

**TCP/11/16(530) – 17/02003/FLL – Change of use of river bank to garden ground, erection of a shed, fence, gate, access steps and associated works (in retrospect) at 26 Almond Grove, Huntingtowerfield, Perth**

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**TCP/11/16(530) – 17/02003/FLL – Change of use of river bank to garden ground, erection of a shed, fence, gate, access steps and associated works (in retrospect) at 26 Almond Grove, Huntingtowerfield, Perth**

**PAPERS SUBMITTED  
BY THE  
APPLICANT**







Pullar House 35 Kinnoull Street Perth PH1 5GD Tel: 01738 475300 Fax: 01738 475310 Email: [onlineapps@pkc.gov.uk](mailto: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 100091247-001

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

## Applicant or Agent Details

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

☐ Applicant ☒ Agent

## Agent Details

Please enter Agent details

Company/Organisation:	MBM Planning & Development		
Ref. Number:		You must enter a Building Name or Number, or both: *	
First Name: *	Mark	Building Name:	Algo Business Centre
Last Name: *	Myles	Building Number:	
Telephone Number: *	01738 450506	Address 1 (Street): *	Glenearn Road
Extension Number:		Address 2:	
Mobile Number:		Town/City: *	Perth
Fax Number:		Country: *	Scotland
		Postcode: *	PH2 0NJ
Email Address: *	mm@mbmplanning.co.uk		

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

☒ Individual ☐ Organisation/Corporate entity

## Applicant Details

Please enter Applicant details

Title:	<input type="text" value="Mr"/>	You must enter a Building Name or Number, or both: *
Other Title:	<input type="text"/>	Building Name: <input type="text"/>
First Name: *	<input type="text" value="Michael"/>	Building Number: <input type="text" value="26"/>
Last Name: *	<input type="text" value="Paton"/>	Address 1 (Street): * <input type="text" value="Almond Grove"/>
Company/Organisation	<input type="text"/>	Address 2: <input type="text" value="Huntingtowerfield"/>
Telephone Number: *	<input type="text"/>	Town/City: * <input type="text" value="Perth"/>
Extension Number:	<input type="text"/>	Country: * <input type="text" value="United Kingdom"/>
Mobile Number:	<input type="text"/>	Postcode: * <input type="text" value="PH1 3NA"/>
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="26 ALMOND GROVE"/>
Address 2:	<input type="text" value="HUNTINGTOWERFIELD"/>
Address 3:	<input type="text"/>
Address 4:	<input type="text"/>
Address 5:	<input type="text"/>
Town/City/Settlement:	<input type="text" value="PERTH"/>
Post Code:	<input type="text" value="PH1 3NA"/>

Please identify/describe the location of the site or sites

Northing	<input type="text" value="725696"/>	Easting	<input type="text" value="307064"/>
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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)

Change of use of river bank to garden ground, erection of shed, fence, gate, access steps and associated works (in retrospect)

## Type of Application

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

- ☒ Application for planning permission (including householder application but excluding application to work minerals).
- ☐ Application for planning permission in principle.
- ☐ Further application.
- ☐ Application for approval of matters specified in conditions.

What does your review relate to? \*

- ☒ Refusal Notice.
- ☐ Grant of permission with Conditions imposed.
- ☐ No decision reached within the prescribed period (two months after validation date or any agreed extension) – deemed refusal.

## Statement of reasons for seeking review

You must state in full, why you are 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.

Please refer to attached statement containing grounds of appeal along with supporting documents, plans and photographs

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)

As no opportunity was given by the planning department to discuss the details of the proposals prior to the decision notice being issued, the applicant responded to the reasons for refusal by removing every 2nd wooden slat from the fence and the fence has also since been painted green. A sign has been erected on the gate which is now left open. For safety reasons the gate is only ever closed when the river is high. The limited 'garden paraphernalia' has also been removed from the site.

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)

Decision notice, Report of Handling, Planning application forms, plans, supporting planning statement, structural assessment report, approved site plan for dwellinghouse on nearby site (MBM1) and photographs (nos 1-5).

## Application Details

Please provide details of the application and decision.

What is the application reference number? \*

17/02003/FLL

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

13/11/2017

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

01/02/2018

## Review Procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

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

☐ Yes ☒ No

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

Please select a further procedure \*

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

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

It is considered that it would be beneficial for the LRB to visit the site to assess the proposals in their context and also to view the engineering works, including the 2 metre high walls that have been erected nearby as part of the ongoing flood defence works.

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

## 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 Mark Myles

Declaration Date: 09/04/2018



**Notice of Review Planning Appeal – Grounds of Appeal Statement**  
**Planning Application Reference 17/02003/FLL**

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**Change of use of river bank to garden ground, erection of a shed, fence, gate, access steps and associated works (in retrospect)  
at 26 Almond Grove, Huntingtowerfield**

**Introduction**

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This ground of appeal statement should be read in conjunction with the Notice of Review Appeal submitted on behalf of Mr Mike Paton, for the change of use of river bank to garden ground, erection of a shed, fence, gate, access steps and associated works (in retrospect) at 26 Almond Grove, Huntingtowerfield. It is noted that this council description differs from the description of the application as submitted, which was change of use of embankment for private use and erect associated structures on land adjacent to 26 Almond Grove.

**Background to the Proposal**

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The applicant purchased the small area of land from Greenbelt Energy Limited as they had been actively seeking to dispose of their assets in this area having failed to properly manage or maintain any of the trees or shrubs along the river bank for at least 20 years.

One of the reasons why the applicant was also keen to purchase this land was because a dead tree had fallen over the footpath and onto his boundary fence crossing into the existing garden which emphasised that the continual neglect of the area was posing a clear safety risk.

This part of the riverbank has historically been neglected, overgrown and had been left in a very poor condition.

The river embankment is not an area of protected or zoned open space. The council's policy of allowing the original developer to transfer ownership/control and future maintenance of the embankment to private companies, such as the Greenbelt Energy Limited, has meant that the council has never had any real control over the future ownership or protection of these types of areas.

Evidence of this is also provided by the council's recent approval for a dwellinghouse on a site located around 200 metres to the north east which formed part of the landscaped edge to the wider development and had also been sold by Greenbelt Energy Limited to a private individual. (see copy of plan approved in respect of application reference 17/01925/IPL) (MBM1).

This particular site has historically been covered in fewer trees and with less dense vegetation compared to some of the other adjacent embankment areas, although that has changed somewhat due to the tree removal, earthworks and excavations that are being undertaken elsewhere along the river banks as part of the River Almond flood prevention works.

The site also had old steps providing access down to the river. Because of the more open aspect of the site and the flat stone bed at the river's edge it had also tended to attract a lot of unlawful and unsavoury behaviour to the detriment of the amenity of the nearby residents.

Therefore, by purchasing this small area of the embankment, the applicant has specifically sought to improve the local environment and to make it easier, safer and cleaner for genuinely interested users to enjoy to the benefit of the amenity and enjoyment of all local residents. (see photo nos. 1 & 2 – showing views along the path before and after improvements. Note that the fence has since been painted dark green).

The installation of the access steps including a safety hand rail now ensures that people can safely go down the slope of the embankment to the flat stone bed at the river's edge that has existed for many years. This type of access stair is common along the length of the River Almond and also the River Tay particularly where the embankments are steep. We are not aware of any planning permissions having been requested or granted for any of those many other similar installations.

There were originally stone steps down to the river at this same point, but these slowly disappeared due to years of erosion and neglect, so the new steps were simply replacing a structure that previously existed but to a much improved and far safer standard.

The timber fence and gate simply replicate what is on the other side of the public footpath and as stated above the gate was installed to prevent those that are involved in unlawful behaviour from leaving broken bottles and syringes behind, simply for others to find and then try and dispose of. The applicant is therefore simply trying to protect his family and members of the public who visit this part of the river embankment from such incidents. However, it should be noted that since the time of the refusal the gate has been left open and a sign has been erected advising that 'anyone using these steps does so at their own risk.' (see photo no.3). The only time the gate is closed is for safety reasons when the river is high to prevent accidents.

The small timber shed structure is used as a shelter/hide to observe and enjoy the wildlife that is in and along the river, in a completely relaxing and safe environment.

### **Response to Reasons for Refusal**

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First in terms of procedure, it was noted that the supporting statement that had accompanied the planning application was not made publicly available for any interested parties to view and consider as part of the application determination process. It is also noted that the Report of Handling contains two reasons for refusal (nos. 4 and 5) that refer to Policy ER6 and yet this policy is not listed in either the Development Plan Section of the Report of Handling or under the initial Policy Appraisal section. The Report of Handling also argues that the proposal is contrary to Policy NE1A, but this does not then appear as one of the numerous reasons for refusal. Incredibly the appointed officer still managed to conjure up 6 separate reasons to refuse this small scale local application.



The proposal requires to be considered under the terms of the Perth & Kinross Local Development Plan (PKLDP) (Policies RD1, PM1A and PM1B, NE1A, NE4, CF2 and ER6) which was adopted in February 2014.

Being located within the identified Perth settlement boundary, Policy RD1 would apply to this application. This policy seeks to encourage residential and compatible uses where existing residential amenity will be protected and where possible improved. The policy also requires small areas of private and public open space to be retained where they are of recreational or amenity value.

In particular Policy RD1 states that encouragement will be given to proposals which fall into one or more of the categories listed under the policy, and which are compatible with the amenity and character of the area. The key category consideration for this proposal is category c) which reads 'proposals which will improve the character and environment of the area or village.'

Policy PM1 within the Local Development Plan further adds that development must contribute positively, to the quality of the surrounding built and natural environment. The design, density and siting of development should respect the character and amenity of the place, and should create and improve links within and where practical beyond the site. Proposals should also incorporate new landscaping and planting works appropriate to the local context and the scale and nature of the development.

Category c) of Policy PM1B specifically states that the design and density should complement its surroundings in terms of appearance, height, scale, massing, materials, finishes and colours and category e) also requires proposals to create safe, accessible, inclusive places for people, which are easily navigable, particularly on foot.

The proposal can be considered as being compatible with the character of the area without causing any adverse impact on the amenity of the area, in accordance with Policy RD1. In fact, the applicant's proposals and aspirations have greatly enhanced the recreational and amenity value of this small area of the embankment in accordance with Policy RD1 as evidenced by the comments received in the 3 letters of support to the application.

We also understand that Methven & District Community Council brought the matter up at their meeting on 21 September 2017. There were no adverse comments received from anyone at the meeting and the Chair advised that he had been given the code to the gate and advised that this could be shared with anyone at the end of the meeting. The Community Council then wrote to Perth & Kinross Council advising them what had happened and that the Community Council had no objections as the riverbank was now a brighter, safer and cleaner environment. The matter has also been brought up at the last two Community Council meetings and there has been no adverse comment from anyone to the improvements carried out by Mr Paton.

The desire to create a safe, clean, pleasant and accessible area of the embankment that is now free from erosion, for people to enjoy is also clearly consistent with the objectives of key aspects of Policy PM1 on Placemaking within the Development Plan. The site was previously

overgrown with shrubs and weeds but as part of any approval if it was considered necessary, the requirement for a planting scheme could be conditioned to provide additional screening and security appropriate to the local context and the scale and nature of the wider area also in accordance with Policy PM1A.

