

LRB-2022-48
22/00175/FLL - S42 application to remove condition 3
(occupancy) of planning permission 04/00351/FUL Staff
Accommodation, Craigvrack Hotel, 38 West Moulin Road,
Pitlochry, PH16 5EQ

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**22/00175/FLL - S42 application to remove condition 3
(occupancy) of planning permission 04/00351/FUL Staff
Accommodation, Craigvrack Hotel, 38 West Moulin Road,
Pitlochry, PH16 5EQ**

**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 100595392-001

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:	Burness Paull LLP		
Ref. Number:		You must enter a Building Name or Number, or both: *	
First Name: *	Jemma	Building Name:	Aurora
Last Name: *	Hughes	Building Number:	120
Telephone Number: *	0141 273 6931	Address 1 (Street): *	Bothwell Street
Extension Number:		Address 2:	
Mobile Number:		Town/City: *	Glasgow
Fax Number:		Country: *	United Kingdom
		Postcode: *	G2 7JL
Email Address: *	jemma.hughes@burnesspaull.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"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text"/>	Building Name:	<input type="text" value="Craigvrack Hotel"/>
First Name: *	<input type="text"/>	Building Number:	<input type="text" value="38"/>
Last Name: *	<input type="text"/>	Address 1 (Street): *	<input type="text" value="West Moulin Road"/>
Company/Organisation	<input type="text" value="Global Hotels Limited"/>	Address 2:	<input type="text"/>
Telephone Number: *	<input type="text" value=""/>	Town/City: *	<input type="text" value="Pitlochry"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="Scotland"/>
Mobile Number:	<input type="text" value=""/>	Postcode: *	<input type="text" value="PH16 5EQ"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text" value=""/>		

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="CRAIGVRACK HOTEL"/>
Address 2:	<input type="text" value="38 WEST MOULIN ROAD"/>
Address 3:	<input type="text"/>
Address 4:	<input type="text"/>
Address 5:	<input type="text"/>
Town/City/Settlement:	<input type="text" value="PITLOCHRY"/>
Post Code:	<input type="text" value="PH16 5EQ"/>

Please identify/describe the location of the site or sites

Northing	<input type="text" value="758752"/>	Easting	<input type="text" value="294265"/>
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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)

Section 42 Application for removal of Condition 3 (Occupancy Condition)

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 see Notice of Review Statement in the Supporting Documents.

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

☐ Yes ☒ No

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

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

Appendix 1 - Decision Notice dated 23 May 2022 Appendix 2 - Report of Handling Appendix 3 - Email from Surveyor

Application Details

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

22/00175/FLL

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

02/02/2022

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

23/05/2022

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: Miss Jemma Hughes

Declaration Date: 19/08/2022

Notice of Review Statement on behalf of Craigvrack Hotel, Pitlochry

in respect of the refusal of an application for removal of Condition
3 (Occupancy Condition) of Planning Permission Reference:
04/00351/FUL

Craigvrack Hotel, 38 West Moulin Road, Pitlochry, Perthshire,
PH16 5EQ

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1 EXECUTIVE SUMMARY

1.1 On 2 February 2022, Burness Paull LLP submitted an application in terms of Section 42 of the Town and Country Planning (Scotland) Act 1997 to remove Condition 3 (Occupancy Condition) of Planning Consent Reference 04/00351/FUL ("the Application") on behalf of Craigvrack Hotel, Pitlochry ("the Appellant") to Perth and Kinross Council ("the Council").

1.2 Planning Permission ("the Planning Permission") was obtained for the erection of replacement one and a half storey extension for owner's accommodation at Craigvrack Hotel, Pitlochry ("the Property") dated 3 May 2004.

1.3 On 23 May 2022, the Council issued its Decision Notice (Appendix 1) refusing the Application for the following reasons:

"The retention of the condition is necessary, relevant to planning and to the development permitted, it is enforceable, precise, and reasonable in all other respects and consistent with Circular 4/1998."

"The proposal is not in accordance with Circular 4/1998."

1.4 The Appellant submits that the Proposal complies with the Perth and Kinross Local Development Plan ("the LDP") and the material considerations support the proposal.

1.5 The Appellant submits that the Council has erred in its approach to the assessment of the Application and failed properly to consider the residential extension as a separate planning unit from the hotel. The Council has failed to take proper account of the current state of the Property and the surrounding area and its assessment of the impact of the application is flawed and unreasonable.

1.6 The Appellant is seeking a review of the Council's decision on the following grounds:

1.6.1 The Council misinterpreted Planning Circular 4/1998;

1.6.2 The Council erred in their approach to the Application by considering paragraph 83 instead of Circular 4/1998;

1.6.3 The Council failed to consider the Property as a separate planning unit to the Craigvrack Hotel; and

1.6.4 The Council failed to consider the Application's benefits to the surrounding area in compliance with the LDP and material considerations.

1.7 This Notice of Review demonstrates that the Application complies with the LDP and that the material considerations support this proposal. The Appellant submits that the Council's

NOTICE OF REVIEW

**Craigvrack Hotel, 38 West Moulin Road,
Pitlochry, Perthshire, PH16 5EQ**



assessment of the Application is unreasonable and for the reasons set out in this Notice of Review the Local Review Body ("the Review Body ") should reverse the Council's decision and grant the Application for the removal of Condition 3 (Occupancy Condition) of Planning Consent Reference 04/00351/FUL.

2 BACKGROUND

- 2.1 Planning Permission for the erection of replacement one and a half storey extension for owner's accommodation was obtained for the Property on 3 May 2004. The Planning Officer's Delegated Report noted that the scale of the building was modest and would not detract from the established hotel. The Delegated Report also noted that the area is screened from the car park by fencing and there were no amenity objections. A condition restricting occupation was recommended.
- 2.2 Three planning conditions were attached to the Planning Permission. Condition 3 states:
- "The occupation of the dwellinghouse hereby approved shall be restricted to an owner, manager or employee of the associated Craigvrack Hotel.
- Reason: In the interests of visual and residential amenity; to ensure a satisfactory standard of local environmental quality and to avoid over-intensive development of the site."
- 2.3 The Planning Permission was implemented and extension constructed.
- 2.4 The Appellant bought the Property in 2018. It is the Appellant's intention to sell the Property in the future for residential purposes. Currently, Condition 3 is constraining the Appellant's plans. Feedback from the Appellant's surveyors is that it is not possible to conduct a valuation on the Property due to the occupancy restriction. This is restricting the Appellant's ability to proceed with plans for the business as the Appellant is unable to sell and expand the portfolio of the Property. An email from the Appellant's surveyor is attached at Appendix 3. Although the surveyor has incorrectly referenced the restriction as a planning obligation, they have carried out their exercise on the correct assumption. The same conclusion would apply if the surveyor had referred to this as a condition.
- 2.5 Condition 3 is overly restrictive and is unnecessarily burdening the Property, particularly where staff do not rely on the Property for accommodation.

