

TCP/11/16(285)**Planning Application 13/01452/IPL – Erection of a dwellinghouse (in principle), Sand and Gravel Pit, Bishopshall, Kinclaven**

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TCP/11/16(285)

Planning Application 13/01452/IPL – Erection of a dwellinghouse (in principle), Sand and Gravel Pit, Bishophall, Kinclaven

**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 2008

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

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

Use BLOCK CAPITALS if completing in manuscript

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

Yes ☒ No ☐

* Do you agree to correspondence regarding your review being sent by e-mail? ☒ Yes ☐ No

Planning authority

PERTH & KINROSS COUNCIL

Planning authority's application reference number

13/01452/1PL

Site address

Sand & gravel pit, Bishopwall, Kinclaven

Description of proposed development

Erection of house (in principle)

Date of application 8th Aug 2013

Date of decision (if any) 7th Oct 2013

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) ☐
2. Application for planning permission in principle ☒
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) ☐
4. Application for approval of matters specified in conditions ☐

Reasons for seeking review

1. Refusal of application by appointed officer ☒
2. Failure by appointed officer to determine the application within the period allowed for determination of the application ☐
3. Conditions imposed on consent by appointed officer ☐

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 ☐
2. One or more hearing sessions ☐
3. Site inspection ☒
4. Assessment of review documents only, with no further procedure ☐

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 type="checkbox"/> | <input checked="" 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 REFER TO ATTACHED STATEMENT

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

Yes ☐ No ☒

If yes, you should explain in the box below, why you are raising 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.

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.

DOC 1. SUPPORTING PLANNING STATEMENT 30.7.13
 DOC 2. DELEGATED REPORT OF HANDLING - 7.10.13
 DOC 3 DECISION NOTICE 7.10.13
 DOC 4 SITE PLAN (SUBMITTED) 13.8.13
 DOC 5 LOCAL REVIEW STATEMENT 7.11.13

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



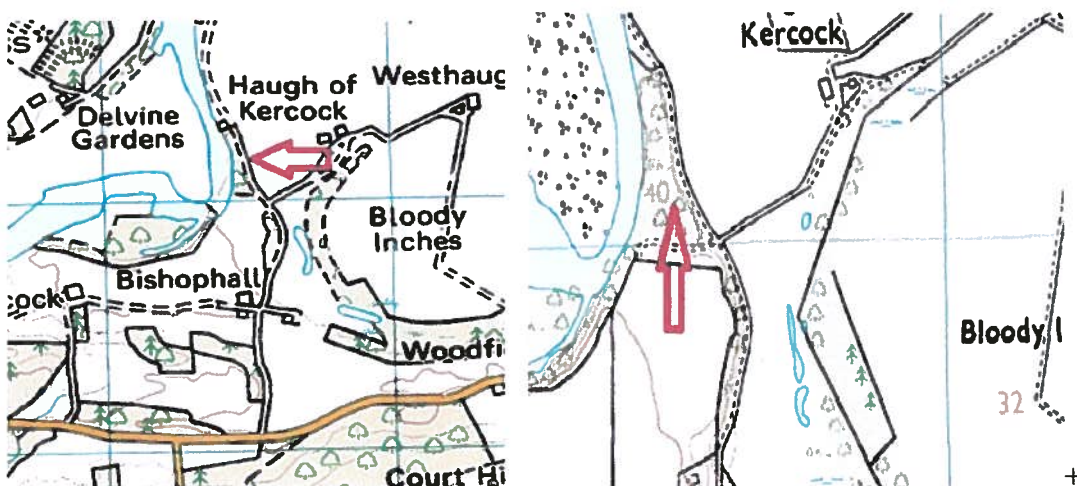
Date

7.11.13

**Supporting Planning Statement
for
Erection of a dwellinghouse at the Sand Pit located approximately 300metres due
north of Bishophall Farmhouse, Ballathie Estate, Kinclaven by Stanley for
Ballathie Estate Limited**

The Site

The site extends to about 1.6 ha and comprises a former sand and gravel pit adjacent to the River Tay within the Kercock area and contained within the Ballathie Estate. The actual site forms part of the an area of higher ground which is topographically distinct from the adjacent low lying and extensive flood plain which follows the course of the river. The former sand pit is enclosed by regenerated trees and shrubs which provide effective visual containment to the site and the surrounding area is also characterised by a patchwork of woodland and open fields. The site is no longer of any commercial or agricultural value and does not contribute in anyway to the effective management of the estate.



The proposed site also lies adjacent to, but outwith the Meikleour Area SSSI and the River Tay SAC which are nature conservation designations relating to the lowland areas alongside the river and to the river itself. The actual site does not form part of any official designation either of nature conservation or landscape interest.

Access to the site is gained via the private unsurfaced estate access road which leads off the Kinclaven to Murthly public road and terminates at the Kercock fishings next to the River Tay. The site is served by a spur which branches off the lower level private access road and rises up to the site allowing for easy vehicular accessibility. The junction with the public road is a typical 'T' arrangement at a point where the public road is straight and where there are no visibility or public safety issues.

The Proposal

Highlights that development plan policies should encourage rehabilitation of brownfield sites in rural areas and defines these as sites that are occupied by redundant or unused buildings or land that has been significantly degraded by a former activity.

The Development Plan

The Development Plan comprises the recently adopted **TAYplan** June 2012 and the Perth Area Local Plan adopted in March 1996 and altered in November 2000.

The **Tayplan** replaces the Tayside Structure Plan (2003) and recognises the importance of sustaining rural economies by allowing some development within rural areas in line with the principles and policies to be identified in the 'Proposed Plan' Local Development Plan (LDP). The current proposal does not raise any 'strategic issues' and sits comfortably with this plan and its aspirations.

The Perth Area Local Plan 1995 applies certain policies which are especially relevant within the Landward Area of the District and applies to the proposed site as follows:

Policy 1 is a 'General Policy' which applies throughout the Landward Area and relates to all new development and seeks to ensure that all new development sites have a good 'landscape fit' and do not raise any visual impact or landscape character issues. It is also a requirement that the site should be easily accessed and serviced.

Policy 19 relates to 'Nature Conservation' stating that the Council do not support development which would damage the integrity of Sites of Scientific Interest, designated Wildlife Trust Sites or other sites of natural history interest.

Policy 32 relates to 'Housing in the Countryside' and lists opportunities for new housing under category headings relating to building groups, infill sites, renovation of abandoned houses, replacement houses, conversion of steadings and operational need. Any new proposal should fall within at least one of these categories. In view of the age of the present Local Plan and to more accurately reflect central government policy which is much more supportive of rural housing, the Council have issued a series of Supplementary Guidance in order to further widen opportunities for rural housing in the District. The most recent revised policy on 'Housing in the Countryside' was approved in November 2012 and is now a material consideration in determining all new developments within rural areas.

Housing in the Countryside policy Supplementary Guide November 2012 follows a similar format to Policy 32, but is much more relaxed in terms of all the individual categories of development where many limitations have been removed or eased. The policy introduces new guidance relating to countryhouse gardens, flood risk, and economic activity together with a completely new category relating to 'brownfield sites' where a former use has been abandoned or buildings removed and where an environmental improvement can be advanced. The new policy encourages redevelopment for small scale housing of up to five units within qualifying brownfield sites and this category of the policy is of particular relevance to our proposal.

Local Development Plan 'Proposed Plan (LDP) approved by the Council in **January 2012** and as stated in the associated written statement under paragraph 3.5 'Residential development' supports the Council's Supplementary policy on 'Housing in the Countryside'. The LDP is intended to replace all five existing Local Plans, but has yet to be adopted and is currently at the 'under examination' stage.

Policy Appraisal

According to Section 25 of the Town and Country Planning (Scotland) 1997 requires that planning applications must be determined in accordance with the Development Plan which includes both the TAYplan and the Perth Area Local Plan (PALP), unless a departure can be justified due to other material considerations such as the recently approved 'Proposed Plan' and any relevant Supplementary Policy Guidance.

The proposal does not raise any issues of strategic significance and presents no conflict with the TAYplan.

In terms of the PALP and in relation to Policy 1, the site is clearly an identifiable site with well defined boundaries comprising mounding and established vegetation. The principal aim of this policy is to ensure that new development sites should have a good 'landscape fit' in order to avoid adverse visual and landscape impact. Early discussions with the Council's planning officials confirmed that the proposed site was a good site in terms of having defined natural boundaries and were satisfied that there would be no adverse visual or landscape impact and that there would as a result be no conflict with Policy 1. In addition, there are no near neighbours to the proposed site and as such it does not raise any residential amenity issues.

As the site lies adjacent to the Meikleour Area SSSI and the River Tay SAC, it does trigger nature conservation issues in regard to Policy 19 which seeks to protect such areas. The special interest with the Meikleour Area SSSI is the greylag goose interest within the lowland grass areas close to the river and the River Tay SAC interest is the salmon and lamprey species within the river system itself. However, the site is at a much higher level to the river and the riverside environs where the protected interests are and would not harm the integrity of these sensitive designations. In addition, no part of the site forms part of the designated areas and is topographically distinct and separate from them. I am satisfied that there is no conflict with Policy 19 which only precludes development which would directly harm their integrity or the protected interests.

Policy 32 in the PALP relates to Housing in the Countryside and identifies various categories such as building groups and infill sites where opportunities for individual new houses are encouraged. However, the policy does not make any allowance for the development of 'brownfield sites' where a new house may be in an isolated position in open countryside. The current proposal would be strictly contrary to this policy which was incorporated in the PALP when it was originally adopted by the Council in 1995, some 18 years ago. However, this policy has since been revised four times since and in its latest form provides more relaxed guidance on Housing in the Countryside and is intended to be more in tune with current Scottish Government policy implicit in SPP and in PAN 72 and 73.

The latest version of the Council's Supplementary Guidance relating to 'Housing in the Countryside' was approved in November 2012 and positively seeks to encourage appropriate housing development within rural areas including open countryside. The policy aims to:

- to safeguard the character of the countryside
- support the viability of communities
- meet development needs in appropriate locations
- ensure that high standards of siting and design are achieved

As with Policy 32 the latest guidance lists various categories of development opportunity in a similar format, but with eased constraints and including additional opportunities in terms of replacing non-domestic buildings, flood risk, country houses and gardens and the introduction of a new category of 'brownfield' site. The policy suggests that to qualify as a brownfield site evidence of former buildings which have since been demolished is one of the requirements highlighted in pre-application discussions. However, this interpretation goes against Scottish Government advice in the SPP which encourages the development of rural brownfield land as defined as '*land where a former activity has ceased and where the land is no longer viable commercially or agriculturally*'. The Scottish Government seek to encourage the efficient use of land as a sustainable resource and highlight the importance of using brownfield land wherever possible rather than developing 'greenfield sites'. The full and effective use of land is an important element of sustainable development; land is a finite resource therefore best use must be made of it. The Council's reliance on defining brownfield sites as only those which formerly had buildings on them, appears a very unreasonable interpretation and inconsistent with the SPP. Numerous brownfield sites never had any buildings and even if they do, the policy implies that all structures must be demolished before the site would qualify as a brownfield opportunity. The key consideration is the efficient use of land and the avoidance of greenfield land in order to safeguard the character of the countryside and to promote the principle of sustainability.



Angus Council also operate a 'brownfield category in their 'Housing in the Countryside' policy and have recently decided in their new emerging Local Development Plan to expand the wording and definitions to allow easier and more consistent interpretation. For example *'the rural brownfield sites category should allow for redevelopment of all redundant brownfield sites. The definition of redundant should be extended to include where it can be demonstrated the site/building has not been in use for some time, or is clearly no longer fit for purpose, or where it can be shown that the former site/building is unsuited to the restructuring needs of the farm or rural business. We also do not consider that it's necessary to place plot size requirements on potential redevelopment opportunities as is currently the case with Schedule 2 in the adopted local plan. Brownfield sites come in many shapes and sizes and placing unnecessary restrictions on plot sizes may prevent opportunities for environmental improvements through enhanced landscaping and planting or other remediation work.'* Stirling Council already operates a wider definition of 'brownfield' land in its 'Housing in the Countryside' policy *'defined as sites that have previously been developed. In rural areas this usually means sites that are occupied by redundant or unused buildings or where the land has been significantly degraded by a former activity.'* It would appear that other neighbouring authorities are more closely applying the principles and aims set down in the SPP and in PAN 72 and 73 in regard to the efficient use of land and principles of sustainability.



The policy also refers to the fact that a site would qualify where dereliction is removed or where an environmental improvement could be advanced. The proposed site was used over many years as a commercial sand pit and former machinery still litters the site, it would clearly be an environmental improvement if the site were to be re-developed as proposed as its present neglected state does not enhance the surroundings or the environment. In addition, the landscaping of the former refuse tip and the removal of any contamination would represent a further significant environmental improvement. The only possible alternative use for the site is residential and although the 'brownfield' category of the policy allows for up to five houses on qualifying sites, the applicant is only seeking one house. The pattern of surrounding development is characterised by single farmhouses dotted among open

fields and woodland and the current proposal is seen as respecting this particular landscape character. The policy also requires that any remedial works should incorporate landscaping which in this case would be an essential element of the proposal to create an attractive setting to the future house. The proposal would comply with the policy in this respect by arresting the dereliction and replacing it with a well designed rural house set within an attractively maintained grounds.

