

Perth and Kinross Council
Development Control Committee – 12 December 2012
Report of Handling by Development Quality Manager

Modification of existing consent - (06/02735/MOD) - to include amended layout and design of units, replacement of commercial block with reception building and revision of Condition 21 (restriction to holiday occupation) at former Tigh Na Loan Hotel, Tigh Na Loan, Fearnan

Ref. No: 12/01736/FLL
Ward No: 4– Highland

Summary

This report recommends approval of the application for the modification of existing consent - (06/02735/MOD) - to include amended layout and design of units, replacement of commercial block with reception building and revision of Condition 21 (restriction to holiday occupation) as the development is considered to comply with the Development Plan in terms of the revision of the layout and there are considered to be sufficient strong material considerations which allow for support to remove the holiday occupancy condition, subject to an alternative condition similar to that attached to consents at nearby holiday sites on Loch Tay.

Background and Description

1. Planning consent was granted in February 2005 (04/02354/FUL) for the demolition of the Tigh Na Loan Hotel and the erection of 30 timeshare holiday accommodation units, ancillary accommodation, a restaurant, bar and shopping facilities. This consent was then modified (06/02735/MOD) in July 2007 to increase the number of units to 36. Since then the former hotel has been demolished and 11 of the 36 approved timeshare units have been erected on site and are currently in use. The units erected to date include a block of four to the south of the site, adjacent to the public road and a further block of seven which are set further back in the site to the north-west. The remaining 25 units, restaurant and shop are yet to be erected.
2. This application seeks to reduce the total number of units on site to 29, a reduction of seven units from the previous 2006 consent. This application also seeks to alter the layout of the units to the north of the site and introduces a central landscaped area. The approved restaurant and shop area is proposed for removal and has been replaced with a reception building and storage area for sports equipment. The reception building is proposed to be a relatively simple single storey, pitched roof structure, finished in timber cladding. Some minor changes to the design of the two storey units (14-29) and their materials are also proposed. Units 1 and 2 marked on the site plan, which are yet to be constructed, are to remain as per the 2006 approval.
3. It should be noted that the access track approved as part of the existing consent has been formed on site.

4. The proposal also seeks to remove Condition 21 which states:

“The approved houses shall be used solely for holiday accommodation and shall not be occupied as the sole or main residence of any occupancy to the satisfaction of the Council as Planning Authority”.

5. The applicant seeks to replace this condition with the following:

“Prior to the occupation of any property, the applicant shall submit full details of the management/title deeds which links every estate property to the wider Shoreside site. These details shall be submitted and agreed in writing with the Planning Authority prior to the occupation of any of the new properties. Every property on the application site shall enter into this management agreement and be subject to these title deeds. This agreement between the Applicant (or successor) and each property owner shall be maintained in perpetuity.”

6. The applicant has outlined in the submission that the Condition 21 severely restricts the ability of the development to move forward. It states that mortgage lenders are reluctant to lend to prospective purchasers with this condition attached and that securing development finance to assist with the construction of the new development has become extremely difficult in the current economic climate and banks are reluctant to lend when this type of occupancy condition is in place. The justification is similar to that provided for recent applications at Croft Na Caber/Taymouth Marina (11/02113/FLL), Mains of Taymouth (12/00352/FLL) both of which were recommended for refusal at officer level but approved at Development Management Committee. A similar justification was made at Taymouth Castle (11/00533/FLM) which was recommended for approval by officer's and approved by Committee.

National Policy and Guidance

NATIONAL GUIDANCE

Scottish Planning Policy 2010

7. 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.