3 DETERMINATION OF NOTICE OF REVIEW

- 3.1 The Application complies with the LDP and is supported by material considerations. The Appellant submits that there is no proper, factual justification for the refusal of the Application and that the Council's decision is erroneous and unreasonable. The Appellant respectfully submits that the Review Body should uphold the review application and grant the Application for the removal of Condition 3 (Occupancy Condition) of Planning Consent Reference 04/00351/FUL.
- 3.2 Under Section 42 of the Town and Country Planning (Scotland) Act 1997 ("the Act"), when determining an application to vary or remove an existing condition, the Planning Authority can only consider the acceptability of the relevant condition. They are not entitled to reconsider whether or not the development is acceptable in principle. Accordingly, the only thing that should be considered in determining this application is whether or not the requirement for the occupancy restriction, as set out in Condition 3, is acceptable.

Determining issues

- 3.3 Under Section 25 of the Act, determination of this application is to be considered in accordance with the Development Plan, unless material considerations indicate otherwise. The Development Plan comprises the TAYplan Strategic Development Plan (Approved October 2017) and the Perth and Kinross Local Development Plan which was adopted on 29 November 2019.

TAYplan Strategic Development Plan (Approved October 2017) ("TAYplan")

- 3.4 The Strategic Development Plan sets out the overall planning vision for the whole of Dundee and Perth area, including North Fife and parts of Angus and Perth and Kinross. TAYplan sets out a spatial strategy which aims to deliver a sustainable pattern of development. The strategy is supported by a framework for delivery to promote and secure economic growth and the delivery of housing in the most sustainable locations.
- 3.5 Policy 4 of TAYplan states that:
- "Developing new homes and refurbishing existing homes is important in growing TAYplan's economy. Good quality homes and communities directly affect economic competitiveness and people's health and quality of life."

The LDP

- 3.6 The town of Pitlochry is recognised as a Tier 3 Principal Settlement within the Highland Housing Market Area in the LDP. Tier 3 settlements are existing local services centres which will accommodate a very small share of new development to support their continuing growth.
- 3.7 The Written Statement of the LDP explains the spatial strategy and sets out detailed policies and proposals. The spatial strategy explains the development strategy for the area, including where development is planned, and the policies explain the Council's approach to particular types of development in particular locations, and how development should be designed. The proposals identify sites where development or land use change is proposed, or where land is safeguarded so as not to prejudice a certain type of development occurring or an existing use continuing, or to ensure an area can be considered as a potential future development location.
- 3.8 Policy 1A: Placemaking requires development to 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 area.
- 3.9 Policy 17: Residential Areas states that the LDP identifies areas of residential and compatible uses inside settlement boundaries where existing residential amenity will be protected and where possible, improved.
- 3.10 The adopted Placemaking Supplementary Guidance ("the SG"), page 39, deals with parking arrangements. The SG states that off-street parking will often be required to accommodate residential parking. Parking should not dominate the front gardens of houses. Courtyards and side parking can provide useful alternatives to this approach.
- 3.11 The SG also considered the effects of new development on neighbouring properties. Consideration must be had to the privacy and amenity of neighbours and the spacing of dwellings to adjoining houses and gardens.

4 MATERIAL CONSIDERATIONS

- 4.1 The material considerations support the grant of the Application. The material considerations which are considered relevant to the Application are as follows:

Circular 4/1998

- 4.2 The Circular sets out six tests for determining whether planning conditions are validly imposed or not. These state that planning conditions must be:-

- 4.2.1 necessary;
- 4.2.2 relevant to planning;
- 4.2.3 relevant to the development to be permitted;
- 4.2.4 enforceable;
- 4.2.5 precise; and
- 4.2.6 reasonable in all other respects.

- 4.3 Section 37(1) of the Act enables the Planning Authority to grant planning permission “either conditionally or subject to such conditions as they think fit”. The power to impose conditions is not, however, as wide as it appears.

- 4.4 Under Section 42 of the Act, the Planning Authority can grant such permission unconditionally or subject to different conditions, or they can refuse the application if they decide that the original conditions should continue. The original planning permission continues to subsist whatever the outcome of the application under Section 42.

- 4.5 The application of the individual tests to Condition 3 are considered in the Determination of the Appeal section above and the Discussion section that follows.

- 4.6 The Circular also deals with the use of occupancy conditions. In particular, paragraph 91 states that:

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

- 4.7 Paragraph 99 limits the use of occupancy conditions as follows:

“Conditions tying the occupation of dwellings to that of separate buildings (eg requiring a house to be occupied only by a person employed by a nearby garage) should be avoided. However, exceptionally, such conditions may be appropriate where there are sound planning reasons to justify them, eg where a dwelling has been allowed on a site where permission would not normally be granted. “

Chief Planner Letter 4 November 2011

- 4.8 The Chief Planning issued a letter on 4 November 2011 clarifying the use of conditions to restrict the occupation of rural housing. This letter is a material consideration in the determination of the Application. Whilst the Council have not defined ‘rural’ within the Development Plan, Pitlochry is classified as being ‘remote rural’ in the Scottish Government’s Rural Scotland Key Facts 2021 guidance.
- 4.9 Of particular note, the Chief Planner recognised in the letter that some people had found it difficult to get a mortgage to buy a house where an occupancy condition is in place. Others have found it difficult to sell the house where there is an occupancy condition in place. The letter also notes that occupancy conditions can be intrusive, resource intensive and difficult to monitor and *enforce*. In summary, the Scottish Government confirmed that occupancy restrictions are rarely appropriate and should be avoided.

