

Perth and Kinross Council  
Development Management Committee – 20 February 2013  
Report of Handling by Development Quality Manager

**Modification of existing consent (10/00219/FLL) for variation of Conditions 7 and 8, Morven, Kindallachan, Pitlochry, PH9 0NW**

Ref. No: 12/02143/FLL  
Ward No: 5 - Strathtay

**Summary**

This report recommends refusal of the application for the variations of Conditions 7 and 8 of planning permission 10/00219/FLL as the development is considered to be contrary to the provisions of the Development Plan and would result in an unacceptable detrimental impact on the residential amenity of the surrounding area. There are no material considerations apparent which outweigh the Development.

**BACKGROUND AND DESCRIPTION**

- 1 The application site is located within the settlement of Kindallachan which lies to the east of the A9(T), some 6 miles to the south of Pitlochry. It is bounded to the north by the residential property 'Morven' which is in the applicant's ownership and sits at a substantially higher level than the existing shed. To the north-east lies 'Roslyn', a house which sits marginally higher than the field level. The land to the south-east and south of the existing shed comprises a grass field, again in the applicant's ownership. The west of the site is bounded by a private access with a field and the A9(T) beyond.
- 2 The existing storage shed, granted under reference 10/00219/FLL by Development Control Committee at its meeting on 2<sup>nd</sup> June 2010, has the appearance of an agricultural portal framed building being finished in olive green profile sheeting. The shed is some 18.4m long, 12.2m wide and 5.6m to the ridge. The previous permission, which has been implemented, was for the erection of the shed for purely storage purposes. This use was defined by condition. It is worth noting that the applicant was advised prior to the submission of that earlier application that using the shed for any other purposes would be likely to cause difficulties given the surrounding land uses.
- 3 The current planning application seeks to revise the wording of two of the conditions attached to the original planning permission for the storage shed. The applicant is seeking to carry out maintenance of machinery in the shed which was granted permission solely for storage purposes, and potentially also the yard area (as stated in the agent's supporting letter). The applicant also wishes to extend the hours of permitted vehicular access to the shed from 6am to 9pm seven days a week.
- 4 Condition 7 of planning permission 10/00219/FLL reads: "The building hereby approved shall be used solely for the purposes of the storage of forestry equipment and machinery and no maintenance, repairs or operation of such is permitted."

- 5 The proposed wording for a revised condition 7 put forward by the applicant reads: “The building hereby approved shall be used solely for the purposes of the storage and maintenance of forestry equipment. No repairs or operation of such equipment and machinery is permitted. The doors within the western elevation shall be kept closed when maintenance is undertaken within the building.”
- 6 Condition 8 of planning permission 10/00219/FLL reads: “Vehicular access and/or egress to/from the storage shed/site shall not take place outwith 0700 hours to 1900 hours Monday to Friday and 0800 hours to 1300 hours Saturday with no vehicular access on Sunday, unless with the prior written agreement of the Council as planning authority.”
- 7 The proposed wording for a revised condition 8 put forward by the applicant reads: “Vehicular access and/or egress to/from the storage shed/site shall not take place outwith 0600 hours to 2100 hours Monday to Sunday.”
- 8 A statement in support of the application has been submitted. This confirms that the applicant has struggled to adhere to conditions 7 and 8 of the original planning permission. It is understood from complaints raised by local residents and from inspections by the Enforcement Officer that some maintenance and/or repairs have been carried out contrary to the terms of the current permission. It should also be noted that although the applicant states he requires longer hours of vehicular access/egress, no written request has been made for additional hours of access/egress under the terms of the existing condition 8. The applicant was advised to maintain a record of instances when he required to operate outwith the terms of condition 8 in order that the need and any impact could be considered fully by the planning authority. No such information has been provided.
- 9 Although the previous application for the same proposal was refused under delegated powers with the agreement of the Committee’s Convener to use that process, it has been decided to report this application to Development Management Committee to resolve the outstanding concern the applicant and his agent have with the processing of the earlier application.