8. The paragraphs relevant this proposal are as follows:

- Paragraphs 45 - 51 Economic Development
- Paragraphs 92 - 97 Rural Development
- Paragraphs 125 - 148 Landscape & Natural Heritage
- Paragraphs 165 - 181 Transport

Development Plan

9. The Development Plan for the area consist of the Approved Tayplan: Strategic Development Plan 2012-2032 and the Adopted Highland Area Local Plan 2000

Tayplan: Strategic Development Plan 2012-2032

10. Under the Tayplan the principal relevant policy is:-

Policy 2: Shaping Better Quality Places

11. The supporting text relative to this policy states 'Quality of place within TAYplan is central to the vision and objectives of this Plan. This directly contributes to a better quality of life for the TAYplan region's people and to improving its economic competitiveness as a place'.
12. Part F of Policy 2 seeks to 'ensure that the arrangement, layout, design, density and mix of development and its connections are the result of understanding, incorporating and enhancing present natural and historic assets, the multiple roles of infrastructure and networks and local design context, and meet the requirements of Scottish Government's Designing Places and Designing Streets and provide additional green infrastructure where necessary'.

Highland Area Local Plan 2000

13. Under the Local Plan the southern part of the application site is located within the settlement boundary of Fearnan where six of the total units are located.
14. The remainder of the northern part of the site located outwith the settlement boundary where the remaining 23 units are located.
15. The principal relevant policies are in summary: -

Policy 1 Sustainable Development

16. The Council seeks to ensure that development is carried out in a manner in keeping with the goal of sustainable development.

Policy 2 Development Criteria

17. All developments are judged against development criteria that include, a good landscape framework, scale and form to fit within the locality and compatibility with surrounding land use to avoid loss of amenity.

Policies 3 & 4 Landscape

18. Requires that any development should seek to conserve landscape features and strengthen and enhance the landscape character. Details of landscape treatment should be submitted with the development proposals.

Policy 5 Design

19. The Council encourages high standards of design for all development in the Plan area.

Policy 13 Nature Conservation

20. The Council seeks to protect special designated sites including the proposed River Tay Special Area of Conservation.

Policy 30 Highland Tourism and Recreation

21. New tourist related development will be supported where it can be demonstrated that it:-
 - (a) Meets a new market or extends the season.
 - (b) Will not adversely affect landscape or nature conservation interests.
 - (c) Will only generate traffic appropriate to its location.
 - (d) Offers the potential to generate additional employment opportunities.
 - (e) Makes good use of the public transport network, particularly rail.
22. Encouragement will be given to development, which improves the quality of existing tourist facilities providing it is consistent with other Local Plan policies.

Policy 45 Development adjacent to settlements

23. Built development should not be located adjoining and outwith those settlements which are the subject of Inset maps.

Policy 87 Village Uses

24. Indicates villages where residential amenity and village character will be retained and if possible, improved. Some scope may exist for infill development particularly for affordable housing but only where this will not adversely affect the density, character or amenity of the village. Proposals, which erode areas of public or private open space, will be resisted.
25. Generally encouragement will be given to: -
 - (a) Improvements to existing village shopping facilities where it can be shown that they would serve the needs of the village.
 - (b) Proposals, which will improve the character and environment of the village.

- (c) Small scale business activities where they are compatible with the amenity and character of the village.
- (d) Proposals for the provision of small-scale tourism and leisure facilities in villages.

Perth and Kinross Proposed Local Development Plan 2012

- 26. Members will be aware that on 30 January 2012 the Proposed Local Development Plan was published. The adopted Local Plan will eventually be replaced by the Proposed Local Development Plan (LDP). The LDP has recently undergone a period of public consultation. The Proposed Local Development Plan may be modified and will be subject to examination prior to adoption. It is not expected that the Council will be in a position to adopt the Local Development Plan before December 2014. The Plan may be regarded as a material consideration in the determination of this application, reflecting a more up to date view of the Council.
- 27. The entire application site is located within the settlement boundary of Fearnan where the following relevant policies apply:

Policy PM1 Placemaking

- 28. Development must contribute successfully to the quality of the surrounding built and natural environment

Policy ED3: Rural Business and Diversification

- 29. The Council will give favourable consideration to the expansion of existing businesses and the creation of new ones in rural areas. There is a preference that this will generally be within or adjacent to existing settlements. Sites outwith settlements may be acceptable where they offer opportunities to diversify an existing business or are related to a site specific resource or opportunity.

