

# 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 DEREK ALLAN

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KELTY

Postcode KY4 0JB

Contact Telephone 1

Contact Telephone 2

Fax No

E-mail\*

## Agent (if any)

Name MARK WILLIAMSON

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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 24/01233/FL

Site address LAND 20m SOUTH OF HILLVIEW, KINNARD, BLAIRADAM, KELTY  
KY4 0JB

Description of proposed development ERECTION OF A DWELLINGHOUSE

Date of application 13 AUGUST 2024 Date of decision (if any) 10 OCT 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 NOTICE OF REVIEW STATEMENT.

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 10 OCTOBER 2024  
 DOC 2. REPORT OF HANDLING 3 OCTOBER 2024  
 DOC 3. PLANNING ENFORCEMENT CLOSING REPORT 19 JAN 2023  
 FIG 1. EXTENSION OF BUILDING GROUP  
 FIG 2. AERIAL PHOTOGRAPH

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

6 JAN 2025

## Statement

### Notice of Review

Erection of a dwellinghouse on Land 20 Metres South of Hillview  
Kinnaird Blairadam, Kelty, KY4 0JB

24/01233/FLL

### Introduction & Background

This Notice of Review is submitted following the refusal of planning permission under delegated powers on the 10 October 2024 for the erection of a dwellinghouse on land 20 metres south of Hillview, Kinnaird, Blairadam, under application 24/01233/FLL. (Doc 1)

The reasons for refusal were:-

- 1. The proposal is on a greenfield site that is not allocated for development and development on the site is not explicitly supported by policies in the Local Development Plan. It is therefore contrary to Policy 9 b), Brownfield, Vacant and Derelict Land and Empty Buildings of National Planning Framework 4 (2023).*
- 2. The proposal is contrary to Policy 17 Rural Homes of National Planning Framework 4 (2023) as it fails to meet any of the 8 criteria listed within Policy 17a).*
- 3. The proposal is contrary to Policy 19, Housing in the Countryside of the Perth and Kinross Local Development Plan 2 (2019) as it fails to comply with any of the 6 categories listed in the policy. In particular the site has been specifically cleared of woodland and the boundaries planted with non-native hedging to specifically create a site for development. This is contrary to the Housing in the Countryside Supplementary Guidance (2020) Category 1, Building Groups. In addition, development of the site does not safeguard the character of the countryside and does not ensure that high standards of siting and design are achieved.*
- 4. The proposal is contrary to Policy 14a) and b), Design, Quality and Place, of National Planning Framework 4 (2023), and Policy 1A and 1Bb), Placemaking, of the Perth and Kinross Local Development Plan 2 (2019). The proposed development would detract from the visual amenity and landscape character of the area and does not contribute to creating a distinctive, pleasant or sustainable place.*
- 5. The proposal is contrary to Policy 39, Landscape, of the Perth and Kinross Local Development Plan 2 (2019) as development would conflict with the aim of maintaining and enhancing the landscape qualities of Perth and Kinross. Such*

*piecemeal development, sited in an area of former woodland, is not appropriate to maintaining and enhancing the landscape qualities of Perth and Kinross.*

It is considered that the Review proposal is in accordance with Perth and Kinross Local Development Plan 2019 Housing in the Countryside Policy and Supplementary Guidance, as it is an acceptable extension of a building group into a definable site which has satisfactory containment to the wider countryside. The site is not a greenfield site but land associated with the existing housing.

The Review dwellinghouse is acceptable in scale and design within the context of the existing building group and housing nearby across the road to the south east and it will not have any adverse impact on the visual amenity or character of the countryside at this location.

## Development Plan

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

### **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 aims 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 9: Brownfield, vacant and derelict land and empty buildings
- Policy 14: Design, Quality and Place
- Policy 16: Quality Homes
- Policy 17: Rural Homes

## **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 site is located within the landward area of the LDP2, where the following policies are applicable,

- Policy 1A: Placemaking
- Policy 1B: Placemaking
- Policy 5: Infrastructure Contributions
- Policy 19: Housing in the Countryside
- Policy 39: Landscape
- Policy 53B: Water Environment and Drainage: Foul Drainage
- Policy 53C: Water Environment and Drainage: Surface Water Drainage
- Policy 53E: Water Environment and Drainage: Water Supply
- Policy 60B: Transport Standards and Accessibility Requirements: New Development Proposals

### **Statutory Supplementary Planning Guidance**

The following statutory SPG are applicable to the proposal,

- Developer Contributions & Affordable Housing (adopted 2020)
- Supplementary Guidance - Placemaking (adopted in 2020)
- Housing in the Countryside Guidance (adopted 2020)

### **Non-Statutory Planning Guidance**

The following non-statutory SPG are applicable,

- Planning Guidance - Planning & Biodiversity

## **NATIONAL PLANNING GUIDANCE**

The Scottish Government expresses its planning policies through 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

### **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 reasons for the review and matters considered refer to the reasons for refusal, which can be summarised: -

*i) The proposal is contrary to the Local Development Plan Housing in the Countryside Policy 19 and the associated Council's Supplementary Guidance on Housing in the Countryside in relation to building groups.*

*ii) The proposal will have a detrimental impact on visual and landscape amenity contrary to Policy 39 of the local development plan and Policy 14a) and b), Design, Quality and Place, of National Planning Framework 4 (2023), and Policy 1A and 1Bb), Placemaking, of the Perth and Kinross Local Development Plan 2 (2019).*



*iii) As a consequence of being considered contrary to Policy 19 of the local development plan the Review proposal is also considered contrary to NPF Policies 9 and 17.*

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

*i) The proposal is contrary to the Local Development Plan Housing in the Countryside Policy 19 and the associated Council's Supplementary Guidance on Housing in the Countryside in relation to building groups.*

The Delegated Report concluded that the proposal does not satisfy any of the categories of the Housing in the Countryside Guidance where a dwellinghouse would be acceptable. (Doc 2)

This is not accepted in this Review and the reasons for this were previously outlined in the Supporting Statement accompanying the Review application and are re-iterated below.

