

LRB-2021-27
21/00001/FLL – S42 application to delete condition 6
(access upgrade) of permission 20/01319/FLL, land 180
metres south west of Powmill Cottage, Rumbling Bridge

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**LRB-2021-27
21/00001/FLL – S42 application to delete condition 6
(access upgrade) of permission 20/01319/FLL, land 180
metres south west of Powmill Cottage, Rumbling Bridge**

**PAPERS SUBMITTED
BY THE
APPLICANT**



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

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

Thank you for completing this application form:

ONLINE REFERENCE 100445799-001

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: | JJF Planning | | |
| Ref. Number: | | You must enter a Building Name or Number, or both: * | |
| First Name: * | Joe | Building Name: | |
| Last Name: * | Fitzpatrick | Building Number: | 35 |
| Telephone Number: * | 07974426615 | Address 1 (Street): * | Aytoun Crescent |
| Extension Number: | | Address 2: | |
| Mobile Number: | | Town/City: * | Burntisland |
| Fax Number: | | Country: * | United Kingdom |
| | | Postcode: * | KY3 9HS |
| Email Address: * | joe.fitzpatrick390@gmail.com | | |

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="Kevin"/> | Building Number: <input type="text"/> |
| Last Name: * | <input type="text" value="O'Reilly"/> | Address 1 (Street): * |
| Company/Organisation | <input type="text"/> | Address 2: |
| Telephone Number: * | <input type="text"/> | Town/City: * |
| Extension Number: | <input type="text"/> | Country: * |
| Mobile Number: | <input type="text"/> | Postcode: * |
| Fax Number: | <input type="text"/> | |
| Email Address: * | <input type="text" value="joe.fitzpatrick390@gmail.com"/> | |

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"/> |
| Address 2: | <input type="text"/> |
| Address 3: | <input type="text"/> |
| Address 4: | <input type="text"/> |
| Address 5: | <input type="text"/> |
| Town/City/Settlement: | <input type="text"/> |
| Post Code: | <input type="text"/> |

Please identify/describe the location of the site or sites

As per S42 application - 21/0001/FUL

| | | | |
|-----------|-------------------------------------|---------|-------------------------------------|
| Northings | <input type="text" value="698388"/> | Easting | <input type="text" value="301658"/> |
|-----------|-------------------------------------|---------|-------------------------------------|

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)

S42 application 21/0000/FLL to delete condition 6 (access upgrade) of permission 20/01319/FLL
180 Metres South West Of Powmill Cottage Rumbling Bridge

Land

Type of Application

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

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

What does your review relate to? *

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

Statement of reasons for seeking review

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

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

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

See attached correspondence of 16th July 2021 - Notice of Review - 21/00001/FLL S42 application to delete condition 6 (access upgrade) of permission 20/01319/FLL Land 180 Metres South West Of Powmill Cottage Rumbling Bridge

Have you raised any matters which were not before the appointed officer at the time the Determination on your application was made? *

☐ Yes ☒ No

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

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review. You can attach these documents electronically later in the process: * (Max 500 characters)

LIST OF DOCUMENTS Document 1 – Perth and Kinross Council Decision Notice 21/00001/FLL. Document 2 – Supporting Statement. Document 3 – Report of Handling 21/00001/FLL. Document 4 - Planning Application Form 21/00001/FLL

Application Details

Please provide the application reference no. given to you by your planning authority for your previous application.

21/00001/FLL

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

02/01/2021

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

19/04/2021

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

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 Joe Fitzpatrick

Declaration Date: 16/07/2021

Joe Fitzpatrick

Planning Consultant

Joe.fitzpatrick390@gmail.com

07974426615

01592874360

The Secretary
Local Review Body
Perth and Kinross Council
Committee Services
Council Building
2 high Street
Perth
PH1 5PH

16th July 2021

Dear Cllrs,

Notice of Review - 21/00001/FLL S42 application to delete condition 6 (access upgrade) of permission 20/01319/FLL Land 180 Metres South West Of Powmill Cottage Rumbling Bridge

Before launching into this Review submission, I would first of all like to thank the Local Review Body for the opportunity to have this matter reconsidered.

You will by now have read all the information I submitted with the application as well as the Council's Report of Handling. However, in breaking with convention, you'll be glad to hear that I'm not intending to do a blow by blow rebuttal on the many points raised in the Report of Handling. I'm also not intending to exhaustively repeat all information previously submitted by myself in support of this case. As you will have noted, the case is set out in detail under my correspondence of the 3rd January 2021 which was submitted in support of the application. Suffice it to say that the terms of Condition 6 clearly breach the provisions of the Scottish Government's Conditions Circular (Circular 4/1998), mainly due to the unreasonableness of imposing a £350,000.00 burden on the applicant before they even look at any development on the site itself. In this regard, the Council's assertion that "the personal financial circumstances of the applicant" are irrelevant, does not in any way obviate the situation or provide absolution from the moral imperative to try and find a way forward. It's not like this is a situation where, had it not been for the "personal financial circumstances of the applicant", it would have been otherwise reasonable to impose such a huge financial burden.

I'm also not intending to get involved in issues of blame as to how we've arrived at the current stalemate position. The key issue is whether it is reasonable to expect someone who is seeking to establish a business use with an associated dwellinghouse, to pay £350,000.00 to install the access roadway, without any prospect of being able to secure any form of reimbursement from the other property owners who will then benefit from the road. The prospect of such an outcome could have easily been avoided by a requirement for all applicants to enter into a Section 75 agreement that would ensure joint responsibility for the cost of installing the road.

To the contrary, this statement focuses on finding a way to break the stalemate and enable development of the wider employment land site to progress through positive cooperation between all the parties involved. Although it is recognised that there is no right of appeal on/

a Breach of Conditions Notice if my client fails to comply with the terms of Condition 6 (which is a very real prospect unless he wins the National Lottery), given that the ultimate recourse will then be to the Procurator Fiscal, I'm hoping that my client's willingness to try and find a solution will be reciprocated by the Local Review Body.

As it stands, if the matter comes before the PF then the clear breach of Circular 4/1998 is likely to result in a decision by the PF not to take any further action. The terms of Condition 6 will then become null and void and the Council will be unable to secure any improvement to the access. However, my client recognises the need for an improved access to be formed and is willing to cooperate with a reasonable approach from the Council in order to achieve this.

The solution my client is offering involves entering into a formal Section 75 Agreement to form the portion of the access road immediately adjoining his property in accordance with the specification submitted with the application. In addition, my client is willing to agree to make a contribution towards formation of the bell mouth at the access of the site with the A977 and any portions of the access track which require a similar cost sharing agreement, it being the case that the full access track is not fronted by proposed development.

The Local Review body will note that this offer has already been made as part of the application but rejected on the basis that such an offer will "fail to provide an appropriate delivery mechanism for the upgrade of the entire access track" as stated in the reason for refusal. Therefore, by implication, if this proposed solution were to be considered an appropriate mechanism which would lead to the upgrade being achieved, then the proposals would be considered acceptable. In this regard, given that every other property owner along the access track is faced with the same restrictions under their respective planning permissions, it is unclear why the Council considers that the solution already proposed will not work.

If a relaxation to the terms of Condition 6 is granted to my client then he will build the section of road in front of his property in accordance with the submitted details and also agree to contribute to the shared responsibility for the works at the access bell mouth etc. All the other property owners who have planning permission along this route will then retain the full burden to provide the roadway which has also been imposed on their planning permissions. To remove such a planning condition these other property owners will then need to enter into the same agreement with the Council – or face the prospect of having to pay £350,00.00 to install the road in accordance with their planning conditions. It's not difficult to see what option they will choose.