## **NATIONAL POLICY AND GUIDANCE**

### **Scottish Planning Policy 2010**

- 10 This SPP is a statement of Scottish Government policy on land use planning and contains:
  - the Scottish Government’s view of the purpose of planning,
  - the core principles for the operation of the system and the objectives for key parts of the system,
  - statutory guidance on sustainable development and planning under Section 3E of the Planning etc. (Scotland) Act 2006,
  - concise subject planning policies, including the implications for development planning and development management, and

- the Scottish Government's expectations of the intended outcomes of the planning system.

Of relevance to this application are

- Paragraphs 45 -51 : Economic Development
- Paragraphs 92 - 97: Rural Development.

## **DEVELOPMENT PLAN**

- 11 The Development Plan for the area comprises the TAYplan 2012 and the Adopted Highland Area Local Plan 2000.

### **Tayplan Strategic Development Plan 2012-2032 June 2012**

- 12 There are no specific policies of strategic importance, relevant to this proposal contained in the TayPlan.

### **Highland Area Local Plan 2000**

- 13 Under the Local Plan the site lies within the defined settlement of Kindallachan and therefore the following policies prevail:-

#### **Policy 2: Development Criteria**

- 14 Identifies the criteria against which all development proposals will be judged against and includes landscape setting, built form, land use, local transport network, services and energy efficiency.

#### **Policy 99: Small Settlements and Clachans**

- 15 This background policy identifies small settlements where there are no specific development proposals but where there is some scope for small scale residential and compatible development provided this does not adversely affect the density, character or amenity of the settlement.

#### **Policy 100: Development Briefs**

- 16 This policy identifies a number of settlements where there is pressure for residential development.

## **PERTH AND KINROSS PROPOSED LOCAL DEVELOPMENT PLAN 2012**

- 17 Members will be aware that on the 30 January 2012 the Proposed Local Development Plan was published. The adopted Local Plan will eventually be replaced by the Proposed Local Development Plan (LDP). The LDP has recently undergone a period of public consultation. The Proposed Local Development Plan may be modified and will be subject to examination prior to adoption. It is not expected that the Council will be in a position to adopt the Local Development Plan before December 2014. The Plan may be regarded as

a material consideration in the determination of this application, reflecting a more up to date view of the Council.

The principal relevant policies are in summary :-

**Policy PMA1: Placemaking**

- 18 This policy requires that all development must contribute positively to the quality of the surrounding built and natural environment. All development should be planned and designed with reference to climate change, mitigation and adaptation. The design and siting of development should respect the character and amenity of the place and should create and improve links within and, where practical, beyond the site. Proposals should also incorporate new landscape and planting works where appropriate to the local context and the scale and nature of the development.

**Policy ED3: Rural Business and Diversification**

- 19 This policy supports the expansion of existing and development of new businesses in the rural area. There is a general preference that locations will be within or adjacent to settlements though sites outwith may be supportable in certain circumstances. All proposals are required to meet a number of specified criteria including that the proposed use is to be compatible with surrounding land uses and not detrimentally impact on the amenity of residential properties within or adjacent to the site.

**Policy EP8: Noise Pollution**

- 20 This policy carries a presumption against development which would generate a high level of noise in the locality of existing or proposed noise sensitive land uses and similarly against the locating of noise sensitive uses near to sources of noise generation. A Noise Impact Assessment will be required for those proposals where it is anticipated that a noise problem may occur.

**OTHER POLICIES**

**Kindallachan Development Brief, Approved 2002**

- 21 Site 5 in the Brief relates to part of the application site and the wider area in the ownership of the applicant. The land is identified as having residential development potential but consideration is to be given to it being retained as an area of private amenity space. The application involves the development of the north west corner of this site and its access road is taken across the southern edge of Site 5. In terms of the current application, the majority of Site 5 is to be retained in its current state which is private open space. The Brief encourages new landscape planting of deciduous local species to provide a more integrated fit into the landscape.

