

TCP/11/16(448)

Planning Application – 16/01058/FLL – Removal of condition 3 (occupation/ownership) of permission 15/01349/FLL for the erection of a dwellinghouse and associated office studio at Powmill Cottage, Rumbling Bridge, Kinross, KY13 0QG

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TCP/11/16(448)

Planning Application – 16/01058/FLL – Removal of condition 3 (occupation/ownership) of permission 15/01349/FLL for the erection of a dwellinghouse and associated office studio at Powmill Cottage, Rumbling Bridge, Kinross, KY13 0QG

**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 100014490-002

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: JM Planning Services

Ref. Number:

You must enter a Building Name or Number, or both: *

First Name: *

Building Name:

Last Name: *

Building Number:

Telephone Number: *

Address 1 (Street): *

Extension Number:

Address 2:

Mobile Number:

Town/City: *

Fax Number:

Country: *

Postcode: *

Email Address: *

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

Individual Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title:	<input type="text"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text"/>	Building Name:	<input type="text" value="Powmill Cottage"/>
First Name: *	<input type="text"/>	Building Number:	<input type="text"/>
Last Name: *	<input type="text"/>	Address 1 (Street): *	<input type="text" value="Rumbling Bridge"/>
Company/Organisation	<input type="text" value="Richstream Ltd"/>	Address 2:	<input type="text"/>
Telephone Number: *	<input type="text"/>	Town/City: *	<input type="text" value="Kinross"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="United Kingdom"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="KY13 0QG"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text"/>		

Site Address Details

Planning Authority:	<input type="text" value="Perth and Kinross Council"/>
Full postal address of the site (including postcode where available):	
Address 1:	<input type="text" value="Powmill Cottage"/>
Address 2:	<input type="text" value="Rumbling Bridge"/>
Address 3:	<input type="text"/>
Address 4:	<input type="text"/>
Address 5:	<input type="text"/>
Town/City/Settlement:	<input type="text" value="Kinross"/>
Post Code:	<input type="text" value="KY13 0QG"/>

Please identify/describe the location of the site or sites

Northing	<input type="text" value="698414"/>	Easting	<input type="text" value="301825"/>
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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)

Removal of condition 3 (occupation/ownership) of permission 15/01349/FLL for the erection of a dwellinghouse and associated office studio

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 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 ATTACHED REVIEW STATEMENT AND SUPPORTING DOCUMENTS

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)

RL1 - Supporting Planning Statement by JMPS RL2 - Supporting Information – Planning in Principle Document 2011 for Plots 3A to 3D RL3 - Supporting Information – Planning Questions RL4 - Heriot Home Studio Plots Marketing Brochure - Strutt and Parker 2012 (one hard copy only, previously supplied to PKC). RL5 - Location Plan RL6 - Additional Supporting Information – JMPS letter of 6th September 2016 RL7 - Additional Supporting Information – JMPS E-Mail of 15th September 2016 to Planner

Application Details

Please provide details of the application and decision.

What is the application reference number? *

16/01058/FLL

What date was the application submitted to the planning authority? *

13/06/2016

What date was the decision issued by the planning authority? *

30/09/2016

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 *

Holding one or more hearing sessions on specific matters

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)

A Hearing would be the best forum to explain to the LRB the complex nature of the issues involved and to enable the key issues to be debated in an open and transparent manner. A Hearing would also assist the LRB to understand that the need for the newly imposed planning condition is no longer necessary or justified and that there are other means of retaining the future business uses at the location.

Please select a further procedure *

Further written submissions on specific matters

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)

IN THE EVENT OF FURTHER INFORMATION/CLARIFICATION BEING SOUGHT BY THE LRB AND IN ORDER TO RESPOND TO ANY ISSUES RAISED BY 3RD PARTIES AND/OR THE LRB

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)

TO ENABLE THE LRB TO VIEW THE SITE AND ITS CONTEXT IN TERMS OF ITS ASSOCIATION WITH POWMILL.

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)

ACCESS TO THE LAND IS VIA A PRIVATE ACCESS ROAD AND WILL REQUIRE PERMISSION FROM THE LANDOWNER/APPLICANT.

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 John MacCallum

Declaration Date: 30/11/2016

Supporting Review Statement

Prepared by

JM PLANNING SERVICES

On Behalf of

Richstream Ltd

NOTICE OF REVIEW

TO

PERTH AND KINROSS COUNCIL

LOCAL REVIEW BODY

Relating to

CONDITION NO.3 OF PLANNING PERMISSION REFERENCE
16/01058/FLL

for

REMOVAL OF CONDITION 3 (OCCUPATION/OWNERSHIP) OF
PERMISSION 15/01349/FLL FOR THE ERECTION OF A
DWELLINGHOUSE AND ASSOCIATED OFFICE STUDIO

at

PLOT 3D, POWMILL COTTAGE, RUMBLING BRIDGE, KY13 0QG

30th November 2016

FINAL

1.0 INTRODUCTION AND REASON FOR REVIEW

1.1 A Notice of Review has been submitted by JM Planning Services on behalf of Richstream Ltd, whose application for Removal of Condition 3 (occupation/ownership) of planning permission Reference 15/01349/FLL for the Erection of a Dwelling House and Associated Office Studio at Powmill Cottage, Rumbling Bridge Kinross KY13 0QG was approved but subject to a differently worded planning condition.

1.2 The application which is subject to this Review (Reference 16/01058/FLL) was determined under delegated powers on 30th September 2016 and the Planning Case Officer deemed that the application should be approved subject to a number of conditions, including a new condition 3 and reason (which replaced the original condition 3), as stated below:-

“3. The office studio subject to consent 15/01349/FLL shall remain in use solely as an office/business unit in perpetuity to the satisfaction of the Council as Planning Authority.

Reason - To meet the requirements of the E23 (Employment Site) Zoning of the Perth and Kinross Local Development Plan 2014 to ensure an employment use is retained on site.”

1.3 The applicant is exercising their right to seek a review of the Planning Officer’s decision which replaced the previous occupancy condition but did not remove the planning burden entirely as applied for. By imposing the newly worded condition, the decision has still nullified the applicant’s ability to implement the consented development. The applicant therefore seeks to have the alternative condition 3 removed.

1.4 The applicant seeks a determination of the Review by written submissions but also by way of further procedure involving a Hearing, subject to the LRB’s agreement when they meet to consider the Review case. The applicant considers that the issues associated with the application are complex and may be better explained in a forum whereby there would be an opportunity for discussion, and answering any questions from the LRB members.

1.5 There are also 5 other plots at this location with valid planning consents which have the same occupancy/ownership planning restrictions imposed on them and it was hoped that the removal of the restriction for one application would pave the way for all the plots to be burden free, subject to further approvals being sought in those other cases. Therefore the decision to remove the occupancy/ownership restriction on this application, while welcomed, has been negated by the decision to replace it with an alternative planning restriction. This effectively rules out all 6 plots from being developed.

1.6 The site and surrounding location (including these 5 other Plots) is presently zoned in the adopted Local Development Plan for Employment Uses with Associated Residential Use (E23). It relates to a “working from home” concept which the applicant first promoted over 15 years ago and which came to fruition as part of the Local Plan/Local Development Plan processes. In effect, to remove the condition would have implications for this zoning as it would enable house plots to be developed with no planning controls over the business/commercial aspect. However, the applicant advocates that the developments can be implemented without the need for any additional planning control based on sound planning justification.

1.7 The purpose of this Statement is therefore to provide the context for the request for a Review of this application, to provide the justification for removal of the new planning condition without fear of any precedent being set and to appeal to the Council to support the applicant's case to allow development to take place at this location which would still be in accordance with the Council's LDP objectives.

1.8 The Notice of Review contains the documents which were submitted as part of the planning application as well as this additional Supporting Statement and one other supporting document. These are listed below as follows:-

RL1 - Supporting Planning Statement by JMPS and Appendices 1, 2 and 3.

RL2 - Supporting Information – Planning in Principle Document 2011 for Plots 3A to 3D

RL3 - Supporting Information – Planning Questions prepared by Richstream Ltd.

RL4 - Heriot Home Studio Plots Marketing Brochure – Prepared by Strutt and Parker 2012

RL5 - Location Plan

RL6 - Additional Supporting Information – JMPS letter dated 6th September 2016 to PKC

RL7 - Additional Supporting Information – JMPS E-Mail dated 15th September 2016 to PKC Planner, John Williamson (PKC)

2.0 THE “WORKING FROM HOME” CONCEPT

2.1 The “working from home” concept was promoted over 14 years ago by the applicant, Richstream Ltd, whose Directors, Crawford and Karen Heriot reside at Powmill Cottage on Craigton Farm Road, Powmill. Richstream Ltd also own the other 5 consented plots which are located to the east and west of Powmill Cottage along the same farm road.

2.2 The concept was devised to provide employment opportunities for small businesses that did not require specific premises in a town office or in an Industrial Estate/Business Park location but which were not suited in terms of their scale and operation to working from a room in a house. The business would be operated within a separate Office/Studio building to facilitate a business-like function but with home and workplace being in close proximity to each other to suit an individual's circumstances and to get the right “work-life balance”.

2.3 The brief for the businesses was discussed and agreed with the Planning Department. They would be office based - the businesses that you would normally associate with working from home. For example, a Surveyor, architect, accountant and other consultant type professions; an art studio, health and beauty treatments and other similar working from home enterprises. They would be predominantly established businesses, most likely sole traders (ie the person is the business) but some could employ 1 or 2 members of staff at most, thereby creating the desired employment opportunities locally.

2.4 The plots are located on the edge of Powmill and therefore the combined business/residential elements do not impact on the existing community which is predominantly residential. Furthermore, and of equal importance, the plots are of a sufficient size to be able to comfortably accommodate a house and the separate business unit. The type of businesses permitted also ensure that residential amenity is safeguarded for the occupants of the adjacent plots. Therefore, the plots at Powmill offer the right type of environment for the home working uses permitted by the E23 LDP zoning. Based on discussions with the Council's Planning Department to date, the applicants understand that the situation is unique as it has not been replicated elsewhere in the Perth and Kinross area.

2.5 The following is a summary of how the Council considers the plots at this location should be developed. They can be regarded as a further explanation of and additional guidance to the terms of the E23 LDP zoning and were provided in response to specific questions raised by the applicant to ensure subsequent planning applications for the development of the plots complied with the Council's requirements for the location. (The details are contained in the supporting document RL3. Note - it was not deemed necessary to submit this information with the current application as the advice contained in it set out the Planning Department's advice and therefore the Planner would have been aware of the views and advice expressed).

- The site is zoned in the Local Plan for business uses and the outline consent was granted by the Council on basis that the site would be used primarily for business use with the ability to develop a house on the site.
- Any proposed office/business unit should be of a sufficient size that would realistically provide enough space to operate as an independent unit.

- It would be difficult to justify that a room above a garage would constitute as a business unit given that this could be done on any residential site. Any applicant will need to illustrate that the business facilities on the site form an integral part of the development and are not simply an ancillary element of a residential plot.
- Any business uses should fall within Class 4 of the Use Classes Order i.e. offices, light industry, research and development of products or processes..... anyone who is looking to establish a reasonably substantial business operation should be able to comply with the requirements of the outline consent.
- The office unit will need to be linked to the occupation of the unit and not occupied separately from the ownership of the house on the site. The plots are essentially zoned for business use with the ability for the operator or an employee of that business to live on site.
- The main reason for the house existing is the presence of the business. ***If circumstances changed in future then the owner will need to apply for planning consent to change the use of the office / studio and provide a justification as to why the office / studio is no longer required.***

2.6 The applicant has adhered to these guidelines in all subsequent planning applications which have been granted planning permission.

2.7 It is also important to clarify at the outset that the Applicant has demonstrated a significant level of commitment in assisting with the “working from home” concept coming to fruition by investing a substantial amount of time, effort and expense over the last 10 years and more.

2.8 The applicant has demonstrated that the plot in question and the 5 other plots have been successfully marketed (refer to RL4) with genuine interest from a number of prospective purchasers who have gone to the expense of submitting full planning applications for the detailed house design and business unit on the plots, resulting in the successful granting of planning consent for each of the plots. There are also other parties who are only too aware of the problems of raising finance due to the imposition of planning restrictions on developments and who have been awaiting the outcome of this particular application, in the hope that they can proceed with plans for their own “working from home” development at this location.

2.9 The demand for the location has further been proven by the amount of planning applications submitted following the successful marketing of the plots by the applicant over the years. Although consents have been granted over a considerable period of time for the plot (and the other 5 plots), it has only been in the last 5 years or so that proposals have been progressed to the point of implementation due to the financial crisis in 2008 and prevailing market conditions since. However, it has only become further apparent in the last year or so that funding for the self-build plots is not possible from Lending Institutions with a planning burden in place due to tighter borrowing criteria. It is the specific issue of funding alone which has prevented any of these consented developments from being implemented.

2.10 In addition to the marketing of the plots and the continued submission of planning applications for specific developments that meet the planning objectives for the location in terms of business use, house design and landscaping requirements, they have also progressed with the required road design

for the upgrading of the access road along the site frontage, in line with the planning approvals, which again demonstrates a firm commitment to the overall concept. A Roads Construction Consent has now been granted for the road with the road layout and design being amended to a higher specification, including the incorporation of a footpath on one side of the road in order to satisfy PKC's Roads Department's requirements.

3.0 BACKGROUND AND PLANNING CONTEXT

3.1 The information in this Section is intended to provide a brief overview and summary of the background and planning context for this application, with more details being contained in the Planning Statement prepared by JMPS submitted in support of the planning application (RL1).

3.2 Local Plan/Local Development Plan Context

3.2.1 The “working from home” concept came to fruition during the preparation of the **Kinross Area Local Plan** process in 2003/4 in response to the landowner’s promotion of the concept through the Local Plan. The Council accepted the principle of the development proposal as a means of sustaining rural communities both in terms of enhancing business enterprise in the rural area as well as helping to retain and increase population.

3.2.2 The adopted **Kinross Area Local Plan 2004** identified the area at Powmill Cottage as suitable for Rural Business Use under the terms of **Policy 82** whereby the Council sought to give encouragement to the development or expansion of business opportunities, subject to satisfying certain amenity related criteria to ensure the business uses would be compatible with residential and other surrounding land uses.

3.2.3 The zoning in the Local Plan was retained in the replacement plan, the **Perth and Kinross Local Development Plan 2014**. The Council maintains support for the business opportunities for this location, as demonstrated by the various planning permissions which have been granted over time since the original zoning in 2004 and the matter was ratified in the adopted LDP in 2014 under **Site Reference E23 - Employment Uses with Associated Residential Use**. The same criteria to be satisfied as before in the adopted Local Plan still apply.

3.3 Site Location and Description

3.3.1 The application site in question relates to Plot 3D at Powmill Cottage, as shown on the Location Plan (RL5). It is located to the north-west of Powmill, within the settlement boundary, with vehicular access to be taken from a farm road (Craigton Farm Road) directly from the public road A977. The 5 other plots which have valid planning consents for home working are located along the same road frontage

3.4 Planning History

3.4.1 Since 2004, the Council has continued to support and be committed to the “working from home” concept at this location by further granting planning permissions for houses with associated business developments on the 6 plots, as detailed in Section 2 - Planning History of JMPS Planning Statement (RL1). A detailed planning permission (Ref. 15/01349/FLL) for a House with an Associated Office Studio on Plot 3D was granted by PKC on 9th September 2015, which was a renewal of a previous planning permission (Ref. 12/01181/FLL)).

3.4.2 The supporting information document (RL2) illustrates the locational context and site specifics of all 6 plots: Plots 1 and 2, and Plot 3 which was subdivided into 4 plots – 3A, B, C and D.

3.5 Development Plan Policy

3.5.1 The Development Plan for the area incorporating the site location comprises the approved **Tayplan Strategic Development Plan (2012-2032)** and the adopted **Perth and Kinross Local Development Plan (February 2014)**.

3.5.2 There are no specific policies or development strategy directly relevant to this proposal in terms of the Strategic Development Plan but the Plan's overall Vision is noteworthy. It states:-

*"By 2032 the TAYplan region will be sustainable, more attractive, competitive and vibrant without creating an unacceptable burden on our planet. The quality of life will make it a place of first choice, **where more people choose to live, work and visit and where businesses choose to invest and create jobs.**"*

3.5.3 The **Perth and Kinross Local Development Plan 2014** is the most recent statement of Council policy. The site benefits from a planning land use designation of **E23 – Employment Use with Associated Residential**, in order to encourage business use with associated residential use. The site is located within the settlement boundary of Powmill, as identified in the settlement plan on page 230 in the adopted LDP.

3.6 Other Material Considerations

3.6.1 Section 4 - Planning Policy Context of JMPS Planning Statement (RL1) refers to documents (contained in the Appendices 2 and 3) which were relevant to the justification for the removal of the original condition 3 of planning permission 15/01349/FLL which sought to link the occupancy and ownership of the approved house and office studio. These national planning policy documents and appeal cases remain material considerations in the case presented as part of this Review.

4.0 APPLICANT'S JUSTIFICATIONS FOR REMOVING PLANNING BURDEN CONDITION

4.1 The comments contained in this Section seek to respond in detail to the Planning Officer's determination of the planning application, as detailed in the Planning Appraisal section of his Report of Handling.

4.2 AN UNBURDENED CONSENT WILL ENSURE THE OFFICE/HOME WORKING USE WILL BE IMPLEMENTED INITIALLY

4.2.1 A key issue is to ensure that the consented development is implemented in the first instance and it is considered that this should be the Council's prime concern given the allocation of the site for such uses in the Local Plan/Local Development Plan over the past 12 years.

4.2.2 The Planner raised a concern in his assessment of the application that removal of the planning condition with no other planning control in place (the newly worded condition) would not guarantee that the consented development would be implemented in its entirety or that indeed the business use would be implemented at all, not only in relation to this plot but also to the 5 other plots at this location, stating:-

"the removal of the condition will result in the site potentially being occupied solely as residential with no guarantee that any office/home working use will occur on the site."

4.2.3 This point is disputed. The applicant's response to this is that the LDP E23 zoning in itself requires a business use first and foremost with associated residential use. Therefore, in order to comply with the Development Plan, any planning application for a house on one of the plots will need to include a business element. In the case of this planning permission (Reference 15/01349/FLL) and the others granted, the business is already an integral part of the overall consented development.

4.2.4 However, and notwithstanding that planning consents have been granted in the past for a joint business and house development at this location, the Planning Department has *never* requested information relating to the justification for a business use, despite the E23 zoning criteria and also stating in its pre-application responses to general questions posed by the applicant in Document RL3, that "***anyone wishing to develop the site will need to illustrate that they will be operating a stand-alone business***".

4.2.5 Based on further specific pre-application discussions with each of the proposals on the consented plots, the Planning Department was only focused on the potential visual and landscape impact of the proposed developments. There was an insistence that the business use was to be contained in a separate building and not in the proposed dwelling and that there was to be a visual gap between some of the buildings on Plot 3 (Nos 3A to 3D) to ensure that there would be a clear line of sight from north to south. The landscape impact was of sufficient concern that an overall landscape concept drawing was prepared by a Landscape Architect (David Wilson Associates) for the entire 6 plot development, which was ultimately accepted and approved as part of the consents granted.

4.2.6 It is important to state, therefore, that despite the E23 zoning wording which promotes "employment opportunities with associated residential", the Planning Department was aware that subsequent planning applications submitted were residential first and foremost. The Planning Department did not request a business justification to be provided. Nevertheless, the proposals complied with the "working from home" concept which was being specifically promoted by Richstream

Ltd. In the case of all 6 plots, all development proposals have been ultimately supported by the granting of consents by the Planning Department. However, it requires to be further stated that all the proposals which have been submitted to date and approved have related to bona fide “working from home” businesses as a result of the successful marketing of the plots. The sole reason for them not being able to be implemented is purely down to the inability to attract finance for the self-build house element.

4.2.7 In order to ensure compliance of these “working from home” developments with the Development Plan requirements of the E23 zoning, the Planners had no option but to impose the occupancy/ownership condition to the consents granted in line with policy at that time. However, in light of a change in Scottish Government policy in 2011 (to be explained later in Section 4.5), the Planning Department accepts now that this is no longer justified or necessary.

4.2.8 It is clear that the Planning Department’s default position on the type of development acceptable on the plot in question, and those on the 5 other plots, has been a Residential type of development with the Business element being an integral part of the consent. The consented developments maintain compliance with the E23 zoning criteria on the basis that the business use is operated in a separate building on the plot, all as previously discussed and agreed with the Planners in advance.

4.2.9 To assist the Council’s deliberation of this matter for this case and in the future, and to allay any concerns they might have in this regard, the applicant would suggest that for **all** applications, the business details should accompany the planning applications to ensure that the business use is an integral part of the overall consented development to satisfy the LDP E23 zoning. The details of the business represent a material consideration in the assessment of the application. This would provide a further safeguard and greater compliance with the Development Plan than previously has occurred and would prevent the need for any further control in that particular respect. With specific regard to the application which is the subject of this Review, the applicant’s business details can be provided on request should it be necessary.

4.2.10 An additional measure was offered by the applicant late in the consideration of the planning application to propose 2 alternatives in the wording for a planning condition that would require the house and business unit to be built/occupied at the same time to help overcome the Planning Department’s concern that the business use might not be implemented (see RL7). This was, however, rejected by the Planner.

4.2.11 Consequently, any proposal for the development of the plot which satisfies the business criteria will result in planning permission being granted (subject to the layout and design aspects of the overall proposal complying with planning policy) with the development being implemented, since it would be a bona fide proposal. In the unlikely event that the development was not fully implemented in accordance with the approved details i.e. a justified business use operating in association with a house, the Council could enforce any breach of planning control for failing to implement the business element as part of the overall justified development.

4.3 FINANCIAL MATTERS MISUNDERSTOOD BY PLANNER

4.3.1 While the applicant acknowledges that the Planner took time to consider their application which included a significant amount of supporting information, and that he was prepared to try and find a solution, the applicant feels rightly aggrieved with the Planner’s views of this evidence as he

has completely misunderstood the financial issues which have led to the need for the application to remove the planning condition in the first place.

4.3.2 Firstly, the evidence presented was direct from Financial Lending Institutions and a Financial Expert in Residential/Self-Build Plot Mortgages: it does not represent an opinion or an interpretation of those financial matters by the applicant or agent (JMPS) as implied in the Planner's Report of Handling, in which he stated:-

"The applicant's agent has indicated that they are struggling to obtain financing/a mortgage to develop the site due to the restrictions put in place by this condition. In summary the link between the house and commercial/business use turns off lenders."

4.3.3 In addition, it is the same financial bodies who advise that the wording of the newly worded condition imposed on the consent will not meet *their* lending criteria: it is not that the wording is not acceptable to the applicant or their agent.

