TCP/11/16(552) – 18/00263/FLL – Erection of an office building (class 4) including access ramp, 3 ancillary storage sheds, formation of car parking, external storage area, landscaping and associated works (in retrospect) at Hillview, Kinloch, Blairgowrie, PH10 6SD

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(a) Papers submitted by the Applicant ***(Pages 377-622)***

(b) Decision Notice ***(Pages 411-412)***

Report of Handling ***(Pages 413-423)***

Reference Documents ***(Pages 435-448, 505-524 and 625-631)***

(c) Representations ***(Pages 633-648)***

TCP/11/16(552) – 18/00263/FLL – Erection of an office building (class 4) including access ramp, 3 ancillary storage sheds, formation of car parking, external storage area, landscaping and associated works (in retrospect) at Hillview, Kinloch, Blairgowrie, PH10 6SD

PAPERS SUBMITTED BY THE APPLICANT

Pullar House 35 Kinnoull Street Perth PH1 5GD Tel: 01738 475300 Fax: 01738 475310 Email: onlineapps@pkc.gov.uk

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100132196-001

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

Applicant or Agent Details

Are you an applicant or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application) ☐ Applicant ☒ Agent

Agent Details

Please enter Agent details

Company/Organisation:	Seath Planning Consultancy Ltd		
Ref. Number:		You must enter a Building Name or Number, or both: *	
First Name: *	ALAN	Building Name:	
Last Name: *	SEATH	Building Number:	88
Telephone Number: *	07731690473	Address 1 (Street): *	Scott Road
Extension Number:		Address 2:	
Mobile Number:		Town/City: *	Glenrothes
Fax Number:		Country: *	Scotland
		Postcode: *	KY6 1AE
Email Address: *	[redacted]		

Is the applicant an individual or an organisation/corporate entity? *

☐ Individual ☒ Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title:	Mr	You must enter a Building Name or Number, or both: *	
Other Title:		Building Name:	[redacted]
First Name: *	Peter	Building Number:	
Last Name: *	Brown	Address 1 (Street): *	[redacted]
Company/Organisation	Browns Groundworks	Address 2:	
Telephone Number: *		Town/City: *	[redacted]
Extension Number:		Country: *	[redacted]
Mobile Number:		Postcode: *	[redacted]
Fax Number:			
Email Address: *			

Site Address Details

Planning Authority: Perth and Kinross Council

Full postal address of the site (including postcode where available):

Address 1:	
Address 2:	
Address 3:	
Address 4:	
Address 5:	
Town/City/Settlement:	
Post Code:	

Please identify/describe the location of the site or sites

Northing	744940	Easting	314475

Description of Proposal

Please provide a description of your proposal to which your review relates. The description should be the same as given in the application form, or as amended with the agreement of the planning authority: *
(Max 500 characters)

Erection of an office building (class 4) including access ramp, 3 ancillary storage sheds, formation of car parking, external storage area, landscaping and associated works (in retrospect)

Type of Application

What type of application did you submit to the planning authority? *

☒ Application for planning permission (including householder application but excluding application to work minerals).

☐ Application for planning permission in principle.

☐ Further application.

☐ Application for approval of matters specified in conditions.

What does your review relate to? *

☒ Refusal Notice.

☐ Grant of permission with Conditions imposed.

☐ No decision reached within the prescribed period (two months after validation date or any agreed extension) – deemed refusal.

Statement of reasons for seeking review

You must state in full, why you are a seeking a review of the planning authority's decision (or failure to make a decision). Your statement must set out all matters you consider require to be taken into account in determining your review. If necessary this can be provided as a separate document in the 'Supporting Documents' section: * (Max 500 characters)

Note: you are unlikely to have a further opportunity to add to your statement of appeal at a later date, so it is essential that you produce all of the information you want the decision-maker to take into account.

You should not however raise any new matter which was not before the planning authority at the time it decided your application (or at the time expiry of the period of determination), unless you can demonstrate that the new matter could not have been raised before that time or that it not being raised before that time is a consequence of exceptional circumstances.

See Statement of Case

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 the new matter, why it was not raised with the appointed officer before your application was determined and why you consider it should be considered in your review: * (Max 500 characters)

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. You can attach these documents electronically later in the process: * (Max 500 characters)

See Appendix 1 Statement of Case

Application Details

Please provide details of the application and decision.

What is the application reference number? * 18/00263/FLL

What date was the application submitted to the planning authority? * 28/03/2018

What date was the decision issued by the planning authority? * 05/06/2018

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.

Can this review continue to a conclusion, in your opinion, based on a review of the relevant information provided by yourself and other parties only, without any further procedures? For example, written submission, hearing session, site inspection. *

☐ Yes ☒ No

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may select more than one option if you wish the review to be a combination of procedures.

Please select a further procedure *

By means of inspection of the land to which the review relates

Please explain in detail in your own words why this further procedure is required and the matters set out in your statement of appeal it will deal with? (Max 500 characters)

The context of the proposed use will be best seen on site.

In the event that the Local Review Body appointed to consider your application decides to inspect the site, in your opinion:

Can the site be clearly seen from a road or public land? * ☐ Yes ☒ No

Is it possible for the site to be accessed safely and without barriers to entry? * ☒ Yes ☐ No

If there are reasons why you think the local Review Body would be unable to undertake an unaccompanied site inspection, please explain here. (Max 500 characters)

No but please arrange with the Appellant

Checklist – Application for Notice of Review

Please complete the following checklist to make sure you have provided all the necessary information in support of your appeal. Failure to submit all this information may result in your appeal being deemed invalid.

Have you provided the name and address of the applicant?. * ☒ Yes ☐ No

Have you provided the date and reference number of the application which is the subject of this review? * ☒ Yes ☐ No

If you are the agent, acting on behalf of the applicant, have you provided details of your name and address and indicated whether any notice or correspondence required in connection with the review should be sent to you or the applicant? * ☒ Yes ☐ No ☐ N/A

Have you provided a statement setting out your reasons for requiring a review and by what procedure (or combination of procedures) you wish the review to be conducted? * ☒ Yes ☐ No

Note: 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. 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.

Please attach a copy of all documents, material and evidence which you intend to rely on (e.g. plans and Drawings) which are now the subject of this review * ☒ Yes ☐ No

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 (if any) from the earlier consent.

Declare – Notice of Review

I/We the applicant/agent certify that this is an application for review on the grounds stated.

Declaration Name: Mr ALAN SEATH

Declaration Date: 22/08/2018

Local Review
Statement of Case

Proposal: Erection of an office building (class 4) including access ramp, 3 ancillary storage sheds, formation of car parking, external storage area, landscaping and associated works (in retrospect)

Land at: Hillview, Kinloch, Blairgowrie PH10 6SD

For: Mr. P. Brown

Date: 22 August 2018

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Preface

This Review is submitted by Seath Planning Consultancy Ltd. on behalf of the Appellant, Mr. P. Brown based on the understanding that the property on the site at Hillview, Kinloch cannot be used for residential purposes.

Mr. Brown currently occupies the property, along with his family following the purchase of the building from the previous owner, understanding it to be lawful as a dwellinghouse. Having paid a substantial amount of money and after discussing matters with Seath Planning Consultancy Ltd. he recognises the position that he and his family find themselves in.

He also recognises the relative position of the Council in this matter. Mr. Brown would like to clarify that his recent appeal to Scottish Ministers, against the enforcement notice served on him [and others], was not designed to contest the Council's decision but an attempt to gain more time to remedy a situation which is causing significant concern to the Brown family.

Mr. Brown wishes to work with the Council in an attempt to find a resolution and protect his asset which is the property on the site. He submits this Local Review as part of his attempts to do so. He relies on this Statement of Case as his defence of the current planning position i.e. refusal of planning permission.

1. The Local Review

Introduction

A planning application for the proposed development (in part retrospect) was submitted by Seath Planning Consultancy Ltd on behalf of Mr. Peter Brown [the Appellant] and registered by Perth and Kinross Council, as Planning Authority on the 28 March 2018 under application reference number 18/00263/FLL.

The Council described the proposal as follows:

"Erection of an office building (class 4) including access ramp, 3 no. ancillary storage sheds, formation of car parking, external storage area, landscaping and associated works (in retrospect) Hillview, Kinloch, Blairgowrie PH10 6SD."

The application form/certificate, refused location plan, rural location plan, site layout plan, elevations of building, floor plan of building, elevations and floor plans of sheds and photographs of sheds are submitted as **Documents AS1A, AS1B, AS1C, AS1D, AS1E, AS1F, AS1G and AS1H** respectively. The Planning Policy and Design Statement submitted on behalf of the Appellant is lodged as **Document AS1J.**

The planning application constituted a Local Development under the terms of The Town & Country Planning [Hierarchy of Developments] [Scotland] Regulations 2009. As a consequence of the Perth and Kinross Council's Scheme of Delegation the application was determined by the appointed planning officer. The planning application was refused planning permission. **Documents AS2A** comprises the Report of Handling and **Document AS2B** is the Decision Notice dated 5 June 2018.

This Review is submitted in response to the Perth and Kinross Council's decision to refuse planning permission for the reasons stated in the Decision Notice. The two reasons are assessed in greater detail in Section 4 of this Statement of Case.

A full list of Documents, which the Appellant intends to reply upon in support of the Review, is included in this Statement at **Appendix 1.**

The Statement of Case

This Statement of Case [the Statement] comprises the Grounds of Appeal, providing an assessment of the development in the context of the site and surrounding area, taking into consideration the rural land uses, the rural community and associated factors. The Statement also provides a reasoned justification as to why it is considered that this development is consistent with National and Development Plan policy; and why other material considerations reinforce the case for planning permission to be granted.

2. Background Information

Site & Surrounding Area

The site at Hillview, Kinloch [the site] is located to east and north of a cluster of buildings (residential and business use e.g. haulage and roofing) on a plateau approximately 500 metres to the north of the A923, Blairgowrie to Dunkeld public road. The site comprises a single storey building originally proposed for agricultural purposes and then converted to a dwellinghouse. The building is set against the backdrop of a steep slope and fronts onto a landscaped embankment. It is visible at distance from the public road due to the open nature of the site.

When considering the merits of the previous development proposal (dwellinghouse) the Council concluded that the building was too remote from the established group of "L shaped" buildings located along the A923. The revised proposals for business use would benefit from this location.

Access/egress to the site is achieved from the south west between two existing properties and onto the A923. There is excellent visibility at the junction of the site access and the public road. The gradient and alignment of the road is suitable for traffic as confirmed by the Council's Transport Planning.

Externally the existing building benefits from some architectural merit having been designed as a dwellinghouse. It has a rectangular footprint and is single storey in scale. The floorspace is taken up with a total of 3 bedrooms, together with two living areas, a kitchen, bathroom and utility area. This lends itself to a conversion to Class 4 Business use.

Outwith the building footprint, the site has a parking and turning area on the south side of the site where the drainage infrastructure is also located. The site is located within the Lunan Valley Catchment Area. The Lochs Clunie and Marlee Site of Special Scientific Interest (SSSI) and Dunkeld Lochs Special Area of Conservation (SAC) are located approximately 270 metres to the south of the site.

The Personal Circumstances of the Appellant

The Appellant

Mr Brown is a successful business man with a focus on landscaping and associated works. The business (Browns Groundworks) was formed in the late eighties and since then has flourished. It used to operate from Dundee but the premises and associated land were too small for this successful enterprise and it was moved to Blairgowrie.

In 2016/17 the Appellant was actively looking for new premises. He saw the potential in the building and the

land at Balcairn Farm and bought the site. He moved into the building using it as a dwellinghouse where he also administers his business. He was unaware that the residential use is unauthorised. He now wants to rectify the position and use the building and land for his business only.

The Business

Browns Groundworks is a family run business. Having assembled over 30 years of experience along with a broad customer base throughout Dundee, Perthshire & Angus success has followed. The company specialise in low maintenance landscaping with a workforce of 5 persons. The principle activities of the business are:

(i) Landscaping and planting;

(ii) Tree and hedge work;

(iii) Turfing;

(iv) Lawn drainage;

(v) Ground clearance;

(vi) Hard landscaping (path work, walling, monoblocking, paving, slabbing, gravelling); and

(vii) Fencing.

The Appellant currently operated from a small site in Blairgowrie. With the popularity of the company growing the existing site being too small the land at Kinloch is ideally suited for the relocation of Browns Groundworks. This rural location will allow the Appellant to expand, display his products and remain central to his customer base.

At present the Appellant and his family live on site. If planning permission is granted he proposes to source alternative accommodation before converting the building (fully) into the Class 4 Business use. If the Local Review Body are minded to grant planning permission he asks that he is provided time to find suitable accommodation which may include:

(i) A dwellinghouse close to the business; or
(ii) A form of temporary accommodation (lodge) on site which will require planning permission.

Succession Planning

The business plans of the Appellant also includes succession planning. This is understood as the process of developing new leaders who can replace the current leaders of business and industry. In this case the

Appellant and his wife recognise that, as they get older and near retirement, they need to plan ahead to ensure continued growth and success of the family run business. Mr and Mrs Brown propose to consolidate the business at this location; allowing them to expand their customer base; develop the skills, knowledge and abilities of their three sons with the intention of allowing them to assume the role of management when the time is right.

At this time of economic uncertainty, most small and medium enterprises are planning for an uncertain future. The proposals as described in this submission, including succession planning, are aimed at promoting a sustainable business model for the future for this landscaping business. The site at Hillview, Kinloch will allow for:

(i) Continuity of employment

(ii) Expansion of the business having relocated from a confined business space in Blairgowrie;

(iii) A location central to the customer base; and

(iv) A location which allows the Appellant to display his products.

Proposed Development

First of all, the Appellant wishes to make use of the building he has purchased making it lawful changing the use of the existing building as the base for Brown's Groundworks. A Class 4 Business use was applied for as defined under the Town and Country Planning (Use Classes) (Scotland) Order 1997.

The existing layout of the building lends itself to conversion as follows:

(i) The living areas will be converted into a reception area.

(ii) The kitchen and bathroom will remain to serve the staff and visitors.

(iii) One of the bedrooms will be used as the main office and for meetings.

(iv) The remaining bedroom will be used for administration, secure storage and filing.

(v) The remaining rooms will be used for separate staff and visitor toilets a cloakroom and boot store. The existing vestibule will remain.

The floor plan submitted with the application (**Document AS1F**) illustrates the proposed changes.

The design of the existing building is aesthetically pleasing due to the original design as a dwellinghouse. The Appellant chose to keep the original building unchanged i.e. no architectural changes, so as to allow his business premises to remain in keeping with the surrounding area (cluster of development); and so as to be in keeping with buildings in the immediate area.

Externally the site will be used for the storage of materials, parking. manoeuvring and a plant display area (on the slope to the west of the building). On other areas of the site the land will be used for a plant nursery with sheds used for storage of equipment (see plans and photographs).

The Appellant sources all his construction materials from local suppliers and proposes a limited amount of outside storage to the rear of the building to ensure it is screened. The storage building (a source of concern for the planning authority) can be moved to the rear.

The embankment in front of the existing building/car park has already been planted to showcase the Appellants work (soft landscaping and species). Some plants to be used in fulfilling contracts will be stored on site and grown from cuttings and seed with other plants sourced from local nurseries.

Planning History

A description of the full planning history of the site is provided in the planning officers Report of Handling (see **Document AS2A**). There is no reason to dispute or repeat this information in this Statement. **However, for the avoidance of doubt, it is considered necessary to reinforce the point that the Appellants focus for the use of the existing building is on business use and not on residential use.**

Following the refusal of planning permission, the Council served an enforcement notice on the Appellant [and others] dated 14 February 2018. The Appellant submitted an appeal to Scottish Ministers in an attempt to gain a time advantage to allow him and his family to explore opportunities to source alternative accommodation.

The Enforcement Notice, related Statement of Case and Decision Notice from Scottish Ministers are submitted as **Documents AS3A, AS3B and AS3C** respectively.

The Appellant has requested that the Local Review Body consider the terms of the letter submitted as **Document AS4**. This provides a summary of the predicament that he [and his family] finds himself in having bought and occupied the existing building. This letter was submitted to the ward member's, by the Appellant, in mid August 2018.

3. Planning Policy

Introduction

There is and continues to be changing economic, social and environmental circumstances with regard to Scotland's economy. In 2017 the Federation of Small Businesses [FSB] wrote to "key councillors" with a message urging them to put small business at the heart of their economic strategy and push for the appointment of a small business champion to the Tay Cities Deal.

The FSB was calling on the local authority to ensure that the interests of the 5,965 small businesses in Perth and Kinross, which contribute £2bn to the local economy, are taken into account when key decisions are being made. This message is repeated as part of this Review i.e. to support the Appellants proposals for an expansion of his business at the location on the Hillview site. **Document AS5** comprises the article published by the FSB.

The Perth and Kinross Community Plan (Local Outcomes Improvement Plan) 2017 – 2027 sets out a strategy to promote a prosperous, sustainable and inclusive economy. The document states:

"We live in fairer Perth & Kinross which promotes inclusive economic growth and a thriving economy."

Document AS6 comprises extracts from this document.

This Statement focusses on the importance of the Appellants business as part of the Council's Economic Strategy setting out a case which justifies the approval of a proposed development which accords with planning policy with other material considerations strengthening the argument for the approval of planning permission.

The terms of the Perth and Kinross Publication Rural Perth & Kinross Leader Programme recognises the importance of e**nterprise development.** It focusses on supporting the capacity of small and medium sized enterprises, to engage in growth in local, regional, national and international markets and in innovation processes. An extract from the Council's web site relating to the Leader Programme is submitted as **Document AS7**.

It is noted that the first Reason for Refusal states that:

"no locational justification has been provided for this specific site"

The Appellant disputes this and asks the Local Review Body to consider the terms of **Document AS1J** and this Statement of Case.

Development Plan Policy & Material Considerations

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 as amended by the Town and Country Planning (Scotland) Act 2006 requires that planning decisions be made in accordance with the Development Plan unless material considerations indicate otherwise.

The status of the site, as it relates to planning policy, is that it lies within countryside situated immediately adjacent to the small cluster of development known as Kinloch. The terms of national and Development Plan policy provide justification for the establishment of a small business at this location despite the views of the planning authority.

The Development Plan of relevance to this Appeal Site comprises the Perth and Kinross Local Development Plan (2014). In addition, the Scottish Government's Scottish Planning Policy 2014 [SPP] reinforces the planning argument.

The assessment of the Development Plan policies and material considerations has already been undertaken in the Appellants Planning Policy and Design Statement (**Document AS1J**). There is no intention to repeat the planning policies and their assessment but to rely on these documents in defence of this Appeal.

A conclusion was reached in the Planning Policy and Design Statement that the proposed development is in accordance with the Development Plan with other material considerations adding weight to a case for approval of planning permission. The planning authority disagreed and issued a decision of refusal of planning permission as referred to in the Report of Handling and Decision Notice (**Documents AS2A and AS2B**).

With the proposed development having no impact on other aspects such as residential amenity, road safety, natural heritage drainage and the water environment the focus of the appeal for the purposes of this Review is on policies ED3 and PM1A as relied upon by the Council in their reasons for refusal.

The majority of the evidence submitted in the attached Documents should be read in conjunction with this Statement. The assessment of the reasons for refusal, which is undertaken in Section 4 states a case in favour of planning permission.

Documents AS8 and AS9 comprise extracts from; the Local Development Plan and Scottish Planning Policy (2014), respectively.

4. Assessment of the Reasons for Refusal

Introduction

This Section of the Statement will analyse the logic/reasoning behind the planning authority's decision to refuse planning permission.

The Reasons for Refusal

The two reasons state:

1. *The proposal is contrary to Policy ED3 (Rural Business) of the Perth and Kinross Local Development Plan 2014 which states that there is* ***a preference*** *that rural businesses are located within or adjacent to settlements. The site is located out with a settlement and no site specific resource is apparent and no locational justification has been provided for this specific site.*

2. *The storage shed located to the front of the main building in a prominent location fails to respect the quality of the surrounding natural environment and fails to respect the agricultural character and visual amenity of the area and is therefore contrary to Policy PM1A and the Perth and Kinross Local Development Plan 2014.*

An assessment of these reasons focusses on the following four issues:

1.The existing development as a permanent feature in the landscape; and other structures including the storage building in front of the main building which are temporary structures capable of being moved.

2. Whether there is a reasoned justification for the proposed business use on the site;

3. What effect the proposed use/development will have on the quality and character of the landscape of the local area.

4. Following this assessment of 1 - 4 above, the weight to be afforded to the Reasons for Refusal in relation to Development Plan policy justification will be determined.

These four issues are now considered in more detail.

1. The Existing Buildings – Permanent and Temporary Features

The existing main building on the site is currently being used for residential purposes. The Appellant knows that this use is unlawful, respects the decision of the Council and knows he will have to discontinue the use. He wants to work with the local authority in order to comply with the enforcement notice and to find an

alternative acceptable use for the building.

The building was approved as an agricultural building and later turned into a dwellinghouse without permission. Unrelated to any farm unit it will remain disused if planning permission is not granted. It is defined as "*operational development*" a permanent feature in the landscape.

Other buildings on the site are of a temporary nature i.e. are not operational development and can be removed or moved quite easily. In particular, the storage building in front of the main building (as referred to in the second reason for refusal) can be relocated to the rear. This has the potential to satisfy the planning authority's concerns.

2. The Acceptability of the Proposed Use

If it is accepted that the main building will remain it is the use of the property in the future that needs to be considered. In particular, the proposal use the main building and curtilage as a Class 4 Business use requires examination in the context of the first reason for refusal.

The wording states in the first reason states that there is a "***preference***" for rural business to be located within or adjacent to settlements. There is a contradiction in terms in this reason because if it is within a settlement then it is no longer a rural business. The Scottish Government in its publication "***Understanding the Scottish Rural Economy***", February 2018 (see **Document AS10**) states:

"There is not an agreed definition of the rural economy in Scotland, and often people use the term as a synonym for agriculture. In this paper, we take the approach that what matters in Scotland's rural economy is what is produced, built, delivered etc. in Rural Scotland and by people living there. As a result, we have looked across all sectors and employment categories to give as full a picture as possible of Scotland's rural economy today."

Looking at the structure of the private sector in rural Scotland the above mentioned Government publication observes:

"Looking at the total number of Business Units across the rural local authorities (see chart 12 below), Aberdeenshire (12,415 units) and Highland (10,350 units) stand a long way ahead of the others, followed by Perth and Kinross (5,651 units) and Dumfries and Galloway (5,046 units)."

So, it follows that Perth and Kinross are performing well in supporting private sector initiatives in the rural environment and has capacity to do more. The proposed use on the site at Kinloch has the potential to:

(i) Accommodate a relocated and very successful landscape business;

(ii) Maintain a level of employment in this family run business; and

(iii) Allow the expansion of the business all too the betterment of the rural economy.

Given the scale and nature of this business then it is asked where better to locate an enterprise which focusses on landscape planting? The policy states a ***preference*** but as will be demonstrated later in this statement there is sufficient flexibility within the policy to allow businesses to become established if a proportionality analysis is applied. There is no definitive statement in policy to ensure that businesses must be located within or adjacent to settlements.

If planning permission is refused the consequences for the family and their business will be devastating. The asset, which is the site and the buildings will be lost. The Appellant will have to try and absorb this loss through his business. The Local Review Body is being asked to support this small rural business.

3. The Effect on the Quality and Character of the Landscape

The Councils refusal of planning application reference 18/00263/FLL also relies on the impact that development will have on the area. The second reason is not at all clear but it appears to relate to the storage building in front of the main building, it states that it:

"fails to respect the quality of the surrounding natural environment and fails to respect the agricultural character and visual amenity of the area"

The Appellant in his planning submission proposed a definitive landscape mitigation strategy which "would soften the visual effect" of the proposed development. The Appellant agrees to implement this strategy in accordance with any condition(s) imposed on any planning permission; and to relocate the storage building which is a temporary structure. This can be undertaken in the first planting season. If the planning officer had discussed this with the Appellant then this issue could have been resolved.

For the avoidance of doubt if the reason for refusal (second) relates to the main building it is worth noting (once again) that this structure is to remain as the enforcement notice asks (only) for the residential use to be discontinued. The building will be a permanent feature unrelated to any farm unit and worthy of reuse. With an appropriate layout and landscape planting to be agreed with the Council an acceptable development can be achieved.

4. Assessment of Development Plan Policy

If it can be accepted that there is:

(i) a reasoned justification for the location of the business use on the site within the existing building;

(ii) a means of protecting environmental quality through accordance with any planning conditions imposed on any planning permission t; and

(iii) a case for accepting the proposed use on the site as a development which will contribute to the rural economy;

then all that remains is an assessment against the Development Plan policies on which the Council found its refusal of planning permission. This statement focusses on the two principal policies PM1A and ED3 of the Local Development Plan.

Placemaking Policy PM1A provides that:

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.

The environmental harm from the site, as referred to in the second Reason of the Decision Notice, is considered to be negligible for three reasons:

(i) The existing building is a permanent feature in the landscape benefitting from an approval of planning permission (agricultural building); and the enforcement notice requires cessation of a use as a dwellinghouse and not the buildings removal;

(ii) The storage building located to the front of the property is a temporary structure that can be relocated. The Appellant will comply with any condition of planning permission requiring its removal/relocation; and

(iii) The ability to impose a planning condition on any permission to secure landscape planting as proposed by the Appellant in the original planning application to mitigate any perceived impacts (see page 8 point d) in **Document AS1J**.

Policy ED3 Rural Business and Diversification provides that:

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. This is provided that they will

contribute to the local economy through the provision of permanent employment, or visitor accommodation, or additional tourism or recreational facilities, or involves the re-use of existing buildings.

New and existing tourism-related development will be supported where it can be demonstrated that it improves the quality of new or existing visitor facilities, allows a new market to be exploited or extends the tourism season.

All proposals will be expected to meet all the following criteria:

(a) The proposed use is compatible with the surrounding land uses and will not detrimentally impact on the amenity of residential properties within or adjacent to the site.

(b) The proposal can be satisfactorily accommodated within the landscape capacity of any particular location.

(c) The proposal meets a specific need by virtue of its quality or location in relation to existing business or tourist facilities.

(d) Where any new building or extensions are proposed they should achieve a high quality of design to reflect the rural nature of the site and be in keeping with the scale of the existing buildings.

(e) The local road network must be able to accommodate the nature and volume of the traffic generated by the proposed development in terms of road capacity, safety and environmental impact.

(f) Outwith settlement centres retailing will only be acceptable if it can be demonstrated that it is ancillary to the main use of the site and would not be deemed to prejudice the vitality of existing retail centres in adjacent settlements.

(g) Developments employing more than 25 people in rural locations will be required to implement a staff travel plan or provide on-site staff accommodation.

Taking each of these criteria in order it is submitted that:

(a) the development proposed is compatible with the cluster of development and will not detrimentally affect residential amenity (as accepted by the Council – see **Document AS2A**);

(b) given that the building is a permanent feature in the landscape the planning authority are satisfied that it can be accommodated within the landscape as it was approved by the as an agricultural building and the enforcement notice does not require its removal;

(c) there is a business case (despite the findings of the planning officer) to justify the locational need as

referred to in this statement and repeated in **Document AS1J**;

(d) the existing building is of a design compatible with the surrounding area;

(e) the site can be accessed and there are no road safety concerns (Transport Planning has no objections);

(f) there will be no retailing on the site; and

(g) there will be permanent staffing but not greater than 25 people so there is no need for a Travel Plan.

If planning permission is granted this would add a degree of certainty for the family and allow the Appellant to invest and demonstrate to the Council [and others] that the site can be laid out, operated and managed in an appropriate manner. Up till now the Council has denied the Appellant this opportunity. **The Appellant would accept a temporary permission.**

With the potential for economic/business need being met; and with the site having the potential to be developed, maintained and managed with no detriment to the rural environment this proposal represents a sustainable development as defined by SPP.

It is submitted that there is compliance with Development Plan Policies ED3 and PM1A and national policy.

5. Relevant Case Law

Introduction

To further reinforce the findings in this Statement the following planning appeal case is considered to be of relevant adding a persuasive argument to a positive planning decision. Although relating to a Gypsy/Travellers site it focusses on the proportionality analysis which will be applied to this case in Section 6 of this statement.

Chichester District Council Case

In **First Secretary of State & Others v Chichester District Council** September 2004 (**Document AS11**) a defendant had established a residential site without planning permission. The Planning Authority issued enforcement notices requiring the use to cease and the land returned to pasture.

At appeal the Inspector found that to uphold the notices would interfere with the Gypsy/Travellers rights to respect for their homes under Article 8 (2) ECHR. The Inspector conducted a **proportionality** analysis. He weighed what he considered to be the limited harm to the environment caused by the development against the harm caused by the Planning Authority's failure to recognise and provide for the needs of Gypsy/Travellers in its District. He found that interference was not justified under Article 8(2) ECHR. The notices were quashed and planning permission was granted.

Following a reinstatement of the Planning Authority's enforcement notices by a judge, the Court of Appeal found in favour of the defendant's rights under Article 8(1) that was justified under Article 8(2) as the Planning Authority had not made adequate site provision.

When taking its decision Perth and Kinross Council has not had proper regard to the interpretation of planning policy as it did in the Kings of Kinloch planning application (see below). This rural location is suitable for the Appellants business and due to its scale and nature (landscape planting) there is a reasoned justification for the approval of planning permission in accordance with planning policy.

6. The Principle of Development

Introduction

With the recent decision/actions of the Council (refusal of planning permission and enforcement) there is an even greater importance placed on addressing the personal circumstances of the Appellant. The planning authority has had a complete disregard to the Appellants personal circumstances and has ignored proportionality analysis in the decision making process. In the context of all the aforementioned sections in this statement it is submitted that the planning authority's actions are disproportionate and unreasonable as will now be demonstrated.

The decision relating to the previous owner of the site are understood and accepted. However, the Council are exacerbating the disadvantage (unlawful development) which is now being experienced by the Appellant and his family.

The Appellant founds on these failures in defence of this Appeal.

It is submitted that the following issues need to be considered when determining this Review:

(i) Change in circumstances on the site;

(ii) Proportionality; and

(iii) Unreasonableness

Changing circumstances

The Appellant has established his business over a 30 year period during which he provided his family with an opportunity to secure future employment and economic stability. His hard work has resulted in an established business which contributes to the local economy. To create a better life for him and his family he purchased the property on the site believing it to be lawful as a dwellinghouse. He has invested heavily into this property.

However, he now knows that the property cannot be used for residential purposes and has developed a business plan based on the relocation of his business to the site allowing for expansion at a location central to his business sources. This has the potential to provide him with the premises which will improve his business and a use which brings benefits to the local rural economy. A new family home will need to be found elsewhere.

The current refusal of planning permission places the Appellant at an extreme disadvantage. As well as having no where to stay the business model will fail. This brings with it extreme financial consequences. It is

submitted that the proposed alternative use of the property on the site is considered to be acceptable and the refusal of planning permission should be overturned.

Proportionality

It is recognised that the personal circumstances on their own are insufficient to allow a determination of planning permission. So, taking this argument one step further the concept of proportionality analysis should be used as a criterion of fairness and justice in the decision making process.

This concept applies logic, with the intention of assisting in discerning the correct balance between any restriction imposed (in this case the refusal of planning permission) and the severity of the nature of the prohibited act i.e. the proposed use.

Proportionality essentially means the decision should meet a legitimate policy goal and should not go further than necessary to achieve that goal. It must be appropriate and necessary to achieve its intended aim taking into consideration any change in circumstances (see above) and how unreasonable the restriction will be. The proposal is considered to be in accordance with planning policy which adds significant weight to the proportionality analysis.

A view of what is or is not proportionate should be formed according to the importance of the rights involved. A greater intensity of review should be taken where Human Rights are engaged. This is particularly relevant because Human Rights bring their own specific rules of interpretation, which means the decision makers (the Local Review Body in this case) should look at whether any action or decision infringes Human Rights and is proportionate.

The principle of proportionality needs to be applied in this case. Simply put the planning authority issued a decision to restrict the use of a building which will remain as a permanent feature in the landscape. The Council as the decision-maker, has interfered in a disproportionate manner. Based on the evidence in this statement this unreasonable decision can be rectified through a reasonable decision of approval of planning permission

Taking into consideration the change in circumstances and proportionality it is submitted that the Council place importance on the Appellants rights, proper planning practice and grant planning permission.

I would draw the Local Review Body's attention to case law First Secretary of State and Others v Chichester Borough Council, 2004 [EWCA Civ 1248] which refers to Human Rights and proportionality. Although this is an English planning case its principles have "persuasive argument' in the Scottish planning system (see **Document AS11)**.

Unreasonableness

It needs to be recognised that when different reasonable people are given the same set of facts, it is perfectly possible for them to come to different conclusions. In this case the Local Review Body are now being asked to come to a decision contrary to the planning authority's reasoning, based on proportionality, which includes a change of personal circumstances of the Appellant. A reasonable decision can be taken with the Local Review Body exercising discretion reflecting good planning practice.

There is good practical, as well as policy reasons for the Local Review Body to take a reasonable and fair decision as referred to in this statement. By doing so public interests will not be affected; nor will there be any policy implications; nor will any undesirable precedent be set.

It is submitted that there is a basis for the unfortunate circumstances that the Appellant and his family find themselves in (purchasing an unauthorised property) not to be exacerbated by a further negative decision.

This Statement of Case and accompanying Documents sets out to demonstrate that the terms of the criteria based Policy ED3 (Rural Business and Diversification) and PM1A (Placemaking) of the LDP are met.

The planning officer's refusal of planning permission is not proportionate or reasonable and has not fully considered:

1. The need to support small businesses in the Perth and Kinross administrative area.

2. The terms of Development Plan policy and their intentions.

3. The ability of the planning system to control visual impact and promote economic development.

4. Other material planning considerations.

In a previous decision, on a separate site, issued by the same planning officer (planning application reference 17/01377/FLL) he did display a reasonable approach and applying proportionality reflecting on the personal circumstances of the business he was dealing with. In his Report of Handling (**Document AS12**) he stated:

"Kings of Kinloch was formerly a hotel but is now a detached dwellinghouse. There are a series of detached holiday lodges located to the south east which are in the ownership of the applicant so there is an established tourism business in this location. The re-use of an existing building to accommodate the proposed use meets part of the criteria required by policy ED3 and ultimately it does involve the diversification of an existing business albeit to a use which is not related. It was evident from my site visit that there were members of staff present in the manufacturing process and delivery of the dry ice. The agent has confirmed there are currently four employees. As such the proposal meets the criteria relating to the

provision of permanent employment. As such the principle of development is considered to meet the criteria contained with policy ED3 of the LDP. Whilst the principle of the change of use is acceptable the impact on residential amenity, visual impact and traffic and road safety considerations also require to be fully considered."

The same approach to this development can be taken. The existing building which is to be returned to an agricultural building (see enforcement notice) is not related to any farm unit. It will remain disused. Its reuse through conversion to a business use which will contribute to the rural economy will meet planning objectives. The Brown family are employed in the business (5 people) so there is employment on site. The principle of change, in this case, appears to be similar to the Kings of Kinloch development.

The Reason 1 for refusal also alleges that:

"The site is located out with a settlement and no site specific resource is apparent and no locational justification has been provided for this specific site."

There are other business uses which operate outwith the settlement boundaries the one referred to above and other sin Kinloch being examples. Policy ED3 it states that:

"*There is a preference that this will generally be within or adjacent to existing settlements."*

It does not state that business use ***must*** be within or adjacent to settlements. If proportionality and reasonableness had been applied in this case (as in the Kings of Kinloch application) a different outcome may have resulted.

In conclusion, it is submitted that the principle for the development is acceptable based on a proper assessment of relevant planning policy, applying proportionality and changing circumstances.

7. Conclusions

There is a proven need to promote business in the rural areas of Perth and Kinross.

The previous decision to refuse planning permission for the erection of a dwellinghouse in retrospect has left a building, the design and external appearance of which, provides a unique opportunity to reuse it for a rural economic business use. The proposed development will afford an opportunity for the Appellant to use the building to fulfil his aspirations to relocate and expand his company, in a suitable environment all for the benefit of this family run business and the local economy. This represents a sustainable solution to a situation involving an unauthorised building. He and his family will vacate the premises and abandon the residential use.

Having assessed the proposals against the Development Plan and other material considerations, with the benefit of the evidence in this Statement this allows a conclusion to be reached that the proposed development is in accordance with Development Plan policy; and that the material considerations strengthen the case in favour of the grant of planning permission. This includes the national planning guidance as contained in SPP 2014 and the Council's Economic Strategy.

The Council's approach to business in rural Perth and Kinross is for fairness and the promotion of inclusive economic growth and a thriving economy. If a proportionality analysis is applied to this case then, taking into account the environmental, economic and social considerations (including the Appellants personal circumstances) a fair and reasonable decision can be reached.

It is considered that the Review should be upheld and planning permission granted subject to reasonable and necessary planning conditions including a temporary planning permission if the Local Review Body consider it necessary.

8. Appendix 1: List of Documents

Document: AS1A: Planning Application Form and Certificate
AS1B: Refused Location Plan
AS1C: Reused Rural Location Plan
AS1D: Refused Site Layout Plan
AS1E: Refused Elevations
AS1F: Refused Floor Plan of Building
ASIG: Refused Elevations and Floor Plans of Sheds
AS1H: Refused Photographs of Sheds
AS1J: Planning Policy and Design Statement

Document: AS2A: Report of Handling
AS2B: Decision Notice dated 5 June 2018

Document AS3A: Enforcement Notice dated 14 February 2018
AS3B: Enforcement Notice Statement of Case
AS3C: Enforcement Notice Appeal Decision dated 24 May 2018

Document AS4: Letter to Councillors dated 14 August 2018

Document AS5: Federation of Small Businesses Article May 2017

Document AS6: Extracts from Perth & Kinross Community Plan (Local Outcomes Improvement Plan)

Document AS7: Rural Perth & Kinross Leader Programme

Document AS8: Extracts from the Local Development Plan

Document AS9: Extracts from Scottish Planning Policy 2014

Document AS10: Scottish Government: Understanding the Scottish Rural Economy

Document AS11: First Secretary of State & Others v Chichester District Council

Document AS12: Report of Handling for Planning Application Reference 17/01377/FLL

PERTH AND KINROSS COUNCIL

Browns Groundworks c/o Seath Planning Consultancy Ltd Alan Seath 88 Scott Road Glenrothes KY6 1AE	Pullar House 35 Kinnoull Street PERTH PH1 5GD
	Date 5th June 2018

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT

Application Number: **18/00263/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 28th March 2018 for permission for **Erection of an office building (class 4) including access ramp, 3no. ancillary storage sheds, formation of car parking, external storage area, landscaping and associated works (in retrospect) Hillview Kinloch Blairgowrie PH10 6SD** for the reasons undernoted.

Interim Development Quality Manager

Reasons for Refusal

1. The proposal is contrary to Policy ED3 (Rural Business) of the Perth and Kinross Local Development Plan 2014 which states that there is a preference that rural businesses are located within or adjacent to settlements. The site is located out with a settlement and no site specific resource is apparent and no locational justification has been provided for this specific site.

2. The storage shed located to the front of the main building in a prominent location fails to respect the quality of the surrounding natural environment and fails to respect the agricultural character and visual amenity of the area and tis therefore contrary to Policy PM1A and the Perth and Kinross Local Development Plan 2014.

Justification

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

Notes

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

Plan Reference

18/00263/1

18/00263/2

18/00263/3

18/00263/4

18/00263/5

18/00263/6

18/00263/7

18/00263/8

18/00263/9

18/00263/10

18/00263/11

REPORT OF HANDLING

DELEGATED REPORT

Ref No	**18/00263/FLL**	
Ward No	**P3- Blairgowrie And Glens**	
Due Determination Date	**27.05.2018**	
Case Officer	**John Williamson**	
Report Issued by		**Date**
Countersigned by		**Date**

PROPOSAL: Erection of an office building (class 4) including access ramp, 3no. ancillary storage sheds, formation of car parking, external storage area, landscaping and associated works (in retrospect)

LOCATION: Hillview Kinloch Blairgowrie PH10 6SD

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.

DATE OF SITE VISIT: 5 April 2018

SITE PHOTOGRAPHS

BACKGROUND AND DESCRIPTION OF PROPOSAL

Full planning consent is sought for the erection of a Class 4 office building, including an access ramp, 3 ancillary storage sheds, formation of a car parking area and external storage area at Hillview near Kinloch to the west of Blairgowrie. The site is proposed to serve as an office and yard for the applicant's landscaping and associated groundworks business known as Brown's Groundworks. There is extensive planning history associated with this site which is considered to be very relevant to consideration of an application for an office use on this site.

A prior notification was granted in April 2012 (12/00544/PN) for the erection of a general purpose agricultural building. There has also been a previous refusal on the site for a holiday home (11/01988/IPL) and a withdrawn application for 2 dwellings (05/00703/FUL).

The agricultural building has been erected approximately 10m to the north of the position indicated in the PN. Therefore the building has not been erected in the correct location. The applicant's agent sought the Planning Authority's view on this matter in 2014 and were informed that a further planning application would be required to regularise the situation. No further application was received. This matter was discussed with PKC planning enforcement and the view taken at the time was that it was not in the public interest to pursue formal enforcement action as there was considered to be limited planning harm in the revised location given the use of the building for agricultural purposes.

It is then became apparent that the agricultural building was been occupied as a dwellinghouse and we have subsequently received the retrospective application for a

dwellinghouse. The application for a dwellinghouse was subsequently refused as being contrary to Policy RD3 of the Perth and Kinross Local Development Plan (LDP) which relates to Housing in the Countryside. An appeal to the Local Review Body was subsequently dismissed. Formal enforcement action followed this (ref:16/00256/UNAUSE), dated 16th February, to cease use of the building as a dwellinghouse. This was subsequently appealed and the appeal recently dismissed by the Department of Planning and Environmental Appeals (DPEA) (ref-ENA-340-2037).

The application site is located on a rising hillside to the north of the A923, Blairgowrie to Dunkeld public road. The site, which can be viewed from the public road is open in nature, as part of a wider slope of fields, leading up to a ridge of trees on top of the slope. There is an existing grouping of buildings along the A923 and extending northwards, however the application site is considered to be remote from the established L shaped building group. Access to the site is proposed from the south west between two existing properties and onto the A923. The building on the site has a rectangular footprint and is single storey in scale. A total of 3 bedrooms are located within, together with two living areas, a kitchen, bathroom and utility area. The building is located at the north western end of the plot with a large parking and turning area to the south, together with the drainage system. It should also be noted that the site is located within the Lunan Valley Catchment Area. The Lochs Clunie and Marlee Site of Special Scientific Interest (SSSI) and Dunkeld Lochs Special Area of Conservation (SAC) is located approximately 273m to the south of the site. This proposal seeks to utilise the building as a class 4 office to serve as a base for the applicant's groundworks company which currently operates from within Blairgowrie. The submission states that the applicant currently lives in the unauthorised dwelling and purchased the site recently in the knowledge that residential use of the building was unauthorised. The intention is to convert the building into a Class 4 office. The submission states that the living areas of the unauthorised house will be converted into a reception and filing rooms, the kitchen and bathroom will remain to serve staff and visitors, one of the bedrooms will be used as an office and the remaining bedrooms used for administration, secure storage and filing.

SITE HISTORY

89/00625/FUL ERECTION OF PORTAL FRAME BUILDING TO FORM GARAGE AT 1 June 1989 Application Permitted

92/01156/FUL ERECTION OF HOUSE ON INFILL SITE AT 24 September 1992 Application Permitted

05/00045/OUT Erection of a dwellinghouse (in outline) 2 May 2005 Application Refused

05/00703/FUL Erection of 2 dwellinghouses and garages 13 May 2005 Application Withdrawn

12/00544/PN Erection of an agricultural shed 3 April 2012 Application Permitted

16/01937/FLL Erection of a dwellinghouse (in retrospect) 24 February 2017

89/00625/FUL ERECTION OF PORTAL FRAME BUILDING TO FORM GARAGE AT 1 June 1989 Application Permitted

92/01156/FUL ERECTION OF HOUSE ON INFILL SITE AT 24 September 1992 Application Permitted

05/00045/OUT Erection of a dwellinghouse (in outline) 2 May 2005 Application Refused

05/00703/FUL Erection of 2 dwellinghouses and garages 13 May 2005 Application Withdrawn

12/00544/PN Erection of an agricultural shed 3 April 2012 Application Permitted

16/01937/FLL Erection of a dwellinghouse (in retrospect) 24 February 2017 – Application Refused and Dismissed at Local Review Body

PRE-APPLICATION CONSULTATION

Pre application Reference: None

NATIONAL POLICY AND GUIDANCE

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

DEVELOPMENT PLAN

The Development Plan for the area comprises the TAYplan Strategic Development Plan 2016-2036 and the Perth and Kinross Local Development Plan 2014.

TAYplan Strategic Development Plan 2016 – 2036 - Approved October 2017

Whilst there are no specific policies or strategies directly relevant to this proposal the overall vision of the TAYplan should be noted. The vision states *"By 2036 the TAYplan area will be sustainable, more attractive, competitive and vibrant without creating an unacceptable burden on our planet. The quality of life will make it a place of first choice where more people choose to live, work, study and visit, and where businesses choose to invest and create jobs."*

Perth and Kinross Local Development Plan 2014 – Adopted February 2014

The Local Development Plan is the most recent statement of Council policy and is augmented by Supplementary Guidance.

The principal policies are, in summary:

Policy ED3 - Rural Business and Diversification
Favourable consideration will be given to the expansion of existing businesses and the creation of new business. There is a preference that this will generally be within or adjacent to existing settlements. Outwith settlements, proposals may be acceptable where they offer opportunities to diversify an existing business or are related to a site specific resource or opportunity. This is provided that permanent employment is created or additional tourism or recreational facilities are provided or existing buildings are re-used. New and existing tourist related development will generally be supported. All proposals are required to meet all the criteria set out in the policy.

Policy PM1A - Placemaking
Development must contribute positively to the quality of the surrounding built and natural environment, respecting the character and amenity of the place. All development should be planned and designed with reference to climate change mitigation and adaption.

Policy PM1B - Placemaking
All proposals should meet all eight of the placemaking criteria.

Policy EP6 - Lunan Valley Catchment Area
The nature conservation and landscape interest of the Lunan Valley Catchment Area will be protected and enhanced in accordance with the criteria set out. Policy RD3: Housing in the Countryside is restricted to economic need, conversions, or replacement buildings within the Lunan Valley Catchment Area.

Policy TA1B - Transport Standards and Accessibility Requirements
Development proposals that involve significant travel generation should be well served by all modes of transport (in particular walking, cycling and public transport), provide safe access and appropriate car parking. Supplementary Guidance will set out when a travel plan and transport assessment is required.

Policy NE1A - International Nature Conservation Sites
Development which could have a significant effect on a site designated or proposed as a Special Area of Conservation, Special Protection Area or Ramsar site will only be permitted where an Appropriate Assessment shows that the integrity of the site will not be adversely affected, there are no alternative solutions and there are imperative reasons of overriding public interest.

Policy NE1B - National Designations
Development which would affect a National Park, National Scenic Area, Site of Special Scientific Interest or National Nature Reserve will only be permitted where the integrity of the area or the qualities for which it has been designated are not adversely affected or any adverse impacts are clearly outweighed by benefits of national importance.

OTHER POLICIES

Developer Contributions and Affordable Housing Supplementary Guidance

Lunan Valley Catchment Area Supplementary Guidance

CONSULTATION RESPONSES

INTERNAL

Environmental Health - concerns with regards to noise for this application particularly if the site is accessed before 7.00 am as there are receptors within 50 metres. Conditions recommended.

Transport Planning – no objection

EXTERNAL

Scottish Environment Protection Agency - objection initially due to lack of information on phosphorus mitigation relating to Lunan Valley Catchment Area. Objection now withdrawn following receipt of additional information.

Scottish Natural Heritage - objection initially due to lack of information on phosphorus mitigation relating to Lunan Valley Catchment Area and potential impact on SAC and SSSI. Objection now withdrawn following receipt of additional information.

REPRESENTATIONS

None received

ADDITIONAL INFORMATION RECEIVED:

Environmental Impact Assessment (EIA)	Not Required
Screening Opinion	Not Required
EIA Report	Not Required
Appropriate Assessment	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 for the area comprises the approved TAYplan 2016 and the adopted Perth and Kinross Local Development Plan 2014.

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

The planning system should be plan led and this is indicated within "Core Values of the Planning Service in paragraph 4 of Scottish Planning Policy (SPP). SPP and the LDP also focus on the delivery of sustainable economic development to support the economy but also to ensure that development occurs in the most sustainable locations. SPP states that "by locating the right development in the right place, planning can provide opportunities for people to make sustainable choices and improve their quality of life". The LDP states within its key objectives that development should "contribute to reducing the need to travel" whilst also "increasing the economic sustainability of Perth and Kinross".

Policy ED1A identifies areas for employment uses which should be retained for such uses and any proposed development must be compatible with surrounding land uses. These zoned sites are generally located within or adjacent to the main settlements.

In this location Policy ED3 of the Local Development Plan (LDP) is the most relevant policy in the assessment of this application. This policy states that the Council will give favourable consideration to the expansion of existing businesses and the creation of new ones in rural areas. It states that there will be a preference that these will generally be within or adjacent to existing settlements. It also confirms that sites outwith settlements may be acceptable where they offer opportunities to diversify an existing business or relate to a site specific resource or opportunity.

The supporting statement indicates that the applicant currently operates from within Blairgowrie and that the current site is too small. The information states that the applicant currently lives in the unauthorised dwelling and purchased the site recently in the knowledge that residential use of the building was unauthorised. The intention is to convert the building into a Class 4 office. The submission states that the living areas of the unauthorised house will be converted into a reception and filing rooms, the kitchen and bathroom will remain to serve staff and visitors, one of the bedrooms will be used as an office and the remaining bedrooms used for administration, secure storage and filing.

There is no evidence to suggest that there is a site specific resource which is met here and required by this particular company. Furthermore there is no evidence

submitted which demonstrates that the requirements of the company could not be met elsewhere in a more sustainable location.

As outlined above there are sites within Perth and Kinross which are specifically allocated for employment uses and it is evident from examining the LDP that potential land for class 4 uses exists within nearby Blairgowrie and other sites in the local area which are considered to be the most appropriate in terms of sustainability, accessibility and economic growth.

The key to the assessment of a development of this type in a rural area is to establish whether a site specific resource or opportunity exists on this site which demonstrates why this particular site is the most appropriate location in planning terms for the proposed class 4 office use. The submission states that the applicant is seeking to expand the existing groundworks business and that this site would allow for that. It does not provide any evidence of a site specific resource or justification for this location being the most appropriate for a site of this nature which is required by policy ED3.

It also fails to provide any evidence as to why an established area of employment land in a nearby settlement could not be utilised for a business of this nature and whether a search for this type of land has been undertaken. Based upon the nature of the operations it would appear to be more logical in planning and sustainability terms for this business to be located within an established settlement, within a designated employment area as indicated within the policy.

It is my view that a rural location of this nature, remote from any settlements is not the most appropriate location and therefore, without any detailed site specific justification for this location choice I consider the principle of development in this location fails to comply with the requirements of Policy ED3.

Residential Amenity

Policy EP8 is relevant and states that there will be a presumption against the siting of development proposals which will generate high levels of noise in the locality of noise sensitive uses. The adjacent residential properties are considered to be noise sensitive and the proposal for an office and associated storage area for a groundworks business is considered to have the potential to generate levels of noise which may disturb neighbouring residents. Environmental Health have reiterated my concerns relating to noise given there are receptors located within 50 metres. They have, however, recommended conditions to control operations including operating hours, plant and equipment control, external lighting control and provision of a noise management plan. Based upon the conclusions from Environmental Health I am satisfied that the proposal could operate without detriment to amenity subject to adherence with the recommended conditions.

Visual Amenity

Policy PM1A and B refer to placemaking and require new development to contribute to the surround built and natural environment and to respect its surroundings in terms of appearance, height and scale. In this instance the rising hillside to the rear

does provide some landscape backdrop to the building, however the building is clearly remote from the existing building group and in my view this results in the building being prominent when viewed from the public road. Nevertheless the erection of a building on this site, albeit slightly lower down the hill was allowed through the prior notification procedure and as such I do not consider the main building to be contrary to policy PM1A and B.

The ancillary storage sheds and outdoor storage area will alter the character of the site. The ancillary storage shed to the front of the main building has a very domestic appearance which is not considered to relate successfully to the agricultural character of this location. As such the shed is considered to be contrary to the criteria contained within Policy PM1A of the LDP which requires new development to contribute positively to the quality of the surrounding built and natural environment and to respect the visual amenity of the area.

Drainage

The site is located within the Lunan Valley Catchment Area where policy EP6 of the LDP applies and refers to the Dunkeld-Blairgowrie Lochs Special Area of Conservation (SAC) and the Lochs Clunie and Marlee Site of Special Scientific Interest (SSSI). Policy NE1A and B are therefore relevant and seek to ensure that development does not have a significant effect or adversely affect the qualities for which the areas have been designated. The Lunan Valley Area Dunkeld Supplementary Guidance is also relevant. This states that the Council will protect the nature conservation and landscape interests of the catchment area. It states that there will be a presumption against built development, except within settlements, for renovations or alteration to existing buildings and developments necessary to economic need amongst others.

The policy goes on to state that total phosphorus from built development must not exceed the current level permitted by existing discharge consents and the current contribution level from built development within the rural area of the catchment to ensure the protection of the SAC and SSSI. It requires all applicants to submit details of the method of phosphorus mitigation with the application. Whilst reference is made to this within the submission, no mitigation methods were submitted initially. SNH and SEPA have both raised concern regarding the impact which the drainage arrangements for the site may be having.

Further information was subsequently submitted by the applicant's agent detailing the phosphorus mitigation and SNH and SEPA have now withdrawn their objection relating to the impact on the Lunan Valley Catchment Area.

Developer Contributions

There is no requirement for a developer contribution at this site.

Access and Traffic

The site is served by an existing private access which links to the A923 public road. The access is considered to be appropriate and accords with the requirements of

Policy TA1B of the LDP. Transport Planning have offered no objection. The submission indicates that the business employs a total of 5 persons. I do not consider the traffic associated with this scale of business to be of detriment to road safety in the local area. A cycle parking area is also proposed to cater for more sustainable means of transport.

Economic Impact

Whilst there may be some economic benefit associated with the relocation of the groundworks business this is not considered to be sufficient to merit approval of the application contrary to the Local Development Plan.

Conclusion

In conclusion, the application must be determined in accordance with the adopted Development Plan unless material considerations indicate otherwise. In this respect, the proposal is considered to be contrary to the adopted Local Development Plan 2014. I have taken account of material considerations and find none that would justify overriding the adopted Development Plan. On that basis the application is recommended for refusal.

APPLICATION PROCESSING TIME

The recommendation for this application has been made within the statutory determination period.

LEGAL AGREEMENTS

None required.

DIRECTION BY SCOTTISH MINISTERS

None applicable to this proposal.

RECOMMENDATION

Refuse the application

Reasons for Recommendation

The proposal is contrary to Policy ED3 (Rural Business) of the Perth and Kinross Local Development Plan 2014 which states that there is a preference that rural businesses are located within or adjacent to settlements. The site is located out with a settlement and no site specific resource is apparent and no locational justification has been provided for this specific site.

The storage shed located to the front of the main building in a prominent location fails to respect the quality of the surrounding natural environment and fails to respect the agricultural character and visual amenity of the area and tis therefore contrary to Policy PM1A and the Perth and Kinross Local Development Plan 2014.

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

None

Procedural Notes

Not Applicable.

