

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

**Removal of condition 3 (occupancy) from planning permission 08/01141/FLL
Erection of a dwellinghouse, straw shed and stable block at Wester Tillyrie
Steadings, Milnathort**

Ref. No: 14/00474/FLL
Ward No:8 – Kinross - shire

Summary

The report recommends approval for the removal of condition 3 of planning consent 08/01141/FLL in accordance with Scottish Government guidance on occupancy conditions.

BACKGROUND AND DESCRIPTION

- 1 The application site comprises a 0.4ha area of land to the south west of the small hamlet of Upper Tillyrie. Planning consent was granted on this land for the erection of a dwellinghouse, straw shed and stable block to serve an established racing stables which were relocated from another site within Upper Tillyrie in January 2011 under application 08/01141/FLL. A Section 75 Agreement was concluded and registered on 6 May 2010 for phosphorus mitigation and maintenance measures, as the dwellinghouse is situated within the Loch Leven Catchment Area. The application was accompanied by a supporting statement which identified the security requirements of the British Racing Authority which are a licensing authority and have influenced the layout of the house and buildings and the applicants need to relocate facilities following the redevelopment of existing premises within the village proposed as part of the redevelopment of Tillyrie Steading (Planning ref 08/01124/FUL). An occupancy condition was attached to this consent, 08/01141/FLL - condition 3:-

“The occupation of the dwellinghouse hereby approved shall be restricted to a person solely or last employed locally by the commercial horse racing stud or stables operated from the site or a dependant of such a person residing with him or her (but including a widow or widower of such a person).”

- 2 In August 2013 planning permission was granted under delegated powers for the variation of the above condition under application 13/00139/FLL as outlined below:-

“The occupation of the dwellinghouse hereby approved shall be restricted to a person solely or last employed locally by the commercial horse racing stud or stables operated from the site or a dependant of such a person residing with him or her (but including a widow or widower of such a person) or any heritable creditors.”

- 3 The justification for the variation of the condition was based on the fact that the applicant has had trouble raising finance to build the house and had the

mortgage withdrawn because of the occupancy condition. The applicant has been told by the bank that if the condition is modified to include 'heritable creditors' then they would be able to provide mortgage funding for the build. This was considered to be acceptable and would reflect the terms of the Section 75 for this proposal where the Bank of Scotland were referred to as the heritable creditors.

- 4 Since the change in the condition to include the 'heritable creditors' the bank had been willing to release the finance but this was not considered acceptable to the underwriters and it was considered that condition 3 constituted an unacceptable burden on the title and mortgage funding could not be released.
- 5 This is an application for the removal of the above occupancy condition 3 of the planning consent 08/01141/FLL. The applicant has provided a supporting statement justifying the removal of the condition, outlined in a letter dated the 14 March 2014.

NATIONAL POLICY AND GUIDANCE

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

Circular 3/2012 – Planning Obligations and Good Neighbour Agreements

Other Guidance

- 8 Letter from Chief Planner Jim Mackinnon to Heads of Planning – "Occupancy Restrictions and Rural Housing" dated 4 November 2011.

DEVELOPMENT PLAN

- 9 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

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

Policy 5: Housing

- 11 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 – Adopted February 2014

- 12 Under the PLDP the site lies within the landward area where the principal relevant policy is:-

RD3: Housing in the Countryside

- 13 The Council will support proposals for the erection, or creation through conversion, of single houses and groups of houses in the countryside which fall into at least one of the following categories:
- (a) Building Groups.
 - (b) Infill sites.
 - (c) New houses in the open countryside on defined categories of sites as set out in section 3 of the Supplementary Guidance.
 - (d) Renovation or replacement of houses.
 - (e) Conversion or replacement of redundant non-domestic buildings.
 - (f) Development on rural brownfield land.
- 14 This policy does not apply in the Green Belt and its application is limited within the Lunan Valley Catchment Area to economic need, conversions or replacement buildings.

OTHER POLICIES

Perth & Kinross Council's Housing in the Countryside Policy 2012

- 15 The Council's revised Housing in the Countryside Policy 2009 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 there is a requirement for an occupancy condition to be considered.