The fencing has been amended by the applicant since the time of the refusal notice. As can be seen from the attached photograph, every 2<sup>nd</sup> wooden slat has been removed and the fencing has also been painted green. The fencing does not therefore completely prevent views of the river and beyond (photo no.4 – shows a view of the revised fencing and also the extent of the engineering works and clearance of the river embankment opposite). Ironically it is the solid walls that have been erected close to the site as part of the flood defence works that have now completely obliterated certain views of the river from the Core Path (see attached photo no 5 which was taken about 100 metres from the appeal site which has now completely removed any view of the river).

Taking all these matters into account it is open to the LRB to impose conditions that set controls on the fencing (height, style, colour). Equally if the LRB consider that the existence of limited 'garden paraphernalia' which has already been removed from the site since the time of the refusal, is so unacceptable to warrant refusal in its own right, then a condition could also be imposed to prevent any such structures from being erected on the site thus ensuring that the proposal does not erode local distinctiveness, the visual and scenic qualities of the landscape and the quality of the landscape experience in accordance with the requirements of Policy ER6.

The proposal does not impinge on the existing Core Path in anyway, a point which appears to have been reluctantly accepted by the appointed officer in the Report of Handling. The proposal therefore does not conflict with Policy CF2 of the LDP.

Turning to the final reason for refusal and the issue of precedent, this is an issue or an argument that can always be used both ways. However, when determining this application, the appointed officer has simply chosen to ignore the fact that precedents have already been set along the same stretch of river as evidenced by the approval of application 17/01925/IPL (MBM1) as recently as December 2017. This approval in principle for a house was given on a site that previously contained mature trees and formed part of the landscape edge to the wider development at Huntingtowerfield and is also located adjacent to the public footpath network and the river bank.

In addition the scale of the engineering works currently taking place on both sides of the river, including the removal of landscaping and mature trees and the introduction of flood defence barriers and walls, is not only introducing a suburbanisation effect along the river corridor, but in certain areas is also already severely limiting views of the river and impacting on the visual and scenic qualities of the landscape and the quality of the landscape experience along this part of the River Almond to a far greater extent than the fence erected by the applicant. (see attached photos nos. 4 & 5).

Therefore, to suggest that this small-scale proposal will somehow set a '*dangerous precedent*' is completely disingenuous, if a proper and more balanced assessment is taken of the nature and scale of other proposals that have already been approved and are also ongoing in close proximity to the site.

Finally, Scottish Government Circular 4/1998 Annex A on The Use of Conditions in Planning Permissions confirms that conditions are a tool that can be used to make an unacceptable development acceptable and can be tailored to tackle any specific problems (paragraphs 13 & 15).

Paragraph 83 of Circular 4/1998 Annex A also confirms that it is appropriate to impose a condition modifying the development permitted where this would not result in a substantial difference in the description of the application. Therefore, for the reasons set out above it is considered that this proposal can be approved subject to any conditions that may be considered necessary or appropriate by the LRB (and these may include one or more of the following; height and colour of the fence, removal of the gate, no garden paraphernalia) and therefore allow the proposal to be approved in accordance with the relevant Development Plan policies outlined above.



# PERTH AND KINROSS COUNCIL

Mr Michael Paton  
c/o Mark Myles  
MBM Planning And Development  
Algo Business Centre  
Glenearn Road  
Perth  
Scotland  
PH2 0NJ

Pullar House  
35 Kinnoull Street  
PERTH  
PH1 5GD

Date 1st February 2018

## TOWN AND COUNTRY PLANNING (SCOTLAND) ACT

Application Number: **17/02003/FLL**

I am directed by the Planning Authority under the Town and Country Planning (Scotland) Acts currently in force, to refuse your application registered on 23rd November 2017 for permission for **Change of use of river bank to garden ground, erection of a shed, fence, gate, access steps and associated works (in retrospect) 26 Almond Grove Huntingtowerfield Perth PH1 3NA** for the reasons undernoted.

Interim Development Quality Manager

### Reasons for Refusal

1. The proposal is contrary to Policy RD1 of the Perth and Kinross Local Development Plan 2014 as the proposal will result in the loss of an area of openspace that should be retained as there is a recreational and amenity value associated with the area. Furthermore there is also a conflict with criterion (c) of Policy RD1 as the proposal will not improve the character and environment of the area.
2. The proposal is contrary to Policy PM1A of the Perth and Kinross Local Development Plan 2014 as the proposal does not contribute positively to the quality of the surrounding built and natural environment due to extending garden paraphernalia into the river corridor and has restricted open views of the river. This fails to respect the character and amenity of place and fails to improve this well used footpath link.

3. The proposal is contrary to criterion (a) Policy PM1b of the Perth and Kinross Local Development Plan 2014 as it erodes the previous coherent structure of streets, spaces and buildings.
4. The proposal is contrary to criterion (a) of Policy ER6 of the Perth and Kinross Local Development Plan 2014 as it erodes local distinctiveness, visual and scenic qualities of the landscape and the quality of the landscape experience.
5. The proposal is contrary to criterion (b) of policy ER6 of the Perth and Kinross Local Development Plan 2014 as it fails to safeguard views and the landscape experience from the footpath.
6. Approval would establish an undesirable precedent for developments of a similar nature to the detriment of the overall character of the area thus undermine and weaken the established policies of the Perth and Kinross Local Development Plan 2014.

### **Justification**

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

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

### **Plan Reference**

**17/02003/1**

**17/02003/2**

**17/02003/3**

**17/02003/4**

**17/02003/5**

# REPORT OF HANDLING

## DELEGATED REPORT

Ref No	17/02003/FLL	
Ward No	P5- Strathtay	
Due Determination Date	22.01.2018	
Case Officer	John Russell	
Report Issued by		Date
Countersigned by		Date

**PROPOSAL:** Change of use of river bank to garden ground, erection of a shed, fence, gate, access steps and associated works (in retrospect)

**LOCATION:** 26 Almond Grove Huntingtowerfield Perth PH1 3NA

### SUMMARY:

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

**DATE OF SITE VISIT:** 20 December 2017

### SITE PHOTOGRAPHS





## **BACKGROUND AND DESCRIPTION OF PROPOSAL**

The application site is to the north west of 26 Almond Grove. The existing fence to the south east defines the current garden ground of the property. This fence-line continues along the right of way and corepath to define the neighbouring curtilages of the Almond Grove residential development.

This application is for the change of use of open space (riverbank embankment) to private use along with the erection of associated structures, this includes fencing, timber steps, seating and a timber shed. The application site includes the right of way and corepath that is situated along the top of the riverbank embankment, the riverbank and part the River Almond (the River Almond is a tributary to the River Tay SAC).

The supporting statement submitted by the agent confirms this area of land was purchased from the Greenbelt Energy Limited as they had been actively seeking to dispose of their assets having failed to manage the area. The agent also confirms that the applicant's purchase was to improve the local environment and also make it easier, safer and cleaner for genuinely interested users to enjoy.

## **SITE HISTORY**

06/01129/FUL Erection of a sunroom 19 July 2006 Application Permitted

## **PRE-APPLICATION CONSULTATION**

Pre application Reference: Contact with Enforcement Team advising that change of use and erection of structures was in breach of planning consent.

## **NATIONAL POLICY AND GUIDANCE**

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



## **DEVELOPMENT PLAN**

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

### **TAYplan Strategic Development Plan 2016 – 2036 - Approved October 2017**

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

### **Perth and Kinross Local Development Plan 2014 – Adopted February 2014**

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

The principal policies are, in summary:

#### **Policy PM1A - Placemaking**

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

#### **Policy PM1B - Placemaking**

All proposals should meet all eight of the placemaking criteria.

#### **Policy RD1 - Residential Areas**

In identified areas, residential amenity will be protected and, where possible, improved. Small areas of private and public open space will be retained where they are of recreational or amenity value. Changes of use away from ancillary uses such as local shops will be resisted unless supported by market evidence that the existing use is non-viable. Proposals will be encouraged where they satisfy the criteria set out and are compatible with the amenity and character of an area.

#### **Policy CF2 - Public Access**

Developments will not be allowed if they have an adverse impact on any core path, disused railway line, asserted right of way or other well used route, unless impacts are addressed and suitable alternative provision is made.

#### **Policy NE1A - International Nature Conservation Sites**

Development which could have a significant effect on a site designated or

proposed as a Special Area of Conservation, Special Protection Area or Ramsar site will only be permitted where an Appropriate Assessment shows that the integrity of the site will not be adversely affected, there are no alternative solutions and there are imperative reasons of overriding public interest.

#### Policy NE4 - Green Infrastructure

Development should contribute to the creation, protection, enhancement and management of green infrastructure, in accordance with the criteria set out.

#### OTHER POLICIES

None

#### CONSULTATION RESPONSES

**Scottish Environment Protection Agency** – Initially objected but their revised position on this retrospective planning application is that they have no objection. However, they do intend to serve a warning letter to the applicant regarding the breach of Controlled Activities Regulations. Included in this warning letter SEPA will advise that, in the event of the structure failing or requiring maintenance, any maintenance or replacing of the structure will require a simple CAR licence to be in place as the structure will not be deemed as existing.

**Community Greenspace** - The red line area includes the Tay and Almond Path which is an asserted the right of way (2/2) and core path (METH/2). This public path is very well used by walkers, cyclists and others and should not be in encroached upon, obstructed or adversely affected in any way. While the site plan shows the existence of this path care should be taken to ensure it does not appear like part of a private garden area. Community Greenspace are aware of local concerns regarding change of use of the riverbank to garden ground. While we do not know of particular issues with canoeists or others entering the river at this point, it would clearly be of concern if further houses along the riverside followed suit.

**Environmental Health** - The proposed development site is on the site of a former bleachfield which was part of the Huntingtower bleachworks. There are also known to previously have been barrels thought to be associated with the bleachworks found buried within the riverbank. As such there is the potential for the ground in this area to be impacted by contamination associated with this historical land use and so the applicant should satisfy themselves that it is suitable for the proposed development.

**Local Flood Prevention Authority** - No objection.

**Scottish Natural Heritage** – Do not object but have raised concerns with the proposed planting. With regards to access they note that the Council should satisfy itself that the public's use and enjoyment of these active travel assets is unaffected by this development.

## REPRESENTATIONS

7 representations have been received on the application, 3 support the application the other 4 object to the application.

Support comments:-

- This has improved access to the river bank.
- The installation and finish is of a high standard.
- Provides a safe boundary.
- The application is an environmental improvement.

Objections:-

- Adverse effect on visual amenity.
- Excessive height.
- Light pollution.
- Loss of openspace.
- Out of character with area.
- Over intensive development.
- In appropriate landuse.
- The gate is locked it restricts access to this part of the river for anglers and other members of the public.
- There are fences on both-side which restricts access/passing.
- The riverbank was in a natural state consistent with the surrounding area.

There is an impact on title deeds that allows fishing for brown trout. – The impact on title deeds is not a planning matter and would be a legal matter between the parties.

## ADDITIONAL INFORMATION RECEIVED:

Environmental Impact Assessment (EIA)	Not Required
Screening Opinion	Not Required
EIA Report	Not Required
Appropriate Assessment	Not Required
Design Statement or Design and Access Statement	Not Required
Report on Impact or Potential Impact eg Flood Risk Assessment	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 2016 and the adopted Perth and Kinross Local Development Plan 2014.

