

Perth and Kinross Council
Development Management Committee – 18 March 2015
Enforcement Report by Development Quality Manager

Enforcement Status, Crookmoss, Crook of Devon, Kinross-shire

Ref. No: 12/00546/FLL
Ward No: 8 – Kinross-shire

Summary

Alleged Breach of Conditions 9, 10, 11, 13 and 14 Land 300 Metres South East Of Fossoway Garage, Fossoway.

LPA ref 12/00546/FLL

BACKGROUND AND DESCRIPTION

- 1 Planning permission was granted for the formation of five permanent gypsy/traveller pitches (partly in retrospect) subject to 17 planning conditions on 9 October 2013 (Report 13/487 refers). This is a report relative to the position of enforcement in relation to the permission approved and the conditions imposed. The previous Development Management Committee report is attached as an appendix to this report (**Appendix 1**).
- 2 This report has been requested by Members to give full clarification of the current status and progress in respect of the conditions and in particular where there has been or is likely to be a requirement for enforcement action.

NATIONAL POLICY AND GUIDANCE

- 3 The policy background set out in the previous report to this committee still applies, subject to **Scottish Planning Policy 2010** being replaced by **Scottish Planning Policy 2014**
- 4 **Designing Gypsy and Traveller Sites: Good Practice Guide 2008**
Department of Communities and Local Government

Circulars

- 5 The relevant guidance associated with our enforcement position can be found in *Circular 4/1998: The Use of Conditions in Planning Permissions* and *Circular 10/2009: Planning Enforcement*.

DEVELOPMENT PLAN

- 6 The Development Plan for the area consists of the TAYplan Strategic Development Plan 2012 – 2032 and the Kinross Area Local Plan 2004. The relevant policies are as set out in the previous committee report.

OTHER GUIDANCE

- 7 **Perth and Kinross Planning Enforcement Charter Revised 2014**

CONDITIONS

- 8 In granting consent of the development 17 conditions were imposed and these are listed below with a corresponding comment as to their current status and in particular in relation to the enforcement position. (for clarification, where a condition refers to *within 2 months of the date of the consent* then that date was 10 December 2013)

Conditions

1. *The proposed development must be carried out in accordance with the approved drawings and documents, unless otherwise provided for by conditions imposed on the planning consent.*

As the development has not been completed this condition is yet to be fulfilled. There is no requirement under the permission or the legislation with regard to timing of completion but clearly the details, as implemented, are subject to on-going monitoring.

2. *Prior to any further work taking place on the site and within 2 months of the date of this planning consent the applicant shall submit details of a suitable SUDS scheme, to be implemented alongside the foul drainage infrastructure, all for the approval of the Planning Authority.*

This information has been submitted and approved. The condition requires implementation of the SUDS scheme concurrently with the foul drainage infrastructure. The foul drainage infrastructure has not been implemented and therefore the condition is not in breach.

3. *Within 2 months of the date of this planning consent the vehicular access shall be formed and permanently maintained in accordance with specification Type C, Fig 5.7 access detail to the satisfaction of the Planning Authority.*

Having discussed the access with Transport Planning I can confirm the access geometry is satisfactory and meets the terms of this condition.

4. *Within 2 months of the date of this planning consent the access shall be provided with a bitumenously bound surface and maintained as so to the satisfaction of the Planning Authority*

This condition has been partially implemented, the access has not been bitumenously bound. Under s124 (3) of the Town and Country Planning (Scotland) Act 1997 relative to time limits for enforcement, the Planning Authority has 10 years from the date of the breach to pursue this matter. We will review the position relative to this condition over time to assess the surface currently on site to ensure it has no impact on the public road network. This has not been the subject of any complaints to date but clearly will be required to be discharged.

5. *The gradient of the access shall not exceed 3% for the first 5 metres measured back from the edge of the carriageway and the access shall be constructed so that no surface water is discharged to the public road.*

This condition can be discharged.

6. *Within 2 months of the date of this consent turning facilities shall be provided within the site to enable all vehicles to enter and leave in a forward gear and shall be permanently maintained so to the satisfaction of this council as planning authority.*

This condition can be discharged.

7. *Within 2 months of the date of this consent a minimum of 2 No. car parking spaces per pitch shall be provided within the site and shall be permanently maintained so to the satisfaction of this council as planning authority.*

In relation to the development so far undertaken, this condition has been satisfied.

8. *The area of land directly adjacent and to the north of the application site which is within the applicants' ownership and indicated as a paddock area, shall remain as such and shall not be used for any other purpose unless otherwise agreed in writing with the Planning Authority.*

The land identified in this condition is no longer within the applicants control and is not owned by any of the occupants of the pitches. At this time the condition is not in breach. A breach of this condition will be investigated on its own merit if and when that happens.

9. *The wastewater treatment facility and associated drainage, storage and pumping installations shall be designed, operated and maintained such that noise and/or odour, therefrom, are not perceptible in any nearby domestic property.*

This condition has an ongoing compliance requirement and shall endure for the life of the permission.

10. *A water supply complying with the appropriate British Standard and in accordance with Scottish Water Byelaws currently in force, or where applicable the Private Water Supply (Scotland) Regulations 2006, shall be provided on the site as soon as practicable. Water supply to caravans shall be supplied through pipes not less than 12.5mm in diameter and approved by the Planning Authority.*

Subject of formal enforcement action. Breach of Condition Notice served by the Planning Authority on 9 April 2014. The compliance period in the notice stipulated 9 months, this date has now passed. Further enforcement action is held pending the satisfaction of Condition 17. However, the applicant is exploring the potential for a mains water supply to the site.

11. *With regard to the residential caravans, a supply of pure and wholesome water complying with the Water Supply (Water Quality) Regulations 2000, or where applicable the Private Water Supply (Scotland) Regulations 2006, shall be provided and shall be connected to all washing and sanitary facilities within the*

residential caravans as soon as is practicable to the satisfaction of the Planning Authority. Adequate precautions shall be taken (or cause to be taken) to protect all service water pipes between the connection to the water main and fittings within the caravans, all to the satisfaction of the Planning Authority

Subject to formal enforcement action. Breach of Condition Notice served by the Planning Authority on 9 April 2014. The compliance period in the notice stipulated 9 months, this date has now passed. Further enforcement action is held pending the satisfaction of Condition 17. Similarly with condition 11 in respect of the potential for a mains water supply. There have been no complaints to Environmental Health with regards to this condition to date.

12. *All plant or equipment associated with operation of the site shall be so enclosed, attenuated and/or maintained such that any noise therefrom shall not exceed Noise Rating 35 between 0700 and 2300 hours daily, or Noise Rating 20 between 2300 and 0700 hours daily, within any neighbouring residential premises, with all windows slightly open, when measured and/or calculated and plotted on a rating curve chart.*

This condition has an ongoing compliance requirement and shall enure for the life of the permission. There have been several complaints relating to an alleged breach of this condition but as yet, no breach has been verified.

In clarification, prior to the approval of the planning application to which this condition relates, a complaint of Statutory Noise Nuisance was raised with Environmental Health and verified in January 2013. The offending generator was moved to a new location thus resolving the complaint. A key consideration here is the specific positioning of generators and ensuring that they are not on the raised ground but take advantage of the baffling provided by the banking. Insulation has been provided with the generators but purpose built housing has not yet been provided.

