

Perth and Kinross Council
Development Management Committee – 19 March 2014
Report of Handling by Development Quality Manager

**Change of use of private amenity land to garden ground at land south east of
Deanfield, Meigle**

Ref No: 13/01616/FLL
Ward No: 8 – Kinross-shire

Summary

This application seeks a change of use of land from private amenity land to garden ground and this report recommends approval as the proposal is considered to be in line with the Development Plan.

BACKGROUND AND DESCRIPTION

- 1 This application seeks detailed Planning Consent for a change of use from private amenity land to garden ground relating to the existing property, Deanfield House. The site extends to approximately 1 ha. and is located in a rural area of land approximately 1km north of the village of Meigle.
2. The site lies mainly to the south of the residential properties of Riverston House, Foresters Cottages and House of Dean. The proposal also appears to incorporate a section of the verge to the north-west of Deanfield House. The locality, although not defined in the Development Plan as a settlement, is known as Cardean
3. Felling of a large number of trees has previously taken place on this site and no substantive replanting has followed this. The land in question has been ploughed and planted with grass and it was following these works that the issue was brought to the attention of the Council's Enforcement Officer. Following this the applicant lodged an application for the change of use of the land to private amenity ground.

NATIONAL POLICY AND GUIDANCE

The Scottish Planning Policy 2010

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

- development planning and development management, and
- the Scottish Government's expectations of the intended outcomes of the planning system.

5 Of relevance to this application are:

- Paragraph 25: Determining planning applications
- Paragraphs 92 -97: Rural development
- Paragraphs 146 – 149: Trees and Woodland

DEVELOPMENT PLAN

6 The Development Plan for the area comprises the Tayplan 2012 and the Adopted Local Development Plan 2014.

TAYplan Strategic Development Plan 2012

7 The principal relevant policy is in summary:

Policy 3: Managing Tayplan's Assets

8 Safeguarding habitats, sensitive green spaces, forestry, watercourses, 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.

PERTH AND KINROSS LOCAL DEVELOPMENT PLAN 2014

9 Under the LDP the most relevant policies are summarised as follows:

Policy PM1: Placemaking

10 This policy requires development to contribute positively to the quality of the surrounding built and natural environment. The design, density and siting of development should respect the character and amenity of the place.

Policy NE2 Forestry Woodland and Trees

11 This policy seeks to ensure the protection of existing woodland especially woods with high natural and heritage value; the delivery of forests and woodlands that meet local priorities as well as maximising the benefits for the local communities and environment; and, seek to ensure the establishment of new woodland in advance of major developments where practicable.

Policy NE 3 Biodiversity

- 12 This policy seeks to protect and enhance all wildlife habitats, including grasslands, wetlands and peat-lands and habitats that support rare or endangered species.

OTHER POLICIES

Control of Woodland Removal Policy:

- 13 This policy is in support of the Governments Scottish Forestry Strategy and the associated ambition to see Scotland's woodland resource increase to 25% of our land area. The policy defines woodland removal as the permanent removal of woodland for the purposes of conversion to another type of land use.

SITE HISTORY

- 14 99/00071/FUL: Erection of house (outline) on part of the current site
Consent refused
- 15 99/00072/FUL: Erection of house (outline) on part of the current site
Consent refused
- 16 99/01102/OUT: Erection of 2 houses (outline) on both of the previous 2 application sites Consent refused and subsequent appeal dismissed. The Reporter considered that the felling of trees had adversely affected the established landscape framework of Cardean and that the erection of 2 dwellings would remove the opportunity for the proper reinstatement of the woodland.

CONSULTATIONS

17 Forestry Commission Scotland

The Forestry Commission (FC) has objected to this application in its current format as the proposals do not conform to the Scottish Government's Policy on Control of Woodland Removal but recommend controls be put on any consent to ensure replanting take place.

