



**NORTH AYRSHIRE**  
COUNCIL

Cunninghame House,  
Irvine.

8 November 2012

### **Local Review Body**

You are requested to attend a Meeting of the above mentioned Committee of North Ayrshire Council to be held in the Council Chambers, Cunninghame House, Irvine on **WEDNESDAY 14 NOVEMBER 2012 at 2.30 p.m., or at the conclusion of the meeting of the Planning Committee, whichever is the later** to consider the undernoted business.

Yours faithfully

Elma Murray

Chief Executive

**1. Declarations of Interest**

Members are requested to give notice of any declarations of interest in respect of items of business on the Agenda.

**2. Minutes**

The Minutes of the previous meeting of the Committee held on 24 October 2012 will be signed in accordance with paragraph 7(1) of Schedule 7 of the Local Government (Scotland) Act 1973 (copy enclosed).

- 3. Notice of Review: 12/00321/PP: Erection of a detached dwellinghouse with detached garage at Plot 5, Steven Place, Kilbirnie**  
Submit report by the Chief Executive on a Notice of Review by the applicant in respect of the refusal of a planning application by officers under delegated powers (copy enclosed).
- 4. Notice of Review: 12/00202/PP: Modification of condition no. 7 of planning permission N/05/00248/PP to permit change of use from holiday letting cottage to permanent dwellinghouse (cottage no 2) on a site to the West of Kilmichael Country House, Brodick, Isle of Arran**  
Submit report by the Chief Executive on a Notice of Review by the applicant in respect of the non-determination of a planning application within the two month period allowed for officers to determine applications (copy enclosed).

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## Local Review Body

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Sederunt:

Matthew Brown

(Chair)

John Ferguson

(Vice-Chair)

Robert Barr

John Bell

John Bruce

Joe Cullinane

Ronnie McNicol

Tom Marshall

Jim Montgomerie

Robert Steel

Chair:

Attending:

Apologies:

Meeting Ended:



Local Review Body  
24 October 2012

**IRVINE, 24 October 2012** - At a meeting of the Local Review Body of North Ayrshire Council at 2.30 p.m.

**Present**

Matthew Brown, Elizabeth McLardy, Robert Barr, John Bruce, Joe Cullinane, John Ferguson, Ronnie McNicol, Tom Marshall and Jim Montgomerie.

**In Attendance**

K. Smith, Planning Advisor to the Local Review Body, J. Law, Legal Adviser to the Local Review Body; and D. McCaw Committee Services Officer (Chief Executive's Service).

**Also In Attendance**

F. Crawford (Applicant); T. Hardie (Hardie Planning - Agent); N. Rodgers (Thomson Architects); D. Hammond, Team Manager (Development Plans), J. Miller, Senior Planning Services Manager, and J. Michel, Senior Planning Officer (Corporate Services).

**Chair**

Councillor Brown in the Chair.

**Apologies for Absence**

John Bell.

**1. Declarations of Interest**

There were no declarations of interest by Members in terms of Standing Order 16 and Section 5 of the Code of Conduct for Councillors.

**2. Minutes**

The Minutes of the previous meeting of the Committee held on 5 September 2012 were signed in accordance with paragraph 7(1) of Schedule 7 of the Local Government (Scotland) Act 1973.

**3. Hearing Session**

In accordance with the Hearing Session Rules contained in the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008 and with the approved North Ayrshire Council Hearing Session Rules and Procedures, a hearing was conducted in respect of the undernoted Notice of Review.

### **3.1 Notice of Review: 12/00106/PP: Erection of Detached Dwellinghouse and Formation of a New Access Road: Site to North of Hillhome: Portencross: West Kilbride**

Submitted report by the Chief Executive on a Notice of Review by the applicant in respect of the refusal of a planning application by officers under delegated powers for the erection of detached dwellinghouse and formation of a new access road at a Site to North of Hillhome, Portencross, West Kilbride. The Notice of Review documentation, the Planning Officer's Report of Handling, a location plan, a copy of the Decision Notice, the applicant's hearing statement and the Council's Planning Service hearing statement were provided as Appendices 1-5b to the report.

At its meeting on 5 September 2012, the Local Review Body agreed (a) following the site familiarisation visit, to continue consideration of the Notice of Review to a future meeting for a hearing to be conducted in terms of the Hearing Session Rules set out in Schedule 1 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008, to examine further the relevant Council policies; and (b) that the applicant/applicant's representative, any interested parties who made representations, and officers of the Council's Planning Service be invited to attend and address the hearing in relation to the relevant policies.

In accordance with the hearing procedure and rules, the applicant and an officer of the Council's Planning Service were invited to attend the Hearing Session and to submit a Hearing Statement and supporting documentation in advance of the session.

The applicant, in addition to addressing the hearing himself, was represented Tom Hardie, Hardie Planning. The applicant's architect, Neil Rodgers, Thomson Architects, although in attendance did not address the Hearing. The Council's Planning Service was represented by David Hammond, Team Manager (Development Plans), Jim Miller, Senior Planning Services Manager and John Michel, Senior Planning Officer.

The Legal Adviser set out the background to the Hearing and advised those present of the procedures for conducting the Hearing.

The Planning Adviser advised the Local Review Body of the background to the application.

The applicant and his representative then addressed the Local Review Body (LRB) followed by the representative from the Council's Planning Service. Both parties confined their comments to the relevant policies under consideration.

Thereafter the applicant and his representative and the representative of the Council's Planning Service answered questions from Members of the LRB on their submissions.

Members agreed that the Local Review Body now had sufficient information before it to determine the matter without further procedure.

Councillors Bruce, Cullinane and Montgomerie, who were unable to attend the site familiarisation visit, took no part in the determination of the review request.

The Local Review Body, having considered all the information, agreed (a) to uphold the decision to refuse planning permission on the following grounds:-

1. That the proposed development does not accord with Policy H2 of the North Ayrshire Local Plan (excluding Isle of Arran) and North Ayrshire Council's approved Guidance on Single Houses Rural Areas, in that by reason of its siting, design and appearance, the proposed dwellinghouse is not of distinct design nor would it make a positive design contribution to the locality of the area or enhance the established character of the area.

2. That there is no locational need for the dwellinghouse which would be : (i) contrary to policy ENV1 of the adopted North Ayrshire Local Plan (excluding Isle of Arran); (ii) detrimental to the amenity and appearance of the countryside; and (iii) establish an undesirable precedent for further similar developments.

3. That the proposed development would be contrary to criteria (a), (b) and (c) in that by reason of its siting, design and external appearance, would detract from the setting of Hillhome and would have an unacceptable cumulative impact on the landscape which would be detrimental to the amenity and character of the area.; and

(b) that the Decision Notice be drafted by Officers, agreed by the Chair and, thereafter, signed by the Proper Officer for issue to the applicant.

**4. Notice of Review: 12/00098/PP: Erection of Detached Dwellinghouse and Refurbishment of Existing Outbuilding with the Addition of a Greenhouse and Landscaping: Land Adjacent to Myrtle Cottage: Whiting Bay: Isle of Arran**

Submitted report by the Chief Executive on a Notice of Review by the applicant in respect of the refusal of a planning application by officers under delegated powers at land adjacent to Myrtle Cottage, Whiting Bay, Isle of Arran. The Notice of Review documentation, a representation received from an interested party, the applicant's response to the additional representation, the Planning Officer's Report of Handling, a location plan and a copy of the Decision Notice, were provided as Appendices 1-6 to the report.

The Planning Advisor introduced the matter under review, confirming that the Notice of Review had been submitted timeously by the applicant. Photographs and plans of the proposed development were displayed.

The Local Review Body agreed (a) to proceed to a site familiarisation visit; (b) to so advise the applicant and interested parties; and (c) to note that only those Members of the LRB who attended the site visit would be eligible to participate in the determination of the review request.

The meeting ended at 3.30 p.m.

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**NORTH AYRSHIRE COUNCIL**

**Agenda Item 3**

**14 November 2012**

**Local Review Body**

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**Subject:** **Notice of Review: 12/00321/PP: Plot 5: Steven Place: Kilbirnie**

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**Purpose:** To submit, for the consideration of the Local Review Body, a Notice of Review by the applicant in respect of a planning application refused by officers under delegated powers.

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**Recommendation:** That the Local Review Body considers the Notice.

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**1. Introduction**

1.1 The Town and Country Planning (Scotland) Act 1997, as amended by the Planning (Scotland) Act 2006, provides for certain categories of planning application for "local" developments to be determined by appointed officers under delegated powers. Where such an application is refused, granted subject to conditions or not determined within the prescribed period of 2 months, the applicant may submit a Notice of Review to require the Planning Authority to review the case. Notices of Review in relation to refusals must be submitted within 3 months of the date of the Decision Notice.

**2. Current Position**

2.1 A Notice of Review has been submitted in respect of Planning Application 12/00321/PP for the erection of a detached dwellinghouse with detached garage at Plot 5, Steven Place, Kilbirnie.

2.2 The application was refused by officers for the reasons detailed in the Decision Notice at Appendix 4.

2.3 The following related documents are set out in the appendices to this report:-

Appendix 1 - Notice of Review documentation;  
Appendix 2 - Report of Handling;  
Appendix 3 - Location Plan; and  
Appendix 4 - Decision Notice.

### **3. Proposals**

- 3.1 The Local Review Body is invited to consider the Notice of Review.

### **4. Implications**

Financial Implications

- 4.1 None arising from this report.

Human Resource Implications

- 4.2 None arising from this report.

Legal Implications

- 4.3 The Notice of Review requires to be considered in terms of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning (Scotland) Act 2006, and the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.

Equality Implications

- 4.4 None arising from this report.

Environmental Implications

- 4.5 None arising from this report.

Implications for Key Priorities

- 4.6 None arising from this report.

### **5. Consultations**

- 5.1 Interested parties (both objectors to the planning application and statutory consultees) were invited to submit representations in terms of the Notice of Review. No such representations have been received.

**6. Conclusion**

- 6.1 The Local Review Body is invited to consider the Notice of Review, including any further procedures which may be required prior to determination.



ELMA MURRAY  
Chief Executive

**Reference :**

For further information please contact Diane McCaw, Committee Services Officer on 01294 324133

**Background Papers**

Planning Application 12/00321/PP and related documentation is available to view on-line at [www.north-ayrshire.gov.uk](http://www.north-ayrshire.gov.uk) or by contacting the above officer.



# NOTICE OF REVIEW

UNDER SECTION 43A(8) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED) IN  
RESPECT OF DECISIONS ON LOCAL DEVELOPMENTS

THE TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND LOCAL REVIEW PROCEDURE)  
(SCOTLAND) REGULATIONS 2008

THE TOWN AND COUNTRY PLANNING (APPEALS) (SCOTLAND) REGULATIONS 2008

**IMPORTANT: Please read and follow the guidance notes provided when completing this form.  
Failure to supply all the relevant information could invalidate your notice of review.**

Use **BLOCK CAPITALS** if completing in manuscript

Applicant(s)	Agent (if any)
Name <input type="text" value="DREW MARSHAM"/>	Name <input type="text"/>
Address <input type="text"/>	Address <input type="text"/>
Postcode <input type="text"/>	Postcode <input type="text"/>
Contact Telephone 1 <input type="text"/>	Contact Telephone 1 <input type="text"/>
Contact Telephone 2 <input type="text"/>	Contact Telephone 2 <input type="text"/>
Fax No <input type="text"/>	Fax No <input type="text"/>
E-mail* <input type="text"/>	E-mail* <input type="text"/>
	Mark this box to confirm all contact should be through this representative: <input type="checkbox"/>
	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
* Do you agree to correspondence regarding your review being sent by e-mail?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

Planning authority	<input type="text" value="NORTH AYRSHIRE COUNCIL"/>		
Planning authority's application reference number	<input type="text" value="12/00321/PP"/>		
Site address	<input type="text" value="STEVEN PLACE KILBIRNIE"/>		
Description of proposed development	<input type="text" value="DETACHED DWELLINGS WITH SEPARATE GARAGE"/>		
Date of application	<input type="text" value="11 JUNE 2012"/>	Date of decision (if any)	<input type="text" value="10 AUGUST 2012"/>

**Note.** This notice must be served on the planning authority within three months of the date of the decision notice or from the date of expiry of the period allowed for determining the application.

**Nature of application**

- 1. Application for planning permission (including householder application)
- 2. Application for planning permission in principle
- 3. Further application (including development that has not yet commenced and where a time limit has been imposed; renewal of planning permission; and/or modification, variation or removal of a planning condition)
- 4. Application for approval of matters specified in conditions

**Reasons for seeking review**

- 1. Refusal of application by appointed officer
- 2. Failure by appointed officer to determine the application within the period allowed for determination of the application
- 3. Conditions imposed on consent by appointed officer

**Review procedure**

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may tick more than one box if you wish the review to be conducted by a combination of procedures.

- 1. Further written submissions
- 2. One or more hearing sessions
- 3. Site inspection
- 4. Assessment of review documents only, with no further procedure

If you have marked box 1 or 2, please explain here which of the matters (as set out in your statement below) you believe ought to be subject of that procedure, and why you consider further submissions or a hearing are necessary:

*Due to the amount of correspondence regarding the application several documents have been collated into one overall summary which should read better and make assessment easier. Site inspection only if deemed necessary by panel.*

**Site inspection**

In the event that the Local Review Body decides to inspect the review site, in your opinion:

- |  | Yes                                 | No                       |
|--|-------------------------------------|--------------------------|
| 1. Can the site be viewed entirely from public land?                                 | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. Is it possible for the site to be accessed safely, and without barriers to entry? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

If there are reasons why you think the Local Review Body would be unable to undertake an unaccompanied site inspection, please explain here:

**Statement**

You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. **Note:** you may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

If the Local Review Body issues a notice requesting further information from any other person or body, you will have a period of 14 days in which to comment on any additional matter which has been raised by that person or body.

State here the reasons for your notice of review and all matters you wish to raise. If necessary, this can be continued or provided in full in a separate document. You may also submit additional documentation with this form.

*Supporting evidence statement attached in separate document  
(Application rejected by appointed officer)*

Have you raised any matters which were not before the appointed officer at the time the determination on your application was made?

Yes  No

If yes, you should explain in the box below, why you are raising new material, why it was not raised with the appointed officer before your application was determined and why you consider it should now be considered in your review.

**List of documents and evidence**

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review.

*Attached in separate document. (Any reproductions to be in colour)*

Note. The planning authority will make a copy of the notice of review, the review documents and any notice of the procedure of the review available for inspection at an office of the planning authority until such time as the review is determined. It may also be available on the planning authority website.

**Checklist**

Please mark the appropriate boxes to confirm you have provided all supporting documents and evidence relevant to your review:

- Full completion of all parts of this form
- Statement of your reasons for requiring a review
- All documents, materials and evidence which you intend to rely on (e.g. plans and drawings or other documents) which are now the subject of this review.

Note. Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice from that earlier consent.

**Declaration**

**I the applicant/agent [delete as appropriate] hereby serve notice on the planning authority to review the application as set out on this form and in the supporting documents.**

Signed  Date 10/9/12

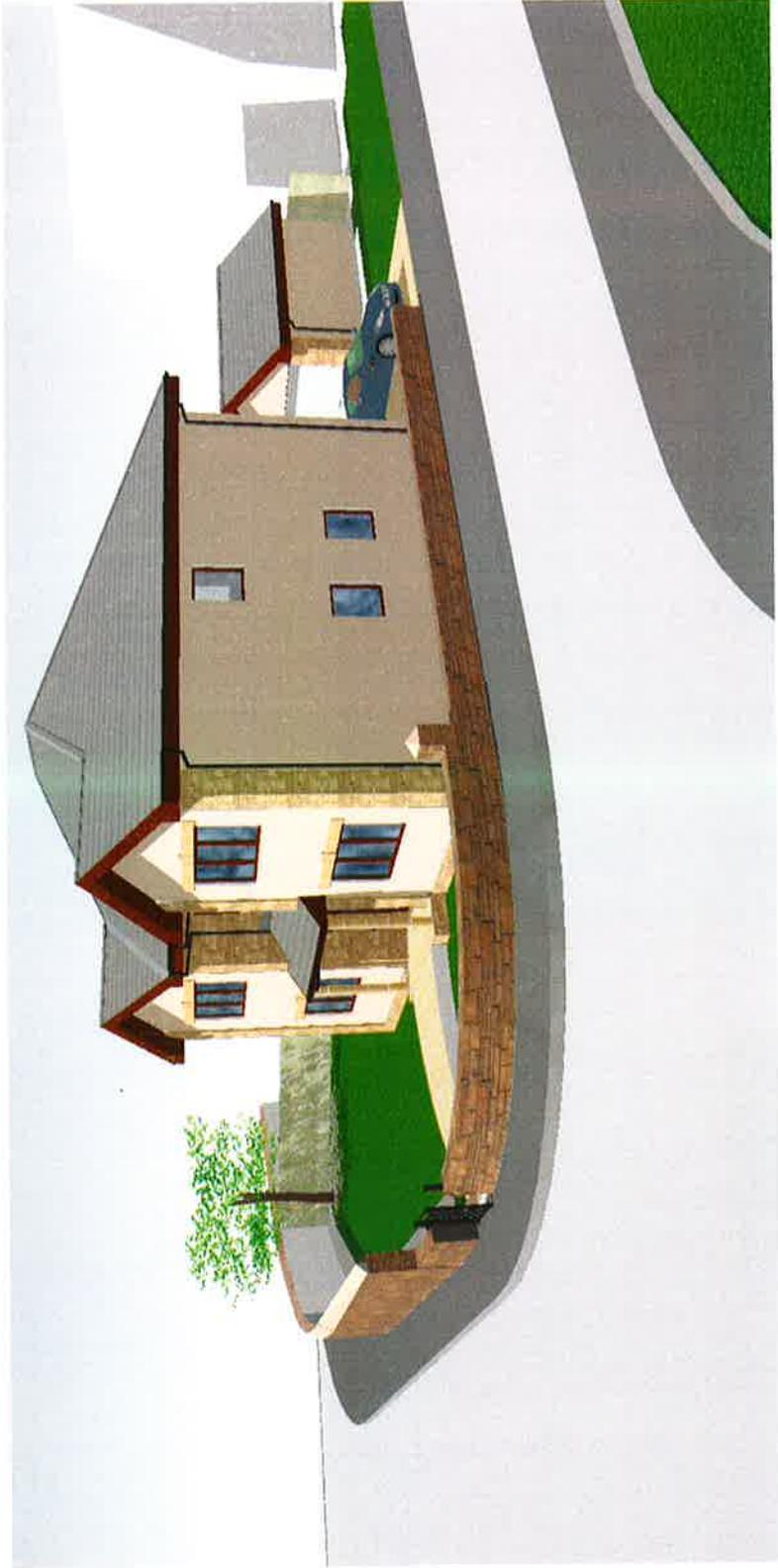
Drew Marsham

**Supporting Evidence for Local Review Panel Reference Planning Application 12/00321/PP**

The following letter outlines my evidence in support of my request for a Local Planning Board review for Planning application 12/00321/PP which has been rejected by the local authority. I have tailored the document from previous evidence supplied prior to the local authorities decision to ensure I have complied with the requirement not to introduce new material in support of my case and have enclosed copies of the correspondence with this document for reference. I have included comments from the Report of Handling some of which I believe are factually incorrect and other areas where I disagree with the analysis of the application, I have supplied mitigating statements and supporting evidence where appropriate.

