

Perth and Kinross Council
Development Management Committee – 15 February 2017
Report of Handling by Interim Head of Planning

Deletion of condition 6 (occupation) of permission 08/01561/FLM (Formation of an equestrian centre, utility shed, indoor riding school, stables, 4 chalets/cottages and 7 dwellinghouses with associated car parking) on land 100 metres West of Easter Muirhead Cottage, Blairingone.

Ref. No: 16/01874/FLM
Ward No: N8- Kinross-shire

Summary

This report recommends approval of the application to delete condition 6 of extant planning permission 08/01561/FLM thereby removing the requirement for the two manager's houses to be tied directly to the business. The proposal is not considered to conflict with the provisions of the Local Development Plan to an extent that would warrant refusal of the application and there are material considerations associated with viability, which assist in the justification of the deletion of the two tied managers dwelling condition.

BACKGROUND AND DESCRIPTION

- 1 Formal planning site history for this site dates back to 2008, through the extant planning consent for this operation, granted in 2011. The site is located at Easter Muirhead, approximately 1.5km south of Blairingone. The wider site is approximately 34 hectares, the majority of which remains open agricultural land or paddocks. The site houses the existing equestrian business of the applicant with a stable block, extensive paddocks and a riding school.
- 2 The original detailed planning consent includes the following elements:
 - A new stable block
 - A utility shed
 - An indoor riding school
 - An outdoor riding school
 - 4 chalet/cottage style operations for visitors and business users
 - 7 dwellinghouses, including 4 units as a steading group, a single new farmhouse and 2 separate managers' dwellings, tied to the business proposal.
 - Associated car parking and landscaping.
- 3 The application was subsequently approved by a meeting of this committee, subject to conditional control and the conclusion of a legal agreement in respect of affordable housing contributions and a commensurate contribution levy towards a public path network.

- 4 This application now seeks to delete condition 6 of application 08/01561/FLM controlling the occupation of the two manager's dwellings, which reads:-

Condition 6 – The occupation of the two tied managers houses shall be limited to a person employed or last employed in agricultural/equestrian work at Easter Muirhead or a dependent of such a person residing with him or her (but including a widow or widower of such a person).

- 5 The deletion of this condition has been sought broadly on the principles of a review in the national planning policy position, including the original Chief Planners letter of 4th November 2011 advising against the use of occupancy restrictions where a proposed development can be otherwise justified under development plan policy and more recently Scottish Planning Policy (SPP) 2014 paragraph 81, which states that decision making for development in accessible or pressured rural areas should generally “*set out the circumstances in which new housing outwith settlements may be appropriate, avoiding use of occupancy restrictions.*”
- 6 Underlying the policy position, the applicants reasoned justification for the deletion of the condition is based on the viable delivery of the business model in relation to experiencing a lack of borrowing capacity through the inclusion of the tied occupancy condition. The supporting statement specifically claims that the project implementation has been severely constrained by difficulty in raising mortgage finance for these two properties, in respect of:
- *“The value of the security against which any mortgage could be set is restricted by the terms of Condition 6; and*
 - *The link with the business use raises potential issues associated with VAT that cannot be off-set against the value of the security.”*
- 7 In relation to development as part of the consent completed to date, it is understood that the principal ‘riding school’ building has now been developed and is operational alongside the standalone dwelling referred to as the ‘Farmhouse’, which has been developed and sold independently. The passing places associated with suspensive condition 15 have also been agreed and delivered.

PRE-APPLICATION CONSULTATION

- 8 Due to the overall size of the application site, which is over 2 hectares, this proposal is classed as a Major Application as defined in the Town and Country Planning (Hierarchy of Development) (Scotland) Regulations 2009. The amended Regulations, which came into force on the 30 June 2013, removes the requirement for Pre-application Consultation for Section 42 applications (which relates to a ‘major planning application’) made on, or after the 3 February 2013. Accordingly there is not a requirement to carry out a pre-application public consultation on this major application due to the inclusion of Regulation 49(5) in the above Regulations.

ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

- 9 The proposed development does not directly fall under any of the general classifications of Schedule 2 of the Environmental Impact Assessment (Scotland) Regulations. No formal screening exercise has been undertaken. The site however benefits from an extant consent and includes no obvious site criteria or characteristics to trigger the requirement for an Environmental Impact Assessment to be undertaken on this occasion.

NATIONAL POLICY AND GUIDANCE

- 10 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

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

TAYplan Strategic Development Plan 2012 – 2032 - Approved June 2012

- 12 The overall vision of the Tay Plan 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.”*
- 13 There are no specific policies of strategic importance, relevant to this particular proposal contained in the Tayplan.