It is an essential requirement of the policy that all brownfield sites should comply with the general siting criteria as listed below:

- it blends sympathetically with the landform
- it uses existing trees, buildings, slopes or other natural features to provide a backdrop
- it uses an identifiable site
- it does not have a detrimental impact on the surrounding landscape

As already outlined under general Policy 1, the site does have a good landscape framework with established vegetation around all boundaries forming a clearly defined site. The actual site boundaries are further re-enforced by raised mounding which further enhances the site containment and enclosure. The proposed development would fit into the site in a sympathetic form and would complement the surroundings rather than detract in any way from them fully in line with policy stipulations. The policy is quite clear in this regard about the type of otherwise inappropriate development which it specifically wishes to discourage which is the wasteful and visually obtrusive sub-division of fields with artificial boundaries and the wasteful and unsustainable use of greenfields. The current proposal is clearly not in this category.

Developer Contributions

The Council's Affordable Housing Guide agreed in August 2007 and updated in January 2010 only applies to sites with five houses and above. As this site involves only one house there would be no affordable housing obligation.

The Council's Primary Education and New Housing Development policy approved in May 2009 and updated in June 2010 would apply, if at the time of the application, the local primary school exceeds the 80% capacity trigger.

Conclusion

The proposal does not raise any strategic issues in terms of the TAYplan and in the context of the PALP, it sits comfortably with both Policy 1 being a well defined site with a good landscape fit and with Policy 19 as not being in conflict with nature conservation issues. Clearly, the proposal does not satisfy the terms of Policy 32 relating to Housing in the Countryside as it does not fit any of the categories listed and is thereby contrary to the PALP. However, the Supplementary Guidance approved in 2012 does allow for rural brownfield sites and the policy does highlight the importance of avoiding new greenfield sites and stresses the concept of sustainability as one of its prime aims. It has been argued that there will be an environmental improvements resulting from the development which will replace

current dereliction and deal with contamination associated with former dumping activities. It is also clear that the choice of site is good in landscape and visual terms and this satisfies the critical locational criteria aimed at avoiding ill defined or greenfield incursions.

The only issue at dispute appears to be the actual definition of what constitutes a brownfield site in the sense that if it did not historically have buildings it does not qualify. I suggest this a very rigid interpretation and goes against the advice in the Scottish Government SPP and also the practice of neighbouring authorities who clearly do not make this unusually inconsistent distinction. Such a strict interpretation also goes against the principles of sustainability and the efficient use of land resources. In times of economic constraint, it is important that local authorities are more flexible in interpreting policy as a stimulus to economic growth. In a UK context it is clear that the government is already trying to ease planning controls on house extensions for instance, primarily as an economic stimulus. It is quite obvious that the site constitutes 'brownfield land' and it is agreed that in both visual and landscape terms the development of the site will not result in any demonstrable harm to the environment or the character of the countryside and is appropriate in its context. In the balance of land use considerations, I would be convinced that the positive aspects significantly outweighs any pedantic consideration on the exact meaning of the otherwise widely accepted definition of 'rural brownfield land'.

Perth and Kinross Council's own web page statement on 'Contaminated Land' recognises the increasing pressure on 'Greenfield sites' and seeks to capitalise on the potential of 'Brownfield sites' and where possible promote the re-development of these sites; this policy statement does not make any distinction other than referring to sites where there could be possible contamination. Clearly, as the proposed site has a long history of tipping, it would fall within this category where possible contamination would be removed and environmental improvements secured through new development.

I would suggest that there are more than sufficient material considerations in favour of the development to enable the local authority to set aside Policy 32 in the PALP and their overly strict and inconsistent interpretation of the term 'brownfield' to allow a departure thereby enabling the proposed development to proceed.

John Culbert
Chartered Town Planner
30/07/13

PERTH AND KINROSS COUNCIL

**ERECTION OF A DWELLING (IN PRINCIPLE) AT SAND AND GRAVEL
PIT, KINCLAVERN**

DELEGATED REPORT OF HANDLING

| | | | | | |
|--|--------------|--------------|-------------|------------------------|----|
| Ref No | 13/01452/IPL | Case Officer | Team Leader | Decision to be Issued? | |
| Ward | 5 Strathtay | | | Yes | No |
| Target | 7 Oct2013 | | | | |
| RECOMMENDATION Refuse the planning application on the grounds that the proposal is contrary to the Development Plan and contrary to the Council's Housing in the Countryside Guide 2012, insofar as the proposal does not comply with any of the acceptable categories of development. | | | | | |

BACKGROUND & DESCRIPTION

The application site relates to 1.6ha of ground which was a former sand and gravel pit. The site is located adjacent to the River Tay at Kerrock, on the Ballathie Estate. The site is elevated, and sits considerably higher than the low lying flood plain of the River Tay to the north. The River Tay is environmentally sensitive and is designated a Special Area of Conservation (SAC) and a Site of Specific Scientific Interest (SSSI).

The site is naturally contained by the slopes of the extraction area which are vegetated by trees and scrubs that have regenerated on the unexcavated slopes. The site is no longer a working pit, and the applicant has indicated that it will not be reopened nor is it capable of any reasonable commercial or agricultural use.

This planning application seeks to obtain a planning in principle consent for the erection of a single dwelling. An indicative design has been submitted which shows a modest, single storey dwelling. Vehicular access to the site will be via an existing, private unsurfaced access road which runs from the Kinclaven-Murthly public road.

APPRAISAL

Policy Background

Sections 25 & 37(2) of the Town & Country Planning (Scotland) Act 1997 (as amended) requires the determination of this planning 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 Perth Area Local Plan 1995 (Incorporating Alteration No1, Housing Land 2000).

Although there are general policies of relevance contained in the Tay Plan, the principal Development Plan policies directly relevant to this proposal are contained in

the adopted Local Plan. Within the Local Plan, the site lies within the landward area of the plan where *Policies 1 (development criteria)*, *19 (nature conservation)* and *Policy 32 (HITCP)* are all directly applicable.

Policy 1 seeks (amongst other things) to ensure that all new sites have a suitable landscape framework and are compatible with exiting land uses, whilst *Policy 19* seeks to ensure that all new developments do not have an adverse impact on areas which are environmentally sensitive. *Policy 32* is the Local Plan version of the HITCP and offers support in principle for new housing in the open countryside in certain instances.

In terms of other material considerations, this principally involves the consideration of other Council policies, namely the approved Developer Contributions 2012 document, the Housing in the Countryside Guide 2012, and the contents of the approved proposed Local Development Plan 2012. The Developer contributions document outlines instances when primary education contributions are required for new housing, whilst the HITCG 2012 is the most recent expression of Council policies towards new housing in the open countryside. In terms of the LDP, within the LDP the site lies within the landward area of the Plan where the plan states that the SPG on HITC is applicable (*Policy RD3*). In addition to this, the LDP also seeks to protect environmentally sensitive areas from inappropriate developments.

Based on the above, I consider the key determining issues for this proposal to ultimately be a) whether or not the proposal has a good (suitable), existing landscape framework and is compatible with the existing, surrounding land uses and b) whether or not the proposal is acceptable in land use terms, bearing in mind the provisions of the Development Plan.

Landscape / Compatibility Issues

Policy 1 of the PALP seeks (amongst other things) to ensure that all new sites within the landward area have a suitable landscape framework which is capable of absorbing the development proposed, and that the proposed development is compatible with existing land uses. In terms of the compatibility with surrounding, existing land uses, I have no particular concerns. Although there are non-residential uses in the immediate area (fishing and agriculture), both these existing uses are perfectly compatible with a residential use.

In terms of the existing landscape framework of the site, the site is essentially the area of extraction which is set within a backdrop of the slopes of the unexcavated land. Whilst the site's landscape framework has been man-made, it has nevertheless been in situ for sometime and creates a well-defined and suitably contained area for development. To this end, I consider the site in landscape terms, to be suitable for development.

Land Use Acceptability

The acceptability of the proposal in land use terms, is ultimately an assessment of the proposal against the Council's HITCPs as contained firstly in the Local Plan and secondly the revised version of 2012. As the proposal is not a replacement of an existing house, a conversion of an existing traditional non-domestic building, the replacement of redundant, traditional non-domestic building, or a house needed for operational need the only section of *Policy 32* which the proposal can logically be assessed against is building groups. However, as the site is isolated and

divorced from any existing buildings, I consider the proposal not be part of an existing building group, and to this end the proposal is contrary to *Policy 32*.

However, under the terms of HITCG 2012 support is offered in principle for new residential development on former 'brownfield sites', where dereliction will be removed and where there will be an environmental improvement. Although the Council does not have a specific definition of what a 'brownfield site' is, it is generally accepted that a 'brownfield site' is often defined as a site which has had a former use which is now redundant or extinct. To this end, there is no doubt that in general land use terms, a quarry or extraction pit (such as this site) - which has had a former use that is now no longer active - could be described as a 'brownfield site'.

However, in terms of the implementation of the HITCG 2012 policy, the first paragraph of the policy specifically relates to sites which were 'formerly occupied' by buildings, which, in my view implies that the types of sites which the policy is aiming to promote for potential development are sites which were formerly occupied by buildings, and not necessary sites which have had a former use. This interpretation of a 'brownfield site' is obviously more restrictive than just considering all sites which had a former use, and for quarries and extraction sites where the developable site (i.e. the area of extraction) would never have been occupied by buildings of any size or permanent ability, it raises conflict with the aims of the 2012 HITCG.

I do have some sympathy for the applicant insofar as the site is well defined, well suited for new development and would probably result in an environmental improvement with suitable domestic landscaping introduced, however I find it very difficult to ignore the reference to 'former buildings' which is clearly in the text of policy. To this end, and in the absence of any former buildings being on the site, I consider the proposal to be contrary to the requirements of the 2012 HITCG.

Other Material Issues

Turning to other material considerations these include road related matters, nature conservation, contaminated land issues and consideration of the Council's approved Developer Contributions document.

Roads Issues

In terms road and pedestrian safety, subject to appropriate conditions I note my Transport Planning colleagues have raised no particular issue with the proposal, and I have no reason to offer a different view.

Impact on Environmental Issues

The site is adjacent to the River Tay, which is environmentally sensitive and has a number of designations attached to it. SNH have raised some concerns regarding drainage matters, however subject to appropriate drainage arrangements and conditions these concerns could be adequately overcome.

Education Contributions

In terms of the approved Developer Contributions document, financial contributions are presently being sought for new housing within the school catchment of areas operating at over 80% capacity. As this is a planning in principle application, full

consideration of the need for an education contribution will be made at the time when a detailed planning application is submitted.

Contaminated Land

Taking on board the former use of the site, it is recommended that further investigation into ground contamination takes place - if a consent is forthcoming. This can be suitably controlled via a condition.

Conclusion

On balance, the restrictive wording of the HITG 2012 in relation to the need for acceptable brownfield sites to have previously been occupied by building, renders the proposal unacceptable, even though in landscape (and visual) terms the proposal may otherwise be acceptable.

DEVELOPMENT PLAN

The Development Plan for the area comprises the approved Tay Plan 2012 and the adopted Perth Area Local Plan 1995 (Incorporating Alteration No 1, Housing Land 2000). As there are no specific policies of relevance contained in the Tay Plan which are directly relevant to this proposal, the key development plan policies are contained in the relevant Local Plan, which is the Perth Area Local Plan 1995 (Incorporating Alteration No1, Housing Land 2000).

Perth Area Local Plan 1995 (Incorporating Alteration No1, Housing Land 2000)

Policy 1 (Development Criteria) states that all developments within the landward area will be judged against the following criteria (amongst other things)

- (a) The sites should have a landscape framework capable of absorbing or, if necessary, screening the development and where required opportunities for landscape enhancement will be sought;
- (b) In the case of built development, regard should be had to the scale, form, colour, and density of existing development within the locality;
- (c) The development should be compatible with its surroundings in land use terms and should not result in a significant loss of amenity to the local community;
- (d) The road network should be capable of absorbing the additional traffic generated by the development and a satisfactory access onto that network provided;

Policy 19 (Nature Conservation) seeks to protect existing areas of nature conservation from inappropriate new developments.

Policy 32 (Housing in the Countryside) is the local plan version of the HITCP and offers scope for new housing in the open countryside, subject to the proposals falling within certain categories.

OTHER COUNCIL POLICIES

Housing in the Countryside Guide 2012

This policy was the most recent expression of Council policy towards new housing in the open countryside when the planning application was submitted, and is applicable across the entire landward area of Perth & Kinross. This policy offers a more up to date expression of Council Policy towards housing in the countryside to that contained the Local Plans and recognises that most new housing will continue to be in or adjacent to existing settlements, and states that the Council will support proposals for the erection of single houses in the countryside which fall into certain specified categories.

Developer Contributions 2012

This guidance sets out (amongst other things) the basis on which Perth and Kinross Council will seek to secure contributions from developers of new homes towards the cost of meeting primary education infrastructure improvements necessary as a consequence of development. All new housing from the date of adoption including those on sites identified in adopted Local Plans will have the policy applied.

Proposed LDP 2012

Within the proposal LDP, the site lies within the landward area of the Plan where the SPG on HITC is applicable. The most recent version of the HITC policy is the Housing in the Countryside Guide 2012. In addition to this, the LDP also seeks to protect existing environmental sites from inappropriate developments.

