

**4(i)(a)**

LRB-2023-29

**LRB-2023-29 - 23/00184/FLL – Erection of a fence (in retrospect), 22 King Street, Stanley, Perth, PH1 4ND**

**PAPERS SUBMITTED  
BY THE  
APPLICANT**



# NOTICE OF REVIEW

UNDER SECTION 43A(8) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED) IN RESPECT OF DECISIONS ON LOCAL DEVELOPMENTS

THE TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND LOCAL REVIEW PROCEDURE) (SCOTLAND) REGULATIONS 2013

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

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

**Use BLOCK CAPITALS if completing in manuscript**

## Applicant(s)

Name

Address

Postcode

Contact Telephone 1

Contact Telephone 2

Fax No

E-mail\*

## Agent (if any)

Name

Address

Postcode

Contact Telephone 1

Contact Telephone 2

Fax No

E-mail\*

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

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

Yes  No

Planning authority

Planning authority's application reference number

Site address

Description of proposed development

Date of application

Date of decision (if any)

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

**Nature of application**

- 1. Application for planning permission (including householder application)
- 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 checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. Is it possible for the site to be accessed safely, and without barriers to entry? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

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



**Statement**

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

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

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

SEE SUPPORTING NOTICE OF REVIEW 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.

SEE SUPPORTING NOTICE OF REVIEW STATEMENT.

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

**Checklist**

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

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

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

**Declaration**

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

Signed [REDACTED]

Date



# Notice of Review Statement on behalf of Mr and Mrs William Birse-Stewart

in respect of the refusal of planning permission for erection of a  
fence (in retrospect) at 22 King Street, Stanley, Perth, PH1 4ND

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# 1 EXECUTIVE SUMMARY

- 1.1 On 9 March 2023, Robert Crerar (Architect) submitted an application for planning permission (Planning Reference: 23/00184/FLL) (“**the Application**”) on behalf of Mr and Mrs William Birse-Stewart (“**the Appellants**”) to Perth and Kinross Council (“**the Council**”) for the following development proposal (“**the Proposal**”) at 22 King Street, Stanley, Perth, PH1 4ND (“**the Property**”):

*“Erection of a fence (in retrospect) 22 King Street, Stanley, Perth, PH1 4ND”.*

- 1.2 On 19 May 2023, the Council issued its Decision Notice (Appendix 1) refusing the Application for the following reasons:

*“1. Approval would be contrary to National Planning Framework 4 Policy 7 criteria (a) due to the proposal's unsuitable impact on a historical asset, and informed by HES 'Managing Change in the Historic Environment: Boundaries and Setting' guidance; and criteria (c) where the proposal does not preserve the identified listed building's setting and associated character; Policy 14 where the proposal is designed in such a way that does not improve the quality of the area, does not support an attractive natural space, lacks attention to detail and does not support the long-term value of the open space, inconsistent with the 'pleasant', 'distinctive' and 'adaptable' qualities of a successful place.*

*2. Approval would be contrary to the Perth and Kinross Local Development Plan 2 Policy 1A and 1B with particular note to criteria (a) where there is a loss of established identity, criteria (b) where no consideration has been made to the identified listed building and wider character of the area, criteria (c) where the proposal's design in terms of appearance, height, scale, massing and materials is not appropriate, criteria (d) where the proposal does not respect or reinforce the open space criteria (e) where the local open space is divided rather than made accessible and inclusive and criteria (g) where the insensitive proposal has eroded local townscape in respect of the existing natural feature; Policy 17 where the proposal is not compatible with the amenity or character of the area and criteria (c) where the proposal does not improve the character and environment of the area and village; Policy 27A where the proposal's layout, design, materials, scale and siting is not appropriate to the listed building's long-established setting, character and appearance; and Policy 60B criteria (a) where the proposal is not designed with safety and convenience of all potential users in mind, and informed by Placemaking Supplementary Guidance, HES 'Managing Change in the Historic Environment: Boundaries and Setting' guidance, Designing Street policy and the National Roads Development Guide.”*

- 1.3 The Appellants submit that the Proposal complies with National Policy Framework 4 (“**NPF4**”) and the Perth and Kinross Local Development Plan 2 (“**the LDP**”) and that material considerations support the Proposal.
- 1.4 The Appellants submit that the Council has taken an unreasonable approach to the assessment of the Application and has failed to balance properly the limited impact of the Proposal with its

clear benefits in terms of the protection of the historical listed Stanley Church, the concerns of the wider community, and the safety of the Appellants. The impact on the setting of the listed building is *de minimus*, whereas the protection afforded by the new fence is critical to protecting the historical asset for future generations and preserving the amenity and security of the Property.

1.5 The Appellants are seeking a review of the Council's decision on the following grounds:

1.5.1 the Council has erred in its assessment of planning policy and its conclusions for refusal, and the Proposal complies with local and national planning policy; and

1.5.2 the Council has failed to take into consideration material considerations which support the Proposal.

1.6 This Notice of Review demonstrates that the Proposal complies with the LDP and NPF4 and that material considerations support the Proposal. The Appellants submit that the Council's assessment of the Application is flawed, and for the reasons set out in this Notice of Review the Local Review Body ("**the LRB**") should reverse the Council's decision and grant planning permission.

## 2 BACKGROUND

2.1 22 King Street is a detached dwellinghouse, with historical association as Manse to the adjacent category B listed Stanley Parish Church. Set back from the public road, the Property is accessed by travelling down a short private track, which is also the access road for the Church.

2.2 The Old Manse at King Street was previously the property of the Church of Scotland and sold to the Appellants in August 2022. The Appellants' title extends not only to the Manse and immediate surrounding ground but includes the access road to the Church and Manse (see area shaded pink on the plan at Appendix 2), as well as the rectangular area of land to the front of the Manse, which bounds King Street (see area shaded pink on the plan at Appendix 3). This rectangular piece of land was described and sold to the Appellants as "Garden Ground" and forms part of the Appellants' private ground.

2.3 The whole of the area including the Church and the Manse and their respective grounds is and always has been separated from King Street by a boundary fence and gate. Historically, it was separated from King Street by a stone wall and gate (see photograph at Appendix 4). There has never been free and open access from King Street onto any part of the church and Manse grounds, which are private ground.

2.4 There is long-standing community concern regarding the security of the historical grade B listed Church at Stanley, which the Appellants understand has not been in use since 2010. In recent years, the building has been subjected to significant vandalism, most significantly, fire-raising, which has led to irrevocable damage to the internal and external fabric of the building (see photographs at Appendix 5).

2.5 At the time the Appellants took ownership of the Manse, a dilapidated and unsightly metal link chain fence with 5-foot metal posts and 2 strands of wire running above, stood at the bottom of the Manse garden grounds. This fence ran adjacent to the pavement along King Street and along the curtilage of the Property. In a state of disrepair (the strand wires having long since

deteriorated) the fence was unsightly and offered minimal security and protection (see photographs at Appendix 6) and vandals continued to take access over it to the Church and Manse grounds.

2.6 Concerned by these security issues, members of the community Neighbourhood Watch approached the Appellants in the Spring of 2023, following which the Appellants met with community wardens, together with members of the local Police, who were regularly being called out to incidents of anti-social behaviour at the Church, to discuss a solution to the problem. Following this meeting, the Appellants contacted their local councillor, Grant Laing, who advised that he had also been made aware of the security issues and was similarly concerned.

2.7 To resolve ongoing security concerns, the Appellants resolved to replace the original dilapidated fence. In September 2022, a local fencer was hired to reposition the wooden board fence from where it was previously erected immediately around the Manse to the edge of the Manse grounds, using the metal upright posts of the existing wire fence to attach it (see photograph at Appendix 7). The fence and its posts were positioned within the boundary of the Appellants' title and do not adjoin or touch the pavement along King Street.

2.8 The Appellants were not aware that this improvement and repair to the original fence would require planning permission, and this having been drawn to their attention by letter dated 17 August 2022 from the Council (Appendix 8), they immediately took steps to apply for retrospective planning permission, the Council having agreed to grant an extension of time for doing so.

2.9 On 9 March 2023, Robert Crerar submitted the Application on behalf of the Appellants. The Application sought permission for the Proposal:

*"Erection of a fence (in retrospect) 22 King Street, Stanley, Perth, PH1 4ND".*

2.10 The Application included a Supporting Statement. The Supporting Statement outlined the background to the Application (i.e., the issues with vandalism, and community support for the new fence) and the various considerations taken by the Appellants to ensure the Proposal was in line with the character of the area and protected the visual amenity of the historical Stanley Church. The Supporting Statement is incorporated for the purposes of this Notice of Review at Appendix 9. The drawings which formed part of the Application can be found at Appendix 10 to Appendix 12.

2.11 The Application received one representation of objection, which relates to loss of view and that the fence was not visually attractive. It is stated in the Report of Handling (Appendix 13) that whilst loss of view cannot be logged as a material consideration, the resulting visual amenity impact and erosion of the aesthetic quality to the open space and the listed building's setting, due to the Proposal's scale and design, are considered as material points.

2.12 On 19 May 2023 the Council refused the Application for the following reasons:

*"1. Approval would be contrary to National Planning Framework 4 Policy 7 criteria (a) due to the proposal's unsuitable impact on a historical asset, and informed by HES 'Managing Change in the Historic Environment: Boundaries and Setting' guidance; and criteria (c) where the proposal does not preserve the identified listed building's setting*

*and associated character; Policy 14 where the proposal is designed in such a way that does not improve the quality of the area, does not support an attractive natural space, lacks attention to detail and does not support the long-term value of the open space, inconsistent with the 'pleasant', 'distinctive' and 'adaptable' qualities of a successful place.*

*2. Approval would be contrary to the Perth and Kinross Local Development Plan 2 Policy 1A and 1B with particular note to criteria (a) where there is a loss of established identity, criteria (b) where no consideration has been made to the identified listed building and wider character of the area, criteria (c) where the proposal's design in terms of appearance, height, scale, massing and materials is not appropriate, criteria (d) where the proposal does not respect or reinforce the open space, criteria (e) where the local open space is divided rather than made accessible and inclusive and criteria (g) where the insensitive proposal has eroded local townscape in respect of the existing natural feature; Policy 17 where the proposal is not compatible with the amenity or character of the area and criteria (c) where the proposal does not improve the character and environment of the area and village; Policy 27A where the proposal's layout, design, materials, scale and siting is not appropriate to the listed building's long-established setting, character and appearance; and Policy 60B criteria (a) where the proposal is not designed with safety and convenience of all potential users in mind, and informed by Placemaking Supplementary Guidance, HES 'Managing Change in the Historic Environment: Boundaries and Setting' guidance, Designing Street policy and the National Roads Development Guide.”*

- 2.13 The Appellants submit that the Application complies with **NPF4** and the **LDP** and is supported by the material considerations. The LRB should therefore reverse the Council's decision and grant planning permission.