## SITE HISTORY

- 22 The earlier application for the erection of a storage shed (10/00219/FLL) was approved by Development Control Committee on 2 June 2010. The shed has been constructed.
- 23 Planning application (11/01499/FLL) for the variation of condition 8 regarding access times for approved storage shed, which sought to increase the access hours substantially, was withdrawn by the applicant prior to determination.
- 24 A subsequent application for the modification of conditions 7 and 8 (12/01452/FLL) was refused under delegated powers.
- 25 There have been a number of breaches of conditions on the previous permission which are currently being considered by the Enforcement Officer. Negotiations have taken place with regard to some outstanding matters and these are still being progressed.

## CONSULTATIONS

- 26 **Environmental Health Manager:**  
This application cannot be supported due to the potential for loss of amenity at nearby/neighbouring residential properties. The circumstances have not changed since the original planning permission for the storage shed was granted. No complaints have been received by this service and it is contended that this is due to the conditions currently in force.
- 27 **Transport Scotland:** No objections to the application.
- 28 **Dunkeld and Birnam Community Council:** No response at time of report.

## REPRESENTATIONS

- 29 Ten letters of representation have been received, including one from Councillor Mrs Vaughn, raising concerns noted below:
- Increased noise and disturbance to neighbouring households
  - Detrimental impact on sensitive residential area, amenity and character of the village
  - Proposed hours of access rise to 105 hours per week rather than the current 65 hours per week
  - Increased hours, particularly at weekends will significantly detrimentally impact on all residences within the area
  - The original permission provided a balance between business and residents but the proposal requests substantial changes to that balance
  - Increased light pollution due to increased hours
  - Proposed changes will bring a more industrial character to the site
  - Currently noise from A9 and railway is limited prior to 7.30am
  - Replacing a part constitutes repair, not maintenance
  - Contrary to Local Plan policies

- Contrary to SPP 2010 paragraph 92
- Contrary to Proposed Local Development Plan
- Concerns regarding disposal of waste oils resulting from repairs

30 These issues are considered within the appraisal section of this report.

31 Issues which have been raised but are not material planning considerations relevant to the current planning application include:

- During consideration of the earlier application the applicant was questioned by councillors regarding the proposed limitations to access hours. The applicant responded that the limits would not cause problems.
- The local estate offered to find a more appropriate site but the applicant refused.
- Demand for forestry works fluctuates dramatically and not necessarily in line with wider economic conditions. The applicant's experience in this business should have informed his decision to proceed with the development subject to the explicit conditions set out in the original permission.
- Frequent deliveries from a motor factor suggest shed is being used for purposes other than storage.
- Although security was given as a reason for requiring the shed, some machinery has been stored outside for long periods.
- On-going breaches of conditions on the original planning permission.

#### **ADDITIONAL STATEMENTS RECEIVED**

32	Environment Statement	Not required
	Screening Opinion	Not required
	Environmental Impact Assessment	Not required
	Appropriate Assessment	Not required
	Design Statement / Design and Access Statement	None
	Report on Impact or Potential Impact	Not required

#### **APPRAISAL**

33 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 adopted Development Plans that are applicable to this area are the TAYplan and the Highland Area Local Plan 2000.

34 The determining issues in this case are whether: the proposal complies with Development Plan policy; whether the proposal complies with supplementary planning guidance; or if there are any other material considerations which justify a departure from policy.

