

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 16 MAY 2023

PLANNING APPLICATION – LAND SOUTH OF THE WHINS, THE BRAE, KIRKTON OF
AUCHTERHOUSE DD3 0RE
GRID REF: 334595: 738734

REPORT BY SERVICE LEADER – PLANNING & SUSTAINABLE GROWTH

Abstract: This report deals with planning application No. [22/00585/FULL](#) for the erection of a dwellinghouse and associated works at land south of The Whins, The Brae, Kirkton of Auchterhouse. This application is recommended for conditional approval.

1. RECOMMENDATION

It is recommended that the application be approved for the reason and subject to the conditions given in Section 10 of this report.

2. ALIGNMENT TO THE ANGUS LOCAL OUTCOMES IMPROVEMENT PLAN/CORPORATE PLAN

This report contributes to the following local outcome(s) contained within the Angus Local Outcomes Improvement Plan and Locality Plans:

- Safe, secure, vibrant and sustainable communities
- A reduced carbon footprint
- An enhanced, protected and enjoyed natural and built environment

3. INTRODUCTION

3.1 The applicant seeks full planning permission for the erection of a dwellinghouse with associated works on land south of The Whins, The Brae, Kirkton of Auchterhouse. A plan showing the location of the site is provided at Appendix 1.

3.2 The application site extends to around 2,400sqm and is located to the east of The Brae and to the north of Old Whisky Road within Kirkton of Auchterhouse. The site is adjacent to the property known as The Whins.

3.3 The proposal seeks permission for the erection of a 4-bedroom, 1½ storey dwelling with an integral double garage to the south of The Whins. A new access to serve the proposed house would be formed to the north of The Whins and would wrap round the eastern boundary of that property. The proposal would be connected to the public water supply and foul drainage networks and SUDs provision is proposed to deal with surface water runoff.

3.4 The Site & Location Plan drawing no. 2022/TWA/01 Rev A amends and supersedes the drawing named the same and numbered 2022/TWA/01. The amended drawing more plots the existing trees around the site; relocates a proposed soakaway; amends proposed boundary treatments; and revises proposed visibility sightlines.

3.5 The application has been subject of statutory neighbour notification and was advertised in the press as required by legislation.

4. RELEVANT PLANNING HISTORY

There is no planning history directly relevant to the consideration of the application.

5. APPLICANT'S CASE

The following supporting information has been submitted and can be viewed on [Public Access](#) and are summarised at Appendix 2: -

- Planning Statement;
- Response to public concerns;
- Sun path information.

6. CONSULTATIONS

6.1 **Angus Council Roads** – no objection in relation to road traffic or pedestrian safety subject to conditions regarding visibility splays and provision of suitable driveway drainage. No objection is offered in relation to potential flood risk.

6.2 **Scottish Water** – no objection.

6.3 **Scottish Forestry** – has advised there is no restocking direction relating to the site.

6.4 **Auchterhouse Community Council** – objects to the proposal. The main concerns raised relate to alleged anomalies in the planning application; land ownership accuracy and right of access concerns in relation to Old Whisky Road; lack of detail relating to, and potential impacts arising from construction traffic, site access, and flood risk; impacts upon pedestrian and vehicle safety; impacts upon the character and pattern of the development in the area; conflicts with ALDP Policy TC2; impacts upon amenity; historic felling of trees previously growing on the site; potential further tree felling; and historic restrictions prohibiting subdivision of plots along Old Whisky Road. *Copies of the full representations made by the community council are provided at Appendix 3.*

7. REPRESENTATIONS

7.1 11 letters of representation have been received, 10 in objection and 1 offering general support. Those letters are provided at Appendix 3 and are available to view on the council's [Public Access](#) website.

7.2 The following matters have been raised as concerns: -

- **Proposed layout/ plot subdivision, house height and boundary treatments are not in keeping with the character of the area.**
- **Approval would undermine previous planning refusals on sites along Old Whisky Road.**
- **Historic felling of trees on the site and the potential felling of existing trees and resultant impacts upon the environment, privacy, and wildlife.**
- **Suitability of proposed access including potential impacts upon traffic safety, light pollution from driveway traffic, and loss of a stone dyke and trees to achieve required sightlines.**
- **Adverse impacts on road traffic and pedestrian safety.**
- **Potential flood and pollution risk and lack of foul and surface water drainage details.**

7.3 The letter offering general support has advised further assessment should be provided in relation to construction traffic and protection measures for the water course passing through the site. However, subsequent correspondence has indicated that the matters appear to have been addressed in further information provided by the applicant.

