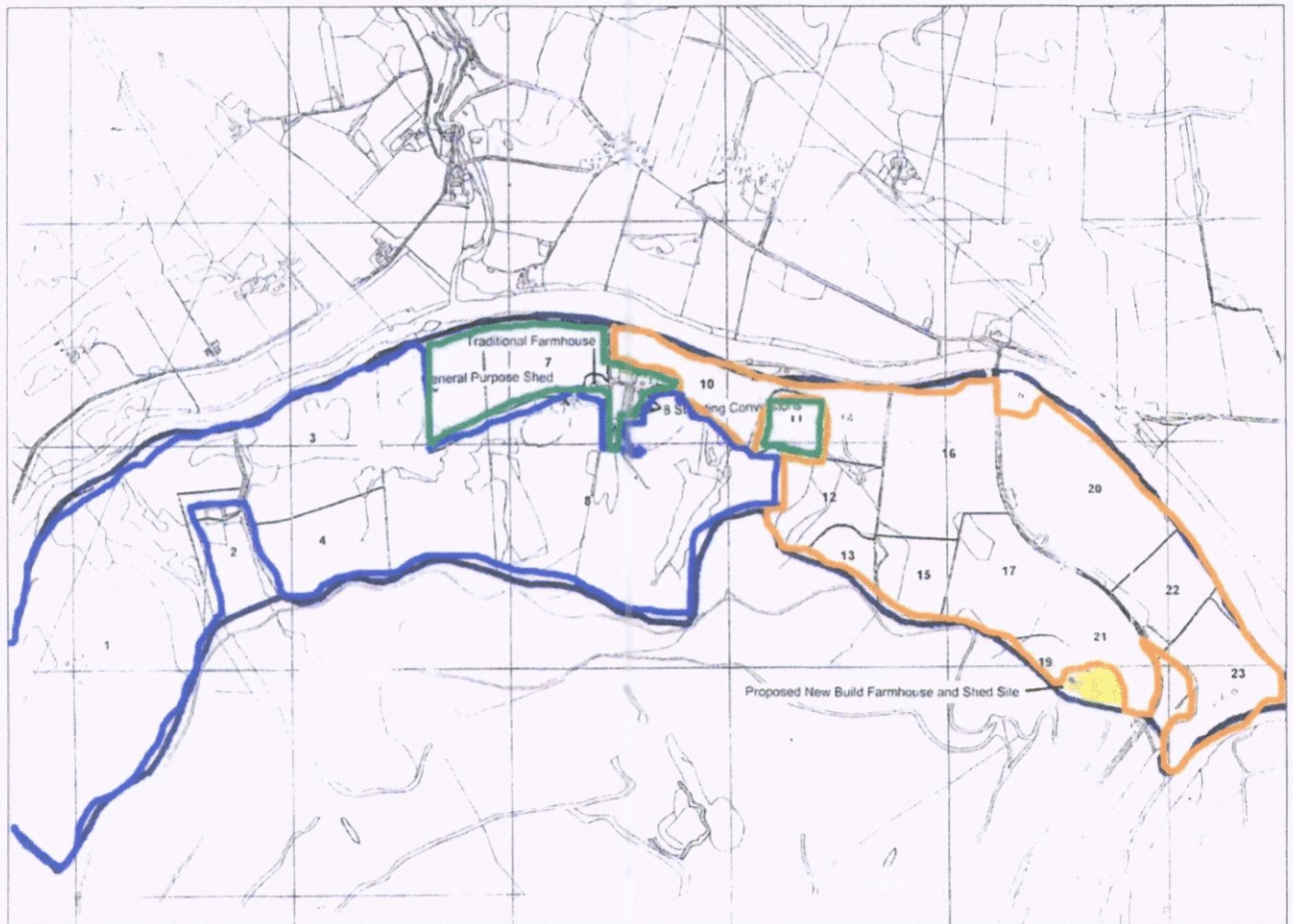


- The farming operations being significantly reduced to minimal duck and pheasant rearing only to support non-commercial shoot, managed by the Applicant's Father and a neighbour.
- The Applicant and his wife having no involvement in what little remains of the commercial farming operations.
- Any shooting that takes place is solely for family and friends with no commercial aspect.