Policy ED4: Caravans, Chalets and Timeshare Developments

- 30. The Council will give favourable consideration to new chalet and timeshare/fractional ownership developments where it is clear these cannot be used as permanent residences. Development of these sites are also subject to certain criteria. In the event of land ceasing to be used as holiday accommodation there will no presumption in favour of permanent residential development.

Policy TA1B Transport Standards

- 31. Development proposals should be well served by all modes of transport and provide safe access/car parking etc

Policy NE1A International Nature Conservation Sites

32. Development which could have a significant effect on a site designated or proposed under the Habitats or Birds Directive (Special Areas of Conservation and Special Protection Areas) or a Ramsar Site will only be permitted after an Appropriate Assessment indicates certain criteria.

Other Policies

33. None.

Site History

34. 04/00552/FUL Demolition of existing hotel and erection of 30 timeshare premises and ancillary admin accommodation, restaurant, bar and gymnasium – Refused 20 July 2004
35. 04/02364/FUL Demolition of existing hotel and erection of 30 timeshare holiday accommodation units, ancillary accommodation, restaurant, bar and shopping facilities – Approved 21 February 2005
36. 06/02735/MOD Modification of existing consent (04/02364/FUL) Residential holiday accommodation units and ancillary unit comprising restaurant/bar and retail facilities – Approved 5 July 2007

Consultations

37. **Scottish Water** No objection
38. **Environmental Health** No objection
39. **Glenlyon and Loch Tay Community Council**
- Reduction in units and improved design is welcomed and the appreciation of the applicant's consultation event is noted
 - The loss of the commercial block is not welcomed. Fearnan will not receive the benefits of the development expressed in the previous application.
 - Concerns expressed regarding the removal of the holiday occupancy condition.
 - Concerns that the justification for departure from the Development Plan on the grounds that the proposal would bring benefit in the form of community facilities and help sustain an economy heavily reliant on the tourist industry was unjustified.

Representations

40. No letters of representation were received within the consultation period. However, one letter was received outwith this period from the Fearnan Village Association. Whilst this does not formally count towards the number of representations received the contents of the letter have been considered.
41. The contents of this letter raise similar issues to that of the Community Council outlined in the consultations section above.
42. These issues are all raised in the Appraisal section of this report.

ADDITIONAL STATEMENTS

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

Appraisal

Policy

44. Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 as amended by Planning Etc (Scotland) Act 2006 require that planning decisions be made in accordance with the development plan unless material considerations indicate otherwise. The determining issues in this case are whether:- the proposal complies with development plan policy; or if there are any other material considerations which justify a departure from policy. The most relevant policies of the Highland Area Local Plan (HALP) in this instance are outlined in the policy section above. The Council's Proposed Local Development Plan 2012 is a relevant material consideration in this instance and the relevant policies of that plan are also outlined above.
45. It should be noted that the principle of development on this site has already been established and this report will not re-visit that issue. This report will focus on the revised layout/design of units, the removal of the occupancy condition and the deletion of the community facilities from the plans.

Layout/Design/Landscaping

46. The reduction in the number of units has allowed for an improved layout which now introduces a central landscaped area. The revised blocks will effectively front onto this landscaped area and overall the amenity and landscape framework for the site has been significantly improved from the existing approval. The minor changes to the design of the units introduce improved finishing materials including stone cladding and this is welcomed. The proposal

also involves a detailed landscaping scheme which includes a number of new shrubs and trees of varying species and sizes. I welcome the revised layout and reduction in proposed units and consider the proposal to be an improvement from the previous consent.

47. Having discussed the landscaping with the applicant, he has indicated that the intention is to phase the planting depending on the phasing of the development of the accommodation. I therefore intend to attach a condition seeking a phasing plan for the landscaping.