NATIONAL PLANNING GUIDANCE

The Scottish Government expresses its planning policies through the National Planning Framework 1 & 2, the Scottish Planning Policy (SPP), Scottish Historic Environment Policy (SHEP), Planning Advice Notes (PAN), Designing Places, Designing Streets, and a series of Circulars. Of relevance to this application are,

Scottish Planning Policy (2010)

The Scottish Government's planning policies are set out in the National Planning Framework, this SPP, Designing Places, Designing Streets and Circulars. This SPP is a statement of Scottish Government policy on land use planning and contains:

- the Scottish Government's view of the purpose of planning,
- the core principles for the operation of the system and the objectives for key parts of the system,
- statutory guidance on sustainable development and planning under Section 3E of the Planning etc. (Scotland) Act 2006,
- concise subject planning policies, including the implications for development planning and development management, and
- the Scottish Government's expectations of the intended outcomes of the planning system.

Of relevance to this application are paragraphs 92-96 which relates to Rural Developments.

SITE HISTORY

None specifically relevant to this proposal.

PKC CONSULTATIONS

Transport Planning have commented on the planning application and have raised no objections, subject to conditions.

EXTERNAL CONSULTATIONS

Scottish Water have commented on the planning application and have raised no objection.

SNH have commented on the planning application and raised no objections.

SEPA have commented on the planning application and raised no objections.

REPRESENTATIONS RECEIVED

One letter of representation has been received objecting to the proposal. The main issues raised by the objector are,

- Proposal is contrary to the Development Plan
- Proposal is contrary to the HITCG 2012
- Proposal is contrary to the Local Development Plan 2012
- Proposal will have an adverse impact on the SAC and SSSI associated with the River Tay.

These issues are addressed in the main section of the report.

ADDITIONAL STATEMENTS

| | |
|--|------------------------------|
| Environment Statement | Not required |
| Screening Opinion | Not required |
| Environmental Impact Assessment | Not required |
| Appropriate Assessment | Carried Out by the Council |
| Design Statement / Design and Access Statement | Planning Statement Submitted |
| Report on Impact or Potential Impact | None |

PUBLICITY UNDERTAKEN

The application was advertised in the local press on the 23 July 2013.

LEGAL AGREEMENTS REQUIRED

None required.

DIRECTION BY SCOTTISH MINISTERS

None applicable to this proposal.

ECONOMIC BENEFIT IMPACTS(S)

With the exception of the construction element, which may or may not be undertaken by local tradesmen, this development is unlikely to have a significant economic impact on the local area – either positively or negatively.

RECOMMENDED REASON FOR REFUSAL

As the site is not part of an existing group of buildings or was formerly occupied by buildings, the proposal is contrary to Policy 32 of the Perth Area Local Plan 1995 (Incorporating Alteration No1, Housing Land 2000), the Council's Housing in the Countryside Guide 2012 and Policy RD3 of the proposed Local Development Plan 2012, all of which seek to ensure that all new proposals for housing in the open countryside meet with specific criteria.

JUSTIFICATION

The proposal is not in accordance with the Development Plan and there are no other material issues which justify approving the planning application.

INFORMATIVES

None

PROCEDURAL NOTES

None.

REFUSED PLANS

13/01452/1- 13/01452/4(inclusive)

PERTH AND KINROSS COUNCIL

Ballathie Estate Limited
c/o John Culbert
Tay Farmhouse
Meikleour
Perth
PH2 6EE

Pullar House
35 Kinnoull Street
PERTH
PH1 5GD

Date 7th October 2013

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT

Application Number: **13/01452/IPL**

I am directed by the Planning Authority under the Town and Country Planning (Scotland) Acts currently in force, to refuse your application registered on 8th August 2013 for permission for **Erection of a dwellinghouse (in principle) Sand And Gravel Pit Bishophall Kinclaven** for the reasons undernoted.

Development Quality Manager

Reasons for Refusal

1. As the site is not part of an existing group of buildings or was formerly occupied by buildings, the proposal is contrary to Policy 32 of the Perth Area Local Plan 1995 (Incorporating Alteration No1, Housing Land 2000), the Council's Housing in the Countryside Guide 2012 and Policy RD3 of the proposed Local Development Plan 2012, all of which seek to ensure that all new proposals for housing in the open countryside meet with specific criteria.

Justification

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

Notes

The plans relating to this decision are listed below and are displayed on Perth and Kinross Council's website at www.pkc.gov.uk "Online Planning Applications" page

Plan Reference

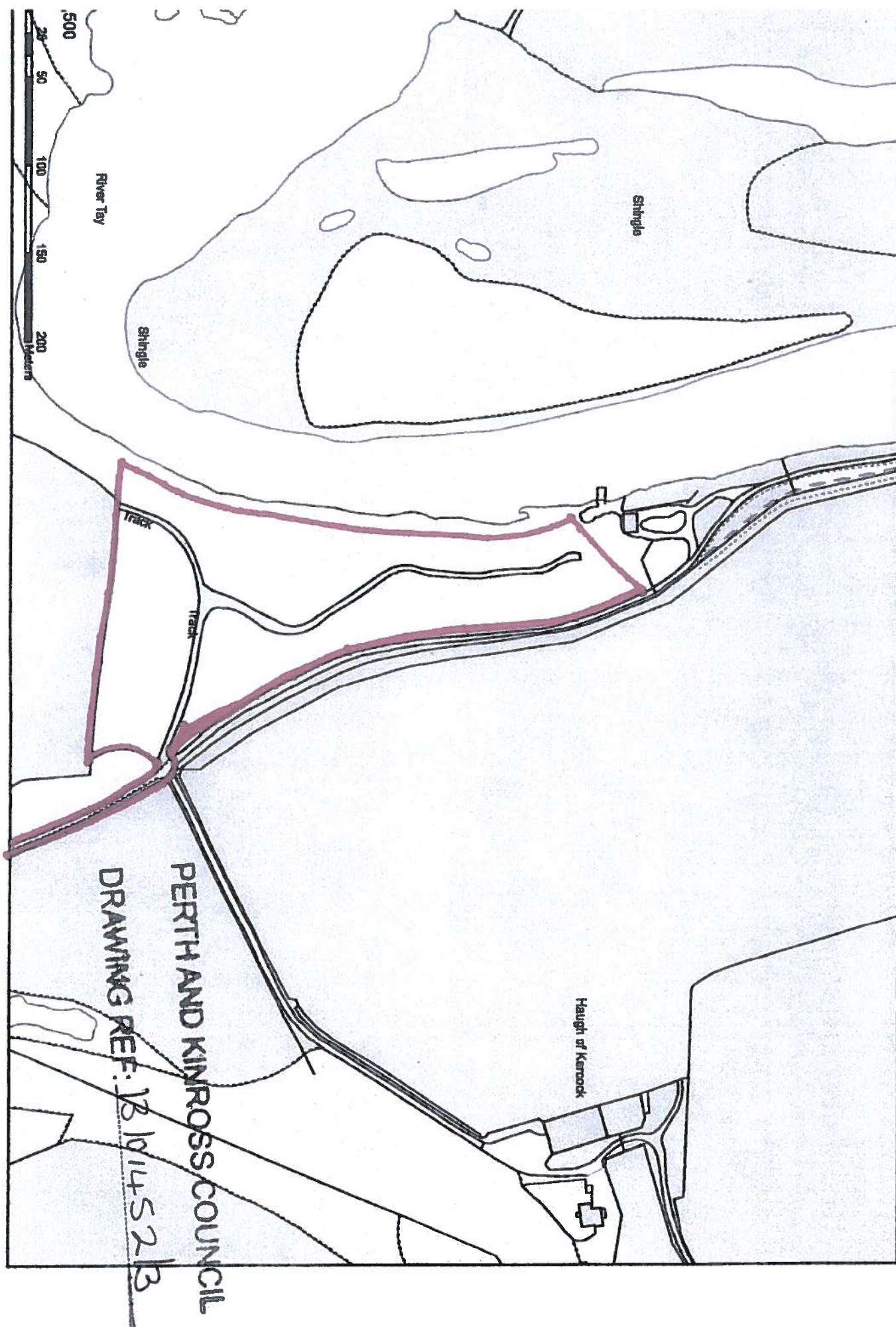
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13/01452/3

13/01452/4

DOH.



Local Review Statement

Erection of dwellinghouse at Sand and Gravel Pit Bishophall Kinclaven



John Culbert
Chartered Town Planner
7 November 2013

Introduction

This statement should be read in conjunction with the 'Supporting Statement' lodged with the application which provides the detailed background in terms of the site its location, history and provides a comprehensive outline of the Development Plan background. I intend to concentrate on the case officer's delegated report picking out the positives and any negative comment and concentrate on the reason for refusal issued on the 7th October 2013 which reads as follows:

'As the site is not part of an existing group of buildings or was formerly occupied by buildings, the proposal is contrary to Policy 32 of the Perth Area Local Plan 1995 (Incorporating Alteration No1, Housing Land 2000), the Council's Housing in the Countryside Guide 2012 and Policy RD3 of the proposed Local Development Plan 2012, all of which seek to ensure that all new proposals for housing in the open countryside meet with specific criteria.'

Delegated Report

The delegated report assesses the proposal against the Development Plan, in this case the Perth Area Local Plan 1995 (PALP) and in particular the Council's Housing in the Countryside Guide 2012 (HITCG) now incorporated into the emerging Local Development Plan (LDP). It is worth considering the train of thought through this assessment where the case officer makes the following statements and conclusions:

- In terms of Policy 1 in the PALP in regard to landscape and compatibility issues the case officer comments that: *'Whilst the site's landscape framework has been man made, it has nevertheless been in situ for sometime and creates a well defined and suitably contained area for development.'* He continues by concluding that: *'the site in landscape (and visual) terms is suitable for development'*. In terms of compatibility with existing surrounding existing land uses, the case officer states that he has *'no particular concern'* as fishing and agriculture are considered to be perfectly compatible with a residential use. It must be accepted therefore that there is no conflict with Policy 1.
- In regard to Policy 19 in the PALP which relates to the protection of nature conservation interests, the case officer has confirmed that SNH has no objections to the proposals on natural heritage grounds. Again no conflict with Policy 19
- Policy 32 in the PALP relates to new Housing in the Countryside and it is confirmed that the proposal is contrary to this policy, as it is an isolated site and not part of any building group. However, it had been argued in the 'Supporting Statement' that this was in fact a 'brownfield site' and the case officer confirmed that the HITCG 2012 offered support in principle for new residential development on 'rural brownfield sites'. The case officer admits that: *'although the Council does not have a specific definition of what a*

'brownfield site' is, it is generally accepted that a 'brownfield site' is often defined as a site which has had a former use which is now redundant or extinct. To this end, there is no doubt that in general land use terms, a quarry or extraction pit (such as this site) - which has had a former use that is now no longer active could be described as a 'brownfield site'.

- The case officer also concludes that *'the proposed development would result in an environmental improvement with suitable domestic landscaping introduced'*. A key requirement of HITCG 2012.
- However, in terms of the implementation of the HITCG 2102 where it relates to rural brownfield sites it is a requirement that sites should have formerly been occupied by buildings which the case officer admits is a very restrictive interpretation and in his own words *'raises a conflict with the aims of the HITCG 2012'* It is this very narrow interpretation of wording which has been the singular basis for the reason given for refusal.
- As it is an application in principle, consideration of the need for an education contribution under the Council's approved Developer Contributions Policy would be undertaken at the time when a reserved matters application were to be submitted.
- The case officer finally confirms that there are no technical issues in relation to Roads, Nature Conservation and contaminated land which would preclude the granting of planning consent.

It is telling that the case officer does comment in his report that: *'the site is well defined, well suited for new development and would result in an environmental improvement'*. The case officer does sympathise with the applicant and the report tends to read to some extent like an apology for the final choice of decision, which is based entirely on a form of words in one of the four criteria applicable to 'rural brownfield sites' under category 6 in the HITCG 2012. In the interests of clarity, it is worth quoting this policy as follows as it constitutes the sole basis for this decision:

- *Redevelopment for small scale housing of brownfield land which was formerly occupied by buildings may be acceptable where,*
- *It would remove dereliction or result in a significant environmental improvement.*
- *There are no other pressing requirements for other uses such as business or tourism on the site.*
- *Development must comply with the criteria set out for 'All Proposals' section of the policy ie; the site should have a good landscape framework and should not raise visual or landscape issues.*

It is quite clear that the proposal complies with all these criteria, but falls simply because of four words *'formerly occupied by buildings'* irrespective of the fact that it

is acknowledged by the case officer as a 'brownfield site' ideally suited to development in every other respect. Clearly, the applicant feels very aggrieved at this overly restrictive interpretation of policy.

Appraisal of reason for refusal

It is quite obvious that the only basis of this refusal decision is centred on the form of words used in the HITCG 2012 to define a 'rural brownfield site'. To understand this unusually restrictive definition which is at variance with both National policy and that applied by many other Scottish local authorities, it is important to understand its origins. As the PALP 1995 and the relevant Policy 32 'Housing in the Countryside' now some eighteen years old was increasingly at variance with Scottish Government advice which was then promoting a much more relaxed approach to new housing in rural areas; the Council introduced new supplementary guidance on Housing in the Countryside. To date several individual versions. The 2005 version of the policy was the first to introduce a new category of 'brownfield sites' which had ceased to be required for an existing use together with a separate category which allowed for the replacement of former steading buildings.

However, the experience with the combination of these two categories resulted in the replacement of former steadings and associated hard standings (yards) with suburban type housing. One case in mind was Gourdie Farm near Stanley, where a traditional farm building group comprising the farmhouse and associated steading was replaced under these policy criteria with a suburban type layout of two storey detached houses which bore no relationship to the rural setting and attracted a justifiable public outcry. It was following this and other similar experiences that the policy was re-visited in 2009, introducing the term 'rural brownfield sites' and the hence the policy re-wording now repeated in the latest HITCG 2012. However, it seems unfair that a site such as the current proposal should subsequently have been penalised as a direct result of this reaction, even though by virtue of its size and location it is only suited for a single house and not to be confused with the controversial suburban layouts which had sparked the change in the first place.