Reasons why I believe my application should be approved are as follows :-

- The reasons given for rejecting my application have been approved for the properties next door on either side of my application and at various other locations in the area. One recent development in particular being on the same principal route into Kilbirnie.
- My application should be treated similarly to these neighbouring properties particularly the property next door at No 31 Stoneyholm Rd which is part of the same outline Planning Application 99/00383/PP approved in June 1999 and a later final planning application approved in February 2007 06/01237/PP for the property.
- I firmly disagree that my house is of a standard design that does not match any of the surrounding properties. I have deliberately designed the roofscape using “twin peaks” to match those properties close by in Stoneyholm Rd and added features associated with a high quality design and ensured matching external materials have been specified such that the nature of my proposal is compatible with and sympathetic to the character of the surrounding area.
- Contrary to the analysis report I have complied with many areas of the Neighbourhood Design Guidance and will give examples of this later in the report.



3D Representation of Planning Application 12/00321/PP

## Comments on Local Authority Analysis

“Criterion a) of the DCS states that design should have regard to existing townscape and that external appearance should have regard to the locality in terms of fenestration, materials and colours. In this regard it is considered that the proposed dwelling is of a standardised appearance which does not reflect the quality of the majority of the properties on Stoneyholm Road. It is also considered that although there are modern 2 storey properties within Steven Place and Dipple Road, the proposed dwelling would relate more to Stoneyholm Road, which is characterised by traditional dwellings of a high quality of design. As such it is considered that any proposed dwelling on the plot should also be of a high quality of design, in accordance with the approved Neighbourhood Design Guidance. It is considered that the properties on Stoneyholm Road have a strong sense of identity and place and that the proposed dwelling would detract from the otherwise high quality streetscape.”

### ***Applicants Response***

***The local authority in it's comments above fails to recognise that the property next door which in their own words "is a modern one and half storey property" is actually in Stoneyholm Rd. Page 40 of the Neighbourhood Design Guidance states that designers should "Ensure that proposals take account of the scale of their neighbours and the wider site" Having approved the property next door on Stoneyholm Rd without any similar conditions to my application, a precedent has been set by the local authority. My application is also proposing matching finish materials to that next door complying with the statement "that external appearance should have regard to the locality in terms of fenestration, materials and colours", my proposal will also comply with the guidance recommendation that designs should form a natural gateway to the development. I believe the fyfestone finishing materials selected, porch design with supporting pillars and additional stonework above the windows on the front elevation add to a high quality design and not something a "standardised appearance" would be associated with.***

## Comments on Local Authority Analysis

In discussion with the Case Officer, the applicant advised that this particular design was selected from a housing development in Aberdeen, with the kit produced by the same developer of that development.

Given the plot fronts onto one of the main routes into Kilbirnie, it is important that any dwelling relates well to that streetscape. The proposed dwelling does not have any significant design ethos and does not sit well with the existing streetscape. Therefore, it is considered that the proposal does not offer an appropriate design, external appearance and finish for this location. There is clearly scope to design a house which would compliment the existing built form and add to the streetscene at this location

The Neighbourhood Design Guidance adopts a context driven approach, seeking development solutions that build on and enhance a sense of place. The guidance recognises that many new developments rely on the reuse of standard housetypes, which use a mixture of architectural solutions imported from other locations and which do not have a character relevant to the location. The guidance encourages that a thorough analysis of the built and natural landscape context should be the basis of all new proposals and that new development should also be of a scale, massing and form that looks right in its setting. In this case it is clear, as advised by the applicant, that the design of the proposed house has been imported from a new housing development and that there is no evidence of any consideration to the sites location and the relevant architectural context of the traditional properties which line Stoneyholm Road.

### ***Applicants Response***

***I am unclear as to the relevance of where good design ideas come from providing they are relevant to their surroundings. In finalising my design I considered many locations in and around the local area especially Steven Place, Dipple Rd and Stoneyholm Rd, particularly the property next door at No 31 Stoneyholm Rd as this is the most recently approved new property in the surrounding area (Appendix A). My application has similar design rooflines (twin peaks ) similar to those older properties a few doors away in Stoneyholm Rd, is of similar standing to Dipple Rd, Steven Place and some of the other properties along Stoneyholm Rd ie 2 Storey. It has external finishes matching the adjacent property which will allow it to blend in well with its current setting. The property is also bounded by two vehicular access roads which will give natural separation to the dwelling from the older properties further along the street and provide a natural fusion with it's neighbours at No 31 Stoneyholm and No1 Dipple Rd (Appendix B). Whilst I have maintained compliance with many of the design criteria called up by the Neighbourhood Design Guidance it is impossible for my design to comply with all the various designs, external finishes etc of both modern and older properties in the local area but I believe I have strived to maintain regular similarities which will blend in naturally with the properties immediate surroundings where it is best judged.***

## Comments on Local Authority Analysis

The applicant has provided a supporting statement (see below) which states that many of the properties within Steven Place and Dipple Road are 2 storey detached modern properties and he considers that the proposed development would “sit comfortably” with these properties.

In response it is considered that the proposed dwelling would occupy a prominent position facing Stoneyholm Road, a principal route into Kilbirnie, which is characterised by traditional properties, of various architectural styles of a high design quality. The properties within Dipple Road and Steven Place do not occupy a prominent position, being side streets off the main road.

The approved Design Guidance states that buildings can be designed to incorporate innovative, contemporary materials and construction details, rather than having to copy architectural styles of the past. For the above reasons, it is considered that the proposal does not conform to the principles of the Design Guidance, and would be contrary to Policy BE14 and criterion a) of the DCS.

### ***Applicants Response***

***Para 3.7 (a) (a) Siting, Design and External Appearance: □ Siting of development should have regard to the relationship of the development to existing buildings and the visual effects of the development on the surrounding area and landscape.***

***I have complied with Development Control Statement Para 3.7 (a) Siting, Design and External Appearance:***

- ***Where I have considered the relationship of the development to existing buildings to best fit with the visual effects of the immediate surroundings.***
- ***The application is similar in size, scale, form, massing, height and density to its neighbours.***
- ***“External appearance should have regard to the locality in terms of style, fenestration, materials and colours.” I have selected a palette of materials the same as the next door property to form a visual natural gateway to the development as recommended by the Neighbourhood Design Guidance.***

***The photograph detailed below clearly shows that the comment above regarding “properties within Dipple Rd and Steven Place do not occupy a prominent position being side streets off the main road” to be incorrect. As can be clearly seen from the photograph these buildings could hardly be any more prominent.***



***This photograph (Photograph 1) shows that the immediate area (properties next door on either side) surrounding the application site are primarily of modern design and visually prominent contrary to the local authorities statement***

#### Comments on Local Authority Analysis

However, criterion b) states that development should have regard to the character of the area in which it is located and as noted above, the proposed development would not reflect the architectural context of the properties on Stoneholm Road. For these reasons, the proposal would not accord with criterion b) of the DCS.

#### ***Applicants Response***

***The application reflects the architectural context of properties by way of roof design being similar to the properties situated close by in Stoneholm Road at No's 39/41, 41/43, 45, & 47/49. Finishing materials are the same as next door at No 31 Stoneholm Rd therefore criterion b) has been achieved.***

## Comments on Local Authority Analysis

The applicant states that the plot is located on a busy route to the coast and the proposed development and the adjacent existing property at no. 31 Stoneyholm Road would form a “gateway” into Steven Place, given that they are of a similar design. The applicant disagrees that the proposal represents an “off-the shelf” housetype and has added some detail to the house, with stone features above the windows and the use of fyfestone on the front elevation to help “break-up” the massing.

It is considered that although the proposed dwelling and the adjacent property at no. 31 Stoneyholm Road would be the first properties when entering Steven Place, the orientation and principle elevations face onto and form part of Stoneyholm Road. Therefore consideration should be given to the architectural context of properties within Stoneyholm Road, rather than Steven Place. It is accepted that the applicant has added architectural detail to the principal elevation; however this is considered to have limited impact.

### ***Applicants Response***

***As highlighted earlier, the property to the east next door is on Stoneyholm Road with which my application has similar architectural context. I have also considered architectural design of older Stoneyholm Rd properties particularly those close by to the east with similar roofscape design. To the west the nearest older property is 41 metres away while the nearest new style property is 5 metres away. To the east the nearest older style property is 46 meters away with the new style being 13 meters away. None of the closer new style properties are in Steven Place, one is on Stoneyholm Rd the other on Dipple Rd. The local authority appear to have dismissed the architectural context of these properties which they have approved when assessing my application. It should also be noted there is an existing wall almost 2 meters high bordering the principal elevation of the site which will severely limit any viewpoint when travelling from the town centre.***

## Comments on Local Authority Analysis

It is considered that 2 storeys is not the key issue, rather it is the architectural style/design and finishes. There are 2 storey properties further west along Stoneyholm Road, and a well considered design for a two storey property could be supported at this location. Notwithstanding this consideration, the proposal still represents a standard house type with no considered design concept, as required by the approved Guidance. It is also considered that the property at no. 1 Dipple Road is orientated towards Dipple Road and would not be viewed as part of Stoneyholm Road.

### ***Applicants Response***

***Regardless of a properties address it is how a property is viewed against it's surroundings that is the key issue. Photograph 1 above clearly shows that the application will sit between two prominent dwellings at No 1 Dipple Rd and No 31 Stoneyholm Rd. I have incorporated design features similar to some of the older properties in Stoneyholm Rd to comply with Design Guidance but have also considered that my design will sit between the two newer properties highlighted and will complement both of it's neighbours which my design will sit directly between in the current streetscene and will be compatible with and sympathetic to the character of it's immediate neighbours. I do not believe the local authority have given this consideration the weighting it deserves in making it's assessment.***

## Comments on Local Authority Analysis

As discussed above, the neighbouring property at no. 1 Dipple Road is orientated towards Dipple Road. It is also considered that although there is a separation with Steven Place, the properties further east beyond no. 31 Stoneyholm Road and adjacent to the site on the south side of the road are also traditional in appearance and as discussed above the proposed dwelling does not reflect their quality of architecture. The photograph submitted in support does not show the adjacent properties on the south side of Stoneyholm Road and it is not considered that these photographs give a proper representation of the plot and its relationship to the surrounding properties and they draw on the worst examples, rather than the wide range of higher quality design on Stoneyholm Road.

### ***Applicants Response***

***The photograph submitted (Photograph No 1) is a true reflection viewing the development from the west travelling along Stoneyholm Rd, A site visit would confirm this if deemed necessary by the review panel.***

## Comments on Local Authority Analysis

No. 6 Steven Place is Alpine in appearance and is not in-keeping with the other properties within Steven Place. Although the Neighbourhood Design Guidance may not have been available at the time, there should have been appropriate policy guidance available to have made an informed judgement. The applicant considers that the design of the proposed dwelling would be more appropriate and not as out of keeping with the surrounding area as this property.

Response: Planning permission was approved for this property in March 2003 (Ref: 03/00041/PP). It is considered that although the design of this property differs from the other modern properties within the street, the property is not located within a highly prominent position and would not be readily visible from Stoneyholm Road.

### ***Applicants Response***

***In comparison I do not believe the local authority have applied a level playing field when judging my application. I agree my site will sit in a more prominent position, however, that does not disguise the fact that the authority would appear to have applied double standards when assessing my application as the property at No 6 is nothing like any other in the development regarding both design aspects and finishing materials. As the photograph below shows, this property in Steven Place only a few doors away from my application would not be out of place in an Alpine village let alone Steven Place. I disagree this property would not be readily visible from Stoneyholm Rd and a site visit would confirm this.***



Photograph 2 (No 6 Steven Place)

#### Comments on Local Authority Analysis

The applicant states that a new housing development (Ref: 07/00977/PP) on Largs Road has been developed where modern properties are adjacent to traditional properties and has provided photographs to demonstrate the contrast in design.

Response: The above example relates to a housing development which was approved in March 2008 for the erection of 48 dwellings and 4 flats, set within a comprehensive redevelopment and creating their own environment. This current proposal relates to in-fill development of a single plot set within a road which is characterised on both sides with high design quality, traditional properties. There is no direct comparison associated to the particular consideration of this case.

#### ***Applicants Response***

***I disagree with the statement there is no direct comparison between the sites.***

- ***Both Stoneyholm Rd and Largs Rd are both on the same vehicular route through the town.***
- ***The older properties on Largs Rd have the exact same design elements as Stoneyholm Rd***
- ***The newer properties given approval are very similar in design to my application***

Properties on Largs Rd with the same design and period as Stoneyholm Rd



Properties approved sited directly opposite older properties on Largs Rd. Note Design similarities to application site

The photograph which is less than half a mile from the application site provides yet another example of where different standards have been applied. Regardless of the guidance information applicable at the time of approval the criterion set by both old and new guidance are similar in context regarding design and external appearance.



## Comments on Local Authority Analysis

Drawings were presented to the case officer prior to the submission of the application and concerns were not raised at this point with regards to design. This meeting was a validation check to ensure the relevant forms and plans were present to enable registration of the application. Advice was given simply in relation to the level of information which would be required to see an application registered, not in relation to pre-determining the acceptability of the proposals. More in depth advice was neither sought nor would have been appropriate at that stage. The issue of design however was raised by the Case Officer with the applicant advised that development should be in-keeping with the character of the surrounding area. Once the application was registered, a more in depth analysis of the proposal was undertaken, as discussed in depth above. The applicant was also advised at an early stage in the application process over the above concerns and it was suggested that advice could be sought from an architect to produce a considered design concept which relates well to its context. However, the applicant has confirmed that he does not wish to consider this.

### ***Applicants Response***

***The Report of Handling states that this meeting was a validation check to enable registration of the application. No mention of this criteria was made either prior to or during our meeting with the actual validation being conducted by another member of staff using separate correspondence following submission of my application. (E Mails confirming this attached. Appendix C)***

***I rang the Planning Department and spoke to a Mr Neil McAteer to ask who would be dealing with my application. Mr McAteer advised that it would be Fiona Knighton who would be dealing with it so I rang Fiona and stated that I wished to attend a meeting with her to run through my plans to “avoid any issues when I formally submitted my plans”. Fiona advised she was familiar with the site and arranged a meeting for the following week. I presented detailed architectural drawings and discussed house design, finishing materials, parking, garden space, existing boundary walls etc. Fiona stated that I seemed to have “thought of everything they would have thought of” and suggested I formally submit the plans without any alterations. Despite following what the local authority recommend ie a pre planning visit to iron out any issues it was quite a surprise when a few days after lodging my application that Fiona called to say someone else in the department had looked at the plans and did not like the design I had submitted and requested that I should make alterations. I personally believe it was quite unprofessional and calls into question the point of having these meetings if they can just be overruled by someone else in the department who happens to have a different opinion from the appointed officer.***

***In summary,***

***I firmly believe that my design is anything but a “standardised design” and will mirror the high quality finish of the modern property next door and complement it in forming a natural gateway to the development as recommended by the Neighbourhood Design Guidance. I ensured that features of both old and new properties in the surrounding area were incorporated in the design whilst complying with Paragraph 3.0 of the Development Control Statement. The reasons cited for rejecting my application have been approved in almost identical developments particularly at Largs Rd in Kilbirnie. As the owner of the original site and also the developer who built the property next door at No 31 Stoneyholm Rd I have always strived to make sure that the development at Steven Place and Stoneyholm Road would be remembered for all the right reasons. I am passionate about the fact that when visitors drive through Kilbirnie they will pass the entrance to Steven Place and form a positive opinion regarding the quality of housing being built in the community. I have received many positive comments on the property at No 31 and this is one of the reasons for selecting the same palette of high quality materials for my application.***

## Enclosures

Appendix A	Photograph of No 31 Stoneyholm Rd
Appendix B	Photograph of No 1 Dipple Rd
Appendix C	E Mails regarding validation checks
Appendix D	Supporting Statement No 1
Appendix E	Supporting Statement No 2
Appendix F	Supporting Statement No 3
Appendix G	Location Plan
Appendix H	DM 200 Rev B Front Elevation showing additional stonework lintels to windows
Appendix I	DM 002 Rev A Block/Site Plan
Appendix J	DM 100 Rev B Ground Floor Plan
Appendix K	DM 101 Rev C Upper Floor Plan
Appendix L	DM 102 Rev A Roof Plan
Appendix M	DM 200 Rev A Front Elevation
Appendix N	DM 201 Rev A Rear Elevation
Appendix O	DM 202 Rev A East Elevation
Appendix P	DM 203 Rev A West Elevation
Appendix Q	DM 103 rev A Proposed Garage
Appendix R	3D Image of Proposed Application





**Marsham, Drew (UK)**

---

**From:** LDempster  
**Sent:** 13 June 2012 10:49  
**To:** Marsham, Drew (UK)  
**Subject:** Re: Plot 5 Steven Place Kilbirnie Planning Application [UNCLASSIFIED]

-----! WARNING ! ----- This message originates from outside our organisation, either from an external partner or from the internet.  
 Keep this in mind if you answer this message.  
 Follow the 'Report Suspicious Emails' link on IT matters for instructions on reporting suspicious email messages.  
 -----

Hi Drew,

Could you change the window sizes on the upper floor plan (drawing number DM -101 B) to match the windows on the proposed front elevation.

Many thanks.

Lisa Dempster  
 Planning Technician

Corporate Services  
 North Ayrshire Council, Cunninghame House, Irvine KA12 8EE  
 Tel:  
 Fax:  
 Email: [ldempster](mailto:ldempster)

*Supporting E Mails to show that  
 validation was conducted post application  
 submission rather than at pre-planning  
 meeting  
 DM 3/9/12*

View planning applications online at:  
<http://www.eplanning.north-ayrshire.gov.uk/OnlinePlanning/>

From: "Marsham, Drew (UK)"  
 To:  
 <  
 Cc:  
 Date: 13/06/2012 10:11  
 Subject: Plot 5 Steven Place Kilbirnie Planning Application

Lisa,

As discussed by telephone please find attached

- A current 1:1250 plan showing neighbouring properties
- Floor plan and elevations of proposed garage

(House floor plans already supplied hard copy)

Regards  
Drew Marsham

\*\*\*\*\*

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You should not copy it or use it for any purpose nor disclose or distribute its contents to any other person.

\*\*\*\*\*

[attachment "Garage Layout 103-A.pdf" deleted by Lisa Dempster/Planning/North Ayrshire Council] [attachment "Ordnance Survey Steven Place red line.pdf" deleted by Lisa Dempster/Planning/North Ayrshire Council]

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## Marsham, Drew (UK)

---

**From:** Marsham, Drew (UK)  
**Sent:** 14 June 2012 08:41  
**To:** 'LDempster'  
**Subject:** RE: Plot 5 Steven Place Kilbirnie Planning Application [UNCLASSIFIED]  
**Attachments:** 101-C Upper Floor Laoyout.pdf

Lisa,

Please find attached revised upper floor layout with window dimensions updated.

Regards  
Drew

-----Original Message-----

**From:** LDempster  
**Sent:** 13 June 2012 10:49  
**To:** Marsham, Drew (UK)  
**Subject:** Re: Plot 5 Steven Place Kilbirnie Planning Application [UNCLASSIFIED]

-----! WARNING ! ----- This message originates from outside our organisation, either from an external partner or from the internet.  
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-----

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Could you change the window sizes on the upper floor plan (drawing number DM -101 B) to match the windows on the proposed front elevation.