The Review proposal is considered to be in accordance with Policy 19 of the LDP and the Council's Housing in the Countryside Supplementary Guidance 2020 where there is support for the extension of a building group into a definable site – the policy guidance states:-

*“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 case the application site is well contained into a readily definable site with containment to the north by the existing building group, to the east by the B996 public road and to the west and south by the Kinnaird Burn – as indicated in Fig 1 Extension of Building Group below. This is in accordance with the criteria quoted above from the Housing in the Countryside Policy Guidance.

Contrary to the objections led by the Community Council, it is clear as indicated in Fig 1 below, that the Review site does have an established permanent southern boundary – Kinnaird Burn is a well-established existing landscape feature, more permanent than any woodland in the vicinity. The Kinnaird Burn provides a defensible boundary to any development pressure further south of it from the existing building group to the north.

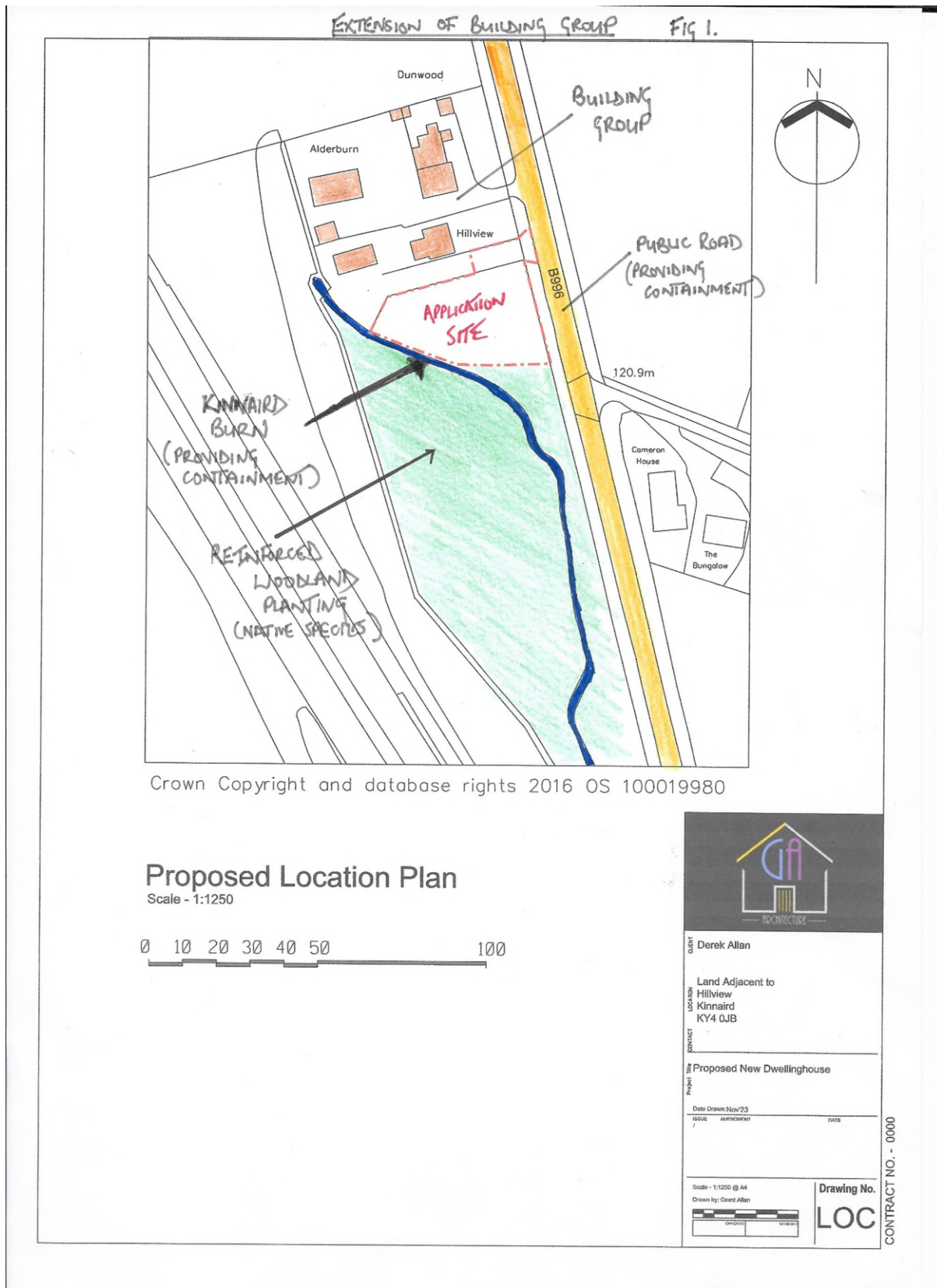


Fig 1 – Extension of a Building Group



Fig 2 – Aerial Photograph (Google)

It was noted in the Delegated Report that *“The land surrounding the proposed dwellinghouse was subject of an Enforcement Notice to restore it to a more natural state. This has not yet been achieved.”*

It is important to note that the Enforcement case 19/00310/ALUNDV relating to the land around the proposed house was closed on 19 January 2023, where it was concluded that, (Doc 3)

*“considering the nature of the breach it's considered not in the public interest to pursue further”.*

The status and character of this land in planning terms is therefore considered to be acceptable as it is in its current form.

