

NOTICE OF REVIEW

UNDER SECTION 43A(8) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED) IN
RESPECT OF DECISIONS ON LOCAL DEVELOPMENTS

THE TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND LOCAL REVIEW PROCEDURE)
(SCOTLAND) REGULATIONS 2013

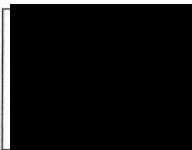
THE TOWN AND COUNTRY PLANNING (APPEALS) (SCOTLAND) REGULATIONS 2008


**IMPORTANT: Please read and follow the guidance notes provided when completing this form.
Failure to supply all the relevant information could invalidate your notice of review.**

Use BLOCK CAPITALS if completing in manuscript

Applicant(s)

Name MR DARREN STEWART

Address 

Postcode 

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Contact Telephone 2

Fax No

E-mail*

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PERTH

Postcode PH1 2SY

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Mark this box to confirm all contact should be
through this representative: ☒

* Do you agree to correspondence regarding your review being sent by e-mail?

Yes ☒ No ☐

Planning authority

PERTH & KINROSS COUNCIL

Planning authority's application reference number

23/01765 / FLL

Site address

LAND 80m SOUTH WEST OF GELLYBANK FARM, KINROSS

Description of proposed
development

ERECTION OF DWELLING HOUSE

Date of application

24 OCTOBER 2023

Date of decision (if any)

16 JANUARY 2024

Note. This notice must be served on the planning authority within three months of the date of the decision notice or from the date of expiry of the period allowed for determining the application.

Nature of application

1. Application for planning permission (including householder application) ☒
2. Application for planning permission in principle ☐
3. Further application (including development that has not yet commenced and where a time limit has been imposed; renewal of planning permission; and/or modification, variation or removal of a planning condition) ☐
4. Application for approval of matters specified in conditions ☐

Reasons for seeking review

1. Refusal of application by appointed officer ☒
2. Failure by appointed officer to determine the application within the period allowed for determination of the application ☐
3. Conditions imposed on consent by appointed officer ☐

Review procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may tick more than one box if you wish the review to be conducted by a combination of procedures.

1. Further written submissions ☐
2. One or more hearing sessions ☐
3. Site inspection ☒
4. Assessment of review documents only, with no further procedure ☒

If you have marked box 1 or 2, please explain here which of the matters (as set out in your statement below) you believe ought to be subject of that procedure, and why you consider further submissions or a hearing are necessary:

Site inspection

In the event that the Local Review Body decides to inspect the review site, in your opinion:

1. Can the site be viewed entirely from public land? Yes ☐ No ☒
2. Is it possible for the site to be accessed safely, and without barriers to entry? Yes ☒ No ☐

If there are reasons why you think the Local Review Body would be unable to undertake an unaccompanied site inspection, please explain here:

Statement

You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. Note: you may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

If the Local Review Body issues a notice requesting further information from any other person or body, you will have a period of 14 days in which to comment on any additional matter which has been raised by that person or body.

State here the reasons for your notice of review and all matters you wish to raise. If necessary, this can be continued or provided in full in a separate document. You may also submit additional documentation with this form.

* SEE SEPARATE STATEMENT ATTACHED

Have you raised any matters which were not before the appointed officer at the time the determination on your application was made?

Yes ☐ No ☒

If yes, you should explain in the box below, why you are raising new material, why it was not raised with the appointed officer before your application was determined and why you consider it should now be considered in your review.

List of documents and evidence

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review.

DOC 1. DECISION LETTER 23/01765/FLL
 DOC 2. REPORT OF HANDLING 23/01765/FLL
 DOC 3. AERIAL IMAGE
 DOC 4. VISIBILITY SPLAY
 PHOTOS 1-5

Note. The planning authority will make a copy of the notice of review, the review documents and any notice of the procedure of the review available for inspection at an office of the planning authority until such time as the review is determined. It may also be available on the planning authority website.

Checklist

Please mark the appropriate boxes to confirm you have provided all supporting documents and evidence relevant to your review:

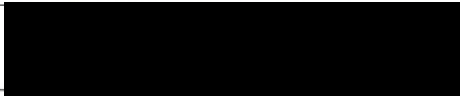
- ☒ Full completion of all parts of this form
☒ Statement of your reasons for requiring a review
☒ All documents, materials and evidence which you intend to rely on (e.g. plans and drawings or other documents) which are now the subject of this review.

Note. Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice from that earlier consent.

Declaration

I the applicant/agent [delete as appropriate] hereby serve notice on the planning authority to review the application as set out on this form and in the supporting documents.

Signed



Date

29 MARCH 2024

Statement

Notice of Review

Erection of a dwellinghouse on Land 80 Metres South West of Gellybank Farm Kinross.

23/01765/FLL

Introduction

This Notice of Review is submitted following the refusal of detailed planning permission 23/01765/FLL under delegated powers on the 16 January 2024 for the erection of a dwellinghouse on land at Gellybank Farm. (Doc 1)

A previous detailed application at Gellybank for 2 dwellinghouses submitted by the appellant, which included the Review application site, was refused in October 2022 under 22/01356/FLL.

It was considered by the Council in this previous refusal, that of the 2 plots, the north plot's northern boundary was not well established enough to contain the site, and this was despite this boundary having the same boundary treatment (post and wire fence) as the existing properties at Gellybank to the east.

As illustrated in Document 3 – Aerial Image the proposed plots in this previous application represent a satisfactory extension of the existing building group at Gellybank, with robust defensible boundaries to the south and west which would satisfactorily contain the grouping.

The reasons for refusal for the Review application are outlined below, relating to the principle of development and the Development Plan policies on Housing in the Countryside and Rural Homes; in relation to residential amenity and Policy 60B Transport Standards and Accessibility of the Perth and Kinross Local Development Plan 2 (2019) and Policy 13 of NPF4 in relation to visibility splays from the site onto the farm access track.