"I believe I have tried to seek a solution to this issue and offered concessionary wording as an alternative condition, **none of which are considered appropriate by the applicant's agent.**"

4.3.4 Secondly, the key issue to understand is that **Lending Institutions cannot and will not lend for a Residential Mortgage under any circumstances** if there is any business associated with the development, either on the plot or on land adjacent owned by the same person or if there are any planning conditions relating to a business element, as confirmed in the evidence presented (see Appendix 1 in RL1; and the Appendix in RL6). Any mention of a business element in a house mortgage application due to it forming part of the planning approval will stop it being funded. The **Lenders** see mention of a business in any way associated with a self-build house project as restricting the potential to sell the property in the future and are reluctant to lend against it. There has to be no restrictions imposed at all to enable any approved house to be implemented on the plot.

4.3.5 It is different for the commercial element as there are no barriers from lending institutions for commercial mortgages and therefore there is no issue with the proposed business use in that regard.

4.3.6 Thirdly, the Planner has incorrectly sought to overcome the problem by making the following suggestion:-

"The applicant could potentially source funding for the business and residential elements separately and build the business unit before trying to gain access to finance for the house. Then because the business unit is already built it would not be a burden on the finance for the house and because we could not stop the applicant/owner selling them separately at a later date I don't see why there would be an issue for lenders."

4.3.7 There are 2 issues with this. On the one hand, the Planner has misunderstood the lending criteria for the residential mortgage in that the Lending Institutions will not lend if the applicant owns a business on the same plot or even on land adjacent, including if the titles (for the house and business) were split (as above). On the other hand, this suggestion would create a situation whereby the business unit would be run remotely from the "home" until such times as the new house is built on the plot. Since the person and the business are effectively the same for the types of end-user envisaged (and those who have expressed an interest following the marketing of the plots), this would be

impractical. Furthermore, if this situation was to prevail for some time, it would create a development that did not represent sustainable development as it would involve the business owner commuting to and from their place of work. It would effectively only promote a Business/Industrial estate use, defeating the purpose of the “home working” concept.

4.3.8 It is evident that the Council’s intentions to create the “home working” concept, while laudable, do not work in a practical sense by seeking to impose the further planning control it considers necessary. The applicant is of the view that the Council has approached the “home working” concept wrongly in that regard. Instead, it is considered that all planning controls should be lifted as there are other material considerations which can prevail and which will enable the home working concept at this location to proceed. These include:

- the right living and working conditions created by the suitable environment on the edge of settlement location;
- the plots being of sufficient size to safeguard amenity for adjacent plot owners;
- the type of businesses to be permitted in accordance with the LDP zoning;
- the business justification presented as part of a planning submission; and
- the guarantee for the Council that the consented development (i.e. business and residential uses) will be implemented in the first place (as set out in section 4.2 above).

4.3.9 Consequently, the applicant believes that these material considerations will enable the Council to grant planning consents which are unburdened while still complying with Development Plan policy. It is only under these circumstances that such consented developments on these plots will ever be implemented.

4.3.10 Furthermore, the “working from home” concept by its very nature requires a residential element as the person and the business are one of the same. On the basis that the Planning Department has granted planning consents at this location for Residential type of development with the Business element being an integral part of the consent, the only effective means of ensuring that the consents can be implemented is to remove the one remaining burden that will allow the finance to be obtained for the self-build plot.

4.4 THE NEWLY IMPOSED PLANNING CONDITION DOES NOT SERVE A PLANNING PURPOSE

4.4.1 The Planner believes that the newly worded condition now imposed “is reasonable, has a planning purpose and is necessary and wouldn’t be open for challenge in the way the occupancy of the house being tied to the business might.”

4.4.2 Again, the Planner has failed to understand the consequences of imposing further planning control as such wording would still be a burden and prevent obtaining the financial borrowing from lenders (as stated in Section 4.3 above). By imposing further control, the Council is effectively creating a situation which is not attractive to lenders and therefore the consented development will not be able to be implemented.

4.4.3 If the condition facilitates in preventing the implementation of the development, then it is argued that it fails to serve a planning purpose. The Planner agrees that the main issue is of a financial nature. However, contrary to the Planner’s view, the applicant is not attempting to utilise the planning system to circumvent what he considers to be an important planning control on this site for the reasons cited already in Sections 4.2 and 4.3 above.

4.4.4 As also stated above, the Council's approach to encourage the creation of rural employment opportunities would now appear to be flawed by the way in which it has sought to exert additional planning control because it prevents applicants from attracting the necessary finance to implement the consented development. This despite the allocation of the land for business and residential uses already creating the opportunity for such development taking place, which should be the primary concern for the Council to ensure its objectives for the home working concept are realised at all.

4.4.5 It is contended that it is not the purpose of planning to prevent development from taking place. The planning control imposed by the Planner effectively creates blight over an area that has been deemed acceptable in land use terms for an appropriate form of development, which can be controlled at the planning application stage.

4.4.6 The Planner's further reasoning for a new condition is to prevent the business unit from being converted to residential use. It is not clear what the intention is by the Planner in this regard. Any change of use from business use to residential is subject to planning control as the uses are classed differently in the Use Classes Order: a planning permission would be required to authorise such a change of use. This is confirmed by the Planning Department's advice in response to specific questions raised by the applicants a number of years ago (see last bullet point in paragraph 2.3 above).

"If circumstances changed in future then the owner will need to apply for planning consent to change the use of the office / studio and provide a justification as to why the office / studio is no longer required."

4.4.7 Any change of use without planning permission would constitute a breach of planning control, subject to potential enforcement action to rectify such a breach. There is no requirement for additional control nor any planning purpose to be served by such planning control in this specific regard and therefore the newly imposed planning condition is contrary to the tests set out in the Planning Obligation and Good Neighbour agreements Circular 3/2012 of necessity and planning purpose. The corollary is that the use of the condition is therefore also unreasonable.

4.5 SCOTTISH PLANNING POLICY ADVOCATES REMOVAL OF PLANNING CONTROLS/BURDENS

4.5.1 The inability to attract finance for a new house development was first accepted as a material consideration in planning appeals and in case law which in turn influenced the Scottish Government to adopt new planning policy in 2011. The Scottish Government advised then that the critical assessment issue was to ensure that once a house proposal for a new countryside location was able to be justified, by way of appropriate evidence, there was no need to restrict the occupancy of the house. This enabled applicants to secure the appropriate funding from lenders.

4.5.2 The removal of occupancy conditions for houses in the countryside, as well as in other locations/situations whereby a manager's house is required to operate a justified business, has been accepted by Councils throughout Scotland since then and PKC is no different in that regard, adopting the approach in recent years as a means of implementing what is now embodied in national planning policy. The introduction of this approach by the Scottish Government into planning policy was therefore not purely based on planning issues but related to matters of finance, to ensure the approved development could be implemented.

4.5.3 The Planner has deemed it acceptable to remove the previous occupancy condition, in line with Scottish Government policy. The purpose of that policy was to recognise that houses with an occupancy condition were difficult to sell or have the restriction lifted when owners are forced by necessity to move (Chief Planner's letter dated 4th November 2011 – RL1 Appendix 2). Removing occupancy conditions would help reduce complexity and expense within the planning system in the monitoring of such conditions.

4.5.4 By approving the application which is the subject of this Review, the Planning Case Officer has accepted the submitted justification presented under relevant national (Scottish) Planning Policy documents and other planning appeal cases that occupancy/ownership conditions are no longer applicable when granting planning permission. He confirmed that removal of the occupancy condition would not stop the applicant/owner selling the house and business unit separately in the future

4.5.5 However, as a result of the further condition imposed by the Planning Case Officer, reference to Scottish Planning Policy (SPP 2014) remains relevant for this Review case as well as the information submitted in support of the application which sought to demonstrate that any planning condition to control the business aspect of the development would fail to attract finance from lending institutions.

4.5.6 It follows therefore that there is an acceptance by the Council that it can no longer use the planning system to control future scenarios: each case is to be treated on its own merits with proposals being granted planning permission unburdened when justified against planning policy.

4.6 NO NEED TO CONTROL RETENTION OF BUSINESS USE IN PERPETUITY

4.6.1 The Planner considers that it is important that a business use is retained in the future on the plots to ensure Development Plan compliance. This is an understandable position but one which requires to be considered in its proper context as there are other ways of protecting the Council's position in this regard.

4.6.2 Firstly, this new planning condition is effectively a barrier to implementing the consented development as well as a further barrier to selling on the property, (if it was even able to be built with such a condition in place). It is contended that the same arguments for removing an occupancy condition, as set out in Section 4.5 above, now exist for the type of planning condition that the Planner has imposed as he has effectively prevented finance from being obtained which will result in no development taking place on the plots in the first place.

4.6.3 Secondly, as stated in Section 4.2 above, if a business does not materialise (which is unlikely given the justifications for the development already having been provided and accepted), the Council can enforce any breach of planning control for the business use not being implemented as part of the overall consented development.

4.6.4 Thirdly, as stated in 4.4 above, the Council can enforce against breach of planning control for an unauthorised change of use from business use to residential.

4.6.5 In terms of other scenarios, if a business was to no longer exist or be operated from the premises or if the house ownership changed resulting in the business element no longer being in use, these ultimately reflect the situation whereby occupancy conditions are no longer necessary and which are no longer under planning control.

4.6.6 In essence, therefore, it is important to emphasise that the Planning System should be used to control what is acceptable in line with current policy but not used to deal with every eventuality in the future. There is no longer any requirement in planning terms for the Council to seek to control the future business use. The Council is nevertheless able to use the planning system to deal with any potential non-compliance through the enforcement powers available to it based on the business justifications presented at the initial planning stage to help support its position.

4.7 POTENTIAL “RESIDENTIAL ONLY” ALLOCATION AS AN ALTERNATIVE

4.7.1 The Planner has stated that “If consent was granted with no condition this would in effect be giving up this site for residential purpose contrary to the LDP.” In essence, this would be the ultimate consequence if all planning controls were to be removed from the consented developments.

4.7.2 It requires to be emphasised that this was not the specific purpose of the application to remove the original occupancy/ownership condition (No.3) nor is it the intention of seeking removal of the new planning condition imposed on this current consent. As already stated, the applicants have been committed to the working from home concept for over 10 years and have invested a considerable amount of time and money in planning promotion and trying to bring consented developments to fruition. It is also worth reminding the Council that a RCC has recently been granted by the Roads Department for a much higher standard of road construction for the upgrading of Craigton Farm Road which serves the 6 plots, all at the applicant’s greater expense. This road design now incorporates a tarred footpath along the length of the entire frontage of the consented plots from the A977 improving accessibility and helping to create enhanced connectivity for the local community by linking the village of Powmill with the Core Path network in the surrounding area.

4.7.3 This effectively means that 3 plots (Plots 1, 3A and 3D) with detailed consent out of the 6 plots (the other 2 have a valid PPP consent and one detailed consent has expired) could be developed but for the one remaining issue of finance for each prospective applicant/developer/plot purchaser (subject to a few minor planning conditions being discharged before serving the requisite Site Start Notices on the Council prior to implementing the relevant consents).

4.7.4 The applicant has clearly given due consideration to the potential for removing the E23 zoning in the replacement LDP (presently under review but progress having been delayed for a year by the Tayplan SDP Examination process) and re-allocate the land for Residential Use in a replacement LDP, specifically for 6 housing plots as consented. Contact has been made recently with the LDP Team’s Planning Officials to meet and discuss the issue, but only as a result of the decision on this planning application as a way of circumnavigating the financial issue which has put a further stop to the consented developments from being implemented, for all the reasons contained in this Statement.

4.7.5 The LDP Team response did not support the view that changing the E23 zoning to a Residential only zoning was an appropriate way forward. However, the reasons cited were not convincing, as follows:-

4.7.6 Firstly, that there are sufficient housing opportunities elsewhere in Powmill. Again, the Planning Department has failed to see the benefit of the edge of settlement location and the larger plots being able to accommodate the working from home type of developments permitted under the current zoning. The land benefits from a committed zoning and development can be implemented to safeguard the relevant consents in perpetuity.

4.7.7 Secondly, the LDP Team made reference to a document which would preclude any housing at all at this location:-

“The David Tyldesley and associates August 2005 settlement strategy landscape capacity study prepared for the Kinross Plan identified the E23 site as being beyond the sensitive edge of Powmill with important landscape features or views beyond it. If this proposal was assessed as purely a residential allocation it would not be considered appropriate.”

4.7.8 It is surprising for the LDP Team to state that housing is not suitable in terms of its location being beyond the sensitive edge of the settlement of Powmill, when the LDP E23 zoning includes housing as an appropriate form of development at this location, as well as additional business types of development. The land use allocation has already been made for this location which lends support for "development" of the land and a residential only allocation has no difference in land use planning terms to the proposed uses to be created by the current LDP allocation.

4.7.9 It is contended that there would be no greater visual and landscape impact associated with 6 house plots (with a garage and small outbuildings) compared with 6 plots with a house and a small outbuilding for a business use as well as any other garage and small outbuildings associated with a house. Indeed, there would potentially be less structures on each plot without a business element. In any event, the Study document is out of date (11 years old) and has now become irrelevant by the granting of planning consents for development on the 6 plots since it was prepared. The Council has the ability through the assessment of planning applications to control the design of all the buildings on these plots to ensure there will be no adverse visual and landscape impact and therefore the Planning Department's concerns with regard to a residential only land use are not substantiated.

4.7.10 The applicants do accept, however, that seeking a change to a Residential only zoning is not appropriate as it is a matter for the future, given the time delay with the LDP review and since the problem rests with the planning burden associated with the currently consented developments. The applicants do also accept that a Residential only zoning would have its drawbacks in that the Planning Department could not then insist on a business element being included in planning applications for development of a house in this location. Furthermore, while the applicant believes that the plots themselves provide the right environment to attract a working from home user, there would be no "carrot" to do so at the outset.

4.7.11 Nevertheless, the applicants believe that there is an alternative and they consider that the Council needs to approach the matter differently than in the past to assist with the delivery of the working from home concept, leading to a better planning outcome as opposed to the Council's current approach which has been unable to deliver the required outcomes and proven to be doomed to failure over the last 12 years.

4.7.12 As explained in Section 4.2 above, the current approach to delivering the home working concept has proven to be flawed by the need to exert additional planning control. The applicants accept that by retaining the E23 zoning would ensure that bona fide applications would have to include a business justification for the business element to be an integral part of the initial development proposal for each plot to ensure compliance with the Development Plan first and foremost – a justification which has not previously been sought by the Planning Department. As also stated, there is already a proven desire and demand for these type of plots, with the demand already having been demonstrated by the successful marketing of the plots in the past by the applicant (refer

to RL4) and only the issue of finance has prevented the consented developments from being implemented and the home working concept being realised.

4.7.13 If the Council was able to take a different and more positive approach, by applying the criteria referred to in paragraph 4.3.8 above, this would enable unburdened consents to be granted. The right conditions would therefore prevail for the “working from home” concept to be realised which is the aim of the E23 zoning – unburdened plots but with the right “living and working conditions” to encourage businesses being run from homes set in large plots on the edge of the settlement, accommodating a business use that would be “compatible with residential and other surrounding land uses”, thus “satisfying certain amenity related criteria” in line with the intentions of the prevailing E23 zoning. Each proposal would then be Development Plan policy compliant. The future scenarios of potentially changing ownership and businesses no longer being run are no longer considered to be relevant in planning terms, and these have been addressed in Sections 4.4, 4.5 and 4.6 of this Statement.

4.7.14 Finally, and although it is not considered absolutely necessary, once the plots are all completed, and as an additional safeguard, the Council could retain the E23 zoning or amend it to a protection type zoning for retention of business/residential uses to ensure that the home-working concept is retained – as submitted in the supporting evidence presented with the planning application.

4.8 COMPLIANCE WITH SCOTTISH PLANNING POLICY (SPP June 2014)

4.8.1 The key Policy Principle contained in SPP is a presumption in favour of development that contributes to sustainable development.

4.8.2 The working from home development opportunities at this location are fully compliant with this national policy objective.

4.8.3 This policy objective is further translated into the following:-

*“The planning system should support economically, environmentally and socially sustainable places by enabling development that **balances the costs and benefits of a proposal over the longer term**. The aim is to achieve the right development in the right place; it is not to allow development at any cost.”*

4.8.4 One of the introductory paragraphs of SPP also sets out the Scottish Government’s aspirations and objectives for an effective Scottish Planning System:-

“Planning should take a positive approach to enabling high-quality development and making efficient use of land to deliver long-term benefits for the public while protecting and enhancing natural and cultural resources.” (Paragraph 2)

4.8.5 The issues raised by this application require the Council to consider the long term benefits of allowing development unburdened on the application site and the 5 other plots at this location. While it is entirely possible for ownership of the plots to change in the future or for businesses to cease, there are safeguards within the planning system to control those potential scenarios. However, it requires to be stated that the benefits of allowing unburdened consented developments for the home working concept to be realised far outweigh the prospect of the developments changing to purely residential, given that the location has been deemed acceptable for development in the LDP and that the built structures on the plots will already have been assessed and deemed to be acceptable in terms of their visual and landscape impact.

4.8.6 The SPP further advocates that policies and decisions should be guided by a number of principles, one of which is “responding to economic issues, challenges and opportunities”.

4.8.7 In this regard, it is contended that the matter of finance is a significant issue impacting on the delivery of the consented developments at this location. The applicants believe that a more positive approach by the Council to facilitate the consented developments is required and that such an approach is supported by national planning policy.

4.8.8 Of further relevance is the inclusion of the Core Values of the Planning Service which are set out in paragraph 4 of the SPP. It states that Scottish Ministers expect the planning service to perform to a high standard and to pursue continuous improvement. In order to achieve those ends, the following 3 key services, which are considered relevant to this review, are expected to:

- **focus on outcomes, maximising benefits and balancing competing interests;**
- **make decisions in a timely, transparent and fair way to provide a supportive business environment and engender public confidence in the system;**
- **be proportionate, only imposing conditions and obligations where necessary;**

4.8.9 As already stated, the newly worded condition imposed on the consent is not considered to meet the policy tests of necessity, serving a planning purpose nor reasonableness. Therefore, the condition is contrary to the core values underpinning the Scottish Planning System and the Council has adopted an approach which is effectively being unfair towards small business enterprises.

4.8.10 Another key driver of SPP is to focus on the delivery of major and small scale housing developments of all types, including affordable housing. In rural areas, particularly the pressurised areas such as in Central Scotland, SPP advises the following-

“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.**”*

4.8.11 Specifically with regard to delivering housing development in line with SPP policy objectives, there is further justification in this case to remove the planning restriction associated with this consented development for a house with associated business (and the consented developments on the 5 other plots at this location) to enable this planned extension of Powmill to be implemented.

4.9 NO PRECEDENT CAUSED BY REMOVAL OF PLANNING CONTROL

4.9.1 There would be no precedent set by removing the planning restriction that might cause the Council difficulty in dealing with other potential applications for similar proposals, since the creation of a rural employment creating opportunity under the terms of the LDP zoning is understood to be unique and is not known to be replicated elsewhere in the Perth and Kinross area. There are material considerations to justify the removal of all planning restrictions for the site and in doing so, it will ensure that the Council’s long standing objectives for rural employment creation at this particular location will come to fruition.

5.0 SUMMARY

5.1 Section 25 of the Town and Country Planning Act 1997 (as amended), states that planning applications are required to be determined in accordance with the Development Plan unless material considerations indicate otherwise.

5.2 The planning application seeking to remove the planning condition has successfully demonstrated to the Council that the business and residential uses are compliant with the Development Plan in that they meet the criteria set out under the E23 zoning for the site.

5.3 The applicant has gone to great lengths fulfilling the “working from home” objectives and has worked closely with Planning Officials throughout the last 10 years and more to meet their requirements, which they have done.

5.4 The Planning Department has accepted the residential nature of development on the site first and foremost based on the “working from home” concept which has been in compliance with the E23 LDP zoning criteria, as accepted by the Planning Department and their granting of subsequent planning consents. All detailed consents granted have the ability to be implemented but for the sole problem of sourcing funding for the self-build house development due to the planning burden imposed.

5.5 While being supportive of the “working from home” concept by the longstanding LP and LDP zonings and subsequent granting of planning consents over a 10 year period, it is nevertheless the case that if the Council continued to place a planning burden on compliant developments, such an approach would not meet the policy tests of Circular 3/2012 Planning Obligations and Neighbourhood Agreements and would be contrary to SPP policy objectives and principles.

5.6 Furthermore, such an approach is not conducive to supporting the needs of local enterprises which have complied fully with the Council’s LDP zoning criteria and Planning Department’s site specific requirements. The Council instead can adopt, with confidence, a more positive approach which is more understanding of economic conditions and more responsive towards the needs of the business community, in line with national planning policy objectives and principles contained in SPP.

5.7 There are safeguards within the planning system for the Council in the future as it has powers to enforce against any non-compliance with the original justification for the business use being present on the site, supported also by retention of the E23 zoning of the site for such uses in the LDP, in terms of a change in ownership or a potential change of use of the business unit to an alternative use.

5.8 There is no threat of a precedent being set as the “working from home” concept is not replicated elsewhere in the Perth and Kinross Council area.

5.9 An unburdened consent is the only way such compliant development will come to fruition at all on the application site and on the other 5 plots. The Council would therefore be justified in removing the newly worded planning Condition No.3 imposed by the Planner on the current planning consent.

6.0 CONCLUSION

6.1 The applicant welcomes the opportunity to have their application reviewed by Perth and Kinross Council's Local Review Body with the potential to be heard at a Hearing if agreed by the members.

6.2 The removal of the planning burden is considered to be wholly justified and by doing so, this will assist in the delivery at long last of the applicant's longstanding endeavours to make the "working from home" concept a reality, as continually supported by the Planning Department over the years at this location by the granting of planning consents. It has been proven that there is a demand for these plots to be developed after successful marketing having generated keen interest and the applicant is appealing for the LRB's further support in order to allow developments to proceed at Powmill once and for all.

6.3 Consequently, it is respectfully requested that the LRB accedes to the applicant's review of the decision to remove the newly worded replacement condition imposed on the current consent, thereby granting a planning permission which is unburdened and which will enable the necessary finance to be obtained to build the self-build house in conjunction with the justified business use for this plot, and subsequently all 5 other plots, at the Powmill location.

PERTH AND KINROSS COUNCIL

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Dunfermline
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Pullar House
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PERTH
PH1 5GD

Date 30 September 2016

Town and Country Planning (Scotland) Acts.