Although it is acknowledged that the solution is not ideal in that the road will not be built in one single phase, progress towards completion will nevertheless be achieved in relation to the scale of demand for the use of the road. In my client's case, although there will be portions of the road to the east of his property which will not be improved until the land owners to the east undertake similar works, the existing track eastwards is perfectly suited to providing adequate access pending such more substantial improvements being made.

Also, although the road will not be constructed to the full specification of an adoptable road, the standard proposed under this application is more than adequate to provide for the level of development. In this regard my client would also be more than happy to agree to shared maintenance of the access roadway, thereby relieving the Council of an ongoing maintenance burden.

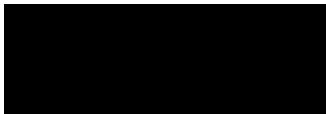
We have a situation here where errors in the past in dealing with successive planning permissions over many years has resulted in a stalemate which is preventing any form of development taking place. How can one person reasonably be expected to raise development/

finance to cover a £350,000.00 cost which will not then be reflected in the resulting asset value. Unless this stalemate is broken this innovative employment land model, a model which directly promotes current moves towards working from home, will remain undeveloped in perpetuity.

This innovative employment land model is one which the Council should be actively seeking to promote and although the above solution represents a compromise on the “platinum gold standard”, it does at least mean that progress can be made towards the delivery of a very worthwhile and forward thinking employment land model, the benefits of which far outweigh the scale of the compromise the Council is being asked to make.

In closing, I've kept this submission fairly brief so as to focus on the key issue. If there's anything more that the Review Body needs in terms of wider information to support your assessment then I will make sure this is provided by return.

Yours sincerely,

A black rectangular box redacting the signature of Joe Fitzpatrick.

Joe Fitzpatrick BSc(Hons) MRTPI



Mr Kevin O'Reilly
c/o JJF Planning
Joe Fitzpatrick
35 Aytoun Crescent
Burntisland
KY3 9HS

Pullar House
35 Kinnoull Street
PERTH
PH1 5GD

Date of Notice: **19th April 2021**

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT

Application Reference: **21/00001/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 2nd January 2021 for Planning Permission for **S42 application to delete condition 6 (access upgrade) of permission 20/01319/FLL Land 180 Metres South West Of Powmill Cottage Rumbling Bridge**

David Littlejohn
Head of Planning and Development

Reasons for Refusal

- 1 The development requires the upgrade of the access for pedestrian and road safety reasons and therefore there is considered to be a sound justification for the existing condition in accordance with the requirements of Policy 60B of the Perth and Kinross Council Local Development Plan 2 (2019) and the National Roads Development Guide in order to serve the development of the E23 allocated Employment site. The proposal, as submitted, fails to provide an appropriate delivery mechanism for the upgrade of the entire access track. Whilst the personal and financial circumstances of the applicant are noted, these are not considered to be sufficient to outweigh the requirements of the Development Plan.

Justification

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

Notes

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

Plan Reference

01

02

Joe Fitzpatrick Planning Consultant

Joe.fitzpatrick390@gmail.com
07974426615
01592874360

Development Management
Corporate and Democratic Services
Perth and Kinross Council
Pullar House
35 Kinnoull Street
PERTH
PH1 5GD

3rd January 2020

Dear Sir/Madam

Section 42 Application Relating to Condition 6 of Planning Permission 20/01319/FLL Land 180 Metres South West Of Powmill Cottage Rumbling Bridge

I act on behalf of Kevin O'Reilly The Ochil, Newbigging Farm, Fossoway. This correspondence is submitted to Perth and Kinross Council for consideration in support of the application under Section 42 of the Town and Country Planning (Scotland) Act 1997 relating to Condition 6 of planning permission 20/01319/FLL for the erection of a dwellinghouse and office. Condition 6 of planning permission 20/01319/FLL states:

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

The Report of Handling Associated with the planning permission sets out the Council's expectation in relation to achieving compliance with the terms of Condition 6 and links this to the Road Construction Consent (RCC) that was obtained by a third party prior to my clients acquisition of the site in May 2018. This RCC relates to the overall development of the wider Perth and Kinross Local Development Plan Site E23. As such the RCC relates to a roadway construction extending over 300m from the A977 to the furthest dwellinghouse access at Plot 1, the neighbouring site to the west of the approved development site.

The outcome of the intention of the above planning condition is that despite the RCC relating to the wider development of Site E23, comprising up to 7 dwellings with associated Class 4 office units, the full burden of the cost associated with provision of the roadway will fall on the dwellinghouse which is completed first. A preliminary costing exercise carried out by my client in relation to provision of an adoptable roadway, including construction of a temporary road to maintain access to properties beyond during construction, indicates that the cost of implementing the works to fully adoptable standard will be in the order of £320k - £350k.

As such the intended terms of Condition 6, if related to the RCC as suggested within the Report of Handling (Ref; 20/01319/FLL), are considered to fail to satisfy the various test of a planning condition set out under Scottish Government Circular 4/1998 – The Use Of Conditions in Planning Permissions. In addition, the position is fundamentally at odds with guidance set out within the SPP relating to rural development which states that the planning system should encourage rural development that supports prosperous and sustainable communities and businesses (SPP – Para 75). In this regard, the financial burden imposed by the intended outcome of Condition 6 renders the approved development financially unviable.

As a further consideration, the approach adopted under Condition 6, if related to the RCC, is also fundamentally at odds with the terms of the Chief Planners Letter of 18th Jan 2016 relating to a requirement to align Planning and Road Construction Consents. In particular the Chief Planners Letter states:

Based on all the work to date I hope that you will agree that alignment of these consents will be a positive step to support more effective delivery and that Planning and Roads services should now support that.

Although the Chief Planners Letter refers primarily to the delivery of housing land, adoption of the alignment principle also extends to wider land use types such as the delivery of employment land. In this regard, in order to achieve such alignment between the RCC and the wider Site E23 with which it is directly linked, it is considered that the Council had an opportunity to do so within the context of the allocation of Site E23 under the Perth and Kinross Local Development Plan. Given that the RCC is directly associated with the wider Site E23 then a requirement that development of the overall site be subject to a mechanism to ensure shared responsibility for implementation of the RCC, the terms of which have been known since 2012, would have represented best practice. As it stands the LDP allocation makes no reference to the RCC, or any burden relating to the provision of access within the Site Specific Developer Requirements.

In relation to Circular 4/1998 there is a requirement that a planning condition meets a range of tests. In this regard Circular 4/1998 states:

While the power to impose planning conditions is very wide, it needs to be exercised in a manner which is fair, reasonable and practicable. Planning conditions should only be imposed where they are:

- *necessary*
- *relevant to planning*
- *relevant to the development to be permitted*
- *enforceable*
- *precise*
- *reasonable in all other respects*

The Secretary of State attaches great importance to these criteria being met so that there is an effective basis for the control and regulation of development which does not place unreasonable or unjustified burdens on applicants and their successors in title.

In relation to the necessity test, it is clearly the case that a single dwellinghouse would not require to be served by a fully adoptable roadway. The condition is clearly aimed at addressing wider development considerations associated with Site E23 as opposed to the site specific development consideration for which planning permission has been granted. The terms of any condition relating to the site need to be defined in accordance with the development proposed and not in relation to the wider potential for development under Site E23. In this regard, although Circular 4/1998 permits a condition relating to an access to be related to occupation of development, the terms of the Circular clearly state that this should be related to the relevant buildings involved, not one single building forming part of the relevant group.

The above consideration is of particular relevance given that the potential currently exists for no other development to take place associated with Site E23. In such circumstances the provision of a fully adoptable specification of roadway, as proposed under the RCC, to serve only one dwellinghouse, would be completely unnecessary. In addition, the provision of the portion of roadway beyond the site to the west is not necessary in relation to the approved development.

