
Report to: **Planning Committee**

Date of Meeting: **26 April 2018**

Subject: **Planning Application 18/00037/FULL - Use of Land for Temporary Siting and Occupation of Static Residential Caravan During Construction of House (Variation of Condition 1 of Planning Permission 17/00095/FULL to Extend Permission for a Minimum Period of 1 Year at 10 Gannel Hill View, Devon Village, Fishcross**

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

1.0 Purpose

- 1.1. This report provides an assessment of the above noted planning application against the provisions of the Local Development Plan and other material considerations, and provides a recommendation on the application.

2.0 Recommendations

- 2.1. It is recommended that the Committee:
- 2.2. Refuse the application for the following reason:
1. The siting and occupation of the caravan on the house plot since September 2014 has not resulted in significant progress on house construction towards a stage of habitation. The continued siting and occupation of the caravan is beyond what could reasonably be considered a temporary period and given its location, visual appearance, proximity to and relationship with surrounding households, would have an unacceptable impact on residential amenity for surrounding householders.

Plans Relating to the Decision:

1. Location Plan

And :

Gives authority to the Development Services Manager in respect of any enforcement action deemed necessary to require cessation of occupation of the caravan and its removal from the site.

2.3. Key Consideration in Recommendation of Refusal

- 2.4. The siting and occupation of the caravan on this house plot was intended to facilitate completion of the approved house on the site by the applicant. The caravan has been sited and lived in on the site by the applicant and his family since September 2014, permitted by three previous temporary planning permissions which have now all expired. Substantial progress on completion of the house has not been made during this period, and all approved house plots surrounding the site have now been completed, with most occupied, some for several years.
- 2.5. The principal justification for previous approvals of the caravan on the site has been to facilitate swift completion of the approved house, however, for whatever reason or reasons, this outcome has not been achieved. It would be unreasonable for the Council to continually renew this permission for as long as the house remains incomplete. At this stage, it has to be concluded that the siting and occupation of the caravan on the site has not proved conducive to enabling completion of the house build.
- 2.6. In approving previous decisions to allow the caravan on a temporary basis the Council has acknowledged the detrimental impact on residential amenity that prolonged siting and occupation of the caravan could have for adjacent residents, given its close physical relationship to other homes. The requested time period would mean that the caravan would have been present and occupied on the site for over 4 years, and neighbouring proprietors would quite reasonably not have expected that a temporary time period in relation to siting and occupation of the caravan would have extended to this period of time. The potential for a detrimental impact on residential amenity that was referred to in previous reasons for granting temporary permissions is now considered to be a material consideration in decision making at this time.
- 2.7. A permission that would approve the caravan for a further year, or until the house is habitable, may provide sufficient time for completion of the house, however there are no guarantees that this will be the case, and whilst the rate of progress on the build may well accelerate in the near future, the only guide we have to estimate future rate of progress is the stage that the build has reached in the preceding 6½ years since permission was granted. The applicant has previously provided timescales for completion, however this has not been implemented. On this basis, it would be reasonable to conclude that completion of the house from its current stage will take significantly longer than one year and that if this were the period granted, it would be likely that the applicant would again seek to extend the permission for the caravan through a future application. Equally, a permission that tied removal of the caravan from the site to completion of the house (even to a habitable stage) could potentially result in the caravan being present and occupied on the site for an indefinite period of time, possibly lasting several more years.

2.8. Key Considerations in Recommendation on Enforcement Action

- 2.9. This is effectively a retrospective application, insofar as the development has already taken place i.e. the caravan is already occupied on the site. As such, in refusing the application, the Council must give consideration to what, if any measures are required to deal with what, if refused, would become an unauthorised development.

- 2.10. The Council's approved Enforcement Charter guides decision making in considering the merits or otherwise of enforcement action. This accords with Government policy as set out in Circular 10/2009 on Planning Enforcement. The Charter notes that planning enforcement action is a discretionary power of the Council and its use must always be in the public interest. The purpose of planning enforcement is to resolve problems, rather than punish mistakes. Planning enforcement action must also be proportionate to the nature and scale of the breach and sensitivity of the location. This report to members has taken cognisance of the Charter.
- 2.11. In addition, when deciding whether to take enforcement action, a planning authority has to take into account the European Convention on Human Rights (ECHR), including *Article 8 (Right to respect for private and family life)*:
1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
 2. *There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*
- 2.12. In this case, the fact that the caravan is the applicant's home requires to be considered both in arriving at any decision on the need to take enforcement action and the time period for compliance with any Notice. Sensitive consideration also requires to be given to a reasonable time period for finding new accommodation as well as vacating and removing the caravan from the site.
- 2.13. Any decision to serve an Enforcement Notice, requiring cessation of occupation and removal of the caravan within a very short time period following refusal of planning permission would need to be considered in accordance with Government guidance on planning enforcement, the Council's own Enforcement Charter and the ECHR. Further, given the time period that the caravan has been present and occupied on the site, careful consideration is needed as to whether enforcement action, following a refusal of this application, is necessary and if so, urgent. Equally, an unauthorised development that is harming the amenity of an area, and is not being addressed through voluntary means, would require the Council to consider both the nature of and appropriate compliance periods for enforcement action.
- 2.14. The Council should therefore consider allowing time for the applicant to voluntarily vacate and remove the caravan from the site before any formal action is taken. The applicant has a right of appeal to Scottish Ministers against the refusal of planning permission, and this right may be exercised within 3 months of the refusal. Should the applicant choose to exercise his appeal right, any decision on the part of the Council to have taken enforcement action, requiring vacation or removal of the caravan within this three months period, would be considered by a Reporter dealing with such an appeal. This consideration would include that of the reasonableness of the serving of an Enforcement Notice by the Council and the requirements of any Notice, including time periods for compliance.

