

Perth and Kinross Council  
Development Management Committee – 21 August 2013  
Report of Handling by Development Quality Manager

**Erection of two dwellinghouses on land 300 metres east of Kingswells,  
Kinfauns**

Ref. No: 13/00692/FLL  
Ward No: 1 - Carse

**Summary**

This report recommends refusal of a detailed planning application for the erection of two dwellings on the eastern side of Kinnoull Hill on the grounds that the proposal is contrary to the Development Plan, the Housing in the Countryside Guide 2012 and the Council's proposed Local Development Plan 2012.

**BACKGROUND AND DESCRIPTION**

- 1 The application site is a large grassed paddock which is located to the north of a small group of residential properties on the eastern side of Kinnoull Hill, along Muirhall Road. The site is located within an Area of Great Landscape Value (as per the adopted Local Plan) and within the proposed Green Belt (as per the Proposed Local Development Plan 2012)
- 2 The main section of the site measures approx 250m in its length (west to east) and ranges from approx 60m-90m in its width (north to south). The 1.9ha site slopes generally north to south, with some degree of cross sloping in some parts of the site. The site is bounded to the north and east by mature woodland and to the south and west by the curtilages of the existing neighbouring residential properties.
- 3 This planning application seeks detailed planning permission for the erection of two detached dwellings of the same house type. One of the dwellings will be located at the western end of the site and the other at the eastern end. In between the two plots, significant new planting and landscaping is proposed, with additional planting also proposed to the west of the western most plot, and also to the north outwith the boundary of the application site. The house type proposed is a traditionally designed house which will offer accommodation over two levels with the upper level within the roof space.
- 4 A detailed planning application for the erection of three dwellings on the site was refused planning permission in 2012 under delegated powers and was subsequently subject to a review by the Council's Local Review Body, which was also dismissed. An appeal to the Court has been lodged against the decision of the Local Review Body and is yet to be determined.
- 5 A detailed planning application on a neighbouring site under reference 13/00691/FLL for the erection of a single dwelling is also included elsewhere on this agenda.

## NATIONAL POLICY AND GUIDANCE

- 6 The Scottish Government expresses its planning policies through The National Planning Framework 1 & 2, the Scottish Planning Policy (SPP), Planning Advice Notes (PAN), Designing Places, Designing Streets, and a series of Circulars. Of particular relevance to this planning application are:-

### **Scottish Planning Policy 2010**

- 7 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.
- 8 Of relevance to this application are
- Paragraphs 66-91, Housing
  - Paragraphs 159-164, Green Belts.

## DEVELOPMENT PLAN

- 9 The Development Plan for the area consists of approved TAYplan Strategic Development Plan 2012 and the adopted Perth Area Local Plan 1995 (Incorporating Alteration No1, Housing Land 2000).

### **TAYplan Strategic Development Plan 2012 – 2032 - Approved June 2012**

- 10 Within the Tay Plan, the principle of a Green Belt around the City of Perth, including the area of Kinfauns has been approved. Specific reference to the Green Belt is made within the plans **Vision and Objectives**, within the **Proposal 1 Map, Policy 1 (Location Priorities)** and **Policy 3 (Managing Tay Plans Assets)**. The underling themes of the Tay Plan is to ensure that the Green Belt around Perth is designated through the emerging Local Development Plan and to ensure that only appropriate forms of development are allowed within this area, which will be based on Scottish Planning Policy.

### **Perth Area Local Plan 1995 (Incorporating Alteration No1, Housing Land 2000)**

- 11 Under the Local Plan the application site lies within the landward area of the plan, and within area of Great Landscape Value (AGLV)

12 The principal policies of relevance are in summary:

**Policy 1: General Policies**

13 This policy seeks (amongst other things) to ensure that all new developments have a good landscape setting within which the development proposed can be set and that the proposed development is compatible with existing land uses.

**Policy 11: AGLV**

14 This policy states that it is the policy of the Council to protect and enhance the environment of the AGLV by protecting the natural and man-made features of the landscape and seeking to improve amenity and landscape.