Also, in terms of the necessity test, the dwellinghouse approved under planning permission 20/01319/FLL represents only the fourth residential unit extending along the track from Craigton, the three other dwellinghouses comprising Craigton House, Craigton Steading and Craigton Bungalow. Although planning permission (Ref: 15/01348/FLL) for a further dwellinghouse had previously been granted to the immediate west of the approved development site, this permission has now lapsed. However, even if planning permission were to be granted for this neighbouring site given its location within Site E23, this would be the last dwelling capable of being constructed, thereby bringing the total number of residential units to only 5. The SCOTS National Road Development Guide states at paragraph 2.1.4 Design Guidance and Adoption Standards, that:

Generally 5 or fewer dwellings (more if a 'brownfield site', eg redeveloped farm steadings) will be served by a 'private access' which, as there is no right of public access, will not require Construction Consent and will not be available for adoption.

Therefore, the intention of Condition 6 also fails the necessity test in that the National Guide does not require the access to the property to be constructed to adoptable standard.

Given the above considerations relating to necessity, with the exception of the provisions of Condition 6 relating to car parking within the curtilage of the dwelling, it is clearly the case that the intended outcome also fails to satisfy the test of relevance to the development to be permitted. In this regard Circular 4/1998 states:

Unless a condition fairly and reasonably relates to the development to be permitted, it will be ultra vires. It is not, therefore, sufficient that a condition is related to planning objectives: it must also be justified by the nature of the development permitted or its effect on the surroundings. (paras 23 and 24)

Given the above, in terms of the proportionality of the intended outcome of Condition 6 compared to the impact of approved development, the details approved under the RCC clearly represents a standard which is not relevant in terms of scale to the development that has been permitted. This consideration is further supported in that the relevant standard of access associated with the development has already been set under the National Guide which confirms that the existing private access is sufficient to serve the approved development.

In relation to the test regarding whether a condition is enforceable, paragraph 37 of Circular 4/1998 advises that:

It is unreasonable to impose a condition worded in a positive form which developers would be unable to comply with themselves, or which they could comply with only with the consent or authorisation of a third party

It will be noted that the existing private access is not owned by my client and that the consent of third parties would be required in order to implement the intended terms of Condition 6. This requirement of Circular 4/1998, when considered against the clear failure to satisfy other tests of necessity and relevance under the Circular, is sufficient to support a case that the terms of Condition 6 also fail to meet the test relating to enforceability.

In addition to the above, one enforcement option open to the Council would be to serve a Breach of Conditions Notice (BCN) in the event of non-compliance with the intended outcome of Condition 6. In this regard Annex J to Circular 10/2009 – Planning Enforcement, advises that:

It is important that any conditions imposed on a planning permission should reflect the current guidance on the use of conditions (see SODD Circular 4/1998) (para 3)

Therefore, given the failure of Condition 6 to meet the tests of Circular 4/1998 relating to necessity and relevance, the above terms of Circular 10/2009 provides further support for the case that the condition also fails the requirements to Circular 4/1998 relating to enforceability.

In relation to the test of precision set out under Circular 4/1998, it is noted that the terms of Condition 6 do not actually require any works to be carried out in order to achieve compliance. Instead, the condition simply states that:

“all matters”....“shall be in accordance with the standards required by the Council as Roads Authority.”

Given that an approved RCC exists for the site then full compliance with the terms of Condition 6 has already been achieved. This consideration is also relevant to matters relating to the necessity and enforceability tests under Circular 4/1998.

A further test under Circular 4/1998 requires that a condition be reasonable in all other respects. Given the above consideration relating to necessity, relevance to the approved development and enforceability it is considered that the terms of Condition 6 also fail the requirement that a condition be reasonable. In terms of proportionality, the intended requirement to provide a fully adoptable access extending some 300m from the site eastwards to the A977 and some 20m westwards to service the full extent of Site E23, in accordance with the RCC, is clearly an unreasonable requirement to impose on a development comprising a single dwellinghouse.

In addition, to impose a condition based on speculation regarding further development as part of Site E23, rather than in relation to the current circumstances associated with the approved development, is considered to be unreasonable.

In terms of the financial burden that the intended outcome of Condition 6 would impose, Circular 4/1998 advises at paragraph 35 that:

*Even where a condition would not be so unreasonably restrictive as to be ultra vires, it may still be so onerous that as a matter of policy it should be avoided. For example, a condition which would put a severe limitation on the freedom of an owner to dispose of his property, **or which would obviously make it difficult to finance the erection of the permitted building by borrowing on mortgage**, should be avoided on these grounds. An unduly restrictive condition can never be made acceptable by offering the prospect of informal relaxation of its effect.*

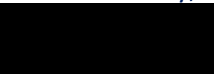
Given that the financial burden imposed by the intended outcome of Condition 6 would render the approved development financially unviable, it is considered unreasonable under the terms of Circular 4/1998.

Finally, in relation to Circular 4/1998 and the reasonableness test, it is understood that the SCOTS National Roads Development Guide relating to a permissible limit of 5 dwellinghouse units being served off a private access is a standard applied elsewhere by the Council. In view of this it is considered wholly unreasonable for the Council to elect not to do likewise in relation to this development when there is clearly no reasonable prospect of any further development beyond the 5 unit standard being applied elsewhere.

Clearly, the intention of Condition 6 with respect to the access etc is such that compliance with the RCC is not a definite requirement of the condition, given that no direct mention is made of the RCC as the standard that must be adopted. Instead, the condition refers to matters being in accordance with the standards required by the Council as Roads Authority. Therefore, notwithstanding above considerations, not least of which relating to the fact that the terms of Condition 6 do not actually require any works to be carried out, my client recognises that some minor improvement to the existing private access may be justified and on this basis, he would be happy to enter into discussion with the Council.

I trust that the above matters will be taken into consideration as part of the assessment process for this application.

Yours sincerely,

A black rectangular box redacting the signature of Joe Fitzpatrick.

Joe Fitzpatrick

REPORT OF HANDLING

DELEGATED REPORT

| | | |
|------------------------|---|------|
| Ref No | 21/00001/FLL | |
| Ward No | P8- Kinross-shire | |
| Due Determination Date | 1st March 2021 Extended to 1st May 2021 | |
| Draft Report Date | 14th April 2021 | |
| Report Issued by | | Date |

PROPOSAL: S42 application to delete condition 6 (access upgrade) of permission 20/01319/FLL

LOCATION: Land 180 Metres South West Of Powmill Cottage
Rumbling Bridge

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: Not undertaken due to Covid 19 restrictions

SITE PHOTOGRAPHS

None

BACKGROUND AND DESCRIPTION OF PROPOSAL

Planning permission under Section 42 of the Planning Act is sought to delete condition 6 of permission 20/01319/FLL which relates to the upgrade of the existing access road serving an application site where a dwellinghouse with associated office accommodation has been approved. The site is located within allocated employment site E23 which is located to the north west of Powmill. The access also serves properties to the west beyond the allocated site, Craigton House, Craigton Bungalow and The Steading and a working farm. The access is also part of the core path network (FSWY/141).

The application is made under Section 42 of the Town and Country Planning (Scotland) Act 1997 (as amended) and is an application for planning permission for the development of land but without compliance with a condition or conditions attached to a previous planning permission.

The applicant wishes to proceed with the development of the house and office accommodation on this site without complying with condition 6 which reads as follows:

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

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

Whilst not explicitly stated in the condition, the principle purpose of this condition is to ensure the upgrade of the access serving the site to Roads Construction Consent standards and this has been recognised in the historic permissions granted on this site.

There have been numerous permissions granted on this site for dwellings with associated office accommodation all of which include the requirements of condition 6 to upgrade the access. The requirement to upgrade the access has been a historic requirement of this site since the initial approval was granted in 2003 and this requirement has been applied to each permission granted since then.