13. *Each of the five gypsy/traveller pitches should have in place a suitably enclosed and acoustically insulated fixed housing unit in which to install any generator brought onto site to the satisfaction of the Planning Authority. This should be installed within 3 months of the date of this consent unless otherwise agreed in writing with the Planning Authority.*

This condition is in breach but we have not pursued any formal enforcement action in this regard. This condition sets out mitigation for a breach of Condition 12 and as such should not be the default position. Should a breach of Condition 12 be identified we would act to ensure the implementation of an acoustic housing sufficient to address these concerns in consultation with colleagues in Environmental Health.

14. *The private waste water treatment plant and surface water discharge proposals shall be carried out in accordance with Resource & Environmental Consultants Ltd Drainage Assessment dated May 2013 and carried out within the timescale indicated under condition 16 of this consent, that is only after the foul drainage infrastructure has been installed at Harelaw Farm, all to the satisfaction of the Planning Authority.*

Subject to formal enforcement action. Breach of Condition Notice served by the Planning Authority on 9 April 2014. A compliance period stipulated 6 months and this date has now passed. Enforcement action is held pending the satisfaction of Condition 17.

15. *The landscaping proposals including tree and hedge planting shall be implemented within 6 months of the date of this consent or within the first planting season and thereafter maintained to the satisfaction of the Planning Authority.*

This condition is in breach but we have not yet pursued any formal enforcement action in this regard. Under s124 (3) of the Town and Country Planning (Scotland) Act 1997 relative to time limits for enforcement, the Planning Authority has 10 years from the date of the breach to pursue this matter. Whilst this was a key consideration in the decision to approve, nevertheless, priority has been given to tackling other more immediate and sensitive conditions. Our intention however remains to enforce this element.

16. *The foul drainage infrastructure capable of achieving not less than 125% phosphorus mitigation as outlined in the Drainage Assessment attached to this consent carried out by REC and dated May 2013 and confirmed by SEPA and SNH as satisfactory shall be installed at Harelaw Farm prior to the foul drainage infrastructure becoming operational at the development site and within 3 months of the date of this consent. For the avoidance of doubt the installed drainage infrastructure at the development site as approved shall be retained thereafter all to the reasonable satisfaction of the Planning Authority.*

Subject to formal enforcement action. Breach of Condition Notice served by the Planning Authority on 9 April 2014. A compliance period stipulated 6 months and this date has now passed. Enforcement action is held pending the satisfaction of Condition 17. The details for mitigation at Harelw farm are agreed and able to be implemented once condition 17 can be resolved, through the CAR Licence process.

17. *Prior to the drainage infrastructure becoming fully operational at the development site the applicant shall submit to the Planning Authority an approved CAR licence under the Water Environmental (Controlled Activities)(Scotland) Regulations 2011 for the drainage infrastructure associated with this project and that the Planning Authority has confirmed receipt of this licence in writing.*

This condition is not in breach and the Planning Authority has no direct control over the determination of a CAR Licence. The applicants have been advised of the requirement for CAR Licence and that no works relative to Conditions 14 or 16 can be implemented until this requirement is secured. Indeed, SEPA are involved in advising the applicant over the CAR Licence submission which would in turn lead to the ability to fully address this condition and indeed other related conditions.

Our position is, that as a consequence of the applicants failure to secure a CAR Licence, Conditions 2, 10, 11, 14 and 16 be held in abeyance until the licence is secured.

CONCLUSION AND RECOMMENDATION

- 9 Members are requested to note the terms of the report and the current position in relation to the enforcement of conditions at this site

