



**Clackmannanshire
Council**

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Comhairle Siorrachd
Chlach Mhanann

Kilncraigs, Greenside Street, Alloa, FK10 1EB (Tel.01259-450000)

Planning Committee

Thursday 28 September 2023 at 12.00 noon

**Venue: Council Chamber, Kilncraigs,
Greenside Street, Alloa, FK10 1EB**



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Council**

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Comhairle Siorrachd
Chlach Mhanann

Planning Committee

Subject to paragraphs 3.28 and 11.4 of the Scheme of Delegation, the Planning Committee has responsibility for taking decisions on planning applications and enforcing planning laws, and;

Carrying out the local authority's function in relation to street naming under section 97 of the Civic Government (Scotland) Act 1982; and

Dealing with regulatory and enforcement issues arising from matters delegated to or delivered by Development and Environment Services related to Building Standards.

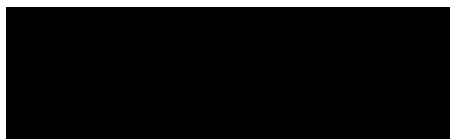
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20 September 2023

A MEETING of the PLANNING COMMITTEE will be held in the COUNCIL CHAMBER, KILNCRAIGS, ALLOA, on THURSDAY 28 SEPTEMBER 2023 at 12.00 NOON



**PETE LEONARD
Strategic Director (Place)**

B U S I N E S S

	Page No.
1. Apologies	--
2. Declaration of Interests Members should declare any financial or non-financial interests they have in any item on this agenda, identifying the relevant agenda item and the nature of their interest in accordance with the Councillors' Code of Conduct. A Declaration of Interest form should be completed and passed to the Committee Officer.	--
3. Confirm Minutes of Meetings of the Planning Committee held on 4 May 2023 (Copy herewith)	05
4. Planning Application (Ref 23/00097/FULL) - Erection Of Kennels For Dog Breeding, Siting Of 4 No. Glamping Pods, Formation of 5 Parking Bays For Camper Vans (Partly Retrospective) at Devon River Riding Centre, Fishcross, Clackmannanshire, FK10 3AW - report by Keith Johnstone, Principal Planner (Copy herewith)	11
5. Update – 10 Gannel Hill View, Devon Village – report by the Lee Robertson, Senior Manager, Legal and Governance (Copy herewith)	29

Planning Committee – Committee Members (Membership 10 – Quorum 4)

Councillors

Wards

Councillor	Denis Coyne (Chair)	5	Clackmannanshire East	CONSERVATIVE
Councillor	William Keogh (Vice Chair)	2	Clackmannanshire North	LABOUR
Councillor	Phil Fairlie	1	Clackmannanshire West	SNP
Councillor	Mark McLuckie	1	Clackmannanshire West	LABOUR
Councillor	Donald Balsillie	2	Clackmannanshire North	SNP
Councillor	Martha Benny	2	Clackmannanshire North	CONSERVATIVE
Councillor	Fiona Law	2	Clackmannanshire North	SNP
Councillor	Jane McTaggart	3	Clackmannanshire Central	SNP
Councillor	Bryan Quinn	4	Clackmannanshire South	SCOTTISH GREEN
Councillor	Kenneth Earle	4	Clackmannanshire South	LABOUR



**MINUTES OF MEETING of the PLANNING COMMITTEE held in the Council Chamber,
Kilncraigs, Alloa, on THURSDAY 4 MAY 2023 at 9.30 AM**

PRESENT

Councillor Denis Coyne (Convener)
Councillor William Keogh (Vice Convener)
Councillor Donald Balsillie
Councillor Martha Benny
Councillor Kenneth Earle
Councillor Phil Fairlie
Councillor Fiona Law
Councillor Jane McTaggart
Councillor Bryan Quinn

IN ATTENDANCE

Emma Fyvie, Senior Manager, Development
Allan Finlayson, Team Leader, Planning and Building Standards
Grant Baxter, Principal Placemaking Officer
Keith Johnstone, Principal Planner
David Paterson, Principal Planner
Stuart Cullen, Principal Roads and Flooding Officer
Kate Fleming, Senior Housing Strategy Officer
Michael Boyle, Improving Outcomes Business Manager
Sophie Gardiner, Solicitor, Legal and Governance
Lee Robertson, Senior Manager, Legal and Governance (Clerk to the Committee)
Melanie Moore, Committee Services, Legal and Governance

PLA(23)01 APOLOGIES

Apologies for absence were received from Councillor Mark McLuckie.

PLA(23)02 DECLARATIONS OF INTEREST

None.

**PLA(23)03 CONFIRM MINUTES OF THE PLANNING COMMITTEE HELD ON 3
NOVEMBER 2022**

The minutes of the Planning Committee held on Thursday 3 November 2022 were submitted for approval.

Decision

The minutes of the Planning Committee held on Thursday 3 November 2022 were agreed as a correct record and signed by the Chair.

**PLA(23)04 CONFIRM MINUTES OF THE LOCAL REVIEW BODY HELD ON 15
NOVEMBER 2022**

The minutes of the Local Review Body held on Tuesday 15 November 2022 were submitted for approval.

Decision

The minutes of the Local Review Body held on Tuesday 15 November 2022 were agreed as a correct record and signed by the Chair.

PLA(23)05 CONFIRM MINUTES OF THE LOCAL REVIEW BODY HELD ON 13 DECEMBER 2022

The minutes of the Local Review Body held on Tuesday 13 December 2022 were submitted for approval.

Decision

The minutes of the Local Review Body held on Tuesday 15 November 2022 were agreed as a correct record and signed by the Chair.

PLA(23)06 CONFIRM MINUTES OF THE LOCAL REVIEW BODY HELD ON 7 FEBURARY 2023

The minutes of the Local Review Body held on Tuesday 7 February 2023 were submitted for approval.

Decision

The minutes of the Local Review Body held on Tuesday 7 February 2023 were agreed as a correct record and signed by the Chair.

PLA(23)07 CONFIRM MINUTES OF THE LOCAL REVIEW BODY HELD ON 16 MARCH 2023

The minutes of the Local Review Body held on Wednesday 16 March 2023 were submitted for approval.

Decision

The minutes of the Local Review Body held on Wednesday 16 March 2023 were agreed as a correct record and signed by the Chair.

PLA(23)08 SAUCHIE WEST PLANNING APPEAL UPDATE REF 10/00153/PPP

The report, submitted by Grant Baxter, Principal Placemaking Officer, provided an update to members on the planning appeal for a proposed housing development at Sauchie West, and in particular, the second Notice of Intention issued by the Reporter on 1 February 2023. The report is for noting only.

Motion

That the Committee agrees the recommendation set out in the report

Moved by Councillor Kenneth Earle. Seconded by Councillor Phil Fairlie.