Perth and Kinross Local Development Plan 2014

- 14 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.
- 15 The site lies within the landward area of the LDP, where the principal relevant policies are, in summary:

Policy PM1A - Placemaking

- 16 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 RD3 – Housing in the Countryside

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

Policy ED3 – Rural Business and Diversification

- 18 Favourable consideration will be given to the expansion of existing businesses and the creation of new businesses within or adjacent to existing settlements in rural areas. Outwith settlements, proposals may be acceptable where they offer opportunities to diversify and existing business or are related to a site specific resource or opportunity.

Policy RD4 - Affordable Housing

- 19 Residential development consisting of 5 or more units should include provision of an affordable housing contribution amounting to 25% of the total number of units. Off-site provision or a commuted sum is acceptable as an alternative in appropriate circumstances.

Policy CF2 - Public Access

- 20 Developments will not be allowed if they have an adverse impact on any core path, disused railway line, asserted right of way or other well used route, unless impacts are addressed and suitable alternative provision is made.

Policy NE3 - Biodiversity

- 21 All wildlife and wildlife habitats, whether formally designated or not should be protected and enhanced in accordance with the criteria set out. Planning permission will not be granted for development likely to have an adverse effect on protected species.

Policy NE4 - Green Infrastructure

- 22 Development should contribute to the creation, protection, enhancement and management of green infrastructure, in accordance with the criteria set out.

Policy ER6 - Managing Future Landscape Change to Conserve and Enhance the Diversity and Quality of the Areas Landscapes

- 23 Development proposals will be supported where they do not conflict with the aim of maintaining and enhancing the landscape qualities of Perth and Kinross and they meet the tests set out in the 7 criteria.

OTHER POLICIES

Housing in the Countryside Guide 2012

- 24 This policy is the most recent expression of Council policies in relation to Housing in the Countryside.

Developer Contributions and Affordable Housing Supplementary Guidance (Sept 2016)

- 25 This document sets out the Council's policy in relation to Developer Contributions in relation to Primary Education, A9 Junction Improvement and Transport Infrastructure, as well as Affordable Housing provision.

SITE HISTORY

- 26 Site history includes:

08/01561/FLM Formation of an equestrian centre including utility shed, indoor riding school, stables, erection of 4 chalets/cottages and 7 dwellinghouses all with associated car parking. Application approved by Development Management Committee December 2008

Pre-Application Reference **15/00624/PREAPP**

Pre-Application Reference **16/00202/PREAPP**

Pre-Application Reference: **16/00331/PREAPP**

CONSULTATIONS

EXTERNAL

Fossoway Community Council (FCC):

- 27 Objection submitted on the basis of the original application, where the community council set out concerns regarding:
- Suitable upgrades to road networks and on-site parking requires to be incorporated into development as the current road network was unsuitable.
 - Proposed housing should include occupancy restrictions.

FCC clarified that they did not see any justification which deviated from the original concerns expressed in 2008.

INTERNAL

Developer Contributions and Affordable Housing Officer

- 28 In accordance with the extant consent, affordable housing contributions will now require to be secured for the two residential units, which will no longer be tied by condition. This can be secured via upfront payment or deferred via a modification of the extant legal agreement covering planning consent 08/01561/FLM.

Transport Planning

- 29 No objection. The representations comment was considered, however it was not assessed that the deletion of condition 6 would lead to an increase in traffic of the magnitude suggested. Conversely it was not anticipated to have any perceptible increase from the current amount of traffic generated by the dwellings remaining as manager's houses.

REPRESENTATIONS

- 30 Two letters of representation were received during the advertisement period for the application.
- 31 The representations have raised the following issues associated with the deletion of condition 6: -
- Application originally supported with five open market dwellings to fund the business model, despite being contrary to planning guidelines. Support for this application would result in a 40% increase to unconnected dwellings.
 - Significant increase in traffic if the manager's dwellings were no longer tied to the business, having unconnected occupants commuting elsewhere to work and employees commuting to the business.
 - Threat of uncontrolled future expansion.
 - Lack of natural screening.
 - Ongoing development fails to comply with suspensive conditions 4,7,8,9,10,11,12 and 15.
 - Applicability of business plan in today's current financial conditions.
 - How do the planning authority propose to control the abuse of "Building in the Countryside" and all that entails.
- 32 All the relevant planning issues associated with the deletion of condition 6 are covered in the Appraisal section of this report.

