

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

**Engineering works to pond at Land to the East of the U165, Donavourd**

Ref. No: 13/00089/FLL  
Ward No: 4– Highland

**Summary**

This report recommends approval of the application for engineering works to a pond as the development is considered to comply with the relevant provisions of the Development Plan.

**BACKGROUND AND DESCRIPTION**

- 1 Full planning consent is sought for engineering works to a pond which is situated within plot 4 of a 4 house development which was granted planning consent in January 2008 (07/02495/FUL). Plot 4 is the southern most of the four plots originally granted planning consent. The application site is bound to its west by the U165 public road, to the south and east by residential properties and to the north by the remainder of the new housing development referred to above. The pond occupies the south east corner of the application site and much of the site is wooded, although some felling has taken place recently which will be addressed in more detail in the appraisal section below.
- 2 The pond in the south east corner was once associated with the Mill to the south which is now in use as residential accommodation. A small watercourse runs from the north east into the pond. The water in the pond discharges to the south of the site into a further water course.
- 3 This application seeks to alter the banks of the pond as they are currently steep. The supporting statement submitted with the application states that as the pond edges are steep it is potentially a hazard for small children and would be extremely difficult for a weak person to pull themselves out. It goes on to state that this observation has been made by a number of potential purchasers and the applicant considers it to be the pond which is resulting in this remaining plot being unsold. It should be noted that the recommendation within this report is based upon the planning policy considerations of carrying out works to the pond and the reasons for carrying out the works are inconsequential to the recommendation.
- 4 This is a follow up application to a previously withdrawn application which sought to entirely infill the pond (12/01747/FLL). This application was withdrawn due to concerns which had been expressed by SEPA and the Council's Flood Risk Officer regarding potential flood risk. The proposal has been revised to retain the pond but carry out works to infill parts of the bank to provide a 1 in 4 slope. These revised works are a result of discussions with SEPA and the Flood Officer.

## **NATIONAL POLICY AND GUIDANCE**

### **Scottish Planning Policy 2010**

- 5 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.
- 6 The relevant paragraphs are as follows:
- Paragraphs 142 - 145 Protected Species
  - Paragraphs 146 - 148 Trees & Woodland
  - Paragraphs 196 - 211 Flooding and Drainage

## **DEVELOPMENT PLAN**

- 7 The Development Plan for the area consists of the Approved Tayplan Strategic Development Plan 2012 and the Adopted Highland Area Local Plan 2000

### **Tayplan: Strategic Development Plan 2012-2032**

- 8 The principal relevant policies are in summary: -

#### **Policy 3: Managing Tayplan's Assets**

- 9 Understanding and respecting the regional distinctiveness and scenic value of the TAYplan area through:
- ensuring development likely to have a significant effect on a designated or proposed Natura 2000 sites (either alone or in combination with other sites or projects), will be subject to an appropriate assessment. Appropriate mitigation requires to be identified where necessary to ensure there will be no adverse effect on the integrity of Natura 2000 sites in accordance with Scottish Planning Policy; and
  - safeguarding habitats, sensitive green spaces, forestry, wetlands, floodplains (in-line with the water framework directive), carbon sinks, species and wildlife corridors, geodiversity, landscapes, parks, townscapes, archaeology, historic buildings and monuments and allow development where it does not adversely impact upon or preferably enhances these assets.

## **Highland Area Local Plan 2000**

- 10 The application site is located within the settlement boundary of Donavourd.
- 11 The principle relevant policies are in summary: -

### **Policy 2 Development Criteria**

- 12 Provides criteria by which all developments will be judged. In particular, that the development should have a landscape framework, should have regard to the scale, form, colour and density of development within the locality and should not result in a significant loss of amenity to the local community.

### **Policy 3 Landscape**

- 13 Development proposals should seek to conserve landscape features and sense of local identity, and strengthen and enhance landscape character. The Council will assess development that is viewed as having a significant landscape impact against the principles of the Tayside Landscape Character Assessment produced by Scottish Natural Heritage.

### **Policy 4 Landscape**

- 14 Details of landscape treatment should be submitted with development proposals including, where appropriate, boundary treatment, treatment of settlement edges, and impact on key views.
- 15 Developers will be required to demonstrate that satisfactory arrangements will be made, in perpetuity, for the maintenance of areas of landscaping.

