

# 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**

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## Applicant(s)

Name Mr & Mrs Pigny  
Address The Walled Garden, Garth,  
Fortingall, Aberfeldy, Perth

Postcode PH15 2NF

Contact Telephone 1   
Contact Telephone 2 

E-mail\* 

## Agent

Name  
Address

Postcode

Contact Telephone 1  
Contact Telephone 2

E-mail\*

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

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Planning Authority

**Perth and Kinross**

Planning authority's application reference number 23/01987/FLL

Site address The Walled Garden PH15 2NF

Description of proposed development

Siting of ecopod

Date of application 01/02/2024

Date of decision (if any) 10<sup>th</sup> April 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.

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## Nature of application

- |    |   |                                     |
|----|---|-------------------------------------|
| 1. | Application for planning permission (including householder application)   | <input checked="" type="checkbox"/> |
| 2. | Application for planning permission in principle  | <input type="checkbox"/>            |
| 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) | <input type="checkbox"/>            |
| 4. | Application for approval of matters specified in conditions   | <input type="checkbox"/>            |

## Reasons for seeking review

- |    |  |                                     |
|----|--|-------------------------------------|
| 1. | Refusal of application by appointed officer  | <input checked="" type="checkbox"/> |
| 2. | Failure by appointed officer to determine the application within the period allowed for determination of the application | <input type="checkbox"/>            |
| 3. | Conditions imposed on consent by appointed officer   | <input type="checkbox"/>            |

## 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 mark more than one box if you wish the review to be conducted by a combination of procedures.

- |    |  |                                     |
|----|--|-------------------------------------|
| 1. | Further written submissions                                    | <input checked="" type="checkbox"/> |
| 2. | One or more hearing sessions                                   | <input checked="" type="checkbox"/> |
| 3. | Site inspection  | <input checked="" type="checkbox"/> |
| 4. | Assessment of review documents only, with no further procedure | <input type="checkbox"/>            |

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:

1 & 2 - the opportunity to correct misinformation if submitted by a 3<sup>rd</sup> party during the appeal process.  
We anticipate the scale and nature of this appeal should make this a straightforward and simple case, however.

## 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?                                 | No |
| 2. | Is it possible for the site to be accessed safely, and without barriers to entry? | No |

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

We wish to be present for practical, privacy and security reasons

## 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.

## Introduction

We wish to lodge this appeal / review to the Local Review Body (LRB) following the refusal of planning permission for the development as described above. The decision notice was issued on 10th April 2024.

Before responding to the two reasons for refusal, we want to say that we are an innocent party here. Although this is a retrospective application, we initially received professional advice that the ecopod did not need planning permission as proposed, and we proceeded accordingly. Planning officers began by telling us that planning permission is required because it consists of a dwellinghouse, (which is not as stated in the officer's Report of Handling), and even if it doesn't, it is located within the curtilage of a listed building. Therefore, officers advised that it is not permitted development. Planning officers have now changed their mind (as of 21st June) and confirm that we are not listed by association! This is central to the why we now find ourselves appealing a planning refusal when we should have been advised to apply for a retrospective certificate of lawfulness in the first instance. Due to incorrect advice and the changing stance of planning officers during this process, we have also missed the opportunity to withdraw the application and follow the correct process of permitted development for our ecopod. An email request to the planning officer on the 25th June failed to answer our questions: he declined to respond to our question on permitted development in relation to the now defunct curtilage listing, declined to confirm our understanding of what constitutes permitted development and declined to provide advice in order to negate the need for this appeal. In fact, not only were the questions avoided, the reply suggests that the LRB can respond on these matters, which is not correct; we understand the responsibility of the LRB to be solely to determine this Notice of Review, and therefore decide if planning permission should be granted. It is for the council to comment on permitted development rights. It seems that now 'the wheels are in motion', we have to pursue this appeal. See Appendix A - email exchange of 25th /26th June.

Given this context, it is essential that these two matters – a dwellinghouse and listed by association - are fully considered and addressed as part of the decision making process. They are material to the application. The following comments provide clarification of the position.

Firstly, and for the avoidance of doubt, the ecopod is not a dwellinghouse. It provides ancillary accommodation for the existing house. It never has been our intention or plan to use it in any other way. It is not a habitable space for day-to-day living and accommodation. Reassuringly, the officer's Report of Handling acknowledges now that it is an ancillary accommodation unit, and to be used for domestic purposes.