PLANS AND DOCUMENTS RELATING TO THIS DECISION

18/00263/1

18/00263/2

18/00263/3

18/00263/4

18/00263/5

18/00263/6

18/00263/7

18/00263/8

18/00263/9

18/00263/10

18/00263/11

Date of Report

5 June 2018

Pullar House 35 Kinnoull Street Perth PH1 5GD Tel: 01738 475300 Fax: 01738 475310 Email: onlineapps@pkc.gov.uk

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100081066-001

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

Type of Application

What is this application for? Please select one of the following: *

☒ Application for planning permission (including changes of use and surface mineral working).

☐ Application for planning permission in principle.

☐ Further application, (including renewal of planning permission, modification, variation or removal of a planning condition etc)

☐ Application for Approval of Matters specified in conditions.

Description of Proposal

Please describe the proposal including any change of use: * (Max 500 characters)

Repositioning of Existing Building (in retrospect) and Change of Use to Form Offices for a Class 4 Business Use (Landscape Business) with Associated External Storage and Car Parking

Is this a temporary permission? * ☐ Yes ☒ No

If a change of use is to be included in the proposal has it already taken place? (Answer 'No' if there is no change of use.) * ☐ Yes ☒ No

Has the work already been started and/or completed? *

☐ No ☒ Yes – Started ☐ Yes - Completed

Please state date of completion, or if not completed, the start date (dd/mm/yyyy): * 01/03/2017

Please explain why work has taken place in advance of making this application: * (Max 500 characters)

No work has taken place to alter the internal layout of the building but the sheds are in place. The applicant was unaware of the need for planning permission.

Applicant or Agent Details

Are you an applicant or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application) ☐ Applicant ☒ Agent

Agent Details

Please enter Agent details

Company/Organisation:	Seath Planning Consultancy Ltd		
Ref. Number:		You must enter a Building Name or Number, or both: *	
First Name: *	ALAN	Building Name:	
Last Name: *	SEATH	Building Number:	88
Telephone Number: *	07731690473	Address 1 (Street): *	Scott Road
Extension Number:		Address 2:	
Mobile Number:		Town/City: *	Glenrothes
Fax Number:		Country: *	Scotland
		Postcode: *	KY6 1AE
Email Address: *	a_seath@sky.com		

Is the applicant an individual or an organisation/corporate entity? *

☐ Individual ☒ Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title:	Mr	You must enter a Building Name or Number, or both: *	
Other Title:		Building Name:	
First Name: *	Peter	Building Number:	[redacted]
Last Name: *	Brown	Address 1 (Street): *	[redacted]
Company/Organisation	Browns Groundworks	Address 2:	[redacted]
Telephone Number: *		Town/City: *	[redacted]
Extension Number:		Country: *	[redacted]
Mobile Number:		Postcode: *	[redacted]
Fax Number:			
Email Address: *			

Site Address Details

Planning Authority: Perth and Kinross Council

Full postal address of the site (including postcode where available):

Address 1:

Address 2:

Address 3:

Address 4:

Address 5:

Town/City/Settlement:

Post Code:

Please identify/describe the location of the site or sites

Land at Balcairn Farm, Kinloch, Blairgowrie, PH10 6SD

Northing 744830 Easting 314456

Pre-Application Discussion

Have you discussed your proposal with the planning authority? * ☒ Yes ☐ No

Pre-Application Discussion Details Cont.

In what format was the feedback given? *

☒ Meeting ☐ Telephone ☐ Letter ☐ Email

Please provide a description of the feedback you were given and the name of the officer who provided this feedback. If a processing agreement [note 1] is currently in place or if you are currently discussing a processing agreement with the planning authority, please provide details of this. (This will help the authority to deal with this application more efficiently.) * (max 500 characters)

Advised that enforcement action would be forthcoming from the Council. The Applicant advised that he was considering options for a change of use for the property which he now owns.

Title:	Mr	Other title:	
First Name:	Paul	Last Name:	Kettles
Correspondence Reference Number:		Date (dd/mm/yyyy):	11/12/2017

Note 1. A Processing agreement involves setting out the key stages involved in determining a planning application, identifying what information is required and from whom and setting timescales for the delivery of various stages of the process.

Site Area

Please state the site area: 1911.00

Please state the measurement type used: ☐ Hectares (ha) ☒ Square Metres (sq.m)

Existing Use

Please describe the current or most recent use: * (Max 500 characters)

Unauthorised dwellinghouse

Access and Parking

Are you proposing a new altered vehicle access to or from a public road? * ☐ Yes ☒ No

If Yes please describe and show on your drawings the position of any existing. Altered or new access points, highlighting the changes you propose to make. You should also show existing footpaths and note if there will be any impact on these.

Are you proposing any change to public paths, public rights of way or affecting any public right of access? * ☐ Yes ☒ No

If Yes please show on your drawings the position of any affected areas highlighting the changes you propose to make, including arrangements for continuing or alternative public access.

How many vehicle parking spaces (garaging and open parking) currently exist on the application Site? 5

How many vehicle parking spaces (garaging and open parking) do you propose on the site (i.e. the Total of existing and any new spaces or a reduced number of spaces)? * 5

Please show on your drawings the position of existing and proposed parking spaces and identify if these are for the use of particular types of vehicles (e.g. parking for disabled people, coaches, HGV vehicles, cycles spaces).

Water Supply and Drainage Arrangements

Will your proposal require new or altered water supply or drainage arrangements? * ☐ Yes ☒ No

Do your proposals make provision for sustainable drainage of surface water?? * (e.g. SUDS arrangements) * ☒ Yes ☐ No

Note:-

Please include details of SUDS arrangements on your plans

Selecting 'No' to the above question means that you could be in breach of Environmental legislation.

Are you proposing to connect to the public water supply network? *

☒ Yes

☐ No, using a private water supply

☐ No connection required

If No, using a private water supply, please show on plans the supply and all works needed to provide it (on or off site).

Assessment of Flood Risk

Is the site within an area of known risk of flooding? * ☐ Yes ☒ No ☐ Don't Know

If the site is within an area of known risk of flooding you may need to submit a Flood Risk Assessment before your application can be determined. You may wish to contact your Planning Authority or SEPA for advice on what information may be required.

Do you think your proposal may increase the flood risk elsewhere? * ☐ Yes ☒ No ☐ Don't Know

Trees

Are there any trees on or adjacent to the application site? * ☐ Yes ☒ No

If Yes, please mark on your drawings any trees, known protected trees and their canopy spread close to the proposal site and indicate if any are to be cut back or felled.

Waste Storage and Collection

Do the plans incorporate areas to store and aid the collection of waste (including recycling)? * ☒ Yes ☐ No

If Yes or No, please provide further details: * (Max 500 characters)

See layout plan

Residential Units Including Conversion

Does your proposal include new or additional houses and/or flats? * ☐ Yes ☒ No

All Types of Non Housing Development – Proposed New Floorspace

Does your proposal alter or create non-residential floorspace? * ☒ Yes ☐ No

All Types of Non Housing Development – Proposed New Floorspace Details

For planning permission in principle applications, if you are unaware of the exact proposed floorspace dimensions please provide an estimate where necessary and provide a fuller explanation in the 'Don't Know' text box below.

Please state the use type and proposed floorspace (or number of rooms if you are proposing a hotel or residential institution): *

Class 4 Business (Office/Light Industry)

Gross (proposed) floorspace (In square meters, sq.m) or number of new (additional) Rooms (If class 7, 8 or 8a): * 154

If Class 1, please give details of internal floorspace:

Net trading spaces:

Non-trading space: 154

Total:

If Class 'Not in a use class' or 'Don't know' is selected, please give more details: (Max 500 characters)

Class 4 Use (Landscape Business)

Schedule 3 Development

Does the proposal involve a form of development listed in Schedule 3 of the Town and Country Planning (Development Management Procedure (Scotland) Regulations 2013 * ☐ Yes ☒ No ☐ Don't Know

If yes, your proposal will additionally have to be advertised in a newspaper circulating in the area of the development. Your planning authority will do this on your behalf but will charge you a fee. Please check the planning authority's website for advice on the additional fee and add this to your planning fee.

If you are unsure whether your proposal involves a form of development listed in Schedule 3, please check the Help Text and Guidance notes before contacting your planning authority.

Planning Service Employee/Elected Member Interest

Is the applicant, or the applicant's spouse/partner, either a member of staff within the planning service or an elected member of the planning authority? * ☐ Yes ☒ No

Certificates and Notices

CERTIFICATE AND NOTICE UNDER REGULATION 15 – TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATION 2013

One Certificate must be completed and submitted along with the application form. This is most usually Certificate A, Form 1, Certificate B, Certificate C or Certificate E.

Are you/the applicant the sole owner of ALL the land? * ☐ Yes ☒ No

Is any of the land part of an agricultural holding? * ☐ Yes ☒ No

Are you able to identify and give appropriate notice to ALL the other owners? * ☒ Yes ☐ No

Certificate Required

The following Land Ownership Certificate is required to complete this section of the proposal:

Certificate B

Land Ownership Certificate

Certificate and Notice under Regulation 15 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

I hereby certify that

(1) - No person other than myself/the applicant was an owner [Note 4] of any part of the land to which the application relates at the beginning of the period of 21 days ending with the date of the accompanying application;

or –

(1) - I have/The Applicant has served notice on every person other than myself/the applicant who, at the beginning of the period of 21 days ending with the date of the accompanying application was owner [Note 4] of any part of the land to which the application relates.

Name: Mr Craig Lewis

Address: [redacted]

Date of Service of Notice: * 20/02/2018

Name: Mr Tim Goucher

Address: [redacted]

Date of Service of Notice: * 20/02/2018

(2) - None of the land to which the application relates constitutes or forms part of an agricultural holding;

or –

(2) - The land or part of the land to which the application relates constitutes or forms part of an agricultural holding and I have/the applicant has served notice on every person other than myself/himself who, at the beginning of the period of 21 days ending with the date of the accompanying application was an agricultural tenant. These persons are:

Name:

Address:

Date of Service of Notice: *

Signed: ALAN SEATH

On behalf of: Browns Groundworks

Date: 19/02/2018

☒ Please tick here to certify this Certificate. *

Checklist – Application for Planning Permission

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Please take a few moments to complete the following checklist in order to ensure that you have provided all the necessary information in support of your application. Failure to submit sufficient information with your application may result in your application being deemed invalid. The planning authority will not start processing your application until it is valid.

a) If this is a further application where there is a variation of conditions attached to a previous consent, have you provided a statement to that effect? *

☐ Yes ☐ No ☒ Not applicable to this application

b) If this is an application for planning permission or planning permission in principal where there is a crown interest in the land, have you provided a statement to that effect? *

☐ Yes ☐ No ☒ Not applicable to this application

c) If this is an application for planning permission, planning permission in principle or a further application and the application is for development belonging to the categories of national or major development (other than one under Section 42 of the planning Act), have you provided a Pre-Application Consultation Report? *

☐ Yes ☐ No ☒ Not applicable to this application

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

d) If this is an application for planning permission and the application relates to development belonging to the categories of national or major developments and you do not benefit from exemption under Regulation 13 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, have you provided a Design and Access Statement? *

☐ Yes ☐ No ☒ Not applicable to this application

e) If this is an application for planning permission and relates to development belonging to the category of local developments (subject to regulation 13. (2) and (3) of the Development Management Procedure (Scotland) Regulations 2013) have you provided a Design Statement? *

☒ Yes ☐ No ☐ Not applicable to this application

f) If your application relates to installation of an antenna to be employed in an electronic communication network, have you provided an ICNIRP Declaration? *

☐ Yes ☐ No ☒ Not applicable to this application

g) If this is an application for planning permission, planning permission in principle, an application for approval of matters specified in conditions or an application for mineral development, have you provided any other plans or drawings as necessary:

☒ Site Layout Plan or Block plan.
☐ Elevations.
☒ Floor plans.
☐ Cross sections.
☐ Roof plan.
☐ Master Plan/Framework Plan.
☐ Landscape plan.
☒ Photographs and/or photomontages.
☐ Other.

If Other, please specify: * (Max 500 characters)

Provide copies of the following documents if applicable:

A copy of an Environmental Statement. *	☐ Yes	☒ N/A
A Design Statement or Design and Access Statement. *	☒ Yes	☐ N/A
A Flood Risk Assessment. *	☐ Yes	☒ N/A
A Drainage Impact Assessment (including proposals for Sustainable Drainage Systems). *	☐ Yes	☒ N/A
Drainage/SUDS layout. *	☐ Yes	☒ N/A
A Transport Assessment or Travel Plan	☐ Yes	☒ N/A
Contaminated Land Assessment. *	☐ Yes	☒ N/A
Habitat Survey. *	☐ Yes	☒ N/A
A Processing Agreement. *	☐ Yes	☒ N/A

Other Statements (please specify). (Max 500 characters)

Declare – For Application to Planning Authority

I, the applicant/agent certify that this is an application to the planning authority as described in this form. The accompanying Plans/drawings and additional information are provided as a part of this application.

Declaration Name: Mr ALAN SEATH

Declaration Date: 19/02/2018

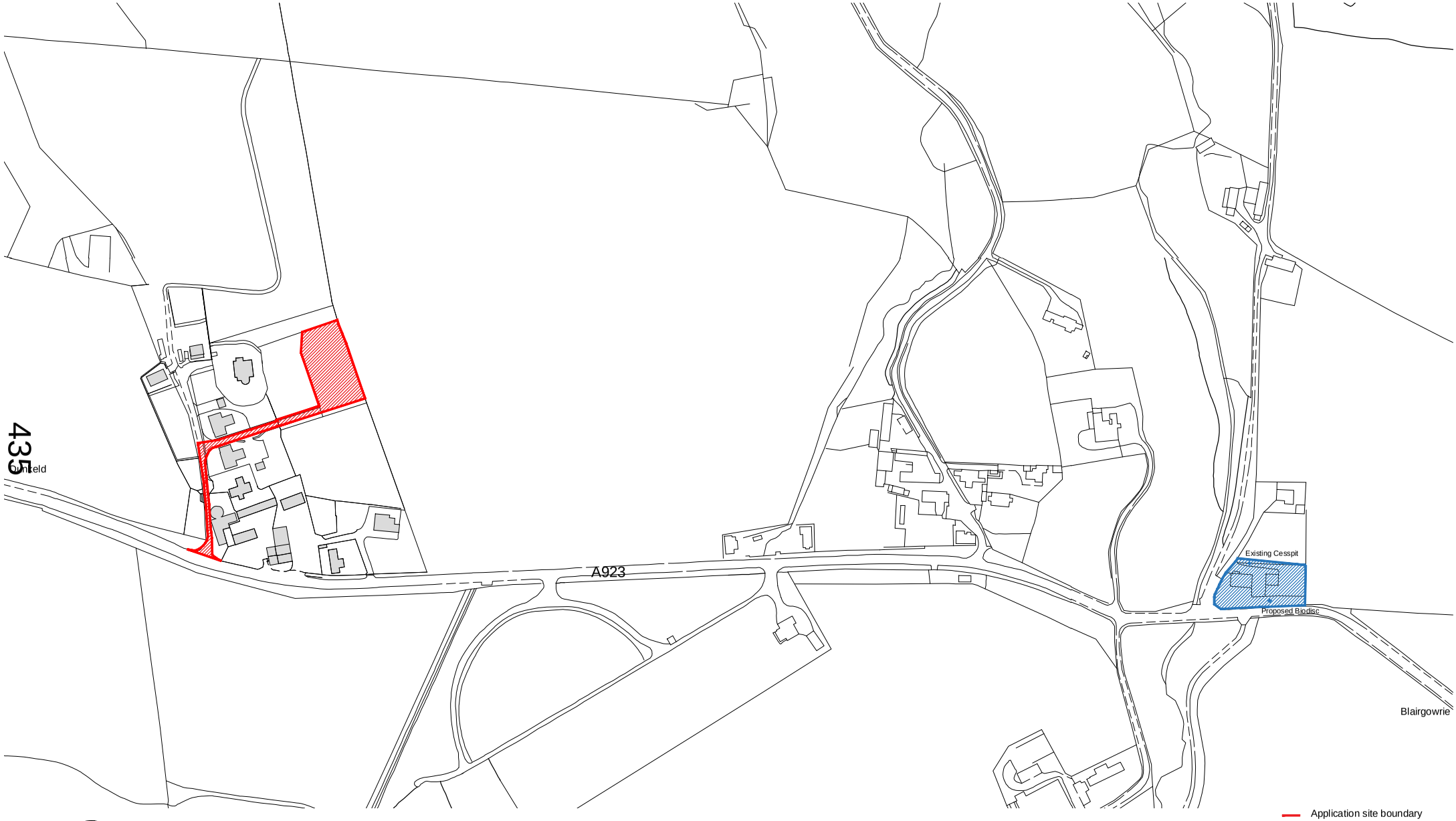
Payment Details

[redacted]

Created: 19/02/2018 07:44

Change of use from Agricultural Shed to Dwelling at Balcairn by Kinloch, Blairgowrie

05a



0 50 100 150

Scale in metres at 1:2500

Application site boundary

Cesspit/Biodisc at Chestnut View

PLANNING

Rev. a - Site boundary revised

LEADINGHAM JAMESON ROGERS + HYND

C H A R T E R E D A R C H I T E C T S

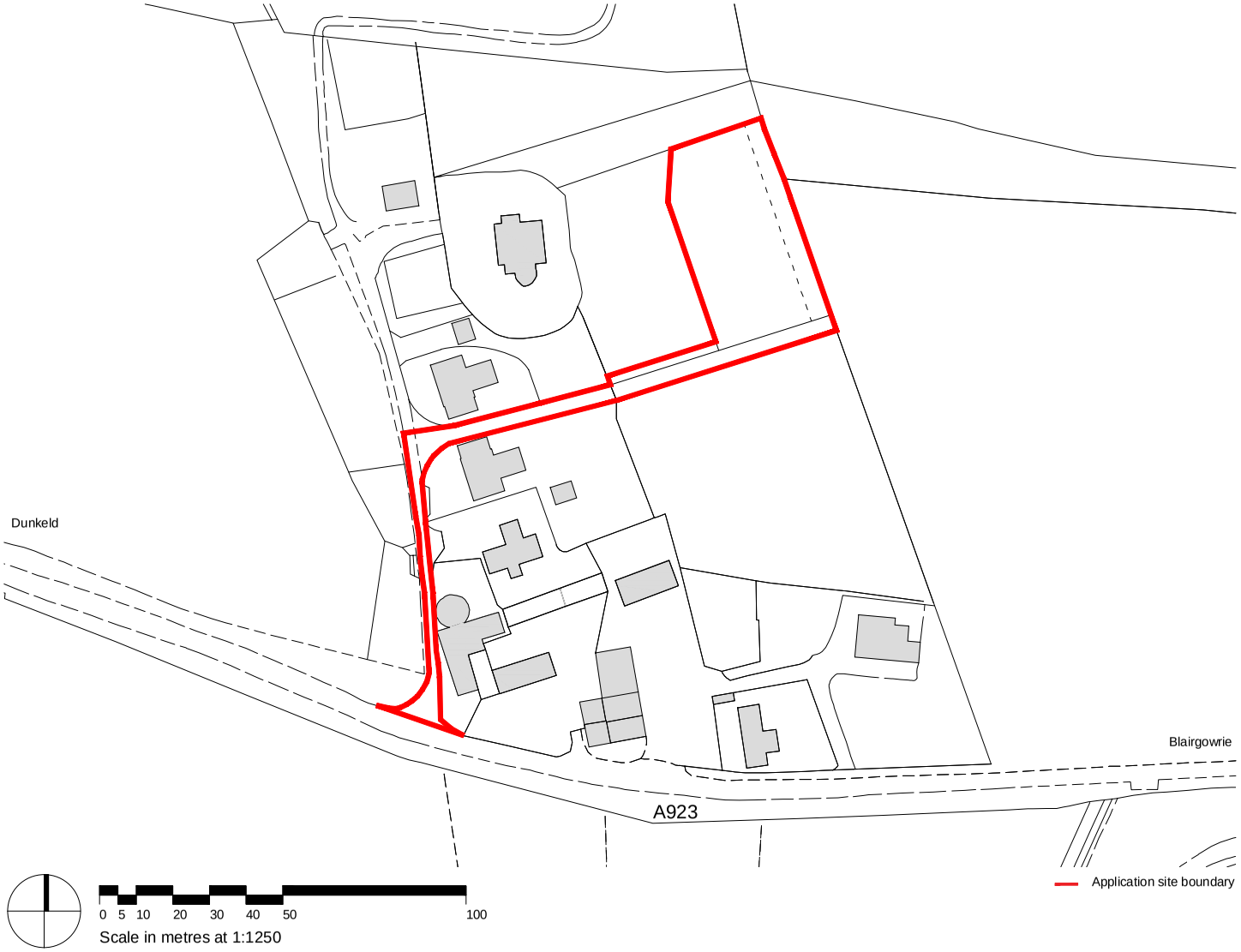
18 South Tay Street Dundee DD1 1PD Tel: 01382 200511 Fax: 01382 225226 e-mail: admin@LJRH.co.uk

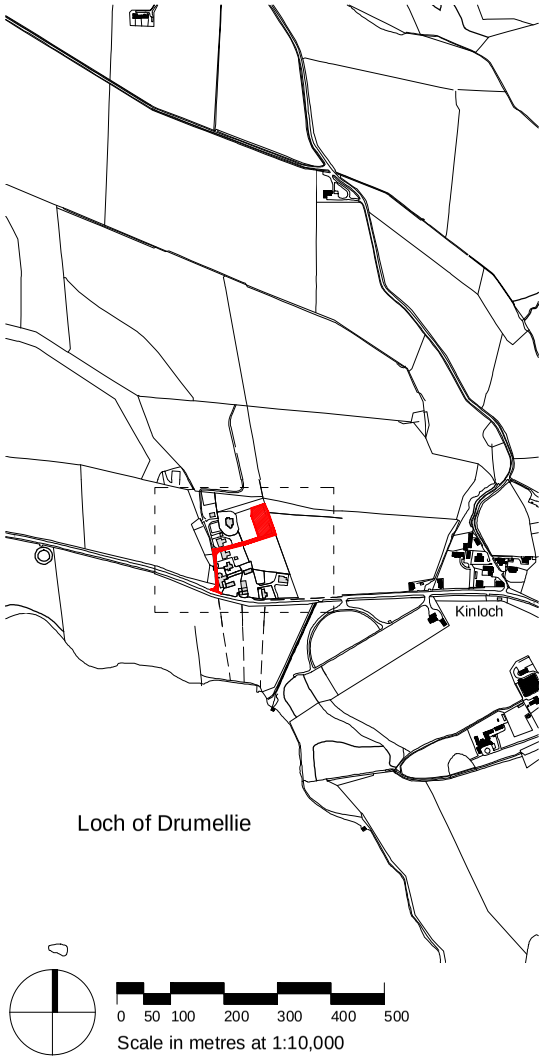
Job Name	Job No.	Series	Drwg. No.
Change of use from Agricultural Shed to Dwelling	2954	PL	05
Drwg Title	Scale	Date	Rev.
Location Plan	1:2500 @A3	Oct 16	a

Location Plan

Change of use from Agricultural Shed to Dwelling at Balcairn by Kinloch, Blairgowrie

01





Location Plan

PLANNING

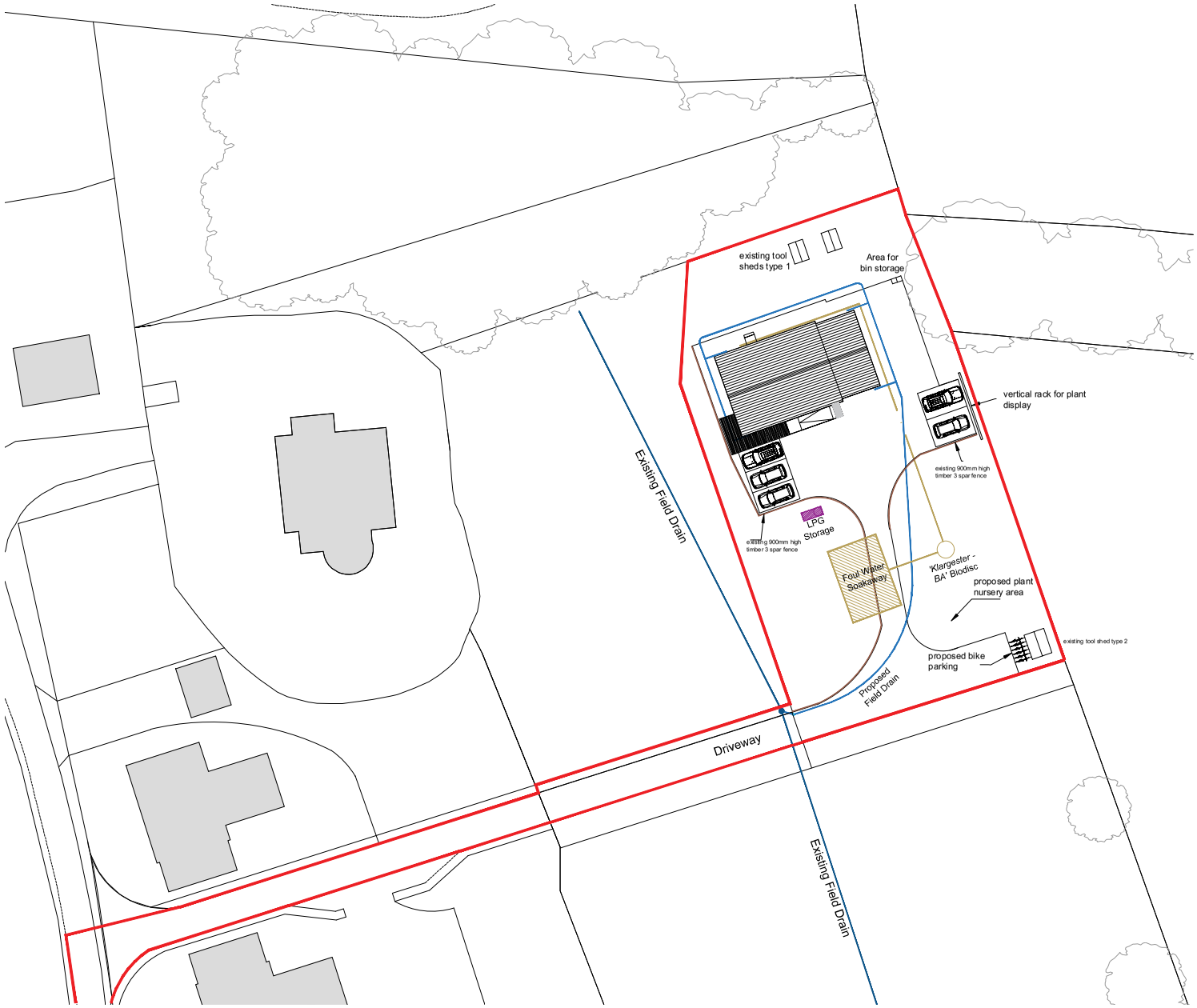
Rev.

LEADINGHAM JAMESON ROGERS + HYND
CHARTERED ARCHITECTS
18 South Tay Street Dundee DD1 1PD Tel: 01382 200511 Fax: 01382 225226 e-mail: admin@LJRH.co.uk

Job Name	Job No.	Series	Drwg. No.
Change of use from Agricultural Shed to Dwelling	2954	PL	01
Drwg Title	Scale	Date	Rev.
Location Plan	As Noted @A3	Oct 16	

Change of use from Agricultural Shed to Business at Balcairn by Kinloch, Blairgowrie

02



Site boundary

0 5 10 15 20 25 35

Scale in metres at 1:500

Rev.
Drawn:

LEADINGHAM JAMESON ROGERS + HYND
CHARTERED ARCHITECTS
18 South Tay Street Dundee DD1 1PD Tel: 01382 200511 Fax: 01382 225226 e-mail: admin@LJRH.co.uk

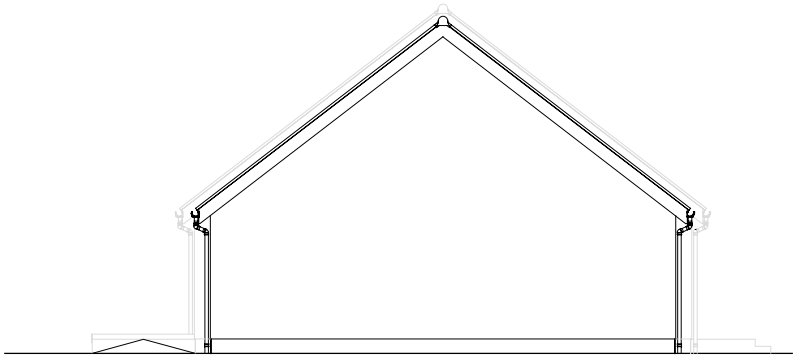
Job Name	Job No.	Series	Dwg. No.
Change of use from Agricultural Shed to Buisness Use	2954	PL	02
Dwg Title	**Scale**	**Date**	**Rev.**
Site Layout	1:500 @ A3	Jan 18	

Site Layout

Change of use from Agricultural Shed to Dwelling at Balcairn by Kinloch, Blairgowrie

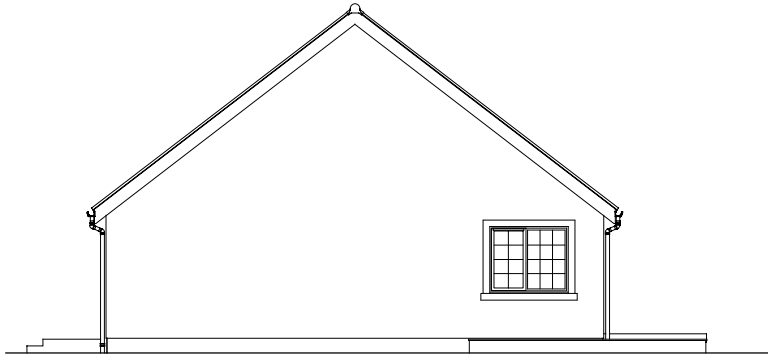
04

South East Elevation



North East Elevation

North West Elevation



South West Elevation

External Use of Materials:

Roof:	Natural Scots Slate *Colour: Grey*
Rainwater Goods:	'Marley' uPVC or similar *Colour: White*
Windows & Doors:	Double Glazed uPVC Units *Colour: White*
Walls:	Wet Dash Roughcast *Colour: Buff*

0 1 2 3 4 5

Scale in metres at 1:100

Rev.
Drawn:

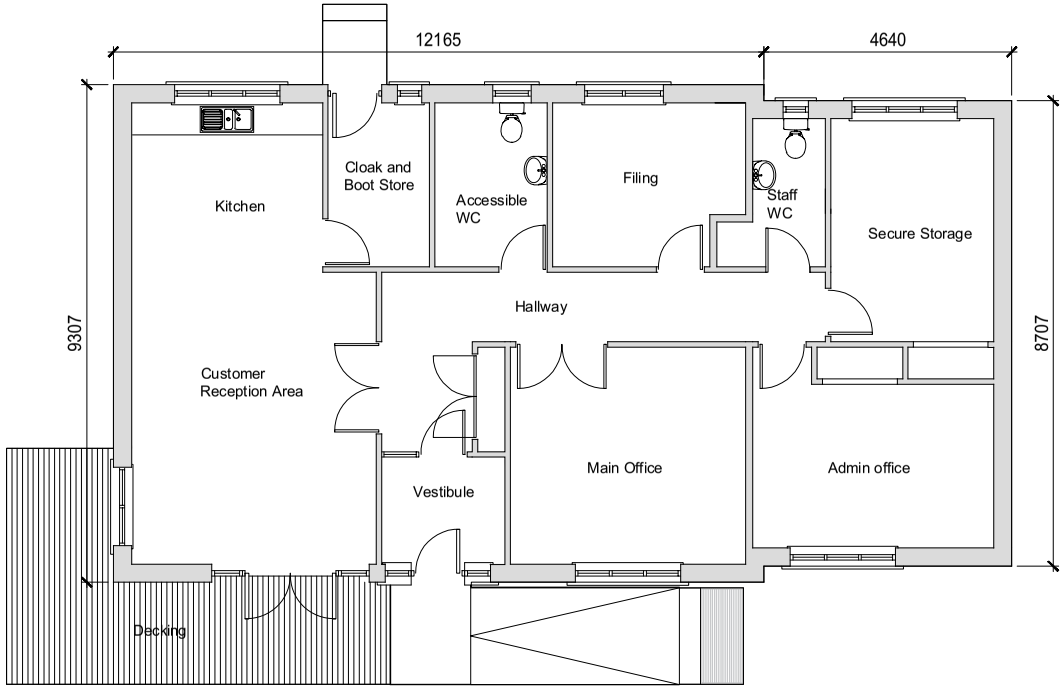
LEADINGHAM JAMESON ROGERS + HYND
C H A R T E R E D A R C H I T E C T S
18 South Tay Street Dundee DD1 1PD Tel: 01382 200511 Fax: 01382 225226 e-mail: admin@LJRH.co.uk

Job Name	Job No.	Series	Dwg. No.
Change of use from Agricultural Shed to Dwelling	2954	PL	04
Dwg Title	**Scale**	**Date**	**Rev.**
Proposed Elevations	1:100 @ A3	Oct 16	

Proposed Elevations

Change of use from Agricultural Shed to Business at Balcairn by Kinloch, Blairgowrie

01



Room Areas:

Ground Floor Total Area: 153.6m²

Customer reception/kitchen:	36.3m²
Vestibule:	4.6m²
Cloak/Boot Store:	5.8m²
Accessible WC:	6.4m²
Filing:	10.4m²
Secure Storage:	13.8m²
Staff WC:	4.3m²
Admin Office:	15.7m²
Main Office:	17.8m²

0 1 2 3 4 5

Scale in metres at 1:100

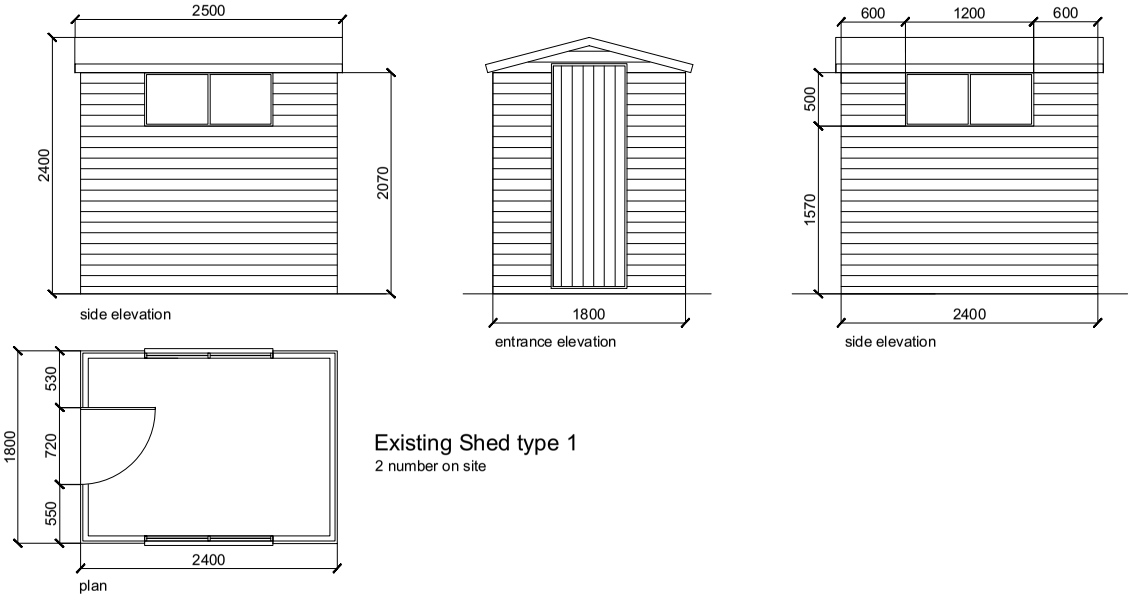
Rev.
Drawn:

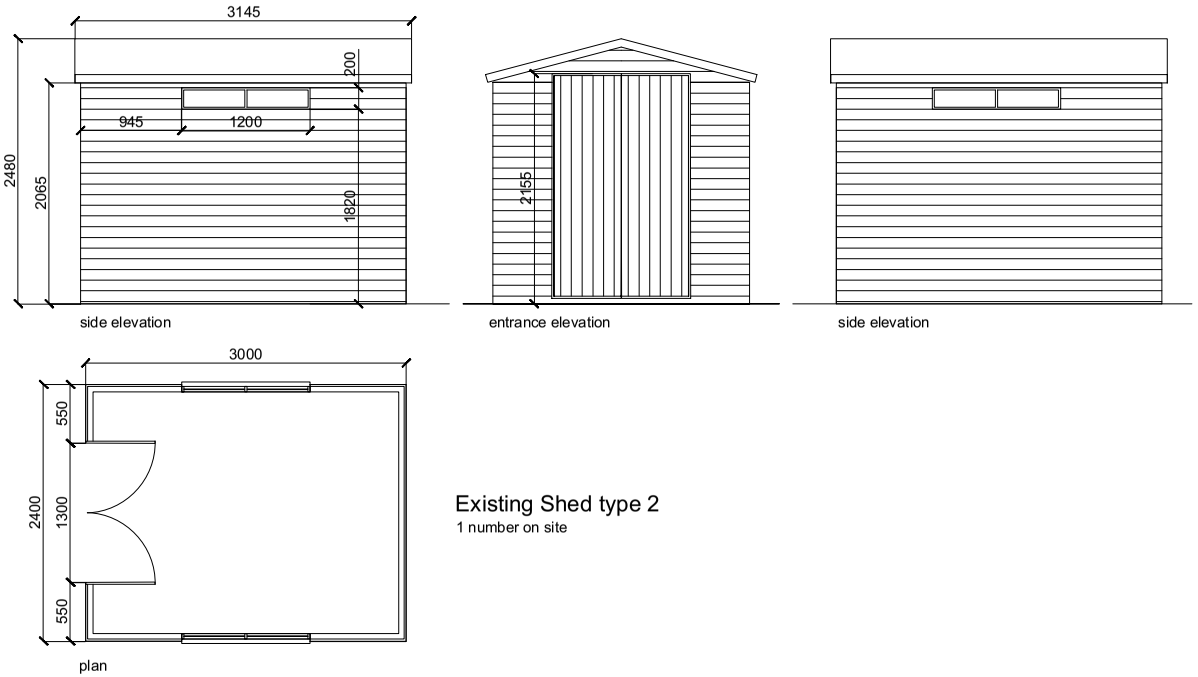
LEADINGHAM JAMESON ROGERS + HYND
C H A R T E R E D A R C H I T E C T S
18 South Tay Street Dundee DD1 1PD Tel: 01382 200511 Fax: 01382 225226 e-mail: admin@LJRH.co.uk

Job Name	Job No.	Series	Dwg. No.
Change of use from Agricultural Shed to Business Use	2954	PL	01
Dwg Title	**Scale**	**Date**	**Rev.**
Proposed Layout	1:100 @ A3	Jan 18	

Proposed Layout

Change of use from Agricultural Shed to Business at Balcairn by Kinloch, Blairgowrie





440

0 0.5 1.0 1.5 2.0 2.5 3.0

Scale in metres at 1:50

Rev.
Drawn:

LEADINGHAM JAMESON ROGERS + HYND
C H A R T E R E D A R C H I T E C T S
18 South Tay Street Dundee DD1 1PD Tel: 01382 200511 Fax: 01382 225226 e-mail: admin@LJRH.co.uk

Job Name	Job No.	Series	Dwg. No.
Change of use from Agricultural Shed to Business Use	2954	PL	04
Dwg Title	**Scale**	**Date**	**Rev.**
Existing Sheds	1:50 @ A3	Jan 18	

Existing Sheds

SAND, GRAVEL & DE
ATIVE CHIPS.
WWW.COTSIDEQUARRY.CO

verve
Large
chipped bark
verve

WWW.COTSIDEQUARRY.CO
SAND, GRAVEL & DECORATIVE CHIPS.

Enforcement Notice Appeal

On behalf of

Mr. Peter Brown, Hillview, Kinloch, Blairgowrie, Perthshire PH10 6SD

Mrs. Agnes Brown, Hillview, Kinloch, Blairgowrie, Perthshire, PH10 6SD

Mr. William Brown, Hillview, Kinloch, Blairgowrie, Perthshire, PH10 6SD

Against

An Enforcement Notice ("Notice") dated 14 February 2018 issued by Perth and Kinross Council ("the Council")

In respect of

An alleged breach of planning control

at land ("Land") Hillview, Kinloch, Blairgowrie, Perthshire

Involving a material change of use of the former storage building and use of associated land forming its curtilage for residential purposes without the benefit of planning permission

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

1. INTRODUCTION

1.1 This Paper explains the grounds on which the Appellants appeal to Scottish Ministers against the Enforcement Notice. A list of the Documents on which the Appellants rely on is attached as **Appendix 1**.

1.2 The Appellants have been served with a copy of the Enforcement Notice (**Document AS1A**). The location plan illustrating the site which they own and have access over is submitted as **Document AS1B**. The Appellants are the heritable proprietor (owners) of the land forming the Appeal Site [the Site]. At the time of preparing this Statement it is understood that the existing ownership was established by the Appellants approximately 14 months ago and is used as private dwellinghouse (temporary accommodation) for the Brown family (1 single storey property). Their intention is to convert this property to business use.

2. PLANNING BACKGROUND

2.1 The former owner of the land and building directly established the Site shown on the Councils plan attached to the Notice for an agriculture storage building in 2016. In 2016 the property was converted to a dwellinghouse without the benefit of planning permission. During 2016/17 a planning application, seeking authorisation for the erection of a dwellinghouse, was submitted and then determined by the Council. This was refused planning permission in February 2017. A Local Review was submitted to the Council. The Review Body dismissed the appeal upholding the officer's recommendation of refusal.

2.2 In February 2017 the former owner of the Site sold the property to the Appellant. This transaction was unknown to the Council and the planning consultancy team defending the former owners position. The ownership position was clarified later in 2017.

2.3 The Council has accepted that the Appellants bought the Site probably not knowing the planning history and did so with the intention of converting the property and its curtilage to form an improved location/base for the family landscape business. A planning application has been submitted and at the time of preparing this appeal it is in the process of being validated. The planning application is submitted as **Document AS2A-E.**

3. THE SITE

3.1 When the Appellant acquired the building on the Site it was in a habitable state. The plans submitted as **Document AS2F and ASG** Illustrate the scale and design of the dwellinghouse as converted from an agricultural building (**Document ASH**). The land around the building has been kept in a good state of

maintenance with the embankment to the south of the property landscaped serving as a display area to showcase the family business.

3.2 The Site is located to the north and east of a cluster of buildings (principally residential) on a plateau approximately 500 metres to the north of the A923, Blairgowrie to Dunkeld public road.

3.3 The site comprises a single storey building originally proposed for agricultural purposes and then converted to a dwellinghouse. The building is set against the backdrop of a steep slope and sits at the top of a landscaped embankment. It is visible at distance from the public road due to the open nature of the Site.

3.4 When considering the merits of the previous development proposal (dwellinghouse) the Council concluded that the building was too remote from the established group of the "L shaped" building cluster located along and close to the A923. The planning application recently submitted offers revised proposals for business use at this location (see **Document AS2A-E**).

3.5 Access/egress to the Site is achieved from the south and west comprising private roads leading from the A923 running alongside and between existing properties (see **Document AS1B**). There is excellent visibility at the junction of the site access and the public road. The gradient and alignment of the road is suitable for traffic as confirmed during determination of the previous planning application.

4. GROUNDS OF APPEAL

The following sections set out the Appellants Statement of Case.

The Council's Reasons for Issuing the Notice

4.1 The Council's reasons for issuing the Notice are set out in Section 4 (I to xiv) (**Document AS1A**).

4.2 It is very important for the Scottish Ministers to carefully consider the reasoning of the Council, particularly in the context of the current planning application, as this is directly relevant to the steps which the Notice requires and the time given for compliance. It is important to observe that the reasoning excludes any weight being placed on, Human Rights legislation. This is a fundamental flaw that cannot be corrected retrospectively. The Appellant founds on the Councils omissions in this appeal (see below).

5. Ground of Appeal s130 (f) of the Planning Act that the steps required by the notice to be taken or that the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

5.1 Step 1 in Section 5 of the Notice **Document AS1A** states as follows:

"*Cease using the building and the associated land at the site for a residential use and the purposes of residential occupation.*"

5.2 The Appellants bought the Site with the intention of using it as a residential property in the short term and then converting it to a business use as set out in **Document AS2A-E**. The property, subject of this appeal, remains the family's only source of accommodation. In the enforcement notice (**Document AS1A**) the Council recognise that the recipients of the notice may have unwittingly taken ownership of the Site, without full knowledge of the planning history and constraints relating to the Site (part xiii of the Reasons for this Notice). Regardless of the intentions relating to the purchase of this land or how this was allowed to happen from a legal perspective, it remains the case that the Appellants have been left at a severe disadvantage.

5.3 If the Appellant's business aspirations are recognised as a viable planning option the Brown family, through the grant of planning permission, they will then apply for the erection of temporary accommodation (lodge) in the grounds of the property. Regardless of the decision of the Council the Appellants recognise that the family will have to move out of the property and cease using it as a dwellinghouse.

5.4 The Council allege in the enforcement notice (**Document AS1A**) that the unauthorised development is causing significant detrimental impact on matters of environmental importance and that a number of residential properties are affected (part xiv of Reasons for this Notice).

5.5 The Appellants accept the decision of the Council and are now aware that the property is unauthorised. However, the reasons stated above are refuted as it was proven, during the processing of the last planning application, that there was no detrimental impact on environmental resources; and given the property is in residential use it is sympathetic to the primary use of this cluster of development (residential). This is reflected in the reason for refusal of planning application reference 16/01937/FLL which states:

"The proposal is contrary to Policy RD3 of the Local Development Plan 2014 and the Council's Housing in the Countryside Guide 2012, which is limited to category 3 - economic need and category 5 - conversions and replacements in the Lunan Valley Catchment Area. No economic need for the house has been identified as required by category 3 and the building is not of traditional character, has not been in place for a number of years and no evidence has been submitted that the agricultural building is now redundant as required by category 5."

Document AS3 comprises the decision notice for planning application reference 16/01937/FLL

5.6 At this stage of the planning process it is considered that Step 1, as stated above, is unreasonable having regard to the potential conformity of the Appeal Site with the Development Plan for the purposes outlined in the current planning application (**Document AS2A-E**).

5.7 The consequences of the Notice being upheld would be to:

(i) Allow the family to stay on the Site in circumstances where they have no feasible alternative accommodation; and

(ii) have the potential to allow the Appellants the opportunity to have the right to a fair hearing throughout the entire planning process (approval or refusal of planning permission) with regard to their current planning application; and

(iii) provide more time to react to the final decision dictated by the planning process i.e. vacate the property.

5.8 Under the terms of Human Rights legislation, the Appellant has the Right to a Fair Hearing (Article 6). A decision to uphold this enforcement appeal could be taken in recognition of the current circumstances and respect the Appellants Rights.

6. Ground of Appeal s130 (g) that any period specified in the notice in accordance with section 128(9) falls short of what should reasonably be allowed.

6.1 This ground on which the Appellants found their case is inextricably linked to the Ground of Appeal s130(f). The time for compliance with the Enforcement Notice (180 days), requiring the cessation of the property for residential use, does fall short of what is reasonable. On behalf of the Appellants it is considered that this is far too short having regard to:

(1) the recent planning application setting out a case founding on conformity of the Appeal Site with the Development Plan for business use;

(2) the length of the planning process and the fact that there is potential for eviction from the property prior to the expiry of that time period which will leave the family homeless;

(3) the compatibility of the current residential use with the rural environment and nearby development and there being no environmental harm or other disamenity in the short term; and

(4) the Council's acceptance that the Appellants bought the Site being unaware of the planning history.

6.2 It is submitted that the time period for compliance should be 180 days after the determination of the current planning application and any appeal lodged if

planning permission is refused. This would allow time to vacate the property (avoiding a Christmas/Winter move) and make other arrangements. This will be dependent upon the decision of the Council to either approve or refuse planning permission for the business aspirations of the family.

6.3 To deprive the Brown family of the use of the land without a fair hearing (through the planning process) would be counterproductive to the requirement to address the business and accommodation needs of the Appellant. It is submitted more time should be afforded to the Appellants as set out above.

7. CONCLUSION

7.1 The Appellants adopt the contents of this Statement of Case in defence of the appeal. It is respectfully submitted that the Enforcement Notice Appeal is upheld in response to the time period set out in Step 1; and that the time period is varied in recognition that a decision has to be made on the current planning application. If the application is refused then it is likely that a further appeal will be lodged. It is requested that a time period 180 days beyond the final decision in the planning process should be imposed. This is considered to be appropriate given the lack of any detrimental impact on the rural environmental or residential amenity.

Appendix 1: List of Documents

AS1A. Copy Enforcement Notice issued by Perth and Kinross Council dated 14 February 2018

AS1B Site Plan

AS2A Current Planning Application Reference 18/00263/FLL Planning Policy & Design Statement

AS2B Current Planning Application Reference 18/00263/FLL Location Plan

AS2C Current Planning Application Reference 18/00263/FLL Site Layout Plan

AS2D Current Planning Application Reference 18/00263/FLL Elevations

AS2E Current Planning Application Reference 18/00263/FLL Floor Plan

AS2F Elevations of Dwellinghouse Refused Planning Permission

AS2G Floor Plan of Dwellinghouse Refused Planning Permission.

AS2H Plans of Agricultural Building Approved 2016.

AS3 Decision Notice for Planning Application Reference 16/01937/FLL

Planning and Environmental Appeals Division

Appeal Decision Notice

T: 0300 244 6668
F: 0131 244 8988
E: dpea@gov.scot

Scottish Government
Riaghaltas na h-Alba
gov.scot

Decision by Stephen Hall, a Reporter appointed by the Scottish Ministers

- Enforcement notice appeal reference: ENA-340-2037
- Site address: Hillview, Kinloch, Blairgowrie, Perthshire, PH10 6SD
- Appeal by Peter Brown against the enforcement notice dated 14 February 2018 served by Perth and Kinross Council
- The alleged breach of planning control: The unauthorised material change of use of the former storage building for residential occupation, and use of associated land forming its curtilage for residential purposes.
- Date of site visit by Reporter: 11 May 2018

Date of appeal decision: 24 May 2018

Decision

I dismiss the appeal and direct that the enforcement notice dated 14 February 2018 be upheld. Subject to any application to the Court of Session, the enforcement notice takes effect on the date of this decision, which constitutes the determination of the appeal for the purpose of Section 131(3) of the Act.

Reasoning

1. The appeal against the enforcement notice was made on the following grounds as provided for by section 130(1) of the Town and Country Planning (Scotland) Act 1997:

- (f) The steps required by the Notice are excessive and less onerous steps would remedy the breach; and
- (g) The time allowed to comply with the notice is too short.

2. As regards ground (f), there is no dispute that the use of the building at Hillview for residential purposes is unauthorised, and that therefore a breach in planning control has occurred. The steps required in the notice, which are to cease using the building and the associated land at the site for a residential use and for the purposes of residential occupation, would serve to remedy the breach in planning control. I consider that any lesser steps that would allow Mr Brown to continue to live at the property would not serve to remedy the breach.

3. The appellant argues that the building has no detrimental impact on environmental resources. Be that as it may, even if it were the case that the residential use of this building caused no planning harm or could be said to comply with development plan policy (which I

do not necessarily accept), it would still be the case that such a use requires planning permission, that such permission does not exist, and that the steps required by the enforcement notice are necessary to remedy this breach in planning control.

4. There is a current planning application to change the use of the building and its curtilage to business use. If this is approved, the appellant states he will then seek permission for temporary residential accommodation in the grounds of the property. The appellant argues that no enforcement action should be taken while these planning applications are under consideration because such action has the effect of denying the appellant the right to a fair hearing under Human Rights legislation.

5. I cannot agree with this argument. With regard to the current residential use of the building, a fair hearing was provided for through an earlier (refused) planning application for this use and the subsequent review of that decision by the council's local review body. As regards the council's enforcement action, a fair hearing has been provided for through the current appeal. And as regards the appellant's future aspirations for the land, a fair hearing will be provided for through the normal operation of the planning system, including its provisions for review and appeal. Unauthorised development is not rendered immune from enforcement action by the submission of planning applications for alternative developments on, or uses for, the site.

6. For the reasons stated above, I therefore conclude that the appeal under ground (f) fails.

7. As regards ground (g), the enforcement notice requires the residential use of the building to cease within 180 days of the notice taking effect. The appellant suggests the 180 days should only commence following the determination of the current application for business use and any subsequent appeal. However, even if the business use application were approved, this would not allow ongoing residential use of the site. That would depend on the outcome of any subsequent application for temporary residential accommodation. There was no duty on the planning authority to allow sufficient time for these processes to be completed, and I am not attracted by the suggestion that I substitute such an uncertain and potentially lengthy time period.

8. I appreciate the possibility that the appellant may have bought and occupied the property without knowing that the residential use was unauthorised. This possible circumstance does add to the importance of allowing a reasonable time period for compliance with the enforcement notice. However I consider that a period of 180 days is adequate to identify alternative accommodation in the Blairgowrie area and agree its purchase or lease.

9. I also note the council's evidence that the appellant was advised of the council's intention to issue an enforcement notice in December 2017, and that if I uphold the notice it will only take effect (and the 180 day period commence) on the date of my decision. The actual period between the appellant being made aware of the likelihood of enforcement action and the date on which the residential use would have to cease would therefore be in excess of 11 months. I do not consider this period unreasonable.

10. For these reasons I conclude that the appeal under ground (g) fails.

Stephen Hall
Reporter

Mr. & Mrs. P. Brown, [redacted]

Telephone: [redacted] Email: [redacted]

Date: 14 August 2018

Councillor
c/o Perth & Kinross Council
2 High Street
Perth
PH1 5PH

Dear Councillor

Subject: Property at Hillview, Kinloch, Blairgowrie PH10 6SD

I write to ask for your guidance on a matter, which is causing stress, and worry for my family and me.

I currently stay in a property at Hillview, Kinloch near Blairgowrie which has a planning history that you may know about. In summary, the former owner of the property converted an agricultural building to a dwellinghouse and moved his family into the property. However, Mr. Burke did not have planning permission. Late in the process a planning consultant and planning solicitors replaced Mr. Burke's previous advisors to try and rectify what looked like an indefensible problem. And this was proved to be the case with Mr. Burke refused planning permission and losing a subsequent appeal.

In 2017 I purchased the property not knowing the planning history and assured that the property was lawful. When I learned of the problems I approached the same planning consultant and solicitors who have briefed me and advised that the property cannot be used as a house. It is this fact that has brought worry and stress to my family.

I have had to defend a planning enforcement notice at appeal and did so simply to allow me more time to submit a planning application for an alternative use. My planning consultant made it clear to Scottish Ministers that any proposed future use would be business related and not for a house.

A planning application has been submitted which asked for permission for a relocation of my existing family run business (landscaping). If this was granted I proposed to pursue two options to provide accommodation for my family either temporary accommodation (chalet or lodge) or look for a property close by.

However, my planning application was refused which is extremely disappointing. The Council require the property to be discontinued as a house and returned to an agricultural building, a use which is of no use to me. The building will remain on site with the planners only allowing agricultural use. All I am asking for is some sort of beneficial use to off-set my misguided investment. My planning consultant is preparing a submission to the Council's Local Review Body appealing the decision of refusal of planning permission.

My wife and I find ourselves at a time in our life where this matter is causing us ill health, worry and stress. As one of our local members I would welcome your advice and guidance and hope you can meet with us to discuss this further.