SITE HISTORY

- 16 08/01141/FLL Erection of a dwellinghouse, straw shed and stable block
20 January 2011 Application Permitted

13/00139/FLL `Variation of condition 3 of planning consent 08/01141/FLL to include any heritable creditor to occupy the dwellinghouse. 14 August 2013 Application Permitted

CONSULTATIONS

17

Environmental Health No objections

REPRESENTATIONS

18 Two letters of representation have been received raising the following issues:-

- the condition was required for a valid reason
- Consequences of removing the clause will be the equine facility owners will permanently live in "temporary" accomodation by the facility,
- there will be increased traffic on the access road and lane,
- there will be a dangerous mixture of residential and equine traffic on the access roads and lane,
- there will be further housing planning applications in the already over developed hamlet of Tillyrie.

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

ADDITIONAL STATEMENTS

20	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

Policy

21 Sections 25 and 37(2) of the Town & Country Planning (Scotland) Act 1997 (as amended) requires the determination of the proposal to be made in accordance with the provisions of the Development Plan, unless material considerations indicate otherwise. The determining issues here are whether the proposals comply with Development Plan policy or if there are other material considerations, which justify a departure from policy.

22 The principle of providing a dwellinghouse was established through the previous consent under application 08/01141/FLL where the proposal was considered to be acceptable in terms of operational need, access, landscape impact, design, drainage and impact on local amenity.

Over the period since the release of the planning consent the applicant has been unable to raise mortgage finance for the construction of the house and in order to complete the build has incurred a significant amount of loan debt and loss of inheritance funds. Finance is still required to furnish the house and invest in the business. This financial pressure, as outlined in the applicant's letter has had a severe effect on the applicant's business to the point of imminent closure.

- 23 Against this background of funding difficulties to construct the dwellinghouse and ability to raise mortgage funding, this has in turn prejudiced the viability of the applicant's racing stables business. Since the grant of this consent the Scottish Government's advice to Planning Authorities from the Chief Planner Jim Mackinnon in November 2011, which was incorporated into Circular 3/2012, is not to continue attaching restrictive occupancy conditions to housing in the countryside proposals. It is not considered necessary to use formal mechanisms to restrict occupancy where the justification for the house is weighed against its impact on landscape quality, design, residential amenity and road safety etc. In this case the proposal will not have an adverse impact on the wider landscape and the amenity of the occupiers or any neighbouring residents as outlined in the original consent.

It is considered that the applicant's financial concerns and ongoing business viability are significantly material and justifiable reasons to recommend the removal of condition 3 from planning consent 08/01141/FLL. Concerns were raised through 2 letters of representation on traffic and road safety issues and the consequences of removing the condition. As indicated above the implications of removing the condition will not be significant in physical planning terms where the landscape impact, design and impact on local amenity are considered to be acceptable, which accords with national planning policy guidance. Also the economic justification for the dwellinghouse was demonstrated satisfactorily in the original consent. There were no objections raised from the Council's Transport Planners on traffic and road safety for the dwellinghouse and stables.

Developer Contributions

- 24 The Developer Contributions Guidance is not applicable to this application and therefore no contributions are required in this instance.

Economic Impact

- 25 The removal of the condition would have a significant impact on the sustainability and future viability of the applicant's business.

LEGAL AGREEMENTS

- 26 No legal agreement is required for this proposal.

DIRECTION BY SCOTTISH MINISTERS

- 27 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

- 28 The applicant has provided sufficient justification for the removal of the occupancy condition on planning consent 08/01141/FLL in accordance with Scottish Government guidance and there are no other material planning considerations which would provide sufficient justification for retaining the occupancy condition.

RECOMMENDATION

- A** Approve

Conditions and Reasons for Recommendation

1. The proposed development must be carried out in accordance with the approved plans herewith, 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. The means of disposal of surface water drainage from buildings and the site shall accord with the details set out in the detailed Drainage Report accompanying application 08/01141/FLL unless otherwise approved in writing by the Planning Authority.

Reason – In the interests of sustainable surface water drainage.

3. The phosphorus mitigation measures and maintenance arrangements shall be carried out in accordance with the Section 75 Agreement attached to planning consent 08/01141/FLL.

