

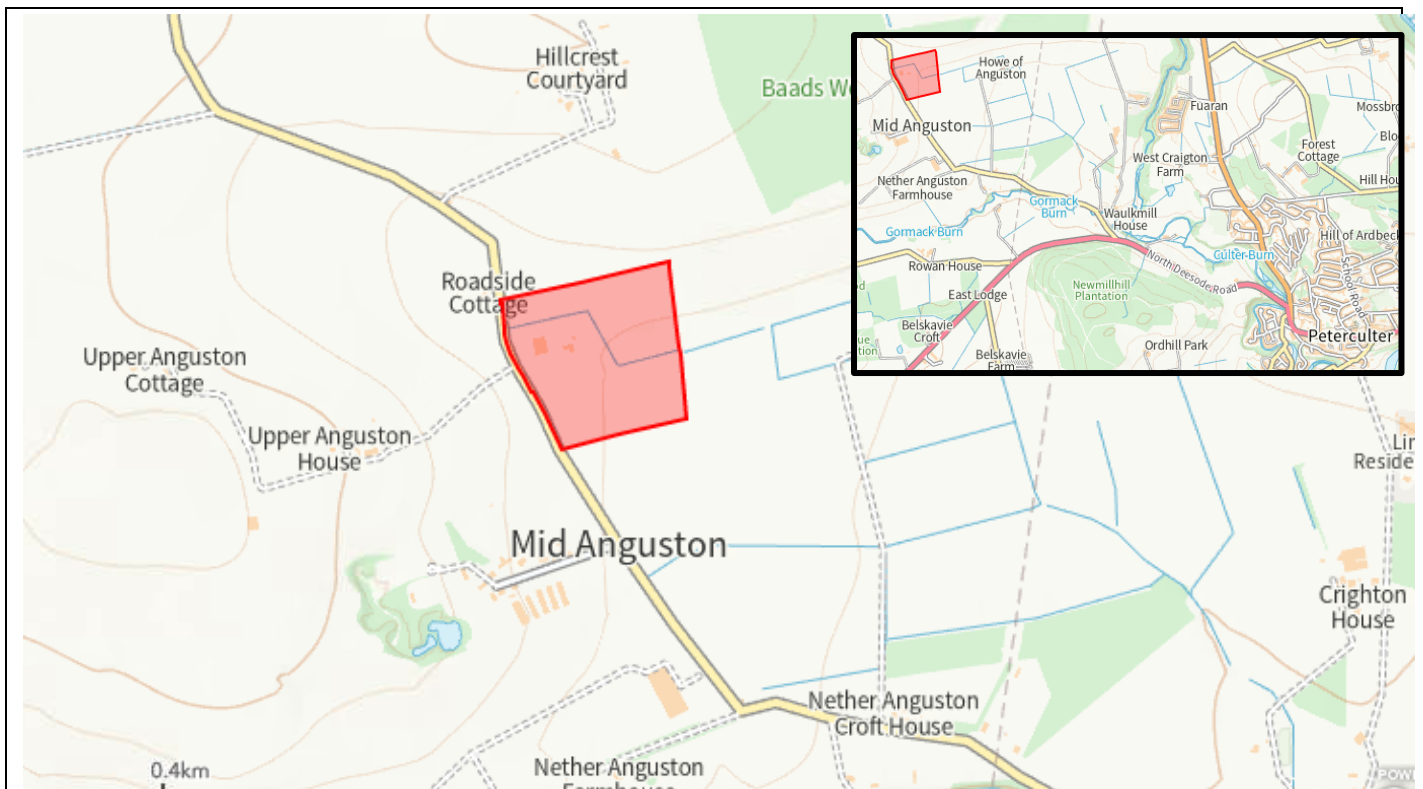


# Planning Development Management Committee

Report by Development Management Manager

**Committee Date: 15 May 2024**

<b>Site Address:</b>	Erinvale, Anguston Road, Peterculter Aberdeen AB14 0PP
<b>Application Description:</b>	Removal of condition 1 of planning ref A6/0654 (dwelling house to be occupied by person employed full time in cattery and equestrian business on property known as Erinvale Cattery & Livery)
<b>Application Ref:</b>	240214/S42
<b>Application Type</b>	Section 42 (Variation to Conditions)
<b>Application Date:</b>	26 February 2024
<b>Applicant:</b>	Mrs Lesley Nicol
<b>Ward:</b>	Lower Deeside
<b>Community Council:</b>	Culter