I look forward to hearing from you.

Yours sincerely

Mr. and Mrs. P. Brown

cc: Councillor Brawn,
Councillor McEwan
Councillor Shiers

Neutral Citation Number: [2004] EWCA Civ 1248

Case No: C1/2003/1818

IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ADMINISTRATIVE COURT
THE HONOURABLE MR JUSTICE BLACKBURNE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29/09/2004

Before :

THE RIGHT HONOURABLE LORD JUSTICE AULD
THE RIGHT HONOURABLE LORD JUSTICE WALL
and
THE HONOURABLE MR JUSTICE PUMFREY

- -

Between :

	1) THE FIRST SECRETARY OF STATE **2) GRANT DOE** **3) GREGORY YATES** **4) PAUL EAMES**	**Appellants**
	- and -	
	CHICHESTER DISTRICT COUNCIL	**Respondent**

- -
- -

Mr Tim Mould (instructed by **Treasury Solicitor**) for the **First Appellant**
Mr David Watkinson (instructed by **Community Law Partnership**) for the **Second, Third & Fourth Appellants**
Mr Richard Langham (instructed by **Sharpe Pritchard**) for the **Respondent**

Hearing dates : 24th March 2004

- -

Judgment

Lord Justice Auld :

1.This an appeal by the first defendant ("the First Secretary of State") and the second, third and fourth defendants ("the applicants") against an order of Blackburne J on 29th July 2003 under section 288 of the Town and Country Planning Act 1990 ("the 1990 Act"), quashing the First Secretary of State's appointed Inspector's decision to grant planning permission to the applicants for use of land at Clearwater, Ratham Lane, West Ashling, Chichester as a private gypsy site with mobile homes and associated outbuildings. The Inspector had also granted planning permission to similar effect to the mobile home owners on three planning applications deemed to have been made by the in accordance with section 177 of the 1990 Act in the course of enforcement proceedings taken by the claimant, Chichester District Council ("the Council") as local planning authority.

2. The appeal raises three issues, only one of which is of any substance in the sense that it affects the outcome of the appeals, namely whether the Inspector was correct in determining that the Council, by refusal of the planning permissions and issue of enforcement proceedings, had violated the applicants' rights under Article 8 of the European Convention of Human Rights ("ECHR",) to respect for their private and family life and their home. The other two issues are associated, but largely academic. They are: whether the Inspector did and/or should have found that the development breached a particular policy of the applicable Structure Plan; and whether he erred in law in failing to identify and/or explain the material considerations that he found weighed in favour of the grant of planning permission to one of the applicants, Mr Eames. The Judge held that the Inspector had erred in law on all three grounds.

3. The First Secretary of State and the applicants appeal on the ground that the Judge wrongly found fault with the Inspector's decisions on all three issues.

The site and planning policies.

4.In about 1999 one of the applicants, Mr Yates, bought the appeal site. He and the other two applicants, Mr Doe and Mr Eames, subdivided it into three main plots, and, without notification to the Council or application for planning permission, they began to lay it out with services for future residential use. Eventually, they moved their mobile homes and caravans onto the site and began to live there. The Yates and Doe families, who had a close association with the Chichester District, moved there from a County Council site where they had been experiencing difficulties. Mr Eames, who had a strong attachment to them and had travelled with them from time to time, seemingly moved there from somewhere else in West Sussex.

5. The appeal site is a triangular shaped area bounded to the east by a lane and to the west by a stream. As I have said, it is divided into three main plots, two, each housing a mobile home and a touring caravan, and the third, a touring caravan. There is a further strip of land on the site providing access to the three plots from the lane. The site lies in the countryside outside, but quite close to one or more well-defined settlement areas and with a good range of local facilities. It is reasonably well screened from distant views by various copses of trees and tall hedges, and is about 150 metres from a major road, the A27. The Inspector described it in paragraph 33 of his decision letter, as "close to few dwellings and largely hidden from view". The site does not fall within an area subject to any special designation by reference to its landscape qualities; it not within a Green Belt or other designation of land

where the policy is strongly to resist development; it is not in an area of recognised nature conservation value or archaeological or historic value. In short, as the Inspector described it, in paragraph 66 of his decision letter, it is "ordinary countryside afforded the least degree of protection".

6. Consideration of the applicable National and local planning policies must take into account the move by the Government from the obligation imposed on County Councils by Part II of the Caravan Sites Act 1968 to provide caravan pitches to its replacement, as a result of amendments made by the Criminal Justice and Public Order Act 1994, to reliance on gypsies to provide their own sites assisted by national and local planning policies requiring local authorities, in the exercise of their planning function, to have regard for their special needs.

7. Departmental Circular 1/94 – "Gypsy Sites And Planning" – revised the previous guidance so as to take account of the repeal of Part II of the 1968 Act and to encourage gypsies to secure their own sites making use of the planning process where necessary and appropriate. In paragraph 6, it stated that the land-use requirements of this tiny proportion of the Country's population "need to be met" and that local planning authorities "need to be aware of" their accommodation and occupational needs". Paragraph 9 stated that once the statutory obligation on local authorities to provide pitches had gone, they should make adequate provision in their development plans "through the appropriate use of occupational and/or criteria-based policies". Paragraph 14 indicated that local planning authorities might consider locations outside existing settlements, "provided that care …[was] taken to avoid encroachment on the open countryside". And in paragraph 22, the Circular indicated, in the case of gypsies, the balance to be drawn between traditional land-use factors and their interests:

> "As with any other planning applications, proposals for gypsy sites should continue to be determined solely in relation to land-use factors. Whilst gypsy sites might be acceptable in some rural locations, the granting of permission must be consistent with agricultural, archaeological, countryside, environmental, and Green Belt policies. … The aim should always be to secure provision appropriate to gypsies' accommodation needs while protecting amenity."

8. In 1997 the Department revised its PPG7, providing, in paragraph 2.3, for strict control of development in "the open countryside, away from existing settlement or from areas allocated for development in development plans" - the greater the landscape, wildlife or historic qualities of the countryside, the greater the priority to be given to the restraint.

9. The Development Plan relevant to the appeal site consisted of the approved West Sussex Structure Plan of July 1993, which preceded the change in the law removing the obligation on County Councils to provide gypsy caravan pitches, and the adopted Chichester District Local Plan, First Review of April 1999, which took into account the Circular 1/94 obligation "to make adequate provision for" gypsies in local development plan policies.

10. The Inspector, in paragraphs 21 and 22 of his decision letter, correctly identified the two main relevant provisions of the Structure Plan. The first is G1, which, consistently with

paragraph 2.3 of PPG7, requires strict control of all development outside existing or potential built up areas defined in local plans-

> "Outside such areas development is to be strictly controlled, subject only to limited exceptions allowed for in other policies."

The second was C1, which the Inspector described as the ethos of the Structure Plan policy for the countryside:

> "The Planning Authorities will seek to protect the countryside for its own sake from development which does not need a countryside location, and will ensure that the amount of land taken for development is kept to the minimum consistent with the provision of high quality and adequate space within the built environment.
> Development will not normally be approved outside built up area boundaries unless it is for quiet informal recreation or related to essential needs of any of: agriculture, forestry, the extraction of minerals, the deposit of waste or the implementation of policy H6 [i.e. social housing outside, but usually adjoining, built-up area boundaries where there is a proven local need].
> Permission will not normally be given for the extension of isolated groups of buildings or the consolidation of linear or sporadic development."

11. The Structure Plan makes specific provision for gypsies in Policy H7, which was still, as Mr Tim Mould, for the First Secretary of State put it, rooted in the 1968 duty on County Councils to provide pitches. It provided:

> "While permission may be granted for the establishment by gypsies themselves of caravan sites in suitable locations, further provision by the Local Authorities will be considered only in the light of demonstrated need."

The note to Policy H7 specifically referred to the impending change in the law:

> 5.31. West Sussex, as a designated county under the Caravan Sites Act 1968, has met the Government requirement to make provision for gypsy caravan pitches. However, Government legislation has been suggested which may change the situation, and the position will be monitored. The Council wishes sites to be in locations with convenient access to schools and health services and with a basic infrastructure available

12. The Chichester District Local Plan, First Review of 1999, only permitted development in the area in which the appeal site is situated in accordance with specified policies in the Plan, one of which is RE22 "Sites for Gypsies". In outline, and as a reflection of the revised guidance given in Circular 1/94, in particular paragraphs 9 and 22, it permits such sites in rural areas "only when it can be demonstrated that the numbers of families who reside in or resort to the District need the number of pitches in the location sought, and provided that" a number of other criteria are satisfied. These include criterion (1) that "[t]hey do not detract from the

undeveloped and rural character and appearance of the countryside, particularly the areas of outstanding natural beauty" and: criterion (8) that "[t]hey are sited on reasonably flat land, provided that the proposals do not create visual encroachment into the open countryside."

13. The Inspector's decision letter of 14th January 2003 identified, in paragraph 25 two main issues before him, as agreed by the parties, namely: the effects of the development on the policy aims of protecting the character and appearance of the countryside around Ratham Lane; and if those effects would be harmful, whether such harm would be outweighed by other material considerations, including the fact that the applicants are gypsies, any need for gypsy sites in that part of West Sussex and Article 8 of the ECHR.

14. Although the Article 8 issue is by far the most important in these appeals, I consider it helpful to set the planning scene by dealing first with the other two.

Issue 1 – Effect on the character and appearance of the countryside/Whether the proposed development conflicted with planning policy

15. This issue, so far as it goes, is whether the Inspector did and/or should have found that the proposed development would breach the Structure Plan Policy C1.

16. The Inspector, at paragraphs 27 to 28 of his decision letter, found that, as the appeal site lay in the countryside and, in particular, outside built up area boundaries, it did not "technically" fall within any of the exceptions in Policy C1 of the Structure Plan. However, he found some tension between that policy, considered on its own, and the wider context, including the provision in Policy H7 for the grant of permission "in suitable locations" for private gypsy sites, stating at paragraph 28 of his decision letter:

> "… Policy H7 refers only to 'suitable locations' for private gypsy sites, a phrase which is not defined. It is thus impossible to deduce from the policy where gypsy sites should be located, apart from some guidance in paragraph 5.31 of the supporting text. [i.e. convenient access to schools, health services and basic infrastructure] ….which the site plainly has. …"

17. In terms of Government Policy, he noted the changes that had occurred since the adoption of the Structure Plan.

> "Furthermore, the Structure Plan was approved at a time when Government Policy on gypsy sites was inclined very much towards local authority provision. Though paragraph 5.31 presages the changes introduced by Criminal Justice and Public Order Act 1994 and the Policy advice of Circular 1/94, the Structure Plan does not address those changes because they post-date its approval. In these circumstances, though the Council's argument is technically correct, that the letter of Policy C1 does not allow for the establishment of gypsy sites in the rural area, that alone is not conclusive. Rather, it is the purpose behind the policy which have to be given particularly careful consideration, together with the changes to Government policy since 1994."

18.The Inspector went on to find that in that wider context – the Development Plan as a whole and Government Policy, including Circular 1/94, paragraph 14, and PPG7 - the fact that the appeal development was strictly contrary to Policy C1 begged the question whether it should now be necessarily be seen as contrary to the ethos or underlying aim of strategic policy for the countryside. In paragraphs 29 to 31 he examined that question and concluded that, in the light of subsequent changes in government policy on the location of gypsy sites in rural areas, a proposal to locate such a site in the West Sussex countryside should not necessarily be seen as in conflict with the underlying aims of Policy C1, i.e. to limit development in the countryside to that which needs to be located there. It is clear, however, that he regarded the appeal development as a breach of the terms of Policy C1.

19. The Inspector then turned to policy RE22 in the local plan permitting the establishment of gypsy sites in rural areas where there is a demonstrated need for them, which he found reasonable as a criteria-based policy and in accord with the aim of PPG 7 of protecting the countryside for its own sake. However, he found that there was a conflict between the clear aim of that policy and the Council's operation of it in practice:

> "32. … the policy does not operate in isolation but in the context of applications by gypsies for private sites, which is the method of provision now encouraged by Government policy. According to the Council's planning witness, since the introduction of Policy RE22 some three years ago, no gypsy site has been approved within the district. That in itself is by no means conclusive of the reasonability of the policy in practice, but it was evident from the witness that the reason for this record was that all applications were in the countryside. Furthermore he considered that the only sites which could meet the criteria of the policy would be those marginal sites which would be seen as the backdrop to the built up area and which did not encroach on the countryside.
>
> 33. Thus is would appear that in practice the Council's interpretation of Policy RE22 is one where only sites close in to built up areas, or within small groups of dwellings in the countryside and not defined as SPAs are considered acceptable. Those beyond, whether in countryside with special sensitivity, such as the AONBs, or in what might be termed 'ordinary' countryside, are considered to be in breach of the policy criteria. Such an interpretation is not considered reasonable or realistic because it conflicts with the advice of paragraph 10 of Circular 1/94. …
>
> 34 Perhaps more significantly the Council's interpretation of Policy RE22 also appears to conflict with paragraph 249 of the supporting text to the Local Plan, which is expressly referred to by the policy. That paragraph recognises that some sections of the community have special needs resulting from occupation, disability or through their chosen lifestyle. It goes on to explain that these requirements mean that in some cases exceptions have to be made to the Plan polices, for example policies relating to the general restraint of development in the rural area. …
>
> 35 But the evidence to this inquiry appears to demonstrate that in practice there is a conflict between the Council's implementation of Policy RE22 and the expressed aims of both the Circular and the policy as adopted. …. Accordingly it is concluded that the criteria of RE22 should be applied to the appeal site, without any assumption that this gypsy development is inherently unacceptable in the rural area."

20. Following that analysis of the relevant policies and his finding of the Council's operation of them, he found, at paragraphs 36-38, by reference to the criteria, including (1) and (8), of Policy RE22, that the proposed development would cause some, but little, harm to the undeveloped and rural appearance of the countryside and that such harm could, in any event, be largely mitigated by by planting. In paragraph 39 of the decision letter, the Inspector drew together the various points on policy against the backcloth of the aim in PPG7 of protecting the countryside for its own sake:

> "…That aim is important but it has to be seen in the context of the advice in Circular 1/94 that the needs of gypsies have to be met and that rural and semi-rural settings for sites may be appropriate. The PPG itself makes no specific reference to gypsy site provision, and given that Circular 1/94 pre-dates it, but that its advice on such sites is not amended or cancelled by PPG 7, it is concluded that the Circular advice should enjoy greater weight in these gypsy cases. Bearing that in mind, and having regard to all the above considerations, it is concluded that the development causes, and in the case of the planning appeal would cause, some harm to the character of the countryside around Ratham Lane in the light of the aims of … Policy RE22. This harm therefore weighs against permission and accordingly it is appropriate to consider whether there are any material considerations which outweigh that harm."

21. In the light of that finding, which is in part confirmatory of his earlier expressed view that the proposed development would breach Structure Plan Policy C1/94, it is plain that, whether he regarded it as a technical breach or of some materiality, it did not affect his threshold planning decision that the proposal would cause some planning harm.

22. The Judge found that there was a clear breach of Policy C1. He viewed the Inspector as in error for failing explicitly to note this. He regarded the Inspector's approach as a misreading of the terms of the Policy. He said, at paragraph 15 of his judgment, that the Inspector had incorrectly found that the proposed development was not a material, as distinct from a technical, breach of Policy C1

> "… He was entitled to find that other material considerations (including subsequent Department of Environment policy guidance and the other factors to which he drew attention … led to a conclusion that policy C1 should be disregarded. … But that was not how the inspector was approaching matters. He was not acknowledging a clear breach of policy C1 but finding that it was justified by other considerations. Rather he was finding that, given what he described as 'the underlying aims of the policy', there was no breach. But … he should have proceeded on the basis that the development was in breach of the policy, as in my view it clearly was. To that extent … the inspector fell into error ...".

23. Mr Mould submitted that the Inspector was entitled to approach Policy C1 as he did. He was obliged, by section 70(2) of the 1990 Act, to have regard to the relevant policies of the development plan and, by section 54A of the Act, to determine the appeal in accordance with the development plan unless material considerations indicated otherwise. However,

provided that he recognised the priority to be given to the development plan, the Inspector was entitled to adopt the process of analysis which seemed to him to be appropriate to the circumstances of the given case: *R v Leominster District Council ex parte Pothecary* 76 P&CR 346 at 352-353.

24. The Inspector had expressly accepted the Council's case that the appeal development was contrary to the terms of Policy C1. However, that in itself was not necessarily decisive of the merits of the development. It was necessary to consider whether there were factors that indicated that, although the appeal scheme was not among those limited categories of development specifically identified in Policy C1, there were good reasons for departing from the strict letter of the policy. On a fair reading of his decision, that is the approach adopted by the Inspector. In particular, it was plainly relevant to take account of subsequent changes in national planning policy indicating that gypsy sites may need to be located in the countryside, since it is need for a countryside location that provides the underlying rationale for the control of development imposed by Policy C1. So Circular 1/94 was logically relevant to the overall question whether, as the Council contended, Policy C1 should be read as raising an objection of principle against the appeal development. He submitted that the Inspector was entitled to base his rejection of that contention upon the contents of more recent, relevant national planning policy guidance, which is directed specifically at identifying appropriate locations for gypsy sites through the planning process and following the repeal in 1994 of the statutory duty to provide County Council sites. In other words, in applying the Structure Plan, the Inspector was entitled to take account of the fact that it did not reflect the current statutory and national policy framework; and to seek to make good that shortcoming by reference to the relevant locational guidance given in the up to date, relevant national planning policy guidance document. That is what he did. He added that, even if the Judge was right to find that the Inspector had erred in his approach to Policy C1, the Inspector's decision should be allowed to stand. The Inspector's overall conclusion that planning permission was merited in this case would have been unaffected by any more clear finding that the development was in breach of Policy C1.

25. Mr David Watkinson, on behalf of applicants, advanced much the same arguments in support of the reasoning of the Inspector in this respect. He submitted that the Judge erred in finding that the Inspector had proceeded on the basis that the proposed development would not breach Policy C1. He said that the Inspector had clearly accepted, at paragraphs 27 to 28 of his decision letter, that there would be such a breach. He added that it was important to keep in mind that the Inspector, in considering Policy C1, was doing so in the context of the first of the two broad issues he had identified, namely as to the effects of the proposed development on the character and appearance of the countryside in the vicinity of the appeal site. He said that, once the Inspector had acknowledged the breach, he was entitled to consider it in the context of the other policies and guidance as part of his consideration of all material factors.

26. However, Mr Richard Langham, on behalf of the Council, supported the Judge's view and reasoning that the Inspector erred in finding that the proposed development would not be in material, as distinct from technical, breach of Policy C1. He said that the relevance of that to the Inspector's final decision was that, it skewed his approach to the subsequent and necessary question whether other material considerations justified a material breach. Consideration of such matters should follow a correct application of the Policy itself, and the Inspector did not correctly apply the Policy. However, along with Mr Mould and Mr

Watkinson, he acknowledged that even if the Inspector had expressly found the breach of Policy C1 to be a material, it is unlikely that he would have given it much weight.

Conclusion

27. The Judge saw force in the arguments of Mr Mould and Mr Watkinson, given the directly relevant policy RE22 of the Chichester District Local Plan, which, as I have said, permits, subject to stringent criteria, the establishment of gypsy sites in rural areas of the Chichester District. It was the Inspector's clear conclusion that Policy RE22 itself raised no objection in principle to the use of the appeal site for a gypsy caravan site. Policy RE22 reflects not only the relevant policies of the Structure Plan, including Policy C1, but also the Secretary of State's more recent policy on the provision of gypsy sites as stated in Circular 1/94. In these circumstances, the Inspector's finding that the development was not objectionable in principle under the relevant Local Plan Policy would not have been affected by a finding that the County-wide Structure Plan Policy was breached.

28. In my view, and as the Judge said at paragraph 38 of his judgment, if the Inspector's view of the breach of Policy C1 had been the only issue, it could not sensibly affect the outcome of the appeal whether he regarded the breach of Policy C1 as technical or material. However he expressed himself, it is plain that he regarded the location of the proposed development in this rural area as causing only slight planning harm. I would, therefore, uphold this ground of appeal, so far as goes, directed at the Judge's finding on this issue.

Issue 2 – Personal circumstances - Mr Eames

29. This issue, again for what it is worth, is whether the Inspector clearly explained the material consideration weighing in favour of Mr Eames' case for planning permission.

30. As I have indicated, the Inspector, in his decision letter, considered both the general need for sites in the Chichester District and each of the applicants' personal circumstances. As to the former, he concluded, at paragraph 49 of his decision letter, after comparing the outcome of supply and demand analyses for gypsy sites in the Chichester District, that the evidence before him plainly demonstrated that the applicants had deployed a compelling case on the aspect of need.

31. The Inspector considered separately the extent to which each individual applicant was able to point to personal considerations that also weighed in favour of his case for planning permission. He considered the personal circumstances of each of the applicants in turn. He dealt first with Mr Yates and Mr Doe and found, at paragraphs 50 to 59 that family ties and educational/cultural factors and their close association for some years with the Chichester District weighed in favour of their appeals.

32. In relation to Mr Eames, the Inspector found, at paragraphs 61, 62, 70 and 72, that, on the evidence, such personal circumstances – family ties and cultural factors – did not apply, or not to the same extent. However, he found that, as a single man, Mr Eames would be unlikely to obtain any pitch that might become available within the County as a whole, on account of his low status in the County Council's allocations policy. He regarded that as a

factor adding weight to Mr Eames' case. This is how he summed up his position in paragraph 72 of his decision letter :

> "In the case of the enforcement appeal by Mr Eames it is concluded that the material considerations of the need for gypsy sites in the District, his personal circumstances, including his gypsy status, and the interference with his Article 8 rights which would arise from the refusal of permission are sufficient to outweigh the limited harm to the aims of planning policies seeking to protect the character of the countryside arising from the stationing of his caravan on this land…."

33. The Judge, at paragraphs 30 and 31, said that he was unclear as to what exactly the Inspector had found weighed in Mr Eames' favour.

Submissions

34. Mr Mould submitted that the Inspector's approach to the issues of need and personal circumstances correctly reflects the approach of the High Court in *Hedges and Hedges v Secretary of State for the Environment and East Cambridgeshire District Council* 73 P & CR 534, per Gerald Moriarty, QC, sitting as a Deputy High Court Judge, at 545. Both were material considerations capable of adding weight to the case of planning permission. Neither Mr Mould nor Mr Watkinson could see any uncertainty in the Inspector's decision on this issue. They pointed to the clear references in the decision letter to the particular difficulties Mr Eames would have, as a single man, in obtaining a pitch, even if one was available, on a Council site in West Sussex due to allocations criteria. The distinction between the general and the personal is clear, as is the separate and complementary significance of each factor. These points are reflected in the Inspector's reasoning.

35. Mr Langham, on behalf of the Council, suggested there was considerable uncertainty as to what additional personal circumstances the Inspector was weighing in Mr Eames' favour, since, although he was part of the demand for gypsy sites, the area applicable in his case was the wider area of West Sussex rather than the Chichester District and the only "additional factor" resulting from that was the likely difficulty for him, as a single man, in obtaining a County Council pitch.

Conclusion

36. In my view, Mr Mould and Mr Watkinson are correct in their submissions that the Inspector made perfectly plain the additional consideration that he had in mind in the case of Mr Eames. In any event, as Mr Watkinson observed the Inspector identified a number of factors in favour of his application, including the shortage of gypsy sites in the District and the County and the likely difficulty for him in obtaining a pitch on a Council site in West Sussex. In my view, it follows that the Inspector explained adequately for the purpose his approach to the questions of general need and personal circumstances and why both were

material considerations weighing in Mr Eames' favour. I would reject the Judge's criticisms of the Inspector on this account and, so far as it goes, uphold this ground of appeal.

Issue 3 – Article 8 ECHR –Chapman v UK

37. The issue is whether the Judge correctly approached the question whether the Council's refusal of planning permission and issue of enforcement proceedings violated the applicants' rights under Article 8 ECHR to respect for their private and family life and home and, the effect one way or another on the balancing exercises respectively required by section 54A of the 1990 Act and Article 8.2.

38. It is common ground that Article 8 was engaged in the sense that the applicants' right to respect for their homes and family lives was capable of becoming a material consideration, that is, it was "at issue", just as the European Court found in *Chapman v. United Kingdom* (2001) 33 EHRR 18, at paragraph 74, that Mrs Chapman's right to respect for her private family life and home was at issue. But it was not common ground that the refusal of planning permission and upholding of enforcement notices would necessarily constitute an interference with those rights, still less whether such an interference would be justified under Article 8.2.

39. The Inspector, having found, as I have said, that the proposed development would cause only slight planning harm, then considered, pursuant to section 54A of the 1990 Act, other "material considerations" arising from the evidence before him. These considerations included, in addition to an unmet need for gypsy sites in the Chichester District, the personal circumstances of the applicants, and those circumstances included their deliberate settlement on the appeal site without prior notification to the Council or seeking planning permission and the potential of the Council's decisions for rendering them homeless and possible violation of their Article 8 rights.

40. As to the former, the Inspector said, at paragraph 54 of his decision letter, that, though the applicants' conduct could not be condoned, two of the families had "a cogent reason" for leaving a County Council site and that their development of the appeal site was not "wholly in conflict with the present Government policy of encouraging private site provision by gypsies". In short, he concluded that this aspect of their personal circumstances did not weigh heavily against their case.

41. As to the impact of the Council's refusal of planning permission and upholding of the enforcement notices on the Article 8 rights of the applicants, he noted the Council's acceptance before him that it would engage Article 8.1, and found, at paragraph 65, on a balance of probabilities that "the harm arising from interfering with their right to a home could potentially affect any of the … [applicants] and would be substantial".

42. He then immediately turned to the issue of justification under Article 8.2, which, for convenience, I set out here, before rehearsing his treatment of it:

> "There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

43. As the Inspector observed, it was common ground that the enforcement action taken by the Council accorded with the law. As to necessity for the interference, in this case to protect the environment from harm from the unauthorised proposed development, the Inspector described it, as I have said, as "ordinary countryside afforded the least degree of protection", and concluded that there was, therefore, less of a pressing social need to keep it undeveloped than there would have been if it were more highly protected land. He added that such necessity for the avoidance of harm as there was would reduce if planting controls were imposed as a condition of development.

44. Finally, and importantly, the Inspector turned to the particular vulnerability and needs of the applicants as gypsies and the implications for his decision of *Chapman*, in which the Court had held, inter alia, that the public authorities are not obliged to provide an adequate number of gypsy sites. He reasoned nevertheless that, as in his view, the development would do only limited harm to the environment, and the Council had failed properly to implement its local policy RE22 to permit the establishment of gypsy sites in rural areas where there was a demonstrated need for them, the applicants' Article 8.1 rights weighed heavily in their favour. This is how he put it in paragraphs 69 and 70 of his decision letter:

> "69. Account has been taken of the Council's argument that the judgment in *Chapman* found that the United Kingdom government was not under an obligation to provide an adequate number of gypsy sites. But paragraph 9 of Circular 1/94 says that repeal of the statutory duty of local authorities under the 1968 Act to provide gypsy sites makes it all the more important that local planning authorities make adequate gypsy site provision in their development plans. In this case the Council has not demonstrated that it has a sound statistical basis for its conclusion that there is no need for any new gypsy site, despite saying that it accepts there is a small unmet need. Furthermore the Council has not granted a single planning permission for a private gypsy site since their Local Plan was adopted in 1999, and the only private gypsy sites in the District all appear to have been granted on appeal, that is following refusal of permission in the first instance by the Council. That situation, coupled with the Council's interpretation of the Local Plan gypsy policy, RE22, appears to have ensured that in practice there is little credible prospect of any private gypsy site being permitted by the Council. This conclusion has to be seen in the context of the need for sites in the District, Policy RE22 and paragraph 249 of the Local Plan, and the Government policy in Circular 1/94 which makes it clear that the needs of gypsies must be met.
>
> "70. Against this background the limited harm caused to the environment, and hence to the public interest, by the appeal development has to be weighed against the serious harm to the appellants arising from the failure to recognise and provide for the needs of gypsies in the District by granting permission for sites. It is concluded that in this case that limited harm does not constitute a pressing social need for the interference with Article 8(1) rights of all the appellants which would result from the upholding of these notices. Moreover, by leading to a situation where there is a high probability that at least one of the appellants would lose their present home for a significant period, such interference would be disproportionate. For these reasons, and because the Council has not convincingly established why the interference is necessary, it is concluded that it is unacceptable. Thus the human rights arguments weigh heavily in favour of the appellants."

45. Like the Judge, I take the last sentence of paragraph 70 of the decision letter to be a finding that to uphold the enforcement notices would constitute an unjustifiable interference with the applicants' Article 8 rights.

46. The Judge dealt quite shortly with that reasoning of the Inspector, holding that he had effectively put the Council under an obligation to exercise its planning powers to provide an adequate number of gypsy sites within its area. He said at paragraph 36 of his judgment:

> "36. … although in paragraph 69 the inspector noted that the United Kingdom Government was not under any obligation (by virtue of article 8) to provide an adequate number of gypsy sites, he, in effect, held that article 8 carries with it a duty on the Council, as the relevant local planning authority, to exercise its planning powers to help achieve that end in its area. In my judgment the article imposes no such an obligation. The inspector was wrong to think as he did."

47. The Judge went on to hold, at paragraphs 37 and 38, that, in a matter so fundamental as the correct approach to Article 8 and, having regard to the weight the Inspector gave to it, the Inspector's decision could not stand. He, therefore, quashed the decision and remitted the matter to the Secretary of State for reconsideration.

The issue and the submissions.

48. Mr Mould, whose submissions on this issue Mr Watkinson adopted, appears to have approached the issue on the basis that, as Article 8 was "engaged", to refuse planning permission and uphold the enforcement notices would necessarily constitute an interference with the applicants' rights under Article 8.1 and, therefore, that the only question was and is whether the interference was, in the circumstances, justified in the terms of Article 8.2 Mr Mould submitted that the Judge, in paragraph 36 of his judgment, had wrongly credited the Inspector with holding that Article 8 obliged the Council to exercise its planning powers so as to fulfil a general obligation to provide an adequate number of gypsy sites in its area regardless of availability. He maintained that the Judge overlooked the fact that a finding of a breach of Article 8 in a particular case does not amount to an acceptance of a general duty to provide sites and that the Inspector had not so decided here.

49. Mr Mould, submitted that it is clear from paragraphs 69 and 70 of the Inspsctor's decision letter that he was there engaged on the only live issue under Article 8, namely one of the *Chapman* balancing exercise under Article 8.2. He maintained that the Inspector carried out the exercise in an exemplary way, deciding as a result that enforcement of planning control in the circumstances would be disproportionate. He said that, the Inspector acknowledged that an inadequate supply of sites to meet the needs of gypsies did not of itself give rise to a breach of Article 8, but nevertheless, he gave, and was entitled to give, weight to the fact that, notwithstanding Government planning policy in Circular 1/94, the Council had failed to provide for the needs of the gypsy community through the development plan process.

50. He submitted that the Government's planning policy is that land-use requirements of

gypsies should be met through the planning process and that local planning authorities, such as the Council, should seek to make adequate provision of gypsy sites through the development plan process, either through the identification of suitable sites or through criteria-based policies. He maintained that the planning policy in Circular 1/94 reflects that positive obligation towards the gypsy community in recognition of their particular land-use requirements, identified by the European Court in paragraph 96 of *Chapman* as "a positive obligation … by virtue of Article 8 to facilitate the gypsy way of life".

51. Mr Mould said that, in deciding whether there was an Article 8.2 justification in this case, the Inspector was entitled to take account of that planning objective and to attach weight to the fact that this Council had failed to meet it, with the result that gypsies' accommodation needs in this district have become more pressing. That fact was a relevant consideration in deciding whether the Council had justified its interference with these gypsies' Article 8 rights in the circumstances of this case.

52. It followed, he submitted, that the Inspector was bound to determine whether it was a proportionate interference with the applicant's Article 8 rights for the Council to evict the applicants in all the circumstances of this case. In doing so, the Inspector was entitled to take account of the limited environmental harm caused by the presence of the caravan site in this location and to balance that limited harm against the factors that weighed in the gypsies' favour. The latter properly included the fact that the Council had, on the Inspector's findings, failed to fulfil its role, as local planning authority for Chichester, in pursuing the Government's planning policy objective of seeking to meet the accommodation needs of gypsies. He submitted that, for those reasons, the Judge wrongly held that the Inspector's approach conflicted with *Chapman*, and placed an unwarranted constraint upon the fulfilment of the Government's positive obligation through the planning process.

53. Mr Watkinson added that the fact there is no general duty to provide a home does not mean that there cannot be particular instances in which a decision preventing the establishment or maintenance of a home through the planning process would breach Article 8. He submitted that if the Court were to uphold the reasoning of the Judge it could wrongly inhibit planning authorities and inspectors from granting planning permission in an appropriate case under threat of a challenge that, in holding that Article 8 can in such circumstances impose such a duty, they have acted contrary to *Chapman.*

54. Mr Langham prefaced his submissions on behalf of the Council with the observation that a decision-maker, in assessing whether a decision, in this case, refusal of a proposed development, would violate Article 8, must first understand the content of the Article 8.1 right before considering whether it is justifiable under Article 8.2 and proportionate. He submitted that the Inspector, in paragraph 69 of his decision letter, was dealing with Article 8.1, not 8.2. He pointed out that the Inspector began it by acknowledging that effect of *Chapman* is that public authorities are not obliged to provide an adequate number of gypsy sites, but then, without reference to matters of justification, turned it into a general obligation "that the needs of gypsies must be met". He submitted that the Judge correctly read the Inspector's treatment in that paragraph as contradicting *Chapman.* This is not, said Mr Langham, the language of justification of the violation by reference to particular material factors in the case, but a mistaken view of the primary Article 8 right. Given such an error, he submitted, it is not surprising that the Inspector found the justification proffered by the Council insufficient and, apparently, that Article 8 would be violated.

Conclusion

55. The first question for an inspector is to determine whether a proposal is in material breach of planning policy. If it is, he should, in accordance with section 54A of the 1990 Act, determine the matter in accordance with the plan unless other material considerations indicate otherwise. Those other material considerations may include, as here, the personal circumstances and needs of the applicants, which in turn may include any Article 8 rights bearing on the issue. However, before embarking on the balancing exercise required by section 54A of the 1990 Act and that of Article 8.2 it is necessary to identify clearly, on the one hand, whether and to what the extent the proposal is not in accord with local planning policy, and, on the other, the exact content of any countervailing material factors, including in cases like these, the Article 8.1 rights, if any, capable of being interfered with. The content of the Article 8.1 right in this context is a positive obligation upon United Kingdom authorities to facilitate the gypsy way of life, by giving special consideration to their needs and nomadic lifestyle both in the regulatory planning framework and in reaching decisions in particular cases. It is not, as the Inspector appears to have concluded in paragraph 69 of his decision letter, an obligation on such authorities to make available to the gypsy community an adequate number of suitably equipped sites to meet their needs either generally or in individual cases.

56. As I have said, it was and is common ground that Article 8 was engaged in the sense that the applicants' right to respect for their homes and family lives was capable of becoming a material consideration. But it was not common ground that the refusal of planning permission and upholding of enforcement notices would necessarily constitute an interference with those rights, still less whether such an interference would be justified under Article 8.2. There is a difference between the "engagement" of Article 8 and the question whether there has been an interference with whatever form the Article 8 right takes in any individual case. Only if there is such interference, does the balancing exercise under Article 8.2 arise for consideration.

57. This three stage test was expressly acknowledged by the European Court of Justice in *Chapman.* The Court, first, in paragraphs 71 to 74 under the heading "A. As to the rights in issue under Article 8 …", concluded that they were in issue, i.e. the Article was engaged. The Court, secondly, in paragraphs 75 to 78, under the heading "B. Whether there was an 'interference' with the applicant's rights under Article 8 …", seemingly relied on the United Kingdom Government's acceptance that there had been such an interference as a result of the local authority's refusal of planning permission and the taking of enforcement measures, and it declined to consider in the abstract whether the framework legislation and planning policy and regulations disclosed a lack of respect for her Article 8 rights. Instead, it said, its task was "to examine the application of specific measures or policies to the facts of each individual case". And without further reasoning on those facts on this issue, it found, in paragraph 78, that, "[having regard to the facts of …[the] case" the planning authorities' decision "constituted an interference with … [Mrs Chapman's right to respect for her private life and home within … Article 8.1"

58. The Court then proceeded to its third question, namely whether the interference was justified within the provisions of Article 8.2. However, it was in the context of that question, not the second, that the Court established, in paragraphs 111-113 that, on the facts of the case, the refusal of planning permission would not render Mrs Chapman homeless.

And it was in the context of the third question that the Court turned to generality in stating: 1) at paragraph 96, that gypsies are not immune from general laws intended to safeguard the environment; 2) at paragraph 98, that a decision "in itself, and without more" not to allow gypsies to occupy land where they wished" would not "constitute ... a violation [i.e. an unjustified interference] of Article 8"; 3) also in paragraph 98, that there is no general "obligation by virtue of Article 8 to make available to the gypsy community an adequate number of suitably equipped sites"; and 4) in paragraph 99 "that Article 8 does not in terms give a right to be provided with a home".

59. So *Chapman* still leaves us with the question whether, in any individual case, refusal of planning permission and enforcement action against a gypsy caravan dweller is capable of amounting to an interference with an Article 8 right. Before deciding whether there has been such an interference, a fortiori, whether it amounts to a violation of the right in the sense of not being justifiable within Article 8.2, it seems to me vital to determine the content of the right in any individual case, something that the Court did not do, or have to do, in *Chapman*, leaving the whole issue to be swept up in an Article 8.2 balance.

60. I acknowledge that it is not always easy to identify the Article 8 right that is said to be the subject of the alleged interference, shorn of the circumstances applicable to the Article 8.2 exercise, as both Strasbourg jurisprudence and a recent decision of this Court have illustrated. See e.g. *Botta v Italy* (1998) 26 EHRR 241, ECtHR; *Dehnalova and Zchnal v Czech Republic* (14 May 2002); and *Anufrijeva & Ors v SSHD* 2003 EWCA 1406, per Lord Woolf CJ, giving the judgment of the Court, at paras 9-38. But where, as in this context, the European Court has clearly and firmly said in C*hapman*, that Article 8 does not confer an entitlement to provision of a home, planning inspectors should not effectively reverse that general proposition when considering, first, whether there has been an interference with an Article 8 right in the circumstances of the case. In my view, Mr Langham correctly submitted that the Inspector should have confined his finding in paragraph 69 of his decision letter as to the nature of the Article 8 right, namely a right of the applicants to "respect" in the sense of a qualified right not to have their existing private and family life and home interfered with. He should not have converted it into the broader proposition that the needs of gypsies "must be met".

61. However, the exercise undertaken by the Inspector in paragraphs 69 and 70 was to draw on the United Kingdom's policy guidance in paragraph 9 of Circular 1/94, the Local Plan Policy RE22 and his finding that the Council had seemingly failed correctly to apply that policy in other cases. He then did what the European Court in *Chapman* expressly declined to do, namely hold that "the needs of gypsies must be met". And, in paragraph 70, he referred to the Council's failure "to recognise and provide for the needs of gypsies in the District by granting permission for sites". As Mr Langham put it, in those paragraphs the Inspector exaggerated or miscast the right, so as to equate shortage of gypsy sites as in itself a violation of - an interference with - some quite different and invalid notion rejected by the European Court in C*hapman.*

62. The exercise undertaken by the Inspector, in his consideration of Article 8.2, was to balance the weight of the breach of planning policy and its resultant harm to the environment – i.e. the seriousness of the planning harm - against other countervailing material, in particular the personal circumstances and needs of the applicants including any interference with any Article 8 rights and the seriousness of such putative interference. In my view, his misreading of the nature of Article 8 rights in this context put him at risk of

wrongly finding that the Council's decisions in issue interfered with the applicant's such rights, and, in any event, of wrongly placing too much weight on such interference, as he found it to be, in his Article 8.2 balance and in its effect on the balance of planning considerations required by section 54A.

63. Accordingly, I would uphold the Judge's ruling on this issue. Although I am not as confident as he was that the error of the Inspector went to the heart of his decision to grant the applicants, including Mr Eames, planning permission, the point of principle is likely to be of great general importance whenever Article 8 is brought into play in such a context. I would, therefore, direct that the matter be remitted to the First Secretary of State for him to reconsider this issue. In doing so, I may perhaps be permitted to make the following comment. In a case like this where the planning harm caused by the development is said to be weak and the countervailing material considerations, including the personal circumstances of the applicants, are said to be strong, recourse to Article 8 may add little but unnecessary complication to the balancing exercise required for the planning decision by section 54A of the 1990 Act.

Lord Justice Wall:

64. I have had the opportunity to read Auld LJ's judgment in draft. Whilst I am in full agreement with him in his conclusions on the first two issues raised by this appeal (namely; (1) The effect on the character and appearance of the countryside / Whether the proposed development conflicted with planning policy (paragraphs 15 to 28 of his judgment); and (2) The personal circumstances of Mr. Eames (ibid paragraphs 29 to 36)), I find myself in respectful disagreement with him on the third and critical issue in the appeal, namely the inspector's approach to ECHR Article 8. In my judgment; (a) the inspector did not make any error of law in his application of Article 8 to the circumstances of this case; (b) the judge was wrong to find that he did; and (c) the appeal should accordingly be allowed, and the decision of the inspector restored.

65. Save where references to them as individuals are required, I propose to refer to Messrs Doe, Yates and Eames collectively as "the Appellants" and to the First Secretary of State by that title. I will refer to Chichester District Council as "the Council".

66. I do not share Auld LJ's view that the inspector misidentified the nature of the rights enjoyed by the Appellants under ECHR Article 8 to which respect was due. The words of Article 8(1) are familiar, but bear repetition: -

> Everyone has the right to respect for his private and family life, his home and his correspondence.

67. At the risk of appearing simplistic, it seems to me that the Article 8 analysis properly runs along the following lines. The caravans which the Appellants had placed on the land belonging to Mr. Yates were their homes (also, in the cases of Messrs Doe and Yates the homes of their respective wives and children and, in the case of Mr. Eames his partner's home). Under Article 8(1) the Appellants had a right to respect for their homes (leaving out of account, for present purposes, their right to respect for their private and family lives). Self-evidently, however, that right was, in the circumstances of the case, subject to the

qualifications imposed by Article 8(2). The Appellants' homes had been placed on land, which, although it was owned by Mr. Yates, did not have planning permission for the caravan dwellings placed on it. Their right to respect for their homes was, accordingly, subject to legitimate attack from the State. The State, in the form of the Council, sought to interfere with their Article 8(1) rights by enforcement notices requiring them to remove the caravans and vacate the site. That interference was plainly in accordance with the law. The Article 8 question for the inspector was, accordingly, whether or not the interference was necessary for any of the reasons identified in Article 8(2), and, if it was, whether the implementation of enforcement notices requiring the Appellants and their dependants to vacate the land was a proportionate response to the identified objective.

68. In my judgment, this analysis (which also seems to me to be the one adopted by the inspector) is entirely consistent with the decision of the European Court of Human Rights (ECtHR) in *Chapman v United Kingdom* (2001) 33 EHRR18 (*Chapman*). Mrs. Chapman was a gypsy who purchased a piece of land with the intention of living on it in a mobile home. Over a period of many years and after numerous inquiries and appeals, the course of which it is not necessary for me to catalogue, the local planning authority made a final attempt to require her to remove her home from the land. After a planning inspector had dismissed her latest appeal against the refusal of her planning application, the case reached the ECtHR. The ECtHR identified Mrs. Chapman's rights under Article 8 of ECHR in the following way: -

> 71. The applicant submitted that measures threatening her occupation in caravans on her land affected not only her home, but also her private and family life as a gypsy with a traditional lifestyle of living in mobile homes, which allow travelling. She refers to the consistent approach of the Commission in her own and similar cases (eg *Buckley v United Kingdom* (1997) 23 EHRR 342).
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> 72. The Government accepted that the applicant's complaints concerned her right to respect for home and stated that it was unnecessary to consider whether the applicant's right to respect for her private and family life was **also** in issue. (My emphasis).
>
> 73. The Court considers that the applicant's occupation of her caravan is an integral part of her ethnic identity as a gypsy, reflecting the long tradition of that minority of following a travelling lifestyle. This is the case even though, under the pressure of development and diverse policies or from their own volition, many gypsies no longer live a wholly nomadic existence and increasingly settle for long periods in one place in order to facilitate the education of their children. Measures, which affect the applicant's stationing of her caravans, have therefore a wider impact than on the right to respect for home. They also affect her ability to maintain her identity as a gypsy and to lead her private and family life in accordance with that tradition.
>
> 74 The Court finds therefore that the applicant's right to respect for her private life, family life and home are in issue in the present case.

69. This was the basis on which Article 8 was engaged in *Chapman.* The Government accepted that there had been "an interference by a public authority" with Mrs. Chapman's right to respect for her home. This interference was identified as "the refusal of planning permission to allow her to live in her caravan on her own land and the pursuit of enforcement measures against her" (paragraph 75 of the judgment). It was common ground that the interference was in accordance with the law (paragraph 79). The Court found that the interference pursued a legitimate aim, which it identified as "protecting 'the rights of others' through preservation of the environment" (paragraph 82). The critical question, accordingly, was whether the interference was "necessary in a democratic society". This, in classic human rights language, involved considering whether it answered a pressing social need and was proportionate to the legitimate aim pursued (judgment paragraph 90).

70. Whilst I see powerful arguments for distinguishing *Chapman* on the facts (apart from anything else, Mrs. Chapman had put up her caravans in the Green Belt) I see no reason for departing from the framework by means of which the ECtHR identified the constituent parts of Article 8 in that case. In my judgment, the inspector followed the *Chapman* structure in his approach to the issue, and was right to do so.

The judge's approach to the Article 8 issue

71. In paragraph 32 of his judgment, the judge identified the issue: -

> The Council accepted that to uphold the enforcement notices would involve an interference with the appellants' Article 8(1) rights. Instead, it argued that the circumstances of the interference and the requirement to protect the environment justified the interference under Article 8(2).

72. The judge then summarises paragraphs 64 to 69 of the inspector's decision letter as "a careful review to determine whether, on the facts, the admitted interference with the appellants' Article 8(1) rights constituted by the refusal of planning permission and the consequent upholding of the enforcement notices, was necessary. The judge then set out paragraphs 96 to 100 of the ECtHR's decision in *Chapman* and paragraphs 69 and 70 of the decision letter, which Auld LJ has set out at paragraph 44 of his judgment, and which I need not repeat.

73. The paragraphs from *Chapman,* which the judge recited, dealt with the extent to which a positive obligation was imposed on Contracting States by virtue of Article 8 to facilitate the gypsy way of life. The ECtHR recognised that "the provision of an adequate number of sites which the gypsies find acceptable and on which they can lawfully place their caravans at a price which they can afford is something which …[had] not been achieved" (paragraph 97). However, the ECtHR on to say: -

98. The Court does not, however, accept the argument that, because statistically the number of gypsies is greater than the number of places available in authorised gypsy sites, the decision not to allow the applicant gypsy family to occupy land where they wished in order to install their caravan in itself, and without more, constituted a violation of Article 8. This would be tantamount to imposing on the United Kingdom, as on all the other Contracting States, an obligation by virtue of Article 8 to make available to the gypsy community an adequate number of suitably equipped sites. The Court is not convinced, despite the undoubted evolution that has taken place in both international law, as evidenced by the Framework Convention, and domestic legislation in regard to protection on minorities, that Article 8 can be interpreted to involve such a far reaching positive obligation of general social policy being imposed on States.

99. It is important to recall that Article 8 does not in terms give a right to be provided with a home. Nor does any of the jurisprudence of the Court acknowledge such a right. While it is clearly desirable that every human being has a place where he or she can live in dignity and which he or she can call home, there are unfortunately in the Contracting States many persons who have no home. Whether the State provides funds to enable everyone to have a home is a matter for political not judicial decision.

100 In sum, the issue for determination before the Court in the present case is not the acceptability or not of a general situation, however deplorable, in the United Kingdom in the light of the United Kingdom's undertakings in international law, ***but the narrower one whether the particular circumstances of the case disclose a violation of the applicant, Mrs. Chapman's right to respect for her home under Article 8 of the Convention*** **(my emphasis).**

74. The judge picks up on the final sentence of paragraph 70 of the decision letter. This reads: "Thus the human rights arguments weigh heavily in favour of the Appellants" and continues: -

I take the last sentence of paragraph 70 to be a finding that the upholding of the enforcement notices would indeed constitute an unjustifiable interference with the Appellants' Article 8 rights.

36. It seems to me that, as Mr. Langham submitted, although in paragraph 69 the inspector noted that the United Kingdom Government was not under any obligation (by virtue of Article 8) to provide an adequate number of gypsy sites, he, in effect, held that Article 8 carried with it a duty on the Council, as the relevant local planning authority, to exercise its planning powers to help achieve that end in its area. In my judgment, the Article imposes no such an obligation (sic). The inspector was wrong to think that it did.

75. With great respect to the judge, I do not think the inspector was doing what the judge says, or importing into Article 8 considerations outlawed by *Chapman*. To explain why I have reached that view, however, it is necessary to look once again at the whole of the inspector's decision-making process on the Article 8 issue.

The inspector's approach to the Article 8 issue

76. In what seems to me (as someone with only a limited experience of planning law) a careful, thorough, manifestly independent and well reasoned decision letter, the inspector prefaced his consideration of the Article 8 issue with these words: -

> 63. The Council accepted that, to dismiss these appeals so that the enforcement notices come into effect would result in the appellants losing their homes on this land and that this would constitute an interference with their right to respect for their home and private and family life under Article 8(1) of ECHR. It is therefore considered that in all three appeals, Article 8 is engaged. That being so, under paragraph 2 of Article 8, it has to be established whether that interference is, firstly, in accordance with the law, and secondly, necessary in a democratic society in the interest of the economic well-being of the country (which includes the preservation of the environment) or for the protection of the rights and freedoms of others. In the light of the judgments in *Cremieux v France* (1993) 16 EHRR 357 and *Chapman* it is acknowledged that the exceptions provided for in paragraph 2 of Article 8 are to be interpreted narrowly and the need for them in a given case convincingly established, and that the interference must correspond to a pressing social need and be proportionate to the aims pursued.

77. As a self-direction, I find that impossible to fault. My only criticism is that the inspector has a tendency to use the passive when he means himself. I take it, therefore, that when he says: "it is therefore considered that in all three appeals Article 8 is engaged" in paragraph 63 of the decision he means, "I consider that Article 8 is engaged". Similarly, I take "it is acknowledged that" later in the paragraph to mean, "I acknowledge that".

78. In paragraph 64 of the decision letter, the inspector records the fact that it was not in issue between the parties to the appeal that the taking of enforcement action by the Council was "in accordance with the law". The argument, accordingly, was about whether the interference is necessary, and whether the action proposed by the authority is proportionate. The inspector records the Appellants' argument that the effects of enforcement would be disproportionate because the harm to the extended family group would be increasingly serious, whereas the harm to the environment would not be great.

79. In the balance of paragraph 64 and in paragraph 65, the inspector discusses the appellants' circumstances and concludes that: -

> … the coming into effect of the notices would, on the balance of probabilities, deprive at least one of the appellants of their homes for a significant period. The length of that period without a secure home and those who would be affected cannot

> be determined with any degree of certainty. In these circumstances it is concluded that the harm arising from the interference with their right to a home could potentially affect any of the appellants, and would be substantial.

80. In my judgment, those conclusions were manifestly open to the inspector on the evidence, and I do not see how they could be challenged.

81. In paragraph 66 of the decision letter, the inspector discusses the Council's argument that the interference was necessary in order to protect the environment from the harm caused by the unauthorised and proposed development. He concludes that there will be some harm to the environment if planning permission is granted. However, he contrasts the instant case with the facts of *Chapman* and points out that the land under consideration is not subject to any special designation due to its exceptional landscape qualities. It is not in the Green Belt. He describes it as "ordinary countryside afforded the least degree of protection". He adds: -

> That is not to devalue its role as open land or the policies, which seek to protect it, but to establish its place within the hierarchy of protection from development given by the planning system. Thus it is land which the public can reasonably expect to remain free from development, but on which when development permission is sought, the weight of argument which needs to be deployed to gain permission is less than in the case of other land subject to higher levels of protection. It follows that the pressing social need for the appeal site being kept undeveloped is correspondingly less than would be the case with more highly protected land.

82. Once again, speaking for myself, I find that conclusion unexceptionable. In paragraph 67, the inspector points out that the harm to the public interest can be reduced on a continuing basis by the imposition of suitable planting conditions, so that in the end the harm would be, not to the landscape itself, but only to the character of the area and the need to prevent development in the countryside. He describes these as "matters of some, but not the greatest, weight" and considers that this conclusion is not undermined by the fact that the appellants established themselves without first seeking planning permission. He refers back to *Chapman* and says: -

> Firstly, as the Council pointed out, in *Chapman* the ECtHR said that it would be slow to grant protection to those who established their home on an environmentally protected side in conscious defiance of the law. But the degree of harm caused to the environment is a matter for the national authorities, as the ECtHR acknowledged, and it would seem to be reasonable to expect that, where this harm is less, the degree of protection would increase accordingly.

83. In paragraph 68 of the decision letter, the inspector turns to the position of the appellants as gypsies. He says: -

> Secondly, the appellants in these appeals are members of a particular and vulnerable minority, whose needs for a home are recognised in planning policy and

Government advice. In this case both the advice in Circular 1/94 and in Policy RE22 and paragraph 249 of the Local Plan acknowledge that private gypsy sites may be appropriate in rural locations where the need for such homes can be established. Given that only about 23% of the rural area of the District is not subject to special designation, the amount of land where only limited harm would be caused by the establishment of any gypsy site is strictly limited. Thus because the appeal site occupies part of that quantum there would seem to be no reasonable prospect of another site coming forward in the rural part of the District with fewer planning constraints.

84. In paragraphs 69 and 70 of the decision letter (set out by Auld LJ in paragraph 44 of his judgment) the inspector, as it seems to me, discusses the Council's performance of its obligations under paragraph 9 of Circular 1/94 to make adequate gypsy site provision in their development plans. He finds it wanting. He concludes that, "in practice there is little credible prospect of any private gypsy site being permitted by the Council". He comments that this conclusion has to be seen in the context of a number of factors, including Government policy in Circular 1/94 which, he says, "makes it clear that the needs of gypsies must be met".

85. In paragraph 70 of the decision letter, the inspector concludes his balancing exercise. His conclusion is that the harm to the environment is outweighed by the harm to the appellants "arising from the failure to recognise and provide for the needs of gypsies in the District by granting permission for sites". Furthermore, the interference would be disproportionate. The Council has not convincingly established why interference is necessary. He concludes with the sentence: "Thus the human rights arguments weigh heavily in favour of the appellants".

86. With great respect to the judge, I simply cannot read the inspector's decision letter in general and paragraphs 69 and 70 in particular as identifying within Article 8 and thus imposing on the Council a non-existent and impermissible duty to exercise its planning powers to help achieve the end of providing an adequate number of gypsy sites.

87. The point, which stands out, to my mind, is that the context of paragraphs 69 and 70 is the Article 8(2) balancing exercise. The inspector is weighing in the balance the factors, which, on the particular facts of the case, support the Council's interference, and those, which weigh against it. Accordingly, all the inspector was doing, in my judgment, was identifying the policy considerations contained particularly in Circular 1/94 and pointing out that the Council's interpretation of the policy meant, in practice, that there was "little credible prospect of any private gypsy sites being permitted by the Council". This, in my judgment, was an entirely legitimate conclusion for the inspector to draw from the evidence, and an entirely legitimate factor for him to place in the balance when considering the relative strengths under Article 8(2) of the competing considerations of legitimate interference, proportionality and the likely hardship suffered by the appellants as a consequence of enforcement.

