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**Report to:**                      **Planning Committee**

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**Date of Meeting:**        **27<sup>th</sup> October 2016**

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**Subject:**                      **Planning Application Ref: 16/00159/FULL – Change of Use of Agricultural Land to Permanent Gypsy/Traveller Site (2 No Households), Cattery and Apiary and Siting of 2 No. Residential Caravans and 2 No Touring Caravans, at**  
  
**Land To The South Of B910 And West Of Gartlove Plantation, by Clackmannan**

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**Report by:**                      **Grant Baxter, Principal Planner**

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## **1.0 Purpose**

- 1.1. The purpose of this report is to provide an assessment of and recommendations on the development proposals for the change of use of agricultural land to permanent gypsy/traveller site (2 No. households), cattery and apiary and siting of 2 No. residential caravans and storage of 2 No. touring caravans on land off the B910 road, at Gartlove, near Clackmannan.
- 1.2. The Planning application is for a local development but requires to be determined by Committee following a request from a local Member.

## **2.0 Recommendations**

- 2.1. It is recommended that the application is approved for a temporary period of 3 years, and also subject to other conditions as contained in Appendix 1 to this report.

## **3.0 Considerations**

- 3.1. Background
- 3.2. The site is a triangular area of land lying just to the west of the Gartlove forestry plantation and accessed via a private track served off the B910 road. The site sits around 30m back from the road frontage. It is partly covered in hard-core type material and enclosed by post and wire fencing. Surrounding land is mainly agricultural. The access track serving the site also serves a site around 200m to the south east which has consent and is used for a permanent gypsy traveller pitch, granted on appeal in 2009, and a caravan approved on a temporary basis, in connection with an adjoining agricultural enterprise.

- 3.3. The application is partly retrospective and comprises the following elements:
1. Change of Use of Agricultural Land to Permanent Gypsy/Traveller Site (2 No Households).
  2. Formation of hardstanding.
  3. Installation of a septic tank drainage system.
  4. Siting and occupation of 2No. Residential caravans.
  5. Storage of 2No. touring caravans.
  6. Formation of cattery business (and associated enclosures).
  7. Formation of apiary (non-business related).
- 3.4. Planning permission was granted in March 2014 to the previous owner of the site for siting of steel container, mesh enclosure and storage huts and formation of hardstanding. It is understood that the current owner purchased the site several months ago, and proceeded to site two residential caravans on the land, and this represents the retrospective element of the application. All aspects of the proposal need to be judged on their individual and collective merits.
- 3.5. Consultations
1. Roads: Objection. The proposal would involve additional development served off a sub-standard private track onto an unrestricted rural road.  
*Comment: The road is observed to be very lightly trafficked and the proposal is for a small scale of development.*
  2. Environmental Health: The proposed cattery will require to be licenced. Further details of storage and disposal of waste will be required and should be in accordance with SEPA guidance. Detailed conditions proposed in relation to cattery business to reduce potential for noise nuisance. *Comment: If approved, such matters can be captured in planning conditions.*
  3. Housing: The HNDA indicates there is no shortage of pitches at Westhaugh G/T Site, with vacant pitches currently available. The 2016 HNDA will provide more specific information on the G/T population, but current information suggests existing site provision in Clackmannanshire is adequate. *Comment: Guidance from Planning Aid Scotland indicates that reliance on availability of pitches at the Council-run site alone would not substantiate a refusal of planning permission for a private site*
- 3.6. Representations
- 3.7. There were no notifiable neighbours to this application, however as there is adjoining land with no premises, a Neighbour Notification advertisement was published in the Alloa Advertiser on 20 July 2016, and again on 24 August 2016, following changes to the application description.
- 3.8. In response, representations were received from the following parties:

