

Perth and Kinross Council
Development Control Committee – 12 May 2010
Report of Handling by Development Quality Manager

**Erection of 3 dwellinghouses at Woodlands, Nivingston House, Cleish
KY13 0LS**

Ref. No: 09/01154/FLL
Ward No: 8 – Kinross - Shire

Summary

This report recommends approval of the application for 3 dwellinghouses as the development is considered to be in accordance with the Council's Housing in the Countryside Policy 2005.

BACKGROUND AND DESCRIPTION

- 1 The application site is a 0.82 hectare area of land which forms part of the mature wooded garden ground to the west and south of Nivingston House, which is situated to the south of the B 9097. The site is 0.5km to the east of Cleish and 2.5km to the west of the M90 on the lower slopes of the Cleish Hills within an Area of Great Landscape Value (AGLV) as designated in the Kinross Area Local Plan 2004. Planning Consent was granted in 2004 to convert the vacant former hotel into 5 residential dwelling units. More recently in January 2009 there had been a refusal, at appeal, of a residential development for 12 houses in the garden ground adjacent and to the north of Nivingston House.
- 2 This proposal is for the erection of 3 dwellinghouses. Plots 1 and 2 are proposed within the walled garden ground to the west of Nivingston House and Plot 3 is proposed to the south of the main house within a wooded area. The houses are 1, 1.5, and 2 storeys in height each with 5 bedrooms. The design of the houses is traditional in proportion and composition with traditional materials. Plots 1 and 3 are accessed through the existing main entrance to the east of Nivingston House from the Loch Glow road and Plot 2 will be accessed from the B 9097 on the access approved under planning application 03/01615/FUL.

NATIONAL POLICY AND GUIDANCE

The Scottish Planning Policy 2010

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

- concise subject planning policies, including the implications for development planning and development management, and
- the Scottish Government's expectations of the intended outcomes of the planning system.

Of relevance to this application are

- Paragraphs 66 - 91 : Housing
- Paragraphs 92-97: Rural Development
- Paragraphs 125 -148: Landscape and Natural Heritage

Planning Advice Note 38 Housing Land

- 4 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.

Planning Advice Note 67 Housing Quality

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

PAN72 Housing in the Countryside

- 6 PAN72 seeks to create more opportunities for good quality rural housing which respects Scottish landscapes and building traditions, whilst also providing support for innovative and carefully considered contemporary designs.

DEVELOPMENT PLAN

- 7 The Development Plan for the area consists of the Approved Perth and Kinross Structure Plan 2003 and the Adopted Kinross Area Local Plan 2004.

Perth and Kinross Structure Plan 2003

The principal relevant policies are in summary:

- 8 Sustainable Communities Policy 6 in lowland areas seeks to ensure that housing in the countryside prevents commuting, is well sited and is of a scale and standard of design appropriate to its location.

Kinross Area Local Plan (2004)

- 9 Under the Local Plan the site lies outwith any defined settlement and is within the AGLV.

The principal relevant policies are in summary:

Policy 1 Sustainable Development

- 10 Seeks to ensure that development within the Plan area is carried out in a manner in keeping with the goal of sustainable development. Where development is considered to be incompatible with the pursuit of sustainable development, but has other benefits to the area which outweigh this issue, the developer will be required to take whatever mitigation measures are deemed both practical and necessary to minimise any adverse impact. A series of principles will be used as guidelines in assessing whether projects pursue a commitment to sustainable development:

Policy 2 Development Criteria

- 11 All developments within the Plan area will be judged against a series of criteria including landscape framework, scale, form and density of development in the locality, road network, drainage capacity and energy efficiency.

Policy 6 Design and Landscaping

- 12 The Council will require high standards of design for all development in the Plan Area. In particular encouragement will be given to the use of appropriate high quality materials; innovative modern design; avoidance of the use of extensive underbuilding on steeply sloping sites; buildings are in keeping with its surroundings and ensuring that the development fits its location.
- 13 The design principles set out in the Council's Guidance on the Design of Houses in Rural Areas will be used as a guide for rural housing applications and where appropriate for other forms of built development.

Policy 10 Drainage within Loch Leven Catchment

- 14 Total phosphorus from built development should not exceed the current level permitted by the discharge consents for the Kinross and Milnathort waste water treatment works together with the current contribution from built development within the rural area of the catchment. Where improvements reduce the phosphorus total from built development, there will be a presumption in favour of retaining such gains to the benefit of the ecological recovery of Loch Leven.
- 15 All applicants will be required to submit details of the proposed method of drainage before their application is determined and adopt the principles of best available technology not entailing excessive costs to the satisfaction of the Planning Authority in conjunction with SEPA.