The reasons for refusal were:-

1. The proposal is contrary to Policy 19 Housing in the Countryside of the Perth and Kinross Council Local Development Plan 2 (2019) and the associated Housing in the Countryside Supplementary Guidance 2020 (SG) as the site is not part of an existing building group and cannot be considered to extend the group into a definable site as the landscaping which has been planted along the northern boundary appears to have been planted with the sole purpose of creating a development site. The SG explicitly states that "fencing or young trees or hedging planted with the specific

intention of creating a site will not be accepted as existing landscape features for the purposes of this Supplementary Guidance". The proposal also fails to meet any of the other categories of development outlined in the SG.

2. The proposal is contrary to Policy 9(b) of National Planning Framework 4 (NPF4) as the proposal is on a greenfield site and is not explicitly supported by policies of the Perth and Kinross Local Development Plan 2 (2019). The proposal also fails to meet any of the categories of development allowed by Policy 17: Rural Homes of NPF4.

3. The proposal is contrary to Policies 1A, 19 and 56 of the Perth and Kinross Council Local Development Plan 2 (2019) and Policies 14(c) and 23 of NPF4 which seek to ensure that an appropriate level of residential amenity for proposed dwelling is provided and states that there is a presumption against the siting of noise sensitive land uses near sources of noise generation. There is some doubt as to the existing level of use of the neighbouring livery yard and farm buildings and the noise therefrom has the potential to impact detrimentally on the amenity of the proposed dwelling and a lack of information, in the form of a noise impact assessment, has been submitted to allow an assessment of this to be made.

4. The proposal is contrary to Policy 60B Transport Standards and Accessibility of the Perth and Kinross Local Development Plan 2 (2019) and Policy 13 of NPF4. There is a requirement for a 33-metre visibility splay to be created at the access from the site onto the private access. The existing hedge along the southern boundary of the site severely restricts visibility at the access points into the site and no indication of suitable visibility splays have been submitted. Furthermore, the hedge does not appear to be located within the red line boundary and therefore it would appear that it may not be in the control of the applicant.

In this Review it will be demonstrated that the Review proposal is in accordance with Housing in the Countryside Policy guidance; that there will be no adverse impact on residential amenity and that the vehicular access to the site will not have a detrimental impact on road safety.

Planning Policy Context

DEVELOPMENT PLAN

The Development Plan for the area comprises National Planning Framework 4 (NPF4) and the Perth and Kinross Local Development Plan 2 (2019) (LDP2).

National Planning Framework 4

The National Planning Framework 4 (NPF4) is the Scottish Government's long-term spatial strategy with a comprehensive set of national planning policies. This strategy sets out how to improve people's lives by making sustainable, liveable and productive spaces.

NPF4 was adopted on 13 February 2023. NPF4 has an increased status over previous NPFs and comprises part of the statutory development plan.

The Council's assessment of this application has considered the following policies of NPF4 :

Policy 2: Climate Mitigation and Adaptation

Policy 3: Biodiversity

Policy 4: Natural Places

Policy 5: Soils

Policy 6: Forestry, Woodland and Trees

Policy 9: Brownfield, Vacant and Derelict Land and Empty Buildings

Policy 13: Sustainable Transport

Policy 14: Design, Quality and Place

Policy 15: Local Living and 20 Minute Neighbourhoods

Policy 16: Quality Homes

Policy 17: Rural Homes

Policy 22: Flood Risk and Water Management

Policy 23: Health and Safety

Perth and Kinross Local Development Plan 2 – Adopted November 2019

The Local Development Plan 2 (LDP2) is the most recent statement of Council policy and is augmented by Supplementary Guidance.

The principal policies are:

Policy 1A: Placemaking

Policy 1B: Placemaking

Policy 2: Design Statements

Policy 5: Infrastructure Contributions

Policy 6: Settlement Boundaries

Policy 19: Housing in the Countryside

Policy 32: Embedding Low & Zero Carbon Generating Technologies in New Development

Policy 40B: Forestry, Woodland and Trees: Trees, Woodland and Development

Policy 41: Biodiversity

Policy 46A: Loch Leven Catchment Area

Policy 46B: Loch Leven Catchment Area

Policy 53B: Water Environment and Drainage: Foul Drainage

Policy 53C: Water Environment and Drainage: Surface Water Drainage

Policy 56: Noise Pollution

Policy 58A: Contaminated and Unstable Land: Contaminated Land

Policy 60B: Transport Standards and Accessibility Requirements: New Development Proposals

Statutory Supplementary Guidance

- Supplementary Guidance - Developer Contributions & Affordable Housing (adopted in 2020)
- Supplementary Guidance - Flood Risk and Flood Risk Assessments (adopted in 2021)
- Supplementary Guidance - Housing in the Countryside (adopted in 2020)
- Supplementary Guidance - Landscape (adopted in 2020)
- Supplementary Guidance - Placemaking (adopted in 2020)

OTHER POLICIES

Non-Statutory Guidance

- Planning Guidance - Loch Leven SPA, the Dunkeld-Blairgowrie Lochs SAC and the River Tay SAC
- Planning Guidance - Planning & Biodiversity

NATIONAL GUIDANCE

The Scottish Government expresses its planning policies through The National Planning Framework, Planning Advice Notes, Creating Places, Designing Streets, National Roads Development Guide and a series of Circulars.

Planning Advice Notes

The following Scottish Government Planning Advice Notes (PANs) and Guidance Documents are of relevance to the proposal:

- PAN 40 Development Management
- PAN 51 Planning, Environmental Protection and Regulation
- PAN 61 Planning and Sustainable Urban Drainage Systems
- PAN 68 Design Statements
- PAN 69 Planning and Building standards Advice on Flooding
- PAN 75 Planning for Transport
- PAN 77 Designing Safer Places

National Roads Development Guide 2014

This document supports Designing Streets and expands on its principles and is considered to be the technical advice that should be followed in designing and approving of all streets including parking provision.

Reason for Refusal and Grounds of the Review

The main issues will be considered below in the applicant's statement and argument against the reasons for refusal in support of the Review.

