

Perth and Kinross Council
Development Management Committee – 13 July 2016
Report of Handling by Development Quality Manager

Erection of a shop and flat (increase size of building and re-position condensing unit fans) (in retrospect) at the Former Bewlands Quarry, Inchtute

Ref. No: 16/00622/FLL
Ward No: N1 - Carse

Summary

This report recommends approval of a retrospective, detailed planning application for the erection of new village shop (with a flat above) in the centre of the Inchtute as the development is considered to comply with the relevant provisions of the Development Plan, and there are no material considerations apparent which would outweigh the Development Plan.

BACKGROUND AND DESCRIPTION

- 1 This planning application seeks to regulate various unauthorised works which relate to an under construction development in the centre of Inchtute, on Main Street. Detailed planning consent was initially granted on the site by this Committee in 2014 for the erection of a new village shop with a private flat above, and that consent was later amended in 2015. However, despite these previous approvals being in place the applicant advanced with the development not in accordance with the approved plans with the principal variations being a revised location of air condensers, a small increase in the footprint of the building and an increase in the finished floor level. At the present time, the building is essentially completed from a structural point of view, with some minor internal works yet to be completed.
- 2 The change in the finished floor level has resulted in the building becoming higher than the previously approved building, and also higher than the neighbouring dwelling in terms of both its ridge line and eaves level.
- 3 In addition to the aforementioned variations, the applicant has not yet incorporated a formal public path through the site and onwards into the open space area to the rear which was a specific requirement on previous planning permissions. The term of the previous planning permissions was that the path was required to be implemented prior to the opening of the shop or the habitation of the flat. As neither of these triggers have been reached, the applicant is not currently in breach with regards to the path. The current plans continue to show a path running through the site into the open space area to the rear of the site.

NATIONAL POLICY AND GUIDANCE

- 4 The Scottish Government expresses its planning policies through the National Planning Frameworks, the Scottish Planning Policy (SPP) and Planning Advice Notes (PAN). Of specific relevance to this planning application is,

Scottish Planning Policy 2014

- 5 The Scottish Planning Policy (SPP) was published in June 2014. It sets out national planning policies which reflect Scottish Ministers' priorities for operation of the planning system and for the development and use of land. The SPP promotes consistency in the application of policy across Scotland whilst allowing sufficient flexibility to reflect local circumstances. It directly relates to:

- the preparation of development plans;
- the design of development, from initial concept through to delivery; and
- the determination of planning applications and appeals.

- 6 Of relevance to this application are:

- Paragraphs 109 – 134: Enabling Delivery of New Homes
- Paragraphs 92 – 108: Supporting Business & Employment
- Paragraphs 135 – 151: Valuing the Historic Environment

DEVELOPMENT PLAN

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

TAYplan Strategic Development Plan 2012

- 8 Whilst there are no specific strategies directly relevant to this proposal the overall vision of the Tay Plan should be noted. The vision states *“By 2032 the TAYplan region will be sustainable, more attractive, competitive and vibrant without creating an unacceptable burden on our planet. The quality of life will make it a place of first choice, where more people choose to live, work and visit and where businesses choose to invest and create jobs.”*
- 9 **Policy 3** (Managing Tay Plan's Assets) seeks to ensure that our cultural heritage assets are protected from inappropriate new developments.

Perth and Kinross Local Development Plan 2014

- 10 The Local Development Plan (LDP) was adopted by Perth and Kinross Council on 3 February 2014. It is the most recent statement of Council policy and is augmented by Supplementary Guidance.

- 11 Within the LDP, the site lies within the settlement boundary of Inchtute, within the village's Conservation Area where the following policies are directly applicable.

Policy RD1 - Residential Areas

- 12 In identified areas, residential amenity will be protected and, where possible, improved. Small areas of private open space will be retained and changes of use away from ancillary uses such as local shops will be resisted unless supported by market evidence that the existing use is non-viable. Proposals will be encouraged where they satisfy the criteria set out and are compatible with the amenity and character of an area.