Policy 11 Drainage within the Loch Leven Catchment

- 16 All developments within the Loch Leven catchment area will require to connect to publicly maintained drainage system incorporating phosphate reduction measures. Exceptions will only be permitted where one of a series of criteria can be met, including where drainage can be diverted outwith the catchment and acceptable mitigation measures.

- 17 All applications for planning consent not connecting to the Kinross or Milnathort waste water treatment works will be required to provide an assessment of phosphorus input for the development. Evidence of phosphorus impact of the development will be required from a suitably qualified person. In cases of great complexity or uncertainty the Precautionary Principle will be adopted.

Policy 12 Drainage within Loch Leven Catchment

- 18 Where a development is likely to breach drainage Policies 10 or 11, it will be refused. However, there may be exceptions to this policy where, if the developer can show that mitigation measures capable of removing from the catchment area 125% of the phosphorus likely to be generated by the development can be implemented and the proposed development is otherwise acceptable in terms of Council policy, a separate planning agreement in terms of Section 75 may be considered.

Policy 54 Areas of Great Landscape Value

- 19 Within the AGLV identified on Proposals Map 1 new developments, which accord with other Plan policies, will only be permitted where they can be shown to enhance the natural and man made landscape assets of the area.
- 20 All applicants for planning consent within the area will require to submit detailed plans of buildings showing the elevations of the new development in its landscape setting together with details of landscape enhancement measures.
- 21 In appropriate cases landscape enhancement measures may require to be implemented in advance of development to ensure that the landscape framework is in place before the development commences.

Policy 64 Housing in the Countryside

- 22 The Council will normally only support proposals for the erection of individual houses in the countryside which fall into at least one of the categories 1-4. Within the Loch Leven Catchment Area Policy 11 also applies.
1. Building Groups
 2. Renovation or Replacement of Houses
 3. Conversion or Replacement of Non-Domestic buildings.
 4. Operational Need

OTHER POLICIES

Housing in the Countryside Policy 2005

- 23 The Council's Housing in the Countryside Policy 2005 stipulates the criteria under which new housing may be considered outwith settlement boundaries.

Housing in the Countryside Policy 2009

- 24 The Council's revised Housing in the Countryside Policy 2009 stipulates the criteria under which new housing may be considered outwith settlement boundaries. This policy supersedes the 2005 Policy.

Affordable Housing Policy

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 | 02/01973/FUL | Erection of timber stable block and hay barn approved in March 2003. |
| 28 | 03/01615/FUL | Change of use and alteration to form 5 dwellings and new access approved in Feb 2004. |
| 29 | 04/00885/FUL | Amendments to previous consent 03/01615/FUL for 5 houses approved in July 2004. |
| 30 | 06/02409/OUT | Erection of 16 new houses with associated access road and private driveway in outline withdrawn in April 2007. |
| 31 | 07/01126/MOD | Modification of existing consent 03/01615/FUL to separate previously approved granny flat from adjoining building approved in Nov 2007. |
| 32 | 07/01624/FUL | Erection of 5 garages approved in May 2008. |
| 33 | 07/01792/FUL | Proposed residential courtyard development for 12 units with 2 within the walled garden refused in June 2008. Appeal dismissed in Jan 2009. |

- 34 08/01982/FUL Formation of a vehicular access approved in Nov 2008.
- 35 09/01729/FLL Erection of stables approved in Dec 2009
- 36 09/01155/FLL Alterations and extension to Woodlands approved Sept 2009.

CONSULTATIONS

- 37 **Education & Children's Services** have stated that the application site falls within the Cleish Primary School catchment area and that a contribution will be required towards school accommodation.
- 38 **Environmental & Consumer Services** has no objections.
- 39 **Scottish Environment Protection Agency** has no objections subject to SUDS condition.
- 40 **Scottish Natural Heritage** objects to the development in terms of potential environmental impact on phosphorus levels in Loch Leven. This objection can be overcome subject to a legal agreement being put in place to ensure phosphorus mitigation.
- 41 **Cleish & Blairadam Community Council** objects to the development in terms of its scale and design and landscape framework and the proposal will be detrimental to the character of the immediate area, the rural environment and Area of Great Landscape Value.
- 42 **Scottish Water** has no objections.