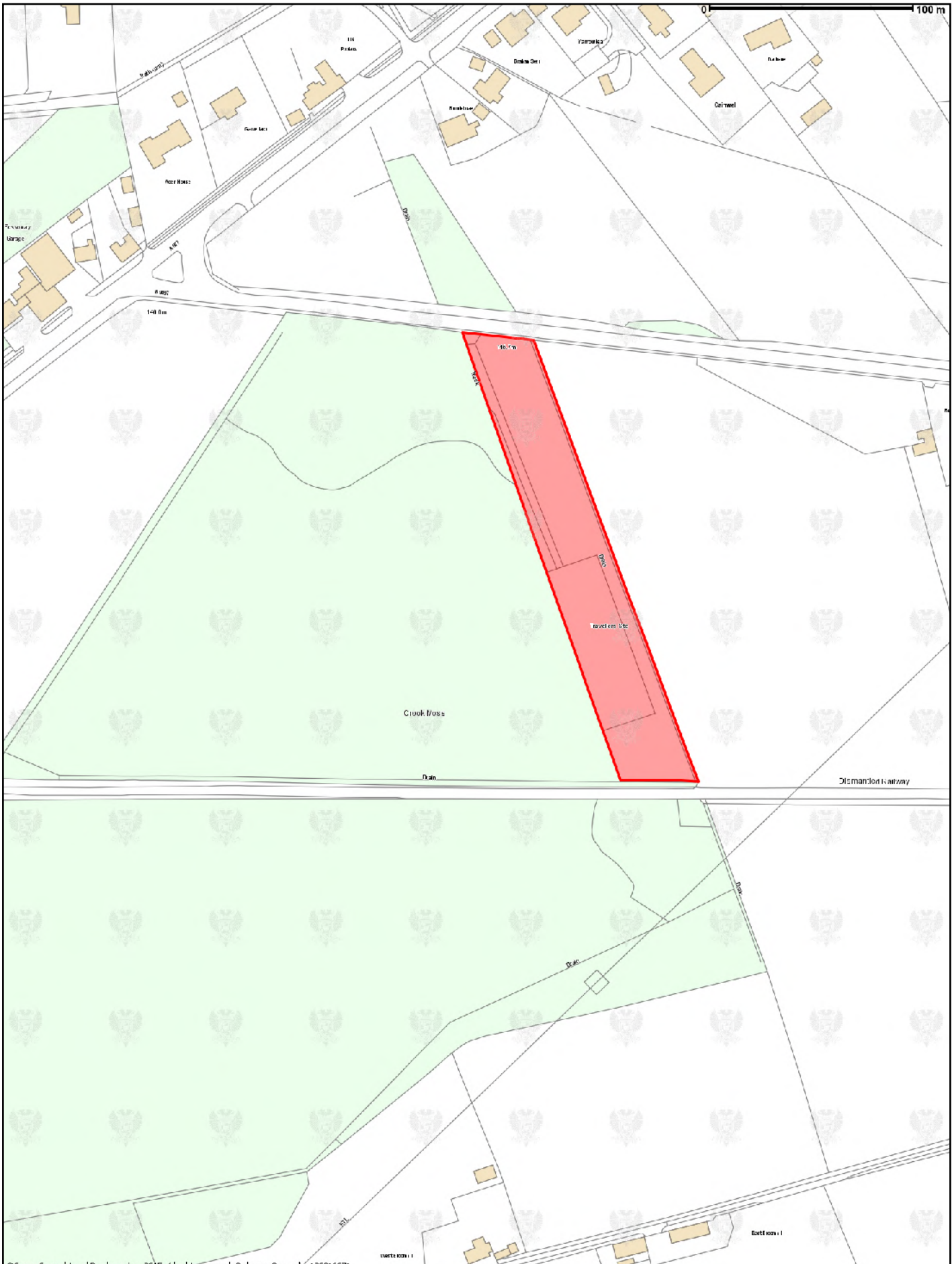
NICK BRIAN
DEVELOPMENT QUALITY MANAGER

Contact Officer: Eddie Jordan – Ext 75341
Date: 5 March 2015

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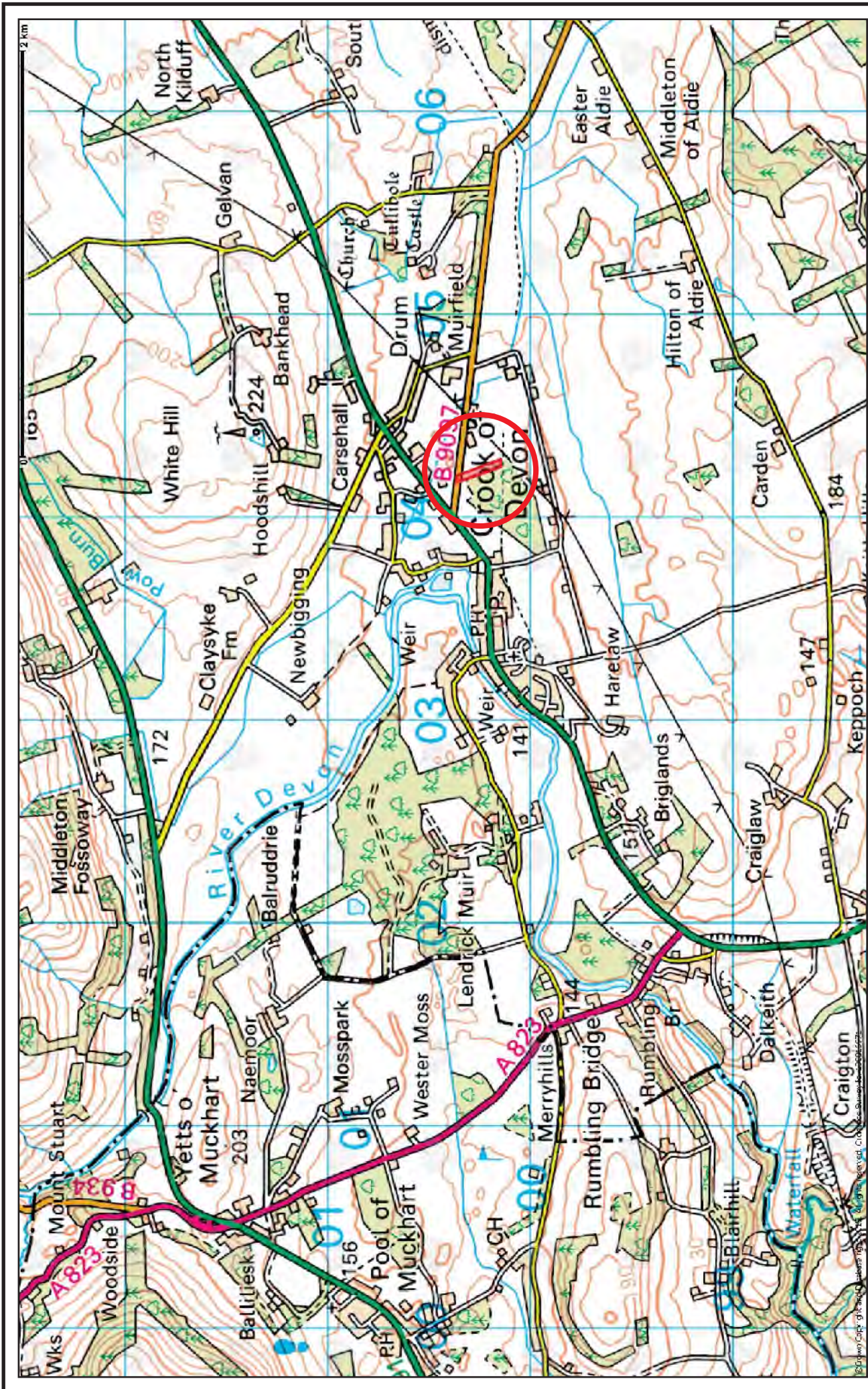
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12/00546/f11

Report on the updated Enforcement position regarding conditions on the planning application for the Formation of five permanent gypsy/traveller pitches (partly in retrospect) on land SE of Fossaway Garage (Cruok Moss), Fossaway





12/00546/fll

Report on the updated Enforcement position regarding conditions on the planning application for the Formation of five permanent gypsy/traveller pitches (party in retrospect) on land SE of Fossoway Garage (Crock Moss), Fossoway



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Perth and Kinross Council
Development Management Committee – 9 October 2013
Report of Handling by Development Quality Manager

Formation of five permanent gypsy/traveller pitches (partly in retrospect), road access improvements and landscaping and tree planting on land at Crook Moss, Crook of Devon, KY13 0PR

Ref No: 12/00546/FLL
Ward No: 8 – Kinross-shire

Summary

This proposal was previously presented to the Development Management Committee on 1 August 2012 where it was resolved to defer the determination of the application for the provision of further information from the applicant in relation to i) private waste water treatment and ii) contamination. The applicants subsequently provided a Drainage Assessment with details of the proposed waste water treatment plant, including phosphorus mitigation measures for the Loch Leven Catchment Area and also a Phase II Geo-Environmental Survey to mitigate any contamination on the site. The application was re-advertised on 31 May 2013 and the relevant consultees re-consulted on the provision of this additional information.

There are no specific Development Plan policies which apply to the development of gypsy/traveller sites in Perth and Kinross however there are emerging policies which address this issue in the Proposed Local Development Plan 2012. There is also encouragement through national planning policy to address the issue of traveller site provision. In the absence of allocated traveller sites, lack of objection from the main environmental consultees and a recognised need for further pitches in the local area the proposal is recommended for approval.

BACKGROUND AND DESCRIPTION

- 1 The application site is an area of ground of 0.82ha situated to the south of and adjacent to the B9097, south east of Crook of Devon and on the east side of Crook Moss which comprises naturalised woodland. A disused former railway line forms the southern boundary. The site has its own access from the B9097, and is separate from Crook Moss and the agricultural land to the east. The application site was a former Council tip. Tipping ceased some years ago. The applicants own the land to which this application relates.
- 2 This is an application, partly in retrospect, for the formation of 5 permanent, private gypsy/traveller household pitches; the relocation and upgrading of the established access, the provision of structural peripheral bunding; tree and hedge planting; privacy screening; and a common access and turning head along the west side of the site. The applicant has already surfaced the access road and placed caravans on the site. The individual pitches measure 20m x 20m, bounded by a 1.8m high close-boarded fence. Within each pitch,

provision is made for the principal or chalet caravan, a touring caravan and an auxiliary caravan, that may be needed for family sleeping accommodation. Provision is also made for the erection of a utility unit which would accommodate WC, shower, laundry and storage facilities, a patio or decked area, an LPG tank and at least 2 parking places. The waste water treatment plant proposed is a Klargestor Airflow AF1 –AF4 and incorporates a tertiary phosphate removal system suitable to deliver concentrations lower than 2mgP/l to a mounded soakaway situated at the northern end of the development in the paddock area. Due to topography within the site a mini – pumping station will be required to lift the treated effluent to the level of the dispersed pipes within the mounded soakaway system. There is poor infiltration capability of the ground within the site and it is proposed that surface water runoff from the site is discharged into the adjacent field drain to the east which is within the applicant's landownership in accordance with SUDS best practice. As the application site is within the Loch Leven Catchment Area a phosphorus reduction of 125% is required which will be achieved through mitigation at a second site – Harelaw Farm and incorporation of a phosphorus removal system which reduces phosphorus from the treated effluent from 900 – 360 mg per person per day.

- 3 In addition to the transverse bund at the north end, a 2m high earth bund would continue from it along the east side of the site screening the pitches.
- 4 A paddock area is indicated adjacent and to the north outwith the application site boundary but within the applicant's ownership.
- 5 The site and the 5 pitches will be served with mains electricity.
- 6 The applicant's agent has submitted a Planning Application Design and Supporting Statement.