**Policy 12: AGLV**

15 This policy states that there will be a presumption against built development within the AGLV, except for development necessary for operational need.

**Policy 32: Housing in the Countryside Policy**

16 This policy is the Local Plan version of the Housing in the Countryside Policy. Within the text of this policy, it is explicitly stated that within the AGLV, there will be a presumption against new houses except on the basis of operational need.

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

17 On 30 January 2012 the Proposed Plan was published. The Council's current adopted Local Plans will eventually be replaced by the Local Development Plan. The Council's Development Plan Scheme sets out the timescale and stages leading to adoption. The Proposed Local Development Plan underwent a period of representation ending in April 2012 and is currently the subject of an examination, but it not expected that the Council will be in a position to adopt the Local Development Plan before December 2014. The Proposed Local Development Plan 2012 is a material consideration in the determination of this application, reflecting a more up to date view of the Council than those contained in the relevant adopted Local Plan.

18 Under the Proposed Local Development Plan, the site lies within the landward area, and within an area identified as Green Belt where the following policies are relevant.

**Policy RD3: Housing in the Countryside**

19 This policy offers support for new housing in the open countryside subject to specific criteria being met. However, the Local Development Plan explicitly states that this policy does not apply in the Green Belt.

## **Policy NE 5: Green Belt**

- 20 This policy states that within the area designated as Green Belt, development will only be permitted where:
- (a) it can be demonstrated that the development is essential for agriculture, horticulture (including allotments) or forestry operations that are appropriate to the Green Belt; or
  - (b) It constitutes woodlands or forestry, including community woodlands; or
  - (c) It constitutes uses which advance the Council's aims of improving public access to the countryside around Perth and are appropriate to the character of the Green Belt, including recreational, educational and outdoor sports development including modest related buildings which are located and designed in such a way as not to detract from the character of the Green Belt; or
  - (d) For buildings, where it involve alterations, extensions and changes of use to existing buildings these must not detract from the character of the Green Belt, (in the case of changes of use to residential property, these will only be permitted where the building is of suitable architectural quality); or
  - (e) For essential infrastructure such as roads and other transport infrastructure, masts and telecom equipment it must be demonstrated that they require a Green Belt location; and
  - (f) For all development within the Green Belt appropriate measures may require to mitigate any adverse impact on the character of the Green Belt.
- 21 The Policy also explicitly states that Housing in the Countryside Policy does not apply in the Green Belt.

## **OTHER POLICIES**

### **Developer Contributions 2012**

- 22 The Primary Education Contributions element of the Guidance is applicable to all new mainstream housing proposals within Perth and Kinross. In instances when the development is located within the catchment of a school which is at capacity (or would be as a result of the development proposed), a financial contribution towards improved educational infrastructure provision will be required.

### **Housing in the Countryside Guide 2012 (HITCG)**

- 23 This policy is the most recent expression of Council policy towards new housing in the open countryside and offers scope for new housing in the open countryside providing the proposals meet certain criteria. However, within the preamble text of this policy, it is explicitly stated that the policy does not apply

within the Green Belt. Under the terms of the proposed Local Development Plan, the site lies within the Green Belt.

## **SITE HISTORY**

- 24 A detailed planning application for the erection of a three dwellings (11/01373/FLL) on the site was refused planning permission in April 2012 under delegated powers on the grounds that,
- 1 *As the proposal will have a visible impact on the landscape character of an area designated as being of Great Landscape Value (AGLV), the proposal is contrary to Policies 12 and 32 of the Perth Area Local Plan 1995 (Incorporating Alteration No1 Housing Land 2000), both of which state that there will be presumption against built development within the AGLV designation, except for development necessary for operational need.*
  - 2 *As a result of the proposal being contrary to a policy relating to a specific designation within the relevant Local Plan (Policy 12 of the Perth Area Local Plan 1995 (incorporating Alteration No1, Housing Land 2000), the proposal is contrary to the Council's Policy on Housing in the Countryside (2009) which seeks to ensure that Local Plan policies relating to specific designations are complied with.*
  - 3 *The proposal is contrary to Policy NE5: Green Belt of the Perth and Kinross Council Proposed Local Development Plan 2012 as the site is located within an area identified as Green Belt. This policy states that the Housing in the Countryside Policy does not apply in the Green Belt*
- 25 That decision was reviewed by the Council's Local Review Body who resolved that the application had been correctly refused by the appointed officer. The applicant has since appealed the decision to the Court of Session, and that appeal is still under consideration by the Court.