- 2.15. Taking these collective circumstances into account, it is considered to be reasonable that any planning enforcement action would not take effect until at least 3 months after a decision to refuse the application.
- 2.16. Should enforcement action be deemed necessary, there are a number of tools that are at the Council's disposal. These include:
1. Enforcement Notice: This can require a landowner to take actions to correct a breach of planning control and set out the actions required, including removal of development. An Enforcement Notice must be served at least 28 days in advance of taking effect and set out timescales for the required steps to be taken or the specified activity to cease. It is an offence not to comply with an enforcement notice, however, the notice can be appealed against.
 2. Discontinuance Order: This order can be served to require discontinuance of any use of land, alteration or removal of a building or works, or impose conditions on a continuance of use, in the interests of the proper planning of the area (including in the interests of amenity). Such an order requires to be confirmed by Scottish Ministers before taking effect. It is an offence not to comply with a discontinuance order, however compensation can be sought for any depreciation of the value of land and costs of complying with the order can be recovered from the planning authority.
 3. Land Adversely Affecting Amenity of Neighbouring Land Notice: This power may be exercised in the absence of a breach of planning control and requires steps to be taken to abate the adverse effect. The notice can be appealed against, and non-compliance with it is not an offence.

3.0 Considerations

3.1. Background

- 3.2. The caravan first arrived on the site in September 2014, and has been retained and occupied there under three previous temporary planning permissions. In each case, the reason for granting temporary permission has been:

1. *"The development is of a temporary nature required in association with the completion of an approved house on the site. The approved time period shall allow sufficient time for house completion, whilst minimising any detrimental impact on the amenity of adjacent residents that may arise from more prolonged siting and occupation of the caravan."*

- 3.3. The current planning application was received on 28 February 2018. It follows three previous planning permissions (14/00225/FULL, 15/00279/FULL and 17/00095/FULL) for the temporary siting and occupation of the caravan during construction of an approved house on this house plot at Gannel Hill View, Fishcross. The most recent permission (17/00095/FULL) was granted permission by the Planning Committee on 14th September 2017 subject to 2No. Conditions:

1. *This permission shall cease on 28 February 2018. By that date, the residential use and occupation of the caravan shall cease. The caravan shall be removed from the site by 31 March 2018.*
 2. *Within one month of the date of this permission, a minimum of one off-street parking space shall be provided within this site, and be accessible from the adjacent road at all times.*
- 3.4. The reasons for the conditions are as follows:
1. *The development is of a temporary nature required in association with the completion of an approved house on the site. The approved time period shall allow sufficient time for house completion, whilst minimising any detrimental impact on the amenity of adjacent residents that may arise from more prolonged siting and occupation of the caravan.*
 2. *In order to ensure provision of off-street parking to serve the caravan*
- 3.5. The planning history of the site, both in respect of development of the house plot and the siting and occupation of the caravan are set out in detail in the Report of Handling that was before Committee on 14th September 2017. That report is attached as Appendix 1 to this Report of Handling on the current application.
- 3.6. The Report of Handling to the Planning Committee of 14 September 2017 made a recommendation that would have allowed for continued siting and occupation of the caravan for a period of one year from the date of the Committee. In determining the application, the Committee decided a shorter period of only around 6 months should be approved, as noted in the conditions and reasons stated above.
- 3.7. The current application was submitted just prior to expiry of the previous temporary period as specified in Condition 1. It seeks: *“Use of Land for Temporary Siting and Occupation of Static Residential Caravan During Construction of House (Variation of Condition 1 of Planning Permission 17/00095/FULL to Extend Permission for a Minimum Period of 1 Year.”* The application form included the statement *“...or until such times as the house is habitable”*. This part of the applicant’s proposed description has been removed from the application description in order to ensure clarity in respect of the precise period of time that is being applied for. This change was discussed with the applicant at the time of submission of the application.
- 3.8. In the period between the last Committee decision and submission of the current application, the applicant has continued to live in the caravan on the site and limited progress has been made on house construction. In respect of Condition 2, it is considered that the required off-street parking space has generally been unavailable.
- 3.9. **Representations**
- 3.10. All previous applications have been subject to objections, principally from neighbouring parties. A total of 10 No. neighbours were notified of this current application. In response objections have been received from the following parties:

1. Duncan Finlay, 7 Gannel Hill View, Fishcross
2. Roger and Kate Houchin, 12 Gannel Hill View, Fishcross
3. D Lynch, 4 Gannel Hill View, Fishcross
4. Yvonne Ann Reid, 17 Gannel Hill View, Fishcross
5. Mac & Jean West, 13 Gannel Hill View, Fishcross
6. Mr & Mrs Walls, 14 Gannel Hill View, Fishcross
7. Mr Brian Walls, 14 Gannel Hill View, Fishcross
8. Thomas Chalmers, Alexandra Chalmers and John Brown, 16 Gannel Hill View, Fishcross
9. Alan Shepherd, Anne Ritchie & Sheelagh MacDonald, 6 Gannel Hill View, Fishcross