Decision

The Committee agreed to note the contents of the Report in respect of the Reporter's conclusions on matters in relation to education and affordable housing contributions and next steps in relation to concluding the Section 75 Agreement and on assessing affordable housing needs and demand.

Action

Principal Placemaking Officer

PLA(23)09 PLANNING APPLICATION**Planning Application ref: 21/00069/FULL – Proposed Mixed Use Development Including Residential (Class 9), Business (Classes 4, 5 and 6), Education (Class 10) and Other Ancillary Uses Together With Associated Access and Infrastructure and Landscaping Works of Former Carsebridge Distillery and Warehouse Site at Carsebridge Bond, Carsebridge Road, Sauchie**

The report, submitted by Keith Johnstone, Principal Planner, provided a summary of the assessment of this application, including consultation responses and representations for planning permission in principle for development of land comprising the former Carsebridge Distillery and warehousing to the south east of Sauchie for housing, business use and education with associated open space, play provision, landscaping, enclosures and infrastructure including roads, footpaths and drainage. The application required to be determined by the Planning Committee since the application falls into the “Major” category of developments.

Attending in Chambers

Lynsey Breen, Applicant, Emma Moore, Agent and Mrs Margaret Docherty, Objector

Attending on Teams

Michael Summers, Agent (Transformation), Michael Stewart, Agent (Flooding), Kenny Ross, Agent (Master Planning), Stuart Salter, Agent (Education/Affordable Housing), Lindsay McIntyre, Agent (Noise), David Adamson, Agent (Drainage), Graeme Laing, Agent (North Planning and Development and Mike Carlin, Agent (Drainage).

The report was introduced by Keith Johnstone, Principal Planner. Members of the Planning Committee had the opportunity to put questions to Mr Johnstone.

The Committee then heard representation from Mrs Margaret Docherty, Objector and the Committee also heard from Emma Moore the Agent for the Applicant. Members of the Planning Committee had the opportunity to put questions to both and other specialists were in attendance on Teams to answer any questions.

Councillor Benny asked what the different classes were. They are as follows:-

Class 4 – Business/Office

Class 5 – General

Class 6 – Storage

Motion

That Committee approves the application subject to the conditions and reasons set out in the report.

Moved by Councillor Denis Coyne. Seconded by Councillor Donald Balsillie.

Decision

The Committee agreed to approve the application for Planning Permission in Principle (PPP) subject to officers concluding a Section 75 Agreement between the applicant and the Council as set out in draft Heads of Terms in Appendix 1 to the report, and a set of detailed Matters to be Specified in Conditions (MSC), as set out in Appendix 2 to the report.

Committee asked that there be a restriction to use class 4, there was detailed mitigation for traffic issues and it was confirmed that a further report with an update on the issues raised would be brought back to Council for approval.

Action

Principal Planner

PLA(23)10 PLANNING APPLICATION

Planning Application ref: 22/00187/FULL – Residential Development of 244 Houses With Associated Infrastructure Including Roads, Footpaths, Landscaping, Drainage, Open Space and Associated Works at Land North and South of A91 To the West of Alva, Clackmannanshire.

The report, submitted by David Paterson, Principal Planner, provided an assessment and made a recommendation on the planning application. The application required to be determined by the Planning Committee since the application falls into the “Major” category of developments.

Attending in Chambers

Ian Craig, Alva Community Council, James Gilmour, Objector, John Cunningham, Objector and Sam Sweeney, Agent for the Applicant.

Attending on Teams - Gary Walker, Objector.

The report was introduced by David Paterson, Principal Planner. Members of the Planning Committee had the opportunity to put questions to Mr Paterson.

The Convenor adjourned the meeting at 11.25 am for a comfort break. The meeting resumed at 11.37 am with 9 members present.

The Committee then heard representation from Ian Craig, James Gilmour, John Cunningham and Gary Walker. The Committee also heard from Sam Sweeney the Agent for the Applicant. Members of the Planning Committee had the opportunity to put questions to all.

Councillor Keogh withdrew from the meeting at 12:37.

Motion

That the Committee refuses the application as set out in the report.

Moved by Councillor Denis Coyne. Seconded by Councillor Donald Balsillie.

Decision

The Committee agreed to refuse planning permission based on the following reasons:

1. It has not been satisfactorily demonstrated that the proposed development would not be at risk from flooding or that existing residential developments would not be at greater risk from flooding. The proposed development does not accord with policies EA9 and EA12 of the Clackmannanshire Local Development Plan “Managing Flood Risk” and “Water Environment” respectively, policy 22 of National Planning Framework policy 22 “Flood Risk and Water Management”, supplementary guidance SG4 “Water” and Planning Advice Note 79 “Water and Drainage”;
2. The proposed development involves development in the countryside which does not accord with policy SC23 of the Clackmannanshire Local Development Plan

“Development in the Countryside” and policies 4 and 17 of National Planning Framework 4 “Natural Places” and “Rural Homes” respectively;

3. The proposed development would not safeguard amenity, landscape quality and function of the Green Belt. The proposed development does not accord with policy EA8 of the Clackmannanshire Local Development Plan “Green Belt”, policies 4 and 8 of National Planning Framework 4 “Natural Places” and “Green Belt” respectively and Supplementary Guidance SG6 “Green infrastructure”; and
4. The proposal would not contribute to the safeguarding or enhancement of the Clackmannanshire Green Network. The proposal does not accord with policy EA1 of the Clackmannanshire Local Development Plan “Clackmannanshire Green Network”, policy 4 of National Planning Framework 4 “Natural Place” and Supplementary Guidance SG6 “Green Infrastructure”.

Action

Principal Planner

Ends: 13.42 pm

Report to Planning Committee

Date of Meeting: 28th September 2023

Subject: Planning Application (Ref 23/00097/FULL) - Erection Of Kennels For Dog Breeding, Siting Of 4 No. Glamping Pods, Formation of 5 Parking Bays For Camper Vans (Partly Retrospective) at Devon River Riding Centre, Fishcross, Clackmannanshire, FK10 3AW

Report by: Keith Johnstone, Principal Planner

1.0 Purpose

- 1.1. The Report provides an assessment of the above application for planning permission having consideration to the provisions of the Development Plan and any other material considerations, including advice from consultees and representations received from a third party. It provides a recommendation on the application. The application is partly retrospective as some of the development has already been implemented.
- 1.2. The application is a Local Development and would normally be determined under the Council's Scheme of Delegation by Appointed Officers. However, in accordance with the Council's Scheme of Delegation for such applications, this application requires to be determined by Committee following a request from an Elected Member to refer it to Committee. The reason for the request was due to the circumstances at the site where development has been undertaken in the past without obtaining planning permission.