In accordance with the Housing in the Countryside Supplementary Guidance siting criteria the Review dwellinghouse will respect the character, scale and form of the existing group, and will be integrated into the existing layout and building pattern (Fig 2). As explained further below the Review proposal will not detract from the visual amenity of the group when viewed from the wider landscape and the plot size affords a high standard of residential amenity for existing and the proposed new dwellinghouse.

It is considered that the Review proposal is in accordance with the adopted local development plan Housing in the Countryside Policy and Supplementary Guidance as it is an acceptable extension of a building group into a definable site which has satisfactory containment to the wider countryside.

ii) The proposal will have a detrimental impact on visual and landscape amenity contrary to Policy 39 of the local development plan and is contrary to Policy 14a) and b), Design, Quality and Place, of National Planning Framework 4 (2023), and Policy 1A and 1Bb), Placemaking, of the Perth and Kinross Local Development Plan 2 (2019).

In the Review application the house design had been revised from the 2023 application.

The Review dwellinghouse is traditional in form and is similar in design, scale and external materials to the house next door at Hillview. The proposed dwellinghouse respects the existing building line addressing the public road. It will not have any adverse impact on the quality of the surrounding built and natural environment. Being similar in design to the neighbouring house it will not have any adverse impact on the visual amenity, character or appearance of the built development at Kinnaird.

As you drive north and southwards on the B996 the Review site is not readily noticeable, with low levels of visibility from the public domain. The existing housing on the other side of the road to the south east of the Review site is more noticeable and visually prominent being on more elevated ground.

There will be no adverse impact on the landscape character of the area as a result of the Review proposal.

As you can see from the aerial photograph – Fig 2 above, the Review site is an area of extended curtilage ground and there are no trees on this ground which will be lost to accommodate the dwellinghouse.

The former woodland scrub area in the vicinity of and to the south of the site and south of the Kinnaird Burn was regenerated un-managed woodland and was not characterised by indigenous species. As part of the Review proposal the applicant has proposed on his landownership a planting scheme to the south of the Kinnaird Burn with native species which will enhance the landscape quality of the area. Hedge planting on the Review site will enhance habitat opportunities.

For the above reasons the Review proposal will not have an adverse impact on the visual amenity or landscape character of the area and is in accordance with Policy 39 of the local development plan and Policy 14a) and b), Design, Quality and Place, of National Planning Framework 4 (2023), and Policy 1A and 1Bb), Placemaking, of the Perth and Kinross Local Development Plan 2 (2019).

iii) As a consequence of being considered contrary to Policy 19 of the local development plan the Review proposal is subsequently considered contrary to NPF Policies 9 and 17.

In the Delegated Report it was concluded that the Review proposal was not in accordance with the Local Development Plan's Housing in the Countryside Policy and associated Supplementary Guidance. The Report also considered that the Review proposal was also not in accordance with NPF 4 policies 9 and 17 as concluded in reasons for refusal 1 and 2.

In this Review it is considered that the proposal is in accordance with the Local Development Plan's Housing in the Countryside Policy 19 and associated Supplementary Guidance and therefore does not require any assessment of the principle of the proposal under NPF 4 policies 9 and 17, as an extension of a building group is a scenario which is not addressed under these NPF 4 policies, but only under the adopted Local Development Plan Policy 19.

The principle of the Review proposal as an extension to an existing group is acceptable under Policy 19 of the adopted Local Development Plan 2019.

#### Other Planning Considerations

The Review proposal is acceptable in terms of impact on neighbouring residential amenity and there is sufficient amenity garden ground for existing housing and the Review proposal. There are no objections to the Review proposal on road safety grounds and on flood risk.

#### Conclusions

It is considered that the Review proposal is in accordance with the adopted Local Development Plan Housing in the Countryside Policy 19 and Supplementary Guidance as it is an acceptable extension of a building group into a definable site which has satisfactory containment to the wider countryside. The proposal is in accordance with the siting criteria of this policy guidance.

The Review proposal will not have an adverse impact on the visual amenity or landscape character of the area and is in accordance with Policy 39 of the local development plan and Policy 14a) and b), Design, Quality and Place, of National Planning Framework 4 (2023), and Policy 1A and 1Bb), Placemaking, of the Perth and Kinross Local Development Plan 2 (2019).

For the reasons outlined above it is considered that the Review proposal for a single dwellinghouse at this location within the context of neighbouring housing is acceptable and it is respectfully requested that the Review is upheld.



Mr Derek Allan  
c/o Mark Williamson  
Hermitage Drive  
Perth  
PH1 2SY

Pullar House  
35 Kinnoull Street  
PERTH  
PH1 5GD

Date of Notice: **10th October 2024**

## **TOWN AND COUNTRY PLANNING (SCOTLAND) ACT**

Application Reference: **24/01233/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 13th August 2024 for Planning Permission for **Erection of a dwellinghouse Land 20 Metres South Of Hillview Kinnaird Blairadam Kelty KY4 0JB**