The Review proposal represents a satisfactory extension of an existing building group in accordance with Housing in the Countryside Policy Guidance

The Review site for a single dwellinghouse is a definable site and has good containment with well-established boundaries on all sides. The southern boundary is defined by a road, the western boundary is defined by the rising slope of the land and existing mature planting. The northern boundary has established tree planting along it, and to the east there is the existing building group. (see Photos 1-5)

In the Delegated Report (Doc 2) it was stated that:-

“It is the view of the case officer that the planting along the northern boundary appears to have been formed with the purpose of creating a site. The planting running along the northern boundary of the application site is at almost exactly the same east-west line as the plots to the east and there does not appear to be any purpose for this landscaping other than to create a boundary for the application site. This is the same concern which was identified with the northern boundary on the application for two plots which was refused in 2022. The SG goes on to provide examples of where the extension of a building group can be accepted. In this case it is considered that planting has been formed in recent past along the northern boundary which appears to be with the specific intention of creating a site which is exactly what the SG seeks to avoid”.

The planting to the north boundary was to re-enforce the enclosure of the Review site which already had strong defensible boundaries on all other sides.

This planting was carried out in late 2017. It was not carried out specifically to create a housing site as it was considered that there was already a potential plot on this site with long- and well-established boundaries to the west, south and east formed by existing topography, roads or well-established features.

As indicated in Document 3 – Aerial Image, the Review site represents an acceptable extension of the existing building group at Gellybank and this is apparent when viewed on site.

It is considered that the Review proposal is in accordance with NPF 4 Policy 17: Rural Homes, where new homes in rural areas will be supported where the development is suitably scaled, sited and designed to be in keeping with the character of the area. The proposed scale, design and siting of the dwellinghouse will not have any detrimental impact on the character or appearance of the countryside at Gellybank.

The Review proposal is considered to be an acceptable extension of an existing building group at Gellybank, in accordance with Policy 19 of the adopted local plan and Perth and Kinross Council Housing in the Countryside Supplementary Guidance 2020

There will be no adverse impact on residential amenity.

There were issues raised by the Council on the issue of neighbouring noise generation from Fasgadh to the east of the Review site, stating:-

The existing use of the adjacent farm and livery yard and the noise therefrom has the potential to impact detrimentally on the amenity of the proposed dwellings and a lack of information, in the form of a noise impact assessment, has been submitted to allow an assessment of this to be made.

The appellant has clarified the status of the neighbouring farm and livery and has stated that:-

*“The previously granted planning permission for the Livery & Stables at the neighbouring property is no longer in use by the new owners and they have done away with this use.
With regard to the issue about noise pollution from the working farm this is incorrect as the previous owner and the new owner do not use this as a working farm as previously stated.”*

In an objection from the neighbour at Fasgadh to the Review application it was stated by the neighbour, Mrs Freer that:-

“Whilst it is correct that it is no longer a working farm or livery the buildings are in regular and increasing use for engineering work as well as for private equestrian use. As a result, the noise levels will be similar to that of any working farm or livery.”

As confirmed by Fasgadh the previously consented farm and livery uses at this property are no longer in use. There is no planning consent however for engineering works (Class 5) to be carried out at Fasgadh. The previous consents at this location were permitted on the basis that they would not impact on the existing neighbouring residential amenity to the east.

The Review application for a single dwellinghouse to the west therefore would not prejudice the consented uses at Fasgadh.

The Class 5 use being carried out at Fasgadh is potentially non-conforming and unauthorised, and planning consent would be required for this engineering operation. Any application for Class 5 use would also require a Noise Impact Assessment to establish any detrimental impact on surrounding residential amenity.

It is clear therefore that on the basis outlined above, the Review proposal is not contrary to Policies 1A, 19 and 56 of the Perth and Kinross Council Local Development Plan 2 (2019) and Policies 14(c) and 23 of NPF4 in terms of residential amenity and the onus would be on the neighbour to submit an application and NIA for any unauthorised use currently being carried out at Fasgadh.

The vehicular access to the site will not have a detrimental impact on road safety

In terms of the visibility splay from the site onto the farm access, this splay can be achieved as indicated in Doc 4 and it is within the appellant's landownership for this splay to be implemented, as shown in the Landownership Plan which was submitted with the Review application.

The Review proposal therefore is not contrary to Policy 60B Transport Standards and Accessibility of the Perth and Kinross Local Development Plan 2 (2019) and Policy 13 of NPF4.

Other Planning Considerations

As indicated in the Delegated Report there are no objections to the Review proposal from the main consultees in terms of Design & Layout, Flood Risk and Phosphorous Mitigation.

Conclusions

In conclusion it is considered that:-

- The Review proposal represents a satisfactory extension of an existing building group in accordance with Housing in the Countryside Policy Guidance
- There will be no adverse impact on residential amenity.
- The vehicular access to the site will not have a detrimental impact on road safety

For the reasons outlined above it is considered that the Review proposal for a single dwellinghouse is acceptable and it is respectfully requested that the Review is upheld.



Mr Darren Stewart
c/o Mark Williamson
34 Hermitage Drive
Perth
PH1 2SY

Pullar House
35 Kinnoull Street
PERTH
PH1 5GD

Date of Notice: **16th January 2024**

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT

Application Reference: **23/01765/FLL**

I am directed by the Planning Authority under the Town and Country Planning (Scotland) Acts currently in force, to refuse your application registered on 14th November 2023 for Planning Permission for **Erection of dwellinghouse Land 80 Metres South West Of Gellybank Farm Kinross.**

David Littlejohn
Strategic Lead (Economy, Development and Planning)