Secondly, the u-turn on listed status demonstrates that the standard checks, drawn from the published advice and guidance from Historic Environment Scotland, had either not been carried out at all or wholly failed in their consideration. A comprehensive report from Historic Environment Scotland (HES) issued on the 12th June confirmed The Walled Garden did not meet criteria for listing, and neither did it in 2007 when it was previously assessed. Planning officers also admit that they have not been consistent in their handling of planning applications within our immediate vicinity. Had these duties been carried out properly, we would not be in a position of appealing a planning refusal that should not exist at all.

To summarise, planning officers were wrong to advise the property is curtilage listed and they acknowledge that it is an ancillary accommodation unit for domestic purposes.

### Grounds of Appeal / Review

Turning now to the refusal of planning permission, there were two reasons for the decision. Reason No 1 indicates that the domestic unit does not comply with Scotland's National Planning Framework 4 (NPF4), and in particular Policy 14. We were not familiar with this document, and it was never mentioned until the decision was issued.

Our research reveals that the Scottish Government describes it as "our National Spatial Strategy for Scotland. It sets out our spatial principles, national developments and national planning policy". In this strategic context, are officers seriously suggesting that a small domestic structure in the garden of a modest house in rural Perthshire is unacceptable because it has fallen foul of the country's principal strategic planning document? This cannot be right; a small domestic structure is a million miles away from matters of national strategic planning and major development. Reading between the lines, we have the impression that because NPF4 has some status in the context of the Development Plan, officers had to make sure that it formed part of the decision notice. Or is this too cynical? We invite members of the LRB to take a sensible and pragmatic view of this, and decide whether it is correct to have modest domestic developments of this nature assessed by some national strategic framework.

There is one specific point we would like to add on the first reason for refusal. It states that the proposal does not improve the quality of the area and does not provide positive ancillary function (whatever that means). We have been advised that there is no requirement in law for any proposal to improve quality or provide positive change. Planning permission cannot be refused for such reasons. The decision is therefore invalid in this respect. The LRB may wish to obtain legal opinion on this before issuing its decision.

Turning now to the second reason for the decision, this relates to a development plan policy. Nevertheless, it makes reference to different issues that appear to be central to the decision. We have tried to distil these down to four salient points, which are listed below, together with our comments responding to the different concerns.

1. The development does not respect the established character and amenity of the area.  
Comment – The planning officers note in the delegated report that the ecopod is modest, limited in scale and low height. The character of the Garth area is not defined by the properties within it, all of which are different from each other, ranging from gothic to modern, varying in construction

materials and size, not typically Scottish in style nor aspire to a common design. The diversity of builds in Garth is arguably its established character, and positive and welcome for well-being. The planning officers noted that the property is atypical to that of a standard dwellinghouse curtilage, which is true of almost every property here to some degree and is not grounds for refusing planning permission or there would still be only a handful of houses in Garth. The established amenity is questionable when the area comprises a significant proportion of second homes, rentals, an AirBnB and new-build plots. In addition, what has or has not been 'established' does not necessarily define what is best going forward. The ecopod does nothing to disrespect the area, it does not seek to change its function, nor cause any harm.

2. The development impacts on the established sense of space. Comment- The planning officers note the scale and mass is absorbed into the wider landscape with negligible impact and does not affect the special qualities or objectives of the Loch Tay Local Landscape Area. Sitting very comfortably within the boundary of a private garden reflecting well the wooded surrounds, It is not evident how the ecopod could be considered to negatively impact on the 'sense of space'.

3. The development does not appreciate its elevated position and consequential visual impact. Comment - It is unfathomable what is meant by elevated or appreciate. The whole area of Garth is on a hill with each property either above or below its neighbours. Ours arguably has least visual impact of all being the only single height property and set well back from the shared driveway by a private driveway of several metres. The ecopod itself sits on the ground and is not elevated. The considerable distance from other properties and the shared driveway plus the numerous trees/bushes means there is negligible, if at all, line of sight from outside our boundary in reality. Indeed, the planning officers confirm THERE IS MUTUAL PRIVACY to neighbouring properties.

4. The development does not relate well to the approach to the house, and is not seen as ancillary to the house. Comment – The planning officers note that we have justified its siting within the curtilage of our property; that is, our rear garden, sitting very comfortably within its plot. They also note there are no visual concerns on approach to the property and minimal impact to the overall setting. We have already addressed the issue of ancillary.