88. At its highest, it seems to me that what the inspector was doing, was pointing out that in his judgment, and on the evidence he had heard, the Council had not made adequate provision for gypsies in accordance with national policy, and that this was a factor which he was entitled to weigh in the Article 8 equation as pointing in the Appellant's favour. The matter can be tested by looking at the converse. Had there been an abundance of Council

sites for gypsies in the area, this would plainly have been a material factor in the Article 8(2) equation, and would have weighed strongly in favour of interference.

89. In my judgment, this assessment of the inspector's reasoning is reinforced by the language of Circular 1/94, from which the inspector is quoting. Paragraph 9 reads: -

> After the proposed repeal of this duty (the duty under the Caravan Sites Act 1968 to make adequate provision for gypsies residing in or resorting to their areas) local planning authorities should continue to indicate the regard they have had to meeting gypsies' accommodation needs. Repeal of the statutory duty will make it all the more important that local planning authorities make adequate gypsy site provision in their development plans, through appropriate use of locational and/or criteria based studies

90. It is plain that the inspector thought that the Council had not followed that guidance. That was a conclusion, which was open to him. I can see no error of law in his approach. He was not stating that the Council had a duty of the kind contradicted by *Chapman*.

91. It follows that in my judgment, the First Secretary of State has made out his first four grounds of appeal, which I am content to incorporate into this judgment as part of my reasoning: -

1. The learned judge was wrong to conclude that the inspector had misinterpreted and misapplied ECHR Article 8.
2. The inspector's approach was correct and in accordance with the principles established by the ECtHR in *Chapman*.
3. The inspector was bound to determine whether it was proportionate for the Council to evict the gypsies in all the circumstances of this case, in order to decide whether the Council could justify its admitted interference with the gypsies' right to respect for their homes and private life under Article 8(2) of the Convention. He was entitled to take account of the limited environmental harm caused by the presence of the caravan site in this location; and to balance that limited harm against the factors that weighted in the gypsies' favour. The latter properly included the fact that the Council had, on the inspector's findings, failed to fulfil its role as local planning authority for Chichester, in pursuing the national planning policy objective of seeking to meet the accommodation needs of gypsies. That policy objective is set out in paragraphs 6 to 12 of Circular 1/94 "Gypsy Sites and Planning". The fact that Article 8 does not oblige the United Kingdom to accommodate every gypsy on a site of his choice does not prevent the First Secretary of State setting out the planning objective in Circular 1/94. Nor does it prevent him (through his appointed inspector) attaching weight to the fact that this particular local planning authority has failed meet that policy objective (with the result that the accommodation needs of gypsies in Chichester have become more pressing) when he decides whether the Council has justified its interference with these gypsies' rights under Article 8 in the circumstances of this case.

4. This is the correct approach following *Chapman*. The inspector took that approach and the learned judge was wrong to find fault with him for the reasons he gives in paragraph 36 of his judgment.

92. As I indicated in paragraph 66 above, the principal point at which I respectfully part company with Auld LJ is in his identification (or rather in his interpretation of the inspector's identification) of the nature of the Article 8(1) rights enjoyed by the Appellants. My understanding of Blackburne J's judgment is that the Council accepted before him that to uphold the enforcement notices would involve an interference with the appellants' Article 8 rights - see paragraph 32 of the judgment set out at paragraph 71 above. The question, therefore, was justification under Article 8(2).

93. For the reasons, which I have attempted to give, the inspector in my judgment did not, as Auld LJ suggests, convert the appellants' qualified Article 8 rights to respect for their homes into the broader proposition that "the needs of gypsies must be met". In my view, the Article 8 rights in this case are not (and were not perceived by the inspector to be) the non-existent "rights" as gypsies to be provided with a home or a site for a home by the State. The rights were to respect for the homes, which they had created – homes admittedly created in breach of planning laws. The Council's legitimate action in issuing enforcement notices was an interference with those rights, and the question for the inspector was whether, under Article 8(2) the interference was justified and proportionate.

94. As I have already stated, the fact that the Council was in breach of the Guidance with the consequence that there was little credible prospect of any private gypsy site being permitted by the Council (as the inspector was entitled to find) was, in my judgment, a factor in the Article 8(2) balance which the inspector was entitled to take into account. The inspector did not, in my judgment, elevate the Council's breach of the policy into an impermissible breach of non-existent Article 8(1) rights enjoyed by the appellants.

95. For all these reasons, I would allow this appeal.

Mr Justice Pumfrey:

96. Three challenges are advanced to the decision of the learned judge in this case.

i) The inspector was right to take the approach that he did in the light of the decision of the ECtHR in *Chapman v United Kingdom* (2001) EHRR 18, and the learned Judge was wrong to fault him in this regard in paragraph 36 of the judgment;

ii) The inspector was entitled to approach Mr Eames's deemed application for planning permission in the manner that he did, and in particular was entitled to take into account the fact that Mr Eames was unlikely by reason of his personal circumstances to become entitled to obtain any pitch that did become available in the county; and

iii)The inspector was entitled to find that there were good reasons for departing from the strict letter of Structure Plan Policy C1, and the Judge should not have criticised the inspector, whose approach was consistent with that approved by this Court in *R (Pothecary) v Leominster DC* (1998) 76 P&CR 346.

97. I have had the opportunity of reading the judgments of Auld LJ and Wall LJ in draft. I respectfully agree with their conclusions on the second and third issues, but in agreement with Wall LJ I consider that the learned Judge was incorrect on the Art 8 point. I shall express my reasons as concisely as I can.

The position of the individual appellants

98. The individual appellants respectively occupy Plots A, B and C at the appeal site. Plot A contains a twin unit mobile home occupied by Mr and Mrs Doe and their baby. Plot B also contains a twin unit mobile home, and is occupied by Mr and Mrs Yates and their daughter. Mrs Yates and Mrs Doe are sisters, and the families intend that the common grandparents, the Golbys, should move to a fourth proposed pitch at the site which is the subject of an appeal under section 78 of the 1990 Act. Mr Eames and his partner occupy a large touring caravan on Plot C. In addition to the mobile homes, each plot has a brick meter box, and each also contains building equipment, building materials, and one or more vehicles. Each plot is provided with hardstanding. Plot D, the last plot on the appeal site provides access. As I understand it, Mr Yates is the freehold owner of the entire site.

99. Each family went into occupation on the same day (21 December 2001) and three applications were made to the District Planning Authority for planning permission to station mobile homes and touring caravans on the land. This was, therefore, an unlawful development at its inception. The inspector found that the failure to approach the Council or apply for planning permission could not be condoned, but that there were cogent reasons for the Doe and Yates families to leave their previous site. These applications for planning permission were rejected at a meeting of the District Council's Area Development Control Committee in February 2002. Stop Notices and Enforcement Notices were issued soon after 5 January 2002, specifying compliance periods of one month. Appeals were entered against the enforcement notices on 15 January 2002 under section 174 of the 1990 Act. Further application for permission for a private gypsy site was made on 15 April 2002, and rejected under delegated powers on 21 June 2002. This application is the subject of the appeal under section 78.

100. The effect of the enforcement notices is to require the use of the site for residential purposes to cease. The notices necessarily require, therefore, that the appellants seek pitches for their mobile homes elsewhere or cease to occupy mobile homes at all, going into ordinary residential accommodation.

101. By section 70(2) of the 1990 Act, in dealing with an application for planning permission the local planning authority is required to have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations, and by section 54A the inspector's determination is required to be made in accordance with the plan 'unless material considerations indicate otherwise'. The statutory development plan in this case comprises the Approved West Sussex Structure Plan 1993 and the adopted Chichester District Local Plan First Review 1999. The 1993 Structure Plan was approved before the change in national policy affecting the provision of gypsy sites took place that is reflected in the policy advice of Circular 1/94. The Local Plan obviously was adopted after that change in national policy.

102. Policies C1 and H7 of the Structure Plan are as follows:

> C1. The Planning Authorities will seek to protect the countryside for its own sake from development which does not need a countryside location, and will ensure that the amount of land taken for development is kept to the minimum consistent with the provision of high quality and adequate space within the built environment.
> Development will not normally be approved outside built up area boundaries unless it is for quiet informal recreation or related to the essential needs of any of: agriculture, forestry, the extraction of minerals, the deposit of waste or the implementation of Policy H6.
> Permission will not normally be given for the extension of isolated groups of buildings or the consolidation of linear or sporadic development.
> …
> H7. While permission may be granted for the establishment by gypsies themselves of caravan sites in suitable locations, further provision by the Local Authorities will be considered only in the light of a demonstrated need.

103. C1 is the fundamental policy. As the inspector said, its aim is to prevent development in the countryside outside the defined settlement areas and SPAs which does not need to be there. Policy H7 refers expressly to gypsy sites but gives no guidance on location. The note accompanying Policy H7 adds nothing simply referring to West Sussex's satisfaction of the requirements of the Caravan Sites Act 1968, and adding that future changes in legislation will be monitored.

104. Circular 1/94: Gypsy Sites and Planning, provides policy guidance in anticipation of the repeal of the Caravan Sites Act 1968. It provides guidance on the content of development plans (paragraph 9). The basic guidance given (paragraph 12) is that local plans and Part II of unitary development plans should wherever possible identify locations suitable for gypsy sites, but where that is not possible development plans should set out clear realistic criteria for suitable locations. Further guidance is given on the provision and location of sites, including, in paragraph 13, the general policy that it will not as a rule be appropriate to make provision for gypsy sites in areas of open land where development is severely restricted, for example, in Areas of Outstanding Natural Beauty, Sites of Special Scientific Interest and other protected areas, nor in Green Belt. In paragraph 14, a suggestion is advanced that rural sites may be appropriate, provided that care is taken to avoid encroachment on the open countryside and to ensure consistency with agricultural and countryside policies, including those set out in PPG7 on the protection of the best and most versatile agricultural land. PPG7 sets out national policy on land use planning in rural areas of England, and is a further thread in the underlying policy fabric.

105. In compliance with the need for clear criteria for suitable locations identified in Circular 1/94, Policy RE22 of the Local Plan accordingly provides a list of eight criteria for the location of gypsy sites in rural areas, echoing the suggestions of Circular 1/94:

> RE22: Sites for gypsies (defined as persons of nomadic habit of life) will only be permitted in the rural area when it can be demonstrated that the numbers of families who reside in or resort to the district need the number of pitches in the location sought, and provided that:

(1) They do not detract from the undeveloped and rural character and appearance of the countryside, particularly the areas of outstanding natural beauty;
(2) They are not likely to cause harm to sites designated as sites of special scientific interest, nature reserves or other sites of nature conservation interest;
(3) They are not sited within strategic gaps or on the best and most versatile agricultural land unless there are compelling circumstances;
(4) The siting, layout and design are acceptable to the district planning authority in accordance with policies BE11, BE14 and TR1;
(5) They have convenient and safe access to the road network;
(6) They are convenient for schools and other community facilities;
(7) The uses do not result in development which would be likely to cause a disturbance to neighbours by reason of noise, fumes and dust resulting from vehicular movement and the storage of machinery and materials;
(8) They are sited on reasonably flat land , provided that the proposals do not create visual encroachment into the open countryside.

106. The inspector recognised that RE22 is the only up do date specific gypsy site development plan policy, which, as he said, accorded with national advice in PPG7 and Circular 1/94.

107. By virtue of section 54A of the 1990 Act, the inspector was bound to consider the proposed development in the light of Policy C1 of the Structure Plan and Policy RE22, interpreted in the context of a change in national policy occurring between the two. His material conclusions seems to me as follows:

i) The aims of development plan policies are clearly towards preventing development or the consolidation of development outside settlement boundaries and SPAs in order to protect and enhance the countryside. The appeal development does not fall within any of the exceptions in Structure Plan Policy C1. (paragraphs 27 and 28 of the decision letter).

ii) It is not reasonable or realistic to interpret Policy RE22 as making acceptable only those sites that are close to built up areas or within small groups of buildings in the countryside and not defined as SPAs, as does the Council (paragraph 33);

iii)There is a conflict between the Council's implementation of Policy RE22 and the aims expressed in Circular 1/94 on the one hand and in 'the policy as adopted' on the other. I take the last phrase to mean that there is inconsistency with Policy RE22 as properly interpreted in the light of Circular 1/94 (paragraph 35);

iv)In the light of that conflict, Policy RE22 should be applied to the appeal site, but without any assumption that this gypsy development is inherently unacceptable in a rural area (paragraph 35);

v) The development causes some harm to the character of the countryside at the appeal site in the light of the aims of Policy RE22, and this harm weighs against the grant of permission.

108. In coming to this conclusion, it seems to me clear that the inspector considered that there was a breach of policy C1; that policy C1 did not stand alone, but had to be considered with

policy RE22 in the light of the underlying national policy expressed in Circular 1/94; and that the appropriate assessment of the degree of planning harm would be that which I have set out in paragraph 107.iv) above. In my judgment, in agreement with Auld LJ and Wall LJ, this was a basis for his assessment that was open to him. The principles are set out by Schiemann LJ in *R v Leominster DC ex parte Pothecary* (1998) 76 P&CR 346 by reference to the speech of Lord Clyde in *Edinburgh City Council v Secretary of State for Scotland* [1997] 1 WLR 1447:

> 'The section [sc. Section 54A of the 1990 Act] has not touched the well-established distinction in principle between those matters which are properly within the jurisdiction of the decision-maker and those matters in which the court can properly intervene. It has introduced a requirement with which the decision-maker must comply namely the recognition of the priority to be given to the development plan. It has thus introduced a potential ground on which the decision-maker could be faulted were he to fail to give effect to that requirement. But beyond that it still leaves the assessment of the facts and the weighing of the considerations in the hands of the decision maker. It is for him to assess the relative weight to be given to all the material considerations.
>
> …
>
> [The decision-maker's] decision will be open to challenge if he fails to have regard to a policy in the development plan which is relevant to the application or fails properly to interpret it. He will also have to consider whether the development proposed in the application before him does or does not accord with the development plan. There may be some points in the plan which support the proposal but there may be some considerations pointing in the opposite direction. He will be required to assess all of these and then decide whether in light of the whole Plan the proposal does or does not accord with it. He will also have to identify all the other material considerations which are relevant to the application and to which he should have regards. He will then have to note which of them support the application and which of them do not and he will have to assess the weight to be given to all these considerations. He will have to decide whether there are considerations of such weight as to indicate that the development plan should not be accorded the priority which the Statute has given to it. And having weighed these considerations and determined these matters he will be required to form his opinion on the disposal of the Application. If he fails to take account of some material consideration or takes account of some consideration which is irrelevant to the application his decision will be open to challenge. But the assessment of the considerations can only be challenged on the ground that it is irrational or perverse.

Schiemann LJ observes that Lord Clyde rejected the submission that inevitably in the practical application of the section two distinct stages should be identified, with these words:

> The precise procedure followed by any decision-maker is so much a matter of personal preference or inclination in the light of the nature and detail of the particular case that neither universal prescription nor even general guidance are useful or appropriate.

109. I should refer also the judgment of Robert Walker LJ at 76 P&CR 359:

> In his speech, Lord Clyde rejected the Secretary of State's submission that the new section always requires a two-stage approach, the first stage being for the decision-maker to decide whether or not the development plan should be given its statutory priority. This appeal shows that there are cases, of which this is a striking example, when the first stage must be for the decision-maker to decide whether the proposed development is or is not in accordance with the development plan.
> Sometimes, of course, the answer to that question will be obvious (for instance, the development plan may have a bald and unqualified prohibition on open-cast mining or quarrying in a conservation area). But more often the development plan will (as in the *City of Edinburgh Council* case, and as in this case) contain exceptions, qualifications, overlapping or even contradictory policies and issues on which value judgments have to be made.

110. These statements of principle clearly indicate the limits of the court's jurisdiction to interfere in the inspector's decision. The court is ill-equipped itself to reach any factual conclusions about a particular application, or itself to make the value judgments called for in the context of a particular application.

'Other material considerations':Mr Eames

111. The inspector considered three matters under the head 'Other material considerations'. These were (i) the need for gypsy sites in the Chichester District (ii) the appellants' personal circumstances, including the personal circumstances of Mr Eames, which were distinct from those of the Yates and Doe families and (iii) human rights considerations. He held that the need for sites in the District 'weighs strongly in favour of permission'. He considered the personal circumstances of the Yates and Doe families, including the reasons they had left their previous site, the strength of the ties between the Yates and Doe (and Golby) families and the effect of separation and educational considerations. He found that 'the health, education and social welfare arguments in the context of the recognition of the cultural importance of extended gypsy families adds weight to the case for permission for the Yates and Doe families.' There is no challenge to these findings.

112. In paragraphs 60 and 61 of the decision letter, the inspector considers the position of Mr Eames. This part of the decision is challenged, but I agree with Auld LJ that the appeal on this ground should be allowed. The basis for finding a factor in favour of Mr Eames case is, I agree, clear.

Human Rights considerations

113. For ease of reference I set out Articles 8 and 14 of the Convention:

Article 8
Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 14
Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Is Article 8 'engaged'?

114. The inspector dealt with human rights considerations as his third head of 'other material considerations'. He first considered the proper approach to Art 8 ECHR and then considered the 'micro' considerations affecting this particular case. He stated the legal approach in terms that in agreement with Wall LJ I consider to be difficult to fault:

> 63. The Council accepted that, to dismiss these appeals so that the enforcement notices come into effect, would result in the appellants losing their homes on this land and that this would constitute an interference with their right to respect for their home and private and family life under Article 8(1) of the European Convention on Human Rights. It is therefore considered that, in all three appeals, Article 8 is engaged. That being so, under paragraph 2 of Article 8, it has to be established whether that interference is, firstly, in accordance with the law, and secondly, necessary in a democratic society in the interests of the economic well-being of the country (which includes the preservation of the environment) or for the protection of the rights and freedoms of others. In the light of the judgments in *Cremieux v France* (1993) 16 ehrr 357 and *Chapman v United Kingdom* (2001) 33 EHRR 399 it is acknowledged that the exceptions provided for in paragraph 2 of Article 8 are to be interpreted narrowly and the need for them in a given case convincingly established, and that the interference must correspond to a pressing social need and be proportionate to the aims pursued.

115. I am conscious that I am not familiar with planning law, but with great respect to Auld LJ I believe that this correctly states the content of the Art 8(1) right. 'Home' is an autonomous

concept in the law under the EHCR. In *Chapman v United Kingdom* (2001) 33 EHRR 399 the ECtHR said

> 73. The Court considers that the applicant's occupation of her caravan is an integral part of her ethnic identity as a gypsy, reflecting the long tradition of that minority of following a travelling lifestyle. This is the case even though, under the pressure of development and diverse policies or from their own volition, many gypsies no longer live a wholly nomadic existence and increasingly settle for long periods in one place in order to facilitate, for example, the education of their children. Measures which affect the applicant's stationing of her caravans have therefore a wider impact than on the right to respect for home. They also affect her ability to maintain her identity as a gypsy and to lead her private and family life in accordance with that tradition.

116. This is a clear statement of the Art 8(1) right in the *Chapman* case, and, it seems to me, in other gypsy planning permission and enforcement cases. The ECtHR in *Chapman* considered the issue of interference separately. It records an acceptance by the Government that there had been 'an interference by a public authority' with the applicant's right to respect for her home disclosed by the refusal of planning permission and the pursuit of enforcement measures against her, and then makes a determination (paragraph 78) which appears to follow the concession:

> 78. Having regards to the facts of this case, it finds that the decisions of the planning authorities refusing to allow the applicant to remain on her land in her caravans and the measures of enforcement taken in respect of her continued occupation constituted an interference with her right to respect for her private life, family life and home within the meaning of Article 8(1) of the Convention. It therefore examines below whether this interference was justified under paragraph 2 of Article 8 as being 'in accordance with the law', pursuing a legitimate aim or aims and as being 'necessary in a democratic society' in pursuit of that aim or aims.

117. It has been repeatedly emphasised that Art 8 does not confer on the citizen a right to a home, but a right to respect for a home, which is different: see *Chapman* paragraph 99 and (not cited to us, but a parallel case) the decision of the House of Lords in *LB Hounslow v Qazi* [2003] UKHL 43. In the present case the Council says, and the learned Judge agreed, that when the inspector considered the question of justification of the interference under Art 8(2) he made precisely this error.

118. Of course, it is not possible to assess whether the interference with the protected right is proportionate to the interests to be protected under Art 8(2) if one incorrectly identifies the protected right in the first place. But it is equally important, in my judgment, not to confuse considerations which naturally belong in the realm of justification with the identification of the protected right or with a finding that there is an interference with that right. My reading of paragraphs 65 to 70 of the inspector's decision letter is that he uses the framework provided by Art 8(2) to identify and balance the planning factors that he has already identified with the other factors he identifies relating to the interference to arrive at a

conclusion whether there is a pressing social need for the interference and that it is proportionate to the aims pursued. I summarise the factors as follows:

i) If permission were refused, the evidence was that the appellants would have to look elsewhere, and more widely that in West Sussex;

ii) There was no evidence that any private pitches were available, and so public pitches would have to be sought, and, although the Doe and Yates families were model tenants, there was no reason to suppose that any Council pitch would be available, and the position for Mr Eames, a single man, would be worse (paragraph 64 of the decision letter);

iii) Further movement might well not result in finding a pitch, there being a national shortage of lawful sites, and so they would be without a secure home for an appreciable period (paragraph 65);

iv) The interference implicit in the foregoing considerations was said to be necessary to protect the environment, and, while the development would result in some harm to the environment, the site was not subject to any special designation due to its qualities either in a national or local context, had no recognised nature conservation value, or archaeological potential and had no declared historical value—it was ordinary countryside accorded the least degree of protection in the hierarchy of protection conferred by the planning system (paragraph 66);

v) Environmental harm could be further reduced by suitable conditions as to planting (paragraph 67); and

vi) The appellants are members of a particular and vulnerable minority whose needs for a home are recognised in planning policy and Government advice, which recognise in Circular 1/94 and RE22 that private gypsy sites may be appropriate in rural locations where a need for such homes can be established. Given that only about 23% of the rural area of the district is not subject to special designation, the amount of land where only limited harm would be caused by the establishment of any gypsy site is strictly limited.

119. Having set out these factors, the inspector concludes his analysis of the human rights issues in paragraphs 69 and 70 of the decision letter. For ease of reference, I set them out again:

> 69. Account has been taken of the Council's argument that the judgment in *Chapman* found that the United Kingdom government was not under an obligation to provide an adequate number of gypsy sites. But paragraph 9 of Circular 1/94 says that repeal of the statutory duty of local authorities under the 1968 Act to provide gypsy sites makes it all the more important that local planning authorities make adequate gypsy site provision in their development plans. In this case the Council has not demonstrated that it has a sound statistical basis for its conclusion that there is no need for any new gypsy site, despite saying that it accepts there is a small unmet need. Furthermore the Council has not granted a single planning permission for a private gypsy site since their Local Plan was adopted in 1999, and the only private gypsy sites in the District all appear to have been granted on appeal, that is following refusal of permission in the first instance by the Council. That situation,

> coupled with the Council's interpretation of the Local Plan gypsy policy, RE22, appears to have ensured that in practice there is little credible prospect of any private gypsy site being permitted by the Council. This conclusion has to be seen in the context of the need for sites in the District, Policy RE22 and paragraph 249 of the Local Plan, and the Government policy in Circular 1/94 which makes it clear that the needs of gypsies must be met.
>
> 70. Against this background the limited harm caused to the environment, and hence to the public interest, by the appeal development has to be weighed against the serious harm to the appellants arising from the failure to recognise and provide for the needs of gypsies in the District by granting permission for sites. It is concluded that in this case that limited harm does not constitute a pressing social need for the interference with the Article 8(1) rights of all the appellants which would result from the upholding of these notices. Moreover, by leading to a situation where there is a high probability that at least one of the appellants would lose their present home for a significant period, such interference would be disproportionate. For these reasons, and because the Council has not convincingly established why the interference is necessary, it is concluded that it is unacceptable. Thus the human rights arguments weigh heavily in favour of the appellants."

120. Before the Judge, it was common ground that Art 8 was engaged, in the sense that the respondent Council accepted that 'to uphold the enforcement notices would involve an interference with the appellants' article 8(1) rights' (judgment paragraph 32). Having considered the decision letter and the judgment of the ECtHR in *Chapman,* the judge held

> 36. It seems to me that…although in paragraph 69 the inspector noted that the United Kingdom Government was not under any obligation (by virtue of article 8) to provide an adequate number of gypsy sites, he, in effect, held that article 8 carries with it a duty on the Council, as the relevant local planning authority, to exercise its planning powers to help achieve that end in its area. In my judgment the article imposes no such an obligation. The inspector was wrong to think that it did.

121. With great respect to the learned Judge, I am unable to find that the inspector did by implication suggest that there was such a duty on the council. If numbers of available sites are a factor to take into account in deciding whether to grant permission in a particular case, it may be difficult to indicate as a matter of language that a shortage (or as the inspector seems to have thought, a deliberate shortage) of sites is being taken into account without also suggesting that there is duty to provide more sites having regard to the paucity of existing provision. In my judgment it is clear that the nature of existing provision is highly material: this is made clear by *Chapman*:

> 103. A further relevant consideration, to be taken into account in the first place by the national authorities, is that if no alternative accommodation is available, the interference is more serious than where such accommodation is available. The more suitable the alternative accommodation is, the less serious is the interference constituted by moving the applicant from his or her existing accommodation.

…

111. The Court observes that during the planning procedures it was acknowledged that there were no vacant sites immediately available for the applicant to go to…

112. Moreover, given that there are many caravan sites with planning permission, whether suitable sites were available to the applicant during the long period of grace given to her was dependent upon what was required of a site to make it suitable. In this context, the cost of a site compared with the applicant's assets, and its location compared with the applicant's desires are clearly relevant…

113. The Court is therefore not persuaded that there were no alternatives available to the applicant besides remaining in occupation on land without planning permission in a green belt area…

122. For my part I would not accept that in saying (at the end of paragraph 69 of the decision letter) that Circular 1/94 makes it clear that the needs of gypsies must be met the inspector prepared the ground for the error that he is said to have made. It is, after all, paragraph 6 of the Circular that says that the land use requirements of gypsies 'need to be met', and paragraph 9 of the same document points out that repeal of the statutory duty to provide sites 'will make it all the more important that local planning authorities make adequate gypsy site provision in their development plans'. In my judgment, paragraph 70 of the decision letter sets out with sufficient clarity the balancing operation that the inspector carried out to satisfy me that he did not permit the shortage of sites to trump the planning harm that he identified. It was one of many factors which he identified in deciding that enforcement was disproportionate to the planning harm he identified.

123. For the foregoing reasons, as well as those set out by Wall LJ, I respectfully consider that the learned Judge's criticisms of the inspector's approach to the Art 8 ECHR considerations in this case are unjustified and I would allow the appeal accordingly.

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9 May 2017

FSB: Perth & Kinross Council urged to get behind local small businesses

The Federation of Small Businesses (FSB) has written to the key councillors in the talks around forming the new Perth & Kinross City Council administration urging them to put small business at the heart of their economic strategy and push for the appointment of a small business champion to the Tay Cities Deal.

FSB is calling on the local authority to ensure that the interests of the 5,965 small businesses in Perth & Kinross, which contribute £2bn to the local economy, are taken into account when key decisions are being made.

Corrado Mella, Chair of the FSB in Perth & Kinross, said: "While another forthcoming election may be grabbing headlines, we know just how important local administrations are to the local communities and economies in which our members trade.

"The Tay Cities Deal and its £1.8bn investment will bring huge supply chain opportunities, but it's vital that small businesses are given a level playing field and a fair chance to access these. A small business champion would ensure this happens and that contractors are paid for their work promptly.

The deal isn't just about Dundee and Perth. We want to see the importance of rural businesses and home-base businesses acknowledged and their requirements – such as improved digital connectivity – addressed with practical solutions.

The small business campaign group also want to see the new administration help hard-pressed towns and villages across the area, by expanding the £620,000 rates relief scheme that was piloted in Perth last year.

Corrado Mella said: "We know that Perth & Kinross Council, like all local authorities, have their work cut out. The demands placed on them are as wide-ranging as the available resources are scarce. So now, more than ever, boosting local businesses, wherever they are based and whatever they do, is essential.

"We are urging the council leaders to prioritise some simple, effective steps that will put Perth & Kinross and its economy on the path to success."

Notes to Editors
FSB's Scottish Local Elections Manifesto covers four key themes: Be Local; Be Open for Business; Be Connected; and Be Smart. It lists measures councils can take to boost local growth.

About FSB
As experts in business, FSB offers members a wide range of vital business services, including advice, financial expertise, support and a powerful voice in Government. Its aim is to help smaller businesses achieve their ambitions.

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Perth & Kinross Council Local Development Plan

Adopted 3 February 2014

3.2 Placemaking

3.2.1 Sustainable economic growth with high environmental quality is an important component in attracting investment into an area.

3.2.2 The sustainable development of Perth and Kinross requires the provision of services in appropriate locations to meet the increasing needs of the expanding population, resulting in the requirement to invest in new infrastructure to meet future needs. The following policies reinforce other policies within the Plan, and together these ensure that new development safeguards and enhances environmental quality, creating quality places and mitigating potential negative impacts.

3.2.3 Placemaking is now a term widely used to describe a comprehensive policy approach to the design, development, management and maintenance of the places in which we live to reflect local context. Central to the creation of sustainable communities is the desire to live in an attractive place which provides for our social, economic and environmental needs. Creating and maintaining sustainable communities are also key national and local policy objectives through Community Planning and Development Planning frameworks.

3.2.4 Fundamental to successful placemaking is an understanding of what makes places special, how places function and how best to involve those involved in the development industry such as architects, agents, developers and funders; as well as the communities themselves.

3.2.5 A local Placemaking Guide for Perth and Kinross was approved by the Council in November 2009 for the design, management and maintenance of public spaces, buildings, roads and new development. The Guides will be supported by the development and subsequent approval of SG to be used in determining planning applications.

Policy PM1: Placemaking

Policy PM1A

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 PM1B

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 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 and make connections where possible to green networks.

Policy ED1B
Areas identified for mixed use are intended to promote the integration of employment-generating opportunities with housing, thereby reducing the potential need to commute between home and employment.

Within these areas a range of uses such as housing, offices, light industry, surgeries and leisure uses would be acceptable providing they are compatible with the amenity of adjoining uses and meet the criteria (a)-(d) above. Proposals for a mixed use opportunity site that comprises predominantly one use will not be acceptable.

Note: Supplementary Guidance will expand on the type of employment uses most suited to the relevant areas.

Policy ED1C
In Perth, within the area of Dunkeld Road identified as motor mile, encouragement will be given to motor vehicle sales/servicing and associated uses. There will be a presumption against any change of use to Class 1 retailing. The Council will encourage improvements to make motor mile more attractive for motor vehicle sales. The trees and verges along the road frontage will be retained.

Note: An Article 4 Direction relating to retail use applies in Dunkeld Road and planning permission is required for a change of use from car showroom to shop in this area irrespective of size.

Policy ED2: Communications Infrastructure

The Council is supportive of the expansion of the communication network (telecommunications, broadband and digital infrastructure) provided it can be achieved without a detrimental impact on the natural and built environment. It is particularly supportive of the expansion of rural broadband and mobile internet services.

Equipment should be designed and positioned as sensitively as possible although some technical requirements may limit this. The visual impact of communications infrastructure will play a significant part in the determination of planning applications.

The siting and design of communication infrastructure should consider all the following series of options when selecting sites:

(a) Installation of smallest suitable equipment.
(b) Concealing/disguising masts, antennas, equipment houses.
(c) Site/mast sharing.
(d) Installation on existing building and structures.
(e) Installation of ground based masts.

In all cases the Council will require the removal of the development and associated equipment and the restoration of the site whenever the consent expires or the project ceases to operate for a specific period.

Policy ED3: Rural Business and Diversification

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. This is provided that they will contribute to the local economy through the provision of permanent employment, or visitor accommodation, or additional tourism or recreational facilities, or involves the re-use of existing buildings.
New and existing tourism-related development will be supported where it can be demonstrated that it improves the quality of new or existing visitor facilities, allows a new market to be exploited or extends the tourism season.

Proposals whose viability requires some mainstream residential development will only be supported where this fits with the Plan's housing policies.

All proposals will be expected to meet all the following criteria:

(a) The proposed use is compatible with the surrounding land uses and will not detrimentally impact on the amenity of residential properties within or adjacent to the site.
(b) The proposal can be satisfactorily accommodated within the landscape capacity of any particular location.
(c) The proposal meets a specific need by virtue of its quality or location in relation to existing business or tourist facilities.
(d) Where any new building or extensions are proposed they should achieve a high quality of design to reflect the rural nature of the site and be in keeping with the scale of the existing buildings.
(e) The local road network must be able to accommodate the nature and volume of the traffic generated by the proposed development in terms of road capacity, safety and environmental impact.
(f) Outwith settlement centres retailing will only be acceptable if it can be demonstrated that it is ancillary to the main use of the site and would not be deemed to prejudice the vitality of existing retail centres in adjacent settlements.
(g) Developments employing more than 25 people in rural locations will be required to implement a staff travel plan or provide on-site staff accommodation.

Policy ED4: Caravan Sites, Chalets and Timeshare Developments

Policy ED4A: Existing Caravan Sites
Encouragement will be given to the retention and improvement of existing caravan and camping sites provided the improvements are compatible with adjoining land uses and the site makes a positive contribution to the local economy.

Policy ED4B: New or Expanded Transit and Touring Caravan and Camping Sites
Proposals for new or expanded transit and touring caravan and camping sites will be supported where the proposals are compatible with Policy PM1.

Policy ED4C: Chalets, Timeshare and Fractional Ownership
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. Such developments must also:

(a) involve the expansion of an existing hotel, guest house, chalet park, caravan park or timeshare or fractional ownership development where the development does not constitute either over-development of the site or its setting; or
(b) replace static caravans with more permanent structures; or
(c) meet a specific need by virtue of its quality or location in relation to existing tourism facilities.

In all cases:
In the event of land ceasing to be used as a caravan and camping, chalet or timeshare or fractional ownership development site, there shall be no presumption in favour of permanent residential development.

Development proposals will only be approved where they will not result in adverse impacts, either individually or in combination, on the integrity of the River Tay Special Area of Conservation. Where proposals are located close to a watercourse, which is part of or connects to the Special Area of Conservation, a Construction Method Statement should be provided for all aspects of the development to protect the watercourse from the impact of pollution and sediment, so as to ensure no adverse effects on the qualifying interests of the Special Area of Conservation. Other studies including an otter survey, drainage impact assessment and species protection plan, where appropriate, may be required.

Planning Policy & Design Statement

Repositioning of Existing Building (in retrospect) and Change of Use to Form Offices for a Class 4 Business Use (Landscape Business) with Associated External Storage and Car Parking.

Balcairn Farm, Kinloch, Blairgowrie, PH10 6SD

Date: 19 February 2018

SPC Seath Planning Consultancy Ltd

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1. Background

Introduction

This planning application is for a change of use of an existing unauthorised dwellinghouse to Class 4 Business use as define by the Use Classes Order. The associated land will be used to support the operations of the proposed business.

The Site & Surrounding Area

The application site [the site] is located to east of a cluster of buildings (principally residential) on a plateau approximately 500 metres to the north of the A923, Blairgowrie to Dunkeld public road. The site comprises a single storey building originally proposed for agricultural purposes and then converted to a dwellinghouse. The building is set against the backdrop of a steep slope and sits at the top of a landscaped embankment. It is visible at distance from the public road due to the open nature of the site.

When considering the merits of the previous development proposal (dwellinghouse) the Council concluded that the building was too remote from the established group of "L shaped" buildings located along the A923. The revised proposals for business use would benefit from this location.

Access/egress to the site is achieved from the south west between two existing properties and onto the A923. There is excellent visibility at the junction of the site access and the public road. The gradient and alignment of the road is suitable for traffic as confirmed during determination of the previous planning application.

Externally the existing building benefits from some architectural merit having been designed as a dwellinghouse. It has a rectangular footprint and is single storey in scale. The floorspace is taken up with a total of 3 bedrooms, together with two living areas, a kitchen, bathroom and utility area. It fits in with the surrounding area.

Outwith the building footprint, the site has a parking and turning area on the west side of the site where the drainage infrastructure is located. The site is located within the Lunan Valley Catchment Area. The Lochs Clunie and Marlee Site of Special Scientific Interest (SSSI) and Dunkeld Lochs Special Area of Conservation (SAC) is located approximately 270 metres to the south of the site.

The Applicant & The Business

Mr Brown is a successful business man with a focus on landscaping and associated works. The business formed in the late eighties and since then has seen the business flourish. He used to

operate from Dundee but the premises and associated land were too small for his successful enterprise.

In 2016/17 the applicant was actively looking for new premises. He saw the potential in the building and the land at Balcairn Farm and bought the site. He moved into the building using it as a dwellinghouse where he also administers his business. He is aware that this use is unauthorised and wants to rectify the position and use the building and land for his business.

The Business

Brown's Groundworks are a family run business. Having assembled over 30 years of experience and a broad customer base throughout Dundee, Perthshire & Angus success has followed. The company specialise in low maintenance landscaping with a workforce of 5 persons. The principle activities of the business are:

(i) Landscaping and planting;

(ii) Tree and hedge work;

(iii) Turfing;

(iv) Lawn drainage;

(v) Ground clearance;

(vi) Hard landscaping (path work, walling, monoblocking, paving, slabbing and gravelling); and

(vii) Fencing.

The applicant currently operates from a small site in Blairgowrie. With the popularity of the company growing the existing site too small the land at Kinloch is ideally suited for the relocation of Browns Groundworks. This rural location will allow the applicant to display his products and remain central to his customer base.

At present the applicant and his family live in the property on site. If planning permission is granted he proposes to source alternative accommodation before converting the building into the Class 4 Business use. He asks that the Council provides him time to find suitable accommodation which will include:

(i) A dwellinghouse close to the business;
(ii) A form of temporary accommodation (lodge) on site which will require planning permission.

Succession Planning

The business plans of the applicant also include succession planning. This is understood as the process of developing new leaders who can replace the current leaders of business and industry. In this case the applicant and his wife recognise that, as they get older and near retirement, they need to plan ahead to ensure continued growth and success of the family run business. Mr and Mrs Brown propose to consolidate the business at this location which is central to their customer base; expand their customer base; develop the skills, knowledge and abilities of their three sons with the intention of allowing them to assume the role of management when the time is right.

At a time of economic uncertainty, most small and medium enterprises are planning for an uncertain future. The proposals as described in this submission, including succession planning, are aimed at promoting a sustainable business model for the future for this landscaping business.

The Proposal

First of all, the applicant is aware that the existing building is in an unauthorised position and the application wishes to address this anomaly. He seeks to make of the location of the building lawful. Thereafter the application seeks to change to the use of the existing building and use it as the base for Brown's Groundworks and Tree Works the applicants company. A Class 4 Business use is being applied for as defined under the Town and Country Planning (Use Classes) (Scotland) Order 1997.

The applicant has been made aware of the previous planning history and that the building cannot be used as a dwellinghouse. The intention is to convert the building from residential use to enable the applicant to relocate his successful landscape business (see above). The existing layout of the building lends itself to conversion as follows:

(i) The living areas will be converted into a reception area and kitchen with one of the bedrooms converted into a filing room.

(ii) The kitchen and bathroom will remain to serve the staff and visitors.

(iii) One of the bedrooms will be used as the main office used for meetings.

(iv) The remaining bedrooms will be used for administration, secure storage and filing.

(v) The remaining rooms will be used for separate staff and visitor toilets a cloakroom and boot store. The existing vestibule will remain.

The floor plan submitted with the application illustrates the changes.

Externally the site will be used for the storage of materials, parking. manoeuvring and a plant display area (on the slope to the west of the building). On other areas of the site the land will be used for a plant nursery with sheds used for storage of equipment (see photographs).

The applicant sources all his construction materials from local suppliers and only proposes a limited amount of outside storage to the rear of the building to ensure it is screened. The embankment in front to of the existing building has already been planted to showcase the soft landscaping and species. Some plants to be used in fulfilling contracts will be stored on site and grown from cuttings and seed with other plants sourced from local nurseries.

The design of the existing building is aesthetically pleasing due to the original design as a dwellinghouse. The design and external finishing materials are in keeping with the cluster of development at Kinloch. The applicant has chosen to instruct no architectural changes to the existing building so as to allow his business premises to remain in keeping with the surrounding area; and so as to have a negligible impact on the area.

Planning History

The following applications comprise the site history:

05/00703/FUL Erection of 2 dwellinghouses and garages - Withdrawn

11/01766/IPL Erection of holiday home - Withdrawn

11/01988/IPL Erection of holiday home (in principle) Refused Delegated Powers

12/00544/PN Erection of agricultural shed – Approved Delegated Powers

16/01937/FLL Erection of a dwellinghouse (in retrospect) refused following a Local Review

In April 2012, the Council granted prior approval for the erection of an agricultural building at the application/appeal site under application reference 12/00544/PN.

The agricultural building was erected a short distance (approximately 4 metres) from the approved position within the application site. This is a very minor deviation from the approved position in the context of the site.

The previous applicant had stated that he erected the building at this position to minimise the visual impact of the development and to maximise parking and turning space in front of the building.

A building warrant and completion certificate were issued by the Council's Building Control Team to cover all related works.

The applicant and his family moved into the property in September 2016. Thereafter, at the request of the Council, a planning application for change of use from an agricultural building to a dwellinghouse (in retrospect) was submitted to regularise this residential use. The planning authority considered that the unauthorised location of the building (as described above) merited a change in the description of the proposed development.

The application described as “Erection of Dwellinghouse” was then refused by the case officer on 24 February 2017 on the grounds that it is contrary to the Perth and Kinross Local Development Plan 2014.

A Local Review was submitted to the Council on the 20 May 2017. Following the deliberations of the Local Review Body the application was refused upholding the appointed Planning Officer’s decision. In effect, the use of the building as a dwellinghouse was unacceptable. An enforcement notice has been served on the 16th February.

2. Planning Policy Background

Introduction

It is against this background that the applicant considers there is potential to relocate his landscape business making best use of a building and associated land all of which lends itself to supporting his business plans. It is submitted that this is a planning proposal is a viable rural economic development which is in accordance with the Development Plan.

The Development Plan

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 as amended by the Town and Country Planning (Scotland) Act 2006 requires that planning decisions be made in accordance with the Development Plan unless material considerations dictate otherwise. This Statement will demonstrate that there is compliance with Development Plan policy with material considerations adding significant weight to justify approval of the proposed development.

Having taken into consideration the determination of the previous planning application during which principle of design and access related to the existing building were accepted (see below); an assessment against the following relevant Perth and Kinross Local Development Plan policies is submitted:

Policy ED3: Rural Business and Diversification;

Policy EP3: Water Environment and Drainage; and

Policy EP6: Lunan Valley Catchment Area

It is considered that together with the material planning considerations (see section 3 of this Statement) a robust planning argument is submitted. This should be regarded by the Council as a reasoned justification to allow the approval of planning permission for the proposals to use the existing building for business purposes.

Perth & Kinross Local Development Plan [LDP]

Policy ED3: Rural Business and Diversification provides that 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. This is provided that they will contribute to the local economy through the provision of permanent employment, or visitor accommodation, or additional tourism or recreational facilities, or involves the re-use of existing buildings.

All proposals will be expected to meet all the following criteria:

(a) The proposed use is compatible with the surrounding land uses and will not detrimentally impact on the amenity of residential properties within or adjacent to the site.

(b) The proposal can be satisfactorily accommodated within the landscape capacity of any particular location.

(c) The proposal meets a specific need by virtue of its quality or location in relation to existing business or tourist facilities.

(d) Where any new building or extensions are proposed they should achieve a high quality of design to reflect the rural nature of the site and be in keeping with the scale of the existing buildings.

(e) The local road network must be able to accommodate the nature and volume of the traffic generated by the proposed development in terms of road capacity, safety and environmental impact.

(f) Outwith settlement centres retailing will only be acceptable if it can be demonstrated that it is ancillary to the main use of the site and would not be deemed to prejudice the vitality of existing retail centres in adjacent settlements.

(g) Developments employing more than 25 people in rural locations will be required to implement a staff travel plan or provide on-site staff accommodation.

Assessment: During the determination of the previous development for a dwellinghouse in retrospect the Council at pages 9/10 of the Report of Handling, when assessing design, scale and layout, accepts that:

"……..the erection of a building on this site, albeit slightly lower down the hill was allowed through the prior notification procedure and as such I do not consider the proposal to be contrary to policy PM1A and B."

Assessing the Development against the criterion of Policy ED3 the following comments are submitted: -

(a) The Development will not unacceptably detract from the amenity currently enjoyed by residents in the area due to the small scale, location and nature of the proposed business use. Reasonable and necessary planning conditions can control the opening hours and activities of the proposed Class 4 use.

(b) The Development does not appreciably detract from the character or appearance of the landscape character or the environmental quality of the area. The building is in keeping with the character of the surrounding area. It is understood from information received from the engineer that the phosphorous mitigation calculation to be submitted will demonstrate that the Loch Leven Basin will be protected. The final documents are wawaited.

(c) The location of the development does allow suitable access to the applicant's sources of business allowing him to consolidate this successful family run business. It provides continuity of employment and meets a specific need of Brown's Groundworks. An economic justification has been submitted in Section 1 of this Statement.

(d) The Development is sympathetically designed and located as accepted by the Council. Landscape planting will provide mitigation. This meets the stated requirements of Policy ED3 and other policies of the of the LDP (PM1A and B).

(e) The determination of the previous planning application for a dwellinghouse resulted in no objections from the Council Roads Service. The family run business with 5 employees will be no greater than a household. It is submitted that there is no road safety or environmental issues and that the road capacity is available to meet the requirements of the proposed use.

(f) There will be no retailing from the premises.

(g) The level of employment will be 5 persons.

It is submitted that the proposed development is in accordance with the terms of Policy ED3 providing justification for a rural economic use.at this location.

Policy EP3: Water Environment and Drainage

Policy EP3A: Water Environment provides that the Scottish River Basin Management Plan has protection and improvement objectives which aim to ensure that there is no deterioration of water body status and where possible secure long term enhancements to water body status. Proposals for development which do not accord with the Scotland River Basin Management Plan and any relevant associated Area Management Plans will be refused planning permission unless the development is judged by the Council to be of significant specified benefit to society and/or the wider environment.

Policy EP3B: Foul Drainage provides that foul drainage from all developments within and close to settlement envelopes that have public sewerage systems will require connection to the public sewer.

In settlements where there is little or no public sewerage system, a private system may be permitted provided it does not have an adverse effect on the natural and built environment, surrounding uses and amenity of the area. For a private system to be acceptable it must comply with the Scottish Building Standards Agency Technical Handbooks.

Policy EP3C: Surface Water Drainage provides that all new development will be required to employ Sustainable Urban Drainage Systems (SUDS) measures.

Policy EP6: Lunan Valley Catchment Area provides that the Council will protect and seek to enhance the nature conservation and landscape interests of the Lunan Valley Catchment Area. Within the area:

(a) there will be a presumption against built development except: within settlements; for renovations or alterations to existing buildings; and developments necessary for economic need which the developer can demonstrate will have no adverse impact on the environmental assets of the area nor are likely to result in an unacceptable increase in traffic volumes;

(b) recreational pursuits like power water sports, likely to cause disturbance in and around sites of nature conservation interest, will be discouraged;

(c) tree planting should be predominantly native species, including Scots Pine, except in cases where it can be proved that the landscape diversity will be improved by the use of a more varied range of species. All planting should be designed to complement the landscape.

Total phosphorus from built development must not exceed the current level permitted by the existing discharge consents and the current contribution from built development within the rural area of the catchment. Where improvements reduce the phosphorus total from the built development, there will be a presumption in favour of retaining such gains to the benefit of the ecological recovery of the Lunan Lochs.

All applicants will be required to submit details of the proposed method of drainage with their application for planning consent and adopt the principles of best available technology, not entailing excessive costs, to the satisfaction of the Planning Authority in conjunction with SEPA.

The following criteria will also apply to development proposals at Butterstone, Concraigie, Craigie and Kinloch so as to ensure no adverse effects on the Dunkeld-Blairgowrie Special Area of Conservation:

(d) Drainage from all development should ensure no reduction in water quality.

(e) Construction Method Statement to be provided where the development site will affect a watercourse. Methodology should provide measures to protect the watercourse from the impact of pollution and sediment.

(f) Where the development site is within 30m of a watercourse an Otter survey should be undertaken and a species protection plan provided, if required.

Note 1: Policy RD3: Housing in the Countryside is limited to economic need, conversions or replacement buildings within the Lunan Valley Catchment Area.

Note 2: Development within the catchment must comply with the general drainage policies as well as policies relating to the catchment area. Supplementary Guidance details the procedures to be adopted for drainage from development in the Lunan Valley area (produced by SEPA/SNH and the Council).

Note 3: Supplementary Guidance 'River Tay Special Area of Conservation' provides a detailed advice to developers on the types of appropriate information and safeguards to be provided in support of planning applications for new projects which may affect the River Tay Special Area of Conservation.

Assessment: The private drainage system has already been installed. Previously SEPA had expressed concern regarding the position of the foul soakaway as it is very close to a field drain. The soakaway requires to be located at least 10m from any drain. If planning permission is granted for the proposed use then the foul soakaway will be relocated.

Revised phosphorous mitigation calculations are to be submitted for this business use. From information received from the engineer it is understood this concludes that there is compliance with the requirements of the relevant part of the planning policy.

The proposed drainage arrangements had been assessed under the terms of the previous planning application ref 16/01937/FLL. There is compliance with the terms of policies EP3 and EP6.

3. Other Material Considerations

Although there is no statutory definition of what constitutes a material consideration there are two main tests for deciding whether a consideration is material and relevant:

(i) it should serve or be related to the purpose of planning. It should therefore be related to the development and use of land; and

(ii) it should fairly and reasonably relate to the particular application.

Generally, a material consideration is a planning issue which is relevant to the application and can include national, European and Development Plan policies, planning history, the design of the proposed development, and the effect of the proposals on the environment.

The material considerations that are critical in this application are:

The national planning guidance set out in Scottish Planning Policy 2014;

The Council's Economic Strategy;

The planning history of the site;

The business aspirations of the applicant;

The design and potential of the existing building to accommodate the business proposed and its accordance with the development plan; and

The Council's Development Plan policies and Supplementary Guidance in the Lunan Valley Area related to drainage.

This Section of the Statement addresses the first two matters with the others having been covered in preceding paragraphs.

Scottish Planning Policy 2014 [SPP]

SPP sets the national context for the proposed development.

SPP recognises that Planning Authorities need to adopt a flexible approach to ensure any changing circumstances are accommodated for new economic opportunities to be realised. It goes on to require Development Plans to identify major locations that will contribute to the economic success of the area and ensure there are serviced marketable sites in locations for a variety of users.

The Policy Principles associated with the promotion of rural development are set out in Paragraph 75 of SPP. The planning system should:

(i) in all rural and island areas promote a pattern of development that is appropriate to the character of the particular rural area and the challenges it faces; and

(ii) encourage rural development that support prosperous and sustainable communities and businesses whilst protecting and enhancing environmental quality

Paragraph 79 provides support for rural businesses stating that Development Plans should set out a special strategy which:

"promotes economic activity and diversification, including where appropriate, sustainable development linked to tourism and leisure, forestry, farm and croft diversification and aquaculture, nature conservation, and renewable energy developments, while ensuring that the distinctive character of the area, the service function of small towns and natural and cultural heritage are protected and enhanced."

In remote rural areas, where new development can often help to sustain fragile communities, plans and decision-making should generally:

(i) encourage sustainable development that will provide employment; and

(ii) support and sustain fragile and dispersed communities through provision for appropriate development. (SPP Paragraph 83)

SPP also lends support to business and employment setting out general principles in paragraph 93 advocating that:

The planning system should:

(i) promote business and industrial development that increases economic activity while safeguarding and enhancing the natural and built environments as national assets;

(ii) allocate sites that meet the diverse needs of the different sectors and sizes of business which are important to the plan area in a way which is flexible enough to accommodate changing circumstances and allow the realisation of new opportunities; and

(iii) give due weight to net economic benefit of proposed development.

Assessment: In this case if flexibility is applied to the assessment of the proposed development the reuse of this existing building for business purposes can be achieved. Due to the design of the building (in keeping with the residential nature of surrounding development); the small scale of the proposed use; and the layout of the site; the pattern of development is respected and the character of the area will be protected. Realising an opportunity for this business venture which will maintain employment represents a

sustainable solution promoting economic activity all in accordance with national and Development Plan policy.

Perth & Kinross Leader Rural Development Strategy 2014–2020 [the Strategy]

Within the context of SPP the Council's Strategy provides encouragement for the applicant's business aspirations.

It is recognised that the overarching aim of the strategy is: -

"To support individuals, organisations and communities in rural Perth & Kinross to be stronger, more confident and inclusive to lead or contribute to local economic and community development."

To deliver the Strategy, Local Action Groups are asked to focus on two key strategic objectives:

(i) Promoting a prosperous, inclusive and sustainable economy; and

(ii) Creating a safe and sustainable place for future generations.

When addressing Integrated Land Use and Sectors (paragraph 4.51) the Strategy states that **Rural Perth & Kinross economy is dominated by small businesses which account for the vast majority of the workforce.** Businesses and business growth cut across the different key sectors and interlink with multiple land use. The Scottish Land Use Strategy appeals inter alia for enhancing the opportunities for synergy between different land uses, and seeking to enhance the blend of 'ecosystem services' including public goods like biodiversity, landscape and flood management as well as ensuring that the provisioning services of food timber and energy are delivered.

On behalf of the Applicant an approach was made to the Estates Service of the Council in relation to the Rural Investment Fund. The principle of this type of development would qualify for funding if finance were available. This serves to demonstrate that this proposed development has a rural economic justification.

Assessment: The applicant is part of the local Blairgowrie community. Mr Brown and his family have stayed in the area all their lives and operated this small business for 30 years bringing benefits such as employment for the family. His successful business needs a purpose built environment to accommodate growth and future proof the success of the company.

The existing building is fit for purpose at this location and within the landscape setting (as confirmed by the planner when reporting on the previous planning application). The proposed development does not affect any biodiversity interests in fact it will improve biodiversity through increased planting of indigenous species on the site. The site is not prone to flooding and evidence to be submitted in support of this planning application will

serve to demonstrate that there will be no detrimental impact on the Loch Leven Basin as a result of the drainage i.e. phosphorous will be mitigated.

4. Overall Assessment Against the Development Plan & Material Considerations

The above paragraphs are hereby adopted by the applicant with regard to the assessment of the Planning Application against the Development Plan policies and other material considerations as referred to above.

The Council's central development plan policy on Rural Business and Diversification is set out in Policy ED3.

It is considered that the Planning Application is in accordance this policy for the following reasons:

The Council will, in terms of this Policy ED3, approve proposals which:

Do not impact on the environment and residential amenity.

Can be accommodated in the local landscape.

Meets a specific need for the business and employment at the chosen location.

The building is of a high quality design reflecting the rural character.

There is sufficient road capacity and suitable access/egress arrangements.

The Report of Handling for the previous planning application for a dwellinghouse (application reference 16/01937/FLL) states that:-

"No evidence of any economic need for a dwelling in this location or association with an existing or proposed economic activity has been identified within the submission, as such the proposal is contrary to the criteria contained within category 3 of the guide where it refers to economic need."