Application Number **16/01058/FLL**

I am directed by the Planning Authority under the Town and Country Planning (Scotland) Acts currently in force, to grant your application registered on 13th June 2016 for planning permission for **Removal of condition 3 (occupation/ownership) of permission 15/01349/FLL for the erection of a dwellinghouse and associated office studio** at Powmill Cottage Rumbling Bridge Kinross KY13 0QG subject to the undernoted conditions.

Interim Head of Planning

Conditions referred to above

- 1 The development hereby approved must be carried out in accordance with the approved drawings and documents, unless otherwise provided for by conditions imposed by this decision notice.

Reason - To ensure the development is carried out in accordance with the approved drawings and documents.

- 2 Prior to the commencement of the development hereby approved, a detailed landscaping and planting scheme for the site shall be submitted for the further written agreement of the Council as Planning Authority. The scheme shall include details of the height and slopes of any mounding or recontouring of the site, full details of all hard landscaping proposals including materials and installation methods and, species, height, size and density of trees and shrubs to be planted. The scheme as subsequently approved shall be carried out and completed within the first available planting season (October to March) after the completion or bringing into use of the development, whichever is the earlier, and the date of Practical Completion of the landscaping scheme shall be supplied in writing to the Council as Planning Authority within 7 days of that date. The scheme as agreed and implemented shall thereafter be maintained.

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

- 3 The office studio subject to consent 15/01349/FLL shall remain in use solely as an office/business unit in perpetuity to the satisfaction of the Council as Planning Authority.

Reason - To meet the requirements of the E23 (Employment Site) Zoning of the Perth and Kinross Local Development Plan 2014 to ensure an employment use is retained on site.

- 4 Development shall not commence on site until an evaluation for the potential of the site to be affected by contamination by a previous use has been undertaken and, as a minimum, a Preliminary Risk Assessment (Phase 1 Desk Study) has been submitted for consideration and accepted by the Council as Planning Authority. If the preliminary risk assessment identifies the need for further assessment, an intrusive investigation shall be undertaken to identify;

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

Prior to the completion or bringing into use of any part of the development the measures to decontaminate the site shall be fully implemented in accordance with the scheme subsequently agreed by the Council as Planning Authority. Validation that the scheme has been fully implemented must also be submitted to the Council as Planning Authority.

Reason - In order to deal with any potential contamination of the site as a result of its former use.

- 5 Prior to the commencement of any works on site, all trees on site (other than those marked for felling on the approved plans) and those which have Root Protection Areas which fall within the site shall be retained and protected. Protection methods shall be strictly in accordance with BS 5837 2012: Trees in Relation to Design, Demolition and Construction. Protection measures, once in place, shall remain in place for the duration of construction.

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

- 6 Prior to the development hereby approved being completed or brought into use, all matters regarding access, car parking, road layout, design and specification, including the disposal of surface water, shall be in accordance with the standards required by the Council as Roads Authority.

Reason - In the interests of pedestrian and traffic safety and in the interests of free traffic flow.

- 7 Prior to the commencement of the development hereby approved, details of the proposed boundary treatments for the site shall be submitted for the further written agreement of the Council as Planning Authority. The scheme as subsequently agreed shall be implemented prior to the completion or bringing into use of the development, whichever is the earlier.

Reason - In the interests of residential amenity; to ensure a satisfactory standard of local environmental quality.

- 8 No development or extensions, whether or not permitted by virtue of Schedule 1, Part 1, Class 1 and 3 of the Town and Country Planning (General Permitted Development)(Scotland) Order, 1992 or any Order revoking and re-enacting that Order shall be erected in the curtilage of the dwelling.

Reason - In the interests of visual and residential amenity; to ensure a satisfactory standard of local environmental quality and to avoid over-intensive development of the site.

- 9 The core path which runs along the access track to the site must not be obstructed either during or on completion of building works. Any damage done to the route must be made good to the satisfaction of the Council as Planning Authority prior to the occupation of the first unit hereby approved.

Reason - To ensure continued public access to the public paths and in the interests of public safety within the site.

Justification

The proposal is in accordance with the Development Plan and there are no material reasons which justify departing from the Development Plan.

Informatives

- 1 This planning permission will last only for three years from the date of this decision notice, unless the development has been started within that period. (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).

- 2 Under section 27A of the Town and Country Planning (Scotland) Act 1997 (as amended) the person undertaking the development is required to give the planning authority prior written notification of the date on which it is intended to commence the development. A failure to comply with this statutory requirement would constitute a breach of planning control under section 123(1) of that Act, which may result in enforcement action being taken.
- 3 As soon as practicable after the development is complete, the person who completes the development is obliged by section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended) to give the planning authority written notice of that position.
- 4 No work shall be commenced until an application for building warrant has been submitted and approved.

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

Plan and Document Reference

16/01058/1

16/01058/2

16/01058/3



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 100014490-001

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.

Please give the application reference no. of the previous application and date when permission was granted.

Application Reference No: *

15/01349/FLL

Date (dd/mm/yyyy): *

09/09/2015

Description of Proposal

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

Removal of Condition No.3 linking ownership of the house and business in its entirety to allow implementation of the planning permission unburdened with funding able to be secured for the entire development.

Is this a temporary permission? *

Yes No

If a change of use is to be included in the proposal has it already taken place?

Yes No

(Answer 'No' if there is no change of use.) *

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

No Yes – Started Yes - Completed

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:	JM Planning Services		
Ref. Number:		You must enter a Building Name or Number, or both: *	
First Name: *	John	Building Name:	
Last Name: *	MacCallum	Building Number:	20
Telephone Number: *	07780465240	Address 1 (Street): *	Braemar Drive
Extension Number:		Address 2:	Duloch Park
Mobile Number:		Town/City: *	Dunfermline
Fax Number:		Country: *	UK
		Postcode: *	KY11 8ES
Email Address: *	johnmaccallum@jmplanningservices.co.uk		

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

Individual Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title:	Other	You must enter a Building Name or Number, or both: *	
Other Title:		Building Name:	Powmill Cottage
First Name: *		Building Number:	
Last Name: *		Address 1 (Street): *	Rumbling Bridge
Company/Organisation	Richstream Ltd	Address 2:	
Telephone Number: *		Town/City: *	Kinross
Extension Number:		Country: *	UK
Mobile Number:		Postcode: *	KY13 0QG
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:

Powmill Cottage

Address 2:

Rumbling Bridge

Address 3:

Address 4:

Address 5:

Town/City/Settlement:

Kinross

Post Code:

KY13 0QG

Please identify/describe the location of the site or sites

Northing

698414

Easting

301825

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)

Various telephone conversations in April 2016 with David Niven, Planning Officer discussing potential options for removal of planning condition No.3 attached to consents on the Powmill Plots.

Title:

Mr

Other title:

First Name:

David

Last Name:

Niven

Correspondence Reference Number:

Date (dd/mm/yyyy):

18/04/2016

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)

Various e-mails in April 2016 from David Niven regarding the Powmill Plots, in particular 22nd April 2016 outlining the Council's position on removal of Condition No. 3 on extant consents and others going forward. Comments received in response to Pre-Application enquiry e-mail issued by JMPS dated 30th March 2016.

Title:

Mr

Other title:

First Name:

David

Last Name:

Niven

Correspondence Reference Number:

Date (dd/mm/yyyy):

22/04/2016

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:

3226.00

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)

Vacant countryside land

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?

0

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)? *

4

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

Are you proposing to connect to the public drainage network (eg. to an existing sewer)? *

- Yes – connecting to public drainage network
 No – proposing to make private drainage arrangements
 Not Applicable – only arrangements for water supply required

As you have indicated that you are proposing to make private drainage arrangements, please provide further details.

What private arrangements are you proposing? *

- New/Altered septic tank.
 Treatment/Additional treatment (relates to package sewage treatment plants, or passive sewage treatment such as a reed bed).
 Other private drainage arrangement (such as chemical toilets or composting toilets).

What private arrangements are you proposing for the New/Altered septic tank? *

- Discharge to land via soakaway.
 Discharge to watercourse(s) (including partial soakaway).
 Discharge to coastal waters.

Please explain your private drainage arrangements briefly here and show more details on your plans and supporting information: *

As per 15/01349/FLL

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.

All Types of Non Housing Development – Proposed New Floorspace

Does your proposal alter or create non-residential floorspace? *

Yes No

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

Certificate Required

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

Certificate A

Land Ownership Certificate

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

Certificate A

I hereby certify that –

(1) - No person other than myself/the applicant was an owner (Any person who, in respect of any part of the land, is the owner or is the lessee under a lease thereof of which not less than 7 years remain unexpired.) 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.

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

Signed: John MacCallum

On behalf of: Richstream Ltd

Date: 10/06/2016

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)

Supporting Planning Statement Supporting Information - PPP Document April 2011 Marketing Brochure 2012

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.

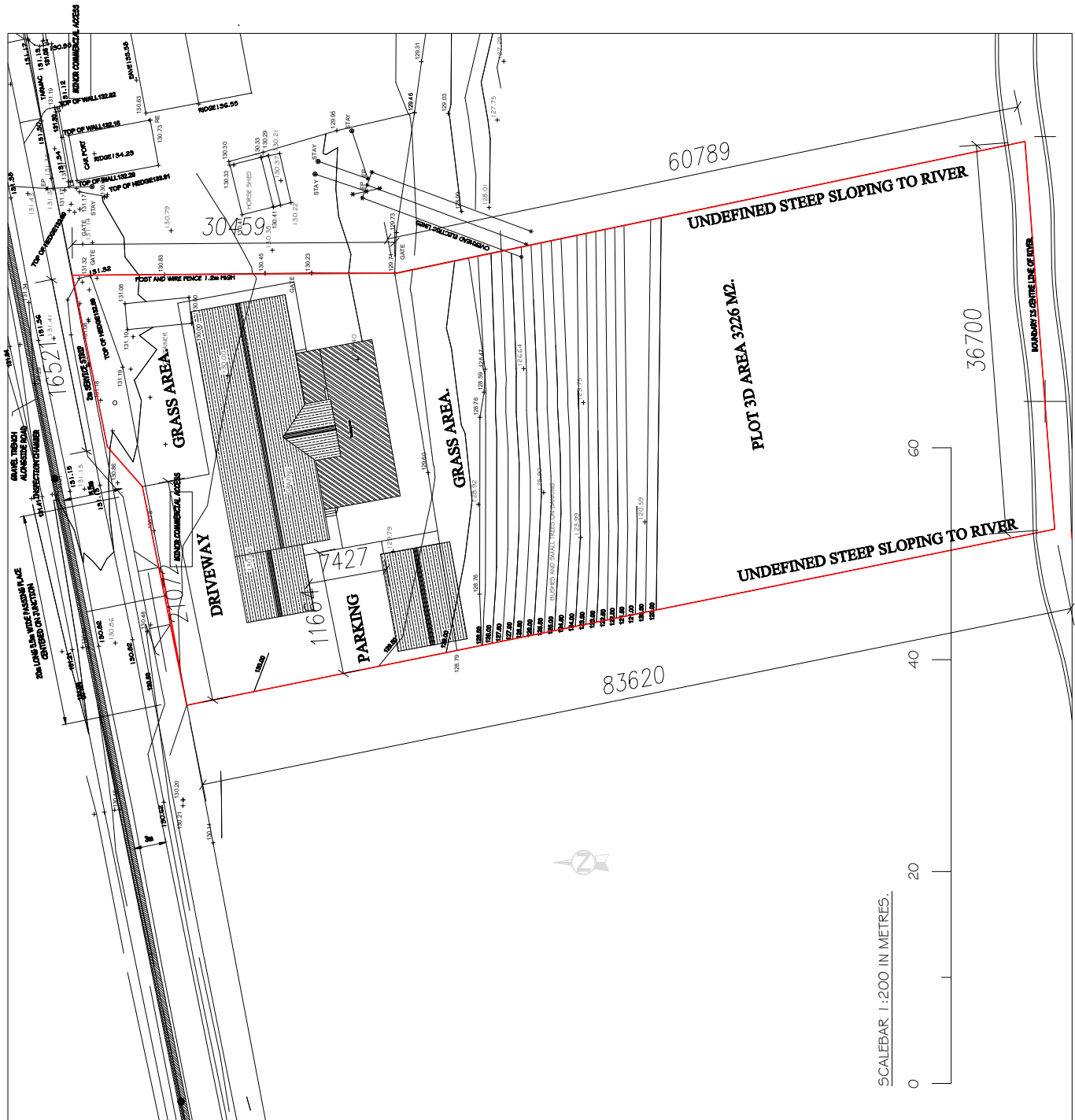
Declaration Name: Mr John MacCallum

Declaration Date: 10/06/2016

Payment Details

Cheque: 000, 000

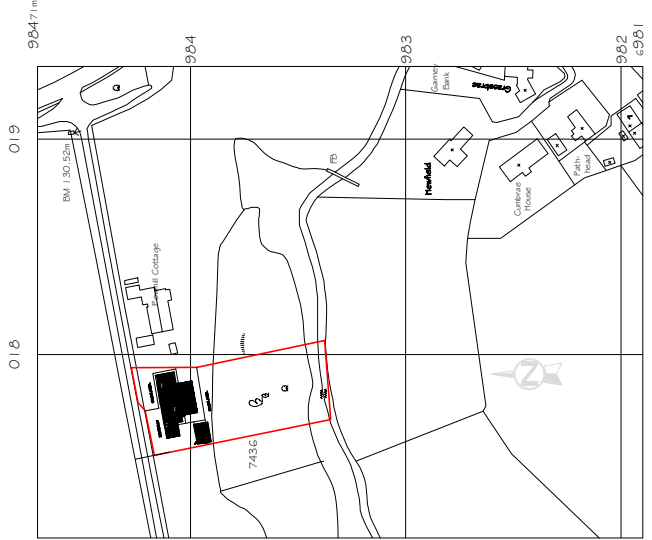
Created: 10/06/2016 14:35



SCALEBAR 1:200 IN METRES.



BLOCK PLAN 1:200.



LOCATION PLAN 1:1250.

Q 20 40 60
SCALEBAR 1:1250 IN METRES.

**DO NOT SCALE FOR CONSTRUCTION
IF IN DOUBT - ASK!**

NOTE

THE DETAILS AND SPECIFICATION SHOWN MAY CHANGE BUT ONLY AT THE PRIOR NOTICE FOR THE APPROVAL OF THE PERSONS, AND ADDITIONALLY THE REGULATIONS APPLY.

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DATE	REVISION	SIGNED	MARK

TITLE:
HERIOT-HOUSE.
PLANNING-LOCATION+BLOCK-PLAN.
FOR: MR+MRS-HERIOT.
PLOT-3D.
POWERMILL.

Drawn by	Checked by	Date	Scale
CLAYMORE	L. COT.	18-12-12	1:200-1:1250

CLAYMORE TIMBER FRAMES LIMITED
4th FLOOR, 100, MARKET STREET, LEEDS, WEST YORKSHIRE, LS1 2EQ
Email: enquiries@claymore.co.uk
Web: www.claymore.co.uk

With the Extra Edge

Supporting Planning Statement

Prepared by

JM PLANNING SERVICES

On Behalf of

Richstream Ltd

Planning Application

To Perth and Kinross Council

**SEEKING TO REMOVE PLANNING CONDITION NO. 3 OF PLANNING
PERMISSION REFERENCE 15/01349/FULL**

RELATING TO

ERECTION OF A DWELLING HOUSE WITH ASSOCIATED OFFICE STUDIO

AT

PLOT 3D, POWMILL COTTAGE,
RUMBLING BRIDGE, POWMILL, KINROSS

10th June 2016

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4.0 Planning Policy Context	9
5.0 Planning Considerations and Assessment	13
6.0 Conclusions	16

Appendices

Appendix 1 - Correspondence from Buildstore to Richstream Ltd dated 22nd April 2016

Appendix 2 - Letter dated 4 November 2011 from Former Director and Chief Planner for the Scottish Government to all Heads of Planning in Scotland

Appendix 3 - Reporter's Decision Letter dated 12th April 2012 on Aberdeenshire case (Appeal Ref. POA-110-2001)

Ref: PL/CKH/RLtd/035
Planning Statement V1. FINAL
John MacCallum
Planning Consultant
10.06.2016

1.0 Introduction

1.1 This Planning Statement has been prepared in support of a planning application which has been submitted to Perth and Kinross Council (PKC) by JM Planning Services (JMPS) on behalf of the applicant, Richstream Ltd. The application seeks to remove a planning condition on an extant planning permission (Reference 15/01349/FULL) for the Erection of a Dwelling house with Associated Office Studio at Plot 3D, Powmill Cottage, Rumbling Bridge, Powmill, Kinross. The permission was granted by PKC on 9th September 2015.

1.2 Condition Number 3 of the permission as stated in the Decision Notice requires that:-

“The office element shall remain in the ownership of the owner of the dwellinghouse hereby permitted and the dwelling shall be occupied by a person who owns and primary place of employment is the office, unless otherwise agreed by the Planning Authority.”

1.3 The Reason cited for the Condition is that:-

“The dwellinghouse has been approved as a "working from home" single house in association with the office development hereby permitted.”

1.4 The purpose of this Statement is twofold:-

1.5 Firstly, to explain the difficulties in implementing the approved development which is otherwise acceptable in planning terms, mainly due to difficulties in obtaining the necessary funding from lending institutions caused by the Council imposing the specific clause (Condition 3) in the extant planning permission requiring a link between the house and business uses.

1.6 Secondly, to make reference to other precedents, which include cases whereby the ability to fund a development to ensure it can be implemented is a material planning consideration; and to make reference to Scottish Government Planning Policy and guidance, presently in force, to help justify the removal of the condition, with a focus on the implementation of a development which has already been proven to be acceptable in planning terms.

1.7 In the case of this site, there is further justification not to retain the condition on the basis that the original justification for the development has been accepted and that a land use zoning over the site within the adopted Local Development Plan for “Employment Use with associated Residential” (Site E23), provides the necessary control over the type of acceptable uses on the land, subject to that zoning remaining in place in future LDPs. This could also be applied to the similarly approved business and related residential developments on other plots which have been granted permission on the same basis.

1.8 Consequently, this Statement will seek to justify that the application to remove the condition completely, and not to have any other planning restriction associated with the extant planning permission imposed, can be approved.

2.0 Planning History

2.1 There is a considerable planning history associated with the application site and other plots which have been promoted for business enterprises with associated houses, both in terms of development plan policy and by way of planning applications.

Kinross Area Local Plan 2004

2.2 The notion of “working from home” type developments at this location came to fruition during the preparation of the Kinross Area Local Plan process in 2003/4 in response to the landowner’s promotion of the issue through the Local Plan. The Council accepted the principle of the development proposal as means of retaining sustaining rural communities both in terms of enhancing business enterprise in the rural area as well as boosting population levels.

2.3 The adopted Local Plan identified the area at Powmill Cottage as suitable for Rural Business Use under the terms of Policy 82 whereby the Council sought to give encouragement to the development or expansion of business opportunities, subject to satisfying certain amenity related criteria to ensure the business uses would be compatible with residential and other surrounding land uses.

Perth and Kinross Local Development Plan 2014

2.4 The zoning in the local plan has been retained in the replacement plan, the Local Development Plan. The Council maintains support for the business opportunities for this location, as demonstrated by the various planning permissions which have been granted over time since the original zoning in 2004 and the matter was ratified in the adopted LDP in 2014 under Site Reference E23 - Employment Uses with Associated Residential Use. The same criteria to be satisfied as before still apply.

Planning Permissions

2.5 The original planning consent granted which established the suitability of the location for a rural business development with associated residential use on the land identified for such uses was in May 2008 (Reference 08/00267/OUT). It was then renewed in May 2011 (11/00600/IPL) and specifically the permission related to the erection of four dwelling houses with associated business use. Since then, there have been a number of planning permissions which have been granted for detailed proposals for house and business use developments on Plot 3, which contains 4 Plots – 3A, 3B, 3C and 3D.

2.6 It should be noted that 2 developments for houses with associated business uses, on the same basis as those for Plot 3, have also been granted planning permission at Plots 1 and 2. The information below sets out the planning history for each of the Plots (1, 2 and 3). However, to assist further in understanding the specific location and layout of the Plots, the plan at the rear of the document which accompanies this application and which was submitted in support of the 2011 application (11/00600/IPL) should be referred to (a separate document in the application package).

Plot 3 (incorporating 4 Plots - 3A, 3B, 3C and 3D)

14/00748/IPL - Renewal of permission (11/00600/IPL) Erection of four Dwelling houses with associated business use development (Class 4) (in principle) at Plot 3 Land South of Craigton Farm Road, Rumbling Bridge. Permission granted on 10 July 2014.

- **Plot 3D** (relative to the current application)
 - 12/00487/FLL - Erection of a Dwelling house with associated office studio 11 May 2012. Application Refused
 - 12/01181/FLL - Erection of a Dwelling house and associated office studio. Permission granted on 7 August 2012
 - 15/01349/FULL - Erection of a Dwelling house with Associated Office Studio. Permission granted 9th September 2015 (Renewal of permission (12/01181/FLL)).

- **Plot 3A**
 - 15/01258/FLL - Erection of Dwelling house, workshop and office (Class 4) on Land 180 Metres South West of Powmill Cottage. Permission granted on 17 September 2015.

Plot 1 (located to the west of Plot 3A)

07/00084/FUL - Erection of a Dwelling house with associated office studio. Permission granted 6 July 2007.

12/00487/FLL - Erection of a Dwelling house with associated office studio. Application Refused on 11 May 2011.

12/01157/FLL - Erection of a rural business class development, office and house. Permission granted on 7 August 2012. (Renewal of permission (07/00084/FUL)).

15/01348/FLL - Erection of an office building and Dwelling house (Plot 1) Land South of Craigton Farm Road Rumbling Bridge. Permission granted 24 September 2015. (Renewal of permission (12/01157/FLL)).

Plot 2 (located to the east of Powmill Cottage which lies to the east of Plot 3D)

07/02078/FUL - Erection of a Dwelling house and associated office studio. Permission granted on 18 March 2008

12/01181/FLL - Erection of a Dwelling house and associated office studio. Permission granted on 7 August 2012

3.0 Background to the Application

- Initial Pre-Application Discussions

3.1 The applicant recently approached PKC to make Planning Officials aware of the difficulties in raising the necessary funding to implement the consented developments due to the burden imposed by the condition (no. 3) on the planning permission to limit the occupancy of the house to the business. Evidence is provided in the form of correspondence mortgage brokers, Buildstore, to Richstream Ltd and this information is attached in **Appendix 1** to this Statement.

3.2 Despite this, the Planning Officer, David Niven, maintained at the time that the Council could not lift such a restriction as it could potentially open the door in the future for the developments not to be used for the specific uses for which planning permission was granted. The concern being that, if there is no restriction in place, it could potentially expose the Council to having allowed unjustified developments at this location in the future or elsewhere and therefore setting an undesirable precedent. He did, nevertheless, advise that the applicant could commission the services of a planning consultant to assist in pursuing the matter further with PKC.