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

### **Policy Appraisal**

26 Almond Grove is part of a residential development at Huntingtowerfield. Policy RD1 of the adopted Local Development Plan 2014 is applicable and this notes that small areas of private and public open space will be retained where they are of recreational or amenity value. The placemaking policies PM1A and PM1B are also of relevance, these require proposals to contribute positively to the surrounding built and natural environment and to respect the character and amenity of the place.

With a right of way and a core path running through the site policy CF2 - Public Access is engaged.

The site also includes the River Almond (River Tay SAC) policy NE1A - International Nature Conservation Sites is applicable along with policy NE4 - Green Infrastructure.

I consider the fundamental issue in this case is whether the amenity land to be incorporated into the garden ground/private use should be retained as amenity space taking account of visual amenity, public access and nature conservation values. Precedent is also a matter of concern.

For reasons set out below the application is considered to be contrary to the development plan.

### **Land use**

I note that the supporting statement submitted by the agent highlights that the amenity ground has not fulfilled its original function, it was unkempt, lacked maintenance and because there were previous stone steps to the river resulted in anti-social behaviour. The application therefore seeks to change the use of what was amenity land into private use (in retrospect). While I note the application has been submitted on behalf of occupant on 26 Almond Grove it is clear from the letters of support that some other nearby residents also have access to the site that is subject to this retrospective application.

The landuse issue on this case is whether this amenity land on the riverbank should be incorporated into the garden ground of 26 Almond Grove or whether it should be retained as amenity land for the wider public to benefit.

The site includes a right of way and corepath which is a well-used resource which facilitates access between Almondbank and Perth. From my review of the Local Development Plan policy RD1 seeks to retain public open space where it is of recreational and amenity value. From my review of the supporting statement and the letters of objection this was an area that previously enabled access to the river and facilitated recreational use associated with the river environment (such as anglers and dog walkers). Although I note that it may have also facilitated other unsavoury activities. While the site may not be afforded the same protection as zoned open space under policy CF1 it is nevertheless a resource that has recreational and amenity value accordingly it should be retained as such to comply with policy RD1.

### **Visual Amenity, Placemaking and Landscape**

Scotland's landscape is one of its most valuable assets it is therefore essential that this quality is maintained and enhanced. Development and land use change should be compatible with the distinctive characteristics and features of Perth & Kinross's landscape. Development proposals will be supported where they do not conflict with the aim of maintaining and enhancing the landscape qualities of Perth and Kinross, as detailed in policy ER6.

One of the attractions of utilising the right of way and corepath network along this section of the River Almond is the interaction between the path and the river corridor. The close-boarded and painted fence that has been erected between the footpath and the river restricts views of the river corridor. The fence design (a close boarded fence) also has a suburbanising effect along with the other garden paraphernalia that has been erected at the site.

The proposal therefore conflicts with criterion (a) of policy ER6 as it erodes local distinctiveness, visual and scenic qualities of the landscape and the quality of the landscape experience. The development also conflicts with criterion (b) of policy ER6 as it fails to safeguard views from the footpath as well as criterion (c) of policy RD1 as the development will not improve the character and environment of the area. With regards to placemaking it is contrary to policy PM1A as the proposal does not contribute positively to the quality of the surrounding built and natural environment. Criterion (a) of PM1B refers to the structure of streets, spaces and buildings. This development erodes the existing coherent street, space and building structure.

At this juncture it is also worth discussing precedent. Court and appeal decisions have established that it is legitimate for decision makers to give weight to the possibility of creating an undesirable precedent when considering whether to grant permission contrary to planning policy or principles. While a clear harm has been identified with this application on its

own it is worth noting that if approved this would set a dangerous precedent and may result in a cumulative impact with other areas of amenity space being fenced along the River Almond with the Right of Way and Corepath hemmed in.

### **Public Access**

I have already discussed how the landuse change can affect recreational access to the riverbank however there is a requirement to assess how the application affects the Right of Way and the core-path network as per policy CF2.

I note concerns in representation that the erection of the close boarded fence throttles the path and restricts passage between users along this section of the footpath. I note that a post and rail fence has been erected to the north east out with the application site to create a safety barrier between the path and the river (although this still allows views of the river corridor). This is of a similar width to the application site and appears to have been erected following remedial works associated with bank erosion. While I appreciate that this part of the path network is narrow I do not consider that the location of the close boarded fence restricts movement to an extent that would warrant refusal. I do not consider there is a conflict with Policy CF2.

### **Nature Conservation**

The River Almond is part of the River Tay Special Area of Conservation. The qualifying interests are as follows:-

- Atlantic salmon
- sea lamprey
- river lamprey,
- brook lamprey,
- clear-water lochs and
- otters.

It should be noted that there are only a few qualifying interests located in this stretch of the SAC namely:-

- Atlantic salmon, river lamprey and brook lamprey.
- Sea lamprey and clearwater lochs are not found on this stretch of the SAC.
- Otters.

Due to the potential impact on nature conservation and water quality that could affect the qualifying features of the SAC both SEPA and SNH have been consulted.

SEPA originally objected to the planning application however this has been removed. Having reviewed the development and having advice on Controlled

Activities Regulations, they now conclude that the development would have had the potential to have been granted a simple licence under CAR.

They note however that an application for a simple licence under CAR, cannot be accepted retrospectively and any structure which is regulated under this regime and which is in place without authorisation can only be dealt with through further enforcement action and they intend to serve a warning letter to the applicant regarding this breach of CAR.

SNH have viewed the development from the opposite bank and note that the fencing appears to extend beyond the red outlined area on the site plan. It is SNH's understanding that the concrete area has been in place for some time, therefore they do not consider that this development will have had a likely significant effect on the protected features of the River Tay SAC. They note they would have to review their position if future work to extend or maintain the concrete area was proposed.

They advise that any gardening undertaken should be appropriate to this riverbank location, as the riparian habitat is important for the otter population of the River Tay SAC and any planting should complement the existing vegetation.

The garden shrubs are therefore not suitable for this riparian corridor, have an adverse impact on the qualifying interest of the SAC which means the application is contrary to policy NE1A.

### **Drainage and Flooding**

Consultation has been undertaken with the Council's Flood team. They note that in a high flow structures such as the stairway may be washed away if not designed to a high flow standard. However, they note that the washed away debris would only pose a low flood risk as there is little blockage risk downstream.

### **Developer Contributions**

The Developer Contributions Guidance is not applicable to this application and therefore no contributions are required in this instance.

### **Economic Impact**

The economic impact of the proposal is minimal.

### **Conclusion**

In conclusion, the application must be determined in accordance with the adopted Development Plan unless material considerations indicate otherwise. In this respect, the proposal is not considered to comply with the approved TAYplan 2016 and the adopted Local Development Plan 2014. I have taken account of material considerations and find none that would justify overriding

the adopted Development Plan. On that basis the application is recommended for refusal.

## **APPLICATION PROCESSING TIME**

The recommendation for this application has not been made within the statutory determination period.

## **LEGAL AGREEMENTS**

None required.

## **DIRECTION BY SCOTTISH MINISTERS**

None applicable to this proposal.

## **RECOMMENDATION**

### **Refuse the application**

#### **Reasons for Recommendation**

- 1 The proposal is contrary to Policy RD1 of the Perth and Kinross Local Development Plan 2014 as the proposal will result in the loss of an area of openspace that should be retained as there is a recreational and amenity value associated with the area. Furthermore there is also a conflict with criterion (c) of Policy RD1 as the proposal will not improve the character and environment of the area.
- 2 The proposal is contrary to Policy PM1A of the Perth and Kinross Local Development Plan 2014 as the proposal does not contribute positively to the quality of the surrounding built and natural environment due to extending garden paraphernalia into the river corridor and has restricted open views of the river. This fails to respect the character and amenity of place and fails to improve this well used footpath link.
- 3 The proposal is contrary to criterion (a) Policy PM1b of the Perth and Kinross Local Development Plan 2014 as it erodes the previous coherent structure of streets, spaces and buildings.
- 4 The proposal is contrary to criterion (a) of Policy ER6 of the Perth and Kinross Local Development Plan 2014 as it erodes local distinctiveness, visual and scenic qualities of the landscape and the quality of the landscape experience.
- 5 The proposal is contrary to criterion (b) of policy ER6 of the Perth and Kinross Local Development Plan 2014 as it fails to safeguard views and the landscape experience from the footpath.



- 6 Approval would establish an undesirable precedent for developments of a similar nature to the detriment of the overall character of the area thus undermine and weaken the established policies of the Perth and Kinross Local Development Plan 2014.

### **Justification**

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

### **Informatives**

None

### **Procedural Notes**

- 1 This case is to be passed back to the Council's Enforcement Officer for remedial action.

### **PLANS AND DOCUMENTS RELATING TO THIS DECISION**

17/02003/1

17/02003/2

17/02003/3

17/02003/4

17/02003/5

**Date of Report 31.01.2018**





Pullar House 35 Kinnoull Street Perth PH1 5GD Tel: 01738 475300 Fax: 01738 475310 Email: [onlineapps@pkc.gov.uk](mailto: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 100075036-001

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

## Type of Application

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

- ☒ Application for planning permission (including changes of use and surface mineral working).
- ☐ Application for planning permission in principle.
- ☐ Further application, (including renewal of planning permission, modification, variation or removal of a planning condition etc)
- ☐ Application for Approval of Matters specified in conditions.

## Description of Proposal

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

Change of use of embankment for private use and erect associated structures on land adjacent to 26 Almond Grove, Huntingtowerfield

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

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

31/07/2017

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

Applicant was unaware that improving the local environment on this part of the embankment required planning permission

## Applicant or Agent Details

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

☐ Applicant ☒ Agent

## Agent Details

Please enter Agent details

Company/Organisation:	MBM Planning & Development		
Ref. Number:		You must enter a Building Name or Number, or both: *	
First Name: *	Mark	Building Name:	Algo Business Centre
Last Name: *	Myles	Building Number:	
Telephone Number: *	01738 450506	Address 1 (Street): *	Glenearn Road
Extension Number:		Address 2:	
Mobile Number:		Town/City: *	Perth
Fax Number:		Country: *	Scotland
		Postcode: *	PH2 0NJ
Email Address: *	mm@mbmplanning.co.uk		
Is the applicant an individual or an organisation/corporate entity? *			
<input checked="" type="checkbox"/> Individual <input type="checkbox"/> Organisation/Corporate entity			

## Applicant Details

Please enter Applicant details

Title:	Mr	You must enter a Building Name or Number, or both: *	
Other Title:		Building Name:	
First Name: *	Michael	Building Number:	26
Last Name: *	Paton	Address 1 (Street): *	Almond Grove
Company/Organisation		Address 2:	Huntingtowerfield
Telephone Number: *		Town/City: *	Perth
Extension Number:		Country: *	United Kingdom
Mobile Number:		Postcode: *	PH1 3NA
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:

26 Almond Grove

Address 2:

Huntingtowerfield

Address 3:

Address 4:

Address 5:

Town/City/Settlement:

Perth

Post Code:

PH1 3NA

Please identify/describe the location of the site or sites

Northing

725696

Easting

307064

## 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)

Correspondence to applicant confirmed that the change of use and erection of structures was in breach of planning control

Title:

Mr

Other title:

First Name:

David

Last Name:

Rennie

Correspondence Reference  
Number:

17/00142/ALUNDV

Date (dd/mm/yyyy):

15/08/2017

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

## Site Area

Please state the site area:

850.00

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)

The area was previously neglected, unsafe and in poor condition due to the previous owners failure to properly manage or maintain any of the embankment

## 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)? \*

0

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

## Water Supply and Drainage Arrangements

Will your proposal require new or altered water supply or drainage arrangements? \*

☐

Yes

☒

No

Do your proposals make provision for sustainable drainage of surface water?? \*  
(e.g. SUDS arrangements) \*

☐

Yes

☒

No

Note:-

Please include details of SUDS arrangements on your plans

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

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

☐

Yes

☐

No, using a private water supply

☒

No connection required

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

## Assessment of Flood Risk

Is the site within an area of known risk of flooding? \*

☐ Yes ☒ No ☐ Don't Know

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

Do you think your proposal may increase the flood risk elsewhere? \*

☐ Yes ☒ No ☐ Don't Know

## Trees

Are there any trees on or adjacent to the application site? \*

☒ Yes ☐ No

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

## Waste Storage and Collection

Do the plans incorporate areas to store and aid the collection of waste (including recycling)? \*

☐ Yes ☒ No

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

Not required

## Residential Units Including Conversion

Does your proposal include new or additional houses and/or flats? \*

☐ Yes ☒ No

## All Types of Non Housing Development – Proposed New Floorspace

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

☐ Yes ☒ No

## 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: Mark Myles

On behalf of: Mr Michael Paton

Date: 13/11/2017

☒ 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)

Engineers Report

## 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 Mark Myles

Declaration Date: 09/11/2017

## Payment Details

Cheque: ,

Created: 13/11/2017 11:11

Head of Development Management  
Environment Service  
Perth & Kinross Council  
Pullar House  
35 Kinnoull Street  
PERTH  
PH1 5GD

13<sup>th</sup> November 2017

Our ref: PAT001  
Your ref: 100075036-001

Dear Sir

### **Planning Application**

#### **Change of use of embankment for private use and erect associated structures on land adjacent to 26 Almond Grove, Huntingtowerfield**

On behalf of Mr Michael Paton, please find enclosed a planning application for the above development, accompanied by the completed planning application forms and a relevant Ordnance Survey Location plan and Site Plan (drawing no.3). In addition, a proposed block plan (drawing no.1) and proposed elevations of the wildlife watching hide and fencing and also site sections are provided on (drawing no.2).

A separate engineers report which relates to the access stairs and highlights how these have addressed a number of safety issues will be forwarded in due course.

We have also enclosed the appropriate application fee of £401 and the separate advert fee of £61.10 for this application (online reference number – 100075036-001).

### **Background to the Application**

The applicant purchased the small area of land from Greenbelt Energy Limited as they had been actively seeking to dispose of their assets in this area having failed to properly manage or maintain any of the trees or shrubs along the river bank for many years.

One of the reasons why the applicant was keen to purchase this land was because a dead tree had fallen over the footpath and onto his boundary fence crossing into the garden which emphasised that the continual neglect of the area was posing a clear safety risk.

This part of the riverbank has historically been neglected, overgrown and has been in very poor condition although because this particular site was covered in fewer trees and less dense vegetation compared to some of the adjacent areas, and also because it had some old stone steps providing access down to the river, it had also tended to attract a lot of unlawful and unsavoury behaviour.

Therefore, by purchasing this small area of the border and the embankment, the applicant has specifically sought to improve the local environment and also to make it easier, safer and cleaner for genuinely interested users to enjoy.

The installation of the access steps including a safety hand rail now ensures that people can safely go down the slope of the embankment to the flat stone bed at the river's edge. This type of access stair is common along the length of the River Almond and also the River Tay particularly between Perth and Luncarty where the embankment can be steep, and we are not aware of any planning permissions having been requested or granted for any of those many other similar installations.

There were originally stone steps down to the river at this same point, but these slowly disappeared due to years of erosion and neglect, so the new steps were simply replacing a structure that previously existed to an improved and safer standard.

The timber fence and gate simply replicate what is on the other side of the public footpath including their colour and as stated above the gate prevents those that are involved in unlawful behaviour from leaving broken bottles and syringes behind simply for others to find and then dispose of. The applicant is therefore simply trying to protect his family and members of the public who visit this part of the river embankment from such incidents.

The small timber shed structure is used as a shelter/hide to observe and enjoy the wildlife that is located in and along the river in a completely relaxing and safe environment.

### **Planning Policy Statement**

The proposal requires to be considered under the terms of the Perth & Kinross Local Development Plan (PKLDP) (Policies RD1, PM1A and PM1B) which was adopted in February 2014.

Being located within the identified Perth settlement boundary, Policy RD1 would apply to this application. This policy seeks to encourage residential and compatible uses where existing residential amenity will be protected and where possible improved. The policy also requires small areas of private and public open space to be retained where they are of recreational or amenity value.

In particular Policy RD1 states that encouragement will be given to proposals which fall into one or more of the categories listed under the policy, and which are compatible with the amenity and character of the area. The key category consideration for this proposal is category

c) which reads 'proposals which will improve the character and environment of the area or village.'

Policy PM1 within the Local Development Plan further adds that development must contribute positively, to the quality of the surrounding built and natural environment. The design, density and siting of development should respect the character and amenity of the place, and should create and improve links within and where practical beyond the site. Proposals should also incorporate new landscaping and planting works appropriate to the local context and the scale and nature of the development.

Category c) of Policy PM1B specifically states that the design and density should complement its surroundings in terms of appearance, height, scale, massing, materials, finishes and colours and category e) also requires proposals to create safe, accessible, inclusive places for people, which are easily navigable, particularly on foot.

## **Conclusions**

The proposed application can be considered as being compatible with the character of the area without causing any adverse impact on the amenity of the area, in accordance with Policy RD1. In fact, the applicant's proposals and aspirations have greatly enhanced the recreational and amenity value of this small area of open space in accordance with Policy RD1.

The desire to create a safe, clean, pleasant and accessible area of the embankment for people to enjoy is also consistent with the objectives of key aspects of Policy PM1 on Placemaking within the Development Plan. As part of any approval if it was considered necessary the requirement for a planting scheme could be conditioned to provide additional screening and security appropriate to the local context and the scale and nature of the wider area also in accordance with Policy PM1A.

The proposal therefore satisfies the key criteria as set out in Policy RD1 and PM1 of the Perth & Kinross Local Development Plan and therefore can be approved as being in accordance with the Development Plan subject to any conditions considered necessary.

I look forward to hearing from you in connection with this application in due course.

Kind regards

Yours faithfully

Mark Myles







Undefined site boundary  
C.L. of river

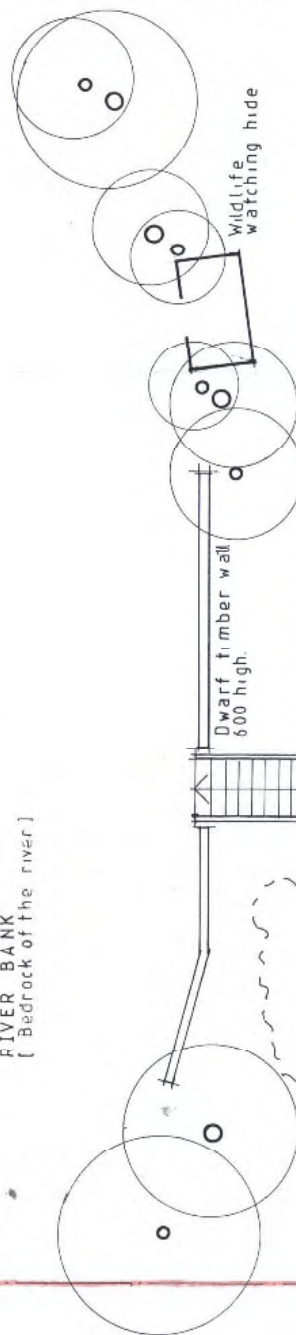
RIVER ALMOND →

Undefined site  
boundary

APPROX. EDGE OF WATER

RIVER BANK  
[ Bedrock of the river ]

Undefined  
site boundary



Scrub trees &  
bushes

Dwarf timber wall  
600 high.

Timber steps down  
to riverbank

Timber fence  
1m high

Planted border

Low timber kerb

Scrub trees &  
bushes

Timber fence  
1-80m high

RIGHT OF WAY

Gate

Gate

Existing timber fence of  
Applicant's property  
26 Almond Grove

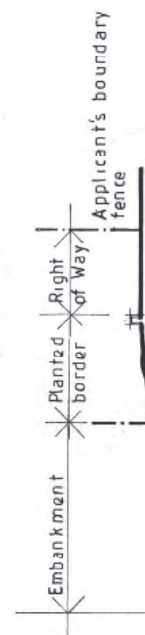
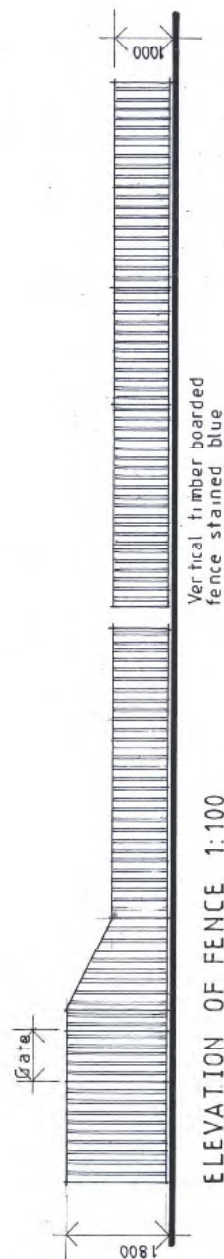
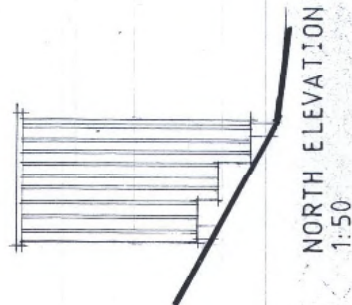
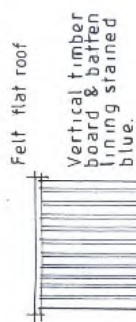
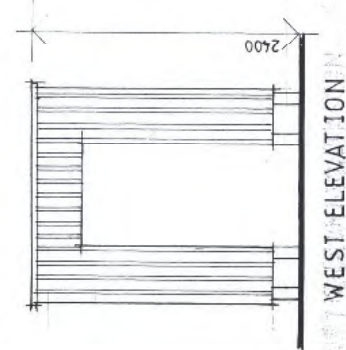
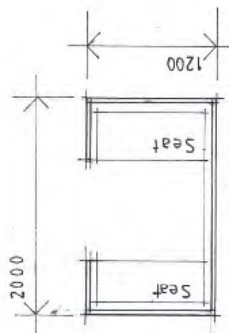
BLOCK PLAN 1:100