Reasons for Refusal

1. The proposal is contrary to Policy 19 Housing in the Countryside of the Perth and Kinross Council Local Development Plan 2 (2019) and the associated Housing in the Countryside Supplementary Guidance 2020 (SG) as the site is not part of an existing building group and cannot be considered to extend the group into a definable site as the landscaping which has been planted along the northern boundary appears to have been planted with the sole purpose of creating a development site. The SG explicitly states that "fencing or young trees or hedging planted with the specific intention of creating a site will not be accepted as existing landscape features for the purposes of this Supplementary Guidance". The proposal also fails to meet any of the other categories of development outlined in the SG.
2. The proposal is contrary to Policy 9(b) of National Planning Framework 4 (NPF4) as the proposal is on a greenfield site and is not explicitly supported by policies of the Perth and Kinross Local Development Plan 2 (2019). The proposal also fails to meet any of the categories of development allowed by Policy 17: Rural Homes of NPF4.
3. The proposal is contrary to Policies 1A, 19 and 56 of the Perth and Kinross Council Local Development Plan 2 (2019) and Policies 14(c) and 23 of NPF4 which seek to ensure that an appropriate level of residential amenity for proposed dwelling is provided and states that there is a presumption against the siting of noise sensitive land uses near sources of noise generation. There is some doubt as to the existing level of use of the neighbouring livery yard and farm buildings and the noise therefrom has the potential to impact detrimentally

on the amenity of the proposed dwelling and a lack of information, in the form of a noise impact assessment, has been submitted to allow an assessment of this to be made.

4. The proposal is contrary to Policy 60B Transport Standards and Accessibility of the Perth and Kinross Local Development Plan 2 (2019) and Policy 13 of NPF4. There is a requirement for a 33 metre visibility splay to be created at the access from the site onto the private access. The existing hedge along the southern boundary of the site severely restricts visibility at the access points into the site and no indication of suitable visibility splays have been submitted. Furthermore, the hedge does not appear to be located within the red line boundary and therefore it would appear that it may not be in the control of the applicant.

Justification

The proposal is in accordance with the Development Plan and there are no material reasons which justify departing from the Development Plan.

Notes

The plans and documents relating to this decision are listed below and are displayed on Perth and Kinross Council's website at www.pkc.gov.uk "Online Planning Applications" page

Plan Reference

01

02

03

04

05

06

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REPORT OF HANDLING

DELEGATED REPORT

Ref No	23/01765/FLL	
Ward No	P8- Kinross-shire	
Due Determination Date	13th January 2024	
Draft Report Date	16th January 2024	
Report Issued by	JW	Date 16 January 2024

PROPOSAL: Erection of dwellinghouse

LOCATION: Land 80 Metres South West Of Gellybank
Farm Kinross

SUMMARY:

This report recommends **refusal** of the application as the development is considered to be contrary to the relevant provisions of the Development Plan and there are no material considerations apparent which justify setting aside the Development Plan.

BACKGROUND AND DESCRIPTION OF PROPOSAL

Full planning permission is sought for the erection of a dwellinghouse on a site to the west of a small group of rural buildings at Gellybank Farm in Kinross-shire.

This application is a follow up application following the refusal of two dwellinghouses at this site in October 2022 (22/01356/FLL). The current application relates to the southern half of the refused site only.

The application site sits at the western end of an existing group and is accessed along an existing private access to the south east which also serves further residential properties to the west. This access is also to serve a recently approved chalet development to the south (19/01648/AML). The site is defined by the access road to the south, some limited landscaping on the western boundary with rising sloping topography beyond, existing residential and farm/livery buildings to the east and some relatively recent planting to the north.

The proposal is to erect one dwelling fronting on the existing access at the southern end of the site with a new parking, turning and access to the south east.

The house is proposed to be a single storey bungalow with a relatively shallow pitched roof and a north facing projection. The finishing materials include grey roof tiles, larch timber cladding and a smooth white render. The house is proposed to accommodate a lounge, kitchen, family room, bathroom and three bedrooms.

SITE HISTORY

22/01356/FLL Erection of 2 dwellinghouses 6 October 2022 Application Refused

PRE-APPLICATION CONSULTATION

Pre application Reference: None

DEVELOPMENT PLAN

The Development Plan for the area comprises National Planning Framework 4 (NPF4) and the Perth and Kinross Local Development Plan 2 (2019) (LDP2).

National Planning Framework 4

The National Planning Framework 4 (NPF4) is the Scottish Government's long-term spatial strategy with a comprehensive set of national planning policies. This strategy sets out how to improve people's lives by making sustainable, liveable and productive spaces.

NPF4 was adopted on 13 February 2023. NPF4 has an increased status over previous NPFs and comprises part of the statutory development plan.

The Council's assessment of this application has considered the following policies of NPF4 :

Policy 2: Climate Mitigation and Adaptation

Policy 3: Biodiversity

Policy 4: Natural Places

Policy 5: Soils

Policy 6: Forestry, Woodland and Trees

Policy 9: Brownfield, Vacant and Derelict Land and Empty Buildings

Policy 13: Sustainable Transport

Policy 14: Design, Quality and Place

Policy 15: Local Living and 20 Minute Neighbourhoods

Policy 16: Quality Homes

Policy 17: Rural Homes

Policy 22: Flood Risk and Water Management

Policy 23: Health and Safety

Perth and Kinross Local Development Plan 2 – Adopted November 2019

The Local Development Plan 2 (LDP2) is the most recent statement of Council policy and is augmented by Supplementary Guidance.

The principal policies are:

Policy 1A: Placemaking

Policy 1B: Placemaking

Policy 2: Design Statements

Policy 5: Infrastructure Contributions

Policy 6: Settlement Boundaries

Policy 19: Housing in the Countryside

Policy 32: Embedding Low & Zero Carbon Generating Technologies in New Development

Policy 40B: Forestry, Woodland and Trees: Trees, Woodland and Development

Policy 41: Biodiversity

Policy 46A: Loch Leven Catchment Area

Policy 46B: Loch Leven Catchment Area

Policy 53B: Water Environment and Drainage: Foul Drainage

Policy 53C: Water Environment and Drainage: Surface Water Drainage

Policy 56: Noise Pollution

Policy 58A: Contaminated and Unstable Land: Contaminated Land

Policy 60B: Transport Standards and Accessibility Requirements: New Development Proposals

Statutory Supplementary Guidance

- [Supplementary Guidance - Developer Contributions & Affordable Housing](#) (adopted in 2020)
- [Supplementary Guidance - Flood Risk and Flood Risk Assessments](#) (adopted in 2021)
- [Supplementary Guidance - Housing in the Countryside](#) (adopted in 2020)
- [Supplementary Guidance - Landscape](#) (adopted in 2020)
- [Supplementary Guidance - Placemaking](#) (adopted in 2020)

OTHER POLICIES

Non Statutory Guidance

- [Planning Guidance - Loch Leven SPA, the Dunkeld-Blairgowrie Lochs SAC and the River Tay SAC](#)
- [Planning Guidance - Planning & Biodiversity](#)

NATIONAL GUIDANCE

The Scottish Government expresses its planning policies through The National Planning Framework, Planning Advice Notes, Creating Places, Designing Streets, National Roads Development Guide and a series of Circulars.