This Statement submits an economic need for a building, the design and layout of which is considered by the Council as being acceptable at this location (see assessment of Policy ED3 above).

In the "Reasoned Justification" of Policy ED3 it is stated that:

"Perth and Kinross's businesses are the key driver of sustainable economic growth in the region. Maintaining and improving their competiveness is vital to the local economy."

It is also stated in the introductory paragraphs to policy ED3 that: -

"In addition, the Plan needs to create an environment where existing businesses can grow, or new ones can be established. With a relatively low supply of readily available employment land, a Plan

priority is to identify new opportunities through its spatial strategy. In addition, the suite of economic development policies seeks to create a positive and flexible framework to encourage new wealth creation opportunities throughout the Plan area."

It is clear that the scale, location and nature of the proposed development meets the inward investments aspirations of the Council as reflected in the Development Plan policy; the Rural Development Strategy; and all in accordance with SPP 2014. The proposals represent a sustainable form of development with the reuse of a building for business purposes being able to meet the aspirations of a successful local business use, allowing continuity of employment without detriment of the local environment,

The approach that the Council should take to the assessment of this Planning Application against the Development plan should be a reasonable one taking into consideration these findings. Planning permission should be granted.

5. Conclusions and Recommendations

There is a proven need to promote business in the rural areas of Perth and Kinross.

The previous decision to refuse planning permission for the erection of a dwellinghouse in retrospect has left a building the design and external appearance of which provides a unique opportunity to reuse it for some rural economic use. The proposed development will afford an opportunity for the applicant to use the building to fulfil his aspirations to relocate and expand his company, in a suitable environment all for the benefit of this family run business and the local economy. This represents a sustainable solution to a situation involving an unauthorised building.

Having assessed the planning application against the Development Plan, with the benefit of the evidence in this Statement this allows a conclusion to be reached that the planning application is, on the whole, in accordance with Development Plan policy; and that the material considerations point in favour of the application. This includes the national planning guidance as contained in SPP 2014 and the Council's Economic Strategy.

It is considered that the planning application should be approved subject to reasonable and necessary planning conditions as indicated in the Planning Statement.

Promoting a Prosperous, Sustainable and Inclusive Economy

Our Ambition:

We live in fairer Perth & Kinross which promotes inclusive economic growth and a thriving economy.

Promoting a Prosperous, Sustainable and Inclusive Economy

The Challenges

To capitalise on the level of economic investment and deliver growth we will need:

- *a more diverse economy, by growing different types of businesses across the region;*
- *to bring more investment into the area;*
- *to secure higher value jobs for people in Perth and Kinross;*
- *a well-skilled and qualified workforce, particularly in areas such as Digital, Science, Technology, Engineering, and Creative Industries;*
- *to retain talent through securing better quality job opportunities for school leavers and graduates;*
- *to enhance the resilience of the rural economy, through enterprise growth support;*
- *to develop innovative approaches to the rural economy through links with organisations such as the James Hutton Institute and local universities;*
- *to work collaboratively with other local authorities to deliver the Tay City Deal ambitions, along with wider economic development focus for the area as a whole;*
- *to extend superfast digital connectivity across the whole of Perth and Kinross;*

Within our area, earnings are around **9%** less than the Scottish average.

Almost **25%** of workers are paid less than the voluntary higher Living Wage.

We have one of the highest rates of self-employment at **46%** in Scotland.

We have one of the lowest unemployment rates in Scotland at **1.3%**

- *to address the trend that smaller city centres such as Perth are more exposed to risk as larger volume retailers concentrate on places that have higher footfall;*
- *to develop our approach to fairer working lives, based on the issues raised by the Fairness Commission.*

What We Are Doing

We have a *Local Development Plan* which recognises that Perth and Kinross is an attractive place to live and identifies how our area needs to be further developed in order to make it a great place to do business too.

Together with our partners and the private sector, we are investing in infrastructure, digital, business and skills, cultural and sporting events and festivals to build a vibrant economy within Perth and Kinross. We have made a capital investment of around half a billion pounds in infrastructure support, which seeks to attract new business and employment opportunities and make Perth one of Europe's great small cities.

We are developing, with our neighbouring councils, a comprehensive economic strategy to address inequalities and deliver a more prosperous and fairer future for our communities. The Tay Cities Deal will see investment up to £1.83 billion across the Tay Cities region.

Business Gateway and *Growbiz* are examples of where we continue to support business start-ups across the region.

Our Bid for UK City of Culture 2021 has been a catalyst to help us grow our creative industries. Through the Innovation Hub at the new 'Creative Exchange Perth' we will be supporting the development of our Creative

1 in 9

working-age households are reliant on some form of benefit.

14%

of our households are classified as being amongst the most socially and financially challenged in the UK.

Residential property prices are above the Scottish average.

Rural Perth & Kinross LEADER Programme

Developing a community-led programme to support rural communities, organisation and small-micro enterprises, including social enterprises, in rural Perth & Kinross

With a population of around 95,000 people, rural Perth & Kinross covers the vast majority of Perth & Kinross area (with the exception of Perth and Scone and areas of Cairngorms National Park) with outstanding landscapes, vibrant towns and villages. Our rural communities have weaknesses and face difficult challenges, but they have also strengths and can take up opportunities.

LEADER is a community-led funding programme aimed at increasing support to local, rural community and business networks to build knowledge and skills, and encourage innovation and cooperation in order to tackle local development objectives. It is funded by the Scottish Government and the European Union, as part of the Scottish Rural Development Programme, with other contributions from local partners and organisations. Grants are awarded by Local Action Groups (LAG) to projects that support delivery of a Local Development Strategy (LDS). An indicative allocation of £3.8million is being administered by the Rural Perth and Kinross LEADER Team.

Support is aimed at innovative, locally driven, bottom-up projects that will support the local community and develop the rural economy. The overall aim of the LEADER programme is to increase the capacity of local community and business networks to build knowledge and skills, innovate and co-operate in order to tackle local development objectives, key objectives for Perth & Kinross LEADER are:

- **Enterprise development:** focusing on supporting the capacity of small and medium sized enterprises to engage in growth in local, regional, national and international markets and in innovation processes
- **Skills development:** focusing on supporting individuals, groups, communities and businesses to develop their IT/digital skills and rural skills
- **Infrastructure improvement:** focusing on broadband, transport and town centres
- **Landscape, natural environment and cultural assets improvement:** focusing on access to assets
- **Local services improvement**: focusing on local facilities. Reduction in local services in small towns/villages including closure may lead to empty buildings
- **Active people and communities development:** focusing on capacity building and young people

Scottish Planning Policy

The Scottish Government
Riaghaltas na h-Alba

- the scale of development proposed is appropriate, and it has been shown that the proposal cannot reasonably be altered or reduced in scale to allow it to be accommodated at a sequentially preferable location;
- the proposal will help to meet qualitative or quantitative deficiencies; and
- there will be no significant adverse effect on the vitality and viability of existing town centres.

Promoting Rural Development

NPF Context

74. NPF3 sets out a vision for vibrant rural, coastal and island areas, with growing, sustainable communities supported by new opportunities for employment and education. The character of rural and island areas and the challenges they face vary greatly across the country, from pressurised areas of countryside around towns and cities to more remote and sparsely populated areas. Between these extremes are extensive intermediate areas under varying degrees of pressure and with different kinds of environmental assets meriting protection. Scotland's long coastline is an important resource both for development and for its particular environmental quality, especially in the areas of the three island councils.

Policy Principles

75. The planning system should:

- in all rural and island areas promote a pattern of development that is appropriate to the character of the particular rural area and the challenges it faces;
- encourage rural development that supports prosperous and sustainable communities and businesses whilst protecting and enhancing environmental quality; and
- support an integrated approach to coastal planning.

Key documents

- Getting the Best from Our Land – A Land Use Strategy for Scotland[40]
- National Marine Plan

Delivery

76. In the pressurised areas easily accessible from Scotland's cities and main towns, where ongoing development pressures are likely to continue, it is important to protect against an unsustainable growth in car-based commuting and the suburbanisation of the countryside, particularly where there are environmental assets such as sensitive landscapes or good quality agricultural land. Plans should make provision for most new urban development to take place within, or in planned extensions to, existing settlements.

77. In remote and fragile areas and island areas outwith defined small towns, the emphasis should be on maintaining and growing communities by encouraging development that provides suitable sustainable economic activity, while preserving important environmental assets such as landscape and wildlife habitats that underpin continuing tourism visits and quality of place.

78. In the areas of intermediate accessibility and pressure for development, plans should be tailored to local circumstances, seeking to provide a sustainable network of settlements and a

40 www.scotland.gov.uk/Publications/2011/03/17091927/0

range of policies that provide for additional housing requirements, economic development, and the varying proposals that may come forward, while taking account of the overarching objectives and other elements of the plan.

79. Plans should set out a spatial strategy which:

- reflects the development pressures, environmental assets, and economic needs of the area, reflecting the overarching aim of supporting diversification and growth of the rural economy;
- promotes economic activity and diversification, including, where appropriate, sustainable development linked to tourism and leisure, forestry, farm and croft diversification and aquaculture, nature conservation, and renewable energy developments, while ensuring that the distinctive character of the area, the service function of small towns and natural and cultural heritage are protected and enhanced;
- makes provision for housing in rural areas in accordance with the spatial strategy, taking account of the different development needs of local communities;
- where appropriate, sets out policies and proposals for leisure accommodation, such as holiday units, caravans, and huts;
- addresses the resource implications of the proposed pattern of development, including facilitating access to local community services and support for public transport; and
- considers the services provided by the natural environment, safeguarding land which is highly suitable for particular uses such as food production or flood management.

80. Where it is necessary to use good quality land for development, the layout and design should minimise the amount of such land that is required. Development on prime agricultural land, or land of lesser quality that is locally important should not be permitted except where it is essential:

- as a component of the settlement strategy or necessary to meet an established need, for example for essential infrastructure, where no other suitable site is available; or
- for small-scale development directly linked to a rural business; or
- for the generation of energy from a renewable source or the extraction of minerals where this accords with other policy objectives and there is secure provision for restoration to return the land to its former status.

81. In accessible or pressured rural areas, where there is a danger of unsustainable growth in long-distance car-based commuting or suburbanisation of the countryside, a more restrictive approach to new housing development is appropriate, and plans and decision-making should generally:

- guide most new development to locations within or adjacent to settlements; and
- set out the circumstances in which new housing outwith settlements may be appropriate, avoiding use of occupancy restrictions.

82. In some most pressured areas, the designation of green belts may be appropriate.

83. In remote rural areas, where new development can often help to sustain fragile communities, plans and decision-making should generally:

- encourage sustainable development that will provide employment;
- support and sustain fragile and dispersed communities through provision for appropriate development, especially housing and community-owned energy;

- include provision for small-scale housing[41] and other development which supports sustainable economic growth in a range of locations, taking account of environmental protection policies and addressing issues of location, access, siting, design and environmental impact;
- where appropriate, allow the construction of single houses outwith settlements provided they are well sited and designed to fit with local landscape character, taking account of landscape protection and other plan policies;
- not impose occupancy restrictions on housing.

National Parks

84. National Parks are designated under the National Parks (Scotland) Act 2000 because they are areas of national importance for their natural and cultural heritage. The four aims of national parks are to:

- conserve and enhance the natural and cultural heritage of the area;
- promote sustainable use of the natural resources of the area;
- promote understanding and enjoyment (including enjoyment in the form of recreation) of the special qualities of the area by the public; and
- promote sustainable economic and social development of the area's communities.

85. These aims are to be pursued collectively. However if there is a conflict between the first aim and any of the others then greater weight must be given to the first aim. Planning decisions should reflect this weighting. Paragraph 213 also applies to development outwith a National Park that affects the Park.

86. Development plans for National Parks are expected to be consistent with the National Park Plan, which sets out the management strategy for the Park. The authority preparing a development plan for a National Park, or which affects a National Park, is required to pay special attention to the desirability of consistency with the National Park Plan, having regard to the contents.

Coastal Planning

87. The planning system should support an integrated approach to coastal planning to ensure that development plans and regional marine plans are complementary. Terrestrial planning by planning authorities overlaps with marine planning in the intertidal zone. On the terrestrial side, mainland planning authorities should work closely with neighbouring authorities, taking account of the needs of port authorities and aquaculture, where appropriate. On the marine side, planning authorities will need to ensure integration with policies and activities arising from the National Marine Plan, Marine Planning Partnerships, Regional Marine Plans, and Integrated Coastal Zone Management, as well as aquaculture.

Development Plans

88. Plans should recognise that rising sea levels and more extreme weather events resulting from climate change will potentially have a significant impact on coastal and island areas, and that a precautionary approach to flood risk should be taken. They should confirm that new development requiring new defences against coastal erosion or coastal flooding will not be supported except where there is a clear justification for a departure from the general policy to

41 including clusters and groups; extensions to existing clusters and groups; replacement housing; plots for self build; holiday homes; new build or conversion linked to rural business.

avoid development in areas at risk. Where appropriate, development plans should identify areas at risk and areas where a managed realignment of the coast would be beneficial.

89. Plans should identify areas of largely developed coast that are a major focus of economic or recreational activity that are likely to be suitable for further development; areas subject to significant constraints; and largely unspoiled areas of the coast that are generally unsuitable for development. It should be explained that this broad division does not exclude important local variations, for example where there are areas of environmental importance within developed estuaries, or necessary developments within the largely unspoiled coast where there is a specific locational need, for example for defence purposes, tourism developments of special significance, or essential onshore developments connected with offshore energy projects or (where appropriate) aquaculture.

90. Plans should promote the developed coast as the focus of developments requiring a coastal location or which contribute to the economic regeneration or well-being of communities whose livelihood is dependent on marine or coastal activities. They should provide for the development requirements of uses requiring a coastal location, including ports and harbours, tourism and recreation, fish farming, land-based development associated with offshore energy projects and specific defence establishments.

91. Plans should safeguard unspoiled sections of coast which possess special environmental or cultural qualities, such as wild land. The economic value of these areas should be considered and maximised, provided that environmental impact issues can be satisfactorily addressed.

Supporting Business and Employment

NPF Context

92. NPF3 supports the many and varied opportunities for planning to support business and employment. These range from a focus on the role of cities as key drivers of our economy, to the continuing need for diversification of our rural economy to strengthen communities and retain young people in remote areas. Planning should address the development requirements of businesses and enable key opportunities for investment to be realised. It can support sustainable economic growth by providing a positive policy context for development that delivers economic benefits.

Policy Principles

93. The planning system should:

- promote business and industrial development that increases economic activity while safeguarding and enhancing the natural and built environments as national assets;
- allocate sites that meet the diverse needs of the different sectors and sizes of business which are important to the plan area in a way which is flexible enough to accommodate changing circumstances and allow the realisation of new opportunities; and
- give due weight to net economic benefit of proposed development.

Key Documents

- Government Economic Strategy[42]

42 www.scotland.gov.uk/Topics/Economy/EconomicStrategy

- Tourism Development Framework for Scotland[43]
- A Guide to Development Viability[44]

Delivery

Development Planning

94. Plans should align with relevant local economic strategies. These will help planning authorities to meet the needs and opportunities of indigenous firms and inward investors, recognising the potential of key sectors for Scotland with particular opportunities for growth, including:

- energy;
- life sciences, universities and the creative industries;
- tourism and the food and drink sector;
- financial and business services.

95. Plans should encourage opportunities for home-working, live-work units, micro-businesses and community hubs.

96. Development plans should support opportunities for integrating efficient energy and waste innovations within business environments. Industry stakeholders should engage with planning authorities to help facilitate co-location, as set out in paragraph 179.

97. Strategic development plan policies should reflect a robust evidence base in relation to the existing principal economic characteristics of their areas, and any anticipated change in these.

98. Strategic development plans should identify an appropriate range of locations for significant business clusters. This could include sites identified in the National Renewables Infrastructure Plan[45], Enterprise Areas[46], business parks, science parks, large and medium-sized industrial sites and high amenity sites.

99. Strategic development plans and local development plans outwith SDP areas should identify any nationally important clusters of industries handling hazardous substances within their areas and safeguard them from development which, either on its own or in combination with other development, would compromise their continued operation or growth potential. This is in the context of the wider statutory requirements in the Town and Country Planning (Development Planning) (Scotland) Regulations 2009[47] to have regard to the need to maintain appropriate distances between sites with hazardous substances and areas where the public are likely to be present and areas of particular natural sensitivity or interest.

100. Development plans should be informed by the Tourism Development Framework for Scotland in order to maximise the sustainable growth of regional and local visitor economies. Strategic development plans should identify and safeguard any nationally or regionally important locations for tourism or recreation development within their areas.

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43 www.visitscotland.org/pdf/Tourism%20Development%20Framework%20-%20FINAL.pdf

44 www.scotland.gov.uk/Resource/Doc/212607/0109620.pdf

45 www.scottish-enterprise.com/~/media/SE/Resources/Documents/Sectors/Energy/energy-renewables-reports/National-renewables-infrastructure-plan.ashx

46 www.scotland.gov.uk/Topics/Economy/EconomicStrategy/Enterprise-Areas

47 These statutory requirements are due to be amended in 2015 as part of the implementation of Directive 2012/18/EU on the control of major-accident hazards involving dangerous substances.

101. Local development plans should allocate a range of sites for business, taking account of current market demand; location, size, quality and infrastructure requirements; whether sites are serviced or serviceable within five years; the potential for a mix of uses; their accessibility to transport networks by walking, cycling and public transport and their integration with and access to existing transport networks. The allocation of such sites should be informed by relevant economic strategies and business land audits in respect of land use classes 4, 5 and 6.

102. Business land audits should be undertaken regularly by local authorities to inform reviews of development plans, and updated more frequently if relevant. Business land audits should monitor the location, size, planning status, existing use, neighbouring land uses and any significant land use issues (e.g. underused, vacant, derelict) of sites within the existing business land supply.

103. New sites should be identified where existing sites no longer meet current needs and market expectations. Where existing business sites are underused, for example where there has been an increase in vacancy rates, reallocation to enable a wider range of viable business or alternative uses should be considered, taking careful account of the potential impacts on existing businesses on the site.

104. Local development plans should locate development which generates significant freight movements, such as manufacturing, processing, distribution and warehousing, on sites accessible to suitable railheads or harbours or the strategic road network. Through appraisal, care should be taken in locating such development to minimise any impact on congested, inner urban and residential areas.

105. Planning authorities should consider the potential to promote opportunities for tourism and recreation facilities in their development plans. This may include new developments or the enhancement of existing facilities.

Development Management

106. Efficient handling of planning applications should be a key priority, particularly where jobs and investment are involved. To assist with this, pre-application discussions are strongly encouraged to determine the information that should be submitted to support applications. Such information should be proportionate and relevant to the development and sufficient for the planning authority requirements on matters such as the number of jobs to be created, hours of working, transport requirements, environmental effects, noise levels and the layout and design of buildings. Decisions should be guided by the principles set out in paragraphs 28 to 35.

107. Proposals for development in the vicinity of major-accident hazard sites should take into account the potential impacts on the proposal and the major-accident hazard site of being located in proximity to one another. Decisions should be informed by the Health and Safety Executive's advice, based on the PADHI tool. Similar considerations apply in respect of development proposals near licensed explosive sites (including military explosive storage sites).

108. Proposals for business, industrial and service uses should take into account surrounding sensitive uses, areas of particular natural sensitivity or interest and local amenity, and make a positive contribution towards placemaking.

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Understanding the Scottish Rural Economy

AGRICULTURE, ENVIRONMENT AND MARINE

social research

539

Understanding the Scottish Rural Economy

23 FEBRUARY 2018

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Main Findings

The economy of rural Scotland is both similar to, and tightly integrated with the economy of urban Scotland. However, distinct differences, often related to distance and scarcity, remain between urban and rural economies. The rural economy has undergone significant structural change over the past twenty years. This working paper sets out our current understanding of the Scottish rural economy, using the available data; develops the information on household and employment data and points to key challenges for the rural economy including broadband services, and fuel poverty. This paper does not deal with natural capital, ecosystem services or the wider public benefits supplied to or by businesses in rural Scotland. However, it supports a more detailed approach towards defining the rural economy as particularly industry sectors in Mainly Rural parts of Scotland develop differently than in the Islands and Remote Rural areas.

Key Findings

- **The largest sectors** of both the rural and urban economy are **'Public Administration' and 'Distribution, Wholesale and Retail'** in terms of their Gross Value Added. In **Islands and Remote areas, 'Real Estate' (11% GVA of the total economy in Islands and Remote)** and 'Construction' (9% GVA) come next, whereas in more accessible Mainly Rural areas 'Manufacturing' (14% GVA) and 'Real Estate' (12% GVA) are the third and fourth largest sectors.

- **'Agriculture, Fisheries and Forestry'** account for 4% of the GVA in Islands and Remote and 3% in Mainly Rural Scotland. On Scottish average, the sector accounts for 1.3% of the GVA. It is the smallest employer in Mainly Rural Scotland (4.4%) and the fifth smallest employer in the Islands and Remote areas (7.7%).

- **Overall GVA growth since 1997 has been positive for rural Scotland and highest in Mainly Rural areas.** The fastest growing sector is 'Business Services' (up by 169 %) and the smallest growth was in 'Agriculture, Fisheries and Forestry' (up by 34%). Growth rates for the Islands and Remote Rural Scotland are largest in Construction (up by 131%). The worst performing sectors here are 'Agriculture, Fisheries and Forestry' with no growth and 'Financial Services' with a decline of 29%.

- **GVA growth between 2007 and 2015** has been **positive across Scotland** and strongest in **Mainly Rural areas** (24%), followed by GVA growth in Larger Cities and Islands and Remote Rural areas (both 19%) and Urban with Substantial Rural areas (14% GVA growth since 2007).

- **The rural economy is highly variable in economic performance between sectors and local authorities.** Aberdeenshire and Highland councils have the largest GVA in most sectors; the island authorities are much smaller in employment and GVA terms.

- **Women living in Remote Rural Scotland have the lowest annual income** of any group, and the largest median Gender Pay gap being at £5,076.

- **Unemployment is lower in Rural Scotland than urban Scotland, and employment and activity rates are higher,** though East Ayrshire in particular has unemployment far above the national average. Rural out-migration may mitigate this difference.

- The **pattern of employment is different in Rural Scotland.** More people are in part time employment in Remote Rural Scotland (31%) than urban Scotland (27%); and self- employment is more common in Remote Rural Scotland (22%) than urban Scotland (10%).

- **Households in rural areas show differences between Accessible Rural and Remote Rural Scotland.** Accessible Rural areas are characterised by higher incomes, and better access to household services, and lower levels of fuel poverty.

- **68% of private sector employees in Remote Rural Scotland are in small businesses.** This compares with 54% of private sector employees in Accessible Rural Scotland and only 32% of private sector employees in the Rest of Scotland.

List of Acronyms

BEIS	Department for Business, Energy and Industrial Strategy
FTE	Full-time equivalent
GVA	Gross Value Added
HIE	Highlands and Islands Enterprise
IDBR	Inter-Departmental Business Register
ONS	Office for National Statistics
PAYE	Pay As You Earn
PCA	Principal Component Analysis
RESAS	Rural & Environment Science & Analytical Services
SEB	Scottish Economic bulletin
SG	Scottish Government
VAT	Value-added tax

Defining the Rural Economy

There is not an agreed definition of the rural economy in Scotland, and often people use the term as a synonym for agriculture. In this paper, we take the approach that what matters in Scotland's rural economy is what is produced, built, delivered etc. in Rural Scotland and by people living there. As a result, we have looked across all sectors and employment categories to give as full a picture as possible of Scotland's rural economy today.

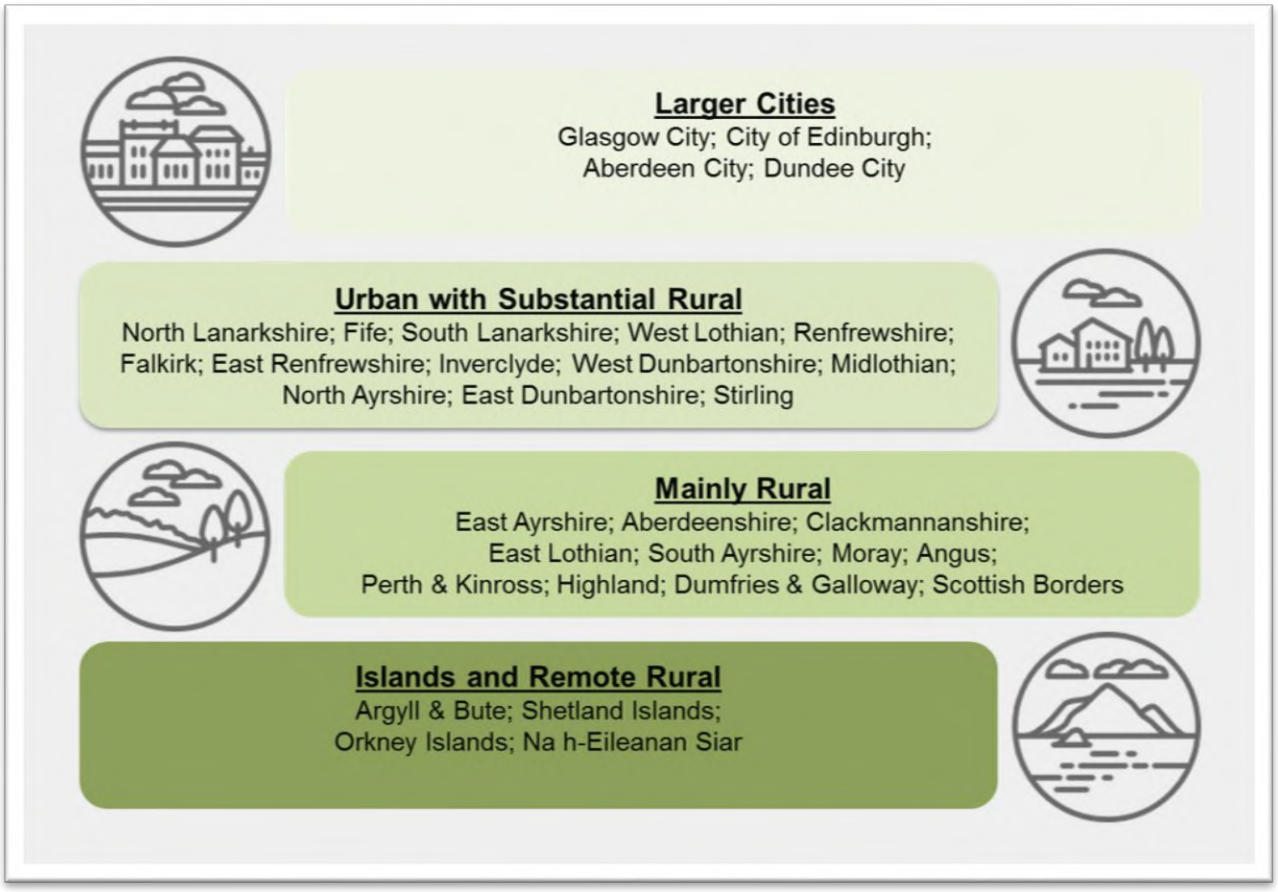
The first challenge when defining the rural economy, is to establish which areas of Scotland count as rural. Whilst this may seem straightforward, there are real challenges due to data availability, and so for different questions different definitions need to be applied.

For **social survey data** there is a standardised approach to defining whether respondents or households are in urban Scotland, or varying degrees of rurality or more Remote Rural Scotland. Definitions for social survey data are updated using data from the National Records of Scotland on population and transport data on remoteness.

Currently, there is no equivalent standardised measurement approach for **rural economy data** as economic data such as Gross Value Added is only available at the local authority level and not at a disaggregate data zone level. So while for social survey data we can distinguish areas in Scotland at a much smaller level, for economic data we need to define which local authority is considered rural or urban. In previous RESAS work we have made use of the Randall definition of Rural Scottish local authorities, first developed in 1985. The Randall definition is binary and only distinguishes between rural and urban. It is solely based on population density (see table below). As a result of using the Randall definition it is hard to get a nuanced picture of the variety within rural Scotland, and the two-fold approach is seen as being a too simplistic instrument for analysis.

In order to get a more holistic and detailed picture of rural Scotland, this paper applies a new classification of the rural economy taking more factors into account that are considered rural, both in the literature and in existing classifications. As a result of a statistical analysis (see methodological annex), **the new RESAS Classification** clusters local authorities according to their level of rurality and establishes four different groups, which are labelled as "Larger Cities", "Urban with Substantial Rural areas", "Mainly Rural" and "Islands and Remote" (see figure 1 below).

Figure 1: RESAS Classification of the rural economy



This new classification of the rural economy does not replace the main Scottish Government Urban/Rural classification which should be used for all non-economic data. The classification is based on a quantitative analysis that allows us to identify key drivers of rurality such as the relative share of population in pensionable age and broadband connectivity. An index was calculated that ranks local authorities according to their degree of rurality. In a second step, these local authorities are then divided into four groups according to their share of population living in urban settlements.

Because this index for the RESAS classification of the rural economy does not neatly follow the share of the urban population, some local authorities are classed differently than the share of their urban population would suggest. South Ayrshire and Angus for example have more than 50% of their population living in large urban and other urban areas and thus should be classed Urban with Substantial Rural. However, because according to their RESAS score they clearly are more rural than Stirling and other more urban areas, they are classed as Mainly Rural. While the island authorities and Argyll and Bute are classed as Islands and Remote Rural due to their RESAS score and the low share of urban population, Highland is classed as Mainly Rural despite the remoteness of large parts of the local authority. This is mainly due to Inverness. Dumfries and Galloway and Scottish Borders are also classed as Mainly Rural and not Island and Remote

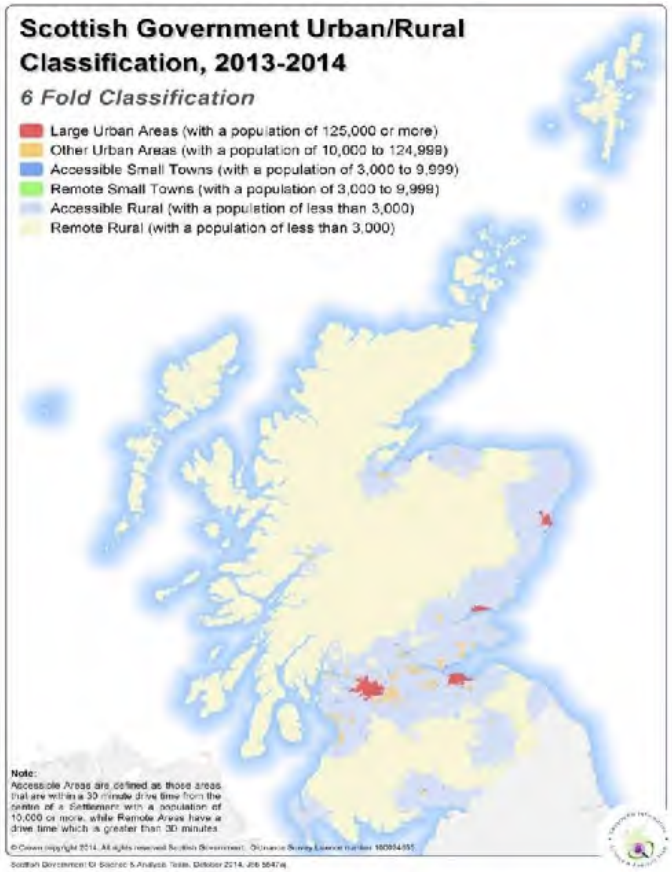
Rural due to their relatively lower share of population living in settlements under 10,000 and generally higher population density compared to the island authorities. These examples illustrate that the RESAS classification as all other Urban/Rural classifications is an aggregation of data and thus simplifies the heterogeneity of the Scottish rural economy. However, as it is based on wide range of data and quantitative analysis, the classification is a useful tool to describe the rural economy.

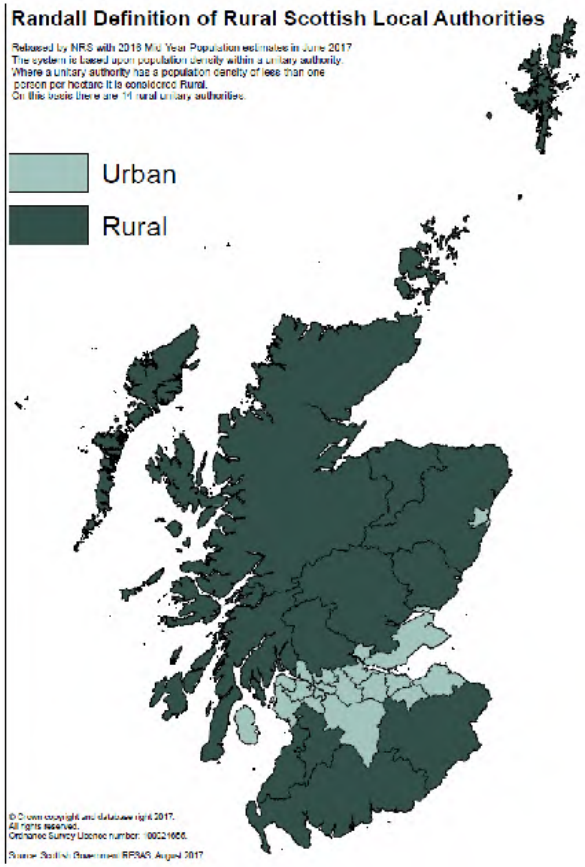
Table 1 Urban/ Rural classifications

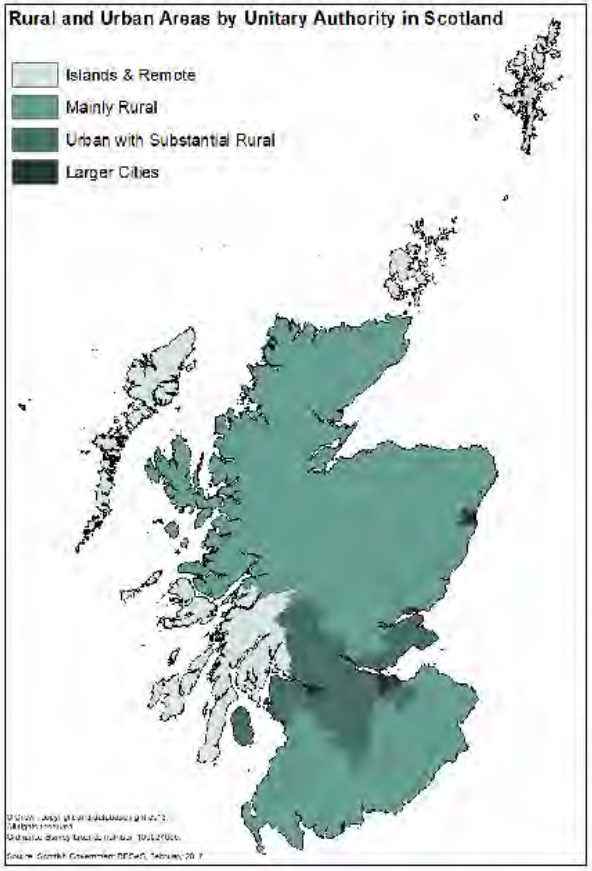
SG Main Urban Rural classification:	The Randall Definition:	The RESAS Classification:
According to the Scottish Government Urban/Rural classification, rural Scotland is defined as settlements with a population of less than 3,000. A settlement is defined to be a group of high density postcodes whose combined population rounds to 500 people or more. By analysing drive times to larger settlements, we can divide rural Scotland into Accessible Rural and Remote Rural. On the standard Urban/Rural classification, around 98% of Scotland's landmass and around 19% of its population are identified as rural. The classification allows for a range of analyses at differing levels, each of which makes it possible to talk in progressively more detail about the statistics for rural households. The data sourced from the Inter-Departmental Business Register for example use the Urban/Rural sixfold classification. These figures exclude self-employment and businesses that are not VAT registered. The Urban/Rural classification is also not applicable to economic data, as for example Gross Value Added figures are only provided at the local authority level and not at the data zone level.	The Randall definition identifies rural local authorities with a population density below one person per hectare. As it is at local authority level it tends to over-state the rural population (e.g. the populations of Stirling, Perth and Inverness are considered 'rural) and understate the rural area (e.g. East Lothian and South Lanarkshire are considered 'urban'). According to the Randall definition of rurality, 89% of Scotland's landmass and 29% of its population is classified as rural (rebased 2017). However, as most economic data is only available at LA level, Randall still serves a useful purpose.[1] The definitions are included in the annex 2 to this paper.	The RESAS definition groups the economies of local authorities according to their degree of rurality. Rurality is defined as a combination of various factors such as demographic and geographical data, broadband connectivity and access to services. Local authorities are divided into four groups and cut-off points have been chosen based on the local authorities' share of the population living in large urban or other urban areas. More than 90% of the population live in large urban areas in the most urban group – classed as 'Larger Cities'. This group is followed by 'Urban with Substantial Rural areas' where more than 50% of the population live in large and other urban areas. Less than 20% of the population live in urban and other urban areas in 'Islands and Remote areas' and the rest is defined as 'Mainly Rural'.

[1] Details on the Randall definition are here: http://www.gov.scot/Publications/2009/08/071 15535/14.

Details of the areas covered by the three definitions are shown in the three maps below. Map one follows the SG Urban/Rural classification to data zones, the second map applies the Randall definition to local authorities and the third map uses the new RESAS Classification for local authorities.







By using the new RESAS definition for the rural economy, it is now possible to look at rural Scotland from a more nuanced economic perspective. Table 2 lists the Gross Value Added for each of the main sectors in Scotland (for a breakdown of the industrial sectors see annex 4). Using the Standard Industrial Classification and applying the RESAS Classification, we can distinguish between Larger Cities[2], Urban with Substantial Rural areas[3], Mainly Rural[4] areas and Islands & Remote areas[5]. Recognising the difference between Mainly Rural and Islands & Remote areas, allows us to clearly identify the most productive sectors in terms of their GVA and identify variation within rural Scotland. Rural Scotland here describes both Mainly Rural areas and Islands and Remote areas. The relative share of each sector is illustrated in chart 1.

Comparing industry sectors in rural and urban Scotland

The focus of this paper is to understand the rural economy. In a first step, we therefore need to see to what extent the rural economy is different to urban Scotland. Table 2 below lists the GVA contributions for each sectors in 2015 using the RESAS classification. We can see that both in urban Scotland (this includes Larger Cities and Urban with Substantial Rural) and rural Scotland (Mainly Rural and Islands and Remote) the two largest sector of the economy in terms of their Gross Value Added are ‘Public Administration; Education; Health’ (23% of the overall Scottish economy) and ‘Distribution; Transport; Accommodation and Food’ (19% of the overall Scottish economy). Together it is estimated that in 2015 the two largest sectors ‘Public administration; education; health’ and ‘Distribution; transport; accommodation and food’ represent nearly half of the rural economy, even though their share varies across areas. In Mainly Rural areas, 42% of the GVA stems from the two largest sectors, while in Islands and Remote areas this share rises to 48%. In Larger Cities this share drops to 39% due to the relatively lower significance of ‘Distribution; transport; accommodation and food’, but reaches 43% in Urban with Substantial Rural areas.

While some sectors such as ‘Other services and household activities’ (4% of the overall Scottish GVA) and ‘Mining, Quarrying, Utilities’ (5% of the Scottish GVA) are similarly important to urban and rural areas, some sectors’ relative share varies. ‘Agriculture, Fishing and Forestry’ for example accounts for 1% of the Scottish average, but is relatively more relevant to rural areas. However, even in rural areas the sector only accounts for 3% of the GVA in Mainly Rural and 4% of

[2] Larger Cities: Glasgow, Edinburgh, Aberdeen and Dundee

[3] Urban with Substantial Rural: East Dunbartonshire, East Renfrewshire, Falkirk, Fife, Inverclyde, Midlothian, North Ayrshire, North Lanarkshire, Renfrewshire, South Lanarkshire, Stirling, West Dunbartonshire, West Lothian

[4] Mainly Rural: Aberdeenshire, Angus, Clackmannanshire, Dumfries & Galloway, East Ayrshire, East Lothian, Highland, Moray, Perth & Kinross, Scottish Borders, South Ayrshire

[5] Islands & Remote: Na h-Eileanan Siar, Orkney Islands, Shetland Islands, Argyll & Bute

the GVA in Islands and Remote Rural areas. Unsurprisingly, ‘Finance’ is relatively more important to Larger Cities (13%) than to Mainly Rural (2%) and Islands and Remote Rural (1%). ‘Business Services’ (10% of the Scottish GVA) is bigger in Larger Cities (13%) than in Mainly Rural (9%) and Islands and Remote Rural Scotland (7%).

There are a number of data challenges which means there can be problems in providing a robust analysis. For example, there are challenges in allocation of business, such as around head office locations, but there is not a clear way to simplify that for publication, and it is not clear if this has a specific urban/ rural effect.

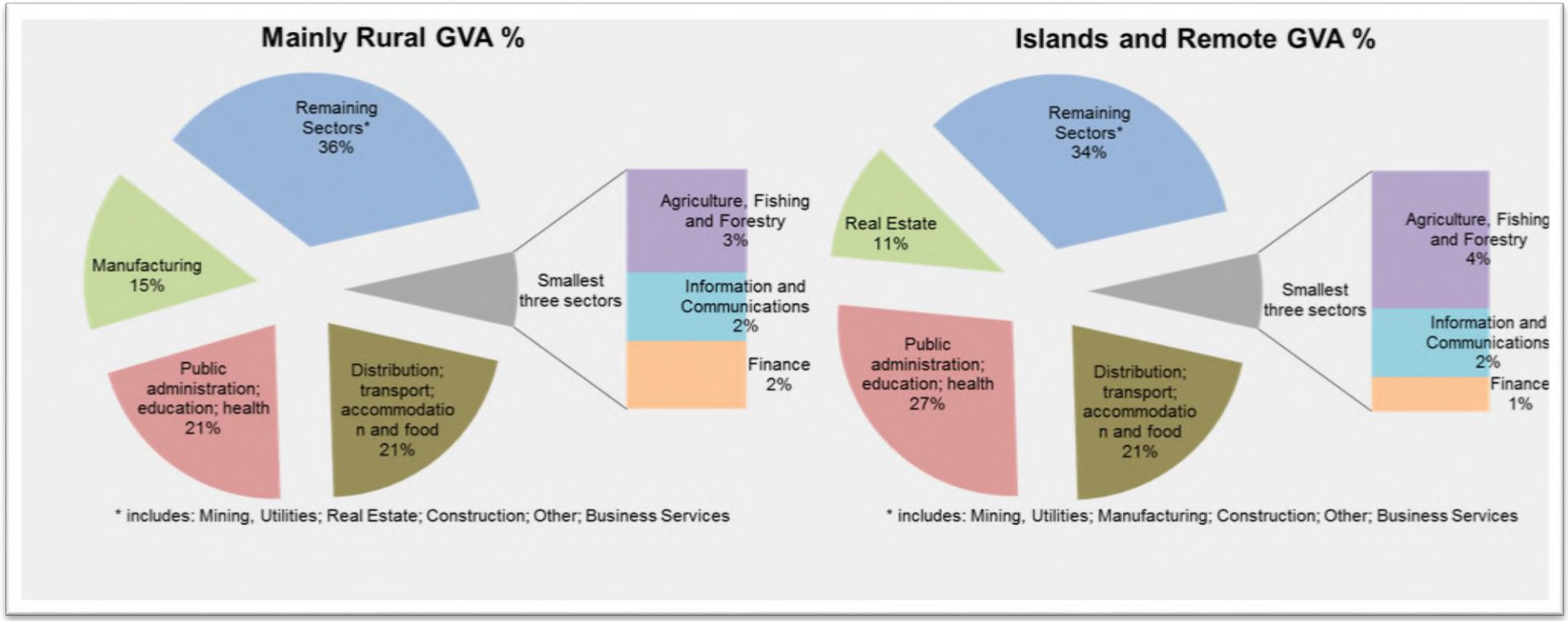
To summarize, data on GVA in 2015 shows how the Scottish rural economy is different from the urban economy. The following section now examines differences within the rural economy.

Table 2: Rural and Urban GVA by Sector 2015

Industry Sector	Larger Cities GVA £m	Urban with Substantial Rural GVA £m	Mainly Rural GVA £m	Islands and Remote GVA £m	Total GVA £m	Larger Cities GVA%	Urban with Substantial Rural GVA%	Mainly Rural GVA%	Islands and Remote GVA%	Total
Agriculture, Fish and Forestry	124	365	998	120	1,607	0.2%	1%	3%	4%	1%
Mining, Quarrying, Utilities	3,153	1,759	1807	225	6,944	6%	4%	6%	7%	5%
Manufacturing	3,375	6,028	4,600	259	14,262	6%	15%	15%	8%	11%
Construction	2,144	3,428	2,336	284	8,192	4%	8%	7%	9%	6%
Distribution; transport; accommodation and food	8,567	8,194	6,523	699	23,983	16%	20%	21%	21%	19%
Information and Communications	2,907	1,294	491	67	4,759	6%	3%	2%	2%	4%
Finance	6,618	1,212	484	25	8,339	13%	3%	2%	1%	7%
Real Estate	4,638	4008	3,745	366	12,757	9%	10%	12%	11%	10%
Business Services	6,952	3185	2,745	237	13,119	13%	8%	9%	7%	10%
Public administration; education; health	1,1875	9,456	6,433	872	28,636	23%	23%	21%	27%	23%
Other services and household activities	1,767	1,617	1,166	118	4,668	3%	4%	4%	4%	4%
Total GVA	52,120	40,546	31,328	3,272	127,266	100%	100%	100%	100%	100%

Source: ONS local authority level GVA Statistics, as at August 2017 (Using Scottish Government RESAS Classification 2018)

Chart 1: The three largest and smallest industry sectors in terms of GVA share in Mainly Rural and Islands and Remote Rural Scotland, 2015



Source: ONS local authority level GVA Statistics, as at August 2017 (Using Scottish Government RESAS Classification 2018)

The largest and smallest sectors in rural Scotland

To understand the Scottish rural economy, chart 1 above illustrates the three largest and three smallest sectors of the economy in Mainly Rural and Islands and Remote Rural Scotland in 2015.

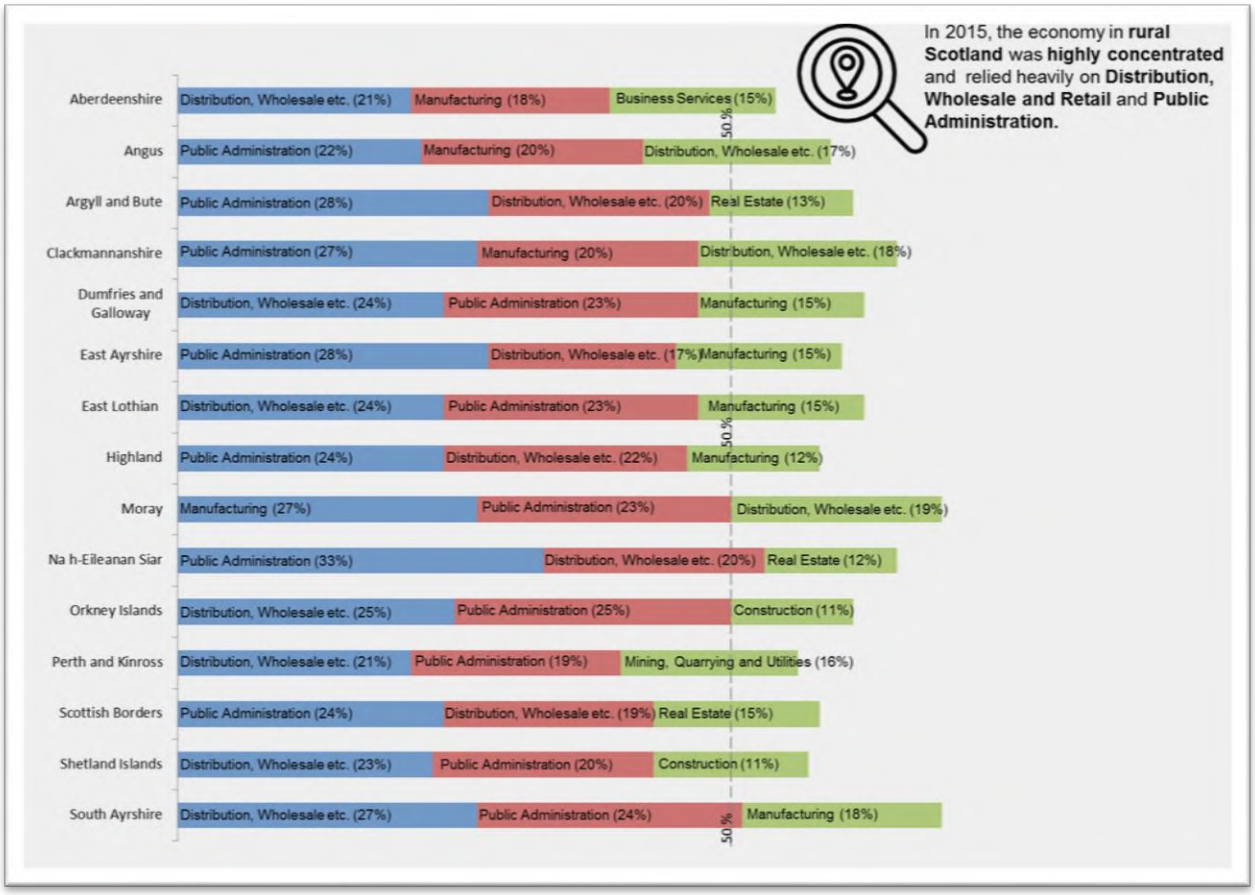
Unsurprisingly, we see that the two largest sectors are ‘Distribution; Transport; Accommodation and Food’ and ‘Public Administration, Education and Health’. However, while the former sector accounts for 21% in both areas, the latter is relatively more important to Islands and Remote areas as 27% of the GVA in the areas stem from and ‘Public Administration, Education and Health’, but only 21% of the GVA in Mainly Rural areas.

Additionally, we see that while the third largest sector in Mainly Rural areas is Manufacturing (15% of the area GVA), it only accounts for 8% of the GVA in Islands and Remote. Here, Real Estate is the third largest sector (11% of the GVA). It needs to be highlighted that Real Estate accounts for 12% in Mainly Rural Scotland, which makes it the fourth largest sector.

The three smallest sectors in 2015 account for around 7% of rural economies. ‘Agriculture, Fishing and Forestry’ generates 3% of the GVA in Mainly Rural Scotland and 4% of the GVA in the Islands and Remote areas. The Scottish average is 1.3%. ‘Information and Communications’ accounts for 2% in both areas and Finance for 2% in Mainly Rural and 1% in Islands and Remote.

Because the RESAS classification aggregates data, it does not fully capture the heterogeneity of rural Scotland. Chart 2 illustrates the three largest sectors for each rural local authority. Overall, we see that as expected Distribution and Public Administration are amongst the three largest sectors in every local authority. Manufacturing is amongst the three largest sectors in Aberdeenshire (18% of local GVA), Angus (20%), Clackmannanshire (20%), Dumfries and Galloway (15%), East Ayrshire (15%), East Lothian (15%) Highland (12%), Moray (27%) and South Ayrshire (18%). Construction contributes substantially to the economy in Orkney Islands (11%) and Shetland Islands (11%), whereas ‘Real Estate’ accounts for 15% of the economy in Scottish Borders, 12% in Na h-Eileanan Siar and 13% in Argyll and Bute. ‘Business Services’ is the third largest sector in Aberdeenshire (15%) and 16% of the GVA in Perth and Kinross stems from ‘Mining, Quarrying and Utilities’.

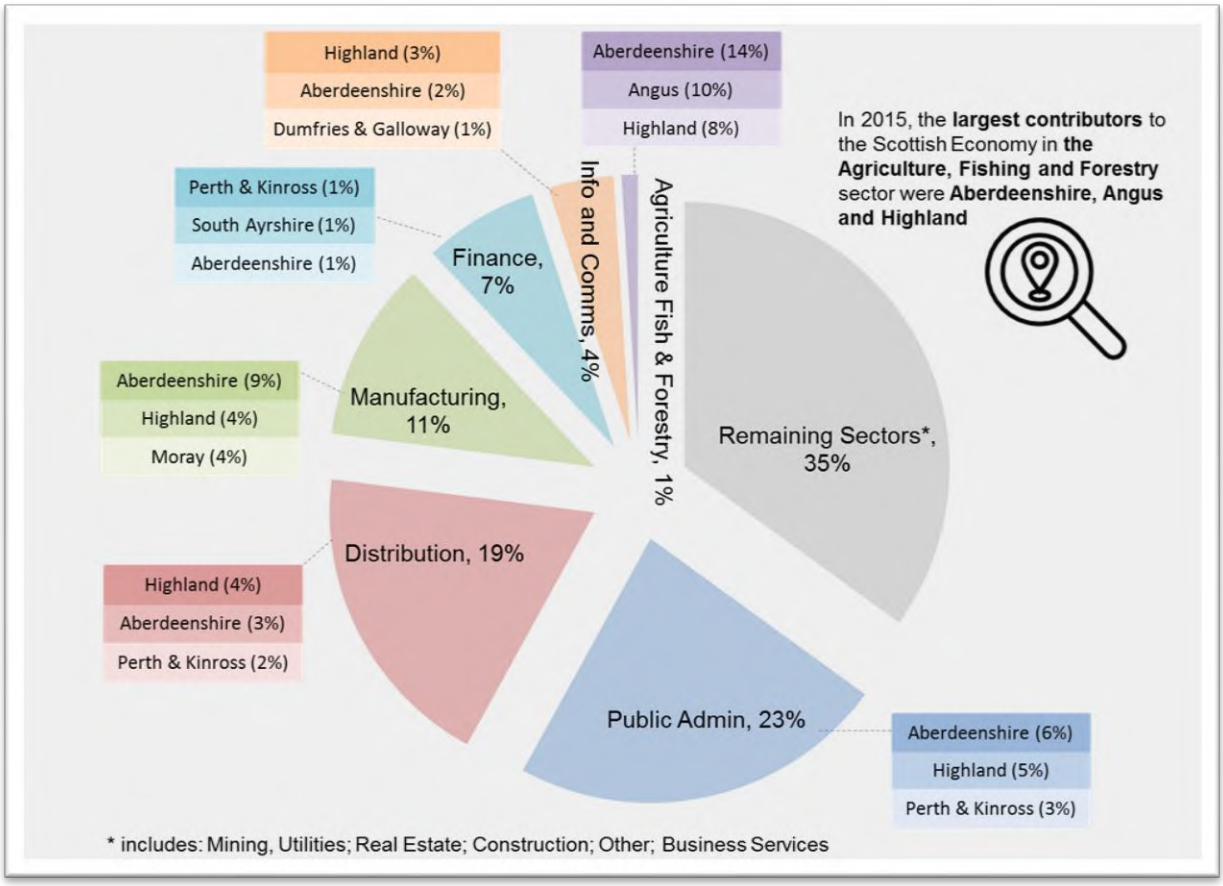
Chart 2: Three largest sectors in each local authority 2015 (% of LA GVA in brackets)



Source: ONS local authority level GVA Statistics, as at August 2017

The question remains which local authorities contribute the most to the three strongest and smallest sectors of the Scottish economy. Chart 3 below shows which local authority contributed the greatest proportions of sectorial GVA in the Rural economy across Scotland:

Chart 3: Largest contributions to Sector by local authorities of rural economy, 2015



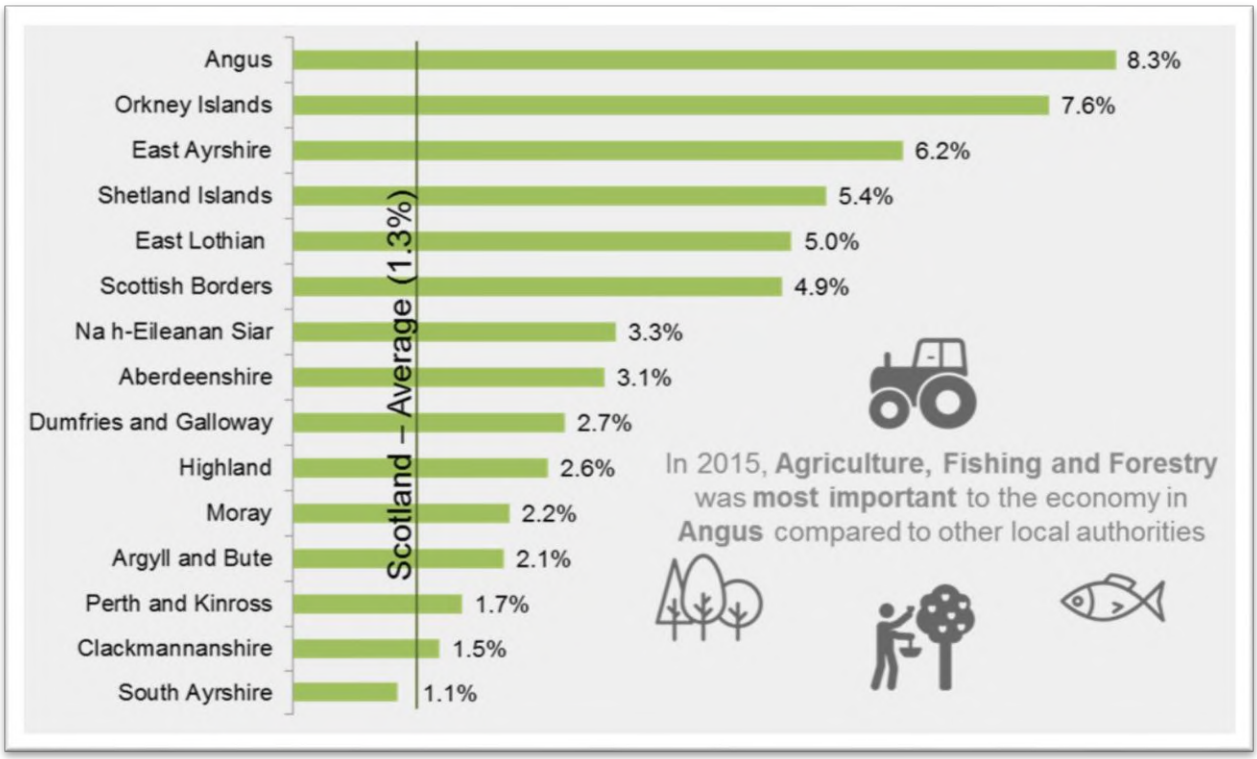
Source: ONS local authority level GVA Statistics, as at August 2017

The large and populous local authorities – Highland and Aberdeenshire – dominate the overall performance of Scotland's rural economies. Nevertheless, the two sectors with a relatively large rural contribution are 'Manufacturing' and 'Agriculture, Fishing and Forestry'. As discussed above, on Scottish average the Agriculture sector only accounts for about 1% of the GVA. A third of this stems from Aberdeenshire (14%), Angus (10%) and Highland (8%). Aberdeenshire and Highland – followed by Moray – also contribute substantially to the Manufacturing sectors. Aberdeenshire, Highland and Perth and Kinross dominate the rural economy's contribution to the Scottish economy in the Distribution, Public Administration and Information and Communications sectors. Perth and Kinross are the third biggest contributor amongst the rural local authorities to the Scottish Distribution and Public Administration sector with 2% of the Scottish Public Administration GVA and 3% of the Distribution GVA generated in the local authority.