## Policy

- 35 Policy 2 of the Highland Area Local Plan (HALP) generally seeks to ensure that all developments are compatible with their surroundings, that there are adequate services to support them and that developments do not have a significantly detrimental effect on the local community. There are no issues relating to service provision as Transport Planning colleagues and Transport Scotland are content with the proposal. The main issue with the current proposal is the compatibility of the revised proposals with the established community. The specific issues are considered in detail below.
- 36 Policy 99 of the Highland Area Local Plan (HALP) applies as the site is within an identified settlement boundary. This policy supports development which is compatible with the main residential uses on the provision that the development does not adversely affect the density, character or amenity of the settlement, subject to three criteria relating to the development pattern, the setting and amenity of adjacent properties and ribbon development. The original permission for the shed was approved at this settlement location on the basis it was solely for storage purposes and the hours of use were to be limited to normal working hours. The planning justification for this was to ensure the established rural residential amenity and character of Kindallachan was protected and not detrimentally affected by the carrying out of inappropriate works at inappropriate times. The conditions of this permission were not challenged by the applicant within the statutory period available to him at that time.
- 37 In terms of this policy it is considered that the proposed changes to conditions 7 and 8 will have a significant effect on the wider character and amenity of the settlement by virtue of the potential disturbance throughout the entire week from early morning to late at night with vehicle movements and the unrestricted maintenance of forestry equipment within the shed.
- 38 Policy 100 of HALP is not relevant to this application as it relates to the preparation of a development brief to provide advice on further housing sites. The Kindallachan Development Brief looked solely at the potential for further housing sites within the settlement and is therefore not directly applicable to the current proposal even though part of the application site is included as part of Site 5 in the Brief. The conclusion of the Brief is that Site 5 has the potential for housing development but also as an area of private amenity space for the village. The application is not contrary to the Brief which relates solely to the potential for housing developments. The area is not zoned as open space in the Local Plan.
- 39 Due to the nature of the current proposal the wider landscape framework will not be adversely affected. The landscaping scheme required by a condition on planning permission 10/00219/FLL was to be implemented by 31 March 2012. It still remains to be implemented to an appropriate standard and discussions are on-going with the Enforcement Officer who is actively trying to resolve the situation to an acceptable standard.

- 40 It is worth noting that paragraph 92 of Scottish Planning Policy 2010 states that the aim is to enable rural development whilst protecting and enhancing environmental quality.

## **MAINTENANCE**

- 41 As mentioned above, the current wording of condition 7 prevents the applicant from carrying out any repair or maintenance on any of his stored equipment within the building. The revised wording proposed seeks to change this to allow maintenance of equipment but not to include repair or operation. In the supporting statement the applicant's agent has indicated that the applicant would like to carry out routine maintenance himself either in the shed or in the yard. The maintenance tasks detailed in the statement are:
- Changing the blade, using spanners, on the chipper (usually monthly) and the blade is then taken off site to the saw doctor for sharpening
  - Checking over the saws weekly and sharpening by hand file
  - Checking the tyres on the vehicles, trailers and chipper weekly and if necessary using the compressor to bring to recommended pressure. If tyres require to be changed then this is done by ATS.
- 42 It is not clear whether this list is exhaustive or not. It may be that these are all the operations intended at the moment but, as the applicant is aware, business requirements change and more maintenance may need to be carried out on site at a later date which could give rise to greater disturbance. No restriction of hours of use for maintenance purposes have been indicated by the applicant. The suggested condition would allow maintenance but not operation. I would expect that after carrying out maintenance one may wish to ensure the machine still works and this therefore creates a potential conflict.
- 43 The Enforcement Officer visited the applicant's shed after a number of complaints were received from local residents stating that unauthorised operations were being carried out within the shed. The Officer took record photographs which showed a pillar drill, a bench grinder, a vice, and one other piece of equipment which may have been a press of some type located within the shed and set up for use. It is likely that the drill would be used for tasks other than routine maintenance operations (possibly ad hoc fabrication jobs); the grinder could be used for certain maintenance tasks but certainly not exclusively. The vice would probably be used for routine maintenance tasks, but again not exclusively. Determining exactly what tasks each piece of equipment was being used for at any time would be impossible unless present on site at the time. This is obviously not a practical option.
- 44 Given the grey area between maintenance and repair and the difficulty in establishing exactly what operation is being carried out within the shed, especially with doors shut as per the proposed revised wording, it is not considered feasible to restrict any works within the shed to maintenance only whilst excluding both repair and operation. The majority of activities relating to maintenance, repair and operation of machinery are considered to be wholly inappropriate for the location of the shed as it lies within a rural hamlet with an