Planning Advice Notes

The following Scottish Government Planning Advice Notes (PANs) and Guidance Documents are of relevance to the proposal:

- PAN 40 Development Management
- PAN 51 Planning, Environmental Protection and Regulation
- PAN 61 Planning and Sustainable Urban Drainage Systems
- PAN 68 Design Statements
- PAN 69 Planning and Building standards Advice on Flooding
- PAN 75 Planning for Transport
- PAN 77 Designing Safer Places

National Roads Development Guide 2014

This document supports Designing Streets and expands on its principles and is considered to be the technical advice that should be followed in designing and approving of all streets including parking provision.

CONSULTATION RESPONSES

EXTERNAL

Scottish Water – no objection

SEPA – No response but likely to be same outcome as previous application given same mitigation proposals put forward

Transport Scotland – consulted in error

INTERNAL

Environmental Health (Contaminated Land) – condition recommended

Development Contributions Officer – contribution required

Structures And Flooding – no comments

Transportation And Development – concerns regarding visibility splay onto private access and presence of hedge not addressed.

REPRESENTATIONS

A total of 6 representations were received all of which object to the applications. The comments may be summarised as follows:

- Overdevelopment
- Contrary to Development Plan
- Road Safety
- Water capacity
- Capacity of existing access
- Maintenance of existing access
- Flood Risk and drainage
- Traffic congestion
- Inappropriate housing density

- Loss of open space
- Adverse effect on visual amenity
- Waste/refuse collection
- Light pollution
- Tree and hedge loss
- Bio Diversity
- Possible future development.
- Progress of other permissions

The above issues are addressed in the appraisal below. The possibility of future development is not material to this application and has no bearing on the assessment. If any further applications are made these will be considered on their own merits. There is no requirement within planning legislation for one consented development to be progressed before another proposal is submitted and therefore this also has no bearing on the assessment of this application.

Additional Statements Received:

Screening Opinion	Not Required
Environmental Impact Assessment (EIA): Environmental Report	Not applicable
Appropriate Assessment under Habitats Regulations	Habitats Regulations AA Not Required
Design Statement or Design and Access Statement	Not Required
Report on Impact or Potential Impact	Planning Statement Phosphorus Mitigation

APPRAISAL

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 comprises NPF4 and the Perth and Kinross Local Development Plan 2019. The relevant policy considerations are outlined in the policy section above and are considered in more detail below. In terms of other material considerations, involving considerations of the Council's other approved policies and supplementary guidance, these are discussed below only where relevant.

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 Appraisal

In policy 19 - Housing in the Countryside of the LDP2, it is acknowledged that opportunities do exist for housing in rural areas to support the viability of communities, meet development needs in appropriate locations while safeguarding the character of the countryside as well as ensuring that a high standard of siting and design is achieved. Thus the development of single houses or groups of houses which fall within the six identified categories will be supported. This is also referenced in the recently adopted National Planning Framework 4 (NPF4) where Policy 9 states that greenfield sites will be supported where there are explicitly supported by LDP policies.

Policy 17 of NPF4 is also relevant and seeks to encourage and promote and facilitate affordable and sustainable homes in the right locations and provides criteria in which proposals for new rural homes will be accepted.

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:

- 1) Building Groups
- 2) Infill site
- 3) New houses in the countryside on defined categories of sites as set out in section 3 of the Supplementary Guidance
- 4) Renovation or replacement of houses
- 5) Conversion or replacement of redundant non-domestic buildings
- 6) Development on rural brownfield land

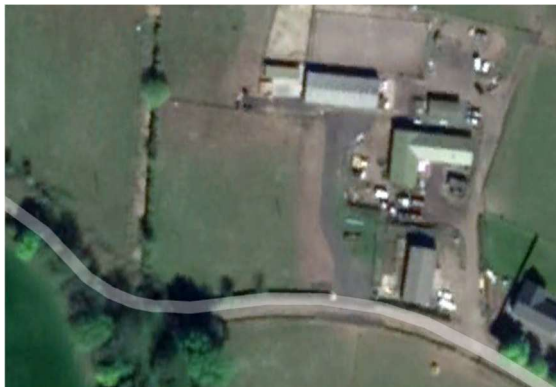
The only category which may be applicable to this development is category 1 Building Groups. None of the remaining criterion are considered to be relevant to this proposal. An existing building group is defined as 3 or more buildings of a size at least equivalent to a traditional cottage, where they are for residential and/or business/agricultural nature.

The supplementary guidance, "The Housing in the Countryside Supplementary Guidance" which was adopted by the Council in 2020 assists in the assessment of the Policy 19. This highlights that:

Permission may be granted, subject to the criteria above, for houses which extend the group into a readily definable adjacent site. This will be formed by existing topography, roads or well-established existing landscape features such as a watercourse or mature tree belt which will provide a suitable setting.