- Pre-Application Response

3.3 JMPS were subsequently commissioned by the applicant and pre-application correspondence was entered in to with David Niven. After a couple of telephone conversations on the matter and exchanges of e-mails, a response dated 22nd April 2016 from David Niven to the specific request for the condition to be removed was received, as detailed below:-

*From: David Niven
Date 22nd April 2016 at 5.33pm
To John MacCallum*

Dear John

As discussed during our telephone call earlier this week, following discussions with the Policy Team we are in agreement that it appears that the only way of taking the plots forward would be for your client to either seek consent to remove the occupancy conditions or for the interested parties to submit a fresh application. Our main concern relates to the plots being developed primarily as residential dwellings with either a minimal degree of business use or without any of the business use at all. The primary reason that this site was zoned in the local plan is to attract new businesses uses into Powmill, hence why the site is designated in the local plan as an employment site with associated residential development. Whilst we would prefer to retain the occupancy conditions we accept that the since the original consent was granted the economic situation has changed and it is now difficult to obtain a mortgage from the banks due to the occupancy restrictions. As such we may be willing to review the use of the occupancy conditions on a case by case basis provided that there is a robust justification based on both the marketing of the plots to date and the specific details of the proposed business intending to operate from the site. The detailed plans would also need to clearly demonstrate that there will be a stand alone business unit within the plot and not simply a garage or ancillary outbuilding with a small office. We would also be seeking to condition that the building(s) associated with the business uses are retained as such in order to prevent them from being converted to residential use.

I hope the above is of some assistance at this stage.

Regards

David Niven
Planning Officer
Development Management
Planning & Development
Perth & Kinross Council

From: John MacCallum

Date: Wed, Mar 30, 2016 at 10:49 AM

Subject: Application Ref 15/01258/FLL - Erection of dwellinghouse, workshop and office (Class 4) on Land 180 Metres South West Of Powmill Cottage Rumbling Bridge, Powmill

To: PKC Planning <developmentmanagement@pkc.gov.uk>

FTAO Mr David Niven

Dear David,

I refer to the above planning permission granted on 17th September 2015 to Miss Gillian McColl.

I note the case officer was John Williamson. However, I was approached by the landowner, Mr Crawford Heriot who mentioned that he had been speaking with yourself recently as well as your colleague in the Development Plan Team, Kelly Briggs. You had suggested to Mr Heriot that he might like to engage in the services of a planning consultant and hence the reason for me contacting you. I tried to contact you by phone today but I understand you are not in the office but return tomorrow.

The main issue relates to the planning condition (No.3 on this permission) requiring the business and house to be linked. It states:-

"The office/workshop element shall remain in the ownership of the owner of the dwelling house hereby permitted and the dwelling shall be occupied by a person who owns and primary place of employment is the office/workshop, unless otherwise agreed by the Planning Authority.

Reason - The dwelling house has been approved as a "working from home" single house in association with the office development hereby permitted."

I can understand the reason behind this but as in the case of occupancy conditions for rural dwelling houses, which are no longer being applied in line with the Scottish Government's Chief Planner's advice in his letter dated 4th November 2011, the use of such a restrictive condition is also falling foul of mortgage lenders' requirements. This is again having a direct impact on the ability to implement planning permissions on this site.

It would be useful for me to discuss not only this application but also the site, its planning history and ways of ensuring the site as a whole is unhindered in the future to allow the

intended developments to take place on the site, as originally envisaged and as provided for by the LDP (and previous LP) zoning.

I would like to set up a meeting with you and your colleague(s) with a view to resolving the matter for the mutual benefit of all concerned parties. Your advice as to whether you would like some written information from me in advance would also be helpful if you think that would assist.

In the meantime, and on your return to the office, if you could contact me in the first instance by telephone on my mobile that would be much appreciated.

I look forward to hearing from you.

Regards,

John

*John MacCallum MRTPI
Planning Consultant*

- Marketing of the Plot(s) at this Location

3.4 The applicant has proactively marketed the plots in the past and this is evident from the Sales Brochure prepared by Strutt & Parker in 2012 (a copy is included in the planning application package) which has been provided to prospective purchasers. In addition, marketing has taken place through the applicant's web site: www.richstream.co.uk .

4.0 Planning Policy Context

- The Development Plan

4.1 The Development Plan for the area incorporating the site location comprises the approved Tayplan Strategic Development Plan (2012-2032) and the adopted Perth and Kinross Local Development Plan (February 2014).

Tayplan Strategic Development Plan 2012 – 2032

4.2 There are no specific policies or strategies directly relevant to this proposal, but the overall Vision of the Tayplan is noteworthy. It states:-

“By 2032 the TAYplan region will be sustainable, more attractive, competitive and vibrant without creating an unacceptable burden on our planet. The quality of life will make it a place of first choice, where more people choose to live, work and visit and where businesses choose to invest and create jobs.”

Perth and Kinross Local Development Plan 2014

4.3 The Local Development Plan is the most recent statement of Council policy. The site benefits from a planning land use designation of E23 – Employment Use with Associated Residential, in order to encourage business use with associated residential use. The site is located within the settlement boundary of Powmill, as identified in the settlement plan on page 230 in the adopted LDP.

- Other material Considerations

4.4 Other planning considerations of material relevance to this application are in the form of national legislation, policy guidance and advice set by the Scottish Government. In this regard, the following are of particular relevance:-

(i) Scottish Office (Government) Circular 4/1998 - The Use of Conditions In Planning Permissions

4.5 This guidance relates to the use of planning conditions. The power to impose conditions is not, however, as wide as it appears and Council rulings can have an influence on that power (paragraph 2 refers).

4.6 Paragraph 91 of the Annex to Circular 4/1998 addresses occupancy conditions generally and indicates that since planning controls relate to the use of land, rather than the identity of the user, who occupies the premises, will normally be irrelevant. The paragraph goes on to state that:

“Conditions restricting occupancy to a particular occupier or class of occupier should only be used when special planning grounds can be demonstrated and where the alternative would normally be refusal of permission.”

4.7 Paragraph 95 of the Annex to Circular 4/1998 contains specific guidance on domestic occupancy conditions. It advises that:-

“... if the development of a site for housing is an acceptable use of the land, there will seldom be any good reason on land use planning grounds to restrict the occupancy of those houses to a particular type of person (eg those already living or working in the area). To impose such a condition would be to draw an artificial and unwarranted distinction between new houses or new conversions and existing

houses that are not subject to such restrictions on occupancy or sale. It may deter housebuilders from providing homes for which there is a local demand and building societies from providing mortgage finance. It may also impose hardship on owners who subsequently need to sell. It involves too detailed and onerous an application of development control and too great an interference in the rights of individual ownership. Such conditions should, therefore, not be imposed save in the most exceptional cases where there are clear and specific circumstances that warrant allowing an individual house (or extension) on a site where development would not normally be permitted.”

(ii) Letter from Chief Planner (Scottish Government)

4.8 Former Director and Chief Planner for the Scottish Government, Mr Jim Mackinnon, wrote in a letter dated 4 November 2011 to all Heads of Planning in Scotland issuing guidance entitled "Occupancy Restrictions in Rural Housing". The advice was later translated into policy in Circular 3/2012 – Planning Obligations and Good Neighbour Agreements particularly with regard to imposing restrictions on the use of land or buildings, including occupancy restrictions on housing in rural areas. (A copy is attached in **Appendix 2** to this Statement).

4.9 The Chief Planner summarises the use of occupancy restrictions as being typically used in Scotland to limit the occupancy of new houses in the countryside either to people whose main employment is with an agriculture or other rural business that requires on-site residency, or to people with a local connection.

4.10 His letter recognises that a number of issues have arisen with the use of occupancy restrictions, some of which have been exacerbated by the current economic situation such that:

"Some people have found it difficult to get a mortgage to buy a house with an occupancy restriction. Others have found it difficult to sell their house, or have the restriction lifted, when they are forced by necessity to move. "

4.11 Mr Mackinnon notes that any use of occupancy restrictions introduces an additional level of complexity (and potentially expense) into the process of gaining consent for a new house such that:

"Occupancy restrictions can also be intrusive, resource-intensive and difficult to monitor and Enforce."

4.12 He offers advice and a new innovative approach on the basis of a genuine desire to assist applicants whose development proposals have already been justified rather than having restrictions imposed to frustrate development:-

"The Scottish Government believes that occupancy restrictions are rarely appropriate and so should generally be avoided."

"Where the authority is satisfied that an adequate case has been made, it should not be necessary to use formal mechanisms to restrict occupancy".

"In areas where new housing can help to support: vibrant rural communities or sustain fragile rural areas, Planning Authorities should seek to support suitable investment in additional provision, focusing on the issues of location, siting, design and environmental impact rather than seeking to place restrictions on who occupies the housing ".

(iii) Planning Obligation Appeal

4.13 A Reporter upheld an appeal on 12th April 2012 against Aberdeenshire Council (Appeal Ref. POA-110-2001) to have a planning obligation removed and discharged. (A copy of the decision letter is attached in **Appendix 3** to this Statement) The obligation required a new house to be tied to an existing business to prevent separate disposal in the future unless the prior written consent of the Council was obtained. It was demonstrated successfully by the appellant that the obligation had failed to meet all five tests in Circular 1/2010 Planning Agreements and the Annex to Circular 1/2010 (prevailing at that time, superseded by Circular 3/2012 – Planning Obligations and Good Neighbour Agreements) in terms of the tests of necessity, planning purpose and reasonableness.

4.14 In summary, the Reporter concluded:-

“Necessary to make the approved development acceptable in planning terms and serving a planning purpose.

I would be surprised if any planning obligation agreement could ever be devised that could guarantee the continuing operation of the business and occupation of the house by an essential worker under all future circumstances. The fact that Clause (First) can be amended by written agreement from the council does not address any of these matters. Therefore, even in its own terms, Clause (First) only provides limited comfort that the original justification would always remain.

Therefore, in the circumstances of the case, I cannot agree with the council that Clause (First) is necessary for the continuing compliance with the development plan.”

*“It is part of good planning practice that planning policies are monitored, evolved and developed over time. I agree with the appellant’s agent, that Scottish Planning Policy and the policies of the emerging Local Development Plan have a different emphasis regarding new housing in rural areas. This may result in different development plan policies in the future. **It is clear from the terms of the letter from the Scottish Government’s Chief Planner, that the expectation is that Councils carefully assess the justification for a new house initially, but should not use formal mechanisms to make sure of continuing compliance.**” (emphasis added).”*

“For all the above reasons, I conclude that Clause (First) does not meet the two tests of necessity or achieving a planning purpose.”

“Reasonable in all other respects

I have concerns that in the circumstances of this case, any continuing obligation seeking to restrict the sale of land is likely to be unrealistic and unreasonable. This is because over the several decades of the likely lifetime of a built house, changes to the personal circumstances of the occupiers and/or the financial circumstances of the business are inevitable. The provision to allow the clause to be amended by written agreement with the council does not address this difficulty, as illustrated by the need for the current appeal.

*In addition, **there is compelling evidence from the letters from mortgage brokers and the letter dated 4 November 2011 from the Scottish Government’s Chief Planner, that planning obligations in general and Clause (First) in particular, makes obtaining a mortgage impossible.**” (emphasis added).*

"In the current case, there is a strong likelihood that with Clause (First) in place, the proposed house would not be built. This would mean a development that complies with the development plan would be frustrated," (emphasis added) the benefits to the business would not be achieved and the site itself left in a derelict and untidy state. I consider all of these to be undesirable.

In explaining the reasonableness test, Circular 1/2010 states that the development should not be permitted without the obligation. I am persuaded by the arguments put forward on behalf of the appellant that with Clause (First), part of the approved development is unlikely to take place. I therefore conclude that Clause (First), in the circumstances of the case is unreasonable."

(iv) Scottish Planning Policy (June 2014)

4.15 Of further relevance is Scottish Planning Policy which includes the Core Values of the Planning Service which are set out in paragraph 4 of the SPP. It states that Scottish Ministers expect the planning service to perform to a high standard and to pursue continuous improvement. The following key services, which are considered relevant to this application, in order to help to achieve those ends, are expected to:

- "focus on outcomes, maximising benefits and balancing competing interests;
- play a key role in facilitating sustainable economic growth, particularly the creation of new jobs and the strengthening of economic capacity and resilience within communities;
- be proportionate, ***only imposing conditions and obligations where necessary;***"

(v) Precedent Case – Removal of a Planning Obligation/Condition relating to an Occupancy Condition

4.16 JMPS has been involved in a case in Fife whereby an occupancy condition/planning obligation has thwarted an acceptable development from proceeding. The application (Reference 12/03245/OBL) related to the removal of the obligations attached to a consent for a new estate manager's house in Elie and JMPS presented the justification when previously employed with the agents, Bell Ingram.

4.17 Fife Council agreed to remove the conditions and obligations by accepting the evidence presented which included all the material considerations referred to above, including additional documentary evidence from the Mortgage lenders (in both the Aberdeenshire and Fife cases) and HMRC advice. A copy of the supporting information and decision can be provided on request although they can be obtained from Fife Council's public access planning portal.

5.0 Planning Considerations and Assessment

5.1 Section 25 (a) of the Town and Country Planning (Scotland) Act 1997 (as amended under the Planning etc Scotland Act 2006) states that Planning Authorities are required to determine planning applications in accordance with the Development Plan unless material considerations indicate otherwise.

5.2 It is contended that the key determining issue for this application is not whether the Council should relax the condition as an exception to Development Plan policy but to demonstrate that the proposals for business and housing developments at this particular location can still accord with the Development Plan without the planning restriction imposed, rather than seeking to justify an exception to policy.

5.3 In the first instance, it is evident that there is overwhelming Development Plan support for the combined business and residential development on the application site (and the other plots with similar consents), as provided for by the specific Local Development Plan land use designation (E23 – Employment Use with Associated Residential). The extant planning permissions which have been granted, both in terms of the principle of development and the detailed design of the developments approved on all affected plots, including the application site, also clearly demonstrate that these proposals accord with the Development Plan.

5.4 In the pre-application discussions with the Planning Official, David Niven, which also included discussions with the Local Development Plan Team who initially agreed to the concept of home-working developments at this location, it was evident that there is a degree of sympathy with and acceptance of the applicant's predicament.

5.5 This resulted in the Planning Department reaching position that the Council could accept the occupancy condition being lifted but, in seeking to still exercise some degree of control, David Niven's advice was to state that a condition would still need to be imposed along of the lines of "the building(s) associated with the business uses are retained as such in order to prevent them from being converted to residential use." It was explained by him that a degree of control still requires to be exercised by the Council to ensure that the uses that were granted consent remained as such in perpetuity in the event that the property changed ownership in the future. This lack of control by the Council over a future scenario appears to be the driving force behind their continued reluctance to allow the development(s) to proceed totally unhindered by any planning condition.

5.6 There are 2 aspects to the Council's stance on the matter of imposing a planning burden on the development: the inability to obtain funding to finance the development in the first place which affects the ability to implement the consents in the first place; and secondly, the Council's concerns of the property changing ownership in the future with the Council having no ability to insist that the consented uses be complied with.

5.7 With regard to the issue of funding, the predicament facing the applicant and prospective purchasers of the other consented plots at this location is a reality in that such wording would still be a burden and prevent obtaining the financial borrowing from lenders to fund these house and business developments. Lenders are clearly being much more scrupulous in the period post-recession (2008) than in the past, adopting a more precautionary approach which is clearly understandable.

5.8 The information supplied in support of the application from mortgage brokers, Buildstore, who have approached potential lenders, provides the necessary evidence to demonstrate that planning conditions merely serve to continually frustrate developments from proceeding, as proven in the other cases cited by way of example in this statement to lend further support and justification for removing the restriction/burden.

5.9 It is also of note that a further barrier to the developments being financially viable and consequently also preventing the implementation of the planning permission(s) is the inability to obtain VAT relief on certain self-build projects. The applicant's accountants have made them aware of the regulations governing self-build houses and that such a development will not be exempt from VAT where a planning restriction applies. The following is an extract the government's HMRC website regarding eligibility for a VAT refund:-

"New homes must:

- *be separate and self-contained*
- *be for you or your family to live or holiday in*
- *not be for business purposes (you can use one room as a work from home office)*

What does not qualify:-

You can't get a VAT refund for:

- *buildings for business purposes*
- ***buildings that can't be sold or used separately from another property because of a planning permission condition"***

5.10 Reference has been made to other precedents, including occupancy restrictions having been lifted by a Reporter at appeal (Aberdeenshire case) and by Fife Council. While the circumstances of these cases may be slightly different to this application, these examples nevertheless serve to demonstrate that since 2012, there has been an acceptance introduced in to planning by way of such decisions that the inability to obtain mortgage funding for residential and business related developments due to the existence of occupancy conditions and other type of planning restrictions is now a material planning consideration. The advice referred to by the former Chief Planner in the Scottish Government has now since been enshrined in planning guidance in Circular 3/2012.

5.11 The development not actually proceeding is therefore a key consideration in this respect. With particular reference to the Aberdeenshire appeal decision, the Reporter made it clear in his conclusions that the site would likely remain vacant and derelict and therefore blighted by excessive planning control and that such a scenario is undesirable: what in effect is the purpose of the Council granting planning permission in the first place if the development cannot proceed through no fault of a proactive and willing applicant/developer whose justification for the development has already been accepted in principle by the Council. The same can be applied to this application under consideration.

5.12 With regard to the issue of future-proofing the consented developments, it is accepted that the situation in the future can and should be a matter for the Local Planning Authority to control, but not through any mechanism that will thwart or prohibit the acceptable development from taking place in the first place. Again, with reference to the Aberdeenshire appeal decision, the Reporter concludes that the restriction imposed by the Council in that case, by way of a planning obligation, provided "limited comfort that the original justification would always remain" and he did not agree "with the council that Clause (First) is necessary for the continuing compliance with the development plan."

5.13 That appeal decision has resonance with this application, as the Reporter clearly is of the view that future-proofing by way of a restriction is neither an appropriate nor an effective means of ensuring the development would comply with the Development Plan in the future.

5.14 In that regard, it is considered that the Council already has the ability to control the developments on the site in perpetuity. The application site (as with the other consented plots) benefits from a particular land use zoning which seeks to control the type of developments accepted for that location. As the site is within the settlement boundary of Powmill, the zoning can remain in place in a similar way to other land use zonings that occur in settlements/urban locations. The site specific requirements can prevail until such times as all the plots are developed. Thereafter, the site can be afforded a protection type of policy and be re-zoned as Existing Employment Use with associated Residential. This would provide the Council with an effective means of control over the development in perpetuity.

5.15 Prospective purchasers will be aware of the requirements as the Local Development Plan criteria will be apparent from the information contained in property searches which solicitors and estate agents will hold for the property. There should be no doubt that the houses and business uses require to be linked. It is not for planning, as implied in the Reporter's decision in the Aberdeen case, to seek to control other parties' involvement in the compliance with permissions granted, since the justifications presented to the Council for the initial development have already been accepted in principle by the Local Planning Authority.

5.16 Finally, with regard to marketing of the plot (and others with extant consents), none has been undertaken since the renewal permission was granted in 2015 due to the funding difficulties and hence neither the website nor the brochure have been updated recently. The intention would be to commence active marketing of the plot(s) following removal of all planning restrictions which will make them more appealing to prospective purchasers with the prospect of obtaining appropriate funding that much more realistic.

6.0 Conclusions

6.1 The proposed development on the application site is wholly compliant with the Development Plan. The Council's current position as stated in the pre-application advice, while relaxed to a certain degree, does not go far enough to satisfy requirements of lenders to enable the consented development on the application site (and other similar developments in the location granted on the same basis) to be implemented. There is no longer any need for the Council to take such a precautionary approach based on the evidence presented in this Statement in the form of recent planning decisions at appeal and by another Authority, and in terms of up to date Scottish Government policy and guidance.

6.2 The Council would not be exposed to unjustified development from occurring at this location in the future or elsewhere, since the uses in this particular location, which are presently safeguarded under the current LDP zoning (E23), can be further afforded protection by a new zoning in order that the intended uses remain as such in perpetuity. No undesirable precedent would therefore be set as a result. It is contended, therefore, that the Council is able to remove Condition 3 on the extant planning permission and grant an amended permission with no burden attached and with the development still being fully compliant with the Development Plan.

6.3 Consequently, the applicant is seeking the Council's support and understanding to their present circumstances and it is respectfully requested that permission is granted for the lifting of the planning restriction which will allow the consent (and others with similar restrictions at this location) to be implemented, thus ensuring that the Council's aspirations for employment creating enterprises in this rural area can ultimately be realised.

Correspondence from Buildstore to Richstream Ltd dated 22nd April 2016

From: Spencer Dunn
To: Karen Heriot
Cc: Crawford Heriot
Date: Fri, 22 Apr 2016 16:23:08 +0100
Subject: Financing a Self Build
Hi Crawford & Karen,

Thanks for your time earlier today and I am sorry I can't help you raise the funds for your self- build at this moment in time. As I mentioned there are currently no self-build lending options available to the project concerned due the fact the planning consent was granted with the condition that it involved a commercial element in the construction of an office building for workable use. Lenders will only lend for residential use only and they consider such planning consent very restrictive for resale purpose and due to the rural location.

Sorry I can't help right now but please contact me if you have any luck with fresh planning consent for residential use.

Regards

Spencer Dunn CEFA
Mortgage & Protection Advisor

BuildStore Mortgage Services, 8 Houstoun Interchange Business Park, Livingston, EH54 5DW

**Letter dated 4 November 2011 from Former Director and Chief Planner
for the Scottish Government to all Heads of Planning in Scotland**

Heads of Planning



4 November 2011

Dear Sir/Madam

OCCUPANCY RESTRICTIONS AND RURAL HOUSING

I am writing to clarify the Scottish Government's views on the use of conditions or planning obligations to restrict the occupancy of new rural housing.

Occupancy restrictions are typically used in Scotland to limit the occupancy of new houses in the countryside either to people whose main employment is with a farming or other rural business that requires on-site residency, or to people with a local connection. Sometimes new houses are tied to particular land holdings, preventing them being sold separately. Such restrictions have been applied either through planning conditions or Section 75 planning obligations.

A number of issues have arisen with the use of occupancy restrictions, some of which have been exacerbated by the current economic situation. Some people have found it difficult to get a mortgage to buy a house with an occupancy restriction. Others have found it difficult to sell the house, or have the restriction lifted, when they are forced by necessity to move. While it may be possible to include provisions in the condition or obligation that attempt to address these issues, any use of occupancy restrictions introduces an additional level of complexity (and potentially expense) into the process of gaining consent for a new house. Occupancy restrictions can also be intrusive, resource-intensive and difficult to monitor and enforce.