1. Mr Colin Logan, East Birkhill Cottage, Clackmannan
2. Mrs Kim Pittaway, 1 Linn Mill Cottages, Clackmannan
3. Mr Gavin Pittaway, 1 Linn Mill Cottage, Clackmannan
4. Gary & Rebecca Boyd, New Woodyett Cottage, Clackmannan,
5. Maureen Ward, West Birkhill, Clackmannan

3.9. The representations can be summarised as follows:

1. Concerns regarding noise disturbance, having already been an issue arising from generators on site. *Comment: Initial concerns about noise nuisance have been investigated by the Council's Environmental Health Team, and no substantial evidence of a noise nuisance has been identified. Environmental Health have recommended conditions, including one regarding control of noise, if planning permission is granted.*
2. Concern that people should not be permitted to site caravans wherever they choose in the countryside, when there are registered sites, including one nearby. The Council-run traveller's site at Westhaugh, Alva is underutilised. *Comment: The availability of space at Westhaugh is not material in considering an application for a small privately owned site with related business proposals. It must be examined on its own merits in relation to relevant LDP policy.*
3. Caravans have previously been refused on land close to the application site. *Comment: The current application must be assessed on its own merits*
4. Concern regarding increased traffic in this rural area, and increased use of a sub-standard access with poor visibility onto a 60mph road. *Comment: Whilst the site access is of restricted width and visibility, it is on a straight section of this lightly trafficked rural road, and the development is of a small scale.*
5. There is no footway serving the site and no public transport routes on the road passing it, creating a safety risk for pedestrians, who will be forced to walk on the road, and additional school transport costs. *Comment: A narrow rural footway runs alongside the road towards Clackmannan, however there are no public transport services.*
6. Concern regarding devaluation of surrounding properties. *Comment: This is not a material planning consideration.*
7. Concern regarding impact on character of this rural area, the visual impact of the development on an area of high scenic value and on the agricultural use of adjoining land. *Comment: The site lies within part of the Special Landscape Area (SLA) designation, however it is one which has a number of small rural developments already within close proximity. The site is not open to distant views from around it and is only partially visible from the B910 road at relatively close proximity. Any permission would be conditioned such that native planting would require to be established in order to further soften any visual impact.*

8. The proposed development does not fall within the current development plan. *Comment: The site is not allocated for any particular use in the Local Development Plan. It is outwith any settlement boundary. Relevant policy issues are examined later in the report.*
  9. Concerns that the site is not large enough to provide an adequate soakaway for the septic tank. *Comment: The septic tank will be subject to separate consenting arrangements through the Council's Building Standards.*
  10. The proposals represent over-development of the plot. *Comment: There is no evidence to indicate that the proposals constitute over-development*
- 3.10. Planning Assessment
- 3.11. The application must be determined in accordance with the development plan unless material considerations indicate otherwise. The Clackmannanshire Local Development Plan, adopted August 2015 (LDP) comprises the development plan.
- 3.12. The main relevant policy provisions of the LDP are as follows:
1. Policy SC3 – Gypsies, Travellers and Travelling Show People
  2. Policy SC20 – Water and Drainage Infrastructure and Capacity
  3. Policy SC23 – Development in the Countryside – General Principles
  4. Policy SC24 – Residential Development in the Countryside
  5. Policy SC25 – Business Development in the Countryside
  6. Policy EA4 – Landscape Quality
- 3.13. Policy SC3 identifies considerations to be taken into account for private gypsy traveller sites, with encouragement given to use of authorised sites in the first instance, and support for private sites only given where certain criteria, including other relevant policies of the LDP, can be met.
- 3.14. Assessment against other policies is set out below, however Policy SC3 also requires the development to be sensitively located and designed to avoid significant adverse effects, offer appropriate standards of amenity and access to local services.
- 3.15. Policy SC20 seeks to ensure that developments are served by suitable water and drainage infrastructure, and proposes SUDs for all new development.
- 3.16. Policy SC23 directs new developments to existing settlements unless certain criteria can be met, including demonstrating the need for a countryside location. Other criteria echo those set out in Policy SC3.
- 3.17. Policy SC24 derives from SC23 and is specific to residential development, setting out additional criteria for assessing residential development. In this case, the residential element of the proposal are the two residential caravans.