REPRESENTATIONS

- 18 12 letters of representation have been received raising the following issues:-
- Inappropriate land use;
 - Loss of trees;
 - Unauthorised felling and change of use and enforcement history
 - Contrary to Local Development Plan policy
 - Detrimental impact on local landscape and quality of space
 - Loss of habitat for red squirrels, bats and bees

These issues are addressed in the Appraisal Section of this report.

ADDITIONAL STATEMENTS RECEIVED

Environmental Statement:	Not required
Screening Opinion:	Not required
Environmental Impact Assessment:	Not required
Appropriate Assessment:	Not required
Design Statement or Access Statement	Not required
Report on Impact or Potential Impact:	None

APPRAISAL

- 19 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

Policy

- 20 As a consequence of the application site falling outwith any recognisable settlement envelope, the application falls to be assessed against Policies PM1 (Placemaking), NE 2 (Forestry, Woodland and Trees) and Policy NE 3 (Biodiversity) of the Local Development Plan 2014.

Enforcement Background

- 21 This proposal was initially brought to the attention of the Council following the felling of trees on the site and the cultivation of the cleared ground. The owner of the land then chose to lodge a retrospective application. However, it must be stressed that the felling of trees did not required planning consent but simply the actual change of use of the land itself does. The requirement for a Felling Licence was an issue for the FC and not this Council.

Previous History

- 22 There have been several applications relating to the site and for residential development of 1 or 2 dwellings, all of which were refused planning consent. However, the fact that there have been these previous refusals does not necessarily mean that planning consent cannot be granted for any extension of a neighbouring residential curtilage.
- 23 If consent were to be granted for the current proposal it would simply result in a significantly larger residential curtilage to Cardean. The presence of a large curtilage does not give that property any greater justification for further residential development in the curtilage than any other large curtilage property outwith a settlement boundary. Indeed, existing larger curtilages would normally have the benefit of permitted development rights for structures within

the garden area but in the current instance the recommendation would be that those rights are withdrawn. Any proposals for additional dwellings, on this site, would be subject to the policies of the LDP and specifically the Housing in the Countryside Guide. I am satisfied therefore that the previous refusals should not necessarily preclude an extension to a residential curtilage.

Landscape Impact:

- 24 One of the key issues raised by representations relates to the loss of trees on the site. Felling of trees prior to the lodging of this application did not require any consent from this Council as the trees were not the subject of any statutory protection, i.e. a Tree Preservation Order. A Felling Licence should have been obtained from the FC, but this was not done. However, a licence was subsequently granted but was the subject to a requirement for specified replanting.
- 25 Under the current application there is no specific proposal to actually fell any of the remaining trees but if consent is granted it could be subject to conditions protecting the trees and requiring additional planting through a landscaping scheme.
- 26 The Forestry Commission lodged an objection in response to the consultation on this application. However, the objection was principally based on the position that the current Felling Licence has a requirement for replanting but if a change of use consent is granted for the use of the site for domestic garden ground then this replanting requirement cannot be enforced by the FC. Private gardens are exempt from the Forestry Act 1967. However, the FC has added the additional comment that if the Council intends to grant consent for the change of use, that restocking of the site should be included in the consent as a Section 75 planning obligation. Whilst I agree with the FC position, with regards to requiring restocking, nevertheless I do not consider that a Section 75 would be required as it could be adequately dealt with through a planning condition.
- 27 In terms of landscape impact, under Policy PM1, there is a requirement to respect the character and amenity of the place. To this end the key issue with the proposal would be in relation to the landscaping within the site and this can be achieved through retention and restocking/replanting. I am therefore of the view that the granting of consent for a change of use of the land to domestic garden would not have an adverse landscape impact provided that a condition is imposed for restocking/replanting and backed up by a condition for the retention of existing trees.

Visual Amenity

- 28 Permitted development rights normally apply to private amenity space which allows for the erection of various structures, ancillary to the occupation of the dwellinghouse to which the garden ground serves. However, where larger areas of ground become part of an extended residential curtilage a concern can be over the potential cumulative impact that such structures may have.