Scottish Planning Policy promotes a positive approach to rural housing. It states that development plans should support more opportunities for small scale housing development in all rural areas, including housing which is linked to rural businesses. It does not promote the use of occupancy restrictions.

The Scottish Government believes that occupancy restrictions are rarely appropriate and so should generally be avoided.

In determining an application for a new house in the countryside, it may be appropriate for the planning authority to consider the need for a house in that location, especially where there is the potential for adverse impacts. In these circumstances, it is reasonable for decision-makers to weigh the justification for the house against its impact, for example on road safety, landscape quality or natural heritage, and in such circumstances it may be appropriate for applicants to be asked to make a land management or other business case. Where the authority is satisfied that an adequate case has been made, it should not be necessary to use formal mechanisms to restrict occupancy.

The Scottish Government believes that a vibrant populated countryside is a desirable objective and that new housing to realise this aim should be well sited and designed, and should not have adverse environmental effects that cannot be readily mitigated. In areas, including green belts, where, due to commuter or other pressure, there is a danger of suburbanisation of the countryside or an unsustainable growth in long distance car-based commuting, there is a sound case for a more restrictive approach. In areas where new housing can help to support vibrant rural communities or sustain fragile rural areas, planning authorities should seek to support suitable investment in additional provision, focussing on the issues of location, siting, design and environmental impact rather than seeking to place restrictions on who occupies the housing.

Where sites are considered unsuitable for new housing, more acceptable locations will often exist elsewhere on the same landholding or nearby, and planning authorities can assist applicants by advising where these are.

Yours faithfully

JAMES G MACKINNON

Reporter's Decision Letter dated 12th April 2012 on Aberdeenshire case
(Appeal Ref. POA-110-2001)

Determination by Dan Jackman, a Reporter appointed by the Scottish Ministers
Appeal under S75B of the Town and Country Planning (Scotland) Act 1997

- Planning obligation appeal reference: POA-110-2001
- Site address: Knock Na Gobhair, Craigston, Turriff, AB53 5PX
- Appeal by Mr and Mrs H Smith against the decision by Aberdeenshire Council.
- Application to modify or discharge the planning obligation BB/APP/2011/2028 dated 17 June 2011 refused by notice dated 25 October 2011
- Modification sought: Removal of Clause (First) of the planning obligation (section 75 agreement) restricting the sale of land to a single unit
- Planning obligation details: An agreement under section 75 of the Town and Country Planning (Scotland) Act 1997 between Aberdeenshire Council and Harry George Smith and Mrs Irene Jane Smith registered in the Land Register of Scotland under title No ABN71840 and ABN107032
- Date of registration of the planning obligation: 7 January 2011
- Date of site visit by Reporter: 13 March 2012

Date of appeal decision: 12 April 2012

Determination

I allow the appeal and determine that the planning obligation comprising Clause (First) of the agreement referred to above is removed and discharged.

Clause (First) reads as follows:

"In regard to all future sales or disposals of the site by the Developer, the site shall be sold as an individual whole and no sale or disposal of part or parts of the site shall take place without the prior written consent of the council."

Background

1. On 6 January 2011, planning permission was granted for the demolition of existing storage facility, erection of dwellinghouse and erection of workshop, storage and office at the above site. Prior to the permission being issued the applicant had entered into a section 75 agreement with the council. Clause (First) of this agreement was as detailed above and, in short, states that the site can only be sold as a single unit.

2. The appellant is now seeking the removal of the above-mentioned Clause from the agreement (now referred to as a planning obligation).

Reasoning

3. I consider the determining issue in this appeal to be whether Clause (First) complies with the five tests in paragraphs 11-22 of **Circular 1/2010: Planning Agreements**: necessity, planning purpose, relationship to the development, scale and kind, and reasonableness.

Necessary to make the proposed development acceptable in planning terms and serving a planning purpose

4. The council argues, in summary, that Clause (First) is necessary to ensure the continuing compliance with Policy Hou 4 of the Aberdeenshire Local Plan, adopted in 2006. I shall therefore consider the first two tests of Circular 1/2010 together.

5. It is not disputed that the proposal complies with Policy Hou 4. I note that the policy wording itself does not require that a new house be in the same ownership as the business. Whilst the reasoned justification following the policy does refer to the need for a section 75 agreement, the precise quote is, "To ensure any new house approved under Part 1 of this policy is never sold on to a non essential worker, developers **MAY** be required to enter into a Section 75 Agreement with the Council " (my emphasis).

6. It appears to me that the underlying premise of the council's case is that the agreement is necessary to prevent the exceptional nature of a house allowed under Policy Hou 4 from being subsequently abused.

7. I accept that the house and business could function as separate planning units with minimal physical changes. If this occurred, I accept that there is an increased risk that the original justification for a house would be less convincing and overtime any link could be broken entirely. However, at the same time, the current close physical relationship between the house and business is one of the requirements of Policy Hou 4 and formed an essential part of the original justification for the proposed house. The business use, run by the appellant, is a long-standing one and has not been contrived to justify a new house. There is no evidence in any of the actions of the appellant or from the approved layout to suggest that there is any intention other than to use the house as claimed in the planning application.

8. One of the council's fears is that if the uses separate, there may be a future request for a further house. Any proposal for a further house in association with the business would be subject to the need for planning permission. Such an application would be assessed on its own merits and in the light of the policies in operation at that time. There is no evidence to suggest that the council would be constrained in making any future decision.

9. I note that Clause (First), whilst preventing the sub division of the application site, does not require the house to be occupied by an essential worker. This is the only

justification given for needing a section 75 agreement in the local plan. Neither would it ensure the continuing operation of the business. In this instance, I would be surprised if any planning obligation agreement could ever be devised that could guarantee the continuing operation of the business and occupation of the house by an essential worker under all future circumstances. The fact that Clause (First) can be amended by written agreement from the council does not address any of these matters. Therefore, even in its own terms, Clause (First) only provides limited comfort that the original justification would always remain.

10. Therefore, in the circumstances of the case, I cannot agree with the council that Clause (First) is necessary for the continuing compliance with the development plan.

11. It is part of good planning practice that planning policies are monitored, evolved and developed over time. I agree with the appellant's agent, that Scottish Planning Policy and the policies of the emerging Local Development Plan have a different emphasis regarding new housing in rural areas. This may result in different development plan policies in the future. It is clear from the terms of the letter from the Scottish Government's Chief Planner, that the expectation is that council's carefully assess the justification for a new house initially, but should not use formal mechanisms to make sure of continuing compliance.

12. For all the above reasons, I conclude that Clause (First) does not meet the two tests of necessity or achieving a planning purpose.

Related to the proposed development and related in scale and kind

13. The two tests regarding the relationship to the development and scale and kind are explained primarily in relation to financial contributions. There is no dispute over the financial contributions required, which in any case have been discharged. As far as these two tests are relevant, I am satisfied that Clause (First) complies with them.

Reasonable in all other respects

14. I have concerns that in the circumstances of this case, any continuing obligation seeking to restrict the sale of land is likely to be unrealistic and unreasonable. This is because over the several decades of the likely lifetime of a built house, changes to the personal circumstances of the occupiers and/or the financial circumstances of the business are inevitable. The provision to allow the clause to be amended by written agreement with the council does not address this difficulty, as illustrated by the need for the current appeal.

15. In addition, there is compelling evidence from the letters from the mortgage brokers and the letter dated 4 November 2011 from the Scottish Government's Chief Planner, that planning obligations in general and Clause (First) in particular, makes obtaining a mortgage impossible.

16. In the current case, there is a strong likelihood that with Clause (First) in place, the proposed house would not be built. This would mean a development that complies with the

development plan would be frustrated, the benefits to the business would not be achieved and the site itself left in a derelict and untidy state. I consider all of these to be undesirable.

17. In explaining the reasonableness test, Circular 1/2010 states that the development should not be permitted without the obligation. I am persuaded by the arguments put forward on behalf of the appellant that with Clause (First), part of the approved development is unlikely to take place. I therefore conclude that Clause (First), in the circumstances of the case is unreasonable.

Conclusion

18. Circular 1/2010 requires that planning obligations must meet all five tests in paragraph 11. I consider that Clause (First) fails the tests of necessity, planning purpose and reasonableness. I therefore conclude that the planning obligation should be modified to remove Clause (First).



Dan Jackman
Reporter

Advisory note

In accordance with Section 75B of the Town and Country Planning (Scotland) Act 1997 (as amended) this determination does not take effect until the date on which this notice is given is registered in the Land Register of Scotland. When submitting this deed for registration it should be identified as a 'Planning notice of determination' on the relevant application form. Further information on the General Register of Sasines and the Land Register of Scotland is available from the Registers of Scotland, www.ros.gov.uk.



View looking South West from Craigton Farm Lane

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OLIVER
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ARCHITECTS

Application for 'PLANNING in PRINCIPLE', April 2011
Rural Business Class Development. Plot 3, Craigton Farm Lane, Powmill



a.



b.



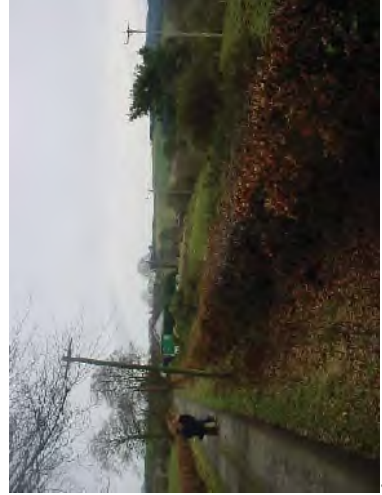
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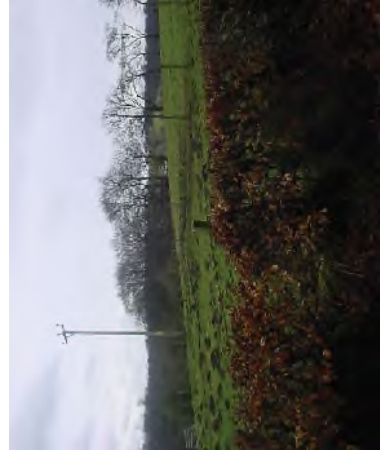
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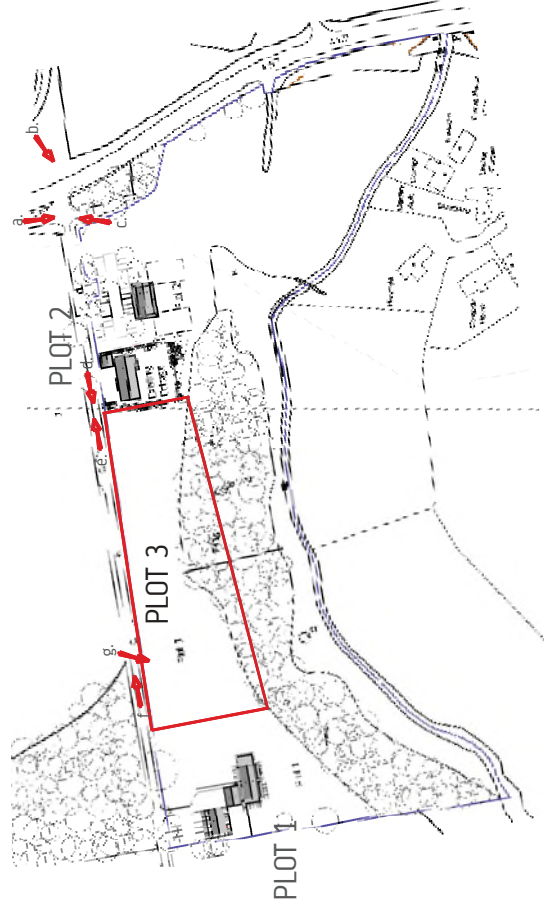
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Application for 'PLANNING in PRINCIPLE', April 2011
 Rural Business Class Development. Plot 3, Craighton Farm Lane, Powmill

Development Plan Structure Plan – Perth and Kinross Structure Plan (2003).

The principal strategic issues of relevance raised through the Perth and Kinross Structure Plan, 2003 relate to the designation of this site as a rural business site which is covered through Sustainable Economy Policy 3 which gives support to measures which promote integrated flexible and innovate approaches to rural development which encompass economic, social and environmental considerations.

Local Plan Kinross Area Local Plan (2004)

The principal policies of relevance are in summary:

Policy 1 Sustainable Development identifies guidelines by which all development should be considered in relation to sound principles of sustainable development.

Policy 2 ‘Development Criteria’ provides criteria by which all developments will be judged. In particular, that the development should have a landscape framework should have regard to the scale, form, colour and density of development.

Policy 5 ‘Landscape’ indicates that developments should conserve landscape features and sense of local identity.

Policy 6 ‘Design and Landscaping’ indicates that a high standard of design is sought across the entire plan area.

Policy 82 Kinross Rural Business Use Inset Maps 10 and 11 identify sites where the Council will give encouragement to the development or expansion of business opportunities subject to the development fulfilling the following criteria:-

- a. The development should not have an adverse impact on the amenity of adjoining occupiers and be compatible in land use terms with surrounding land uses.
- b. To facilitate “working from home” single houses in association with the development may be permitted.
- c. Businesses which because of their scale or character would be more appropriately located in a dedicated business or industrial estate, will not be permitted.

SPP15 Planning for Rural Development

It advances policy in respect of small scale rural housing developments, including clusters and groups in close proximity to settlements, replacement housing and plots on which to build individually designed homes.

“the availability of new, originally designed housing and plots should help to encourage entrepreneurs and investors to live in rural Scotland and to start new businesses”

SPP20 Role of Architecture and Design Scotland

The policy identifies the following indicators of high quality design: -

Distinctiveness – the proposals will give the development a distinct character and identity

Safe and pleasant – the entrance courtyards will encourage passive surveillance

Easy to get to and move around

Welcoming

Adaptable

Resource efficient

PAN44 Fitting New Housing Development into the Landscape

This advice, superseded in large parts by PAN72, was prepared to provide advice on how improvements can be secured in the environmental quality of new housing developments in terms of their relationship to the landscape.

PAN67 Housing Quality

The stated aims of this advice are to encourage the design of new housing to reflect a full understanding of its context, to reinforce local and Scottish identity, and to integrate housing into the movement and settlement patterns of the wider area.

PAN72 Housing in the Countryside, Feb 2005

This guidance aims to develop high quality modern designs which maintain a sense of place. Housing should be sympathetic in terms of orientation, scale, proportion and materials to other buildings in the locality. It sets out basic principles to achieve good quality design: -

1. Landscape. A Land Management plan has been prepared by David Wilson Associates, Landscape Architects.

2. Layout. An arrangement of built form in ‘clustered pairs’ rather than ‘varied repetition’ (see last page) was selected as it:

- has a more rural rather than suburban character.
- allows a view of landscape between pairs of clusters.

3. Access - The farm lane is to be upgraded to a 4.8m wide carriageway with 1.2m footpath on one side, all to an adoptable standard.

Design

1. Scale

2. Materials – natural stone, render and slate.

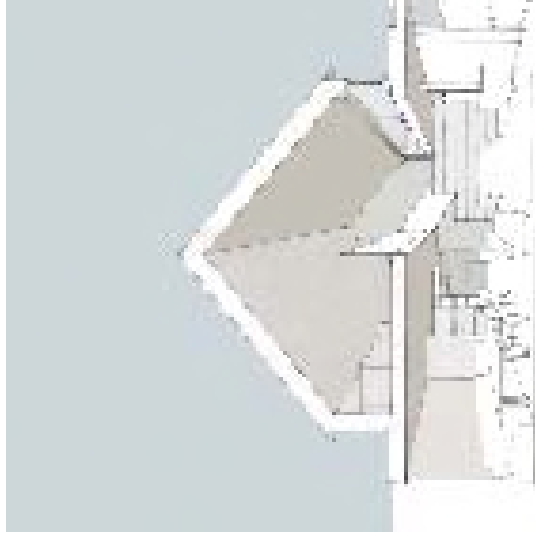
3. Details – Flush detailing helps give the impression of simple, precise forms set in the natural landscape. Permeable setts/hard surfacing is proposed for a SUDS compatible drainage solution.

In conclusion

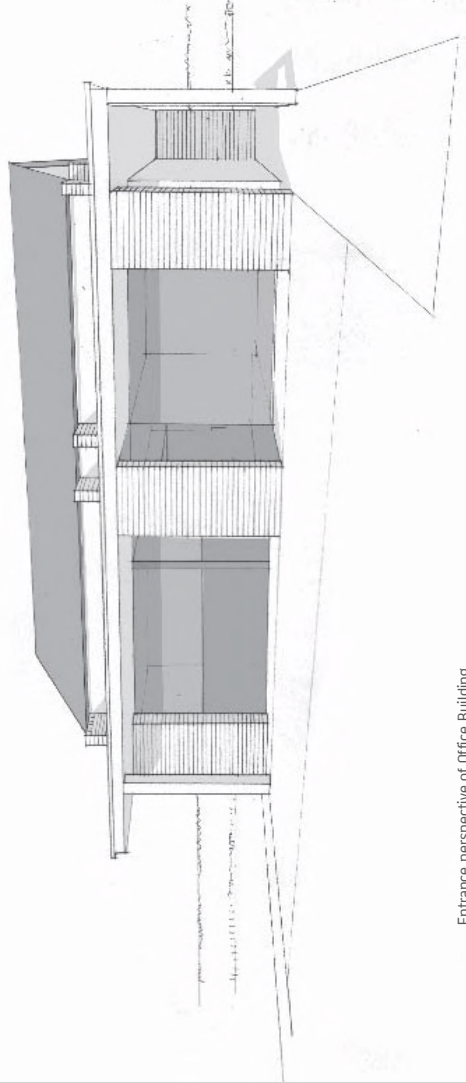
The national policy encourages high quality housing development in the countryside that enhances an existing sense of place for proposals that have considered their landscape, layout, access, scale, materials and detail, such as this.

03/00605/FUL

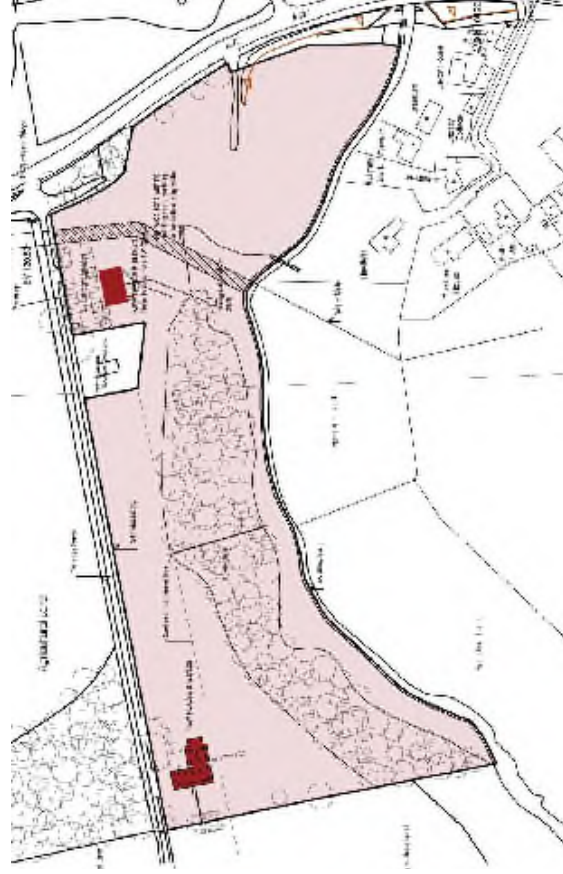
Erection of house and garage, and office development
 APPROVED



Sectional perspective through Living Room of House



Entrance perspective of Office Building



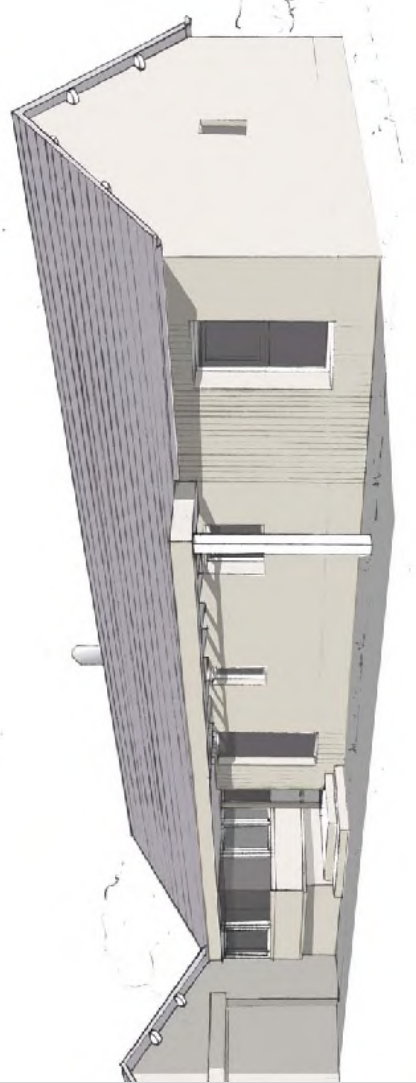
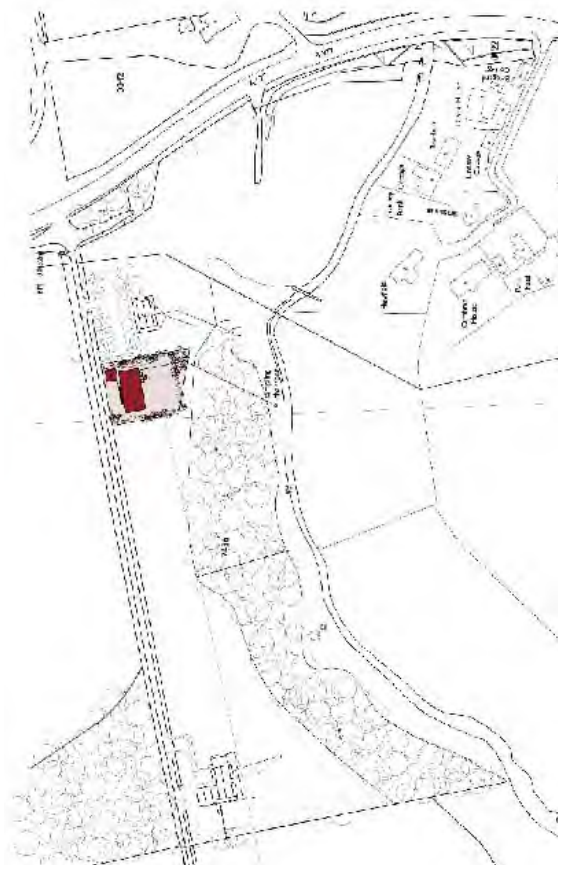
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 Tel: 0131 477 4513
www.oliverchapmanarchitects.com

Application for 'PLANNING in PRINCIPLE', April 2011
 Rural Business Class Development. Plot 3, Craighton Farm Lane, Powmill

03/01636/FUL
 Powmill Cottage
 APPROVED



Previous house on the site



Perspective of front of new house (now built)

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 ARCHITECTS

Application for 'PLANNING in PRINCIPLE', April 2011
 Rural Business Class Development. Plot 3, Craighton Farm Lane, Powmill

07/00084/FUL

Erection of a rural business class development, office and house plot 1
APPROVED

07/00085/FUL

Erection of a rural business class development office plot 2
WITHDRAWN



08/00267/OUT

Formation of business use development (Class 4) at plot 3 (in outline)
APPROVED



View looking East along Craighton Farm Lane

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OLIVER
CHAPMAN
ARCHITECTS

Application for 'PLANNING in PRINCIPLE', April 2011
Rural Business Class Development. Plot 3, Craighton Farm Lane, Powmill

WATER SUPPLY + DRAINAGE ARRANGEMENTS

There is no public sewer available, so the proposal is to discharge to a water-course (The Gairney Burn). The land is not suitable for a soakaway, so a biodisk or suitable treatment plant will be required.