The share of Agriculture, Fishing and Forestry for the rural economy

Scotland's rural economy is often equated with 'Agriculture, Fishing and Forestry'. However, with a total GVA of £1.6 billion (see table 2), 'Agriculture, Fishing and Forestry' only accounts for about 1% of the overall Scottish economy. Even in rural Scotland, the GVA share of the sector is marginal compared to other sectors of the economy. The largest contributor to the sector unsurprisingly is the rural economy. Of the £1.6 billion GVA nearly 70% is generated in Mainly Rural and Islands and Remote areas. Chart 4 below illustrates which local authorities contribute the most. In Angus and Orkney Islands, 8% of the overall GVA is based on 'Agriculture, Fishing and Forestry', followed by East Ayrshire with 6%. In contrast to this, the sector only accounts for 1% of the GVA in Clackmannanshire and South Ayrshire and 2% in Moray, Argyll and Bute and Perth and Kinross.

Chart 4: GVA share of Agriculture Fish & Forestry of rural local authorities, 2015



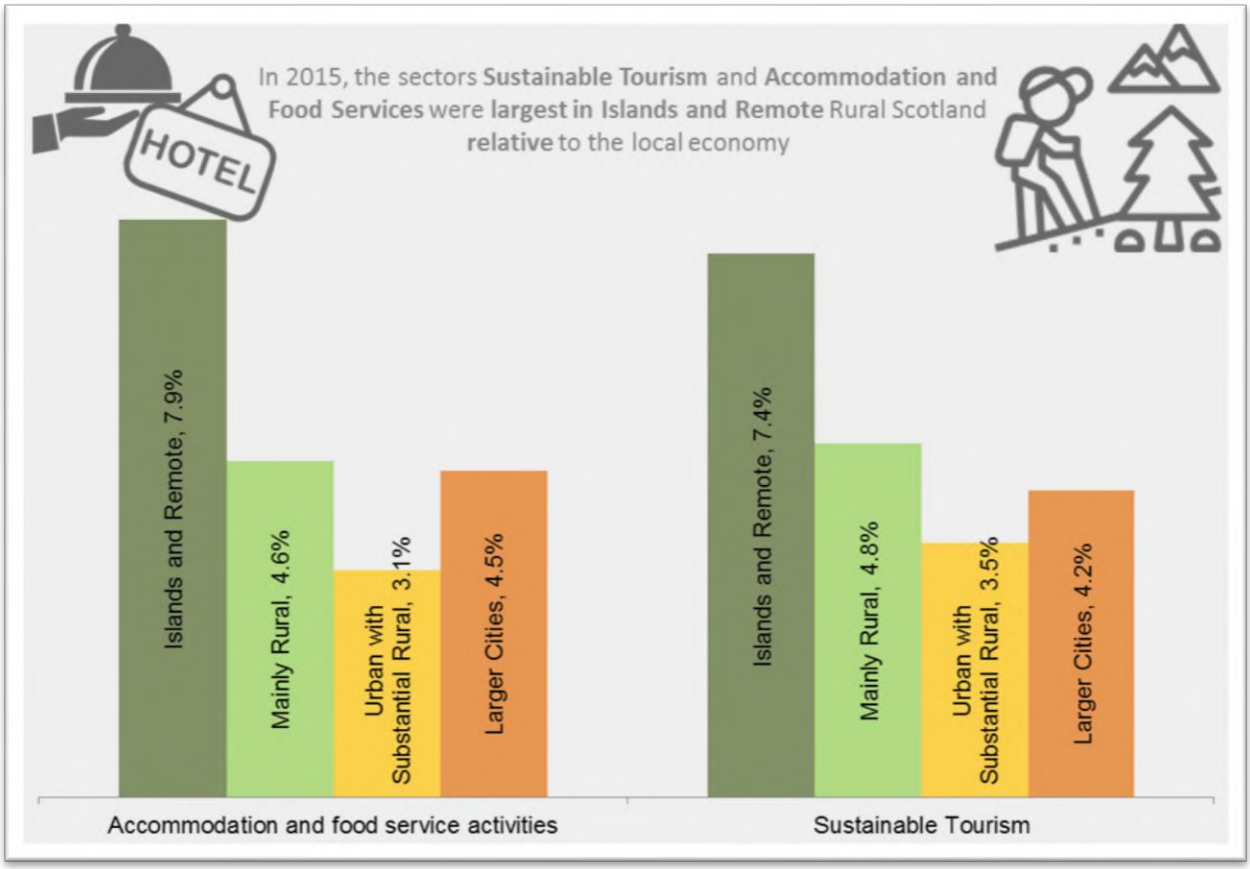
Source: ONS local authority level GVA Statistics, as at August 2017

Examining sectors independently from each other does not reflect how interconnected these are. This is for example the case for the sector 'Agriculture, Forestry and Fishing' that is – among others – linked with 'Accommodation and Food Services' and 'Sustainable Tourism' in particular. Chart 5 illustrates the importance of those two sectors to the rural economy. It

needs to be highlighted here that in contrast to all previous graphs, the data does not stem from the ONS, but from the Inter-Departmental Business Register, produced via the Annual Business Survey. This data is structured differently so it is possible to dive deeper into individual sectors. It also allows us to more closely examine sectors that are connected with other industrial sectors which helps us to understand that sectors within the rural economy are not independent. However, data from the Inter-Departmental Business Register excludes the 'Finance' sector, parts of the agriculture and the public sector and also excludes non registered VAT businesses and self-employment. Hence, the data presented below does not reflect the GVA share of 'Sustainable tourism' and 'Accommodation and food services' of the overall economy, but is helpful in order to show the significance of not only agriculture, but also its surrounding sectors.

The agricultural sector contributes to food production, preservation of natural resources, employment and sustainable development of the rural territory. Besides agriculture, the two sectors tourism and food and accommodation are therefore affected by these areas.

Chart 5: Private Sector GVA share of 'Sustainable Tourism' and 'Accommodations and Food Services', 2015

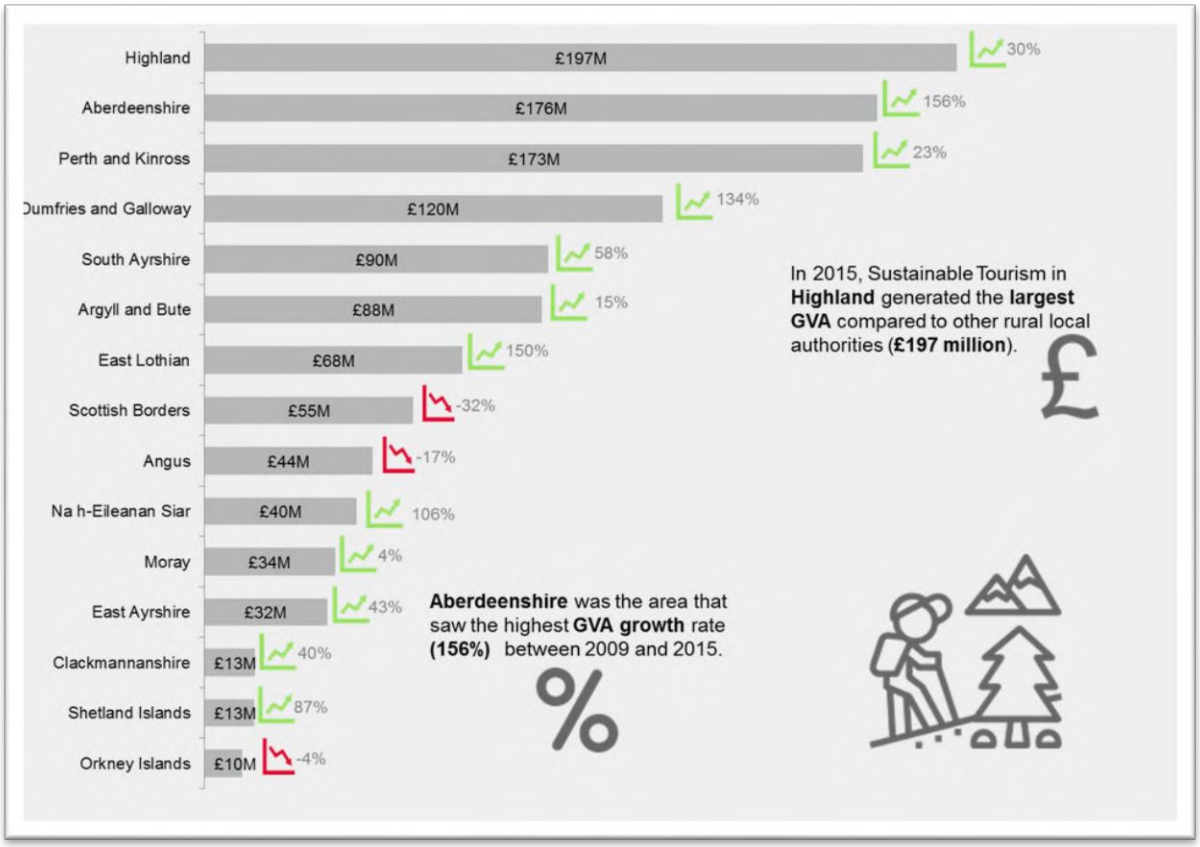


Source: Inter-Departmental Business Register, as at March 2016 (Using RESAS Classification 2018)

Following the RESAS Classification, data from the Annual Business Survey show that in 2015, accommodation and food services accounted for 7.9% of the GVA in Mainly Rural parts of Scotland (chart 5). This however only includes the private sectors and thus excludes the public sector, which, as we know from the previous section, accounts for a third of the GVA in Remote Rural Scotland. In rural areas of Scotland, accommodation and food services accounts for 4.6% to the economy which is similar to the cities. In Urban with Substantial Rural areas, the sector only contributes 3.1% to the economy. We can see similar trends for the sustainable tourism sector that is relatively more important for remote areas, followed by rural and urban areas.

Chart 6 shows the contributions of each rural local authority to 'Sustainable Tourism' in 2015 and the sector growth between 2009 and 2015.

Chart 6: 2015 GVA performance of Mainly Rural and Islands & Remote local authorities in the 'Sustainable Tourism' sector and changes between 2009 and 2015



Source: Scottish Annual Business Statistics, as at August 2017 (using RESAS Classification, 2018)

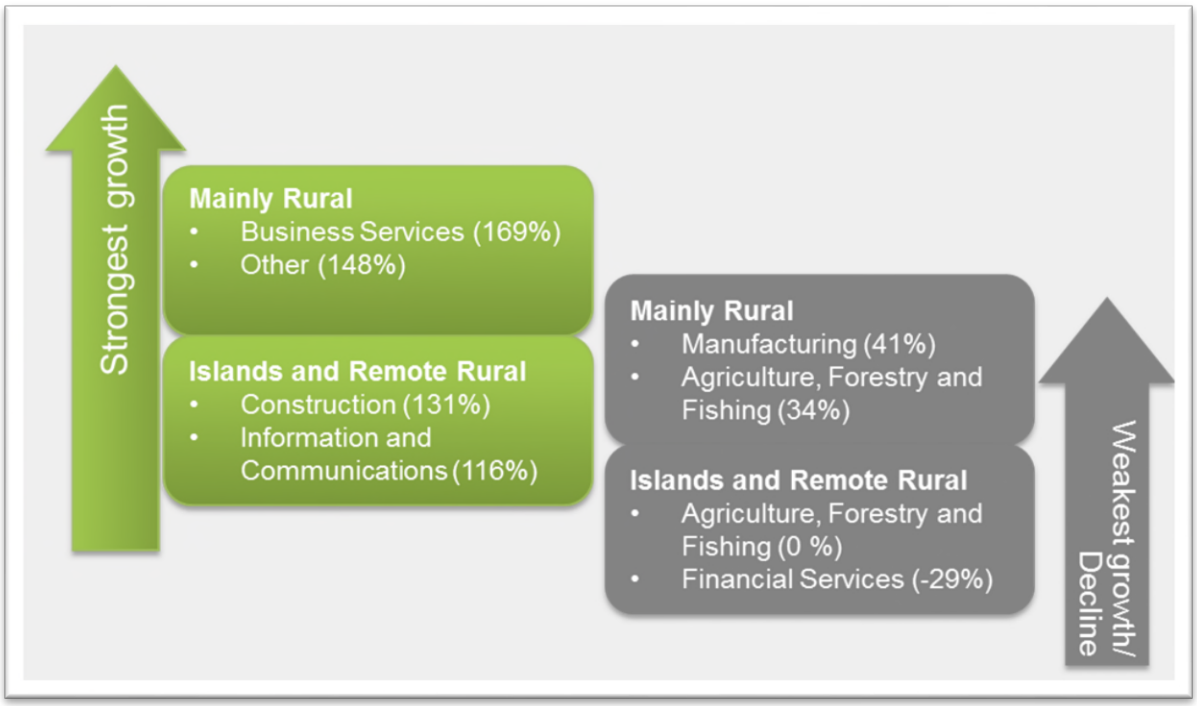
In 2015, Highland, Aberdeenshire and Perth and Kinross dominated the 'Sustainable Tourism' sector in rural Scotland. Aberdeenshire has also seen the strongest relative growth as the sector's GVA has increased by 156%. In other

words, Aberdeenshire's Sustainable Tourism has grown by 2.5 times between 2009 and 2015. There has been positive growth in all local authorities with the exception of Scottish Borders (down by 32%), Angus (-17%) and Orkney Islands (down by 4%).

Rural growth over time

This positive trend of a growing rural economy is also captured by chart 6 below that highlights the sectors that have grown strongest since 1997 in rural Scotland. The data used here stems from the ONS and includes all sectors and both the public and private sector. Scotland's Mainly Rural economy has nearly doubled between 1997 and 2015, from around £16.4 billion in 1997 to around £31.3 billion in 2015 (91% increase), while the economy in Islands and Remote areas has grown from £1.9 billion in 1997 to £3.3 billion in 2015 (74% increase). For a more detailed breakdown see table 1.2 and 1.3 in annex. Figure 2 below illustrates the sectors that have grown strongest and weakest between 1997 and 2015.

Figure 2: Relative GVA performance of strongest and weakest growth sectors in rural local authorities – between 1997 and 2015 (1997=100)



Source: Inter-Departmental Business Register, as at March 2016 (Using Scottish Government RESAS Classification 2018)

Here, seven sectors out of eleven are most striking: 'Business Services', 'Other Services and Household Activities', 'Information and Communications',

‘Construction’, ‘Agriculture, Fishing and Forestry’, ‘Manufacturing’ and ‘Financial Services’. While the former four sectors have shown the strongest relative GVA growth between 1997 and 2015, the latter three have grown the least in relative terms.

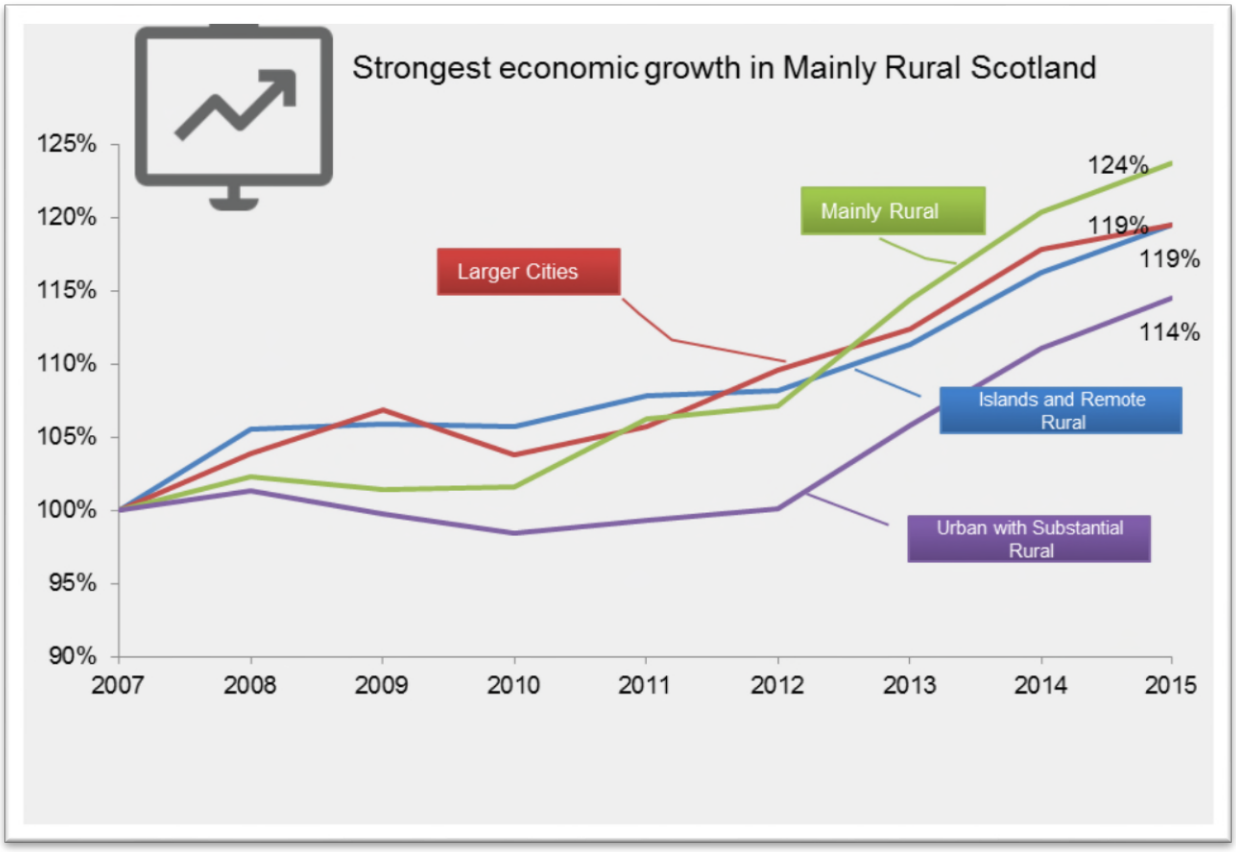
‘Business Services’ accounts for 7% (Islands and Remote) to 9% (Mainly Rural) of the GVA in rural areas. This sector has grown by 169% since 1997 in Mainly Rural areas. ‘Other services and household activities’ accounting for 4% in both rural areas has grown by 148% in Mainly Rural areas. Therefore, these two sectors have shown the strongest GVA increase in the area. In Islands and Remote Rural areas, ‘Information and Communications’ and ‘Construction’ have grown strongest. ‘Information and Communications Services; accounts for 2% in Island and Remote Rural areas and has more than doubled since 1997. ‘Construction’ accounts for 9% of the GVA in the area and has even increased by 131%.

On the other end of the scale, we find that ‘Agriculture, Fishing and Forestry’ – accounting for 3% (Mainly Rural) to 4% (Islands and Remote) – has shown the lowest GVA growth in rural Scotland with no growth at all in Islands and Remote and a growth of 34% in Mainly Rural Scotland.

‘Manufacturing’ – accounting for 15% of the GVA in Mainly Rural – has increased by 41% in Mainly Rural Scotland and lastly Financial Services (1% of the GVA in Islands and Remote) is the only sector in rural Scotland that has shrunk by 29% in Islands and Remote Rural Scotland.

Looking at the medium term trends for 2007-2015 (chart 7), covering the period of the credit crunch and recession, we can see that overall the Scottish economy has grown since 2007 with stark increases particularly after 2012. What is more, we see that the Mainly Rural economy has grown strongest (up by 24%), followed by the Islands and Remote Scotland and Larger Cities (both up by 19%) and Urban with Substantial Rural areas (up by 14 %). In real terms, the economy in Mainly Rural Scotland has grown from £25.3 billion to £31.3 billion, and in the Islands and Remote Rural areas from £2.7 billion to £3.3 billion (see tables 1.2 and 1.3 in annex 1).

Chart 7: GVA relative growth, by area, 2007 to 2015 (2007=100)



Source: Inter-Departmental Business Register, as at March 2016 (Using Scottish Government RESAS Classification 2018)

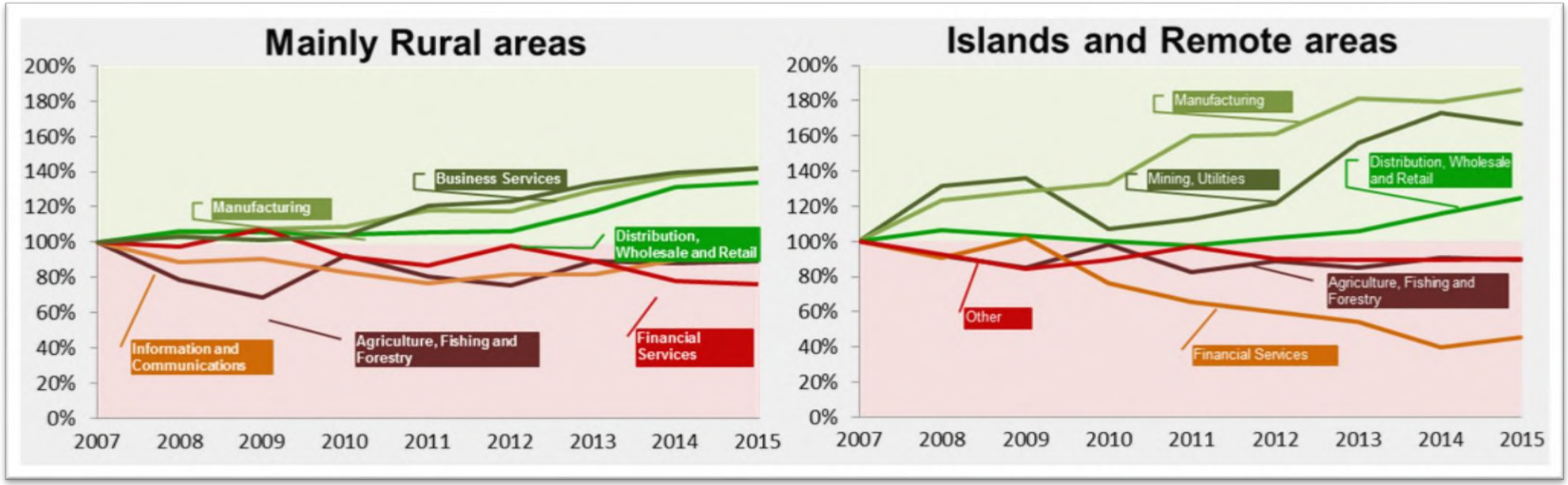
However, there are significant differences between rural and Remote Rural areas of Scotland and also between the sectors. For simplicity, chart 8 only shows the three sectors with the strongest growth and the three sectors with the weakest growth or even decline.

Overall, we can see that growth rates in more remote parts of Scotland (Islands and Remote) range wider than in mostly rural areas with the highest increase of more than 86 % in Manufacturing and 67% in Mining and Utilities. While the majority of sectors have grown at least slightly, we find that 'Financial Services' have diminished by more than half and 'Agriculture, Fishing and Forestry'; and 'Other Services' have also shrunk to 90% of their 2007 value. In more accessible Mainly Rural areas, the 'Financial Sector', 'Agriculture, Fishing and Forestry' and the 'Information and Communication' Sector have lower GVA than in 2007.

The rural economy has generally grown between 1997 and 2015 and has also significantly grown between 2007 and 2015. However, we need to clearly distinguish between Mainly Rural and the Islands and Remote parts of Scotland. This is because even though the overall rural economy has grown, growth rates and also the sectors affected vary crucially between areas.

Agriculture, Fishing and Forestry in the most rural parts of Scotland has grown compared to 1997, but growth has slowed down in the 2000s. Compared to 2007, the sector has actually declined, most noticeably in the Islands and Remote parts of Scotland.

Chart 8: Relative GVA performance of the three fastest and weakest growing sectors – medium term picture, 2007 to 2015 (2007=100)

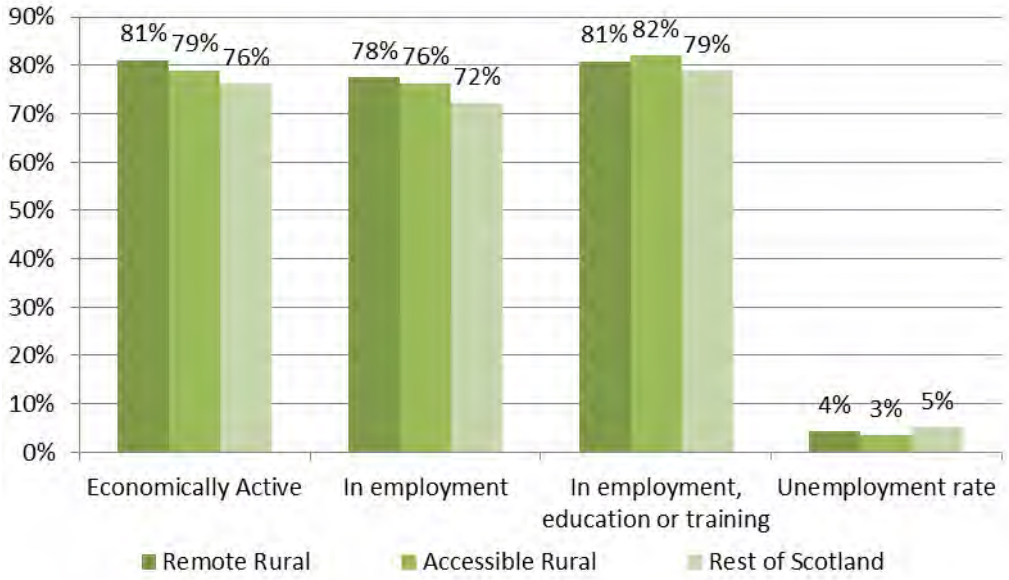


Source: Inter-Departmental Business Register, as at March 2016 (Using Scottish Government RESAS Classification, 2018)

Employment and Unemployment in Rural Scotland

Employment and unemployment are key drivers of public policy and of the Scottish Rural economy. Employment is measured through a range of household surveys including the Scottish Household Survey, and through the Labour Force Survey. There are structural issues which may affect employment and unemployment in rural Scotland, people may choose to move from rural to urban areas in search of employment reflecting the greater job opportunities. This combined with age structure issues can give rural and especially Remote Rural particular demographic challenges. Bearing this in mind however, on average, unemployment is lower in both Accessible Rural and Remote Rural Scotland, as shown in chart 9 below:

Chart 9: Unemployment and Employment Rates in Remote Rural, Accessible Rural and Urban Scotland compared, 2016



Source: Annual Population Survey in Scotland, Jan-Dec 2016; Using the Scottish Government Urban Rural Classification 2013-2014

The chart above shows four different ways of understanding employment and unemployment. The first set of columns shows people employed or looking for work. The second set shows those employed as a percentage of the total working age population. The third shows those in employment, education and training. The final set shows the unemployment rates. The trend is consistent for each set, showing that unemployment is higher in Urban Scotland than in either of the rural classifications, at around 6% for Urban Scotland and 4% for both remote and Accessible Rural Scotland. However looking across the piece

it is possible to discern that overall in employment terms Remote Rural Scotland is slightly better than Accessible Rural, and Accessible Rural is slightly better than urban Scotland. There may be issues around job quality or preferences but it is not possible to discern them in the data we have. This is shown in the economic activity rate, which is highest in Remote Rural Scotland, the overall employment rate, which again is highest in Remote Rural Scotland, and the employment, education or training class, which again is highest in Remote Rural Scotland.

There are more recent figures if we use the RESAS defined Rural local authorities. This approach specifically identifies there are only two which have unemployment levels higher than the Scottish average of 4.8% (2016). These two areas are East Ayrshire and South Ayrshire, with East Ayrshire far above the national average. At the other end of the scale, both the Orkney Islands and Shetland Islands have very low rates and levels of unemployment, as does Aberdeenshire. It is not possible to say whether this represents a better performing labour market in Remote Rural areas, or whether there is simply the out-migration from those areas of those who would otherwise likely be unemployed. In practice, it could be an element of both, though it would take longitudinal research to establish the relative importance of each aspect. The table is below:

Table 3: Unemployment rates and levels in Rural local authorities

Local authority	Unemployment rate 2016	Unemployment level 2016
Aberdeenshire	3.8%	5,300
Angus	4.1%	2,500
Argyll and Bute	3.7%	1,600
Clackmannanshire	5.6%	1,300
Dumfries and Galloway	4.1%	3,000
East Ayrshire	6.5%	3,500
East Lothian	4.4%	2,200
Highland	3.7%	4,500
Moray	4.1%	2,000
Na h-Eileanan Siar	3.9%	500
Orkney Islands	2.6%	300
Perth and Kinross	3.4%	2,600
Scottish Borders	4.3%	2,400
Shetland Islands	2.8%	400
South Ayrshire	5.0%	2,600

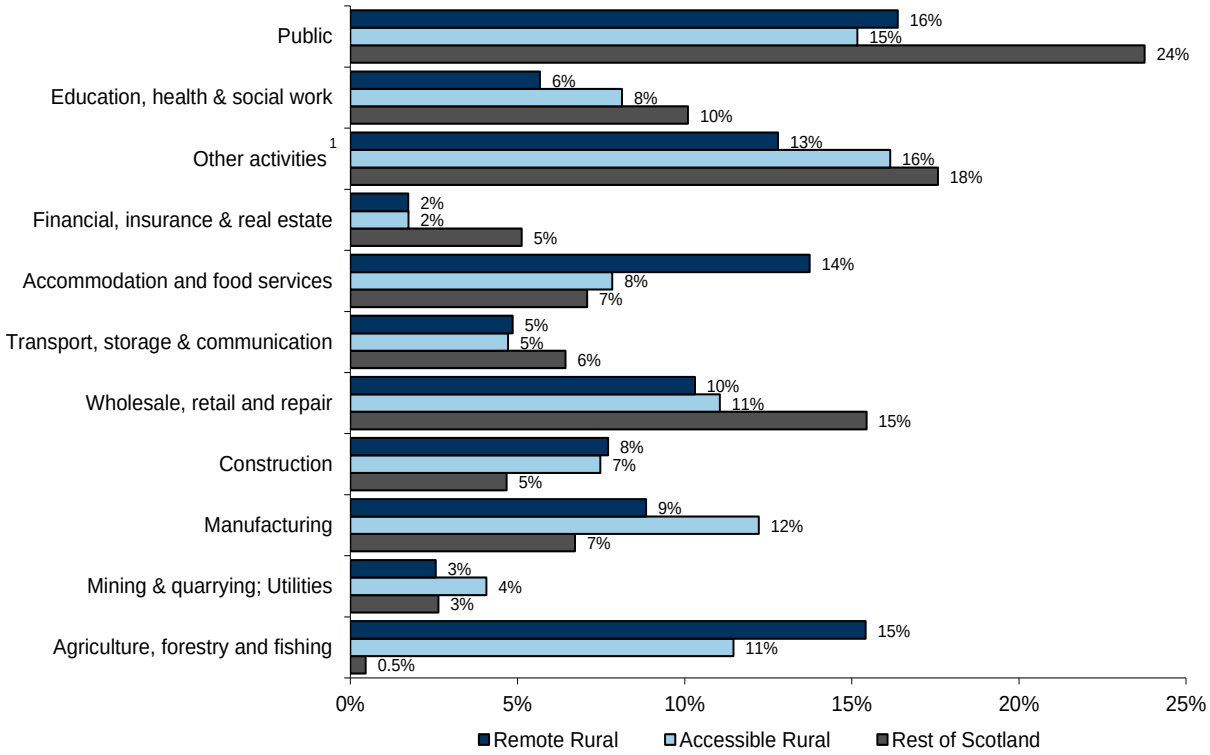
Source: Local authority web tables from the Regional Employment Patterns in Scotland: Statistics from the Annual Population Survey publication using RESAS Classification 2018.

Employment by sector, excluding small businesses and self-employment

Employment data shows a different picture to that from the economic data, reflecting the better definition found at postcode level. The Scottish Household Survey offers the opportunity to go down to a lower level than the economic survey data used above, and also to make use of the Scottish Government's Urban – Rural classification, which is much more accurate to the rurality of the area, as it is based on postcode areas which are much smaller and less heterogeneous than local authorities. With this data we can look at the distinction between Accessible Rural Scotland (areas within a 30 minute drive-time of population centres; and Remote Rural Scotland, which are more inaccessible, see table 1). In this section we will look at employment data; and then a range of accessibility and household data to show the constraints on households living in Rural Scotland. However, it needs to be noted here that the data does not cover very small businesses without VAT or PAYE schemes (i.e. self-employed and those with low turnover and without employees) and some non-profit making organisations. Micro-businesses that are highly common in rural Scotland are partly not represented in the data.

As can be seen in the chart below which identifies employment by location of the workplace there are strong distinctions between Remote Rural, Accessible Rural and urban Scotland.

Chart 10: Employment by industry sectors and in the public sector by geographic area, 2016[6], excluding self-employment and small businesses



Source: Inter-Departmental Business Register, as at March 2016 (Using Scottish Government Urban Rural Classification 2013-2014)

This figure shows the distribution of employment across sectors across the threefold SG Urban/Rural classification that is based on postcodes and thus more detailed. The top line of each set is the figure for Remote Rural Scotland, the middle line Accessible Rural Scotland and the third line is the rest of Scotland.

In Remote Rural areas, ‘Agriculture, forestry and fishing’ is the largest source of private sector jobs (15%) followed by ‘Accommodation and food services’ (14%) and then ‘Other activities’ (13%). In Accessible Rural areas, ‘Other activities’ (16%), ‘Manufacturing’ (12%) ‘Agriculture, forestry and fishing’ (11%) and ‘Wholesale, retail and repair’ (11%) are the largest sources of private sector jobs. ‘Agriculture, forestry and fishing’ is a sector that shows the greatest difference across Scotland, accounting for 15% of workers in Remote Rural areas compared to 11% in Accessible Rural areas and 0.5% in the rest of Scotland. Conversely, other sectors such as ‘Wholesale, retail and repair’ and ‘Financial, insurance & real estate’ are a larger source of jobs in the rest of Scotland than in rural areas. Given the overall higher employment rates in Remote Rural Scotland, it may be that agriculture, forestry and fishing is helping to support the higher employment rate, but in low paying activities.

[6] 'Other activities' consists of: 'Professional, scientific and technical activities', 'Administrative and support service activities' and 'Arts, entertainment and recreation; Other service activities'.

One area that does stand out in the household level data is the relatively lower dependence of Accessible Rural and Remote Rural areas on public sector employment at only 15% and 16% of jobs in those areas as compared with 24% for the rest of Scotland. Given that the overall GVA contribution of the public sector is similar for both rural and urban Scotland this may reflect relatively higher non-employment related costs in rural area.

The data discussed above is aggregated at data zone level and therefore allows us a very detailed distinction in terms of rurality. However, self-employment and very small businesses are not included in the dataset. The Annual Population Survey includes these businesses, but data is aggregated at the local authority level, which is why for the following section, the analysis follows the RESAS Classification.This also allows us to compare GVA and employment, as we need to take both into account if we want to understand what the rural economy looks like.

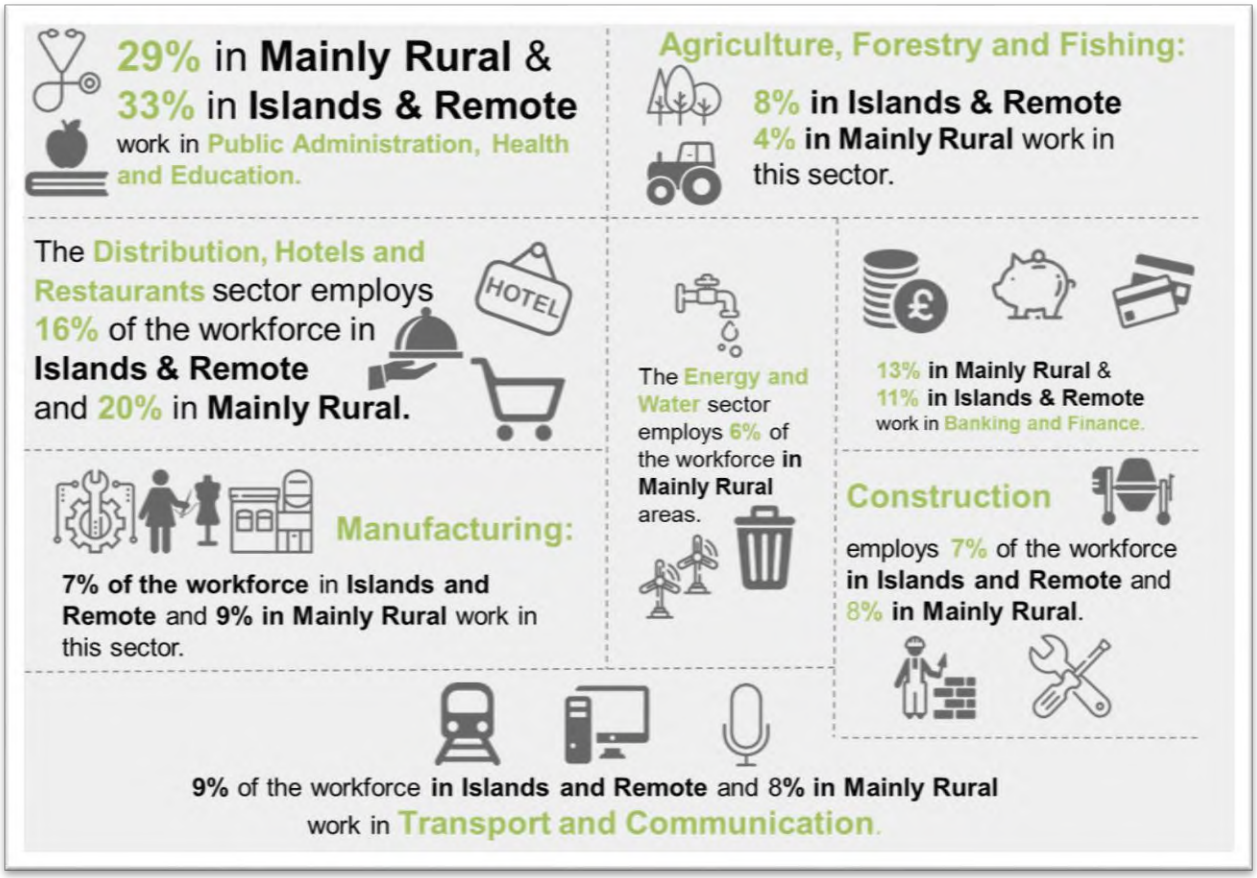
When comparing GVA and employment, we need to be aware of the different definitions used in the datasets as different coding of industry sectors was applied. Thus, rural Scotland is defined as Mainly Rural and Islands and Remote following the RESAS Classification.

Employment by Sector, including small businesses and self-employment

Figure 3 and table 4 help us to understand variations in employment rates between Mainly Rural, Islands and Remote and the Rest of Scotland. The top line of each set is the figure for Islands and Remote, the middle line Mainly Rural Scotland and the third line is the rest of Scotland. Because the data presented below is only available at the local authority level and codes sectors differently, we cannot fully compare it with the data discussed above and shown in chart 10.

However, we can see that when self-employment and very small businesses are also included, the patterns change quite substantially. In every sector, we see some variation of employment numbers between rural areas (see table 4), but overall urban and rural economies look quite similar. ‘Public Administration, education and health’ (figure 3) – comparable to ‘Public’ and ‘Education, health and social work’ (chart 10) – remain the largest employer for all areas in Scotland, the importance of ‘Agriculture, Fishing and Forestry’ seems to decline when self-employment and non-VAT registered businesses are included. In Mainly Rural areas the sector only employs 4.4% of the workforce. It is relatively more important in the Islands and Remote areas (7.7%). This makes the sector the smallest one in terms of employment in Mainly Rural and fifth in Islands and Remote areas.

Figure 3: Rural and urban employment rates, arranged by relative size in Scottish economy – including self-employment and small businesses



Source: Regional Employment Patterns in Scotland: Statistics from the Annual Population Survey, 2017 (Using Scottish Government RESAS Classification 2018)

We can see however that for the rural economy overall the sectors ‘Energy & Water’ and ‘Agriculture, Fishing & Forestry’ are more important in terms of employment numbers compared to the rest of Scotland. Even though the share of the workforce employed in Public Administration, education and health is smaller in Mainly Rural areas compared to the rest of Scotland, it still remains the largest employer overall. About 50% of the workforce is employed in ‘Public administration, health and education’ and ‘Distribution, hotels and restaurants’. As expected, ‘Banking and finance’ is relatively less important in rural areas.

While ‘Manufacturing and Construction’ is noticeably more relevant to Mainly Rural areas and employs 9% of the workforce, it employs 6.5% of the workforce in the Islands and Remote parts of Scotland. ‘Construction’ employs between 7 to 8% of the workforce in urban and rural Scotland. ‘Transport and communication’ seems more significant for the Islands and Remote areas with 9% employed in this sector in contrast to only 6% in Mainly Rural areas. The sample size for the sectors ‘Energy and Water’ and ‘Other Services’ is too small for Islands and Remote areas, which is why it cannot be included.

Table 4 Rural and urban employment by Sector 2016, (aged 16+) by Industrial Group and Area

Area	Agriculture, forestry and fishing	Energy and water	Manufacturing	Construction	Distribution, hotels and restaurants	Transport and communication	Banking and finance	Public admin, education and health	Other services	Total
Scotland	1.8%	3.4%	7.7%	7.1%	18.7%	7.7%	16.0%	30.9%	6.1%	2,581,000
Larger Cities	*	2.9%	5.5%	5.9%	17.0%	9.6%	20.0%	31.6%	*	718,100
Urban with Substantial Rural	0.8%	2.2%	8.7%	7.4%	19.2%	7.8%	16.0%	31.9%	5.6%	1,061,400
Mainly Rural	4.4%	5.6%	8.7%	7.7%	19.9%	5.7%	12.7%	28.6%	6.0%	721,800
Islands and Remote	7.7%	*	6.5%	7.4%	16.3%	8.9%	11.0%	32.9%	*	79,700

1. Figures may not round to 100% due to missing values
2. Level rounded to the nearest 100
3. Some values are suppressed using * where the data is limited by small sample sizes

Source:ONS, Annual Population Survey (2016) (Using Scottish Government RESAS Classification 2018).

Patterns of Employment

Going beyond employment numbers, we can also see that the pattern of people's daily employment in Remote Rural Scotland is not the same as in urban Scotland. Self-employment is more than twice as high – 22% of people are self-employed as compared with 10% for the rest of Scotland. People in Remote rural Scotland are also more likely to work a second job – 8% for Remote Rural vs. 3% for the rest of Scotland; and also more likely to work from home (24% for Remote Rural Scotland vs. 9% for the Rest of Scotland). All is shown in the table below:

Table 5: Patterns of work by geographic area, 2016, population aged 16+

Local authority	Remote Rural	Accessible Rural	Rest of Scotland
Percentage of employed males who are:			
Self-employed	32%	22%	14%
Working part time in main job	14%	12%	13%
With a second job	6%	4%	2%
Homeworkers[1]	32%	21%	11%
Percentage of employed females who are:			
Self-employed	17%	15%	8%
Working part time in main job	53%	44%	41%
With a second job	10%	5%	4%
Homeworkers[1]	21%	15%	8%
Percentage of all employed who are:			
Self-employed	25%	18%	11%
Working part time in main job	33%	28%	26%
With a second job	8%	4%	3%
Homeworkers[1]	27%	19%	10%

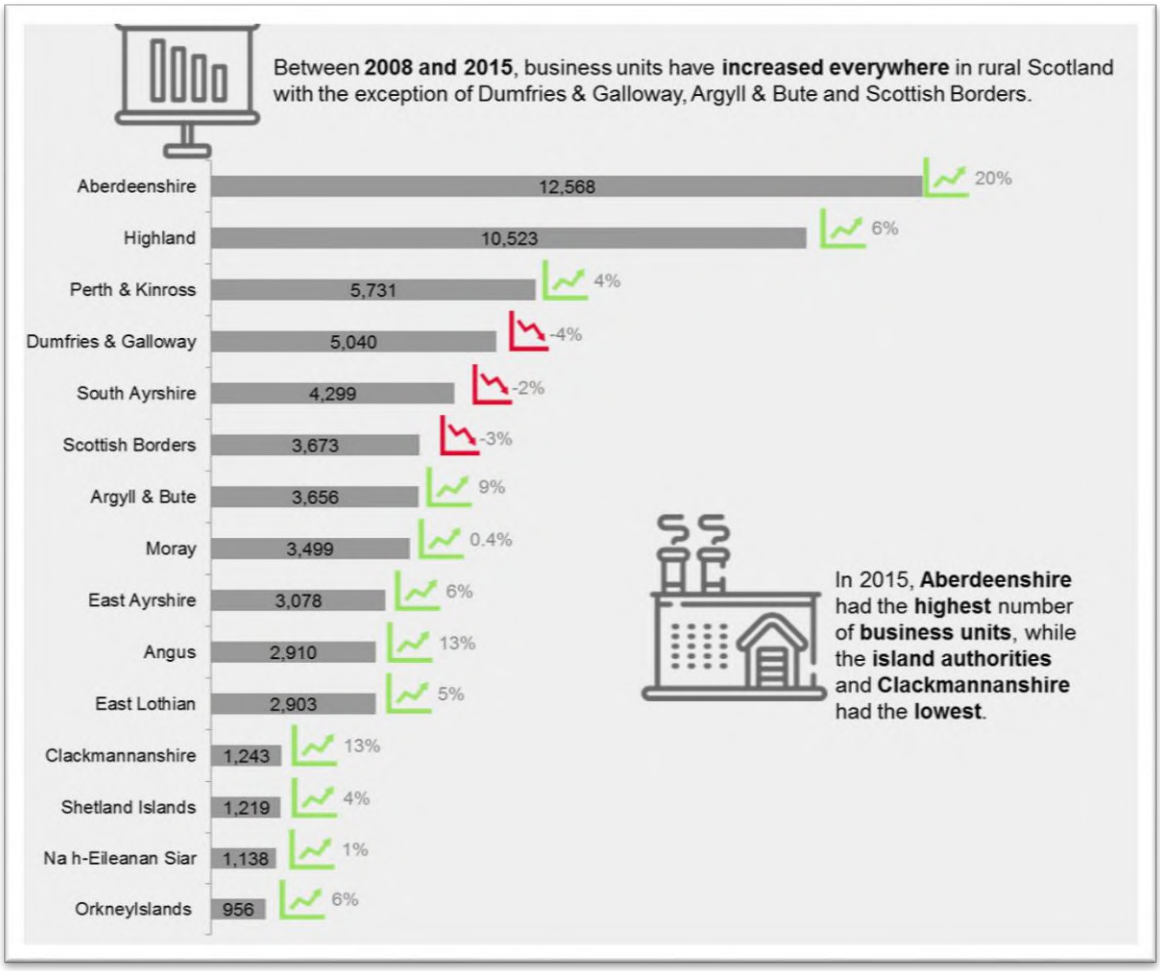
Note: Includes all workers aged 16 and over
[1] Homeworkers are people who work mainly in their own home, or in different places using home as a base, in their main job.
Excludes people on government employment and training schemes
Source: Annual Population Survey, Annual Population Survey, January to December 2016, (Using Scottish Government Urban Rural Classification 2013-2014)

The Structure of the Private Sector in Rural Scotland

All data presented so far describes both the public and private sector in rural Scotland. This section aims to examine the structure of the private sector by looking at the number of enterprise units and the size of businesses, private sector employees and growth over time. Looking at the total number of Business Units across the rural local authorities (see chart 12 below), Aberdeenshire (12,415 units) and Highland (10,350 units) stand a long way ahead of the others, followed by Perth and Kinross (5,651 units) and Dumfries and Galloway (5,046 units). Aberdeenshire's economy has had the fastest absolute expansion of business units over the period, growing by nearly 2000 units, (from 10,444 units in 2009 to 12,415 in 2014), where other areas have grown more modestly, and a few, notably Dumfries & Galloway, Scottish Borders and Argyll and Bute, have all had falling numbers of businesses.

Unsurprisingly, those areas with the larger GVA are the same as those with the highest number of Business Units. It may be worth noting that South Ayrshire which has a falling number of businesses also has the highest unemployment rate in rural Scotland. In contrast, Aberdeenshire has one of the lowest unemployment rates, and also shows very significant absolute and relative growth.

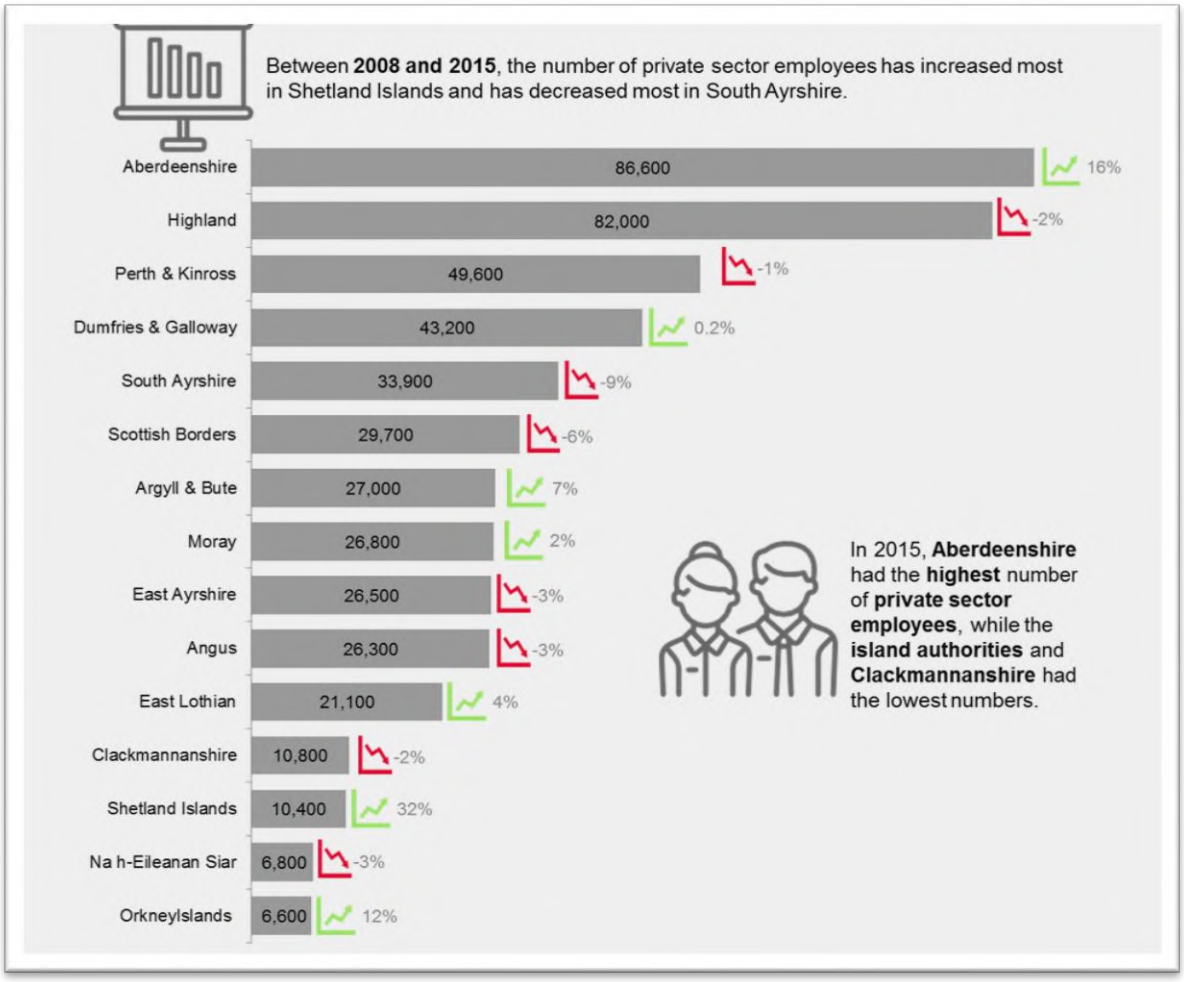
Chart 11: Total Business Units in Rural local authorities in Scotland



Source: Inter-Departmental Business Register, as at March 2016 (Using RESAS Classification 2018)

The largest number of private sector employees are in Aberdeenshire 88,000; Highland, 82,000; Perth and Kinross, 50,000; and Dumfries and Galloway 42,000. Aberdeenshire has experienced strong growth in employee numbers (an increase of 13,000), Perth and Kinross mild growth (fewer than 1,000), and Highland (less 2,000) and Dumfries and Galloway (less 1,000) have had falling employee numbers. For all of these areas however there is inter-year variance so the trends should not be seen as uni-directional over the period. The chart below shows private sector employee numbers for each of these areas.

