

PLANNING AUTHORITY OPINION ON MODIFICATION OF CONDITION 3

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| Application Number: | 22/00463/PPPL |
| Description of Development: | Demolition of Redundant Farm Buildings and Erection of 4 Dwellinghouses |
| Site Address: | Carlungie Farm, Carlungie, Carnoustie |
| Grid Ref: | 351277 : 735903 |
| Applicant Name: | Clova Farms Limited |

At its meeting on 27 September 2023 the Development Management Review Committee (DMRC) requested:

'1. An opinion from the Planning Authority (Development Standards) is required which advises if the requested amendments to condition 3 are supported by the Town and Country Planning (Scotland) Act 1997 (as amended), and if applied, if the conditions will continue to comply with the regulations.'

Development standards service statement

Condition 3 of planning permission in principle 22/00463/PPL states:

3. Plans and particulars of the matters listed below shall be submitted for consideration by the planning authority. No work shall begin until the written approval of the authority has been given and the development shall be carried out in accordance with that approval. The matters are: -

- a) The siting of the building(s);*
- b) The design and external appearance of the building(s);*
- c) The layout of the site including access, car parking and turning space. The means of vehicular access to the site shall be by way of a suitable access to be formed and constructed onto Old Downie Road in accordance with the standards of Angus Council and the car parking within each plot curtilage shall be in accordance with the National Roads Development Guide (SCOTS);*
- d) A scheme of hard and soft landscaping including the means of site enclosure. For the avoidance of doubt the submitted scheme shall include details of protection measures for existing trees within and adjacent to the site, during construction works. All landscaping shall be carried out in accordance with the approved scheme and shall be completed during the planting season immediately following the commencement of development or such other date as may be agreed in writing with the Planning Authority (but shall be no later than within 12 months of the occupation of the dwelling hereby approved). Any planting which, in the opinion of the Planning Authority within a period of five years from*

the completion of development, is dying, being severely damaged or becoming seriously diseased, shall be replaced by plants of similar size and species to those originally required to be planted;

e) Precise details of the means of drainage for the development. For the avoidance of doubt surface water shall be directed to a sustainable drainage system;

f) The existing and proposed ground levels and finished floor levels relative to a fixed ordnance datum and ground and floor levels of neighbouring properties.

In considering the review case, it is necessary to have regard to relevant legislative requirements set out in the Town and Country Planning (Scotland) Act 1997 (as amended). It would not be legally competent to allow a review and grant permission in a manner that does not comply with statutory requirements.

In this case, the application subject of review is for planning permission in principle.

Section 59(1) of the Town and Country Planning (Scotland) Act 1997 (as amended) states: -

(1) "Planning permission in principle" is planning permission (granted in accordance with the provisions of regulations or a development order): -

(a) in respect of the carrying out of building, engineering, mining or other operations in, on, over or under land, and

(b) **subject to a condition, imposed under section 37(1)(a), that the development in question will not be begun until certain matters (which may, but need not be, particularised in the application) have been approved by the planning authority or as the case may be the Scottish Ministers.**

Section 59(1)(b) of the Town and Country Planning (Scotland) Act 1997 (as amended) requires that any planning permission in principle which is granted must, amongst other things and in summary terms, be subject to a condition that prevents the development in question beginning until certain matters are approved by the planning authority. A condition to this effect is not discretionary and section 59(1)(b) as highlighted in bold above is very clear on the requirements.

Condition 3 as attached to the planning permission in principle is compliant and consistent with the requirements of section 59(1)(b).

The matter has been discussed with solicitors in the legal, governance & change directorate and it is agreed that it would not be legally competent to grant planning permission in principle without a condition as required by section 59(1)(b). It follows that it would not be legally competent to amend the condition in the manner suggested by this review.