Loss of Community Facilities/Development Viability

48. This proposal seeks to remove the community facilities approved as part of the 2006 consent. This community building was to house a reception area, retail area, café/restaurant/bar and toilet facilities. The delivery of this community facility was tied to the development of the wider site by Condition 22 of consent 06/02735/MOD which ensured that work on the commercial unit shall have commenced at least by the occupation of the eighteenth holiday unit and that it shall be open and operational prior to the occupation of the twenty seventh holiday unit. As only 11 of the units have been erected on site there has been no requirement for these facilities to be erected to date.
49. It should be noted that the community's general acceptance of the development of this site was dependant on the provision of community facilities on the site as there are currently no local facilities in Fearnan as the local shop/post office closed some time ago and the former hotel on the site provided the only local bar/restaurant. The provision of community facilities on the site was therefore identified as a key aspect of the proposal as outlined in the numerous letters of representation received during the previous applications. This issue has also been raised by the Glen Lyon and Loch Tay Community Council in their consultation response to this application.
50. The applicant has indicated in meetings with the Planning Officer that whilst he notes the wishes of the local community for the provision of community facilities on the site there simply is no economic case for the provision of this type of facility on the site. The former hotel on the site closed partly due to the lack of trade which the bar and restaurant had and my understanding is that the local shop also closed due to a lack of use. There is therefore the unfortunate situation that a village the size of Fearnan simply cannot sustain this type of community facility particularly as the number of full time residents in Fearnan is relatively low. The applicant has also indicated that the post office were approached regarding the possibility of re-opening in Fearnan but were advised that this was not feasible.
51. The applicant has submitted a brief justification document outlining the reasoning for removing the community facilities from the proposed site which outlines the detail of the above.
52. There are also a number of successful similar developments within 3 miles of the application site including the Fortingall Hotel, The Courtyard and local shop

and post office in Kenmore and The Lawers Hotel to the west. The refurbished café at Croft Na Caber/Taymouth Marina is also currently seeking a new operator.

53. The proposal does, however, seek to introduce further activities to the site including cycle and canoe hire and the provision of fishing rights to make better use of the neighbouring shore area.
54. Whilst it is noted that the loss of community facilities on the site is very unfortunate as outlined above there is limited demand for these facilities in Fearnan. The size of Fearnan and limited permanent occupancy of properties exacerbates this problem particularly during these times of austerity. It is, however, fortunate that nearby facilities as outlined above do exist in relatively close proximity.

Removal of Occupancy Condition

55. The determining issues in this case are whether: - the development without compliance with the existing condition and modification to that specified as Condition 21 on consent 06/02735/FUL would be consistent with the relevant provisions of the adopted Local Plans; or if an exception to these provisions is justified by other material considerations.
56. Concerns have previously been expressed at officer level regarding the use of the alternative condition and these are outlined in detail within the report for applications 12/00352/FLL (Mains of Taymouth) and 11/02113/FLL (Taymouth Marina). These applications were both approved at the Development Management Committee which allowed for the removal of the standard occupancy condition and it being replaced with a condition which linked each unit to the management and letting arrangements for the respective development.
57. The applicant has indicated that the intention for the units is for them to be sold as individual properties and then Shoreside retains management over the units. In that regard it has been agreed with the developer that a mechanism of control for the units would be to ensure they are tied to Shoreside in terms of management and through their title deeds, similar to the condition which was approved at Mains of Taymouth and Taymouth Marina.
58. This can be covered by a planning condition and the title deeds and management agreement shall include issues such as the following:
 - Ensuring that the properties are let only through the Shoreside company
 - Ensuring the owners of each estate property pay an equitable share of the cost of maintaining the common property (access tracks/landscaping etc)
 - Proprietors should maintain their property in a good state of repair
 - No external alterations or alterations to the colour scheme of the estate properties is permitted
 - No trees, shrubs within the landscape around each estate property shall be lopped, felled or altered in anyway

59. Whilst concerns regarding this approach have been raised at officer level in the past, the revised occupancy condition has been approved on a number of similar sites in the Loch Tay area and as such these have set a precedent for approval of this type of change. Therefore, despite concerns regarding the enforceability and ability of this condition to control occupancy, I consider it appropriate to allow the condition to be amended in this instance.