### **3 DETERMINATION OF NOTICE OF REVIEW**

- 3.1 Section 43A of the Town and Country (Scotland) Act 1997 (“**the 1997 Act**”) provides the Appellants with the right to require the planning authority to review the decisions made by an appointed officer under the scheme of delegation. On such review, the LRB may uphold, reverse or vary a determination reviewed by them. The LRB must approach the review *de novo* (Sally Carrol v Scottish Borders Council [2015] CSIH 73).

#### **3.2 Determining Issues**

- 3.3 Section 25 of the 1997 Act requires planning applications to be determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan comprises NPF4 and the LDP. The Proposal is in accordance with NPF4 and the LDP and is supported by material considerations. The LRB should therefore reverse the Council's decision and grant planning permission.

#### Key issues

- 3.4 The Appellants submit that key issues in determination of the Application are:



- 3.4.1 conservation considerations;
- 3.4.2 design and layout, and residential and visual amenity;
- 3.4.3 public concern for safety; and
- 3.4.4 safety and concerns of the Appellants.

#### NPF4

- 3.5 NPF4 was adopted on 13 February 2023. The following NPF4 policies (produced in full at Appendix 18 – Note of relevant policies in full) are relevant to the Notice of Review and support the approval of the Proposal.
  - 3.5.1 Policy 7 – Historic assets and places.
  - 3.5.2 Policy 14 – Design, quality and place

#### The LDP

- 3.6 The LDP was adopted on 29 November 2019. The following LDP policies (produced in full at Appendix 18 – Note of relevant policies in full) are relevant to the Notice of Review and support the approval of the Proposal.
  - 3.6.1 Policies 1A and 1B – Placemaking
  - 3.6.2 Policy 17 – Residential Areas.
  - 3.6.3 Policy 27A – Listed Buildings.
  - 3.6.4 Policy 60B – Transport Standards and Accessibility Requirements: New Development Proposals.

#### Material Considerations

- 3.7 The Proposal is supported by the following material considerations:
  - 3.7.1 Public concern for safety; and
  - 3.7.2 safety and concerns of the Appellants.
- 3.8 The Appellants submit that the Application complies with NPF4 and the LDP and is supported by the material considerations, all as set out below.

## **4 GROUNDS FOR REVIEW**

- 4.1 The Appellants are seeking a review of the Council's decision on the following grounds:
  - 4.1.1 the Council has erred in its assessment of planning policy and its conclusions for refusal, and the Proposal complies with local and national planning policy; and

4.1.2 the Council has failed to take into consideration material considerations which support the Proposal.

4.2 The Appellants submit that the LRB should reverse the Council's decision and grant planning permission for the reasons that follow.

**Ground for Review 1: The Council has erred in its assessment of national and local planning policy and the Proposal complies with planning policy;**

4.3 The Proposal complies with NPF4 and the LDP and is supported by the following policies:

4.4 **Conservation Considerations - Compliance with NPF4 Policy 7 and LDP Policy 27A**

4.5 The Council refused the Application as they concluded it was contrary to NPF4 Policy 7 criteria (a) *due to the proposal's unsuitable impact on a historical asset and informed by HES' 'Managing Change in the Historic Environment: Boundaries and Setting' guidance*, and criteria (c) *where the proposal does not preserve the identified listed building's setting and associated character*; and LDP Policy 27A *where the proposal's layout, design, materials, scale and siting is not appropriate to the listed building's long-established setting, character and appearance*.

4.6 The Appellants disagree with the Council's assessment and reason for refusal. It is submitted that the proposal will have a positive impact on the listed building, going to the core of Policy 7's very purpose, which is to "protect and enhance" historic environment assets.

4.7 For years, the grade B listed Stanley Church has regularly been vandalised by members of the public who take access to the grounds from King Street. The building has and continues to incur significant damage to its internal and external fabric: in November 2022 it was set alight (see photograph of fuel cans at Appendix 5), and incidents of vandalism occurred again in September 2022 and 2023. Up until now, vandals have been able to access to the Church with relative ease, because of the wire fence and gate from King Street, which had fallen into disrepair.

4.8 However, since building the new fence there has been a significant reduction in vandalism and damage to the Church. The increased height of the new fence means that taking access is now more difficult, whilst any opportunity to access through the fence is prevented by the wood panels. The neighbours on both sides of the Property asked the Appellants to take the new fence right along, so as to abut their walls and fences, thus minimising the opportunities for vandals to take access via adjacent properties.

4.9 As such, the Proposal serves to protect the historical Church, and members of the community have expressed their appreciation for what they see as the work the Appellants have done in good faith to tackle security issues which have been a concern for several years. Stanley Church is precisely the type of historical asset which Policy 7 is designed to protect.

4.10 As for the setting of the historical building, it is incorrect to infer that the proposed development will have an unsuitable impact. In the Report on Handling, the permeability of the new fence, and its height, were raised as being problematic. However, historically, there was a wall along the boundary with King Street (see photograph produced at Appendix 4) which was stone built (much less permeable than the new slatted wood fence), and much higher than the existing wire fence.

Indeed, the view of the Church in the historical photo, taken looking down Charlotte Street, mirrors closely the view a pedestrian looking down Charlotte Street would have today (see photo at Appendix 14). The Appellants have also been sensitive to the use of materials for the new fence, and design and this is explored further **Design and layout: Residential and visual amenity – Compliance with NPF4 Policy 14 and LDP Policies, 17(c), 1A and 1B** below. In summary, the scale and siting are appropriate to the listed building's long-established setting, character, and appearance, in that they closely resemble the original setting of the Church.

- 4.11 In any case, even if the Council do take issue with the design of the new fence (which, it is submitted by the Appellants, is unreasonable), the Proposal should nonetheless fall to be considered as 'enabling development' under Policy 7, i.e., *development that would otherwise be unacceptable in planning terms but is essential, to secure the future of an historic environment asset or place which is at risk of serious deterioration or loss*. Without this new fence, or some other means of protection (although what the Council would deem to be acceptable is not clear), the Church will continue to be vandalised. This is contrary to Policy 7 and LDP Policy 27A, which seek to protect and enhance historical assets.
- 4.12 It is submitted by the Appellants that the proposed development fully complies with Policy 7 and LDP Policy 27A, and that it is unreasonable to refuse the Proposal on the basis of protecting its setting, when the historic asset itself is currently being destroyed. The Proposal protects the historical asset, and it does not introduce a change to the boundary but, rather, reinstates a boundary which has existed historically. Any harm to the listed building's setting is *de minimus* and is outweighed by the positive impacts on the listed building. The historical church should be protected, which this Proposal seeks to do.
- 4.13 The Proposal complies with NPF4 Policy 7 and LDP Policy 27A.
- 4.14 **Design and layout: Residential and visual amenity – Compliance with NPF4 Policy 14 and LDP Policies, 17(c), 1A and 1B**
- 4.15 The Council also refused the Application because it was contrary to NPF4 Policy 14, *where the Proposal is designed in such a way that does not improve the quality of the area, does not support an attractive natural space, lacks attention to detail and does not support the long-term value of the open space, inconsistent with the 'pleasant', 'distinctive' and 'adaptable' qualities of a successful space*, and LDP Policies 1A and 1B and 17(c).
- 4.16 The Appellants disagree with the Council's assessment and reason for refusal. It is submitted by the Appellants that the Proposal will not have a negative impact on the visual amenity of the site, but rather, will improve the visual quality of the area.
- 4.17 At present, the Church is vandalised and in a state of disrepair (see photographs at Appendix 4), and the previous perimeter fence was similarly destitute. By contrast, this new fence is tidy and well-kept. According to *Placemaking Supplementary Guidance*, "spaces should create safe, accessible, inclusive spaces for people"; such is the effect of this new fence, which preserves the church for those users looking to access the site for legitimate use, rather than those who are entering to vandalise. The stand and strand wires had long since deteriorated and the old fence

was felt both to be in a dangerous state but also, and more importantly, no longer provided any security for the listed Church.

- 4.18 In erecting the new fence, the Appellants considered that it was in keeping with the 6-foot fence at the other end of the curtilage (see photograph at Appendix 15). Indeed, neighbours on both sides asked the Appellants to take the new fence right along at either end, so as to abut their walls and fences. The new fence is also similar to others in the surrounding area (see photographs at Appendix 16).
- 4.19 Views to the Church are unaffected and, in the last year, the Appellants have enhanced visibility of the Church, through the removal of scrub trees and bushes (see photograph at Appendix 17). Beyond the new fence itself, wire fencing within the site means that clear lines of vision are kept open towards the Church, which is still very much visible from the street and surrounding viewpoints. As discussed above, the new fence matches the height of the original historical perimeter wall to the Church and Manse grounds (as do the views down Charlotte Street). The new fence itself is not impermeable – you can still see through the wooden slats – and the original 5 bar (i.e. not solid board) metal church gate has been retained, meaning that views down the access path to the Church are preserved.
- 4.20 As for materials of the new fence, the Appellants have simply moved the existing fence around the Manse and reused it, securing it to the existing wire fence. This was an intentional design decision by the Appellants, in a bid to respect and preserve the existing visual amenity and erect a fence in keeping with the wider site. The new fence will also be painted to enhance its appearance in the coming months, but on the advice of the fencer, has been left for the wood to settle. The Council's conclusion that there has not been attention to detail in the Proposal is simply incorrect. The Appellants would be very happy to discuss and agree with officers an appropriate finishing for the new fence.
- 4.21 It is submitted that the Proposal complies with NPF4 Policy 14 and LDP Policies 1A and 1B and 27A.
- 4.22 **Roads and access – Compliance with LDP Policy 60B**
- 4.23 Finally, the Council refused the Application based on the view that it was contrary to LDP Policy 60B criteria (a) *where the proposal is not designed with safety and convenience of all potential users in mind, and informed by Placemaking Supplementary Guidance, HES 'Managing Change in the Historic Environment: Boundaries and Setting' guidance, Designing Street policy and the National Roads Development Guide.*
- 4.24 One issue raised in the Report of Handling is that the height of the new fence at the vehicle access is in excess of 1.05 metres and does not afford the appropriate visibility splay onto the public road network. As noted, the Appellants have considered this by lowering the new fence either side of the access gate. The Appellants would be happy to further lower the new fence at this point, to meet national requirements.
- 4.25 It is submitted that this deviation alone does not justify refusal of the Application.