Chart 12: Private Sector Employees in Rural local authorities in Scotland



Source: Inter-Departmental Business Register, as at March 2016 (Using RESAS Classification 2018)

When we compare private sector employee numbers and business units, we can see a pattern evolving. With small employee numbers (fewer than 10,000) and around a 1,000 businesses are the Island authorities and Clackmannanshire. The next group includes a large share of local authorities and has around 30,000 private sector employees and between 3,000 and 4,000 businesses in their district. Thirdly is the pair of Perth and Kinross and Dumfries and Galloway; with around 5,000 businesses and 40- 50,000 employees. Finally are the two giants of Highland and Aberdeenshire with over 10,000 businesses and around 80-90,000 employees. They are significantly larger in GVA than any of the other rural authorities, and together the pair have output of £12.5 billion which means they represent around 36% of the total GVA of rural Scotland.

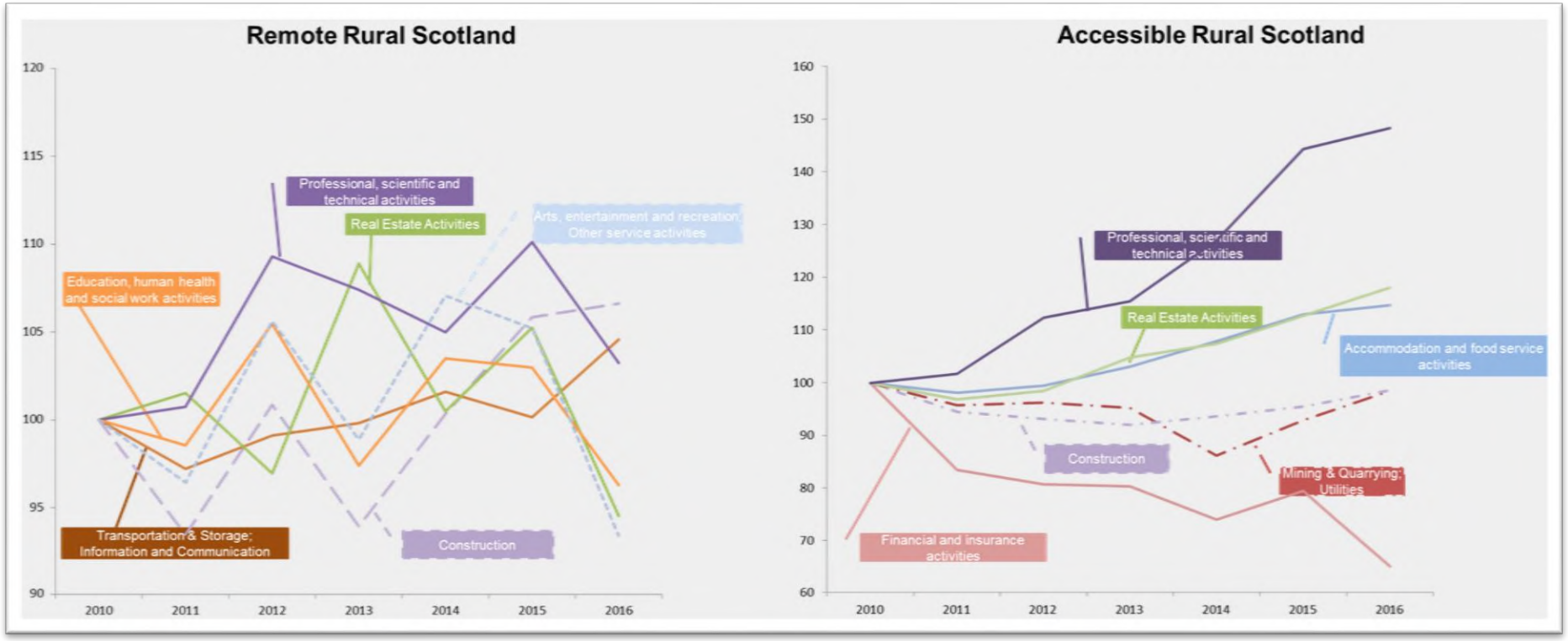
Private Sector Employment

The Businesses in Scotland Statistics provide an up-to-date picture of some parts of the private sector in Scotland. These show employee numbers, numbers of enterprises, and turnover by sector. Using these statistics we can see threefold urban-rural breakdowns, though they do exclude financial sector businesses, and by definition also the public sector, which provides around 21% of Scotland's GVA.[7] Analysing Business in Scotland data one key area that stands out is in employment growth in rural Scotland. Over the six years from 2010 it is possible to look at the relative performance in job growth by sector.

The chart below shows different patterns of job growth in the private sector. Because data here is available at the data zone level, we can apply the SG Urban/ Rural classification and distinguish between Accessible Rural and Remote Rural Scotland. Accessible Rural Scotland has had two strong trends in employment. Firstly, a strong rise in professional, scientific and technical jobs. These are generally high skill and high productivity sectors, which is positive news. There has been a strong decline in financial services sector jobs over the same period which is unsurprising given the financial crisis. Only two other sectors have had declining jobs numbers: utilities, mining and quarrying; and construction, both clearly affected by world markets, and related issues. Two further sectors have seen no growth between 2010 and 2016. This is because there has either been no growth at all or growth and decline bring them to be the same size at the end as at the beginning in jobs terms, administration and support services; and agriculture, fisheries and forestry.

[7] There are also further exclusions around certain types of non-VAT registered businesses, and clearly GVA must not be conflated with turnover.

Chart 13: Strongest and weakest relative job growth in the Private Sector between 2010 and 2016 (2010=100)



Source: Inter-Departmental Business Register via Business in Scotland Statistics, as at March 2016 (RESAS Analysis 2018)

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The picture for Remote Rural Scotland is somewhat different, though the number of jobs overall are of course smaller. Chart 13 shows that there is not the same spread in performance as there was in Accessible Rural Scotland. However, overall whilst only 3 sectors had shrunk in jobs terms in Accessible Rural Scotland, several sectors had fewer jobs in 2016 than 2010 in Remote Rural Scotland. The sectors with reducing employment numbers in Remote Rural Scotland were: 'Agriculture, Fisheries and Forestry'; 'Accommodation and Food Services'; 'Financial Services'; 'Real Estate'; (private sector) 'Education, Human Health and Social work'; and 'Arts and entertainment'. As in Accessible Rural Scotland the decline in employment in financial services had been the most severe. There was employment growth in 'Professional, Scientific and technical activities'; 'Construction'; and 'Transportation'; and there may have been growth in 'Mining and utilities', but because there is little data available for this sector, it is hard to be sure.

Structure of the Private Sector in Rural Scotland

Enterprises in the private sector within Scotland have a similar structure across the urban/rural categories when broken down by employee size band. As shown in the table below the overwhelming number of enterprises in urban and rural Scotland have fewer than 50 employees, though larger businesses are slightly more common in Accessible Rural areas and in the rest of Scotland.

Table 6: Percentages of Enterprise numbers by Urban/Rural Category and by employee size band, 2016

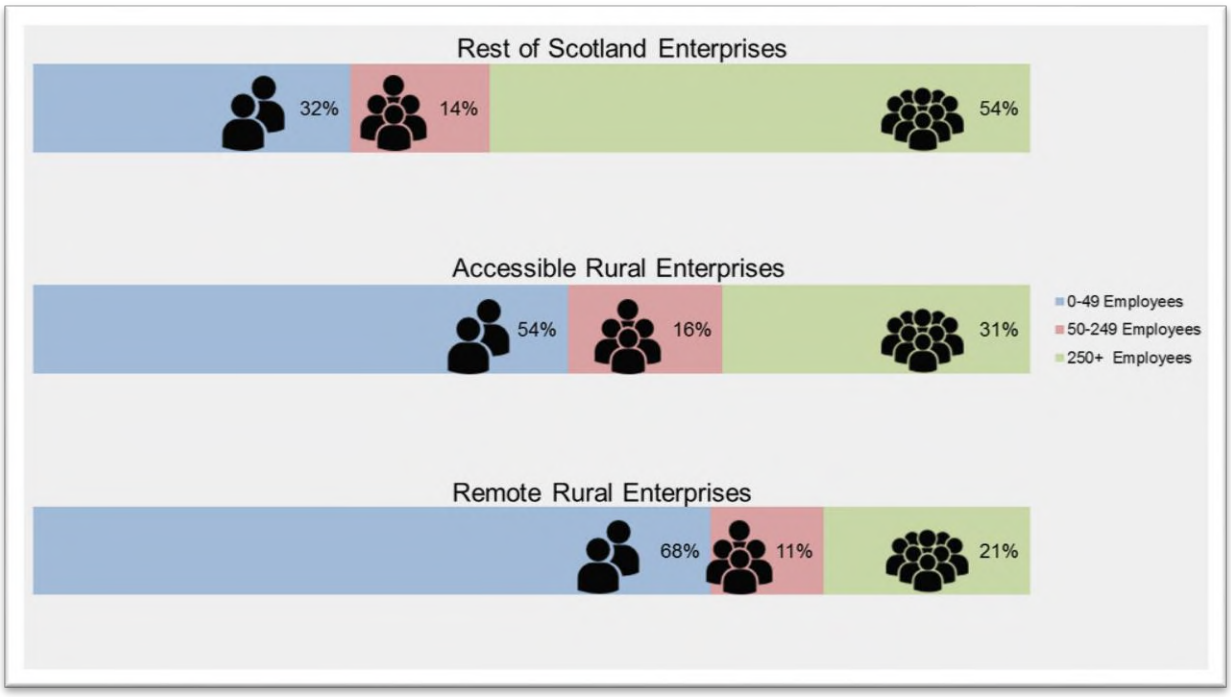
Employee Numbers	Remote Rural Enterprises %	Accessible Rural Enterprises %	Rest of Scotland Enterprises
0-49	97%	96%	95%
50-249	1%	2%	3%
250+	1%	2%	2%
Total	100%	100%	100%

Source: Inter-Departmental Business Register via Business in Scotland Statistics, as at March 2016

However, whilst the structure of the enterprises is largely similar, the structure of employment within those private sector enterprises is distinctly different. The overwhelming majority (68%) of employees in the private sector in Remote Rural areas work in small businesses with fewer than 50 employees. It is similar but less pronounced in Accessible Rural areas where 54% of employees work in small businesses. By contrast in the rest of Scotland only 34% of private sector employment is in small businesses whereas 54% of

employment is in businesses with 250 or more employees. This is shown in the chart below

Chart 14: Percentages of Private Sector Employees within each Urban/Rural Category by employee size band, 2016



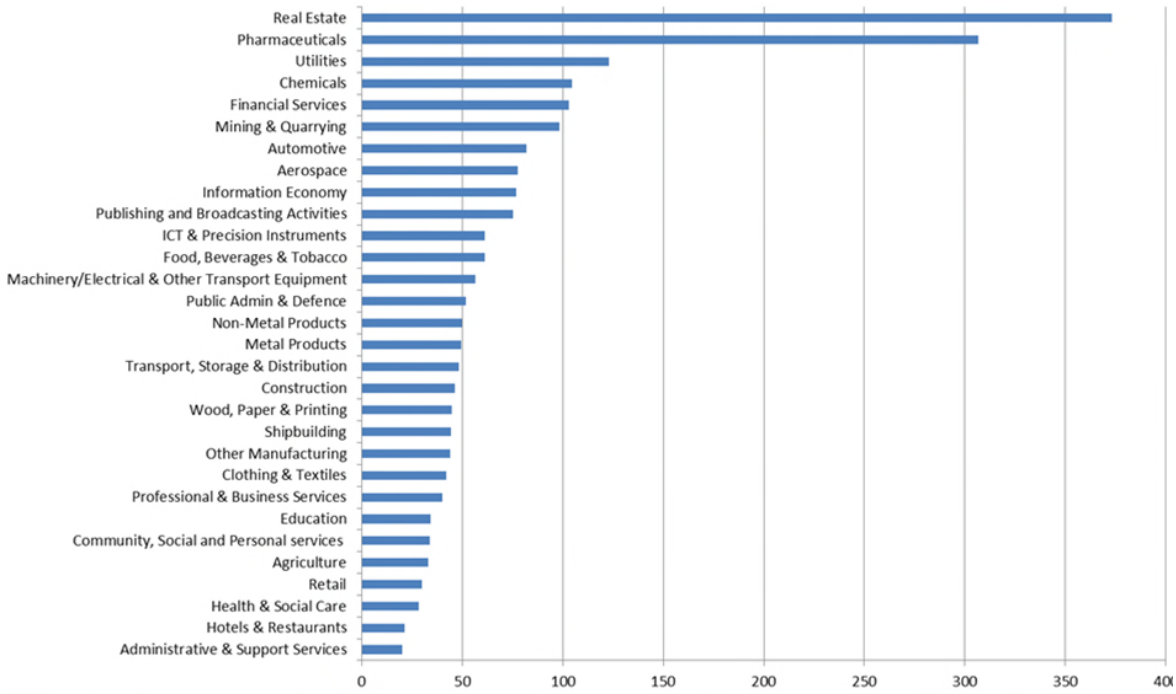
Source: Inter-Departmental Business Register via Business in Scotland Statistics, as at March 2016 (RESAS Analysis 2017)

Looking at the group of small businesses more thoroughly, the Scottish Government's Topic Report (2016) found that 87% of Accessible Rural and 81% of Remote Rural SMEs were microbusinesses with 1-9 employees. 11% of SMEs in Accessible Rural areas were small businesses (10-49 employees) compared to 18% in Remote Rural Scotland.

UK Sectoral Productivity

While there is data at the local authority level available for the main industry sectors as described above, there are no local level figures available for sectoral productivity at a more detailed level. The figures below stem from the UK department BEIS and illustrate the sectoral variation in labour productivity at the UK level. Whilst there may be differences for Scotland there are not presently cross sector statistics at the Scotland level. Overall these BEIS analysis show that the highest productivity sectors are Oil and Gas, Real Estate, Pharmaceuticals and Utilities. The lowest are in administrative and support services; hotels and restaurants; health and social care; retail; and agriculture.

Chart 15: UK Labour Productivity by sector (Gross Value Added per head, £000s), 2015



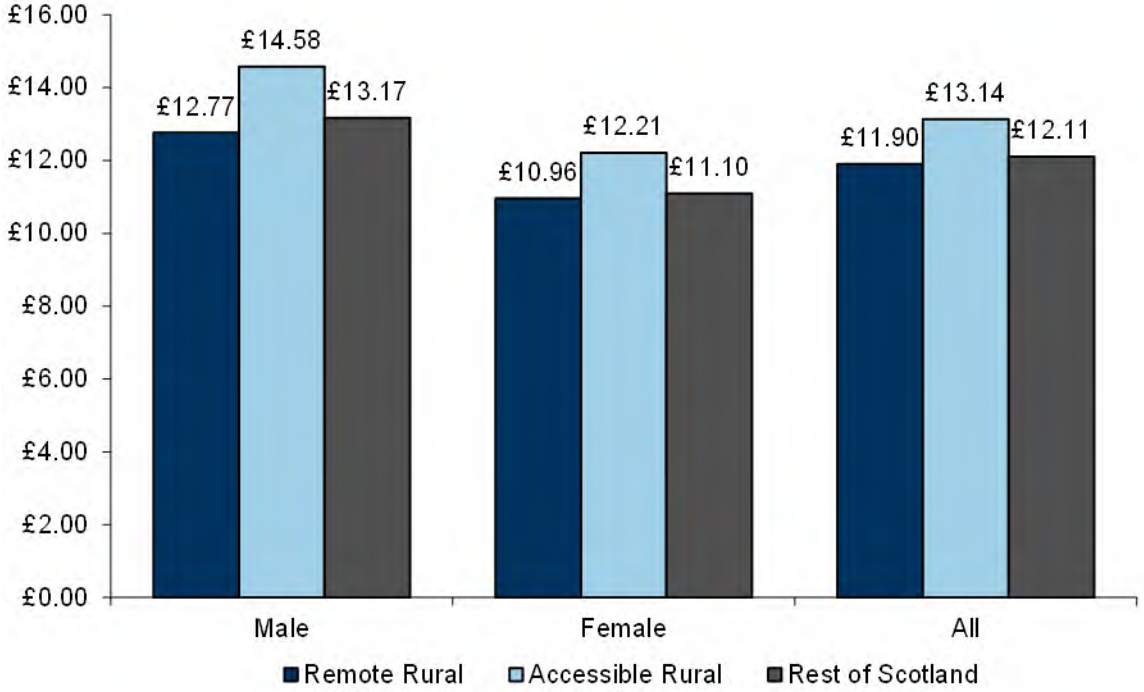
Source: BEIS analysis of Office for National Statistics data, 2015.[8]

[8] The ONS statistics for agriculture are different to that in Agriculture in the UK but the overall picture does not change greatly. Oil and Gas has been excluded because of its extremely high GVA per head.

Earnings and the Gender Pay Gap

Earnings also vary by people's locality, and also by gender. People living in Accessible rural areas have the highest average incomes in Scotland, whereas people living in remote areas have the lowest average incomes. This is likely to be at least partly because of higher income commuters who work in larger urban areas, rather than through an inherently higher level of productivity found in Accessible Rural Scotland. The low incomes of people in Remote Rural Scotland can be compounded by additional costs including more expensive food, fuel and other goods, as shown in work on the Minimum Income Standard for Remote Rural Scotland,9 which suggests to support equivalent standards of living that incomes need to be between a tenth and third higher in remote areas. Median hourly rates of pay are shown below:

Chart 16: Residence based median hourly rates of pay[10] by geographic area and gender, 2016



Source: Annual Survey of Hours and Earnings, 2016 (Using the Scottish Government Urban Rural Classification 2013-2014)

Chart 16 shows the median hourly wage rate for all male and female employees residing in each of the geographical areas. In all areas of Scotland the median

[9] The Minimum Income Standard for Remote Rural Scotland report was produced for HIE in 2017 and is available here: http://www.hie.co.uk/regional-information/economic-reports-and-research/archive/a-minimum-income-standard-for-remote-rural-scotland.html

[10] Employees on adult rates whose pay for the survey pay-period was not affected by absence.

wage for males is higher than that for females. The median wage of those who reside in Accessible Rural areas is highest for both males and females. The differences in median hourly rates of pay between the different areas are greater for males than females. The largest difference is between males who reside in Accessible Rural and Remote Rural areas (£1.81 higher per hour in Accessible Rural areas).

Table 7: Residence based median gross annual pay for full-time employees[11] by geographic area

	Remote Rural	Accessible Rural	Rest of Scotland
Male	£29,017	£32,098	£29,765
Female	£23,941	£27,523	£24,799
All	**£27,074**	**£30,452**	**£27,715**

Source: Annual Survey of Hours and Earnings, 2016 (Using Scottish Government Urban Rural Classification 2013-2014)

Table 7 shows that the median gross annual pay (i.e. before taxation and other deductions) for all full-time employees is highest for people living in Accessible Rural areas. This is followed by people living in the rest of Scotland and then finally those residing in Remote Rural areas. The disparity in median pay between rural areas and the rest of Scotland is greater for females than for males.

Table 8: Gender Pay Gap by geographic area

Gross Gender Pay Gap by geographic area	Remote Rural	Accessible Rural	Rest of Scotland
Annual median wage difference	£5,076	£4,575	£4,966
Gender Pay Gap	17%	14%	17%

Source: Annual Survey of Hours and Earnings, 2016, (Using Scottish Government Urban Rural Classification 2013-2014)

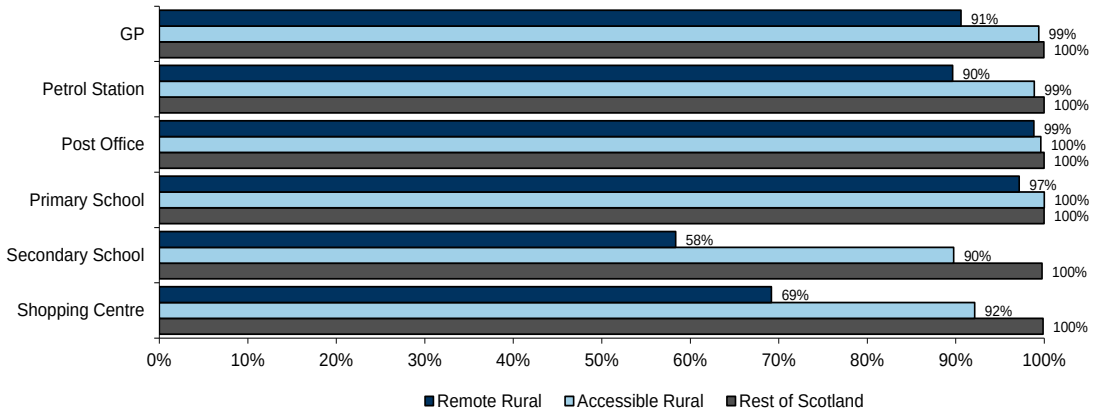
For median wages, overall the gender pay gap varies by geography, it is at 14% in Accessible Rural Scotland, and at 17% in both Remote Rural Scotland and the rest of Scotland. It is highest in absolute terms in Remote Rural Scotland, at £5,076, and lowest in Accessible Rural Scotland at £4,575, which also has the highest average incomes. Women working in Remote Rural Scotland have the lowest overall annual median income at £23,941. It is not clear what drives this as we do not know whether it is the type of jobs causing the pay gap or other factors. This may be worth further study. Here, a survey could examine the types and level of jobs women pursue. Additionally, research into gender attitudes and data on access to nurseries and informal care would be helpful to examine the gender pay gap.

[11] Employees on adult rates who have been in the same job for more than a year

Access and Convenience of Services

As noted in the previous section, access is a main driver of rural disadvantage, both for individuals and businesses. We do not have current data around access for business to services, so as a proxy it can be useful to see the challenges reported by households in relation to service access, particularly as in Remote Rural areas a much higher proportion of people work from home, as shown in the section above on employment and work pattern.

Chart 17: Percentage within 15 minute drive time of service by geographic area, 2016

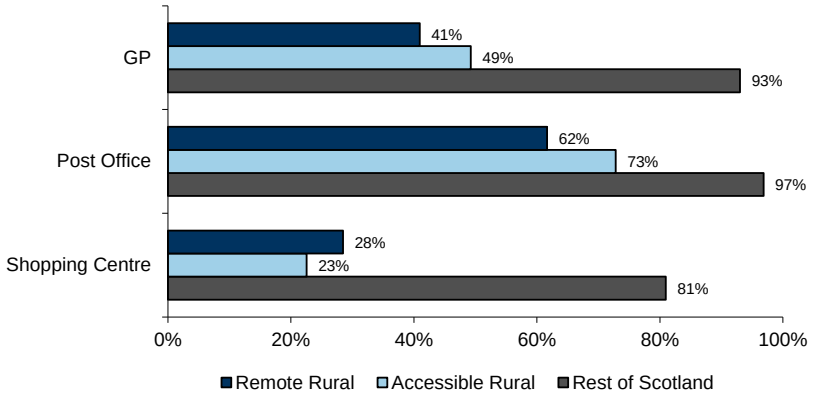


Source: Scottish Index of Multiple Deprivation, 2016 (Using Scottish Government Urban Rural Classification 2013-2014)

Chart 17 shows that only rural areas of Scotland are not within a 15 minute drive time to key services. For example 91% of people in Remote Rural areas and 99% of people in Accessible Rural areas live within a 15 minute drive time to a GP compared to 100% of the population in the rest of Scotland. It should be noted that that Scottish Index of Multiple Deprivation (SIMD) 2016 is calculated based upon the 2011 Data Zone boundaries.

The greatest difference observed in drive time is to the nearest secondary school. In Remote Rural areas, 58% people live within a 15 minute drive time to a secondary school, compared to 92% of people in Accessible Rural areas and 100% of people in the rest of Scotland.

Chart 18: Percentage within 15 minute drive time by public transport of service, by geographic area, 2016



Source: Scottish Index of Multiple Deprivation, 2016 (Using Scottish Government Urban Rural Classification 2013-2014)

Chart 18 shows that the proportion of people within a 15 minute drive time to key services by public transport is much lower in both remote and Accessible Rural areas compared to the rest of Scotland. The figures are particularly low in rural areas with respect to drive time to the nearest shopping centre.

Table 9: Households with home internet access by geographic area, 2015

	Remote Rural	Accessible Rural	Rest of Scotland
Yes	79%	85%	80%
No	21%	15%	20%
Don't know	-	-	0%
All	**100%**	**100%**	**100%**

Source: Scottish Household Survey, 2015 (Using Scottish Government Urban Rural Classification 2013-2014)

From table 9 it can be seen that the households with the highest proportion of home internet access are in Accessible Rural areas (85%) followed by the rest of Scotland (80%). The lowest proportion of households with home internet access are in Remote Rural areas (79%).

Table 10: Households with broadband (households with internet connection only) by geographic area, 2013[12]

	Remote Rural	Accessible Rural	Rest of Scotland
DSL broadband (via your phone line)	90%	80%	59%
Broadband via cable, optical fibre, Ethernet, PLC etc. (e.g. Virgin)	3%	16%	31%
Broadband via satellite, public WiFi	5%	3%	7%
Mobile broadband via mobile phone network (at least 3G) via a mobile phone or smartphone	3%	11%	9%
Mobile broadband via mobile phone network (at least 3G) via a dongle or card	1%	0%	1%
Dial-up access over a normal telephone line or ISDN	-	0%	0%
Other	2%	2%	2%

Source: Scottish Household Survey, 2015 (Using Scottish Government Urban Rural Classification 2013-2014)

Of those households with home internet access, almost all of them have a broadband connection. This is true for all areas of Scotland (see table 10). These figures show how households access internet services and do not reflect the availability of internet services across the whole of Scotland. In addition, the availability of superfast broadband is much lower in rural areas than in the rest of Scotland.[13]

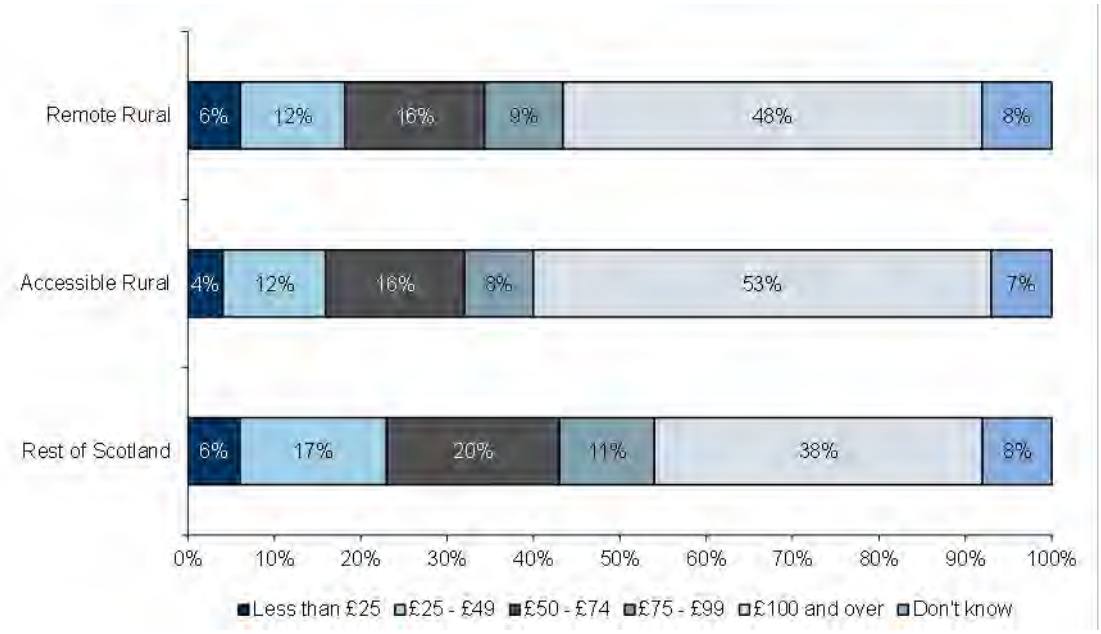
[12] Households were allowed to select multiple answers. As a result percentages can sum to more than 100%.

[13] https://www.ofcom.org.uk/__data/assets/pdf_file/0035/95876/CN-Report-2016.pdf

Travel Patterns

Chart 19 below shows that residents in rural Scotland are more likely than those in the rest of Scotland to spend over £100 per month on fuel for their cars. The proportion of residents of remote and Accessible Rural areas that report that they spend over £100 per month on fuel are 48% and 53% respectively, compared to 38% in the rest of Scotland. A higher level of expenditure on fuel for cars is likely to be, in part, due to longer driving distances to key services, as shown in Chart 18 and 17.

Chart 19: Total expenditure on fuel for cars per month by geographic area, 2015

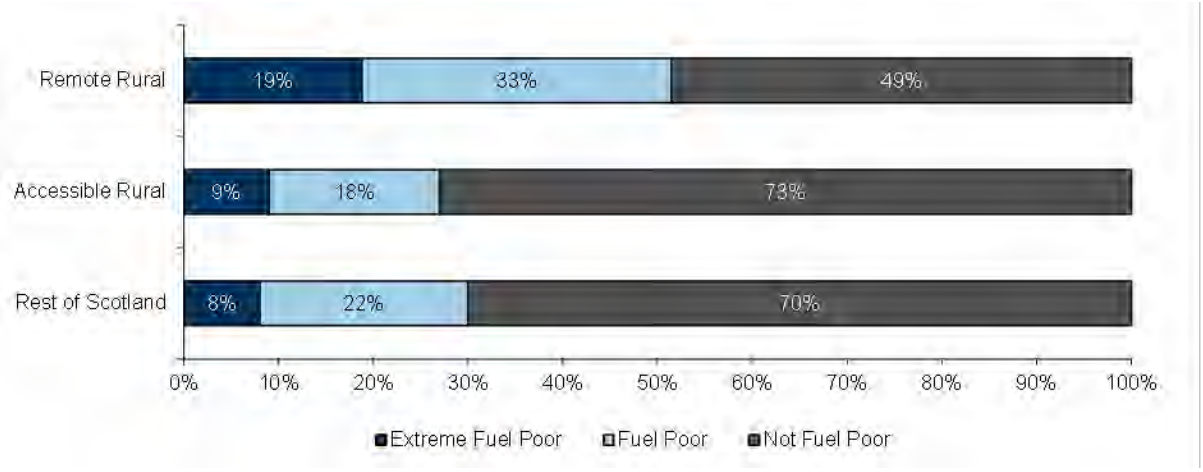


Source: Scottish Household Survey, 2015 (Using Scottish Government Urban Rural Classification 2013-2014)

Housing

A household is defined as being in fuel poverty if it would be required to spend more than 10% of its income (including Housing Benefit or Income Support for Mortgage Interest)on fuel in order to maintain a satisfactory heating regime – in this case it does not refer to transportation, but only household consumption. ‘Extreme fuel poverty’ is defined as a household having to spend more than 20% of its income on household fuel.

Chart 20: Fuel poverty by geographic area, 2015



Source: Scottish House Condition Survey, 2015 (Using Scottish Government Urban Rural Classification 2013-2014)

Chart 20 shows that the proportion of households in Remote Rural Scotland which are classed as extreme fuel poor is more than double that of the proportion in the rest of Scotland (19% compared to 8%). Just over a half of households in Remote Rural Scotland are classed as 'fuel poor', while 27% of households in Accessible Rural Scotland are in fuel poverty. While in the rest of Scotland 30% of households are classed as 'fuel poor'.

Overview

The rural economy in Scotland has grown both in terms of employment numbers and GVA. Here, it is worth distinguishing between degrees of rurality. While for example 'Agriculture, Fishing and Forestry' is a relatively larger employer in Remote areas and the Islands – despite only accounting for 4% of the GVA – it is the smallest employer in Mainly Rural areas. However, there are likely to be land management benefits which support tourism and other sectors indirectly, which are not easy to establish here.

Going beyond the comparison within rural Scotland, the Rural economy (or economies) shows a number of key similarities and differences with the Scottish economy as a whole. In general, people living in rural Scotland are slightly less likely to work in the public sector than urban Scots. For those working in the private sector they are more likely to work for small businesses, especially in the most remote areas. By GVA output sector by sector urban and rural Scotland have similar patterns, with the bulk of GVA being contributed by Wholesale, Retail and Transport; the Public Sector; Manufacturing; Business Services; and Real Estate. For two sectors, Finance; and Information and Communications there are significant Scotland level GVA contributions, but they are concentrated in urban areas.

On growth, there has not been a consistent difference between urban and rural Scotland. However, it is clear that financial services have been a poorly performing sector both in jobs and GVA terms across all urban/rural geographies. Accessible rural and Remote Rural Scotland have had different patterns of job growth overall. Growth has been more varied in Mainly Rural Scotland, with financial services declining rapidly, but professional, scientific and technical services rising rapidly. By contrast after considering data issues Remote Rural has been less variable with employment in particular very similar in 2016 to 2010.

Unemployment and inactivity tend to be lower in rural Scotland, but much of this may be the effect of an outflow of working age people to urban Scotland in search of improved job opportunities. The demographic challenges have been covered in other work and are well known, but clearly Scotland's ageing population issues are most acute in some of the most remote areas. Continuing access to new labour and migration can help to mitigate this.

Wages and Earnings do show some differences between rural and urban Scotland, with the highest wages being in Accessible Rural Scotland, and lower wages in the remote and urban areas. The gender pay gap (when measured crudely by median incomes) also shows that Remote Rural women have the lowest median wage and the biggest gender pay gap in Scotland.

This paper does not recommend policy prescriptions, but merely seeks sets out the current position of the rural economy.

Annex 1: Statistical Annex

Table 1.1: 2015 GVA by Sector for Rural local authorities £ Million

Local Authority	Distribution, Wholesale & Retail	Public Admin	Manufacturing	Real Estate	Business Services	Construction	Mining, Quarrying, Utilities	Other	Agriculture Fish & Forestry	Finance	Info and Comms	TOTAL
Aberdeenshire	1,498	873	1,270	912	1,058	589	458	207	228	58	101	7,252
Angus	328	426	385	267	132	143	31	52	164	28	13	1,969
Argyll and Bute	352	479	145	223	145	108	151	60	37	11	25	1,736
Clackmannanshire	143	220	162	73	42	50	27	57	12	6	18	810
Dumfries and Galloway	685	642	414	331	161	159	102	118	77	48	66	2,803
East Ayrshire	328	526	204	162	142	137	131	87	117	38	25	1,897
East Lothian	267	343	107	239	152	126	108	83	40	39	24	1,528
Highland	1,159	1,252	625	599	391	463	282	193	136	48	126	5,274
Moray	376	444	537	199	94	131	38	81	43	15	12	1,970
Na h-Eileanan Siar	92	154	32	53	23	38	7	14	15	5	27	460
Orkney Islands	113	111	25	45	28	50	16	11	34	5	7	445
Perth and Kinross	697	644	222	415	287	270	549	103	58	114	41	3,400
Scottish Borders	373	477	234	285	152	152	51	78	97	31	31	1,961
Shetland Islands	142	128	57	45	41	88	51	33	34	4	8	631
South Ayrshire	669	586	440	263	134	116	30	107	26	59	34	2,464

Source: ONS local authority level GVA Statistics April 2017 (Using Scottish Government RESAS Classification 2018)

Table 1.2: GVA in Mainly Rural Scotland, 1997 to 2015 (Scottish Borders, Dumfries & Galloway, Highland, Perth & Kinross, Angus, Moray, South Ayrshire, East Lothian, Clackmannanshire, Aberdeenshire, East Ayrshire)

Rural Growth over time GVA £million	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Agriculture, Forestry, Fishing	788	809	793	904	944	869	991	1,104	803	1,024	1,184	919	798	1,112	959	902	1,023	1,016	998
Mining, Utilities	1,202	1,170	907	1,025	973	1,105	1,063	1,132	1,181	1,299	1,351	1,385	1,750	1,410	1,466	1,763	1,808	1,881	1,807
Manufacturing	2,939	2,939	2,831	2,790	2,779	2,712	2,536	2,796	3,034	3,050	3,131	3,362	3,490	3,513	3,805	3,804	4,217	4,442	4,600
Construction	1,051	1,150	1,207	1,322	1,273	1,504	1,566	1,659	1,818	2,010	2,266	2,111	1,788	1,898	2,000	1,957	2,269	2,285	2,336
Distribution, Wholesale and Retail	3,140	3,234	3,315	3,272	3,716	3,737	3,917	4,197	4,388	4,582	4,845	5,182	5,144	5,104	5,177	5,172	5,776	6,448	6,523
Information and communications	289	318	347	422	475	494	554	567	490	508	496	442	463	425	389	415	426	459	491
Financial Services	374	389	362	335	366	353	407	540	589	611	704	676	735	609	555	591	540	489	484
Real Estate	2,284	2,302	2,282	2,166	2,068	2,035	1,979	2,103	2,343	2,718	3,014	3,329	2,893	2,876	3,132	3,304	3,279	3,412	3,745
Business Services	975	1,051	1,101	1,169	1,219	1,274	1,398	1,487	1,594	1,823	1,874	1,950	1,899	1,971	2,333	2,382	2,546	2,676	2,745
Public Admin	2,878	3,029	3,288	3,522	3,813	4,053	4,257	4,660	5,078	5,397	5,508	5,580	5,755	5,825	6,042	5,741	5,888	6,229	6,433
Other	468	509	548	589	661	767	866	875	900	1,001	962	976	982	1,006	1,060	1,112	1,214	1,149	1,166
Total	**16,388**	**16,900**	**16,981**	**17,516**	**18,287**	**18,903**	**19,534**	**21,120**	**22,218**	**24,023**	**25,335**	**25,912**	**25,697**	**25,749**	**26,918**	**27,143**	**28,986**	**30,486**	**31,328**

Source: ONS local authority level GVA Statistics April 2017 (Using Scottish Government RESAS Classification 2018)

Table 1.3: GVA in Islands and Remote Rural Scotland, 1997 to 2015 (Orkney Islands, Shetland Islands, Na h-Eileanan Siar, Argyll & Bute)

Remote rural Growth over time GVA £million	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Agriculture, Forestry, Fishing	120	134	140	138	144	140	143	160	132	137	134	123	114	132	111	119	114	122	120
Mining, Utilities	125	119	119	135	129	197	177	181	172	142	135	178	184	145	152	164	211	234	225
Manufacturing	171	172	120	109	119	107	125	136	143	139	139	172	179	185	222	224	252	249	259
Construction	123	145	173	186	139	158	187	212	241	254	253	238	216	232	236	227	268	291	284
Distribution, Wholesale and	376	406	472	461	471	431	450	508	537	515	560	595	578	561	548	573	593	648	699
Information and communications	31	35	40	41	42	39	57	62	63	64	54	56	50	47	49	53	57	65	67
Financial Services	35	36	37	35	34	29	27	39	44	43	55	50	56	42	36	33	30	22	25
Real Estate	251	248	246	235	228	220	213	224	257	275	305	332	302	292	322	355	339	350	366
Business Services	111	117	129	136	141	159	168	170	172	202	204	213	218	211	234	243	231	250	237
Public Admin	451	502	520	518	518	564	629	680	762	792	769	813	892	931	916	853	838	835	872
Other	72	81	77	73	80	91	103	106	122	143	131	121	111	117	127	118	117	117	118
Total	1,866	1,995	2,073	2,067	2,045	2,135	2,279	2,478	2,645	2,706	2,739	2,891	2,900	2,895	2,953	2,962	3,050	3,183	3,272

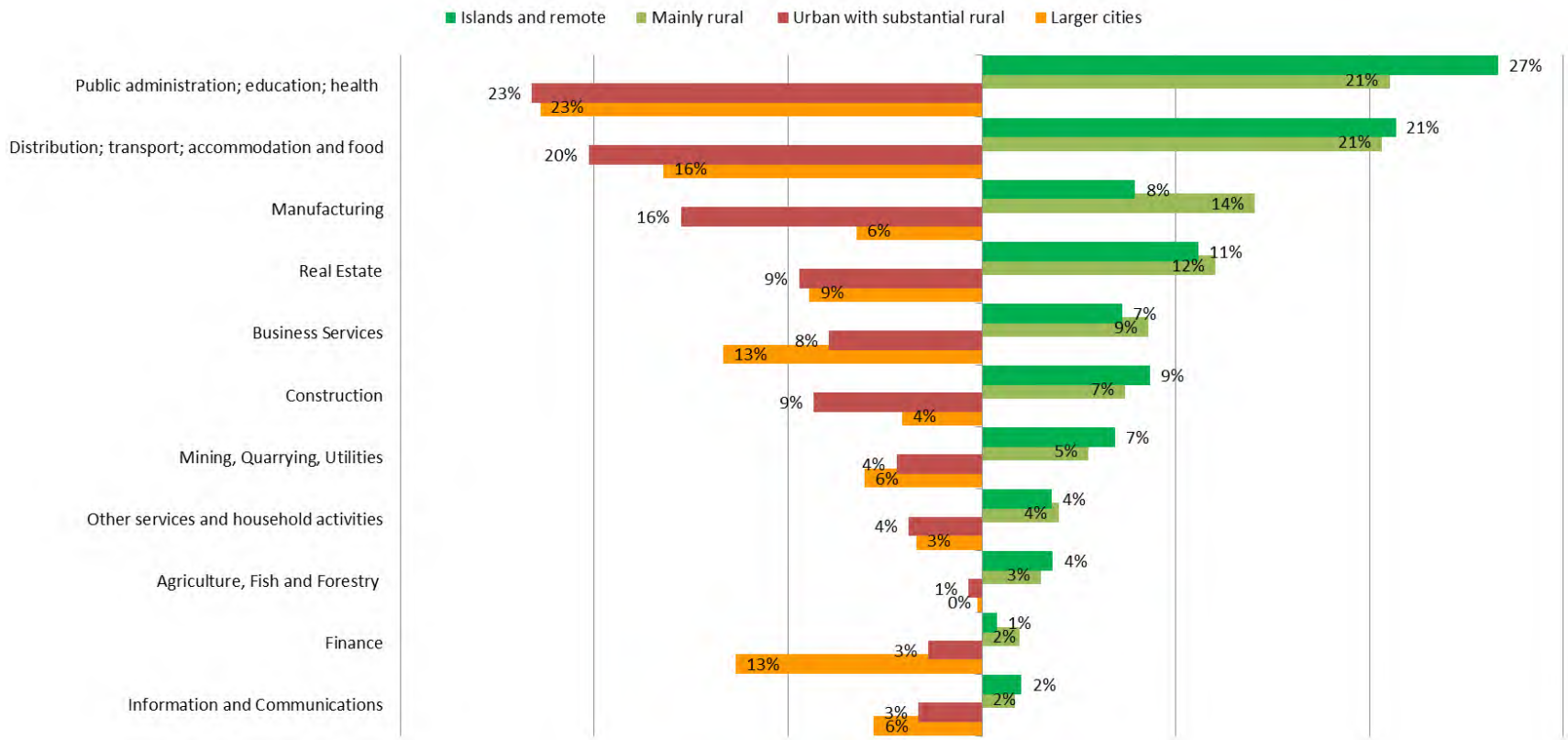
Source: ONS local authority level GVA Statistics April 2017 (Using Scottish Government RESAS Classification 2018)

Table 1.4 Gross Value Added (Income Approach) by rural local authorities, 1997 to 2015,

Local Authority	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Aberdeenshire	3,087	3,094	2,915	3,092	3,299	3,396	3,411	3,597	3,792	4,309	4,800	5,099	4,990	5,102	5,583	5,778	6,362	7,022	7,253
Angus	1,270	1,283	1,295	1,294	1,310	1,352	1,457	1,520	1,548	1,729	1,861	1,797	1,707	1,804	1,816	1,752	1,909	1,945	1,969
Argyll and Bute	976	1,048	1,094	1,149	1,127	1,130	1,219	1,273	1,373	1,472	1,468	1,610	1,589	1,574	1,579	1,562	1,609	1,694	1,736
Clackmannanshire	457	469	471	574	576	598	612	622	570	634	675	679	682	648	667	650	728	785	811
Dumfries and Galloway	1,549	1,575	1,679	1,615	1,819	1,804	1,776	1,959	2,037	2,199	2,290	2,296	2,344	2,376	2,419	2,370	2,527	2,728	2,802
East Ayrshire	1,202	1,244	1,219	1,289	1,355	1,345	1,396	1,488	1,614	1,696	1,684	1,662	1,669	1,722	1,721	1,687	1,671	1,818	1,897
East Lothian	926	943	936	958	968	1,043	1,102	1,187	1,213	1,388	1,387	1,396	1,295	1,297	1,340	1,367	1,438	1,463	1,528
Highland	2,484	2,681	2,774	2,901	3,021	3,153	3,418	3,780	4,072	4,148	4,324	4,464	4,347	4,295	4,518	4,560	4,804	5,105	5,273
Moray	988	1,063	1,076	1,105	1,169	1,263	1,344	1,438	1,634	1,640	1,746	1,834	1,893	1,843	1,966	1,960	2,040	1,929	1,970
Na h-Eileanan Siar	294	312	349	301	297	318	365	422	443	450	445	435	440	405	429	438	436	450	460
Orkney Islands	234	251	247	245	235	250	274	310	338	329	341	353	368	381	394	406	410	434	446
Perth and Kinross	1,942	1,999	1,915	1,950	1,952	2,075	2,110	2,328	2,414	2,652	2,813	2,784	2,980	2,811	2,973	3,135	3,340	3,333	3,400
Scottish Borders	1,084	1,100	1,202	1,186	1,247	1,271	1,302	1,444	1,467	1,614	1,705	1,743	1,668	1,709	1,758	1,733	1,888	1,930	1,961
Shetland Islands	366	383	383	371	381	440	423	470	492	455	481	495	504	535	554	559	594	606	630
South Ayrshire	1,405	1,447	1,500	1,551	1,571	1,605	1,610	1,761	1,860	2,010	2,053	2,158	2,125	2,143	2,161	2,148	2,282	2,433	2,464

Source: ONS local authority level GVA Statistics April 2017 (Using Scottish Government RESAS Classification 2018)

Chart 1.1: Rural and urban GVA illustrated, arranged by relative size of the economy in Mainly Rural areas



Source: ONS local authority level GVA Statistics, as at August 2017 (Using Scottish Government RESAS Classification 2018)

Table 1.5: Total Business Units in compared with Private Sector Employees in Rural local authorities in Scotland

Local authority	Business Units		Private Sector employees	
	2008	2015	2008	2015
Aberdeenshire	10,444	12,568	74,900	86,600
Angus	3,344	3,656	27,200	26,300
Argyll and Bute	3,782	3,673	25,200	27,000
Clackmannanshire	1,168	1,219	11,000	10,800
Dumfries and Galloway	5,259	5,040	43,100	43,200
East Ayrshire	2,755	2,903	53,700	51,700
East Lothian	2,581	2,910	27,300	26,500
Highland	9,907	10,523	20,200	21,100
Moray	2,895	3,078	83,800	82,000
Na h-Eileanan Siar	1,131	1,138	26,400	26,800
Orkney Islands	901	956	7,000	6,800
Perth and Kinross	5,509	5,731	5,900	6,600
Scottish Borders	4,397	4,299	49,100	49,600
Shetland Islands	1,097	1,243	31,700	29,700
South Ayrshire	3,484	3,499	7,900	10,400

Source: Inter-Departmental Business Register, as at March 2017 (Using RESAS Classification 2018)

Table 1.6: Unemployment rates and levels by local authority

Local authority	2015 Unemployment rate	2015 Unemployment level
Aberdeen City	4.7%	6,200
Aberdeenshire	2.7%	3,900
Angus	4.7%	2,700
Argyll and Bute	4.5%	1,900
City of Edinburgh	5.4%	14,100
Clackmannanshire	5.7%	1,500
Dumfries and Galloway	4.4%	3,400
Dundee City	8.9%	6,200
East Ayrshire	7.7%	4,600
East Dunbartonshire	4.5%	2,400
East Lothian	5.0%	2,500
East Renfrewshire	4.4%	2,000
Falkirk	5.8%	4,700
Fife	6.6%	12,300
Glasgow City	8.7%	26,400
Highland	3.2%	4,100
Inverclyde	7.8%	2,900
Midlothian	4.8%	2,100
Moray	4.2%	1,900
Na h-Eileanan Siar	4.4%	600
North Ayrshire	9.3%	5,700
North Lanarkshire	6.9%	11,800
Orkney Islands	2.4%	300
Perth and Kinross	3.8%	2,900
Renfrewshire	6.1%	5,600
Scottish Borders	4.0%	2,300
Shetland Islands	2.2%	300
South Ayrshire	6.1%	3,400
South Lanarkshire	5.5%	9,300
Stirling	5.3%	2,300
West Dunbartonshire	7.6%	3,300
West Lothian	5.8%	5,300

Source: Annual Population Survey in Scotland, Jan-Dec 2015

Table 1.7: GVA share of 'Accommodation and Food Services' and 'Sustainable Tourism' of Mainly Rural and Islands and Remote local authorities, 2015

Local authority	Gross Value Added at Basic Prices in Accommodation and Food Services	Overall gross Value Added at Basic Prices	Share of 'Accommodation and Food Services' of LA GVA	GVA in 'Sustainable Tourism'	Share of 'Sustainable Tourism'
Aberdeenshire	169.7	6474.9	2.6%	176.2	2.7%
Angus	44.2	1127.2	3.9%	43.9	3.9%
Argyll and Bute	77.6	1049.4	7.4%	88.3	8.4%
Clackmannanshire	12.7	576.7	2.2%	13.2	2.3%
Dumfries and Galloway	114.9	1613.8	7.1%	119.9	7.4%
East Ayrshire	33.1	958.3	3.5%	32.0	3.3%
East Lothian	65.3	870.6	7.5%	67.6	7.8%
Highland	181.6	2978.8	6.1%	197.1	6.6%
Moray	32.6	1104	3.0%	34.1	3.1%
Na h-Eileanan Siar	25.5	234.2	10.9%	39.9	17.0%
Orkney Islands	7.0	233	3.0%	9.8	4.2%
Perth and Kinross	167.7	2453.2	6.8%	172.5	7.0%
Scottish Borders	49.9	1067.5	4.7%	54.6	5.1%
Shetland Islands	50.2	524	9.6%	12.9	2.5%
South Ayrshire	79.8	1509.7	5.3%	90.0	6.0%

Source: Scottish Annual Business Statistics 2017 (Using RESAS Classification 2018)

Table 1.8: GVA of 'Accommodation and Food Services' of Mainly Rural and Islands and Remote local authorities, 2008 to 2015 (in £m)

Local authority	2009	2010	2011	2012	2013	2014	2015
Aberdeenshire	63.4	159.5	117.4	183.9	189.7	152.6	169.7
Angus	50.2	41.9	35.8	42.6	32.1	34.4	44.2
Argyll and Bute	66.8	69.1	74.2	83.3	94.5	120.0	77.6
Clackmannanshire	7.3	12.4	8.6	13.1	17.0	17.0	12.7
Dumfries and Galloway	45.7	77.3	63.5	65.7	86.8	130.7	114.9
East Ayrshire	16.4	25.0	27.7	27.1	34.5	39.6	33.1
East Lothian	21.3	32.6	33.2	43.5	33.3	51.2	65.3
Highland	140.1	157.7	184.6	201.9	210.6	269.7	181.6
Moray	30.0	64.2	44.4	47.3	37.1	56.3	32.6
Na h-Eileanan Siar	9.2	9.1	12.9	16.2	18.3	39.6	25.5
Orkney Islands	7.9	*	12.5	19.6	26.9	11.8	7.0
Perth and Kinross	137.3	128.3	124.6	159.8	162.6	155.5	167.7
Scottish Borders	84.1	69.4	51.2	45.3	41.8	43.2	49.9
Shetland Islands	8.6	10.7	14.2	9.0	28.1	24.2	50.2
South Ayrshire	50.8	60.1	82.5	80.4	94.5	98.4	79.8

Source: Scottish Annual Business Statistics as at August 2017 (Using RESAS Classification 2018)

Table 1.9: GVA of 'Sustainable Tourism' of Mainly Rural and Islands and Remote local authorities, 2008 to 2015 (in £m)

Local authority	2009	2010	2011	2012	2013	2014	2015
Aberdeenshire	68.8	150.7	139.7	190.6	196.8	166.4	176.2
Angus	52.6	41.9	37.9	44.0	37.5	37.1	43.9
Argyll and Bute	76.7	76.8	81.0	90.7	105.8	127.8	88.3
Clackmannanshire	9.4	12.6	9.0	13.4	19.1	18.1	13.2
Dumfries and Galloway	51.2	79.6	67.3	68.2	91.0	133.7	119.9
East Ayrshire	22.3	28.0	30.7	29.9	39.4	45.3	32.0
East Lothian	27.0	34.3	33.5	45.4	40.0	58.8	67.6
Highland	151.4	163.0	200.2	216.4	225.6	285.2	197.1
Moray	32.9	60.9	54.0	45.1	38.1	56.9	34.1
Na h-Eileanan Siar	19.4	10.3	9.9	14.7	18.4	19.4	39.9
Orkney Islands	10.2	10.8	14.3	20.7	26.8	14.3	9.8
Perth and Kinross	140.1	133.2	130.5	162.2	169.9	162.5	172.5
Scottish Borders	80.7	64.8	56.0	50.8	47.4	46.5	54.6
Shetland Islands	6.9	12.9	17.7	11.2	30.4	21.5	12.9
South Ayrshire	56.8	61.2	83.0	83.3	98.6	109.4	90.0

Source: Scottish Annual Business Statistics, as at August 2017 (Using RESAS Classification 2018)

Annex 2: Urban and Rural Definitions

There are a range of different ways that Scottish Government classifies Urban and Rural differences. Primarily, they are based upon the threefold, sixfold or eightfold classification; though for economic data the Randall definition is also used.

Threefold Urban Rural definition

Classification	Definition
1 Rest of Scotland	Settlements of 3,000 or more people
2 Accessible Rural	Settlements of less than 3,000 people and within 30 minutes drive of a settlement of 10,000 or more.
3 Remote Rural	Settlements of less than 3,000 people and with a drive time of over 30 minutes to a settlement of 10,000 or more.

Sixfold Urban Rural definition

Classification	Definition
1 Large Urban Areas	Settlements of 125,000 or more people.
2 Other Urban Areas	Settlements of 10,000 to 124,999 people.
3 Accessible Small Towns	Settlements of 3,000 to 9,999 people and within 30 minutes drive of a settlement of 10,000
4 Remote Small Towns	Settlements of 3,000 to 9,999 people and with a drive time of over 30 minutes to a settlement of 10,000 or more.
5 Accessible Rural	Areas with a population of less than 3,000 people, and within a 30 minute drive time of a settlement of 10,000 or more.
6 Remote Rural	Areas with a population of less than 3,000 people, and with a drive time of over 30 minutes to a settlement of 10,000 or more.