NATIONAL POLICY AND GUIDANCE

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 125-148: Landscape & Natural Heritage
- Paragraphs 196-211: Flooding and Drainage

9 The National Planning Guidance set out in SPP advises that Development Plans should address the housing needs of gypsies and travellers and the needs of this section of the community for appropriate accommodation should be considered through the housing needs and demand assessment and local housing strategy. The absence of allocated sites may provide a justification for departing from the Plan provided that an unfulfilled demand locally for this type of accommodation can be recognised and all other detailed planning issues are satisfied.

**Designing Gypsy and Traveller Sites: Good Practice Guide 2008
Department of Communities and Local Government**

10 The guidance contained in this document is intended to concentrate more closely on design issues, in the context of Gypsy and Traveller site provision, to familiarise developers with the key elements necessary to design a successful site and to identify good practice using case study examples to illustrate different approaches.

DEVELOPMENT PLAN

11 The Development Plan for the area consists of the TAYplan Strategic Development Plan 2012 – 2032 and the Kinross Area Local Plan 2004.

TAYplan Strategic Development Plan 2012 – 2032 Approved June 2012

12 The following policy is of relevance:

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.

Kinross Area Local Plan 2004

14 The application site falls within the landward area of the Kinross Area Local Plan 2004 and is within the Loch Leven Catchment Area. The site is close to Crook of Devon Moss which is a Listed Wildlife Site. The following policies are relevant:

Policy 1: Sustainable Development

- 15 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 natural environment, the precautionary principle is applied, biodiversity is conserved, minimisation of waste and pollution and should meet local needs and enhance access to land, employment, facilities, services and goods.

Policy 2: Development Criteria

- 16 All developments within the Plan area will be judged against a series of criteria including a landscape framework capable of absorbing, and if necessary, screening the development, regard should be had to 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, the site shall be large enough to accommodate the impact of the development satisfactorily, buildings and layouts for new development should be designed so as to be energy efficient, and where possible be located in those settlements which are the subject of inset maps.

Policy 7: Landscaping

- 17 Details of landscape treatment shall be submitted with development proposals including where appropriate boundary treatment, treatment of settlement edges and impact on key views.

Policy 12: Drainage within the Loch Leven Catchment Area

- 18 Development may be acceptable if it can be demonstrated that mitigation measures capable of removing from the catchment area 125% of the phosphorus likely to be generated by the development can be implemented through a separate legal agreement.

Policy 14: Surface Water Drainage

- 19 Where appropriate surface water should be disposed of to closed soakaways or by the adoption of the best management practices.

Policy 22: Local Wildlife Sites

- 20 Development which would affect an area designated as being of local nature conservation or geological interest, as identified on the Proposals Map, will not normally be permitted except where appropriate assessments have demonstrated to the satisfaction of the Council that the objectives of designation and the overall integrity of the designated area would not be compromised or any locally significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social and economic benefits.

Policy 26: Trees

- 21 Existing tree cover should be protected as far as is practicable in any development proposals and the Council will seek the implementation of appropriate planting schemes.

Policy 28: Archaeology

- 22 The Council will safeguard the site, settings and archaeological landscapes associated with Scheduled Ancient Monuments from potential adverse development.

Policy 43: Transport

- 23 Suitable provision for parking and where appropriate public transport must be made in all new developments in accordance with the Council's Roads Development Guide.

Policy 48: General Land Use

- 24 Built development should not be located adjoining and outwith those settlements which are the subject of inset maps.

Local Development Plan for Perth and Kinross 2012

- 25 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.

Policy RD5: Gypsy/Travellers' sites

Policy RD5a Existing sites

- 26 Existing authorised Gypsy/Travellers' sites will be protected and there will be a presumption against their conversion to other uses

Policy RD5b New sites

- 27 The Council will assess applications for permanent sites and temporary 'short-stay' sites in small groupings; generally considered to be between 1-10 pitches. Proposals for the development of a site for Gypsies/Travellers' accommodation on unallocated land will be supported provided:-

- a) The Council is satisfied the number and nature of the pitches provided on the site is appropriate to the site size and general area.
- b) The site will not detract from the physical character, and there is no more than a minimal effect on the appearance, of the wider area; the site is, or can be, adequately screened and landscaped.
- c) The use of the site must be environmentally compatible with, and not negatively affect or be affected by, the neighbouring land uses.
- d) The needs of the residents of the site, temporary or permanent, for essential services can be met appropriately by local facilities; these include rubbish collection, access to water and drainage.
- e) There is satisfactory access and the site does not generate traffic of an amount or type inappropriate for the roads in the area.
- f) The site can be adequately secured to provide a safe environment for the residents using the site.

28 **Note:** All authorised sites will require a caravan site licence from the Council, as per the Caravan Sites and Control of Development Act 1960; the licence deals with the management of the site so further detail on this has not been duplicated in the policy. Any non-domestic waste (i.e. commercial and industrial), will be the responsibility of the landowner to dispose of appropriately.

Other Policies/Guidance:-

Planning for Gypsy/Travellers in Perth and Kinross 2007

29 The draft report on Planning for gypsy/travellers in Perth and Kinross was published by the Council in 2007, some time after the Kinross Area Local Plan 2004. The report identified a lack of good quality, safe and secure accommodation across Perth and Kinross. A need for alternative accommodation (trailers, pitches or chalets) for 37 to 42 households was recognised across Perth and Kinross with a need for 13 -15 in the Kinross area itself.

Memorandum of Understanding for Planning Procedure for Applications in the Loch Leven Catchment Area has been approved at the Council's Enterprise and Infrastructure Committee on 28 August 2013

SITE HISTORY

30 The majority of the application site is on an upfilled embankment of made up ground/infill material with part of it being construction rubble. Another portion of the site had been used for municipal waste disposal from an unknown date. Historical information indicated that the site, including the refuse tip was acquired by Kinross County Council in 1956. In 1974 the site was tidied and sold to W & G Shand, Builders in 1975. Tipping on the site ceased some years ago.

31 Planning Enforcement were first contacted in May 2010 about the application site and that the land was to be used to site storage containers and that travellers were using the site. From May 2010 the land was observed by the

Planning Enforcement team during routine site visits in the area and in particular had noted that some road scalping materials had been brought in and spread on the land. SEPA were advised and letters were sent to the owner asking him to cease the activity which then stopped for some time. Further spreading of scalpings and land levelling was observed during February 2012. A letter was sent to the owner on 23 February 2012 asking that no more material be brought onto the site and that he contact the Council.

- 32 Further activity was observed on the afternoon of 2 March 2012 by the Planning Enforcement Officer. A Temporary Stop Notice valid for 28 days only was issued to stop the import of aggregate on to the private land on Friday 2 March 2012. Once the Notice was displayed on the land the import of aggregate ceased and the local contractor left the land and further deliveries of aggregate stopped. The landowner, did not subsequently breach the temporary stop notice which expired on 30 March 2012. Caravans were moved onto the land over the Friday night/Saturday morning 2/3rd March 2012.
- 33 Planning legislation contains a commitment to equality and fairness and Scottish Ministers decided when making the Regulations that a temporary stop notice may not be used to remove a caravan from land. The Council decided not to instruct formal planning enforcement action given they had a commitment from the landowner that a retrospective planning application would be submitted. The present application was submitted for 5 gypsy traveller pitches on 27 March 2012.
- 34 Since the deferral of the application and awaiting submission of additional information the site has been monitored by Environmental Health to ensure that the ongoing habitation of the site does not pose any issues to neighbouring land and neighbouring residential amenity.
- 35 On 15 August 2013 an inspection of the site revealed that several loads of building waste had been tipped at the south of the site and west embankment. This was referred to SEPA and the Council's Land Quality Coordinator. SEPA advised that the landowners had registered an Exemption from Waste Management Licence with SEPA on the 17 April 2012 for the spreading of waste soils and stones for the improvement of the roads on the site. SEPA confirmed that they did not intend to take any further action with regard to the waste deposits at this time. The Council's Land Quality Coordinator also confirmed that the recent deposits did not pose any contamination issues.