established residential amenity. Consideration was given to the type of business the applicant was involved in at the time of the original application in 2010. Concerns for the protection of the residential amenity and the character of the area are evident in that the use of the shed was restricted to storage only. Had it not been possible to restrict the use by appropriate condition, my recommendation at the time would have been one of refusal. In order to support a local business, discussions were held with the applicant at that time to ensure the business would not be compromised if such restrictions were put in place. Had the restrictions not been acceptable to the applicant at the time, an outcome other than approval may well have been forthcoming.

- 45 In terms of planning legislation, all conditions are required to meet the 'six tests' set out in Circular 4/1998. Whilst all the tests are relevant here I consider the most crucial to be the 'ability to enforce'. I consider it would be exceptionally difficult if not impossible to establish exactly what operations were being carried out by the applicant, especially if the doors were shut. The difference between maintenance and repair is very difficult to establish. It seems that the sharpening of a saw blade could be classed as maintenance but perhaps the replacement of a damaged blade with a new one could be repair. I would also suggest that it would be difficult for a layman to establish whether noise was being generated by a compressor inflating tyres or some other type of machine. These are only a couple of examples where the difficulties of defining the works allowed by the proposed reworded condition 8 would lead to compliance and enforcement difficulties. If a condition does not meet the six tests, the advice is that the condition should not be attached. If the matter cannot be suitably controlled through an appropriate condition, serious consideration must be given to refusing the application.
- 46 It should be noted that one of the conditions attached to the initial permission prohibited the storage of equipment within the yard area. It would therefore not be in accordance with the terms of the current approval to consider the maintenance of any equipment within the yard area.

### **Hours of Access/Egress**

- 47 The applicant is hoping to increase the hours of vehicular access/egress to/from the current storage building from 65 hours over six days a week to 105 hours over seven days a week. The intention is that operations could commence at 6am all days of the week and could continue until 9pm all nights of the week. The applicant has submitted letters from a number of employers confirming that he is required to be on site prior to main contractors and given the distances required to travel this means leaving the base early. Whilst I do not dispute that his presence on site is required prior to other operators, a fundamental concern is the impact this change to operating conditions would have on the village of Kindallachan, its character and established levels of residential amenity.
- 48 Although the norm may be that there are one or two vehicle movements in the morning and the same again in the evening, the proposed rewording of the condition would not prevent numerous vehicle movements throughout any day

between 6am and 9pm. Whilst the current occupier of the shed may not intend to use the building in such a manner, as permission runs with the land, any other operator taking over the business or the shed may function in a different manner. This needs to be taken into account at this stage as it would not be possible to revisit this at a later date. It would also not be reasonable nor practical to limit the number of vehicle movements to and from the shed in any one day due to difficulties in recording and monitoring. Whilst it may be possible to write into any condition that prior agreement be sought from the planning authority if there were to be more than a certain number of movements in day, this style of condition has proven to be ineffective in other circumstances where an applicant may disregard the need to seek prior agreement.

- 49 The hours of access/egress being sought are considered to be excessive for the quiet rural hamlet of Kindallachan and are greater than hours of operation normally granted for businesses located in industrial estates where there are no residential properties nearby. The fact that there are numerous dwellinghouses which would be affected by the vehicle movements, due to the site's location in relation to the junction with the A9(T) and the main grouping of houses in Kindallachan, must be considered and taken into account when considering whether the detrimental impact the changes would have outweigh the economic benefit which may be brought to the area.

