

Perth and Kinross Council  
Development Management Committee – 11 September 2013  
Report of Handling by Development Quality Manager

**Erection of a dwellinghouse at West Park, Braco FK15 9LQ**

Ref. No: 11/01091/FLL

Ward No: 7 Strathallan

### Summary

This application was originally presented to the Development Control Committee on the 19 October 2011 (Report 11/523) with a recommendation for refusal. The Committee however was minded to approve the application subject to conditions and a Section 75 Agreement which would tie the proposed house to the farm business.

Subsequently the applicant advised that he did not wish the application to be the subject of any restriction on occupancy and consequently a report was prepared for consideration by the Development Management Committee at its meeting on 29 August 2012. However, immediately prior to that meeting the applicant withdrew the application from consideration.

Since then the applicant has submitted further supporting information to seek justification for the removal of the Section 75 Agreement.

However, having fully considered the supporting information, this report recommends refusal of the request for removal of the Section 75 as without an occupancy restriction this would result in the proposal being considered to be contrary to the Development Plan and the Council's Housing in the Countryside Guide 2012 and there are not considered to be sufficient material considerations to justify a departure from the Development Plan.

### BACKGROUND AND DESCRIPTION

- 1 The application site is a 0.32 hectare area of ground on a raised terrace of farmland at West Park Farm situated to the west of West Park Farmhouse which is located 2.5km to the north of Braco and accessed off the Old Military Road to the west of the A822. A new access will be taken off the existing private access road around the rear of West Park Farmhouse. An electricity pylon line cuts diagonally across the northern half of the site. The applicant presently resides in West Park Farmhouse. A previous application in principle for a house on the site was refused as it did not satisfy any of the criteria of the Housing in the Countryside Policy 2009 and there was no information relating to operational need submitted in support of the proposal.

- 2 The proposal is for the erection of a single storey, 4 bedroom dwellinghouse with accommodation in the roof space provided for by dormers. The application has been submitted on the basis of operational need associated with the applicant's farm business at West Park Farm, which is under his ownership and on land leased by him on a long term lease at Garrick Farm from Ardoch Farming Company. The farm unit amounts to a total of 140 acres with 6 acres at West Park and 134 acres at Garrick Farm, comprising arable and livestock and is operated by the applicant himself with assistance from his daughter at the weekends. An economic justification has been submitted in support of an additional house on the farm on the basis that the business generates a labour profile of over 2 units and that there is a need for an additional resident worker to deal also with disease prevention and general bio-security aspects of the business. It is the intention that the applicant's daughter will succeed her father in the business, after a period of working alongside him and it is essential that she can reside at the farm on a full time basis.
- 3 The applicant has stated that no significant trees will be lost as a result of the proposal.
- 4 The external finishing materials proposed for the house includes slate to the roof and stone and render to the external walls.
- 5 As a result of the previous committee decision to approve the application, the principle for the erection of a dwellinghouse for operational need has been established for the site. Similarly, the details relating to siting, design, access, etc. have also been agreed. Consequently, the only issue to be considered by members now is whether a tie between the occupancy of the dwelling and the farm to which justification for operational need arises from, should be through a condition and/or a Section 75 Legal Agreement or if indeed the tie can now be regarded as not necessary.

## **NATIONAL POLICY AND GUIDANCE**

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

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

7 Of relevance to this application are:

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

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

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

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

**PAN 38 Housing Land**

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

**PAN 67 Housing Quality**

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

**DEVELOPMENT PLAN**

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

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

13 The principal relevant policy is in summary:-

**Policy 5: Housing**

14 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.

## **Strathearn Area Local Plan 2001**

- 15 The application site is situated within the landward area of the Local Plan and outwith any defined settlement.
- 16 The relevant policies are, in summary:

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

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

### **Policy 2: Development Criteria**

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

### **Policy 5: Design**

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

### **Policy 45: Agriculture**

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

### **Policy 54: Housing in the Countryside**

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

## **The Perth and Kinross Proposed Local Development Plan 2012**

- 22 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.

- 23 Under the LDP the principal relevant policy is:-

**Policy RD3: Housing in the Countryside**

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

**OTHER POLICIES**

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

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

**Education Contributions**

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

- 26 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**

- 27 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**

- 28 In March 2010 an application for the erection of a house in principle on the site was refused as it did not satisfy any of the criteria under the Council's Housing

in the Countryside Policy 2009 for new houses in the open countryside. It was also considered at the time, in the absence of details of the house, that the site did not afford a suitable landscape framework. (10/00049/IPL)

## CONSULTATIONS

- 29 **Education and Children’s Services** No objections

## REPRESENTATIONS

- 30 None were lodged against the application and no re-notification has been required to be undertaken.