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## **RECOMMENDATION**

Approve Conditionally

## **APPLICATION BACKGROUND**

### **Site Description**

The application relates to Erinvale, which is in open countryside, to the north of Mid Anguston and to the east of Upper Anguston, some 3km to the northwest of the centre of Peterculter. It incorporates a detached dwellinghouse completed in 2007, a building accommodating Erinvale Cattery and an adjacent agricultural shed. The surrounding land holding extends to around eight hectares and is used for sheep farming.

### **Relevant Planning History**

- Planning permission (A3/2083 / 032066) was approved in October 2004 for the change of use of the land to equestrian use.
- Planning permission (A4/1991 / 041495) was approved under delegated powers in March 2005 for re-location of an equestrian building, positioning of a temporary caravan, erection of a cattery building, relocation of access road and change of use from agricultural to equestrian use.
- Planning permission (A6/0654 / 060633) was approved by the Planning Committee in accordance with officer recommendation in June 2006 for the erection of a dwelling house to be associated with the cattery and livery stable. Condition 1 of the planning permission restricted occupancy of the house to persons employed full time in the cattery and equestrian business. The house was completed in 2007.
- A section 42 application (131114) to remove condition 1 of planning permission A6/0654 was refused under delegated powers in February 2014. The reason for the decision was that the removal of the condition would be *“contrary to Scottish Planning Policy and Policy NE2 (Green Belt) of the Aberdeen Local Development Plan, which seek to protect the integrity of green belts and, in particular, seek to avoid the granting of individual planning permissions to prevent the cumulative erosion of a green belt. If it were not for the specific individual requirements of the business the house would not have complied with planning policy and ultimately refused. The removal of this condition would undermine the policies which seek to protect the integrity of the green belt which seeks to safeguard against unsustainable development and suburbanisation of the area. It was judged necessary to impose condition 1 to ensure that the development complied with planning policies. The business is still operating successfully, which requires on-site care for the welfare of the animals. No evidence has been submitted that with the condition the applicants have been unable to raise the finances that they require. It is judged that condition 1 meets the tests set out in Circular 4/1998. The advice in the letter from the Chief Planner (04.11.2011) has been considered. The proposal to delete condition 1 is considered unacceptable in planning policy terms.”*

## **APPLICATION DESCRIPTION**

### **Description of Proposal**

The application is submitted under the provisions of section 42 of the Town and Country Planning (Scotland) Act 1997 and seeks to remove condition 1 of planning permission A6/0654.

Condition 1 places a restriction on the occupancy of the dwellinghouse at Erinvale and only allows the house to be occupied by persons employed full-time in the cattery and equestrian business. The full condition reads –

*“The dwelling house hereby granted planning permission shall not be occupied by any person other than a person employed full-time in the cattery and equestrian business on the property known as Erinvale Cattery and Livery and located at Upper Anguston and the dependants, widow or widower of such a person in accordance with the planning authority's policy of restricting isolated developments in the countryside unless specifically required in connection with an essential rural occupation - in order to preserve the amenity and integrity of the Green Belt and the Council's Green Belt Policy.”*

At present the livery business is no longer active, whilst the cattery business, which operates alongside the applicant's sheep farming business, has been active since 2005 and remains so.

The applicant are seeking to retire which will involve the closure of the cattery business and a gradual reduction in the scale of the sheep farming operation. They would like to remain in their home of around 17 years as they continue their sheep farming on a small-scale, but without having to continue the cattery business. This would not be possible with the occupancy condition in place and therefore its removal is sought.