SCALE OF METRES 1:50



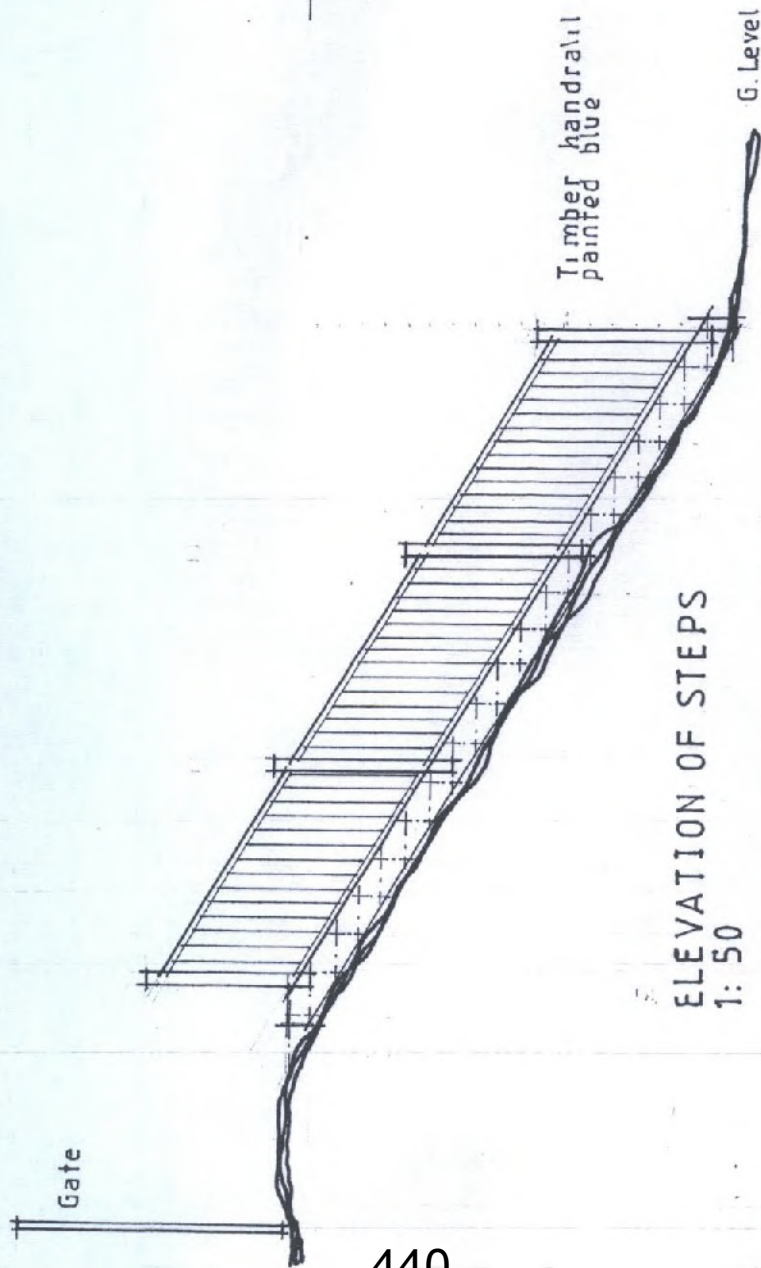
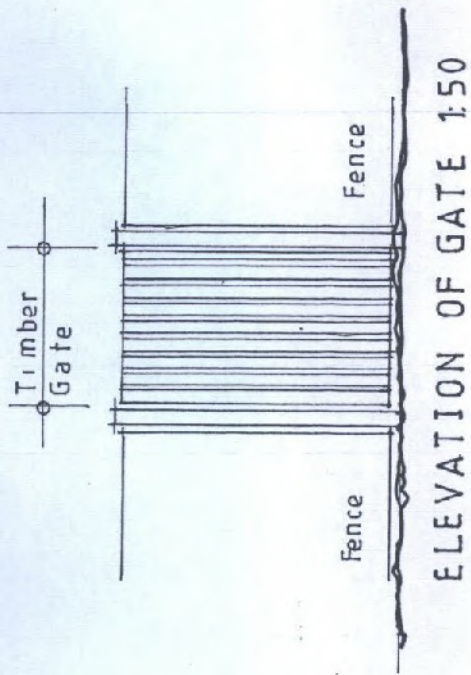
SCALE OF METRES 1:100



RIVER ALMOND

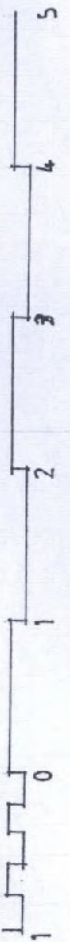
River Bank

TYPICAL SECTION 1:100



17/02003/FLL

SCALE BAR 1: 50







# SLOAN STRUCTURAL SOLUTIONS LTD

12 George Street, Perth, PH1 5JR

t: 01738 561697

m: 07867 880 736

e: mark@3slimited.co.uk

www.3slimited.co.uk

Mr Mike Paton,  
26 Almond Grove,  
Huntingtowerfield,  
Perth,  
PH1 3NA.

14 November 2017

Dear Mr Paton,

**117283      26 Almond Grove, Huntingtowerfield, Perth, PH1 3NA.**

Sloan Structural Solutions Ltd. has been instructed by Mr Mike Paton, to carry out a structural assessment at, 26 Almond Grove, Huntingtowerfield, Perth, PH1 3NA.

The report is based on a visual walk over inspection of the property with no internal intrusive inspections being carried out on Tuesday 31 October 2017. The weather was dry and overcast.

The Sloan Structural Solutions brief was limited to: -

- Structural assessment;

## GENERAL DESCRIPTION OF PROPERTY

The subject of the report is a flight of timber stairs.

## OBSERVATIONS

- A timber stair flight has been installed to the rear of the above property to connect path level to the riverside. The stair has been formed from;
  - Stair Strings of 45 x 260mm deep timber joists,
  - 950mm between strings,
  - 89 x 89mm posts at 2000mm centres,
  - Top of handrail 900mm above nosing,
  - 40 x 40mm spindles with gaps between generally less than 99mm,
  - 950mm between strings,
  - 45mm thick timbers used for treads and risers.
- Some damage of the lower spindle support trim at step 2 and 3 to be repaired.
- There was some movement of the 89 x 89mm posts noted under applied load.

## CONCLUSION AND RECOMMENDATIONS

The arrangement of the stair is generally in keeping with the requirement of the British Woodworking Federation and their documentation "Design Guide: Timber stairs,

A Guide to Designing and Manufacturing Safe and Compliant Staircases". Although this is a guide for internal stairs, the applied loadings remain the same.

The stair would benefit from the following non-essential works;

- Provide a mechanical fixing to tie the posts at low level into sleeper wall timbers,
- Remove soil and vegetation from any support points to the timber string,
- Undertake repairs to the timber trim holding the spindles in position as noted above.

The stair would benefit from the following works;

- Ensure all exposed timber receives a painted finish,
- Regular maintenance to be adopted.

We are satisfied that the stair, in its current arrangement, is of robust construction and is satisfactory for single occupancy use.

For multiple occupancy use we would advise a marshalling arrangement to be established and implemented.

If you require any additional information or information regarding the terminology adopted in this report, please feel free to call.

## **LIMITATIONS AND CONSTRAINTS**

The inspection of the buildings was non-intrusive. No opening up of the building fabric was undertaken to determine the nature or condition of structural members.

The identification of timber rot and/or materials containing asbestos requires specialist inspection and is excluded from this report.

This report is intended for use by Mr Mike Paton and his professional advisors. It is not intended for use by third parties in terms upon which it can be relied.

Regards,



Mark Sloan BEng (Hons) CEng MStructE  
Director





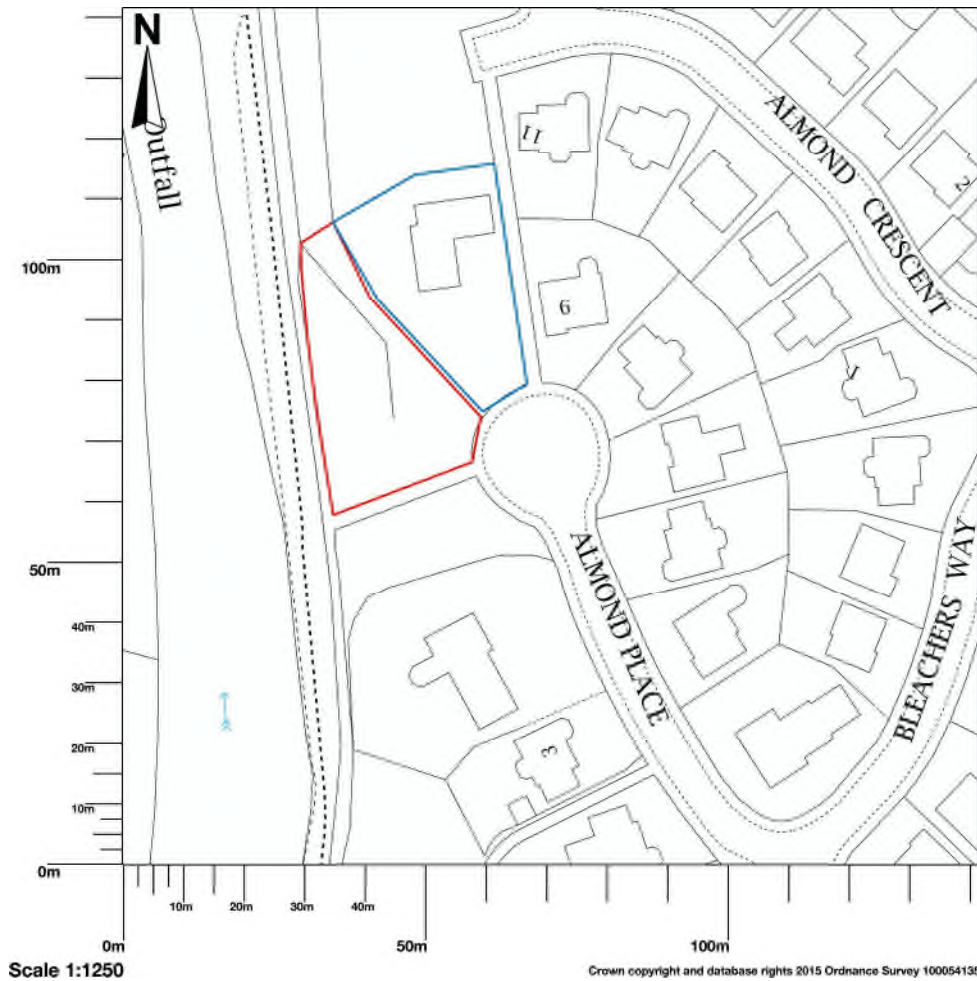
View of stairs from the riverside looking towards the access path.



Side view of stairs showing posts, handrail, spindles, treads and stair string. The arrow highlight areas of the structure in need of decoration.



## 5 Almond Place, Huntingtowerfield, Perth, PH1 3FA



Map shows area bounded by: 307106.28,725842.3,307247.72,725983.7 (at a scale of 1:1250) The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a property boundary.

