

Perth and Kinross Council
Development Management Committee – 16 July 2014
Report of Handling by Development Quality Manager

Removal of condition 3 (occupancy) of permission 11/01839/FLL (Erection of an indoor horse arena building for equestrian business and erection of a dwellinghouse and garage) at Dollar Equestrian, Blairingone

Ref: No: 14/00705/FLL
Ward No: 8 – Kinross-shire

Summary

This report recommends approval of the application for the removal of condition 3 of planning consent 11/01839/FLL as being in accordance with Scottish Government guidance on occupancy conditions.

BACKGROUND AND DESCRIPTION

- 1 This application relates to the recently constructed equestrian development on land to the north of Cairnfold Farm. In March 2012 the Development Control Committee granted planning permission for the development of a commercial equestrian centre on the site. The permission comprised of the erection of a large steel portal framed building containing 24 stables and an indoor riding arena. The permission also included the erection of a large dwellinghouse with a detached double garage. This consent was granted subject to the following occupancy condition:-

“The occupancy of the approved dwellinghouse and associated garage shall be restricted to persons solely or last employed locally in the equestrian business or other persons associated with the equestrian business at Cairnfold Farm Livery Stables; or a dependant of such a person residing with him or her (but including a widow or widower of such a person).”

- 2 To date the applicant has completed the construction of the building containing the stables and arena and the equestrian business is now operating. In addition, works have also commenced on the construction of the house with the garage nearing completion. However works have not commenced on the construction of the actual house itself.
- 3 The applicant is now seeking planning consent for the removal of the occupancy condition (Condition 3). The applicant is claiming that they cannot obtain the finance necessary to complete the house construction as lending institutions are not presently willing to provide a mortgage where the consent is restricted by an occupancy condition.

NATIONAL POLICY AND GUIDANCE

Scottish Planning Policy (June 2014)

- 4 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.
- 5 Of relevance to this application are:
- Paragraphs 74-83 'Promoting Rural Development'

Other Guidance

- 6 Letter from Chief Planner Jim Mackinnon to Heads of Planning – "Occupancy Restrictions and Rural Housing" dated 4 November 2011.
- 7 Circular 3/2012 – Planning Obligations and Good Neighbour Agreements

DEVELOPMENT PLAN

- 8 The Development Plan for the area consists of the Approved Tayplan Strategic Development Plan 2012 and the Adopted Local Development Plan 2014.

TAYplan Strategic Development Plan 2012 – 2032 - Approved June 2012

- 9 There are no policies of strategic importance of relevance to this application in TAYplan.

Perth and Kinross Local Development Plan 2014 – Adopted February 2014

- 10 The Local Development Plan was adopted by Perth and Kinross Council on 3 February 2014. It is the most recent statement of Council policy and is augmented by Supplementary Guidance.
- 11 Under the LDP the site lies outwith any settlement boundaries and within an area where the principal relevant policies are, in summary:

RD3: Housing in the Countryside

- 12 The Council will support proposals for the erection, or creation through conversion, of single houses and groups of houses in the countryside which fall into at least one of the following categories:
- (a) Building Groups.
 - (b) Infill sites.
 - (c) New houses in the open countryside on defined categories of sites as set out in section 3 of the Supplementary Guidance.
 - (d) Renovation or replacement of houses.
 - (e) Conversion or replacement of redundant non-domestic buildings.
 - (f) Development on rural brownfield land.
- 13 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.

OTHER POLICIES

- 14 Housing in the Countryside Guide 2012

SITE HISTORY

- 15 Outline Consent was granted in 2008 (Ref: 07/02513/OUT) for the erection of a single storey farm and farm building on the site. This consent lapsed in May 2011.
- 16 Full planning application was submitted for the development of an equestrian centre comprising an indoor and outdoor riding arena, stabling for 40 horses and two workers dwellinghouses (Ref: 09/00738/FLM). This application was withdrawn following issues regarding the lack of sufficient information, design and operational justification.
- 17 Full planning application was submitted for the erection of a farmhouse and farm building under the auspices of the previous outline consent (Ref: 11/00776/FLL). This application was withdrawn as it did not comply with the requirements of the outline consent and due to insufficient justification.
- 18 Full planning permission was granted for the erection of a large steel portal framed building containing 24 stables and an indoor riding arena (Ref: 11/01839/FLL). The development also included permission for the erection of a large dwellinghouse with a detached double garage.
- 19 A modification of existing consent (Ref: 11/01839/FLL) was granted to change the position of house and garage within the site (Ref: 13/00105/FLL).
- 20 Erection of stable building (temporary for two years) (in retrospect) was granted consent (14/00287/FLL) at the June 2014 Development Control Committee.

CONSULTATIONS

21 Fossoway and District Community Council

The Community Council objects to the removal of the occupancy condition on the grounds that, if removed, there would be no control over the use of the house.