Many thanks.

Lisa Dempster  
Planning Technician

Corporate Services  
North Ayrshire Council, Cunninghame House, Irvine KA12 8EE  
Tel:  
Fax:  
Email: ldempster

View planning applications online at:  
<http://www.eplanning.north-ayrshire.gov.uk/OnlinePlanning/>

From: "Marsham, Drew (UK)"  
To:  
<  
Cc:

Date: 13/06/2012 10:11  
Subject:Plot 5 Steven Place Kilbirnie Planning Application

Lisa,

As discussed by telephone please find attached

- A current 1:1250 plan showing neighbouring properties
- Floor plan and elevations of proposed garage

(House floor plans already supplied hard copy)

Regards  
Drew Marsham

\*\*\*\*\*

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\*\*\*\*\*

[attachment "Garage Layout 103-A.pdf" deleted by Lisa Dempster/Planning/North Ayrshire Council] [attachment "Ordnance Survey Steven Place red line.pdf" deleted by Lisa Dempster/Planning/North Ayrshire Council]

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## Marsham, Drew (UK)

---

**From:** Marsham, Drew (UK)  
**Sent:** 13 June 2012 10:11  
**To:** 'Idempster'  
**Cc:**  
**Subject:** Plot 5 Steven Place Kilbirnie Planning Application  
**Attachments:** Garage Layout 103-A.pdf; Ordnance Survey Steven Place red line.pdf

Lisa,

As discussed by telephone please find attached

- A current 1:1250 plan showing neighbouring properties
- Floor plan and elevations of proposed garage

(House floor plans already supplied hard copy)

Regards  
Drew Marsham

*Supporting statement No 1*

Fiona Knighton  
NAC Planning Department  
Cunninghame House  
Irvine  
KA12 8EE

Fiona,

**Supporting Statement for Planning Application 12/00321/PP Registered 14<sup>th</sup> June 2012**

Thank you for the opportunity to discuss on site the above planning application. You stated that the planning department thought the design of the house a bit "off the shelf" and would prefer to see a one and a half storey property rather than a two storey. I would like to submit the following in support of my application for a two storey development.

As the original owner of the whole development at Steven Place I have always been passionate about how the development would turn out. Despite me losing some control on the majority of the plots which I sold to finance the new infrastructure I retained ownership of the two properties forming the gateway to the development as I wanted to make sure that they were of a high quality and were something I would be proud of on completion. As the development is a busy route to the coast I was keen to form a gateway that would contribute to a positive impression of the area (and something that I would be glad to put my name to for many years to come). I would disagree that my application is an off the shelf product and perhaps the 2D drawings do not reflect the property as I had intended. However, I have added some additional detail with stone features above the windows on the front elevation and continued the fyfestone to the centre section of this elevation to help alleviate any concerns with massing. I have also attached two 3D drawings which I think gives a much better perspective on how the finished property will look. I would also request the following points are considered in support of the application :-

My original outline planning application (N/01/99/0256) supported the erection of either one and a half or two storey properties for the development.

The Local authority has already granted permission to others for two storey properties for 80% of the development.

I attended a pre-planning application meeting with yourself where I presented the drawings and discussed the two storey layout and elevations etc. At no time was there any concerns expressed regarding my proposals and no indication that a one and a half storey development would be considered more appropriate.

I believe that to date no objections to a two storey property have been received from neighbours on the notification list.

The council have already approved a wide range and variety of styles of two storey properties within the development.

There are few well proportioned 4 bedroom family homes with plenty of communal space with off street parking and large areas of garden space for family enjoyment readily available in Kilbirnie. Something that this two storey development will lend itself to achieving and a one and a half storey would struggle to achieve on the upper floors.

Having built the adjacent one and a half storey property I can from experience state that this type of design does not make the best use of upstairs space due to the nature of the internal (sloping walls).

On the design front the property has distinctive features in way of the round columns supporting the entrance canopy, stone lintels above the windows and although I could have opted for a cheaper and easier plain roof I opted for a roofscape that I believe will give the property a varied and interesting look.

I have used a common palette of materials similar to the property on the other side of the gateway to help them sit together comfortably. I have also selected a series of smaller components (fyfestone) which I will use to help avoid massing issues with the front elevation.

I have considered the use of common building lines with the other properties in Stoneyholm Road both to the east and west.

I have avoided the "could be anywhere" syndrome by ensuring that the property has it's own unique style whilst retaining the finishing materials of adjacent properties.

I have maintained a good proportion of footprint (well below the quoted 33% in the outline planning application) to ensure that how prominent the new development will look shall not be compromised.

I have retained some of the older landscape features namely the existing stone wall at the front of the property to frame space for the front and side garden. This should assist in providing privacy and security of the property.



Fiona Knighton  
NAC Planning Department  
Cunninghame House  
Irvine  
KA12 8EE

Supplementary evidence No 2

Fiona,

**Further Supporting Statement for Planning Application 12/00321/PP Registered 14<sup>th</sup> June 2012**

Thank you for your clarification on the points we discussed by telephone last week. Please find below my response to the points you have raised regarding my application along with some additional information which I would like to submit to support my application. I have taken your comments below in italics and added my response to each of the points plus some further supporting material I believe is relevant.

*“As discussed, the Council's Neighborhood Design Guidance is a material consideration in the assessment of your proposal which emphasises the importance of high quality, well designed development. The guidance also states that many new developments rely on the reuse of standard housetypes which use architectural solutions imported from other locations and do not have a distinctive North Ayrshire character. You previously advised that you incorporated your design and house type from a housing development in Aberdeen and whilst I appreciate you have made changes to suit your purposes, there is no reflection on the context or character of the traditional properties along Stoneyholm Road.”*

**The design has been assessed against the Council's Neighborhood Design Guidance document and many of the positive points and features in the guidance are already incorporated in my application. The house style is similar in context and character to many of the houses in the development and I believe that although the principle elevation is to Stoneyholm Rd it is also very much a part of Steven Place and in keeping with those already situated within the development and also similar to the neighboring property next door in Dipple Rd (see photograph 1 below) and will incorporate similar material characteristics to the neighbouring property on the other side of the vehicular access at No 31 Stoneyholm Rd. I firmly believe that if the property were to be similar to those properties further along Stoneyholm Rd as you suggest then it would not sit comfortably with the adjacent dwellings.**

*“Whilst it is appreciated that there are other “modern” 2 storey dwellings within Steven Place, these properties are not located in a prominent visual location as is the case with your plot. I would also add that many of these properties would've been approved prior to the current design guidance. As we previously discussed, the plot faces onto a main road where many of the properties are stone built, traditional 1 and 1 ½ storey properties. Although you make reference to the 2 storey modern property at 7 Dipple Road, this property is orientated towards Dipple Road and not Stoneyholm Road and is not considered to be as visually prominent as the application site.”*

**I would suggest the Town & Country Planning (Scotland) Act applicable to these dwellings provided sufficient guidance to make informed decisions similar to those specified in the latest additional guidance. I would disagree that the property in Dipple Rd will not be as visually prominent, in fact as you can see in the photograph below it may be more prominent than my application will be. Due to the extremely wide entrance to Dipple Rd the distance between the older properties on Stoneyholm Rd and my application is sufficiently detached that I believe the property will sit quite comfortably within its immediate neighbouring development. (As my proposals have suggested, common building lines and the use of common elements and materials to form a natural gateway to the development will be formed). The view below shows quite clearly that it will be the newer properties of Steven Place and Dipple Rd that will be much more prominent and relevant against how comfortably my application will sit in it's immediate surroundings.**



Photograph 1

*“I also note that the proposed materials would reflect the materials of the adjacent 1 1/2 storey property at no. 31 Stoneyholm Road. However, it is not considered that the design and scale of the proposed development would reflect the context of the properties situated along the main road. The design guidance encourages that a thorough analysis of the built and natural landscape context should be the basis of all proposals. New development should be of a scale, massing and form that looks right in its setting.”*

**I would suggest that the scale, design and finishing materials selected should be weighted against the newer properties of the development at No 31 Stoneyholm Rd and the two storey next door on Dipple Rd. As Photograph 1 above quite clearly shows the setting of my application will sit more comfortably in it's immediate surroundings than those situated along the main road.**

*“In view of the above, I would advise that it is considered that a standard housetype from a modern housing development would not reflect the local context when viewed from Stoneyholm Road and would suggest that you withdraw the application and re-submit with an alterative design solution.”*

**It is considered that my application will be much more a part of the newer development of Steven Place and Dipple Rd than the older part of Stoneyholm Rd due to the close proximity of the neighbouring properties which have design and material finishes which have been considered acceptable.**

**I would also like to draw your attention to a property which currently sits within the Steven Place development which your department were content met the planning policies of the day (within the last eight years). Whilst the Neighborhood Design Guidance may not have been available at the time of planning approval there would have been enough guidance and policy available through The Town & Country (Scotland) act to make an informed judgment on whether the property fitted in with the current setting. As you will see the house design, style, type, and material finish in Photograph 2 would not be out of place in an Alpine Village let alone Steven Place. If my design was as different as this property was to the surrounding development I could understand your comments and reluctance to accept my design, however, I have taken deliberate steps to ensure that the finishing materials selected, the ridge heights and massing will blend in quite appropriately with the neighbouring properties. I would also point out that the entrance to Dipple Rd is significantly wide to form a natural separation to the older properties towards the town centre and it would be double standards if my application were rejected for the reasons given in your correspondence.**



Photograph 2

In summary, I would like to highlight some of the key points below in support of my application but remind you that I would wish both this document (in colour) and the Supplementary Statement supplied earlier to be considered in full for assessing my application or any subsequent hearings. I have decided that there is enough evidence and past practice from the surrounding development which strongly supports my proposals as they stand and wish for them to proceed on that basis.

- I attended a pre planning meeting with yourself with detailed drawings of my application which received encouraging comments with no reason whatsoever to alter the design, materials, size or shape.
- There are no objections to the application.
- Greater than 80% of the properties in the new development are two storey.
- Neighbouring properties are of a similar design, finish and form.
- The property is bounded by two vehicular access roads which will give natural separation to the dwelling from other properties further along the street.
- The dwelling will use a common palette of materials, have similar features and maintain similar proportions to its neighbouring properties allowing a natural and pleasant gateway to Steven Place.
- The design has been checked against the Council's Neighborhood Design Guidance with a wide variety of the positive points identified in the guidance already incorporated. (see previous notes throughout supporting documentation).
- My outline planning application (N/01/99/0256) supported the erection of either one and a half or two storey properties for the development.
- The only stipulation of the previous outline planning listed one criteria for the plot in question. "That the dwelling houses bounding Stoneyholm Road and Dipple Rd shall have their principle elevations to those streets"

Regards

Drew Marsham

*Supporting evidence No 3*

Fiona Knighton  
NAC Planning Department  
Cunninghame House  
Irvine  
KA12 8EE  
16<sup>th</sup> July 2012

Fiona,

**Reply to Ref 12/00321/PP Planning Application at Steven Place**

Thank you for your letter referenced above, I would like to address the points as follows.

I can understand the differences of opinion when it comes to design, selection of materials etc but I find it incredible the depths your department has stooped to in stating our pre-planning meeting was not a formal appointment as a reason against my application. I booked an appointment well in advance by telephone with yourself detailing the location and intentions for my application. If the councils position is that our meeting was not "formal" then that is where we are, but I would suggest that for future this is communicated to others who attempt to do the right thing by meeting with the planning department to go through the detailed plans, where no issues were raised, only to be told later on that someone else does not like their ideas and the application should be changed. It questions the professionalism and integrity shown by your department and certainly does not reflect the good communications and constructive dialogue we have had to date regarding my application.

Regarding comments about the Council's Neighbourhood Design Guidance. I have assessed my application against that document and there are numerous criteria listed that my application conforms to and has adopted in the design.

You state that my application will be "read" as Stoneyholm Rd. I agree to some extent, however, it will also sit adjacent to the newer properties in Steven Place and Dipple Rd and I believe should match in with these developments as both neighbours are prominently positioned in the overall development.

I believe that my application being a similar style to the prominently situated properties on Dipple Road and 31 Stoneyholm Rd would look out of context and character if it were to be of similar appearance to the older properties further along the road. My current design will also have a much better chance of being integrated with it's surroundings due to it's similarities with it's immediate neighbours.

Your letter states "that the proposal is a standard house type from a new housing development and does not reflect the local context or character of the traditional house types along Stoneyholm Road" When driving through Kilbirnie from Glasgow to the coast people will drive past my site in Stoneyholm and up through Largs Rd. I would like to bring to your attention a recent development at Jennings Place. On Largs Rd on one side you have almost identical style of houses as that in Stoneyholm Rd and on the other side (both very prominent in the positioning along the main road) those in Jennings Place. The pictures totally contradict your comments and more significantly, are not uniquely related to the new Neighbourhood Design Guidance. I have also included a further example in Kilbirnie for your consideration.

**Example A**

**Largs Rd similar to Stoneyholm Rd**



**Largs Rd Directly Opposite (Modern House Design, different palette of materials)**



**Example B**

**Largs Road - Older style properties**



**Largs Rd Directly opposite side of road - Modern House Layout**



**Example C In Kilbirnie**



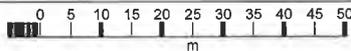
**Please note I have emailed a copy of this letter to Councillor Bell.**

**Content for you to proceed with my application as it stands.**

**Regards**

**Drew Marsham**

**Enclosures Examples A B & C**



OS Mastermap  
 12 June 2012, ID: BLJT-00156485  
[www.planningapplicationmaps.co.uk](http://www.planningapplicationmaps.co.uk)

1:1250 scale print at A4, Centre: 231932 E, 654894 N

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REVISED:  
 A: 29/05/12 Update roof & window:  
 B: 26/06/12 Add stone lintels

DO NOT SCALE DRAWINGS IF IN DOUBT ASK

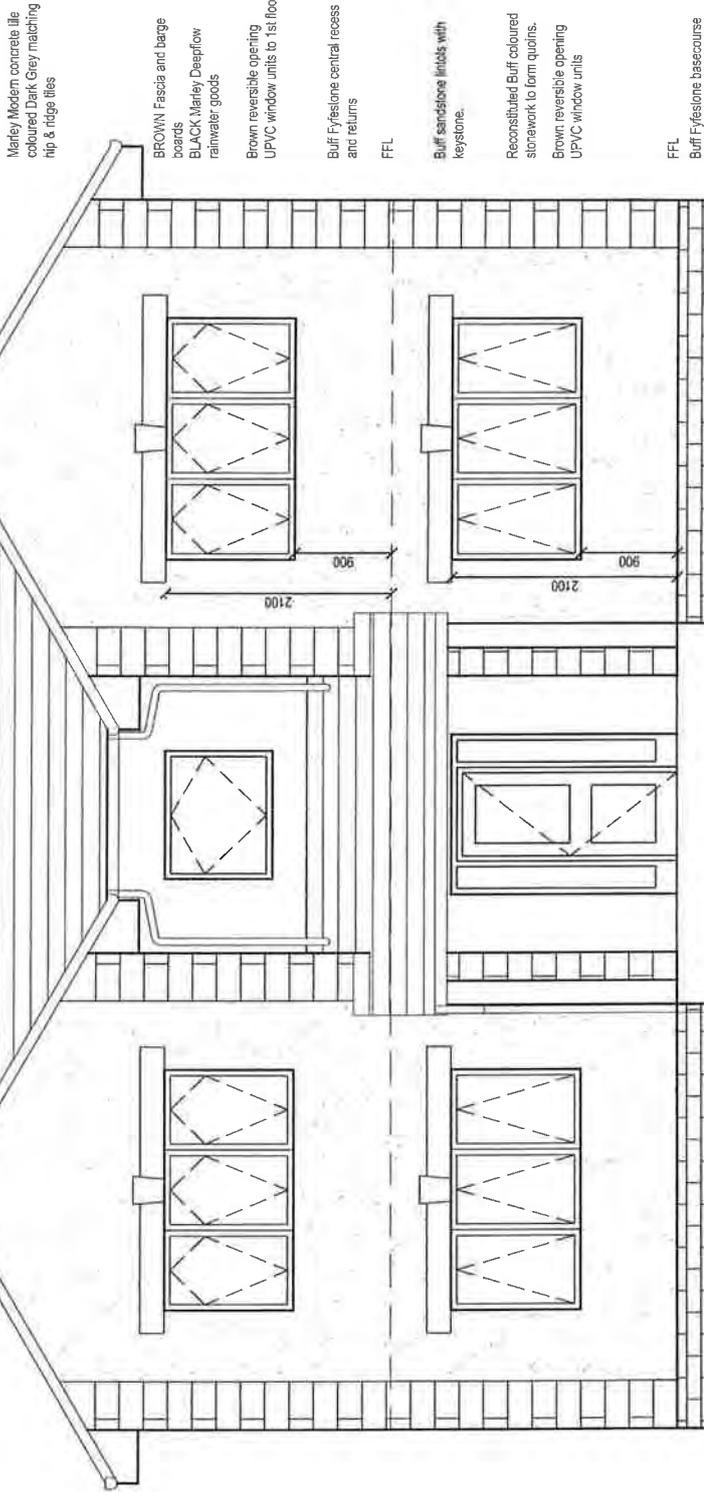
**Planning Application**

I hereby certify this is a true copy of the drawing required to in our application for a Planning Permission

Date: ..... 2012

Signed .....

Samples of all finishing materials to be provided to the local Planning Authority for approval prior to commencement of building operations



- Marley Modern concrete tile coloured Dark Grey matching hip & ridge tiles
- BROWN Fascia and barge boards
- BLACK Marley Deepflow rainwater goods
- Brown reversible opening UPVC window units to 1st floor
- Buff Fyestone central recess and returns
- FFL
- Buff sandstone lintels with keystone.
- Reconstituted Buff coloured stonework to form quoins.
- Brown reversible opening UPVC window units
- FFL
- Buff Fyestone basecourse

*Showing showing additional stonework to windows.  
 Neither registered or rejected by planning. L.M. 3/9/12*

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**PROJECT**  
 New Single Dwelling  
 Plot 5, Steven Place,  
 Kibrimie

**VIEW**  
 Front Elevation

**DATE**  
 DRAWING NO: DM - 200 B  
 SCALE: 1:50@A3  
 DATE: May 12

**A** Front Elevation  
 Scale 1:50

**Planning Application**  
This drawing is a true copy of the drawing referred to in our application for a Planning Permission.

Date: ..... 2012  
Signed .....