2.0 Recommendations

- 2.1. It is recommended that the application is APPROVED subject to the following conditions:-
1. The development to which this permission relates must be begun not later than the expiration of 3 years from the date of this permission or, as the case may be, when the permission is deemed to be granted.
 2. The materials and colours of the external finishes of the 2 glamping pods still to be installed shall match the details on the approved drawings unless otherwise agreed in writing by the planning authority.

3. Before works commence to install either of the remaining 2 glamping pods hereby approved, details of the design of their layout and parking provision shall have been submitted to, and approved in writing by, the planning authority. Thereafter, the development shall be implemented in accordance with the approved details, unless otherwise agreed by in writing by the planning authority.
4. The use of the 4 glamping pods hereby approved shall be used solely for holiday and tourism purposes. For the avoidance of doubt, this permission does not authorise the use of any of the pods as the sole or main place of residence for any of their occupants.
5. Within 2 months from the date of this permission, details of a method statement shall have been submitted to and approved in writing by the planning authority, which shall facilitate monitoring by the planning authority of occupancy by individual occupiers of the glamping pods, allowing access to letting or lease records to ensure compliance with Condition 4 above. Thereafter, the development shall be operated in accordance with the approved details unless otherwise agreed in writing by the planning authority.
6. In the event that any pod remains unoccupied for its approved use for a continuous period of at least 12 months, it shall be removed from the site within 2 months of the expiration of the 12 month period and the site reinstated to its original condition within 3 months from the date of removal, unless otherwise agreed in writing by the planning authority.

Reasons

1. As required by Section 58 of the Planning (Scotland) Act 2019.
2. In the interests of visual amenity and the landscape character of the area.
3. To consider these details yet to be submitted.
4. To ensure that the pods are utilised for their intended and approved purpose and not for any permanent residential use having regard to their design and amenity standards and the relevant provisions of the Clackmannanshire Development Plan.
5. To ensure the planning authority can effectively monitor the development to ensure it is used for its approved purpose only rather than permanent residential use, having regard to the relevant provisions of the Clackmannanshire Development Plan.
6. To minimise the level of unnecessary visual and landscape intrusion, having regard to the countryside location, the provisions of the Development Plan and the nature of construction of the pods which are not permanent and capable of being readily removed.

2.2 Notes to Applicant

1. The Council's Contaminated Land Section has advised that if during the development work, areas of contamination are encountered, then the applicant shall immediately notify the Planning Authority. The nature and extent of any contamination found shall be fully assessed by way of a site investigation and an adequate site investigation report and remediation strategy shall be submitted to and approved by Planning Authority in writing. Any remediation work agreed shall be fully implemented and a remediation verification report submitted to and approved in writing by the Planning Authority.
2. The Coal Authority has advised that the Coal Mining Risk Assessment submitted for the previous application at the site (ref 18/00154/FULL) be updated by way of an addendum to confirm that the kennel building is positioned in accordance with the recommendations in that Coal Mining Risk Assessment. Whilst the absence of this information would not justify withholding planning permission, the Service would advise you to consider complying with this advice and submitting the addendum to the Service.

2.3 Reasons for Decision

1. The development is considered to accord with the relevant policies and objectives of the adopted Clackmannanshire Development Plan.
2. The issues raised by a third party and consultees can be satisfactorily mitigated or are not judged to provide sufficient or reasonable grounds to withhold permission. The development is not considered to result in an unacceptable adverse impact on the residential amenity and privacy of neighbours.
3. Subject to the proposed conditions, the development is considered to be compatible with neighbouring uses and the local environmental quality and character of the surrounding countryside area.
4. The proposals would help sustain and enhance the viability of the established riding centre business on the site. This would help sustain an existing business and generate local employment opportunities.
5. The pods would support local and national tourism strategies, including increasing the number and length of stays by visitors in Clackmannanshire.
6. On balance, it is considered there are no other material considerations which would outweigh the development plan support for the development and justify withholding the partly retrospective permission.

3.0 Considerations

- 3.1. The application has been submitted in response to enquiries by the Service relating to unauthorised development taking place at the established Devon River Riding Centre located near Fishcross. The enquiry was initiated in 2021 when the applicant was advised to seek retrospective permission for works taking place on the site. This was during the period when site visits and

contact were inhibited due to the restrictions associated with the Covid 19 pandemic. Following contact with the landowner he advised that a paper copy of the application had been handed in at the offices at Kilncraigs during the period when it was closed and staff were working from home. The Service was unable to locate the documents at that time despite extensive searches and enquiries being made. While the enforcement enquiry continued, the application documents were eventually received by the Service in March 2023. The applicant was contacted and he confirmed that he wanted the application registered to try to regularise the regulatory planning position. This was achieved in May this year.

3.2. The application seeks planning permission, partly retrospective, for the following;

- a) Retrospective permission for the installation of a timber clad building for use as kennels associated with a dog breeding business. The building measures 18.0m in length, 5.0m in width and 2.9m to roof height. The internal layout contains kennels including space for whelping and a wash room. The building sits parallel to the boundary of the riding centre and the SSPCA's National Wildlife Centre approximately 10.0 m to the south of the residential chalet accommodation occupied by the applicant. There is a security fence and tree belt between the building and Centre. The nearest SSPCA animal enclosures are approximately 10.0 m from the kennels building. The north gable of the kennel building is approximately 69.0 m from the boundary between the Riding Centre and the curtilage of the objector's property (Devonbank Cottage) and 76.0 m from the cottage itself. The intervening land includes the curtilage of the applicant's chalet, an area of yard which is part of the Riding Centre, a large storage building and the tree belt which encloses the Wildlife Centre.
- b) The installation of 4 No glamping pods on land to the south of the riding centre facilities. The 2 pods on the north side of the access road which serves the riding centre have been installed and both are in use. The 2 annotated on the drawing on the south side of the access road have not been installed. The pods measure approximately 4.8m in length by 3.6 m in width and 3.0 m in height with a small deck to the front. The external finish to the walls is timber boarding. They contain a room with bed settee and small kitchen and a separate WC/shower room. The pods face towards the fields to the south of the access road to the Riding Centre.
- c) The formation of up to 5 parking bays regularly spaced along the south side of the private access road which serves the riding centre. These are intended to be available for overnight parking by campervans. The bays will be serviced with electricity and water. Two of the bays have already been formed.

3.3. The Service received an enquiry about further building works taking place at the Riding Centre at the end of August 2023. On investigation, it was noted that a timber frame of a building was being installed on land to the south east of the proposed location of the 2 glamping pods. The structure measures approximately 7.0 m in length by 3.0 m in width. The landowner has advised that this is not connected to the current application and that work has been put on hold and will not re start until any relevant planning approval has been obtained. At the time of compiling this report, no planning application has

been received. The presence of this unauthorised development unrelated to the current application was taken into account when the reason for the request for referral to Committee was considered by the Service. However, this recent development is not part of the current application based on the information available and therefore its presence is not considered to be a material consideration in the determination of the current application. Its planning merits will be considered as part of ongoing enforcement monitoring.