In this instance the application site is not located within a building group but adjacent to it. It is noted that there is some landscaping on the western boundary although this is partly due to the recent planting of some small scale trees. There is also some rising topography adjacent to the western boundary. To the south the site is defined by the existing access track. The site is therefore partly defined. The planning statement indicates that the north boundary is defined by existing mature landscaping with photos provided. From reviewing satellite imagery of this area it is clear that the

planting on the northern boundary was planted at some point in the first half of 2018 as the images before that show an open field. There are similar concerns with this application as those identified in the assessment of the previous application for two plots. The SG makes it clear what features can be used to enable a site to be considered defined. It states that "fencing or young trees or hedging planted with the specific intention of creating a site will not be accepted as existing landscape features for the purposes of this Supplementary Guidance, nor will the felling of woodland or an orchard specifically to create a site". It is the view of the case officer that the planting along the northern boundary appears to have been formed with the purpose of creating a site. The planting running along the northern boundary of the application site is at almost exactly the same east-west line as the plots to the east and there does not appear to be any purpose for this landscaping other than to create a boundary for the application site. This is the same concern which was identified with the northern boundary on the application for two plots which was refused in 2022. The SG goes on to provide examples of where the extension of a building group can be accepted. In this case it is considered that planting has been formed in recent past along the northern boundary which appears to be with the specific intention of creating a site which is exactly what the SG seeks to avoid. There is a requirement for boundaries to be well established landscape features and that is not considered to be the case with this artificially created boundary. Before and after satellite images of this planting are outlined below for reference.



May 2017 Sattelite image



April 2023 sattelite image

In this instance the planting of this northern boundary appears to have been carried out with the intention of creating a site which would not meet with the building groups category of the SG which the SG specifically references as not being appropriate. This proposal is therefore not considered to comply with the building groups category of the SG. The proposal also fails to meet any of the categories of development outlined in the SG. This proposal is therefore contrary to Policy 19 of the Perth and Kinross Local Development Plan 2, the associated SG and therefore also Policy 9 of NPF4 as this is a greenfield site which is not explicitly supported by policies of the LDP as outlined in Policy 9(b) of NPF4.

Design and Layout

Generally, the design and scale of development should respect its surroundings and adhere to Policies 1A and B of LDP2 which relate to placemaking and Policy 14 of NPF4 which seeks to deliver well designed development. Further guidance is also provided within the associated Placemaking Supplementary Guidance. Furthermore, the siting criteria outlined within the Housing in the Countryside Supplementary Guidance is also relevant. Policy 4(a) of NPF4 is also applicable and seeks to ensure that the development does not have an unacceptable impact on the natural environment.

The character of the grouping is relatively mixed and there are similarly designed simple dwellings of this nature located elsewhere in the grouping which utilise similar finishing materials. The proposed design of the dwellings are considered to be of a form and mass which is conducive to the relatively mixed character of the existing grouping. The house is proposed to front onto the private access and continues the building line created by the existing properties to the east. The previous application intended to utilise shared access in the south east corner to enter the site. This revised application seeks to create a separate access onto the private track along the southern boundary. Assessment of the access will be undertaken below.

The proposal in terms of design and layout is therefore generally considered to comply with the LDP2 and NPF4. Nevertheless, the principle of developing the site is considered to be contrary to the LDP2.

Trees and Landscaping

The previous refusal outlined concerns regarding the potential impact on trees on the western boundary given the intention to form an access along this boundary to plot 2. This is no longer proposed as part of this application. There is therefore no longer any requirement for a tree survey. The existing boundary hedge of the southern edge of the site next to the private access will require to be removed to accommodate the access and required visibility splays and similar to the concerns on the previous application it is not clear whether this actually forms part of the site as it appears to be omitted from the red line and therefore whether the applicant has control of this hedge to

enable it to be removed, maintained to form the visibility splays is not clear. Despite this being identified as a concern with the previous application it has not been addressed fully in this new submission. Further assessment of this is provided in the traffic and transport section below.

Loch Leven Catchment Area

The site is located within the Loch Leven Catchment Area where policy 46B of the LDP2 applies as does the relevant Supplementary Guidance. Total phosphorus from built development must not exceed the current level permitted by discharge consents for Kinross and Milnathort waste treatment works together with the contribution from built development within the rural area catchment. Details of the proposed methods of drainage require to be submitted with applications. The mitigation measures require to demonstrate that they are capable of removing 125% of the phosphorus likely to be generated by the development from the catchment. Sufficient information has been presented to demonstrate that this can be achieved and whilst SEPA are yet to respond to the consultation response, this is the same mitigation which was submitted with the previous application, which was accepted by SEPA. There is therefore no reason to suggest that this would not be accepted again and therefore the intention is to proceed with determination.

The phosphorus calculations have been submitted which indicate that total phosphorus reduction meets the requirements of the 125% indicated in the LDP2 and that an existing septic tank at Easter Balgedie House Lodge will be upgraded. The proposal is therefore considered to accord with Policy 46B of the LDP2. Conditions are recommended to ensure the implementation of the phosphorus mitigation.

Residential Amenity

Policy 1A and B and 56 of LDP2 and Policy 14 (c) and 23 of NPF4 require any development to not detrimentally impact on residential amenity and to ensure any occupiers of new development have an adequate level of residential amenity.

There is an existing operational farm located to the east of the application site and the presence of this farm was identified as a potential concern during pre application. The existing farm operation could detrimentally impact on the amenity of any proposed residential use and it is noted that there have been recent applications for extensions to agricultural buildings at this farm. It is also understood that it operates as a farm and livery yard. Full details of the existing farm use and noise therefrom was requested during pre application discussions for the previous application and these concerns were identified in the Report of Handling for the previous application and were a reason for refusal.

Environmental Health (EH), following a verbal discussion, have raised concern regarding the use and activity which takes place in the adjacent farm buildings and the potential impact which the use may have on the amenity of

the proposed dwelling, both internally and externally given the proximity. On that basis they have stated that a Noise Impact Assessment is required to establish the level of noise which is generated and whether this would impact on the amenity of the proposed houses.

Whilst it is recognised that planning permission for a house to the east of this site and north of the farm buildings was granted in 2016 this was granted solely on the basis of operational need associated with the operation of the farming and livery business at Gellybank Farm (16/00156/IPL and 16/00983/FLL) and therefore there are less concerns with any potential disturbance due the associated use. The house subject to this application would be in separate ownership and are not proposed to be associated with the farm and livery business and therefore the potential for disturbance remains and requires to be addressed.