Site approximate areas and boundary lines - all to be checked on site

Proposed Dwelling	110.8msq	20.44%
Detached Garage	24msq	4.43%
Hard Landings	msq	0%
Soft Landscaping	msq	0%
Site Total	542msq	

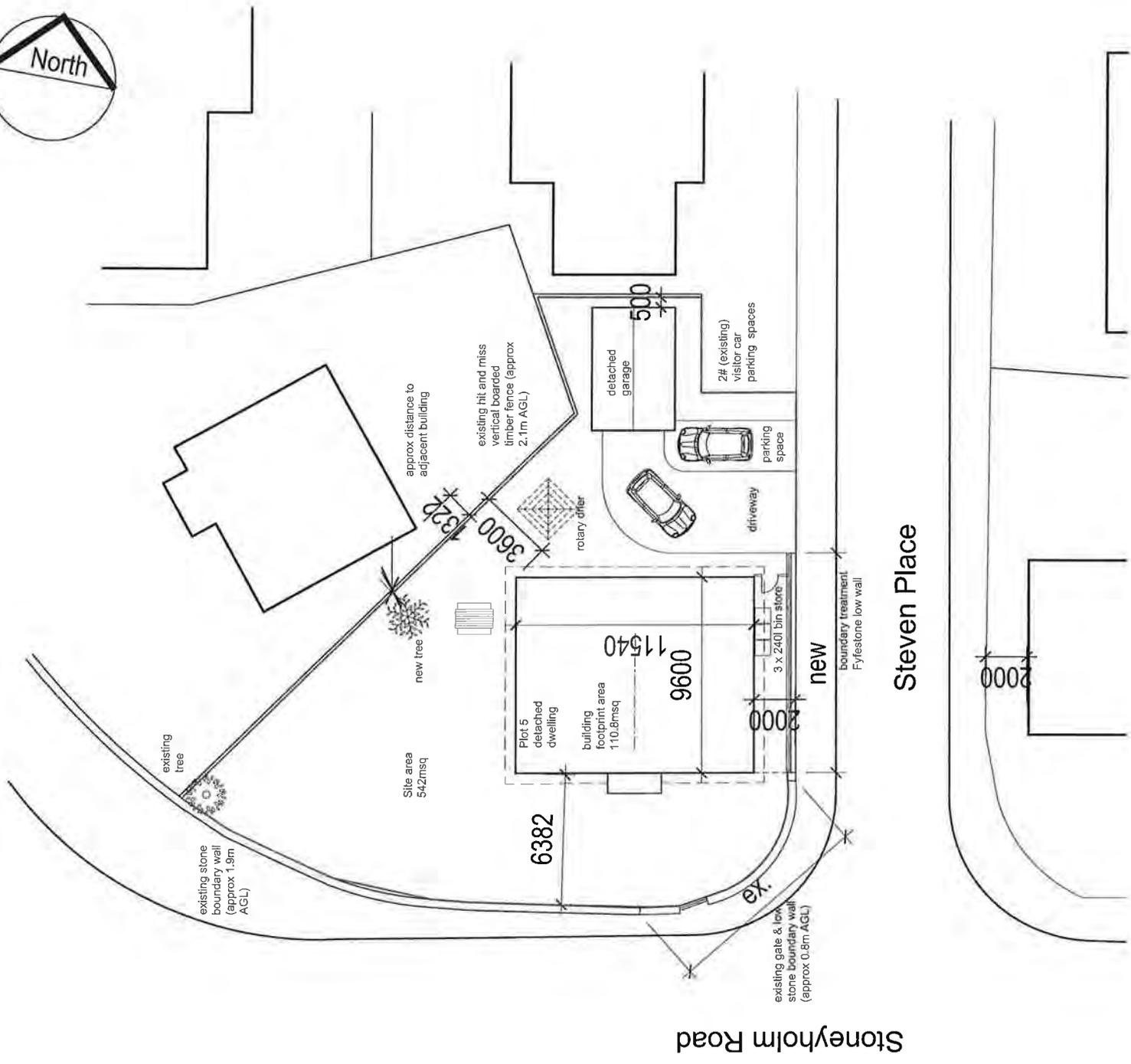
Block/SITE Plan

**Copyright**  
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**PREPARED BY**  
New Single Dwelling  
Plot 5, Steven Place,  
Kilbirnie

**TITLE**  
Proposed Site Plan

**DATE**  
1:200 May 12



APPENDIX J

REVISIONS  
 A: 29/05/12 Utility window added  
 B: 06/06/12 Circular columns

DO NOT SCALE DRAWINGS IF IN DOUBT ASK

Planning Application

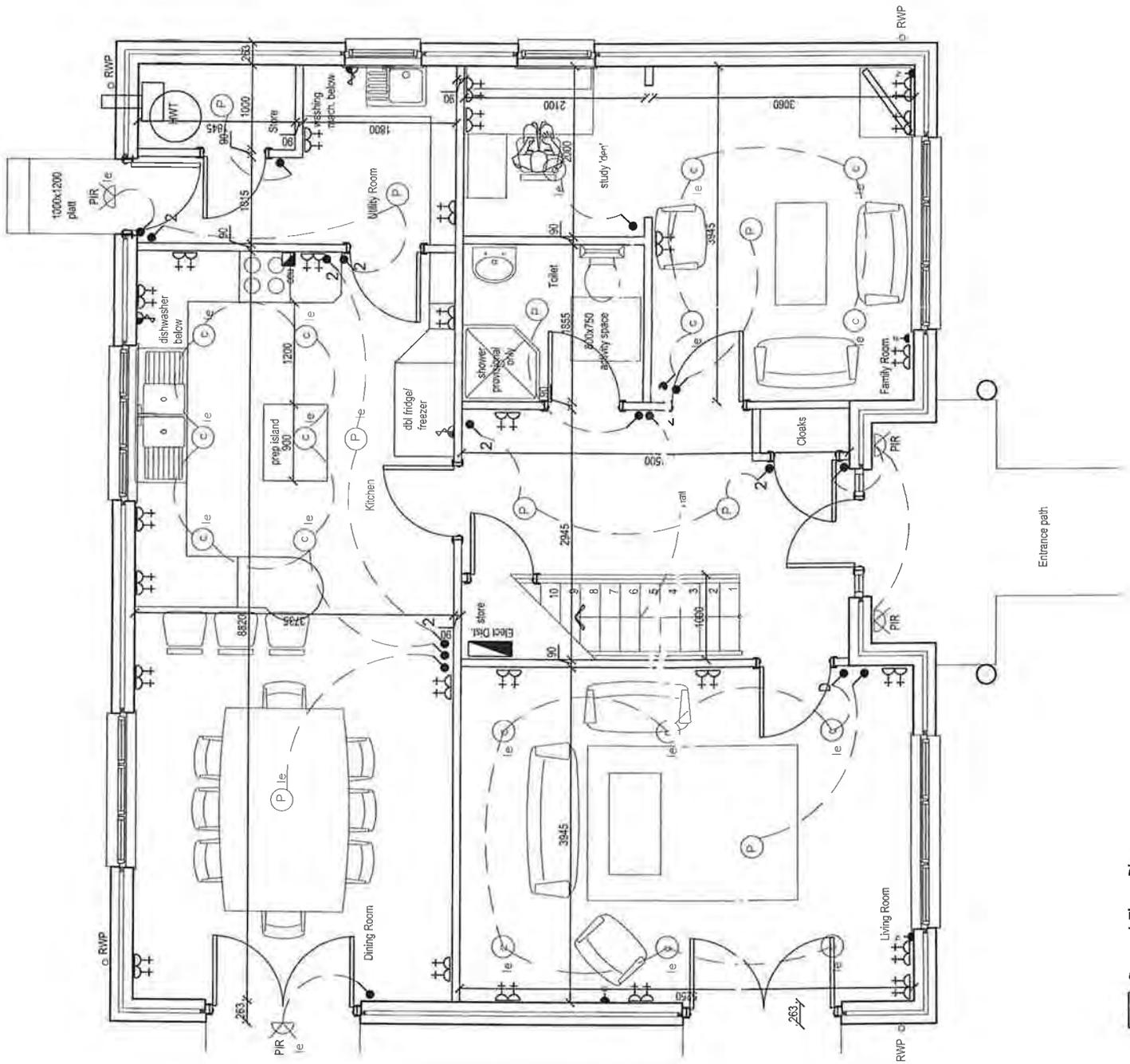
I hereby certify this is a true copy of the drawing referred to in our application for a Planning Permission.

Date: ..... 2012

Signed .....

PROJECT  
 New Single Dwelling  
 Plot 5, Steven Place,  
 Kibrimie  
 CLIENT

TITLE  
 Ground Floor Plan  
 DRAWING NO. DM - 100 B  
 SCALE 1:50@A3  
 DATE May 12



**A** Ground Floor Plan  
 Scale 1:50

APPENDIX K

REVISIONS  
 A: 29/05/12 Renumber and Issue  
 B: 05/06/12 amend layout  
 C: 13/06/12 front windows

DO NOT SCALE DRAWINGS. IF IN DOUBT ASK.

**Planning Application**

I hereby certify this is a true copy of the drawing referred to in our application for a Planning Permission.

Date: ..... 2012

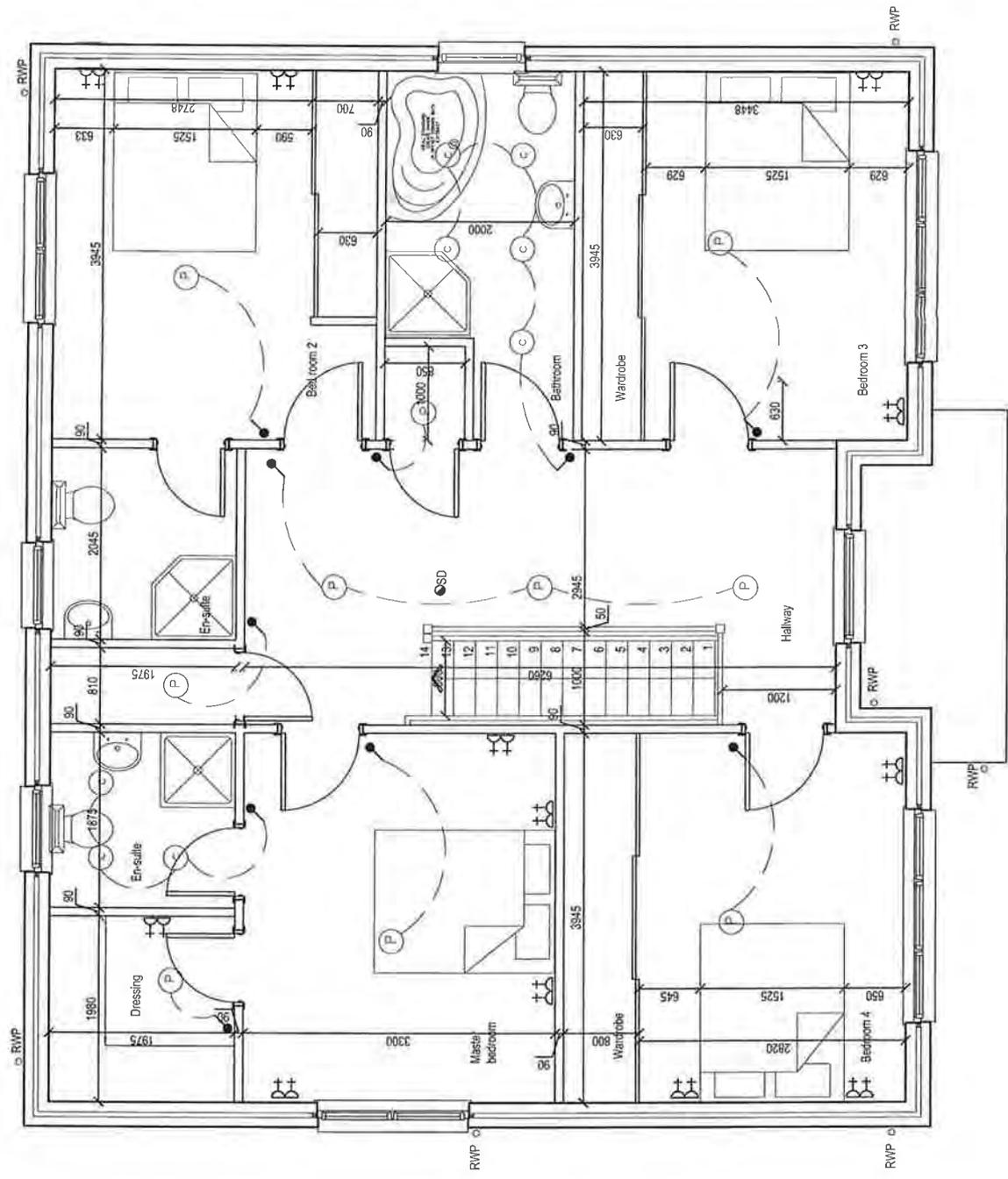
Signed .....

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**PROJECT**  
 New Single Dwelling  
 Plot 5, Steven Place,  
 Kiltirnie

**TITLE**  
 Upper Floor Plan

**DATE**  
 DW - 101 C 1:50@13 May 12



**A** Upper Floor Plan  
 Scale 1:50

APPENDIX L

REVISIONS  
A: 29/05/12 Update roof design

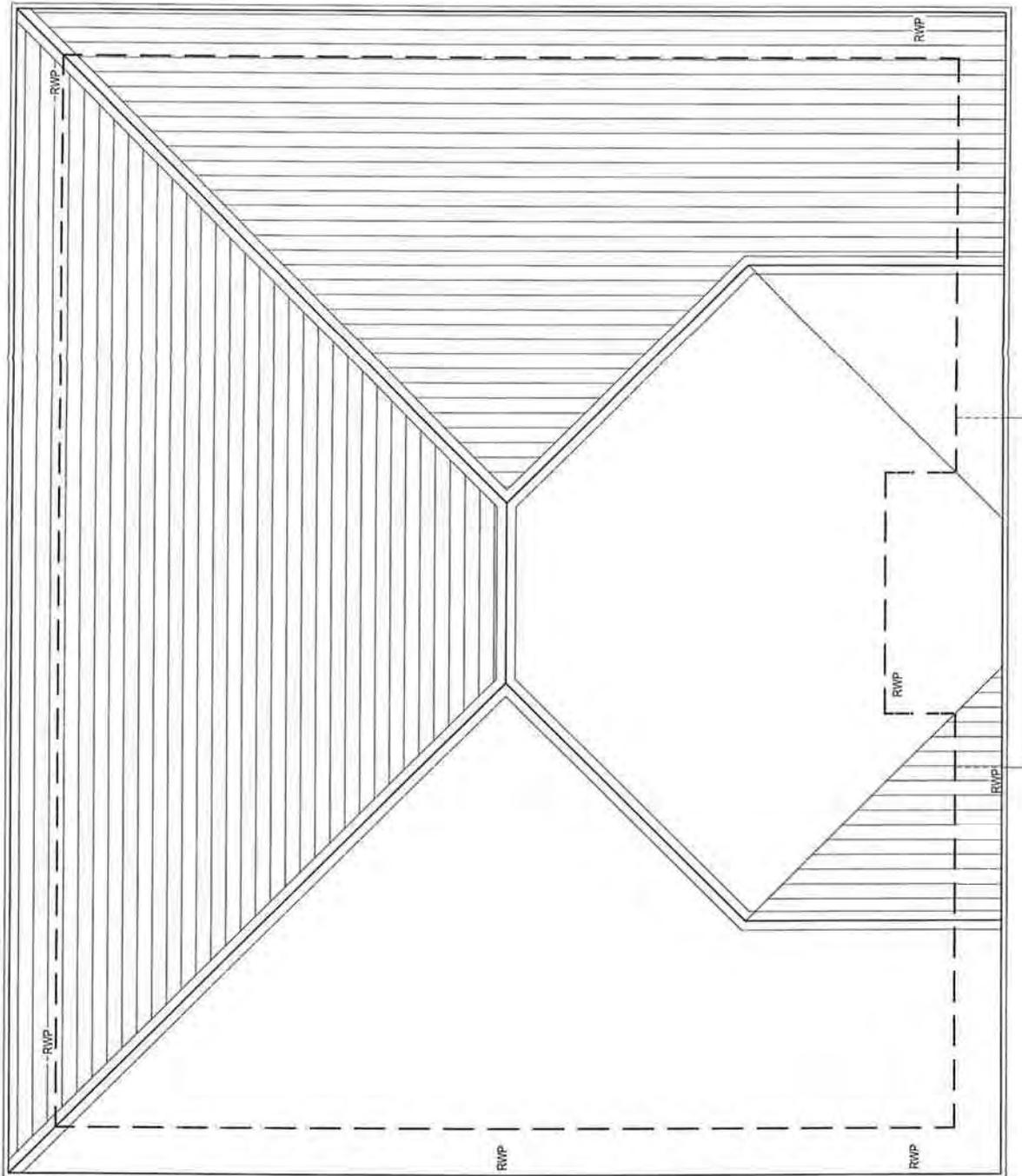
DO NOT SCALE DRAWINGS IF IN DOUBT ASK

### Planning Application

I hereby certify this is a true copy of the drawing referred to in our application for a Planning Permission

Date: ..... 2012

Signed .....



REVISIONS  
New Single Dwelling  
Plot 5, Steven Place,  
Kilbirmie  
.....

REVISIONS  
Roof Plan  
DM - 102 A 1:50@e3 May 12

**A** Roof Plan  
Scale 1:50

DO NOT SCALE DRAWINGS IF IN DOUBT ASK

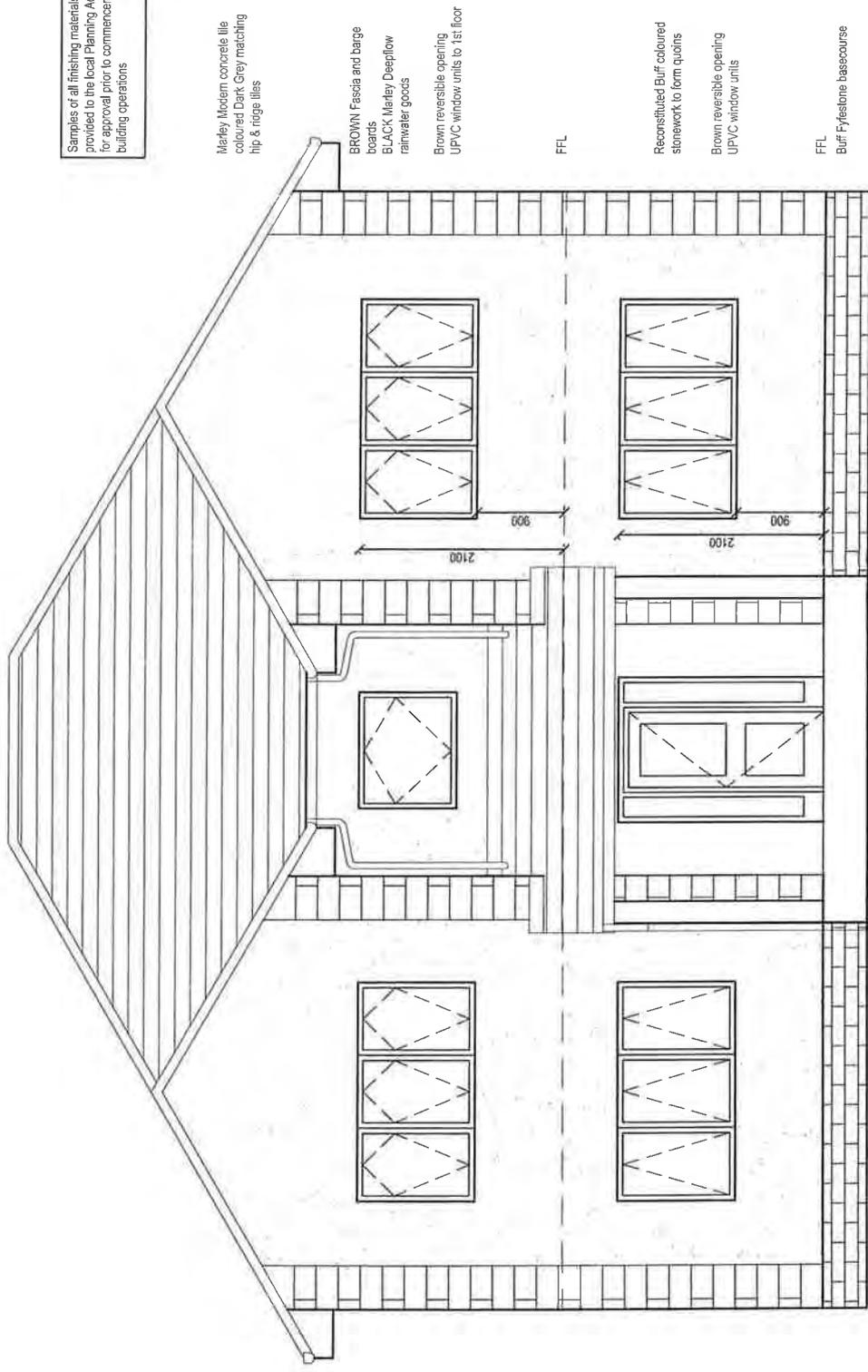
**Planning Application**

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Date: ..... 2012

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Samples of all finishing materials to be provided to the local Planning Authority for approval prior to commencement of building operations



Marley Modern concrete tile coloured Dark Grey matching hip & ridge tiles

BROWN Fascia and barge boards  
BLACK Marley Deepflow rainwater goods

Brown reversible opening UPVC window units to 1st floor

F.F.L.