### **Amendments**

None.

### **Supporting Documents**

All drawings and supporting documents listed below can be viewed on the Council's website at:

<https://publicaccess.aberdeencity.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=S9AZSTBZKHP00>

- Supporting Statement

### **Reason for Referral to Committee**

The application has been referred to the Planning Development Management Committee because it is being recommended for approval and has been the subject of formal objection by the local community council within whose area the application site falls, thus falling outwith the scheme of delegation.

### **CONSULTATIONS**

**Culter Community Council** – reflecting feedback from our community, the community council has serious concerns about this application. These concerns are entirely about the potential precedent which would arise should the subject condition be removed, and do not in any way arise from the declared intentions of the current occupiers.

The planning authority will be aware of the history in the rural area around the west side of Culter, which includes a number of applications for dwelling-houses, each allegedly in support of an agricultural business. Once the applicants have obtained planning permission with a condition

imposing an agricultural tie, they have fought tooth and nail to get the condition removed, which then allows the house to be sold easily and for a significant increase in price to an Aberdeen commuter – thereby undermining the point of the green belt.

The community council would be happy to see some form of suspension of the condition, so as to allow the current occupiers to remain in the dwelling-house having retired and ceased to run an agricultural-related business, but at such time when the current occupiers decide they can no longer continue to live there, the suspension would lapse leaving the condition in place for any future occupiers. This arrangement would of course require to have a robust legal basis. Should the planning authority be minded approving the application in its current form, a very clear direction should be included, making it clear that the condition has been lifted because of the 17-year occupancy by the original occupiers, running a successful agricultural business, with their declared intent to retire in the dwelling-house.

## **REPRESENTATIONS**

One letter of representation has been received from a neighbouring residential property which expresses support for the application. The matters raised are summarised below.

- A precedent has been set for the removal of the condition as removal of a similar restrictive occupancy condition was approved in January 2011 at Nether Anguston Croft, located 1km south of Erinvale (ref. 101729).
- Erinvale has been established for 17 years and has been built to an excellent standard and are comparable to other domestic residential properties in the Anguston area. Some of these established homes also have a parcel of land and outbuildings as part of their overall domestic residential property and Erinvale provides the same.
- Erinvale is an established family home like many others in the area and having such a restrictive occupancy condition removed would allow my neighbours of 17 years to enjoy their retirement and allow future owners the freedom to buy and use their home without constraints.

## **MATERIAL CONSIDERATIONS**

### **Legislative Requirements**

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that where making any determination under the planning acts, regard is to be had to the provisions of the Development Plan; and, that any determination shall be made in accordance with the plan, so far as material to the application, unless material considerations indicate otherwise.

Section 42 of the Town and Country Planning (Scotland) Act 1997 (as amended) requires the planning authority in determining the application only to consider the question of the condition(s) subject to which the previous planning permission should be granted. The planning authority has the option to approve the permission subject to new or amended conditions or to approve planning permission unconditionally. Alternatively, the planning authority can refuse the application, which would result in the conditions on the original application remaining.

## **Development Plan**

### National Planning Framework 4

National Planning Framework 4 (NPF4) is the long-term spatial strategy for Scotland and contains a comprehensive set of national planning policies that form part of the statutory development plan.

- Policy 8 (Green Belts)

### Aberdeen Local Development Plan (2023)

- Policy NE1 (Green Belt)

## **Other National Policy and Guidance**

- Planning Circular 4/1998: The Use of Conditions in Planning Permissions (Scottish Government)
- Planning Circular 3/2012: Planning Obligations and Good Neighbour Agreements (Scottish Government)
- Circular 3/2022 (Development Management Procedures) – Annex H: Applications for Planning Permission Under Section 42 (Scottish Government)

## **EVALUATION**

The determining factor in the consideration of the application is whether the retention of the condition is required. The planning authority have the option to refuse the application in which case the condition would remain; amending the terms of the condition; or removing it completely.