CONSULTATIONS

- 36 **Scottish Water** has confirmed that there is no capacity to serve this new demand. A totally separate drainage system will be required with the surface water discharging to a suitable outlet.
- 37 **Fossway & District Community Council** object to the proposal stating it to be contrary to Policy 81 of the Kinross Area Local Plan, being outwith the Crook of Devon settlement boundary, the proximity of the application site to the gypsy/traveller site at Greenacres (Policy RD5a), unsuitability of site because of

prior use for landfill and the risk of ground water flooding (Policy RD5d and RD5f).

- 38 **SEPA** initially objected to the application on the grounds of lack of information regarding foul effluent disposal. However SEPA was re-consulted following the receipt of details relating to the private waste water treatment plant and phosphorus mitigation measures incorporated in this and have confirmed that they have no objections to the proposals in this regard.
- 39 **Perth and Kinross Heritage Trust** has no objection to the proposal.
- 40 **The Flooding Officer** has no objections to the proposal in terms of flood risk both on and adjacent to the site. The area around this site is flat and there are likely to be issues with ponding water during heavy rainfall and depending on the soil characteristics it may take sometime to permeate through the soil. The presence of a bog to the west would indicate the soil characteristics are poor around this location. The surrounding land is agricultural land and there are no inhabited properties on this land and the Council therefore has no flooding records for this location. The application site is raised above the level of the adjacent land and it is considered that there is no significant flood risk associated with the site itself. Surface runoff rates to the adjacent watercourse will be attenuated satisfactorily in accordance with best SUD's practise.
- 41 **SNH** has stated that with reference to the Crook of Devon Moss listed wildlife site (a raised bog) this is not a statutory designation and SNH would only comment if there was anything of national interest at risk. As the development is not on the Moss itself and is unlikely to have an impact on it, SNH have no comment to make in this regard. Having been re-consulted on the proposed private waste water treatment plant and it's possible impact on the Loch Leven Catchment Area with regard to phosphorus discharge, SNH have no objections to this provided a suitable conditions are put in place to secure the phosphorus loading mitigation measures for the long term.
- 42 **Environmental Health** has no objections to the proposal subject to conditions on the proposed private waste water treatment plant to control noise and odour from it. Since the site has been occupied the residents have been using generators for electricity and this has raised noise complaints from local residents. The applicants agent has intimated that they intend to connect to mains electricity, however Environmental Health have recommended conditions to protect neighbouring residential amenity by condition which will include a generator housing unit to further dampen generator noise until such time as they can secure a mains connection. Having been re-consulted on the Phase II Geo-Environmental Survey Environmental Health have confirmed that the application site is satisfactory in terms of contamination and no further remediation is required.
- 43 **Education** has confirmed that at this time there is insufficient capacity available at Fossoway Primary School to accommodate the proposed development and any children of primary school age would need to be accommodated at the nearest available school with sufficient capacity. As the proposed housing is

considered as affordable housing there is no requirement for an education contribution in this case.

REPRESENTATIONS

44 Forty four letters of objection have been received with the main issues being raised as follows:-

- The site is contaminated which requires to be addressed
- The site is outwith the local village development boundary
- The proposed site is not consistent with criteria for designing gypsy/ traveller sites
- No local need for the development
- The development is not compatible with the surrounding land use
- It will result in a loss of amenity to the local community
- The local nursery and primary school has no capacity
- The area around the site is prone to flooding
- There will be a detrimental impact on biodiversity on Crook of Devon Moss which is a listed wildlife site contrary to Policy 22 of the local plan
- Impact on the archaeological significance of Crook Moss
- Contrary to the Housing in the Countryside Policy
- Loss of visual amenity
- Contrary to the Local Plan and Structure Plan
- Unacceptable design
- Unsafe access
- No drainage capacity
- Concerns over surface water
- Loss of trees

These issues are all raised in the Appraisal section of this report.

ADDITIONAL STATEMENTS

45	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	Not submitted

APPRAISAL

46 Following the previous report to this Committee strong concerns were raised by some objectors over alleged inaccuracies in that report. In particular these related to the status of the objection by SEPA and that this was not specifically stated in that report, that the report omitted to state that the application site adjoined the settlement boundary and was therefore contrary to Policy 48 of the Local Plan and that the needs analysis for local need for traveller's sites was

erroneous. This current report therefore also seeks to address and clarify these points.

Policy

- 47 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. The determining issues here are whether the proposals comply with Development Plan policy or if there are other material considerations, which justify a departure from policy.
- 48 There are no policies in the adopted Kinross Area Local Plan 2004 which deal with development associated with gypsy/travellers. In the New Proposed Local Development Plan 2012, which is now a material consideration in the determination of planning applications, Policy RD5 addresses both existing and new gypsy/travellers' sites. Under Policy RD5B, proposals for 1-10 pitches for permanent and short stay sites on unallocated land will be supported provided the number of pitches is appropriate to the site size and general area; the site will not detract from the physical character and there is no more than a minimal impact on the wider area or can be adequately screened and landscaped; the use of the site is environmentally compatible with neighbouring uses; the needs of the residents of the site for essential services can be met by local facilities including rubbish collection, water and drainage; there is a satisfactory road access and the site would provide a safe environment for the residents.
- 49 Under Policy RD5B of the Proposed LDP It is considered that the application site is large enough and can comfortably accommodate 5 pitches, as indicated in the submitted layout and in fact, as laid out on the site. The location of the site against the backdrop of trees provides a suitable landscape framework and this can be further reinforced with landscape planting to providing containment of the site in relation to the wider area. Through the consultation process it has been demonstrated that the site is environmentally compatible with neighbouring land uses subject to conditions. The site is close to the public road network and there is the opportunity to connect to the water supply, and for a connection to mains electricity. The site is also capable of being secured to provide a safe environment for the residents. The proposal is therefore considered to be in accordance with Policy RD5 of the Proposed LDP which is a material consideration in the determination of the application. The proposal is also in accordance with the other relevant Kinross Area Local Plan policies with regard to surface water, drainage within the Loch Leven Catchment Area, landscape, biodiversity and sustainability and these issues are assessed below.
- 50 Policy 48 of the Kinross Area Local Plan states that built development should not be located adjoining and outwith those settlements which are the subject of inset maps. This proposal is contrary to the terms of Policy 48 being located outwith and adjacent to the settlement boundary of Crook of Devon. The purpose of this policy is generally to prevent ribbon development spreading out from settlements along existing roads. In this particular case, in terms of the configuration of the application site, although the site actually bounds the B9097, this is only in terms of the width of the access point and associated

visibility splays. The main body of the site, namely that accommodating the pitches, is set back for the road frontage of the B9097 and does not actually run along the frontage. In addition, the application site is also buffered from other built development within Crook of Devon by the woodland strip to the west of the site and the local plan village setting designation to the north and therefore does not coalesce with existing built development within the settlement. Although contrary to Policy 48, the proposal will not lead to the coalescence which the Policy seeks to prevent because of the particular circumstances of the site described above. Furthermore in the emerging New LDP, which is a material consideration in determining a planning application, there is no equivalent to Policy 48 which seeks to restrict built development adjacent to and outwith settlements because it is considered that it may be reasonable to allow development in this context under certain circumstances.