Access/Cycle Parking

60. As indicated above the access track and bell mouth with the public road has already been formed to an acceptable standard. Parking provision is indicated on the site plan and Transport Planning have offered no objection to the proposal as submitted. I am satisfied that the vehicular access and parking arrangements for the site are considered acceptable. The existing consent includes conditions regarding the provision of a footpath on the south and east boundaries of the site which includes street lighting which will help to link the site to the village. I intend to attach the same condition to this consent with a timescale to ensure the footpath and associated lighting is constructed prior to the completion of the development. The previous consent also includes a condition requiring the provision of a cycle parking facility for 10 bicycles and again I intend to replicate that condition on this consent.

Footpath Link

61. A condition on the previous consent required the provision of a footpath link on the south and east boundaries of the application site. The site plan submitted with this application shows the footpath link solely on the south boundary. Having discussed this with the applicant and Transport Planning the understanding is that the link on the east side was to ensure a suitable pedestrian link from the village to the community facilities which are located on the eastern side of the site. A timber pedestrian bridge is currently on site to provide this link. As the community facilities are no longer proposed there is no longer a requirement to provide a footpath link on the eastern side of the site. Having discussed this with Transport Planning they have offered no objection to the removal of the footpath link. It should also be noted by members that there are only limited footpaths in the village of Fearnan and these are restricted to Dalchiaran which is a more recent addition to the village.

Bus Pick Up and Drop Off Areas

62. There is a requirement for bus pick up and drop off areas as part of the previous application. This was considered prudent given the community facilities contained within the site. As these are no longer proposed the applicant raised the question as to whether these pick up and drop off areas were required. I have discussed this with Transport Planning who have advised that there is still potential demand from tourists to use bus services and scope for members of staff at the development site to use the bus and therefore the condition is still considered to be necessary.

Street Lighting

63. A condition on the previous consent requires the provision of street lighting along the length of the new footway. The applicant has questioned the requirement for street lighting in this location given that there is none along the stretch of the main road through Fearnan. There are, however street lights to the north east of the site in the village. Having discussed this issue with Transport Planning they have advised that the street lighting requirement is in the interests of pedestrian and traffic safety particularly in regard to lighting the junction into the site and therefore I intend to attach a condition in this regard.

Drainage

64. Information submitted as part of the previous application indicated that the seven units at the front (south) of the site were to connect the public septic tank in Fearnan as a direct replacement of the now demolished hotel. A new sewage treatment works will take the remaining development. Full details of this were submitted as part of the previous application and discharged under Condition 20. These details also indicated that when Scottish Water upgraded the public system in Fearnan the intention for the development would be to connect to this public system and abandon the private package treatment plant. I intend to attach a condition to confirm this on this application. This drainage arrangement complies with the requirements of Policy EP3B of the Proposed Local Development Plan.

Legal Agreements

65. None required.

Direction by Scottish Ministers

66. Under the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008, regulations 30 – 32 there have been no directions by the Scottish Government in respect of an Environmental Impact Assessment screening opinion, call in or notification relating to this application.

Conclusion and Reasons for Recommendation

67. In conclusion, the application must be determined in accordance with the adopted Development Plans unless material considerations indicate otherwise. In this respect, the alterations to the design and layout are considered to comply with the adopted Highland Area Local Plan and Tayplan 2012. Whilst the alterations to the occupancy condition raise concerns regarding enforceability and compliance with policy I have taken account of material considerations, including the previous approvals of a similar nature in the local area and consider these sufficient to justify an approval in this instance. On that basis the application is recommended for approval subject to conditions.