Reason - To ensure a satisfactory drainage solution in the light of the potential threat to the Loch Leven Catchment Area.

B JUSTIFICATION

It is considered that there are significant material considerations which have provided sufficient justification for the removal of the occupancy condition on consent 08/01141/FLL in accordance with Scottish Government advice.

C PROCEDURAL NOTES

None

D INFORMATIVES

None

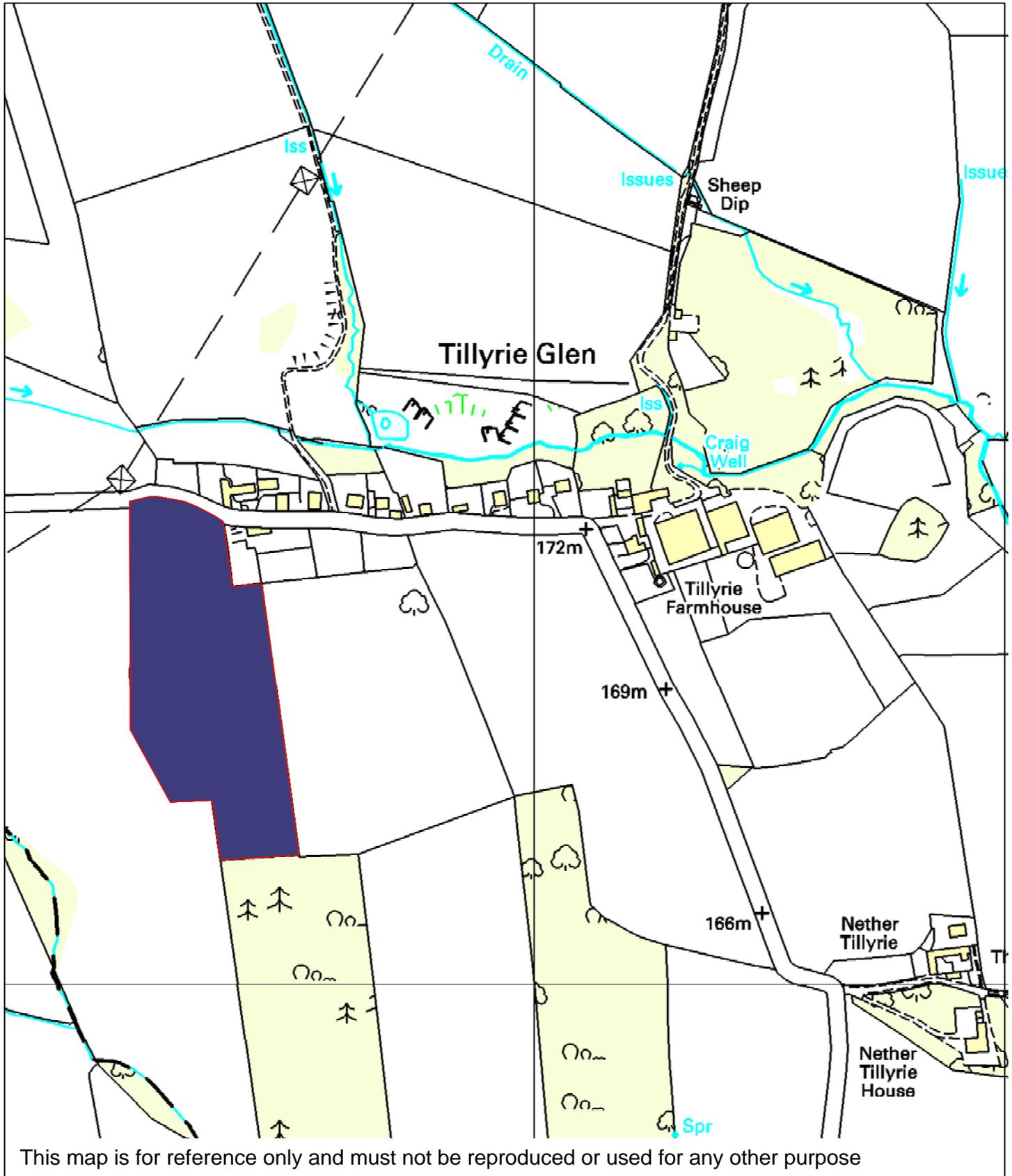
Background Papers: 2 letters of representation
Contact Officer: Mark Williamson – Ext 75355
Date: 27 May 2014