This can be addressed through the imposition of a condition which removes these permitted development rights and as a result enables the council to fully control the resultant impact. In this instance, it is considered to be appropriate to remove the permitted development rights and a condition to deal with this is included as part of the recommendation for approval in this report.

Ecology and Protected Species

- 29 There are no designations on the application site relating to habitats or protected species. Representations have made reference to the possibility of the presence of protected species, namely, bats and red squirrels, as well as wild bees. Although the previous felling works which were undertaken may have impacted on localised habitats, nevertheless there is no evidence that this was the case but in any event as stated elsewhere in this report the felling did not require planning consent. However, in order to ensure that the future use of the site would not have any significant impact on any habitats or species then further replanting, as required under the Felling Licence and indeed retention of remaining trees, could be undertaken to ensure that the site still retained semi natural habitats. To ensure that this is achieved, if consent is granted, it could be subject to a condition to require replanting and tree retention.
- 30 In addition, there is a requirement on the applicant, as with any landowner under legislation in respect of any protected species as it is an offence to damage resting or breeding sites. This is also embodied under LDP policy with specific reference under policy NE3. The policy requirement to protect habitats, in this case the woodland on the site, can be controlled, in the event that consent is granted, through the imposition of appropriate conditions and an Informative.

Residential Amenity

- 31 The proposals only relate to a change of use of the ground and therefore in terms of residential impact it would only result in existing garden areas being bounded by other garden area rather than privately owned land containing some woodland. The existing authorised use allows for private access to the site and subject to the imposition of a condition on any consent removing permitted development rights, it is not considered that there would be any impact on existing residential amenity.

Economic Impacts:

- 32 There would be no economic impacts as a result of the change of use of this area of ground as it would simply be an extension of an existing curtilage and not result in any additional development

LEGAL AGREEMENT

- 33 No legal agreement is required for this proposal.

DIRECTION BY SCOTTISH MINISTERS

- 34 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

- 35 It is not considered that the change of use would have an adverse impact on residential amenity or landscape or natural heritage interests and therefore it is regarded as being acceptable and in accordance with development plan policy subject to the imposition of appropriate conditions and there are no other material considerations which are considered to warrant a refusal of consent.

RECOMMENDATION

A Approve subject to the following conditions:

1. No development or extensions, whether or not permitted by virtue of Schedule 1, Part 1, Class 3 of the Town and Country Planning (General Permitted Development Order) (Scotland), 1992 or any Order revoking and re-enacting that Order shall be erected within the application site without the prior written approval of the Council as Planning Authority.
2. Replanting of trees shall be undertaken on the site in full accordance with the restocking obligations required under the Felling Licence Ref. No. CB150567 and within the timescale set down in that licence, namely by 30 June 2016, all to the satisfaction of the Council as Planning Authority.
3. All existing trees on the site shall be retained and no trees shall be lopped, topped or felled without the prior approval in writing of the Council as Planning Authority.

Reasons

- 1 In the interests of visual and residential amenity; to ensure a satisfactory standard of local environmental quality and to avoid over-intensive development of the site.
- 2 In the interests of visual amenity.
- 3 In the interests of visual amenity.

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 The applicant is advised to take full account (and action as necessary) of The Wildlife and Countryside Act 1981, Conservation (Natural Habitats, &c.) Regulations 1994, and Nature Conservation (Scotland) Act 2004 in relation to protected species and their associated habitats, which may be present within the site. As a result, if there is any subsequent knowledge of protected species at the site (in particular bats and red squirrels), it is recommended to consult Scottish Natural Heritage in the first instance. The applicant is further advised that there may be a requirement to employ a suitably qualified consultant to undertake a survey to both ascertain if a license is required and ensure protected species are suitably protected.