Scottish Planning Policy

- 4.10 Paragraph 83 of SPP states (emphasis added):

“In remote rural areas, where new development can often help to sustain fragile communities, plans and decision-making should generally:

...

support and sustain fragile and dispersed communities through provision for appropriate development, especially housing and community-owned energy;

include provision for small-scale housing and other development which supports sustainable economic growth in a range of locations, taking account of environmental protection policies and addressing issues of location, access, siting, design and environmental impact;

...

not impose occupancy restrictions on housing.”

5 GROUNDS FOR REVIEW

- 5.1 The Appellant is seeking a review of the Council's decision on the following grounds:
- 5.1.1 The Council misinterpreted Planning Circular 4/1998;
 - 5.1.2 The Council erred in their approach to the Application by considering paragraph 83 of Circular 4/1998;
 - 5.1.3 The Council failed to consider the Property as a separate planning unit to the Craigvrack Hotel; and
 - 5.1.4 The Council failed to consider the Application's benefits to the surrounding area in compliance with the Local Development Plan and other material considerations.
- 5.2 The Appellant submits the Review Body should reverse the Council's Decision and grant the removal of Condition 3 (Occupancy Condition) of Planning Consent Reference 04/00351/FUL for the reasons set out in detail below.

Ground for Review 1: The Council Misinterpreted Planning Circular 4/1998

- 5.3 The Decision Notice was supported by a Report of Handling recommending the Application be refused (Appendix 2). The Report of Handling demonstrates that the Council took an erroneous and unreasonable approach to the determination of the Application.

- 5.4 At page 5 of the Delegated Report dated 20th May 2022, the Council noted:

"The planning circular on conditions (Circular 4/1998) confirms that a condition can be used to make a minor modification to a proposal, however a condition that would make a development substantially different from that set out in the application should not be used."

The above reflects paragraph 83 of Circular 4/1998. However the Council then noted,

"By extension, this principle applies to a case where the removal of a condition would significantly change the nature of the development."

This extension of the principle is not set out anywhere in the Circular 4/1998 and it is the Appellant's view that this is an error in the reading of the Circular 4/1998 by the Council. The Council then applied this flawed reading of Circular 4/1998 to their determination of the Application, giving the reason for their decision as "The proposal is not in accordance with Circular 4/1998."

- 5.5 The Appellant therefore submits that the Review Body should review the Application as the reason the Council gave for refusing the Application was based on an error in the Council's reading Circular 4/1998.

Ground for Review 2: the Council erred in their approach to the Application by considering paragraph 83 of Circular 4/1998

- 5.6 The Appellant submits that the Council should not have considered paragraph 83 of Circular 4/1998. The Appellant submits that the Council should have considered paragraphs 5 and 13 of Circular 4/1998 and by reading those paragraphs the Review Body will be able to determine that the proposal is acceptable in terms of Circular 4/1998.

Circular 4/1998

- 5.7 Paragraph 5 sets out a Planning Authority's power to vary or remove the effect of conditions as follows:

"Section 42 of the Act provides for applications for planning permission to develop land without complying with conditions previously imposed on a planning permission. The planning authority can grant such permission unconditionally or subject to different conditions, or they can refuse the application if they decide that the original condition(s) should continue. The original planning permission will continue to subsist whatever the outcome of the application under section 42. This section will not apply if the period within which the development could begin, as specified in the previous condition, has expired without the development having begun."

- 5.8 Paragraph 13 sets out the test for the necessity of a condition as follows:

"In considering whether a particular condition is necessary, authorities should ask themselves whether planning permission would have to be refused if that condition were not to be imposed. If it would not, then the condition needs special and precise justification. Planning authorities should also avoid imposing conditions through anxiety to guard against every possible contingency, however remote. The argument that a condition will do no harm is no justification for its imposition; as a matter of policy a condition ought not to be imposed unless there is a definite need for it. The same principles, of course, must be applied in dealing with applications for the removal of a condition under section 33 or 42 of the Act; a condition should not be retained unless there are sound and clear-cut reasons for doing so."

- 5.9 At page 5 of the Delegated Report dated 20th May 2022, the Council noted:

“The application had been made under section 42 of the Act and if the removal of the condition were to be granted this would not lawfully amend the permission for the original development which would remain as an extension to Craigvrack Hotel to form managers accommodation. Accordingly, the application to remove the condition should fail.”

- 5.10 The Appellant submits that the Council failed to give a sound and clear-cut reason as to the definite need to retain Condition 3 and failed to consider that this condition is overly restrictive, particularly where Craigvrack Hotel’s staff do not rely on the Property for accommodation.

Ground for Review 3: the Council failed to consider the Property as a separate planning unit to the Craigvrack Hotel

- 5.11 The Appellant submits that the Council unreasonably exercised their discretion in not varying the condition as the Council failed to consider whether the Property is a separate planning unit from the Craigvrack Hotel. The Appellant submits that in relation to this issue the below should be considered by the Review Body when reviewing the Application.

- 5.12 The Appellant would also draw the Review Body’s attention to the principle that the question of what constitutes the planning unit is one of fact and degree for the planning officer to determine. However, Bridge J in *Burdle v Secretary of State for the Environment* [1972] 1 WLR 1207, set out a useful test to be applied when determining a ‘planning unit’;

- (i) the whole unit of occupation should be considered whenever it was possible to recognise a single main purpose of the occupier’s use of land to which secondary activities were incidental or ancillary;
- (ii) the entire unit of occupation might aptly be considered when the occupier carries on variety of activities and it is impossible to say that one was incidental or ancillary to another, which was well settled for a composite use with component activities fluctuating in their intensity from time to time but with the different activities not confined in separate and physically distinct areas of land; and
- (iii) where separate and distinct areas within a single unit of occupation were occupied for substantially different and unrelated purposes, each area used for a different main purpose (together with its incidental and ancillary activities) was to be considered as a separate planning unit.

Later in his judgement Bridge J set a working rule, that it should be assumed that the unit of occupation is the appropriate planning unit, unless and until some smaller unit can be recognised

as the site of activities which amount in substance to a separate use both physically and functionally.

The Appellant would also draw the Review Body's attention to *Duffy v Secretary of State for the Environment* [1981] J.P.L. 811 where a premises formerly used as a staff hostel in connection with a hotel was held to form a separate planning unit from the hotel.