3.4. Consultations

3.5. Transportation has raised concern that the development will increase traffic movements at the junction of the private road that serves the site and the C110 Shavelhaugh Loan. They advise that an increase in further slowing, stopping and turning traffic movements at the junction would not be welcomed for road safety reasons. Whilst they acknowledge that the development might be argued to generate a modest increase in overall traffic movements, any additional turning movements on the C110 where turning movements are relatively rare, will increase the accident potential. A proportion of drivers will be unfamiliar with the area and any risk of driver hesitancy would increase the risk of accident potential. There is also potential for precedent to be set leading to more camping pods, pitches and dog kennels which could exacerbate the situation. Comment – *the applicant has advised that the development would not result in a significant increase in traffic above what is already generated by the operation of the riding centre. They note that each pod may generate only 1 additional trip in and out per day while the kennels do not generate traffic all year; only when dog litters are available. Following assessment, it is concluded that, on balance, the development proposals would not be likely to result in an increase in traffic levels or in the type of vehicles which would result in a significant increase in the existing risk to road safety associated with the existing use of the junction onto the C110 to justify withholding permission on the grounds of impact on road and pedestrian safety. This conclusion has been reached having regard to the following factors;*

- a) *the likely frequency and nature of vehicle trips the use of the kennels and pods and bays would generate. This is predicted to be in the region of an average of 1-2 additional movements per hour over a typical day when fully booked;*
- b) *the relatively small quantum of increase these movements would comprise compared with the existing number of vehicle turning movements at the junction with the C110. This junction is currently used to access the Devon River Riding Centre business, the SSPCA National Wildlife Rescue Centre facility and 4 houses;*
- c) *the fact most visitors are likely to have pre-booked in advance of visiting the site when directions could be made available to them;*
- d) *any future expansion of this development would require planning permission which would provide an opportunity for any associated impacts on road safety to be considered before permission was granted; and*
- e) *The nature of the proposed development is appropriate to a rural location, which will commonly be served off a road outwith the urban area.*

- 3.6. Environmental Health has advised that they have no objection to the development. They have asked that the applicant be made aware that a Short Term Let and/ or a Caravan Site Licence may be required for the pods and camper van parking bays. Comment – *Environmental Health has had regard to the concerns raised by the objector relating to noise nuisance associated with the use of the kennel building and glamping pods on the site in providing their advice. Environmental Health officers have also visited the site to inform their consultation response. Since the application was registered, the Council has received a complaint about noise nuisance in relation to dogs barking at the site. This is being investigated by Environmental Health under the regulatory powers in the Environmental Protection Act (EPA), 1990 relating to statutory nuisance. However, Environmental Health has confirmed that they have no objection to the application including the kennels and pods and consider that the uses would be compatible with surrounding land uses. They could take action under the EPA Act 1990, to regulate noise emissions in the event there was evidence of noise nuisance.*
- 3.7 The Contaminated Land Section has raised no objection and advise that an informative note be attached if permission is granted to provide guidance to the developer in the event contamination is encountered. Comment – *this can be included in the decision notice.*
- 3.8 The Coal Authority was consulted as the site lies within an area identified as being at higher risk of legacy mining. They have objected to the application. They have reviewed the proposals and the Coal Mining Risk Assessment (CMRA) document which the applicant has provided and had been submitted in support of a previous application for the site (ref 18/00154/FULL *Development of a chalet building for residential and staff welfare uses, extension to stable block, formation of access road and change of use of fields from agricultural use to riding centre use*). The Coal Authority advises that the proposed glamping pods would comprise an exempt form of development that would not require a CMRA but consider the kennels building would not be exempt from needing a CMRA. As the existing CMRA is not specific to the proposals they are objecting, but the Coal Authority has advised that they would withdraw this objection if there was an addendum to the original CMRA which confirms that the kennel building is positioned in accordance with the recommendations in the original CMRA. Comment – *notwithstanding the objection, it is considered that this advice would not justify withholding permission taking account to the following factors;*
- i) *The advice only relates to the kennels building and not the glamping pods.*
 - ii) *The applicant has confirmed that the kennels building has no foundations and is supported on top of the existing ground levels, and is a similar type of construction to the “chalet” style building which is located some 10.0 m from the kennels. The CMRA concluded there were no adverse risks from legacy mining issues in the vicinity of the chalet development, including the area where the kennels building has been installed, that required further investigation or possible mitigation. The Coal Authority did not raise any objection in relation to the chalet having regard to the assessment and advice in the CMRA.*
 - iii) *An Informative Note can be included in the decision notice to highlight the advice from the Coal Authority on the application and to advise the applicant to obtain an update of the CMRA from its author to confirm that*

the kennels building is positioned in accordance with the recommendations in that Coal Mining Risk Assessment.

- 3.9 Scottish Water has no objection. It has advised there is sufficient capacity to provide a public water supply and for a foul only connection to Alloa Waste Water Treatment Works. Any connection will require the submission of a Pre-Development Enquiry Form to Scottish Water. The applicant should ensure the development does not result in any conflict with any Scottish Water infrastructure in the area. Comment – *the proposed buildings would not be connected to the public drainage system. There would be private arrangements to dispose of foul drainage.*
- 3.10 Representations
- 3.11 Four neighbouring properties were notified of the application and the application had to be publicised in the Alloa Advertiser for neighbour notification reasons.
- 3.12 An objection was received on behalf of one of the 4 neighbours notified of the application who lives at Devonbank Cottage, Fishcross which is located to the north of the Riding Centre. The objection can be summarised as follows;
- 3.13 Unauthorised pods are being rented out. The objector has had to call the police at 1 am about noise nuisance. Comment – *2 of the pods have been built and are in use. The applicant has the right to apply for retrospective planning permission under the Planning Acts. Environmental Health has no objections and have advised that they have no record of having received complaints about noise or disturbance associated with the pods since they have been brought into use. It is considered that the use, siting and design of the pods and associated parking bays would be compatible with neighbouring uses and the surrounding area having regard to;*
- a) *their small scale;*
 - b) *the intervening distances to the nearest houses. The 2 pods closest to the objector`s house are approximately 125.0 m from the objector`s house;*
 - c) *the degree of screening provided by existing buildings and vegetation between the development and the objector`s house and curtilage and the mitigation this provides. The camper van parking bays are also located on land which is lower than the land closest to the objector`s house.*
 - d) *the advice received from Environmental Health who have not objected;*
and
 - e) *the existing established character of the area which includes a riding centre and national wildlife rescue centre which contribute to the general standards of amenity in the area. The applicant has stated that there has not been any Police presence and they already display advice to visitors that there is a restriction on noise after a specified time. If there ever was an issue they would take further action to eliminate this issue. It is considered that there is always a risk of instances of anti social behaviour by guests which could result in nuisance but these circumstances could be investigated and regulated if necessary by the Police or Environmental*

Health. There are examples elsewhere of similar accommodation being approved and operating in comparable proximity to neighbouring houses.