**David Littlejohn**  
**Strategic Lead (Economy, Development and Planning)**

### **Reasons for Refusal**

1. The proposal is on a greenfield site that is not allocated for development and development on the site is not explicitly supported by policies in the Local Development Plan. It is therefore contrary to Policy 9 b), Brownfield, Vacant and Derelict Land and Empty Buildings of National Planning Framework 4 (2023).
2. The proposal is contrary to Policy 17 Rural Homes of National Planning Framework 4 (2023) as it fails to meet any of the 8 criteria listed within Policy 17a).
3. The proposal is contrary to Policy 19, Housing in the Countryside of the Perth and Kinross Local Development Plan 2 (2019) as it fails to comply with any of the 6 categories listed in the policy. In particular the site has been specifically cleared of woodland and the boundaries planted with non-native hedging to specifically create a site for development. This is contrary to the Housing in the Countryside Supplementary Guidance (2020) Category 1, Building Groups. In addition development of the site does not safeguard the character of the countryside and does not ensure that high standards of siting and design are achieved.
4. The proposal is contrary to Policy 14a) and b), Design, Quality and Place, of National Planning Framework 4 (2023), and Policy 1A and 1Bb), Placemaking, of the Perth and Kinross Local Development Plan 2 (2019). The proposed development would detract from the visual amenity and landscape character of the area and does not contribute to creating a distinctive, pleasant or sustainable place.

5. The proposal is contrary to Policy 39, Landscape, of the Perth and Kinross Local Development Plan 2 (2019) as development would conflict with the aim of maintaining and enhancing the landscape qualities of Perth and Kinross. Such piecemeal development, sited in an area of former woodland, is not appropriate to maintaining and enhancing the landscape qualities of Perth and Kinross.

### **Justification**

The proposal is not 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](http://www.pkc.gov.uk) "Online Planning Applications" page**

Plan Reference

01

02

03

04

05

06

07

08

09



## NOTES

1. If the applicant is aggrieved by the decision to refuse planning permission or an application for approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the Planning Authority to review the case under Section 43A of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. 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 [www.pkc.gov.uk](http://www.pkc.gov.uk)

2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the Planning Authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

The foregoing notes are explanatory only and reference must be made to the Town and Country Planning (Scotland) Acts and the appropriate Regulations or Orders for their full context.

## REPORT OF HANDLING

### DELEGATED REPORT

Ref No	24/01233/FLL	
Ward No	P8- Kinross-shire	
Due Determination Date	12th October 2024	
Draft Report Date	3rd October 2024	
Report Issued by	Persephone Beer	Date 3rd October 2024

**PROPOSAL:** Erection of a dwellinghouse

**LOCATION:** Land 20 Metres South Of Hillview Kinnaird Blairadam Kelty  
KY4 0JB Blairadam

#### 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

The proposal is for a 3-bedroom detached house with accommodation over two levels measuring around 12m by 8m. The house will mainly be rendered with some "Fyfestone" on the front and side elevation and timber cladding on the dormers. The roof is of grey tiles.

The site is adjacent to an existing dwellinghouse, Hillview, that received planning permission on appeal in 2008 when the land subject to this application was woodland. The appeal was granted on the basis that the existing woodland gave the site a landscaped setting and containment. Hillview was considered to complete the group. Following felling of the woodland a number of planning applications have been put forward on the site. This includes a retrospective application (20/01207/FLL) for change of use to garden ground. This was refused with a small section being the subject of a separate retrospective application to form an access and parking area (22/00505/FLL). This application was approved with the unauthorised garden ground being required to be revegetated.

An application was refused, in June 2024, for the erection of a single storey dwellinghouse on the site of this current application. The applicant did not seek a review of the decision and is seeking to address the refusal reasons with the submission of this application.

#### SITE HISTORY

06/00113/FUL Erection of a dwellinghouse 7 April 2006 Application Refused

06/01874/FUL Erection of a detached dwellinghouse (Re-submission 06/00113/FUL)  
6 August 2007 Application Refused (Allowed on appeal)

11/01874/FLL Removal of condition 3(ii) of planning consent 06/01874/FUL to remove bus boarders pick up/drop off point 22 December 2011 Application Approved

16/00416/FLL Erection of a garage with ancillary accommodation 20 April 2016 Application Refused

16/01235/FLL Erection of ancillary accommodation 29 August 2016 Application Approved

18/00450/FLL Siting of 4no. holiday accommodation units, formation of a vehicular access and associated works 26 September 2018 Refused (appeal to LRB dismissed).

19/00164/FLL Erection of ancillary accommodation, boundary fence and formation of vehicular access 13 February 2019 Application returned.

19/00204/FLL Change of use of woodland to garden ground, siting of ancillary accommodation, erection of a fence and formation of vehicular access (in part retrospect) 18 April 2019 Application Refused

19/00812/LAW Siting of a caravan for ancillary accommodation use (proposed) 15 July 2019 Application Approved

20/01207/FLL Change of use from agricultural land to form extension to garden ground (in retrospect) 8 November 2020 Application Refused

22/00505/FLL Change of use from open space to form extension to garden ground, formation of vehicular access and parking area (in retrospect) 22 July 2022 Application Approved

23/02135/FLL Erection of a dwellinghouse 18 June 2024 Application Refused

## **PRE-APPLICATION CONSULTATION**

Pre application Reference: 23/00065/PREAPL

## **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 4: Natural Places  
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 17: Rural Homes

## **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 5: Infrastructure Contributions  
Policy 19: Housing in the Countryside  
Policy 32: Embedding Low & Zero Carbon Generating Technologies in New Development  
Policy 39: Landscape  
Policy 40A: Forestry, Woodland and Trees: Forest and Woodland Strategy  
Policy 40B: Forestry, Woodland and Trees: Trees, Woodland and Development  
Policy 52: New Development and Flooding  
Policy 53B: Water Environment and Drainage: Foul Drainage  
Policy 53C: Water Environment and Drainage: Surface Water Drainage  
Policy 53E: Water Environment and Drainage: Water Supply  
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 - Forest & Woodland Strategy](#) (adopted in 2020)
- [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 - 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

### **Creating Places 2013**

Creating Places is the Scottish Government's policy statement on architecture and place. It sets out the comprehensive value good design can deliver. It notes that successful places can unlock opportunities, build vibrant communities and contribute to a flourishing economy and set out actions that can achieve positive changes in our places.