Policy PM1A - Placemaking

- 13 Development must contribute positively to the quality of the surrounding built and natural environment, respecting the character and amenity of the place.

Policy PM3 – Contributions

- 14 Where the cumulative impact of new developments will exacerbate a current or generate a future need for additional infrastructure provision or community facilities, planning permission will only be granted where contributions which are reasonably related to the scale and nature of the proposed development are secured.

Policy HE2 - Listed Buildings

- 15 The layout, design, materials, scale, siting and use of any development which will affect a listed building or its setting should be appropriate to the building's character, appearance and setting.

Policy HE3A - Conservation Areas

- 16 Development within a Conservation Area must preserve or enhance its character or appearance. The design, materials, scale and siting of a new development within a Conservation Area, and development outwith an area that will impact upon its special qualities should be appropriate to its appearance, character and setting.

Policy CF3 - Public Access

- 17 Development proposals that would have an adverse impact upon the integrity of any (proposed) core path, disused railway line, asserted right of way or other well used route will be refused. Development proposals that would affect unreasonably public access rights to these features will be refused unless these adverse impacts are adequately addressed in the plans and suitable alternative provision is made.

Policy EP8 – Noise Pollution

- 18 There will be a presumption against the siting of development proposals which will generate high levels of noise in the locality of existing or proposed noise sensitive land uses and similarly against the locating of noise sensitive uses near to sources of noise generation.

OTHER COUNCIL POLICIES

Developer Contributions and Affordable Housing, April 2016

- 19 This supplementary guidance is about facilitating development. It sets out the basis on which the Council will seek developer contributions and affordable housing provision for new developments. This Supplementary Guidance should be read in conjunction with LDP Policy PM3: Infrastructure Contributions and the Developer Contributions Supplementary Guidance.

OTHER LEGISLATION

Planning (Listed Buildings & Conservation Areas) (Scotland) Act 1997 (PLBCA)

- 20 *Section 64* of the PLBCA requires the Council, when considering applications that affect the character and appearance of Conservation Areas, to have special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area, whilst *section 59* requires the Council, when considering applications which potentially affect the setting of a listed building, to have special regard to the desirability of preserving the setting of the affected listed building.

SITE HISTORY

- 21 The most relevant planning history on the site is the approval of a detailed planning application in 2014 (14/00844/FLL) which related to the erection of a new village shop with a flat above. A further planning permission to encompass approved non-material variations made to the 2014 permission, and the installation of additional solar panels was subsequently approved in 2015 (15/01398/FLL).
- 22 After inspections by the Council in early 2016, it became clear that the building on site was not being built as per the approved plans. To this end, the applicant was invited to lodge a further planning application to accurately reflect what was actually under construction. It should be noted that once the discrepancy between the approved plans / what was being built on site was established, the applicant was made aware that any further works to the near completed building would be at his own personal risk.

CONSULTATIONS

EXTERNAL

- 23 **Scottish Water** – Made no specific comment.

INTERNAL

- 24 **Environmental Health** - In terms of the proposed relocation of the air condensing units they have raised no concerns regarding noise or odours subject to appropriate conditions being attached to any permission.
- 25 **Education and Children Services** - Indicated that the local primary school is operating at over 80% capacity.
- 26 **Transport Planning** - In terms of the proposed parking provision and also the vehicular access have raised no objections.
- 27 **Contributions Officer** –Confirmed that there is no additional Developer Contributions required.
- 28 **Community Greenspace** - Have indicated that once a path on the land outwith the side has been formed, a path through the site should be opened up for public use.

REPRESENTATIONS

- 29 Three letters of representations have been received from local residents, all of which are objecting to the proposal. The main issues raised by the objectors are,
- Visual impact
 - Impact on residential amenity, in terms of noise nuisance
 - Impact on existing trees
 - Non-implementation of the public path
 - Implementation of the public path
 - Road safety issues, in terms of an increase in on-street parking.
 - Impact on the existing shop, in terms of loss of business
- 30 These issues are addressed in the Appraisal section of this report.