- 3.14 The access road serving the site is not suitable for increased traffic and not for camper vans. The visibility at the junction of the track onto the private road is not suitable and dangerous to other road users. Comment – *the track has been installed to serve the riding centre and accommodates vehicles and traffic movements associated with this use, including horseboxes. Permission was granted as part of application Ref 18/00154/FULL as highlighted in Paragraph 3.22 below. The likely frequency and type of additional traffic generated by the development is not considered to result in any significant change to the risks to road or pedestrian safety associated with the existing usage and the access arrangement is still considered to be adequate and not dangerous. The applicant has been advised to remove low level vegetation which has become established on the land to the north of the access where his track joins the private road which would improve visibility for drivers exiting the track when looking north and for users on the private road approaching the junction from the north. This is considered sufficient to address the issue.*
- 3.15 Increased road traffic using the junction onto a derestricted section of public road with poor visibility at Shavelhaugh Loan will exacerbate the existing issues. There is already a caravan site access nearby. Comment – *as discussed in our response to the advice from Transportation in Paragraph 3.5 above, it is concluded that these issues would not provide sufficient or justifiable grounds to withhold permission in terms of the change in any risk to road and pedestrian safety.*
- 3.16 The dog breeding kennel is another noise nuisance and should also have a building warrant. Comment – *The need for a warrant would be regulated under separate legislation and this issue would not be a material consideration in the determination of the planning application. However, the applicant has been advised by the Service to contact Building Standards to obtain advice on any regulatory requirements under the Building (Scotland) Acts. The use of the kennel building to breed dogs has the potential to generate noise such as from dogs barking. This concern has been carefully considered as part of the assessment of the application. On balance, it is considered that there are not sufficient grounds to justify withholding permission for the use of the kennel building due to noise impact having regard to the following factors*
- a) *Environmental Health does not object. Environmental Health officers have visited the site and reviewed the operation of the use and have not raised concerns that this would be an incompatible use. They have confirmed that they do not object to planning permission being granted.*
 - b) *Environmental Health has also advised that any complaints about noise emissions could be investigated and regulated by them under the EPA Act 1990 if there was evidence of nuisance. Environmental Health has advised that it is currently dealing with a complaint about noise from dog barking but has confirmed they do not object to the application for the kennel building*
 - c) *the location of the kennels building in relation to the nearest noise sensitive properties;*

- d) *the attenuation that the building would provide to reduce noise generated within it;*
 - e) *the frequency and duration of periods when the dog breeding operation would take place or generate activity and noise.*
- 3.17 The toilet facilities in the pods are a health risk. Has Environmental Health been consulted? Comment - *Environmental Health have been consulted and made aware of the issues raised in the objection. They have not objected. Advice has also been obtained from SEPA about the sewage disposal arrangements and they have advised that the toilet facilities in the pods are acceptable in principle and their operation and disposal arrangements are regulated by SEPA. Given the issue would not be regulated under planning legislation, it is concluded that it would not constitute material planning grounds to justify withholding planning permission.*
- 3.18 There is an increase in fire risk due to the buildings comprising timber sheds. Have any measures been taken in regard to fire safety and fire fighting? Comment – *this issue is not regulated under planning regulations and is not considered to provide reasonable grounds to withhold planning permission. The applicant has however stated that they comply with relevant fire safety requirements.*
- 3.19 Site History
- 3.20 The site comprises land associated with a riding centre which the applicant has operated and developed for around 20 years. The centre includes an arena, stabling, storage buildings, temporary residential accommodation and fields used in connection with the riding centre. The surrounding area includes a mix of uses including the national wildlife rescue centre, agricultural operations, residential use and the grazing of horses on land.
- 3.21 The application has been submitted following an enforcement investigation relating to works taking place at the riding centre, including the installation of the kennels and 2 glamping pods. These buildings have been installed on the site. The application provides the opportunity for the applicant to address the breaches of planning control as well as the consideration of the planning merits of the remaining proposed development. The retrospective nature of part of the development would not prejudice the positive determination of this application.
- 3.22 A number of planning applications have been approved on the site including;
- a) Ref 18/00154/FULL - Erection of Temporary Residential Accommodation and Staff Welfare Building and Construction Of Access Track To South of Riding Centre (both Partly Retrospective), Extension to Stable Block And Change Of Use Of Agricultural Land To Riding Centre Use – approved and permission partly implemented.
 - b) Ref 18/00099/FULL – Erection of 2 No Residential Accommodation Units (Retrospective) – the application was withdrawn by the applicant.

- c) Ref 11/00172/FULL - Erection of 2 No Houses as Temporary Residential Accommodation – permission granted for one unit for a temporary period for someone employed in the running of the riding centre.

3.23 Our records show there have been 6 planning enforcement cases opened relating to the site; the first being in 2006. One resulted in an Enforcement Notice being served in 2012 relating to the occupation of a chalet for residential purposes. The Notice was subsequently complied with. The other cases either did not require any formal action, or retrospective applications were submitted which were approved to satisfactorily regularise the planning position. There have been instances of unauthorised development taking place at the site but those breaches have either been satisfactorily resolved or brought under planning control. These matters are not however considered to be material planning considerations in the determination of the current application.

4.0 Planning Assessment

- 4.1 The application must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 4.2 The National Planning Framework 4 (NPF4) was adopted on 13th February 2023 and is now part of the statutory Development Plan. Decisions on planning applications have to be made in accordance with the Development Plan unless material considerations indicate otherwise. The NPF4 and the adopted Clackmannanshire Local Development Plan 2015 and associated Supplementary Guidance currently comprise the Development Plan. A review of the Local Development Plan (LDP) is underway and will be informed by the policies in the NPF4. Planning applications will be assessed against the relevant Principles, Strategies and Policies in the NPF4 and the LDP. As NPF4 provides the latest national planning policy context for the assessment of planning applications, where it is considered there is incompatibility between the provisions of the adopted Clackmannanshire Local Development Plan 2015 and NPF4, the provisions of NPF4 will prevail.
- 4.3 The site is located within countryside as defined by the adopted LDP.
- 4.4 The most relevant policy provisions of the Development Plan are considered to comprise;
- 4.5 NPF4 Policies
- 1 – Tackling the climate and nature crises
 - 9 – Brownfield, vacant and derelict land and empty buildings
 - 14 – Design, quality and place
 - 23 – Health and safety
 - 29 – Rural development
 - 30 - Tourism
- 4.6 Clackmannanshire LDP Policies
- SC12 (Access and Transport Requirements)
 - SC23 (Development in the Countryside – General Principles)
 - SC25 (Business Development in the Countryside)