Each plot will have their own biodisk system and a common outlet to the burn. The proposal assumes a single route and outlet for both treated sewerage and surface water.

The proposal assumes utilizing an area at the bottom of the site for the retention of surface water on site before being released slowly into the burn.

A new water supply will be taken from the mains pipe at the lane end where it joins the A977. It will be laid within the service strip to serve all of the properties.

PROPOSED ROAD ACCESS

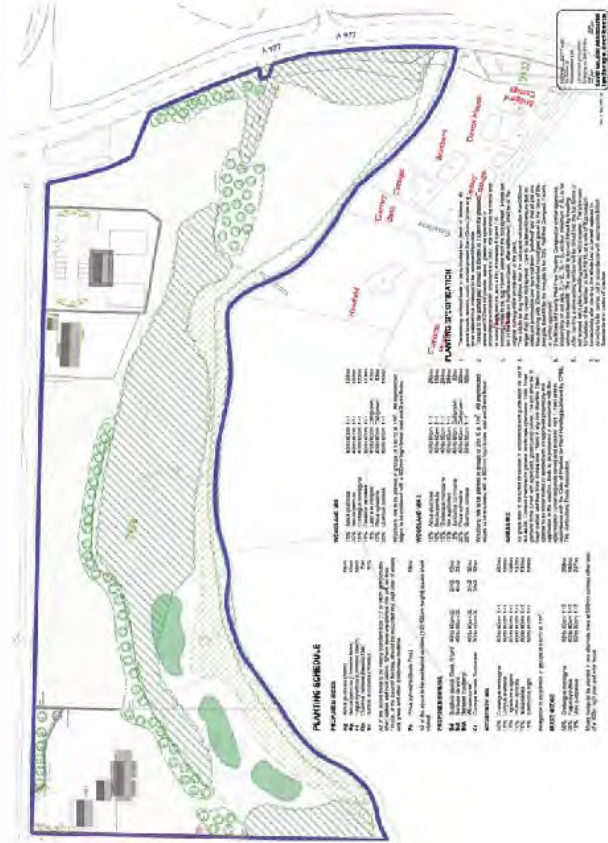
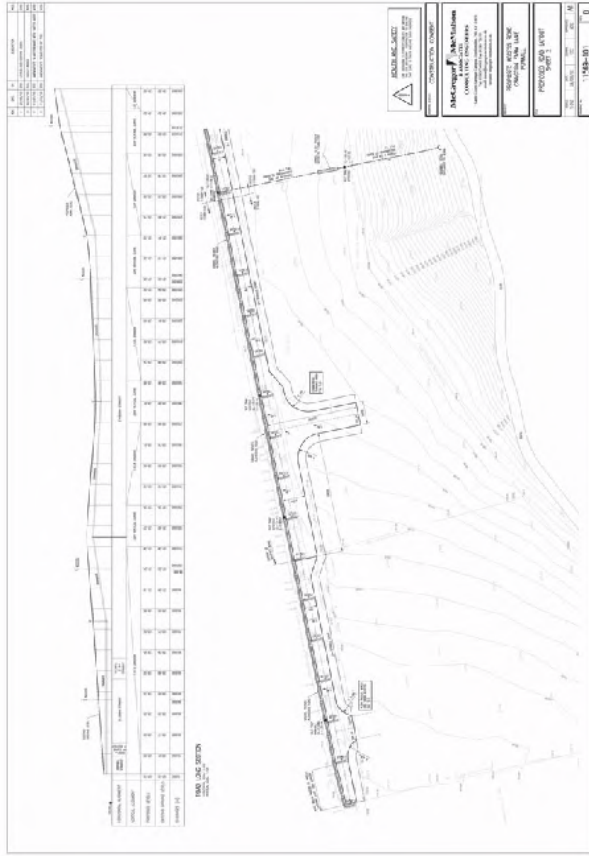
The road is being changed to adoptable standards (single carriage) and a foot-path / service strip is being added. Road design and RCC application have been prepared by McGregor + McMahon Associates (see enclosed drawing).

The proposal does not affect paths, rights of way or access other than making the existing one better and more assessable.

PROPOSED LANDSCAPING

A detailed landscaping plan has been prepared by David Wilson Associates (see enclosed drawing) which proposes the planting of a large number of trees, bushes and hedges.

It was produced to support previous applications and includes a survey of the existing trees on site.



REV.	DATE	BY	DESCRIPTION
A	27/05/10	STC	DETAILS AND LEVELS ADDED
B	02/07/10	STC	CROSSING POINTS, NOTES AND GULLET ADDED
C	13/07/10	STC	AMENDMENTS IN ACCORDANCE WITH SAFETY AUDIT
D	14/12/10	STC	AMENDMENTS REQUESTED BY PKC

APL	DESCRIPTION
K05	
K05	
K05	

HEALTH AND SAFETY

 THE OVERHEAD ELECTRIC CABLES ARE WITHIN THE 5M CLEARANCE ZONE. ALL WORKERS MUST BE AWARE OF THIS AND TAKE APPROPRIATE PRECAUTIONS.

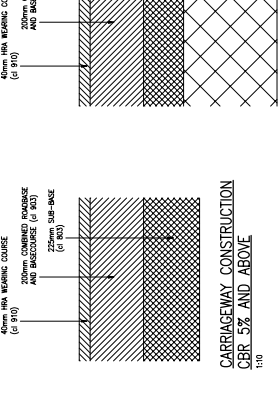
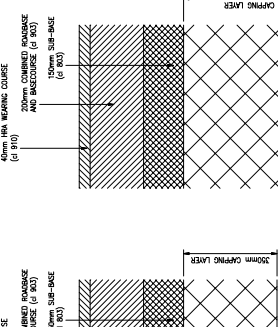
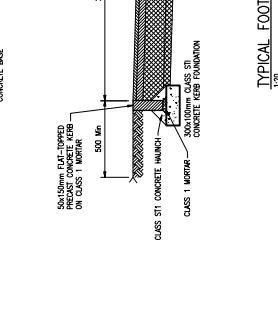
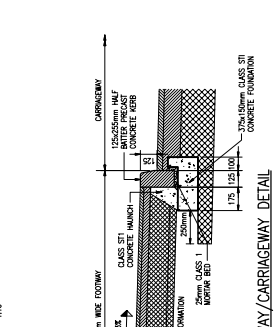
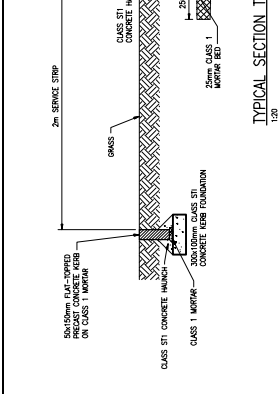
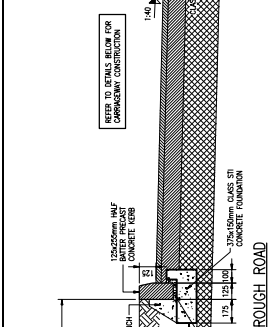
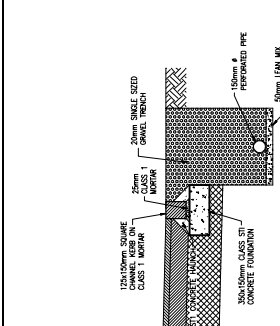
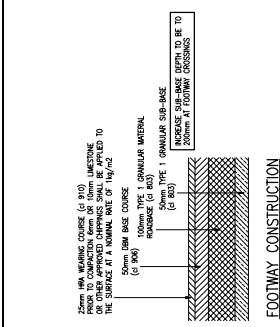
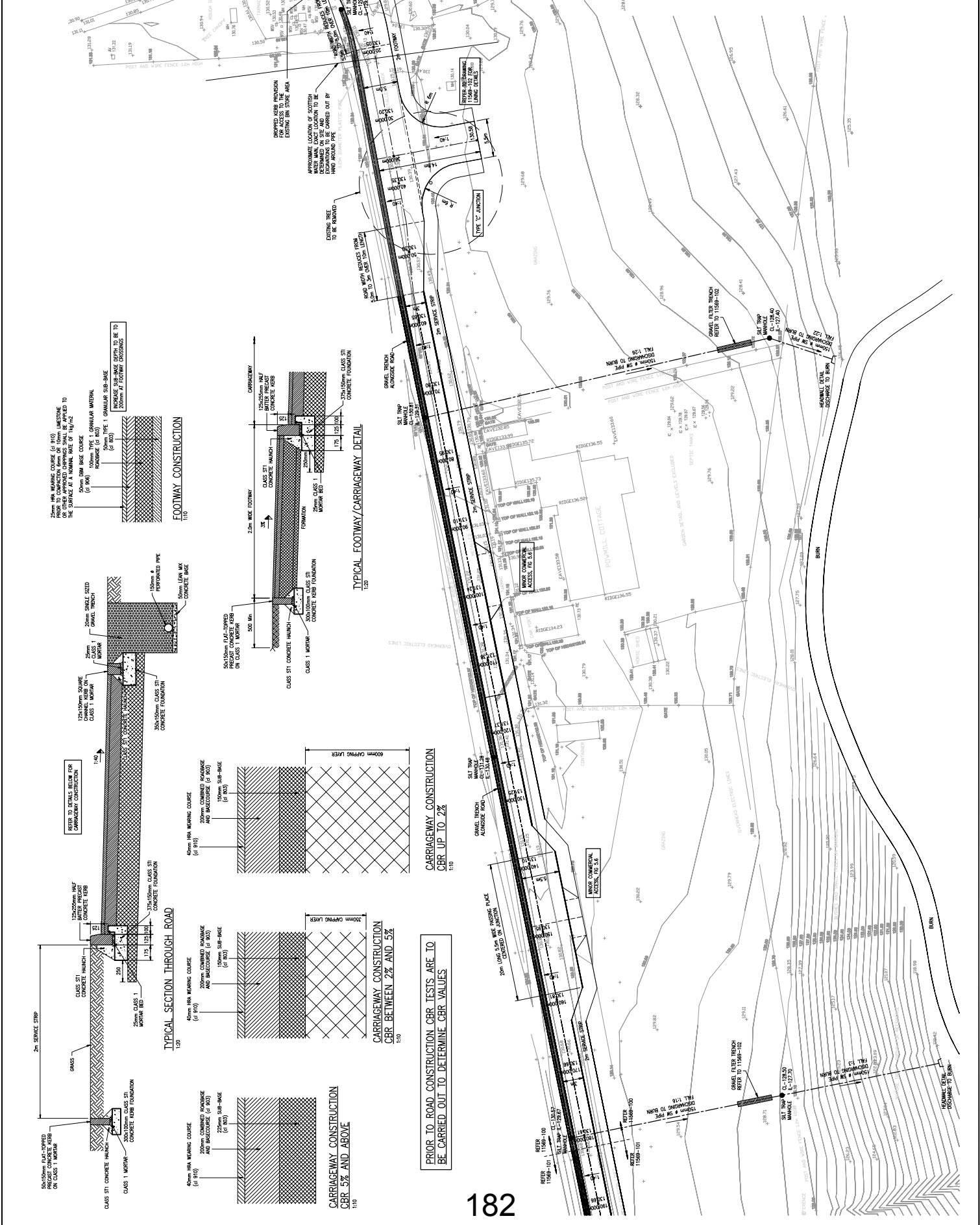
CONSTRUCTION CONSENT

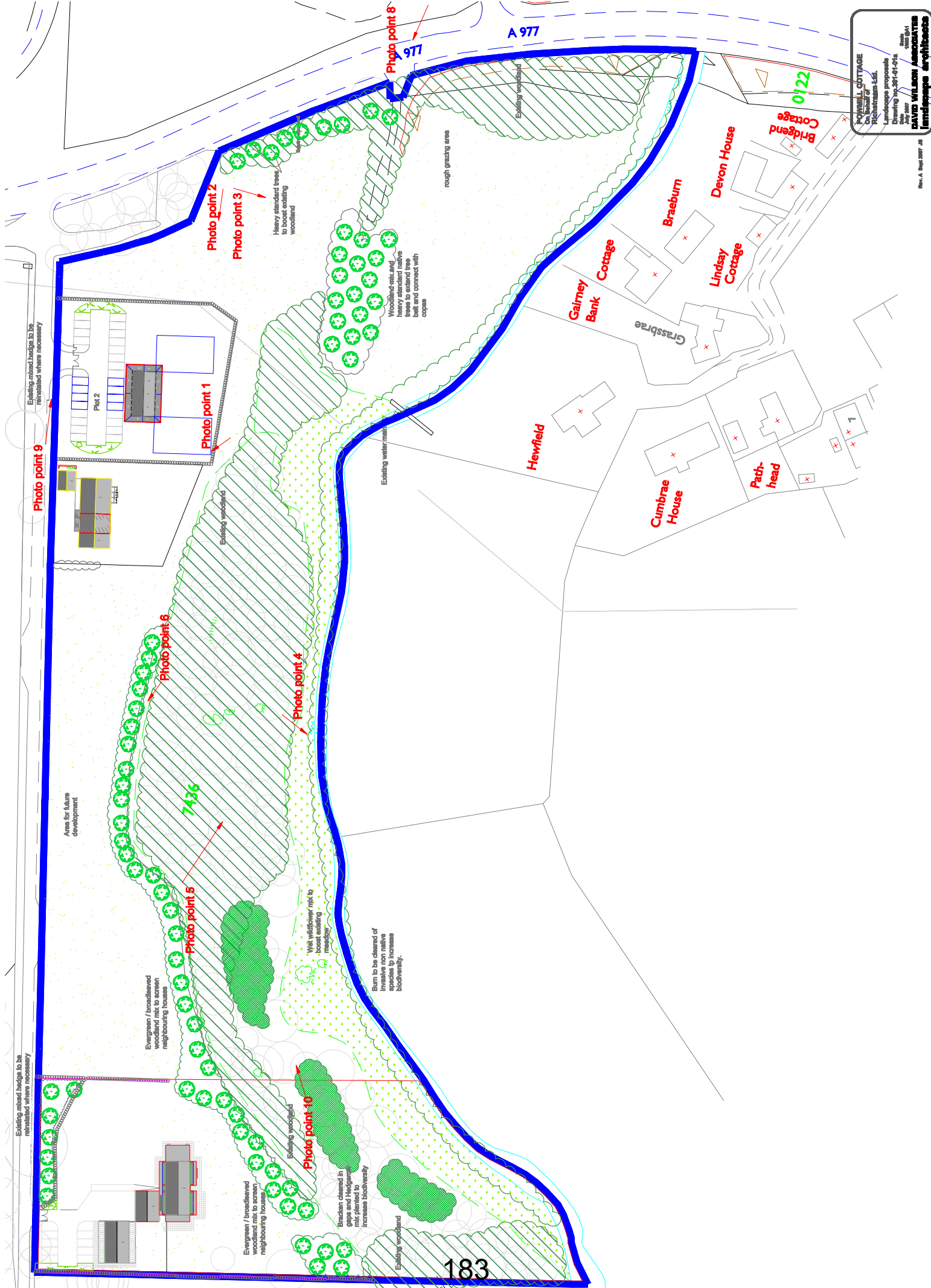
McGregor & Associates
CONSULTING ENGINEERS
 Castle Court, Craigston Campus, Dalrymple, G16 8YJ, GLASGOW
 Tel: 0141 807 7040 Fax: 0141 807 7319
 email: info@mcgregor-associates.co.uk
 website: www.mcgregor-associates.co.uk

PROPOSED ACCESS ROAD
 CRAIGTON FARM LANE
 POWMILL

PROPOSED ROAD LAYOUT
 SHEET 1

SCALE: 1:250 DATE: 04/05/10 DRAWN: STC APPROVED: K05
 DRAWING NO.: 11569-100 REV.: D





Existing mixed hedge to be reinstated where necessary

Photo point 9

Area for future development

Evergreen / broadleaved woodland mix to screen neighbouring houses

Evergreen / broadleaved woodland mix to screen neighbouring houses

Pkt 2

Photo point 1

Photo point 6

Photo point 5

Photo point 10

Existing woodland

Burn to be cleared of invasive non native species to increase biodiversity

Existing woodland

With willow mix to boost existing meadow

Burn to be cleared of invasive non native species to increase biodiversity

Photo point 4

Photo point 3

Photo point 2

Photo point 3

Heavy standard trees to border existing woodland

Woodland mix - heavy standard trees to border and connect with copse

Photo point 8

977

A 977

Existing woodland

rough grazing area

0122

Hewfield

Galmey Bank Cottage

Cottage

Cumbræ House

Lindsay Cottage

Devon House

Bridgend Cottage

Path-head

Grassbrae

Braeburn

1

183

KILMILLY COTTAGE
 LANDSCAPE PROPOSALS
 RICHMONDSIDE LTD.
 LANDSCAPE PROPOSALS
 Drawing No. 204-01-07a
 Date: 14/01/24
 Rev: A
DAVID WILSON ASSOCIATES
 landscape architects

Rev. A. Sheet 2047_08

Site Plan 1:1250 - 'Clustered Pairs'

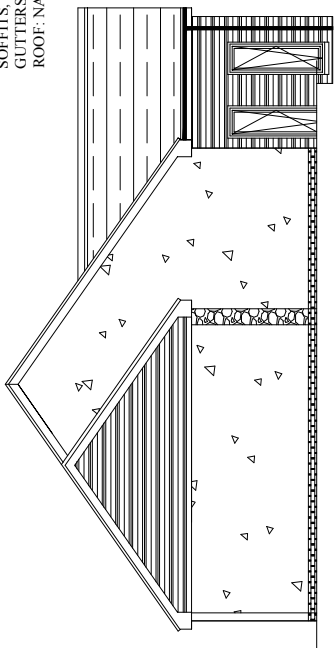


Application for 'PLANNING in PRINCIPLE', April 2011
Rural Business Class Development. Plot 3, Craighton Farm Lane, Powmill

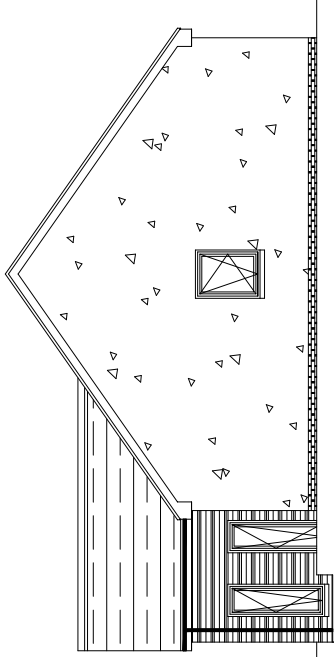
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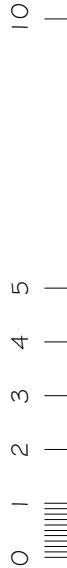
EXTERNAL FINISHES:
 EXTERNAL WALLS: WHITE WETDASH FINISH RENDER.
 BASE COURSE: ARTIFICIAL STONE BUFF COLOUR.
 WINDOWS & DOORS: WHITE UPVC WINDOWS AND WHITE COMPOSITE DOORS.
 SOFFITS, FASCIAS & LINING TO CLAD AREAS: WHITE UPVC CLADDING BOARD.
 GUTTERS & DOWNPIPES: BLACK UPVC DOWNPIPES AND GUTTERING.
 ROOF: NATURAL BLUE/GREY SLATES.



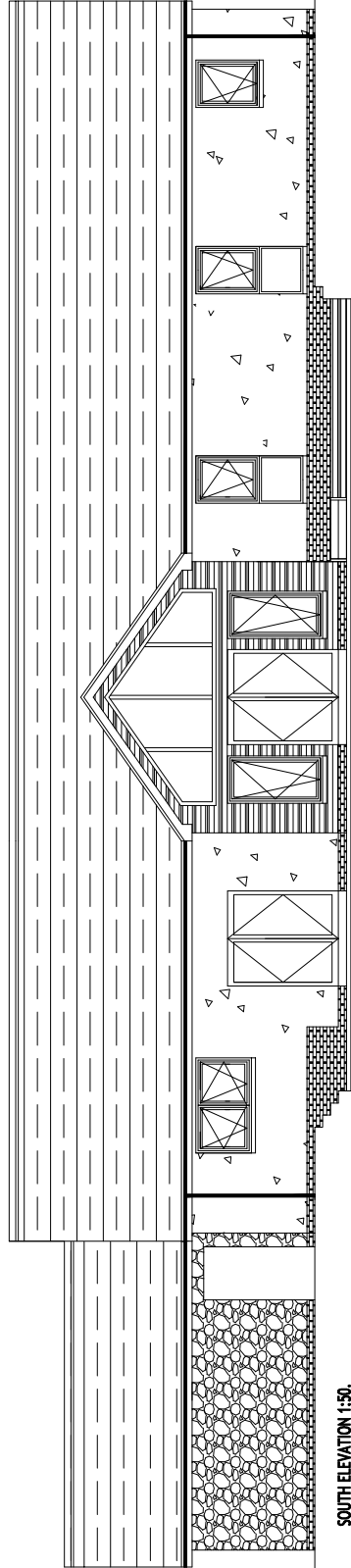
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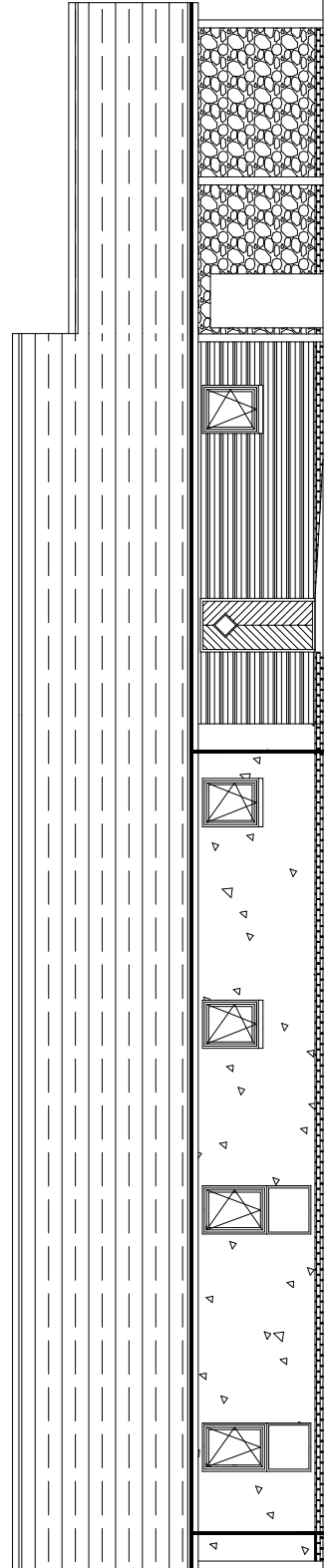
WEST ELEVATION 1:50.