- 5.13 The Appellant submits that Craigvrack Hotel's staff do not rely on the Property for accommodation. Owing to this and the layout of the two properties the Appellant submits it would be unreasonable for the Review Body to determine that the Property and the Craigvrack Hotel constitute one planning unit.
- 5.14 Following from this the Appellant submits that the Review Body should consider Condition 3 as overly restrictive and should grant this Application to remove this condition.

Ground for Review 4: the Council failed to consider the Application's benefits to the surrounding area in compliance with the LDP and other material considerations.

- 5.15 The proposal is supported by a number of material considerations, including compliance with Local Development Plan policies as set out below.

Circular Tests

- 5.16 Condition 3 fails to meet the Circular Tests. The removal of Condition 3 should be approved for the reasons set out below.
- 5.17 The Scottish Government's guidance on planning conditions as set out in the Circular provides that, in order for a condition to be valid, it must be necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise; and reasonable in all other respects.

- 5.17.1 The relevant tests from Circular are considered in turn below:

Necessary

- 5.17.2 The Condition is not necessary in planning terms. There is no proper planning reason for the inclusion of the condition. The use of the Property for residential purposes is supported by the LDP. The Property is located within the Pitlochry Settlement Area. There is no harm to residential amenity as the Property is already within a predominately residential area. There were no objections to the Application. The reasons for Condition 3 no longer apply as it is not in the interests of the visual or residential amenity to restrict the use to staff accommodation. In addition, the use of the Property for staff accommodation is not required

as was first envisioned. Members of staff do not rely upon the use of the Property for their accommodation. The Condition fails the test of necessity.

Relevant to planning

- 5.17.3 The Condition is not relevant to planning. There are no planning reasons for the condition being applied. The reasons applied to Condition 3 are vague which in itself suggests that the condition has no proper justification. The phrases used in Condition 3 are general and obscure and have not been clearly explained. The condition fails the test of relevance.

Enforceable

- 5.17.4 The Appellant cannot reasonably be expected to comply with Condition 3, especially where this hinders the ability to sell the Property. The requirement to comply with the condition cannot reasonably be enforced. The condition fails the test of enforceability.

Reasonable in all other respects.

- 5.17.5 Condition 3 is unduly restrictive. The imposition of the condition means that the Appellant is unable to take the necessary steps to sell the Property as the Property cannot be valued with the occupancy restriction. It will also make it difficult for potential purchasers to get a mortgage to buy the Property with the occupation restriction. This is having a detrimental affect on the Appellant.
- 5.17.6 The use of occupancy conditions is not supported by the Scottish Government, as is evidenced in the Chief Planner's letter and the SPP. SPP clearly states that within remote rural areas, occupancy conditions should not be imposed on housing. The Chief Planner has confirmed that occupancy conditions should be avoided and are rarely appropriate. There are no proper planning reasons for the condition and the condition is not reasonably justified. The condition fails the reasonableness test.

Local Development Plan

- 5.18 The removal of Condition 3 is supported by the Local Development Plan.
- 5.19 The use of the Property for residential purposes is supported by Policy 1A. The use of the Property for residential purposes will make a positive contribution to the area which is already predominately residential. The use of the Property for residential purposes will contribute to the character and amenity of the area and the use as a residential property works in the local context.

- 5.20 Policy 17 supports the residential use as this is compatible to the settlement boundary of Pitlochry. Tier 3 settlements are existing local services centres which will accommodate a very small share of new development to support their continuing growth. Pitlochry is a growing rural town which will require housing to support its growth.
- 5.21 The removal of Condition 3 is supported by the SG and will have no detrimental impact on the privacy and amenity of neighbours. Existing essential amenity will be protected and there will be no detrimental impact on the surrounding residential area. Again, there were no objections to the Application.
- 5.22 The proper infrastructure is already in place for residential use including parking arrangements. The car park will have an allocated parking space which complies with the SG. The use of off-street parking is also supported by the SG. This emphasises the point that there will be no detrimental impact on the residential amenity of the area.

Representations

- 5.23 There were no objections made against the Application. The Appellant submits this adds support to their Application, and reflects that the removal of Condition 3 would not have a determinantal impact on the amenity of the surrounding area.
- 5.24 For the reasons set out above, the removal of Condition 3 is supported by the development plan and material considerations. The Appellant submits on this basis that the Review Body remove Condition 3.

6 CONCLUSION

- 6.1 The Council erred in their assessment of Circular 4/1998, consequently the reasons given in the Decision Notice for refusing this Application were flawed and not in the spirit of the LDP or other material considerations.
- 6.2 Condition 3 restricts the Property to being used as Craigvrack Hotel staff accommodation, the Property is no longer relied upon by staff. The Application therefore seeks to remove this as it is the Appellant's view that this is an onerous condition and there is not a definitive reason for this to be retained.
- 6.3 The Council's assessment of the Application is flawed and unreasonable as it failed in its application of the Circular 4/1998 and to take proper account of the current state of the Property and the surrounding area.
- 6.4 The Application complies with Circular 4/1998, the LDP and is supported by a number of material considerations. On that basis, the LRB should reverse the Council's decision and grant the removal of Condition 3 (Occupancy Condition) of Planning Consent Reference 04/00351/FUL.

BURNESS PAULL LLP
Solicitors, Edinburgh

AGENT FOR THE APPELLANT

18 August 2022

7 LIST OF DOCUMENTS

7.1 Appendix 1 – Decision Notice dated 23 May 2022

7.2 Appendix 2 – Report of Handling

7.3 Appendix 3 – Email from Surveyor



Global Hotels Limited
c/o Burness Paull
Fiona Closs
Union Plaza
1 Union Plaza
Aberdeen
AB10 1DQ

Pullar House
35 Kinnoull Street
PERTH
PH1 5GD

Date of Notice: **23rd May 2022**

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT

Application Reference: **22/00175/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 February 2022 for Planning Permission for **S42 application to remove condition 3 (occupancy) of planning permission 04/00351/FUL Staff Accommodation Craigvrack Hotel 38 West Moulin Road Pitlochry PH16 5EQ**

David Littlejohn
Head of Planning and Development

Reasons for Refusal

1. The retention of the condition is necessary, relevant to planning and to the development permitted, it is enforceable, precise, and reasonable in all other respects and consistent with Circular 4/1998.