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**ANYONE USING  
THESE STEPS  
DOES SO  
AT THEIR OWN RISK**











**TCP/11/16(530) – 17/02003/FLL – Change of use of river bank to garden ground, erection of a shed, fence, gate, access steps and associated works (in retrospect) at 26 Almond Grove, Huntingtowerfield, Perth**

**PLANNING DECISION NOTICE** *(included in applicant's submission, see pages 411-412)*

**REPORT OF HANDLING** *(included in applicant's submission, see pages 413-423)*

**REFERENCE DOCUMENTS** *(included in applicant's submission, see pages 437-443)*



**TCP/11/16(530) – 17/02003/FLL – Change of use of river bank to garden ground, erection of a shed, fence, gate, access steps and associated works (in retrospect) at 26 Almond Grove, Huntingtowerfield, Perth**

## **REPRESENTATIONS**





### Comments to the Development Quality Manager on a Planning Application

<b>Planning Application ref.</b>	17/02003/FLL	<b>Comments provided by</b>	Jane Pritchard
<b>Service/Section</b>	Community Greenspace	<b>Contact Details</b>	
<b>Description of Proposal</b>	Change of use of river bank to garden ground, erection of a shed, fence, gate, access steps and associated works (in retrospect)		
<b>Address of site</b>	26 Almond Grove Huntingtowerfield Perth PH1 3NA		
<b>Comments on the proposal</b>	<p>We note that the red line area includes the Tay and Almond Path which is an asserted the right of way (2/2) and core path (METH/2). This public path is very well used by walkers, cyclists and others and should not be in encroached upon, obstructed or adversely affected in any way. While the site plan shows the existence of this path care should be taken to ensure it does not appear like part of a private garden area.</p> <p>We are aware of local concerns regarding change of use of the riverbank to garden ground. While we do not know of particular issues with canoeists or others entering the river at this point, it would clearly be of concern if further houses along the riverside followed suit.</p>		
<b>Recommended planning condition(s)</b>			
<b>Date comments returned</b>	27.11.17		



# Memorandum

To	Development Quality Manager	From	Regulatory Service Manager
Your ref	PK17/02003/FLL	Our ref	LJ
Date	4 December 2017	Tel No	( [REDACTED] )

The Environment Service

Pullar House, 35 Kinnoull Street, Perth PH1 5GD

## Consultation on an Application for Planning Permission

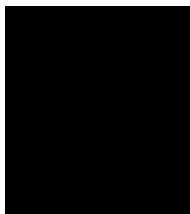
**PK17/02003/FLL RE: Change of use of river bank to garden ground, erection of a shed, fence, gate, access steps and associated works (in retrospect) 26 Almond Grove Huntingtowerfield Perth PH1 3NA for Mr Michael Paton**

I refer to your letter dated 29 November 2017 in connection with the above application and have the following comments to make.

**Contaminated Land** (assessment date – 04/12/2017)

### Informative

The proposed development site is on the site of a former bleachfield which was part of the Huntingtower bleachworks. There are also known to previously have been barrels thought to be associated with the bleachworks found buried within the riverbank. As such there is the potential for the the ground in this area to be impacted by contamination associated with this historical land use and so the applicant should satisfy themselves that it is suitable for the proposed development. The Land Quality team be contacted on 01738 475000 or es@pkc.gov.uk for further advice regarding this matter if required.





# Comments for Planning Application 17/02003/FLL

## Application Summary

Application Number: 17/02003/FLL

Address: 26 Almond Grove Huntingtowerfield Perth PH1 3NA

Proposal: Change of use of river bank to garden ground, erection of a shed, fence, gate, access steps and associated works (in retrospect)

Case Officer: John Russell

## Customer Details

Name: Mrs Jane Anderson

Address: [REDACTED]

## Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

- Adverse Affect on Visual Amenity
- Out of Character with the Area

Comment: Commenting as a frequent user of the adjacent right of way on foot and bicycle.

The fence blocks views of the river and river bank where normally you can enjoy natural vegetation and wildlife. If every householder along the right of way built similar fences the way would be a corridor between fences.

Does the householder own the piece of embankment and river bank which is now fenced in and has a locked gate?

In my opinion the additions do not enhance the area but spoil it.



## Tracy McManamon

---

**From:** Sally Gregor [REDACTED]  
**Sent:** 05 December 2017 11:06  
**To:** Development Management - Generic Email Account  
**Subject:** Planning Application Reference 17/02003/FLL

To whom it may concern

I recently received an application for retrospective planning permission regarding a property at 26 Almond Grove, Huntingtowerfield, Perth for a M. Paton. I was amazed to get this letter, as I assumed planning permission had previously been granted and that I had merely missed the application in the local press, as I would have been vehemently opposed to this construction, namely the change of use of riverbank to garden ground, erection of a shed, fence, gate, access steps and associated works.

I will give you my reasons for objection as follows:

What used to be a tranquil, natural environment, with various types of trees, has now turned into unnatural pagoda style bird boxes, placed on stumps that have been cut down to accommodate them. The said boxes are approximately two feet square and of various colours, culminating with a three foot silver eagle placed upon another stump.

Said person has also erected a fence on two properties, on his own property and a small fence on an adjoining property where all the paths were leading down to the river. These access points were always the traditional paths for anglers and other members of the public who wished to visit the river. At this point I would like to make you aware that myself and others have, over the last twenty years, fished there for trout as we have the right to do so in our Title Deeds.

I now find that all the traditional access points have been closed off with a blue fence and a locked key code gate, which is not acceptable. It should be made aware to the relevant authorities that several years ago he was asked to remove a set of steps leading to the river by the relevant authorities.

I had no complaints then because access was open to the general public, including my neighbours and myself.

Lastly, I am amazed that Scottish Natural Heritage have not been made aware of this construction which is not in keeping with the flora and fauna. In fact one could say it is all rather tacky in my opinion.

Also, he has erected cctv cameras to oversee the development that he did not seek permission to do. I now discover, he has no signage up to indicate these cameras are in use to the general members of the public. If they are not being used why are they in position.

[REDACTED]

Yours faithfully

Derek Gregor

Sent from my iPad





# Comments for Planning Application 17/02003/FLL

## Application Summary

Application Number: 17/02003/FLL

Address: 26 Almond Grove Huntingtowerfield Perth PH1 3NA

Proposal: Change of use of river bank to garden ground, erection of a shed, fence, gate, access steps and associated works (in retrospect)

Case Officer: John Russell

## Customer Details

Name: Mrs Gwen Morton

Address: [REDACTED]

## Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

- Adverse Affect on Visual Amenity
- Excessive Height
- Inappropriate Land Use
- Lack or loss Of Car parking
- Light Pollution
- Loss Of Open Space
- Out of Character with the Area
- Over Intensive Development

Comment: I object as it restricts access to the part of the river where we use to take the dog for a swim. If a cyclist is coming along there is no room to stand aside to let them past as there is fences on both sides. It looks completely out of character and does not fit in with the rest of the surroundings.



### Comments to the Development Quality Manager on a Planning Application

<b>Planning Application ref.</b>	17/02003/FLL	<b>Comments provided by</b>	Steven Wilson
<b>Service/Section</b>	TES/Flooding	<b>Contact Details</b>	FloodingDevelopmentControl@pkc.gov.uk
<b>Description of Proposal</b>	Change of use of river bank to garden ground, erection of a shed, fence, gate, access steps and associated works (in retrospect)		
<b>Address of site</b>	26 Almond Grove Huntingtowerfield Perth PH1 3NA		
<b>Comments on the proposal</b>	No Objection – it should be noted that in a high flow structures such as the stairway may be washed away if not designed to a high flow standard. Any debris would only pose a low flood risk as there is little blockage risk downstream		
<b>Recommended planning condition(s)</b>			
<b>Recommended informative(s) for applicant</b>	PKC Flooding and Flood Risk Guidance Document (June 2014)		
<b>Date comments returned</b>	14/12/2017		



# Comments for Planning Application 17/02003/FLL

## Application Summary

Application Number: 17/02003/FLL

Address: 26 Almond Grove Huntingtowerfield Perth PH1 3NA

Proposal: Change of use of river bank to garden ground, erection of a shed, fence, gate, access steps and associated works (in retrospect)

Case Officer: John Russell

## Customer Details

Name: Mr robert sinclair

Address: [REDACTED]

## Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

- Adverse Affect on Visual Amenity
- Inappropriate Land Use

Comment: The site plan shows that a right of way is included within the site. This should not be allowed.

The riverbank was in a natural state consistent with the surrounding area. Any construction in this area is obtrusive and out of place.

Does the applicant actually own the area that he intends to use for his own purposes.



# Comments for Planning Application 17/02003/FLL

## Application Summary

Application Number: 17/02003/FLL

Address: 26 Almond Grove Huntingtowerfield Perth PH1 3NA

Proposal: Change of use of river bank to garden ground, erection of a shed, fence, gate, access steps and associated works (in retrospect)

Case Officer: John Russell

## Customer Details

Name: Mr George Brown

Address: [REDACTED]

## Comment Details

Commenter Type: Neighbour

Stance: Customer made comments in support of the Planning Application

Comment Reasons:

- Enhances Character of Area

Comment: I am in total support of this application, Mr Paton has transformed this river bank from a area that was not accessible, to an area where i can take my grandchildren to enjoy the river and feed the ducks, it is also a place myself and my wife can go and sit and relax, i am also led to believe there is a few objections to this planning application, i personally believe this is out of jealousy and not concern for the area, and i am sure i read, some objector said they used to go fishing there but i can honestly say in the last four years since i moved in to the area, i have never seen anybody fishing at that point. Also i sincerely hope my comments are taken in to consideration and Mr Paton is allowed to continue with his application.

Yours Sincerely

George and Lorraine Brown





# Comments for Planning Application 17/02003/FLL

## Application Summary

Application Number: 17/02003/FLL

Address: 26 Almond Grove Huntingtowerfield Perth PH1 3NA

Proposal: Change of use of river bank to garden ground, erection of a shed, fence, gate, access steps and associated works (in retrospect)

Case Officer: John Russell

## Customer Details

Name: Mr Bruce Miller

Address: [REDACTED]

## Comment Details

Commenter Type: Neighbour

Stance: Customer made comments in support of the Planning Application

Comment Reasons:

- Results in Environmental Improvements

Comment: My original posting is categorised as neutral, however I would like to make it clear we are very much in support of this application as it provides a safe boundary and safe access to the river bank which over time had become very unsafe with gaps in the flora and fauna leading down a steep slope leaving it dangerous for pedestrians and cyclists during hours of darkness and unsafe to negotiate and reach the riverside.

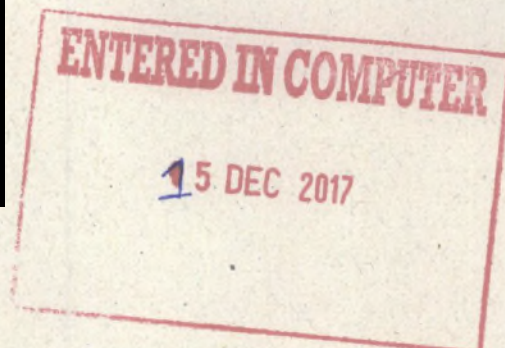
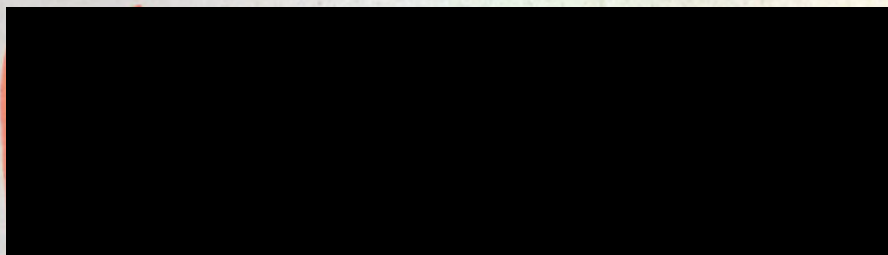
This application is very much an environmental improvement.