3.11. The grounds of objection are as follows:

1. The plot and caravan are now out of keeping with the surroundings as the adjacent houses have all now been completed, and are having a detrimental impact on residential amenity. *Comment: Whilst previously there were incomplete house plots opposite and to the side of the application site, these have now been developed, and the plot is now surrounded by completed houses. The caravan now appears to be incongruous with the general character and amenity of the immediately surrounding area.*
2. The amenity of neighbouring residents is being affected by the continued siting and occupation of the caravan, particularly if this is for a further year or longer, as is requested. The previous planning report indicated that prolonged siting of the caravan would not be suitable for this reason. *Comment: The comment to this effect in the Reports of Handling of the previous applications is acknowledged. Whilst measuring and quantifying the impact on residential amenity from siting and occupation of the caravan is not straightforward, and may be aggravated by issues relating to the general condition and visual appearance of the whole site, there would clearly be a detrimental impact on the amenity of immediately surrounding residents by prolonged siting and occupation of the caravan, and which would be the result of planning approval in this case.*
3. The reason for having the caravan on site, i.e. to facilitate construction of the house is not valid as little or no construction activity has taken place in the period since the last approval, which has continued the pattern of previous years. *Comment: It is clear that siting and occupation of the caravan on the house plot has not facilitated completion of the house itself, and progress on the build during the time the caravan has been on site has been limited, with very little in the previous six months period granted by the Planning Committee in September 2017. There are no guarantees that extending the permission for the caravan by a year or more, as requested, will result in the build continuing to a conclusion within a reasonable time period. Past performance is the only gauge that*

can be used to estimate what future progress may be, and this does not lead to the conclusion that retaining the caravan on the site for another year or more will result in the house build reaching completion, or indeed a stage where habitation could occur.

4. If approved, the permission would effectively mean the caravan would become permanent, not temporary. *Comment: There is no definitive period of time that constitutes the limit of temporary planning permission in law. An unauthorised development may become lawful after 4 years, however this time period is not specifically relevant in this case, as the approval of the caravan has thus far been limited in time by the terms of the planning permission. Nevertheless, the four year period does give some guidance as to what may reasonably be considered a period after which the nature of a development may change to something more permanent. If approved, the cumulative time the caravan had been on the site and occupied would be at least 4½ years. This would appear to be in excess of what may be considered a reasonable temporary time period.*
5. The caravan's position and congested nature of the site prevents construction activity and there is no means of removing the caravan from the site once the house is built, other than by craning it over the house. This seems unlikely to happen. *Comment: Whilst the position of the caravan undoubtedly constrains the working area around the house, it does not physically prevent construction. Once the house is completed, the removal of the caravan would appear to be possible via a shared driveway serving adjacent houses. These house owners are objectors to the continued presence of the caravan on the site, and whilst the Council as planning authority cannot compel these residents to permit access over the shared driveway for removal of the caravan, this option seems wholly more practical than requiring a crane to hoist the caravan over the house. This may however be the only option if the applicant cannot secure consent from owners of the shared driveway for access to remove the caravan.*
6. Health and safety concerns about condition of the site and utilities in it. *Comment: The Council's Environmental Health Service have previously visited the site and found no issues that require their formal action. This matter is not a material planning consideration in any event.*
7. A parking space on the site required by planning conditions has never been used and is not accessible. The applicant insists on parking vehicles on a narrow stretch of road, making it difficult to pass. *Comment: The applicant initially presented photographic evidence of the parking space having been formed, however there is no requirement through the planning permission that it actually be used. Whilst parking vehicles on the section of currently unadopted road appears to cause inconvenience, this in itself is not a breach of planning control. The applicant indicated that utility works in the service strip fronting the plot prevent vehicle access to the space, however it is understood that these works have been completed. The parking space still appears to be enclosed by Heras fencing and not available for use as required by the planning conditions and this represents a breach of the conditions, which*

may be subject of enforcement action, depending on the planning committee's decision.

8. The continued lack of progress on completion of the house is preventing completion of the road serving the houses to the approved and adoptable standard. *Comment: The delay in completion of this house is not impacting on completion of the access road, which is the responsibility of the main developer on this wider housing site.*