The only relevant criterion is that which relates to accommodation required in association with a new rural business, indicating that temporary consent for a mobile home or similar may be permitted, until the business is established.

- 3.18. Policy SC25 also derives from SC23 and is specific to business developments in the countryside, and is therefore relevant to the proposed cattery. It indicates that proposal should be supported by a business plan or financial appraisal, and for a new business, the need for a countryside location must derive from the characteristics of the development.
- 3.19. Policy EA4 indicates that developments within a Special Landscape Area (SLA) should demonstrate that the landscape character would not be adversely affected and that it could not be located in a less sensitive location, and that any adverse impacts are outweighed by social, environmental or economic benefits.
- 3.20. Taking account of the provisions of the development plan, the following conclusions are made:
  1. Capacity exists to accommodate families in the Council-run travellers' facility at Westhaugh, by Alva.
  2. The site benefits from some natural screening afforded by the mature woodland that lies to the east. The site is open on all other sides and slopes upwards away from the public road, and is partially visible on approach from the west, however the only full views of the site from the B910 road are immediately at the access point.
  3. The site lies in an area of agriculture and forestry, and the nearest houses are over 200m away. There is no clear evidence that it would impact negatively on residential amenity. There is no clear view of the site from any nearby house.
  4. In respect of services and amenity for residents of the site itself, it is considered large enough to provide parking and amenity space for the two families that would occupy it. A septic tank has been installed that requires a Building Warrant, which has not as yet been applied for. This will require to be sought and soakaway and surface water drainage arrangements will require to comply with SEPA guidance. The site lies within 2.5km of the amenities, including school, shops and health centre in Clackmannan. There are no public transport connections and only a narrow informal footway exists along the road.
  5. There is no evidence of justification as to why the development requires to be located in an SLA, rather than a less sensitive landscape area. The design of the development is very much limited by its nature i.e. caravans and utilitarian structures. The location is not considered to be visually prominent, despite being part of the SLA, and the development is not judged to have any significant impact on the designation. In this context, it should be noted that there are a number of other developments of similarly modest scale, but perhaps different character, in the vicinity and the SLA. These include a separate private Gypsy/Traveller pitch, a new farm steading and temporary

accommodation, stables, a pheasant rearing enterprise and various means of enclosure erected under permitted development rights.

6. The cattery business is yet to be established, and limited information has been submitted in respect of it. There may be some policy support towards its need for a rural location, and the justification for temporary on-site living accommodation in the form of a caravan. However, the credentials of the business are not certain, and it would not need the two separate households for supervision.
- 3.21. Overall, whilst elements of the proposals comply with certain provisions of the LDP, there are also significant areas of policy conflict, suggesting that the proposals do not fully comply with the provisions of the development plan. However, in the absence of significant adverse effects on the appearance, amenity and character of the surrounding area, the provision of appropriate levels of residential amenity, access to local amenities and availability of services, the proposal complies with the key policy test on gypsy/traveller accommodation, so cannot be deemed to be contrary to the development plan.
- 3.22. Other Material Considerations
- 3.23. There are a number of material considerations that are relevant to this proposal, includes:
  1. The Planning Aid Scotland's publication "Gypsy/Travellers and the Scottish Planning System – A Guide for Local Authorities" (The PAS Guide).
  2. The Secretary of State's Advisory Committee on Scotland's Travelling People – Guidance Note on Site Provision for Travelling People (ACSTP), Final Report 2000 - adopted by Scottish Executive( SE) as policy.
  3. Human Rights and Equality Legislation – Public Sector Equality Duty (PSED)
  4. Personal circumstances of the applicant.
  5. Previous appeal decision on adjacent site.
- 3.24. Taking account of these considerations, the following conclusions can be drawn:
- 3.25. The Council has adopted a policy for consideration of private Gypsy/Traveller sites, as required by the SPP. The proposals largely comply with this policy, given the absence of any significant adverse effects on the character of the area and amenity of residents. There may be some areas of support in the LDP for the planning application.
- 3.26. The personal circumstances of the applicant are not normally of relevance in determining planning applications. The PAS Guide suggest that due to the inequalities that gypsy/travellers face, it may be the case that personal circumstances should be given weight in determining applications, but only if there is conflict with the development plan. In this case, the key personal