**Ground for Review 2: The Council has failed to take into consideration material considerations which support the Proposal.**

- 4.26 It is submitted by the Appellants, that in coming to its decision for refusal, the Council has failed to take into consideration material considerations which are relevant to the Proposal.
- 4.27 Firstly, public concern for safety can be a material consideration with respect to planning decisions (*Newport BC v Secretary of State for Wales* [1998] Env. L.R. 174). The erection of the new fence is primarily a safety measure to help stop vandalism of the Church and grounds, which is clearly a very real threat (evidenced by the many incidents of vandalism in the past few years), as well as a concern of the wider community. There is support for the new fence, in particular, from surrounding neighbours, who have actively written in support of the Proposal (see letter from the owner of adjacent properties 18, 20a and 20b, King Street, at Appendix 19) The Proposal is also supported by the wider community, including the local Neighbourhood Watch, Community Wardens and Police, who have been involved with several incidents of youths gathering at the Church and vandalising, and actively engaged in meetings with the Appellants in the months leading up to the erection of the new fence. Recently, police officer 1609 visited the Appellants and said to quote his number in respect to vandalism issues at the Church. Only one representation of objection to the Application was received.
- 4.28 The erection of the new fence has helped quell long-standing concerns for the security of the Church, and indeed, members of the community have expressed their appreciation for what they see as the work the Appellants have done in good faith to tackle these issues. The sentiments of the wider community should not be overlooked in considering this Application.
- 4.29 Secondly, whilst the Appellants accept that as a general principle, planning is concerned with land use from the point of view of public interest, it is also well established that the public interest may require that the interests of individual occupiers should be considered (*Stringer v Minister of Housing and Local Government* [1971] 1 All E.R. 65).
- 4.30 Whilst the new fence encloses the historical Stanley Church, it also encloses the Appellants' home, and land which is in their private ownership. The Manse itself is in close proximity to the Church and it follows that the presence of vandals not only poses a threat to the historical Church but threatens the Appellants' safety and that of their property, as well as their rights to enjoyment of their home. The Appellants are now in their late 60's and 70's and fearful for their own safety, as well as the security of their pedigree working dogs, whom they fear may be targeted by those unlawfully accessing the Church and adjacent grounds.
- 4.31 It is submitted that the new fence is a justified development in the circumstances. Those who are accessing the Church for the wrong reasons are deterred from entering, whilst those accessing for legitimate purposes are still free to take access and enjoy the Church and surrounding grounds. The Appellants' primary concerns remain the protection of the Church – a concern shared by the wider community – and the right to feel safe in their own home.
- 4.32 It is submitted that the Council have failed to take into consideration the above material considerations which support the Proposal.

## **5 TEMPORARY CONSENT**

- 5.1 Whilst the Appellants submit that the LRB should reverse the Council's decision and grant planning permission for the reasons outlined in this Notice of Review, they also acknowledge that the proposed development may not always be required.
- 5.2 In its present state, the Church is unused and in a state of disrepair, attracting vandals to the Property. Such is the requirement for this new, reinforced fence, primarily as a security measure to help prevent vandalism. Nonetheless, the Appellants acknowledge that there may be plans to renovate the Church in the future, in which case, the fence may no longer be required in its current form.
- 5.3 Considering this, should the LRB be minded to refuse the application, the Appellants would be open to a condition being attached to the planning permission limiting its duration to a period of 5 years. That would protect the Church and the Manse, and the requirement for the new fence to remain in place could be revisited at the end of that period. That would, for example, provide time for the Church to be redeveloped and secured to a reasonable standard.
- 5.4 The Appellants respectfully submit that the LRB consider this proposal when assessing the Application as outlined below.

## **6 CONCLUSION**

- 6.1 The Application is supported by NPF4 and the LDP and material considerations as set out in this Notice of Review. It is submitted that the LRB should therefore reverse the Council's decision and grant planning permission.

BURNES PAULL LLP  
Solicitors, Edinburgh

AGENT FOR THE APPELLANTS

August 2023

## **7 LIST OF DOCUMENTS**

- 7.1 Appendix 1 – Decision Notice dated 19 May 2023
- 7.2 Appendix 2 – Title Plan 1
- 7.3 Appendix 3 – Title Plan 2
- 7.4 Appendix 4 – Historical Photograph taken from Charlotte Street
- 7.5 Appendix 5 – Photographs of vandalism of Church
- 7.6 Appendix 6 – Photographs of old fence
- 7.7 Appendix 7 – Photograph of new fence fixed to old fence
- 7.8 Appendix 8 – Copy letter dated 17/08/2022 from the Council
- 7.9 Appendix 9 – Supporting Statement (submitted with Application)
- 7.10 Appendix 10 – Site Plan as Built (submitted with Application)
- 7.11 Appendix 11 – Existing Site Plan (submitted with Application)
- 7.12 Appendix 12 – Plans and Elevations (submitted with (Application)
- 7.13 Appendix 13 – Report of Handing
- 7.14 Appendix 14 – Photograph taken from Charlotte Street 2023
- 7.15 Appendix 15 – Photograph showing fence at other end of curtilage
- 7.16 Appendix 16 – Photographs showing other fences in the area
- 7.17 Appendix 17 – Photograph showing cleared scrub
- 7.18 Appendix 18 – Note of relevant policies in full
- 7.19 Appendix 19 – Letter of support from neighbour, Michelle Gillies



## APPENDIX 1

Decision Notice dated 19 May 2023



Mr And Mrs Billy Birse-Stewart  
c/o Robert Crerar  
Office  
The Square  
Methven  
Perthshire  
PH1 3PE

Pullar House  
35 Kinnoull Street  
PERTH  
PH1 5GD

Date of Notice: 19th May 2023

### TOWN AND COUNTRY PLANNING (SCOTLAND) ACT

Application Reference: 23/00184/FLL

I am directed by the Planning Authority under the Town and Country Planning (Scotland) Acts currently in force, to refuse your application registered on 5th April 2023 for Planning Permission for Erection of a fence (in retrospect) 22 King Street Stanley Perth PH1 4ND

**David Littlejohn**  
Head of Planning and Development

#### Reasons for Refusal

1. Approval would be contrary to National Planning Framework 4 Policy 7 criteria (a) due to the proposal's unsuitable impact on a historical asset, and informed by HES 'Managing Change in the Historic Environment: Boundaries and Setting' guidance; and criteria (c) where the proposal does not preserve the identified listed building's setting and associated character; Policy 14 where the proposal is designed in such a way that does not improve the quality of the area, does not support an attractive natural space, lacks attention to detail and does not support the long-term value of the open space, inconsistent with the 'pleasant', 'distinctive' and 'adaptable' qualities of a successful place.
2. Approval would be contrary to the Perth and Kinross Local Development Plan 2 Policy 1A and 1B with particular note to criteria (a) where there is a loss of established identity, criteria (b) where no consideration has been made to the identified listed building and wider character of the area, criteria (c) where the proposal's design in terms of appearance, height, scale, massing and materials is not appropriate, criteria (d) where the proposal does not respect or reinforce the open space, criteria (e) where the local open space is divided rather than made accessible and inclusive and criteria (g) where the insensitive proposal has eroded local townscape in respect of the existing natural feature; Policy 17 where the proposal is not compatible with the amenity or character of the area and criteria (c) where the proposal does not improve the character and environment of the area and



village; Policy 27A where the proposal's layout, design, materials, scale and siting is not appropriate to the listed building's long-established setting, character and appearance; and Policy 60B criteria (a) where the proposal is not designed with safety and convenience of all potential users in mind, and informed by Placemaking Supplementary Guidance, HES 'Managing Change in the Historic Environment: Boundaries and Setting' guidance, Designing Street policy and the National Roads Development Guide.

#### Justification

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

#### Informatives

- 1 The unauthorised fence should be removed in its entirety, with the site boundaries reinstated to their original methods of enclosure, within three months of this Decision Notice. Failure to do so shall result in the case being passed back to the Development Management Enforcement Team.
- 2 If a replacement boundary treatment is desired, it is advised to submit a pre-application advice enquiry prior to the submission of a planning application. More information can be found online at <https://www.pkc.gov.uk/preapplicationservices>
- 3 It is noted that unauthorised works where a change of use from open space to form an extension to garden ground and associated works, within the blue ownership boundaries (plan 01) have been carried out without gaining the appropriate planning permission. An application for planning permission should be submitted via the <https://www.eplanning.scot> portal.

