

Perth and Kinross Council
Development Control Committee – 18 June 2014
Report of Handling by Development Quality Manager

Excavation and levelling of land to form a farm yard storage area (in retrospect) on land 60 Metres North West Of North Cottage Glentarkie Strathmiglo

Ref. No: 11/01284/FLL

Ward No: N9 – Almond and Earn

Summary

This report recommends approval of the application for excavation and levelling of land to form a farm storage area as the development is considered to comply with the Development Plan.

BACKGROUND AND DESCRIPTION

- 1 This is a full application which seeks consent for the excavation and levelling of land to form a farm yard storage area. The application was lodged retrospectively as the excavation works had been completed although the area has not been used for storage purposes to date.
- 2 The site is located at Glentarkie, immediately adjacent to the Strathmiglo – Glenfoot- Abernethy public road. The application site is elevated above the road and between the road and the new excavations and immediately bordering the site, is a small shed enclosing the equipment and head of a private water borehole which serves third party residential properties nearby.
- 3 The site is in open countryside outside of any defined settlement boundary.

NATIONAL POLICY AND GUIDANCE

- 4 The Scottish Government expresses its planning policies through the National Planning Framework (NPF) 1 and 2 the Scottish Planning Policy (SPP) and Planning Advice Notes (PAN).

The Scottish Planning Policy 2010

- 5 The 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 following sections of the SPP are of particular importance in the assessment of this application:-
- Paragraphs 92 - 97: Rural Development.
 - Paragraphs 196 -211: Flooding and Drainage.

TAYPlan Strategic Development Plan 2012-2032

- 7 The TAYplan sets out a vision for how the region will be in 2032 and what must occur to bring about change to achieve this vision. The vision for the area as set out in the plans states that:

“By 2032 the TAYplan region will be sustainable, more attractive, competitive and vibrant without creating an unacceptable burden on our planet. The quality of life will make it a place of first choice where more people choose to live, work, study and visit, and where businesses choose to invest and create jobs”

- 8 There are no policies of strategic importance of relevance to this application in TAYplan.

Perth and Kinross Local Development Plan 2014 – Adopted February 2014

- 9 The Local Development Plan was adopted by Perth and Kinross Council on 3 February 2014. It is the most recent statement of Council policy and is augmented by Supplementary Guidance.

- 10 The LDP sets out a vision statement for the area and states that:

“Our vision is of a Perth and Kinross which is dynamic, attractive and effective which protects its assets whilst welcoming population and economic growth.”

- 11 Under the LDP, the site lies outwith any defined settlement boundary where the principal policies are, in summary:

PM1: Placemaking

PM1A

- 12 Development must contribute positively to the quality of the surrounding built and natural environment, respecting the character and amenity of the place.

Policy ED3: Rural Business and Diversification

- 13 Favourable consideration will be given to the expansion of existing businesses and the creation of new business. There is a preference that this will generally be within or adjacent to existing settlements. Outwith settlements, proposals may be acceptable where they offer opportunities to diversify an existing business or are related to a site specific resource or opportunity

OTHER POLICIES

None

PLANNING SITE HISTORY

- 14 87/01769/FUL GLENTARKIE STRATHMIGLO CHANGE OF USE OF SHED TO OFFICE/STORE & BUTCHERY AT 11 February 1988 Application Permitted
- 89/01774/FUL RENOVATION TO FARM HOUSE AT 5 December 1989 Application Permitted
- 94/00344/FUL FORMATION OF A NEW EXTERNAL DOOR TO HOUSE AT 22 April 1994 Application Permitted
- 04/02072/PPLB Redevelopment of existing steading to form 8 residential units at Glentarkie Farm. 14 December 2005 Application Permitted
- 07/02476/FUL Relocation of off-road driving business office premises into proposed key worker accommodation 27 August 2008 Application Withdrawn
- 07/02699/PN Erection of a general purpose agricultural storage building 31 January 2008 Application Refused
- 08/02117/FUL Erection of new farm building 17 December 2008 Application Permitted
- 08/02118/FUL Erection of house and office for workers accommodation at 17 December 2008 Application Permitted
- 10/00936/FLL Erection of a dwellinghouse 26 July 2010 Application Refused
- 10/01891/FLL Erection of a dwellinghouse 5 July 2011 Application Permitted
- 11/01236/IPL Excavation and levelling of farm yard storage area 10 August 2011 Application Withdrawn

CONSULTATIONS

- 15 **Scottish Water** – No objection
- 16 **SEPA** – No objection
- 17 **Environmental Health** – No objection subject to conditions

18 REPRESENTATIONS

A total of 8 letters of representation have been received objecting to the application for the following reasons:-.

