

Perth and Kinross Council  
Development Management Committee – 17 December 2013  
Report of Handling by Development Quality Manager

**Removal of occupancy condition at Croftnamuick, Camserney**

Ref. No: 13/01567/FLL  
Ward No: 4 Highland

**Summary**

Having fully considered the supporting information, this report recommends refusal of the request for removal of the occupancy condition as without an occupancy restriction it would result in the proposal being considered contrary to the Development Plan and the Council's Housing in the Countryside Guide 2012 and there are not considered to be sufficient material considerations to justify a departure from the Development Plan.

**BACKGROUND AND DESCRIPTION**

- 1 The original consent on this site was granted in 2007 at the Development Control Committee (Art 467(15)/12) after recommendation of refusal by officers. The site for the consented house sits on a hill slope above and to the north of Camserney on the access road to Lurgan Farm in a rural location approximately 3 miles west of Aberfeldy.
- 2 The supporting information for the original application indicated that it was the applicant's intention to live in the new house, vacating his existing house for occupation by a new farm manager. The submission also indicated the following relevant points to the time of submission in 2007:
  - The applicant was not retiring
  - Hands on management of livestock would be shared between the applicant and farm manager
  - The farms at Camserney and Lurgan employ two part time workers as one "Full time equivalent" and they are housed elsewhere.
  - The applicant expected the house to be subject to an occupancy condition
  - The use of the existing house was claimed to be logical given its relationship to farm buildings
  - There were no available houses on the farm to accommodate the new farm manager and no houses have been sold in the last ten years.

- 3 The 2007 application also included a report from the Scottish Agricultural College (SAC) which assessed the labour requirements for the farm and provided an explanation as to why a further agricultural dwellinghouse was required.
- 4 As a result of the previous Committee decision to approve the application in 2007, the principle for the erection of a dwellinghouse for operational need has been established for the site. Similarly, the details relating to siting, design, access, etc. have also been agreed. Consequently, the only issue to be considered by Members now is whether a tie between the occupancy of the dwelling (Condition 9) and the farm to which justification for operational need arises from, should be through a condition or if indeed the tie can now be regarded as not necessary.
- 5 Condition 9 of the 2007 consent stated the following:

*“The occupation of the dwellinghouse shall be restricted to a person solely or last employed locally in agriculture at Camserney Farm; as defined in Section 277(1) of the Town and Country Planning (Scotland) Act 1997 or a dependant of such a person residing with him or her (but including a widow or widower of such a person).”*

## **NATIONAL POLICY AND GUIDANCE**

### **SPP 2010 Scottish Planning Policy 2010**

- 6 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.
- 7 Of relevance to this application are:
  - Paragraphs 66 - 91 : Housing
  - Paragraphs 92 - 97: Rural Development.
  - Paragraphs 125 -148: Landscape and Natural Heritage

### **Scottish Government Circular 3/2012 - Planning Obligations and Good Neighbour Agreements**

- 8 This circular translates into policy the advice contained in the Chief Planner's letter regarding occupancy restrictions. The circular states

*A number of issues have arisen with the use of occupancy restrictions, some of which have been exacerbated by the current economic situation. Some people have found it difficult to get a mortgage to buy a house with an occupancy restriction...any use of occupancy restrictions introduces an additional level of complexity and (potentially expense) into the process of gaining consent for a new house. Occupancy restrictions can also be intrusive, resource intensive and difficult to monitor and enforce.*

### **PAN 38 Housing Land**

- 9 The main aim is to provide advice on the availability of sites for development and which supports sustainable options that can be delivered in a suitable time period to meet the present level of demand.

### **PAN 67 Housing Quality**

- 10 A successful place in which to live is one which is distinctive, safe and pleasant, accessible, welcoming, adaptable and resource efficient.

## **DEVELOPMENT PLAN**

- 11 The Development Plan for the area consists of TAYplan Strategic Development Plan 2012 – 2032, the Approved Perth and Kinross Structure Plan 2003 and the Adopted Strathearn Area Local Plan 2001.