Justification

The proposal is not in accordance with Circular 4/1998.

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

03

04

REPORT OF HANDLING

DELEGATED REPORT

Ref No	22/00175/FLL	
Ward No	P4- Highland	
Due Determination Date	1st April 2022 extended to 1 st May 2022	
Draft Report Date	19th May 2022	
Report Issued by	DN	Date 20/05/22

PROPOSAL: S42 application to remove condition 3
(occupancy) of planning permission
04/00351/FUL

LOCATION: Staff Accommodation Craigvrack Hotel 38
West Moulin Road Pitlochry PH16 5EQ

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.

SITE VISIT:

In line with established practices, the need to visit the application site has been carefully considered by the case officer. The application site and its context have been viewed by a variety of remote and electronic means, such as aerial imagery and Streetview, in addition to photographs submitted by interested parties.

This information has meant that, in this case, it is possible and appropriate to determine this application without a physical visit as it provides an acceptable basis on which to consider the potential impacts of this proposed development.

SITE PHOTOGRAPHS



BACKGROUND AND DESCRIPTION OF PROPOSAL

This application relates to the Craigvrack Hotel located on the West Moulin Road, Pitlochry. The existing hotel, which is currently operational, is a former Victorian manse that has been quite significantly altered and extended over the years, with large flat roofed extensions on the front and side that obscure much of the original building. The surrounding area is residential with housing immediately to the north, east and south of the site.

In 2004 permission was granted for the erection of a one and a half storey extension on the rear of the hotel which was specifically stated as being owners' accommodation associated with the operation of the hotel. This accommodation is physical attached the rear of the existing hotel with an internal door affording access between the managers accommodation and the hotel. Access and parking are taken via the existing car park to the rear of the hotel.

Due to the relationship with the existing hotel and to avoid any confusion regarding the use of the accommodation, this permission was granted subject to the following occupancy condition (Condition 2):

“The occupation of the dwellinghouse hereby approved shall be restricted to an owner, manager or employee of the associated Craigvrack Hotel.”

Planning permission is now being sought to remove the occupancy condition. The supporting statement submitted with the application states that the objective of removing the condition is to enable the accommodation to be occupied as a private residential dwellinghouse, independent of the existing hotel.

SITE HISTORY

02/00711/FUL Change part of garden into 10 additional car parking spaces at 5 June 2002 Application Approved

91/01788/FUL ALTERATIONS/REPLACEMENT BEER CELLAR AT 29 October 1991 Application Approved

92/00717/FUL ERECTION OF CANOPIES ON WEST ELEVATION OF 3 June 1992 Application Approved

97/00768/FUL Renewal of consent to erect canopies on west elevation of craigrack 23 June 1997 Application Approved

04/00351/FUL Erection of replacement one and a half storey extension for owners' accommodation 5 May 2004 Application Approved

20/01516/FLL Formation of raised decking 18 December 2020 Refused but upheld by LRB

PRE-APPLICATION CONSULTATION

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 1A: Placemaking

Policy 1B: Placemaking

Policy 5: Infrastructure Contributions

Policy 8: Rural Business and Diversification

Policy 17: Residential Areas

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

OTHER POLICIES

None

CONSULTATION RESPONSES

Development Contributions Officer

No contributions required

Scottish Water

No objection

Transport Planning

No objection

REPRESENTATIONS

No representations received.

ADDITIONAL STATEMENTS

Screening Opinion	EIA Not Required
-------------------	------------------

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

APPRAISAL

Section 42 of the Town and Country Planning (Scotland) Act 1997 enables the determination of applications to develop land without compliance with conditions previously attached. The legislation specifies that on such an application the planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and if they decide that planning permission should be granted subject to conditions differing from that subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly. If they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.

This application seeks to remove condition 2 which clarifies the use of the extension to the existing hotel as accommodation for the owner, manager or employee of the associated Craigvrack Hotel.

Policy 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 2 (2019).

The determining issues in this case are whether; the development without compliance with part of the condition in contention would be consistent with the relevant provisions of the adopted Local Plans; or if an exception to these provisions is justified by other material considerations.

The planning circular on conditions (Circular 4/1998) confirms that a condition can be used to make a minor modification to a proposal, however a condition that would make a development substantially different from that set out in the application should not be used. By extension, this principle applies to a case where the removal of a condition would significantly change the nature of the development. The application had been made under section 42 of the Act and if the removal of the condition were to be granted this would not lawfully amend the permission for the original development which would remain as an

extension to Craigvrack Hotel to form managers accommodation. Accordingly, the application to remove the condition should fail.

The supporting planning statement has been reviewed however there is nothing contained within the statement to outweigh the findings above. If there was an intention to utilise the extension as a separate planning unit from the main hotel operations, there would still be a requirement to apply to change the use. However, it should be noted that the existing accommodation, by virtue of its relationship with the hotel raises significant concerns in respect to the ability to provide an acceptable level of amenity and its potential impact on operation of the hotel. As such, it is likely that any application for a change of use would not be supported.

Roads and Access

The proposal does not raise any issues in concerns in respect to roads or access related matters.

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 likely to be minimal.

VARIATION OF APPLICATION UNDER SECTION 32A

This application was not varied prior to determination.

PLANNING OBLIGATIONS AND LEGAL AGREEMENTS

None required.

DIRECTION BY SCOTTISH MINISTERS

None applicable to this proposal.

CONCLUSION AND REASONS FOR DECISION

To conclude, the condition is necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. The removal of the condition is not considered to adhere to Circular 4/1998. On that basis the application is recommended for refusal.

Accordingly, the proposal is refused on the grounds identified below.

Conditions and Reasons

The retention of the condition is necessary, relevant to planning and to the development permitted, it is enforceable, precise, and reasonable in all other respects and consistent with Circular 4/1998.

Justification

The proposal is not in accordance with Circular 4/1998.

Informatives

None

Procedural Notes

Not Applicable.