Eightfold Urban Rural Definition

Classification	Definition
1 Large Urban Areas	Settlements of 125,000 or more people.
2 Other Urban Areas	Settlements of 10,000 to 124,999 people.
3 Accessible small Towns	Settlements of 3,000 and 9,999 people and within 30 minutes drive of a settlement of 10,000
4 Remote Small Towns	Settlements of between 3,000 and 9,999 people and with a drive time of over 30 minutes to a settlement of 10,000 or more.
5 Very Remote Small Towns	Settlements of 3,000 and 9,999 people and with a drive time of over 60 minutes to a settlement of 10,000 or more.
6 Accessible Rural	Areas with a population of less than 3,000 people, and within a 30 minute drive time of a settlement of 10,000 or more.
7 Remote Rural	Areas with a population of less than 3,000 people, and with a drive time of over 30 minutes
8 Very Remote Rural	Areas with a population of less than 3,000 people, and with a drive time of over 60 minutes to a settlement of 10,000 or more.

Randall Definition rebased-2017

Originally produced in 1985 for the Scottish Economic bulletin (SEB) as a means of profiling economic trends and indicating need for support in rural Scotland. The system is based upon population density within a unitary authority. Where a unitary authority has a population density of less than one person per hectare it is considered Rural. On this basis there are 14 rural unitary authorities. These are:

- Aberdeenshire
- Angus
- Argyll and Bute
- Dumfries and Galloway
- East Ayrshire
- Highland
- Moray
- Na h-Eileanan Siar
- Orkney Islands
- Perth and Kinross
- Scottish Borders
- Shetland Islands
- South Ayrshire
- Stirling

According to the Randall definition of rurality, 89% of Scotland's landmass and 29% of its population is classified as rural (defined in 1995, and rebased in 2017).

Benefits:

Unitary Authority data is readily available and it is therefore very easy to use this system for classification.

Limitations:

Since the classification system is Unitary Authority based, some urban pockets including Stirling and Inverness, are classified as rural.

Fourfold RESAS Classification

The fourfold RESAS Classification distinguishes local authorities according to their level of rurality. In order to define rurality from a conceptual and methodological point of view, a literature review on existing urban: rural classification at an aggregate data level was conducted.

- If data is available at a data zone level, the Scottish Government most commonly applies its Scottish Executive Rural Urban Classification that is based both on population levels and distance from urban areas with more than 10,000 inhabitants.

- However, because data is not always available at the data zone level, the Scottish Government uses the Randall definition that is based solely on population density aggregated at the local authority level. Thus, it tends to over-state the rural population (e.g. the populations of Stirling Perth and Inverness are considered ‘rural) and understate the rural area (e.g. East Lothian and South Lanarkshire are considered ‘urban’).

- The OECD classifies regions as predominantly urban, intermediate or predominantly rural based on the percentage of population living in local rural units and divides Scotland into 23 regions of which nine are considered to be predominantly rural accounting for 75% of the landmass and 17% of the population (OECD, 2008).

- Scholars such as Cloke (1977) however suggest that a definition of rurality cannot only be based on population density and distance to urban settlements, but should include factors such as demographics, occupational structure, household amenities and migration.

Based on the literature and classifications defined thus far, but also on suggestions of various stakeholders, an extensive range of demographic, economic, social and geographic indicators was collected. Data included:

- Persons; Km^2; Persons/ Km^2; % Population not in localities - classed as Rural;

- Share of 15-45 year olds; Share of 15-64 year olds; Percentage population change mid-2006 to mid-2016; % pensionable age;

- Local government employment by local authority(FTE); Net Revenue Expenditure per capita (£); Workforce from the LA;

- Road Length; % of premises unable to receive 10Mbit/s

- Local Share of Access to Services for most/least deprived areas

To identify which variables correlate and thus help to explain groupings of local authorities, a principal component analysis was conducted. The analysis generated the following four different components:

1. Population; population per km^2; Share of 15-64 year olds; Local government employment by local authority(FTE); share of population in pensionable age; Share of population that not assigned to either a settlement or locality; share of premises unable to receive 10Mbit/s; population in settlements under 10,000; and access to Services 40% most deprived areas in LA.

2. Road length, km^2; workforce stemming from the local authority

3. Share of population in pensionable age; hare of population that not assigned to either a settlement or locality; share of premises unable to receive 10Mbit/s; population in settlements under 10,000; and access to Services 40% most deprived areas; workforce stemming from the local authority; Net Revenue Expenditure per capita (£)

4. Share of 16-64 year olds; share of population in pensionable age; Percentage population change mid-2006 to mid-2016.

Following the PCA, a cluster analysis was conducted using the components in order to identify which component would allow the most suitable grouping. Component 2 and 3 did not allow for much variation and suggested creating several groups, but one main and dominant group with almost all local authorities assigned to it. Component 4 allowed for a lot of different and fairly evenly distributed groups. However, as the indicators are only based on demographics and exclude all other features that are crucial for rural Scotland, this component was also put aside. Component 1 however suggested a fairly even distribution of groups and takes a wide range of indicators into account.

Component 1 of the PCA suggests including both the share of the population in pensionable age and the share of the population in working age. These variables express two different features: A higher share of pensioners and thus an ageing population aims to capture the potential burden on services and the relative number of dependents. The share of the population in working age on the other hand captures not only the size of the workforce, but also indicates out-migration. Both variables are correlated, but not interchangeable. According to the PCA, a large working age population and a relatively small share of pensioners are features of more urban areas.

Population in settlements under 10,000 and the share of the population not assigned to either a settlement or locality are also correlated and a high share of each is a feature of more rural areas. While the first variable directly expresses the share of the population in rural settlements and thus expresses rurality, the second variable describes remoteness as it describes the population living in areas so small, that they are not picked up by the data.

According to the PCA, a large population and high population density is an indicator for more urban areas. This is also highly correlated with access to services, employment opportunities, remoteness and other rural features.

Broadband connectivity is a key variable to include when describing rural economies as the lack of high-speed broadband does not only affect homes, but also enterprises and their business. Access to high speed broadband is described as a key enabler. However, while in urban areas nearly all households can access at least 10 Mbit/s, this is not the case for more rural areas.

Lastly, following the PCA local government employment is taken into account as well. High absolute numbers of FTE government employees indicate greater human resources and thus more capacity for policy-making and the development of new strategies. This variable needs to be taken into account if we want to compare the size of rural economies.

Thus, component 1 was pursued further.

In a last step, the results from the PCA were used in order to create an index for the rural economy. All data was standardized and various weights were applied. However, because weighting did not change the results crucially, the decision was made not to apply any weights. Following the results for component 1, the additive index was calculated as follows:

Rurality=
(Share of population in pensionable age) + (Share of population that not assigned to either a settlement or locality) + (Share of premises unable to receive 10Mbit/s) + (Population in settlements under 10,000) + Access to Services 40% most deprived areas in LA) - (Population) - (Population per km^2) – (Share of 16-64 year olds) - (Local government employment)

Scores for the index range from -20.1 in Glasgow and thus least rural to 15.5 making N-ah Eileanan Siar most rural. In order to now group local authorities, an additional lens was applied in order to incorporate the existing and more detailed 8-fold Scottish Government classification. Firstly, the local authorities with the lowest scores are Glasgow, Edinburgh, Aberdeen and Dundee. These four LAs do not only have a distinctively higher score than the next highest LAs, but are also the only Scottish cities with more than 90% of the population living in large urban areas. Thus, these four LAs are classed as ‘Larger Cities’.

The second group is classed as ‘Urban with Substantial Rural areas’ and includes all LAs with a population of more than 50% living in urban and other urban areas. Thus, while Stirling is considered ‘Urban with Substantial Rural areas’, East Ayrshire is not. The next cut-off point aims to distinguish between Mainly Rural and ‘Islands & remote’. Here, the Islands and Argyll & Bute stand out both due to their high RESAS Classification score and due their share of

population living in urban areas of less than 20%, and even 0% on the islands. Thus, while Scottish Borders is considered Mainly Rural, Argyll & Bute is classed as 'Islands & remote'. South Ayrshire and Angus are exceptions to this rule as they both have more than 50% of their population living in large urban and other urban areas and thus should be classed Urban with Substantial Rural. However, because according to their RESAS score they clearly are more rural than Stirling and other more urban areas, they are classed as Mainly Rural.

Accordingly, local authorities are classed as follows:

Local authority	RESAS Classification	Label
Na h-Eileanan Siar	15.5	Islands & Remote
Orkney Islands	12.7	
Shetland Islands	10.8	
Argyll & Bute	9.1	
Scottish Borders	6.9	Mainly Rural
Dumfries & Galloway	6.6	
Highland	4.9	
Perth & Kinross	4.5	
Angus	3.2	
Moray	3.1	
South Ayrshire	2.4	
East Lothian	1.8	
Clackmannanshire	1.4	
Aberdeenshire	1.3	
East Ayrshire	1	
Stirling	0.7	Urban with Substantial Rural areas
East Dunbartonshire	0.4	
North Ayrshire	0.2	
Midlothian	-0.6	
West Dunbartonshire	-1	
Inverclyde	-1.3	
East Renfrewshire	-1.6	
Falkirk	-2.1	
Renfrewshire	-3.5	
West Lothian	-3.9	
South Lanarkshire	-4.8	
Fife	-4.9	
North Lanarkshire	-6.8	
Dundee City	-10	Larger Cities
Aberdeen City	-10.1	
City of Edinburgh	-15.6	
Glasgow City	-20.1	

Annex 3: Sources

Information relating to the 'Annual Survey of Hours and Earnings' (ASHE) is available from http://www.ons.gov.uk/ons/rel/ashe/annual-survey-of-hours-and-earnings/index.html. ASHE is a UK wide survey that was developed to replace the New Earnings Survey in 2004. Data are National Statistics.

The Inter-Departmental Business Register is maintained by the Office for National Statistics (ONS) and is a database of all registered enterprises operating in the UK, i.e. enterprises that are registered for VAT and/or PAYE. It covers 99% of economic activity in the UK. Those excluded are small sole traders or partnerships with no employees and an annual turnover of less than the VAT threshold (£82,000 as at 1st March 2016). Further tables from the Inter-Departmental Business Register can be found here: http://www.gov.scot/Topics/Statistics/Browse/Business/Corporate. Data are National Statistics.

There are occasional variations in base sizes for individual tables/figures sourced from the 'Scottish Household Survey'. Further detail on the base numbers is available in 'Scotland's People: Results from 2015 Scottish Household Survey', published on 27th September 2016. The sample sizes are smallest for Remote Rural areas so there are larger confidence intervals associated with the statistics for this area than for the rest of Scotland figures. Further information on the Scottish Household Survey is available at: http://www.gov.scot/Topics/Statistics/16002. Data are National Statistics.

Details on the 'Scottish House Condition Survey' are available at the survey's website here: http://www.gov.scot/Topics/Statistics/SHCS. Data are National Statistics.

The 'Scottish Index of Multiple Deprivation' (SIMD**)** provides a wealth of information to help improve the understanding about the outcomes and circumstances of people living in the most deprived areas in Scotland. Information on drive times to services and the number of people income and employment deprived from the SIMD is presented in this publication. Information on income deprived and employment deprived people is based on people in receipt of certain disability and unemployment benefits. More information can be found here: http://www.gov.scot/Topics/Statistics/SIMD. Data are National Statistics.

Scottish Household Survey, Scottish House Condition Survey and Annual Survey of Hours and Earnings figures are all based on surveys which sample a proportion of residents of Scotland. Figures quoted are best estimates of the true value, based on the survey results which have been weighted to represent the population. However,

small differences in estimates, between geographic areas and years, are not necessarily always statistically significant.

OECD, 2008*. OECD Rural Policy Reviews. Scotland, UK*. OECD Publications: Paris.

Cloke, P.J., 1977. An index of rurality for England and Wales. *Regional Studies*, 11(1), pp.31-46.

Annex 4: UK Standard Industrial Classification of Economic Activities

ONS GVA sectors	UK SIC 2007 Section	UK SIC 2007 Division
Agriculture, Forestry and Fishing	A Agriculture, Forestry and Fishing	Crop and animal production, hunting and related service activities; Forestry and logging; Fishing and aquaculture
Mining, Quarrying, Utilities	B Mining and Quarrying	Mining of coal and lignite; Extraction of crude petroleum and natural gas; Mining of metal ores; Other mining and quarrying; Mining support service activities
	D Electricity, Gas, Steam and Air Conditioning Supply	Electricity, gas, steam and air conditioning supply
	E Water Supply; Sewerage, Waste Management and Remediation Activities	Water collection, treatment and supply; Sewerage; Waste collection, treatment and disposal activities; materials recovery; Remediation activities and other waste management services.
Manufacturing	C Manufacturing	Manufacture of food products; Manufacture of beverages; Manufacture of tobacco products; Manufacture of textiles; Manufacture of wearing apparel; Manufacture of leather and related products; Manufacture of wood and of products of wood and cork, except furniture; manufacture of articles of straw and plaiting materials; Manufacture of paper and paper products; Printing and reproduction of recorded media; Manufacture of coke and refined petroleum products; Manufacture of chemicals and chemical products; Manufacture of basic pharmaceutical products and pharmaceutical preparations; Manufacture of rubber and plastic products; Manufacture of other non-metallic mineral products;

		Manufacture of basic metals; Manufacture of fabricated metal products, except machinery and equipment; Manufacture of computer, electronic and optical products; Manufacture of electrical equipment; Manufacture of machinery and equipment n.e.c; Manufacture of motor vehicles, trailers and semi-trailers; Manufacture of other transport equipment; Manufacture of furniture; Other manufacturing; Repair and installation of machinery and equipment
Construction	F Construction	Construction of buildings; Civil engineering; Specialised construction activities
Distribution; transport; accommodation and food	G Wholesale and Retail Trade; Repair of Motor Vehicles and Motorcycles	Wholesale and retail trade and repair of motor vehicles and motorcycles; Wholesale trade, except of motor vehicles and motorcycles; Retail trade, except of motor vehicles and motorcycles
	H Transportation and Storage	Land transport and transport via pipelines; Water transport; Air transport; Warehousing and support activities for transportation; Postal and courier activities
	I Accommodation and Food Service Activities	Accommodation; Food and beverage service activities
Information and Communication	J Information and Communication	Publishing activities; Motion picture, video and television programme production, sound recording and music publishing activities; Programming and broadcasting activities; Telecommunications; Computer programming, consultancy and related activities; Information service activities
Finance	K Financial and Insurance Activities	Financial service activities, except insurance and pension funding; Insurance, reinsurance and pension funding, except compulsory social security; Activities auxiliary to financial services and insurance activities

Real Estate	l Real Estate Activities	Buying and selling of own real estate; Renting and operating of own or leased real estate; Real estate activities on a fee or contract basis
Business Services	M Professional, Scientific and Technical Activities	Legal and accounting activities; Activities of head offices; management consultancy activities; Architectural and engineering activities; technical testing and analysis; Scientific research and development; Advertising and market research; Other professional, scientific and technical activities; Veterinary activities
	N Administrative and Support Service Activities	Rental and leasing activities; Employment activities; Travel agency, tour operator and other reservation service and related activities; Security and investigation activities; Services to buildings and landscape activities; Office administrative, office support and other business support activities
Public Administration, health and Education	O Public Administration and Defence; Compulsory Social Security	Public administration and defence; compulsory social security
	P Education	Education (pre-primary; primary; secondary; Higher education; Other education; educational support activities)
	Q Human Health and Social Work Activities	Human health activities; Residential care activities; Social work activities without accommodation
Other	R Arts, Entertainment and Recreation	Creative, arts and entertainment activities; Libraries, archives, museums and other cultural activities; Gambling and betting activities; Sports activities and amusement and recreation activities
	S Other Service Activities	Activities of membership organisations; Repair of computers and personal and household

		goods; Other personal service activities
	T Activities of Households as Employers; Undifferentiated Goods-and Services-Producing Activities of Households for own use	Activities of households as employers of domestic personnel; Undifferentiated goods- and services-producing activities of private households for own use
Source: ONS Summary of Structure, 2017		

How to access background or source data

The data collected for this social research publication:
☒ are available in more detail through statistics.gov.scot and data.gov.uk

social research

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IMPORTANT: THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997,
SECTION 127
PLANNING etc. (SCOTLAND) ACT 2006

ENFORCEMENT NOTICE

SERVED BY PERTH & KINROSS COUNCIL

RELATING TO THE LAND AND BUILDINGS AT HILLVIEW, KINLOCH, BLAIRGOWRIE, PERTHSHIRE, PH10 6SD.

THIS NOTICE IS SERVED ON

PETER BROWN, HILLVIEW, KINLOCH, BLAIRGOWRIE, PERTHSHIRE, PH10 6SD.

AGNES BROWN, HILLVIEW, KINLOCH, BLAIRGOWRIE, PERTHSHIRE, PH10 6SD.

WILLIAM BROWN, HILLVIEW, KINLOCH, BLAIRGOWRIE, PERTHSHIRE, PH10 6SD.

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1) **THIS IS A FORMAL NOTICE** which is served by the Council because it appears to them that there has been a breach of planning control, under Section 123(1)(a) of the Town and Country Planning (Scotland) Act 1997, at the land described below. They consider it is expedient to issue this notice, having regard to the provision of the development plan and to other material planning considerations.

2) **THE LAND AFFECTED**

The site to which this notice relates, (shown edged in red on the attached site plan), is the land and the former general storage building at, Hillview, Kinloch, Blairgowrie, Perthshire, PH10 6SD.

3) **THE BREACH OF PLANNING CONTROL ALLEGED**

The unauthorised material change of use of the former storage building for residential occupation, and use of associated land forming its curtilage for residential purposes.

4) **REASONS FOR THIS NOTICE**

i. The development has occurred within the last four years.
ii. An application for an agricultural storage shed (17 x 11m) was received by Perth and Kinross Council on 27th March 2012, and was granted under prior notification as permitted development on 03rd April 2012. Within the agent's supporting statement, it was stated, *It is intended that 2/3 of its capacity will be used for winter feed storage and the remaining area for farm implement storage*. The Council was advised that the area of associated agricultural ground was in excess of 0.4 hectares.

SCHEDULE 1

Explanatory note for those in receipt of an enforcement notice

Relevant Legislation

A copy of Sections 127 – 136 of the Town and Country Planning (Scotland) Act 1997, and Section 136A Planning etc, (Scotland) Act 2006, is attached. You will wish to note in particular the points referred to below.

Right of Appeal

If you wish to appeal against this notice, you should write to The Directorate for Planning and Environmental Appeals, The Scottish Government, 4 The Courtyard, Callendar Business Park, Callendar Road, Falkirk, FK1 1XR. The appeal must be received, or posted in time to be received, by him before 26th March 2018. The Scottish Executive has no power to consider an appeal lodged out of time.

The Appeal, which must be in writing, must be based on one or more of the grounds set out in Section 130(1) (subsections (b) to (g)) of the 1997 Act, and you should state the facts on which you propose to reply in support of each of the grounds of the appeal. The grounds of appeal and the statement of facts must be submitted with your appeal or within 14 days of your being required to do so by the Scottish Executive.

If you lodge an appeal, the Enforcement Notice is suspended and will not take effect unless the appeal is withdrawn or dismissed.

(a) PENALTIES FOR NON - COMPLIANCE WITH AN ENFORCEMENT NOTICE

Where an Enforcement Notice requires the discontinuance of a use of land or compliance, in respect of a use of land or the carrying out of operations, with any conditions or limitations, then any person who, without the grant of planning permission uses the land or causes or permits it to be used, or carries out those operations or causes or permits them to be carried out, is guilty of an offence and liable on summary conviction to a fine not exceeding £20,000, or on conviction on indictment to an unlimited fine. Furthermore, if the use is continued after conviction the person may be convicted of a second or subsequent offence.

(b) Fixed Penalty Notices

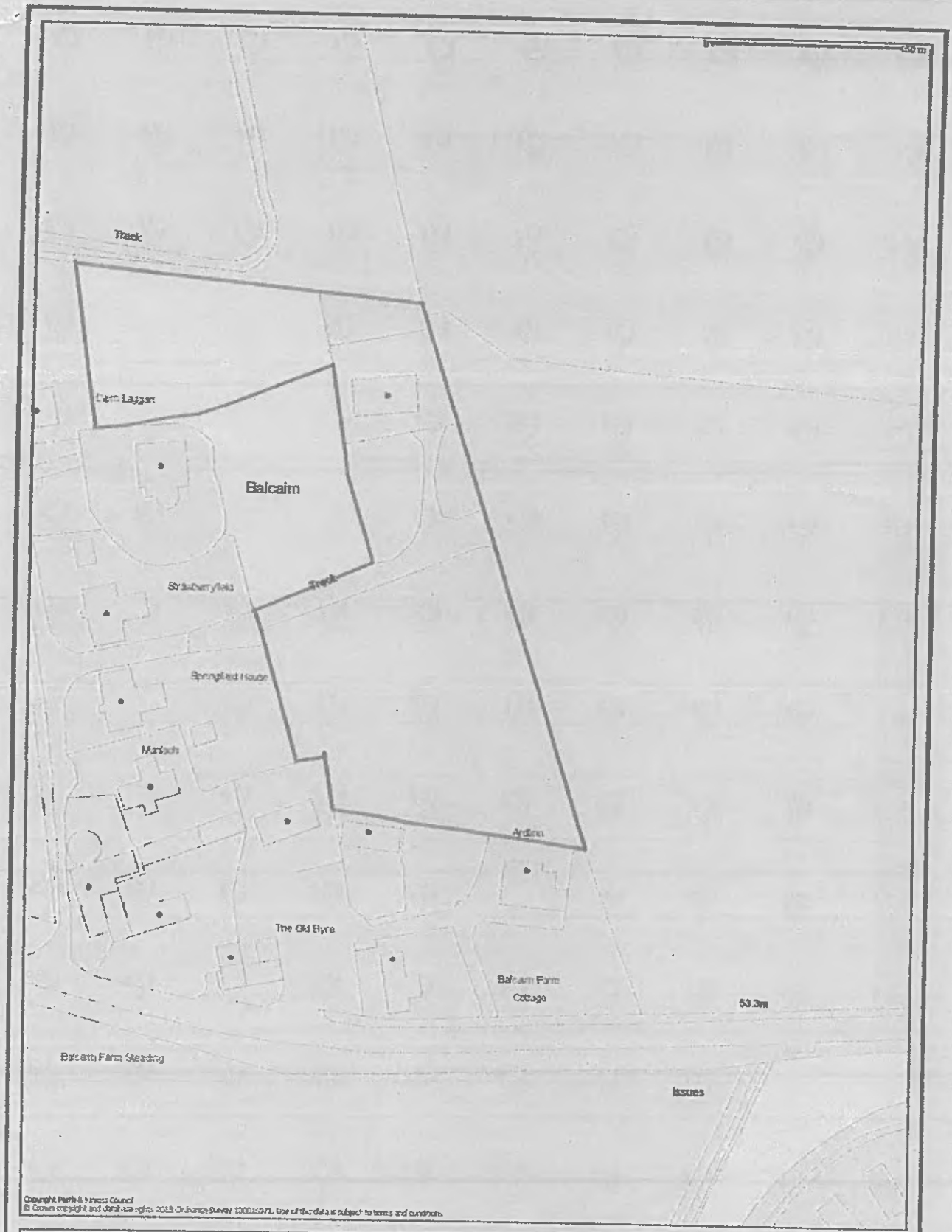
Where a planning authority has reason to believe that a person is in breach of an enforcement notice they may serve on him a fixed penalty notice as respects that breach.

(c) Direct Action for Non Compliance with an Enforcement Notice

If the steps required by an enforcement notice are not taken within the specified period(s) the Council may enter the land, take those steps and recover the cost from the owner or lessee of the land.

(d) Further Offences

Compliance with the terms of an enforcement notice does not discharge the notice. It will continue in effect and any repetition of the breach of control may incur further penalties or may result in direct action by the Council.



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N

Scale 1:1250

Hillview, Kinloch, Blairgowrie.

Enforcement Notice

PERTH & KINROSS COUNCIL

Created by Paul Kettles on 07 February 2018

REPORT OF HANDLING

DELEGATED REPORT

Ref No	**17/01377/FLL**	
Ward No	**P2- Strathmore**	
Due Determination Date	**15.10.2017**	
Case Officer	**John Williamson**	
Report Issued by		**Date**
Countersigned by		**Date**

PROPOSAL: Change of use of outbuildings to form dry-ice manufacturing business (class 5), siting of portable office and installation of plant and machinery (in retrospect)

LOCATION: Kings Of Kinloch Meigle Blairgowrie PH12 8QX

SUMMARY:

This report recommends **approval** of the application as the development is considered to comply with the relevant provisions of the Development Plan and there are no material considerations apparent which outweigh the Development Plan.

DATE OF SITE VISIT: 31 August 2017

SITE PHOTOGRAPHS

BACKGROUND AND DESCRIPTION OF PROPOSAL

Full planning consent is sought for the change of use of outbuildings to form a dry ice manufacturing business (class 5), siting of a portable office and installation of plant and machinery. The application site is occupied by a stone built, slate roof outbuilding associated with Kings of Kinloch, a large, listed, detached stone built dwellinghouse which was formerly a hotel. There is a storage tank, small stone built, slate roof store and portable office building on the site and operations are currently taking place on the site as the application is in retrospect. The site is located to the west of Meigle and is accessed from the A94 public road. The site is served by an existing access which travels past a series of holiday lodges up to the main house with the outbuilding located to its east, partially contained by woodland. A timber fence surrounds the site to the east and north which provides screening from the open farmland to the north.

The site manufactures dry ice for sale which is utilised in pharmaceutical, transportation and cleaning industries. The submission indicates that working hours are 0730 to 1800.

SITE HISTORY

None

PRE-APPLICATION CONSULTATION

Pre application Reference: None

NATIONAL POLICY AND GUIDANCE

existing tourist related development will generally be supported. All proposals are required to meet all the criteria set out in the policy.

Policy EP8 - Noise Pollution
There is a presumption against the siting of proposals which will generate high levels of noise in the locality of noise sensitive uses, and the location of noise sensitive uses near to sources of noise generation.

Policy HE2 - 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. 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.

OTHER POLICIES

None

CONSULTATION RESPONSES

Environmental Health – no objection subject to conditions

Transport Planning – no objection

EXTERNAL

Scottish Water – no objections

REPRESENTATIONS

None received

ADDITIONAL STATEMENTS RECEIVED:

Environmental Impact Assessment (EIA)	Not Required
Screening Opinion	Not Required
EIA Report	Not Required
Appropriate Assessment	Not Required
Design Statement or Design and Access Statement	Supporting Statement submitted
Report on Impact or Potential Impact eg Flood Risk Assessment	Not Required

Environmental Health (EH) have indicated that this is not ideal but given the 200 metre separation distance to the nearest property and the stated hours of operation of 0730-1800 Monday to Friday with occasional Saturday morning working, EH believe the noise can be adequately control through suitable conditions. Whilst EH initially recommended a condition limiting the hours until 1630 (based upon the original submission) following discussions they have confirmed that they consider allowing operations to occur until 1800 to be acceptable. Furthermore the applicant has indicated that only on occasion will work continue until 1800 hours. On the basis of the response from EH I am satisfied that the use can be suitably controlled to minimise impact on residential amenity and is therefore considered to accord with the relevant provisions of the Development Plan in this regard.

Visual Amenity/Listed Building

The application site is well hidden with a large area of woodland to the south which provides containment and screening for the use. Furthermore the development makes use of existing outbuildings on the site which is considered appropriate. It is noted that there is a temporary office building sited and a timber fence present on the east and north boundaries. These are both considered acceptable but I intend to limit the siting of the temporary building for a temporary period only given its temporary appearance. The fence helps to screen the operations from the wider rural area and is considered acceptable. The site sits separately from the main listed building and is located on its servicing side rather than adjacent to any principle elevations and as such is not considered to result in any detrimental impact to the setting of the listed building. Overall the visual impact of the operation is considered minimal and accords with policies PM1A and B relating to placemaking and HE2 relating to the setting of listed buildings subject to the condition restricting the office building to a temporary period only.

Traffic and Road Safety

From my site visit it was evident that deliveries to the site are undertaken using light goods vehicles (LGVs). The applicant has indicated that the operation involves one delivery in to the site weekly and 2 vans delivering out once per day. As such the traffic associated with the use is considered to be limited and acceptable. The existing access drive serving the house and business is capable of accommodating the traffic associated with the use and the bellmouth onto the public road and its visibility is considered acceptable. The proposal therefore accords with Policy TA1B of the LDP.

Developer Contributions

The Developer Contributions Guidance is not applicable to this application and therefore no contributions are required in this instance.

Economic Impact

Reason - In the interests of residential amenity; to ensure a satisfactory standard of local environmental quality.

3 The hours of operation shall be restricted to 0730 hours to 1800 hours Monday to Saturday and no work shall be undertaken on the premises on Sunday.

Reason - In the interests of residential amenity; to ensure a satisfactory standard of local environmental quality.

4 The portable office building is granted for a temporary period of three years from the date of the decision notice. Prior to the expiry of this, the portable office building shall be removed and the site reinstated to its former condition, all to the satisfaction of the Council as Planning Authority.

Reason - In view of the nature of the proposed development and to enable the Planning Authority to review the circumstances pertaining to the proposal within a reasonable period of time.

Justification

1 The proposal is in accordance with the Development Plan and there are no material reasons which justify departing from the Development Plan.

Informatives

None required

Procedural Notes

Not Applicable.

PLANS AND DOCUMENTS RELATING TO THIS DECISION

17/01377/1

17/01377/2

17/01377/3

17/01377/4

17/01377/5

TCP/11/16(552) – 18/00263/FLL – Erection of an office building (class 4) including access ramp, 3 ancillary storage sheds, formation of car parking, external storage area, landscaping and associated works (in retrospect) at Hillview, Kinloch, Blairgowrie, PH10 6SD

PLANNING DECISION NOTICE *(included in applicant's submission, see pages 411-412)*

REPORT OF HANDLING *(included in applicant's submission, see pages 413-423)*

REFERENCE DOCUMENTS *(part included in applicant's submission, see pages 435-448 and 505-524)*

RA DALTON
waste water specialists

Unit 18, Block 8
South avenue
Blantyre
G72 0XB
Office: 01698 827628
Email: chris@radalton.co.uk
Website: www.radalton.co.uk

Seath Planning Consultancy Ltd.,
88 Scott Road,
Glenrothes,
Fife,
KY6 1AE

20th February 2018

Attn: Alan Seath DipTP MRTPI

Ref: 2954 Proposed House At Hillview, Balcairn

Dear Alan,

Following our recent conversation please find tables below as discussed;

Please note we have used a flow rate of 50L/hd /day for the calculation based on office workers NO canteen as per Flows and loads 4 By British Water.

2954 Proposed House at Hillview, Balcairn for G Burke	
Phosphorus mitigation calculations based on British Water Code of Practice.	
Background	
Average amount of water per person per day	= 150 litres
Primary Treatment (Septic Tank - standard discharge)	= 10mg P/litre
Daily discharge of phosphorus (per person) form primary treatment	= 1500mg P
Secondary treatment (package treatment plant)	= 2mg P/litre
Daily discharge of phosphorus (per person) from secondary treatment	**= 300mg P**
Proposed Development	
Office development 6 persons @ 50 l /Hd Per day	= 2 P.E.
Secondary treatment to be installed	= 2mg P/litre
Daily discharge of phosphorus = 300mg P x 5 P.E.	**= 600mg P/day**
Phosphorus Mitigation	
Mitigation requires a reduction of 125% of the amount of phosphorus to be discharged from the new development = 125% x 1500mg P/day	**= 750mg P/day**

Mitigation is proposed by upgrading a septic tank for 2 x3 bedroomed properties to a secondary treatment plant	
2 x 3 bedroom houses (Chestnut View, Balcairn and Wood Acre, Balcairn)	= 10 P.E.
Existing discharge	= 15000mg P/day
Discharge after upgrade to 2mg/l P = 300mg P x 6 P.E.	= 3000mg P/day
Mitigation offered is 15000 - 3000	**= 14250mg P/day**
which is in excess of the requirements	

I hope this helps with your proposal and look forward to our meeting on Thursday.

Yours sincerely

pp. H Campbell

Chris Brand
Tel: 07384462528

All correspondence to Head Office Address above
OFFICES ALSO AT CHESTERFIELD: TEL: 01246 865412 EMAIL: michelle@radalton.co.uk
BLANTYRE, GLASGOW: TEL: 01698 827628 EMAIL: marion@radalton.co.uk

V.A.T Reg. No. 827 7242 15 Company No. 04880888

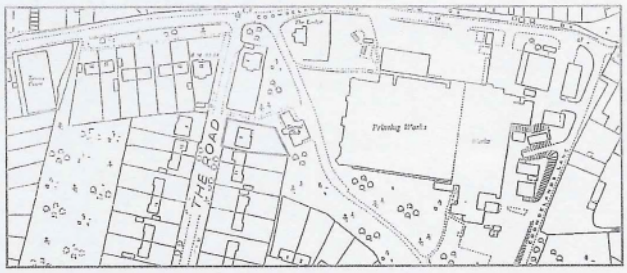
LPGenius from CALOR

Technical Publication

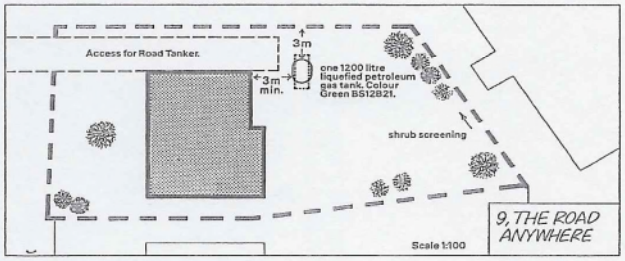
Guide to Obtaining Planning Permission for a Calor Tank Installation

If formal planning permission is required by the Local Planning Authority for a Calor tank installation, the Planning Application forms can be obtained from your Local Planning Authority at the local district council or downloaded from their web site and completed on-line. You will need to submit four completed copies of the planning application form and enclose in the application the following information:-

1. Four copies of an ordnance survey street map with your location and boundary clearly shown and outlined in red. These maps can often be obtained for a small charge from your local planning authority.



2. Four copies of a site plan showing the location of the tank in relation to buildings & property boundary. Planners will normally ask for plan and elevation of installation to a scale of 1:500 or 1:200. This can be easily drawn by yourself using a builders/architects scale rule, these are available from leading stationers.



3. You should indicate on the attached plan the specification of the Calor tank that has been selected for your installation. The vessel specification can be obtained from your Calor representative.

4. A cheque to cover the small fee which is payable to your local authority

9, The Road
Anywhere

Director of Planning Services
Council Offices
Anywhere

For the attention of Mr. T Smith, Planning Department

Dear sir,

ref: 9, The Road, Anywhere

In support of our Application for the installation of a ..... litre LPGtank to be used in connection with a domestic central heating system, we enclose the following:-
1. Four copies of your planning application form
2. Four copies of the site location plan
3. Four copies of the plan showing specification of the tank concerned
4. Cheque for the planning application fees.

The tank is being supplied by Calor Gas Limited and the whole installation will be in accordance to LP Gas Association Codes of Practice.

Yours faithfully,

Further details will be available from the Planning Department.

We suggest that your covering letter could be similar to the example shown.

Before submitting your application it is prudent to telephone the planning department of your local Town or District Council to tell them that an application is being submitted and to enquire as to the name of the planning officer who will be dealing with your application.

Should you require any further advice on obtaining planning permission your Calor representative will be pleased to assist you.

The information in this document is intended to give guidance and believed to be accurate and represent good practice at the time of publication. It does not replace the need to consult other formal documents where further information may be required.

No responsibility or liability is accepted by Calor Gas Limited for any loss or damage arising out of the information given.
It is important that users of this publication adhere to all legal requirements, Regulations, CoP's and Standards, particularly, those relating to gas safety.

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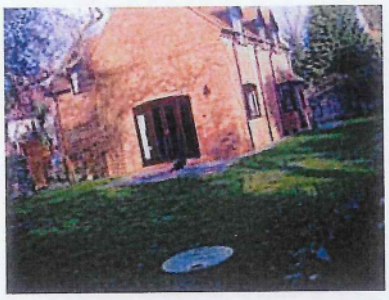
102904 Produced by Safety, Health & Environment Department rev 1 (02/10)

UNDERGROUND TANK SPECIFICATION

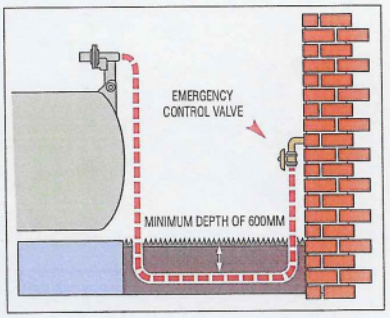
This information sheet will guide you through your underground tank installation step by step.

The underground tank is an unobtrusive installation. All that's visible is the green cover which gives access to the valve assembly. Once the tank is buried, the area can be returned to grass or planted with flowers or shallow rooted shrubs (no trees to be planted or buildings or timber decking erected). As with all gas installations, there are some basic health and safety precautions to observe. These can be found overleaf.



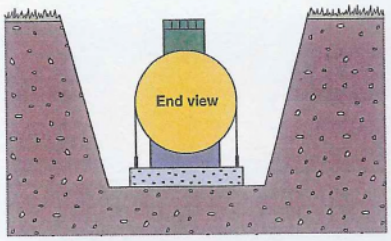
The installation, step by step

1. You and Calor will have decided on the site for the tank.
2. You will have signed a Domestic Gas Order (DGO).
3. You will need to have the excavation dug at least 7 days prior to the installation. Calor will supply the base, unless otherwise stated. You will need to have the trench prepared from the centre of the narrow end of the base to the agreed pipeline entry point as indicated on the DGO. When preparing the trench it should be a minimum of 600mm deep and the width of an ordinary garden spade. You should ensure that the bottom of the trench and the back-fill are free of sharp stones/objects as these may damage the pipe. Extra protection may be necessary if the pipe runs below roadways or garden walls etc. The route of the trench should be agreed with your local Calor area specialist and indicated on the plan. Calor can provide detailed information and guidance on key safety tips to consider before, during and after the excavation process.
4. The tank is delivered and lowered into the pit and back-filled. On most occasions, the original soil will be used, unless the soil contains sharp stones/objects, in which case, the soil needs to be filtered. Specific advice will be provided by your local Calor area specialist.
5. A Calor approved contractor connects the tank pipeline to the house. The contractor installing the tank will normally lay the underground gas pipe that runs from the tank to your house. The pipe will be laid along a prepared trench to the outside wall of your home where it will enter at about 600mm above ground level with a quick acting emergency control valve (as indicated below). You will require a CORGI registered installer to connect the pipe from this valve to the boiler and any other appliances.
6. When the excavation has been suitably back-filled, the tank is filled with LPG. Once your CORGI registered installer has connected the internal pipework and tested the installation for gas tightness, you can enjoy all the benefits of Calor Country Living.

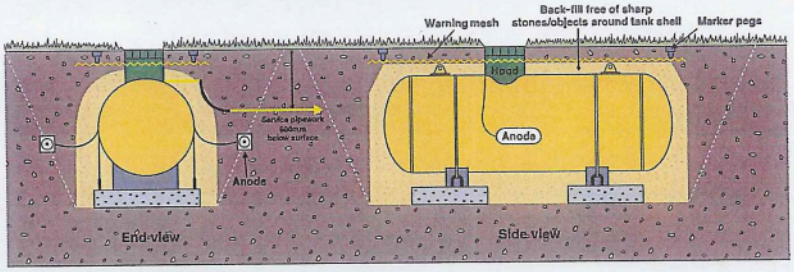


Note: All photographs and diagrams are for illustrative purposes only.

Typical tank excavation



Cross-section of a typical underground tank installation



Note: White dotted lines detail the original excavation.

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CALOR

UNDERGROUND TANK SPECIFICATION

Health and safety requirements

- A minimum separation distance away from any building, property or ignition source, as specified in the 'Tank dimensions' table below.
- As the tank is hidden from view, the area must be clearly marked with pegs.
- Vehicles must not be able to drive or park over the tank boundary area.
- Access for installation of the tank and its safe removal if required at any time.
- Access for our delivery tanker, considering vehicle weight, height, width, the suitability of access roads and the length of the delivery hose.
- Access for our driver to fill the tank (the driver must be able to see the delivery tanker from the tank whilst filling).
- Screen planting is acceptable on one side of the tank only if kept at a minimum distance of one metre. The area around the tank must be kept clear of vegetation or flammable items.
- Tanks should not be located directly beneath electrical power cables.
- The tank itself remains the property of Calor and will be checked and maintained by our qualified engineers. Calor must retain rights of access to the land on which the tanks are sited to allow access for refuelling and maintenance.

Tank dimensions	2,000 Litre	4,000 Litre
Diameter of tank (mm)	1,200	1,200
Length of tank (mm)	3,040	4,400
Width of excavation - at bottom (mm)	2,400	2,600
Length of excavation (mm)	4,240	5,600
Depth of excavation (mm)	1,565	1,865
Height of anode 'shelf' (mm)	400	550
Minimum depth of trench (mm)	600	600
Width of trench	Spade width	Spade width
Minimum separation distance between tank, buildings, property boundary and ignition source (mm)	1,000	3,000
Minimum separation distance between valve assembly, buildings, property boundary and ignition source (mm)	3,000	7,500

© Calor Gas Limited 2006

CALOR

Bike Rack Specification

Single sided outdoor bike rack for up to 6 bikes

Compact design to maximise quantity of bikes per rack

Galvanised steel construction for outdoor use with 19mm diameter tube

To suit a maximum tyre width of 45mm

Stable with option to secure to the ground

Multiple racks can be attached together end on end

Ideal for commercial application outside offices and shops

TCP/11/16(552) – 18/00263/FLL – Erection of an office building (class 4) including access ramp, 3 ancillary storage sheds, formation of car parking, external storage area, landscaping and associated works (in retrospect) at Hillview, Kinloch, Blairgowrie, PH10 6SD

REPRESENTATIONS

Comments to the Development Quality Manager on a Planning Application

Planning Application ref.	18/00263/FLL	**Comments provided by**	Dean Salman Development Engineer
Service/Section	Transport Planning	**Contact Details**	[redacted]
Description of Proposal	Erection of an office building including access ramp (class 4), 3no. ancillary storage sheds, formation of car parking, landscaping and associated works (in retrospect)		
Address of site	Hillview, Kinloch, Blairgowrie, PH10 6SD		
Comments on the proposal	Insofar as the Roads matters are concerned I have no objections to this proposal.		
Recommended planning condition(s)			
Recommended informative(s) for applicant			
Date comments returned	17 April 2018		

M e m o r a n d u m

To	Development Quality Manager	From	Regulatory Service Manager
Your ref	18/00263/FLL	Our ref	MP
Date	23 April 2018	Tel No	[redacted]

The Environment Service **Pullar House, 35 Kinnoull Street, Perth PH1 5GD**

Consultation on an Application for Planning Permission
RE Erection of an office building (class 4) including access ramp, 3no. ancillary storage sheds, formation of car parking, external storage area, landscaping and associated works (in retrospect) Hillview Kinloch Blairgowrie PH10 6SD for Browns Groundworks

I refer to your letter dated 4 April 2018 in connection with the above application and have the following comments to make.

Recommendation
I have no objection in principle to the application but recommend the under noted condition be included on any given consent.

Comments
I have concerns with regards to noise for this application particularly if the site is accessed before 7.00 am as there are receptors within 50 metres. As this is in retrospect and I am aware of no complaints, I believe the undernoted conditions should provide sufficient protection to residential amenity.

Conditions
EH02 Servicing of and deliveries to the premises shall be carried out between 0700 and 1900 Monday to Saturday only, with no servicing or deliveries permitted on Sundays.

EH10 All plant or equipment shall be so enclosed, attenuated and/or maintained such that any noise therefrom shall not exceed Noise Rating 35 between 0700 and 2300 hours daily, or Noise Rating 25 between 2300 and 0700 hours daily, within any neighbouring residential property, with all windows slightly open, when measured and/ or calculated and plotted on a rating curve chart.

EH31 All external lighting shall be sufficiently screened and aligned so as to ensure that there is no direct illumination of neighbouring land and that light spillage beyond the boundaries of the site is minimised to a degree that it does not adversely affect the amenity of the neighbouring land.

Within 2 months of the granting of planning permission, a noise management plan shall be submitted to and approved by the Planning Authority to minimise the impact of noise at local receptors

Scottish Natural Heritage
Dualchas Nàdair na h-Alba
All of nature for all of Scotland
Nàdar air fad airson Alba air fad

Development Quality Manager
Perth and Kinross Council
Pullar House
35 Kinnoull Street
PERTH
PH1 5GD

21 May 2018

Our ref: SIT/SAC/Dunkeld-Blairgowrie Lochs/ASS
SIT/SSSI/Lochs Clunie and Marlee/ASS

Your ref: 18/00263/FLL

Dear Mr Brian

Town and Country Planning (Scotland) Act 1997

Erection of an office building (class 4) including access ramp, 3no. ancillary storage sheds, formation of car parking, external storage area, landscaping and associated works (in retrospect), Hillview, Kinloch, Blairgowrie, PH10 6SD

Thank-you for your consultation of 2 May 2018 seeking our comments in respect of the above planning application.

Summary

This proposal could be having serious impacts on the protected features of the Dunkeld-Blairgowrie Lochs Special Area of Conservation (SAC) and Lochs Clunie and Marlee Site of Special Scientific Interest (SSSI) due to nutrient enrichment of the lochs as a result of foul drainage from the property. We, therefore, object to this proposal until further information is provided. This will enable us to carry out an appraisal of these effects and help you determine this proposal.

Appraisal of the Impacts of the proposal and advice

Dunkeld-Blairgowrie Lochs Special Area of Conservation (SAC)

The proposed development lies within the catchment of the Dunkeld-Blairgowrie Lochs SAC. The site's status means that the requirements of the Conservation (Natural Habitats, &c.) Regulations 1994 (the "Habitats Regulations"), as amended, apply. A summary of Scottish Government policy can be found on our website: (http://www.snh.gov.uk/docs/A423286.pdf).

In our view, this proposal is likely to have a significant effect on the clearwater lochs, slender naiad and mire interests of the SAC. This type of water body, and the slender naiad, are now rare and threatened in the UK as a result of nutrient enrichment from man-made sources, including housing developments and agriculture. Consequently, Perth and Kinross Council is required to carry out an appropriate assessment in view of the site's conservation objectives

Scottish Natural Heritage, Battleby, Redgorton, Perth, PH1 3EW
Tel 01738 444177 Fax 01738 45 8611 www.snh.org.uk

for its qualifying interests. To help you do this, we propose to carry out an appraisal to inform your appropriate assessment.

To enable us to carry out this appraisal, the following information is required:

- As per the Supplementary Guidance for the Dunkeld-Blairgowrie Lochs SAC, http://www.pkc.gov.uk/media/37576/Lunan-Lochs-SPG-Final-2016/pdf/Lunan_Lochs_SPG_Final_2016 the applicant is required to provide phosphorus mitigation calculations to demonstrate that the total phosphorus loading from the existing property can be reduced by at least 125% of the phosphorus loading likely to be generated by the new development (PolicyEP6*)*

Annex 1 contains full details and reasoning of these requirements.

If you are minded to grant planning permission against our advice, you should notify the Scottish Ministers.

European Protected Species – Slender Naiad

Please note that Slender Naiad is also a European Protected Species (EPS), and is therefore afforded further protection under the Habitats Regulations. Further information is available on our website http://www.snh.gov.uk/protecting-scotlands-nature/species-licensing/european-species-licensing/

Lochs Clunie & Marlee SSSI

The lochs and associated botanical interest of the SSSI are also likely to be adversely affected by the proposal for the reasons outlined above for the SAC interest.

The contact for this consultation is Nicki McIntyre, email nicki.mcintyre@snh.gov.uk or telephone 01738 458591.

I would be grateful if you could let us know of your Council's decision in due course or of any further changes to the proposal which would be relevant to our interests.

Yours sincerely

(via email)

Gavin Clark
Operations Manager
Tayside and Grampian
[redacted]

Annex 1 - SNH Appraisal of the Proposals

Appraisal of the likely impacts to the Dunkeld-Blairgowrie Lochs Special Area of Conservation (SAC)

Information regarding the SAC qualifying features and Conservation Objectives are available on the Sitelink section of our website at http://gateway.snh.gov.uk/sitelink/index.jsp.

Dunkeld-Blairgowrie Lochs SAC

The site's SAC status means that the requirements of the Conservation (Natural Habitats, &c.) Regulations 1994 as amended, (the 'Habitats Regulations') apply. Further details of the legislative requirements can be found at: http://www.snh.gov.uk/docs/A423286.pdf.

The proposal is not directly connected with, or necessary to, conservation management of the site.

This is a retrospective application for the conversion of the current building to office use. The planning application does not provide the phosphorous mitigation calculations required under EP6, therefore, in our view, as Hillview has been occupied since 2016, this proposal is likely to be having a significant effect on the qualifying interests of the site. As a consequence, Perth and Kinross Council is required to undertake an appropriate assessment in view of the site's conservation objectives for its qualifying interests.

It is likely that the proposal is currently having a significant indirect effect on the qualifying interests of the SAC due to the increase in phosphorus released into the catchment. Eutrophication, which leads to deterioration in water quality, has been an issue in these lochs for a considerable length of time. These problems result in higher pH, phosphate and nitrate levels and increased turbidity through suspended algal growth. The combination of these factors leads to decreased water clarity and reduced photosynthesis, resulting in a serious decline in the botanical interest of the SAC, including the slender naiad population. Slender naiad monitoring in September 2007 found a healthy slender naiad population in Loch of the Lowes, two plants in Marlee Loch and none in Lochs Craiglush, Butterstone and Clunie, overall, a considerable crash in population from the 2004 survey. The plant was monitored again in 2016, with no plants being found in any of the lochs and an algal bloom recorded in both Clunie and Marlee Lochs. Water clarity in Marlee was noted as poor. This is clear evidence that nutrient enrichment is continuing to have a detrimental impact to the protected features of the SAC. Any further increase in the phosphorus loading to the lochs further reduces any chance of the slender naiad population recovering.

Research work by the Scottish Environment Protection Agency (2004) and Edinburgh University (2005) has demonstrated that the two most significant contributions to the increased phosphorus loads in the catchment are run-off from agricultural land and septic tanks. To address this issue we introduced a catchment management scheme in 2004 to reduce phosphate pollution from farming. Due to reductions of run-off from agricultural land the lochs showed early signs of recovery, however, recent excessively wet winters have reversed this trend, demonstrating how fragile the recovery had been.

Nutrient enrichment arising from the foul drainage associated with housing tends to be long lasting and difficult to reverse. It is, therefore, essential that any proposed development demonstrates that there would be no net increase in phosphorus loading to the lochs. The drainage strategy for this development is currently increasing the phosphorous loading to the catchment.

SEPA
Scottish Environment Protection Agency
Buidheann Dìon Àrainneachd na h-Alba

Our ref: PCS/158865
Your ref: 18/00263/FLL

If telephoning ask for:
Silvia Cagnoni-Watt

23 May 2018

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

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

Dear John

Town and Country Planning (Scotland) Acts
Planning application: 18/00263/FLL
Erection of an office building (class 4) including access ramp, 3no. ancillary storage sheds, formation of car parking, external storage area, landscaping and associated works (in retrospect)
Hillview Kinloch Blairgowrie PH10 6SD

Thank you for your consultation email which SEPA received on 02 May 2018.

Advice for the planning authority

We **object** to this planning application on the grounds of lack of information in relation to waste water drainage. We will review this objection if the issues detailed in Section 1 below are adequately addressed.

1. Phosphorous mitigation

1.1 We responded to planning application 16/01937/FLL in 2017 (last response send by email on the 24 February 2018 – our ref: PCS/151544). We removed our objection on the basis that the phosphorus calculation was acceptable for the dwellinghouse proposed. This consultation is now for an office and other associated development but no phosphorus calculation is available within the documentation provided, even though the Supporting Statement, page 9, mentions a revised calculation to be submitted.

1.2 The updated Lunan Valley Area Dunkeld – Blairgowrie Lochs Special Area of Conservation supplementary guidance (SG) was adopted in October 2016. The SG requires that information is submitted with Full or Approval of matters specified by condition (AMM) planning applications for new developments to provide details of proposed phosphorous (P) mitigation

1.3 The reason for this is to ensure that development accords with Local Development Plan Policy EP6: Lunan Valley Catchment Area which requires that total phosphorous from built

development must not exceed the current level, to ensure no reduction in water quality in the Lunan Lochs due to the fact that the catchment has an issue with elevated nutrient levels. Given that this application does not provide any details of required P mitigation we **object** to this application due to lack of information.

2. Phosphorous mitigation

2.1 Relevant information with regards forms of phosphorous mitigation proposals are contained within the SG. We recommend that the applicant contacts the SEPA Local Regulatory team for further information (see details in section 4 below).

3. The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended)

3.1 The applicant should be aware that they will need to apply for a licence under The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended (CAR)) for the discharge of foul effluent from the development. It should also be noted that any mitigating property will also require authorisation from us under CAR. Contact should be made with the Perth Regulatory Team, details below, regarding this issue.

3.2 The provision of phosphorous mitigation to ensure that total phosphorous from built development does not exceed the current level is a separate issue to the CAR licence. The approval of submitted phosphorus mitigation details through the planning process is therefore made without prejudice to any CAR licence application and does not infer that the CAR licence application(s) will be approved. Conversely it is at the applicant's commercial risk if the CAR license application is progressed in advance of approval of P mitigation details.

Regulatory advice for the applicant

4. Regulatory requirements

4.1 Details of regulatory requirements and good practice advice for the applicant can be found on the Regulations section of our website. If you are unable to find the advice you need for a specific regulatory matter, please contact a member of the regulatory team in your local SEPA office at:

Broxden Business Park, Lamberkine Drive, PERTH, PH1 1RX, Tel: 01738 627989

If you have any queries relating to this letter, please contact me by telephone on 01786 452430 or e-mail at planning.se@sepa.org.uk.

Yours sincerely

Silvia Cagnoni-Watt
Senior Planning Officer
Planning Service

ECopy to: Alan Seath, Seath Planning Consultancy Ltd, a_seath@sky.com ;

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

SEPA
Scottish Environment Protection Agency
Buidheann Dìon Àrainneachd na h-Alba

Our ref: PCS/159265
Your ref: 18/00263/FLL

If telephoning ask for:
Silvia Cagnoni-Watt

28 May 2018

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

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

Dear Mr Williamson

Town and Country Planning (Scotland) Acts
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Erection of an office building (class 4) including access ramp, 3no. ancillary storage sheds, formation of car parking, external storage area, landscaping and associated works (in retrospect)
Hillview Kinloch Blairgowrie PH10 6SD

Thank you for your consultation email which SEPA received on 23 May 2018.

Advice for the planning authority

1. Phosphorus calculations

1.1 In our previous response of the 23 May 2018 (our ref: PCS/158865) we objected on the basis of lack of information in relation to waste water drainage. Having considered the phosphorus calculations submitted in the letter from RA Dalton (dated 20 February 2018), we are now in a position to **remove our objection** to this planning application.

Detailed advice for the applicant

2. The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended)

2.1 The applicant should be aware that they will need to apply for a licence under The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended (CAR)) for the discharge of foul effluent from the development. It should also be noted that any mitigating property will also require authorisation from us under CAR. Contact should be made with the Perth Operations team, details below, regarding this issue.

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Regulatory advice for the applicant

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Yours sincerely

Silvia Cagnoni-Watt
Senior Planning Officer
Planning Service

ECopy to: Alan Seath, Seath Planning Consultancy Ltd, a_seath@sky.com ;

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