#### Conclusions

In submitting this Notice of Review, we have tried to be fair and reasonable in responding to the terms of the Planning Officer's decision. Broadly speaking, it appears that officers may in part be responding to the representations from a minority of neighbours and others, and found reasons to refuse our application based upon a national strategy for major development and a development plan policy that cannot be sustained. We do hope that members of the LRB can see through all of this, and see for themselves that there is no reasonable basis for the refusal of planning permission.

If, however, our Notice of Review is rejected, it is anticipated that formal enforcement action may follow. Given the issues that would appear to indicate that the structure is in fact permitted development, we will strongly challenge the enforcement action. And if any appeal is upheld, we will have serious questions for the Planning Service in relation to their investigation, planning advice on site constraints and the administration of their statutory function. Hopefully it will not come to that, and we respectfully request that the LRB grant planning permission for the development, subject to any conditions that are deemed to be reasonable and necessary.

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.

Appendix A - email exchange on permitted development 25 and 26 June

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.

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### 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.

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### 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: A J Pigny

Date: 27<sup>th</sup> June 2024

**From:** Andrew Rennie [REDACTED]  
**Subject:** RE: Decision Notice - 23/01987/FLL  
**Date:** 26 June 2024 at 08:50  
**To:** Pigny Home [REDACTED]  
**Cc:** Mary Barr [REDACTED]

AR

Dear Mandy and Patrick,

The decision on the application remains and stands.

I can confirm that the Walled Garden is no longer considered as listed by association, and the informative (not legally binding) on the Decision Notice is to be ignored. I have added case notes onto the relevant case files to clarify the situation.

As per the email dated 29<sup>th</sup> March 2024:

*"It is our interpretation that, as the ancillary accommodation offers overnight accommodation, a kitchenette, WC facility and living space, it fails criteria (2)(a) and thus requires planning permission. ~~Even if this point were to be argued, the proposal would require planning permission as it is located within the curtilage of a listed building (by association to the category B-listed Garth House) as confirmed by our Conservation Team. Information on HES' website informs to contact the planning authority in checking if a building is covered by a listing: [What is Listing? | Public Body for Scotland's Historic Environment.](#)"~~*

I should also note, although there is reference within the Delegated Report regarding the associated listing, the proposal was not refused on the relevant heritage policies.

The points made within your email below can form the basis of argument for the Local Review Body to consider.

Kind regards,  
Andrew

**Andrew Rennie**

**Planning Officer – Development Management | Economy, Development and Planning**

: [Pullar House, 35 Kinnoull Street, Perth PH1 5GD](#)

[REDACTED]

: [pkc.gov.uk/planning](http://pkc.gov.uk/planning)

: [pkc.gov.uk/mentalhealth&wellbeing](http://pkc.gov.uk/mentalhealth&wellbeing)



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**From:** Pigny Home [REDACTED]  
**Sent:** Tuesday, June 25, 2024 5:08 PM  
**To:** Andrew Rennie [REDACTED]  
**Cc:** Mandy Pigny [REDACTED]  
**Subject:** Re: Decision Notice - 23/01987/FLL

importance: high

Dear Andrew,

Further to your email of 21 June 2024 to Maff at Mozolowski & Murray, in which you confirmed that The Walled Garden is no longer considered to be listed by association, this now appears to have implications for our ecopod development, as the previously alleged listed status was central to your advice and decision on the need for planning permission. This was set out in your email of 29 March 2024.

In that email, you referred to the Class of permitted development that applied to our development, namely Class 3A. Can we now reiterate and confirm the position on each paragraph within this Class.

2(a) The ecopod is NOT a dwelling. A dwelling is a house, or a flat, or other place of residence. The ecopod never was, and never has been, and never will nor could be used for such purposes. It was not provided for this purpose. As we have mentioned previously, it is for the use of the existing household, or friends or family that may be visiting the house, and is therefore entirely incidental to the use and enjoyment of the house. There is no separate residential use, no new planning unit and no business use. The accommodation is akin to that of a house extension, but detached from rather than attached to the house.

2(b) The development is not forward of any elevation wall which fronts a road. This was agreed by the Council, as stated in the report of handling for application number 23/00666/LAW.

2(c) The height of the eaves does not exceed 3 metres.

2(d) The maximum height of the development does not exceed 4 metres.

2(e) N/a

2(f) The development does not exceed 50% of the front and rear curtilage within which it is located.

2(g) N/a, given that the Council has now confirmed that the Walled Garden is no longer considered to be a listed building by association.

2(h) N/a

— . . . . . — . . . . .