### **Designing Streets 2010**

Designing Streets is the policy statement in Scotland for street design and changes the emphasis of guidance on street design towards place-making and away from a system focused upon the dominance of motor vehicles. It was created to support the Scottish Government's place-making agenda, alongside Creating 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. No Scottish Water waste water infrastructure in the area. Private options treatment required.

## Internal

### Transportation And Development

No objection subject to conditions with regard to provision of a bus boarder and details of arrangements for servicing and desludging of the septic tank to be provided.

### Development Contributions Officer

No developer contributions required.

### Environmental Health (Contaminated Land)

A review of the proposed development site did not raise any real concerns, although historical mapping indicates that the proposed development is close to former mining land which may have resulted in contamination in the vicinity of the site. Should any contamination be found during the approved works, works should cease, and the Land Quality team should be contacted on 01738 475000 or es@pkc.gov.uk for further advice.

### Cleish And Blairadam Community Council

Late objection to the proposal.

## REPRESENTATIONS

1 representation was received objecting to the proposal that highlighted the following matters:

- Principle is contrary to National Planning Framework 4 and Perth and Kinross Local Development Plan 2.
- Contrary to policies 39, Landscape and 1A and 1B, Placemaking of LDP2
- Contrary to NPF4 policies 9b, Brownfield, 14a and 14b Design, Quality and Place

1 late representation of objection was also received.

### Additional Statements Received:

Screening Opinion	EIA 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	Planning statement submitted
Report on Impact or Potential Impact eg Flood Risk Assessment	Not required.

## 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**

The previous refusal on this site (23/02135/FLL) highlighted that the principle of residential development could not be supported as it was contrary to Development Plan policy. The Development Plan framework in terms of national and local policies has not changed. The consideration of the principle of development on the site therefore is the same as previously set out.

The proposal is for the erection of a dwellinghouse on a site that is not within an area defined by a settlement boundary.

Policy 9 b) of NPF4 states that proposals on greenfield sites will not be supported unless the site has been allocated for development or the proposal is explicitly supported by policies in the LDP. The proposal is on a greenfield site that is not allocated for development and development on the site is not explicitly supported by policies in the Local Development Plan.

Policy 17 of NPF4 promotes the development of rural homes. In particular support is given to development in previously inhabited areas with greater constraint being applied in areas of pressure. The Local Development Plan will identify the different approaches for different areas. NPF4 policy intent with regard to rural homes is to encourage, promote and facilitate the delivery of more high quality, affordable and sustainable homes in the right locations.

Policy 17 sets out 8 criteria for the development of suitably scale, sited and designed development that is in keeping with the character of the area. This proposal does not meet any of these criteria:

The site :

- i. Is not allocated for housing;
- ii. is not brownfield land;
- iii. does not reuse a redundant building;
- iv. does not secure a historic asset;
- v. is not necessary to support the sustainable management of a viable rural business;
- vi. is not retirement succession of a viable farm holding;
- vii. is not subdivision of an existing residential dwelling; and
- viii. does not reinstate a former dwellinghouse or is a one-for-one replacement of an existing permanent house.

NPF4 takes precedence over the Local Development Plan. However, the proposal is also contrary to policy 19 of the LDP. This supports proposals for the erection of houses in the countryside subject to them falling into at least one of the following categories:

- 1) building Groups
- 2) infill sites
- 3) new houses in the open countryside on defined categories of sites as set out in section 4 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.

Policy 19 of the LDP(2) is supplemented by the Housing in the Countryside Guide November 2020.

In this case the only section of the policy and guide that is relevant to this site is Category 1) Building Groups. This states that consent will be granted for houses within building groups provided they do not detract from the residential and visual amenity of the group. Consent will also be granted for houses which extend the group into definable sites formed by existing topography and or well established landscape features which will provide a suitable setting.

A building group is defined as 3 or more buildings of a size at least equivalent to a traditional cottage, whether they are residential and / or business / agricultural nature. Small ancillary premises such as domestic garages and outbuildings will not be classed as buildings for the purposes of the policy.

The Supplementary Guidance is very clear with regard to situations where the addition to a building group is not supported. In particular 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 purpose of this Supplementary Guidance, nor will the felling of an area of woodland or orchard specifically to create a site".

In this case the past history of the site has demonstrated that the felling of trees and more recently the planting of fast growing conifer trees along the front and side boundaries has been undertaken with the specific intention of creating a site. This is contrary to the Council's Housing in the Countryside policy and guidance.

The principle of the development is therefore contrary to the NPF 4, policy 9 b), Brownfield, Vacant and Derelict Land and Empty Buildings, policy 17, Rural Homes, and the Local Development Plan, Housing in the Countryside policy 19.

The proposal should also be considered in terms of placemaking policies that seek to ensure that development makes a positive contribution to the built and natural environment and to policies that seek to protect landscape character. Further discussion of these aspects and other matters is set out in the report below.



## Design and Layout

Policies 1A and 1B Placemaking of the Perth and Kinross Local Development Plan require proposals to contribute positively to the quality of the surrounding built and natural environment, respecting the character and amenity of the place. Policy 14, Design, Quality and Place of NPF4 requires proposals to be designed to improve the quality of an area and to be consistent with six qualities of successful places including pleasant places that support attractive natural and built spaces, distinctive places that give attention to detail of local architectural styles and natural landscapes and sustainable places that support the efficient use of resources that allow people to live, play, work and stay in their area, ensuring climate resilience and integrating nature positive, biodiversity solutions.