SITE HISTORY

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

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

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

15/01258/FLL Erection of dwellinghouse, workshop and office (Class 4) 17 September 2015 Application Approved

18/00925/FLL Application under Section 42 of the Town and Country Planning (Scotland) Act 1997 to develop land without complying with Condition 3 (office/workshop ownership) of planning permission 15/01258/FLL (Erection of dwellinghouse, workshop and office (Class 4)) 27 June 2018 Application Approved

18/02124/FLL Erection of a dwellinghouse and office (Class 4) 31 January 2019 Application Refused

19/00631/FLL Erection of a dwellinghouse and office (Class 4) 28 May 2019 Application Approved

20/00764/FLL S42 application to modify condition 6 (access and road) of permission 19/00631/FLL 4 August 2020 Application Withdrawn

20/01319/FLL Erection of a dwellinghouse and office (class 4) 26 October 2020 Application Approved

PRE-APPLICATION CONSULTATION

Pre application Reference: None

NATIONAL POLICY AND GUIDANCE

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

DEVELOPMENT PLAN

The Development Plan for the area comprises the TAYplan Strategic Development Plan 2016-2036 and the Perth and Kinross Local Development Plan 2 (2019).

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 2 – Adopted November 2019

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

The principal policies are:

Policy 15: Public Access

Policy 60B: Transport Standards and Accessibility Requirements: New Development Proposals

OTHER POLICIES

None

CONSULTATION RESPONSES

INTERNAL

Transport Planning – objection on grounds of lack of appropriate mechanism to secure upgrade of entire access track.

EXTERNAL

Fossoway Community Council – objection due to concerns that deletion of condition would impact on road safety and result in the access track not being upgraded. There is a historic requirement to upgrade the access serving the E23 allocation. Concerns are also expressed regarding impact on use of core path which runs along the access.

REPRESENTATIONS

The following points were raised in the 1 representation received from the Fossoway Community Council:

- Impact on road safety
- Planning history
- Impact on use of core path

The above issues are addressed within the appraisal section below.

ADDITIONAL STATEMENTS

| | |
|--|----------------------------------|
| Screening Opinion | Not Required |
| Environmental Impact Assessment (EIA): Environmental Report | Not Required |
| Appropriate Assessment | AA Not Required |
| Design Statement or Design and Access Statement | Not Required |
| Report on Impact or Potential Impact | Supporting Planning Statement |

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 and the adopted LDP2.

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.

Assessment

The submission includes a Supporting Statement which considers that condition 6 fails to meet the various tests set out in Scottish Government Circular 4/1998 - The Use of Conditions in Planning Permissions and that the condition is at odds with guidance set out in Scottish Planning Policy (SPP) regarding rural development. It states that the condition puts a financial burden on the developer and renders the approved development financially unviable. It goes on to state that the Council

should have secured delivery of the access upgrade through some form of mechanism to ensure shared delivery of the access upgrade and that this could have been done through the recent adoption of the LDP2.

In summary the submission indicates that the condition fails to meet the six tests outlined in the circular, namely they require to be:

- Necessary
- Relevant to planning
- Relevant to the development permitted
- Enforceable
- Precise
- Reasonable in all other aspects

The submission concludes that a single dwellinghouse and associated office would not require to be serviced by a fully adoptable roadway and therefore the condition is not relevant to the development permitted and states that the condition clearly seeks to cater for the wider development of the E23 allocated site. The submission goes on to state that the total number of dwellinghouses being served by the access would be 5 and questions whether there is a need for the access to be brought up to adoptable standards as the National Roads Development Guide states in para 2.1.4 that generally 5 or fewer dwellings will be served by a "private access" which will not be available for adoption. The submission also indicates that the access is owned by a third party and points out that delivery of the upgrades would require the permission of third parties and that Circular 4/1998 advises that it is unreasonable to impose a condition worded in a way which the developer would be unable to comply with or which they could only comply with the consent of a third party.

The deliverability of allocated sites is a key issue in planning currently and the Council is currently investigating how this can be amalgamated into Local Development Plan allocations through Delivery Strategies for Allocated Sites. However, this mainly references larger scale housing development sites but the strategic issue is relevant to this permission. This issue is recognised nationally in the Scottish Government publication Local Development Plans - Deliverability of Site Allocations: Research. The deliverability of allocated sites has come into greater focus in NPF3 and SPP. It is therefore clear that the issue of deliverability has been given larger focus recently. Whilst this issue is recognised and acknowledged, this particular site has a long standing allocation which dates back to the Kinross Area Local Plan 2004 which was long before the issue of delivery strategies for sites was a key focus. On discussion with the Planning and Strategy team there was some consideration during the preparation of the LDP2 as to whether a delivery strategy could be secured for this site. However, given the allocated site was no longer in the ownership of one party and that the plots had been sold off it was considered that it would not be possible to secure a delivery strategy for the site.

Need for Access Upgrade

The original permission on this site which dates back to 2003 has always specified the need to upgrade the access into the site and a detailed layout of the upgrade accompanied that application. The access is required to be upgraded to an adoptable standard and this longstanding requirement for this allocated site has

been transferred down to each subsequent permission which has been granted on the E23 site. The applicant's submission appears to focus on the site and E23 allocation as dwellinghouses and frequently mentions dwellinghouses within the submission. It references dwellinghouses when it refers to associated policy guidance. Allocated site E23 is an employment site which allows for associated residential development. Therefore each permission which has been granted on the allocated site allows for this and the upgrade of the access is required on this basis. The traffic levels for each plot are considered to be higher than that of a normal residential development given the presence of employment/office based uses on each plot. There is potential for visiting members of the public and employees to utilise the access track in addition to the traffic associated with the dwellinghouses and the upgrade of the track is required in order to cater for this increased usage together with ensuring the safety of users of the core path which runs along the access. Therefore, the reference solely to dwellinghouses within the Supporting Statement is flawed.

Nevertheless, it was considered to be prudent to assess whether the upgrade of the access to an adoptable standard was necessary in light of current guidance and policy. The applicant has submitted a sectional drawing which indicated a reduced specification for the access and it is noted that this is not to an adoptable standard and would not be subject to the same maintenance requirements as an adoptable road.

It is also necessary to consider how this revised specification could actually be delivered along the entire 300 metre length of the access track which serves the E23 allocation.

Delivery of the Proposed Upgrade

The condition which is currently applied to this permission and other live permissions along the access requires the upgrade of the entire length of access track (approx 300 metres) from the western end of plot 1 to the access bellmouth with the A977 public road. As mentioned above this is a longstanding requirement for new build development within the E23 allocation for the access to be upgraded and has been applied to all permissions for employment/dwellinghouses uses granted to date.