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

- 12 The principal relevant policy is in summary:-

#### **Policy 5: Housing**

- 13 Ensure that the mix of housing type, size and tenure meets the needs and aspirations of a range of different households throughout their lives, including the provision of an appropriate level of affordable housing based on defined local needs. Local Development Plans (where applicable) will need to set affordable housing requirements for or within each housing market area.

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

- 14 The application site is situated within the landward area of the local plan and outwith any defined settlement.
- 15 The relevant policies are, in summary.

#### **Policy 1: Sustainable Development**

- 16 This sets out the criteria to ensure the goals for sustainable development are achieved including use of non renewable resources, maintain or improve the quality of the environment, the precautionary principle is applied, biodiversity is conserved, minimisation of waste and pollution and to meet local needs and enhance access to employment facilities, goods and services.

**Policy 2: Development Criteria**

- 17 All developments within the Plan area will be judged against series of criteria including a landscape framework regard the scale, form, colour and density of development within the locality, compatibility with its surroundings in land use terms and should not result in a significant loss of amenity to the local community, capacity of the local road and public transport network, sufficient spare capacity in drainage, water and education services to cater for the new development, buildings and layouts for new development should be designed so as to be energy efficient and be located in those settlements which are the subject of inset maps.

**Policy 5: Design**

- 18 The Council require high standards of design for all development with encouragement given to the use of good quality materials, energy efficiency, innovative design and good landscape fit.

**Policy 45: Agriculture**

- 19 The Council will support agriculture remaining as a major land use and source of employment in the Plan area. Prime quality agricultural land will be protected from irreversible development.

**Policy 54: Housing in the Countryside**

- 20 The Council will normally only support proposals for the erection of individual houses in the countryside which fall into at least one of a series of categories 1-4. In this instance, Category (b) relating to operational need is applicable and the policy specifies the need for a condition controlling its occupancy.

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

- 21 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 has undergone an Examination following which a report was published on 11 October 2013 containing the Reporter's recommendations. The Council has a three month period to consider the Reporter's recommendations and the modified Plan will be published by 11 January 2014. This will be the Plan that the Council intends to adopt, subject to agreement by Scottish Ministers. Prior to adoption, 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.

22 Under the LDP the principal relevant policy is:-

**Policy RD3: Housing in the Countryside**

23 The Council will support proposals for the erection of single houses or groups of in the countryside which fall within one of a series of categories. In this instance it would be for operational need and the requirement an occupancy control to be considered.

**OTHER POLICIES**

**Perth & Kinross Council's Housing in the Countryside Guide 2012**

24 The Council's revised Housing in the Countryside Guide 2012 stipulates a number of criteria where new housing in the countryside may be considered and these include, under Section 3.3, development for operational need and also states the requirement for an occupancy condition to be considered.

**Education Contributions**

**Planning Guidance Note – Developer Contributions May 2009**

25 Across Scotland, local authorities are having difficulty maintaining and developing infrastructure in order to keep up with the pressures of new development. Additional funding sources beyond that of the local authority are required to ensure that infrastructure constraints do not inhibit sustainable economic growth.

**Planning Guidance Note – Primary Education and New Housing Development May 2009**

26 This guidance sets out the basis on which Perth and Kinross Council will seek to secure contributions from developers of new homes towards the cost of meeting primary education infrastructure improvements necessary as a consequence of development. All new housing from the date of adoption including those on sites identified in adopted Local Plans will have the policy applied.

**SITE HISTORY**

27 05/01274/FUL Erection of a dwellinghouse – Refused 5 August 2005  
06/01734/FUL Erection of an agricultural dwellinghouse – Withdrawn  
07/01221/FUL Erection of an agricultural dwellinghouse - Approved

**CONSULTATIONS**

28 None

## REPRESENTATIONS

- 29 One letter of representation has been received which relates to concerns regarding the access arrangements.
- 30 This application relates solely to considering the removal of the agricultural occupancy condition and the detailed aspects of the proposal have been considered and assessed under the extant 2007 consent.