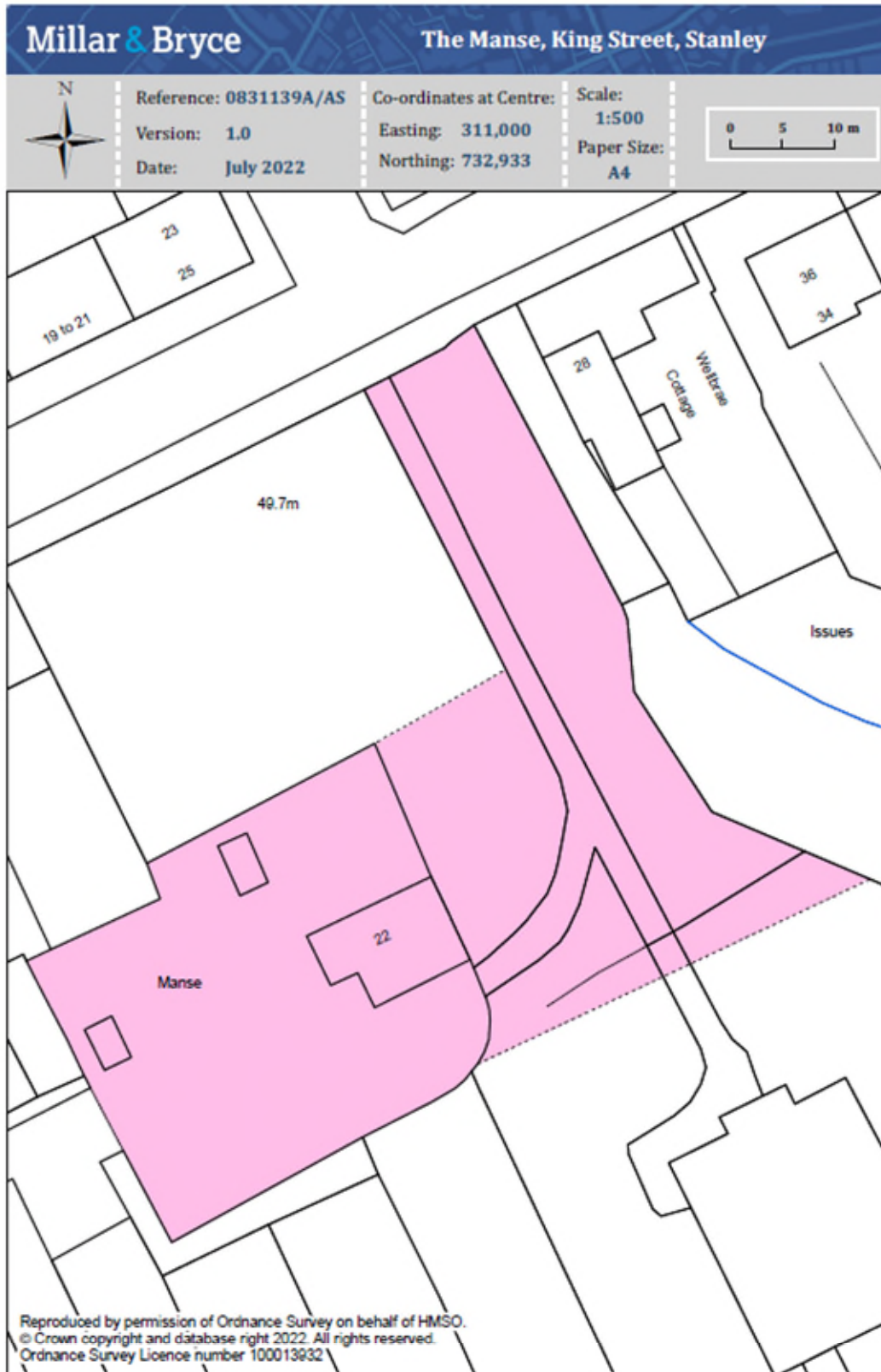
**The plans and documents relating to this decision are listed below and are displayed on Perth and Kinross Council's website at [www.pkc.gov.uk](http://www.pkc.gov.uk) "Online Planning Applications" page**

#### Plan Reference

- 01
- 02
- 03
- 04
- 05

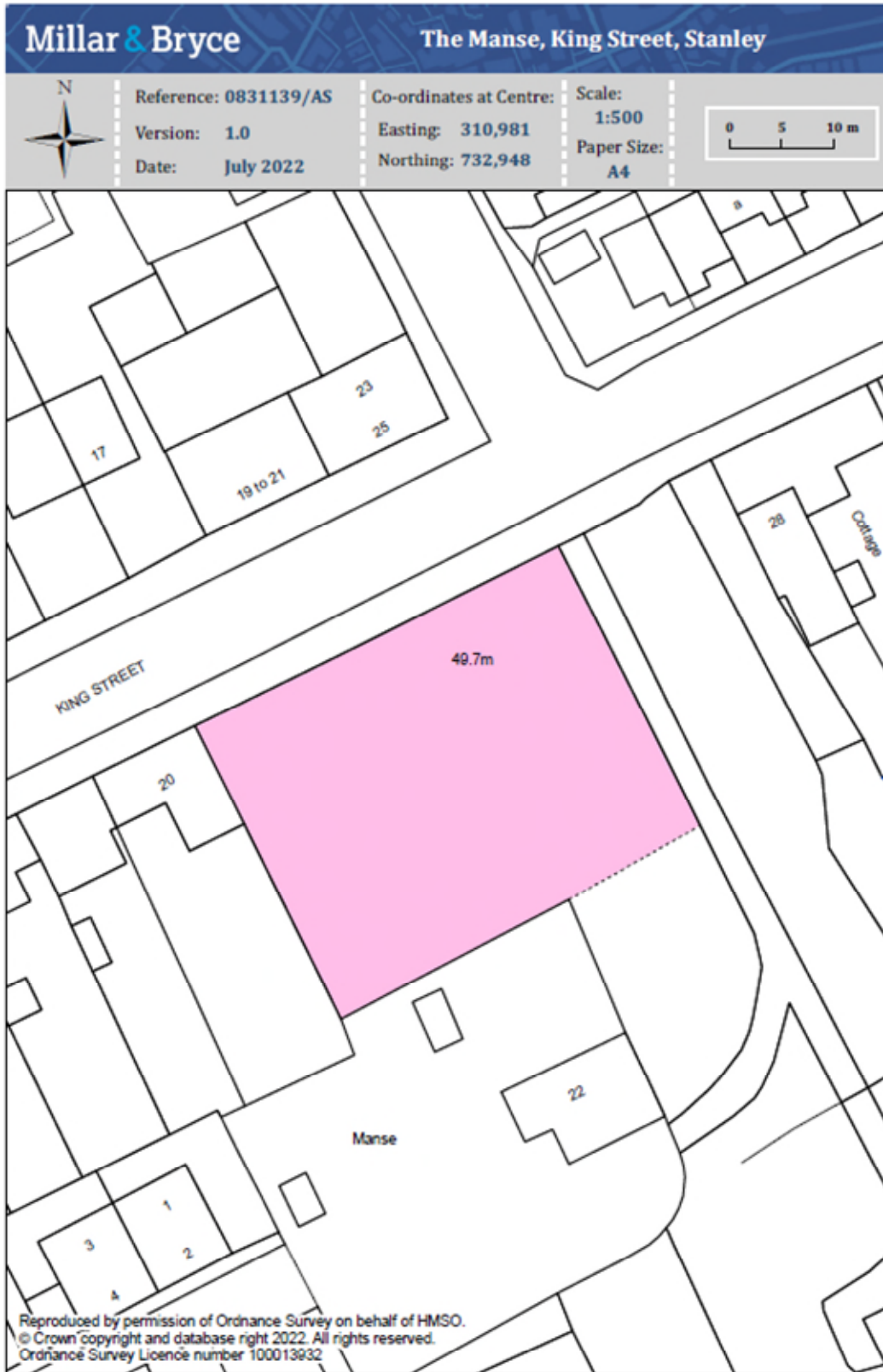
APPENDIX 2

Title Plan 1



APPENDIX 3

Title Plan 2



APPENDIX 4

Historical photograph taken from Charlotte Street





APPENDIX 5

Photographs of Vandalism













APPENDIX 6

Photographs showing old fence









APPENDIX 7

Photograph of new fence fixed to old fence



Copy letter dated 17/08/2022 from the Council

**Delayed Office Opening  
for Employee Training**  
*This office will be closed from  
8.45 am - 11.00 am on the first  
Thursday of each month.*



**Planning & Development**  
*Head of Service – David Littlejohn*

Pullar House, 35 Kinnoull Street, PERTH,  
PH1 5GD  
Tel: 01738 475000 Fax: 01738 475710

Contact: **Graham Stewart**

Direct Dial: [REDACTED]

Email: [REDACTED]

Our ref: 22/00177/ALUNDV

Your ref:

Date: 17 August 2023

Mr and Mrs Birse-Stewart  
[REDACTED]

Dear Mr and Mrs Birse-Stewart,

**Town and Country Planning (Scotland) Act 1997**

22/00177/ALUNDV - Alleged unauthorised erection of a fence, King Street, Stanley.

It has been brought to our attention that a fence has recently been erected.

The fence does not constitute permitted development under Class 3E of The Town and Country (Scotland) Act 1992 (as amended) and a search of our records has established that planning permission has not been sought or approved.

Having considered the works undertaken/development against policy 1A and 1B of the Perth and Kinross Local Development Plan 2 (2019) (LDP2), it is the Planning Authorities opinion that planning permission is unlikely to be supported in its current form.

As the fence is currently unlawful, we require that you to reduce the height to 1m or remove the fence by the 27<sup>th</sup> of December 2022.

Failure to alter or remove the fence may result in the Planning Authority taking formal enforcement action.

Please don't hesitate to contact me should you need to discuss anything I have raised in this letter.

Yours faithfully  
[REDACTED]

**Graham Stewart**  
Enforcement Assistant



## APPENDIX 9

### Supporting Statement (submitted with Application)

We write in relation to the erection of a fence at The Manse, 22 King Street, Stanley, PH14NG which replaces an original fence and advise that we wish to appeal in respect of the letter sent to us by Graham Stewart - [REDACTED]

Date: 15 November 2022 at 16:50:04 GMT

To: "[REDACTED]" >

Subject: 22/00177/ALUNDV - Alleged unauthorised erection of a fence

We request that consideration is given to review this decision and we also request a meeting and site visit at the Old Manse with a member of the planning department. We wish to appeal the decision and would also plan to apply for retrospective planning permission should this be required. Given that the fence is on our land and attached to the previous posts of the land for this property and is within the curtilage of our property, we wish to have the opportunity to fully go over the fencing matter and for the following information provided below to be taken into consideration in support of this appeal:

#### Background:

The Manse at King Street was previously the property of the Church of Scotland and sold to ourselves in August 2022. At this time a much dilapidated and unsightly metal link chain fence with 2 strands of wire running above this attached to 5 foot metal posts stood at the bottom of the Church land adjacent to the pavement along King Street- this was in significant disrepair and ran along the curtilage of the manse and access road to the church but the stand wires had long since deteriorated and the fence was felt both to be in a dangerous state but also and more importantly no longer provided any security or security for the listed Church accessed from the track through our property.