PLANS AND DOCUMENTS RELATING TO THIS DECISION

01

02

03

04

Subject: FW: Craigvrack - Pitlochry, Mr Sharma

Begin forwarded message:

From: Roy Hudghton MRICS <[REDACTED]>
Subject: RE: Craigvrack - Pitlochry, Mr Sharma
Date: 15 March 2019 at 11:48:47 GMT
To: Craigvrack [REDACTED]

Mr Kaushik,

I refer to your email, and whilst I understand the nature of the request, in this case there is no separate value of the owners accommodation, as it is subject to a Section 75 Planning restriction, rendering it capable of being occupied only by the owners or hotel staff, and incapable of being sold separately from the business premises.

That renders it simply additional accommodation, which cannot be marketed on its own. The rate per room arrived at as a result of the analysis of comparable sales, reflects only those with similar owners space, and so it is lost in the overall valuation. In the case of Craigvrack, there is even an argument that, with some minor reconfiguration, there could be owners accommodation within the hotels main walls, without the loss of any letting rooms.

We do not, therefore, consider that there is any way an opinion of the value of the annexe can be given in this case.

I trust that this satisfies your current requirements.

Regards



Roy Hudghton MRICS
Director



17 Corstorphine Road Edinburgh EH12 6DD

www.dmhall.co.uk



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LRB-2022-48

22/00175/FLL - S42 application to remove condition 3 (occupancy) of planning permission 04/00351/FUL Staff Accommodation, Craigvrack Hotel, 38 West Moulin Road, Pitlochry, PH16 5EQ

PLANNING DECISION NOTICE *(included in applicant's submission, pages 607-608)*

REPORT OF HANDLING *(included in applicant's submission, pages 609-615)*

REFERENCE DOCUMENTS *(part included in applicant's submission, pages 617-618)*

PERTH AND KINROSS COUNCIL

Mary Lang
c/o Urban Creatures
The Grainstore
The Square
BLAIR ATHOLL
PH8 5SG

Pullar House
35 Kinnoull Street
PERTH
PH1 5GD

Date 3 May 2004

Town and Country Planning (Scotland) Acts.

Application Number **04/00351/FUL**

I am directed by the Planning Authority under the Town and Country Planning (Scotland) Acts currently in force, to grant your application registered on 5th March 2004 for planning permission for Erection of replacement one and a half storey extension for owners' accommodation Craigvrack Hotel 38 West Moulin Road Pitlochry Perthshire subject to the undernoted conditions. One set of the relative plans, duly docquetted with reference to this approval, is returned herewith.


Head of Development Control

Conditions Referred to Above

1. The development shall be begun within a period of five years from the date of this consent.
2. The proposed development must be carried out in accordance with the approved plans herewith, unless otherwise provided for by conditions imposed on the planning consent.
3. The occupation of the dwellinghouse hereby approved shall be restricted to an owner, manager or employee of the associated Craigvrack Hotel.

Reasons for Conditions

1. In accordance with the terms of Section 58 of the Town and Country Planning (Scotland) Act 1997.
2. To ensure that the development is carried out in accordance with the plans approved.
3. In the interests of visual and residential amenity; to ensure a satisfactory standard of local environmental quality and to avoid over-intensive development of the site.

Notes

1. No work shall be commenced until an application for building warrant has been submitted and approved.

Supporting Planning Statement On behalf of Craigvrack Hotel, Pitlochry

Application for removal of Condition 3 (Occupancy Condition) of
Planning Permission Reference: 04/00351/FUL

CONTENTS

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1 EXECUTIVE SUMMARY

- 1.1 This Supporting Statement has been prepared in support of Craigvrack Hotel's ("**The Applicant**") application to remove Condition 3 (Occupancy Condition) of Planning Consent Reference 04/00351/FUL. A copy of the Planning Permission forms Appendix 1 annexed to this Supporting Statement.
- 1.2 Planning Permission ("the Planning Permission") was obtained for the erection of replacement one and a half storey extension for owner's accommodation at Craigvrack Hotel, Pitlochry ("**the Property**") dated 3 May 2004.
- 1.3 Condition 3 of the Planning Permission is as follows:
- 1.3.1 *"The occupation of the dwellinghouse hereby approved shall be restricted to an owner, manager or employee of the associated Craigvrack Hotel*
- Reason: In the interests of visual and residential amenity; to ensure a satisfactory standard of local environmental quality and to avoid over-intensive development of the site."*
- 1.4 Condition 3 is no longer manageable for the Applicant and they require removal of this in order to allow for the Property to be sold on the open market with the potential to be used for residential purposes. As it stands, Condition 3 is so restrictive that the Applicant has been unable to move forward with a valuation for sale on the open market. Condition 3 is hindering the Applicant's ability to progress with plans to sell the Property.
- 1.5 The Property is situated within a predominately residential area and there will be no harm to the residential amenity by removing Condition 3. There is no planning justification for Condition 3 to remain in place as there are no visual or residential amenity issues which were originally identified by the Council. This Application is not seeking further development at the Property and there is no risk of over development on the site. The Council's reasons for requiring Condition 3 are not justified on planning grounds and are no longer relevant.
- 1.6 The removal of Condition 3 and the potential use of the Property for residential purposes is supported by the Development Plan and material considerations. The imposition of Condition 3 fails the tests set out in Circular 4/1998, in particular the tests of necessity, relevance, enforcement and reasonableness. The general use of occupancy conditions in a rural area such as Pitlochry is not supported by the Chief Planner or Scottish Planning Policy.
- 1.7 The Application should therefore be approved as outlined in this Supporting Statement.

2 BACKGROUND TO APPLICATION

2.1 Planning Permission for the erection of replacement one and a half storey extension for owner's accommodation was obtained for the Property on 3 May 2004. The Planning Officer's Delegated Report noted that the scale of the building was modest and would not detract from the established hotel. The Delegated Report also noted that the area is screened from the car park by fencing and there were no amenity objection. A condition restricting occupation was recommended.

2.2 Three planning conditions were attached to the Planning Permission. Condition 3 states:

"The occupation of the dwellinghouse hereby approved shall be restricted to an owner, manager or employee of the associated Craigvrack Hotel.