The factual position is therefore clear and unambiguous. Can you kindly confirm that you agree with this factual position, and that the ecopod, as described in our planning application, can now be regarded as permitted development under the relevant planning legislation. Can you then advise us on the consequential status of the decision to refuse planning permission, as we had intended to submit a Notice of Review before 9 July.

Accordingly, we would be grateful if you could reply within the next 7 days.

Kind regards

Mandy & Patrick

On 28 May 2024, at 12:02, Andrew Rennie [REDACTED] wrote:

Good morning Mandy & Patrick,

The deadline would be 23:59pm on 9<sup>th</sup> July 2024.

I have copied in Local Review Body administration for awareness and as per the email sent out previously, I think you should have received relevant forms. Once completed, the notice of review should be addressed to:

The Secretary  
Local Review Body  
Perth and Kinross Council  
Committee Services  
Council Building  
2 High Street  
Perth  
PH1 5PH


Email [planninglr@pkc.gov.uk](mailto:planninglr@pkc.gov.uk)

The 'Notice of Review' form together with guidance notes for completion can be obtained from Perth & Kinross Council website <https://www.pkc.gov.uk/localreviewbody>

Kind regards,  
Andrew

**Andrew Rennie**

Planning Officer – Development Management | Economy, Development and Planning

: [Pullar House, 35 Kinnoull Street, Perth PH1 5GD](#)







: [pkc.gov.uk/planning](http://pkc.gov.uk/planning)

: [pkc.gov.uk/mentalhealth&wellbeing](http://pkc.gov.uk/mentalhealth&wellbeing)



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**From:** Pigny Home   
**Sent:** Tuesday, May 21, 2024 7:55 AM  
**To:** Andrew Rennie < >  
**Cc:** Mary Barr  Mandy Pigny   
**Subject:** Re: Decision Notice - 23/01987/FLL

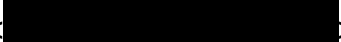
Hello Andrew

We hope you are well and enjoying the welcome sunshine.

Could you please confirm what the deadline is for our appeal and that we can email the form plus appendices/attachments?

Many thanks

Mandy & Patrick

On 23 Apr 2024, at 08:14, Andrew Rennie  
< > wrote:


Good morning Mandy & Patrick,

The requested photos on this occasion have been agreed to be redacted and have since been actioned by our admin team.

Kind regards,  
Andrew


**Andrew Rennie**

**Planning Officer – Development Management | Economy, Development and Planning**


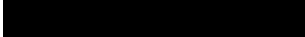
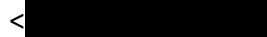
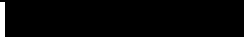
: [Pullar House, 35 Kinnoull Street, Perth PH1 5GD](#)



: [pkc.gov.uk/planning](http://pkc.gov.uk/planning)

: [pkc.gov.uk/mentalhealth&wellbeing](http://pkc.gov.uk/mentalhealth&wellbeing)

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**From:** Pigny Home <  
**Sent:** Thursday, April 18, 2024 6:31 AM  
**To:** Development Management  
<[DevelopmentManagement@pkc.gov.uk](mailto:DevelopmentManagement@pkc.gov.uk)>  
**Cc:** Andrew Rennie ; Mary Barr  
<>; Mandy Pigny   
**Subject:** Re: Decision Notice - 23/01987/FLL

CAUTION: This email originated from an external organisation. Do not follow guidance, click links, or open attachments unless you have verified the sender and know the content is safe.

Thank you for your email and the attached report.

We would like to request that the 3 pictures that show aspects of our front garden be removed from the published report please. We feel that a narrative description relating to your point about re-siting the ecopod suffices in the report without needing to include photos; we are uncomfortable with these pictures being in the public domain for security and privacy reasons.

We have been clear from the outset that re-siting the ecopod to this location is not physically possible so we suggest the photos are irrelevant, aside from our concerns expressed above.

We confirm that we will be making an appeal.

Andrew - Please note that we did respond to your email of the 29th March (good Friday) on the 2nd April, requesting an additional week to consider our options. You advised that you had set a deadline of the 12th April yet the notice was published on the 10th April (ahead of your stated date and without consideration of our request for more time), for which we were not prepared.

We look forward to hearing from you regarding the photos.

Kind regards

Mandy & Patrick Pigny

> On 10 Apr 2024, at 13:44,  
> <[developmentmanagement@pkc.gov.uk](mailto:developmentmanagement@pkc.gov.uk)>  
> <[developmentmanagement@pkc.gov.uk](mailto:developmentmanagement@pkc.gov.uk)> wrote:  
>  
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