REPRESENTATIONS

- 43 11 letters of representation were received from residents in the area including one from the Kinross-Shire Civic Trust.
- 44 Summary of Issues raised by Representations
- Inadequate landscape framework
 - Contrary to the Housing in the Countryside Policy
 - Phosphate mitigation not adequate
 - Will lead to increased traffic and light pollution
 - No affordable housing provision
 - Loss of trees/ detrimental impact on flora and fauna
 - Out of keeping with surrounding countryside/ detrimental to Area of Great Landscape Value
 - No need for housing in the area
 - Prominence of plot 1

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

45 ADDITIONAL STATEMENTS

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	None submitted.

APPRAISAL

Policy

- 46 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. The most relevant policies of the Development Plan are the Perth and Kinross Structure Plan 2003 Sustainable Communities Policy 6 and Kinross Local Plan 2004 Policies 2, 6, 12 and 54. The Council's more recent Housing in the Countryside Policy 2005 and the revised 2009 policy effectively provide more up to date guidance than Policy 64 of the Local Plan and are a material consideration. In this case the relevant policy is the 2005 policy as the application pre-dates the Housing in the Countryside Policy 2009.
- 47 The proposal was the subject of pre-application discussion and it was considered that the two houses to the west and one to the south of Nivingston House were in accordance with the Council's Housing in the Countryside Policy 2005, where new houses in the countryside would be considered favourably provided they were in a walled garden where they would not affect the integrity of the wall. In this case also, it was considered that the 3 houses would be part of a building group where consent will be granted for houses which extend the group into definable sites formed by existing topography and landscape features which provide a suitable setting. The trees around Nivingston House provide the framework for the containment of the house. The principle of residential use is therefore considered acceptable and in satisfying the Council's Housing in the Countryside Policy 2005 the proposal is also in accordance with local plan policies 2, 6 and 54. The Loch Leven Drainage Policy 12 for phosphate mitigation to the catchment area is satisfied through the completion of the legal agreement.

Education

- 48 The proposal falls within the Cleish Primary School catchment area. Based on current information this will breach the capacity trigger for the school and

therefore a financial contribution is required to go towards accommodation for the school which would equate to 3 x £6105 = £18315

Traffic

- 49 The proposed accesses to the public roads are acceptable to the Council's Road's Engineers subject to conditions on specification of access detail, width and gradient. There should be a minimum of 2 parking spaces per dwelling.

Drainage and Flooding

- 50 The proposed houses will connect to an existing private sewage treatment plant which will require to be upgraded to deal satisfactorily with phosphate discharge to the Loch Leven Catchment Area. This will be dealt with through the completion of a Section 75 Agreement between the applicant and the Council to ensure suitable phosphate mitigation for the life of the development. Surface water treatment will be dealt with through an approved SUDs scheme details of which will be required prior to any commencement of work on site. There are no flooding issues on the site.

Residential Amenity

- 51 The proposed houses have ample garden grounds and the distances to boundaries will not impinge on the residential amenity of the other proposed houses or any existing residences. There will be no adverse impact on any neighbouring properties from light pollution as a result of the development as the light generated will be only of a normal residential nature and be part of an existing contained group of units.

Design and Layout

- 52 The scale and design of the houses is acceptable. The layout of the plots reflects the existing building layout at Nivingston House and extends and consolidates the layout within the existing landscape framework of trees in the immediate area. The proposed houses are traditional in character and proportions and the materials proposed are of good quality. The houses are 1, 1.5 and 2 storeys and will not be detrimental or conflict with the existing built form in terms of scale or design.

Trees and Landscaping

- 53 There will be no trees felled to accommodate the proposed houses and existing tree belts will be retained to define the landscape framework for the site. Existing boundaries will be retained and any new boundaries will match the materials of the proposed houses. Areas of new planting will incorporate a mix of indigenous species. A fully detailed landscaping plan will be required prior to commencement of work on site.

Natural Heritage

- 54 The self containment of the site within the landscape framework around Nivingston House suggests that the proposed development will not have any adverse visual impact on the wider countryside or the Area of Great Landscape Value associated with the Cleish Hills. This was reiterated by the Appeal Decision on the previous proposal 07/01792/FUL where the Reporter commented that “the proposed development would have little visual impact on the wider community”. As already mentioned above there will be little tree removal and therefore no adverse impact on habitat associated with the trees on the site.

Sustainability

- 55 The applicant is keen to utilise renewable energy sources on this site including geothermal ground heat and solar energy. The proposed development is within easy access to social, cultural and economic services in Kinross and Dunfermline. There is also good access to public transport facilities along the B9097. There will be no adverse impact on road safety, drainage infrastructure, natural or built heritage interests. The development of the garden ground for housing alleviates pressure for the development of greenfield land for housing in accordance with national guidance and the goal of sustainability.