We were made aware by many members of the community that there were significant community concerns for the security and safety of the Church since the departure of the minister from the Manse in 2021 and that it was incurring terrible damage and destruction to the internal and external fabric of this historic listed building ( listed by Historic Scotland) and the land around it by vandals as the fence and gates from King Street had fallen into disrepair and were no longer providing any protection and security for both properties. Indeed we were approached by members of the neighbourhood watch and met with them and police (who we understand were being frequently called out to deal with issues on the Manse Grounds and church itself following further acts of vandalism and recently a fire and fire-raising at the church one night September.

Following these meetings we agreed to replace the original dilapidated fence and in consideration of the significant cost of re-fencing we agreed to move the 6 foot

wooden post and board fence from where it was (immediately around the manse) , and re-use it taking it down to the edge of and within the curtilage of the manse grounds using the metal upright posts in the ground within our grounds to attach the wooden fence to it. The fence and its post lie within the curtilage of the garden and do not adjoin or touch the pavement along King Street – indeed the wooden boarding utilises the original metal posts.

We were not aware therefore in light of the above that this improvement and repair to the original fence would require planning permission and this having been drawn to our attention, we will apply for this retrospectively.

Other considerations:

This fence was not altered in height when moved and was considered to be of a height that would provide a much higher security for the Church and the Manse but also to the neighbouring properties on either side who we have discussed and consulted with.

We also took into account and considered that it was in keeping with the 6 foot fence ( blue wooden slatted fence) at the other end of the curtilage and view of the old church running along the main road in Stanley (opposite the Linn) which runs along the pavement at the other end of the properties which access the street from the main street along the back to the old manse.

Indeed neighbours on both sides asked us that we take the fence right along at either end to abut with their walls and fences as they had been subject to vandals and youths climbing over their fences and walls into their gardens and properties from the Church grounds. Neighbours in NO 28 and No 20 and other properties will confirm this.

Other factors considered were security for ourselves ( in our late 60's early 70's and our property and vehicles. We also required to consider the safety and security of our working dogs (who would navigate or could be lifted over (stolen) over a lower fence).

Consideration was also given with regards to the fence being required to be higher than the old original metal upright standing posts at 4 ft 6" both from a health and safety perspective but also to be sympathetic from an aesthetic perspective so that there were not ugly iron bars sticking up above.

We are advised that some residents in the immediate area had come to a mistaken understanding that the land adjacent to the church and manse were public ground and public ground and are aggrieved that they no longer have access . The Church of Scotland sold the property and the land to ourselves and the land is private and we have entitlement to re -fence the property – we have done so in our view sensitively and continue to provide foot access for those interest in visiting the church for sightseeing etc. Until it was re-fenced, public continued to access the grounds and at night there was concern for the ongoing behaviours and disturbances to many in the King Street area and the damage caused.

Since the fence has been erected, the evidence is that incidents of vandalism and illegal access to both the church grounds, the church, the manse and the adjoining

properties along King Street have seen a significant reduction and indeed many members of the community have expressed their appreciation for what they see as the work we have done in good faith to protect the church which has been a concern for several years.

Mention has been made by a member of the planning department that a complaint had been made in relation to the entitlement "to a view" and that the fence should come down as they feel that their view of the church has been affected. It is our understanding that "entitlement to a view" is not a consideration. However not withstanding this is not a consideration we had already chosen to provide a gate which is 5 bar (and is not solid board) on the access path to the church so that a view is provided from the road up the path to the old church.

We trust that we have provided sufficient detail in support of an appeal in respect of the letter of [redacted] and that consideration will be given for this to be reviewed and re – considered and that the fence that has been put in place to reflect the concerns of the community for the security and long term safety and preservation of the historic church and also ( as the new owners and "custodians" of Stanley Manse) the Manse and its grounds.

We would also be grateful for guidance and advice as to next steps and to if and how we can apply for retrospective planning permission. We will also give consideration to approaching our local community Council in Stanley and have been in touch with our local PKC Council member on this matter.

We look forward to hearing from you.

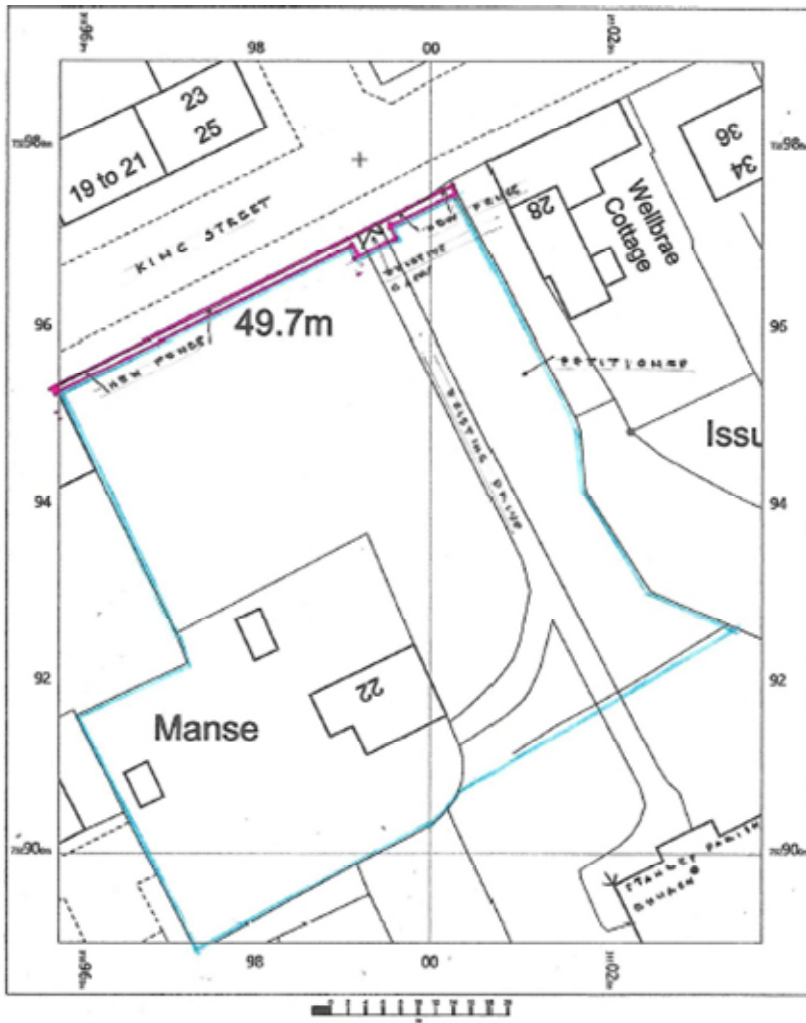
Regards

William and Lorna Birse-Stewart



APPENDIX 10

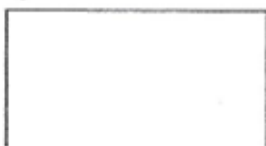
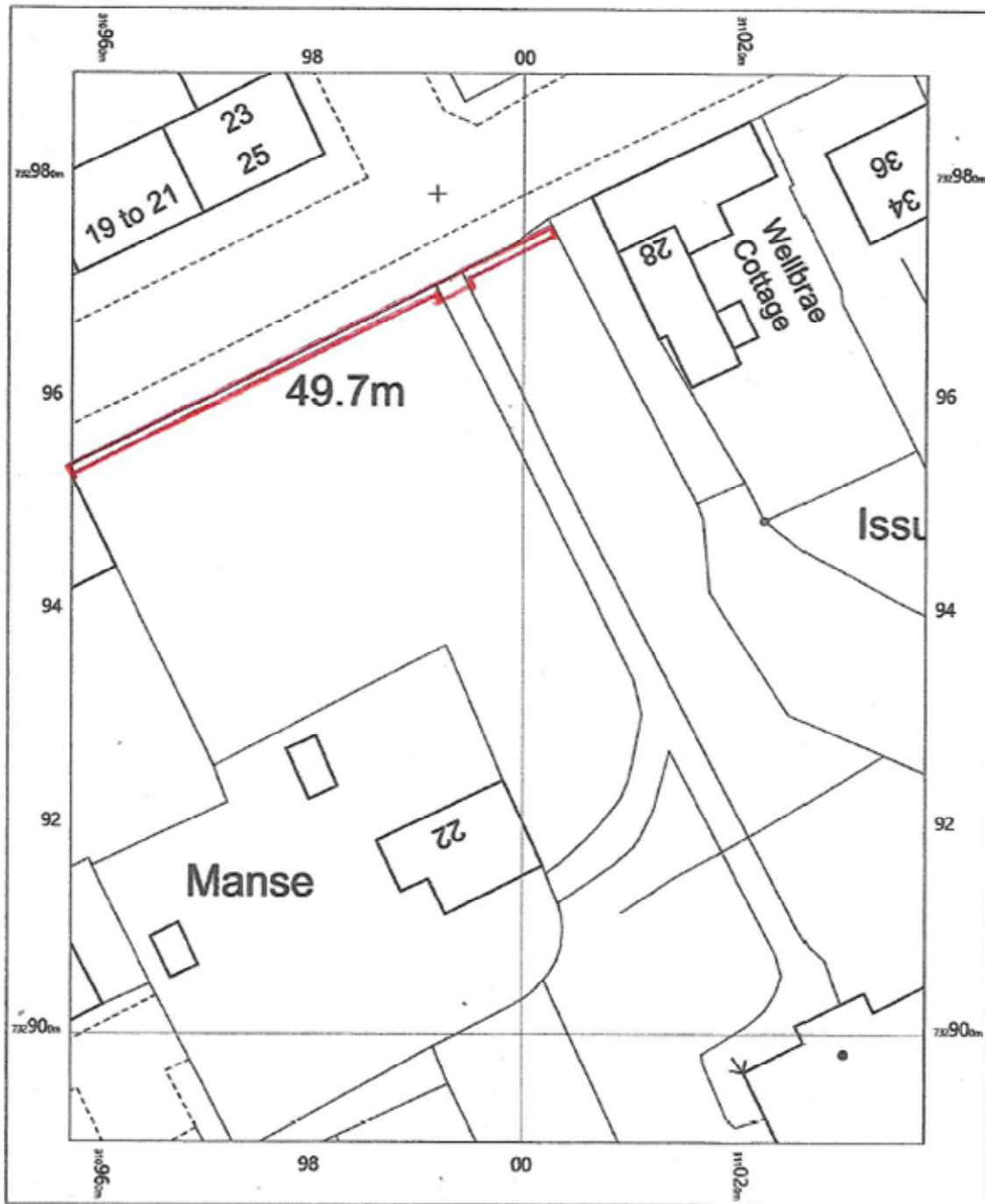
Site Plan as Built (submitted with Application)