Nick Brian
Development Quality Manager

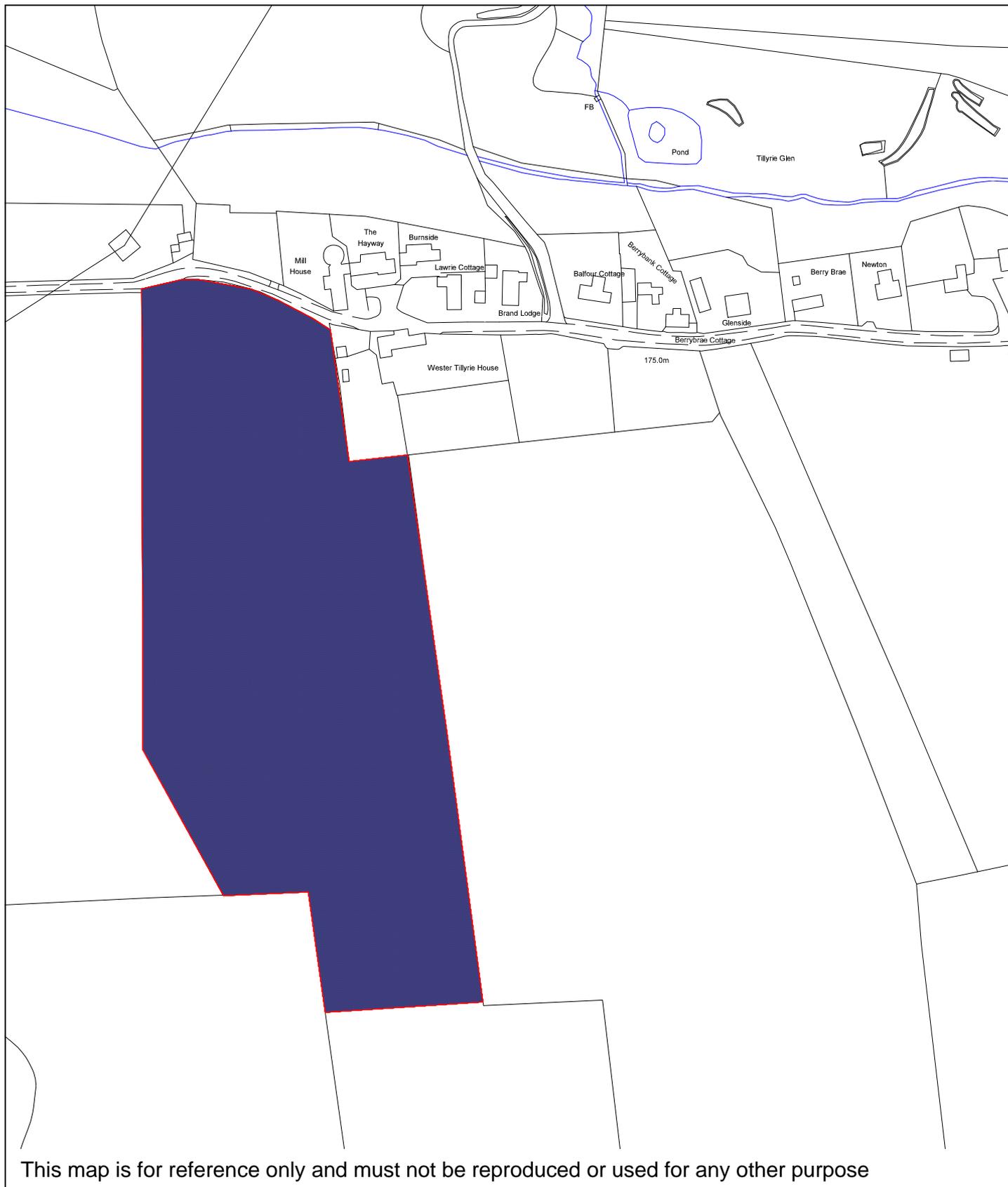
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