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

2.3 Development has commenced pursuant to the Planning Permission and has complied with the planning conditions to date.

2.4 The Applicant bought the Property in 2018. It is the Applicant's intention to sell the Property in the future for residential purposes. Currently, Condition 3 is constraining the Applicant's plans. Feedback from the Applicant's surveyors is that it is not possible to conduct a valuation on the Property due to the occupancy restriction. This is restricting the Applicant's ability to proceed with plans for the business as the Applicant is unable to sell and expand the portfolio of the Property. An email from the Applicant's surveyor is attached at Appendix 2. Although the surveyor has incorrectly referenced the restriction as a planning obligation, they have carried out their exercise on the correct assumption. The same conclusion would apply if the surveyor had referred to this as a condition.

2.5 Condition 3 is overly restrictive, particularly where staff do not rely on the Property for accommodation.

3 PLANNING POLICIES

3.1 Under Section 42 of the Town and Country Planning (Scotland) Act 1997 ("**the Act**"), when determining an application to vary or remove an existing condition, the Planning Authority can only consider the acceptability of the relevant condition. They are not entitled to reconsider whether or not the development is acceptable in principle. Accordingly, the only thing that should be considered in determining this application is whether or not the requirement for the occupancy restriction, as set out in Condition 3, is acceptable.

- 3.2 Under Section 25 of the Act, determination of this application is to be considered in accordance with the Development Plan, unless material considerations indicate otherwise. The Development Plan comprises the TAYplan Strategic Development Plan (Approved October 2017) and the Perth and Kinross Local Development Plan which was adopted on 29 November 2019.

TAYplan Strategic Development Plan (Approved October 2017) (“TAYplan”)

- 3.3 The Strategic Development Plan sets out the overall planning vision for the whole of Dundee and Perth area, including North Fife and parts of Angus and Perth and Kinross. TAYplan sets out a spatial strategy which aims to deliver a sustainable pattern of development. The strategy is supported by a framework for delivery to promote and secure economic growth and the delivery of housing in the most sustainable locations.

- 3.4 Policy 4 of TAYplan states that:

“Developing new homes and refurbishing existing homes is important in growing TAYplan’s economy. Good quality homes and communities directly affect economic competitiveness and people’s health and quality of life.”

Perth and Kinross Local Development Plan (“the LDP”)

- 3.5 The town of Pitlochry is recognised as a Tier 3 Principal Settlement within the Highland Housing Market Area in the LDP. Tier 3 settlements are existing local services centres which will accommodate a very small share of new development to support their continuing growth.
- 3.6 The Written Statement of the LDP explains the spatial strategy and sets out detailed policies and proposals. The spatial strategy explains the development strategy for the area, including where development is planned, and the policies explain the Council’s approach to particular types of development in particular locations, and how development should be designed. The proposals identify sites where development or land use change is proposed, or where land is safeguarded so as not to prejudice a certain type of development occurring or an existing use continuing, or to ensure an area can be considered as a potential future development location.
- 3.7 Policy 1A: Placemaking requires development to 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 area.
- 3.8 Policy 17: Residential Areas states that the LDP identifies areas of residential and compatible uses inside settlement boundaries where existing residential amenity will be protected and where possible, improved.

- 3.9 The adopted Placemaking Supplementary Guidance (“the **SG**”), page 39, deals with parking arrangements. The SG states that off-street parking will often be required to accommodate residential parking. Parking should not dominate the front gardens of houses. Courtyards and side parking can provide useful alternatives to this approach.
- 3.10 The SG also considered the effects of new development on neighbouring properties. Consideration must be had to the privacy and amenity of neighbours and the spacing of dwellings to adjoining houses and gardens.

4 MATERIAL CONSIDERATIONS

- 4.1 As stated above, this application must be determined in accordance with the Development Plan unless material considerations indicate otherwise. The following section sets out those material considerations which support the removal of Condition 3.

Circular 4/1998 (“the Circular”)

- 4.2 The Circular sets out six tests for determining whether planning conditions are validly imposed or not. These state that planning conditions must be:-
- 4.2.1 necessary;
 - 4.2.2 relevant to planning;
 - 4.2.3 relevant to the development to be permitted;
 - 4.2.4 enforceable;
 - 4.2.5 precise; and
 - 4.2.6 reasonable in all other respects.
- 4.3 Section 37(1) of the Act enables the Planning Authority to grant planning permission “*either conditionally or subject to such conditions as they think fit*”. The power to impose conditions is not, however, as wide as it appears.
- 4.4 Under Section 42 of the Act, the Planning Authority can grant such permission unconditionally or subject to different conditions, or they can refuse the application if they decide that the original conditions should continue. The original planning permission continues to subsist whatever the outcome of the application under Section 42.
- 4.5 The application of the individual tests to Condition 3 are considered in the Discussion section that follows.

- 4.6 The Circular also deals with the use of occupancy conditions. In particular, paragraph 91 states that:

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

- 4.7 Paragraph 99 limits the use of occupancy conditions as follows:

“ Conditions tying the occupation of dwellings to that of separate buildings (eg requiring a house to be occupied only by a person employed by a nearby garage) should be avoided. However, exceptionally, such conditions may be appropriate where there are sound planning reasons to justify them, eg where a dwelling has been allowed on a site where permission would not normally be granted. “

Chief Planner Letter 4 November 2011

- 4.8 The Chief Planning issued a letter on 4 November 2011 clarifying the use of conditions to restrict the occupation of rural housing. This letter is a material consideration in the determination of the Application. Whilst the Council have not defined ‘rural’ within the Development Plan, Pitlochry is classified as being ‘remote rural’ in the Scottish Government’s Rural Scotland Key Facts 2021 guidance.

- 4.9 Of particular note, the Chief Planner recognised in the letter that some people had found it difficult to get a mortgage to buy a house where an occupancy condition is in place. Others have found it difficult to sell the house where there is an occupancy condition in place. The letter also notes that occupancy conditions can be intrusive, resource intensive and difficult to monitor and enforce. In summary, the Scottish Government confirmed that occupancy restrictions are rarely appropriate and should be avoided.

Scottish Planning Policy

- 4.10 Paragraph 83 of SPP states (emphasis added):

“ In remote rural areas, where new development can often help to sustain fragile communities, plans and decision-making should generally:

...

support and sustain fragile and dispersed communities through provision for appropriate development, especially housing and community-owned energy;

include provision for small-scale housing and other development which supports sustainable economic growth in a range of locations, taking account of environmental protection policies and addressing issues of location, access, siting, design and environmental impact;

...

not impose occupancy restrictions on housing."