OS MasterMap 1250/2500/10000 scale  
Tuesday, September 6, 2012, 12:10:59 PM  
www.scofieldigital.com  
1:1000 scale plan of 115889989v5

APPENDIX 11

Existing Site Plan (submitted with Application)

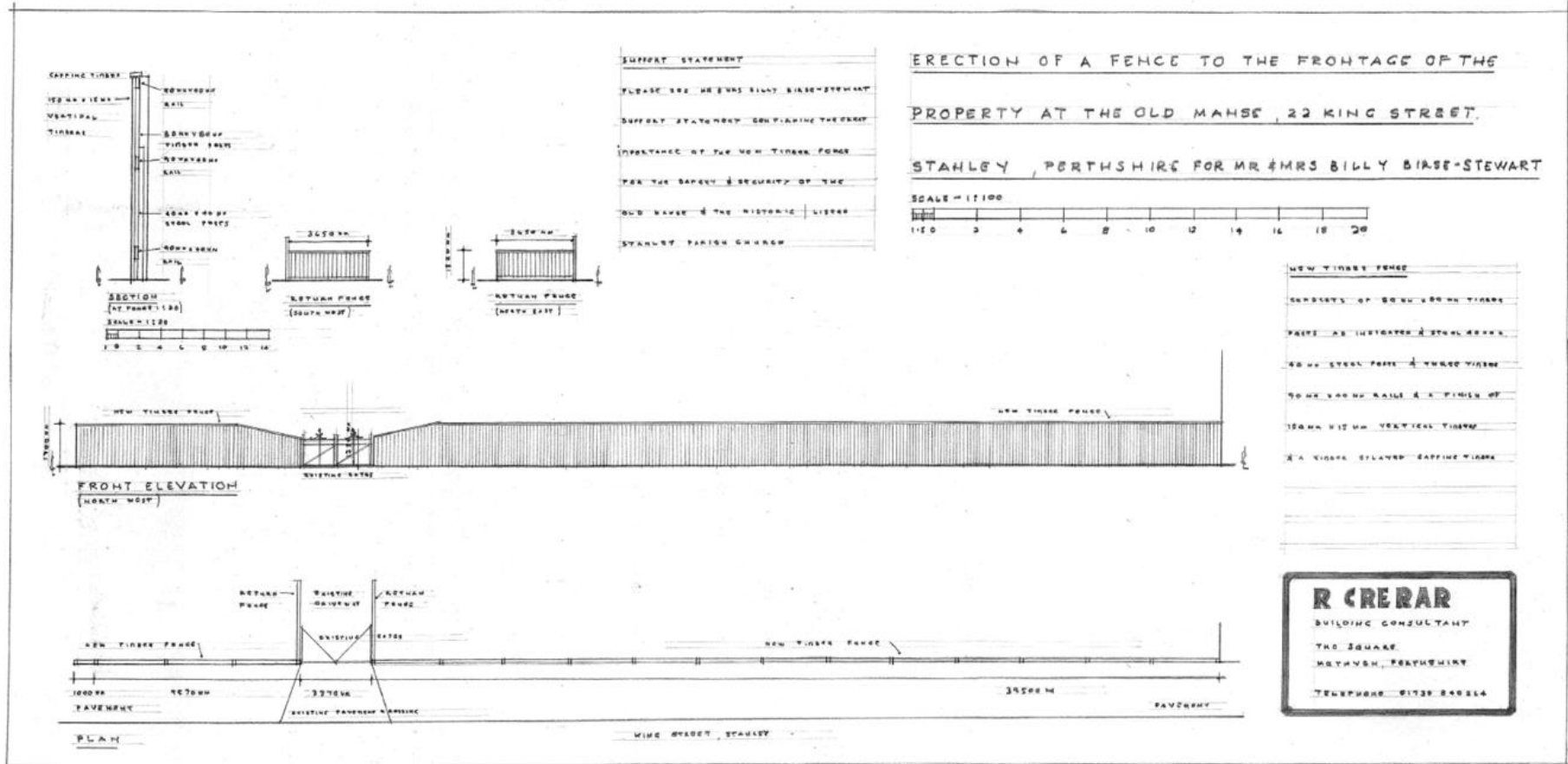


OS MasterMap 1250/2500/10000 scale  
Tuesday, September 6, 2022, ID: M4P-01059758  
www.nicolsondigital.com  
1:400 scale plot at A4 Centre 350008 E 791045M



APPENDIX 12

Plans and Elevations (submitted with (Application)



Report of Handing

**REPORT OF HANDLING  
DELEGATED REPORT**

Ref No	23/00184/FLL	
Ward No	P5- Strathtay	
Due Determination Date	4th June 2023	
Draft Report Date	16th May 2023	
Report Issued by	AR	Date 16.5.23

**PROPOSAL:**                      Erection of a fence (in retrospect)

**LOCATION:**                      22 King Street Stanley Perth PH1 4ND

**SUMMARY:**

This report recommends **refusal** of the application as the development is considered to be contrary to the relevant provisions of the Development Plan and there are no material considerations apparent which justify setting aside the Development Plan.

**BACKGROUND AND DESCRIPTION OF PROPOSAL**

22 King Street is a detached dwellinghouse located within a residential area of Stanley, with historical association as manse to the nearby category B listed former church (HES ref. LB17925). Set back from the public road, King Street, the property can be accessed by travelling down a short private track. This application seeks detailed planning permission for the retrospective erection of a fence, north of the property's curtilage, which replaces an existing post and wire fence.

**SITE HISTORY**

11/01676/LBC              Install replacement windows  
13 January 2012 Application Refused

**PRE-APPLICATION CONSULTATION**

Pre application Reference: none.

## DEVELOPMENT PLAN

The Development Plan for the area comprises National Planning Framework 4 (NPF4) and the Perth and Kinross Local Development Plan 2 (2019) (LDP2).

### National Planning Framework 4

The National Planning Framework 4 (NPF4) is the Scottish Government's long-term spatial strategy with a comprehensive set of national planning policies. This strategy sets out how to improve people's lives by making sustainable, liveable and productive spaces.

NPF4 was adopted on 13 February 2023. NPF4 has an increased status over previous NPFs and comprises part of the statutory development plan.

The Council's assessment of this application has considered the following policies of NPF4:

- Policy 7: Historic Assets and Places
- Policy 14: Design, Quality and Place

### Perth and Kinross Local Development Plan 2 – Adopted November 2019

The Local Development Plan 2 (LDP2) is the most recent statement of Council policy and is augmented by Supplementary Guidance. The principal policies are:

- Policy 1A: Placemaking
- Policy 1B: Placemaking
- Policy 17: Residential Areas
- Policy 27A: Listed Buildings
- Policy 60B: Transport Standards and Accessibility Requirements: New Development Proposals

### Statutory Supplementary Guidance

- [Supplementary Guidance - Placemaking](#) (adopted in 2020)

## OTHER POLICIES

### Non Statutory Guidance

- [Managing Change in the Historic Environment: Boundaries \(2020\)](#)
- [Managing Change in the Historic Environment: Setting \(2020\)](#)
- [Historic Environment Policy for Scotland \(2019\)](#)



## **NATIONAL GUIDANCE**

The Scottish Government expresses its planning policies through The National Planning Framework, Planning Advice Notes, Creating Places, Designing Streets, National Roads Development Guide and a series of Circulars.

### **Planning Advice Notes**

The following Scottish Government Planning Advice Notes (PANs) and Guidance Documents are of relevance to the proposal:

- PAN 40 Development Management

### **Designing Streets 2010**

Designing Streets is the policy statement in Scotland for street design and changes the emphasis of guidance on street design towards place-making and away from a system focused upon the dominance of motor vehicles. It was created to support the Scottish Government's place-making agenda, alongside Creating Places.

### **National Roads Development Guide 2014**

This document supports Designing Streets and expands on its principles and is considered to be the technical advice that should be followed in designing and approving of all streets including parking provision.

## **CONSULTATION RESPONSES**

### **Internal**

#### **Conservation Team**

*Internal discussion. Concerns and objection due to the adverse impact to the category B listed church's view and setting from the North, and the manse which is listed by curtilage, in respect of the proposal's design, scale and material finish. The fence is situated immediately in front of open ground that is clearly associated to the listed buildings and forms part of the church's setting. Less concern with the impact on the category B listed building to the north.*

#### **Transportation And Development**

*Concerns and objection. The height of the fence would not have an appropriate pedestrian visibility splay.*

## REPRESENTATIONS

One (1) representation of objection was received. The loss of view cannot be logged as a material consideration however the resulting visual amenity impact and erosion of the aesthetic quality to the open space and the listed building's setting, due to the proposal's scale and design, are considered as material points.

### Additional Statements Received:

Screening Opinion	Not Required
Environmental Impact Assessment (EIA): Environmental Report	Not applicable
Appropriate Assessment under Habitats Regulations	AA Not Required
Design Statement or Design and Access Statement	Not Required
Report on Impact or Potential Impact eg Flood Risk Assessment	Not Required

## APPRAISAL

Sections 25 and 37 (2) of the Town and Country Planning (Scotland) Act 1997 require that planning decisions be made in accordance with the development plan unless material considerations indicate otherwise. The Development Plan comprises NPF4 and the Perth and Kinross Local Development Plan 2019. The relevant policy considerations are outlined in the policy section above and are considered in more detail below. In terms of other material considerations, involving considerations of the Council's other approved policies and supplementary guidance, these are discussed below only where relevant.

In this instance, section 14(2) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 places a duty on planning authorities in determining such an application as this to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

The determining issues in this case are whether; the proposal complies with development plan policy; or if there are any other material considerations which justify a departure from policy.