The Planning Statement with this application states that the buildings are no longer used for livery and stables and is no longer in use. They also state that the buildings are not used as a working farm and therefore there is no noise. The letters of representation on the application dispute this statement and indicate that that buildings are in use as livery and an expanding engineering use. The applicant's agent has requested that planning enforcement investigate a possible breach of planning control if the buildings are utilised for a Class 5 use. They were advised to report any potential breach directly to the enforcement team. During a site visit it appeared that the buildings were in active use. Given the activity taking place within these buildings there remains a possibility that this could impact on the residential amenity of any new dwelling approved on this site and this requires to be addressed in the submission via a Noise Impact Assessment to ascertain whether the activity would impact on amenity.

The amenity of future occupiers is therefore considered to be potentially detrimentally affected by the presence of the farm buildings and the potential operations within and the proposal therefore is contrary to policies 1A and 19 of the LDP2 which seek to ensure adequate levels of residential amenity for dwellings are provided and to policy 56 of the LDP2 relating to noise pollution and to Policy 14 (c) and 23 of NPF4.

Roads, Transport and Access

Policy 60B of LDP2 and Policy 13 of NPF4 seeks safe access, egress and appropriate car parking and to encourage the use of sustainable transport.

The vehicle access to the properties will be via the existing track that serves a number of properties including the development site. The track to the site has been formed with a sealed surface for an acceptable distance from the C458 public road network and encompasses the length of the bin storage area for the easy manoeuvrability of the waste containers for the waste collection operatives.

The visibility splay onto the public road network have been cut back, to maintain vegetation at a low level.

The track to the development is formed with compacted material along the remainder of its length from the vehicle access. A number of objectors have commented about the current maintenance arrangements for the track; any current legal arrangements in place are a private civil matter and any disputes arising from ongoing maintenance should be addressed between the parties out with the planning application process. The upkeep and maintenance of the track is therefore not a material planning consideration.

Transportation and Development have visited the site and have noted that given the make up of the access, which includes posts and large rocks on the immediate boundaries there is limited opportunity for vehicles to pass on the track. This application now proposes an additional passing place on the track between the public road and the entrance into the site which is considered to be acceptable, in addition to the two existing passing places. A fourth passing place is proposed but this is beyond and to the west of the entrance into the site. If any planning permission is granted this should be subject to a condition to ensure delivery of these passing places as part of the development.

The previous refusal identified concerns with the lack of visibility at the access point into both plots onto the private access due to the presence of a large hedge. The access into this site has been moved further west but the presence of the hedge is not referenced on the submitted plans. The Planning Statement appears to have misunderstood the issue here and states that the hedge at the access onto the public road has been cut back. That is not the concern here. Transportation and Development have stated that a visibility splay of 33 metres is required from the edge of the access track onto the private track. As outlined above it is not clear from the plans whether the hedge is in control of the applicant as the red line boundary appears to omit it. The presence of the hedge is also not referenced on the submitted plans. Therefore, it is not clear if the required visibility splay can be formed and maintained on an ongoing basis. This further submission does not indicate why the hedge is omitted from the red line boundary. This was identified as a concern on the previous application and has not been fully addressed in this submission.

The proposal is therefore considered to be contrary to Policy 60B of the LDP2 and 13 of NPF4.

Developer Contributions

Policy 5 of LDP2 applies which refers to the Developer Contributions and Affordable Housing Supplementary Guidance. This requires a financial contribution towards increased primary school capacity in areas where a primary school capacity constraint has been identified. A capacity constraint is defined as where a primary school is operating at over 80% and is likely to be operating following completion of the proposed development, extant planning

permissions and Local Development Plan allocations, at or above 100% of total capacity.

Education & Children's Services have indicated that there is a capacity constraint at this school and therefore a contribution of £5164 per dwelling is required in this instance. The applicant has indicated that they intend to pay the contribution upfront if planning permission is granted.

Flood Risk

Perth and Kinross Council Structures and Flooding have been consulted on the proposal and raised no concerns relating to flood risk on the previous application. Whilst they have not commented on this application it is assumed the same conclusion would be reached. It is noted that comments regarding surface water flooding have been raised in letters of representation. Surface water would require to be dealt with through appropriate provision of a Sustainable Urban Drainage System (SUDS) to meet best practise requirements and policy 53C of the LDP2 and 22 of NPF4. A drainage layout has been submitted. Should any planning permission be granted this should be secured by a condition. Given the recommendation for refusal it is not considered to be necessary to investigate any flooding matters further with the applicant.

Water Supplies

Scottish Water have indicated that there is sufficient capacity within the Glendevon Water Treatment works to service the development. Letters of representation have raised concerns regarding water pressure in the area. There is a separate application process to Scottish Water which any developer would require to go through to connect to their assets.

Waste Collection

The new dwellings would require to seek agreement with PKC Waste Services for waste provision, storage and collection. It is noted that there is an existing collection point at the access onto the public road.

Contaminated Land

Due to the presence of a disused quarry in the area the Council's Contaminated Land Team have recommended that an evaluation of contamination is carried out to meet the requirements of Policy 58A of the LDP2.

Economic Impact

The economic impact of the proposal is likely to be minimal and limited to the construction phase of the development.

PLANNING OBLIGATIONS AND LEGAL AGREEMENTS

None required.

DIRECTION BY SCOTTISH MINISTERS

None applicable to this proposal.

CONCLUSION AND REASONS FOR DECISION

To conclude, the application must be determined in accordance with the Development Plan unless material considerations indicate otherwise. In this respect, the proposal is considered to be contrary to the Development Plan. Account has been taken of the relevant material considerations and none has been found that would justify overriding the Development Plan.

Accordingly the proposal is refused on the grounds identified below.

Reasons for Refusal

1 The proposal is contrary to Policy 19 Housing in the Countryside of the Perth and Kinross Council Local Development Plan 2 (2019) and the associated Housing in the Countryside Supplementary Guidance 2020 (SG) as the site is not part of an existing building group and cannot be considered to extend the group into a definable site as the landscaping which has been planted along the northern boundary appears to have been planted with the sole purpose of creating a development site. The SG explicitly states that "fencing or young trees or hedging planted with the specific intention of creating a site will not be accepted as existing landscape features for the purposes of this Supplementary Guidance". The proposal also fails to meet any of the other categories of development outlined in the SG.

