

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

Variation of condition No 8 of planning permission (Ref 10/00134/FLL) to revise the visibility splays at Kilmagadwood Cottage, Scotlandwell

Ref. No: 13/01976/FLL  
Ward No: 8 – Kinross - Shire

**Summary**

The report recommends approval of the application for the variation of condition 8 of planning permission (Ref 10/00134/FLL) to revise the visibility splays at a new access at Kilmagadwood Cottage, Scotlandwell.

**BACKGROUND AND DESCRIPTION**

- 1 The application site extends to an area of 0.68 hectares of land which is situated to the western edge but within the settlement of Kilmagadwood as identified in the Perth and Kinross Local Development Plan 2014. The application site is bounded by the A911 to the north, open farmland to the west and south and residential properties at Kilmagadwood to the east.
- 2 In March 2013 planning consent was granted for the erection of 2 dwellinghouses and formation of a new access on land to the north of Kilmagadwood Cottage, Scotlandwell under application 10/00134/FLL. The new access arrangement onto the A911 replaced the former access onto this road which was to the east. More recently planning consent has been granted for a change of house type on both plots at this site, and the house on Plot 1 is presently under construction.
- 3 This planning application seeks to vary condition 8 attached to planning consent 10/00134/FLL through a planning application made under Section 42 of the Planning Act. Condition 8 which is imposed on the extant planning consent reads:-  
  
*Visibility splays of 4.50m x 160.00m measured from the centre line of the new access shall be provided in both directions along the nearside channel of the A911 prior to the occupation of the development and thereafter maintained free from any obstruction of a height exceeding 1.05 metres above the adjacent road channel level.*
- 4 This application seeks to vary the visibility splays to 2.4m x 43m to the east and 2.4 x 59m to the west of the new junction to the A911 in accordance with Scottish Government Policy Designing Streets 2012 with regard to sightlines.
- 5 Section 42 of the Town and Country Planning (Scotland) Act 1997 is a mechanism which allows for the submission of a planning application for the

development of land without complying with conditions subject to which a previous planning permission was granted. Section 42 of the Act stipulates that in this type of application the Planning Authority shall consider only the question of the condition subject to which planning permission should be granted”.

- 6 Negotiation between the applicant and the adjacent landowner has taken place to ensure that the visibility splay as proposed can be achieved.

## **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 165-181: Transport

### **Designing Streets: A Policy Statement for Scotland 2010**

- 9 Streets have to fulfil a complex variety of functions in order to meet people’s needs as places in which to live, to work and to move around. Their design requires a thoughtful approach that balances potential conflicts between different users and objectives.

### **Planning Advice Note 67 (Housing Quality)**

- 10 *Designing Places*, published November 2001, sets out the Scottish Government’s aspirations for design and the role of the planning system in delivering them. This Planning Advice Note explains how *Designing Places* should be applied to new housing.

### **Planning Advice Note 76 (Designing new residential streets)**

- 11 This document has been produced in line with the Scottish Government’s drive to promote the design agenda. It follows on from *Designing Places* and forms part of the design based series of PANs. In particular, it complements, and

should be read in conjunction with, *PAN 67 Housing Quality*. The advice applies to everyone engaged in the planning, design and approval of streets in new residential developments including planners, road engineers, architects and developers. In particular, it means that planners and engineers should work more closely together.

## **DEVELOPMENT PLAN**

- 12 The Development Plan for the area consists of TAYplan Strategic Development Plan 2012 – 2032 and the Perth and Kinross Local Development Plan 2014.

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

- 13 Under the TAYPlan the principal relevant policy is:-

#### **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.

## **PERTH AND KINROSS LOCAL DEVELOPMENT PLAN 2014**

- 15 Under the LDP the site lies within the settlement boundary of Scotlandwell/Kilmagadwood where the principal relevant policy is:-

#### **Policy RD1 Residential Areas**

- 16 The plan identifies areas of residential and compatible uses where existing residential amenity and character will be protected and where possible improved.

## **SITE HISTORY**

- 17 **04/0980/OUT** April 2005. Planning consent refused for the erection of 2 dwellinghouses and formation of a new access (in outline) on land at Kilmagadwood. The reasons for refusal related to the fact that the development would extend the settlement boundary into open countryside, be detrimental to the setting of Kilmagadwood and out of keeping with the character of the settlement and that the road improvements would be of marginal benefit to road and pedestrian traffic safety.
- 18 **P/PPA/340/466** Feb. 2006. Appeal against the refusal of outline planning consent for the erection of 2 dwellinghouses and formation of new road access was dismissed. The Reporter, in coming to this decision, commented that it was not possible to reasonably assess the impact on village character and visual impact through an outline application. In terms of road safety the view

was that in the absence of the inclusion of the existing access there would not be an improvement in road safety.