- Noise
- Odour
- Detrimental to tourism business

- Road safety
- Potential for contamination of private water supply
- Visual impact
- Potential for intensification of use
- Use of delivery vehicles
- Water run off

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

ADDITIONAL STATEMENTS

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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

- 20 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 for the area comprises the approved TAYplan 2012 and the adopted Perth and Kinross Local Development Plan 2014. The relevant policies are outlined in the policy section above.
- 21 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.
- 22 Other material planning considerations relevant in this instance include: need for planning permission; implications of the use; relationship with adjacent properties; highway safety and representations.

Policy Appraisal

- 23 In terms of the policy context, in line with the provisions of the Development Plan, the site has a history of agricultural use and as a consequence its use for agricultural related use will be acceptable, provided that it is compatible with its surroundings, the visual impact is acceptable and all other detailed planning issues are satisfied. In such a situation therefore the development would not constitute a departure from the Development Plan.

Need for Planning Consent

- 24 The storage of agricultural items on agricultural land requisite for the business of agriculture carried on from that agricultural holding does not amount to

development. This would not constitute a material change of use of land. However, what requires planning consent in this instance are the engineering works which have taken place to facilitate a storage use. The works are within 25m of a classified road, accordingly a planning application is needed in this instance (Schedule 1 Part 6 Class 18 2(g)).

- 25 As the application is only required for the engineering works then conditions which might be required to address potential planning concerns can only be used in relation to the engineering works undertaken.

Use

- 26 As the storage use itself does not require planning permission and would not comprise development as a material change of use of land, the ability of the Council as planning authority to regulate this aspect of the proposal would only be through conditions on any planning consent.

Relationship to Farm Operations

- 27 This is a 'satellite' holding to the main farm operations which are centred elsewhere, and some distance from the application site.

The applicant has chosen to use land more intensively than it has been used in the past. Through correspondence the applicant's agent has indicated:

- (i) an intention to use this land as the main focus for farm vehicle, machinery and feedstock storage associated with the management of his farm land in this area;
- (ii) the site would be un-surfaced with rain water percolating to ground;
- (iii) spill kits would be available on site as mitigation against fuel leaks;
- (iv) the site would be required to comply with the Water Environment (oil storage)(Scotland) Regulations 2006 (this relates to oil, diesel and vegetable oil storage only – ie fuel);
- (v) currently no intention to store silage;
- (vi) intention to build farm buildings on the site at some future date;
- (vii) that they have no specific knowledge of depth of borehole or aquifer.

It should be stated that the erection of any structures on the site would also require planning consent as they would similarly be positioned within 25m of the highway. This would therefore enable the Council to exercise controls over the future intensity of use of the site.

- 28 The effect of the unauthorised development which is the subject of this application is that the farm land would be used more intensively than it otherwise would if these works of levelling and excavation had not been carried out.

Private Water Supply

- 29 This application site lies in close proximity to a private water supply serving several third party properties (Borehole, pump house, underground storage

tanks). The use of the site for agricultural storage activities has the potential for pollutants to migrate to groundwater, depending on the nature of storage and to what extent it might be restricted. In these circumstances the Council as Planning Authority is obliged to consider the effects of that new use on the residential amenities of third parties adjacent. It should be pointed out that the private water supply infrastructure is positioned on land not owned by the occupants of the third party properties.

- 30 The Private Water Supplies (Scotland) Regulations 2006 classify supplies as either Type A (water use of more than 10 cubic metres per day, or serving more than 50 persons, or supplies to buildings used for public /commercial activities) or Type B (all others). Perth and Kinross Council, as with all other Scottish local authorities, have a statutory duty to risk assess and regularly sample Type A supplies. There is no statutory duty to risk assess or sample Type B supplies but these can be sampled on request for house sale purposes or as part of a public health investigation etc. The Glentarkie supply is classified, due to the population served, as a type B supply.
- 31 The Council's Private Water Supply Team, based in the Environment Service, who enforce these regulations have confirmed that they have been actively involved in sampling the water supply to Glentarkie since 2007 prior to completion of the development. Initially sampling was undertaken to confirm the suitability of the supply for human consumption prior to occupation of the houses on site.
- 32 Further sampling activities at Glentarkie were instituted following a referral from the Scottish Environment Protection Agency (SEPA) in May 2011 of concerns raised by some Glentarkie residents over the potential effects on water quality of unauthorised earthworks adjacent to the borehole site. When the unauthorised works were brought to the attention of the Council's Planning Enforcement Officer the landowner was contacted and the works were immediately halted. The landowner then lodged the retrospective planning application which is the subject of this report.. Whilst the applicants' agent has lodged further supporting information, nevertheless, to date this has not been conclusive.
- 33 There is however, as yet, no substantial technical evidence to support the view that these works were responsible for the changes in water quality subsequently observed. Samples taken by the water team in June 2011 following the SEPA referral indicated no concerns over water quality at that time.
- 34 The supply was however assessed at that time as having high risk status (i.e. the potential for contamination from the surrounding environment) and a list of "Approved Works" (suggested improvements to protect the well head of the borehole from surface contamination) eligible for financial assistance under the Private Water Supplies (Grants) Scotland) Regulations 2006 was issued in July 2011. An application for grant assistance was approved in November 2011 but contractual difficulties led to these proposals being withdrawn and a further application was approved in November 2012. Works to improve the protection