Reconstituted Buff coloured stonework to form quoins

Brown reversible opening UPVC window units

F.F.L.  
Buff Fyresstone basscourse

PROJECT	New Single Dwelling Plot 5, Steven Place, Kilbirnie
DATE	
DRAWN	Front Elevation
SCALE	DM - 200 A 1:50@A3 May 12

# APPENDIX N

REVISIONS  
A: Renumber and Issue

DO NOT SCALE DRAWINGS. IF IN DOUBT ASK

## Planning Application

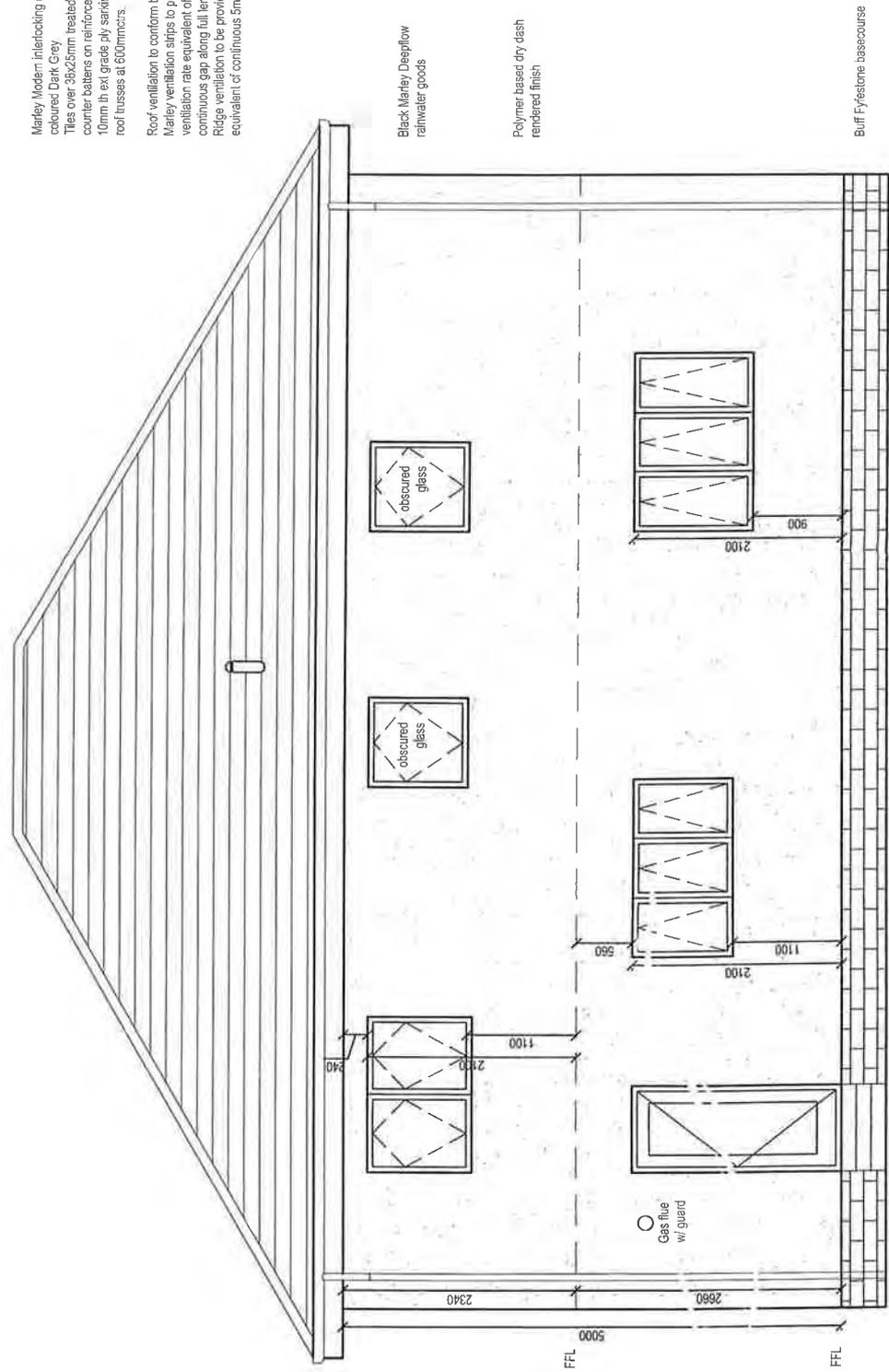
I hereby certify this is a true copy of the drawing referred to in our application for a Planning Permission.

Date: ..... 2012

Signed .....

Marley Modern Interlocking concrete roof tile coloured Dark Grey  
 Tiles over 38x25mm treated tile battens and counter battens on reinforced roofing felt on 10mm th ext grade ply sarking over prelab roof trusses at 600mm c/c's.

Roof ventilation to conform to BS5250: 1989  
 Marley ventilation strips to provide ventilation rate equivalent of 25mm continuous gap along full length of eaves  
 Ridge ventilation to be provided to the equivalent of continuous 5mm gap



Black Marley Deepflow  
rainwater goods

Polymer based dry dash  
rendered finish

Buff Flystone basecourse

PROJECT  
New Single Dwelling  
Plot 5, Steven Place,  
Kilbirnie

REAR ELEVATION  
DW - 201 A 1:50 (a3) May 12

**A** Rear (North) Elevation  
Scale 1:50

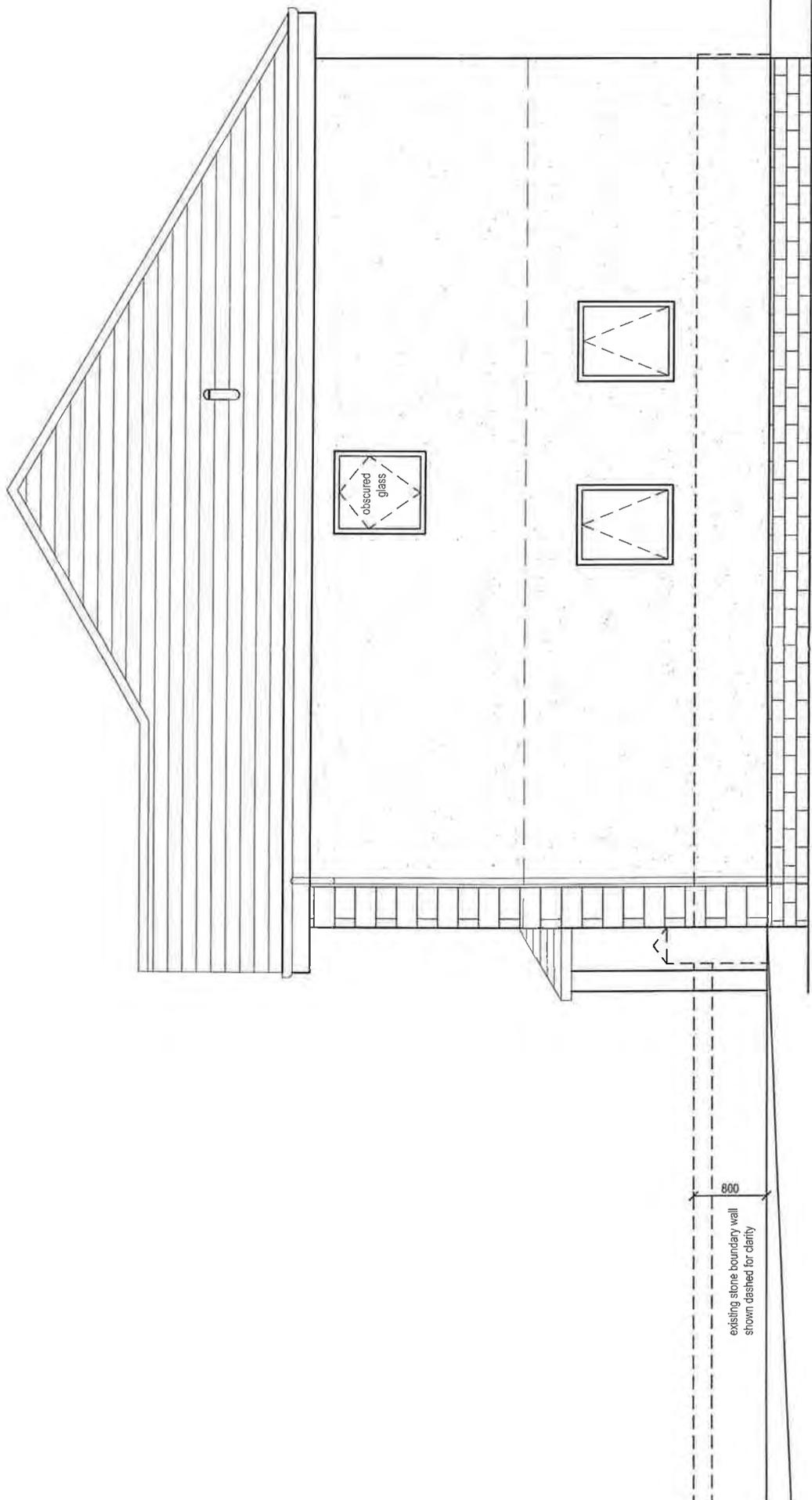
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### Planning Application

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Date: ..... 2012

Signed .....



basecourse level indicative, site levels to be established at topographical survey

PROJECT  
New Single Dwelling  
Plot 5, Steven Place,  
Kilbirnie

TITLE  
East Elevation  
DRAWING NO. DM - 202 A  
SCALE 1:50@A3  
DATE May 12

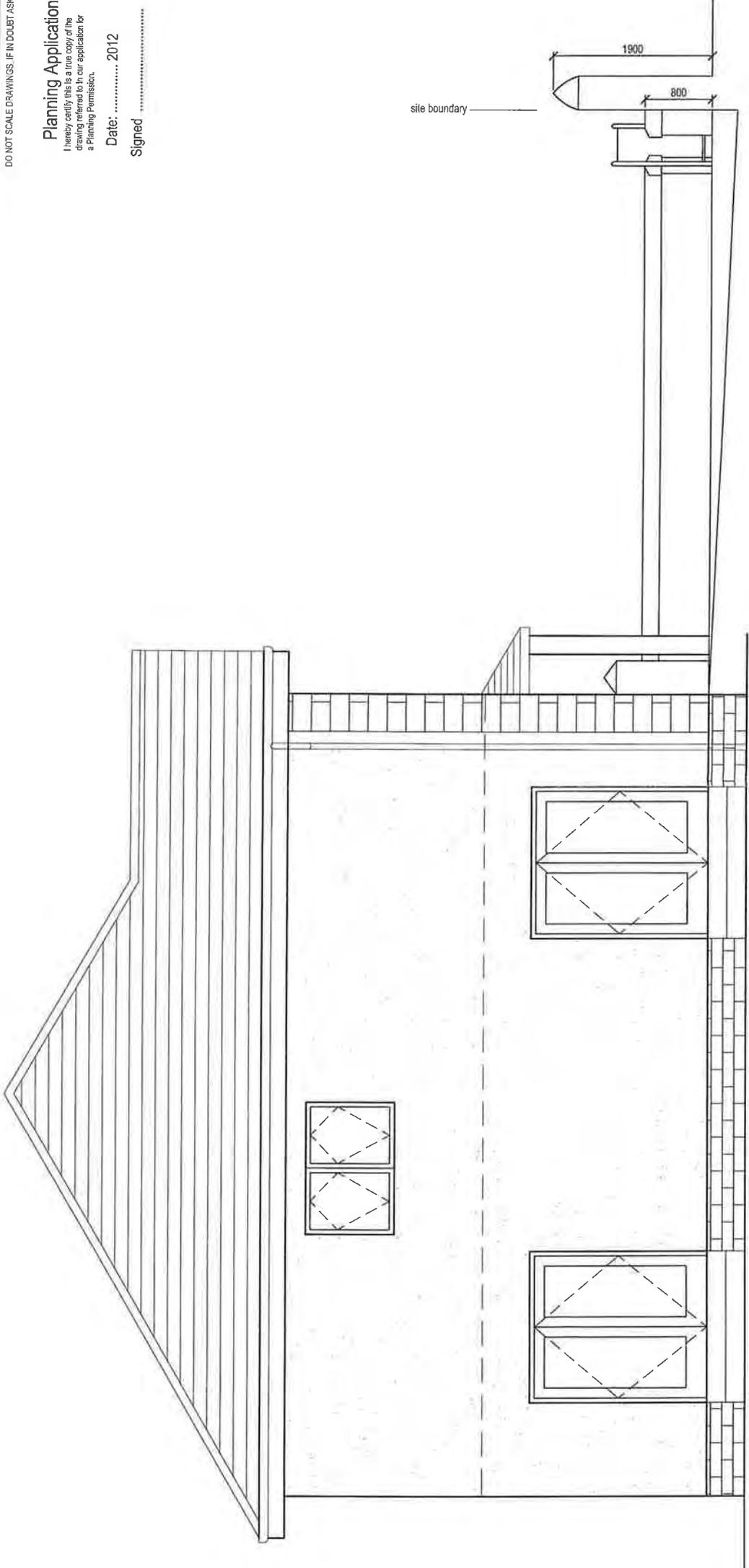
DO NOT SCALE DRAWINGS. IF IN DOUBT ASK

### Planning Application

I hereby certify this is a true copy of the drawing referred to in our application for a Planning Permission.

Date: ..... 2012

Signed .....



PROJECT	New Single Dwelling Plot 5, Steven Place, Kilbrieme
TITLE	West Elevation
DRAWING NO.	DW - 203 A
SCALE	1:50eaa
DATE	May 12

**A** West Elevation  
Scale 1:50

APPENDIX Q

REVISION  
A: 29/05/12 Remove stone to rear

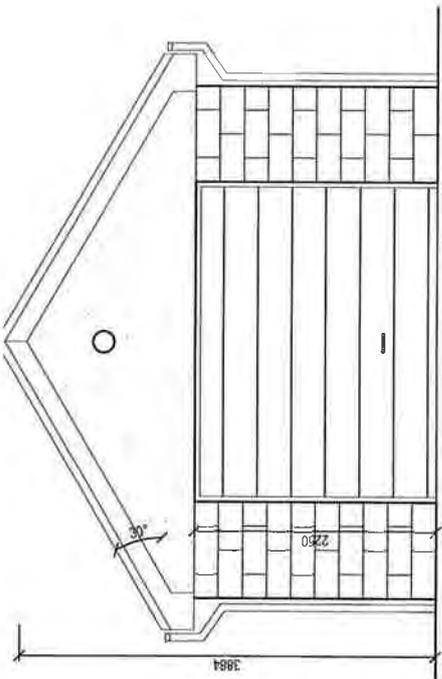
DO NOT SCALE DRAWINGS. IF IN DOUBT ASK

**Planning Application**

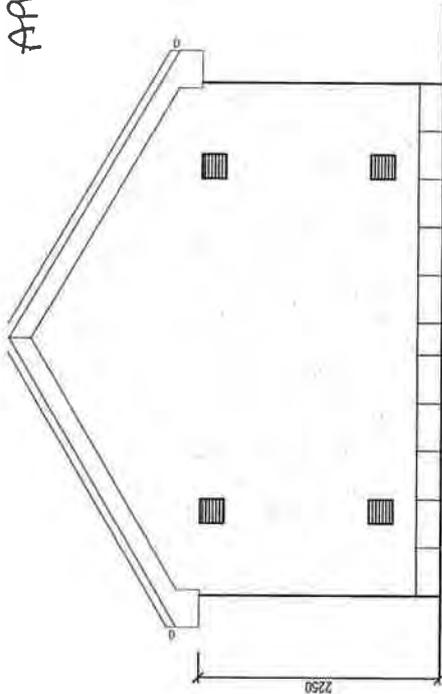
I hereby certify this is a true copy of the drawing referred to in our application for a Planning Permission

Date: ..... 2012

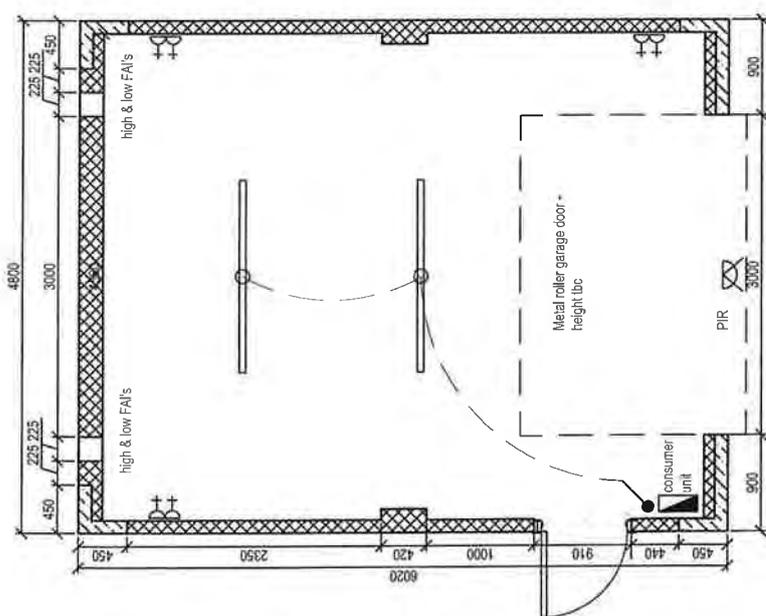
Signed .....



