

9th June 2024

Application for Review – Non-determination of application No 23/00400/PPPL in respect of the erection of dwellinghouse at 1 Brochie Cottages, Monikie.

Site Address: 1 Brochie Cottages, Craigton of Monikie, DD5 3QN

Dear Development Management Review Committee,

THE REPORT

We refer to the following documents:

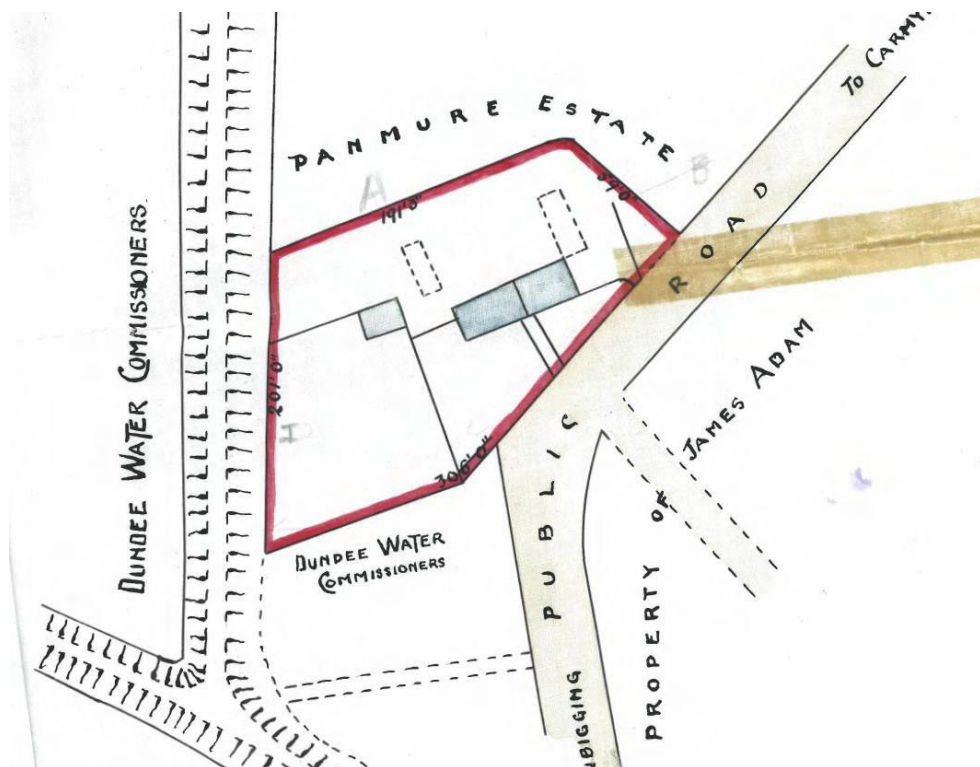
- The Angus Local Development Plan (2016) (ALDP),
- The ALDP Countryside Housing Supplementary Guidance (Guidance)
- And The National Planning Framework (NPF4)

1. Curtilage

- a. Curtilage is not defined anywhere in the ALDP or Guidance or NPF4. In its glossary, the ALDP defines *gap* site and *rounding off* in terms of *curtilage*, so a clear definition is important.
- b. The word *curtilage* is defined by the Shorter Oxford Dictionary as, “a small court, yard, or piece of ground, attached to a dwelling-house **and forming one enclosure with it**”. This definition is used by HMRC in assessing capital gains tax on a property⁴.
- c. The notion that ‘curtilage’ is that which may be regarded as forming one property was adopted by Buckley LJ in *Methuen-Campbell v Walters* [1979] 1 All ER 606 at 621, ‘What ... is meant by the curtilage of a property? In my judgment it is not sufficient to constitute two pieces of land parts of one and the same curtilage that they should have been conveyed or demised together, for a single conveyance or lease can comprise more than one parcel of land, neither of which need be in any sense an appurtenance of the other or within the curtilage of the other’
- d. For over a hundred years the development site and the cottage have been separately enclosed, and distinctly differentiated, by stone walls. These walls are shown on Scotland’s Land Information Service⁵ map (below) and in the title deeds for the property from 1923 when the reservoir was managed by the Dundee Water Commissioners and the land was owned by Forfarshire Education Authority. The site thus does not *subdivide an existing residential curtilage*, does not *artificially create a new build plot*, and has a well-defined and historic sense of *containment*.