However, it now appears that the 'rural brownfield' policy (category 6) has gone from one extreme to another. I would have thought that category 5 in the policy which relates to the replacement of non-domestic buildings would have provided sufficient protection for the retention and conversion of traditional steading buildings without the need for the re-wording. Uniquely, the policy now excludes all sites with or without evidence of buildings and only allows development on sites with an historical record of buildings, previously removed. The revision to purposefully exclude land, and land with buildings, was intended as a broad brush measure to discourage further applications for large scale housing. In practice, it is a catch 22, where in order to gain consent a developer has to demolish the buildings first before it can qualify as a 'rural brownfield site', but then with any possible dereliction removed, it is very difficult to argue a 'significant environmental improvement' once the site is cleared, which is another essential requirement of the policy.

A particular case before the Review Body earlier this year under 12/01353/FLL at Deuglie Farm Glenfarg illustrates the above scenario, where the applicant wished to

erect a house on the site of a former ruinous building, but the planners did not recognise it as a rural brownfield site and felt that once the site were cleared it would not result in any significant environmental improvement. However, the Review Body did see it differently as qualifying as a rural brownfield site and approved the application which demonstrated flexibility over an otherwise dogmatic approach.

The HITCG's definition of 'brownfield land' is inconsistent with the definition of 'brownfield land' in the LDP glossary. The former excludes land occupied by redundant buildings and also land which has been degraded by a former use, while the LDP glossary includes land with buildings and also includes land such as the proposed site which has been degraded by a former activity and where environmental improvements can be obtained. The result of this inconsistency is the fact that rural 'brownfield sites' under the HITCG are classed and considered differently to 'brownfield sites' within settlements under the LDP.

Glossary definition of 'brownfield land' (Section 10.4) in LDP is identical to the SPP definition as follows:

'Land which has previously been developed. The term may cover vacant or derelict land, land occupied by redundant or unused buildings and developed land within the settlement boundary where further intensification of use is considered acceptable.'

The exclusion of vacant or derelict land which had previously been developed from the 'rural brownfield' category is also inconsistent with the aims of the HITCG itself which seeks to encourage sustainable development within rural areas. The re-use of vacant and derelict land contributes to regeneration and renewal and reduces the pressure for development on 'Greenfield sites'. The case officer also recognises this inconsistency and comments in his report that the overly restrictive definition in Category 6 works against the aims of the policy document itself. The case officer does recognise the site as a 'brownfield, opportunity, ideally suited to the proposed development in both landscape and visual terms and does acknowledge that a positive environmental improvement would be obtained as a direct result, but is obstructed by the very dogmatic wording in the policy. The prime aim of the HITCG is to direct development to such appropriate sites in the interests of sustainability, but the form of words in Category 6 precludes this worthy objective and is inconsistent with national aspirations. The Scottish Government in the SPP actively promote the efficient use of land and the avoidance of 'Greenfield sites' in the interests of sustainability as follows:

'Planning authorities should promote the efficient use of land and buildings, directing development towards sites within existing settlements where possible to make effective use of existing infrastructure and service capacity and to reduce energy consumption. Redevelopment of urban and rural brownfield sites is preferred to development on greenfield sites. When housing, planning authorities and developers should consider the reuse of previously developed land before development on greenfield sites.' (Scottish Government SPP 'Housing' paragraph 80)

It is apparent that the exclusion from the policy of rural brownfield sites which have been degraded by a former activity and of no agricultural value is contrary to the aims of the HITCG and inconsistent with the SPP.

In my experience, judgements on planning applications should be a balance of all the material considerations, both positive and negative and if a site, in the balance of all these varied considerations appears to be ideally suited to development and 'no demonstrable harm' would ensue as a direct result, then common sense should prevail over dogma. It is hard to find applications which tick each and every box, as at the end of the day it has to be a balanced objective judgement.

The HITCG 2012 in section 3 encourages new houses in open countryside under various categories which among others includes under 3.4 'Houses for Local People' and 3.5 'Pilot projects creating eco-friendly houses'. Both categories are subject to the siting criteria applicable to 'All Proposals'. The application under review meets all the siting criteria and this has not been contested. An applicant is required to live within the local area for at least three years and be inadequately housed, such a person would qualify under this category for a house on this site. However, the estate owner who has lived within the area for more than ten years and who has done so much to improve and develop the estate, does not qualify. Although this is an outline application, for all we know a future house might well end up being a so called 'eco-friendly house'. The current trend with soaring energy costs is to incorporate the full range of energy saving devices such as solar panels, ground source heat pumps, triple glazing and technically advanced insulation as standard necessities now commonplace in the majority of new houses today.

Third Party Objection

One objection was received in response to this application from a neighbouring fishing interest at the Kercock salmon beat who also share the use of the private access road. The grounds of objection raise the following issues:

- Development is contrary to Development Plan, HITCG 20122 and the LDP.
- Adverse impact on the SAC and SSSI associated with the River Tay.

The first issue has been argued above and in regard to the second point, SNH have confirmed in their consultation response that they have no objections on nature conservation grounds. The objector also suggests the inclusion of various standard conditions reference siting, single storey construction, ground contamination and drainage in the event of consent being granted.

Conclusion

This Notice of Review seeks consent to erect one house on a clearly defined brownfield site which comprises a former sand pit, where the introduction of fresh landscaping would achieve a significant environmental improvement. The proposal would also deal with any possible ground contamination associated with former tipping which would be in the interests of public safety. The development of one house on this site would not prejudice the objectives of the HITCG 2012 as it would

complete the opportunities for development at this location and is a sustainable form of development.

The site benefits from a strong and robust landscape framework, the development will not impact on the amenity of other properties and suitable access to the public road can be provided. It is accepted that the proposal complies with Policy 1 in the PALP and also all the siting criteria under 'All Proposals' in the HITCG and the case officer fully acknowledges that the proposal raises no landscape or visual issues. The proposal is also compliant with Policy 19 relating to Nature Conservation and this is confirmed by SNH.

Although contrary to Policy 32 'Housing in the Countryside', the proposal is compliant with the Supplementary guidance in the HITCG 2012 under category 6 'rural brownfield sites'. The case officer acknowledges that it is a brownfield site with no other possible alternative use, recognises that a significant environmental improvement will result and sees no conflict with the essential siting requirements applicable to 'All Proposals'. The case officer also acknowledges the conflict between the form of words used in defining 'rural brownfield sites' with the aims of the policy in promoting sustainable development. However as highlighted above, it is considered that there are sufficient and justifiable positive reasons for allowing the application as it is consistent with the key policy considerations.

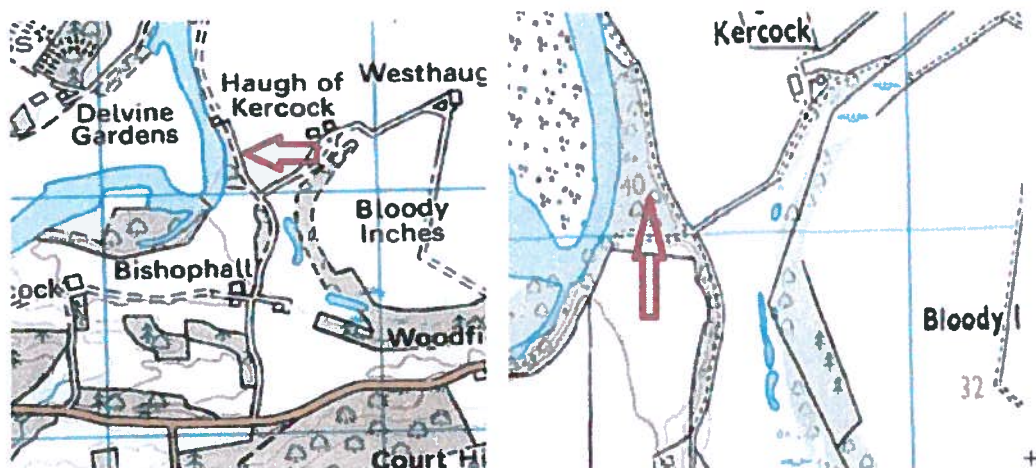
There are no other technical difficulties or infrastructure issues raised by this proposal and only one objection was lodged which simply seeks assurance that planning conditions would be included to ensure that the proposed development is appropriate to the site and its surroundings.

We therefore respectfully request that this Notice of Review is approved as being compatible in the balance of considerations with Category 6 of the HITCG and as a justifiable departure to policy 32 of the PALP, subject to any conditions that may be considered necessary by the Local Review Body.

**Supporting Planning Statement
for
Erection of a dwellinghouse at the Sand Pit located approximately 300metres due
north of Bishophall Farmhouse, Ballathie Estate, Kinclaven by Stanley for
Ballathie Estate Limited**

The Site

The site extends to about 1.6 ha and comprises a former sand and gravel pit adjacent to the River Tay within the Kercock area and contained within the Ballathie Estate. The actual site forms part of the an area of higher ground which is topographically distinct from the adjacent low lying and extensive flood plain which follows the course of the river. The former sand pit is enclosed by regenerated trees and shrubs which provide effective visual containment to the site and the surrounding area is also characterised by a patchwork of woodland and open fields. The site is no longer of any commercial or agricultural value and does not contribute in anyway to the effective management of the estate.



The proposed site also lies adjacent to, but outwith the Meikleour Area SSSI and the River Tay SAC which are nature conservation designations relating to the lowland areas alongside the river and to the river itself. The actual site does not form part of any official designation either of nature conservation or landscape interest.

Access to the site is gained via the private unsurfaced estate access road which leads off the Kinclaven to Murthly public road and terminates at the Kercock fishings next to the River Tay. The site is served by a spur which branches off the lower level private access road and rises up to the site allowing for easy vehicular accessibility. The junction with the public road is a typical 'T' arrangement at a point where the public road is straight and where there are no visibility or public safety issues.

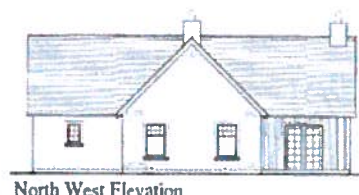
The Proposal

PERTH AND KINROSS COUNCIL

DRAWING REF: 13/01452/5

The application is in outline, but the intention is to develop the site for a single storey house based on simple rural design proportions and utilising traditional external finishes to reflect the local vernacular. The house would be set into the site which although it is at a significantly higher level in comparison to the adjacent floodplain, does benefit from the fact that it is sunken in profile with mounds and established landscaping around the boundaries providing effective screening to any new house.

The design of the proposed house would be similar to the sample sketch elevations depicted below of a house recently approved on a nearby site under 10/01285/FLL at Boatlands, also on the Ballathie estate.



Site History

The use of the site for sand and gravel extraction dates back to the late 1930's and the use continued up until 1970, when extraction operations ceased and the site became redundant and surplus to estate requirements. The southern end of the site has also been partially infilled with the periodic disposal of estate refuse over many years. The only function the site has at present is as an alternative access to fields beyond, while the site itself is unfit for purpose and of no other value to the management of the estate. Evidence of the former use is clearly visible in the aerial photograph below.



Pre-application Discussions

I have had pre-application discussions with the Planning Service and was advised that the site in both landscape and visual terms was well defined by existing vegetation around all its boundaries providing effective screening and containment. However, it was suggested that in terms of qualifying as a 'brownfield site' in strictly policy terms there should be evidence of former buildings on the site.

The Scottish Planning Policy 2010

This **SPP** is a statement of Scottish Government policy on land use planning and of particular relevance are paragraphs 92-97 relating to 'Rural Development' where the stated aims are as follows:

- The planning system has a significant role in supporting sustainable economic growth in rural areas. The aim is to enable development in all rural areas which supports prosperous and sustainable communities whilst protecting and enhancing environmental quality.
- The strategy for rural development set out in the development plan should respond to the specific circumstances in an area whilst reflecting the overarching aim of supporting diversification and growth of the rural economy.
- Development plans should support more opportunities for small scale housing development.
- Development on prime agricultural land should not be permitted unless it is an essential component of the settlement strategy or is necessary to meet an established need, for example for major infrastructure development, where no other suitable site is available.
- Planning authorities should promote the efficient use of land and buildings, directing development towards sites within existing settlements where possible to make effective use of existing infrastructure and service capacity and to reduce energy consumption. Redevelopment of urban and rural brownfield sites is preferred to development on greenfield sites. When identifying locations for housing, planning authorities and developers should consider the reuse of previously developed land before development on greenfield site.

Planning Advice Note 72 – Housing in the Countryside

The advice in this PAN sets out key design principles which need to be taken into account by applicants when planning a new development and by planning authorities, when preparing development plans and supporting guidance, and determining applications. The purpose is to create more opportunities for good quality rural housing which respects Scottish landscapes and building traditions. The advice should not, however, be seen as a constraint on architects and designers wishing to pursue innovative and carefully considered contemporary designs.

Planning Advice Note 73 Rural Diversification

Highlights that development plan policies should encourage rehabilitation of brownfield sites in rural areas and defines these as sites that are occupied by redundant or unused buildings or land that has been significantly degraded by a former activity.

The Development Plan

The Development Plan comprises the recently adopted **TAYplan** June 2012 and the Perth Area Local Plan adopted in March 1996 and altered in November 2000.