- 19 **08/01102/FUL** May 2008. Planning consent refused for the erection of 3 dwellinghouses and the formation of a new access. The reasons for refusal being that the proposal did not provide an adequate design solution for access to the A911 and was contrary to Policies 2 and 5 of the Adopted Kinross Area Local Plan 2004.
- 20 **P/PPA/340/747** April 2009. Appeal against the refusal of the above planning application for the erection of 3 dwellinghouses and the formation of a new access was dismissed. The main reasons cited being visual and landscape impact, landscape fit and road safety.
- 21 **10/00134/FLL** March 2013. Planning consent granted for the erection of 2 dwellinghouses and formation of a new access on land to the north of Kilmagadwood Cottage Scotlandwell.
- 22 **13/00903/FLL** August 2013. Planning consent granted for the modification of existing consent (10/00134/FLL) for a Change of house type (Plot 1) on land to the north of Kilmagadwood Cottage, Scotlandwell.
- 23 **13/01425/FLL** January 2014. Planning consent granted for the modification of existing consent (10/00134/FLL) for a Change of house type (Plot 2) on land to the north of Kilmagadwood Cottage, Scotlandwell.

## **CONSULTATIONS**

- 24 Scottish Water No Objections

## **REPRESENTATIONS**

- 25 8 letters of representation have been received raising the following issues:-
  - The new access is unsafe
  - Visibility is severely restricted and the sightline obstructed
  - Construction had started prior to completion of the access
  - Originally specified visibility splays were not achievable
  - Creating a new access closer to the blind crest on the A911 has meant visibility to the north west has been reduced
  - A 59m visibility splay is inappropriate on this stretch of road
  - Improving visibility would reduce traffic speeds
  - Visibility to the left/north west should be 100m
  - The stone dyke along the length of the developers land shall be dismantled and re-built 1m or so from the road and lower in height
  - The access road should be implemented in accordance with guidance on rural roads not suburban roads.
- 26 These issues are all addressed in the Appraisal section of this report.

## 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	Not required
Report on Impact or Potential Impact	Not required

## APPRAISAL

- 27 Section 42 of the Town and Country Planning (Scotland) Act 1997 enables the determination of applications to develop land without compliance with conditions previously attached. The legislation specifies that on such an application the Planning Authority shall consider only the question of the conditions subject to which planning permission should be granted, and if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly. If they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.
- 28 Taking the above into account, the assessment of this application therefore only relates to the visibility splays outlined in condition no. 8 of the extant planning permission and whether or not these can be varied as outlined in this application.
- 29 Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that planning decisions be made in accordance with the development plan unless material considerations indicate otherwise. The Development Plan consists of the TAYplan 2012 and the Perth and Kinross Local Development Plan 2014.
- 30 Since application 10/00134/FLL was approved and the new access has been constructed there have been ongoing safety concerns from neighbouring residents that the configuration of the access and in particular the visibility splays that were originally conditioned have not been met. There were also concerns about existing obstructions along the visibility splay to the northwest which remained and required to be removed such as a traffic counter, speed limit signage and stone walling. These concerns were followed up with the Enforcement Monitoring Officer.

- 31 Following national re-assessment of speed limits and consultation with the community the 30mph speed limit was moved to the west of the new access in 2011. The speed limit signage was moved, the traffic counter and part of the stone walling closest to the access were removed. Concerns however still remained from local residents about the visibility at the access particularly to the northwest and these have been expressed through representations. In addition, a site meeting was held with interested parties to discuss the issues and address concerns.
- 32 In consultation with the Council's Transport Planners the applicant has submitted this application to vary the visibility splays. The applicant was advised that since the original assessment of the access, requirements under the Design Manual for Roads and Bridges 1993 (DMRB), planning policy was introduced in 2010 through Designing Streets (p35 visibility requirements) which allows amended sightlines in this situation, where the new access with the A911 borders a 30mph and a 40mph speed restricted road. The Standard Stopping Distance (SSD) used in Designing Streets is based on evidence established by the Transport Research Laboratory in its report no. 611 into deceleration rates, driver perception-reaction times and speed. In this situation where the access is within the 30mph speed limit and within the settlement, it is considered acceptable for the sightline to be reduced and an amended 'x' distance of 2.4m with a 'y' distance of 43m into the 30mph zone (east) and 59m into the 40mph zone (west). It was considered that in order to achieve the vertical sightline to the west, the stock proof fence on the boundary of the northernmost plot requires to be either removed or re-positioned so that it is to the south and outwith the visibility splay. The Council's Transport Planners have no objection to the proposals provided the above recommendations are included in the varied condition. The improvements to the visibility splay are still required to be implemented prior to occupation of any of the 2 dwellings recently consented at this site.
- 33 The proposed variation of the visibility condition, whilst representing a reduction on that originally consented, would nevertheless, be to a standard which would achieve the current guidelines now applicable. In addition, when considering the acceptability of this variation, it must be borne in mind that the access, with the proposed visibility splays will serve the existing dwellings to the east which were previously served by a substandard access in terms of geometry and gradient.

## **LEGAL AGREEMENTS**

- 34 No legal agreement is required for this proposal.

## **DIRECTION BY SCOTTISH MINISTERS**

- 35 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**

- 36 The proposed variation of condition 8 of planning consent 10/00134/FLL is in accordance with more recent roads design policy guidance and it is not considered to adversely impact on road safety at the new access and accordingly is considered to comply with the Development Plan and it is therefore recommended that the varied condition is approved.