### **Policy 7 Flood Risk**

- 16 Development in areas liable to flood, or where remedial measures would adversely affect flood risk elsewhere, will not normally be permitted. For the purposes of this policy flood risk sites will be those which are judged to lie within:-
  - (a) Areas which flooded in January 1993.
  - (b) Sites which lie within a flood plain.
  - (c) Low lying sites adjacent to rivers, or to watercourses which lead to categories a and b above.

### **Policy 17 Nature Conservation**

- 17 The Council will seek to protect and enhance habitats of local importance to nature conservation including grasslands, wetlands, peatlands and habitats which support endangered species.

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

18 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 is 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.

19 The relevant policies of this plan are:

### **Policy PM1 Placemaking**

20 Development must contribute successfully to the quality of the surrounding built and natural environment.

### **Policy NE1 Natural Heritage**

21 National, local and European protected species should be considered in development proposals.

### **Policy EP2 Flooding**

22 There will be a general presumption against development where a proposal would increase the probability of flooding elsewhere.

## **OTHER POLICIES**

23 None.

## **SITE HISTORY**

24 07/02495/FUL Erection of 4 dwellinghouses with garaging facilities and formation of an improved access – Approved January 2008

25 12/01373/FLL Infilling of pond - Withdrawn

26 12/01747/FLL Infilling of pond and formation of a stream – Withdrawn

## **CONSULTATIONS**

### **Pitlochry Community Council**

27 Objection on grounds of flood risk, impact on ecology, impact on visual amenity, loss of trees.

## SEPA

28 No objection.

## PKC Flood Risk Officer

29 No objection.

## REPRESENTATIONS

30 A total of 10 letters of representation were received during the first advertisement period which includes one letter from Pitlochry and Moulin Community Council.

31 A further advertisement was carried out due to the receipt of further information where a further eight letters of representation were received (all from individuals or bodies who had made representation during the first advertisement period), all objecting to the proposal.

32 Summary of Issues raised by Representations

The representations have raised the following relevant issues: -

- Flood Risk
- Visual Amenity
- Bio Diversity/protected species
- Loss of trees
- Contrary to local and national policy

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

## ADDITIONAL STATEMENTS

33	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

34 Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 as amended by Planning Etc (Scotland) Act 2006 require that planning decisions be made in accordance with the Development Plan unless material considerations indicate otherwise. 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. The most relevant policies of the Highland Area Local Plan (HALP) in this instance are outlined in the policy section above. The Council's Proposed Local Development Plan (PLDP) 2012 is a relevant material consideration in this instance.

### **Bio Diversity**

- 35 A number of letters of representation raise concerns that the engineering works to the pond will have a detrimental impact on bio diversity associated with the pond. Policy 17 of the HALP and Policy NE1 of the Proposed Local Development Plan require the Council to consider protected species in determining any planning application. The Council's Bio Diversity Officer has been consulted on the proposal. He has stated that he has visited the site on three separate occasions, at different times of the year and the only species directly associated with the pond were a group of mallard ducks. He considers the pond to be "oligotrophic" meaning that it is very clear with little or no vegetation and as a consequence is unlikely to be able to support much wildlife. He also states that within a 1km radius there are at least three other ponds which are possibly of better value for wildlife. Given this response from the Council's Biodiversity Officer and from the evidence available to me during my site visit I am satisfied that the engineering works to the pond will not result in any significant harm to any protected species and as such the proposal is considered to comply with the Development Plan in that regard.

### **Flooding**

- 36 Similar to the biodiversity issues outlined above, letters of representation have raised concerns regarding potential flood risk. Policy 7 of the HALP and Policy EP2 of the PLDP state that there is a general presumption against development on areas which are prone to flooding or which would result in flooding elsewhere. Due to the concerns which have been expressed by neighbours, both SEPA and the Council's Flood Risk Officer have been consulted.
- 37 SEPA and the Flood Officer objected to the previous application for the complete removal of the pond. The amended application now proposes to reduce the gradient along the banks of the pond by using material from the north shore. No material will be imported for infilling purposes. An additional 150mm pipe is also planned to be placed at a lower level than the current outlet weir which will reduce pond levels during low flows.
- 38 The Supporting Statement (Revised January 2013) notes that it is important to keep the diameter of the pipe small to avoid significant increases in flow downstream during peak flows. The Flood Officer states that installing the pipe should act as a throttle during high flows, allowing the pond to fill to its original water level before the current weir level is reached. The statement also notes that there will be a small amount of additional flood storage held within the pond during high flows although no modelling has been undertaken regarding this. The volume lost through infilling will be comparatively small as material is being taken from the pond area itself.