The **Tayplan** replaces the Tayside Structure Plan (2003) and recognises the importance of sustaining rural economies by allowing some development within rural areas in line with the principles and policies to be identified in the 'Proposed Plan' Local Development Plan (LDP). The current proposal does not raise any 'strategic issues' and sits comfortably with this plan and its aspirations.

The Perth Area Local Plan 1995 applies certain policies which are especially relevant within the Landward Area of the District and applies to the proposed site as follows:

Policy 1 is a 'General Policy' which applies throughout the Landward Area and relates to all new development and seeks to ensure that all new development sites have a good 'landscape fit' and do not raise any visual impact or landscape character issues. It is also a requirement that the site should be easily accessed and serviced.

Policy 19 relates to 'Nature Conservation' stating that the Council do not support development which would damage the integrity of Sites of Scientific Interest, designated Wildlife Trust Sites or other sites of natural history interest.

Policy 32 relates to 'Housing in the Countryside' and lists opportunities for new housing under category headings relating to building groups, infill sites, renovation of abandoned houses, replacement houses, conversion of steadings and operational need. Any new proposal should fall within at least one of these categories. In view of the age of the present Local Plan and to more accurately reflect central government policy which is much more supportive of rural housing, the Council have issued a series of Supplementary Guidance in order to further widen opportunities for rural housing in the District. The most recent revised policy on 'Housing in the Countryside' was approved in November 2012 and is now a material consideration in determining all new developments within rural areas.

Housing in the Countryside policy Supplementary Guide November 2012 follows a similar format to Policy 32, but is much more relaxed in terms of all the individual categories of development where many limitations have been removed or eased. The policy introduces new guidance relating to countryhouse gardens, flood risk, and economic activity together with a completely new category relating to 'brownfield sites' where a former use has been abandoned or buildings removed and where an environmental improvement can be advanced. The new policy encourages redevelopment for small scale housing of up to five units within qualifying brownfield sites and this category of the policy is of particular relevance to our proposal.

Local Development Plan 'Proposed Plan (LDP) approved by the Council in **January 2012** and as stated in the associated written statement under paragraph 3.5 'Residential development' supports the Council's Supplementary policy on 'Housing in the Countryside'. The LDP is intended to replace all five existing Local Plans, but has yet to be adopted and is currently at the 'under examination' stage.

Policy Appraisal

According to Section 25 of the Town and Country Planning (Scotland) 1997 requires that planning applications must be determined in accordance with the Development Plan which includes both the TAYplan and the Perth Area Local Plan (PALP), unless a departure can be justified due to other material considerations such as the recently approved 'Proposed Plan' and any relevant Supplementary Policy Guidance.

The proposal does not raise any issues of strategic significance and presents no conflict with the TAYplan.

In terms of the PALP and in relation to Policy 1, the site is clearly an identifiable site with well defined boundaries comprising mounding and established vegetation. The principal aim of this policy is to ensure that new development sites should have a good 'landscape fit' in order to avoid adverse visual and landscape impact. Early discussions with the Council's planning officials confirmed that the proposed site was a good site in terms of having defined natural boundaries and were satisfied that there would be no adverse visual or landscape impact and that there would as a result be no conflict with Policy 1. In addition, there are no near neighbours to the proposed site and as such it does not raise any residential amenity issues.

As the site lies adjacent to the Meikleour Area SSSI and the River Tay SAC, it does trigger nature conservation issues in regard to Policy 19 which seeks to protect such areas. The special interest with the Meikleour Area SSSI is the greylag goose interest within the lowland grass areas close to the river and the River Tay SAC interest is the salmon and lamprey species within the river system itself. However, the site is at a much higher level to the river and the riverside environs where the protected interests are and would not harm the integrity of these sensitive designations. In addition, no part of the site forms part of the designated areas and is topographically distinct and separate from them. I am satisfied that there is no conflict with Policy 19 which only precludes development which would directly harm their integrity or the protected interests.

Policy 32 in the PALP relates to Housing in the Countryside and identifies various categories such as building groups and infill sites where opportunities for individual new houses are encouraged. However, the policy does not make any allowance for the development of 'brownfield sites' where a new house may be in an isolated position in open countryside. The current proposal would be strictly contrary to this policy which was incorporated in the PALP when it was originally adopted by the Council in 1995, some 18 years ago. However, this policy has since been revised four times since and in its latest form provides more relaxed guidance on Housing in the Countryside and is intended to be more in tune with current Scottish Government policy implicit in SPP and in PAN 72 and 73.

The latest version of the Council's Supplementary Guidance relating to 'Housing in the Countryside' was approved in November 2012 and positively seeks to encourage appropriate housing development within rural areas including open countryside. The policy aims to:

- to safeguard the character of the countryside
- support the viability of communities
- meet development needs in appropriate locations
- ensure that high standards of siting and design are achieved

As with Policy 32 the latest guidance lists various categories of development opportunity in a similar format, but with eased constraints and including additional opportunities in terms of replacing non-domestic buildings, flood risk, country houses and gardens and the introduction of a new category of 'brownfield' site. The policy suggests that to qualify as a brownfield site evidence of former buildings which have since been demolished is one of the requirements highlighted in pre-application discussions. However, this interpretation goes against Scottish Government advice in the SPP which encourages the development of rural brownfield land as defined as *'land where a former activity has ceased and where the land is no longer viable commercially or agriculturally'*. The Scottish Government seek to encourage the efficient use of land as a sustainable resource and highlight the importance of using brownfield land wherever possible rather than developing 'greenfield sites'. The full and effective use of land is an important element of sustainable development; land is a finite resource therefore best use must be made of it. The Council's reliance on defining brownfield sites as only those which formerly had buildings on them, appears a very unreasonable interpretation and inconsistent with the SPP. Numerous brownfield sites never had any buildings and even if they do, the policy implies that all structures must be demolished before the site would qualify as a brownfield opportunity. The key consideration is the efficient use of land and the avoidance of greenfield land in order to safeguard the character of the countryside and to promote the principle of sustainability.



Angus Council also operate a 'brownfield category in their 'Housing in the Countryside' policy and have recently decided in their new emerging Local Development Plan to expand the wording and definitions to allow easier and more consistent interpretation. For example *'the rural brownfield sites category should allow for redevelopment of all redundant brownfield sites. The definition of redundant should be extended to include where it can be demonstrated the site/building has not been in use for some time, or is clearly no longer fit for purpose, or where it can be shown that the former site/building is unsuited to the restructuring needs of the farm or rural business. We also do not consider that it's necessary to place plot size requirements on potential redevelopment opportunities as is currently the case with Schedule 2 in the adopted local plan. Brownfield sites come in many shapes and sizes and placing unnecessary restrictions on plot sizes may prevent opportunities for environmental improvements through enhanced landscaping and planting or other remediation work.'* Stirling Council already operates a wider definition of 'brownfield' land in its 'Housing in the Countryside' policy *'defined as sites that have previously been developed. In rural areas this usually means sites that are occupied by redundant or unused buildings or where the land has been significantly degraded by a former activity.'* It would appear that other neighbouring authorities are more closely applying the principles and aims set down in the SPP and in PAN 72 and 73 in regard to the efficient use of land and principles of sustainability.



The policy also refers to the fact that a site would qualify where dereliction is removed or where an environmental improvement could be advanced. The proposed site was used over many years as a commercial sand pit and former machinery still litters the site, it would clearly be an environmental improvement if the site were to be re-developed as proposed as its present neglected state does not enhance the surroundings or the environment. In addition, the landscaping of the former refuse tip and the removal of any contamination would represent a further significant environmental improvement. The only possible alternative use for the site is residential and although the 'brownfield' category of the policy allows for up to five houses on qualifying sites, the applicant is only seeking one house. The pattern of surrounding development is characterised by single farmhouses dotted among open

fields and woodland and the current proposal is seen as respecting this particular landscape character. The policy also requires that any remedial works should incorporate landscaping which in this case would be an essential element of the proposal to create an attractive setting to the future house. The proposal would comply with the policy in this respect by arresting the dereliction and replacing it with a well designed rural house set within an attractively maintained grounds.

It is an essential requirement of the policy that all brownfield sites should comply with the general siting criteria as listed below:

- it blends sympathetically with the landform
- it uses existing trees, buildings, slopes or other natural features to provide a backdrop
- it uses an identifiable site
- it does not have a detrimental impact on the surrounding landscape

As already outlined under general Policy 1, the site does have a good landscape framework with established vegetation around all boundaries forming a clearly defined site. The actual site boundaries are further re-enforced by raised mounding which further enhances the site containment and enclosure. The proposed development would fit into the site in a sympathetic form and would complement the surroundings rather than detract in any way from them fully in line with policy stipulations. The policy is quite clear in this regard about the type of otherwise inappropriate development which it specifically wishes to discourage which is the wasteful and visually obtrusive sub-division of fields with artificial boundaries and the wasteful and unsustainable use of greenfields. The current proposal is clearly not in this category.

Developer Contributions

The Council's Affordable Housing Guide agreed in August 2007 and updated in January 2010 only applies to sites with five houses and above. As this site involves only one house there would be no affordable housing obligation.

The Council's Primary Education and New Housing Development policy approved in May 2009 and updated in June 2010 would apply, if at the time of the application, the local primary school exceeds the 80% capacity trigger.

Conclusion

The proposal does not raise any strategic issues in terms of the TAYplan and in the context of the PALP, it sits comfortably with both Policy 1 being a well defined site with a good landscape fit and with Policy 19 as not being in conflict with nature conservation issues. Clearly, the proposal does not satisfy the terms of Policy 32 relating to Housing in the Countryside as it does not fit any of the categories listed and is thereby contrary to the PALP. However, the Supplementary Guidance approved in 2012 does allow for rural brownfield sites and the policy does highlight the importance of avoiding new greenfield sites and stresses the concept of sustainability as one of its prime aims. It has been argued that there will be an environmental improvements resulting from the development which will replace

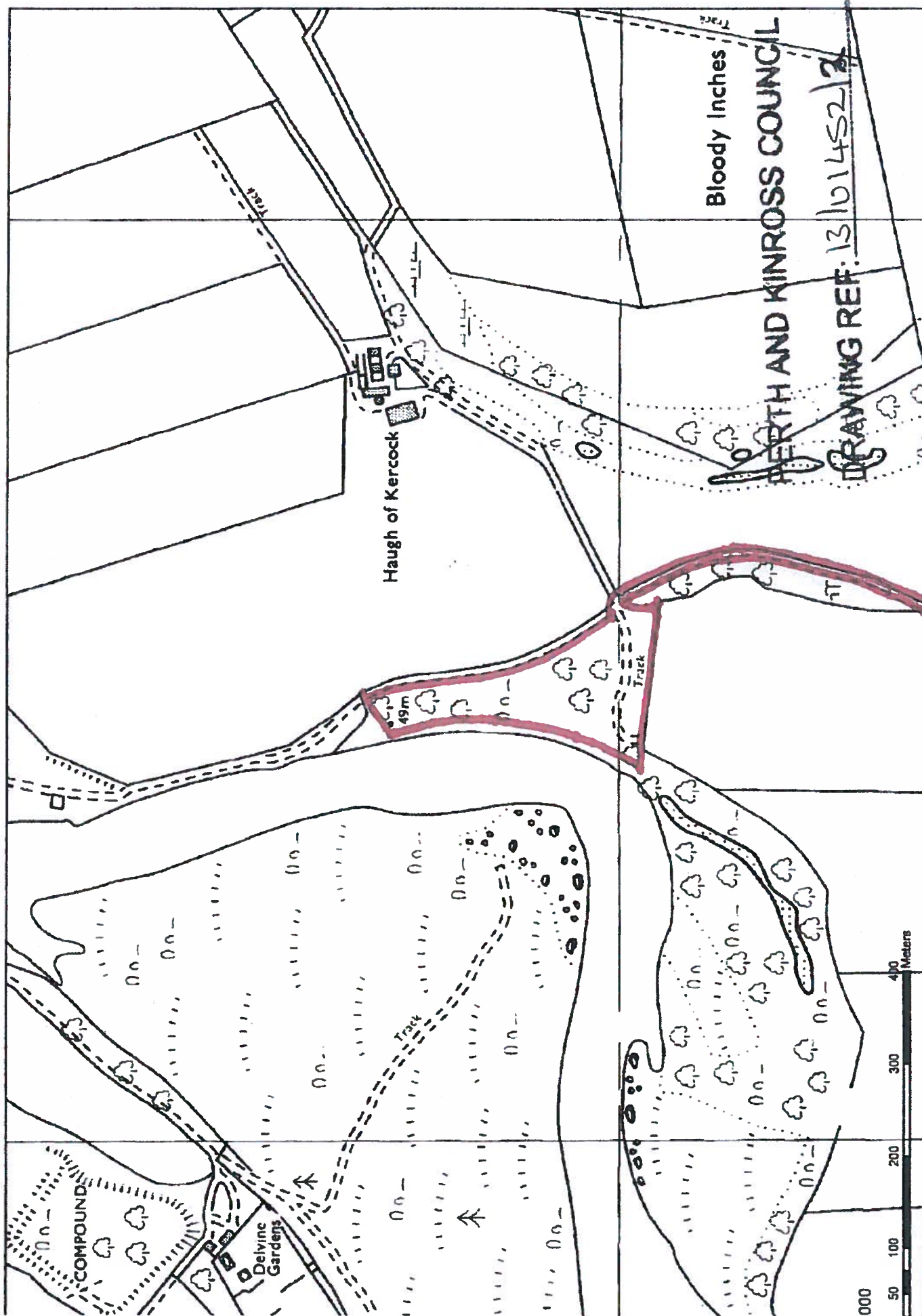
current dereliction and deal with contamination associated with former dumping activities. It is also clear that the choice of site is good in landscape and visual terms and this satisfies the critical locational criteria aimed at avoiding ill defined or greenfield incursions.