5 DISCUSSION

- 5.1 As noted above, in determining this application it is the appropriateness of the condition which is relevant.

Circular Tests

- 5.2 Condition 3 fails to meet the Circular Tests. The removal of Condition 3 should be approved for the reasons set out below.
- 5.3 The Scottish Government's guidance on planning conditions as set out in the Circular provides that, in order for a condition to be valid, it must be necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise; and reasonable in all other respects.
- 5.4 The relevant tests from Circular are considered in turn below:

5.4.1 *Necessary*

The Condition is not necessary in planning terms. There is no proper planning reason for the inclusion of the condition. The use of the Property for residential purposes is supported by the LDP. The Property is located within the Pitlochry Settlement Area. There is no harm to residential amenity as the Property is already within a predominately residential area. The reasons for Condition 3 no longer apply as it is not in the interests of the visual or residential amenity to restrict the use to staff accommodation. In addition, the use of the Property for staff accommodation is not required as was first envisioned. Members of staff do not rely upon the use of the Property for their accommodation, with the exception of the Applicant who is the owner of the hotel and Property. The Condition fails the test of necessity.

5.4.2 *Relevant to planning*

The Condition is not relevant to planning. There are no planning reasons for the condition being applied. The reasons applied to Condition 3 are vague which in itself suggests that the condition

has no proper justification. The phrases used in Condition 3 are general and obscure and have not been clearly explained. The condition fails the test of relevance.

5.4.3 *Enforceable*

The Applicant cannot reasonably be expected to comply with Condition 3, especially where this hinders the ability to sell the Property. The requirement to comply with the condition cannot reasonably be enforced. The condition fails the test of enforceability.

5.4.4 *Reasonable in all other respects.*

Condition 3 is unduly restrictive. The imposition of the condition means that the Applicant is unable to take the necessary steps to sell the Property as the Property cannot be valued with the occupancy restriction. It will also make it difficult for potential purchasers to get a mortgage to buy the Property with the occupation restriction. This is having a detrimental affect on the Applicant.

The use of occupancy conditions is not supported by the Scottish Government, as is evidenced in the Chief Planner's letter and the SPP. SPP clearly states that within remote rural areas, occupancy conditions should not be imposed on housing. The Chief Planner has confirmed that occupancy conditions should be avoided and are rarely appropriate. There are no proper planning reasons for the condition and the condition is not reasonably justified. The condition fails the reasonableness test.

Local Development Plan

- 5.5 The removal of Condition 3 is supported by the Local Development Plan.
- 5.6 The use of the Property for residential purposes is supported by Policy 1A. The use of the Property for residential purposes will make a positive contribution to the area which is already predominately residential. The use of the Property for residential purposes will contribute to the character and amenity of the area and the use as a residential property works in the local context.
- 5.7 Policy 17 supports the residential use as this is compatible to the settlement boundary of Pitlochry. Tier 3 settlements are existing local services centres which will accommodate a very small share of new development to support their continuing growth. Pitlochry is a growing rural town which will require housing to support its growth.
- 5.8 The removal of Condition 3 is supported by the SG and will have no detrimental impact on the privacy and amenity of neighbours. Existing essential amenity will be protected and there will be no detrimental impact on the surrounding residential area.
- 5.9 The proper infrastructure is already in place for residential use including parking arrangements. The car park will have an allocated parking space which complies with the SG. The use of off-

street parking is also supported by the SG. This emphasises the point that there will be no detrimental impact on the residential amenity of the area.

- 5.10 For the reasons set out above, Condition 3 does not comply with the Circular and the removal of Condition 3 is supported by the development plan and material considerations. Condition 3 should therefore be removed.

6 CONCLUSION

- 6.1 Condition 3 is not compliant with Circular 4/1998 and in particular fails to meet the tests of necessity, relevance, enforceability and reasonableness. There are no planning reasons which justify the requirement for an occupancy condition on the Planning Permission.
- 6.2 The Property is in a residential area in Pitlochry with the required supporting infrastructure, such as parking, already in situ. The removal of Condition 3 would allow the Property to be used for residential purposes which is supported by the Development Plan and material considerations.
- 6.3 It is respectfully submitted that Condition 3 is unduly restrictive and that the Application should be approved as outlined in this Supporting Statement.

BURNESS PAULL LLP
Solicitors, Aberdeen

AGENT FOR THE APPLICANT

7 APPENDICES

Appendix 1 – Planning Permission

Appendix 2 – Email from Surveyor

LRB-2022-48**22/00175/FLL - S42 application to remove condition 3
(occupancy) of planning permission 04/00351/FUL Staff
Accommodation, Craigvrack Hotel, 38 West Moulin Road,
Pitlochry, PH16 5EQ**

REPRESENTATIONS

Comments to the Development Quality Manager on a Planning Application

Planning Application ref.	22/00175/FLL	Comments provided by	Lucy Sumner
Service/Section	Strategy & Policy	Contact Details	Development Contributions Officer: Lucy Sumner Email: [REDACTED]
Description of Proposal	S42 application to remove condition 3 (occupancy) of planning permission 04/00351/FUL		
Address of site	Staff Accommodation Craigvrack Hotel 38 West Moulin Road Pitlochry PH16 5EQ		
Comments on the proposal	The site gained planning consent in 2004 and has been used as staff residential accommodation for a number of years. The consent pre-dates the Council's Primary Education contributions policy. I have no comments to make on this proposal in terms of the Developer Contributions and Affordable Housing Supplementary Guidance.		
Recommended planning condition(s)			
Recommended informative(s) for applicant			
Date comments returned	24 February 2022		

Comments to the Development Quality Manager on a Planning Application

Planning Application ref.	22/00175/FLL	Comments provided by	Dean Salman Development Engineer
Service/Section	Transport Planning	Contact Details	
Description of Proposal	S42 application to remove condition 3 (occupancy) of planning permission 04/00351/FUL		
Address of site	Staff Accommodation Craigvrack Hotel 38 West Moulin Road Pitlochry PH16 5EQ		
Comments on the proposal	Insofar as the Roads matters are concerned, I have no objection to this proposal.		
Recommended planning condition(s)			
Recommended informative(s) for applicant			
Date comments returned	01 March 2022		