- 7.4 Material planning issues are addressed below but the following matters are addressed at this stage: -
- **Use of the existing shared access at The Whins and potential damage to property, loss of privacy, and blocking of access** – Use of the existing shared access does not form part of the current proposal and the application must be determined on the basis it is submitted. The applicant has advised the existing access would not be utilised for construction or residential traffic associated with the development. Screen fencing is proposed to maintain the privacy of the property known as The Whins.
 - **Use/ suitability of Old Whisky Road for construction access and resultant traffic safety impacts, as well as potential damage to the road and its boundary treatments** – The application does not propose formation of a new access from Old Whisky Road and the applicant has advised no new access would be formed from Old Whisky Road for construction or residential traffic associated with the development. Furthermore, a condition is proposed to prohibit the use of permitted development rights which would allow a new access to be formed from Old Whisky Road. Any damage to the road or existing boundary treatments would be a civil matter.
 - **Land ownership concerns regarding the former verge located within the site** - The applicant has provided certification that they own the application site and has provided information to support that position. However, land ownership is not a material planning consideration, and it is not the purpose of the planning system to arbitrate on matters of disputed land ownership.
 - **Historic restrictions limiting only one house per plot on Old Whisky Road** – the applicant has advised this relates to a feudal condition that is no longer enforceable. Notwithstanding that, title restrictions are a civil matter and are not a material planning consideration.
 - **Previous property damage and impacts upon stability of neighbours trees** – damage to property is a civil matter and is not a material planning consideration. Neighbouring trees may be exposed to windblow because of tree felling that has taken place, but that is the case irrespective of any decision on this application.
 - **Inconsistency of site address across various documents** – this is not a material planning consideration. The location and extent of the site is apparent from the submitted drawings.

8. PLANNING CONSIDERATIONS

- 8.1 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.
- 8.2 In this case the development plan comprises: -
- [National Planning Framework 4](#) (NPF4) (2023)
 - [Angus Local Development Plan](#) (ALDP) (2016)
- 8.3 The development plan policies relevant to the determination of the application are reproduced at Appendix 4 and have been taken into account in preparing this report.
- 8.4 The ALDP was adopted in September 2016 while NPF4 was adopted on 13 February 2023. Planning legislation indicates that where there is any incompatibility between the provision of the national planning framework and a provision of a local development plan, whichever of them is the later in date is to prevail.
- 8.5 ALDP Policy DS1 states that proposals on sites not allocated or otherwise identified for development but within development boundaries will be supported where they are of an appropriate scale and nature and are in accordance with relevant policies of the ALDP. Both the ALDP and NPF4 encourage the reuse of brownfield land in

preference to the use of greenfield land.

- 8.6 NPF4 Policy 16 seeks to encourage, promote and facilitate the delivery of more high quality, affordable and sustainable homes, in the right locations. It indicates that development proposals for new homes on land not allocated for housing in the local development plan will only be supported in limited circumstances where the proposal is supported by an agreed timescale for build-out; the proposal is otherwise consistent with the plan spatial strategy and other relevant policies including local living and 20-minute neighbourhoods; and where (amongst other things) the proposal is for smaller scale opportunities within an existing settlement boundary. ALDP Policy TC2 indicates that proposals for new residential development within identified development boundaries will be supported where the site is not protected for another use and is consistent with the character and pattern of development in the surrounding area. It also includes detailed tests requiring proposals to be compatible in terms of land use; to provide a satisfactory residential environment; not to result in unacceptable impact on the built and natural environment, surrounding amenity, access and infrastructure; and to include provision for affordable housing in specified circumstances.
- 8.7 In this case the site is located within the development boundary for Kirkton of Auchterhouse as defined by the ALDP and the erection of a single dwelling would represent a small-scale development. The site is largely greenfield in character, but ALDP policy seeks to facilitate new houses on appropriate sites within development boundaries. The use of the site for housing would be compatible with existing and proposed land uses in the surrounding area, and a condition is proposed to ensure the development commences within 3 years.
- 8.8 The proposed plot would front the public road known as The Brae and the plot size would be comparable with existing house plots in the general area that front The Brae. For comparison, the three plots to the south of the site that front The Brae range from around 700 – 1000sqm in area while the application site is over 2000sqm. The property known as The Whins would similarly retain a plot size comparable to those in the area (around 1800sqm). The proposed house would be located towards the east of the plot but would be on a similar axis to existing properties with a main elevation orientated such that it would face the southwest, addressing The Brae and Old Whisky Road. The plot is of sufficient size that it could readily accommodate new tree planting and landscaping which is otherwise characteristic of plots in the area, and this could be secured by planning condition. In general terms, the proposal is compatible with the character and pattern of development in the area.
- 8.9 The proposed plot is reasonably sizeable and could provide a good standard of residential amenity. Areas of the plot would experience some shadow from woodland to the east, but that would be for relatively short periods during the day, and it is a characteristic of properties in the area. The proposed house is located on the plot and designed in a manner such that it would not give rise to unacceptable impact on the amenity of occupants of neighbouring property. Separation distances are in general accordance with those identified in council design guidance, specifically the advice note that deals with small housing sites. The proposed vehicular access arrangement is slightly unusual as it wraps round the existing property at The Whins, but screening is proposed to safeguard the amenity of occupants of that property. The resultant relationship between the private access to the new house and other dwellings in the area is not one that is otherwise unacceptable.
- 8.10 The site is not subject of any built or cultural heritage designations and development would not affect any such designations. There are a wide variety of house styles in the area and the design of the proposed building is acceptable in terms of the council's Design and Placemaking Supplementary Guidance. The layout plan has been amended to indicate provision of post and wire fencing and native hedgerow planting on those boundaries that have a direct interface with the public realm. This