### Policy Appraisal

Small-scale development in suitable and appropriate locations, with a reasonably identified need, can generally be considered as acceptable in



principle. Nevertheless, consideration must be given to the scale, design, position, layout and external finishes of the proposed development, within the context of the application site, and whether it would have any adverse impact upon visual, residential or environmental amenity.

The proposed development does not comply with the relevant National Planning Framework 4 and Perth and Kinross Council Local Development Plan 2 policies, as noted within the Development Plan section above.

In this instance, the proposal is considered inappropriate and cannot be approved due to concerns with its unsympathetic design, scale, massing and material finish and its impact to visual, residential and cultural heritage amenity.

### **Design and Layout**

The application seeks to regularise the retrospective erection of a fence that replaces an existing post and wire fence which runs the (south-west to north-east) length of open space in front of the former Redgorton & Stanley Parish Church's and historically associated manse (22 King Street).

At approximately 49.5 metres in total length along the King Street's streetscape, the proposed fence, in the main, would be 1.9 metres tall but gradually lowers to the existing gate post height, 2.9 metres from each post. Two return fences are proposed either side of the gate at 3.65 metres long and 1.32 metres high. The original access gate has been retained which is welcomed.

Placemaking Supplementary Guidance (2020) states that the quality and character of boundaries between public and private space play a significant role in the creation of legible and attractive streets. Boundary treatments contribute to and assist in the overall sense of local character of an area, can *define* an area and are an active part of the public realm. As such, they require special attention in design. Also, the guidance notes the use of timber can provide a high-quality, natural finish if sensitively designed.

The proposal by virtue of its design, scale, positioning, massing and material finish presents a poor design unsuited to the location, would erode established townscape character, the sense of place created by the former boundary treatment and adjacent open space, and would have an adverse impact on visual amenity to the local area, its setting and immediate environment which cannot be supported.

The proposal does not comply with NPF4 Policy 14 (c) and LDP2 Policy 1A and 1B (a), (b), (c), (d), (e) and (g), supported by Placemaking Supplementary Guidance.

## **Residential and Visual Amenity**

It is considered that the change from a low and visually permeable post and wire fence to a substantially taller and visually impermeable boundary treatment is not suitable or appropriate as a replacement boundary treatment. The proposal would result in detrimental impact to the local streetscape, character of the area and detract from its 'open' sense of place nature. The proposed development would result in physical and visual amenity fragmentation.

The proposal does not comply with NPF4 Policy 14 (c), where it is detrimental to the amenity of the surrounding area, and LDP2 Policy 17(c) where the character and environment of the area and village is not improved, supported by Placemaking Supplementary Guidance.

## **Roads and Access**

On consultation with Transport Planning colleagues, it was confirmed that the height of the fence at the vehicle access is in excess of 1.05 metres and does not afford the appropriate pedestrian visibility splay onto the public road network. It is noted that there had been some thought with the lowering of the fence either side of the access gate but does not meet national requirements.

The proposal does not comply with LDP2 Policy 60B (a) where the proposal has not been designed for the safety and convenience for all potential users and does not meet the requirements of Designing Streets (2010) policy and the National Roads Development Guide (2014).

## **Conservation Considerations**

The proposal is located within the setting of the category B listed former church (HES ref. LB4483) and the setting of category B building (HES ref. LB4483).

HES' 'Managing Change in the Historic Environment: Setting' (2020) notes a variety of factors that contribute to a historic asset's setting such as views to, from and across or beyond the historic asset, current townscape context, aesthetic qualities, relationship with other features and a 'sense of place'. Furthermore, HES' 'Managing Change in the Historic Environment: Boundaries' (2020) section 3.1 notes that the layout and design of a boundary, its materials and method of construction, and the way in which it relates to other structures can be important elements of the character of a building or street, or contribute substantially to the sense of place and historical understanding of a rural or urban landscape.

The proposal does not relate well to the surrounding environment, or townscape, and divides historical understanding of the area which has close association for the former church and manse. It is considered that key views to and from the listed building would be significantly interrupted, when compared to the original and more visually permeable post and wire fence,



and the proposal now dominates and detracts from the original historical character and understanding of the area. As a result of the retrospective development, it is clear the setting of the listed building is sensitive to change and has been detrimentally affected.

On consultation with the Conservation Team, it was confirmed that the proposal is situated immediately in front of open space associated to the listed buildings and forms part of the category B listed former church's setting. Although there is less concern of impact on the listed building to the north, the proposal cannot be supported due to the adverse impact to the category B listed former church's view and setting from the north, and to the manse (22 King Street) which is listed by curtilage, as a result of the proposal's inconsiderate design, massing, scale and material finish.

The proposal does not comply with NPF4 Policy 7 criteria (a) and (c), and LDP2 Policy 27A, supported by HES' 'Managing Change in the Historic Environment: Boundaries and Setting' guidance.

## **PLANNING OBLIGATIONS AND LEGAL AGREEMENTS**

None required.

## **DIRECTION BY SCOTTISH MINISTERS**

None applicable to this proposal.

## **CONCLUSION AND REASONS FOR DECISION**

To conclude, the application must be determined in accordance with the Development Plan unless material considerations indicate otherwise. In this respect, the proposal is considered to be contrary to the Development Plan. Account has been taken of the relevant material considerations and none has been found that would justify overriding the Development Plan.

Accordingly the proposal is refused on the grounds identified below.

### **Conditions and Reasons**

1. Approval would be contrary to National Planning Framework 4 Policy 7 criteria (a) due to the proposal's unsuitable impact on a historical asset, and informed by HES 'Managing Change in the Historic Environment: Boundaries and Setting' guidance; and criteria (c) where the proposal does not preserve the identified listed building's setting and associated character; Policy 14 where the proposal is designed in such a way that does not improve the quality of the area, does not support an attractive natural space, lacks attention to detail and does not support the long-term

value of the open space, inconsistent with the 'pleasant', 'distinctive' and 'adaptable' qualities of a successful place.

2. Approval would be contrary to the Perth and Kinross Local Development Plan 2 Policy 1A and 1B with particular note to criteria (a) where there is a loss of established identity, criteria (b) where no consideration has been made to the identified listed building and wider character of the area, criteria (c) where the proposal's design in terms of appearance, height, scale, massing and materials is not appropriate, criteria (d) where the proposal does not respect or reinforce the open space, criteria (e) where the local open space is divided rather than made accessible and inclusive and criteria (g) where the insensitive proposal has eroded local townscape in respect of the existing natural feature; Policy 17 where the proposal is not compatible with the amenity or character of the area and criteria (c) where the proposal does not improve the character and environment of the area and village; Policy 27A where the proposal's layout, design, materials, scale and siting is not appropriate to the listed building's long-established setting, character and appearance; and Policy 60B criteria (a) where the proposal is not designed with safety and convenience of all potential users in mind, and informed by Placemaking Supplementary Guidance, HES 'Managing Change in the Historic Environment: Boundaries and Setting' guidance, Designing Street policy and the National Roads Development Guide.

#### **Justification**

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

#### **Informatives**

1. The unauthorised fence should be removed in its entirety, with the site boundaries re-instated to their original methods of enclosure, within three months of this Decision Notice. Failure to do so shall result in the case being passed back to the Development Management Enforcement Team.
2. If a replacement boundary treatment is desired, it is advised to submit a pre-application advice enquiry prior to the submission of a planning application. More information can be found online at <https://www.pkc.gov.uk/preapplicationservices>
3. It is noted that unauthorised works where a change of use from open space to form an extension to garden ground and associated works, within the blue ownership boundaries (plan 01) have been carried out without gaining the appropriate planning permission. An application for planning permission should be submitted via the <https://www.eplanning.scot> portal.

**Procedural Notes**

Not Applicable.

**PLANS AND DOCUMENTS RELATING TO THIS DECISION**

01 02 03 04 05



APPENDIX 14

Photograph taken from Charlotte Street 2023



APPENDIX 15

Photograph showing fence at other end of curtilage



APPENDIX 16

Photographs of other fences in area











APPENDIX 17

Photograph showing cleared scrub



Note of Relevant Policies

National Planning Framework 4

1.1 Policy 7 – Historic assets and places.

*a) Development proposals with a potentially significant impact on historic assets or places will be accompanied by an assessment which is based on an understanding of the cultural significance of the historic asset and/or place. The assessment should identify the likely visual or physical impact of any proposals for change, including cumulative effects and provide a sound basis for managing the impacts of change.*

*Proposals should also be informed by national policy and guidance on managing change in the historic environment, and information held within Historic Environment Records.*

*b) Development proposals for the demolition of listed buildings will not be supported unless it has been demonstrated that there are exceptional circumstances and that all reasonable efforts have been made to retain, reuse and/or adapt the listed building. Considerations include whether the:*

*i. building is no longer of special interest;*

*ii. building is incapable of physical repair and re-use as verified through a detailed structural condition survey report;*

*iii. repair of the building is not economically viable and there has been adequate marketing for existing and/or new uses at a price reflecting its location and condition for a reasonable period to attract interest from potential restoring purchasers; or*

*iv. demolition of the building is essential to delivering significant benefits to economic growth or the wider community.*

1.2 *c) Development proposals for the reuse, alteration or extension of a listed building will only be supported where they will preserve its character, special architectural or historic interest and setting. Development proposals affecting the setting of a listed building should preserve its character, and its special architectural or historic interest.*

1.3 *d) Development proposals in or affecting conservation areas will only be supported where the character and appearance of the conservation area and its setting is preserved or enhanced. Relevant considerations include the:*

1.4 *i. architectural and historic character of the area;*

1.5 *ii. existing density, built form and layout; and*

1.6 *iii. context and siting, quality of design and suitable materials.*

1.7 *e) Development proposals in conservation areas will ensure that existing natural and built features which contribute to the character of the conservation area and its setting, including structures, boundary walls, railings, trees and hedges, are retained.*