Recommendation

A Approve subject to the following conditions:

- 1 The proposed development must be carried out in accordance with the approved drawings and documents, unless otherwise provided for by conditions imposed on the planning consent.
- 2 A detailed phasing plan for the landscaping shown on drawing (12/01736/2) and planting detail (12/01736/8) shall be submitted for the further written approval of the Planning Authority. This phasing plan shall indicate when each area of planting is proposed and the details as agreed shall be strictly adhered to during the development of the site. The landscaping shall also be maintained on site in perpetuity all to the satisfaction of the Council as Planning Authority. Any planting failing to establish within 5 years shall be replaced with planting of a similar size and species in the next available planting season.
- 3 Prior to the occupation of any property hereby approved, the applicant shall submit full details of the management/title deeds which links every property to the wider Shoreside site. These details shall be submitted and agreed in writing with the Planning Authority prior to the occupation of any of the new properties. Every property on the application site shall enter into this management agreement and be subject to these title deeds. This agreement between the Applicant (or successor) and each property owner shall be maintained in perpetuity.
- 4 A 1.8m wide footway constructed to the standard and specifications required by the Council as Roads Authority shall be provided along the south boundary of the site as indicated on the approved site plan (12/01736/2) to the satisfaction of the Council as Planning Authority. The footpath shall be formed prior to the occupation of the first unit hereby approved under this consent.
- 5 A cycle parking facility for a minimum of 10 cycles shall be provided within the site to the satisfaction of the Council as Planning Authority.
- 6 "Pick up and drop off" areas for bus passengers shall be provided on both sides of the A827 public road adjacent to the access to the development. The areas shall be a minimum of 4m long by 1.8m wide kerbed and surfaced to the requirements of the Council as Roads Authority to the satisfaction of the Planning Authority. This area shall be formed prior to the completion of the development hereby approved.
- 7 Prior to the commencement of any development on site details of a street light system designed to EN 13201 / BS 5489 to be provided over the length of new footway shall be submitted for the written approval of the Planning Authority. The type and standard of lighting shall be assessed using the zoning system outlined in 'The Institution of Lighting Engineers Guidance Notes for the Reduction of Light Pollution'. The details as agreed shall be implemented as part of the site development and completed in its entirety prior the occupation of the first unit approved under this consent.

- 8 Prior to the commencement of development details of the materials and colour of all the proposed finishes for the development shall be submitted and approved in writing by the Council as Planning Authority.
- 9 The development hereby approved shall be connected to the private drainage system approved as part of application 06/02735/MOD and referred to specifically in the letter from Scott Bennett Associates dated 19 August 2010. All drainage works shall follow the phases outlined in the letter.

Reasons

- 1 To ensure that the development is carried out in accordance with the plans approved.
- 2 In the interests of visual amenity and improving the landscape character of the site.
- 3 To ensure the suitable occupancy of the properties
- 4 In the interests of pedestrian and traffic safety
- 5 To ensure adequate cycle parking provision and to encourage the use of sustainable modes of transport.
- 6-7 In the interests of pedestrian and traffic safety
- 8 In the interests of visual amenity
- 9 To ensure the site is served by an adequate drainage system

B JUSTIFICATION

68. The alterations to the design and layout are considered to comply with the adopted Highland Area Local Plan and Tayplan 2012. Whilst the alterations to the occupancy condition raise concerns regarding enforceability and compliance with policy I have taken account of material considerations, including the previous approvals of a similar nature in the local area and consider these sufficient to justify an approval in this instance.

C PROCEDURAL NOTES

None.

D INFORMATIVES

- 1 Under Section 27A of the Town and Country Planning (Scotland) Act 1997 (as amended) the person undertaking the development is required to give the Planning Authority prior written notification of the date on which it is intended to commence the development. A failure to comply with this statutory requirement

would constitute a breach of planning control under section 123(1) of that Act, which may result in enforcement action being taken.