- EP3 (Business and Industrial Uses Outwith Existing or Allocated Business Sites)
 - EA2 (Habitat Networks and Biodiversity)
 - EA4 (Landscape Quality)
 - EA11 (Environmental Quality)
 - EA25 (The Development of Brownfield, Unstable and Contaminated Land)
- 4.7 Policy 1 requires weight to be given to the global climate and nature crises. The development has a locational justification based on the diversification of an established business and uses which would justify a countryside location. The application is not considered to be contrary to the objectives of Policy 1 having regard to the nature and scale of the development, the likely level of greenhouse gas emissions associated with the proposals and the absence of any significant impact on local biodiversity.
- 4.8 Policy 14 requires development to be designed to improve the quality of an area and not be detrimental to the amenity of the surrounding area. The design, siting and materials of the buildings are not considered to adversely impact on the established character and visual amenity of the area. They sit or would sit in proximity to the existing grouping of buildings which are characterised by a mix of building types and designs including stables, a chalet, a shed and animal enclosures on adjacent land. Planting on surrounding land helps contain the visual impact. The buildings would have a neutral impact on the established amenity of the area and are not considered to be contrary to this Policy.
- 4.9 Policy 29 provides support for development which would contribute to the sustainability and diversity of the local rural economy and communities, including the diversification of existing businesses. Development should be suitably scaled, sited and designed to be in keeping with the character of the area. Policies SC23 and SC25 require new business development in the countryside to have a locational justification and respect the character and amenity of the area. The location of the development is necessitated partly by the fact the uses are part of a diversification of the established countryside business on the site and the applicant could not practicably locate them elsewhere within an urban area. The buildings are also near to the existing building group and services. The glamping pods are designed and marketed to cater for visitors looking for a rural location and possibly associated with the riding centre activities. The siting and design of the buildings are not considered to adversely affect the character and amenity of the area. The access arrangements are considered to be acceptable. The existing buildings and tree belts and vegetation around the applicant's landholding also help to screen and contain the visual and landscape impact associated with the buildings from nearby properties, and the Core Path network. The buildings would not be readily visible from the nearest dwellings to the north, including the objector's. The pods would be visible from Hillview located to the west but they would be viewed against the back drop of wooded areas and existing buildings and would not have an adverse impact. On balance, the application is not considered to be contrary to the provisions of Policies 29, SC23, SC25 and EA4.
- 4.10 Policy EP3 creates a presumption in favour of new business developments being located within the business sites identified in the LDP. While the site is

not identified in the LDP for business development, it would comprise a diversification of an established countryside business including tourist visitor accommodation. Having regard to the conclusions set out in the preceding paragraph, it is concluded that a locational justification for the site has been established and that the application would not be contrary to Policy EP3.

- 4.11 Policy 30 provides support for new or extended tourist facilities in locations identified in the LDP. It also states that proposals will take into account; the contribution made to the local economy; compatibility with the surrounding area; opportunities for sustainable travel; accessibility for disabled people; measures to minimise carbon emissions; and opportunities to provide access to the natural environment. While the existing riding centre is not identified in the LDP as a visitor facility it does attract visitors to the area and the addition of 4 glamping pods is considered to be a suitable and complementary diversification of the business which would accord with the criteria listed above. The pods overlook fields and the Core Path network is accessible which would provide opportunities for sustainable travel and enjoyment of the natural environment. The application is not considered to be contrary to Policy 30.
- 4.12 As discussed in Paragraphs 3.13 and 3.16 above, it is concluded that there would not be sufficient or reasonable grounds to withhold permission due to the environmental impacts on the residential amenity and environmental quality of the nearest residents or other land uses. While the use of the kennels could generate noise from barking dogs at times, and notwithstanding the issues raised by the objector, it is considered that any impacts could be effectively managed and would not justify withholding permission having regard to; the advice from Environmental Health that it does not object; the regulatory powers that would be available to them to address nuisance if complaints are raised; the existing character of the site and adjoining land including the contribution that existing activities and uses make; and the juxtaposition of the kennels, pods and parking bays with the nearest noise sensitive properties. The risks associated with noise impacts are not considered to be unacceptable and justify withholding permission and the application is not considered to be contrary to Policy 23 and EA11.
- 4.13 As discussed in Paragraphs 3.5, 3.14 and 3.15 above, on balance, the development is not considered to result in a significant adverse increase in risk to road or pedestrian safety which would justify withholding permission. For these reasons. The application is not considered to be contrary to Policy SC12.
- 4.14 The development would not adversely affect existing trees and vegetation or natural habitats and is not considered to be contrary to Policy EA2.
- 4.15 The site lies within an area identified by the Coal Authority as being at higher risk from legacy mining issues. However, as discussed in Paragraph 3.8 above, it is concluded that the advice from the Coal Authority would not provide sufficiently justifiable grounds to withhold permission in the circumstances, and a suitably worded advisory note would be added to the decision notice to address the advice from the Coal Authority. The Contaminated Land Section has raised no objections and an advisory note would also be attached as per their advice. The development would be on

brownfield land. The application is considered to accord with Policy 9 and EA25.

- 4.16 Overall, subject to the proposed conditions, it is concluded that the development would not be contrary to the provisions of the Development Plan and that, on balance, there would not be sufficient policy grounds to justify withholding permission.

5.0 Other Material Considerations

- 5.1 A number of other material considerations have been identified which have also informed the assessment of the application. These are summarised below;

5.1.1 Notwithstanding the issues raised in the consultation advice from Roads and the Coal Authority, it is concluded that these would not, either alone or collectively, provide sufficient or justifiable grounds to withhold permission.

5.1.2 The issues raised by the objector have been carefully considered as part of the assessment of the application. However, for the reasons summarised in Paragraphs 3.11 to 3.18 of the Report, these are not considered individually or collectively, to justify withholding permission.

5.1.3 Environmental Health has raised no objections to the application having considered the issues raised by the objector and visited the site.

5.1.4 The development would help diversify the existing riding centre business, helping sustain the business and creating employment opportunities which would contribute to the rural economy of the area.

5.1.5 The development would increase the supply of visitor accommodation in Clackmannanshire and encourage more visitors to stay and spend money in the local area. This would contribute to both local and national tourism strategies.

5.1.6 The site is readily accessible from the surrounding Core Path network providing opportunities for active travel trips for visitors.

5.1.7 The development is considered to be compatible with neighbouring land uses and would not result in any significant change in the visual amenity and landscape character of the area or the established residential amenity of neighbours.

5.1.8 Although the kennels and 2 glamping pods have been installed and the uses have commenced in advance of the application being determined, regard should be given to the following factors;

- a) The Planning legislation allows for retrospective applications to be submitted in order to try to regularise the planning position.
- b) The Council's Planning Enforcement Charter highlights that the objective of planning enforcement enquiries is to resolve the problem rather than necessarily punish the mistake. Where a breach relates

to a small business or the self employed, the Council will try to remedy the breach without harming the viability of the business.