The proposed house design has been changed from a single storey to storey and a half property. The footprint is slightly less, material finish is similar. Parking for the property is to the front. No garages or outbuildings are proposed. The design partly now reflects the design of the house to the north, Hillview, which does not make any significant difference to the acceptability of the proposal in terms of quality of design. The proposal is still therefore considered to be contrary to policy 1A placemaking and 14a) and b) of NPF4, policy 14.

## Landscape

The land was formerly woodland. An appeal decision in 2008 (P/PPA/340/591, 8 January 2008) on the site recognised this area as being important to the setting of the then two houses to the north and would allow for a third house, Hillview, to be constructed.

The Reporter noted that at the time that the application did not fully accord with the housing in the countryside policy but considered that the site could accommodate a house that would provide opportunities for rural housing that respected local landscape and building traditions in the area. Furthermore it was stated that: *“Given the containment provided by the woodland to the south, the Council’s concern that allowing the appeal could lead to further development to the burn beyond is unlikely to be realised because the woodland to the south provided a suitable landscape framework.”*

The past history is a material consideration. Since then the woodland has been removed and a fast growing conifer hedge planted around the boundary. Such planting is not appropriate to the landscape character of the area. The Council's Housing in the Countryside guide notes in the “For All proposals” category on page 4 that non-native fast-growing conifers should be avoided when designing rural housing developments as this does not generally fit in with local landscape character and has limited biodiversity benefits. The land surrounding the proposed dwellinghouse was subject of an Enforcement Notice to restore it to a more natural state.

LDP Policy 39 Landscape requires proposals, including individual developments, to demonstrate that they do not conflict with the aim to maintain and enhance the landscape qualities of Perth and Kinross. Incremental development, such as this proposal that is sited in an area of former woodland, is not appropriate to maintaining

and enhancing the landscape qualities of Perth and Kinross. As such the proposal is contrary to policy 39, Landscape of the Local Development Plan.

### **Residential Amenity**

The proposed use would be residential and as such compatible with other residential properties in the area. There is potential for road noise from the M90 that would impact on any occupant. Policy 56 Noise Pollution of the LDP advises against the siting of noise sensitive uses near to sources of noise generation. However, given that there are existing houses close by this issue is secondary to the principle of the proposal being contrary to housing in the countryside policy.

The layout and orientation of the proposal does not raise any issues with regard to neighbour amenity in terms overlooking or overshadowing. Sufficient garden ground would be available to any future residents.

### **Visual Amenity**

The site is bounded by a coniferous hedge which is an incongruous and alien feature in the landscape. Development of the site would not contribute positively to the visual amenity of the area and would further detract from the rural nature of the site and the quality of the local landscape.

### **Roads and Access**

The access to the site was approved retrospectively. Transportation and Development has no objection to the use of this access and notes that proposed on site turning and parking is adequate. An informative is recommended for access to the proposed septic tank if the application is approved. Conditions are recommended for the installation of bus boarders for school transport and local bus transport as well as a condition to ensure that emptying of the septic tank is not carried out from the public road network. If approved conditions and informative as recommended would be added.

### **Drainage and Flooding**

The Kinnaird Burn runs along the southern boundary of the site. Policy 52 of the LDP (New development and flooding) states that there is a general presumption against proposals for built development or land raising on a functional flood plain and in areas where there is a significant probability of flooding from any source. Additional information with regard to flood risk was previously provided at the request of the Flood Team.

The plans show a septic tank and soakaway to the south east of the proposed new house and a surface water soakaway to the west.

### **Conservation Considerations**

The site is not within a Conservation Area. There are not any Listed Buildings in the area. There will not be any impact on any built heritage assets.

## **Natural Heritage and Biodiversity**

Policy 3, Biodiversity, of NPF4 requires local development to conserve, restore and enhance biodiversity. The previous submission did not include any landscaping proposals and did not demonstrate any contribution to nature recovery or to the strengthening of nature networks as required by NPF4.

This application suggests that new tree planting would be undertaken on land to the south of the site which is in the same ownership as this application site. Whilst this is welcomed this site was subject to a planning application for the erection of a dwellinghouse in 2021 (21/00126/IPL). Whilst this was refused it does suggest that there would be pressure to continue to try to develop the woodland if this current application is approved.

## **Embedding Low and Zero Carbon Generating Technology in New Development**

Policy 32 of the LDP requires that a proportion of the energy use of each building is provided by low and zero-carbon generating technology. If approved details of low or low or zero-carbon generating technology would be required to meet the terms of policy 32.

## **Developer Contributions**

### **Primary Education**

The Council Developer Contributions Supplementary Guidance 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.

This proposal is within the catchment of Cleish Primary School. Education & Children's Services have no capacity concerns in this catchment area at this time. No developer contributions are required.

## **Economic Impact**

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

## **VARIATION OF APPLICATION UNDER SECTION 32A**

This application was not varied prior to determination.