### **Residential Amenity**

- 50 As mentioned above the proposed changes to conditions 7 and 8 of permission 10/00219/FLL would have direct impacts on the existing level of residential amenity within the settlement of Kindallachan. The determining factor is whether or not the impact would be so significant as to cause the impact to be unacceptable. The nature of the area within which the application site is located is rural and peaceful even though there will be some increased background noise from the A9(T).
- 51 The hours of access/egress were restricted on the previous planning permission to allow operation within the times when the A9(T) was busy and when the background noise was elevated. There is considered to be a noticeable difference in the volume, and therefore noise, of traffic on the A9(T) between the hours of 7pm and 6am, and at weekends with these times being much quieter. Any other noise would therefore be perceived to be louder when heard in the context of the reduced background noise.
- 52 Whilst areas such as this may experience limited farming traffic at various hours of the day, the residential properties which would be affected by the changes proposed would not be subject to similar disturbance from farm traffic due to the lack of a through access.
- 53 Allowing any level of maintenance of equipment within the shed and increasing the hours of access/egress as proposed could have a significantly detrimental effect on the established residential amenity of the area. It would not be

possible to limit these effects by the proposed condition 7 due to monitoring and enforceability constrictions.

- 54 It is worth noting that condition 9 of permission 10/00219/FLL remains applicable to the remainder of the site and prohibits storage of materials within the wider yard area. Any breaches of conditions of the earlier permission should be notified directly to the Council's Enforcement Team. Depending on the outcome of this planning application, further enforcement involvement may be necessary.

### **Complaints**

- 55 The applicant's agent refers more than once to the fact that no complaints have been received by the Council's Environmental Health team during the unauthorised operation of the storage shed. However no mention has been made of the number of complaints received by Development Management's Enforcement Officer. At the time of writing these totalled approximately 30 received from a number of different people with 15 specifically relating to the hours of use of the storage shed and 17 relating to noise. It is evident from the level of complaints that the current working practices employed at the application site are causing a great deal of concern to local residents.

### **LEGAL AGREEMENTS**

- 56 A legal agreement is not required for this application.

### **DIRECTION BY SCOTTISH MINISTERS**

- 57 Under the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008, regulations 30–32, there have been no directions by the Scottish Government in respect of an Environmental Impact Assessment screening opinion, call in or notification relating to this application.

### **CONCLUSION AND REASONS FOR RECOMMENDATION**

- 58 In conclusion, the application must be determined in accordance with the adopted Development Plan unless material considerations indicate otherwise. In this respect, it is considered to be contrary to national policy and the Adopted Local Plan. I have taken account of material considerations and find none that would justify overriding the adopted Development Plan. The application is therefore recommended for refusal.

### **RECOMMENDATION**

#### **A Refuse the application for the following reason:**

- 1 The proposal does not accord with the requirements of Scottish Planning Policy 2010 (paragraph 92) in that the proposal does not protect or enhance the existing environmental quality.

- 2 The proposal is contrary to Highland Area Local Plan 2000 Policy 2 which, amongst other criteria, requires all development to be compatible with its surroundings in land use terms and not to result in a significant loss of amenity to the local community. The proposal is not compatible with its surroundings in land use terms and does not have regard to the existing amenity and character of the area. The development would therefore have a significant detrimental effect on the amenity of the area.
- 3 The proposal is contrary to Highland Area Local Plan 2000 Policy 99: Small Settlements and Clachans as the proposed development would adversely affect the amenity and character of the settlement due to the nature and hours of operation of the proposed development.
- 4 The proposal is contrary to Policy EP9: Noise Pollution, of the Proposed Local Development Plan 2012 in that the development could potentially generate a high level of noise in the locality of existing noise sensitive land uses to the detriment of the residential amenity of the properties.

**B JUSTIFICATION**

The proposal is contrary to the Development Plan and there are no material reasons which justify departing from the Development Plan.

**C PROCEDURAL NOTE**

A number of allegations have been made with regard to unauthorised activities within the site and the breach of planning permission conditions. On determination, the file shall be passed to the Enforcement Team to permit further investigations and action, if deemed appropriate.