REPRESENTATIONS

22 A total of 8 letters of representation have been received, including one from the Community Council. The grounds of objection can be summarised as follows:

- House was justified on the basis of the restriction
- Lack of justification for removal of condition
- Contrary to Policy RD3 'Housing in the Countryside'
- Removal of condition would allow house to be occupied separately from the business or sold on.

23 The above issues are addressed in the Appraisal section of this report. Concerns have also been raised in regards to conditions relating to consent granted for the associated equestrian business (11/01839/FLL). These concerns are not considered to be relevant as they do not specifically relate to this application and are separate matters that, if necessary, should be investigated by the Council's Enforcement Officer.

ADDITIONAL STATEMENTS

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

APPRAISAL

Policy

25 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 2012 and the adopted Perth and Kinross Local Development Plan 2014.

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

- 27 As a result of the previous decision to approve the application, the principle of 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 in the assessment of this application is whether or not there is sufficient justification for the removal of the condition that ties the house to the equestrian business.
- 28 This proposed deletion of the occupancy condition falls to be assessed under the Council's Housing in the Countryside Guide 2012. Under category 3.3 of this policy encouragement is 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. It further states that permission may be restricted by an occupancy condition in order to ensure that the house remains as essential worker housing in perpetuity. In this instance under the original consent the applicant successfully demonstrated that the house was required under operational need associated with the operation of the proposed equestrian centre.
- 29 Since the granting of consent that applicant has invested a significant amount of money in the equestrian centre, constructing the building containing the stables and indoor arena and the business is now operating, albeit not at full capacity. However, the applicant has now indicated that they have encountered difficulties in respect of obtaining the necessary funding (mortgage) for the dwelling as lending institutions are not presently willing to provide a mortgage where the consent is restricted by an occupancy condition. In support of their case the applicant has submitted a letter from a bank which states that they are unable to assist with the financing of this project due to the occupancy condition.
- 30 The applicant's agent also cites a letter issued by the former Chief Planner, Jim McKinnon (JMCK) dated 4 November 2011, which outlines the Scottish Government's view that imposing restrictions on the use of land or buildings are rarely appropriate and should generally be avoided. This advice has since been incorporated as into Circular 3/2012 and therefore now forms the Scottish Government's formal policy position on the matter.
- 31 Nevertheless, 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 key issues in assessing the request to remove the restriction. 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 equestrian business. I also note that the Local Development Plans Team has provided comments and they have advised that they do not support the removal of the occupancy condition. It is their view that the occupancy condition formed an essential part of the justification for the house and without the economic activity justification, a house in this location would be contrary to policy RD3 as no evidence appears to have been submitted to suggest it would meet any of the other categories.

- 32 However, in this case the reasoned justification provided by the applicant's agent is considered to have strong weighting in the assessment of the application.
- 33 The proposed house was approved as a key part of the operation of the equestrian facility, providing 24hr care and surveillance which is not uncommon for a business of this type and scale. It is clearly evident that the applicants are committed to making the equestrian business a successful enterprise, having already invested a considerable amount of money in establishing the equestrian business in advance of developing the house. The problem that applicant now faces is that if the business is to continue developing they will need to develop the house to provide the required 24hr care and surveillance. At present only 11 of the 24 boxes are occupied (4 of which are the applicants' own horses) and the applicant is claiming that it is only by being onsite permanently that the business will be able to grow.
- 34 As outlined above, the only reason that the house has not been developed is due to the inability to raise a mortgage due to the occupancy restriction condition currently in place. The applicant has submitted a letter from a bank that state they are not able to assist with the financing of this project due to the occupancy condition. It is acknowledged that this letter only identifies that this specific bank cannot provide the fund but it has become apparent on many other self-build projects throughout Perth and Kinross and across Scotland that due to the economic climate banks are generally not willing to lend on projects that have restrictive occupancy conditions. Hence the reason that the Scottish Government has now issued formal guidance (Circular 3/12) on the matter.
- 35 In addition to the above, it is important to highlight that the removal of the occupancy condition does not in this instance dilute the economic justification for the proposed house. The house was justified on the basis of operational need associated with the now operational equestrian business and an occupancy condition was imposed on the consent as a measure to ensure that it was tied to the business. However in light of the Scottish Government's up to date view on the application of occupancy restrictions contained in Circular 3/2012, the Council are now moving away from imposing occupancy conditions and instead focusing on ensuring that any housing required under economic activities are appropriately sited and designed to ensure that they sit comfortably within the landscape. In this case, regardless of the decision to impose the occupancy condition, it was judged that the proposed scale and design of the proposed house was acceptable and that the proposed level of structured landscaping would in time provide a good landscape framework for the development. I am therefore satisfied that even without the occupancy condition the proposed houses still complies with Policy RD3 and the HICG 2012.
- 36 Furthermore it is considered that the likelihood that the house will be occupied separately from the business is remote considering the level of investment already made by the applicant. The physical relationship between the house and the business would also make it quite difficult to market the house as a separate entity.

Economic Development

- 37 The removal of the condition would have a significant beneficial impact on the sustainability and future viability of the applicant's business.