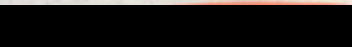
**Meaghan Wilson**

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**From:** Development Management - Generic Email Account  
**Sent:** 15 December 2017 13:51  
**To:** Meaghan Wilson  
**Subject:** FW: Planning reference 17/020003/FLL



-----Original Message-----

**From:** Bruce Miller [mailto:  
**Sent:** 15 December 2017 13:35  
**To:** Development Management - Generic Email Account  
**Subject:** Planning reference 17/020003/FLL

Hello there

My wife has just spoken with Christopher in Customer Services who gave her this email address to allow us to make comments regarding the above application which are not objections.

I note that in one objection there is a specific reference to having fishing rights with their title deeds. I would point out that those rights are no longer applicable since G S Brown sold the river bank to Greenbelt. All rights were terminated at that time in line with terms of the "Grant of Fishing Rights". A copy of our document of rights is available if required.

Also there is mention too of having access to the area in question to let dogs swim etc. Can I just state since the horrendous high water in 2010 where the river bank, just a short distance away (approx 30m) slid into the river, it became extremely difficult and quite honestly dangerous to navigate down to the rivers edge at the area in question.

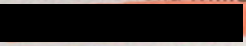
Mention is also made in an objection that there is not enough room now to stand aside if a cyclist passes. In my opinion there is more room here than there is along the new stretch of pathway that was made by the council following the land slip into the river.

Further, there is mention of being unable to see the river bank now because of the fencing. This comment seems redundant as the flood protection scheme works has taken away the view of the river from the weir around to the corner at the Pow burn.

I think what I am trying to point out here is that these objections have no merit and as a family with a dog and young grandchildren living directly next to the area in question, we are very happy to have the said area fenced and steps to provide safe access to the river bank. Safety being a major concern to my wife who was a safety professional before her retirement.

I hope when making your consideration regarding the above application you take onboard our comments.

Regards

Bruce & Sheila Miller  






## **Development Management - Generic Email Account**

---

**From:** [REDACTED]  
**Sent:** 15 December 2017 21:50  
**To:** Development Management - Generic Email Account  
**Subject:** Planning Application Reference 17/02003/FLL

Dear Sir,

I have lived in Almondgrove for many years and have enjoyed walking along the river banking in all weathers. When Mr. Michael Paton informed me of his plans for the river banking, I did have my reservations. However, on seeing the completed project, I was very pleasantly surprised.

All the neighbours have been offered the security code for access at any time. It is a pleasure to see young families enjoying such a safe environment leading to the flat river bed.

Mr. Paton has used quality joiners for the installation and the finished effect is of a very high standard of workmanship. Mr Paton has also raised a considerable sum of money for the Scottish Air Ambulance Charity by using this space which is commendable

It would be a great pity if planning for this project were to be refused.

Yours faithfully,  
Sheena C. Wright







## Scottish Natural Heritage Dualchas Nàdair na h-Alba

All of nature for all of Scotland  
Nàdar air fad airson Alba air fad

Mr N Brian  
Planning  
Pullar House  
35 Kinnoull Street  
Perth  
PH1 5GD

20 December 2017  
Our ref: SIT/SAC/River Tay/ASS  
Your ref: 17/02003/FLL

Dear Mr Brian

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

**Change of use of river bank to garden ground, erection of a shed, fence, gate, access steps and associated works (in retrospect), 26 Almond Grove, Huntingtowerfield, Perth, PH1 3NA**

Thank-you for your consultation of 24 November 2017. My apologies for the lateness of this response, I was unavoidably off work last week.

### **River Tay Special Area of Conservation**

The development lies within the River Almond, part of the River Tay SAC. Information regarding the SAC qualifying features and Conservation Objectives are available on the Sitelink section of [www.snh.gov.uk](http://www.snh.gov.uk). Details of the legislative requirements are included in Annex 1.

I have viewed the development from the opposite bank and it would appear that the fencing extends beyond the red outlined area on the site plan. However, it is our understanding that the concrete area has been in place for some time, we, therefore, do not consider that this development will have had a likely significant effect on the protected features of the River Tay SAC. We would have to review our position if future work to extend or maintain the concrete area was proposed.

We advise that any gardening undertaken should be appropriate to this riverbank location, as the riparian habitat is important for the otter population of the River Tay SAC. Any planting should complement the existing vegetation. We have previously noted rhododendron along the bank of the River Almond, this species can become dominant, out competing native species and reducing biodiversity. For further information regarding invasive non-native species see our website: <https://www.nature.scot/professional-advice/safeguarding-protected-areas-and-species/protected-species/invasive-non-native-species>

### **Access**

We note the presence of Core Path Meth/2 and National Cycle Route 77 within the development area. The Council should satisfy itself that the public's use and enjoyment of these active travel assets is unaffected by this development.

Scottish Natural Heritage, Battleby, Redgorton, Perth, PH1 3EW  
Tel 01738 444177 - Fax 01738 458611 - [www.snh.gov.uk](http://www.snh.gov.uk)

I hope you find this advice useful.

Yours sincerely

(via email)

Nicki McIntyre  
Operations Officer  
Tayside and Grampian  
[nicki.mcintyre@snh.gov.uk](mailto:nicki.mcintyre@snh.gov.uk)



## Annex 1

### Legislative Requirements for European Sites

In Scotland, European Sites are defined as candidate Special Areas of Conservation (cSACs), designated Special Areas of Conservation (SACs) and classified Special Protection Areas (SPAs).

The Conservation (Natural Habitats, &c.) Regulations 1994 as amended (the "1994 Habitats Regulations") apply to European Sites. Where reserved matters (within the meaning of Schedule 5 of the Scotland Act 1998)<sup>1</sup> are concerned, certain provisions of the Conservation of Habitats and Species Regulations 2010 as amended (the "2010 Regulations") apply instead. Both sets of regulations require an equivalent process in relation to the assessment of plans and projects with the potential to affect European sites.

The requirements are summarised in Circular 6/1995 as amended June 2000 and include, at paragraph 12,

"The Regulations require that, where an authority concludes that a development proposal unconnected with the nature conservation management of a Natura 2000 site is likely to have a significant effect on that site, it must undertake an appropriate assessment of the implications for the conservation interests for which the area has been designated."

The need for appropriate assessment extends to plans or projects outwith the boundary of the site in order to determine their implications for the interest protected within the site.

Under regulation 48 of the 1994 Habitats Regulations (or regulation 61 of the 2010 Regulations in respect of reserved matters), this means that the competent authority has a duty to:

- determine whether the proposal is directly connected with or necessary to site management for conservation; and, if not,
- determine whether the proposal is likely to have a significant effect on the site either individually or in combination with other plans or projects; and, if so, then
- make an appropriate assessment of the implications (of the proposal) for the site in view of that site's conservation objectives.

If significant effects are unknown or likely, the competent authority can only agree to the proposal under regulation 48 (or regulation 61 of the 2010 Regulations in respect of reserved matters) after having ascertained that it will not adversely affect the integrity of the site. If this is not the case, and there are no alternative solutions, either:

1. Reserved matters include: activities consented under sections 36 or 37 of the Electricity Act 1989; activities consented under the Pipelines Act 1962; matters related to the exploration for, and exploitation of, deposits of oil and natural gas; and matters related to defence of the realm.
2. *(i) for sites where no priority habitat<sup>2</sup> is affected* The proposal can only be allowed to proceed if there are imperative reasons of overriding public interest, which in this case can include those of a social or economic nature. If you propose to approve the plan on the grounds of imperative reasons of overriding public interest then regulation 49 (or regulation 62, as modified by regulation 67(3)(c), of the 2010 Regulations) states that you must inform Scottish Ministers (or the Secretary of State) and you must not issue approval for a period of 21 days after receipt by Scottish Ministers (or the Secretary of State) unless notified otherwise<sup>3</sup>.

If proposals are allowed to proceed in accordance with regulation 49 (or regulation

62, as modified by regulation 67(3)(c), of the 2010 Regulations) then it should be noted that regulation 53 (or regulation 66, as modified by regulation 67(3)(c), of the 2010 Regulations) requires that Scottish Ministers (or the Secretary of State) 3 shall secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.

*Or (ii) for sites where a priority habitat<sup>2</sup> is affected*

The proposal can only be allowed to proceed if there are imperative reasons of overriding public interest. As the site is identified for a priority habitat, reasons of overriding public interest can relate only to human health, public safety, beneficial consequences of primary importance for the environment or other reasons subject to the opinion of the European Commission (via the Government). If you propose to approve the plan on the grounds of imperative reasons of overriding public interest then regulation 49 (or regulation 62, as modified by regulation 67(3)(c), of the 2010 Regulations) states that you must inform Scottish Ministers (or the Secretary of State) and you must not issue approval for a period of 21 days after receipt by Scottish Ministers (or the Secretary of State) unless notified otherwise<sup>3</sup>.

If proposals are allowed to proceed in accordance with regulation 49 (or regulation 62, as modified by regulation 67(3)(c), of the 2010 Regulations) then it should be noted that regulation 53 (or regulation 66, as modified by regulation 67(3)(c), of the 2010 Regulations) requires that Scottish Ministers (or the Secretary of State) 3 shall secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.

2 Priority habitats (within the meaning of the Habitats Directive and the Habitats Regulations) which

occur as qualifying interests in SACs in Scotland are listed here

<http://www.snh.gov.uk/docs/B638527.pdf> . Priority habitats are not qualifying interests of SPAs and

there are no European sites designated for any priority species in Scotland.

3 Scottish Ministers are the competent authority in relation to considerations under regulations 49 and

53 of the 1994 Habitats Regulations. Scottish Ministers are also the appropriate authority in relation

to regulations 62 to 66 of the 2010 Regulations for activities consented under sections 36 or 37 of the

Electricity Act 1989 and activities consented under the Pipelines Act 1962. For reserved matters

other than Electricity and Pipelines, the appropriate authority in relation to these provisions is the

Secretary of State (Westminster).

Our ref: PCS/156570  
Your ref: 17/02003/FLL

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

If telephoning ask for:  
Paul Lewis

08 January 2018

By email only to: [DevelopmentManagement@pkc.gov.uk](mailto:DevelopmentManagement@pkc.gov.uk)

Dear Mr Russell

**Town and Country Planning (Scotland) Acts**  
**Planning application: 17/02003/FLL (in retrospect)**  
**Change of use of river bank to garden ground, erection of a shed, fence, gate,**  
**access steps and associated works (in retrospect)**  
**26 Almond Grove, Huntingtowerfield, Perth, PH1 3NA**

Thank you for your consultation which SEPA received on 13 December 2017.