3.12. Planning Assessment

- 3.13. The application requires to be determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan in this case is the Clackmannanshire Local Development Plan (LDP), adopted August 2015. There are however no specific policy provisions in the LDP that relate to temporary developments of this nature.
- 3.14. In this case determination of the application must be made on the basis of assessing the material considerations which are considered to be:
- 3.15. The length of time permitted for siting and occupation of the caravan in connection with construction of the house.
- 3.16. The impact on amenity of neighbouring residents of continued siting and occupation of the caravan.
- 3.17. The lack of an available parking space in the house plot during construction.
- 3.18. From reviewing assessment of the previous application, and the reason given for the three previous temporary planning permissions, it is clear that siting and occupation of the caravan was intended to assist with and indeed hasten completion of the approved house on the plot. However, it has become clear over the past 3.5 years that this objective has not been fulfilled. Timber frame working has reached first floor level, however no roof trusses have been fitted, nor external cladding, windows or doors, and the build appears to be some way from completion.
- 3.19. Whatever the reasons for the lack of progress on house construction may be, it has to be concluded at this stage that there is little evidence to suggest that the siting and occupation of the caravan is helping to facilitate its progress. It cannot automatically be concluded that the caravan is therefore having a detrimental impact on progress with house construction, as alleged by some objectors. Nor however can there be any certainty over what impact the removal of the caravan from the site would have on the progress of house construction. However, the reason stated for the three previous temporary planning permissions is instructional in assessing this fourth application which, if approved, would allow the caravan to remain occupied on the site until at least April 2019:

Reason 1: The development is of a temporary nature required in association with the completion of an approved house on the site. The approved time period shall allow sufficient time for house completion, whilst minimising any detrimental impact on the amenity of adjacent residents that may arise from more prolonged siting and occupation of the caravan.

- 3.20. Therefore in assessing the current situation in the context of the reason for the three previous temporary permissions, it must be concluded that the caravan is not required in association with completion of the approved house, as it has failed to deliver this over the past 3½ years.
- 3.21. The caravan sits close to the rear and side boundaries of the house plot and in close proximity to existing houses to the south, west and east. Its relationship to existing houses is quite different from that of the planned house on the plot, which would have a street frontage and main garden to the rear, laid out in a manner that is in keeping with the surrounding building pattern, and therefore which respects privacy and amenity. The same cannot be said of the caravan, either in terms of its relationship to existing houses or its overall appearance. In granting temporary consent, the Council recognised the potential detrimental impact that prolonged siting and occupation of the caravan could have on the residential amenity. The evidence from representations made by adjoining residents supports the view that a reasonable temporary period has passed, and that no-one, perhaps not even the applicant, would have reasonably anticipated that the temporary period would extend beyond 4 years.
- 3.22. Members will note from Appendix 1 that the recommendation of officers in September 2017 was to approve the caravan for one year, partly on the basis that this would stop short of the caravan having been sited and occupied for a period of 4 years. The report noted *“An unauthorised development may become lawful after 4 years, however this time period is not specifically relevant in this case, as the approval of the caravan has thus far been limited in time by the terms of the planning permission. Nevertheless, the four year period does give some guidance as to what may reasonably be considered a period after which the nature of a development may change to something more permanent.”* The requested time extension period would last at least until April 2019 (giving a total period of at least 4½ years).
- 3.23. Whilst the previous recommendation of officers would allow have allowed the caravan to remain on site until September this year, this period would have been less than 4 years, which was considered to be the upper limit of a reasonable temporary period at that time.
- 3.24. As previously noted, evidence on the ground indicates that the parking space required by Condition 2 of the previous planning permission has by and large not been available for a vehicle to park in, normally being enclosed behind “Heras” fencing, and the applicant’s vehicles have normally been parked on the road outside the site. Whilst the planning condition cannot compel the applicant to park a vehicle in the required space, it is clear that such a space has not been provided in accordance with Condition 2.
- 3.25. The report contained in Appendix 1 set out a number of possible decision-making options at that time, and these options remain relevant to consideration of the current application, however, based on the foregoing assessment, the recommendation in this case is that the application be refused for the reasons set out in Section 2.0 of this report.
- 3.26. It is important to stress that any decision on the status of the caravan does not effect the extant planning permission for the house on the plot. This can continue to be implemented. It is also important to stress that the Council, as

Planning Authority, has limited powers to achieve completion of the house build. Again, the report in Appendix 1 sets out options in this regard.

- 3.27. Section 2.0 of the report provides a recommendation on the planning application and sets out the key considerations in respect of this. Furthermore, it sets out key considerations in respect of any decision to take planning enforcement action should planning permission be refused in accordance with the recommendation.

4.0 Sustainability Implications

- 4.1. There are no specific sustainability implications arising from this decision.

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 ☒)

Clackmannanshire will be attractive to businesses & people and ensure fair opportunities for all	<input type="checkbox"/>
Our families; children and young people will have the best possible start in life	<input type="checkbox"/>
Women and girls will be confident and aspirational, and achieve their full potential	<input type="checkbox"/>
Our communities will be resilient and empowered so that they can thrive and flourish	<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 - Report of Handling to Planning Committee of 14 September 2017 on Planning Application ref: 17/00095/FULL

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)

NAME	DESIGNATION	TEL NO / EXTENSION
Grant Baxter	Principal Planner	2615

Approved by

NAME	DESIGNATION	SIGNATURE
Allan Finlayson	Planning & Building Standards Team Leader	
Julie Hamilton	Development Services Manager	

CLACKMANNANSHIRE COUNCIL

Report to:	Planning Committee
Date of Meeting:	14 September 2017
Subject:	Use of Land for Temporary Siting and Occupation of Static Residential Caravan During Construction of House (Variation of Condition 1 of Planning Permission 15/00279/FULL to Extend Permission for a Further 2.5 Years) Planning Application Ref: 17/00095/FULL
Report by:	Grant Baxter, Principal Planner

7.0 Purpose

- 7.1. This report provides an assessment of the above noted planning application against the provisions of the Local Development Plan and other material considerations, and provides a recommendation on the application.