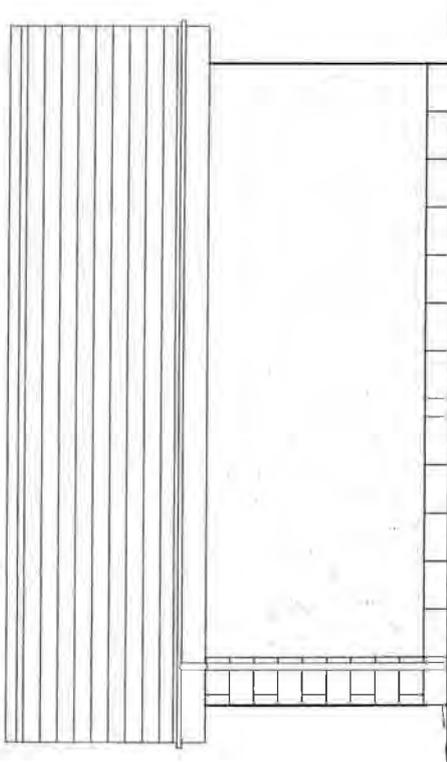
**B** South Elevation  
Scale 1:50



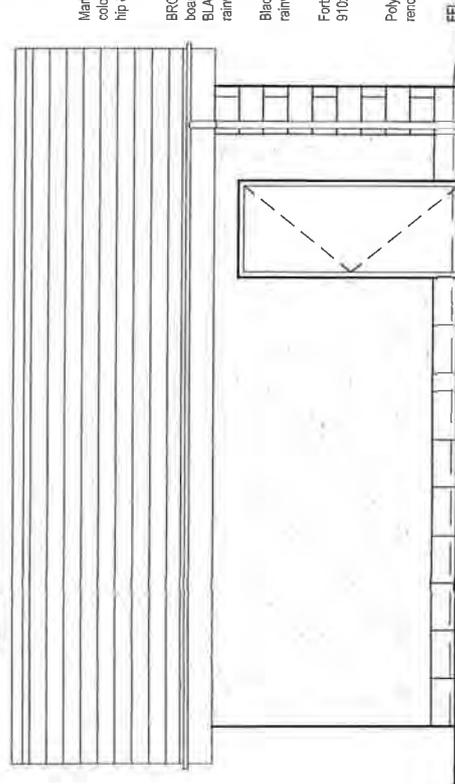
**C** North Elevation  
Scale 1:50



**A** Proposed Plan  
Scale 1:50



**D** East Elevation  
Scale 1:50



**E** West Elevation  
Scale 1:50

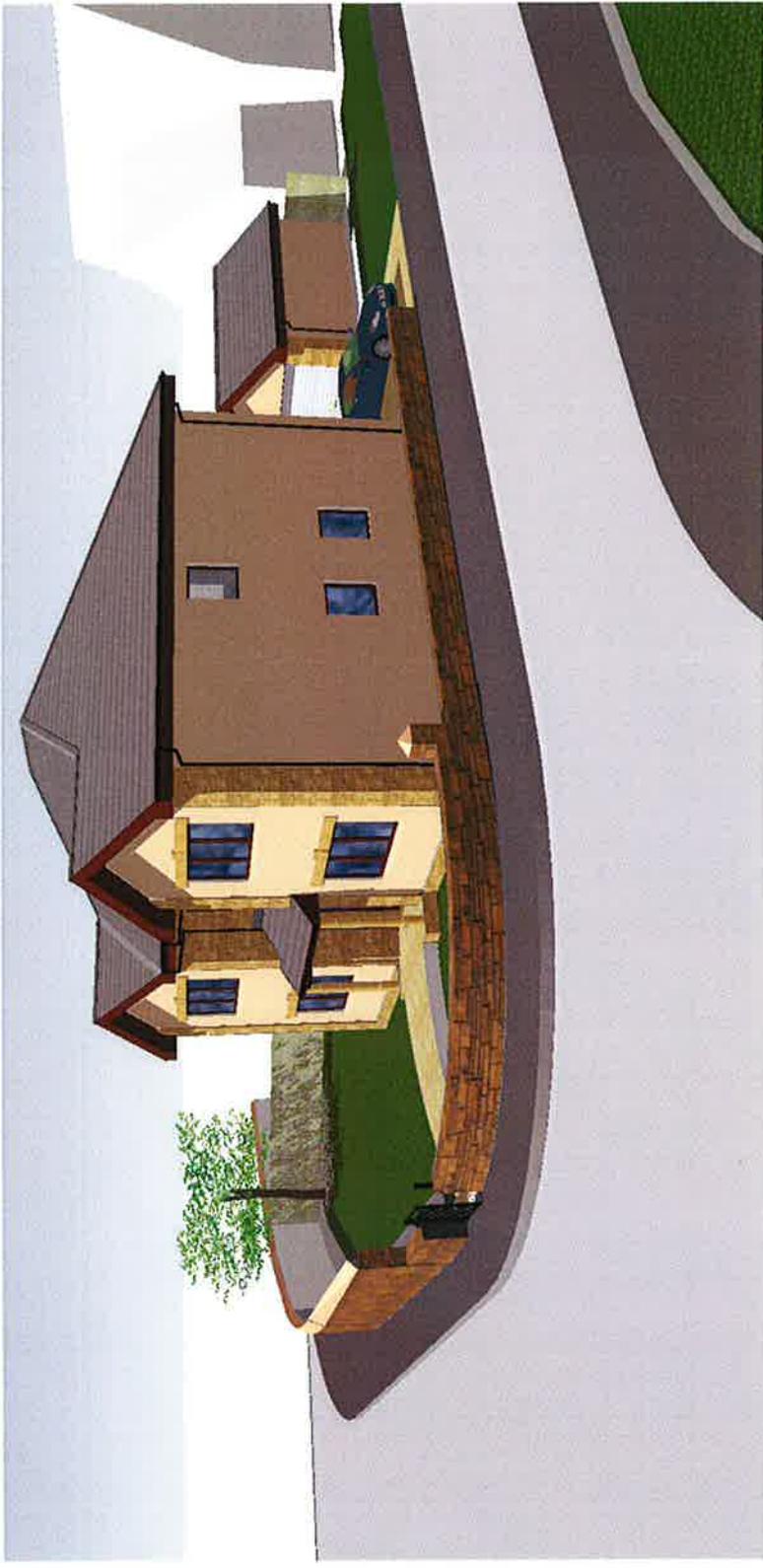
- Marley Modern concrete tile coloured Dark Grey matching hip & ridge tiles
- BROWN Fascia and barge boards
- BLACK Marley Deepflow rainwater goods
- Black Marley Deepflow rainwater goods
- Fortress type security door 910x2100
- Polymer based dry dash rendered finish

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**Client**  
New Single Dwelling  
Plot 5, Steven Place,  
Kilbrin

**Project**  
Proposed Garage

**Drawn** DW  
**Scale** A  
**Date** 1:50@A3 May 12



3D Representation of Planning Application 12/00321/PP



## REPORT OF HANDLING



**NORTH AYRSHIRE**  
COUNCIL

<b>Reference No:</b>	12/00321/PP
<b>Proposal:</b>	Erection of detached dwelling house with detached garage
<b>Location:</b>	Plot 5, Steven Place, Kilbirnie, Ayrshire
<b>Local Plan Allocation:</b>	Residential
<b>Policies:</b>	Development Control Statement POLICY BE14
<b>Consultations:</b>	Yes
<b>Neighbour Notification:</b>	Neighbour Notification carried out on 14.06.2012 Neighbour Notification expired on 05.07.2012
<b>Advert:</b>	Not Advertised
<b>Previous Applications:</b>	None

### Description

This application proposes the erection of a 4 bedroom 2 storey detached property at Plot 5, Steven Place, Kilbirnie. The proposed dwelling would have a ground floor area of 110sqm and would be 8.8m high to the apex of the roof. The dwelling would face onto Stoneyholm Road (A760) and would be of a modern appearance comprising of a grey tiled double hipped roof, with two forward projecting two storey wings and a linking single storey entrance canopy. Side elevations would have limited openings at first floor level, being principally finished in the dry dash render. At ground floor level there would be two sets of patio doors to the west elevation, providing access to the side garden. The roof would have overhanging eaves with brown box fascias and barge boards. Windows would be framed with brown upvc. Finishes to walls are buff coloured dry dashed walls, a buff fyfestone basecourse and reconstituted stone quoins again buff in colour. Vehicular access would be taken from the Steven Place at the north-east corner of the site. It is also proposed to erect a detached double garage at the north of the site. The proposed garage would be finished in materials to match the proposed house, would have a pitched roof and would be 3.8m high. As a result of these access arrangements the majority of the rear garden would be developed as driveway and garage.

The dwelling would be erected approx. 2m from the eastern boundary with Steven Place and 12m from the western boundary with no. 1 Dipple Road, and the junction of Dipple Road itself. As such the plot would occupy the position between the access/egress points to Steven Place and Dipple Road. There would also be a

distance of approx. 14m from the rear elevation to the northern boundary and 6.3m from the front elevation and the southern boundary with Stoneyholm Road.

The application site comprises of a flat vacant house plot with an area of approx. 542sqm on the north side of Stoneyholm Road at the junction with Steven Place and Dipple Road. The site is the last remaining undeveloped house plot associated to an outline planning consent granted in June 1999 for the development of 8 Plots within Steven Place and Dipple Road. (Ref: 99/00383/OPP) (See below).

The site is bounded by a 1.9m high stone wall at the south-west corner with Stoneyholm Road which lowers to 800mm along the south-west corner with Stoneyholm Road and the eastern boundary with Steven Place. The northern and eastern boundary is bounded with 1.8m high close board fencing.

The proposed dwelling would face onto and relate to Stoneyholm Road, rather than Steven Place. Stoneyholm Road is a main arterial route into Kilbirnie and is characterised by traditional 1 and 1 ½ storey stone built properties resulting in a high quality streetscape. The properties within Steven Place and Dipple Road are mainly 2 storey modern detached properties with limited continuity of architectural style and finishes. There is a modern 1 ½ storey property on the east side of Stoneyholm Road which was approved in February 2007 (Ref: 06/01237/PP) (See below).

The application site is located within a residential area as identified within the adopted North Ayrshire local Plan (Excluding Isle of Arran) and is unaffected by any site specific policies or proposals therein. The application requires to be assessed against Policy BE14 (Design Guidance) and the Development Control Statement (DCS) contained within the local Plan where the relevant criteria would be a) Siting, Design and External Appearance, b) Amenity, and d) Access, Road Layout, Parking Provision. In relation to BE14 the Council's Supplementary Planning Guidance relating to Neighbourhood Design Guidance is considered relevant and a material planning consideration.

Planning permission was approved in February 2007 for the erection on the 1 ½ storey dwelling at 31 Stoneyholm Road which is situated approx. 10m east of the site on the opposite side of Steven Place. This property also faces onto Stoneyholm Road. (Ref: 06/01237/PP).

Outline Planning Permission was approved in June 1999 for the development of 8 housing plots within Steven Place and Dipple Road (Ref: 99/00383/OPP). The application site is the last remaining undeveloped plot as part of this approval.

The applicant has provided a statement in support of his application, which seeks to explain the siting and design considerations used to formulate the proposals (see analysis).

## **Consultations and Representations**

No objections have been received.

One representation letter has been received which states that the existing stone boundary wall adds to the character at Stoneyholm Road and should be retained.

Response: Agreed. Many of the properties along Stoneyholm Road have stone boundary walls of similar appearance and it is considered that this boundary

treatment is an important design feature and in-keeping with the wider character of the area and this important arterial route into Kilbirnie. The applicant has confirmed that he would retain this wall. An appropriate condition could also be imposed to address this issue.

## CONSULTATIONS

Infrastructure and Design Service (Roads): - No objections. There is an existing drop kerb to service the plot. However should the applicant require to alter the footpath crossing a permit (S56 agreement) will be required. Such a permit will control the design of such a crossing. Such a design shall see no surface water issue from the access/driveway onto the public road and the first 2m shall be hard surfaced in order to prevent deleterious material from being deposited onto the public road.

Response: Noted. A suitable condition with regards to the access/driveway could be imposed to address these points. An informative could also be attached to advise the applicant to contact Infrastructure and Design Services if necessary with regards to the S56 agreement.

Environmental Health: - No objections.

Response: Noted.

## Analysis

Assessment against Policy BE14 shall be conjoined with the assessments relating to the DCS.

Criterion a) of the DCS states that design should have regard to existing townscape and that external appearance should have regard to the locality in terms of fenestration, materials and colours. In this regard it is considered that the proposed dwelling is of a standardised “could be anywhere”/“anonymous” appearance which does not reflect the quality of the vast majority of the properties on Stoneyholm Road. It is also considered that although there are modern 2 storey properties within Steven Place and Dipple Road, of low design quality, that as the proposed dwelling would “front” onto Stoneyholm Road, and relate thereto, which is characterised by traditional dwellings of a high quality of design. As such it is considered that any proposed dwelling on the plot should also be of a high quality of design, as required by the Neighbourhood Design Guidance. It is considered that the properties on Stoneyholm Road create a strong sense of identity and place and that the proposed dwelling would appear out of place and detract from the otherwise high quality streetscape.

On discussion with the case officer, the applicant intimated that he chose this particular design from a housing development in Aberdeen known as Earlsparck, a Stewart Milne Development. The kit being produced by that company.

In response to this it is considered that although that housetype may relate well to the other similar houses within that development it is not considered to relate well to the context within which it is proposed. Given the plot fronts onto one of the main routes into Kilbirnie it is important that any dwelling relates well to that high quality streetscape. The proposed dwelling does not have any particular design quality and appears at odds with the existing streetscape and would fail to connect well to it.

Therefore, it is considered that the proposal does not give regard to the streetscene against which it would be read (Stoneyholm Road) and is of an inappropriate design, external appearance and finish.

It is recognised that the development of this site with an appropriately designed dwellinghouse would enhance the amenity of the land and thereby assist in improving the amenity of the surrounding area. However, it is considered that the overall design quality proposed is limited, does not reflect the character of the established streetscene, contradicts the Council's design guidance, and to approve it would represent a poor planning decision. As such, it is considered that the proposal would have a detrimental impact on the character, appearance and amenity of the area.

The Neighbourhood design Guidance adopts a context driven approach, seeking development solutions that build on and enhance a sense of place. The guidance recognises that many new developments rely on the reuse of standard housetypes, which use mixture of architectural solutions imported from other locations and do not have a character relevant to the location. The guidance encourages that a thorough analysis of the built and natural landscape context should be the basis of all new proposals and that new development should also be of a scale, massing and form that looks right in its setting.

In this case it is clear, as advised by the applicant, that the design of the proposed house has been imported from a new housing development (being a "stock" kit available from a timber frame manufacturer) and that no consideration has been given to the sites location and the relevant architectural context of the traditional properties which line Stoneyholm Road.

The applicant has provided a supporting statement (see below) which states that many of the properties within Steven Place and Dipple Road are 2 storey detached modern properties and he considers that the proposed development would "sit comfortably" with these properties.

In response to this statement by the applicant, and as discussed above, the proposed dwelling would be sited in a prominent position facing Stoneyholm Road, a principal route into Kilbirnie, which is characterised by traditional properties, of various architectural styles of a high design quality. The properties within Dipple Road and Steven Place do not occupy a prominent position, being side streets off the main road, and are not "read" in context with the properties along Stoneyholm Road. These side streets, and in particular Steven Place, are of low design quality and do not create a positive sense of place. In this regard it is not considered appropriate that standards should be drawn from those low design standards, when the relationship of the plot is with Stoneyholm Road rather than the side streets off it. To do so would compound the low desing quality evident in these side streets and would adversely affect the positive and high quality streetscene of Stoneyholm Road.

The design guidance states that buildings can be designed to incorporate innovative, contemporary materials and construction details, rather than having to copy architectural styles of the past. It is considered that the proposal is lacking in design quality and would be at odds within the high quality of design within the streetscape, reflective of its architectural context. For the above reasons, it is considered that the proposal does not conform to the principles of the Design Guidance, thus Policy BE14 and contrary to criterion a) of the DCS.

With regards to criterion b), the floor area of the proposed dwelling would be 110sqm, whilst the plot has an area of approx. 542sqm. It is considered that the footprint of the proposed dwelling could readily be accommodated within the site with adequate amenity space remaining, principally via the side garden. With regards to privacy, there would be an upper floor window on the west (side) elevation which would be 12m from the side elevation of the neighbouring property at no. 1 Dipple Road. However, this window would face onto a small side window which appears to serve a hall or bathroom. There are also windows at upper floor level on the north (rear) elevation which would be 15m from the side elevation of the neighbouring property at no. 3 Steven Place. Again the windows would face onto a small side window which would appear to serve a non-habitable room. 2 of the rear upper floor windows would also be obscure glass. There would be a distance of approx. 14m from the east (side) elevation of the proposed dwelling and the west (side) elevation of the neighbouring property at no. 31 Stoneyholm Road. The upper floor window would be obscured and the ground floor windows would serve a study room and utility room. It is therefore considered that there would be no significant privacy issues with regards to the neighbouring properties.

With regards to overshadowing, the proposed dwelling would be situated east of the nearest neighbouring property at no. 1 Dipple Road and given there would be a distance of approx. 12m between these properties, it is not considered that there would be significant overshadowing.

However, criterion b) states that development should have regard to the character of the area in which it is located and as discussed above, the proposed development lacks design quality and would not reflect the architectural context of the high quality streetscene of Stoneyholm Road and as such would have a detrimental impact on the visual amenity of the surrounding area. For these reasons, the proposal would not accord with criterion b) of the DCS.

With regards to criterion d), Infrastructure and Design Services have no objections to the proposal and advise that conditions should be imposed with regards to vehicular access and the driveway. Suitable conditions can be imposed to address this issue. The proposal therefore accord with criterion d) of the DCS.

Additional matters raised by the applicant in the submitted statement in support of his proposal are summarised and responded to as follows: -

1) The applicant originally applied in outline for the development of house plots within Dipple Road and Steven Place (Ref: 99/00383/OPP) and retained ownership of the application plot and the adjacent plot at 31 Stoneyholm Road, on which a house was approved in Feb. 2007 (Ref: 06/01237/PP) and subsequently constructed.

The applicant states that the plot is located in a busy route to the coast and the proposed development and the adjacent existing property at no. 31 Stoneyholm Road would form a "gateway" into Steven Place, given that they are of a similar design. The applicant disagrees that the proposal represent an "off-the shelf" housetype and has added some detail to the house, with stone features above the windows and the use of Fyfestone on the front elevation to help "break-up" the massing.

Response: It is considered that although the proposed dwelling and the adjacent property at no. 31 Stoneyholm Road would be the first properties when entering Steven Place, the orientation and principle elevations face onto and are “read” as part of Stoneyholm Road. Therefore consideration should be given to the architectural context of properties within the established streetscene of Stoneyholm Road, rather than Steven Place, which is of an overall poor architectural quality. It is accepted that the applicant has added architectural detail to the principle elevation, however this is not considered to have any positive impact, rather it further enforces the inappropriateness of the design in the streetscape by further complicating the elevation with ill-considered detail.

2) Condition 4 of the original outline consent (Ref: 99/00383/OPP) required that any dwelling house should be either one and half or two storeys. 80% of the properties within Dipple Road and Steven Place are 2 storeys. The applicant developed the adjacent one and a half storey property at no. 31 Stoneyholm Road and does not intend to develop another property under 2 storeys due to restrictions on upper floor space. Similar materials to this property have been incorporated into the proposal with the use of Fyfe stone and distinctive features such as the entrance canopy supporting columns have been added to avoid the “could be anywhere” appearance. The applicant also considers that the dwelling would be part of Steven Place and would also be “in-keeping” with the neighbouring property at 1 Dipple Road.