- c) The application was submitted by the applicant in response to the enquiries by the Service and he has confirmed that he wants to obtain the relevant permissions for his business activities. This application is seeking to address unauthorised development at the site which was given as the reason for referring the application to Committee.
- d) The timescales and actions by the applicant have been affected by the disruption caused by the Covid 19 pandemic. The applicant has advised that the development was implemented to help diversify the business and secure income to sustain the business in the face of the significant impact of the pandemic on the riding centre business.

5.1.9 It is considered that there are no other material considerations which would outweigh the development plan support for the application and justify withholding permission.

5.2. In conclusion, it is considered that subject to the proposed conditions, the application would not be contrary to the provisions and policies in the Development Plan and there would not be any other material considerations to outweigh that support and justify withholding permission.

6.0 Sustainability Implications

6.1. The development would comprise the expansion of an established countryside business. It would not adversely affect the environmental quality of the area and is accessible by active travel as well as the private car.

7.0 Resource Implications

7.1 Financial Details

7.2 The full financial implications of the recommendations are set out in the report. This includes a reference to full life cycle costs where appropriate. Yes

7.3 Finance have been consulted and have agreed the financial implications as set out in the report. Yes

8.0 Exempt Reports

8.1 Is this report exempt? Yes (please detail the reasons for exemption below) No

9.0 Declarations

The recommendations contained within this report support or implement our Corporate Priorities and Council Policies.

- (1) **Our Priorities** (Please double click on the check box)
- Clackmannanshire will be attractive to businesses & people and ensure fair opportunities for all X
- Our families; children and young people will have the best possible start in life
- Women and girls will be confident and aspirational, and achieve their full potential
- Our communities will be resilient and empowered so that they can thrive and flourish

- (2) **Council Policies** (Please detail)

10.0 Equalities Impact

- 10.1 Have you undertaken the required equalities impact assessment to ensure that no groups are adversely affected by the recommendations?
 Yes No X

11.0 Legality

- 11.1 It has been confirmed that in adopting the recommendations contained in this report, the Council is acting within its legal powers. Yes

12.0 Appendices

- 12.1 Please list any appendices attached to this report. If there are no appendices, please state "none".

- Location Plan

13.0 Background Papers

- 13.1 Have you used other documents to compile your report? (All documents must be kept available by the author for public inspection for four years from the date of meeting at which the report is considered)


Yes X (please list the documents below) No

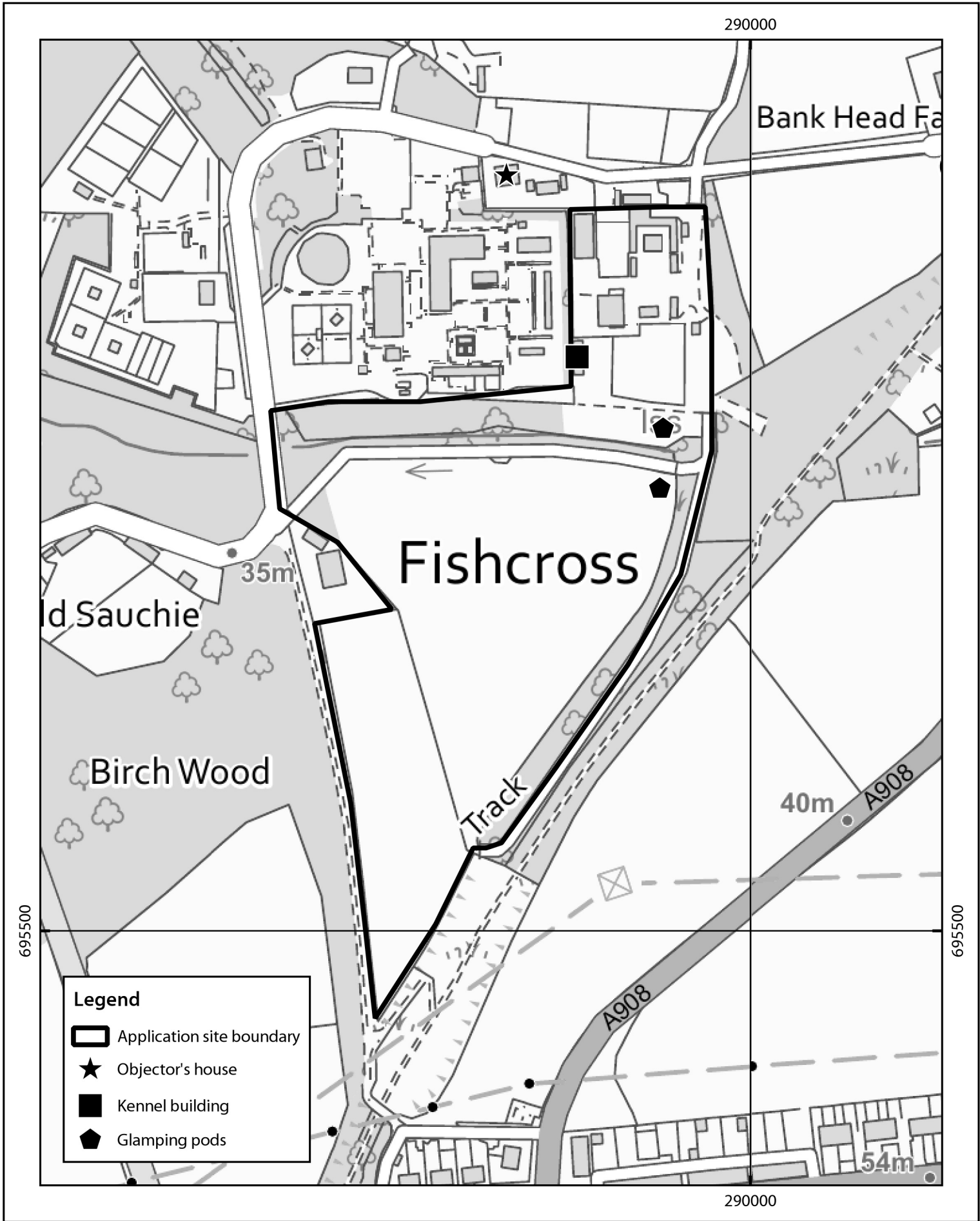
- Adopted Clackmannanshire Local Development Plan 2015
- NPF4, 2023

Author(s)





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NAME	DESIGNATION	SIGNATURE
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Emma Fyvie	Senior Manager (Development)	



Legend

-  Application site boundary
-  Objector's house
-  Kennel building
-  Glamping pods



23/00097/FULL – Devon River Riding Centre, Fishcross

Erection Of Kennels For Dog Breeding, Siting Of 4 No. Glamping Pods, Formation of 5 Parking Bays For Camper Vans (Partly Retrospective)

Ward: Clackmannanshire Central

OS Grid Ref: NS898956

0 50 100 150 200 250 metres

Scale: 1:2,500

Date: 15 Sep 2023

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Comhairle Siorrachd Chlach Mhanann

Development & Environment
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Report to: **Planning Committee**

Date of Meeting: **28 September 2023**

Subject: **Update - 10 Gannel Hill View, Devon Village**

Report by: **Lee Robertson, Senior Manager of Legal & Governance**

1.0 Purpose

- 1.1. The purpose of this report is to provide Planning Committee with an update on the option of using the Council's compulsory purchase order (CPO) powers for a property at 10 Gannel Hill View, Devonside as provided for in the Report presented to the Planning Committee on 3 November 2022.