8.0 Recommendations

- 8.1. Approve the application subject to the following:

Conditions

1. This permission shall cease on 31 August 2018. By that date, the residential use and occupation of the caravan shall cease. The caravan shall be removed from the site by 30 September 2018.
2. Within one month of the date of this permission, a minimum of one off-street parking space shall be provided within this site, and be accessible from the adjacent road at all times.

Reasons

1. The development is of a temporary nature required in association with the completion of an approved house on the site. The approved time period shall allow sufficient time for house completion, whilst minimising any detrimental impact on the amenity of adjacent residents that may arise from more prolonged siting and occupation of the caravan.
2. In order to ensure provision of off-street parking to serve the caravan.

2.2 Reasons for Decision

1. The siting and occupation of the caravan on this house plot is intended to facilitate completion of the approved house on the site by the applicant. The caravan has been sited and lived in on the site by the applicant and his family since September 2014, permitted by two previous temporary planning permissions which have now expired. Whilst substantial progress on completion of the house has not been made during this period, all approved house plots surrounding the site have now been completed, with most occupied, some for several years.
2. In approving previous decisions to allow the caravan on a temporary basis the Service has acknowledged the detrimental impact on residential amenity in the surrounding area that prolonged siting and occupation of the caravan could have, given its close physical relationship to other homes.
3. Approval of the caravan for a further 2.5 years, as requested would, it is felt, represent a prolonged period that would not be considered reasonable in terms of the wider amenity of the area. It is also not a period that would have been reasonably anticipated by neighbouring proprietors when the caravan was first applied for, as it would mean the caravan would have been in place and occupied on the site for over 5 years.
4. The principle justification for previous approvals of the caravan on the site has been to facilitate swift completion of the approved house, however, for whatever reason or reasons, this outcome has not yet been achieved. It would be unreasonable for the Council to continually renew this permission for as long as the house remains incomplete, as the Council has no control over the timescale for completion of the house.
5. A permission that would approve the caravan for a further 2.5 years may provide sufficient time for completion of the house, however there are no guarantees that this will be the case, and whilst the rate of progress on the build may well accelerate in the near future, the only guide we have to estimate a future rate of progress is the stage that the build has reached in the preceding 6 years since permission was granted.
6. Approval of the caravan until the date stated in Condition 1 would represent a period of just under 1 year from expiry of the last consent, and just around 3.5 years in total. This not only gives the applicant adequate time to carry on the build to an advanced or completed stage, it allows sufficient time for alternative living arrangements to be made in the event that the house is not yet habitable.
7. This time period is also considered to represent the upper limits of what can reasonably be termed a temporary development, in respect of siting and occupation of the caravan, which is now within a substantially complete development, surrounded by homes, and taking account of the wider residential amenity.

Plans Relating to the Decision:

2. Location Plan
3. Location of Static and Parking Bay

9.0 Considerations

9.1. Background

- 9.2. The current planning application was received on 30 March 2017. It follows two previous planning permissions (14/00225/FULL & 15/00279/FULL) for the temporary siting and occupation of the caravan during construction of an approved house on this house plot at Gannel Hill View, Fishcross.
- 9.3. Planning permission for a house on this plot was originally granted in 2005, as part of a larger development for a care home and 14 houses (05/00241/FULL). Whilst work commenced on this approved development, it is understood that the now owner and applicant (Mr Steve Smith) purchased this plot from Marshall Homes, the main developer with the intention of doing a self-build. Subsequently, Mr Smith made an application in 2011 (11/00020/FULL) for modification of the approved house type on the plot, principally proposing to enlarge the house, including incorporation of the approved detached garage as an integral garage. This was approved on 29 March 2011.
- 9.4. At this time, adjacent plots were either complete or under construction and the foundation slab of the originally approved house and garage were in place on this plot. Following the grant of planning permission for the modified house, the applicant commenced construction works on the revised house type. This involved foundation works and erection of steel and timber framing, insulation and sheeting at ground floor level. The site was enclosed with Heras fencing and contained building materials, steel containers, scaffolding, tools and machinery.
- 9.5. In the period between commencement of works on the house and the first application for the static caravan (October 2014), it was noted that works on the house did not progress significantly beyond these initial stages. During the same period, works by Marshall Homes on approved adjacent plots had also ceased with the care home and around half of the approved plots completed. The houses at 12, 14 and 16 Gannel Hill View, immediately to the east and south of the plot, had been completed and occupied, whilst approved houses to the west and north had not been constructed.
- 9.6. It is understood that the caravan was in fact brought onto the site in September 2014, and a retrospective planning application was then lodged in October 2014 following advice from this Service (*14/00225/FULL - Use of Land for Temporary Siting and Occupation of Static Residential Caravan During Construction of House*). The applicant indicated at that time that siting and occupation of the caravan would allow for accelerated progress on house construction whilst providing 24hr site security, and estimated that a period of around one year was required for completion. The permission was therefore granted, subject to conditions that occupation of the caravan ceased on 30th November 2015 and the caravan be removed from the site by 31 December 2015, by which time it was anticipated that the house would be completed.