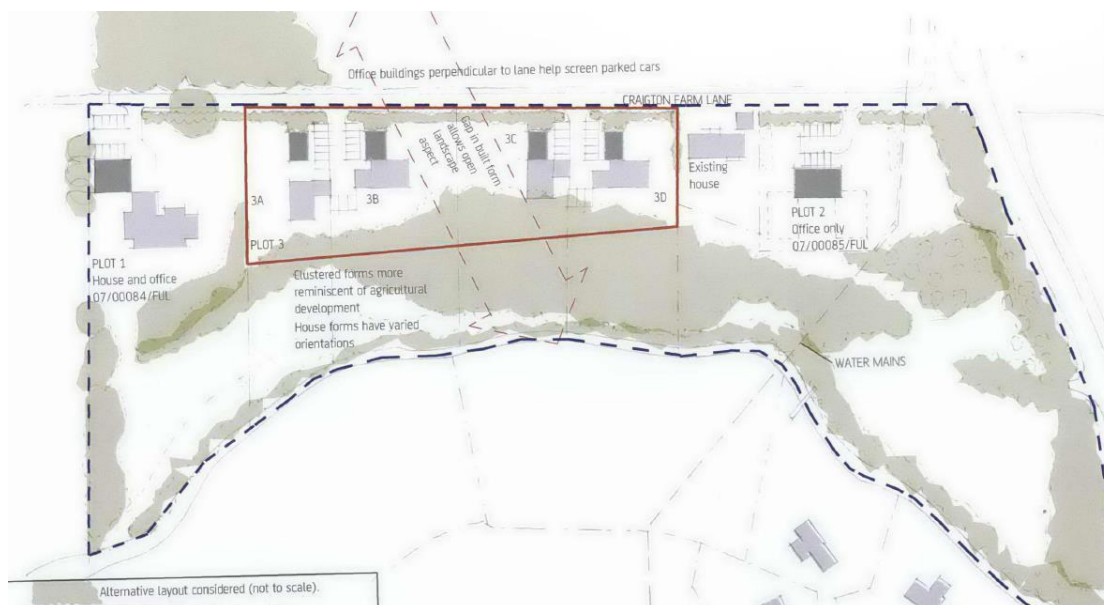
The developer has indicated that the upgrade of the track to serve the entire site is not appropriate given that the permission relates to one dwellinghouse and that this particular permission (20/01319/FLL) does not seek to develop out the entire E23 allocated site. The submission therefore concludes that it is unreasonable to apply a condition of this nature as it is not relevant to the development which is proposed. Whilst this view is noted, the condition has been consistently applied to permissions on this site and the applicant would have been aware of the requirements of this condition when purchasing the land.

The applicant's agent was asked to outline how any proposal to delete or amend condition 6 would work in practise as there is still a requirement to secure the upgrade of the access to serve the allocated E23 site. The recommendation of the applicant's agent is that the developer of each plot upgrade the access as it fronts onto that specific plot. The agent has suggested that the other plot owners are ready to submit similar Section 42 applications to amend their permissions, similar to this

current application and has argued that this would allow the Council to secure the upgrade of the access elsewhere along the remaining track. There is, however, no evidence to suggest that this is the case and none of the other land owners have approached the Council on this basis. From reviewing the planning history of the E23 allocation it is noted that the following situation is evident:

- Plot 1 (the furthest west of the plots) had a permission in 2015 (15/01348/FLL) which has since expired.
- Plot 2 (the furthest east of the plots) now has permission for a 5 berth caravan park (19/01073/FLL) which is accessed directly from the bellmouth and therefore does not require to utilise the track for access and there is no condition on this permission which requires the upgrade of the access.
- Plot 3A is the site subject to this application.
- Plot 3B and 3C have a live permission for the erection of 2 dwellinghouses and offices (21/00809/FLL) which is subject to the same condition regarding access upgrade.
- Plot 3D (located to the immediate west of Powmill Cottage) had a permission in 2016 (16/01058/FLL) which has since expired.

The plan below is taken from an earlier approval on the site but helps to provide some context:



There is an extensive length of access track which requires to be upgraded from the public road to the east, along to plot 1 to the very west of the allocated site. There are therefore sections of the length of the access track which would be not upgraded based on the proposal which has been put forward by the applicant's agent for each owner to only upgrade the section immediately adjacent to their plot. This includes the track in front of the existing house (Powmill Cottage), together with the stretch from Powmill Cottage to the public road and the land outside plots 1 and 3D which do not have a current permission. The Council would therefore have no mechanism

to secure the upgrade of the entire length of access track based upon the proposal which has been put forward in this submission.

There is a long standing historic requirement for the upgrade of the access associated with the E23 allocation and it would be for the applicant/developer on each plot of land to be aware of this when they purchased the land. The apportioning of costs/sections of the access for upgrade is not considered to be a material planning consideration and is a civil matter which requires to be resolved between the owners/developers of the relevant plots which are to be served by the access.

On that basis it is suggested to the applicant that discussions are undertaken with the other owners and any future developers to consider how the cost of the works to upgrade the access are apportioned to each site owner as it is not considered to be the remit of the Planning Authority to split up and apportion costs and upgrade works for sections of the access track. Furthermore, there is also no guarantee that the other developers will come forward and develop out the remaining sites or seek a Section 42 application for their particular plot which limits the ability of the Council to secure the upgrade and may result it parts of the track being upgraded and other parts left in its current state for a considerable period of time. Therefore, the proposed delivery mechanism for the upgrade of the track which has been put forward by the agent is fundamentally flawed and would offer no guarantees to the Council that the access would ever be entirely upgraded. Therefore the delivery mechanism for securing the upgrade of the access at a future date is not acceptable.

The key question to ask is at what point would the required upgrade of the access be undertaken should the condition be deleted. Ultimately if the condition is deleted or amended to only require the applicant to upgrade the length of track which fronts their plot, the burden and cost of upgrading the remainder of the access would then fall on the next dwellinghouse and office to be developed, which is also not considered to be appropriate. If the Council approved this application to delete or amend condition 6, this would set a precedent for the deletion or amendments of the conditions on all other plots being served by this access and there would be a strong possibility that the entire E23 allocated site could be developed without the appropriate upgrades to the access serving the new development to the detriment of pedestrian and road safety. The Council has considered what mechanisms are available to secure the upgrade of the entire length of access following discussions between Strategy & Policy and Development Management. No solutions are apparent which would deliver the upgrade of the full extent of the track.

Ultimately it is the responsibility of a developer to ensure that the conditions on a planning permission can be adequately addressed and the role of a solicitor to consider this when purchasing land. Some sort of collaboration agreement should have been entered into with the other sites at the time of purchase to ensure the requirements of the planning permissions could be delivered. This is considered to be the applicant's risk and not a matter which the Planning Authority can adequately resolve without compromising the delivery of the access upgrades for the wider site.

PLANNING OBLIGATIONS AND LEGAL AGREEMENTS

None required.

DIRECTION BY SCOTTISH MINISTERS

None applicable to this proposal.

CONCLUSION AND REASONS FOR DECISION

The development requires the upgrade of the access for pedestrian and road safety reasons and therefore there is considered to be a sound justification for the existing condition in accordance with the requirements of Policy 60B and the National Roads Development Guide. Whilst it is considered that there may be some scope to reduce the requirements of the condition in terms of the specification of the access upgrade, there is still a requirement to secure an appropriate and robust delivery mechanism for the access upgrade and the proposal put forward by the applicant's agent fails to demonstrate any indication of an appropriate mechanism for delivery of the entire access upgrade.

Whilst the personal and financial circumstances of the applicant are noted these are not considered to be sufficient to outweigh the requirements of the Development Plan. On that basis the application to amend or delete condition 6 is recommended for refusal.

Reasons

The development requires the upgrade of the access for pedestrian and road safety reasons and therefore there is considered to be a sound justification for the existing condition in accordance with the requirements of Policy 60B of the Perth and Kinross Council Local Development Plan 2019 and the National Roads Development Guide in order to serve the development of the E23 allocated Employment site. The proposal, as submitted, fails to provide an appropriate delivery mechanism for the upgrade of the entire access track. Whilst the personal and financial circumstances of the applicant are noted these are not considered to be sufficient to outweigh the requirements of the Development Plan.

Justification

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

Informatives

None

Procedural Notes

Not Applicable.

PLANS AND DOCUMENTS RELATING TO THIS DECISION

01

02



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

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

Thank you for completing this application form:

ONLINE REFERENCE 100345827-001

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

Type of Application

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

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

Please provide the application reference no. given to you by your planning authority for your previous application and the date that this was granted.