## ADDITIONAL STATEMENTS

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

## APPRAISAL

### Policy

- 32 This proposal for a new house in the countryside falls to be assessed under the Council’s Housing in the Countryside Guide 2012. Under category 3.3 of this policy encouragement will be given for the provision of a house or group of houses on the basis of economic activity for a local or key worker associated with either a consented or an established economic activity. The applicant must demonstrate that there is a need for the house. In this case the applicant previously submitted a Supporting Economic Justification which concluded that the labour profile for the working farm presently requires 2 labour units. The applicant works the farm himself with weekend help from his daughter. His daughter however is to become more active in the farm business and will ultimately succeed her father in the running of the farm. With 250 stock on the farm there are also issues of animal welfare and bio-security and a requirement for on-site supervision of stock is an important consideration. Taken together it was considered previously by Committee, contrary to the report recommendation, that the labour profile and the requirement for increased animal welfare and security demonstrated satisfactorily the operational need for a further house on the farm to support the business, subject to control over occupancy.
- 33 As Members had acknowledged the operational need for an additional dwelling, the proposal was consequently considered to be in accordance with the Council’s Housing in the Countryside Policy 2009 (prior to the Housing in the

Countryside Guide 2012) and therefore acceptable in principle and in accordance generally with structure and local plan policy in encouraging and supporting agricultural activity. However, in coming to this decision Members did require that the occupancy of the dwelling was tied to the operation of the farm and this was to be through a Section 75 Agreement, as was appropriate under the policy position.

- 34 Development Plan policy clearly sets out the circumstances under which residential development in the countryside can be regarded as being acceptable, in this instance for operational need. However, the applicant has put forward evidence of the difficulties that are being met in respect of obtaining the necessary funding (mortgage) for the dwelling where the consent has any restriction on the occupancy of the dwelling. The applicant also cites a letter issued by the former Chief Planner, Jim McKinnon (JMCK) and, more recently, Circular 3/2012, in which it states that occupancy conditions can result in difficulties in obtaining a mortgage and may also result in difficulties when selling the house. The letter actually states that:-
- 35 *The Scottish Government believes that occupancy conditions are rarely appropriate and should generally be avoided.*
- 36 The supporting letter from the applicant's agent goes on to state that he considers the guidance from the Chief Reporter's letter and Circular 3/2012, makes it clear that these overbearing restrictions should not be applied to suitable developments where the case for the development has been proven through the planning process.
- 37 It is not disputed that the applicant is having difficulties in obtaining a mortgage for this additional dwelling and indeed he has lodged evidence of this. However, whilst both the JMCK letter and Circular 3/12 are material considerations in the determination of this application, they also have to be viewed in the context of several key issues in assessing the request to remove the restriction:
- The dwelling would be the second dwelling to serve the farming operation and would be to provide back up and succession accommodation. It is therefore not the principal dwelling to serve the operation as that role is provided by the existing dwelling.
  - The majority of the land associated with the farming operation and providing the operational need is not in the ownership of the applicant and therefore would not be formally tied to consent.
  - Without any occupancy restriction on the proposed dwelling, there would be no restriction on it being sold off or not being occupied in relation to farming operation. It is felt that such a scenario is more likely to occur for a second dwelling.
- 38 If consent were to be granted for the dwelling without any occupancy restriction then I would have concerns over the precedent that such a decision would set. Whilst the JMCK letter and Circular 3/12 set out the Scottish Government

position nevertheless, they do not necessarily or automatically provide sufficient justification for Development Plan policies to be overcome. It is still down to individual planning authorities to apply policy as they consider appropriate and also to decide the level of materiality which both of these carry. If there was to be a general presumption against applying any occupancy restrictions on dwellings which had demonstrated an operational need then it would present future difficulties where a rural business was disposed of separately to the related dwelling and a new operator then seeking a dwelling for operational need and there are previous instances of this.

- 39 In addition, if restrictions on occupancy were not applied to dwellings which were required for operational need then this would effectively mean that the operational need category of the Development Plan policy and the HiCG 2012 were not applicable. The obvious consequence of this would be that dwellings required for operational need would be required to meet one of the other categories of the respective policies. In this instance it is not considered that the proposed dwelling would satisfy any of the other categories.

### **ECONOMIC DEVELOPMENT**

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

### **EDUCATION**

- 41 This development falls within the Braco Primary School catchment area and based on current information this school will reach the 80% capacity threshold. There is therefore a requirement for the applicant to make a financial contribution towards improving capacity at the primary school in accordance with the Education Contributions Policy.