SCALEBAR 1:50 IN METRES.



SOUTH ELEVATION 1:50.



NORTH ELEVATION 1:50.

**DO NOT SCALE FOR CONSTRUCTION
 IF IN DOUBT - ASK!**

NOTE

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DATE: 16/05/12

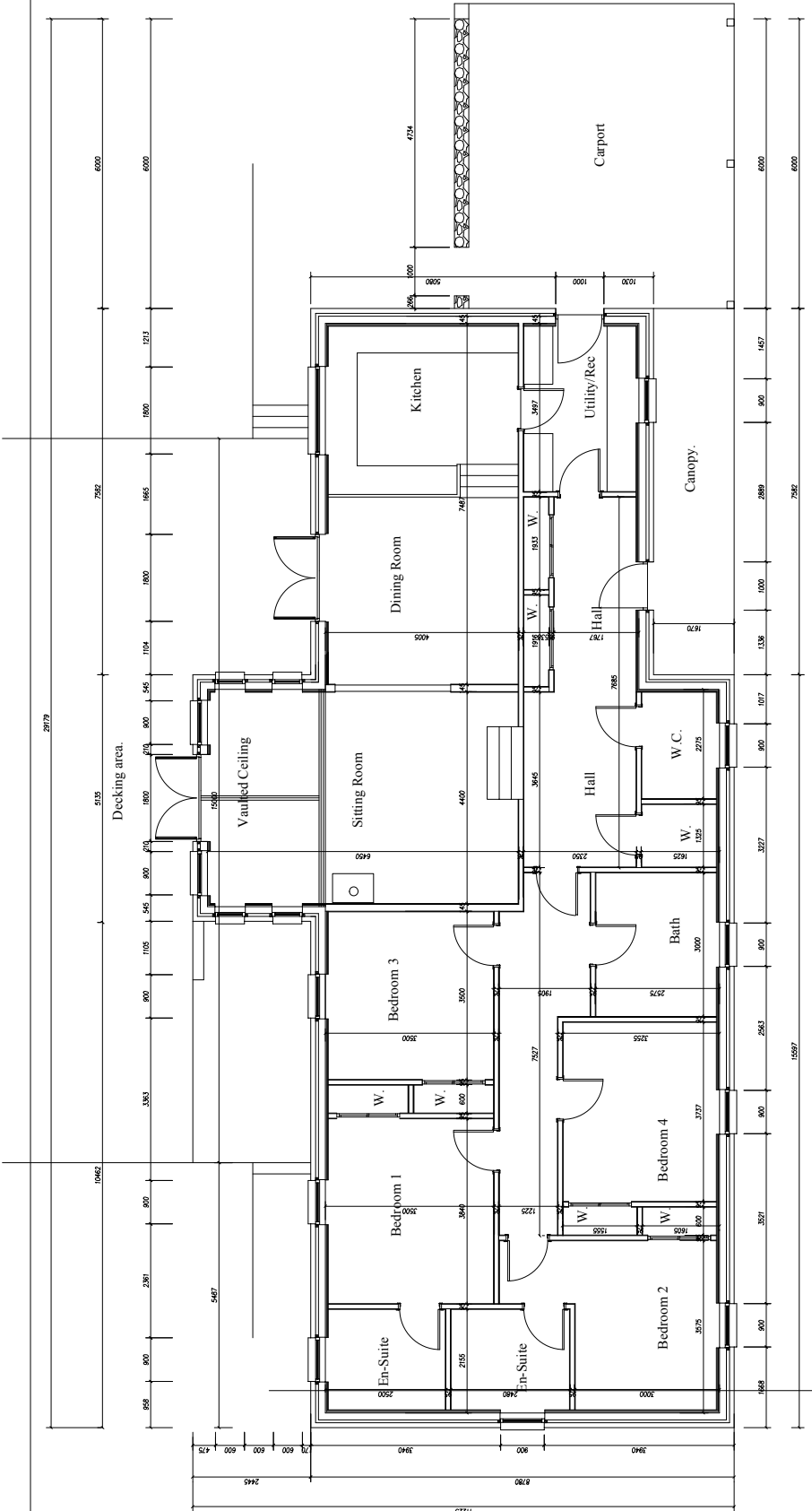
REVISION: SIGNED MRS

TITLE:

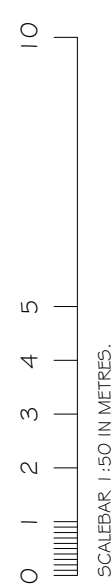
HERIOT-HOUSE
 PLANNING-ELEVATIONS.

FOR: MR+MRS-HERIOT.
 PLOT-3D,
 POMMILL.

Drawn by	Checked by	Date	Scale
CLAYMORE TIMBER FRAME LTD	CLAYMORE TIMBER FRAME LTD	16-5-12	1:50
4th HERIOT-HOUSE, 1000 WOODSIDE, HERIOT, PETERHEAD, AB9 7JL Email: info@claymoretimberframe.co.uk			
With the Extra Edge	Revision		



GROUND FLOOR PLAN 1:50.



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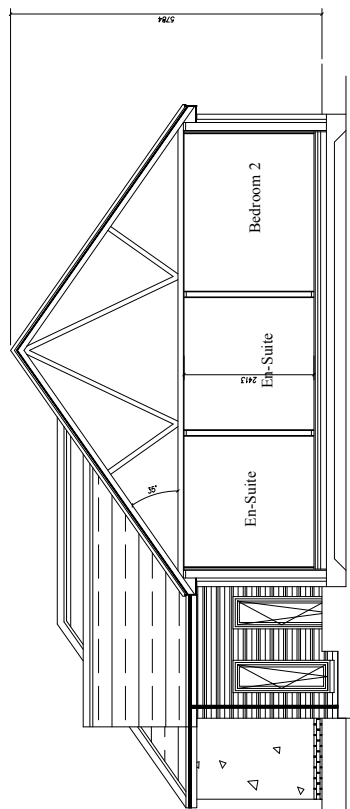
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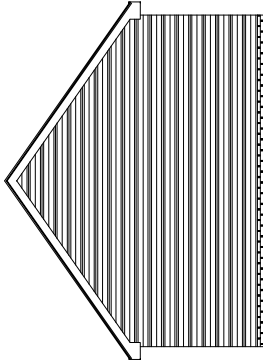
DATE	REVISION	SIGNED/INDEX

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PLANNING-FLOOR PLAN-4 SECTION.
FOR: MR-4 MRS-HERIOT.
PLOT-3D.
POMMILL.

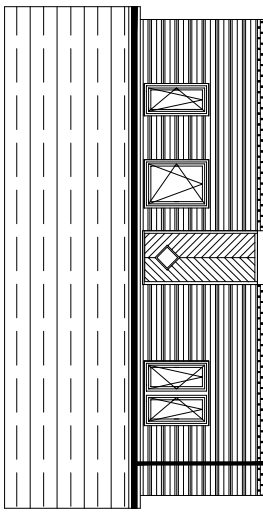
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CLAYMORE TIMBER FRAMES LIMITED 100, WILSON ROAD, WILSON, WYTHAM, LEICESTER, LE19 1JQ Tel: 0115 933 8777 Fax: 0115 933 8778 Email: claymoretimberframes@bt.com			
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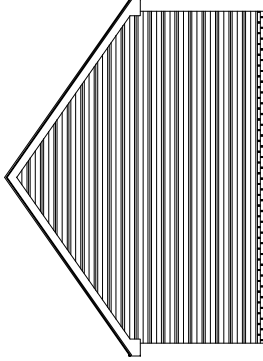
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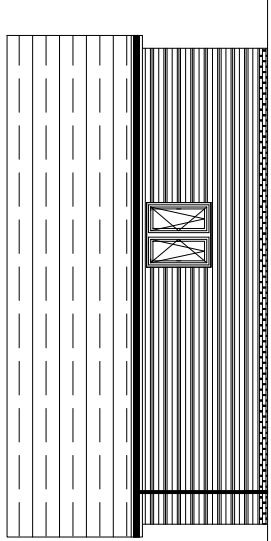
EAST ELEVATION 1:50.



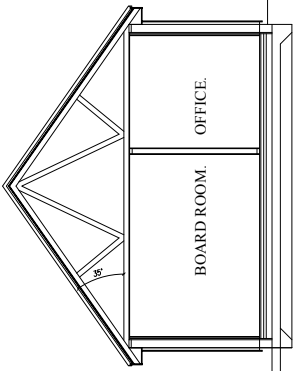
NORTH ELEVATION 1:50.



EAST ELEVATION 1:50.

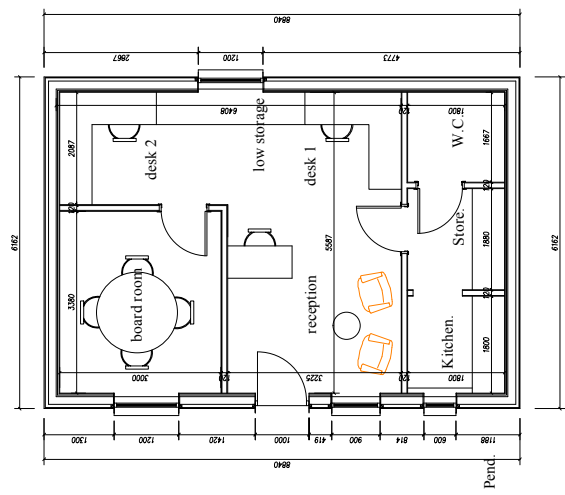


SOUTH ELEVATION 1:50.



SECTION 1:50.

EXTERNAL FINISHES:
 EXTERNAL WALLS: WHITE UPVC CLADDING TO MATCH THE HOUSE.
 BASE COURSE: ARTIFICIAL STONE BUFF COLOUR TO MATCH THE HOUSE.
 WINDOWS & DOORS: WHITE UPVC WINDOWS AND WHITE COMPOSITE DOORS.
 SOFFITS, FASCIAS & LINING TO CLAD AREAS: WHITE UPVC CLADDING BOARD.
 GUTTERS & DOWNPIPES: BLACK UPVC DOWNPIPES AND GUTTERING.
 ROOF: NATURAL BLUE/GREY SLATES TO MATCH THE HOUSE.



FLOOR PLAN 1:50.

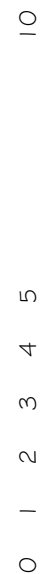
JUSTIFICATION FOR OFFICE DESIGN:

THE PLANNING OUTLINE PERMISSION FOR THIS SITE WAS ONLY GRANTED WITH THE CONDITION THAT THE PROPOSAL INVOLVED A COMMERCIAL ASPECT AS WELL, AS THE LAND IS IN A RURAL AREA.

THE OFFICE PROPOSED FITS IN WITH THE DESIGN OF THE HOUSE WHICH IT IS TIED TO IN THAT THE OWNERS OF THE HOUSE ALSO OWN THE OFFICE.

THIS OFFICE WOULD BE SUITED TO A VARIETY OF USES, SUCH AS AN ARCHITECTS STUDIO, AN ADVERTISING OFFICE, A CRAFT STUDIO SUCH AS FOR WOOD TURNING, ETC, A TECHNOLOGY BASED COMPANY USING COMPUTERS, AN INSURANCE OR ESTATE AGENTS OR LEGAL PRACTICE OR EVEN AS A HEADQUARTERS FOR A CONSTRUCTION BASED OPERATION, PREDOMINANTLY SUITED TO WHITE COLLAR WORKING OR DIGITAL CROFTING IN ACCORDANCE WITH PLANNING LEGISLATION AS SET OUT FOR THIS SORT OF DEVELOPMENT UNDER THE 2001 DEVELOPMENT PLAN.

THE BUILDING IS ADAPTABLE BUT WOULD EASILY ACCOMMODATE 2 WORKING PARTNERS AND A RECEPTIONIST OR 3 WORKING PARTNERS, WITH A PRIVATE MEETING ROOM AND STORAGE.



SCALEBAR 1:50 IN METRES.

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 IF IN DOUBT - ASK!**

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DATE	REVISION	SIGNED/INITIALS

TITLE:
 HERIOT-OFFICE.
 PLANNING-PLANS-SECTIONS-ELEVATIONS.
 FOR: MRS-4-MRS-HERIOT.
 POWNMILL.

Drawn by		Checked by	
Date	19-12	Date	
		Scale	1:50
CLAYMORE TIMBER FRAME LIMITED 100, WOODS WAY, WOODS, WYTHAM, LEICESTERSHIRE, LE19 5JL Tel: 0115 937 8777 Email: claymoretimberframe@bt.com		Project No.	CH04-EP-12
With the Extra Edge		Revision	

J M Planning Services

20 Braemar Drive Duloch Park Dunfermline Fife KY11 8ES

Mr John Williamson
Planner
Development Management
Perth and Kinross Council
Pullar House
35 Kinnoull Street
Perth
PH1 5GD

6th September 2016

Dear Mr Williamson,

Application Reference 16/01058/FLL

Variation to Planning Permission Reference 15/01349/FLL - Erection of a Dwelling house with Associated Office Studio at Plot 3D, Powmill Cottage, Rumbling Bridge, Powmill, Kinross

Richstream Ltd

I refer to your e-mail dated 16th August 2016.

As you know from the recent interim correspondence, I discussed the contents of your e-mail with my clients. It was considered necessary to seek advice from their financial agents in order to get further clarification on the points raised in your e-mail relative to funding options and on your intention to use the type of wording for a condition as suggested previously by your colleague, David Niven.

I now wish to respond as follows and I will focus on the planning merits of the case as presented first as I feel it is necessary to outline what the objectives are for this location.

It is important to state from the outset that while the Employment Use with Associated Residential Development zoning in the LDP started off as my client's own concept, it was clear early on in their discussions that they gained your Department/Council's support and since have worked in partnership with your Council, sharing the Vision of seeking to stimulate employment in the local rural economy.

They have worked extremely hard in trying to make this home working concept work and bring the vision to reality. They have invested a considerable amount of time, effort and money in marketing the plots as a combined business and residential development opportunity. The site has never been marketed just for residential as to do so would contravene the planning requirements for the plots. They are in the process of upgrading the access road leading to the plots and have just obtained agreement from your Roads Department colleagues for an RCC to be approved for a revised design for the road layout to meet Council standards. These works require considerable financial investment on their part, as an upfront cost, to ensure that the plots have the appropriate infrastructure to be sold as serviced plots. (Note – I will forward to you shortly the revised road design details to satisfy Condition 6 of the relevant planning permission and would seek your support to treat the matter as a non-material variation since the changes have been made to satisfy your Roads Department).

It is equally important to state that my clients have received many enquiries over the years and they are from existing, well established businesses, not new ventures. Why? People interested in this site are not going to be new businesses to "test the water" first. New starts prefer to rent business

premises as they cannot afford the outlay from the start of buying a new premises and it also helps to keep overheads down to build up the business income.

The vision for this location has always been that it will attract people that "are the business". They have marketable skills and professional services to offer personally and wish to live and work in the community. My clients currently have one business/family ready to build and another desperately waiting to hear the outcome of this application as they need to relocate from their existing premises in order that they can commit to the development. However, they are all having the same difficulty in raising finance with any kind of planning restriction associated with the residential element.

As presented to your Department in the supporting material, the response from lenders is that "any mention of business in the house mortgage application and planning approval will stop it being funded". They see mention of a business in any way associated with a self-build house project as restricting the potential to sell the property in the future and are reluctant to lend against it.

It would be untenable to ask for a prospective purchaser of one of the plots to demonstrate the business is built first (physically) because the person is the business in order to comply with the home working concept. It would also be contrary to sustainable development principles if the business was operated remotely from the business owner's home as this would involve home to work car journeys. Security of the business premises would also be a genuine concern if there was no on-site residence initially.

It also serves to build the business unit and house at the same time as it is cost effective and practical. The individual can then sort out their tax, insurance, professional and public indemnity, accounts, business broadband connections etc. Most of these are likely to be in place already as the business is already established and it is effectively a relocation of an existing business: the businesses that have been attracted as mentioned all fall in to that category. That information has already been and will continue to be provided as the justification for any proposal for these plots when applying for planning consent.

With specific regard to the further advice received from my client's financial agents, they specifically approached reputable financial lending institutions and the responses received from 3 to date are contained in the Appendix to this letter. These lending institutions are steadfast in their views on this matter in that any reference to a commercial unit being included in any planning permission for the residential element is not going to attract funding from lenders but that the splitting of title would help to enable separate funding of each. However, that will not overcome the difficulty of raising funds initially if the planning permission relating to both elements still has the restrictive planning condition attached.

It is evident, therefore, that there has to be no restrictions imposed at all to enable any development to be implemented on this plot and the other plots which have the same restrictions imposed on them.

While it is appreciated that you are seeking to find a solution to the issue of future control over the use of the commercial units at this location, it is evident that the position is not able to be ameliorated by any concessionary wording offered by you as the use of a planning condition will effectively prohibit the availability of potential purchasers. My clients wish to maintain their position as per the application submission and seek an unburdened consent with no conditions referencing the commercial element.

Notwithstanding that, the last thing that my clients want is for this longstanding unresolved matter to continue any longer and I am sure the Council would not want to see its own Vision for these plots failing to come to fruition. However, if the plots are not able to become burden free in a planning sense, then there is a real potential for the whole home working concept being destroyed which would be very disappointing for my clients after all the time, money and effort spent in marketing the plots which has actually succeeded in attracting potential purchasers.

My clients and those interested purchasers are seeking to comply with the planning requirements for the location and their current application has been submitted for all the right reasons and in good faith: there is no desire on anyone's part to "get round" the planning system in order to create a purely residential development without the business uses associated with them. Equally, there is no benefit in removing the occupancy condition while imposing an alternative planning restriction, as you suggest, if the end result is to be the same i.e. no-one will be able to raise the necessary finance for the self-build house element and the plots will just not be developed.

Ultimately there has to be some flexibility as no-one can guarantee things will always remain the same, circumstances and business opportunities change constantly. There has to be an element of trust on the part of Perth and Kinross Council as they have backed their own desire to encourage a home working environment in a rural community by committing to the LDP zoning. Again, I would state that the LDP zoning provides that degree of comfort for the Council and protects the situation in the future as any alternative use of the commercial units would constitute an unauthorised change of use, contrary to policy, and would be subject to potential enforcement action to rectify such a breach of planning control.

As I hope you are aware from my clients' past involvement with your Department with regard to all the previous planning applications, they are very keen and remain committed to working with you and the Council to make this work. They expressly wish to avoid a state of impasse to continue with their current application.

Before any further decision or recommendation is made on the application, I would ask that you reconsider your recommended action on the application and that you revert to me first with your further thoughts. Please also let me know if you think there is any further information that you might require that would assist you in supporting my client's position.

However, if you remain of the same view, I would welcome the opportunity to meet with you in person, including your Development Plan Team colleagues and/or senior management as appropriate, in order to talk this through to try and reach agreement.

I look forward to hearing from you.

Yours faithfully,

John MacCallum MRTPI
Planning Consultant

Cc: Richstream Ltd.

Appendix

E-Mail Exchanges between Buildstore and JMPS

from: Spencer Dunn [REDACTED]
to: John MacCallum <johnmaccallum@jmplanningservices.co.uk>
date: Wed, Aug 31, 2016 at 10:47 AM

"Hi John,

I have had two lenders just respond briefly to say that they would not entertain any plot with a commercial element to planning and below is a response from a senior underwriter from one lender :

Hi Spencer

You are absolutely correct in that we would not consider lending due to the commercial element.

In order to consider, the planning condition re the commercial element would need to be removed and the plans/build and use of the property would need to be wholly residential.

If the title were to be split and the commercial element remain but on a separate title, may be able to consider. However, we would need to understand the type of commercial element, it's use and the proximity to the residential property. If we or the valuer felt the commercial element may have a negative impact on re-sale/marketability of the residential property, we would not consider lending.

Hope this helps."

On Thu, Sep 1, 2016 at 9:35 AM, Spencer Dunn [REDACTED] wrote:

"Hi John,

Here is another response:

Good Morning,

Regarding your correspondence below, it appears the proposals would be outside our lending criteria. It is correct that we will only lend for residential purposes. While we could lend if the title was split between the residential and commercial property, we could not lend if the applicants also owned the commercial plot/property. This is because we cannot lend if the applicant(s) or their family own any of the surrounding plots/properties."

Document RL7 – E-mail from JMPS to John Williamson, PKC

From: johnmaccallum@jmplanningservices.co.uk

To: John Williamson, PKC

15 September 2016 at 2.07 pm

Dear John,

I refer to our telephone conversation yesterday.

It was good speaking with you and thanks for chatting over the points. I have since had the opportunity to speak with my clients.

Your desire to help by supporting the removal of the existing planning condition and being positive towards the main objective for this site is again much appreciated by my clients.

I would like to reiterate that the working from home concept has Council support and the opportunity created can come to fruition but for the issue of finance. Effectively this is a non-planning issue in that a financial matter is blocking the implementation of the development which is otherwise acceptable in planning terms. I can understand, however, that removing an element of planning control is a concern for your Council. Nevertheless, it would be particularly disappointing if development was not able to be realised after the substantial investment by my clients both in terms of costs and time in obtaining planning consents and marketing the plots which have been successful in attracting genuine interest from prospective purchasers.

You mentioned that you will discuss the matter further with senior management who are likely ultimately to make a decision on the matter.

However, I would also like to offer the following comments as discussed.

Firstly, in direct response to your query, there is no absolute guarantee that funding would be made available even by splitting the titles and therefore this does not overcome the problem.