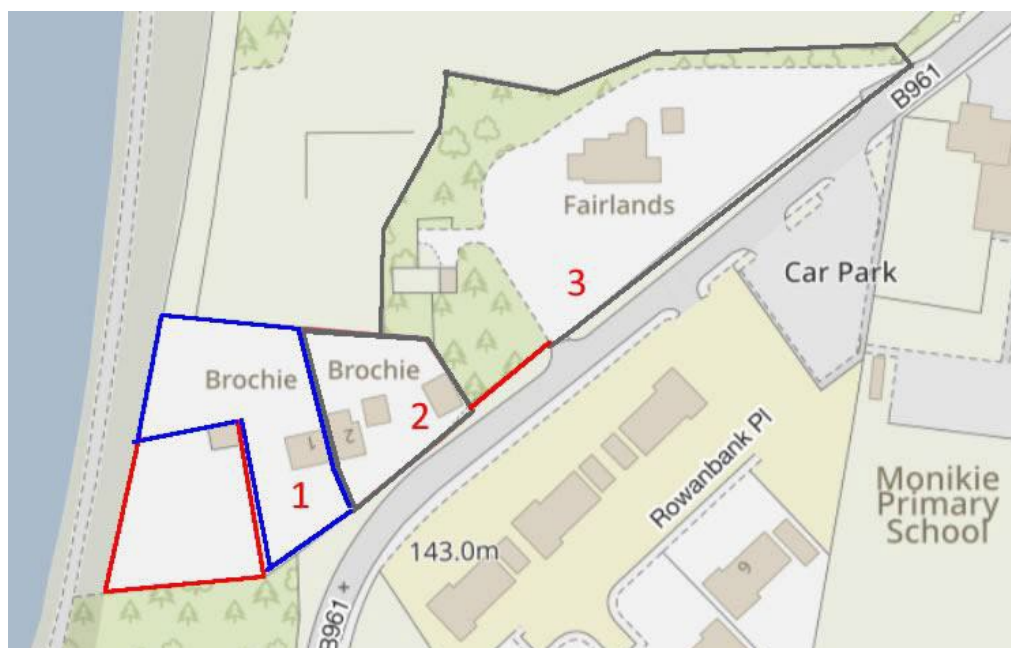
⁴ HMRC Capital Gains Manual CG64245 <https://www.gov.uk/hmrc-internal-manuals/capital-gains-manual/cg64245>

⁵ <https://scotlis.ros.gov.uk/map-search>



- e. The Applicant and her agent readily admitted in the appeal to being 'too casual' in our initial use of the term curtilage in the primary application. We are not planning professionals. We hope the above clarifies the position.
- f. A further map (below) also shows **three** dwellings (Brochie1, Brochie 2 and Fairlands) to the north of the B961. This is a material consideration

in our assertion of rounding off under ALDP policy TC2.



2. Regarding the ALDP development boundary (DS1), the Report states that *“there is no reasonable basis to suggest that the Craigton of Monikie development boundary is unreasonable or irrational.”* The Meeting noted that the ALDP was formulated in 2016 and was now 3 years past its lifespan. In a decision by a Scottish Government Reporter (PPA-120-2061) the reporter states *“where a development plan is more than five years old, it is regarded by Scottish Planning Policy (SPP)⁶ as “out of date”. ...it does potentially allow a proposal to qualify for support from SPP despite being contrary to the development plan”*. The reporter agreed with the appellant *“that the fact that the LDP is more than five years old is an important material consideration”*. In our submission, the Craigton of Monikie development boundary no longer reflects

⁶ Scottish Planning Policy (SPP) has been replaced by the National Planning Framework 4 (NPF4). There is no reason to suppose a reporter would decide differently under NPF4 than the SPP.

the actual settlement. The boundary now runs directly through the middle of two of the houses built at Rowanbank under 23/00636/PPPL (Overlaid maps Pictured right).

We believe the above provides a reasonable and rational basis to question the relevance of the current development boundary.



3. Regarding the precedent set by 23/00636/PPPL the Report states that *'there is no binding precedent in planning law, each application is assessed on its own individual merits'*. While it is correct to say that there is no **'binding precedent'** in planning law, it is not correct to say that there is no value in precedent. Binding precedent is impossible in planning law for the reason set out in the Report: each application involves the consideration of a unique combination of factors.

However, consideration of previous applications is of demonstrable utility, especially in circumstances where the factors upon which the present application turns have already been considered in previous planning decisions. In the present case, many of the considerations raised in the Report including the ALDP, NPF4, development boundary, local housing requirements community needs, etc. affecting Craigton of Monikie have already been considered and it would be illogical to discard these deliberations and repeat them all *de novo*. The Report itself relies on precedent citing other cases. The individual merits of the current review include and exceed those of 23/00636/PPPL in that

- a. There have been no objections from statutory consultees, neighbours or the public;
 - b. The site is essentially invisible from the public road;
 - c. While of itself not a major contributor to sustainable development, the proposal would supplement the sustainable development benefits of 23/00636/PPPL by 14% thus providing public benefit.
4. The Report itself cites precedents. It refers to a rejected appeal (PPA-120-2061) to Scottish Ministers, for a development of 60 houses in Carnoustie, based on adequate housing supply in the South Angus Housing Market Area. The scale of that development is in no way comparable to the current application.

The Angus Council Housing Market Profile for the South Angus Area⁷ states *"By 2037 there is projected to be around 3216 more people aged over 65 – by*

⁷ https://www.angus.gov.uk/directories/document_category/housing_market_area_profiles

2026 there will be around 1600 more, meaning the provision of housing suitable for older people is an immediate issue". 2026 is only two years away. The proposal is for a house suitable for an elderly person for whom the stairs to the bathroom in the existing house could be unmanageable.