ADDITIONAL STATEMENTS

Environment Statement	Not required
Screening Opinion	Not required
Environmental Impact Assessment	Not required
Appropriate Assessment	Not required
Design Statement / Design and Access Statement	None
Report on Impact or Potential Impact	None

APPRAISAL

- 31 Sections 25 and 37(2) of the Town & Country Planning (Scotland) Act 1997 (as amended) requires the determination of the application to be made in accordance with the provisions of the Development Plan, unless material considerations indicate otherwise. The Development Plan for the area comprises the approved Tay Plan 2012 and the adopted LDP. In terms of other material considerations, this involves considerations of the Councils other approved policies, namely those which relate to developer contributions, the site previous planning history and also consideration of the PLBCA Act.

Policy

- 32 In terms of the Development Plan, the key land use policies are contained within the LDP. Whilst this application is essentially for a change of design of an already approved land use, there are nevertheless still policies which are applicable to this proposal. Within the LDP, the site lies within the settlement boundary of Inchtute where *Policies RD1 and PM1A* seek similar objectives insofar as they look to ensure that residential and visual amenity is not adversely affected by inappropriate new developments. *Policy EP5* of the LDP also seeks to protect existing residential amenity by ensuring that new sources of noise are suitably controlled so that they do not affect residential amenity.
- 33 In addition, both the Tay Plan (*Policy 3*) and the LDP (*Policies HE2 and HE3*) seek to protect our cultural assets from inappropriate new developments.
- 34 For reasons stated elsewhere, I consider the change of building design to be in accordance with the aforementioned policies.

Land Use

- 35 In terms of land use issues, detailed planning permission already exists on the site for a new shop with a residential flat above. I therefore consider the land uses proposed to be firmly established, and the principle of these uses does not require to be revisited in terms of a policy assessment. The key issues for this proposal is therefore ultimately whether or not the revised building design (including the relocated condensers) is acceptable in terms of its visual impact and its impact on existing residential amenity.

Design, Visual Amenity and Impact on Listed Buildings/Conservation Area

- 36 In terms of design issues, and the impact that the development would have on the visual amenity of the area and on the historic setting of the area, I have no concerns.
- 37 Whilst the overall size and height of the building has increased slightly from what was previously approved, the overall design and appearance of the building is still of a high quality - which is what you would expect to see on a site within a prominent location within an historic setting. I do note the concerns which have been raised within some of the representations that the design of the proposed building is (now) out of keeping with the surrounding area, and that the building has an negative impact on the character of the Conservation Area/setting of the listed buildings, however I do not agree with these views. I do fully accept that the raised floor level of the building does visually change the initially approved symmetrical appearance of the building (in relation to the adjacent property), but this alone does not render the proposal unacceptable. There are a number of varying heights of buildings within the centre of Inchtute, and I do not consider the proposal (as built) to be particularly incongruous or out of keeping with the character of the streetscene. I'm also conscious of the fact that the site is not flanked by buildings on either side which does reduce the impact of a higher ridge to some degree.
- 38 In terms of the visual impact of the condensers in their revised location, whilst these are visual from the rear, I do not consider them to have an adverse impact on the visual amenity of the area. To this end, I have no issues over the design of the 'as built' building, and consider the proposal not to have an adverse impact on the visual amenity of the area, or on the character of the Conservation Area or on the setting of the adjacent listed building (Inchtute Hotel).

Road Related Issues

- 39 In terms of roads related matters I have no concerns, and I note that the road matters which are subject to this retrospective application correlate closely to those previously considered in relation to onsite parking provisions etc. In any event, it remains the case that the proposal meets with the Council's standards in terms of onsite parking provision which is required for a local shop of this size, and the presence of a pavement along the sites frontage to ensure that good visibility can be achieved when leaving the site without the need to remove more trees than are already approved. It is noted that the required formal parking spaces have not yet been marked out by the applicant on site (with the exception of a disabled bay), but this informal arrangement on a neatly gravelled surface is considered to be acceptable.