## **Background**

The intention of green belts is to encourage, promote and facilitate compact urban growth and use the land around our towns and cities sustainably. Within green belts tight control is applied to new developments, with only certain types of development being supported and only in limited circumstances. At the time planning application A6/0654 (“the original application”) was considered in 2006, standalone new houses were not supported within the green belt. For a new house associated with agriculture or other business to be supported as an exception, it was accepted practice by the Council that new business enterprises in the green belt had to already be established and their viability and profitability demonstrated before planning permission was granted. Furthermore, it had to be demonstrated that the house was required to provide accommodation for an essential worker who required to be housed on the site.

In the original application, it was found that the applicant had demonstrated as far as one reasonably could that the business had been and would continue to be viable in the long term and that in the interests of animal welfare and to meet a statutory requirement, there was a need for permanent residential accommodation on the site. It was therefore found that there would be no conflict with green belt policy or with the purpose and principles of the green belt. Since a new house would otherwise be unacceptable in the green belt, it was considered necessary to attach the condition restricting the occupancy of the house. In the absence of such a restriction, there is a risk that new houses in the green belt would be sold for profit after construction or a short period of occupation, which would result in unsustainable urbanisation of the countryside and the erosion of the landscape setting of the city.

The green belt zoning continues to apply to Erinvale, where Policy 8 (Green Belts) of National Planning Framework 4 (NPF4) and Policy NE2 (Green Belts) of the Aberdeen Local Development Plan (ALDP) apply. Development continues to be tightly controlled within the green belt, with only certain types of development supported. Both NPF4 and the ALDP list the range of developments which may be permitted. Of relevance in this case is the section of Policy 8 which supports “residential accommodation required and designed for a key worker in a primary industry within the immediate vicinity of their place of employment where the presence of a worker is essential to the operation of the enterprise, or retired workers where there is no suitable alternative accommodation available”. Policy NE2 has a less specific provision, which allows for development which “is directly associated with and required for agriculture, woodland or forestry”.

The Scottish Government provides advice on the appropriate use of conditions through two relevant planning circulars, with specific sections on the use of occupancy conditions. Paragraph 95 of Planning Circular 4/1998 (The Use of Conditions in Planning Permissions) relates to domestic occupancy conditions in general, rather than green belt specifically, and states that –

*95. Subject to the advice about affordable housing, staff accommodation, agricultural and forestry dwellings and seasonal use, if the development of a site for housing is an acceptable use of the land, there will seldom be any good reason on land use planning grounds to restrict the occupancy of those houses to a particular type of person (e.g. those already living or working in the area). To impose such a condition would be to draw an artificial and unwarranted distinction between new houses or new conversions and existing houses that are not subject to such restrictions on occupancy or sale. It may deter housebuilders from providing homes for which there is a local demand and building societies from providing mortgage finance. It may also impose hardship on owners who subsequently need to sell. It involves too detailed and onerous an application of development control and too great an interference in the rights of individual ownership.*

However, paragraph 95 goes on to say that –

*Such conditions should, therefore, not be imposed save in the most exceptional cases where there are clear and specific circumstances that warrant allowing an individual house (or extension) on a site where development would not normally be permitted.*

Paragraphs 98 and 99 on staff accommodation explains that –

*98. The above considerations may equally apply to staff accommodation. Where an existing house is within the curtilage of another building and the two are in the same occupation, any proposal to occupy the two buildings separately is likely to amount to a material change of use, so that planning permission would be required for such a proposal even in the absence of a condition. Planning authorities should normally consider applications for such development sympathetically since, if the need for such a dwelling (for the accommodation of an employee, for example) disappears, there will generally be no justification for requiring the building to stand empty or to be demolished.*

*99. Conditions tying the occupation of dwellings to that of separate buildings (e.g. requiring a house to be occupied only by a person employed by a nearby garage) should be avoided. However, exceptionally, such conditions may be appropriate where there are sound planning reasons to justify them, e.g. where a dwelling has been allowed on a site where permission would not normally be granted. To grant an unconditional permission would mean that the dwelling could be sold off for general use which may be contrary to development plan policy for the locality. To ensure that the dwelling remains available to meet the identified need, it*

*may therefore be acceptable to grant permission subject to a condition that ties the occupation of the new house to the existing business.*

Also of relevance are paragraphs 100-102 which relate to agricultural and forestry dwellings.