- 51 The site is considered to be rural brownfield land and redevelopment of this land for small scale housing provision is considered to be acceptable under the Council's Housing in the Countryside Policy 2009 where it would result in a significant environmental improvement of the site through the remediation of former uses and that there are no other pressing requirements for other uses on the site such as business or tourism. A contaminated land investigation has indicated that the site has been remediated satisfactorily. It is considered that there is no other demand for this site to be used for any other purpose.

Need for the development

- 52 The draft report on Planning for gypsy/travellers in Perth and Kinross was published by the Council in 2007, some time after the Kinross Area Local Plan. The report identified a lack of good quality, safe and secure accommodation across Perth and Kinross. A need for alternative accommodation (trailers, pitches or chalets) for 37 to 42 households was recognised across Perth and Kinross with a need for 13 -15 households in the Kinross area itself. Within Kinross-shire there is one established privately owned Gypsy/Traveller site at Greenacres.
- 53 Gairneybridge caravan site received planning permission for 16 permanent mobile homes in addition to the previous 15 permanent mobile units. This was a change from tourist use to permanent residential. It should be noted this is not a gypsy/traveller site specifically and there are no conditions restricting it as such, its understood gypsy/travellers do use the site but it is also used by other residents and persons from the settled community.
- 54 As of January 2013 there was still an existing need and demand for pitch spaces in Kinross-shire with only approximately half of the current need of 13-15 households having been met at Greenacres, where 7 pitches having been granted since 2007, this leaves a demonstrable existing need for at least 6-8 pitches in the area. In addition to this there is the newly arising need which when taken into account increases the overall need in Kinross-shire to approximately 9-11 pitches at this time. A further 2 applications are pending at the present time for sub-division to provide 2 further pitches at Greenacres.

There is still unfulfilled local demand for this type of accommodation and therefore this proposal is acceptable in terms of the Proposed LDP policy and the SPP.

Landscape and Visual Impact

- 55 The application site is set against the backdrop of the woodland at Crook Moss which screens the site to the west and northwest to the village of Crook of Devon. The detailed site layout indicates that the applicant proposes a 2m high landscaped bund to the east of the site supplemented with tree planting and hedge planting which has still to be completed. Tree and hedge planting is also proposed on the northern boundary of the site beside the site access. It is considered that the proposed structural landscaping will effectively screen the site from the wider countryside and the proposal will not have any significant adverse visual impact.

Drainage and Flooding

- 56 The proposed development, as originally submitted, intended to connect to the public sewerage system and this led to the initial objection by SEPA on the basis of lack of information on the disposal of foul effluent disposal. The previous report did not clearly set out the SEPA position at that time, indicating that they would object if foul drainage was not connecting to the public sewerage system. However it has been established there are capacity issues at the public waste water treatment plant and there was, therefore no capacity available to be allocated to this application. Following the deferral of the application, this issue was raised with the applicant who has progressed the proposal for a private waste water treatment plant to serve the development of the site along with improvements to an existing property within the Loch Leven Catchment Area which will allow sufficient compensatory phosphorus mitigation. It is proposed that surface water will be attenuated via a combination of large diameter pipes and a filtration unit, which will provide sufficient volume, therefore preventing surface water flooding during the 1 in 30 year plus climate change event and also provide sufficient treatment of flows prior to discharge into the nearby land drain.
- 57 Since the deferral of the application a Memorandum of Understanding for Planning Procedure for Applications in the Loch Leven Catchment Area has been approved at the Council's Enterprise and Infrastructure Committee on 28 August 2013 where phosphorus mitigation measures to the Loch Leven Catchment Area will be secured by conditions rather than a Section 75 legal agreement in order to reduce delays and streamline the planning application process.
- 58 SNH and SEPA have no objections to the proposed drainage arrangements for the site subject to suitable conditions being attached to any consent to maintain phosphorus mitigation to the Loch Leven Catchment Area. This will ensure the treatment works are regularly serviced and chemically dosed and that the total phosphorus discharged to the catchment does not increase as a result of the development.

- 59 In addition, in consultation with the Council's Flooding Section it has been confirmed that there are no flood risk issues associated with this site. The presence of a bog to the West would indicate the soil characteristics are poor around this location. The surrounding land is agricultural land and there are no inhabited properties on this land and the Council therefore has no flooding records for this location. The application site is raised above the level of the adjacent land and it is considered that there is no significant flood risk associated with the site itself. Surface runoff rates to the adjacent watercourse will be attenuated satisfactorily in accordance with best SUD's practise.

Ground Contamination

- 60 The second reason for deferral of the application related to the issue of alleged contamination of the site. The most recent former use of the site was as a small landfill tip and it is adjacent to a disused railway line. Following the deferral, a Phase II Geo-Environmental Survey was carried out. In consultation with the Council's Contaminated Land Officer it has been concluded that the application site is considered to be free from risk of contamination from past uses and no further remediation on the site is required and as a consequence this issue is considered to be discharged.

Noise

- 61 Noise complaints have been raised from local residents as a result of generator use at the site and this has been monitored by Environmental Health. It is the applicants intention to connect to mains electricity, however Environmental Health have recommended noise conditions to ensure that any ongoing generator use does not have a detrimental impact on residential amenity. Noise and odour conditions are also attached to any consent to control any issues arising from the operation of the private waste water treatment plant.

Residential Amenity

- 62 The application site is large enough to afford a suitable level of residential amenity for residents. There will be no overlooking or overshadowing of pitches within the site and the application site is sufficiently distant from any neighbouring residences to impact adversely on their residential amenity.

Ecology and Biodiversity

- 63 The application site is adjacent to Crook Moss which is a listed raised bog and wildlife site. This is a local rather than a statutory designation. The proposed development is not situated on the Moss and SNH and the Council's Biodiversity Officer have no objection to the proposal in terms of ecology and biodiversity. There will be no tree loss on or adjacent to the site as a result of the proposal. Tree planting and hedging is proposed on the site which will increase the habitat potential and biodiversity of the site.

Cultural Heritage

- 64 There were concerns raised through representations that the proposal would impact on the archaeological significance of Crook Moss. In consultation with

Perth and Kinross Heritage Trust there are no archaeological concerns about the site and the only element of historical interest nearby is the line of the dismantled Alloa to Kinross railway line and the proposed development does not impact on this site.

Traffic and Road Safety

- 65 As far as roads matters are concerned the Council's Transportation Planner has no objection to the proposal provided conditions on the access and parking provision are applied to any consent. The application site is close to the B9097 and public transport services.

Education

- 66 As there is insufficient capacity available at Fossoway Primary School to accommodate the proposed development then any children of primary school age arising from the development would need to be accommodated at the nearest available school with sufficient capacity. As the proposed housing is considered as affordable housing there is no requirement for an education contribution in this case.

67 Economic Benefits

The economic benefits which it is considered would arise as a result of this proposal relate principally to residents of the units spending on goods and services in the local area.

Sustainability

- 68 The use of brownfield land for development instead of greenfield land is in accordance with the principles of sustainable development. The site is close to settlements and can take advantage of the existing infrastructural, social, educational and community facilities which they offer and it is close to the public transport network. There is an identified need for gypsy/traveller sites in the area. The proposal will not have any adverse impact on the visual amenity, ecology and biodiversity of the area and the quality of the natural environment will be maintained.

LEGAL AGREEMENTS

- 69 Not required.