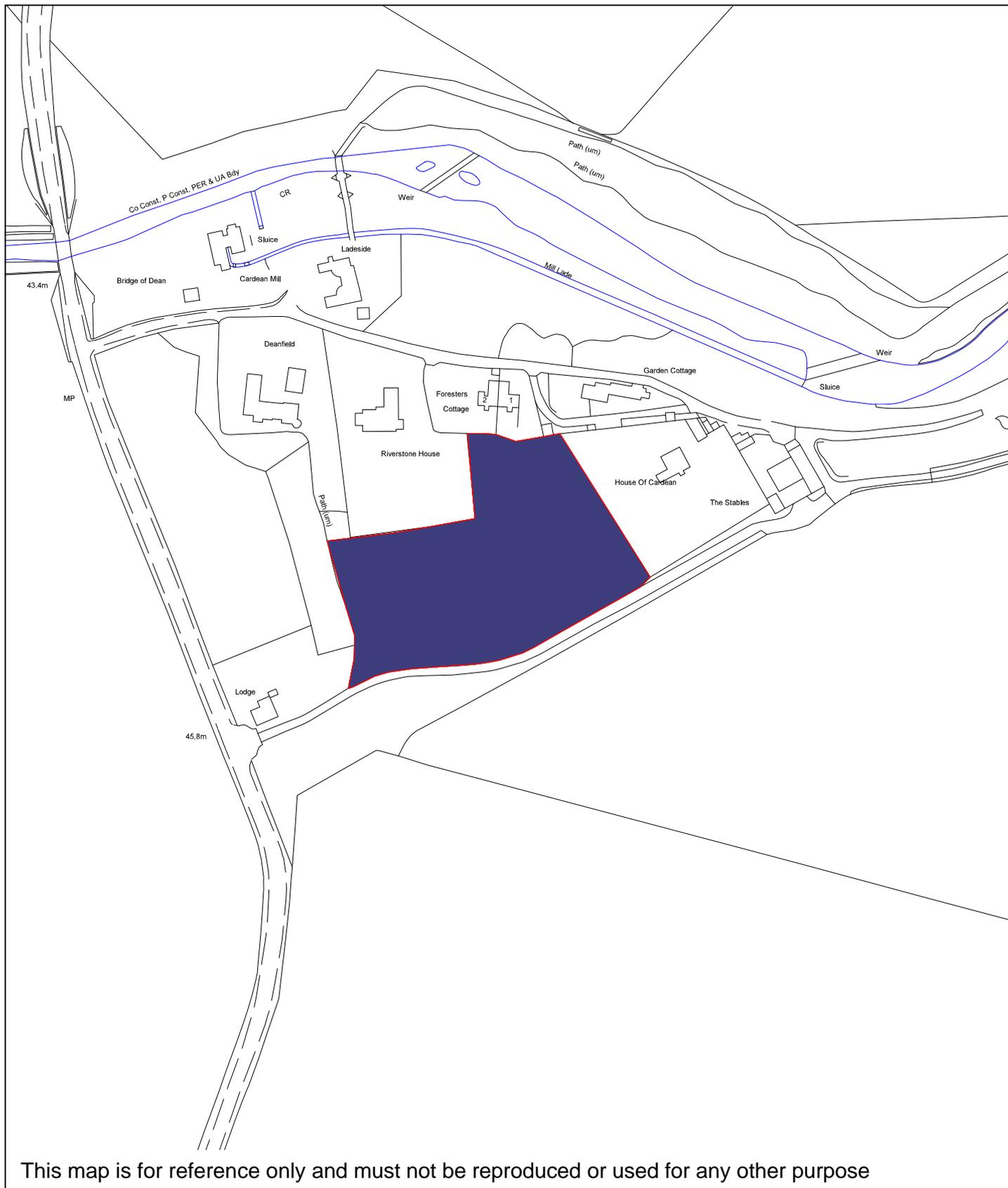
Background Papers: 12 letters of representation
Planning Officer: Nick Brian – ext 75351
Date: 23 February 2014