5. The Report refers to a comment received from the Angus Council Countryside Access Officer. The comments concern:
 - a. The core path – the proposal does not affect the amenity or access to the core path around the reservoir. Many Angus core paths pass much closer to dwellings than will be the case for this proposal.
 - b. Affect on the setting of the country park – the proposal is for a site some 4 meters below the path and is only significantly visible from a short section of the core path. Its effect on the setting of the park will be minimal and not significantly different from the effect of other existing housing.
 - c. Privacy for the occupants – this is really a matter for the Applicant and future purchasers to consider. The degree of overlook can be mitigated by good design at the full planning permission stage. Privacy for and from other dwellings is maintained as the site is very well screened from other properties.
 - d. Affect on trees to the south of the site – the trees mentioned are on Monikie Country Park property. The Applicant has no authority over these trees and no desire to see them removed. No trees would be removed by the proposal and the indicative site of the dwelling is far enough away from any roots extending onto the site to avoid damaging the existing trees.

We are gratified that the proposal has not received any objections from statutory consultees, neighbours, community council or the wider public.

ALDP Policy TC2

In countryside locations Angus Council will support proposals for the development of houses which fall into at least one of the following categories:

...

- *single new houses where development would:*
 - *round off an established building group of 3 or more existing dwellings;*
- *... in Rural Settlement Units (RSUs), fill a gap between the curtilages of two houses, or the curtilage of one house and a metalled road, or between the curtilage of one house and an existing substantial building such as a church, a shop or a community facility;*

Guidance further provides that

A single new house may be permitted where development would round off an established group of 3 or more closely related residential buildings or buildings capable of conversion for residential use. This should be sited/located within the building group (i.e. generally located close to other

buildings in the group) provided this does not detract from the overall sense of containment and cohesion of the group within its wider landscape setting.

The site rounds off the established residential building group of 3 dwellings: Fairlands, Brochie 2, and Brochie 1 as shown in the map above.

Guidance indicates that *A sense of containment is contributed to by existing physical boundaries such as landform, buildings, roads, trees, watercourses, or long established means of enclosure such as stone walls*. The site is contained on all sides by the existing dwellings to the east and substantial landscaping features such as the reservoir embankment to the west; also the development of the plot would not result in, encourage, or even allow linear/ribbon development. The *sense of containment* is further enhanced by the historic, over 100-year-old, dry-stone walls forming the site's perimeter and supporting the reservoir embankment.

The site is in a Category 1 RSU and fills a gap between the curtilage of Brochie 1 and the human-built structure of the Monikie reservoir embankment forming an essential part of the community facility of Monikie Country Park.

This in our view demonstrates full compliance with the requirements and overall objectives of Policy TC2.

National Planning Framework (NPF4)

Our proposal is in keeping with the general principles of NPF4 Policy 17

- a) *Development proposals for new homes in rural areas will be supported where the development is suitably scaled, sited and designed to be in keeping with the character of the area.*
The list of permitted development classes that follows is not exhaustive, for instance it does not mention or prohibit gap sites or rounding off.
- b) *Development proposals for new homes in rural areas will consider how the development will contribute towards local living and take into account identified local housing need.*

Our proposal considers and addresses the need for suitable housing for the elderly as identified in the South Angus Housing Market Area Profile. Members at the DMRC Meeting made significant comments that the proposal would help the small community of Craigton of Monikie especially by potentially supporting the roll in the nearby local primary school.

Summary

We believe we have shown that

1. There are regulatory reasons and practical implications as to why the Procedure Notice is fatally flawed.
2. A Decision Notice upholding the appeal is required under Regulation 22.

3. The development boundary of Craigton of Monikie is *out-of-date* and no longer reflects reality. This being a '*significant material consideration*' affecting DS1
4. The proposed site qualifies as a *rounding off* of the three existing dwellings to the north of the B961, namely Brochie 1, Brochie 2 and Fairlands
5. There are several good reasons to hold that the proposed site is out-with the curtilage of Brochie 1 and thus qualifies as a *gap* site, under policy TC2, between Brochie 1 and the community facility of Monikie Country Park
6. The proposal has a strong *sense of containment* and will not result in or encourage ribbon development
7. There is public benefit to the proposal in supporting the local school and a fragile local community
8. The need for the dwelling, being suitable and intended for an elderly person, is supported in the South Angus Housing Market Area Profile
9. That the general principles of NPF4 policy 17 are supportive of the proposal
10. That the DMRC has given careful consideration to the ALDP and NPF4 policies and to the public benefit of the proposal to the local community, in reaching its unanimous decision to uphold the appeal.

Accordingly, we respectfully invite the DMRC to issue the required Decision Notice, upholding its approval of the appeal, forthwith and without further delay.

Yours Faithfully,



Kenneth Cochran
(as agent for Rosemary Watson, Applicant)

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