Response: The fact that the proposed dwelling would be 2 storeys is not necessarily the issue, rather it is the architectural style/design and finishes. There are 2 storey properties further west along Stoneyholm Road, and it may well be that a well considered design for a two storey property could be supported. Notwithstanding this, as discussed above, although the applicant has added architectural detail to the housetype and there would be a common palette of materials with the property at no. 31 it is considered that the detail added does not improve the overall poor design of the proposal and neither is it considered that the property at 31 is an appropriate guide. The proposal still represents a standard house type where no considered design concept, accounting for the high design quality of the streetscape within which it would be situated, and reflective of the local architectural context. In the context of the streetscene the property at 31 appears out of place on Stoneyholm Road and should not be considered as the standard against which proposals are lead. It is also considered that the property at no. 1 Dipple Road, again of limited design quality, is orientated towards Dipple Road and would not be read as part of Stoneyholm Road.

3) Drawings were presented to the case officer prior to the submission of the application and concerns were not raised at this point with regards to design.

Response: The applicant attended the front desk and asked to speak with an officer. As part of this visit the submission was checked to ensure the relevant forms and plans were present to enable registration of the application. Advice was given simply in relation to the level of information which would be required to see an application registered, not in relation to pre determining the acceptability of the proposals. Clearly an unannounced approach, with no context or wider information, would not allow more in depth advice to be given. Notwithstanding this, the issue of design was raised by the case officer whereby the applicant was advised that development should be in-keeping with the character of the surrounding area, on which the applicant considered that the various modern 2 storey properties within Steven Place justified the design approach. Given that the case officer was unaware of the wider context this comment was taken at face value and no adverse

12/00321/PP

comments were provided. Once the application was registered and allocated a more in depth analysis of the proposals was undertaken, the findings of which do not consider the design of the proposed house to be appropriate, as is discussed in depth above. The applicant was also advised at an early stage in the application process over the above concerns and it was suggested that advice could be sought from an architect to produce a considered design concept which relates well to its context. However, the applicant has confirmed that he does not wish to consider this.

4) There would be adequate amenity space within the plot and the existing stone wall would be retained which would assist in providing privacy for the property.

Response: Agree. It is considered that there would be sufficient amenity space and that the retention of the stone wall would reflect the boundary treatment of the existing properties along Stoneyholm Road.

5) The applicant considers that the 2 storey modern property at no. 1 Dipple Road is more visually prominent than the proposed plot and that as there is a degree of separation from the plot and the older properties within Stoneyholm Road due to the road at Steven Place. The proposed dwelling would “sit well” within its surroundings and form a gateway into Steven Place. The applicant has submitted photographs to demonstrate this separation.

Response: As discussed above, the neighbouring property at no. 1 Dipple Road is orientated towards Dipple Road and it is not considered that it is “read” as part of Stoneyholm Road. It is also considered that if the application plot is developed this would further obscure the property at no. 1 Dipple Road from Stoneyholm Road. Given the quality of design on Stoneyholm Road it is considered that a good quality design solution should be sought to ensure that the sound architectural quality of Stoneyholm Road, particularly given it is a main route through Kilbirnie, is maintained. It is also considered that although there is a separation with Steven Place, the properties further east beyond no. 31 Stoneyholm Road and adjacent to the site on the south side of the road are also traditional in appearance and as discussed above the proposed dwelling does not reflect their higher quality of architecture. The photograph submitted in support does not show the adjacent properties on the south side of Stoneyholm Road and it is not considered that these photographs give a proper representation of the plot and its relationship to the surrounding properties and they draw on the worst examples, rather than the wide range of higher quality design on Stoneyholm Road.

6) No. 6 Steven Place is Alpine in appearance and is not in-keeping with the other properties within Steven Place. Although the Neighbourhood Design Guidance may not have been available at the time, there should have been appropriate policy guidance available to have made an informed judgement. The applicant considers that the design of the proposed dwelling would be more appropriate and not as out of keeping with the surrounding area as this property.

Response: Planning permission was approved for this property in March 2003 (Ref: 03/00041/PP). It is considered that although the design of this property differs from the other modern properties within the street, the property is not located within a highly prominent position and would not be readily visible from Stoneyholm Road. As such it is read within the context of Steven Place and it is considered that the majority of the properties within this street are not of a high quality design. Notwithstanding this, each proposal should be determined on its own merits and for 12/00321/PP

the above reasons, it is not considered that a relevant comparison is being made or that the proposal would add or contribute to the character of Stoneyholm Road.

7) The applicant states that a new housing development (Ref: 07/00977/PP) on Largs Road has been developed where modern properties are adjacent to traditional properties and has provided photographs to demonstrate the contrast in design.

Response: The above example relates to a housing development which was approved in March 2008 for the erection of 48 dwellings and 4 flats, set within a comprehensive redevelopment and creating their own environment. Nevertheless, it is agreed that the relatively standardised approach is one which the Design Guidance was subsequently introduced to improve upon. The same can be said about many of the other examples the applicant refers to, although it is also considered that these relate to a small overall percentage of properties. This current proposal relates to in-fill development of a single plot set within a road which is characterised on both sides with high design quality, traditional properties. There is no direct comparison associated to the particular consideration of this case. It should be remembered that each application is determined on its own merits and that past poor quality development(s) should not set future standards and should not prevent high quality design solutions being sought to maintain a sense of quality, identity and place.

In view of the above, it is considered that the proposed development would be contrary to Policy BE14, the associated design principles within the Council's Design Guidance for Neighbourhoods, and the principles contained within the Development Control Statement with reference to design and external appearance, within a street of predominantly traditional housing, all to the detriment of the character, appearance and amenity of the area. Planning permission should therefore be refused.

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## **Decision**

Refused

Case Officer - Mrs Fiona Knighton

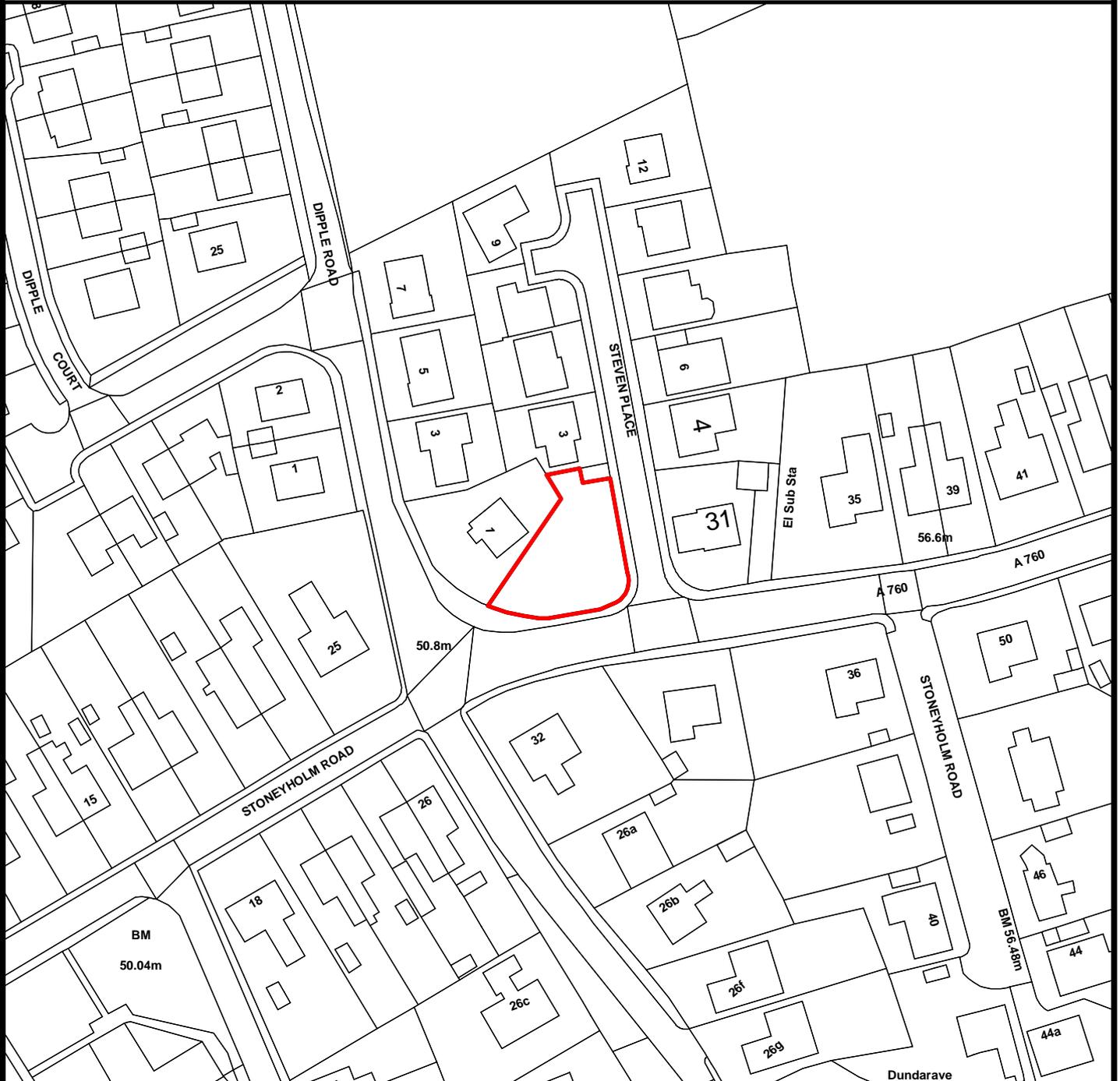
**Appendix 1 - Drawings relating to decision**

<b>Drawing Title</b>	<b>Drawing Reference (if applicable)</b>	<b>Drawing Version (if applicable)</b>
Roof Plan	DM 102	A
Proposed Elevations	DM 103	A
Proposed Floor Plans	DM 100	B
Proposed Floor Plans	DM 101	C
Location Plan		
Block Plan / Site Plan	DM 002	A
Proposed Elevations	DM 200	A
Proposed Elevations	DM 201	A
Proposed Elevations	DM 202	A
Proposed Elevations	DM 203	A



# Local Review Body

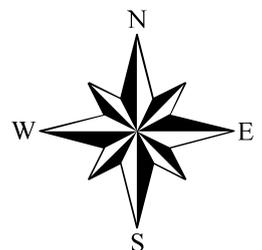
12/00321/PP



**NORTH AYRSHIRE**  
COUNCIL

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**Not To Scale**







**NORTH AYRSHIRE  
COUNCIL**

IAN T. MACKAY : Solicitor to the Council (Corporate Services)

No N/12/00321/PP

REFUSAL OF PLANNING PERMISSION

Type of Application: Local Application

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT, 1997,  
AS AMENDED BY THE PLANNING ETC (SCOTLAND) ACT 2006.  
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND)  
REGULATIONS 2008

To : Mr Drew Marsham  
55 Knoxville Road  
Kilbirnie  
Ayrshire  
KA25 7ED

With reference to your application received on 14 June 2012 for planning permission under the above mentioned Acts and Orders for :-

Erection of detached dwelling house with detached garage

at Plot 5  
Steven Place  
Kilbirnie  
Ayrshire

North Ayrshire Council in exercise of their powers under the above-mentioned Acts and Orders hereby refuse planning permission on the following grounds :-

1. That the proposed development would be contrary to Policy BE14, the associated design principles within the Council’s Design Guidance for Neighbourhoods, and the principles contained within the Development Control Statement with reference to design and external appearance, within a street of predominantly traditional housing, all to the detriment of the character, appearance and amenity of the area. Planning permission should therefore be refused.

Dated this : 10 August 2012

.....  
for the North Ayrshire Council

(See accompanying notes)



**NORTH AYRSHIRE  
COUNCIL**

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997  
AS AMENDED BY THE PLANNING ETC (SCOTLAND) ACT 2006.  
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND)  
REGULATIONS 2008 – REGULATION 28

IAN T. MACKAY : Solicitor to the Council (Corporate Services)

**FORM 2**

1. If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. The notice of review should be addressed to Committee Services, Chief Executive's Department, Cunninghame House, Irvine, North Ayrshire, KA12 8EE.
2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

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**NORTH AYRSHIRE COUNCIL**

**Agenda Item 4**

**14 November 2012**

**Local Review Body**

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**Subject:** **Notice of Review: 12/00202/PP: Site to West of Kilmichael Country House, Brodick, Isle of Arran**

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**Purpose:** To submit, for the consideration of the Local Review Body, a Notice of Review by the applicant in respect of the non-determination of a planning application within the two month period allowed for officers to determine applications.

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**Recommendation:** That the Local Review Body considers the Notice.

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**1. Introduction**

1.1 The Town and Country Planning (Scotland) Act 1997, as amended by the Planning (Scotland) Act 2006, provides for certain categories of planning application for "local" developments to be determined by appointed officers under delegated powers. Where such an application is refused, granted subject to conditions or not determined within the prescribed period of 2 months, the applicant may submit a Notice of Review to require the Planning Authority to review the case. Notices of Review in relation to non determination within the prescribed period must be submitted after the expiry of the 2 month period allowed for officers to determine applications.

**2. Current Position**

2.1 A Notice of Review has been submitted in respect of Planning Application 12/00202/PP for the modification of condition no. 7 of planning permission N/05/00248/PP to permit the change of use from holiday letting cottage to permanent dwellinghouse (cottage no 2) on a site to the West of Kilmichael Country House, Brodick, Isle of Arran.

2.2 The application has not been determined within the 2 month period allowed for officers to determine applications.

2.3 The following related documents are set out in the appendices to this report:-

Appendix 1 - Notice of Review documentation;  
Appendix 2 - Report of Handling; and  
Appendix 3 - Location Plan.

### **3. Proposals**

- 3.1 The Local Review Body is invited to consider the Notice of Review.

### **4. Implications**

Financial Implications

- 4.1 None arising from this report.

Human Resource Implications

- 4.2 None arising from this report.

Legal Implications

- 4.3 The Notice of Review requires to be considered in terms of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning (Scotland) Act 2006, and the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.

Equality Implications

- 4.4 None arising from this report.

Environmental Implications

- 4.5 None arising from this report.

Implications for Key Priorities

- 4.6 None arising from this report.

### **5. Consultations**

- 5.1 Interested parties (both objectors to the planning application and statutory consultees) were invited to submit representations in terms of the Notice of Review. No such representations have been received.

**6. Conclusion**

- 6.1 The Local Review Body is invited to consider the Notice of Review, including any further procedures which may be required prior to determination.



ELMA MURRAY  
Chief Executive

**Reference :**

For further information please contact Diane McCaw, Committee Services Officer on 01294 324133

**Background Papers**

Planning Application 12/00202/PP and related documentation is available to view on-line at [www.north-ayrshire.gov.uk](http://www.north-ayrshire.gov.uk) or by contacting the above officer.



# NOTICE OF REVIEW

UNDER SECTION 43A(8) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED) IN RESPECT OF DECISIONS ON LOCAL DEVELOPMENTS

THE TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND LOCAL REVIEW PROCEDURE) (SCOTLAND) REGULATIONS 2008

THE TOWN AND COUNTRY PLANNING (APPEALS) (SCOTLAND) REGULATIONS 2008

**IMPORTANT: Please read and follow the guidance notes provided when completing this form. Failure to supply all the relevant information could invalidate your notice of review.**

Use **BLOCK CAPITALS** if completing in manuscript

## Applicant(s)

## Agent (if any)

Name	<u>GEORGEY BOTTERILL + ANTONY BUTTERWORTH</u>	
Address		
Postcode		
Contact Telephone 1		
Contact Telephone 2		
Fax No		
E-mail*		

Mark this box to confirm all contact should be through this representative:

Yes  No

\* Do you agree to correspondence regarding your review being sent by e-mail?  Yes  No

Planning authority

NORTH MYRSKIRE COUNCIL

Planning authority's application reference number

12/00202/PP

Site address

KILMICHAEL HOUSE, GLEN CLOY, BY BRODICK, ISLE OF ARRAN

Description of proposed development

NO 'DEVELOPMENT' PROPOSED

Date of application

7 MAY 2012

Date of decision (if any)  
SEVEN OF PERIOD

7 JULY 2012

**Note.** This notice must be served on the planning authority within three months of the date of the decision notice or from the date of expiry of the period allowed for determining the application.

**Nature of application**

- 1. Application for planning permission (including householder application)
- 2. Application for planning permission in principle
- 3. Further application (including development that has not yet commenced and where a time limit has been imposed; renewal of planning permission; and/or modification, variation or removal of a planning condition)
- 4. Application for approval of matters specified in conditions

**Reasons for seeking review**

- 1. Refusal of application by appointed officer
- 2. Failure by appointed officer to determine the application within the period allowed for determination of the application
- 3. Conditions imposed on consent by appointed officer

**Review procedure**

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may tick more than one box if you wish the review to be conducted by a combination of procedures.

- 1. Further written submissions
- 2. One or more hearing sessions
- 3. Site inspection
- 4. Assessment of review documents only, with no further procedure

If you have marked box 1 or 2, please explain here which of the matters (as set out in your statement below) you believe ought to be subject of that procedure, and why you consider further submissions or a hearing are necessary:

1. Only if the Review Body consider this necessary.  
 2. Reviewer to be present during the Review process.

**Site inspection**

In the event that the Local Review Body decides to inspect the review site, in your opinion:

- |  | Yes                                 | No                                  |
|--|-------------------------------------|-------------------------------------|
| 1. Can the site be viewed entirely from public land?                                 | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 2. Is it possible for the site to be accessed safely, and without barriers to entry? | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |

If there are reasons why you think the Local Review Body would be unable to undertake an unaccompanied site inspection, please explain here:

**Statement**

You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. Note: You may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

If the Local Review Body issues a notice requesting further information from any other person or body, you will have a period of 14 days in which to comment on any additional matter which has been raised by that person or body.

State here the reasons for your notice of review and all matters you wish to raise. If necessary, this can be continued or provided in full in a separate document. You may also submit additional documentation with this form.

*Please see enclosed statement.*

Have you raised any matters which were not before the appointed officer at the time the determination on your application was made?

Yes  No

If yes, you should explain in the box below, why you are raising new material, why it was not raised with the appointed officer before your application was determined and why you consider it should now be considered in your review.

**List of documents and evidence**

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review.

See attached list

**Note:** The planning authority will make a copy of the notice of review, the review documents and any notice of the procedure of the review available for inspection at an office of the planning authority until such time as the review is determined. It may also be available on the planning authority website.

**Checklist**

Please mark the appropriate boxes to confirm you have provided all supporting documents and evidence relevant to your review:

- Full completion of all parts of this form
- Statement of your reasons for requiring a review
- All documents, materials and evidence which you intend to rely on (e.g. plans and drawings or other documents) which are now the subject of this review.

**Note:** Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice from that earlier consent.

**Declaration**

I the applicant/agent [delete as appropriate] hereby serve notice on the planning authority to review the application as set out on this form and in the supporting documents.

Signed

Date

21	09	2012
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## **Local Review Statement**

**Application 12/00202/PP for amendment to Condition 7\* of Conditional Planning Consent N/05/00248/PP to permit change of use from holiday letting cottage to permanent dwelling house, “Bluebird Cottage” (Cottage 2 of 4) Kilmichael, Glencloy, By Brodick, Isle of Arran, KA27 8BY**

*\* “Condition 7: That the self-catering cottages shall be used only for holiday letting purposes and shall not be rented, sold or sub-let for any other purpose. For the avoidance of doubt, none of the cottages shall be occupied on a permanent basis without the prior written approval of North Ayrshire Council as Planning Authority”*

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## **I.** **INTRODUCTION**

### ***Background to the application***

This application is the latest stage in a process which began 18 months ago, in March of 2011, when we approached the planning department to seek the “prior written approval” for fulltime occupation of the house, which Condition 7 requires. We explained that the need resulted from major changes in personal circumstances, and the difficulties caused by the dramatic economic crisis, which meant, among other things, that the sale of this asset seemed to be the only way of funding urgently needed repairs to the roof and chimneys of the main listed building here.