**D INFORMATIVES**

None

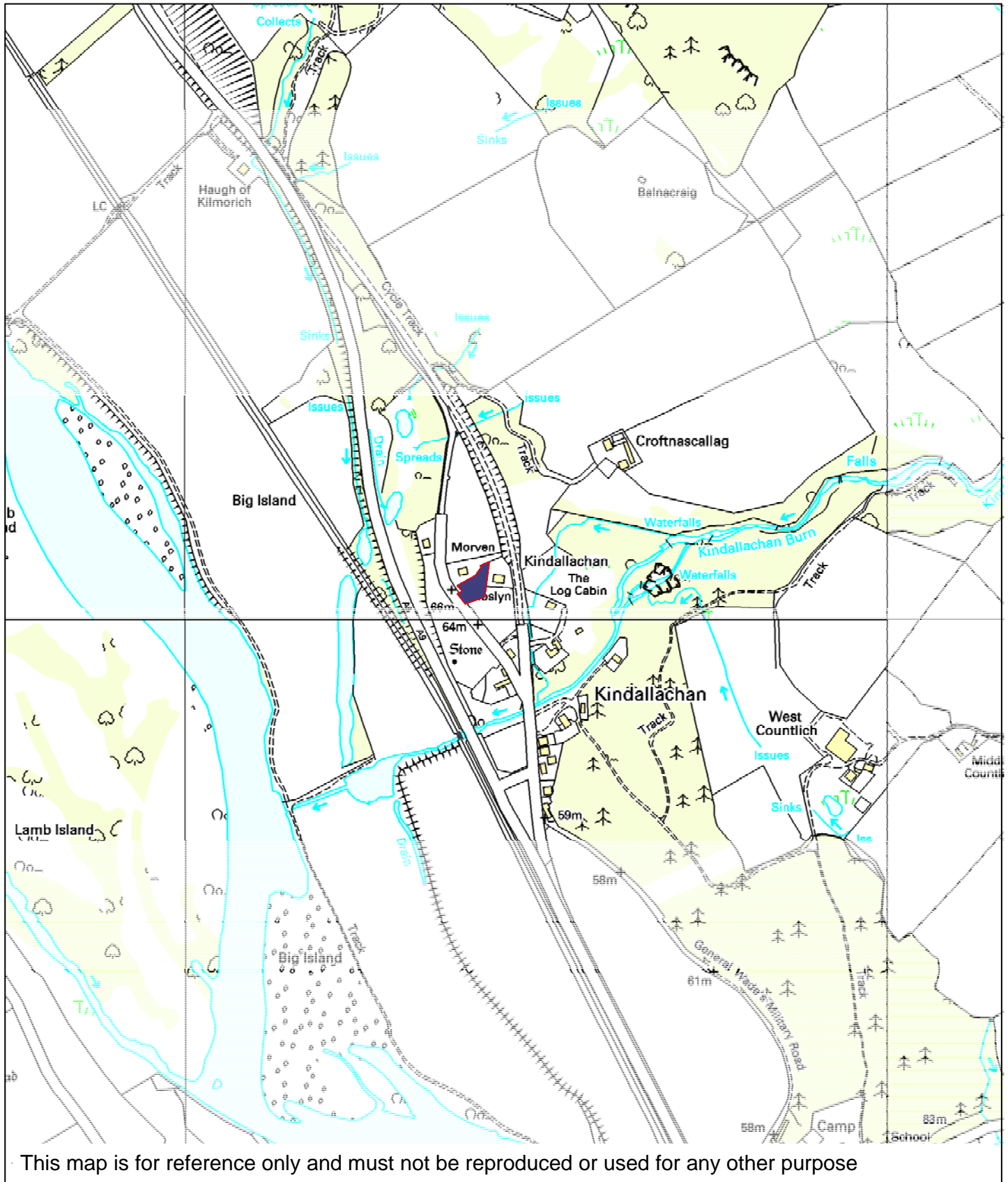
Background Papers: 10 letters of representation  
 Contact Officer: Christine Brien – Ext 75359  
 Date: 4 February 2013