### **LEGAL AGREEMENTS**

- 42 A legal agreement may be required if the applicant wishes to defer the financial contribution required for educational provision.

### **DIRECTION BY SCOTTISH MINISTERS**

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

### **CONCLUSION AND REASON FOR RECOMMENDATION**

- 44 The principle of providing housing on the site is acceptable for operational need and the scale and design of the dwelling would not have any adverse impact on the character or appearance of the neighbouring property or the wider

countryside. The proposal is in accordance with the Council's Housing in the Countryside Guide 2012 and is in accordance generally with structure and local plan policy in encouraging and supporting agricultural activity. However, this is on the basis of operational need having previously been accepted by this Committee with appropriate occupancy controls. I do not consider that the financial case and other material considerations that have been put forward are sufficient to justify a departure from Development Plan policy and therefore cannot support the request to have the occupancy restrictions removed. As a consequence refusal is recommended.

## **RECOMMENDATION**

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

#### **Reasons:-**

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

### **B JUSTIFICATION**

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

### **C PROCEDURAL NOTES**

If Members resolve to grant consent then prior to the issuing of consent the applicant shall make a financial contribution of £6395 towards education provision at Braco Primary School, or enter into a suitable legal agreement with the Council to defer payment of the contribution.

## D INFORMATIVES

None.