- 9.7. In November 2015, however, the applicant lodged a further application (15/00279/FULL) to extend the period for siting and occupation of the caravan for a further year. The applicant provided details, confidentially as to why the project had been delayed, and advised that these issues had now been overcome. The applicant also set out a work programme for completion of the house by March 2017. The application form stated that the permission was sought for *"approximately 1 year. This is required to continue to facilitate the house build and to provide site supervision, welfare and security as prior to our presence on site a number of items went missing. The Heras fencing had also been breached in our absence from the site. Whilst in the past construction/building works had ceased, this was due to personal circumstances outwith our control. This has now changed and has allowed us to proceed with the house build."*
- 9.8. This application was approved subject to conditions, requiring that the permission ceased on 31 March 2017 that a parking space was made available in the site and that quarterly progress reports on the house construction were submitted. Whilst initial work recommenced on the ground floor and also part of the first floor structures, this again ceased shortly afterwards, and as at 31 March 2017, no substantial progress had been made towards completion of the house build, and this current application was lodged, seeking retention and occupation of the caravan on the site for a further 2.5 years.
- 9.9. Representations
- 9.10. All previous applications have been subject to objections, principally from neighbouring parties. A total of 10 No. neighbours were notified of this current application. In response objections have been received from the following parties:
1. Duncan Finlay, 7 Gannel Hill View, Fishcross
 2. R Simpson, 9 Gannel Hill View, Fishcross
 3. Roger and Kate Houchin, 12 Gannel Hill View, Fishcross
 4. D Lynch, 4 Gannel Hill View, Fishcross
 5. Yvonne Ann Reid, 17 Gannel Hill View, Fishcross
 6. Mrs West, 13 Gannel Hill View, Fishcross
 7. Mr & Mrs Walls, 14 Gannel Hill View, Fishcross
 8. Thomas Chalmers, Alexandra Chalmers and John Brown, 16 Gannel Hill View, Fishcross
 9. Alan Shepherd, Anne Ritchie & Sheelagh MacDonald, 6 Gannel Hill View, Fishcross
- 9.11. The grounds of objection are as follows:
1. The plot and caravan are now out of keeping with the surroundings as the adjacent houses have all now been completed. Comment: Whilst

previously there were incomplete house plots opposite and to the side of the plot, these have now been developed, and the plot is now surrounded by completed houses.

2. The amenity of neighbouring residents is being affected by the continued siting and occupation of the caravan. The previous planning report indicated that prolonged siting of the caravan would not be suitable for this reason. Comment: *The comment to this effect in the Report of Handling of the previous application is acknowledged. It is also the case that measuring and quantifying the actual impact on residential amenity from siting and occupation of the caravan is not straightforward, as issues about the general condition and visual appearance of the whole site are also factors contributing to the amenity concerns, and which are not specifically related to consideration of this application.*
3. The reason for having the caravan on site, i.e. to facilitate construction of the house is no longer valid as there is little or no construction activity taking place. Comment: *It is clear that siting and occupation of the caravan on the house plot has not facilitated completion of the house itself, and progress on the build during the time the caravan has been on site has been limited. There are no guarantees that extending the permission for the caravan, as requested, will result in the build continuing to a conclusion within a specified time period.*
4. If approved, the permission would mean the caravan has been on site for 5 years, which would make it permanent, not temporary. Comment: *There is no definitive period of time that constitutes the limit of temporary planning permission in law. An unauthorised development may become lawful after 4 years, however this time period is not specifically relevant in this case, as the approval of the caravan has thus far been limited in time by the terms of the planning permission. Nevertheless, the four year period does give some guidance as to what may reasonably be considered a period after which the nature of a development may change to something more permanent.*
5. The caravan's position prevents construction activity and there is no means of removing it from the site once the house is built, other than by craning it over the house. This seems unlikely to happen. Comment: *Whilst the position of the caravan undoubtedly constrains the working area around the house, it does not physically prevent construction. Once the house is completed, the removal of the caravan would appear to be possible via a shared driveway serving adjacent houses. These house owners are objectors to the continued presence of the caravan on the site, and whilst the Council as planning authority cannot compel these residents to permit access over the shared driveway for removal of the caravan, this option seems wholly more practical than requiring a crane to hoist the caravan over the house. This may however be the only option if the applicant cannot secure consent from owners of the shared driveway for access to remove the caravan.*
6. Previous assertions of the applicant about making progress have not been fulfilled and the house has been under construction for 8 years. Comment: *The period of time that the house has been under construction is not disputed.*

7. Timber forming part of the constructed house has been exposed to the elements for several years and may not now be in compliance with Building Standards. *Comment: Building Standards advise the applicant has presented professional verification that the constructed structures are structurally sound. The Service has had no communication from HSE regarding this site.*
8. Health and safety concerns about condition of the site and utilities in it. *Comment: The Council's Environmental Health Service have visited the site and found no issues that require their formal action.*
9. A parking space on the site required by planning conditions has never been used and is not accessible. The applicant insists on parking vehicles on a narrow stretch of road, making it difficult to pass. *Comment: The applicant initially presented photographic evidence of the parking space having been formed, however there is no requirement through the planning permission that it actually be used. Whilst parking vehicles on the section of currently unadopted road appears to cause inconvenience, this in itself is not a breach of planning control. The applicant has since indicated that utility works in the service strip fronting the plot prevent vehicle access to the space, however it is understood that these works have been completed. Should permission be granted subject to a similar parking condition, continued non-compliance would represent a breach of planning control, which may require formal action.*