of the well head at the borehole began in January 2013, however deterioration in the water quality, initially noted in October 2012, led to suspension of further works in April 2013 on the advice of the Water Team, as it was felt that any further protective works would have little or no effect on improving water quality and any remaining grant entitlement could be better used on water quality improvements. Throughout 2013 members of the water team undertook 12 site visits to Glentarkie and 15 water samples were submitted for chemical examination at no cost to the supply users. The quality of the water from the supply was failing intermittently and during this period four separate sample failures were noted in relation to turbidity, arsenic, aluminium and iron levels.

- 35 These failures were reported to NHS Tayside via the Consultant in Public Health Medicine (CPHM) and the first 'do not use notice' was issued in March 2013 due to excessive levels of aluminium and iron. This notice was lifted in May 2013 when water quality improved and parameters were identified within legal limits, however, on-going monitoring was continued as requested by the CPHM and the Drinking Water Quality Regulator. Subsequent sampling failures for aluminium and arsenic levels were recorded in and the 'do not use notice' was reinstated in July 2013 and remains in place.
- 36 The reason for the intermittent failures has not been established, and the Private Water Team feel they have exhausted the technical opinions available to them to progress any further attempts to diagnose the situation. The Team feels there appears to be only three options to remedy this situation namely
- The installation of a more robust filtration system designed to reduce aluminium, iron, turbidity and arsenic levels
 - Development of a new borehole
 - Connection to the mains supply
- 37 The Private Water Supplies (Grants) Scotland) Regulations 2006 allow a grant of up to £800 to each property on a private water supply to improve the quality of water provided and to date there is still funding available to the Glentarkie properties of around £4,000 in grant assistance to install further treatment or provide an alternative supply e.g. new borehole. Unfortunately grant assistance is not available for connection to the public water supply
- 38 The combined efforts of Trinity Factors, Glentarkie residents and the Council's Private Water Team to source a solution to these problems have been unable to definitively diagnose the cause of the intermittent elevation of Arsenic, Iron and Aluminium in the water supply beyond acceptable limits. There appears therefore to be only two possible routes to improvement from the three outlined above as the costs associated with connection to the public water supply are clearly not within the capacity of the Glentarkie residents collectively without some extensive public funding, therefore the provision of a new private source (e.g. a new borehole) or additional filtration of the existing supply appear to be the only avenues open to you at this time.
- 39 It would appear that either of these proposals will require negotiation with neighbouring landowners to seek agreement over rights to lay drainage or

locate a new borehole and these are obviously matters for the Glentarkie residents and their legal representatives to pursue.

- 40 With respect to the installation of the existing borehole at the time of the original application for residential development, planning consent was not required for this type of work neither was a building warrant for the wellhead building as there is no human occupancy associated with this activity. In terms of the original planning consent for the residential development, the borehole was not included within the application site and details of the borehole were not provided. However, it was not the policy of PKC, at that time, to require the details of the private water supply. In addition, Building Standards did not require the details of the proposed private water supply when dealing with the building warrant application for the steading development
- 41 Copies of the wellhead construction which were held on the Building Warrant file for the development (these would have been the technical specification for the builders at the time) have been examined. The borehole was not registered with the British Geological Society at that time.
- 42 There is clearly an issue here for the residents, having purchased properties which are served by a borehole which lies on land outwith their control and as a consequence severely restricts their ability to address this particular issue.
- 43 As the development is retrospective, it would be within the control of the Council, if consent were to be granted, to impose conditions which could be used to restrict the extent of the use of the site for storage in the future. This would be to ensure that the impact of the use was minimised. However, it should be repeated that in normal circumstances the use of agricultural land for associated storage purposes would not be controlled through planning legislation. However, equally, as a consequence protection of this important third party private water supply and infrastructure would depend to a large measure on good practice employed by the applicant in his farming operation with respect to storage and use of the land.