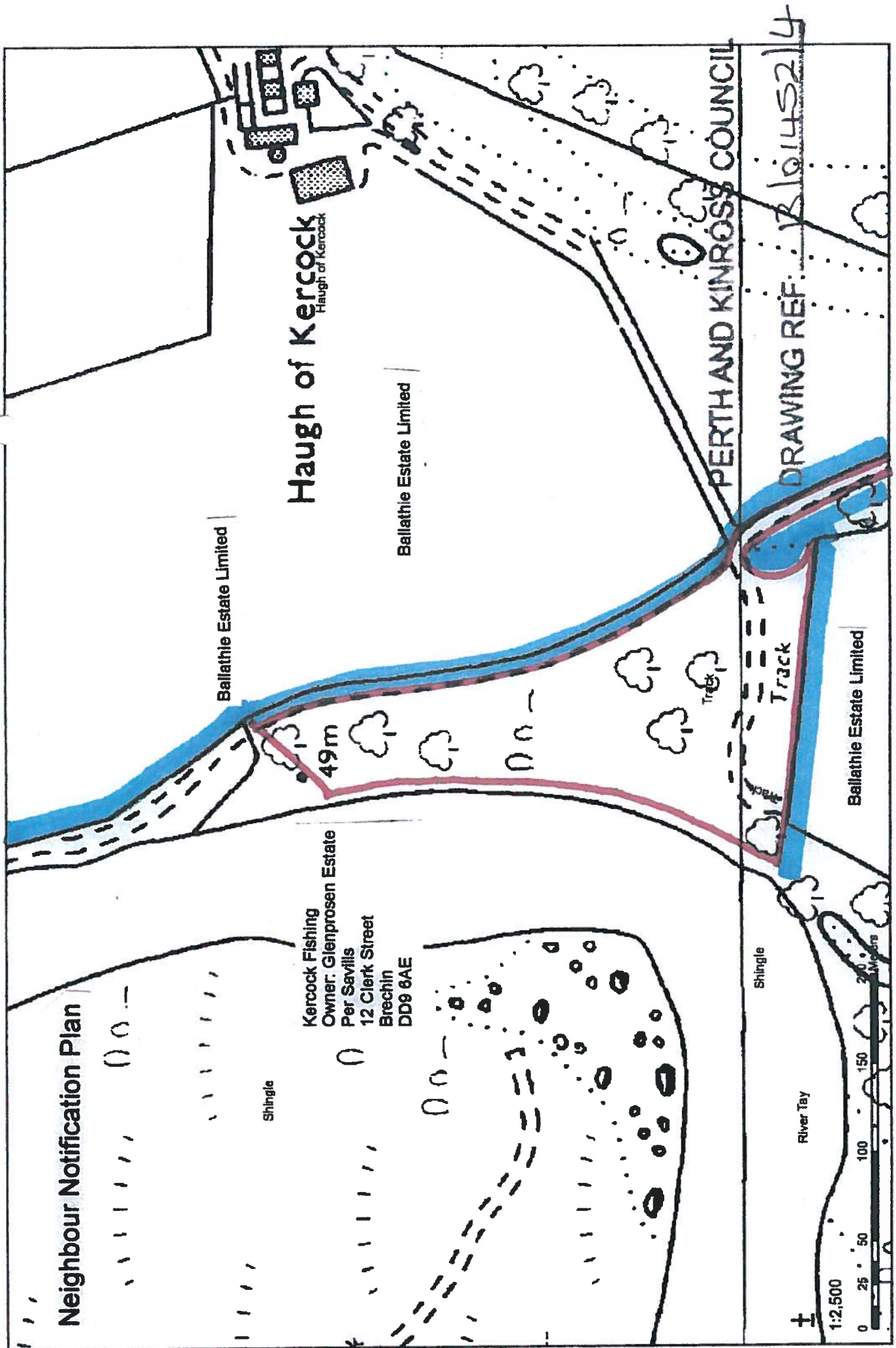
The only issue at dispute appears to be the actual definition of what constitutes a brownfield site in the sense that if it did not historically have buildings it does not qualify. I suggest this a very rigid interpretation and goes against the advice in the Scottish Government SPP and also the practice of neighbouring authorities who clearly do not make this unusually inconsistent distinction. Such a strict interpretation also goes against the principles of sustainability and the efficient use of land resources. In times of economic constraint, it is important that local authorities are more flexible in interpreting policy as a stimulus to economic growth. In a UK context it is clear that the government is already trying to ease planning controls on house extensions for instance, primarily as an economic stimulus. It is quite obvious that the site constitutes 'brownfield land' and it is agreed that in both visual and landscape terms the development of the site will not result in any demonstrable harm to the environment or the character of the countryside and is appropriate in its context. In the balance of land use considerations, I would be convinced that the positive aspects significantly outweighs any pedantic consideration on the exact meaning of the otherwise widely accepted definition of 'rural brownfield land'.

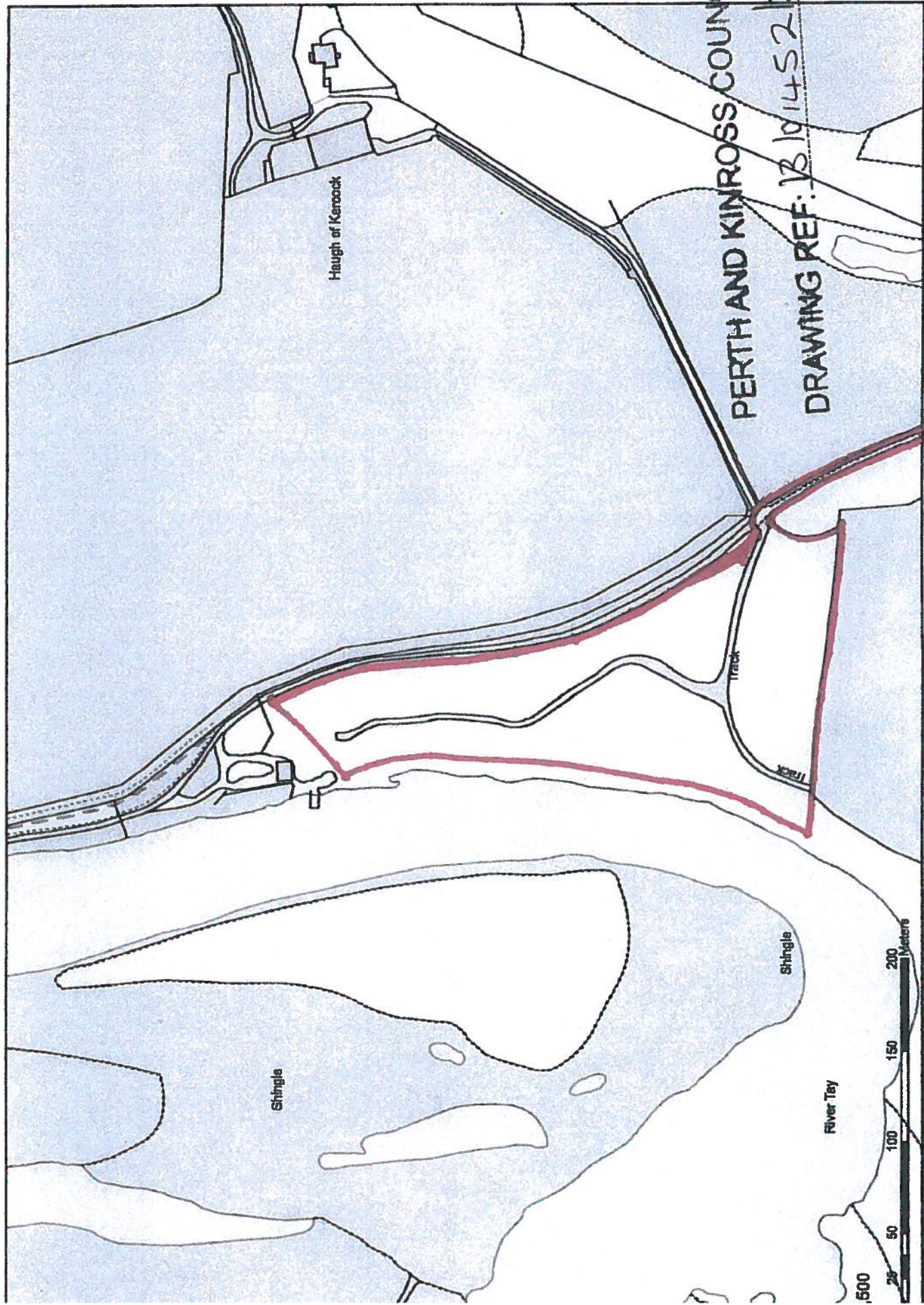
Perth and Kinross Council's own web page statement on 'Contaminated Land' recognises the increasing pressure on 'Greenfield sites' and seeks to capitalise on the potential of 'Brownfield sites' and where possible promote the re-development of these sites; this policy statement does not make any distinction other than referring to sites where there could be possible contamination. Clearly, as the proposed site has a long history of tipping, it would fall within this category where possible contamination would be removed and environmental improvements secured through new development.

I would suggest that there are more than sufficient material considerations in favour of the development to enable the local authority to set aside Policy 32 in the PALP and their overly strict and inconsistent interpretation of the term 'brownfield' to allow a departure thereby enabling the proposed development to proceed.

John Culbert
Chartered Town Planner
30/07/13







PERTH AND KINROSS COUNCIL

DRAWING REF: B101452B

Haugh of Kenrook

Shingle

Shingle

River Tay

Track

Track



TCP/11/16(285)

Planning Application 13/01452/IPL – Erection of a dwellinghouse (in principle), Sand and Gravel Pit, Bishophall, Kinclaven

PLANNING DECISION NOTICE *(submitted as part of applicant's submission, see pages 533-534)*

REPORT OF HANDLING *(submitted as part of applicant's submission, see pages 525-531)*

REFERENCE DOCUMENTS *(submitted as part of applicant's submission, see pages 535 and 544-556)*

TCP/11/16(285)

Planning Application 13/01452/IPL – Erection of a dwellinghouse (in principle), Sand and Gravel Pit, Bishophall, Kinclaven

REPRESENTATIONS

- Representation from Regulatory Service Manager, dated 19 August 2013
- Representation from the Structures and Flooding Team, dated 19 August 2013
- Representation from the Scottish Environment Protection Agency, dated 21 August 2013
- Representation from Scottish Natural Heritage, dated 29 August 2013
- Objection from ABC Planning & Design Limited on behalf of Kercock Fishings, dated 4 September 2013
- Representation from Transport Planning Technician, dated 5 September 2013

Memorandum

| | | | |
|----------|-----------------------------|---------|----------------------------|
| To | Head of Development Control | From | Regulatory Service Manager |
| Your ref | PK13/01452/IPL | Our ref | LJ/ALS |
| Date | 19 August 2013 | Tel No | (4)75248 |

The Environment Service

Pullar House, 35 Kinnoull Street, Perth PH1 5GD

Consultation on an Application for Planning Permission

PK13/01452/IPL RE: Erection of a dwellinghouse (in principle) Sand And Gravel Pit Bishophall Kinclaven for Ballathie Estate Limited

I refer to your letter dated 13 August 2013 in connection with the above application and have the following comments to make.

Contamination

The proposed development is on an area of land that was previously a sand and gravel quarry. It is known that the quarry has been partially infilled using refuse material from Ballathie Estate and there is therefore the potential for localised ground gas production that could possibly impact on any residential property being built in this area.

There is also the possibility of contaminants being present in the fill therefore a full ground risk assessment should be carried out prior to building commencing.

I therefore recommend the following condition be applied to the application.

Condition

Development should not begin until a scheme to deal with the contamination on the site has been submitted to and approved in writing by the planning authority. The scheme shall contain proposals to deal with the contamination to include:

- I. the nature, extent and type(s) of contamination on the site
- II. measures to treat/remove contamination to ensure the site is fit for the use proposed
- III. measures to deal with contamination during construction works
- IV. condition of the site on completion of decontamination measures

Before any residential unit is occupied the measures to decontaminate the site shall be fully implemented as approved by the planning authority. Verification that the schemes proposals have been fully implemented must also be submitted to the planning authority.

Water (assessment date - 15/08/13)

Recommendation

The application relates to a proposed new property; it is our understanding that no existing private water supplies will be affected by the proposed activities and the applicant has indicated that connection will be made to the public mains; therefore we have no comment at this time.

A handwritten signature in purple ink, consisting of a stylized 'X' followed by a vertical line and a small loop.

Memorandum

| | | | |
|----------|------------------|---------|--|
| To | Planning Officer | From | Steven Smith Technician Structures and Flooding Team |
| Your ref | 13/01452/IPL | Our ref | 6.9.10/486 – Dwellinghouse, Bishophall, Kinclaven |
| Date | 19 August 2013 | Tel No | 01738 477250 |

The Environment Service

The Atrium, 137 Glover Street, Perth, PH2 0HY

RE: Erection of a dwellinghouse (in principle) Sand and Gravel Pit Bishophall Kinclaven for Ballathie Estate Limited

Thank you for your consultation in relation to the above planning Application that I received on 15 August 2013, I can comment as follows:

- 1) The proposed development is located on the boundary of the SEPA 1 in 200 Flood Map and is therefore at medium risk of flooding from the River Tay which lies to the west of the application site.
- 2) As the development is located on an area of higher ground from the surrounding land, the risk of flooding is reduced. Therefore the Flood Team can only request that the applicant be made aware of flood risk at the site and that a flood evacuation procedure be put in place for the development.