9.12. Planning Assessment

- 9.13. The application requires to be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan in this case is the Clackmannanshire Local Development Plan, adopted August 2015. There are however no specific policy provisions in the LDP that relate to temporary developments of this nature.
- 9.14. In this case determination of the application must be made on the basis of assessing the material considerations which are considered to be:
 1. The length of time permitted for siting and occupation of the caravan in connection with construction of the house.
 2. The impact on amenity of neighbouring residents of continued siting and occupation of the caravan.
 3. The lack of an available parking space in the house plot during construction.
- 9.15. Taking account of the above considerations, the Council has a number of possible decision-making options, both in relation to the caravan and the completion of the house itself. These options, and implications of them are set out in the table below:

DECISION OPTIONS	OUTCOMES
Approve the application for a further 2.5 years	Secures the applicant's place of residence for a further 2.5 years. Allows sufficient time for house

	<p>completion.</p> <p>Continued concerns from neighbours about loss of amenity. No guarantee that house will be completed in the 2.5 year period.</p>
<p>Approve the application but for a shorter period e.g. one year</p>	<p>Secures the applicant's place of residence for a further year. Allows additional time for house completion.</p> <p>Continued concerns from neighbours about loss of amenity, but only for one year. Less likely that the house will be completed in one year.</p>
<p>Refuse application and take necessary steps to cease occupation and have caravan removed from the site.</p>	<p>Address neighbours concerns about loss of amenity.</p> <p>Removal of applicant's place of residence. May further delay any future progress on the house.</p>

- 9.16. As noted earlier, whilst there is no definitive period of time that constitutes the limit of temporary planning permission, an unauthorised development may become lawful after 4 years. The approval of the caravan in this case has been limited in time by the terms of the planning permission, so would not become lawful in this way, however, the four year period stated in law would it seems, mark an appropriate upper limit of what is temporary development.
- 9.17. Whilst the current planning application relates solely to the siting and occupation of the caravan, its presence is directly linked to the completion of the approved house, as this is the principal reason for the caravan being occupied by the applicant on the site. A number of issues raised by objectors are in relation to lack of progress on the house itself. This issue is material to consideration of this current application insofar as the siting and occupation of the caravan is directly connected to construction of the house by the applicant, who is a self-builder.
- 9.18. Nevertheless, decision-making on this application can have no bearing on progress with the house build itself. The Planning Service has been asked by objectors on several occasions as to what tools the Council has at its disposal to expedite house completion. Set out below is a summary of options and what effect they may have:

PLANNING TOOLS FOR HOUSE COMPLETION	EFFECT
Notice requiring proper maintenance of land (formerly a waste land notice)	It is unlikely that this power is specifically aimed at this type of

	<p>situation, but more typically where a site has been left in a very poor condition, and where the actions required to comply with the notice would be to tidy it up, or removal waste material for example, rather than to complete the construction of a house. It should be noted that failure to comply with such a notice is not an offence, and the only action the Council can take in respect of non-compliance is to enter the land itself and take the steps necessary to comply with the notice.</p>
Completion Notice	<p>The Council may serve such a notice where the development has commenced but hasn't been completed by the time the permission would have expired had the development not yet commenced, and the Council is of the view that it will not be completed in a reasonable timescale. The notice will only take effect if confirmed by Scottish Ministers. Once the period specified in the notice has expired, no development carried thereafter will be competent/authorised. This could therefore still mean that the house remains incomplete at the expiry of the compliance period, but that further works on it would then not be permitted or lawful. This may not be a satisfactory outcome for any parties.</p>

- 9.19. It is clear that allowing the applicant to live in the caravan on the site, since September 2014 has not facilitated significant progress on completion of the house. Whilst there may be numerous legitimate and understandable reasons for this, it is the case that prolonged siting and occupation of the caravan on this site, which is now surrounded by completed and occupied houses on all sides, would not be appropriate in terms of the wider amenity of neighbours and the surrounding area.
- 9.20. The most appropriate planning outcome is therefore one which provides the applicant with a reasonable amount of additional time to complete and occupy the house but also, if necessary, to make separate living arrangements away from the site should the house not be complete or habitable at the end of that period.
- 9.21. Approval of the application for the further 2.5 years requested would allow the caravan to remain occupied on the site until October 2019 (if the date is taken

from when the application was lodged, following expiry of the previous permission). This would mean that the caravan would have been potentially present and occupied on the site for over 5 years. As previously noted above, this is greater than the 4 years time period within which an unauthorised development can become lawful.

- 9.22. It would appear unreasonable, taking account of this fact, and considering the reasonable expectations of neighbours that the caravan would be very much a temporary fixture, it that the caravan should not be permitted on the site for a further 2.5 years. A more appropriate time period would be one that allows the caravan to have been on site and occupied for no more than four years in total. Therefore a consent lasting until 31 August 2018 would be appropriate.

10.0 Sustainability Implications

- 10.1. There are no specific sustainability implications arising from this decision.