would provide some biodiversity enhancement and a further condition is attached requiring provision of additional planting within the plot to reflect the character of the area.

- 8.11 It is apparent from available information that trees have been felled on the site, they were not subject of any natural heritage designation and their felling did not require approval from the planning authority. Scottish Forestry has advised there is no re-stocking requirement in relation to the site and no outstanding enforcement case. The site itself is not subject of any natural heritage designation and there is no evidence to suggest that development would adversely affect any designated site or protected species. It is on the periphery of the settlement, sits adjacent to existing woodland, and provides ready access to the wider countryside for any wildlife that may use the existing space. A limited number of what appear to be self-seeded trees would require to be felled to accommodate the proposed access, but the applicant has indicated that the driveway itself would be formed in a manner that would minimise disruption to trees that form the northern site boundary. Submitted plans provide for hedgerow planting in association with the proposal and proposed conditions require provision of new planting to respect the character of the area and this would provide some compensation for tree loss.
- 8.12 The proposal provides for the formation of a new vehicular access from The Brae which is a public road with a 20mph speed limit. The carriageway of the road is reasonably narrow and does not have footways, but it is fairly typical of roadways that are found in rural areas, and it is not a through route. The proposed house would have dedicated off-street parking and turning facilities within its curtilage. Kirkton of Auchterhouse provides a range of community facilities including a school and village hall, and it is on a bus route. The council's roads service has confirmed no objection to the application in relation to road traffic and pedestrian safety, subject to conditions to regulate visibility splays and for the provision of suitable driveway drainage. It has indicated that in circumstances where the road is reasonably straight, comparatively lightly trafficked, and subject of a 20mph speed limit, visibility sightlines of 2.0 x 25m would be acceptable and in accordance with Designing Streets. Officers from the roads service have inspected the proposed access and advised that it appears capable of being formed in accordance with its requirements.
- 8.13 The proposed water supply, foul drainage, and surface water drainage arrangements are compatible with relevant policy in the ALDP and would be further regulated through the building warrant process. A watercourse crosses the site and the council's roads service has reviewed information regarding flood risk and has confirmed no objection to the application. The position of a proposed soakaway has been amended in response to discussion. Conditions are proposed requiring details of final ground and floor levels, submission of a construction management plan to minimise potential disruption to the watercourse during construction activity, and to remove permitted development rights that might otherwise allow for increase in ground levels within the site without the need for planning permission.
- 8.14 The proposal is not of a scale where it would require affordable housing provision or other developer contributions. There is no reason to consider that the proposal would result in unacceptable impacts upon infrastructure.
- 8.15 Information submitted with the application indicates that the proposed house has been sited to benefit from solar gain and includes solar panels on the roof. Information relating to biodiversity enhancement and landscaping proposals is limited, but the new native hedgerows identified on the plans would provide some benefit and additional planting can be secured by planning condition. The application does not give rise to any significant issues in terms of other development plan policy.
- 8.16 The proposal would provide a new house within an identified development boundary in a manner that is broadly compatible with development plan policy. It would not give

rise to any significant impacts on amenity, environmental interests, or infrastructure. As with any proposal, it attracts support from some development plan policies and is not entirely compatible with others. However, when those matters are balanced and considered in the round, the proposal is in compliance with the development plan.