2 The proposal is contrary to Policy 9(b) of National Planning Framework 4 (NPF4) as the proposal is on a greenfield site and is not explicitly supported by policies of the Perth and Kinross Local Development Plan 2 (2019). The proposal also fails to meet any of the categories of development allowed by Policy 17: Rural Homes of NPF4.

3 The proposal is contrary to Policies 1A, 19 and 56 of the Perth and Kinross Council Local Development Plan 2 (2019) and Policies 14(c) and 23 of NPF4 which seek to ensure that an appropriate level of residential amenity for proposed dwelling is provided and states that there is a presumption against the siting of noise sensitive land uses near sources of noise generation. There is some doubt as to the existing level of use of the

neighbouring livery yard and farm buildings and the noise therefrom has the potential to impact detrimentally on the amenity of the proposed dwelling and a lack of information, in the form of a noise impact assessment, has been submitted to allow an assessment of this to be made.

4 The proposal is contrary to Policy 60B Transport Standards and Accessibility of the Perth and Kinross Local Development Plan 2 (2019) and Policy 13 of NPF4. There is a requirement for a 33 metre visibility splay to be created at the access from the site onto the private access. The existing hedge along the southern boundary of the site severely restricts visibility at the access points into the site and no indication of suitable visibility splays have been submitted. Furthermore, the hedge does not appear to be located within the red line boundary and therefore it would appear that it may not be in the control of the applicant.

Justification

The proposal is in accordance with the Development Plan and there are no material reasons which justify departing from the Development Plan.

Informatives

None

Procedural Notes

Not Applicable.

PLANS AND DOCUMENTS RELATING TO THIS DECISION

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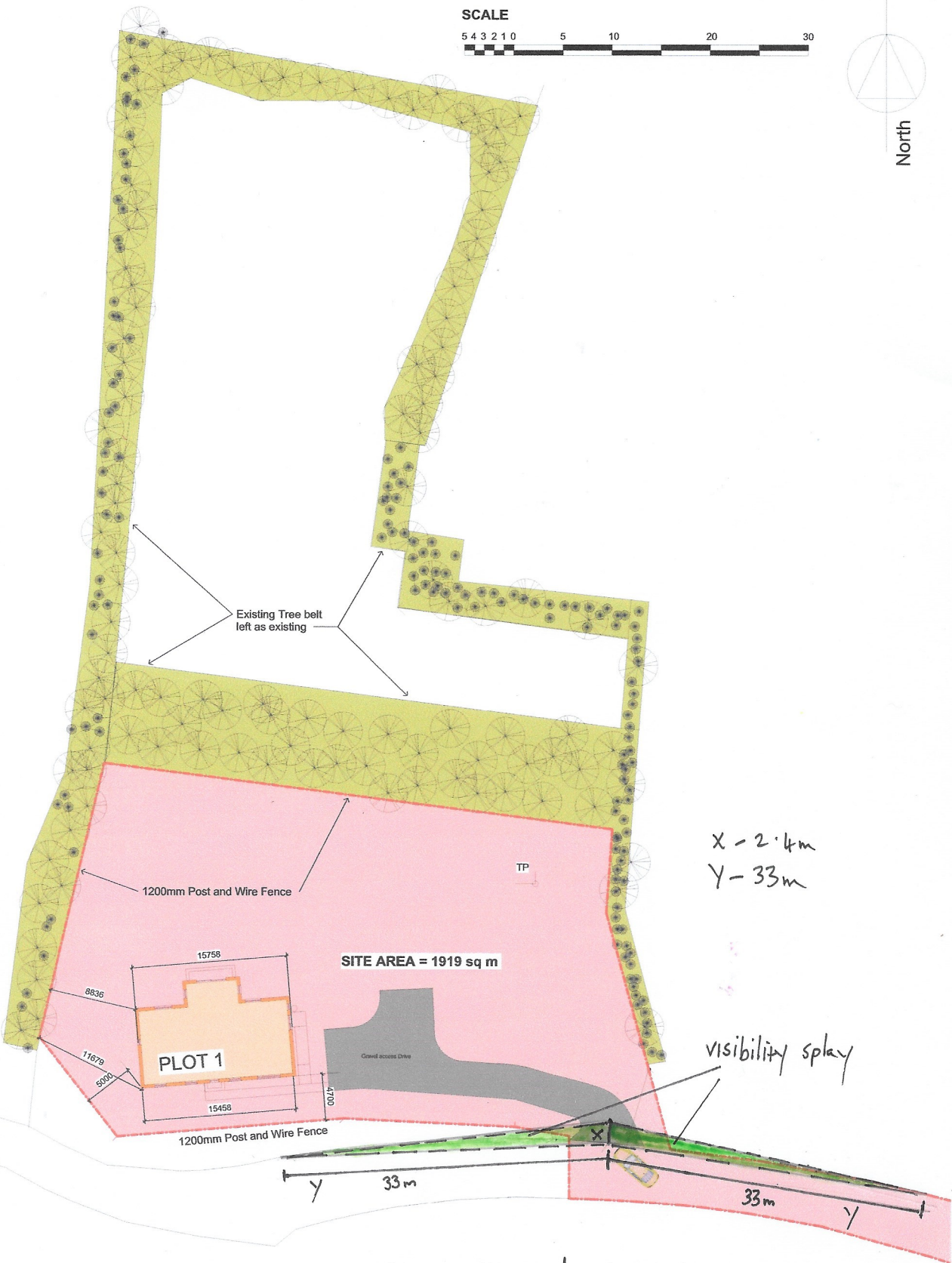
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* Splay is within appellant's landownership



Photo 1 West Boundary



Photo 2 North & West Boundary



Photo 3 South Boundary



Photo 4 South Boundary



Photo 5 East Boundary