## **CONSULTATIONS**

- 26 **The Executive Director (Education and Children Services)** has indicated that the local primary school (Kinnoull) is currently operating at over 80% capacity.
- 27 **The Environmental Health Manager** has commented on the planning application and raised no objection to the proposal, subject to conditions.
- 28 **Scottish Water** have commented on the planning application and raised no objection to the proposal

## **REPRESENTATIONS**

- 29 Ten letters of representations have been received, all of which are objecting to the proposal. The main issues raised within the representations are:

- Contrary to the Development Plan
- Contrary to the Proposed Local Development Plan 2012
- Adverse impact on the landscape
- Drainage Implications
- Setting a precedent

30 These issues are addressed in the main section of the report.

## ADDITIONAL STATEMENTS

|    |  |                |
|----|--|----------------|
| 31 | Environment Statement                          | Not required   |
|    | Screening Opinion                              | Not required   |
|    | Environmental Impact Assessment                | Not required   |
|    | Appropriate Assessment                         | Not required   |
|    | Design Statement / Design and Access Statement | Submitted      |
|    | Report on Impact or Potential Impact           | LVIA Submitted |

## APPRAISAL

### Policy

32 Sections 25 and 37(2) of the Town & Country Planning (Scotland) Act 1997 (as amended) requires the determination of the proposal to be made in accordance with the provisions of the Development Plan, unless material considerations indicate otherwise. Accordingly, the key test of the acceptability of this proposal is whether or not the proposed land use (for residential) accords with the Development Plan, and whether other material considerations, including the 2012 HITCG and the Proposed Local Development Plan 2012, offer weight to approve or refuse consent. For reasons stated elsewhere, I consider the proposal to be unacceptable and contrary to a number of Council Policies.

### Land Use

33 The application site lies within the landward area of both the adopted Local Plan and the proposed Local Development Plan 2012. To this end, in terms of accessing the acceptability of the proposal (in land use terms), there are three key documents which need to be considered; the adopted Local Plan, the HITCG 2012 and the Proposed Local Development Plan 2012.

### Adopted Local Plan

34 Within the adopted Local Plan, the site lies within the landward area and within an area designated an AGLV. Policy 12 of the Local Plan states that there will be a presumption against built development within the AGLV, except for development necessary for operational need. In addition to this, Policy 32 of the Local Plan which specifically relates to new housing in the open Countryside explicitly states that within the AGLV there will be presumption against new houses, except on the basis of operational need. To this end, and without

assessing the proposal against the specific criteria contained in Policy 32, the proposal is contrary to the Local Plan in terms of its proposed land use, as it is located within the AGLV and is not required for operational need.

### **Housing in the Countryside Guide 2012**

- 35 The HITCG 2012 is the most recent version of the Council's Housing in the Countryside Policy and to this end, it is the most recent expression of Council Policy towards new housing in the open countryside. The HITCG 2012 is similar to the previous policy which was approved in 2009 but does not provide for AGLVs as the AGLV designation is not part of the proposed Local Development Plan 2012. Within the preamble text of the HITCG 2012, it is explicitly stated that *'this policy does not apply in the Green Belt and its application is limited within the Lunan Valley Catchment Area to economic need, conversions or replacement buildings.* Accordingly, and again without assessing the proposal against the specific criteria of the HITCG 2012 the proposal is contrary to this policy as it is located within an area designated as Green Belt within the Proposed Local Development Plan 2012.