*100. In many parts of Scotland planning policies impose strict controls on new residential development in the open countryside. There may, however, be circumstances where permission is granted to allow a house to be built to accommodate a worker engaged in bona fide agricultural or forestry employment on a site where residential development would not normally be permitted. In these circumstances, it will often be necessary to impose an agricultural or forestry worker occupancy condition.*

*101. Planning authorities will wish to take care to frame agricultural occupancy conditions in such a way as to ensure that their purpose is clear. In particular, they will wish to ensure that the condition does not have the effect of preventing future occupation by retired agricultural workers or the dependants of the agricultural occupant.*

*102. Where an agricultural occupancy condition has been imposed, it will not be appropriate to remove it on a subsequent application unless it is shown that circumstances have materially changed and that the agricultural need which justified the approval of the house in the first instance no longer exists.*

Planning Circular 3/2012 (Planning Obligations and Good Neighbour Agreements) also contains advice on the use of imposing restrictions on the use of land and buildings. Although this is in the context of planning obligations (legal agreements), it is also directly relevant to the use of conditions. This part of the circular translates into policy the advice contained in the Chief Planner's letter of 4 November 2011 covering the use of occupancy conditions. Paragraphs 49-51 state –

*49. While the most common use of planning obligations is to ensure the provision of infrastructure to make a development acceptable in planning terms, there is a limited role for obligations in restricting the use of land or buildings.*

*50. Such restrictions have historically been used particularly in respect of housing in rural areas. Imposing restrictions on use are rarely appropriate and so should generally be avoided. They can be intrusive, resource-intensive, difficult to monitor and enforce and can introduce unnecessary burdens or constraints. In determining an application, it may be appropriate for the planning authority to consider the need for the development in that location, especially where there is the potential for adverse impacts. In these circumstances, it is reasonable for decision-makers to weigh the justification against the potential impacts, for example on road safety, landscape quality or natural heritage, and in such circumstances it may be appropriate for applicants to be asked to make a land management or other business case.*

*51. Where the authority is satisfied that an adequate case has been made, it should not be necessary to use a planning obligation as a formal mechanism to restrict occupancy or use.*

## **Applicant's Case**

A supporting statement has been submitted on behalf of the applicant and explains the reasoning behind seeking removal of the condition. In summary this outlines that the applicants are seeking to retire, which will involve the closure of the cattery business and a gradual reduction in the scale of the sheep farming operation.

It is the applicant's desire to remain living in their home once the cattery closes. The presence of the condition presents two problems in this regard. The first is that it would be unlawful for the applicant to remain living in their home once the cattery closes. Secondly, if they were to seek to sell the house to downsize in future, or if rehousing became necessary due to ill health or advanced age, it would be difficult, if not impossible, to sell the house with the condition attached. The applicant contends that condition limits the saleability of the house, as it ties a sizeable property to a demanding custom-built business which drastically restricts the pool of potential buyers. A cattery business is not particularly marketable and the issues associated with gaining mortgages for houses with occupancy conditions attached is well-documented. The condition reduces the value of the property to such an extent that the return on sale would limit the applicant's options for downsizing or rehousing in later retirement. The condition is described as an unreasonable and artificial barrier on their individual property rights and the Scottish planning system has generally directed that their use be avoided for in excess of 12 years.