- 2 As soon as practicable after the development is complete, the person who completes the development is obliged by section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended) to give the Planning Authority written notice of that position.
- 3 This planning permission will last only for three years from the date of this decision notice, unless the development has been started within that period. (See Section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

**NICK BRIAN
DEVELOPMENT QUALITY MANAGER**

Background Papers: None

Contact Officer: John Williamson – Ext 75360

Date: 20 November 2012

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Perth & Kinross Council

12/01736/FLL

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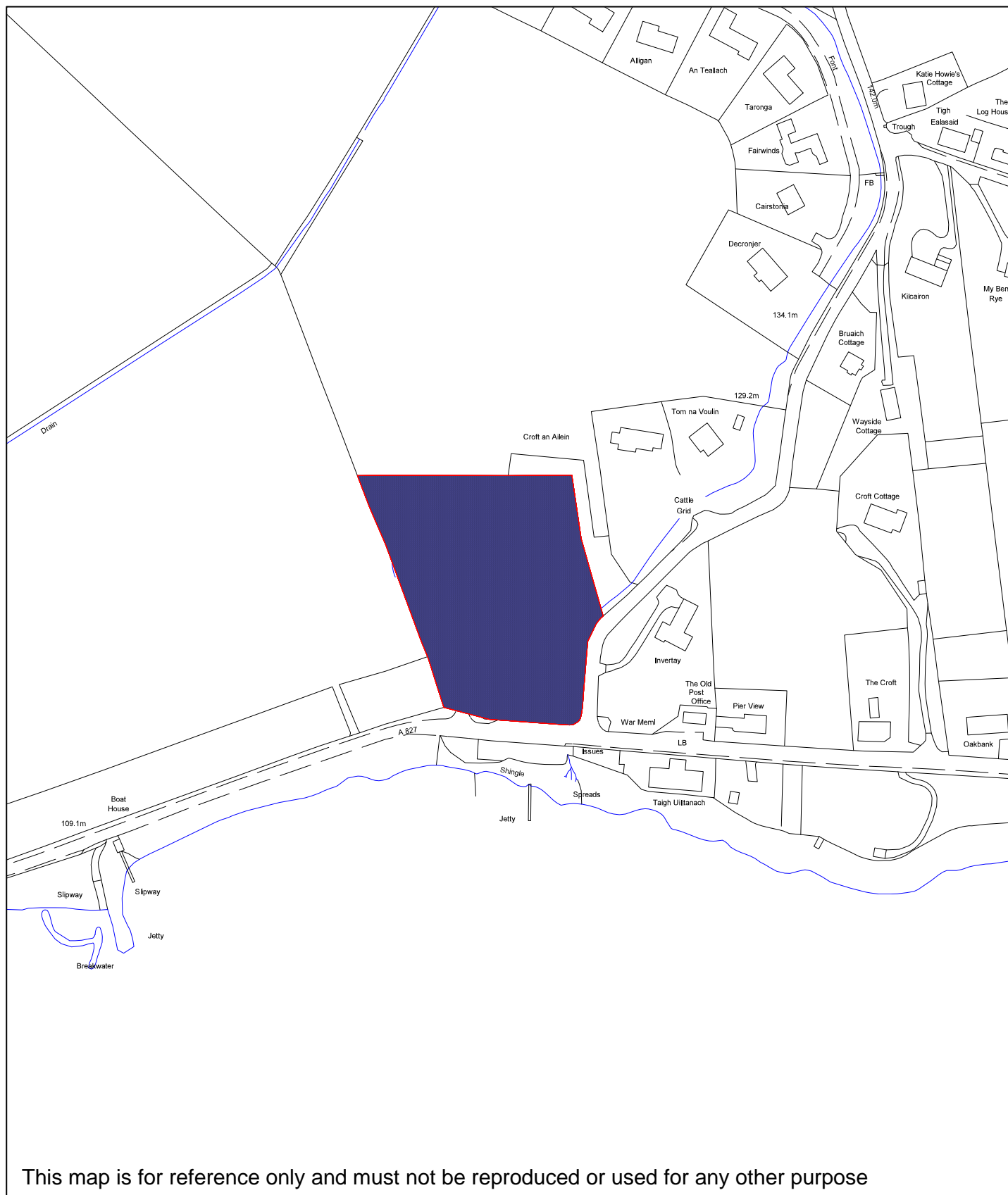
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Perth & Kinross Council

12/01736/FLL

Former Tigh Na Loan Hotel, Fearnan

Modification of existing consent (06/02735/MOD)



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