Appearance / Landscape Impact

- 44 The application site is immediately adjacent to a classified road and elevated more than 2 metres above it on the western side. Machinery and equipment on the site would be visible from the road. The lane has a rural character with buildings and development presently existing on the east side of the road only.
- 45 No landscaping details have been submitted in support of the proposal. To minimise the visual impacts of the earthworks and the use of this elevated land, appropriate species hedge and tree planting within the site and bordering the road would be desirable. This could be delivered by way of condition on any planning consent.
- 46 Part of the excavated spoil has been deposited immediately adjacent to the road and forms a projecting 'nib' between the elevated field, re-profiled road banking and the highway edge. This feature is uncharacteristic of the banking

bordering the road in this area, is positioned immediately adjacent to the borehole pump house and has the effect, due to position and height, of obscuring forward visibility across a bend in the road. This could also be the subject of a condition.

Road Safety

- 47 The new ramped access from the road up onto the excavated area is located close to a bend. The Council's Transportation Planner is content with the position of the new access in relation to visibility and highway safety but would wish to see the un-surfaced access consolidated and drained to prevent the spill of mud and surface water onto the public highway. In addition vehicle turning should be provided within the site. These aspects could be delivered by way of condition on any planning approval.

Impact on Tourism Businesses

- 48 One of the Representations raises concern over the potential impact of the storage use on the business premises which lie on the opposite side of the public road to the application site. This business, the Scottish Off Road Driving Centre, has a large open parking area to the south of the application site and on the same side of the road, which accommodates a large number of 4x4 vehicles for use in the business. If the nature of the proposed storage is adequately controlled through a condition on any consent then it is not considered that this would have a significant

Noise

- 49 It is proposed to use the site for storage only and not any processes or operation of machinery. There would be noise from the use of the access to the site for machinery in association with the agricultural use of the site but this would be no different to the use the site could otherwise have been put if the engineering operations had not been undertaken.

Odour

- 50 The odours which might be generated from the use of the site would depend upon the nature of the storage. As with the previous paragraph, the site is agricultural land and could be used for associated purposes. There would be a limit to the nature and extent of storage which could be undertaken as any additional structures on the site would require a further planning consent. This would include any buildings for the accommodation of livestock which could not be undertaken without further consent.

Water Run-Off

- 51 The Council's Roads Maintenance team have commented on possible water run-off from the site on to the road as a result of the development and have stated that whilst some of the run-off may be attributed to the development, it may also result from other sites. However, they have suggested that a

condition could be attached to any consent requiring drainage provision across the access road in to the site to address this by intercepting the run-off.

Listed Building Setting

- 52 The application site is within the vicinity of Glentarkie Farmhouse, a category C(s) Listed structure. The Conservation Officer raises no objections to the proposals as they are not considered to adversely affect the setting of this important Listed Building.

LEGAL AGREEMENTS

- 54 None required

CONCLUSION AND REASONS FOR RECOMMENDATION

- 55 The proposed development is considered to be in accord with the Development Plan and I have taken account of material considerations 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.

Reason - To ensure that the development is carried out in accordance with the plans approved.

- 2 No storage of chemicals or slurry shall be undertaken on the site.

Reason: In the interest of residential amenity; to ensure that there is no contamination of the adjacent water borehole serving the residential properties.

3. Within 2 months of the date of this consent, the applicant shall submit details in writing for the prior approval of the Council as Planning Authority showing the arrangements for the interception and drainage of water run-off from the site to the public road. The details as approved shall be fully implemented to the satisfaction of the Council as Planning Authority within 4 months of the date of this consent. For the avoidance of doubt no storage shall take place on the site until these works are completed.

Reason: To ensure adequate drainage of the site.

4. Prior to the use of the excavated area for any storage purposes, the vehicular access shall be consolidated, surfaced and drained in accordance with details submitted in writing to the satisfaction of the Council as Planning Authority

Reason: In the interests of road safety

5. Prior to the use of the excavated area details shall be lodged for the treated of the excavated materials deposited on the site and such detail as agreed shall be fully implemented to the satisfaction of this Council as Planning Authority

Reason: In the interests of visual amenity

6. Details of landscape treatment of the application site shall be provided prior to commencement of the use of the excavated area. The approved landscaping and planting scheme shall be fully implemented within six months of the completion of the development and thereafter maintained by the applicants or their successors to the satisfaction of the Planning Authority.