Affordable Housing

- 56 The proposal only involves 3 houses and is below the threshold of 5 specified in the Council’s Affordable Housing Policy 2005 and therefore no provision for financial contribution to affordable housing is required in this instance.

LEGAL AGREEMENTS

- 57 A Section 75 Agreement will be required for the phosphate mitigation measures to be implemented with regard to the specification and ownership of the private sewage treatment plant. A financial contribution of £18315 is required towards educational provision at Cleish Primary School and the applicant may wish to defer payment of this through a suitable legal agreement.

DIRECTION BY SCOTTISH MINISTERS

- 58 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

- 59 The proposed development for 3 houses at Nivingston House is considered to be acceptable in principle and in detail, in accordance with the Development Plan and the Council’s Housing in the Countryside Policy 2005. The scale and

design of the houses reflect the traditional character of the area and there is a good landscape framework around the houses which contain them and they do not adversely affect the character of Nivingston House or the wider countryside and the AGLV.

RECOMMENDATION

A Approve the application subject to the following conditions:

- 1 The development shall be begun within a period of three years from the date of this consent.
- 2 The proposed development must be carried out in accordance with the approved plans, unless otherwise provided for by conditions imposed on the planning consent.
- 3 Details of the specification and colour of the proposed external finishing materials to be used shall be submitted for the approval of the Planning Authority prior to the commencement of the development. The scheme as approved shall be implemented prior to the occupation and or use of the development.
- 4 Prior to the occupation or the use of the approved development the vehicular access shall be formed in accordance with the Council's Roads Development Guide Type c Figure 5.7 access detail to the satisfaction of the Council as Planning Authority.
- 5 Prior to the occupation or use of the approved development the public road over a length of 6.00m immediately adjacent to the access shall be widened to a minimum of 5.00m.
- 6 The gradient of the access shall not exceed 3% for the first 5.00 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.
- 7 Prior to the occupation or use of the approved development turning facilities shall be provided within the site to enable all vehicles to enter and leave in a forward gear.
- 8 Prior to the occupation or use of the approved development a minimum of 2 No. car parking spaces per dwelling shall be provided within the site.
- 9 Storm water drainage from all paved surfaces, including the access, shall be disposed of by means of suitable sustainable urban drainage systems to meet the requirements of best management practices
- 10 A fully detailed landscaping plan, including details of all hard and soft surface and boundary treatments and all planting shall be submitted and approved in writing by the Planning Authority before work is commenced on site.

- 11 No trees on the site shall be felled, apart from those shown on the approved plan, without the prior written approval of the Planning Authority.

Reasons:-

- 1 In accordance with the terms of Section 58 of the Town and Country Planning (Scotland) Act 1997 as amended by Section 20 of the Planning etc (Scotland) Act 2006.
- 2 To ensure that the development is carried out in accordance with the plans approved.
- 3 In the interests of visual amenity; to ensure a satisfactory standard of local environmental quality.
- 4-8 In the interests of pedestrian and traffic safety and in the interests of free traffic flow.
- 9 In order to reduce flood risk.
- 10 In the interests of visual amenity; to ensure a satisfactory standard of local environmental quality.
- 11 In order to protect existing trees on the site.

B JUSTIFICATION

The proposal is considered to comply with the Development Plan and there are no other material considerations that would justify a departure there from.

C PROCEDURAL NOTES

- 1 Consent shall not be issued until a Section 75 Agreement has been completed and signed by the applicant in order to secure the ownership and maintenance of a sewage treatment plant which is suitable to mitigate phosphate discharge to the Loch Leven Catchment Area.
- 2 Prior to the issue of consent the applicant shall provide a financial contribution Of £18,315 towards the provision of additional accommodation at Cleish Primary School or enter into a suitable legal agreement for deferral of this payment.

D INFORMATIVES

- 1 Under section 27A of the Town and Country Planning (Scotland) Act 1997 (as amended) the person undertaking the development is required to give the planning authority prior written notification of the date on which it is intended to commence the development. A failure to comply with this statutory requirement would constitute a breach of planning control under section 123(1) of that Act, which may result in enforcement action being taken.