DIRECTION BY SCOTTISH MINISTERS

- 70 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

- 71 There have been a significant number of objections to this partly retrospective proposal. However having considered the material considerations in the absence of specific existing Development Plan policies for gypsy/traveller sites, it is considered that there is policy support for the proposal through the emerging Proposed Local Development Plan which addresses some of the main issues. The proposal is also considered to be in accordance with those Kinross Area Local Plan 2004 policies concerning the impact of the proposal on the surrounding environment. There are now no objections from the main statutory environmental consultees and there is an identified need for further pitches in the area. It is not considered that the proposal will have any adverse visual impact on the surrounding area or that there will be any detrimental impact on neighbouring residential amenity and the proposal is therefore recommended for approval.

RECOMMENDATION

A Approve the application subject to the following conditions:

- 1 The proposed development must be carried out in accordance with the approved drawings and documents, unless otherwise provided for by conditions imposed on the planning consent.
- 2 Prior to any further work taking place on the site and within 2 months of the date of this planning consent, the applicant shall submit details of a suitable SUDS scheme, to be implemented alongside the foul drainage infrastructure, all for the approval of the Planning Authority.
- 3 Within 2 months of the date of this planning consent the vehicular access shall be formed and permanently maintained in accordance with specification Type C, Fig 5.7 access detail to the satisfaction of the Planning Authority.
- 4 Within 2 months of the date of this planning consent the access shall be provided with a bitumenously bound surface and maintained as so to the satisfaction of the Planning Authority
- 5 The gradient of the access shall not exceed 3% for the first 5 metres measured back from the edge of the carriageway and the access shall be constructed so that no surface water is discharged to the public road.
- 6 Within 2 months of the date of this consent turning facilities shall be provided within the site to enable all vehicles to enter and leave in a forward gear and shall be permanently maintained so to the satisfaction of this council as planning authority.
- 7 Within 2 months of the date of this consent a minimum of 2 No. car parking spaces per pitch shall be provided within the site and shall be permanently maintained so to the satisfaction of this council as planning authority.

- 8 The area of land directly adjacent and to the north of the application site which is within the applicants' ownership and indicated as a paddock area, shall remain as such and shall not be used for any other purpose unless otherwise agreed in writing with the Planning Authority.
- 9 The wastewater treatment facility and associated drainage, storage and pumping installations shall be designed, operated and maintained such that noise and/or odour, therefrom, are not perceptible in any nearby domestic property.
- 10 A water supply complying with the appropriate British Standard and in accordance with Scottish Water Byelaws currently in force, or where applicable the Private Water Supply (Scotland) Regulations 2006, shall be provided on the site as soon as practicable. Water supply to caravans shall be supplied through pipes not less than 12.5mm in diameter and approved by the Planning Authority.
- 11 With regard to the residential caravans, a supply of pure and wholesome water complying with the Water Supply (Water Quality) Regulations 2000, or where applicable the Private Water Supply (Scotland) Regulations 2006, shall be provided and shall be connected to all washing and sanitary facilities within the residential caravans as soon as is practicable to the satisfaction of the Planning Authority. Adequate precautions shall be taken (or cause to be taken) to protect all service water pipes between the connection to the water main and fittings within the caravans, all to the satisfaction of the Planning Authority
- 12 All plant or equipment associated with operation of the site shall be so enclosed, attenuated and/or maintained such that any noise therefrom shall not exceed Noise Rating 35 between 0700 and 2300 hours daily, or Noise Rating 20 between 2300 and 0700 hours daily, within any neighbouring residential premises, with all windows slightly open, when measured and/ or calculated and plotted on a rating curve chart.
- 13 Each of the five gypsy/traveller pitches should have in place a suitably enclosed and acoustically insulated fixed housing unit in which to install any generator brought onto site to the satisfaction of the Planning Authority. This should be installed within 3 months of the date of this consent unless otherwise agreed in writing with the Planning Authority.
- 14 The private waste water treatment plant and surface water discharge proposals shall be carried out in accordance with Resource & Environmental Consultants Ltd Drainage Assessment dated May 2013 and carried out within the timescale indicated under condition 16 of this consent, that is only after the foul drainage infrastructure has been installed at Harelaw Farm, all to the satisfaction of the Planning Authority.
- 15 The landscaping proposals including tree and hedge planting shall be implemented within 6 months of the date of this consent or within the first planting season and thereafter maintained to the satisfaction of the Planning Authority.

- 16 The foul drainage infrastructure capable of achieving not less than 125% phosphorus mitigation as outlined in the Drainage Assessment attached to this consent carried out by REC and dated May 2013 and confirmed by SEPA and SNH as satisfactory shall be installed at Harelaw Farm prior to the foul drainage infrastructure becoming operational at the development site. For the avoidance of doubt the installed drainage infrastructure at the development site as approved shall be retained thereafter all to the reasonable satisfaction of the Planning Authority.
- 17 Prior to the drainage infrastructure becoming fully operational at the development site the applicant shall submit to the Planning Authority an approved CAR licence under the Water Environmental (Controlled Activities)(Scotland) Regulations 2011 for the drainage infrastructure associated with this project and that the Planning Authority has confirmed receipt of this licence in writing.

Reasons:-

- 1 To ensure that the development is carried out in accordance with the plans approved.
- 2 In the interests of environmental quality and surface water mitigation
- 3 -7 In the interests of traffic and pedestrian safety.
- 8 In the interests of visual amenity; to ensure a satisfactory standard of local environmental quality.
- 9-12 In the interests of residential amenity.
- 13 In the interests of environmental quality.
- 14-15 In the interests of environmental quality and visual amenity.
- 16 To ensure appropriate drainage arrangements are installed and retained to remove phosphorus from the Loch Leven Catchment Area thereby ensuring compliance with the Kinross Area Local Plan 2004 and Enterprise and Infrastructure Committee Resolution of 28 August 2013.
- 17 To ensure appropriate drainage arrangements are installed and retained to remove phosphorus from the Loch Leven Catchment Area thereby ensuring compliance with the Kinross Area Local Plan 2004 and Enterprise and Infrastructure Committee Resolution of 28 August 2013

B JUSTIFICATION

The proposal is considered to comply with the Development Plan and there are material considerations available which add weight to a recommendation of approval.

C PROCEDURAL NOTES

None

D INFORMATIVES

- 1 As soon as practicable after the development is complete, the person who completes the development is obliged by Section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended) to give the Planning Authority written notice of that position.
- 2 This development will require the 'Display of notice while development is carried out', under Section 27C(1) of the Town and Country Planning Act 1997, as amended, and Regulation 38 of the Development Management Procedure(Scotland) Regulations 2008. The form of the notice is set out in Schedule 7 of the Regulations and a draft notice is included for your guidance. According to Regulation 38 the notice must be:
 - Displayed in a prominent place at or in the vicinity of the site of the development
 - Readily visible to the public
 - Printed on durable material.
- 3 The application site will require a caravan site licence in terms of the Caravan Sites and Control of Development Act 1960.
- 4 A Building Warrant will be required for this proposal.
- 5 The applicant is advised that in terms of Section 56 of the Roads (Scotland) Act 1984 he must obtain from the Council as Roads Authority consent to open an existing road or footway prior to the commencement of works. Advice on the disposal of surface water must be sought at the initial stages of design from Scottish Water and the Scottish Environmental Protection Agency.