- 8.17 In relation to material considerations, it is relevant to have regard to the planning matters that have been raised in letters of representation in so far as they have not been addressed in the above assessment.
- 8.18 General concern is raised regarding title restrictions that purportedly limit houses on Old Whisky Road to one house per plot. As indicated above, title restrictions are not in themselves a material consideration and the relevant issue in the determination of this planning application is whether the proposal complies with the current development plan and if there are any material planning considerations that justify a departure from policy. For the reasons set out above, the proposal is considered to comply with the development plan. Concern is raised that approval of this application may undermine previous planning refusals on sites along Old Whisky Road. However, there is no concept of binding precedent in planning law and each application is assessed on its own merits having regard to development plan policies and any material considerations. The outcome of this application would not alter any previous planning decisions relating to properties taking access from Old Whisky Road where the character of the plots is different from those fronting The Brae, and where access arrangements would be materially different.
- 8.19 Trees have been removed from the site in the recent past and there appears to be some dispute about the identity of the party that undertook that work. However, the removal of the trees was not a breach of planning control and Scottish Forestry has advised there is no re-stocking direction in relation to the site. In these circumstances, matters relating to who removed the trees or why they were removed are not relevant to the determination of the application: the application should be considered having regard to the site as it currently exists. A planning condition is proposed that seeks to safeguard existing trees from construction activity and it also requires provision of additional tree planting in association with the development. The site is on the periphery of the village and any wildlife using the site would have ready access to existing woodland and surrounding countryside. There is no evidence to suggest that protected species would be significantly affected by the proposal.
- 8.20 Issues regarding the compatibility of the proposal with the character and pattern of existing development in the area are addressed above. As indicated, there are a mix of plot sizes and house types evident on The Brae and this proposal would be compatible with the general form of development in the area.
- 8.21 Access to the site is a matter that has attracted considerable comment with parties variously suggesting that access should/ should not be taken from the existing driveway serving The Whins, and that access should/ should not be taken from Old Whisky Road. There is divergent opinion on the matter and in these circumstances, it is not possible to satisfy all interests. However, the application must be determined on the basis it has been submitted and in that respect the council's roads service has confirmed that the proposed access arrangements are acceptable. For the avoidance of doubt the applicant's agent has confirmed these do not involve use of Old Whisky Road or the existing driveway serving The Whins. Concern has been raised regarding the developer's ability to provide the sightlines as identified on the submitted plans and the roads service has confirmed that these cannot be achieved. However, the roads service has also indicated that sightlines in accordance with Designing Streets and appropriate for an area with a 20mph speed limit can be achieved. Additional traffic associated with a single new house would not materially affect road safety or amenity in the area. The new driveway would change the amenity enjoyed by residents of existing adjacent property but not to a level that would be untypical or unacceptable in an established residential area. A small breach

in an existing stone wall would not significantly alter the character of the area.

- 8.22 The council's roads service has considered the application in its capacity as flood prevention authority and has offered no objection. Surface water would be dealt with by a sustainable urban drainage system which should ensure that post-development runoff does not exceed pre-development runoff rates. Conditions are proposed that seek to ensure the water course is not adversely affected during construction activity and that require precise details of the culvert to be installed under the new access driveway. There is no reason to conclude the proposal would result in an increase in flood risk on the site or elsewhere, subject to conditions.
- 8.23 In conclusion, the proposal provides for the erection of a new house within a development boundary defined by the local development plan. The new house would be compatible with surrounding land uses and with the character and pattern of development in the area. It could be provided in a manner that does not give rise to any unacceptable impacts on existing amenity, environmental interests, or infrastructure, including flood risk and road safety. Issues raised by interested parties have been considered and, where appropriate, are addressed by proposed planning conditions. However, when relevant matters are balanced and considered in the round, the proposal complies with relevant policies of the development plan and there are there are no material considerations that justify refusal of the planning application contrary to the provisions of the development plan.