Therefore, I can confirm that the Flood Prevention Authority **does not object** to this application subject to the applicant being made aware of the flood risk at this site and a flood evacuation procedure being put into place.

If you have any queries regarding the above content please contact me on the above number.

Regards

Steven Smith

Our ref: PCS/128340
Your ref: 13/01452/IPL

If telephoning ask for:
Diarmuid O'Connor

21 August 2013

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

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

Dear Sirs

Town and Country Planning (Scotland) Acts
Planning application: 13/01452/IPL
Erection of a dwellinghouse (in principle)
Sand and Gravel Pit Bishophall Kinclaven

Thank you for your consultation letter which SEPA received on 13 August 2013.

We have **no objection** to the proposed development on flood risk grounds. Notwithstanding this we would expect Perth & Kinross Council to undertake their responsibilities as the Flood Prevention Authority.

This advice is given without prejudice to any decision made on elements of the proposal regulated by us, which may take account of factors not considered at the planning stage.

Advice for the planning authority

- 1.1 The proposed site is located adjacent to the 0.5% AEP (1:200) flood extent of the River Tay on the Indicative River and Coastal Flood Map (Scotland). The 40 mAOD contour line is located along the edge of the site shared with the east bank of the River Tay. Flood levels recorded at Caputh Bridge in the large floods of 1990 and 1993 of 38.93 mAOD and 38.97 mAOD respectively and levels recorded at nearby Meikle Fardle and Little Fardle in 1993 of 35.77 and 35.2 respectively provide a further indication that the site is above a significant risk of flooding from the River Tay.
- 1.2 In summary, SEPA has no objection to the erection of the proposed dwellinghouse on flooding grounds. However we would recommend that finished floor levels be raised above surrounding ground levels and ground levels should be sloped away from the outer walls of the building to reduce the risk of surface waters ponding against the house and entering the property.

Detailed advice for the applicant

2. Flood Risk Caveats & Additional Information for Applicant/Authority

- 2.1 The Indicative River & Coastal Flood Map (Scotland) has been produced following a consistent, nationally-applied methodology for catchment areas equal to or greater than 3km² using a Digital Terrain Model (DTM) to define river cross-sections and low-lying coastal land. The outlines do not account for flooding arising from sources such as surface water runoff, surcharged culverts or drainage systems. The methodology was not designed to quantify the impacts of factors such as flood alleviation measures, buildings and transport infrastructure on flood conveyance & storage. The Indicative River & Coastal Flood Map (Scotland) is designed to be used as a national strategic assessment of flood risk to support planning policy in Scotland. For further information please visit www.sepa.org.uk/flooding/flood_extent_maps.aspx.
- 2.2 Please note that we are reliant on the accuracy and completeness of any information supplied by the applicant in undertaking our review, and can take no responsibility for incorrect data or interpretation made by the authors.
- 2.3 The advice contained in this letter is supplied to you by SEPA in terms of Section 72 (1) of the Flood Risk Management (Scotland) Act 2009 on the basis of information held by SEPA as at the date hereof. It is intended as advice solely to Perth & Kinross Council as Planning Authority in terms of the said Section 72 (1). Our briefing note entitled: "*Flood Risk Management (Scotland) Act 2009: Flood risk advice to planning authorities*" outlines the transitional changes to the basis of our advice inline with the phases of this legislation and can be downloaded from www.sepa.org.uk/planning/flood_risk.aspx.

Regulatory advice for the applicant

3. Regulatory requirements

- 3.1 Details of regulatory requirements and good practice advice for the applicant can be found on our website at www.sepa.org.uk/planning.aspx. If you are unable to find the advice you need for a specific regulatory matter, please contact a member of the operations team in your local SEPA office at:

SEPA Perth, Strathearn House, Broxden Business Park, Lamberkine Drive, Perth, PH1 1RX
Tel: 01738 627989

If you have any queries relating to this letter, please contact me by telephone on 01698 839341 or e-mail at planning.se@sepa.org.uk.

Yours faithfully

Diarmuid O'Connor
Planning Officer
Planning Service



Chairman
David Sigsworth

Chief Executive
James Curran

566

Strathearn House
Broxden Business Park,
Lamberkine Drive, Perth, PH1 1RX
tel 01738 627989 fax 01738 630997
www.sepa.org.uk

Copy to: John Culbert , Tay Farmhouse, Meikleour, Perth, PH2 6EE

Disclaimer

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



Chairman
David Sigsworth

Chief Executive
James Curran

567

Strathearn House

Broxden Business Park,
Lamberkine Drive, Perth, PH1 1RX
tel 01738 627989 fax 01738 630997
www.sepa.org.uk

Planning & Regeneration
Perth & Kinross Council
Pullar House
35 Kinnoull Street
Perth
PH1 5GD

29 August 2013
Our ref: SIT/SAC/River Tay/ASS
Your ref: 13/01452/IPL

Dear Sir

Town and Country Planning (Scotland) Act 1997

Erection of a dwellinghouse (in principle) Sand and Gravel Pit Bishophall, Kinclaven

Thank you for your correspondence of 13 August 2013 seeking the comments of Scottish Natural Heritage (SNH) in respect of the above planning application.

Designated Sites

The proposed development lies within the boundary of the River Tay Special Area of Conservation (SAC), designated for its Atlantic salmon, brook, river and sea lamprey, clearwater lochs and other qualifying features and approximately 30m to the east of the Meikleour Area Site of Special Scientific Interest (SSSI), designated for its wintering greylag geese, hydromorphological mires and lowland neutral grassland.

SNH Appraisal of the Impacts to the Designated Sites

The wider area within which the development site is located is included in the boundary of the SAC due to its suitability for otter habitat. However, the development site itself is not suitable for otters. As it is our understanding that the development will be contained within the footprint of the sand and gravel pit, we are content that construction of the dwelling house will not impact upon the protected features of the SAC.

At this stage full details of the drainage strategy have not been provided. We have concerns that there could be implications for both designations, however, these can be avoided if there is a buffer between the boundary of the SSSI and the septic tank/soakaway. We are happy to discuss the matter further, if required.

Information regarding the SAC qualifying features and Conservation Objectives and the notified features of the SSSI are available on the [Sitelink](http://www.snh.gov.uk) section of www.snh.gov.uk.

Details of the legislative requirements of the SAC are also available from the SNH website: <http://www.snh.gov.uk/docs/A423286.pdf>.



INVESTOR IN PEOPLE

Scottish Natural Heritage, Battleby, Redgorton, Perth, PH1 3EW
Tel 01738 444177 - Fax 01738 458611 - www.snh.gov.uk

For further information or advice please don't hesitate to contact me.

Yours sincerely

(via email)

Nicki McIntyre

Operations Officer

Tayside and Grampian

nicki.mcintyre@snh.gov.uk



ABC Planning & Design Limited
Hill of Morpie
St Cyrus
Aberdeenshire
DD10 0AB

Tel: 01674 850188

04 September 2013

130905L0030AB-GPE REPRESENTATION APPLICATION 13-01452.DOC

David Littlejohn
Head of Planning and Regeneration
Development Management
Perth and Kinross Council
Pullar House
Kinoull Street
Perth
PH1 5GD

Dear Mr Littlejohn

LETTER OF OBJECTION
Planning Application 13/01452/IPL
Erection of Dwelling House (in principle)

I am writing to make an objection to the proposed dwelling house (application 13/01452/IPL), on behalf of Kercock Fishings, owned by Glenprosen Estate (per Savills, 12 Clerk Street, Brechin, DD9 6AE). Kercock Fishing is a neighbour to the site and control /operate the commercial fishing rights along both banks of the River Tay adjacent to the application site. Kercock Fishings also have right of access to their business along the access track proposed as part of the application.

Our objection relates to the following points, with reference to the applicant's Supporting Planning Statement dated the 30.07.13:

| Planning Statement Reference | Comment |
|-------------------------------------|---|
| Page 1, para 2 | <p>The planning statement states the site does not form part of any official designation either of nature conservation or landscape interest.</p> <p>The site is located within the SAC, as noted by SNH.</p> |

| Planning Statement Reference | Comment |
|------------------------------|--|
| Page 2, para 1 & photo | <p>The planning Statement states the house <i>"does benefit from the fact it is sunken with mounds and established landscaping around the boundaries providing effective screening to any new house"</i></p> <p>However, this is an "in principle" application, so the above statement would imply that a specific location within the site has been selected, otherwise how can it be determined if the house will be visually contained? In addition, the proposed house design is only indicative. It is clear from the photo that the habitat and landscape has regenerated to a significant degree. Has any walkover or detailed ecological survey been undertaken to determine the landscape or habitat value of the site. Kercock Fishing (who wish to see the quality of the local environment and landscape protected and enhanced as it impacts on their business) would ask, should the Council decide to grant planning permission, that the siting of the house be conditioned to be visually contained and is located to the southern end in the open areas to minimise the impact on the landscape and habitat and that the appropriate ecological and landscape surveys are undertaken to inform the design and layout of the site. In addition, the consent should only be for one single storey house, if permission is granted.</p> |
| Page 2, para 3 | <p>The site has had a mineral operation since the 1930's until 1970 according to the planning statement, and the <i>"southern end of the site has also been partially infilled with the periodic disposal of estate refuse over many years."</i></p> <p>There is no evidence or survey data provided about what has been tipped in this location or any remediation proposals to deal with either the remnants of the former mineral operation or the many years of refuse tipping. Kercock Fishings is concerned that disturbance to the ground may have a detrimental impact on the river and its fishing business and request that information on the tipping and any contamination be provided at the appropriate stage to inform this or any future planning decisions to ensure no damage is caused.</p> |

| Planning Statement Reference | Comment |
|---------------------------------|--|
| Page 3, para 1 | <p>This is Kercock Fishings main objection. The Planning officer in pre-application discussions has clearly advised that the proposal is contrary to Planning Policy and in particular – Supplementary Guidance (November 2012) Housing in the Countryside Guide. The definition of "Rural Brownfield Land" is explicit in that it states <i>"Redevelopment for small scale housing of brownfield land which was formerly occupied by buildings may be acceptable where it would remove dereliction or result in a significant environmental improvement"</i>. The Supplementary Guidance goes on to state <i>"All land within the site....must be subject of landscaping and/or other remediation works."</i></p> <p>The proposal is contrary to Council planning policy and guidance. The key points here are:</p> <ul style="list-style-type: none"> • There are no buildings on site; • No evidence has been provided to prove buildings were ever on site; • Arguably there is no dereliction on site and the former machinery and other rubbish (shown in photos on pages 6 and 7) could easily be removed without the need for a house; • This is a rural site largely covered in shrubs, vegetation and trees as shown in the photograph on page 2; and • No landscape or remedial proposals have been provided. |
| Policy Appraisal and Conclusion | <p>In relation to the above point of objection, the Planning Statement's Policy Appraisal and Conclusion argues that the Council should depart from Policy to grant planning permission. However, we note that the Local Development Plan is currently under examination. In response to representations seeking a change to the definition of brownfield land in the Housing in the Countryside Supplementary Guide the Council state this in their formal response to LDP Examination Issue 08a:</p> <p><i>"As the changes relate to the supplementary guidance rather than LDP policy this issue was addressed through the consideration of comments received on the guidance as approved by the Enterprise and Infrastructure Committee on 7 November 2012 (Core_Doc_160). The approved response to these comments is summarised as follows: Experience of the 2005 policy demonstrated that allowing brownfield sites containing buildings to be developed led to large scale suburban type housing development which met with significant public opposition. This section was therefore revised to purposefully exclude land with buildings to discourage further applications for large scale housing. Policy RD3 and section 6 of the supplementary guidance refer specifically to rural brownfield land and so the definition differs from the LDP glossary wider definition of brownfield land within settlements. It is not considered that the differing definition of rural brownfield land constitutes a departure from national policy. The full response can be found in the report to the Enterprise and Infrastructure Committee on 7 November 2012 (Core_Doc_160). No modification is proposed to the Plan."</i></p> <p>Therefore, planning approval in relation to this application should be refused.</p> |

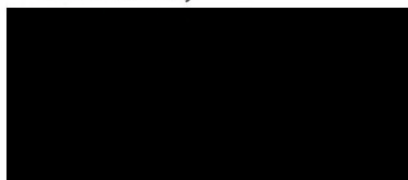
Should the Council however, decide to recommend the granting of planning permission contrary to Planning Policy, we request the following issues are dealt with satisfactorily at this stage and/ or are covered by planning conditions:

- Appropriate landscape and ecological surveys are undertaken and important features and habitat is maintained and improved;
- The siting and design of the proposed dwelling is visually contained by the sunken nature of the site, existing mounds and the established landscaping around the boundaries which provide effective screening to any new house;
- It is only for one single storey house;
- The proposed foul drainage and surface water run off does not adversely affect the stability of the river bank or the integrity/ quality of the river and its designated SSSI and SAC status due to the site's immediate proximity;
- Any residual materials and contaminated ground/ material is established and remediated; and
- Ensure that any disruption due to construction is minimised and that any damage to the shared access is repaired during the construction period if significant but fully reinstated to its original state following construction.

I would be grateful if you could confirm in writing or via email that you have received this letter.

I look forward to hearing from you.