## **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**

- 1 The proposal is on a greenfield site that is not allocated for development and development on the site is not explicitly supported by policies in the Local Development Plan. It is therefore contrary to Policy 9 b), Brownfield, Vacant and Derelict Land and Empty Buildings of National Planning Framework 4 (2023).
- 2 The proposal is contrary to Policy 17 Rural Homes of National Planning Framework 4 (2023) as it fails to meet any of the 8 criteria listed within Policy 17a).
- 3 The proposal is contrary to Policy 19, Housing in the Countryside of the Perth and Kinross Local Development Plan 2 (2019) as it fails to comply with any of the 6 categories listed in the policy. In particular the site has been specifically cleared of woodland and the boundaries planted with non-native hedging to specifically create a site for development. This is contrary to the Housing in the Countryside Supplementary Guidance (2020) Category 1, Building Groups. In addition development of the site does not safeguard the character of the countryside and does not ensure that high standards of siting and design are achieved.
- 4 The proposal is contrary to Policy 14a) and b), Design, Quality and Place, of National Planning Framework 4 (2023), and Policy 1A and 1Bb), Placemaking, of the Perth and Kinross Local Development Plan 2 (2019). The proposed development would detract from the visual amenity and landscape character of the area and does not contribute to creating a distinctive, pleasant or sustainable place.
- 5 The proposal is contrary to Policy 39, Landscape, of the Perth and Kinross Local Development Plan 2 (2019) as development would conflict with the aim of maintaining and enhancing the landscape qualities of Perth and Kinross. Such piecemeal development, sited in an area of former woodland, is not appropriate to maintaining and enhancing the landscape qualities of Perth and Kinross.

**Justification**

The proposal is not 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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# Planning Enforcement Closing Report



**PERTH &  
KINROSS  
COUNCIL**

<b>Case Reference Number</b>	19/00310/ALUNDV
<b>Description of Possible Breach</b>	Construction of a caravan/building; formation of an access track and parking area; change of use of open space to garden ground; formation of an access from B996
<b>Date Observation Received</b>	16 September 2019
<b>Address/Location</b>	Hillview Kinnaird Blairadam Kelty KY4 0JB
<b>Ward</b>	Kinross-shire
<b>Case Officer</b>	DR

## Approach to Planning Enforcement

Perth & Kinross Council endeavours to resolve breaches of planning control where possible, through either informal or formal means to remedy the breach. The use of enforcement action is; however, a discretionary power and the Council is not required to take any particular action and may decide, in some cases, that not taking action is justified.

In determining whether it is expedient to take formal action, the Council must have regard to:

- a) Whether a breach of planning control has occurred;
- b) Whether enforcement action is justified and in the wider public interest;
- c) Relevant provisions of the [Development Plan](#) and other material considerations;
- d) The priorities specified within the [Planning Enforcement Charter](#)

## Consultations

Consultee	Date Consulted	Consultee Comments
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None.

## Site History

06/00113/FUL Erection of a dwellinghouse 7 April 2006 Application Refused

06/01874/FUL Erection of a detached dwellinghouse (Re-submission 06/00113/FUL) 6 August 2007 Application Refused

11/01874/FLL Removal of condition 3(ii) of planning consent 06/01874/FUL to remove bus boarders pick up/drop off point 22 December 2011 Application Approved

16/00416/FLL Erection of a garage with ancillary accommodation 20 April 2016 Application Refused

16/01235/FLL Erection of ancillary accommodation 29 August 2016 Application Approved

18/00450/FLL Siting of 4no. holiday accommodation units, formation of a vehicular access and associated works 26 September 2018 Review Dismissed by LRB

19/00164/FLL Erection of ancillary accommodation, boundary fence and formation of vehicular access 13 February 2019

19/00204/FLL Change of use of woodland to garden ground, siting of ancillary accommodation, erection of a fence and formation of vehicular access (in part retrospect) 18 April 2019 Application Refused

20/01207/FLL Change of use from agricultural land to form extension to garden ground (in retrospect) 8 November 2020 Application Refused

22/00505/FLL Change of use from open space to form extension to garden ground, formation of vehicular access and parking area (in retrospect) 26 July 2022 Application Approved

07/00052/REF Erection of a detached dwellinghouse (Re-submission 06/00113/FUL) 8 January 2008 Appeal Allowed

## Main Report

The following observation was received: ***Construction of a caravan/building; formation of an access track and parking area; change of use of open space to garden ground; formation of an access from B996.*** The results of the case officer's investigation are as follows.

It has been determined that development has been undertaken and these do constitute development, as defined in Section 26 of the Town and Country Planning (Scotland) Act 1997 (as amended).

Planning Permission was not in place for the development.

The development does not constitute Permitted Development under The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended).

It has been established that a breach of planning control has occurred. Having considered the impacts in respect of amenity / appearance / traffic safety, it has been found that these require to be considered against the Perth and Kinross Local Development Plan 2 (2019) (LDP2). It was considered to be in the public interest to take action to remedy the breach to an acceptable level. To achieve this, the following action was taken:

A formal Enforcement Notice was served by the Planning Authority under Section 123(1) / 179(1) of the Town and Country Planning (Scotland) Act 1997 (as amended). The Notice was appealed through the Planning and Environmental Appeals Division. The amended Notice required the following steps to be taken:

Step 1. Removed at appeal.

Step 2. With the exception of land within the curtilage of the dwellinghouse, cease using the land as domestic garden ground. For the avoidance of doubt, the curtilage of the dwellinghouse is the hatched area on the second plan attached to this Notice.

Step 3. Remove all materials that have been laid on the land to form the access track and parking area immediately to the south of the curtilage of the dwellinghouse.

Step 4. Removed at appeal.

Step 5. Remove the lawn that has been planted on the land outwith the curtilage of the dwellinghouse.

Step 6. Removed at appeal.

Step 7. Following the removal of the access track, parking area, hardstanding and lawn as described above, allow these areas to revegetate and return to their former state as scrubland/woodland.

Step 8. Removed at appeal.