**Nick Brian**  
**Development Quality Manager**

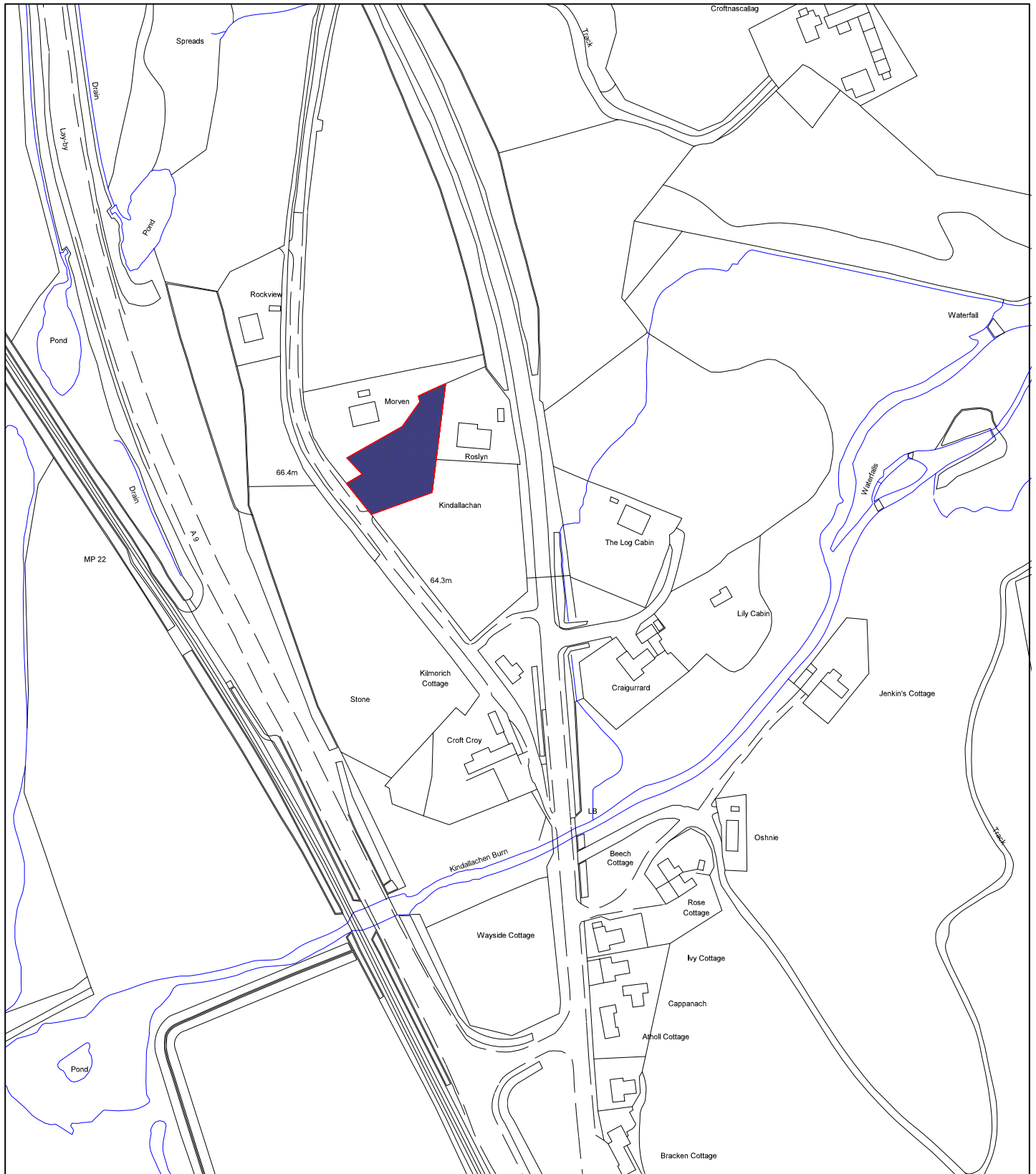
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1:2500