## 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	None
	Report on Impact or Potential Impact	Not required

## APPRAISAL

### Policy

- 32 This proposed deletion of the agricultural occupancy condition falls to be assessed under the Council's Housing in the Countryside Guide 2012. Under category 3.3 of this policy encouragement will be given for the provision of a house or group of houses on the basis of economic activity for a local or key worker associated with either a consented or an established economic activity. The applicant must demonstrate that there is a need for the house. In this case the applicant previously submitted a Supporting Statement which concluded that the labour profile for the working farm required an additional farm worker. At officer level it was concluded that the proposed new house on a remote site not directly adjacent to existing farm buildings was not an appropriate site for a new house. Nevertheless the Committee chose to approve the application subject to controlling the occupancy of the new house to an agricultural worker.
- 33 Taken together it was considered previously by Committee, contrary to the report recommendation, that the labour profile and the requirement for a new farm manager demonstrated satisfactorily the operational need for a further house on the farm to support the business, subject to control over occupancy.
- 34 As Members had acknowledged the operational need for an additional dwelling, the proposal was consequently considered to be in accordance with the Council's Housing in the Countryside Policy 2005 (prior to the Housing in the Countryside Guide 2012) and therefore acceptable in principle and in accordance generally with structure and local plan policy in encouraging and supporting agricultural activity. However, in coming to this decision Members did require that the occupancy of the dwelling was tied to the operation of the farm and this was controlled by the condition which the applicant now seeks to delete.

35 Development Plan policy clearly sets out the circumstances under which residential development in the countryside can be regarded as being acceptable, in this instance for operational need. However, the applicant has now indicated the difficulties that are being met in respect of obtaining the necessary funding (mortgage) for the dwelling where the consent has any restriction on the occupancy of the dwelling. The applicant also cites a letter issued by the former Chief Planner, Jim McKinnon (JMCK) and, more recently, Circular 3/2012, in which it states that occupancy conditions can result in difficulties in obtaining a mortgage and may also result in difficulties when selling the house. The letter actually states that:-

*The Scottish Government believes that occupancy conditions are rarely appropriate and should generally be avoided.*

36 The supporting letter from the applicants agent goes on to state that he considers the guidance from the Chief Reporter's letter, makes it is clear that these overbearing restrictions should not be applied to suitable developments where the case for the development has been proven through the planning process.

37 No evidence of the applicant having difficulty obtaining a mortgage has been submitted with the application. Whilst both the JMCK letter and Circular 3/12 are material considerations in the determination of this application, they also have to be viewed in the context of several key issues in assessing the request to remove the restriction.

- The dwelling would be for the applicant and the existing house where the applicant lives would be occupied by a farm manager. The house subject to the occupancy condition is therefore not the principal dwelling to serve the operation as that role is provided by the existing dwelling.
- Without any occupancy restriction on the proposed dwelling, there would be no restriction on it being sold off or not being occupied in relation to farming operation. It is felt that such a scenario is more likely to occur for a second dwelling.

38 If consent were to be granted for the dwelling without any occupancy restriction then I would have concerns over the precedent that such a decision would set. Whilst the JMCK letter and Circular 3/12 set out the Scottish Government position nevertheless, they do not necessarily or automatically provide sufficient justification for Development Plan policies to be overcome. It is still down to individual Planning Authorities to apply policy as they consider appropriate and also to decide the level of materiality which both of these carry. If there was to be a general presumption against applying any occupancy restrictions on dwellings which had demonstrated an operational need then it would present future difficulties where a rural business was disposed of separately to the related dwelling and a new operator then seeking a dwelling for operational need and there are previous instances of this.