Comrie Farm (2012) - all land in hand



Comrie Farm (2019):



Orange Area	c.155 acres	Arable and Sheep Grazing	Leased to 2 Parties
Blue Area	c.170 acres	Deer Enterprise	Sold to 1 Party
Green Area	c.20 acres	Comrie Farm House & Ponds	Applicant's Fathers
Yellow Area		Easter Comrie	Applicant's



## 4.0 Removal of Occupancy Condition

As outlined in the previous Section, it is clear that for unforeseen and unfortunate reasons, the circumstances at Comrie Farm have materially changed and the agricultural need which justified the approval of the house in the first instance, no longer exists. This Planning Application therefore seeks to remove the occupancy condition (Condition 3) of Planning Consent; 10/00184/FLL.

This would enable the Applicant, his wife and 3 growing boys to expand the existing Easter Comrie dwellinghouse to more fully and practically accommodate a family of 5, whilst remaining close to the Applicant's Father, the family home and to fully remain part of both the local and wider community in which they both work, volunteer and contribute.

Since this Planning Application (10/00184/FLL) was granted consent (4 May 2010), there has been a considerable shift in planning policy relating to occupancy conditions. In November 2011, The Chief Planner for the Scottish Government in an open letter (see Appendix 1), outlined that it was the Scottish Government's view that imposing restrictions on the use of land or buildings are rarely appropriate and should generally be avoided. This advice has since been incorporated into Circular 3/2012 and therefore now forms the Scottish Government's formal policy position on the matter

As outlined in the list below of planning applications which seek to remove an occupancy condition (all of which have been granted planning consent), there is an overwhelming precedence which has been established in the Perth & Kinross Council area. This trend has accelerated following the letter from the Scottish Government Chief Planner (in November 2011) and the publishing of Circular 3/12.

It has been observed that approximately 90% of planning applications which seek to remove the occupancy condition in Perth & Kinross Council Area since 2009, have been approved.

Approved Planning Applications in Perth & Kinross Council Area which have been approved since 2009:

1. 17/00704/FLL | Removal of condition 2 (occupancy) of permission 11/01917/FLL for erection of a dwellinghouse, livery stables and

- associated buildings | Portmoak Livery Stables Main Street Scotlandwell Kinross KY13 9JA – **Approved**
2. 17/00146/FLL | Removal of condition 7 (occupancy) of permission PK920795 (Erection of a dwellinghouse) | Inchcoonans Farm House Errol Perth PH2 7RB – **Approved**
  3. 16/01264/FLL | Removal of condition 7 (occupancy) of permission 08/02343/FUL (erection of a dwellinghouse) | Macgregor House Strathmiglo Cupar KY14 7SR – **Approved**
  4. 15/01830/FLL | Removal of condition 3 (occupancy) of permission 10/00908/AML for the erection of a dwellinghouse | Land 600 Metres South East Of Touchie Farm Milnathort - **Approved**
  5. 15/01264/FLL | Removal of condition 4 (Occupancy) of permission 02/01507/OUT relating to the erection of gamekeepers cottage | Gameskeepers Cottage Braco Dunblane FK15 9RA – **Approved**
  6. 15/00147/FLL | Removal of condition 2 (occupancy) of permission 99/01630/REM (erection of a dwellinghouse, etc) | Cottown House Cottown Glencarse Perth PH2 7NL – **Approved**
  7. 14/01996/FLL | Removal of condition 7 (occupation) of permission 10/01449/FLL for the erection of a dwellinghouse | Islabank Auchterarder PH3 1DU - **Approved**
  8. 14/01009/FLL | Removal of condition 2 (occupancy) of planning permission 13/01531/AML for erection of dwellinghouse and formation of car parking and access | Land 50 Metres North East Of Gatehouse Mechanical Services Aberfeldy - **Approved**
  9. 14/00791/FLL | Removal of condition 3 (occupancy) of permission 09/02042/FLL (Erection of dwellinghouse and garage) | Millwood Cleish Kinross KY13 0LS - **Approved**
  10. 14/00705/FLL | Removal of condition 3 (occupancy) of permission 11/01839/FLL (Erection of an indoor horse arena building for equestrian business and erection of a dwellinghouse and garage) | Cairnfold Farm Blairingone - **Approved**
  11. 14/00474/FLL | Removal of condition 3 (occupancy) from planning permission 08/01141/FLL Erection of a dwellinghouse, straw shed and stable block | Wester Tillyrie Steadings Milnathort Kinross KY13 0RW - **Approved**