### **Proposed Local Development Plan 2012**

- 36 The Council approved its proposed Local Development Plan in 2012, and this document is considered to be a significant material consideration in the determination of all planning applications. Within the proposed Local Development Plan 2012, the site lies within the landward area, and within an area which has been designated as Green Belt.
- 37 *Policy NE3* of the proposed Local Development Plan 2012 explicitly states that the Council's Housing in the Countryside Policies do not apply within the Green Belt and that any development must be limited to agriculture, horticulture or forestry operations which are appropriate to the Green Belt.
- 38 Whilst the Council has received some representations to the Green Belt policy and the exact boundaries of the Green Belt are currently being examined by the Scottish Ministers, it is crucial to note that the Green Belt and its underlining policy framework is materially different to other Local Development Plan policies which have attracted representations during the consultation process as it is underpinned by the approved Tay Plan 2012. Under the terms of the Tay Plan, the City of Perth must have a Green Belt within its Local Development Plan, and within the general area of Kinfauns, if the Local Development Plan is to be consistent with Tay Plan – which is a requirement of the Planning Act.
- 39 Accordingly, I consider the Council's requirement for the identification of this area as a Green Belt to increase the restrictions on new development in this area, particular as the settled view of the Council, as expressed in the proposed Local Development Plan 2012 is that the HITCG 2012 should be not applicable within the Green Belt and therefore I consider the proposal to be contrary to the proposed Local Development Plan 2012.

## **Siting Criteria**

- 40 Policy 1 of the adopted Local Plan seeks to ensure (amongst other things) that all new sites have a good existing landscape framework. In terms of the existing landscape framework, the site is relatively well defined to the south (by existing properties) and to the north and east (by existing woodland). However, I ultimately consider this site to be somewhat excessive in area for two dwellings, and with the extensive planting proposed between the two plots, I consider the arrangement to be slightly contrived. The two plots are essentially part of a far larger site which has been artificially manufactured to create two smaller plots by virtue of the proposed significant planting. To this end, I do not consider this site to have an existing landscape framework which is capable of absorbing the development proposed, and consider the proposal to be contrary to the aims of Policy 1 of the Local Plan.

## **Compatibility with existing land uses**

- 41 In terms of compatibility with existing land uses, Policy 1 of the adopted Local Plan seeks (amongst other things) to ensure that all new sites are compatible with existing land uses. As the immediate neighbouring land uses are principally residential, I have no particular issues with the compatibility of the proposal with the existing land uses. I do however note the concerns which have been raised in the representations concerning the potential impact that this proposal would have on existing private water supplies, which serve several existing dwellings. My Environmental Health colleagues have commented on the proposal specifically on this matter and although they note the potential issues arising from the possibility of contamination of existing private water supplies, they do not object to the proposal subject to an appropriately worded condition being attached to any consent. I therefore consider the proposed land use to be compatible with existing uses.

## **Impact on Visual Amenity / Landscape Character**

- 42 In terms of the potential impact that the proposal will have on the existing landscape character and visual amenity of the area, whilst this proposal (via the proposed extensive planting) will undoubtedly have a degree of impact, the impact is not considered to be an adverse one. Much as been written within the applicant's submission regarding the significance of the lack of adverse impact that the development will have on the landscape character and / or visual amenity of the area. The applicant has suggested that the proposal's limited impact on the landscape and visual amenity of the area should be sufficient justification to approve the application. I accept that the proposal will not have an adverse impact on the landscape character or visual amenity of the area but I do not accept that is sufficient basis to support the development having regard to the Development Plan and other policy considerations.
- 43 It is the case that the Council has taken a relaxed approach in the past towards some new housing within the AGLV when it was considered that the impact on the existing visual amenity / landscape character of the area arising from the



development was negligible as a result of the site's physical characteristics, and the applicant has drawn attention to such cases in their submission.