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

Background Papers: None

Contact Officer: Mark Williamson – Ext 75355

Date: 21 August 2013

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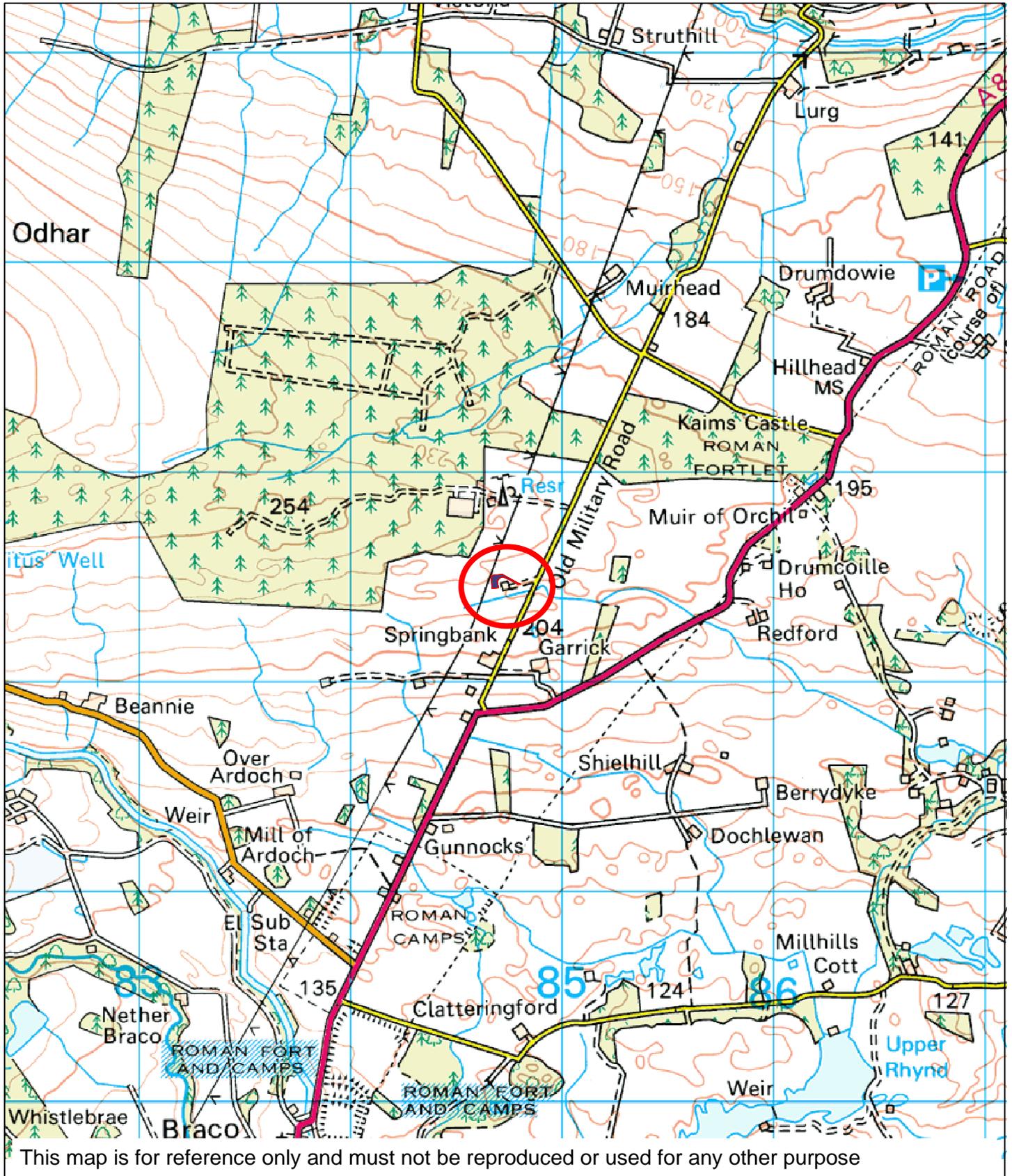
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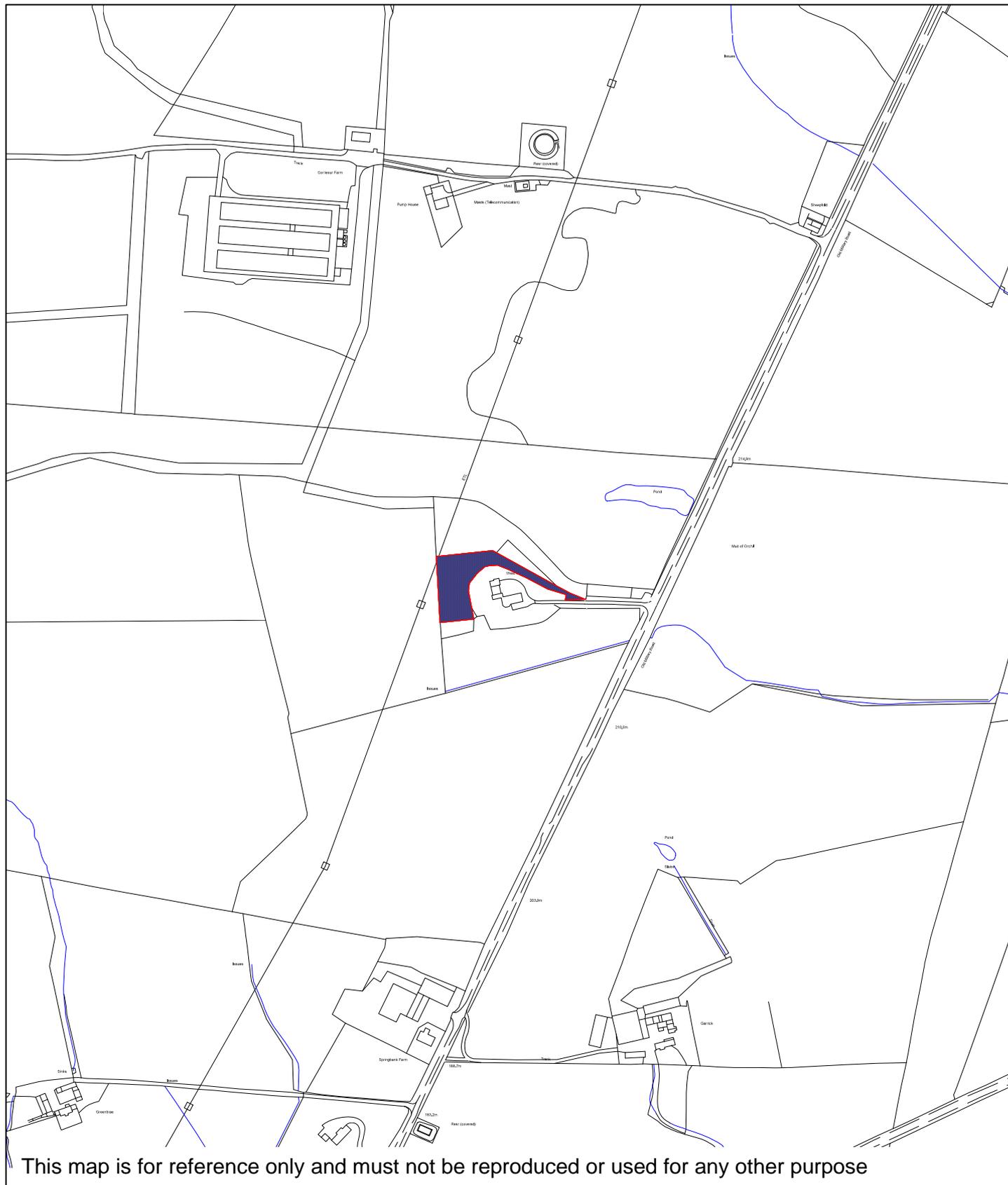
West Park Farm, Braco

Erection of dwellinghouse



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