circumstances that have been brought to our attention are the education of children living at the site, the applicant's local connections and intention to establish a cattery business.

- 3.27. Article 8 of the European Convention on Human Rights (ECHR) is concerned with the right to private and family life, and public authorities are required to consider carefully the proportionality of their actions in decision making which may affect Gypsy/Travellers family or home life. This requires a balance of social need with the protection of designations, such as SLAs. In respect of Article 14 of the ECHR, concerning prohibition of discrimination, there is a positive obligation to facilitate the Gypsy/Traveller way of life, and again, a balance must be struck, taking account of the facts of the case. It should also be noted that the UN Convention on the Rights of the Child (UNCRC) is also a material consideration. When considering Gypsy/Traveller applications, there is a duty on the Council to consider the impact that decision-making will have on any children affected by the outcome of that decision.
- 3.28. In an appeal decision for a private gypsy/traveller pitch on nearby land, the Reporter noted that, at that time, the Council did not have a development plan policy on gypsy/traveller sites, as required by the then SPP3. The Reporter noted that the ACSTP stated that applications for private sites should be sympathetically considered and also that the site in question was particularly discreet. These were the main reasons for allowing the appeal.
- 3.29. The Council now has a development plan policy to assess private gypsy/traveller sites against, and as noted above there is some potential support and conflict with the development plan provisions in this case. Where there is conflict with development plan policies, the ACSTP would continue to be a material consideration, as it was at the previous planning appeal on the nearby site, and which states that planning permission for private sites should be sympathetically considered.
- 3.30. The PAS Guide indicates that temporary planning permissions can create uncertainty and should be avoided where possible, however, are not ruled out where the balance between the potential planning harm of the development and other material circumstances is unresolved.
- 3.31. Therefore, a temporary planning permission for a period of three years would appear to strike a suitable balance between meeting the housing needs of the applicant and his family in the medium term, enabling the proposed business to be established, allowing the Council to monitor the use of the site, and commence a review of local development plan policy.

## **4.0 Sustainability Implications**

- 4.1. As described in paragraphs 3.10 – 3.19 of this report.

## **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 ☒)

The area has a positive image and attracts people and businesses	<input type="checkbox"/>
Our communities are more cohesive and inclusive	<input type="checkbox"/>
People are better skilled, trained and ready for learning and employment	<input type="checkbox"/>
Our communities are safer	<input type="checkbox"/>
Vulnerable people and families are supported	<input type="checkbox"/>
Substance misuse and its effects are reduced	<input type="checkbox"/>
Health is improving and health inequalities are reducing	<input type="checkbox"/>
The environment is protected and enhanced for all	<input type="checkbox"/>
The Council is effective, efficient and recognised for excellence	<input type="checkbox"/>

(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".