Residential Amenity

- 40 In terms of the impact on existing residential amenity, as planning consent exists on the site already for a shop and flat above, the key issue in terms of residential amenity issues is whether or not the relocation of the air condensing units would adversely impact on the residential amenity of existing properties. Whilst representations have been received from some interested parties, it is the view of Environmental Health that subject to standard conditions the revised location of the condensing units should not adversely affect existing residential amenity to an unacceptable degree. In relation to other matters (which remain unaltered from previous permissions) I intend to attach similar conditions on any consent in relation to hours of operation, delivery times and also sound insulations to ensure that the commercial aspect of this proposal does not result in any unacceptable impact on residential amenity.

Drainage

- 41 The proposal raises no issues in terms of either surface water or foul drainage.

Trees

- 42 As the construction phase is almost complete, there are no additional trees under threat by this development. It is however intended to place a restrictive condition on any consent to this permission to ensure that all existing trees along the sites frontage are retained, unless otherwise agreed in writing by the Council as Planning Authority.

Public Path / Asserted Right of Way

- 43 There is an asserted right of way and historic pedestrian linkage through the site, connecting Main Street to Quarryknowe Crescent. As part of previous planning approvals, there has been a constant requirement for the applicant to formally reinstate this route prior to the opening of the shop and / or occupation of the flat above. However, despite this path being clearly shown on all the previous plans (and on the plans now submitted), the applicant has now openly indicated his reluctance to formalise a route through this site until such time as a suitable path on the adjacent land has been formalised.
- 44 It has now been established that the land to the south of the site is partly within the ownership control of the Council and an unknown third party. It is also the case that to formalise the route outwith the planning site, a set of steps would most likely be required to connect the path from the application site to the lower lying land below to allow for a safe and reasonable access. Ultimately it would be desirable to have improved pedestrian links from the residential area to the rear into Main Street, however as there does remain some uncertainty about when such a path outwith the application site will be formalised, I propose to slightly amend the wording of the condition so that it now only requires the formalisation of the path through the application site when there is a suitable path to join up to. This position has been agreed with my colleagues in

Community Greenspace as being a reasonable position to take, particularly bearing in mind that there does appear to be some differing views in the Community regarding whether or not the path link should be promoted.

Impact on Existing Shop

- 45 As detailed planning consent already exists on the site for a new shop with flat above, the impact on the commercial interests of the existing shop is not relevant to this current proposal which only relates to a revised design of building.

Retrospective Nature of the Application

- 46 Whilst unfortunate, retrospective applications are not uncommon and it is not reasonable to refuse them because the applicant/developer involved has not adhered to a previous planning permission or has advanced without further consents being granted. Consideration of a retrospect application must be made on its own merits (with consideration of the sites history) and an assessment thereafter made on the grounds of whether or not what is proposed is acceptable or not. In this case, the building on site is considered to be acceptable and the fact that it is now at an advanced stage has had little bearing on the final recommendation.

DEVELOPER CONTRIBUTIONS

Primary Education

- 47 The applicant has previously paid a Primary Education Contribution. As no additional residential units are proposed, there is no requirement for any further developer contributions in relation to Primary Education.

Transport Infrastructure

- 48 The applicant has previously paid a Transport Contribution, and as this proposal is only creating a minor extension to the retail area there is no requirement for any additional Developer Contribution in relation to Transport Infrastructure.

ECOMONIC IMPACT

- 49 There will be a limited economic impact from the development, and any impact associated with the shop element of the proposal will be extremely localised.

LEGAL AGREEMENTS

- 50 None required.

DIRECTION BY SCOTTISH MINISTERS

- 51 Under the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, regulations 30 – 32 there have been no directions by the Scottish Government in respect of an Environmental Impact Assessment screening opinion, call in or notification relating to this application.