- 39 In addition, if restrictions on occupancy were not applied to dwellings which were required for operational need then this would effectively mean that the operational need category of the Development Plan policy and the HiCG 2012 were not applicable. The obvious consequence of this would be that dwellings required for operational need would be required to meet one of the other categories of the respective policies. In this instance it is not considered that the proposed dwelling would satisfy any of the other categories. If operational need had not been cited under the 2007 application it is therefore likely that it would have been refused as it would have failed to meet any of the other categories contained within the Housing in the Countryside Policy applicable at that time.
- 40 Furthermore it concerns me that the applicant went to great lengths to demonstrate the operational need for a dwellinghouse on this site in 2007 but to date the house has not yet been started. The 2007 consent remains extant as a result of some works to the bellmouth etc being undertaken just before the consent lapsed to ensure the consent was implemented but there is no evidence of the commencement of any building works for the house. In my view, if there was truly a sound operational need for a new dwellinghouse, its development would have been completed soon after consent was initially granted (or indeed we would have had a request for a temporary caravan on the site to house the farm manager pending the new build). The application for the removal of the occupancy condition only serves to confirm this view. I therefore have concerns over the operational necessity for the development under these circumstances.

### **ECONOMIC DEVELOPMENT**

- 41 The development is clearly linked to the existing operational requirements of the farm business and therefore, as the previous committee decision recognised this, then there would be an economic benefit to this operation through the development proceeding.

### **LEGAL AGREEMENTS**

- 42 None required.

### **DIRECTION BY SCOTTISH MINISTERS**

- 43 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 REASON FOR RECOMMENDATION**

- 44 The principle of providing housing on the site is acceptable for operational need and the scale and design of the dwelling would not have any adverse impact on the character or appearance of the wider countryside. The proposal is in accordance with the Council's Housing in the Countryside Guide 2012 and is in



accordance generally with structure and local plan policy in encouraging and supporting agricultural activity. However, this is on the basis of operational need having previously been accepted by this Committee with appropriate occupancy controls. I do not consider that the limited justification and other material considerations that have been put forward are sufficient to justify a departure from Development Plan policy and therefore cannot support the request to have the occupancy restrictions removed. As a consequence refusal is recommended.

## **RECOMMENDATION**

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

#### **Reasons:-**

- 1 The proposed dwelling, without any restriction on its occupancy would be contrary to the Councils Housing in the Countryside Guide 2012 Section 3.3 Economic Activity, in that it would not have any restriction on its occupancy and it would as a result not be possible for the Planning Authority to ensure that the occupancy remained for the purpose intended. Furthermore the house in this location, without any occupancy control would fail to adhere to any other category within this policy.
- 2 The proposed development would be contrary to Policy 54 (d) of Highland Area Local Plan in that it would not have any restriction on its occupancy and it would as a result not be possible for the Planning Authority to ensure that the occupancy remained for the purpose intended. Furthermore the house in this location, without any occupancy control would fail to adhere to any other category within this policy.
- 3 The proposed development would be contrary to Policy RD3 of the Local Development Plan in that it would not have any restriction on its occupancy and it would as a result not be possible for the Planning Authority to ensure that the occupancy remained for the purpose intended. Furthermore the house in this location, without any occupancy control would fail to adhere to any other category within this policy.
- 4 The proposed development, if approved without any restriction on occupancy, would set an undesirable precedent for other unrestricted residential development in the countryside which could undermine the Planning Authority's policy approach to such development.

### **B JUSTIFICATION**

Without any restriction of the occupancy of the dwellinghouse the Council would be unable to exercise control over its future use and as a consequence it is considered that it would fail to comply with the Development Plan and there are no material considerations which are considered to provide sufficient justification to allow a departure to the Development Plan.

**C PROCEDURAL NOTES**

None.