- 12.14/00249/FLL | Removal of condition No 8 (occupancy) from planning permission (09/00553/FUL) Erection of a dwellinghouse | Land North East Of Powmill - **Approved**
- 13.13/01997/FLL | Removal of condition 10 from planning permission 12/02130/FLL (relating to agricultural occupancy) | Glencallan Methven Crieff PH7 3NN - **Approved**
- 14.13/01574/FLL | Modification of existing consent (PK/84/01224) removal of condition no 4 (occupancy condition) | Whitehills Farm Blackford Auchterarder PH4 1RQ - **Approved**
- 15.13/01567/FLL | Modification of existing consent (07/01221/FUL) removal of condition no 9 (occupancy condition) | Land At Croftnamuick Camserney - **Approved**
- 16.13/01293/FLL | Removal of condition 6 of planning consent 11/01263/FLL - relating to occupancy of new dwellinghouse | Newtoft Farm Path Of Condie Perth PH2 9DP - **Approved**
- 17.13/01053/FLL | Removal of condition 4 (agricultural occupancy) of consent (PK/94/2009) | East Cairns New Alyth Blairgowrie PH11 8NN
- 18.13/00916/FLL | Removal of Condition No 3 (occupancy restriction) from planning consent 07/02733/FUL | Sealladh Coille And Sealladh Gleann Fortingall Aberfeldy PH15 2LN - **Approved**
- 19.13/00460/FLL | Modification of existing consent - (06/00379/FUL) - Removal of condition 7 - occupation of the dwellinghouse | Drumearn Forteviot Perth PH2 9BU - **Approved**
- 20.13/00280/FLL - Renewal of consent (08/00315/FUL) erection of a dwellinghouse and removal of condition 9 (occupancy condition) at Craigow, Milnathort, Kinross, KY13 ORP - **Approved**
- 21.13/00280/FLL | Renewal of consent (08/00315/FUL) Erection of a dwellinghouse and removal of condition 9 (occupancy condition) | Craigow Milnathort Kinross KY13 ORP - **Approved**
- 22.12/01786/FLL | Removal of condition 3 (restricted occupancy of dwelling) from previous consent (08/00633/FUL) | Pitmeadow Farm Dunning Perth PH2 0RA - **Approved**
- 23.12/00794/FLL | Modification of existing consent (09/01976/FLL) - removal of condition 2 (restricting occupancy of house) | Parks Of Keillour Farm Methven Perth PH1 3RB - **Approved**

- 24.11/01934/FLL | Removal of condition No. 2 (occupancy condition) attached to planning consent D13790 | Elmbank Longforgan Dundee DD2 5HU - **Approved**
- 25.11/01722/FLL | Removal of occupancy condition (PK/96/1826 and 00/00337/MOD) tying dwellinghouse to land | Boreland Farm Cleish Kinross KY13 0LN - **Approved**
- 26.11/00453/FLL | Removal of Condition 3 (occupancy condition) (PK/97/1263) | Castlehill Dunning Perth PH2 0RA - **Approved**
- 27.10/01522/FLL | Removal of occupancy condition (PK/87/1333 - condition No 4) | Broadgates Duchally Road Auchterarder PH3 1PW - **Approved**
- 28.09/02063/FLL | Removal of occupancy condition from house approved under (PKD/76/273) | Dunollie Fossoway Kinross KY13 0UP - **Approved**
- 29.09/01393/FLL | Removal of occupancy condition (08/00158/FUL) attached to new dwellinghouse | Treetops Glenalmond Perth PH1 3SF - **Approved**
- 30.09/01266/FLL - Removal of restrictive occupancy condition (Condition 3 Planning Consent 08/00596/FUL) - **Approved**
- 31.09/01266/FLL - Removal of restrictive occupancy condition (Condition 3 Planning Consent 08/00596/FUL) - **Approved**