Application Reference No: *

20/01319/FLL

Date (dd/mm/yyyy): *

22/09/2020

Description of Proposal

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

Section 42 Application For Removal/Amendment to Condition 6 of Planning Permission 20/01319/FLL

Is this a temporary permission? *

☐ Yes ☒ No

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

☐ Yes ☒ No

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

☒ No ☐ Yes – Started ☐ Yes - Completed

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

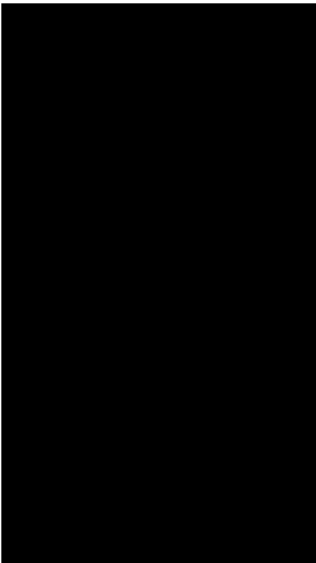

| | | | |
|-----------------------|------------------------------|--|-----------------|
| Company/Organisation: | JJF Planning | | |
| Ref. Number: | | You must enter a Building Name or Number, or both: * | |
| First Name: * | Joe | Building Name: | |
| Last Name: * | Fitzpatrick | Building Number: | 35 |
| Telephone Number: * | 07974426615 | Address 1 (Street): * | Aytoun Crescent |
| Extension Number: | | Address 2: | |
| Mobile Number: | | Town/City: * | Burntisland |
| Fax Number: | | Country: * | United Kingdom |
| | | Postcode: * | KY3 9HS |
| Email Address: * | joe.fitzpatrick390@gmail.com | | |

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

☒ Individual ☐ Organisation/Corporate entity

Applicant Details

Please enter Applicant details

| | | | |
|----------------------|--|--|---|
| Title: | Mr | You must enter a Building Name or Number, or both: * | |
| Other Title: | | Building Name: |  |
| First Name: * | Kevin | Building Number: | |
| Last Name: * | O'Reilly | Address 1 (Street): * | |
| Company/Organisation | | Address 2: | |
| Telephone Number: * | | Town/City: * | |
| Extension Number: | | Country: * | |
| Mobile Number: | | Postcode: * | |
| Fax Number: | | | |
| Email Address: * |  | | |

Site Address Details

Planning Authority:

Perth and Kinross Council

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

Address 1:

Address 2:

Address 3:

Address 4:

Address 5:

Town/City/Settlement:

Post Code:

Please identify/describe the location of the site or sites

Northing

698386

Easting

301650

Pre-Application Discussion

Have you discussed your proposal with the planning authority? *

☐ Yes ☒ No

Site Area

Please state the site area:

700.00

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)

Housing Plot

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.

| | |
|--|--|
| <p>Are you proposing any change to public paths, public rights of way or affecting any public right of access? * <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>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.</p> | |
| <p>How many vehicle parking spaces (garaging and open parking) currently exist on the application Site?</p> | <div style="border: 1px solid black; padding: 2px 10px;">0</div> |
| <p>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)? *</p> | <div style="border: 1px solid black; padding: 2px 10px;">4</div> |
| <p>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).</p> | |
| <h2 style="margin: 0;">Water Supply and Drainage Arrangements</h2> | |
| <p>Will your proposal require new or altered water supply or drainage arrangements? * <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> | |
| <p>Do your proposals make provision for sustainable drainage of surface water?? * <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (e.g. SUDS arrangements) *</p> <p>Note:-</p> <p>Please include details of SUDS arrangements on your plans</p> <p>Selecting 'No' to the above question means that you could be in breach of Environmental legislation.</p> | |
| <p>Are you proposing to connect to the public water supply network? *</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No, using a private water supply</p> <p><input checked="" type="checkbox"/> No connection required</p> <p>If No, using a private water supply, please show on plans the supply and all works needed to provide it (on or off site).</p> | |
| <h2 style="margin: 0;">Assessment of Flood Risk</h2> | |
| <p>Is the site within an area of known risk of flooding? * <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Don't Know</p> <p>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.</p> <p>Do you think your proposal may increase the flood risk elsewhere? * <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Don't Know</p> | |
| <h2 style="margin: 0;">Trees</h2> | |
| <p>Are there any trees on or adjacent to the application site? * <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>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.</p> | |
| <h2 style="margin: 0;">All Types of Non Housing Development – Proposed New Floorspace</h2> | |
| <p>Does your proposal alter or create non-residential floorspace? * <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> | |

Schedule 3 Development

Does the proposal involve a form of development listed in Schedule 3 of the Town and Country Planning (Development Management Procedure (Scotland) Regulations 2013 *

☐ Yes ☒ No ☐ Don't Know

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

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

Planning Service Employee/Elected Member Interest

Is the applicant, or the applicant's spouse/partner, either a member of staff within the planning service or an elected member of the planning authority? *

☐ Yes ☒ No

Certificates and Notices

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

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

Are you/the applicant the sole owner of ALL the land? *

☐ Yes ☒ No

Is any of the land part of an agricultural holding? *

☐ Yes ☒ No

Are you able to identify and give appropriate notice to ALL the other owners? *

☐ Yes ☒ No

If you cannot trace all the other owners, can you give the appropriate notice to one or more owner? *

☐ Yes ☒ No

Certificate Required

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

Certificate C

Certificates

The certificate you have selected requires you to distribute copies of the Notice 1 document below to all of the Owners/Agricultural tenants that you provided previously. Please note that your planning authority may be required to place an advertisement in a local newspaper. You may wish to contact the planning authority for further guidance.

Notice 1 is required

☒ I understand my obligations to provide the above notice before I can complete the certificates. *

Land Ownership Certificate

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

I hereby certify that – (1) –

I am/The applicant is unable to issue a certificate in accordance with Regulation 15 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 and in respect of the accompanying application;

(2) - No person other than myself/the applicant was an owner of any part of the land to which the application relates at the beginning of the period of 21 days ending with the date of the accompanying application.

or –

(3) - I have/the applicant has been unable to serve notice on any person other than myself/the applicant who, at the beginning of the period of 21 days ending with the date of the accompanying application, was owner [Note 2] of any part of the land to which the application relates.

or –

(2) - I have/The applicant has served notice on each of the following persons other than myself/the applicant who, at the beginning of the period of 21 days ending with the date of the accompanying application, was owner [Note 2] of any part of the land to which the application/appeal was owner [Note 2] of any part of the land to which the application relates.

Name:

Address:

Date of Service of Notice: *

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

or –

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

Name:

Address:

Date of Service of Notice: *

(4) – I have/The applicant has taken reasonable steps, as listed below, to ascertain the names and addresses of the other owners or agricultural tenants and *have/has been unable to do so –

The uncertainty relating to ownership relates purely to the access road. The residential plot itself is owned solely by the applicant. It is likely that one or all properties at Craighton Bungalow, Craighton Steading, Craighton House and Powmill Cottage will either own or jointly own the access track. There may also be a local farmer involved. Due to Covid19 restrictions it has not proved possible to carry out a site visit to make contact with the owners of these properties.