ADDITIONAL STATEMENTS

Environment Statement	Not required
Screening Opinion	Not required
Environmental Impact Assessment	Not applicable
Appropriate Assessment	Not applicable
Design Statement / Design and Access Statement	Not applicable
Reports on Impact or Potential Impact	Undertaken for previous application

APPRAISAL

Policy Appraisal

- 34 Sections 25 and 37(2) of the Town & Country Planning (Scotland) Act 1997 (as amended) requires the determination of the proposal to be made in accordance with the provisions of the Development Plan, unless material considerations indicate otherwise. The previous decisions on this site including the extant consent were made under the Kinross Area Local Plan 2004. The adopted Development Plan that is currently applicable to this area consists of the TAYplan Strategic Development Plan 2012 – 2032 and Perth and Kinross Local Development Plan 2014.
- 35 Section 42 of the Town and Country Planning (Scotland) Act 1997 enables the determination of applications to develop land without compliance with conditions previously attached. The legislation specifies that on such an application the Planning Authority shall consider only the question of the conditions subject to which planning permission should be granted, and if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly. If they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.
- 36 The determining issues in this case are whether: - the deletion of condition 6 in contention would be consistent with the relevant provisions of the Development Plans; or if an exception to these provisions is justified by other material considerations
- 37 This application is for the deletion of condition 6 as stated above:-

- 38 A removal of the occupancy condition of both the managers dwelling units (based on operation needs) should be forthcoming if there remains a need for the dwelling's, which has been previously established and supported, and also that the site characteristics would reasonably restrict the occupancy to its original purpose. Bearing this in mind, as set out, the extant consent remains in place in perpetuity, allowing the associated managers houses to be built out at any point. The was originally justified and recommended for approval in accordance with the development plan policy at the time, which is considered to remain a strong material consideration to the assessment of this application.
- 39 In this case, the two plots are situated close to the main hub of the equine business and to this end; the dwellings are unlikely to generate significant mainstream market interest unless the potential occupant was passionate about horses. The applicant has reiterated the commitment of the original business plan and the ongoing requirement for these two units to be occupied as manager's dwellings long term in his supporting statements. Whilst it cannot be taken as a given to assume that by virtue of its location and site characteristics the two dwellings will remain effectively tied to the business, they are however considered to remain restricted, attractive to a more limited market in this particular site context; should the applicant chose to dispose of the plots on the open market.
- 40 Both in the wording of the original report, presented to December 2008 Development Management Committee and the subsequent minute of agreement of the associated S.75 set out clearly that the two managers dwellings were not subject to the affordable housing policy at the time through being tied to the business; but should this position change, the dwellings would be subject to the affordable housing policy applied at that time. Paragraph 54 of the Committee paper states *"if the occupancy conditions are successfully removed at a later date, these houses would be subject to the affordable policy, if applicable"*.

Site Circumstances

- 41 There has been no fundamental change to wider site circumstances since the original 2008 planning approval. I have taken account of the applicable policies of the LDP, which relate to a wide range of issues including residential amenity, access/traffic/transport, waste collection, developer contributions and landscape. I find that these matters have been satisfactorily addressed or covered through earlier applications and conditions, or are otherwise conditioned through the recommendations of this consent.

Landscaping

- 42 Field boundaries in and around the two managers dwellings remains limited to post and wire fencing. It is accepted that this remains an extant consent; however it will be appropriate to review timing in relation to landscaping undertaking, particularly at this exposed corner. Additional conditional control is therefore proposed at this stage in relation to this application to facilitate the associated landscaping to be delivered at an earlier stage and ensure the supplementary planting requirements are also fulfilled.

Response to representations

- 43 Responding to the associated representations received as follows:

- *Application originally supported with five open market dwellings to fund the business model, despite being contrary to planning guidelines. Support for this application would result in a 40% increase to unconnected dwellings.*

There is no net change to dwelling numbers on the ground and the extant consent remains for overall numbers to be developed out. Through the current application, the applicant confirms a commitment to the units being part of the business operation.

- *Significant increase in traffic if the manager's dwellings were no longer tied to the business, having unconnected occupants commuting elsewhere to work and employees commuting to the business.*

No objection. The comments from the representations were fully considered, but it was not assessed that the deletion of this condition would lead to any significant increase in traffic as suggested. Conversely, should the two units be sold on the open market at some point in the future, it was not anticipated to have any perceptible increase from the current amount of motorised vehicular traffic generated by the dwellings remaining as manager's houses.

- *Threat of uncontrolled future expansion.*

The full extents of the development are considered to have been met at this time. Any future expansion would be controlled and assessed through a requirement to obtain planning consent.

- *Lack of natural screening*

There is no disagreement with the observations regarding the lack of natural screening, which is considered and addressed elsewhere within the appraisal and recommended conditions to supplement and reinforce the conditions of the extant consent.

- *Ongoing development fails to comply with suspensive conditions 4,7,8,9,10,11,12 and 15.*

Conditions 4 and 9 have been picked up and reinforced in the recommended conditions of consent through this application.

Condition 7 – this will be picked up separately through the requirement for a CAR licence through SEPA. The requirement for a foul drainage plan was reminded and requested in 2014 in writing via the enforcement monitoring officer. It has been considered appropriate to re-condition this element through any grant of consent.

Condition 8- the Council as Planning Authority wrote out offering a relaxation in relation to this condition in 2014, stating that enforcement of the development phasing will not be pursued through this condition.