In many of the above approved applications, a inability to secure funding from banks due to the occupancy condition was often one of the key issues and reasons for the planning application being made to remove the occupancy condition. In justifying the removal of the occupancy condition, the Planning Officer's in their Report of Handling, often make reference to this issue and one of the reasons for granting consent to remove the occupancy condition.

Funding/financing issues was also one of the main reasons for the Government Chief Planners Letter (see Appendix 1) and subsequently, Circular 3/12 being published.



## **5.0 Summary**

The occupancy condition is an unfair and unnecessary constraint on allowing the Applicant and his family to move on with their life.

The material change in circumstances and events at Comrie Farm (including the requirement to lease and sell land to fund the substantial end of life costs of caring for the Applicant's Mother (now dead) and Father who is currently in poor health) combined with the Applicant's inability to secure finance to extend their house, provide strong grounds for granting planning consent to remove the occupancy condition.

Furthermore, since the granting of planning consent for the original planning application in 2010, the Scottish Government have changed their position on occupancy conditions and now consider them rarely appropriate and should generally be avoided.

At a local level, there is an overwhelming number of planning applications proposing the removal of occupancy conditions which have been approved (approximately 90% of the applications which have been submitted).



# Appendix 1

Directorate for the Built Environment  
Jim Mackinnon, Director and Chief Planner

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Heads of Planning

DELIVERING  
A GAMES LEGACY FOR SCOTLAND

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.**

B5142669  
Victoria Quay, Edinburgh EH6 6QQ  
www.scotland.gov.uk





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**

**TCP/11/16(617) – 19/00652/FLL – Application under Section 42 of the Town and Country Planning (Scotland) Act 1997 to remove condition 3 (occupancy) of permission 10/00184/FLL (erection of dwellinghouse and agricultural shed, formation of new access road), Easter Comrie, Keltneyburn, Aberfeldy**

## **PLANNING DECISION NOTICE**

**REPORT OF HANDLING** *(included in applicant's submission, pages 197-204)*

**REFERENCE DOCUMENTS** *(part included in applicant's submission, pages 205-220)*



# PERTH AND KINROSS COUNCIL

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PH2 7TB

Pullar House  
35 Kinnoull Street  
PERTH  
PH1 5GD

Date 27th June 2019

## TOWN AND COUNTRY PLANNING (SCOTLAND) ACT

Application Number: **19/00652/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 24th April 2019 for permission for **Application under Section 42 of the Town and Country Planning (Scotland) Act 1997 to remove condition 3 (occupancy) of permission 10/00184/FLL (erection of dwellinghouse and agricultural shed, formation of new access road) Easter Comrie Keltneyburn Aberfeldy PH15 2LS** for the reasons undernoted.

Interim Development Quality Manager

### 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 as the proposal fails to comply with category (3) New Houses in the Open Countryside as the agricultural land holding which justified the need for the house has been separated from the dwelling unit. Furthermore the site also fails to comply with categories (1) Building Groups, (2) Infill Sites, (4) Renovation or Replacement of Houses, (5) Conversion or Replacement of Redundant Non Domestic Buildings, or (6) Rural Brownfield Land.

## **Justification**

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

The plans and documents relating to this decision are listed below and are displayed on Perth and Kinross Council's website at [www.pkc.gov.uk](http://www.pkc.gov.uk) "Online Planning Applications" page

## **Plan Reference**

10/00184/1

19/00652/2