2.0 Recommendations

Committee is asked:

- 2.1. To note that the option to use the Council's CPO powers is unlikely to be successful and accepted by the Scottish Ministers as detailed in the considerations in paragraph 3.0

3.0 Considerations

- 3.1. All CPO's require to be approved by the Scottish Ministers before they can be enforced.
- 3.2. Acquiring authorities should aim to develop the strongest possible case drawn from evidence when demonstrating the public interest associated with the CPO proposal. This is to ensure that any objections or legal challenge by land owners or those impacted by the development can be addressed and if necessary defended.
- 3.3. There are a number of factors that must be considered and the acquiring Authority must be able to clearly set out why an order is in the public interest and that there is clear justification for interfering with the legal rights of those affected by such an order (Planning Circular CPOGNAA/003).
- 3.4. Acquiring authorities should be able to explain why they consider that:
- 3.4.1. The purpose for which land is to be acquired are sufficiently important to justify the deprivation of property or interference with possession which the compulsory purchase entails;

- 3.4.2. All of land in question is directly needed for the proper delivery of those purposes;
 - 3.4.3. A less intrusive measure could not have been used for those purposes; and
 - 3.4.4. A fair balance has been struck between the rights of the individuals affected and the interests of the community.
- 3.5. Acquiring Authorities should be able to clearly evidence and justify the following when setting out the reasons for a CPO:
- 3.5.1. Powers it intends to use and why it is considered that those powers are the most appropriate in the circumstances.
 - 3.5.2. Public Benefit for the proposal versus what would happen if the project did not go ahead:-
 - 3.5.2.1. Any direct and immediate benefits to the population such as flood prevention, public health facilities, new sewer systems etc;
 - 3.5.2.2. Wider public benefits such as an increase in road capacity, alleviation of congestion, reduction in air pollution;
 - 3.5.2.3. Economic benefits such as job creation;
 - 3.5.2.4. New housing and the provision of any new infrastructure to support this, education or healthcare
 - 3.5.2.5. Infrastructure to support area regeneration
 - 3.5.2.6. Social benefits such as providing public service or addressing social problems ie crime reduction, skills development and employment opportunities.
- 3.6. In addition to the factors detailed in paragraph 3.2 there is also a legal requirement to evidence that the Council has attempted to negotiate the sale of the property. Any purchase price would need to be at market value and the Council would need to obtain a valuation to confirm the market value of the property. Costs would also need to include additional compensation and covering of all legal costs. As there is currently no budget available for the purchase of properties under CPO powers the Planning Authority would also require to confirm budget to allow the Council to make an offer to purchase from the owner.
- 3.7. Acquiring Authorities should not use their CPO powers speculatively as there is a need to demonstrate there is a reasonable prospect of being able to meet any potential shortfalls in funding. At this time the Council has no available budget for the completion of such a project.
- 3.8. One of the owners of the property has recently passed away. The estate of the late owner will take a number of months before it is finalised. As such it would not be appropriate nor would the owner have the ability to sell the property until the estate of the deceased has been discharged.

- 3.9. It is unlikely as a result of the requirements detailed in paragraphs 3.2, 3.3, 3.4, 3.5 and 3.6 the Council would be successful in obtaining the approval of the Scottish Ministers to CPO the property.
- 3.10. Acquiring Authorities can, in some circumstances, undertake the compulsory purchase of the land needed for the project but then rely on a third party (including the private sector) to undertake the development of the land and/or deliver the underlying project. Where this is the case the responsibility for obtaining confirmation of and implementing the CPO and then ensuring the project is delivered appropriately, remains with the Acquiring Authority. When considering the disposal of land to a third party an Acquiring Authority should at a minimum satisfy itself that:
- 3.10.1. No better solution exists;
 - 3.10.2. The developer has been unable to acquire the land through any other means;
 - 3.10.3. The developer can demonstrate it has actively engaged with the affected community. This should include land owners and all those directly or indirectly likely to be impacted by any proposed development;
 - 3.10.4. The developer can demonstrate a clear link to and/or compliance with a relevant plan or strategy;
 - 3.10.5. The developer can demonstrate the clear public interest in the development proceeding; and
 - 3.10.6. No procurement or State Aid issues arise, and if they do, that these can be complied with.
- 3.11. On the basis of the minimum requirements detailed in paragraph 3.10 it is unlikely that the Council would obtain Scottish Government consent for the relevant CPO and back to back agreement.

4.0 Sustainability Implications

- 4.1. None.

5.0 Resource Implications

5.1. Financial Details

- 5.2. The full financial implications of the recommendations are set out in the report. This includes a reference to full life cycle costs where appropriate. Yes

- 5.3. Finance have been consulted and have agreed the financial implications as set out in the report. Yes

5.4. Staffing

6.0 Exempt Reports

6.1. Is this report exempt? Yes (please detail the reasons for exemption below) No

7.0 Declarations

The recommendations contained within this report support or implement our Corporate Priorities and Council Policies.

(1) **Our Priorities** (Please double click on the check box)

Clackmannanshire will be attractive to businesses & people and ensure fair opportunities for all

Our families; children and young people will have the best possible start in life

Women and girls will be confident and aspirational, and achieve their full potential

Our communities will be resilient and empowered so that they can thrive and flourish

(2) **Council Policies** (Please detail)

8.0 Equalities Impact

8.1 Have you undertaken the required equalities impact assessment to ensure that no groups are adversely affected by the recommendations?

Yes No

9.0 Legality

9.1 It has been confirmed that in adopting the recommendations contained in this report, the Council is acting within its legal powers. Yes

10.0 Appendices

10.1 Please list any appendices attached to this report. If there are no appendices, please state "none".

11.0 Background Papers

11.1 Have you used other documents to compile your report? (All documents must be kept available by the author for public inspection for four years from the date of meeting at which the report is considered)

Yes (please list the documents below) No

Reports

to


Clackmannanshire

Council:

Author(s)

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