**D INFORMATIVES**

None

Background Papers: None

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Date: 21 November 2013

**Nick Brian  
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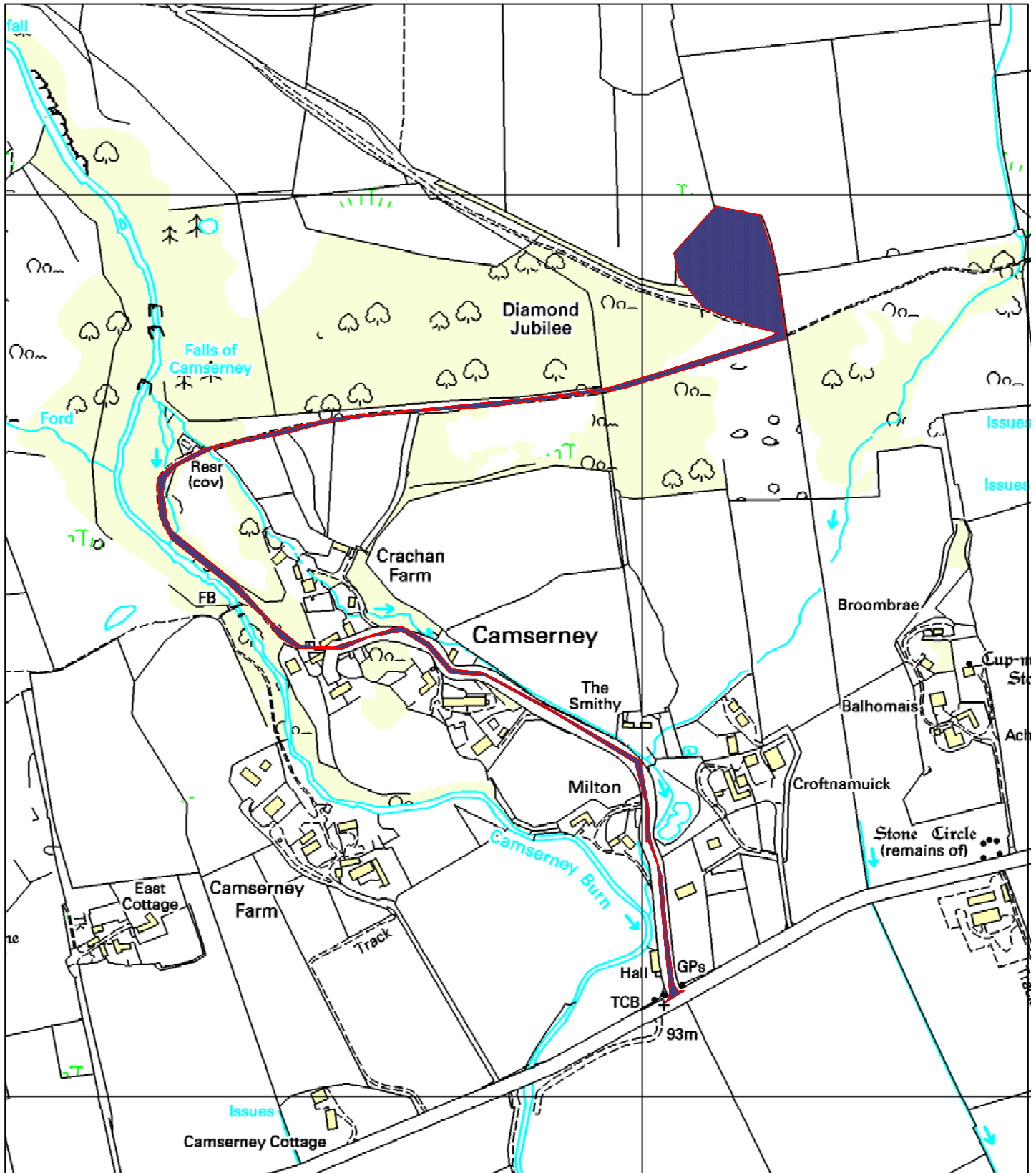
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# Perth & Kinross Council

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## Land at Croftnamuick, Camserney