Reason: In the interests of visual amenity

7. Details of the measures proposed for the safeguarding of a private water source, private water supply storage facilities and private water supply pipes serving properties in the vicinity, sited within and running through the application site, shall be submitted within 4 weeks of this approval to and approved in writing by the Council as Planning Authority. The approved protective or replacement measures shall be put in place before further site works commence and shall be so maintained throughout to completion.

Reason: In the interests of proper site management

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

None

D INFORMATIVES

- 1 The applicant should be aware that the erection of any structures on the site will require the benefit of formal planning consent.
- 2 The applicant should ensure that any existing wayleaves for maintenance or repair to existing private water supply or infrastructure in the development area are honoured throughout and after completion of the development.

Nick Brian
Development Quality Manager

Background Papers: 8 letters of representation
Contact Officer: Nick Brian – Ext 75351
Date: 28 May 2014

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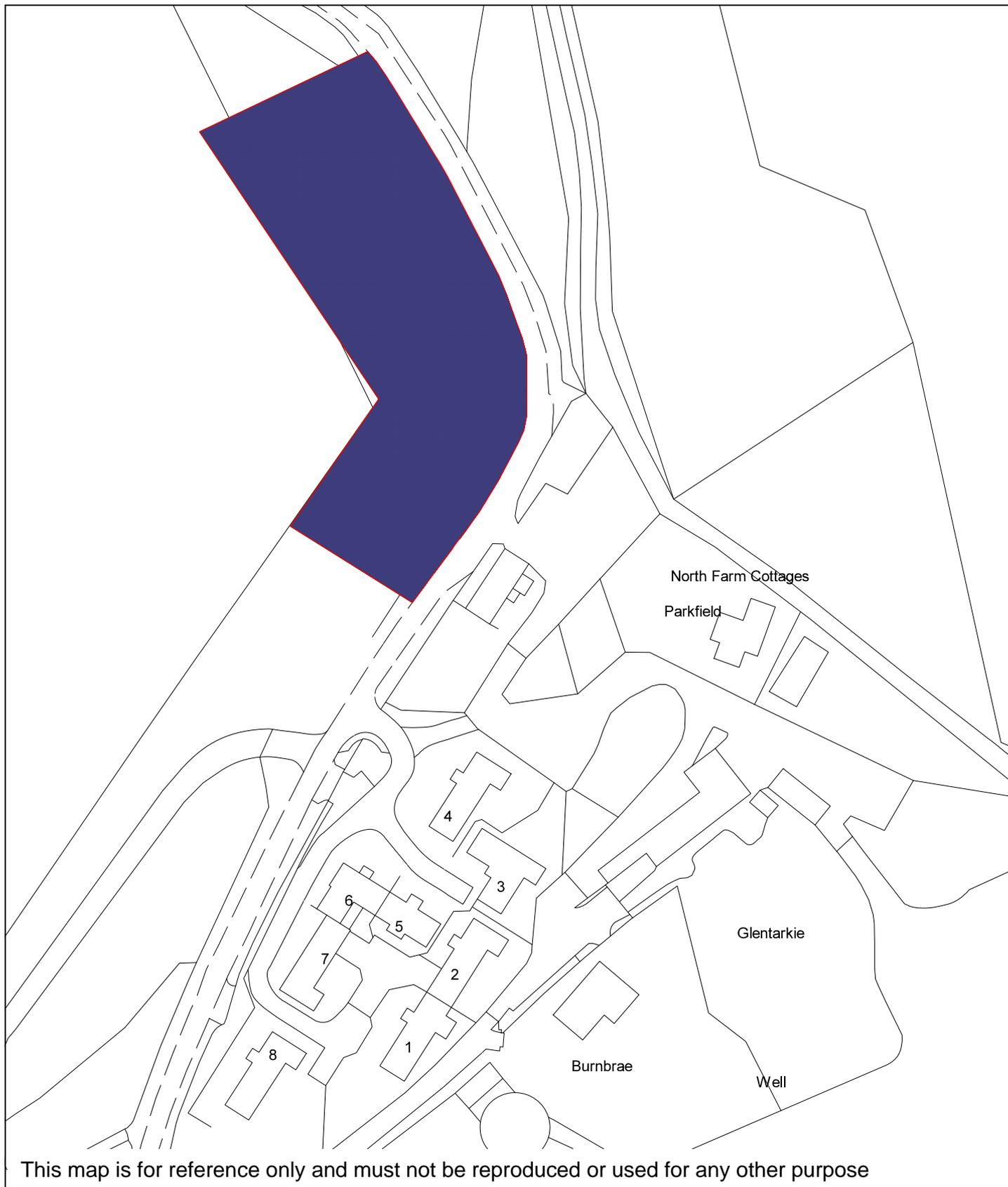


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