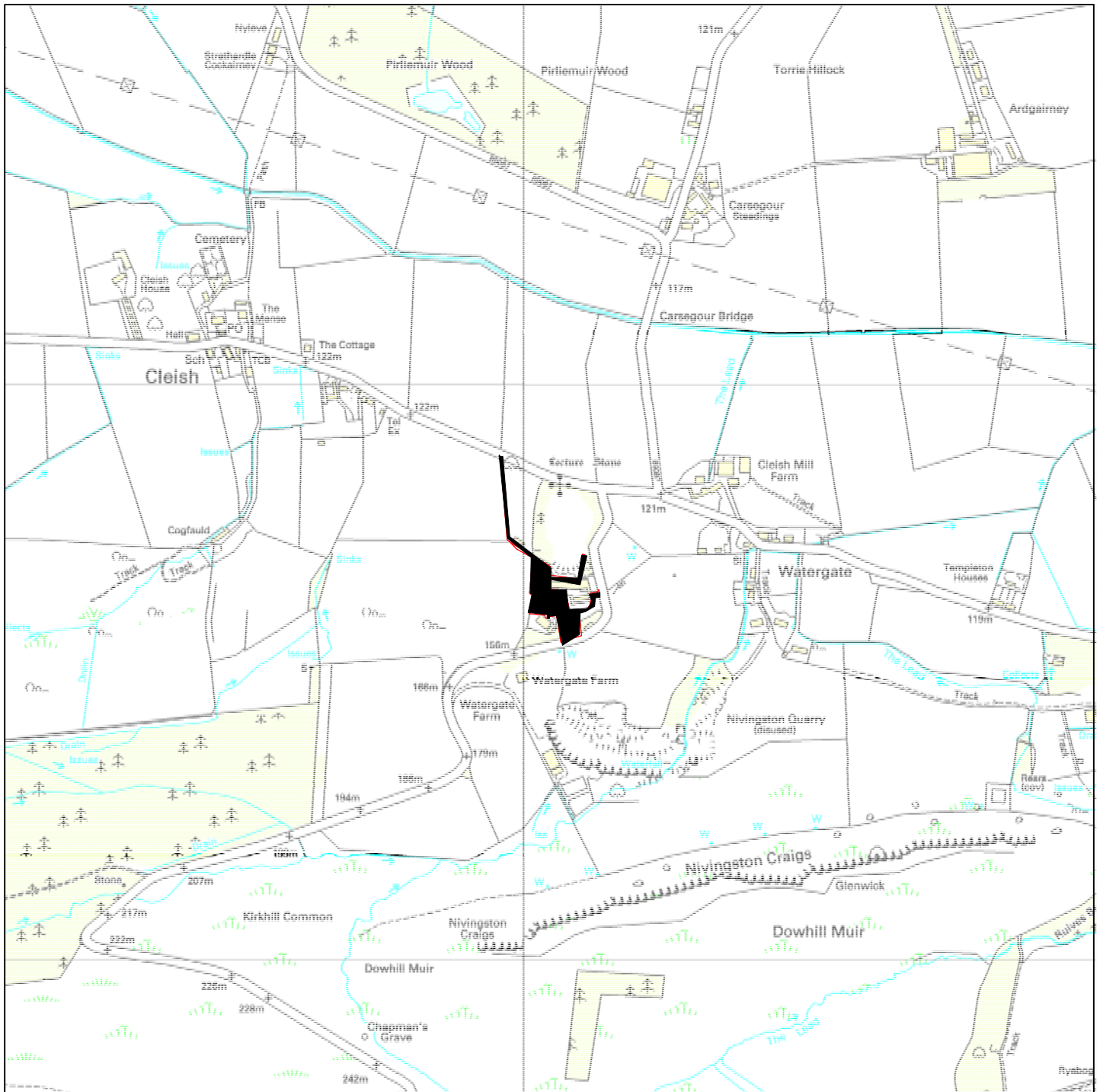
- 2 As soon as practicable after the development is complete, the person who completes the development is obliged by section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended) to give the planning authority written notice of that position.
- 3 The applicant is advised that in terms of Sections 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.
- 4 No work shall be commenced until an application for building warrant has been submitted and approved.
- 5 The applicant is advised that a Controlled Activities Regulations (CAR) application is required and contact should be made with SEPA at an early date to establish the requirements for this application
- 6 The existing buildings may contain habitats of protected species such as barn owls. It is worth noting that these are protected by separate legislation and you should contact RSPB or SNH regarding this.

Background Papers: 11 letters of representation
Contact Officer: Mark Williamson – Ext 75355
Date: 16 April 2010

NICK BRIAN
DEVELOPMENT QUALITY MANAGER

09/01154/FLL

Erection of 3 houses, Nivingston House, Cleish



Scale : 1:10000

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Organisation	Perth & Kinross Council
Department	Planning
Comments	
Date	13 April 2010
SLA Number	100013289

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