- 1.8 *f) Demolition of buildings in a conservation area which make a positive contribution to its character will only be supported where it has been demonstrated that:*
- 1.9 *i. reasonable efforts have been made to retain, repair and reuse the building;*
- 1.10 *ii. the building is of little townscape value;*
- 1.11 *iii. the structural condition of the building prevents its retention at a reasonable cost; or*
- 1.12 *iv. the form or location of the building makes its reuse extremely difficult.*
- 1.13 *g) Where demolition within a conservation area is to be followed by redevelopment, consent to demolish will only be supported when an acceptable design, layout and materials are being used for the replacement development.*
- 1.14 *h) Development proposals affecting scheduled monuments will only be supported where:*
- 1.15 *i. direct impacts on the scheduled monument are avoided;*
- 1.16 *ii. significant adverse impacts on the integrity of the setting of a scheduled monument are avoided;*  
*or*
- 1.17 *iii. exceptional circumstances have been demonstrated to justify the impact on a scheduled monument and its setting and impacts on the monument or its setting have been minimised.*
- 1.18 *i) Development proposals affecting nationally important Gardens and Designed Landscapes will be supported where they protect, preserve or enhance their cultural significance, character and integrity and where proposals will not significantly impact on important views to, from and within the site, or its setting.*
- 1.19 *j) Development proposals affecting nationally important Historic Battlefields will only be supported where they protect and, where appropriate, enhance their cultural significance, key landscape characteristics, physical remains and special qualities.*
- 1.20 *k) Development proposals at the coast edge or that extend offshore will only be supported where proposals do not significantly hinder the preservation objectives of Historic Marine Protected Areas.*
- 1.21 *l) Development proposals affecting a World Heritage Site or its setting will only be supported where their Outstanding Universal Value is protected and preserved.*
- 1.22 *m) Development proposals which sensitively repair, enhance and bring historic buildings, as identified as being at risk locally or on the national Buildings at Risk Register, back into beneficial use will be supported.*
- 1.23 *n) Enabling development for historic environment assets or places that would otherwise be unacceptable in planning terms, will only be supported when it has been demonstrated that the enabling development proposed is:*

- 1.24 *i. essential to secure the future of an historic environment asset or place which is at risk of serious deterioration or loss; and*
- 1.25 *ii. the minimum necessary to secure the restoration, adaptation and long-term future of the historic environment asset or place.*
- 1.26 *The beneficial outcomes for the historic environment asset or place should be secured early in the phasing of the development, and will be ensured through the use of conditions and/or legal agreements.*
- 1.27 *o) Non-designated historic environment assets, places and their setting should be protected and preserved in situ wherever feasible. Where there is potential for non-designated buried archaeological remains to exist below a site, developers will provide an evaluation of the archaeological resource at an early stage so that planning authorities can assess impacts. Historic buildings may also have archaeological significance which is not understood and may require assessment.*
- 1.28 *Where impacts cannot be avoided they should be minimised. Where it has been demonstrated that avoidance or retention is not possible, excavation, recording, analysis, archiving, publication and activities to provide public benefit may be required through the use of conditions or legal/planning obligations.*
- 1.29 *When new archaeological discoveries are made during the course of development works, they must be reported to the planning authority to enable agreement on appropriate inspection, recording and mitigation measures.*

**Policy 14 – Design, quality and place**

- 1.30 *a) Development proposals will be designed to improve the quality of an area whether in urban or rural locations and regardless of scale.*
- 1.31 *b) Development proposals will be supported where they are consistent with the six qualities of successful places:*
  - 1.31.1 *Healthy: Supporting the prioritisation of women’s safety and improving physical and mental health.*
  - 1.31.2 *Pleasant: Supporting attractive natural and built spaces.*
  - 1.31.3 *Connected: Supporting well connected networks that make moving around easy and reduce car dependency*
  - 1.31.4 *Distinctive: Supporting attention to detail of local architectural styles and natural landscapes to be interpreted, literally or creatively, into designs to reinforce identity.*
  - 1.31.5 *Sustainable: Supporting the efficient use of resources that will allow people to live, play, work and stay in their area, ensuring climate resilience, and integrating nature positive, biodiversity solutions.*



- 1.32 *Adaptable: Supporting commitment to investing in the long-term value of buildings, streets and spaces by allowing for flexibility so that they can be changed quickly to accommodate different uses as well as maintained over time.*
- 1.33 *Further details on delivering the six qualities of successful places are set out in Annex D.*
- 1.34 *c) Development proposals that are poorly designed, detrimental to the amenity of the surrounding area or inconsistent with the six qualities of successful places, will not be supported. Places that consistently deliver healthy, pleasant, distinctive, connected, sustainable and adaptable qualities.*

#### **Perth and Kinross Local Development Plan 2 ("the LDP")**

#### **1.35 Polices 1A and 1B – Placemaking**

##### **Policy 1A.**

*Development must contribute positively to the quality of the surrounding built and natural environment. All development should be planned and designed with reference to climate change, mitigation and adaptation.*

*The design, density and siting of development should respect the character and amenity of the place, and should create and improve links within and, where practical, beyond the site. Proposals should also incorporate new landscape and planting works appropriate to the local context and the scale and nature of the development.*

##### **Policy 1B.**

*All proposals should meet all the following placemaking criteria:*

*(a) Create a sense of identity by developing a coherent structure of streets, spaces, and buildings, safely accessible from its surroundings.*

*(b) Consider and respect site topography and any surrounding important landmarks, views or skylines, as well as the wider landscape character of the area.*

*(c) The design and density should complement its surroundings in terms of appearance, height, scale, massing, materials, finishes and colours.*

*(d) Respect an existing building line where appropriate or establish one where none exists. Access, uses, and orientation of principal elevations should reinforce the street or open space.*

*(e) All buildings, streets, and spaces (including green spaces) should create safe, accessible, inclusive places for people, which are easily navigable, particularly on foot, bicycle and public transport.*

*(f) Buildings and spaces should be designed with future adaptability, climate change and resource efficiency in mind wherever possible.*



*(g) Existing buildings, structures and natural features that contribute to the local townscape should be retained and sensitively integrated into proposals.*

*(h) Incorporate green infrastructure into new developments to promote active travel and make connections where possible to blue and green networks.*

*(i) Provision of satisfactory arrangements for the storage and collection of refuse and recyclable materials (with consideration of communal facilities for major developments).*

*(j) Sustainable design and construction.*

**Policy 17 – Residential Areas.** *The Plan identifies areas of residential and compatible uses inside settlement boundaries where existing residential amenity will be protected and, where possible, improved. Changes away from ancillary uses such as employment land, local shops and community facilities, for example pubs and restaurants will be resisted unless there is demonstrable market evidence that the existing use is no longer viable as a commercial venture or community-run enterprise.*

*Generally, encouragement will be given to proposals which fall into one or more of the following categories of development and which are compatible with the amenity and character of the area: (a) Infill residential development at a density which represents the most efficient use of the site while respecting its environs. (b) Improvements to shopping facilities where it can be shown that they would serve local needs of the area. (c) Proposals which will improve the character and environment of the area or village. (d) Business, homeworking, tourism or leisure activities. (e) Proposals for improvements to community and educational facilities.*

**Policy 27A – Listed Buildings.** *There is a presumption in favour of the retention and sympathetic restoration, correct maintenance and sensitive management of listed buildings to enable them to remain in active use, and any proposed alterations or adaptations to help sustain or enhance a building's beneficial use should not adversely affect its special architectural and historic interest.*

*Policy 27A also states that "enabling development may be accepted where it can be shown to be the only means of preventing the loss of listed building and securing their long-term future. The layout, design, materials, scale, siting and use of any development which will affect a listed building or its setting should be appropriate to the building's character, appearance and setting."*

**Policy 60B – Transport Standards and Accessibility Requirements: New Development Proposals.** *All development proposals that involve significant travel generation should be well-served by, and easily accessible to all modes of transport. In particular the sustainable modes of walking, cycling and public transport should be considered, prior to private car journeys. The aim of all development should be to reduce travel demand by car, and ensure a realistic choice of access and travel modes is available, including opportunities for active travel and green networks.*

*All development proposals (including small-scale proposals) should:*

*(a) be designed for the safety and convenience of all potential users;*

*(b) incorporate appropriate mitigation on-site and/or off-site, provided through developer contributions where appropriate, which might include improvements and enhancements to the walking/cycling network and public transport services including railway and level crossings, road improvements and new roads;*

*(c) incorporate appropriate levels of parking provision not exceeding the maximum parking standards laid out in SPP, including application of maximum on-site parking standards to help encourage and promote a shift to the more sustainable modes of travel of walking, cycling and public transport;*

*(d) fit with the strategic aims and objectives of the Regional Transport Strategy and the Tay Cities Deal;*

*(e) support the provision of infrastructure necessary to support positive changes in Low and Ultra Low Emission Vehicle transport technologies, such as charging points for electric vehicles, hydrogen refuelling facilities and car clubs, including for residential development.*

*In certain circumstances developers may be required to:*

*(a) prepare and implement travel plans to support all significant travel generating developments;*

*(b) prepare a Transport Assessment and implement appropriate mitigation measures where required*

## APPENDIX 19

### Letter of support from neighbour, Michelle Gillies

**From:** Ron [REDACTED]  
**Date:** 9 August 2023 at 21:16:18 BST  
**To:** "[REDACTED]"  
**Subject:** Fencing along front of former churchyard

Dear Billy and Lorna,

I write to advise that I fully support the erection of the wooden fence along the whole front of the former churchyard ground along roadside of king street. This fence provides much needed security not only to your premises and the church but more importantly to those of your neighbours including my family's 3 properties at 18, 20a & 20b King Street.

We neighbours are all too aware that vandals have been entering the churchyard and adjoining areas including the old Manse grounds and our adjacent properties on a regular basis with the sole intention of causing damage to property. This is most distressing and concerning for all of us living in the close vicinity of the former churchyard.

I am also aware that my father Cameron Gillies, who lived in no.18 King Street until his death in January 2023, was also in full support of the heightened fence and that he voiced his support verbally to you both on numerous occasions. He informed me that it made him feel safer in his home and garden as it provided an additional screen and security to his own garden which adjoins the now privately owned old Manse ground and churchyard beyond.

I am very disappointed in Perth & Kinross Council's decision to disallow the fence rather than consider the significant merits of the security concerns that it has addressed for our community and protected us and our properties from intruders and vandalism which we had to endure prior to its installation . I also consider the concerns raised by but only two local residents, one of whom has only recently moved into the street to be spurious.

Kind regards

Michelle Gillies

Sent from [Mail](#) for Windows

