

ANGUS COUNCIL

DEVELOPMENT MANAGEMENT REVIEW COMMITTEE – 10 MAY 2024

LAND AT BALBEUCHLEY HOUSE, BALBEUCHLEY, KIRKTON OF AUCHTERHOUSE

REPORT BY THE DIRECTOR OF LEGAL, GOVERNANCE & CHANGE

1. ABSTRACT

- 1.1 This report advises Committee of an anomaly in the drafting of the Decision Notice following its meeting on 27 September 2023, where consideration was given to conditions attached to planning permission ref: 22/00787/FULL for the erection of staff accommodation for seasonal workers and associated works. The report provides advice on how that anomaly could be remedied to ensure that the subsequent decision is robust and that any conditions attached comply with relevant guidance.

2. ALIGNMENT TO THE COUNCIL PLAN

This Report contributes to the following local outcomes contained within the Angus Council Plan 2023-2028:

- Caring for our people
- Caring for our place

3. RECOMMENDATIONS

- 3.1 It is recommended that the Committee:-
- (i) Note the contents of this report; and
 - (ii) Determine the review as appropriate.

4. CURRENT POSITION

- 4.1 At its meeting on 27 September 2023, the Development Management Review Committee considered an application for a review in respect of Conditions 2 and 4 of the planning permission for the erection of staff accommodation for seasonal workers and associated works application ref 22/00787/FULL, at Land at Balbeuchley House, Balbeuchley, Kirkton of Auchterhouse. (Report 269/23 to the Committee is attached as Appendix 1; and the Minutes of that Meeting as Appendix 2.
- 4.2 The submitted review sought amendment to Conditions 2 and 4 of the planning permission which had been granted by officers under delegated powers. The review did not seek any further amendment to the planning permission.
- 4.3 Committee resolved to remove Condition 2 and to retain Condition 4.
- 4.4 In the drafting of the decision notice following the Committee meeting, it has become apparent that the resultant conditions would result in an anomalous situation. Deletion of Condition 2 from the originally granted planning permission would result in the remaining Condition 3 stating that: -

That on or before the expiration of the period stated in Condition 2, the use of land hereby permitted shall be discontinued and all buildings, plant, machinery or materials associated with that use shall be removed. Unless otherwise approved by a grant of planning permission.

- 4.5 The resultant Condition 3 would have no practicable meaning in circumstances where the Condition 2 which is referenced was deleted. This would result in the Decision Notice not being precise, enforceable, reasonable and competent in terms of the conditions contained therein.
- 4.6 The test of conditions contained within Planning Circular 4/1998: the use of conditions in planning permissions, states that conditions should only be imposed where they are:
- necessary,
 - relevant to planning,
 - relevant to the development to be permitted,
 - enforceable,
 - precise, and
 - reasonable in all other respects
- 4.7 As the decision notice has not been issued, it is appropriate for the matter to be remedied to ensure that the decision and resultant conditions are lawful. Case law is clear that as the Decision Notice has not been issued, the Council has not determined the review case and therefore, can, if so minded, consider the review again. It is the view of both legal and planning officers that as a result of the anomaly noted above, the case requires to be reconsidered and Committee can reach any decision, including a different decision to the one that they took on 27 September 2023. In effect the Committee can consider the review of new; or alternatively can consider such amendments to overcome the anomaly to allow a lawful Decision notice to be issued.

5. PROPOSAL

- 5.1 Having regard to the Committee resolution, it is suggested that if Condition 2 of the original planning permission is to be deleted, Condition 3 of that permission should be amended. Such amendment would remove reference to Condition 2 and it is suggested that it should be further revised as detailed below to ensure that it meets the tests set out in Circular 4/1998.

That when the need for the development hereby approved to accommodate seasonal workers employed by Nissen Christmas Trees Ltd ceases, the use of land hereby permitted shall be discontinued and all buildings, plant, machinery or materials associated with that use shall be removed, unless otherwise approved by a grant of planning permission.

- 5.2 Committee should note that the deletion of Condition 2 would not be entirely consistent with Policy TC5 of the Angus Local Development Plan which states that planning permission will not normally be granted for more than 5 years when the requirement for seasonal or transient worker accommodation can be reviewed. Committee is invited to identify whether the proposal complies with the development plan, and if it does not, to identify material planning reasons that justify a departure from policy in this case. Such reasons are necessary for the decision notice.

6. FINANCIAL IMPLICATIONS

There are no financial implications arising directly from the recommendations in the report.

7. RISK MANAGEMENT

There are no issues arising from the recommendations of this report.

8. ENVIRONMENTAL IMPLICATIONS

There are no direct environmental implications arising from the recommendations of this report.

9. EQUALITY IMPACT ASSESSMENT, HUMAN RIGHTS AND FAIRER SCOTLAND DUTY

An Equality Impact Assessment is not required.

10. CONSULTATION

The Service Leader – Planning and Sustainable Growth/Chief Planning Officer has been consulted in the preparation of this Report.

NOTE: No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973, (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.

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DATE: 1 May 2024

List of Appendices:

APPENDIX 1 – [Report 269/23](#) to Committee on 27 September 2023

APPENDIX 2 – Minutes of the Meeting of Committee on 27 September 2023