Step 9. Cease all vehicular use of the two unauthorised accesses that have been formed from the public road.

Step 10. Removed at appeal.

Planning permission 22/00505/FLL was approved on the 31st of March 2022, addressing step 3.

Steps 5 and 7 have not been fully complied with as the lawn has not been removed, however considering the nature of the breach it's considered not in the public interest to pursue further.

All other steps appear to have been complied with following a visual inspection of the site on the 21st of December 2022.

The Notice was complied with to a satisfactory standard.

This action is considered to be proportionate to the breach identified and satisfactorily resolved the planning harm identified.

The owner of the land should be aware that, whilst this enforcement case is being closed, the Council, as Planning Authority, reserves the right to undertake a further investigation should any further information be provided in regard to breaches of planning control in the future.

## Decision



Perth & Kinross Council, as the Planning Authority, has determined that the case has been closed because:

**Not in the Public Interest to Pursue**

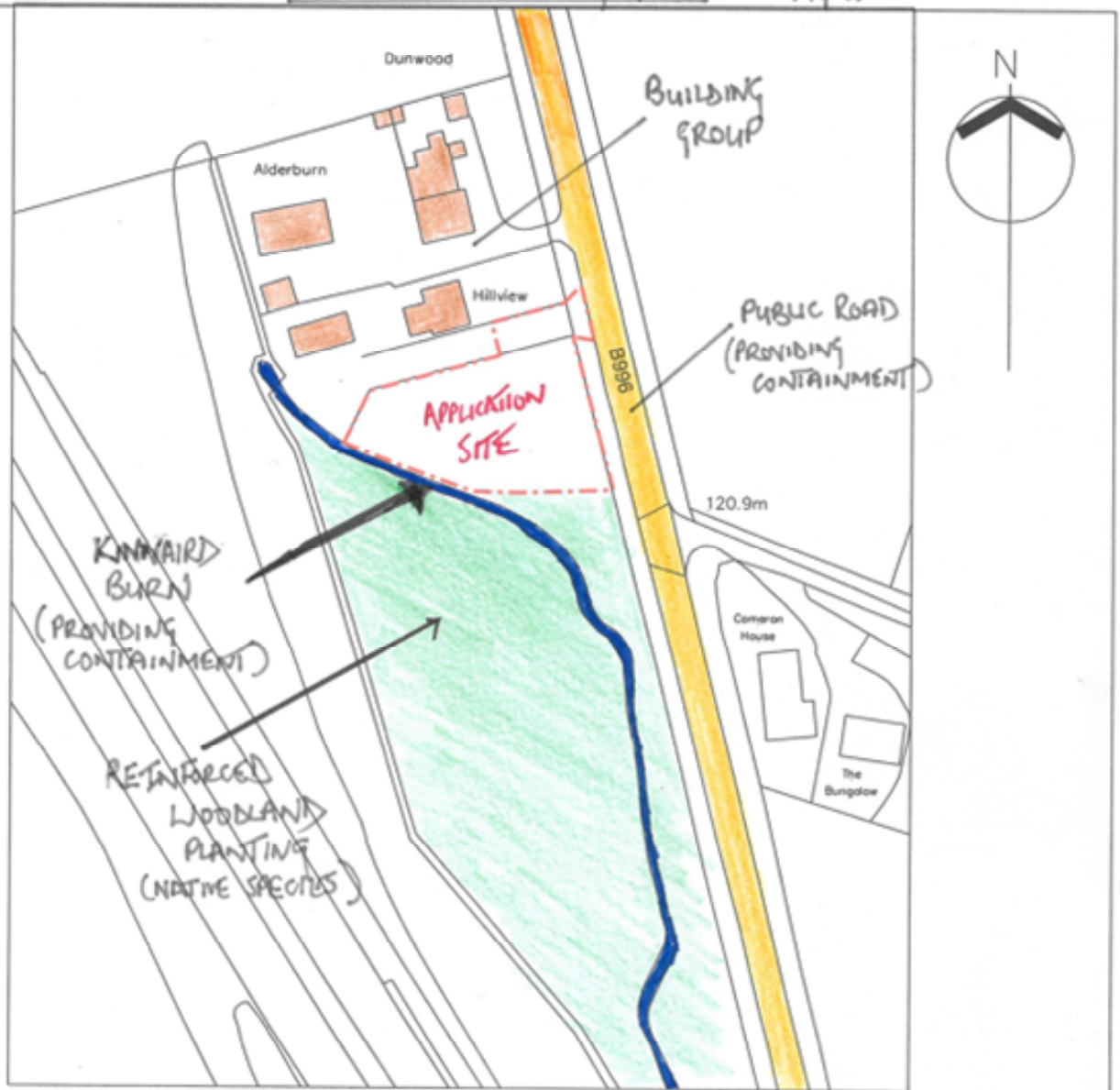
This decision has been reached for the following reasons:

**Not in the Public Interest to Pursue**

**Authorising Officer**                      **SP1**

**Date of Decision**                      **19 January 2023**

EXTENSION OF BUILDING GROUP FIG 1.



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## Proposed Location Plan

Scale - 1:1250



	
<p>DESIGN Derek Allan</p> <p>LOCATION Land Adjacent to Hillview Kinnaird KY4 0JB</p> <p>PROJECT Proposed New Dwellinghouse</p> <p>DATE Date Drawn Nov/23</p>	<p>Scale - 1:1250 @ A4</p> <p>Drawn by: Derek Allan</p> <p>Drawing No. <b>LOC</b></p>

CONTRACT NO. - 0000

Fig 2 – Aerial Photograph (Google source)