Signed: Joe Fitzpatrick

On behalf of: Mr Kevin O'Reilly

Date: 01/01/2021

☒ 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 principle where there is a crown interest in the land, have you provided a statement to that effect? *

☐ Yes ☐ No ☒ Not applicable to this application

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

☐ Yes ☐ No ☒ Not applicable to this application

Town and Country Planning (Scotland) Act 1997

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

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

☐ Yes ☐ No ☒ Not applicable to this application

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

☐ Yes ☐ No ☒ Not applicable to this application

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

☐ Yes ☐ No ☒ Not applicable to this application

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

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

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

Provide copies of the following documents if applicable:

A copy of an Environmental Statement. *

☐ Yes ☒ N/A

A Design Statement or Design and Access Statement. *

☐ Yes ☒ N/A

A Flood Risk Assessment. *

☐ Yes ☒ N/A

A Drainage Impact Assessment (including proposals for Sustainable Drainage Systems). *

☐ Yes ☒ N/A

Drainage/SUDS layout. *

☐ Yes ☒ N/A

A Transport Assessment or Travel Plan

☐ Yes ☒ N/A

Contaminated Land Assessment. *

☐ Yes ☒ N/A

Habitat Survey. *

☐ Yes ☒ N/A

A Processing Agreement. *

☐ Yes ☒ N/A

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

Declare – For Application to Planning Authority

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

Declaration Name: Mr Joe Fitzpatrick

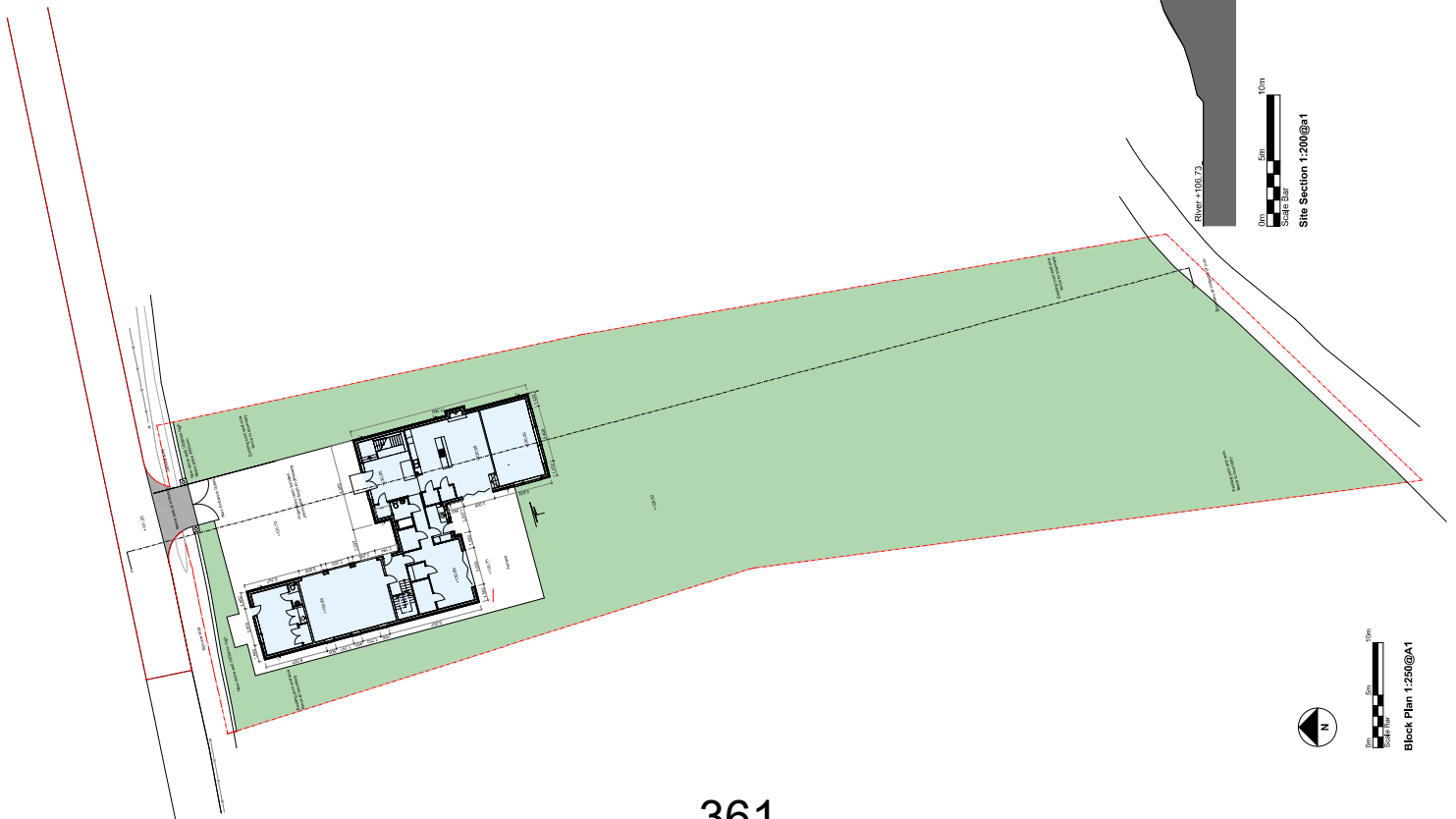
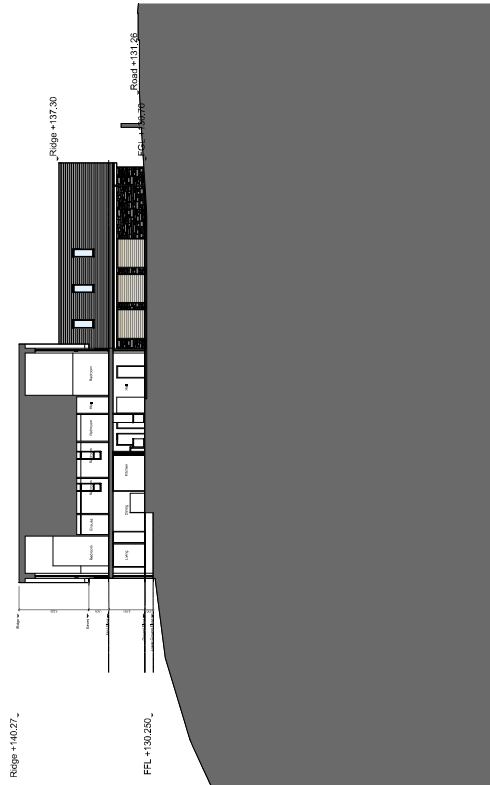
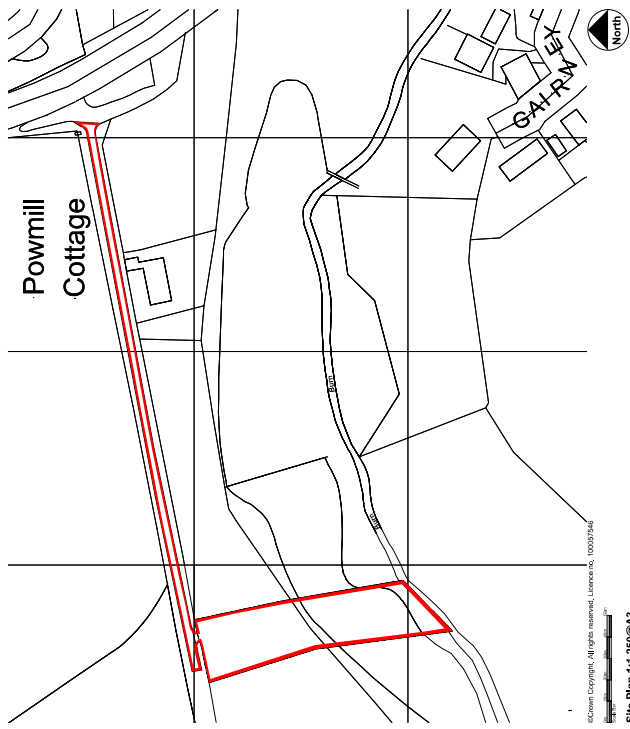
Declaration Date: 01/01/2021

| |
|---|
| <p>LRB-2021-27 21/00001/FLL – S42 application to delete condition 6 (access upgrade) of permission 20/01319/FLL, land 180 metres south west of Powmill Cottage, Rumbling Bridge</p> |
|---|

PLANNING DECISION NOTICE *(included in applicant's submission, pages 333-334)*

REPORT OF HANDLING *(included in applicant's submission, pages 341-349)*

REFERENCE DOCUMENTS *(part included in applicant's submission, pages 335-339)*



LRB-2021-27
21/00001/FLL – S42 application to delete condition 6
(access upgrade) of permission 20/01319/FLL, land 180
metres south west of Powmill Cottage, Rumbling Bridge

REPRESENTATIONS

From: Kevin Borthwick
Sent: 05 February 2021 13:00
To: Development Management - Generic Email Account
Subject: 21/00001/FLL. (S42 application to delete condition 6 (access upgrade) of permission 20/01319/FLL | Land 180 Metres South West of Powmill Cottage Rumbling Bridge) - Objection

The Fossoway and District Community Council objects to planning application 21/00001/FLL.