## **RECOMMENDATION**

### **A Approve the application subject to the following condition:**

#### **Condition:-**

- 1 Visibility splays of 2.4m x 59m to the west and 2.4m x 43m to the east measured from the centre line of the new access shall be provided along the nearside channel of the A911 and thereafter maintained free from any obstruction of a height exceeding 1.05 metres above the adjacent road channel level as indicated in drawing number 13/01976/2. In order to maintain the vertical sight line to the west the existing stock proof fence situated within the visibility splay shall either be removed or re-positioned to the south outwith the splay indicated in the abovementioned drawing to the satisfaction of the Planning Authority prior to the occupation of the dwellinghouses approved under planning consent 10/00134/FLL and the modifications under consents 13/00903/FLL and 13/01425/FLL.

#### **Reasons:-**

- 1 In the interests of road safety.

### **B JUSTIFICATION**

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

### **C PROCEDURAL NOTES**

None.

### **D INFORMATIVES**

- 1 All other conditions relating to planning consents 10/00134/FLL, 13/00903/FLL and 13/01425/FLL shall continue to apply.

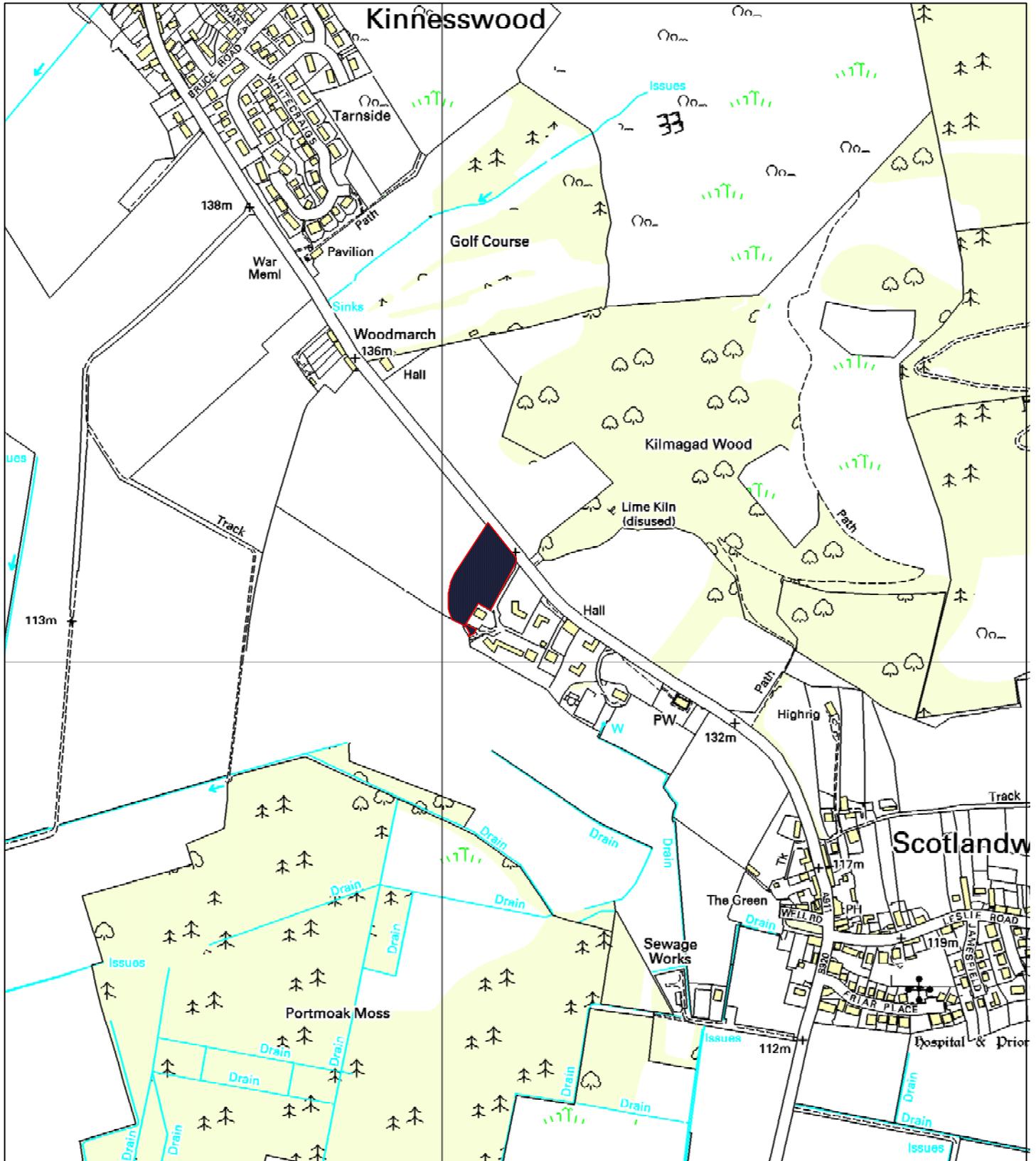
Background Papers: 8 letters of representation  
Contact Officer: Mark Williamson – Ext 75355  
Date: 27 February 2014

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

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