- 44 Whilst acknowledging that all planning applications are treated on their own individual merits (which includes consideration of their specific site characteristics), the additional weighting of the content of the proposed Local Development Plan 2012 and the Green Belt designation has changed the Councils position. The current approach of the Council when assessing housing applications within the existing AGLVs (which are also within the proposed Green Belt) is that regardless of their visual impact or their impact on the landscape character of the area, there should be a strong presumption against development and that applications for new housing in the AGLV / Green Belt should be resisted.

### **Residential Amenity**

- 45 In terms of the potential direct impact on existing residential amenity i.e. overlooking or loss of privacy, as a result of the physical size of the plots and the significant separation distances to existing properties, the proposal in my view will have no direct impact on existing residential amenity.

### **Traffic and Pedestrian Safety**

- 46 I note that my colleagues in Transport Planning have commented on the planning application in terms of road and pedestrian safety and have raised no concerns. I have no reason to offer a different view on this matter and I accept that there are no road or pedestrian safety issues arising from this proposal.

### **Drainage / Private Water Supplies**

- 47 Within the representations concerns have been raised regarding the proposed drainage of the site, and the implications that the development will have on the infrastructure of existing private drainage systems and / or private water supplies. My Environmental Health colleagues have commented on this matter and although they note the potential issues arising from possible contamination of existing private water supplies, they nevertheless do not object to the proposal subject to an appropriately worded condition being attached to any consent.

### **Developer Contributions**

- 48 The site lies within the school catchment of Kinnoull Primary School, which is currently operating at more than 80% capacity. To this end, and in line with the requirements of the Councils Developer Contributions 2012 document, an education contribution would be required for this development in the event that the application secured planning consent.

## **Economic Development**

- 49 The economic benefits which it is considered would arise as a result of this proposal include added value to the local economy in terms of employment through the construction of the house and spending on goods and services in the local area.

## **LEGAL AGREEMENTS**

- 50 No legal agreement is required for this proposal.

## **DIRECTION BY SCOTTISH MINISTERS**

- 51 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**

- 52 The proposal is contrary to the adopted Local Plan, the HITCG 2012 and the proposed Local Development Plan 2012 by virtue of it being located within the current AGLV and the proposed Green Belt. To this end, there is significant policy reasoning for refusing the planning application.

## **RECOMMENDATION**

### **A Refuse the planning application for the following reasons:**

- 1 As the proposal is located within an area designated as being of Great Landscape Value (AGLV), the proposal is contrary to Policies 12 and 32 of the Perth Area Local Plan 1995 (Incorporating Alteration No1 Housing Land 2000), both of which state that there will be presumption against built development within the AGLV designation, except for development necessary for operational need.
- 2 As a result of the proposal a) being contrary to a policy relating to a specific designation within the relevant Local Plan (Policy 12 of the Perth Area Local Plan 1995 (incorporating Alteration No1, Housing Land 2000) and b) being located within the Green Belt, the proposal is contrary to the Council's Housing in the Countryside Guide (2012) which seeks a) to ensure that Local Plan policies relating to specific designations are complied with and b) states that the policy does not apply within the Green Belt.
- 3 As the proposal does not have a good existing landscape framework, the proposal is contrary to Policy 1 of the Perth Area Local Plan 1995 (Incorporating Alteration No1, Housing Land 2000) which seeks to ensure that all new developments within the landward area have a good existing landscaping framework.

- 4 As the site is located within an area identified as Green Belt, the proposal is contrary to Policy NE5: Green Belt of the Perth and Kinross Council Proposed Local Development Plan 2012 which explicitly states that the Housing in the Countryside Policy does not apply in the Green Belt.

**B JUSTIFICATION**

The proposal is considered to be contrary to the Development Plan and there are no material considerations which justify approval of the application.

**C PROCEDURAL NOTES**

None.

**D INFORMATIVES**

None.