- Appendix 1 – Planning conditions and reasons for decision recommended in paragraph 2.1

## 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 ☒

### Author(s)

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Grant Baxter	Principal Planner	2615

### Approved by

NAME	DESIGNATION	SIGNATURE
Julie Hamilton	Development Services Manager	Signed: J Hamilton
Gordon McNeil	Head of Development and Environment Services	Signed: G McNeil



## **Appendix 1 - Planning Conditions and Reasons for Decision Recommended in Paragraph 2.1**

### **Conditions**

1. This permission shall cease on 31 October 2019. By that date, the use of the site as a permanent gypsy/traveller site, cattery and apiary shall cease and all caravans shall be removed from the site. Unless, by that time, planning permission has been granted for continued use of the site for this development.
2. The site shall only be occupied by a maximum of two families who are declared Gypsy/Traveller households.
3. Within three months of the date of this permission, the following additional information shall have been submitted to and approved in writing by the Council:
  - a. A detailed site layout plan at a scale of not less than 1:500 showing the precise location of all caravans, structures, domestic and commercial waste storage, parking and hard and soft landscaping.
  - b. Elevations and floor plans at a scale of not less than 1:50, showing the proposed cattery enclosures, fencing and any other structures in the site.
  - c. A schedule of native tree and hedge planting along the site boundaries, and arrangements for planting and future maintenance.
  - d. Details of proposed water supply, foul and surface water drainage arrangements.

Once approved, the development shall be carried out in accordance with such approved details, unless otherwise approved in writing by the Council.

4. All plant, machinery and equipment installed or operated within the site shall be so enclosed and/or attached that noise therefrom does not, at any time, increase the background levels as measured in accordance with British Standard BS4142:2014, at any nearby residential property.
5. The proprietor of the cattery business shall keep a record of the number and frequency of customer numbers travelling to and from the site. From the first anniversary of the commencement of the development hereby approved, the information shall be submitted in writing to the Council, as planning authority for the preceding 12 month period. The information shall be presented giving the number of visitors on a weekly basis split between weekend and weekdays of each week within the 12 month period, unless otherwise agreed in writing by the Council.
6. The cattery and any activities associated with its operation including serving of customers, shall only be carried out between 0800 hours and 1900 hours, Monday to Friday and 0700 and 1200 hours on Saturdays and Sundays.

### **Reasons**

1. The application does not fully comply with the Local Development Plan. The proposed cattery business has yet to be established and this period of time will allow sufficient time for it to do so whilst meeting the applicant's housing needs and allow landscaping to mature.