Nick Brian
Development Quality Manager

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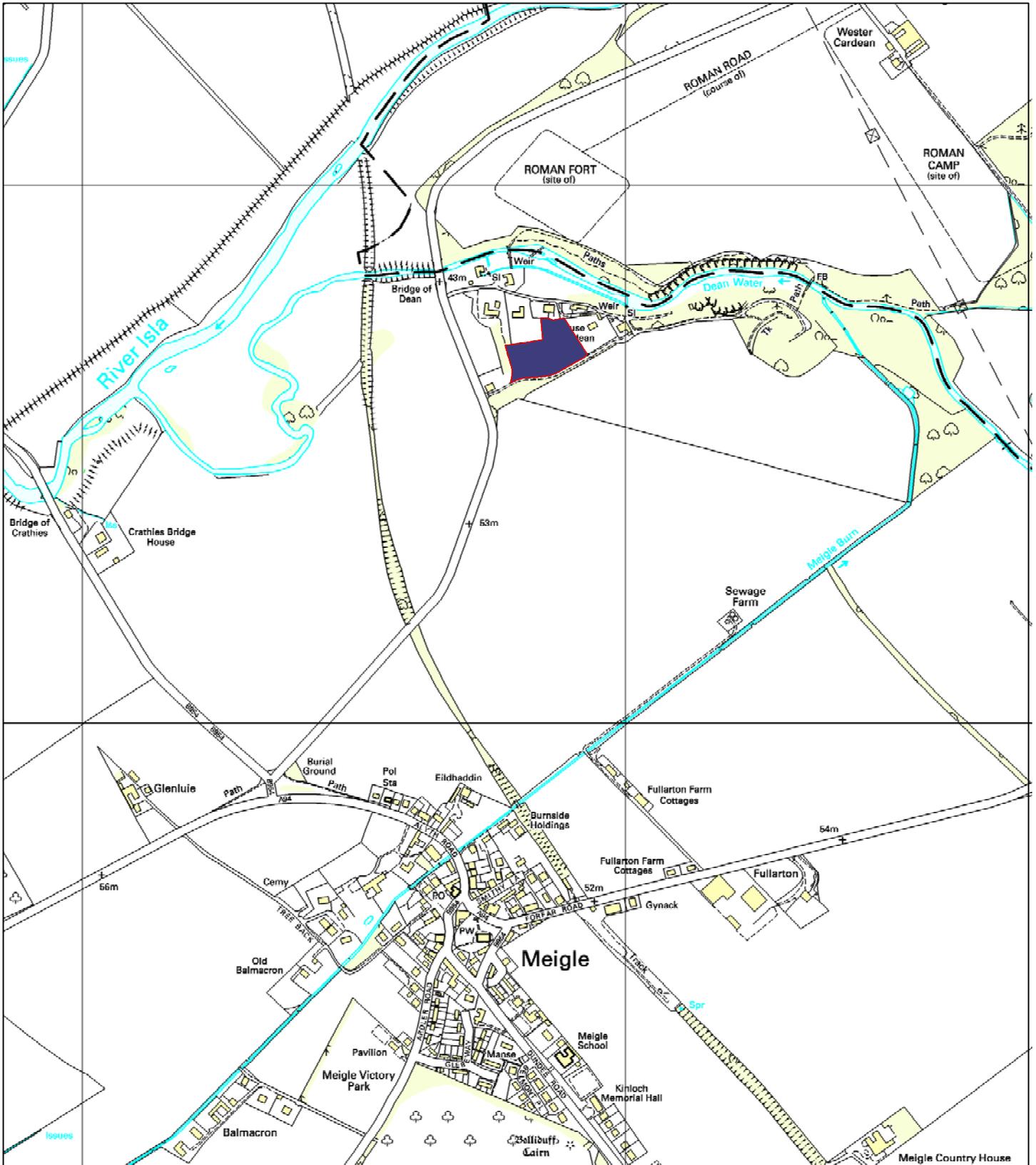


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