Background Papers: 10 letters of representation  
Contact Officer: Andy Baxter – Ext 75339  
Date: 30 July 2013

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

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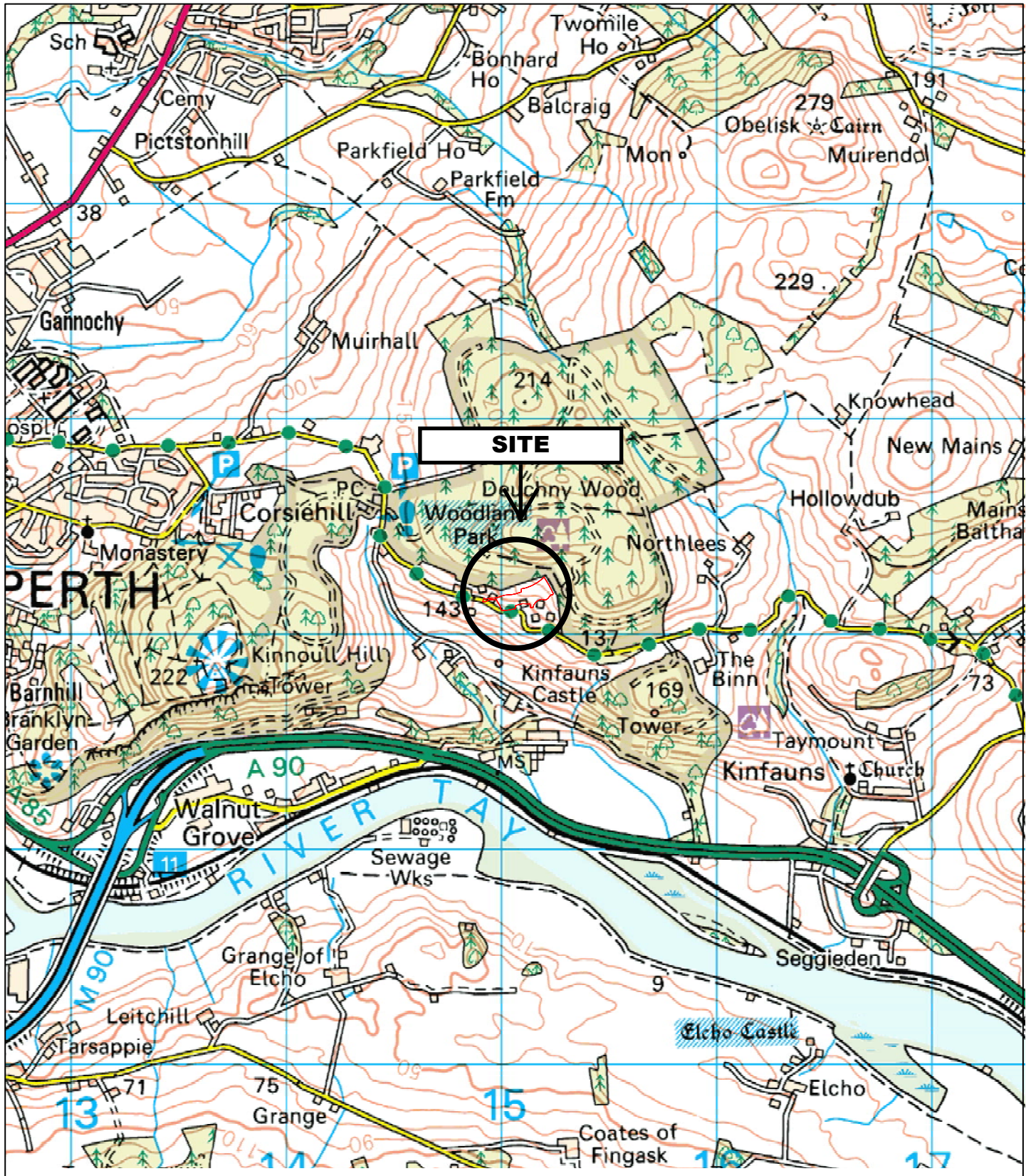