### **Removal of Condition**

The requirement for the house, as an exception to green belt policy, was established through the original application in 2006. The application now being considered does not propose any physical development and therefore there would be no conflict with Policy 8 of NPF4 and Policy NE2 of the ALDP on green belts. Any impact on the green belt because of the presence of the house has already occurred. That said, the house and accompanying landscaping surrounding it has become well established and the building sits comfortably in the landscape.

The advice on the use of conditions in Circular 4/1998 explains that occupancy conditions should only be used in the most exceptional cases, where there are clear and specific circumstances that warrant allowing a house on a site where development would not normally be permitted. New houses in the green belt are only permitted in limited specific circumstances, therefore when a house is granted consent for agricultural or other purposes, it is entirely reasonable to attach such a condition. Taking into account this advice and green belt policy, the use of occupancy conditions is deemed to continue to be a legitimate way of supporting the development of new houses in the green belt where they are necessary, but at the same time protecting the green belt from erosion by unnecessary development.

The advice is also clear that if the reason justifying the condition no longer exists or circumstances otherwise change, planning authorities should take a sympathetic view on the removal of conditions. This is to avoid situations where a house remains vacant or the owners are forced to demolish a building as it is not possible to occupy it within the terms of the condition.

In this case, it is accepted that as it stands, if the business closed, the condition would require the applicants to move out of Erinvale. This would also be the case if the applicant's retired but the cattery business continued under different ownership or was staffed by other employees. At this stage however, the business is still operational, so the circumstances are yet to change.

In recognition of the applicant's position that they wish to retire in the near future, it is appropriate to redraft the condition so that the occupancy restriction lapses on the closure of the business. From the applicant's point of view, once the business has closed, this would allow them to continue to occupy the house into the future without restriction or sell it should they wish. From the Council's perspective, it would retain the status quo until the circumstances change, in effect preventing the house from being occupied by or sold to a third party, until after the business closes and the original reason for the condition no longer exists. The condition would also require the Council to be notified by the applicant no sooner than 14 days before the business ceases operation, to ensure that all parties are aware of when the condition no longer has effect. This approach would align with paragraph 102 of Circular 4/1998 which explains it is not appropriate to remove such conditions



unless it is shown that circumstances have materially changed and that the need which justified approval of a house in the first instance no longer exists.

An alternative option is that the condition is removed fully now. However, this would bring the risk that when the condition is removed, the cattery business could be transferred to a third party separately from the house, with the potential that the new cattery owner subsequently contends that a new second house is required to support the business. This approach would not accord with paragraph 102 as the condition would be removed before the circumstances have changed,

The third option is to retain the condition as it is. However, given the applicant's stated intention of retiring, it is considered that this would impose an unreasonably burden on the applicant which could result in the unlawful occupation of the house if they were to remain in it after the business closed, or result in the house becoming vacant on a long-term basis, both undesirable situations which would be to the benefit of no party. Retention of the condition even when the circumstances have changed would be in conflict with the advice on the use of such conditions, which expects planning authorities to deal with changes in circumstances sympathetically and reasonably.

In summary, the revised condition would strike a balance between removing the condition when the circumstances change without the need for a further application, but also maintain the condition until the circumstances do in fact change.

The applicant's supporting statement provides two examples of applications at other locations in the city where occupancy conditions have previously been removed, dating from 2010 and 2018. In seeking the fully removal of the condition, it is asserted by the applicant that the decisions should carry significant material weight in the assessment of this application due to the high degree of similarity in their surrounding circumstances. However, these are not directly relevant to this application. In both examples, the activity to which the occupancy of the house in question was tied to had already ceased by the time approval was granted for removal of the condition, which is not the case in this application.

In terms of the concerns raised by the Culter Community Council, it is acknowledged that there is pressure on the green belt in terms of demand for new houses. However, the tight control applied to development within the green belt through NPF4 and the ALDP provides a suitable framework for considering applications on a case-by-case basis. To minimise the potential for such controls to be circumvented, the Council have operated a long-standing policy of attaching occupancy conditions when new houses are approved. It is inevitable however that over time circumstances will change and such conditions will no longer be relevant or justified. Each application to remove a condition is considered on its individual merits and therefore any decision made on this application would not set a precedent for future applications at different sites.