11.0 Resource Implications

11.1. *Financial Details*

- 11.2. 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 ☐

- 11.3. Finance have been consulted and have agreed the financial implications as set out in the report. Yes ☐

11.4. *Staffing*

12.0 Exempt Reports

- 12.1. 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 ☐

The Council is effective, efficient and recognised for excellence ☐

(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".

None

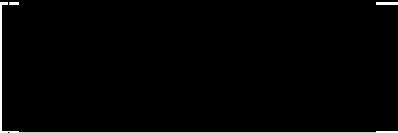
11.0 Background Papers

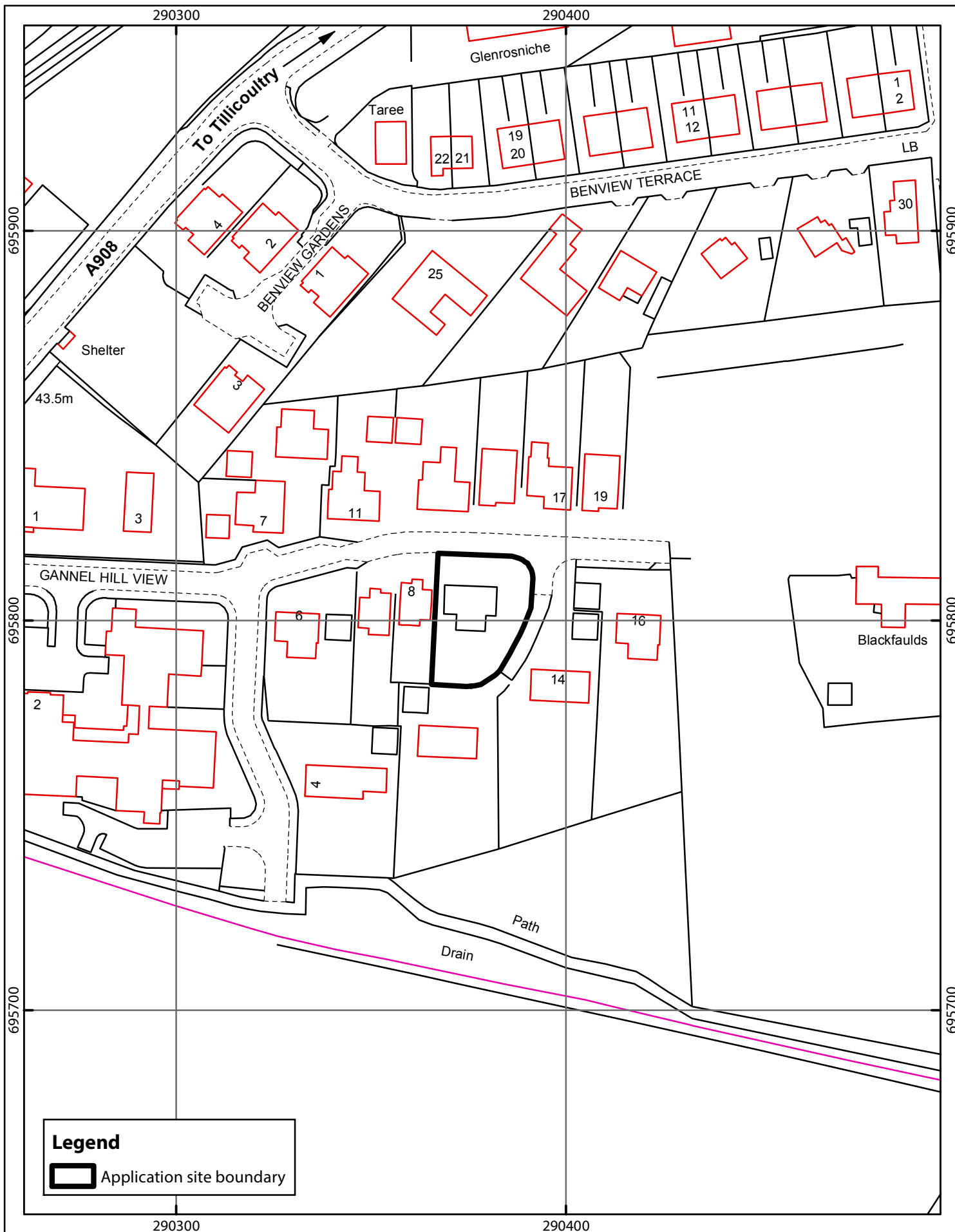
11.1 Have you used other documents to compile your report? (All documents must be kept available by the author for public inspection for four years from the date of meeting at which the report is considered)
 Yes ☐ (please list the documents below) No ☒

Author(s)

NAME	DESIGNATION	TEL NO / EXTENSION
Grant Baxter	Principal Planner	2615

Approved by

NAME	DESIGNATION	SIGNATURE
Julie Hamilton	Development Services Manager	



Date:
10-Apr-2018

18/00037/FULL – 10 Gannel Hill View, Devon Village
Variation of Condition of Planning Permission 17/00095/FULL to Extend Permission
for Temporary Siting and Occupation of Static Caravan for a Minimum of 1 Year

Ward: Clackmannanshire Central

OS Grid Ref: NS 90 95 NW

0 10 20 30 40 50
Meters

Scale: 1:1,250

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