Yours sincerely



Andrew Bayne
Director



MEMORANDUM

| | | | |
|-----------|------------------------|---------|--|
| To | Development Management | From | Niall Moran Transport Planning Technician Transport Planning |
| Our ref: | NM | Tel No. | Ext 76512 |
| Your ref: | 13/01452/IPL | Date | 5 September 2013 |

Pullar House, 35 Kinnoull Street, Perth, PH1 5GD

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997, - ROADS (SCOTLAND) ACT 1984

With reference to the application 13/01452/IPL for planning consent for:- **Erection of a dwellinghouse (in principle) Sand And Gravel Pit Bishophall Kinclaven for Ballathie Estate Limited**

Insofar as the Roads matters are concerned I do not object to the proposed development provided the conditions indicated below are applied, in the interests of pedestrian and traffic safety.

- Prior to the occupation or use of the approved development turning facilities shall be provided within the site to enable all vehicles to enter and leave in a forward gear.
- Prior to the occupation or use of the approved development a minimum of 2 No. car parking spaces shall be provided within the site.

I trust these comments are of assistance.

TCP/11/16(285)

Planning Application 13/01452/IPL – Erection of a dwellinghouse (in principle), Sand and Gravel Pit, Bishophall, Kinclaven

FURTHER INFORMATION REQUESTED BY THE LRB

- Further Information from Agent, dated 4 February 2014
- Appropriate Assessment from Planning, dated 29 August 2013

CHIEF EXECUTIVES
DEMOCRATIC SERVICES

06 FEB 2014

RECEIVED

Local Review Body
Perth & Kinross Council
2 High Street
Perth
PH1 5PH

Tay Farmhouse
Meikleour
Perth
PH2 6EE

4th February 2014
Ref: 13/01452/IPL

**Erection of a dwellinghouse (in principle) Sand and Gravel Pit Bishopall
Kinclaven**

Dear Sir/Madam.

I refer to a recent planning application which was considered by the Local Review Body on the 28th January 2014 and was deferred at the meeting subject to an unaccompanied site visit and additional information to include a site plan indicating the location of the proposed house.

I now attach the following for the assistance of the LRB when they visit the site in the coming weeks as follows:

- A site plan which shows the intended position of the proposed house within the site.
- An explanatory note on the 'sand martin sign' which was the subject of one of the photos displayed at the LRB meeting held on the 28/01/14.

I trust that the above enclosures are sufficient for the LRB to reach a decision, but if any further additional information is required, please do let me know.

Yours faithfully



John Culbert
Chartered Town Planner

Sand Martin Sign.

The Local Review Body which met on the 28th January 2014 deferred consideration of an application at Bishophall, nr Kinclaven subject to additional information on the proposed house position and to carry out an unaccompanied site visit. One additional point which emerged at the meeting was illustrated in one of the photographs shown at the meeting which featured a post mounted sign relating to nesting sand martins.



I would wish to inform the LRB that this is purely a private sign which related to a Ballathie Estate conservation initiative intended to encourage sand martins to nest within two former oil drums filled with sand and drilled with holes mounted vertically on tripod legs. However, this experiment failed to attract the intended nesting birds and was subsequently abandoned, but the associated sign and the two drums remain.



As can be seen in the photograph below, both drums remain clearly visible amongst the shrubbery along the north eastern fringe of the site.

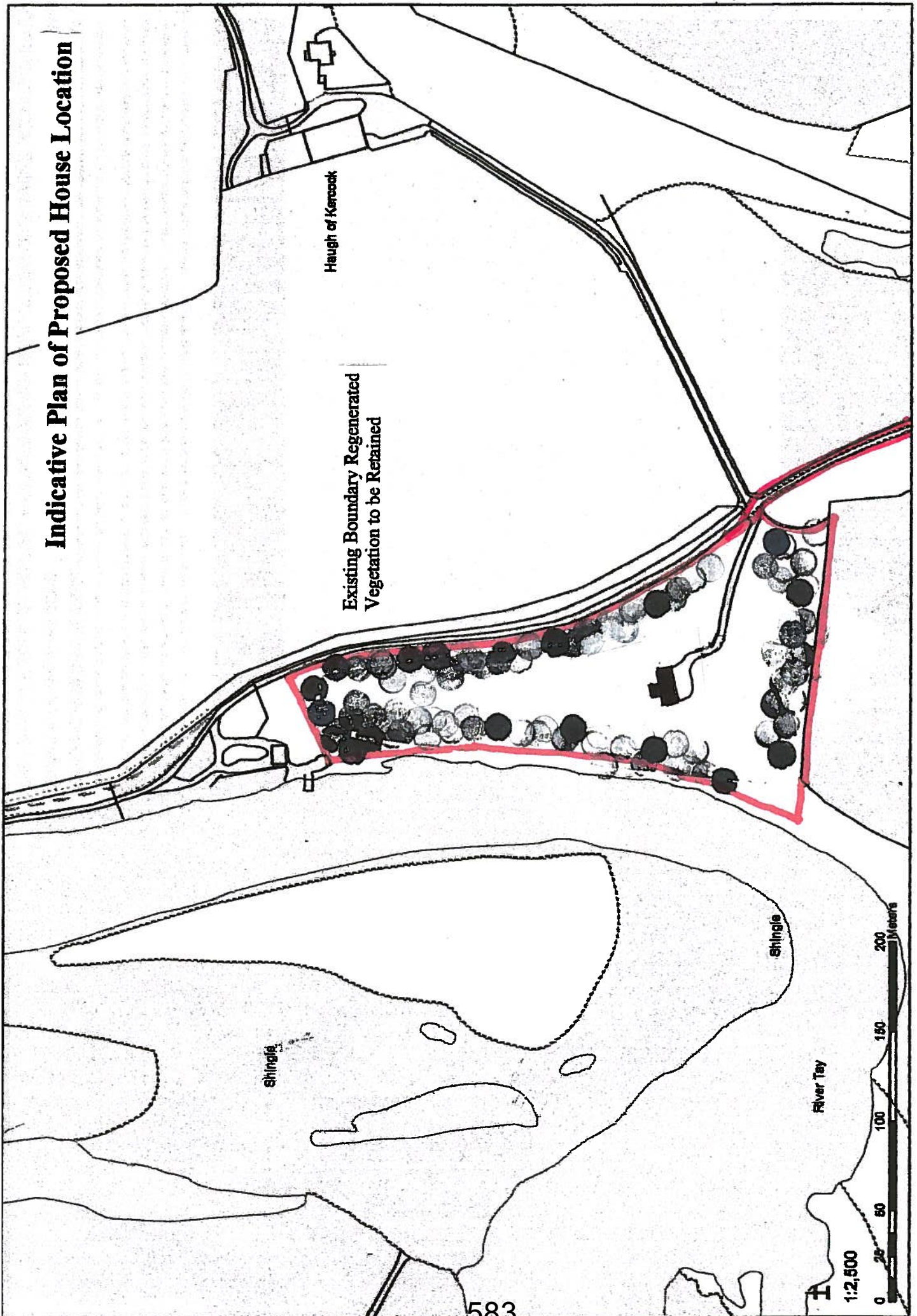


I trust that the above information is helpful.

John Culbert
Chartered Town Planner

30th January 2014

Indicative Plan of Proposed House Location



Perth and Kinross Council

APPROPRIATE ASSESSMENT OF PLANNING APPLICATION

This is a record of the Appropriate Assessment required by regulation 48 of the Habitats Regulations 1994 and the Nature Conservation (Scotland) Act 2004, undertaken by Perth and Kinross Council for the Erection of a dwellinghouse (in principle) at Sand And Gravel Pit Bishophall, Kinclaven (13/01452/IPL)

29 August 2013

Background

Reason for an Appropriate Assessment

The reason for an Appropriate Assessment is that it is required by the Habitats Directive Article 6 paragraphs (3) and (4) which state that:

“(3) Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans and projects, shall be subject to Appropriate Assessment of its implications for the site in view of the site’s conservation objectives. In the light of the conclusions of the assessment of the project for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

(4) If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.”

“The precautionary principle which requires that the conservation objectives of Natura 2000 should prevail where there is uncertainty”

Assessment

Section 1 – Information in relation to the Planning Application

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| Reference Number | 13/01452/IPL |
| Location of Application | Sand And Gravel Pit Bishophall, Kinclaven |
| Description of Application | Erection of a dwellinghouse |
| Distance from SAC boundary | The proposal lies adjacent to the River Tay, as part of the River Tay SAC. |
| No. of net additional residential dwellings | One |

Section 2 – Information in relation to the International Nature Conservation Site

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| International Designation | River Tay SAC |
| Site Description | A former sand and gravel extraction pit and surrounding land which extends over an area of approx. 1.6 ha. A far small area will actually be subject to ‘development’ i.e. the area of the extraction. |
| Relevant international nature conservation features of the SAC | <p>River Tay SAC is classified for the following interests:</p> <ul style="list-style-type: none"> • Atlantic salmon (<i>Salmo salar</i>) – fish • Brook lamprey (<i>Lampetra planeri</i>) - fish • Otter (<i>Lutra lutra</i>) – mammal • River lamprey (<i>Lampetra fluviatilis</i>) – fish • Sea Lamprey (<i>Petromyzon marinus</i>) – fish • Clear- water lakes or lochs with aquatic vegetation and poor to moderate nutrient levels – standing open water & canals |
| Conservation objectives of the SAC | <p><u>Conservation Objectives for Qualifying Habitats</u></p> <p>To avoid deterioration of the qualifying habitat (listed below) thus ensuring that the integrity of the site is maintained and the site makes an appropriate contribution to achieving favourable conservation status for each of the qualifying features; and To ensure for the qualifying habitat that the following are maintained in the long term:</p> |

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| | <ul style="list-style-type: none"> • Extent of the habitat on site • Distribution of the habitat within site • Structure and function of the habitat • Processes supporting the habitat • Distribution of typical species of the habitat • Viability of typical species as components of the habitat • No significant disturbance of typical species of the habitat <p>The Qualifying Habitat in this case is Clear-water lochs .</p> <p><u>Conservation Objectives for Qualifying Species</u></p> <p>To avoid deterioration of the habitats of the qualifying species (listed below) or significant disturbance to the qualifying species, thus ensuring that the integrity of the site is maintained and the site makes an appropriate contribution to achieving favourable conservation status for each of the qualifying features; and</p> <p>To ensure for the qualifying species that the following are maintained in the long term:</p> <ul style="list-style-type: none"> • Population of the species, including range of genetic types for salmon, as a viable component of the site • Distribution of the species within site • Distribution and extent of habitats supporting the species • Structure, function and supporting processes of habitats supporting the species • No significant disturbance of the species |
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| | <p>The qualifying species potentially affected by the proposal are,</p> <ul style="list-style-type: none"> • Atlantic salmon • Brook lamprey • Otter • River lamprey • Sea lamprey |
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Section 3 – Consideration of Development Proposed

The consideration of the associated planning application is in accordance with national procedures and guidance of Scottish Natural Heritage (SNH). Guidance for Competent Authorities when dealing with proposals affecting SAC freshwater sites (SNH 2006)

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| Stage 1: Is the proposal directly connected with or necessary to site management for nature conservation? | No |
| Stage 2: Is the proposal likely to have a significant effect on the internationally important interest features of the SCA? | <p>Subject to conditions being imposed on any consent relating to the siting of the proposed dwelling, drainage details being submitted (and approved) and a CMP being submitted (and approved), the Planning Authority are of the view that there is little risk that this development will impact directly on the salmon, lamprey and other interests of TAY SAC, either during construction or once the development is completed.</p> <p>This view is shared by SNH.</p> |
| Stage 3: Assess the implications of the effects of the proposal for the site's conservation objectives – to include a description of any likely direct, indirect or secondary impacts of the proposal (either on its own or in combination with other proposals) on the designated site. | <p>The Planning Authority have identified (after consultation with SNH) and predicted any foreseeable and quantifiable risks associated to the integrity of the SAC.</p> <p>Whilst the proposed private drainage arrangements have a potential to directly impact on the qualifying interests of the SAC, these matters can be adequately addressed via appropriately engineering solutions.</p> <p>In terms of the impact on otters and their habitats, the area which will subject to the</p> |

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| | <p>development, is not suitable for otters and therefore it is extremely unlikely that any direct impact on otters or their habitats will occur.</p> <p>These views are shared by SNH</p> |
| Stage 4: Can it be ascertained that the proposals will not adversely affect the integrity of the site? | Subject to conditions, yes. |
| Stage 5: Would compliance with conditions or other restrictions enable it to be ascertained that the proposal would not adversely affect the integrity of the site? | <p>Yes, compliance with conditions to ensure that the proposal would not adversely affect the integrity of the site.</p> <ul style="list-style-type: none"> • A suspensive condition to seeking the submission (and approval) of private drainage details • A suspensive condition to seeking the submission (and approval) of a construction management plan |
| Stage 6: Are there alternative solutions which avoid any adverse impacts on the integrity of the Natura 2000 site? | No |

Section 4 - Conclusion

The Appropriate Assessment has concluded that In line with regulation 48 of the Habitats Regulations 1994 and the Nature Conservation (Scotland) Act 2004, the preceding confirms that the proposals associated for application 13/01452/IPL concerning the Erection of a dwellinghouse (in principle) Sand and Gravel Pit Bishophall, Kinclaven have been appropriately assessed as having no significant effect on the integrity of the site.

Perth and Kinross Council has therefore concluded that there will be no adverse impact on River Tay SAC as a result of granting planning consent for the principle of development on this site.

Andy Baxter
Planning Officer
Perth and Kinross Council.

29 August 2013