### **Advice for the planning authority**

We **object** to this planning application on the grounds of its non-compliance with the Water Environment (Scotland) Regulations (as amended) (CAR): please see Section 1. We also draw your attention and the attention of the applicant to the advice on flood risk in Section 2.

#### **1. CAR**

- 1.1 When SEPA is consulted on a planning application one of the issues we consider is its potential to be authorised or registered under CAR. We consider that this approach is consistent with the relationship between planning and environmental regulation.

#### **Planning Advice Note 51 (Revised 2006): Planning, Environmental Protection and Regulation**

Paragraph 49 *"Whether authorisation or licensing under another regime would be approved or refused is not a material consideration although whether a proposal was 'capable of being licensed' would be."*

- 1.2 Had we been consulted on a planning application for this development and use of land, we would have advised that these works would require a CAR licence for the steps and shed within the river as these are 'in stream structure.' We would have **objected** to the proposal for the bank protection as it cannot be classed as green bank protection as treated wood



Chairman  
Bob Downes

Chief Executive  
Terry A'Hearn

#### **Perth Strathearn House**

Broxden Business Park,  
Lamberkine Drive, Perth, PH1 1RX  
tel 01738 627989 fax 01738 630997

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has been used. This is not a suitable material for use in-river. Untreated wood would be acceptable protection and not a breach of CAR General Binding Rule 8.

- 1.3 A retrospective planning application should be treated as if it were a planning application, i.e. as if development had not been started or completed. We can only, therefore, **object** to this planning application.

## 2. Flood Risk

- 2.1 We have no objection to the proposed development on flood risk grounds. Notwithstanding this we expect Perth & Kinross Council to undertake its responsibilities as the Flood Prevention Authority.
- 2.2 Review of the SEPA Flood Map indicates that the site lies within the 0.5% annual probability (or 1 in 200-year) flood extent and may therefore be at medium to high risk of flooding. Whilst we would generally object to development within the functional floodplain we understand that this application is for an extension to garden ground and the work carried out is unlikely to lead to an increase in flood risk elsewhere.
- 2.3 We would advise that this area is prone to flooding and it is likely that the structures and items within the floodplain could be washed away or damaged. People should avoid the area during periods of high flows on the river and we would recommend that users of the site sign up to receive the flood warning for Almondbank to ensure the area is cleared prior to flooding.

## Caveats & Additional Information for Applicant

- 2.4 The SEPA Flood Maps have been produced following a consistent, nationally-applied methodology for catchment areas equal to or greater than 3km<sup>2</sup> using a Digital Terrain Model (DTM) to define river corridors and low-lying coastal land. The maps are indicative and designed to be used as a strategic tool to assess flood risk at the community level and to support planning policy and flood risk management in Scotland. For further information please visit <http://www.sepa.org.uk/environment/water/flooding/flood-maps/>
- 2.5 Please note that we are reliant on the accuracy and completeness of any information supplied by the applicant in undertaking our review, and can take no responsibility for incorrect data or interpretation made by the authors.
- 2.6 The advice contained in this letter is supplied to you by SEPA in terms of Section 72 (1) of the Flood Risk Management (Scotland) Act 2009 on the basis of information held by SEPA as at the date hereof. It is intended as advice solely to Perth & Kinross Council as Planning Authority in terms of the said Section 72 (1). Our briefing note "*Flood Risk Management (Scotland) Act 2009: Flood risk advice to planning authorities*" outlines the transitional changes to the basis of our advice in line with the phases of this legislation and can be downloaded from <http://www.sepa.org.uk/environment/land/planning/guidance-and-advice-notes/>



Chairman  
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## **Regulatory advice for the applicant**

### **3. Regulatory requirements**

- 3.1 Authorisation is required under The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (CAR) to carry out engineering works in or in the vicinity of inland surface waters (other than groundwater) or wetlands. Inland water means all standing or flowing water on the surface of the land (e.g. rivers, lochs, canals, reservoirs).
- 3.2 Details of regulatory requirements and good practice advice for the applicant can be found on the [Regulations section](#) of our website. If you are unable to find the advice you need for a specific regulatory matter, please contact a member of the regulatory team in the local SEPA office at:

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

If you have any queries relating to this letter, please contact me by telephone on 0131 273 7334 or e-mail at [planning.se@sepa.org.uk](mailto:planning.se@sepa.org.uk).

Yours sincerely

Paul Lewis  
Senior Planning Officer  
Planning Service

ECopy to: Mark Myles, MBM Planning & Development - [mm@mbmplanning.co.uk](mailto:mm@mbmplanning.co.uk)

#### *Disclaimer*

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



Chairman  
Bob Downes

Chief Executive  
Terry A'Hearn

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**From:**Lewis, Paul  
**Sent:**Wed, 24 Jan 2018 16:53:06 +0000  
**To:**Development Management - Generic Email Account;John Russell  
**Cc:**'mm@mbmplanning.co.uk'  
**Subject:**Planning Application 17/02003/FLL (in retrospect)

Dear Mr Russell

I am writing to follow up my letter to you of 08 January 2018 (our reference PCS/156570) which is copied below.

Our advice based on the structure not meeting the requirements under GBR 8 rule (e) was incorrect. GBR 8 (e) states:

- e) The revetment can only be constructed from vegetation, geotextiles, untreated wood, or non-grouted stone rip-rap.

However GBR 8 is with reference to ☐Controlling bank erosion by green bank reinforcement or re-profiling☐. In this instance the structures in question are some wooden steps and a hut installed on a riverbank and while made of treated wood the structures are not installed for the purpose of green bank reinforcement or re-profiling and therefore in this instance GBR 8 does not apply.

The steps and hut structures should have been regulated through the granting of a simple licence under the Controlled Activities (Water Environment) (Scotland) Regulations 2011 (CAR). Following table 5 ☐Engineering levels of authorisation☐ on pages 42-44 of the CAR Practical Guide defines this activity as ☐other controlled activities not defined elsewhere in the table☐.

As mentioned at Section 1.1 of our letter of 08 January 2018, when consulted on a planning application one of the issues we consider is its *potential* to be authorised or registered under CAR. (Until we receive an application for a CAR licence we cannot comment on whether the licence will be granted, but we can comment on the potential for a licence to be granted.)

As mentioned at 1.3 of our letter, a retrospective planning application should be treated as if it were a planning application, i.e. as if development had not started. If it is uncertain that the development included elements that had had the potential to be authorised or regulated we can only object to the retrospective planning application.

Having reviewed the development and having reviewed our advice on CAR, we now conclude that the development would have had the potential to have been granted a simple licence under CAR. An application for a simple licence under CAR, however, cannot be accepted retrospectively and any structure which is regulated under this regime and which is in place without authorisation can only be dealt with through further enforcement action. We intend, therefore, to serve a warning letter to the applicant regarding this breach of CAR.

In summary, our revised position on this retrospective planning application is that we have **no objection** but we do intend to serve a warning letter to the applicant regarding the breach of CAR. Included in this warning letter we will advise that, in the event of the structure failing or requiring maintenance, any maintenance or replacing of the structure will require a simple CAR licence to be in place as the structure will not be deemed as ☐existing☐.

Please contact me if you would like to discuss this email or if you would like any further information.

Yours sincerely,

**Paul Lewis**

Senior Planning Officer

Planning Service, SEPA, Silvan House, 231 Corstorphine Road, Edinburgh, EH12 7AT

Direct line: 0131 273 7334

Email: [paul.lewis@sepa.org.uk](mailto:paul.lewis@sepa.org.uk)





## CHX Planning Local Review Body - Generic Email Account

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**From:** Bruce Miller [REDACTED]  
**Sent:** 05 May 2018 10:15  
**To:** CHX Planning Local Review Body - Generic Email Account  
**Subject:** Re: TCP/11/16(530)

For the attn of Gillian Taylor

With reference to the above application and appeal my wife and I would like to reiterate our support in this matter and point out that Mr Paton has made significant changes to the works that were carried out so as to address objections and concerns that were raised.

As previously stated in our original supporting correspondence, the fencing off of the riverbank has massively improved the safety aspect of the bank which has suffered significant erosion and had left dangerous pathways (gullies) leading down to the river.

With the addition of the steps our family and the general public has safe access to the beautiful riverside.

It is our hope that the council view this application as a positive addition to the riverbank and rescind their refusal and grant retrospective permission.

Yours sincerely  
Bruce & Sheila Miller

[REDACTED]

Sent from my iPad



## **CHX Planning Local Review Body - Generic Email Account**

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**From:** R SINCLAIR <[REDACTED]>  
**Sent:** 05 May 2018 16:32  
**To:** CHX Planning Local Review Body - Generic Email Account  
**Subject:** TCP/11/16(530)

I refer to planning application 17/02003/FLL Change of use of ground at 26 Almond Grove, Huntingtowerfield, Perth.

I am pleased that the planning department refused this application with the reasons for refusal expressing beautifully in official language the points I tried to make in my objection to the application.

The situation has not changed and I would hope that the appeal is dismissed.

R. F. Sinclair



## CHX Planning Local Review Body - Generic Email Account

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**From:** George Brown [REDACTED]  
**Sent:** 07 May 2018 22:16  
**To:** CHX Planning Local Review Body - Generic Email Account  
**Subject:** Support for Mr Paton, 26 Almond Grove

I am sending this email in support of Mr Paton at 26 Almond Grove, Huntingtowerfield, what he has done to the river bank, with the access steps in my opinion has completely reformed a derelict part of the river for which nobody could get to the river, only today I walked passed and saw a elderly couple siting down at the the river enjoying the tranquility, also some kids that parked there bikes at the top and were enjoying the river in complete safety, I still don't understand why it has got to this situation apart from jealousy on the part of some objectors, if only more people were like Mr Paton and looked after property they owned, and also I saw one of the objections was, when you are walking passed you could no longer see the river, well I would like to bring to your attention the big wall for the flood prevention scheme which blocks out everything.

Yours in hoping common sense will come through

George Brown  
[REDACTED]

Sent from my iPad  
Sent from my iPad



## **CHX Planning Local Review Body - Generic Email Account**

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**From:** Mark Myles <mm@mbmplanning.co.uk>  
**Sent:** 21 May 2018 08:53  
**To:** CHX Planning Local Review Body - Generic Email Account  
**Subject:** TCP/11/16(530)

**Application Ref: 17/02003/FLL – Change of use of river bank to garden ground, erection of a shed, fence, gate, access steps and associated works (in retrospect) at 26 Almond Grove, Huntingtowerfield, Perth**

Dear Audrey

Thank you for your email of 9<sup>th</sup> May enclosing copies of the further representations (2 emails in support and 1 objection) received in respect of the above Notice of Review.

All I would wish to add is that the 2 additional representations in support both take account of several points raised within our grounds of appeal and also highlight the significant changes that have been carried out in response to the concerns that were raised by the appointed officer, whereas the 1 further objection fails to acknowledge anything raised in the grounds of appeal statement and doesn't add nothing new.

I look forward to hearing from you in connection with the date of the LRB meeting in due course.

Kind regards

Mark Myles  
MBM Planning & Development  
Algo Business Centre  
Glenearn Road  
PERTH  
PH2 0NJ

01738 450506  
07887 801965