The community council's suggestion of an amended condition has been considered, which would see the occupancy restriction suspended to allow the applicant to remain in the house on retirement, but once they decide they can no longer continue to live there at some future point, the suspension would lapse, reinstating the restriction for any future occupiers. This mechanism however would be unworkable and unreasonable. The first problem is that the cattery business to which the house is tied is very unlikely to exist at the future point, so it would be unreasonable to require any future occupant of the house to work in a business that does not exist. Even if the business did happen to exist at the future point, as the applicant has indicated in their supporting statement, the pool of buyers looking to purchase a house and work in a cattery full time, is likely to be extremely small. Therefore, if the restriction were reinstated at a future date, it is likely that this would result in the house becoming vacant on a long-term basis, which would be an unsustainable use of existing housing stock.

The representation from a neighbouring resident which supports the applicant's application to fully remove the condition has been taken in account. For the reasons noted above the proposed retention of an amended condition is considered more appropriate than full removal.

### **Other Conditions**

In addition to the occupancy restriction condition, three other conditions were attached to the original planning permission, all relating to matters which required to be addressed prior to construction of the house commencing. The first covered the provision of site access to the Council's archaeologist, the second to approval of external finishing materials and the third to details of sewage disposal. With the house complete these conditions are redundant and it is therefore unnecessary to re-apply them to the new planning permission.

Since 1 October 2022, there has been a requirement to attach a condition controlling the duration of a consent and when it lapses. However, this does not apply if the development subject of the application has already been carried out before the grant of planning permission. Therefore, as the house has already been constructed, a condition specifying the duration of consent is not required.

### **RECOMMENDATION**

Approve Conditionally

### **REASON FOR RECOMMENDATION**

Taking into account the advice from Scottish Government on the use of conditions as well as Policy 8 (Green Belts) of National Planning Framework 4 (NPF4) and Policy NE2 (Green Belts) of the Aberdeen Local Development Plan (ALDP), the use of occupancy conditions is deemed to continue to be a legitimate way of supporting the development of new houses in the green belt where they are necessary, but at the same time protecting the green belt from erosion from unnecessary development.

In recognition of the applicant's position that they wish to retire in the near future, it is considered appropriate to redraft the condition so that the occupancy restriction lapses on the closure of the business. From the applicant's point of view, once the business has closed, this would allow them to continue to occupy the house into the future without restriction or sell it should they wish. From the Council's perspective, it would retain the status quo until the circumstances change, in effect preventing the house from being occupied by or sold to a third party, until after the business closes and the original reason for the condition no longer exists.

The revised condition would strike a balance between removing the condition when the circumstances change without the need for a further application, but also retain the condition until the circumstances do in fact change, maintaining the Council's long-standing approach to controlling the occupancy of new houses in the green belt and supporting the outcomes of Policy 8 (Green Belts) of NPF4 and Policy NE2 (Green Belts) of the ALDP.

### **CONDITIONS**

(01) OCCUPANCY OF DWELLINGHOUSE

Part A – The dwellinghouse shall not be occupied by any person other than a person employed full-time in the cattery and equestrian business on the property known as Erinvale Cattery and Livery and located at Upper Anguston and the dependants, widow or widower of such a person.

Part B – In the event that the cattery and equestrian business close, from the date the business ceases to operate, Part A of this condition shall no longer apply.

Prior to the business closing, but no sooner than 14 days before the event, the applicant shall notify the planning authority of the intention to close the cattery and equestrian business and the date on which it will cease operation.

Reason – to restrict the occupancy of the house as considered necessary to support the development of new houses in the green belt where they are necessary, whilst protecting the green belt from erosion by unnecessary development, in accordance the aims of Policy 8 (Green Belts) of National Planning Framework 4 and Policy NE2 (Green Belts) of the Aberdeen Local Development Plan.