- 39 Both SEPA and the Flood Prevention Officer have offered no objection to the proposals and conditions regarding the maintenance of the outlet pipe are recommended.

### **Loss of Trees/Visual Amenity**

- 40 The supporting statement submitted with the application states that no trees will be affected by the engineering works to the pond. However, during the course of the application, a number of trees were felled on the site. This resulted in a number of complaints from neighbours. The 2007 consent for residential development on this site indicated the retention of trees on site, as this was marked on the approved plans, and as such the felling of trees on the site was a breach of planning control. The Council's Enforcement Officer wrote to the applicant seeking a re-planting plan as the felling which had taken place was considered to detrimentally impact on the visual amenity of the area given the proximity of the site to the public road. A re-planting plan has been submitted which outlines additional trees, shrubs and hedging. Whilst it is clear the re-planting scheme will not entirely make up for the loss of mature trees from the site it is considered to be a reasonable compromise given the felling that has occurred. Furthermore the trees to be replanted will mature and over time will improve the visual amenity of the area. A condition is recommended to ensure the re-planting is carried out within a reasonable timescale. A condition to ensure the protection of existing trees during construction operations is also recommended. I am satisfied that this re-planting scheme is sufficient to address the impact of the unauthorised felling and ensures that the application complies with the policies of the Development Plan relating to visual amenity and landscape character.

### **Economic Development**

- 41 There are no economic development implications as a result of this development.

### **LEGAL AGREEMENTS**

- 42 None required.

### **DIRECTION BY SCOTTISH MINISTERS**

- 43 Under the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008, regulations 30 – 32 there have been no directions by the Scottish Government in respect of an Environmental Impact Assessment screening opinion, call in or notification relating to this application.

### **CONCLUSION AND REASONS FOR RECOMMENDATION**

- 44 In conclusion, the application must be determined in accordance with the adopted Development Plans unless material considerations indicate otherwise. In this respect, the proposal is considered to comply with the adopted Highland Area Local Plan and Tayplan 2012. I have taken account of material considerations, including the Proposed Local Development Plan 2012 and find

none that would justify overriding the adopted Development Plan. On that basis the application is recommended for approval subject to conditions.

## **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 The re-planting as indicated on drawing ref: 13/00089/6 shall be carried out and completed in full within 6 months of the approval of this application, all to the satisfaction of the Council as Planning Authority.
- 3 All trees marked for retention on the approved plans shall be retained and protected in line with BS 5837:2012 Trees in Relation to Design, Demolition and Construction. All protective fencing required shall remain in place for the duration of works at the site and shall only be removed upon completion of all works, all to the satisfaction of the Council as Planning Authority.
- 4 The trash screen on the outlet pipe shall be installed at an angle rather than vertically against the headwall. A revised plan demonstrating this change shall be submitted for the written approval of the Planning Authority prior to the commencement of any development. The details, as approved in writing, shall be implemented as part of the site development and completed in their entirety alongside the works to the pond.
- 5 The 150mm pipe and trash screen shall be maintained and kept free of obstruction at all times. All debris shall be removed and vegetation cut back in order to maintain a functioning outlet pipe. All to the satisfaction of the Council as Planning Authority in consultation with SEPA.

### **Reasons**

- 1 To ensure that the development is carried out in accordance with the plans approved.
- 2 In order to ensure the replanting is carried out within a reasonable timescale
- 3 In order to provide protection for retained trees during construction works.
- 4 In order to allow for regular maintenance
- 5 To ensure the pipe and trash screen are kept free from obstruction

### **B JUSTIFICATION**

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



## C PROCEDURAL NOTES

None.

## 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 This planning permission will last only for three years from the date of this decision notice, unless the development has been started within that period. (See Section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).
- 4 Any further changes to the pond will require further planning consent. If the applicant/owner intends to carry out further changes to the pond contact should be made with the Planning Authority and SEPA prior to carrying out any works.

Background Papers: 18 letters of representation  
Contact Officer: John Williamson – Ext 75360  
Date: 30 July 2013

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

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