CONCLUSION AND REASONS FOR RECOMMENDATION

- 52 The proposal is in accordance with the relevant land use policies contained in the Local Development Plan 2014. I do acknowledge the retrospective nature of the proposal and the concerns which have been raised within the representations, but it is nevertheless my view that what has been built (and what is now subject to the current planning application) is ultimately acceptable and on this basis, the application is recommended for a conditional approval.

RECOMMENDATION

A Approve the application subject to the following conditions:

- 1 The proposed development must be carried out in accordance with the approved plans, unless otherwise provided for by conditions imposed on the planning consent.

Reason - To ensure that the development is carried out in accordance with the plans approved.

- 2 All plant or equipment including any ventilation system associated with operation of the commercial areas be so enclosed, attenuated and/or maintained such that any noise therefrom shall not exceed Noise Rating 35 between 0700 and 2300 hours daily, or Noise Rating 20 between 2300 and 0700 hours daily, within any neighbouring residential premises, with all windows slightly open, when measured and/ or calculated and plotted on a rating curve chart, all to the satisfaction of the Council as Planning Authority.

Reason – In the interest of protecting existing residential amenity

- 3 The Hours of operation of the shop are limited to 07:00 to 19:00hrs Monday to Sunday, to the satisfaction of the Council as Planning Authority.

Reason – In the interest of protecting existing residential amenity

- 4 All deliveries shall be between the hours of 07:00 to 17:00hrs Monday to Saturday no deliveries on a Sunday, to the satisfaction of the Council as Planning Authority.

Reason – In the interest of protecting existing residential amenity

- 5 The sound installation and sound transmission properties of the structure and finishes shall be such that no airborne noise from the operations within the premises is perceptible in the flatted property above, to the satisfaction of the Council as Planning Authority.

Reason – In the interest of protecting existing residential amenity

- 6 A public path through the site must be made available for public use within 1 month of a suitable connection being achievable to the land to the south, all to the satisfaction of the Council as Planning Authority.

Reason – In order to ensure that a public walk way is proposed between Main Street and Quarryknowe Crescent is achieved when a suitable connection is achievable.

- 7 All trees as shown on plan 16/00622/2 as being retained, must be retained and adequately protected during the remainder of construction and thereafter retained, to the satisfaction of the Council as Planning Authority.

Reason – In the interest of the visual amenity of the area.

- 8 The vehicular access to the shop must be retained in accordance with specification Type B, Fig 5.6 access detail to the satisfaction of the Council as Planning Authority.

Reason - In the interests of pedestrian and traffic safety and in the interests of free traffic flow.

- 9 Turning facilities must be retained within the site to enable all vehicles to enter and leave in a forward gear, all to the satisfaction of the Council as Planning Authority.

Reason - In the interests of pedestrian and traffic safety and in the interests of free traffic flow.

- 10 A minimum of 5 No. car parking spaces shall be retained within the site, all to the satisfaction of the Council as Planning Authority.

Reason - In the interests of pedestrian and traffic safety and in the interests of free traffic flow.

- 11 For the avoidance of doubt, no signage is approved as part of this permission.

Reason – In order to clarify the terms of this permission.

B JUSTIFICATION

The proposal is considered to comply with the Development Plan and there are no other material considerations that would justify a departure there from.

C PROCEDURAL NOTES

None

D INFORMATIVES

- 1 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.
- 2 An application for Building Warrant will be required, and the necessary completion certificates must be issued prior to a) the occupation of the flat and / or b) the opening of the shop.
- 3 Prior to the opening of the shop all the appropriate trading licences must be obtained from the Council.
- 4 The applicant is advised that any signage would require a formal planning for Advertisement Consent.

Background Papers: Three letters of representation

Contact Officer: Andy Baxter – Ext 5339

Date: 29 June 2016

Nick Brian
Development Quality Manager

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