Secondly, and in a further attempt to try and find a solution to the problem that would provide your Council with a degree of control over the development, I would like to suggest the following possible alternative wording for a condition which avoids reference to the commercial element:-

“The built structures/development hereby approved shall be constructed and completed simultaneously?”

Or,

“All of the built structures/development hereby approved shall be constructed to completion at the same time?”

In addition, and as a further safeguard for the Council, while the previous marketing material prepared by Strutt and Parker has been submitted with the current application, I wondered if it would be cleaner for a condition to require new, more up to date marketing material for the plot (again without reference to the commercial element in such a planning condition) to be submitted for further approval. The material, as presently prepared, would be very specific on the working from home concept, thus demonstrating to the Council that the house and business units can only be developed as one package. You indicated that this might be too vague a condition. However, in my view, I consider that the wording for such a condition could be written in a way that would meet the policy tests.

Finally, I thought I should mention that I attended the RTPI event at the Perth Museum and Art Gallery last night at which Wayne Hemingway gave his talk on Inspiring Places. Afterwards, I was speaking with your Head of Development Plans, Peter Marshall, and I talked to him, albeit very briefly, on the matter of this application knowing of his past involvement. He acknowledged my client's current predicament, referencing again the change in the Council's position to occupancy conditions for houses in the countryside due to the difficulties of obtaining mortgages, in line with Scottish Government policy. He indicated again his support

for the concept and suggested that it may be possible to take a pragmatic approach for this particular location given the commitment by both the Council and the landowners to try and make it work but that he would need to discuss it further with you and Nick Brian before a decision could be reached.

I would be grateful therefore if you would take these further thoughts and discuss them with your senior management colleagues at the earliest opportunity which I hope will then result in your Department lending its full support to my client's application.

Many thanks and I look forward to hearing from you.

Regards,

John

John MacCallum MRTPI
Planning Consultant

Mobile:- 07780 465240

JM Planning Services
20 Braemar Drive
Dulloch Park
Dunfermline
FIFE
KY11 8ES

Richstream Ltd - Heriot Home Studios

Planning references: 11-00600-IPL (Plot 3), 07-00084-FUL (Plot 1), 07-02078-FUL (Plot 2)

Background

The following questions have been asked during discussions with prospective purchasers of building plots covered by the references above. The responses normally given are noted as [Richstream]. The overall background narrative given is as follows:

Initial applications were made to create a “working from home” zone during the consultation period preceding the last local plan (2001). I work on a consulting basis and at the time had a young family. Working from home was difficult and inappropriate when meeting clients. I needed and proposed the homes with offices to facilitate the sort of lifestyle approaches that were coming to the fore at the time. 'Digital Crofting' was one of the terms used at the time to try to explain the white collar use married to the country location. The planning applications and approvals have followed from the initial brief and inclusion in the 2001 Local Plan.

Questions

What is a business in the context of this site and planning approach?

[Richstream] A business is an activity requiring space that would not be appropriate within a house due to its scale or impact. It is an activity requiring visiting customers, suppliers or counter-parties. It's an activity that generates income.

(PKC) I would generally agree with this statement. The site is zoned in the Local Plan for business uses and the outline consent was granted by the Council on basis that the site would be used primarily for business use with the ability to develop a house on the site.

What size should the office / studio be?

[Richstream] The office sizes can vary. The planning on Plot 3 indicates sizes up to 75m². Sizes below 20m² (bedroom / single garage) would not be deemed to be large enough to warrant a separate building or be appropriate for this site.

(PKC) I would generally agree with this statement. As the site only has outline consent no specific details have been agreed but any proposed office/business unit should be of a sufficient size that would realistically provide enough space to operate as an independent unit.

Can the office / studio be located above a garage or as part of another building?

[Richstream] The important aspect of the plan is to create distinct separate zones to conduct business or creative activities from. This is not about having a spare bedroom that can be used as an office or a garage that doubles as a workshop. Subject to planning approval an office over a garage would be considered but would need to maintain the separation of function.

(PKC) As per the recent pre-application advice, whilst the detailed design of any proposed development has not been approved it would be difficult to justify that a room above a garage would constitute as a business unit given that this could be done on any residential site. Any applicant will need to illustrate that the business facilities on the site form an integral part of the development and are not simply an ancillary element of a residential plot.

Could the office / studio be a wooden building or a steel clad workshop?

[Richstream] Subject to approval by the planners

(PKC) There are no specific conditions in relation to the external finish. The detailed design of

the proposed offices or houses is a reserved matter that will be considered upon the submission of an application for approval of matters specified by condition.

What types of activity are permitted?

[Richstream] The site is zoned for Business class 4 use; white collar, administration or office based. Health, well being, artistic and lifestyle based activities suitable to the size and scale. Excluding uses better facilitated from dedicated buildings or industrial units. Hours of work are assumed to be 8:00am – 8:00pm.

(PKC) Any business uses should fall within Class 4 of the Use Classes Order i.e. offices, light industry, research and development of products or processes. As discussed above, anyone who is looking to establish a reasonably substantial business operation should be able to comply with the requirements of the outline consent.

Does the business have to be Limited or legally structured?

[Richstream] Not necessarily, sole traders, hobbyists etc could be considered within the overall guidelines.

(PKC) Whether the business is limited or legally structured is not a planning matter.

Can the office / studio be rented out?

[Richstream] Requires clarification but it would seem overly restrictive to prohibit this if future circumstances changed.

[Richstream] Office ownership is required to remain with the owner of the house. If its occupied by a company owned by the home owners this shouldn't preclude rents being paid.

(PKC) The office unit will need to be linked to the occupation of the unit and not occupied separately from the ownership of the house on the site. The plots are essentially zoned for business use with the ability for the operator or an employee of that business to live on site. It would acceptable for the business to pay rent to the owner of the house so long as the occupant of the house is involved with the business.

Will commercial rates be due on the office / studio?

[Richstream] Requires clarification, my initial understanding is that as the property should be owned and used by the home owner. It would therefore be included in the council tax banding of the house. I expect it will be handled on a case by case basis dependent on use.

(PKC) Whether or not commercial rates are applicable is not a planning matter. If anyone wishes to enquire about commercial rates they should contact the Council's Rates Department.

What would happen if circumstances change and the home owner is no longer in need of the office / studio?

[Richstream] Requires clarification, applications could be made for a change of use

(PKC) This would need to be considered on a case by case basis but generally the office / studio should be tied to the house. The main reason for the house existing is the presence of the business. If circumstances changed in future then the owner will need to apply for planning consent to change the use of the office / studio and provide a justification as to why the office / studio is no longer required.

What if a different business use classification is required like catering or bed and breakfast?

[Richstream] The use would need to within the general site guidelines, any change would need to be

approved by the planning department.

(PKC) If someone wishes to operate a different use they will need to submit a fresh application for the amended proposals. For clarification it is unlikely that uses that can easily be operated from a house, such a bed and breakfast, would be supported on this site. As stated previously the site is zoned for business use and anyone wishing to develop the site will need to illustrate that they will be operating a stand alone business.

TCP/11/16(448)

Planning Application – 16/01058/FLL – Removal of condition 3 (occupation/ownership) of permission 15/01349/FLL for the erection of a dwellinghouse and associated office studio at Powmill Cottage, Rumbling Bridge, Kinross, KY13 0QG

PLANNING DECISION NOTICE *(included in applicant's submission, see page 135-136)*

REPORT OF HANDLING

REFERENCE DOCUMENT *(included in applicant's submission, see page 147-184)*

REPORT OF HANDLING
DELEGATED REPORT

Ref No	16/01058/FLL	
Ward No	N8- Kinross-shire	
Due Determination Date	12.08.2016	
Case Officer	John Williamson	
Report Issued by		Date
Countersigned by		Date

PROPOSAL: Removal of condition 3 (occupation/ownership) of permission 15/01349/FLL for the erection of a dwellinghouse and associated office studio

LOCATION: Powmill Cottage Rumbling Bridge Kinross KY13 0QG

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: 29 June 2016

SITE PHOTOGRAPHS





BACKGROUND AND DESCRIPTION OF PROPOSAL

Full planning consent is sought for the removal of condition 3 of consent 15/01349/FLL which relates to the erection of a dwellinghouse and associated

office studio at Powmill Cottage, Rumbling Bridge which is located on the northern outskirts of Powmill. The site is allocated within the Local Development Plan as an employment site (E23) and consent exists on the wider site for residential units with associated home working/office units. This application relates to one of a number of similar consents granted on this strip of land on the northern edge of Powmill. This application relates to one of these plots and there is a condition attached to the consent which states the following:

"The office element shall remain in the ownership of the owner of the dwellinghouse hereby permitted and the dwelling shall be occupied by a person who owns and primary place of employment is the office, unless otherwise agreed by the Planning Authority.

Reason - The dwellinghouse has been approved as a "working from home" single house in association with the office development hereby permitted"

This application seeks to delete this condition.

SITE HISTORY

01/00724/FUL Removal of occupancy condition on planning consent PK87/1182 10 July 2001 Application Refused

02/00163/FUL Removal of agricultural occupancy condition (PK/87/1182) at 29 April 2002 Application Permitted

03/01636/FUL Part change of use from agricultural ground to garden ground and alterations and extension to house at 5 December 2003 Application Permitted

03/01910/FUL Formation of a disabled access ramp at 27 February 2004 Application Permitted

12/00487/FLL Erection of a dwellinghouse with associated office studio 11 May 2012 Application Refused

12/01181/FLL Erection of a dwellinghouse and associated office studio 7 August 2012 Application Permitted

13/01568/FLL Permanent siting of a catering kiosk, erection of a fence, gazebo and formation of a seating area 17 October 2013 Application Withdrawn

13/02088/FLL Temporary siting of catering kiosk (for three years) and erection of boundary fence and gazebo 17 February 2014 Application Refused

15/01349/FLL Renewal of permission (12/01181/FLL) erection of a dwellinghouse and associated office studio 9 September 2015 Application Permitted

03/00605/FUL Erection of house and garage, and office development on 26 August 2003 Application Permitted

07/00084/FUL Erection of a rural business class development, office and house plot 1 6 July 2007 Application Permitted

07/00085/FUL Rural business class development office plot 2 13 June 2007 Application Withdrawn

07/02078/FUL Rural business class development Plot 2 18 March 2008 Application Permitted

08/00267/OUT Formation of business use development (Class 4) at plot 3 (in outline) 3 June 2008 Application Permitted

11/00600/IPL Renewal of planning consent 08/00267/OUT Erection of four dwellinghouses with associated business use development (Class 4) (in principle) at Plot 3 3 June 2011 Application Permitted

12/00487/FLL Erection of a dwellinghouse with associated office studio 11 May 2012 Application Refused

12/01157/FLL Renewal of previous consent (07/00084/FUL) - Erection of a rural business class development, office and house plot 1 7 August 2012 Application Permitted

12/01181/FLL Erection of a dwellinghouse and associated office studio 7 August 2012 Application Permitted

14/00748/IPL Renewal of permission (11/00600/IPL) Erection of four dwellinghouses with associated business use development (Class 4) (in principle) at Plot 3 10 July 2014 Application Permitted

15/01348/FLL Renewal of permission (12/01157/FLL) erection of an office building and dwellinghouse plot 1 24 September 2015 Application Permitted

PRE-APPLICATION CONSULTATION

Pre application Reference: Various discussions

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.

Of particular relevance to this application is:

Circular 4/1998 – The Use of Conditions in Planning Permissions.

Other material considerations include:

Chief Planner’s Letter (Scottish Government) – 4 November 2011 which provides guidance in relation to the use of occupancy conditions in planning consents specifically in relation to rural housing.

DEVELOPMENT PLAN

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

TAYplan Strategic Development Plan 2012 – 2032 - Approved June 2012

Whilst there are no specific policies or strategies directly relevant to this proposal the overall vision of the Tay Plan should be noted. The vision states *“By 2032 the TAYplan region will be sustainable, more attractive, competitive and vibrant without creating an unacceptable burden on our planet. The quality of life will make it a place of first choice, where more people choose to live, work and visit and where businesses choose to invest and create jobs.”*

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 application site forms part of a land use designation:

E23 – Employment Uses with Associated Residential which states that:

Encouragement will be given to the development or expansion of employment opportunities where the development would be compatible in amenity and land use terms with surrounding land uses. Single dwellinghouses in association with employment use may be permitted where the employment element can exist as a stand alone unit.

The principal policies are, in summary:

Policy ED1A - Employment and Mixed Use Areas

Areas identified for employment uses should be retained for such uses and any proposed development must be compatible with surrounding land uses

and all six of the policy criteria, in particular retailing is not generally acceptable unless ancillary to the main use.

OTHER POLICIES

None

CONSULTATION RESPONSES

None required

REPRESENTATIONS

None received

ADDITIONAL STATEMENTS RECEIVED:

Environment Statement	Not Required
Screening Opinion	Not Required
Environmental Impact Assessment	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	Supporting Statement submitted

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 2012 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

As outlined above the land use zoning within the LDP for this site and the surrounding land is designated for employment uses. The E23 zoning specifically refers to employment uses with associated residential and indicates that encouragement will be given to the development or expansion

of employment opportunities where the development would be compatible in amenity and land use terms with surrounding land uses. It then states that single dwellinghouses in association with employment use may be permitted where the employment element can exist as a stand alone unit. In my view this zoning makes it very clear that the site is designated for employment uses first and foremost. The consent which is in place on this site has been granted on this basis and the condition outlined above ensures that the employment use on the site will remain specifically ensures that the site does not become solely a residential site.

The applicant's agent has indicated that they are struggling to obtain financing/a mortgage to develop the site due to the restrictions put in place by this condition. In summary the link between the house and commercial/business use turns off lenders. The submission includes a detailed Supporting Statement outlining the case.

The statement makes reference to other occupancy conditions, case law and the Scottish Government's Chief Planner's letter which relates to occupancy conditions. It includes details of marketing which has been undertaken for the site to date. It also considers that the LDP zoning which is in place will ensure control over the future use of the site.

It should be noted that whilst the access upgrades required to access the site have been undertaken, none of the built development on site has taken place. The applicant wishes the condition to be removed in its entirety.

In correspondence with the agent an alternative condition has been put forward which seeks to ensure that the building(s) associated with the business uses are retained as such in order to prevent them from being converted into residential use.

The existing condition is an occupancy restriction (as per Aberdeenshire case that was overturned by a Reporter referred to in the agent's planning statement) and it could be argued not to be necessary. My view is that our concern is primarily about ensuring a suitable amount of business use alongside the residential use (and that the business use is retained as such) rather than being particularly concerned about ensuring the residential and business use are tied together. Even if the link between them was later broken I would not consider this to be particularly significant (there will still be a new business unit and this will still be maintained as a business unit).

I think this proposed revised condition is reasonable, has a planning purpose and is necessary and wouldn't be open for challenge in the way the occupancy of the house being tied to the business might. The applicant's agent has stated that this proposed revised condition is still not acceptable and that "such wording would still be a burden and prevent obtaining the financial borrowing from lenders to fund these house and business developments".

He goes on to state that "as the site is within the settlement boundary of Powmill, the zoning can remain in place in a similar way to other land use zonings that occur in settlements/urban locations. The site specific requirements can prevail until such times as all the plots are developed. Thereafter, the site can be afforded a protection type of policy and be rezoned as Existing Employment Use with associated Residential. This would provide the Council with an effective means of control over the development in perpetuity."

My response to the agent is that a condition on the planning permission so that the building(s) associated with the business uses are retained as such in order to prevent them from being converted to residential use would achieve this as it relates to the individual proposal rather than the overall site. It is more defined and controlled when a condition is used which relates the specific business and the specific residential property. The use of conditions would provide sufficient control to ensure the retention of an appropriate balance of employment and housing land and the proposed LDP suggestion, above, would not provide this assurance. This revised approach is not an occupancy condition and it meets the tests set out in the Planning Obligation and Good Neighbour agreements Circular 3/2012 of necessity, reasonableness and planning purpose. It is therefore my intention to recommend this application for approval subject to this condition.

I indicated to the applicant's agent that I didn't think there is evidence that this position would preclude access to finance. The applicant could potentially source funding for the business and residential elements separately and build the business unit before trying to gain access to finance for the house. Then because the business unit is already built it would not be a burden on the finance for the house and because we could not stop the applicant/owner selling them separately at a later date I don't see why there would be an issue for lenders.

The agent's response to this is that any mention of business in the house mortgage application and planning approval will stop it from being funded and that they see the mention of a business in any way associated with a self build house project as restricting the potential to sell the property and are reluctant to lend against it.

In my view this is a financial issue but the applicant is attempting to utilise the planning system to circumvent what I consider to be an important planning control on this site and the removal of the condition will result in the site potentially being occupied solely as residential with no guarantee that any office/home working use will occur on the site. I do not agree with the agent's view that the LDP zoning will ensure the business use occurs. I have suggested an alternative condition wording which the applicant's agent has indicated would still result in difficulties obtaining financing. I have also suggested potentially splitting the title of the office unit and the house or building them separately from each other none of which are considered acceptable to the applicant.

I believe I have tried to seek a solution to this issue and offered concessionary wording as an alternative condition, none of which are considered appropriate by the applicant's agent. I have also discussed the situation with management and the Council's Legal Services to establish whether there is any alternative. I do not feel that the entire deletion of this planning condition is appropriate in planning terms as it fails to comply with the E23 zoning for this site in the LDP. Following the discussion with management and Legal Services it was agreed to recommend the application for approval subject to a revised condition which removes the occupancy element of the condition and states the following:

"The office studio subject to consent 15/01349/FLL shall remain in use as an office/business unit in perpetuity to the satisfaction of the Council as Planning Authority".

In my view this provides additional scope for the applicant to obtain financing and removes an element of restriction on the consent together with ensuring that should development proceed that it does so in accordance with the requirements of the E23 zoning. If consent was granted with no condition this would in effect be giving up this site for residential purpose contrary to the LDP. The alternative to this revised condition would be refusal of the application. As such this recommendation is considered to accord with Circular 4/1998 relating to the use of conditions in planning.

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 to attach a revised condition is considered to provide further scope for the developer to obtain financing whilst ensuring compliance with the E23 employment zoning contained within 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 approval subject to a revised condition.

APPLICATION PROCESSING TIME

The recommendation for this application has been made outwith the statutory determination period due to ongoing negotiations with the applicant's agent.

LEGAL AGREEMENTS

None required.

DIRECTION BY SCOTTISH MINISTERS

None applicable to this proposal.

RECOMMENDATION

Approve the application

Conditions and Reasons for Recommendation

1 The development hereby approved must be carried out in accordance with the approved drawings and documents, unless otherwise provided for by conditions imposed by this decision notice.

Reason - To ensure the development is carried out in accordance with the approved drawings and documents.

2 Prior to the commencement of the development hereby approved, a detailed landscaping and planting scheme for the site shall be submitted for the further written agreement of the Council as Planning Authority. The scheme shall include details of the height and slopes of any mounding or recontouring of the site, full details of all hard landscaping proposals including materials and installation methods and, species, height, size and density of trees and shrubs to be planted. The scheme as subsequently approved shall be carried out and completed within the first available planting season (October to March) after the completion or bringing into use of the development, whichever is the earlier, and the date of Practical Completion of the landscaping scheme shall be supplied in writing to the Council as Planning Authority within 7 days of that date. The scheme as agreed and implemented shall thereafter be maintained.

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

3 The office studio subject to consent 15/01349/FLL shall remain in use solely as an office/business unit in perpetuity to the satisfaction of the Council as Planning Authority.

Reason - To meet the requirements of the E23 (Employment Site) Zoning of the Perth and Kinross Local Development Plan 2014 to ensure an employment use is retained on site.

4 Development shall not commence on site until an evaluation for the potential of the site to be affected by contamination by a previous use has been undertaken and, as a minimum, a Preliminary Risk Assessment (Phase 1 Desk Study) has been submitted for consideration and accepted by the Council as Planning Authority. If the preliminary risk assessment identifies the need for further assessment, an intrusive investigation shall be undertaken to identify;

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

Prior to the completion or bringing into use of any part of the development the measures to decontaminate the site shall be fully implemented in accordance with the scheme subsequently agreed by the Council as Planning Authority. Validation that the scheme has been fully implemented must also be submitted to the Council as Planning Authority.

Reason - In order to deal with any potential contamination of the site as a result of its former use.

5 Prior to the commencement of any works on site, all trees on site (other than those marked for felling on the approved plans) and those which have Root Protection Areas which fall within the site shall be retained and protected. Protection methods shall be strictly in accordance with BS 5837 2012: Trees in Relation to Design, Demolition and Construction. Protection measures, once in place, shall remain in place for the duration of construction.

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

6 Prior to the development hereby approved being completed or brought into use, all matters regarding access, car parking, road layout, design and specification, including the disposal of surface water, shall be in accordance with the standards required by the Council as Roads Authority.

Reason - In the interests of pedestrian and traffic safety and in the interests of free traffic flow.

7 Prior to the commencement of the development hereby approved, details of the proposed boundary treatments for the site shall be submitted for the further written agreement of the Council as Planning Authority. The scheme as subsequently agreed shall be implemented prior to the completion or bringing into use of the development, whichever is the earlier.

Reason - In the interests of residential amenity; to ensure a satisfactory standard of local environmental quality.

8 No development or extensions, whether or not permitted by virtue of Schedule 1, Part 1, Class 1 and 3 of the Town and Country Planning (General Permitted Development)(Scotland) Order, 1992 or any Order revoking and re-enacting that Order shall be erected in the curtilage of the dwelling.

Reason - In the interests of visual and residential amenity; to ensure a satisfactory standard of local environmental quality and to avoid over-intensive development of the site.

9 The core path which runs along the access track to the site must not be obstructed either during or on completion of building works. Any damage done to the route must be made good to the satisfaction of the Council as Planning Authority prior to the occupation of the first unit hereby approved.

Reason - To ensure continued public access to the public paths and in the interests of public safety within the site.

Justification

The proposal is in accordance with the Development Plan and there are no material reasons which justify departing from the Development Plan.

Informatives

- 1 This planning permission will last only for three years from the date of this decision notice, unless the development has been started within that period. (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).
- 2 Under section 27A of the Town and Country Planning (Scotland) Act 1997 (as amended) the person undertaking the development is required to give the planning authority prior written notification of the date on which it is intended to commence the development. A failure to comply with this statutory requirement would constitute a breach of planning control under section 123(1) of that Act, which may result in enforcement action being taken.
- 3 As soon as practicable after the development is complete, the person who completes the development is obliged by section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended) to give the planning authority written notice of that position.
- 4 No work shall be commenced until an application for building warrant has been submitted and approved.

Procedural Notes

Not Applicable.

PLANS AND DOCUMENTS RELATING TO THIS DECISION

16/01058/1

16/01058/2

16/01058/3

Date of Report 28.09.2016