Background Papers: 44 letters of representation

Contact Officer: Mark Williamson – Ext 75355

Date: 18 September 2013

Nick Brian
Development Quality Manager

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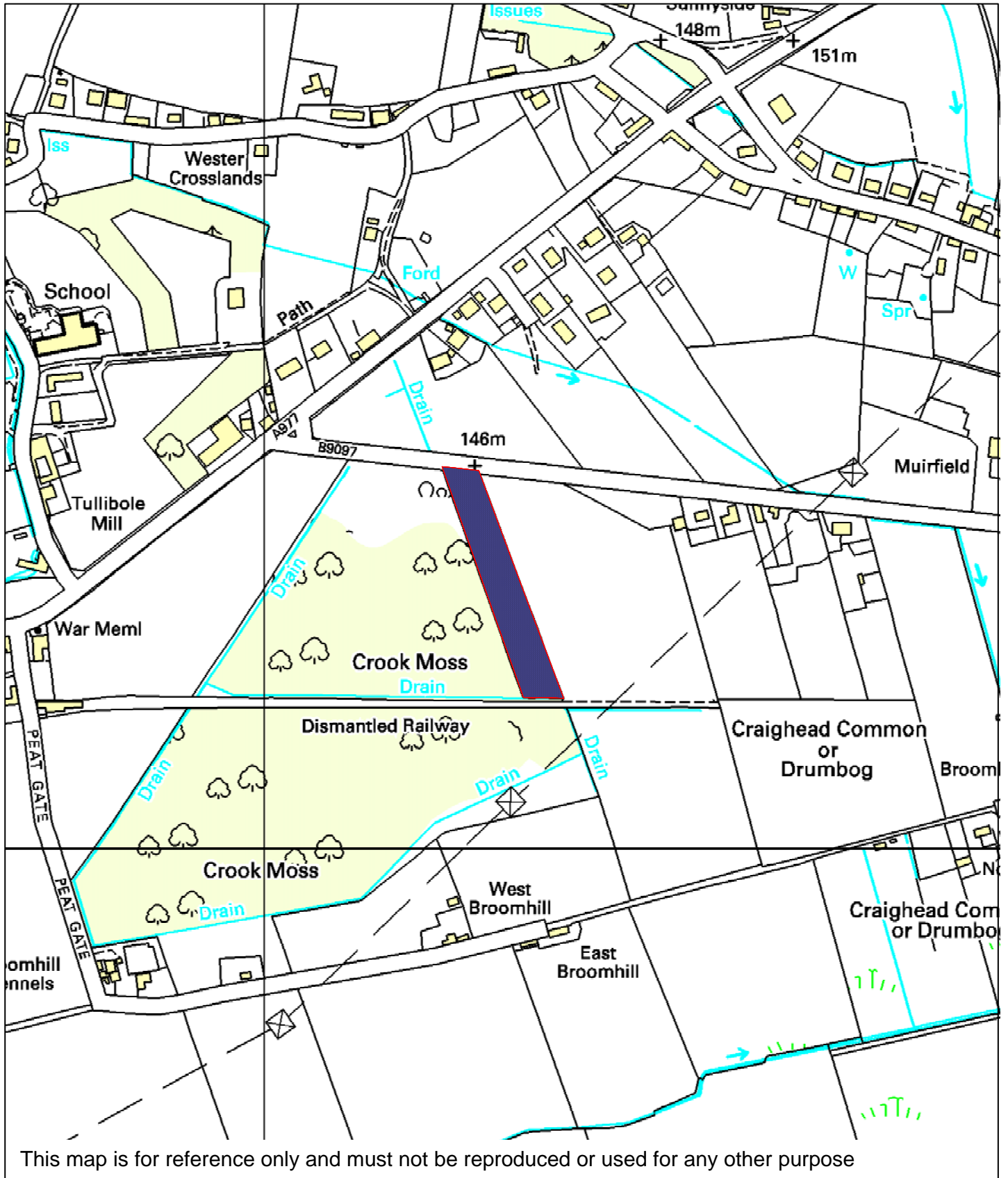
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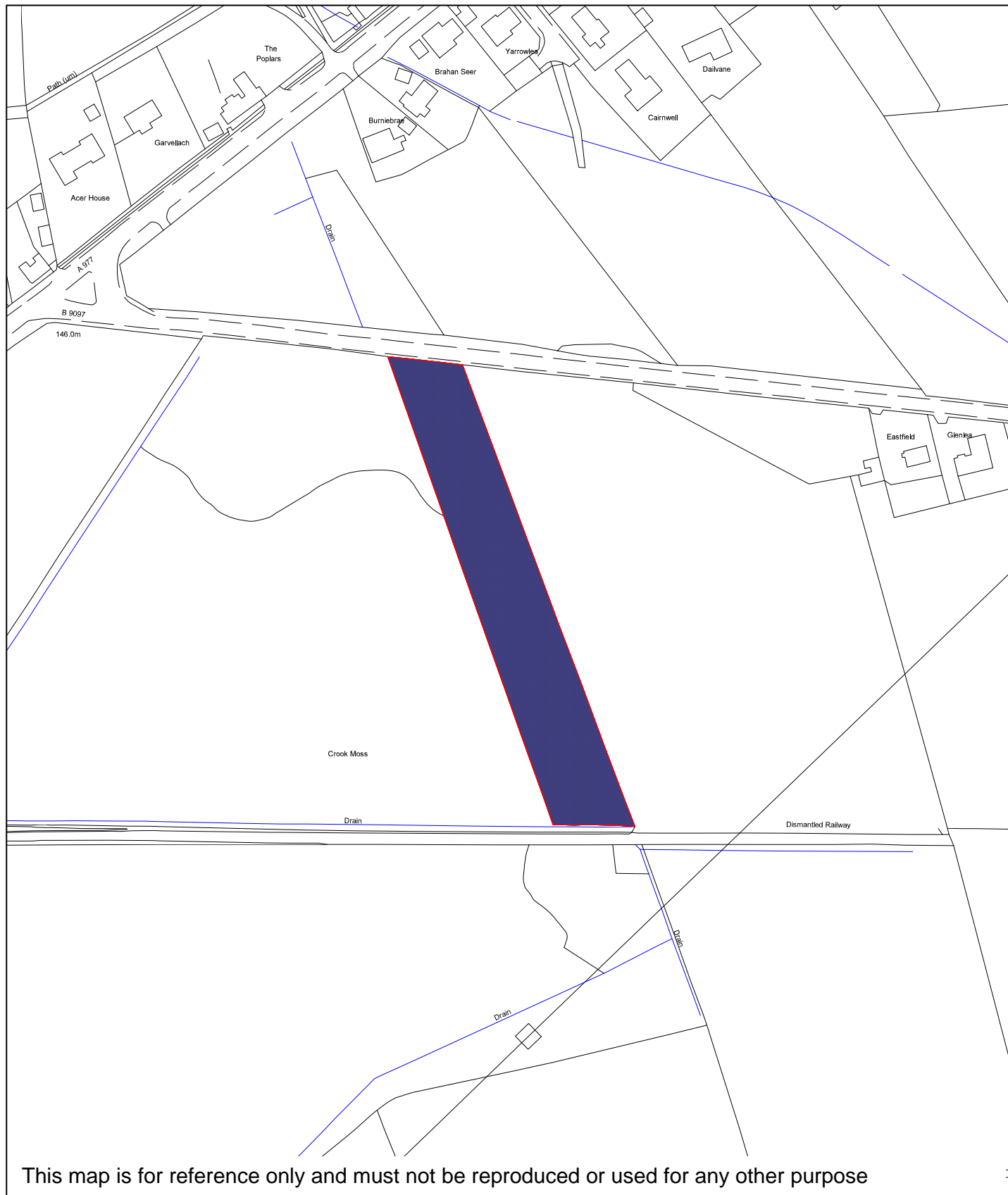
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Formation of five permanent traveller pitches (partly in retrospect)

land at Crook Moss, Crook of Devon



↑ Scale
1:5001



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↑ Scale
1:2500