(S42 application to delete condition 6 (access upgrade) of permission 20/01319/FLL | Land 180

Metres South West of Powmill Cottage Rumbling Bridge)

This application refers to area E23 of the LDP2 and has a significant history of planning applications.

E23 was originally intended for employment use with associated residential properties, where encouragement would be given to the development or expansion of employment opportunities where the development would be compatible in amenity and land use terms with surrounding land uses.

The requirement for employment use associated with this proposed dwelling house has already been removed.

However, in all the historical applications the requirement to upgrade the private track linking the A977 to Craigton Farm at the end of the track has existed. The CC strongly recommends

that the track, which is also a public footpath and has no passing places, be upgraded as per the original conditions of the approved planning applications.

The track is regularly used by walkers and farm vehicles. By placing dwelling houses mid-way along the track without the provision of passing places in our view is unacceptable.


The deletion of condition 6 contravenes PKC Policy 15 as traffic associated with the new

dwelling houses in E23 would have an adverse impact upon the integrity of any (proposed) core path and would affect unreasonably public access rights to these features; in this case Craigton Woods.

The CC requests that PKC carefully consider how best to ensure that reliable and suitable access

for both vehicles and pedestrians is ensured to all properties now and in the future using the track from the A977 to Craigton Farm

Kind regards
Nicola Marchant
Community Councillor
[REDACTED]



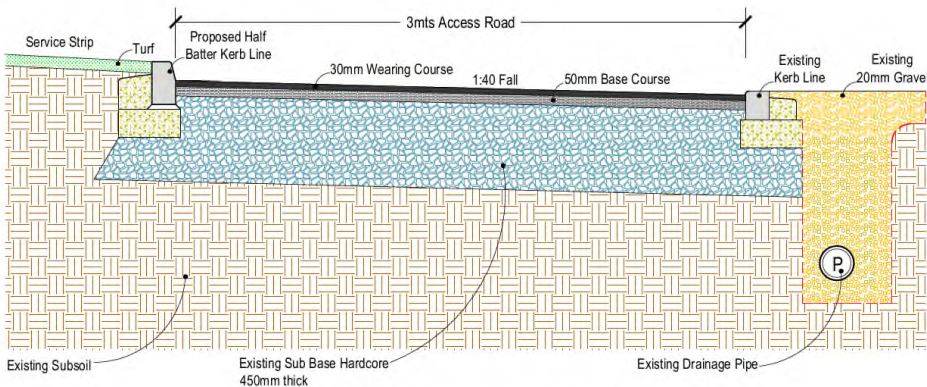
Fossoway and District Community Council
working for Blairingone, Drum, Carnbo, Rumbling Bridge, Crook of
Devon and Powmill, meeting every
first Tuesday in the month apart from July.

For news: find us on Facebook [here](#).

Comments to the Development Quality Manager on a Planning Application

| | | | |
|---|--|-----------------------------|---|
| Planning Application ref. | 21/00001/FLL | Comments provided by | Lachlan MacLean Project Officer – Transport Planning |
| Service/Section | Transport Planning | Contact Details | TransportPlanning@pkc.gov.uk |
| Description of Proposal | S42 application to delete condition 6 (access upgrade) of permission 20/01319/FLL | | |
| Address of site | Land 180 Metres South West Of Powmill Cottage, Rumbling Bridge | | |
| Comments on the proposal | <p>The applicant is seeking to delete Condition 6 from planning application 20/01319/FLL for the erection of a dwellinghouse off of Craigton Farm Lane in Powmill. Condition 6 stated:</p> <p><i>Prior to the development hereby approved being completed or brought into use, all matters regarding access, car parking, road layout, design and specification, including the disposal of surface water, shall be in accordance with the standards required by the Council as Roads Authority. Reason - In the interests of pedestrian and traffic safety and in the interests of free traffic flow.</i></p> <p>The applicant is seeking to delete the condition above but has provided no details as to what they are seeking to deliver. Without this information, it would not be appropriate to delete this condition. In order for a full assessment of the application to be undertaken, the applicant should come forward with a proposal that can be considered by the Transport Planning Team.</p> <p>More information is requested from the applicant to allow this application to be determined. Without this information, the Transport Planning Team are unable to support this application.</p> | | |
| Recommended planning condition(s) | | | |
| Recommended informative(s) for applicant | | | |
| Date comments returned | 16 February 2021 | | |

Comments to the Development Quality Manager on a Planning Application

| | | | |
|----------------------------------|---|-----------------------------|---|
| Planning Application ref. | 21/00001/FLL | Comments provided by | Lachlan MacLean Project Officer – Transport Planning |
| Service/Section | Transport Planning | Contact Details | TransportPlanning@pkc.gov.uk |
| Description of Proposal | S42 application to delete condition 6 (access upgrade) of permission 20/01319/FLL | | |
| Address of site | Land 180 Metres South West Of Powmill Cottage, Rumbling Bridge | | |
| Comments on the proposal | <p>The applicant is seeking to delete Condition 6 from planning application 20/01319/FLL for the erection of a dwellinghouse off of Craigton Farm Lane in Powmill. Condition 6 stated:</p> <p><i>Prior to the development hereby approved being completed or brought into use, all matters regarding access, car parking, road layout, design and specification, including the disposal of surface water, shall be in accordance with the standards required by the Council as Roads Authority. Reason - In the interests of pedestrian and traffic safety and in the interests of free traffic flow.</i></p> <p>The applicant is proposing a reduced specification for the access, as shown in the image below. It is important for the applicant to note that the specification proposed would not be to an adoptable standard. For the access to be to an adoptable standard a Road Construction Consent application would be required. The applicant has advised that an ongoing maintenance could be put in place for the track to avoid the track becoming adopted once the road is formed. However, the supporting statement gives doubt to a maintenance agreement being put in place, as it advises: <i>provided an agreement can be put in place with regard to on-going maintenance</i></p>  <p style="text-align: center;"><u>Craigton Farm Lane - Access Road Proposal</u></p> | | |

| | |
|---|--|
| | <p>The delivery method proposed by the application may lead to sections of the track remaining in an unsurfaced state, as the applicant is proposing the plot holders undertake the formation of in front of their plots. There is a concern that there may be sections of the track with no frontage or live consent, which will lead to sections of the track left in its current state for a considerable time. If this application was to be approved, there is no guarantee that the remaining applicants would come forward with a similar proposal.</p> <p>It is considered that if all the plot owners are in agreement to an alternative delivery method, they should all come forward with an agreed method, clearly stating who will delivering what areas of the track, to ensure that the track can be surfaced as per the previous consent for the wider site.</p> <p>Currently, the delivery method and agreement of other plot owners can not be ascertained from this planning application.</p> |
| Recommended planning condition(s) | |
| Recommended informative(s) for applicant | |
| Date comments returned | 16 April 2021 |