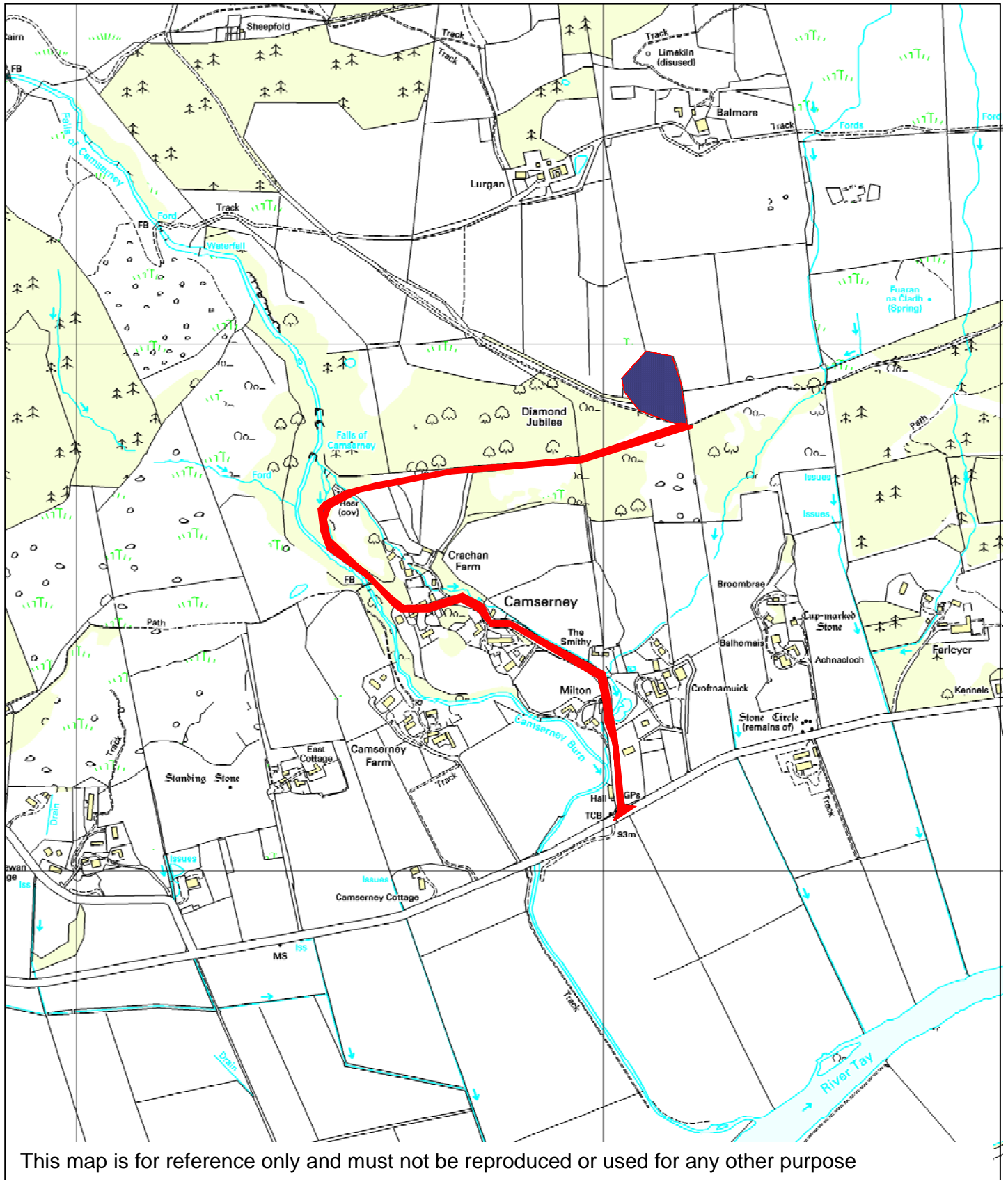
Modification of existing consent for removal of condition no 9 (occupancy condition)



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1:6000





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