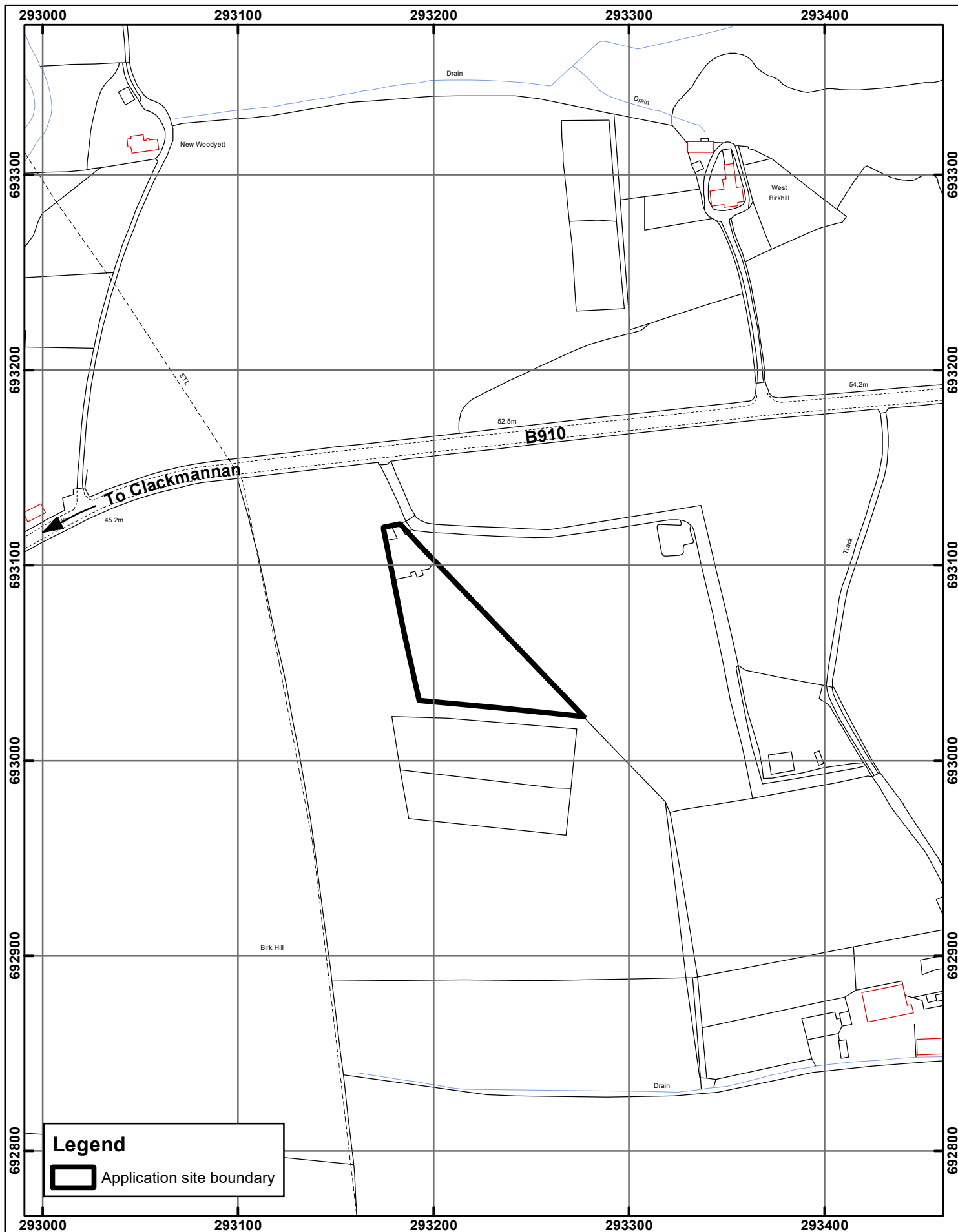
2. In order to protect the visual amenity of the Special Landscape Area against over-development and in recognition of the needs of Gypsy/Travellers.
3. In order to ensure the submission and approval of precise details in connection with the proposed development and their implementation on the site.
4. In the interests of residential amenity.
5. In order to monitor traffic impact in association with the proposed development.
6. In the interests of visual amenity.


#### Reasons for Decision

1. Elements of the proposals comply with certain provisions of the LDP, but there remain areas of policy conflict, however, the proposals would not result in significant adverse effects on the appearance, amenity and character of the surrounding area, the provision of appropriate levels of residential amenity, access to local amenities and availability of services. As such, they comply with the key policy test on gypsy/traveller accommodation, as set out in Policy SC3 of the Local Development Plan.
2. The application does not fully meet the tests set out in the LDP in respect of developments in the countryside and SLA, however, the housing needs of a gypsy/traveller family and the establishment of a rural business, in the form of a cattery, are material considerations that are of relevance in this case.
3. Whilst not fully in accordance with such policy provisions, there are areas of policy support, such that a clear case for refusal of the application and subsequent enforcement action is not at this stage fully justified.
4. Taking account of the development plan and material considerations, therefore, a temporary planning permission for a period of three years would strike a suitable balance between meeting the housing needs of the applicant and his family in the medium term, enabling the proposed business to be established, allowing the Council to monitor the use of the site, and commence a review of local development plan policy.

#### Approved Plans

1. Location, Site and Layout Plan






Date:  
11-Oct-2016

**16/00159/FULL – Land To The South Of B910, West Of Gartlove Plantation, Alva**  
**Change of Use of Agricultural Land to Gypsy/Traveller Site (2 Households),**  
**Cattery and Apiary and Siting to 2 Residential Caravans and 2 Touring Caravans**

**Ward: Clackmannanshire East**

0 25 50 75 100 Meters

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Scale: 1:2,500