9. OTHER MATTERS

HUMAN RIGHTS IMPLICATIONS

The recommendation in this report for grant of planning permission, subject to conditions, has potential implications for neighbours in terms of alleged interference with privacy, home or family life (Article 8) and peaceful enjoyment of their possessions (First Protocol, Article 1). For the reasons referred to elsewhere in this report justifying this recommendation in planning terms, it is considered that any actual or apprehended infringement of such Convention Rights, is justified. The conditions constitute a justified and proportional control of the use of the property in accordance with the general interest and have regard to the necessary balance of the applicant's freedom to enjoy his property against the public interest and the freedom of others to enjoy neighbouring property/home life/privacy without undue interference.

10. CONCLUSION

It is recommended that the application be approved for the following reason, and subject to the following condition(s):

Reason(s) for Approval:

The proposal is in accordance with the development plan as it will provide new residential accommodation in a manner that is compatible with relevant locational criteria and that does not give rise to unacceptable impacts on amenity, natural, built, or cultural heritage interests or infrastructure, and that does not result in unacceptable flood risk or road safety implications, subject to the stated conditions. There are no material considerations that justify refusal of planning permission contrary to the provisions of the development plan.

Conditions:

1. The development to which this permission relates must be begun not later than the expiration of three years from the date of its grant.

Reason: In order to clarify the duration of this permission in accordance with the requirements of the Town and Country Planning (Scotland) Act 1997 (as amended) and to ensure that it will lapse if not implemented within that period.

2. Prior to the commencement of development the following shall be submitted to and approved in writing by the planning authority;
 - (a) A scheme of landscaping and precise details of all boundary treatments at the site. Those details shall include measures for the protection of existing trees within and adjacent to the site during construction, along with details of new planting including species, number, and density of new planting stock which shall include provision for native tree species within the site and for the planting of the native hedgerow shown on the proposed site plan drawing number 2022/TWA/01 Rev A. For the avoidance of doubt, the provision of timber fencing with public interfacing boundaries is not approved. Thereafter, the landscaping and boundary treatments shall be provided in accordance with the approved scheme and all planting shall be completed in the first planting season following the occupation of the dwellinghouse hereby approved. Any plants or trees which within a period of five years from the commencement of the use die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of a similar size and species. Any approved fences, gates or walls shall be erected prior to the occupation of the dwellinghouse hereby approved.
 - (b) Existing and proposed ground levels and floor levels relative to a fixed ordnance datum. Any increase in ground levels proposed shall be supported by information to demonstrate that such levels change will not increase flood risk within or outwith the site. Thereafter the development shall be completed in accordance with the approved details prior to the occupation of the dwellinghouse hereby approved.
 - (c) Precise details of the culvert to be formed under the access driveway to redirect the burn running through the site. Thereafter the culvert shall be provided in accordance with the approved details.
 - (d) A construction management plan that includes measures to protect the water course that transects the site from pollution and that provides details of soil movement and material storage during construction activity in a manner that reduces risk of flooding. Thereafter the development shall be undertaken in accordance with the approved plan.

Reason: In order that the planning authority may verify the acceptability of the specified matters and to ensure the development is undertaken in an acceptable manner having regard to biodiversity, landscaping, flood risk and pollution control, and the general amenity of the area.

3. Prior to the commencement of development, visibility splays of 2.0 x 25 metres shall be provided on both sides of the proposed access at its junction with The Brae in accordance with details as provided in drawing no. 2022/TWA/01 Rev A. Within the visibility splays nothing shall be erected, or planting permitted to grow to a height in excess of 1050 millimetres above the adjacent road channel level.

Reason: To enable drivers of vehicles leaving the site to have a clear view over a length of road sufficient to allow safe exit.

4. The driveway shall be designed and constructed to prevent the discharge of surface water onto the public road. This shall include the provision of a cut-off drain on the driveway at the interface with the public road verge.

Reason: To prevent the flow of surface water onto the public road in the interests of traffic safety.

5. Notwithstanding the provisions of any Development Order, no vehicular access or egress shall be formed or taken to or from Old Whisky Road to serve the house or house plot hereby approved, and ground levels within the plot shall not be altered, all unless otherwise first approved through the grant of planning permission on application to the planning authority.

Reason: In order that the planning authority may consider any such proposal in the interests of road traffic and pedestrian safety, amenity, and avoidance of flood risk.

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: 9 MAY 2023

APPENDIX 1: LOCATION PLAN

APPENDIX 2: SUMMARY OF APPLICANTS SUPPORTING INFORMATION

APPENDIX 3: LETTERS OF REPRESENTATION

APPENDIX 4: DEVELOPMENT PLAN POLICIES