Condition 10 and 11 – ongoing as the development is built out and occupied stages.

Condition 12 – ongoing and monitored as part of the wider development.

Condition 15 – the passing places have been agreed and constructed to the standard and specification of the Council as roads authority.

- *Applicability of business plan in today's current financial conditions.*

It is not considered appropriate for the Council as Planning Authority to undertake a full review the overall applicability of the business plan in the wider context of an extant planning consent.

- *How do the planning authority propose to control the abuse of "Building in the Countryside" and all that entails.*

All development proposals continue to be reviewed against the Council's current Housing in the Countryside Policy (RD3) and associated policy of the LDP.

- 44 Overall, I remain satisfied that in granting consent for the removal of a tied occupancy condition to two properties associated with this development will not fundamentally result in any additional impact on existing residential and neighbouring amenity than would be experienced through the extant consent.

Economic Impact

- 45 The removal of the tied occupancy condition to allow for the construction of the two managers dwellings would provide some potential opportunities for local trades and tradesmen to potentially become involved in the construction phase whilst supporting the ongoing viability of this rural business.

Developer Contributions

- 46 As previously set out, the associated legal agreement and original committee report supporting extant planning permission 08/01561/FLM require a review of the position for affordable housing. The requirement for affordable housing, calculated at £3750 per dwelling would continue to apply in this context. There does not appear to be any mitigating circumstances to not apply the relevant policy position in this regard. The applicant and planning agent originally challenged the position regarding this obligation, but have laterally agreed to conclude by means of an upfront payment in advance of planning consent being issued.

LEGAL AGREEMENTS

- 47 In line with the aforementioned, the applicant has not indicated a preference to pursue the contributions to be secured via legal agreement. A modification of the original S.75 agreement may however be required to secure the associated affordable housing contributions if this is not secured as an upfront payment.

DIRECTION BY SCOTTISH MINISTERS

- 48 Under the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, regulations 30 – 33 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

- 49 To conclude, the application must be determined in accordance with the adopted Development Plan unless material considerations indicate otherwise. In this respect, I have taken account of the LDP and material considerations and in this case I am content that the deletion of condition 6 can be supported, provided that the conditional landscaping is planted up at the earliest opportunity and the associated affordable housing contributions are paid or secured. While the Planning Authority preference would be to encourage the two units to have the affordable housing element paid upfront to allow for early issue of the planning decision notice, the applicant has identified a reluctance to do so. In addition, the applicant is also unwilling to enter into a modification of planning obligation or fresh S.75 legal agreement to effectively secure the affordable housing element generated by removal of this condition.

- 50 Accordingly the section 42 application, taking account of the circumstances should be granted as there are material considerations that support the approval of the application.

RECOMMENDATION

A Approve the application

Conditions:

- 1 Prior to the occupation and use of the approved manager's dwellinghouses, the associated approved landscape plan 08/01561/17 shall be implemented.

Reason - In the interests of visual amenity and to ensure the satisfactory implementation of the proposed planting scheme.

- 2 Consistent with conditions 4 and 9 of planning consent 08/01561/FLM, supplementary landscaping planting proposals around the periphery of the site shall be submitted for further written approval of the Planning Authority within 6 months of this Committee decision. The scheme as agreed shall be implemented during the first available planting season thereafter.

Reason - To ensure a satisfactory standard of development and environmental quality and to reserve the rights of the Planning Authority.

- 3 Any planting failing to become established within five years shall be replaced in the following planting season with others of similar size, species and number.

Reason - In the interests of visual amenity and to ensure the satisfactory implementation of the proposed planting scheme.

- 4 A detailed foul drainage plan shall be submitted for the approval of the Planning Authority in consultation with SEPA within 3 months of this Committee decision.

Reason - To ensure the provision of effective drainage for the site.

B JUSTIFICATION

The principle of supporting the removal of condition 6 of planning consent 08/01561/FUL is not considered to conflict with the Development Plan to a level that would warrant refusal of the application and there are associated material considerations, which assist in justifying the removal of this condition.

C PROCEDURAL NOTES

- 1 No consent shall be issued until the payment of a commuted sum towards affordable housing provision of £7500 has been secured through either an upfront payment or a Section 75 Legal Agreement has been agreed between the applicant and the Council.
- 2 Consistent with procedural note 1, the formal planning consent shall not be issued until such time as the required commuted sum for affordable housing has been secured. In the event that the applicant does not a) make the required payment upfront within 14 days of the date of the committee decision or b) complete a legal agreement for its delayed payment within a 4 month period, the application will be refused under delegated powers.

D INFORMATIVES

None.

Background Papers: 2 letters of representation
Contact Officer: Callum Petrie – Ext 75353
Date: 27 January 2017

NICK BRIAN INTERIM HEAD OF PLANNING

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