LEGAL AGREEMENTS REQUIRED

- 38 No legal agreement is required.

DIRECTION BY SCOTTISH MINISTERS

- 39 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

- 40 In conclusion, the applicant has provided sufficient justification for the removal of the occupancy condition on planning consent 11/01839/FLL in accordance with Scottish Government guidance and there are no other material planning considerations which would provide sufficient justification for retaining the occupancy condition.

RECOMMENDATION

- A Approve the application.**

B JUSTIFICATION

It is considered that there are significant material considerations which have provided sufficient justification for the removal of the occupancy condition on consent 11/01839/FLL in accordance with Scottish Government advice.

C PROCEDURAL NOTES

None

D INFORMATIVES

- 1 None

Background Papers: 8 letters of representation
Contact Officer: David Niven – Ext (4)75345
Date: 26 June 2014

NICK BRIAN
DEVELOPMENT QUALITY MANAGER

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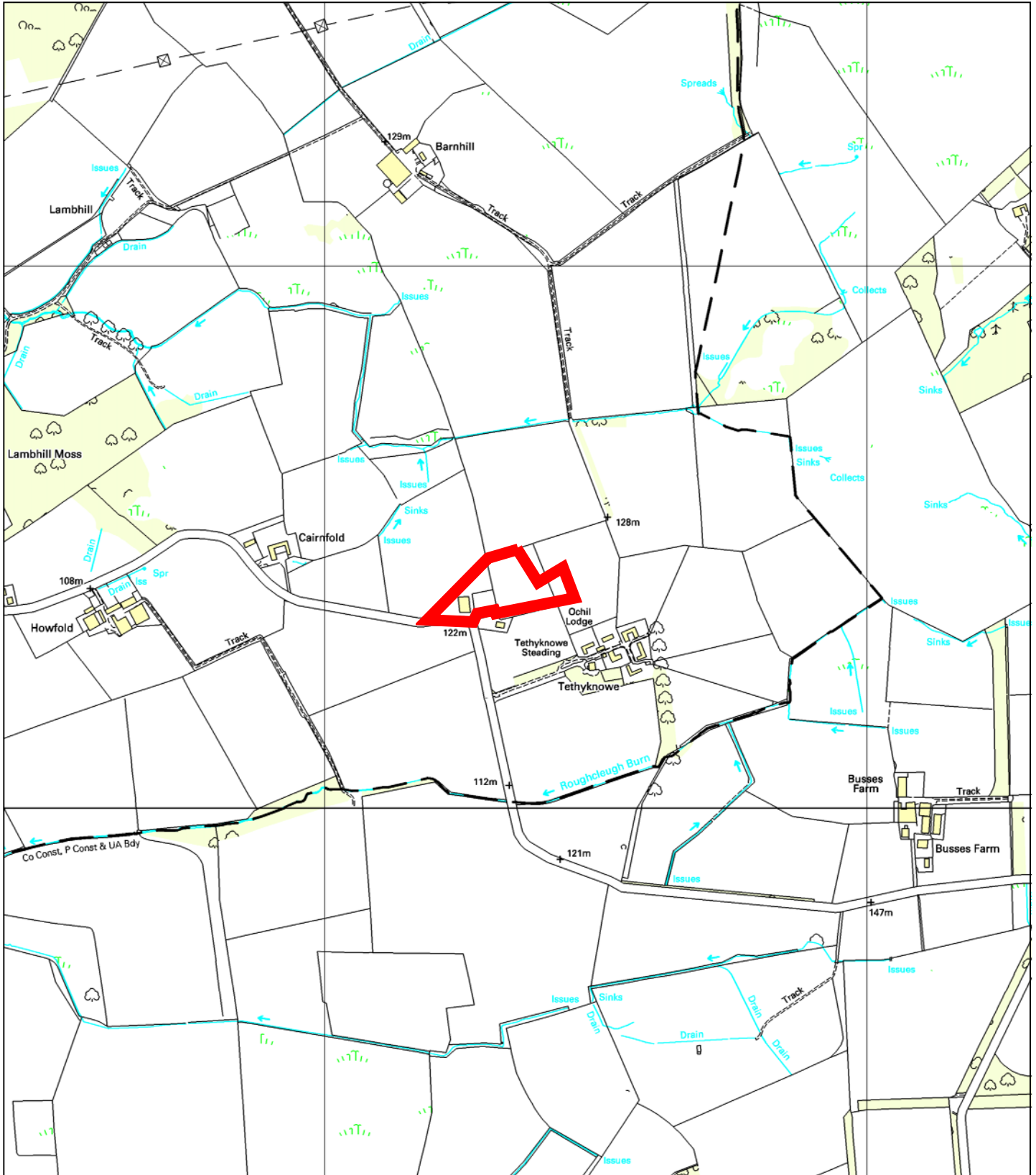
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Perth & Kinross Council

14/00705/FLL

Cairfold Farm, Blairingone

Removal of Cond 3 (occupancy) of 11/01839/FLL



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