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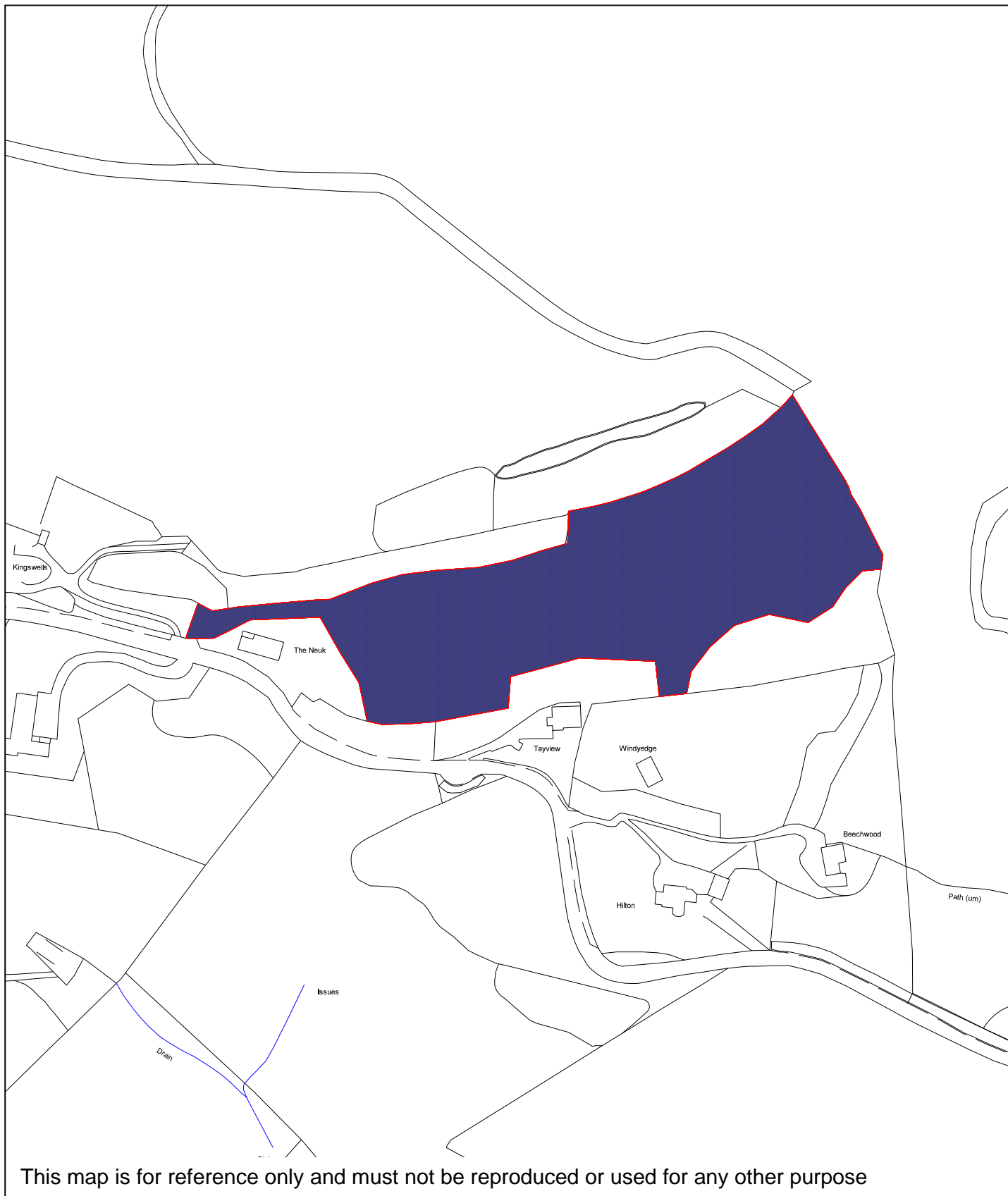
Land East Of Kingswells

Erection of 2 dwellinghouses



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