The case officer, on her first site visit, did not seem to consider our request problematic, and suggested we might not need to make a formal application “because of the wording,” which, she said, the department would not now use. Accordingly, we made a written request the following day [Document 5]. It was rejected immediately. In marked contrast to her initial response, the case officer determined that a formal application for planning permission must be made, but indicated that it would be unlikely to be recommended for approval, as it had “no justification on planning grounds” [Document 6].

Since the decision would be a delegated one, the case officer would be making the ‘recommendation’ to herself, and her response was therefore tantamount to a rejection of the request for the “prior written approval” which the condition requires. In extended correspondence over the whole of the rest of the year [Documents 7, 9, 12, 14 & 16] , we sought to persuade her, and the Chief Development Management Officer, that the local plan had no specific policy which would require refusal of consent and that there were, in fact, numerous material considerations which would permit the granting of it, as well as factual inaccuracies in their deliberations. She remained resolute; an application would not be approved.

At the end of the year, we approached our local councillor for assistance. Following her intervention, the case officer, in discussion with her colleagues, changed her mind and concluded that approval would be possible, on condition that we signed a section 75 Agreement, binding us to spend the proceeds of the sale on repairs to the listed building. In a subsequent meeting at Cunninghame House, a colleague of the officer intimated that a more flexible agreement would be acceptable, whereby we would still agree to expenditure on the listed building, but would also be permitted to use the remainder of the proceeds on other business expenses, because of the damage wrought by the economic crisis.

On the basis of this understanding, and because we urgently needed a positive decision, we submitted a formal application, although we had independent legal advice which suggested this was not properly a legal requirement.

In spite of the exceptionally extended period of pre-application discussions, the officer failed to determine the application within the two month period permitted by

the Town and Country Planning (Development Management Procedure)(Scotland) Regulations 2008 and no contact was made during that time regarding the terms of the proposed Section 75 Agreement.

When a draft agreement was produced – outwith the statutory period – its terms were unacceptable, both because it did not allow for the other more general business expenditure which we thought had been agreed in principle and also because it lacked precision in a number of respects.

In the circumstances it seems more appropriate to exercise our right to seek a Local Review on the grounds of non-determination, which will allow for the application to be considered afresh.

### ***Sequencing of comments in support***

In making our supporting statement here, we have followed the guidance in Circular 4, 2009 of the Scottish Planning Series: Procedure for Determining Planning Applications.

Part of this procedure requires the examination of any material considerations relating to the application. Although this stage usually follows the identification of relevant Local Plan policies, we believe some considerations to be of overarching significance and wish to draw attention to them here first. We would ask the Local Review Body to bear these in mind when coming to its conclusions.

### ***Past decisions and the ‘de novo’ principle***

We are aware that the *de novo* principle will apply to the Review.

Notwithstanding this, we have also made reference to past statements from the case officer, and our responses to them, in order to ensure these matters are properly addressed if they should arise again in the course of the Review. Her long held view was that “it is unlikely that planning permission would be recommended for approval.” Because she maintained this position for over a year, it is necessary to examine the way in which she came to her conclusions, so that we can highlight areas in which we believe she misdirected herself and so forestall a similar conclusion.

## **II. PROBLEMS WITH THE TERMS OF CONDITION 7**

### ***Interpretation***

Dealing with Condition 7 has caused considerable difficulty, because of the terms in which it is expressed. As the case officer commented, “We would not use that wording now” and all this has implications for the current Review.

In Condition 3, the property is referred to as a “dwellinghouse” [Document 3], but Condition 7 restricts its *use* to holiday letting only and specifically prohibits use as a permanent dwelling without prior written approval. Yet the Use Classes (Scotland) Order 1997 makes no distinction between a “letting cottage” and a dwelling house. Both fall into the same category: “Class 9. Houses.” The Order specifies that:

“Where a building is used for a purpose which is included in a particular class the use of that building or land for a purpose in the same class *shall not be taken to involve development and therefore would not require planning permission.*” [our italics]

Although Condition 7 requires us to obtain “prior written approval” for use as a permanent residence, it does not specify the procedure by which this is to be obtained, and it does not appear that Condition 7 can legitimately invalidate the provisions of the Order, as far as the *use class* is concerned, in the way that a section 75 Agreement could. This means our request should not be taken as a new application for “development,” as defined in the Town and Country Planning (Scotland) Acts and that no formal application for planning permission for *change of use* should be required. This is central to our questioning of the way this application has been dealt with to date and we have more observations to make on this point below.

### ***Condition 7 ultra vires***

It would also appear that Condition 7 is *ultra vires* in at least one of its provisions: the condition includes the prohibition that the cottages “shall not be... sold [etc]... for any other purpose”. Planning authorities do not have the power to determine whether or not an owner may sell his property, nor the circumstances in which he may do so. The imposition of this prohibition goes beyond the lawful powers of a planning authority, which means that this provision, at the very least, should be struck out.

### ***“Acceptability” of Condition 7***

Further scrutiny of the Condition gives rise to other questions about whether it should ever have been imposed in the form it takes and that doubt impinges on the decision in this Review.

Condition 7 appears to be both a condition to restrict *use* (as defined by the Use Classes Order) as well as being a condition to restrict *occupancy*, which is usually covered by a Section 75 Agreement. Either way, Circular 4/1998 Annex A “The Use of Conditions in Planning Permission” paragraph 31 advises against such conditions. It states:

“Conditions which are imprecise or unreasonable cannot be made acceptable by phrases such as “except with the prior approval of the planning authority” which purport to provide an informal procedure to waive or modify their effect”.

That seems to be exactly what our Condition 7 is. As it appears to be capable of more than one interpretation, it is certainly “imprecise.” And the inclusion of the requirement for the “*prior written approval of the Council as Planning Authority,*” does appear to “*purport to provide an informal procedure to waive or modify [the] effect.*” This makes the Condition ‘unacceptable’ by the criteria of the Circular.

Furthermore, Circular 1/1998, relating to the provisions of the Use Classes Order states, at para 44.2:

“...there is a presumption against conditions designed to restrict future changes of use which, by virtue of the UCO, would not otherwise constitute development. The Secretary of State would regard the imposition of such conditions as unreasonable, unless there was clear evidence that the uses excluded would have serious adverse effects on the environment or on amenity.”

In the way it is expressed, Condition 7 seems to be exactly this kind of condition and since there is no evidence at all that there would be any adverse affects on the environment by the use excluded, this makes the condition “unreasonable” as far as this Circular is concerned. In comparable applications locally, which they have approved, officers of North Ayrshire Council (including the case officer for this application) have determined that there is no significant effect on the environment brought about by such a change from letting cottage to dwelling house (q v). Indeed, as recently as March of this year, in her Report of Handling for application 12/00028/PP, [Document 21(c)], for the ‘change of use’ of 2 self catering houses and 2 self catering flats to 4 domestic residences, which she approved, the same officer who was handling our case wrote:

“The change of use of self catering properties to permanent residences would not have a significant adverse impact on the amenity of the area... The proposed use is similar in nature to that existing and there should be minimal impact on the amenity of other nearby residential properties. As no external alterations are proposed, there would be no implications for visual amenity, privacy, etc as a result of the change of use”.

Judged by the criteria of these two government Circulars, therefore, the condition is “imprecise” and “unreasonable”.

It would appear that, if the Council had any intention “*to restrict future changes of use which, by virtue of the UCO, would not otherwise constitute development*” and where there was ample evidence that change would not “*have serious adverse effects on the environment or on amenity,*” it was not appropriate to do so by means of Condition 7. Condition 7 is therefore “unacceptable”.

### ***Condition 7 “unreasonably restrictive”***

Moreover Circular 4/1998 warns, at paragraph 35:

“Even where a condition would not be so unreasonably restrictive as to be *ultra vires*, it may still be so onerous that as a matter of policy it should be avoided. For example, a condition which put a severe limitation on the freedom of an owner to dispose of his property...should be avoided on these grounds”.

When we first approached the department, 18 months ago, we had prospective buyers, a local couple beyond retirement age, who have a guest house, who wished to move into the cottage for their retirement, and who were willing to agree to terms which would ensure the visual integrity of the group. But they could not obtain the necessary bridging finance, so long as Condition 7 remained. As we are now into the second half of the second year of “negotiations” with the Council regarding the “prior written approval” which the condition requires, those prospective purchasers have withdrawn and it is evident that the condition certainly does put a severe practical limitation of our freedom to dispose of our own property.

This limitation relates even to the prospect of selling the property as a letting cottage. It has become apparent that, even though our houses were required to have individual building warrants, and are individual, self-contained houses, we could not sell an individual house even as a letting cottage, except to someone in our own family, whose operation of the letting cottage we could control. As each forms part of a group, each is visually indistinguishable from the other and clearly related to the rest of the property, so would appear to continue to be part of our property whoever owned it. But we would have no way of ensuring that the new operator maintained our standards, with the result that he could seriously undermine the viability of the rest of the business by operating his “letting unit” unsatisfactorily.

Whilst it is acknowledged that the creation of competition by the granting of planning permission is not normally an obstacle to such a grant, the imposition of a condition which, in its effects, requires an owner to dispose of all his property, in its entirety, or none at all, is not a reasonable requirement by any assessment and certainly does not seem to have any justification on planning grounds.

### ***Validity of Condition 7 as a permanent occupancy restriction***

In spite of the references to change of “use,” both in the condition and in discussions with the case officer, the principal aim of the condition is clearly to restrict the *occupancy* of the house to temporary residents. The relevant Report to the planning committee in 2005 [ Document 2] makes this clear:

“Whilst noting that the proposal would result in an additional four houses in the countryside, the applicant is willing to accept a condition to restrict their occupancy.”

This restriction was not intended to be permanent and immutable, however. We had not agreed to that, as our letter of 17 June 2005 [Document 1] made inescapably clear. If it was the intention of the Council that this restriction should be permanent, and should be a real and legal burden on the property in perpetuity, then the planning

permission should have been constrained by a Section 75 Agreement, the purpose of which is to permanently restrict or regulate the use of land affected by a planning permission, or the application should have been refused.

There is no Section 75 agreement. In our letter [Document 1] addressed to the Chief Development Control Officer (as his title then was), we had declined to enter into such an agreement on the grounds that planning policies change over time and nobody could predict how future policies and personal circumstances might do so. It turns out we were right. We could not have predicted our personal health problems and nobody predicted the world economic crisis, both of which have led to this application. Also, one central policy has changed significantly: the Scottish Government has reviewed its policy towards occupancy restrictions and indicated that it no longer supports them. The rationale underlying this policy change is relevant to our application in several respects and this will be considered below.

The fact is, we would not have carried out the development at all if the department had insisted on a section 75 Agreement, because we feared being trapped in a business we could not dispose of, as we have seen in others – and as we now seem to be. In our letter we requested instead a permission which acknowledged that the application was for letting cottages, but which would incorporate a degree of flexibility to take account of predictable and unpredictable future changes. We requested that the Council impose appropriate Conditions, rather than a section 75 Agreement, to allow for a review of the occupancy question at an appropriate time in the future, should the need arise, at which time the restriction could be assessed against the policies which would be then prevailing. We gave the example of our possibly wanting to live in one of the cottages during our retirement.

Condition 7 seemed to be in accord with this - indeed we still believe this was the intention of the case officer at the time and that the reference to “prior written approval” was a device to help the Council monitor change, not necessarily to prevent it. We had been told in a telephone conversation about the Council’s difficulty in monitoring change and had made specific reference to this in our letter at para 4.(vii) [Document 1]. No explanation of the implications of the condition were given, however, as we received no reply to our letter. We were left to draw our own conclusions, which turn out to be significantly different from those of the current case officer and the Chief Development Management Officer (as he now is). We do not believe that the case officer seven years ago acted in anything other than good faith, but the inclusion of the phrase “For the avoidance of doubt” has proven to be considerably over optimistic.

The approach of the current case officer has been to treat this Condition as if it were a Section 75 Agreement. It is not. All section 75 Agreements are by definition voluntary, and so it would have been wholly improper of any officer in 2005 to surreptitiously slip into the planning consent a Condition designed to have the same perpetually restrictive effect as a Section 75 Agreement when that had been explicitly rejected. Moreover, since February 2011 it has been possible to apply for the modification or discharge of a real planning obligation, with a right of appeal to the Scottish Ministers in the case of a refusal. The case officer’s interpretation and her intransigence serve to make this Condition more onerous than a genuine Section 75 Agreement and this cannot be right.

***“We would not use that wording now”***

Bearing in mind all these problems, it is clear that Condition 7 should not have been imposed in the form it was. In her very first meeting, the case officer commented, “We would not use that wording now.” Clearly, the wording should not have been used even then.

Lest it be observed that we should not have accepted this “unacceptable” condition, we would draw attention to this point in Circular 4/1998, at paragraph 39:

“An unreasonable condition does not become reasonable because an applicant suggests it or consents to its terms”

As it happens, we thought it was reasonable at the time. It is only the interpretation of the current case officer which has made it less so. With all this in mind, it would seem that the most appropriate course of action would be not just to vary Condition 7, but to strike it out altogether.

### **III** **THE PROCEDURE FOR SEEKING “PRIOR WRITTEN APPROVAL”**

#### ***Lawful process***

The Condition requires the Council’s “prior written approval” for full-time occupation, but it does not list any criteria by which the Council is to determine whether to grant or deny approval. And no specific procedure is indicated for this.

Accordingly, as indicated above, we originally made our request by letter. In fact we did so at the request of the case officer who, as also indicated above, originally believed no formal application might be necessary.

We have sought legal advice on this matter and have been advised as follows:

“At first sight”, [a reading of the regulations] “would suggest that there would need to be a formal application made for consent for the purposes of Condition 7...However, I do not think this is correct because what I think you obtained is not planning permission in principle (outline planning permission) but full planning permission... “Condition 7 therefore restricts occupancy without the agreement of the Council, but should you seek their agreement to vary that position, you are not seeking any approval, consent or agreement required in respect of a planning permission granted in principle (outline planning permission). In fact...what you are seeking is not “required” but an option you wish to pursue. It therefore seems to me that no formal application is

necessary, and the way to challenge the Council, should they decline to exercise their discretion in your favour, is by way of judicial review.”

“The condition itself seems to include a self contained mechanism for the condition to be “varied” so far as occupation is concerned, namely obtaining the “prior written approval” of the Council.”

“There is no prescribed form for an application for approval but in my opinion an application would be properly made if made in writing referring to the planning permission by reference seeking approval of the Council. Their response could be no more than a letter coming back to confirm the position.”

[M.S. Biggart Baillie LLP]

Unfortunately, the case officer has consistently declined to answer repeated requests for clarification of the statutory authority on which she based her requirement for a formal application for full planning permission, in spite of clear government guidance that she should have done so:

“Where statute confers an administrative power there is a presumption that it will be exercised fairly....It will be important to look at the terms of the statute and the parameters in which the discretion is to be exercised. It will often be necessary to allow a person or persons who may be adversely affected by the decision...to have notice of the information on which the decision is based”

[“Right first time: A practical guide for public authorities in Scotland to decision-making and the law”[www.scotland.gov.uk/Publications/2010/02/23134246/6](http://www.scotland.gov.uk/Publications/2010/02/23134246/6)]

Our legal advice was to proceed to judicial review, but, rather than going straight for the ‘sledgehammer’ approach immediately, we agreed to make a formal application first, as the case officer insisted.

We would make the point here, however, that in requesting the “prior written approval” to which the condition refers, we were in fact *complying* with the condition, not seeking to change it. In the absence of an appropriate confirmation from the case officer, but bearing in mind that our original approval was not for planning permission in principle, we have assumed she required a Section 42 application and that is what we have made. That, in turn, carries implications which we will address below.

#### **IV.**

#### **IDENTIFICATION OF PROVISIONS OF THE DEVELOPMENT PLAN RELEVANT TO THIS DECISION**

#### **Step 1 of the procedure for determining planning applications**

#### ***No specific policy***

There is no specific policy in the Local Plan which prevents the approval we seek.

This fact has been relied upon for many years as the justification for approval in the assessment of previous local applications for permission to ‘change the use’ of letting cottages to dwelling houses for full time occupation.

Eight years ago, in his Report on application 04/01204/PP, [Document 21(a)], in which he supported the granting of consent, the officer wrote:

“ The adopted Local Plan has no policy to control the change of use of a holiday letting unit to a full time residential unit. It has always been asserted that any proposal for holiday letting units should be considered on the same basis as that for a new dwelling house.”

Six years after that, the case officer who produced the Report for application 10/00791/PP [Document 21(b)] wrote:

“There is no specific policy that opposes change of use of holiday letting units to full time residential”

and then referred back to the approval of application 04/01204/PP for further support.

Even the case officer dealing with our application has used it as the basis for her approval of an application as recently as March of this year [Document 21(c)], although she slipped in a qualifier which has no foundation in the Plan:

“ There is no specific policy that opposes change of use of holiday letting units *formed from former steading buildings* to full time residential units”

We have italicised her addition, because it makes no difference to the basic fact: there is no policy to oppose the change, whatever the letting units were originally formed from – just as there is no policy to oppose the change when they were not “formed” from anything, but were newly built from scratch.

In her Report of Handling for application 12/00028/PP, [Document 21(c)] she continued:

“Furthermore, in defining managed units, i.e. self catering accommodation let for tourist accommodation, the local plan states that the prime use remains as a dwelling house. It is therefore considered that the proposal is acceptable in principle subject to complying with the Development Control Statement of the adopted Local Plan”.

This is word-for-word the same further justification as that given in the earlier application 10/00791/PP, because that remains the fact of the matter.

It should be particularly noted that “the proposal is acceptable in principle.” And there is a very good, straightforward, reason why, although the case officer does not directly acknowledge it. In the words of the officer at the time of our original development application:

“this proposal involves the construction of dwelling houses, albeit for holiday accommodation.”

[James Miller, Chief Development Control Officer 19.05.2005]

and, as indicated above, the committee report [Document 2] reiterates this fact.

The case officer’s conclusions regarding compliance with the Development Control Statement are those we quoted above, but they are worth repeating here:

“... the relevant criterion relates to amenity impact. The change of use of self catering properties to permanent residences would not have a significant adverse impact on the amenity of the area... The proposed use is similar in nature to that existing and there should be minimal impact on the amenity of other nearby residential properties. As no external alterations are proposed, there would be no implications for visual amenity, privacy, etc as a result of the change of use”. [JH 12/00028/PP] [Document 21(c)]

All this – every word of it – can, and should, be applied to our application.

### *An Exclusion Clause?*

Regrettably, both the case officer and the Chief Development Management Officer have insisted that we cannot rely on this policy situation, because our property is “of relatively recent construction”.

This ‘exclusion clause’ is without foundation anywhere in the Local Plan or the relevant Act. It is a constraint they wish to apply to our application alone in order to disqualify it. In spite of repeated requests for direction to which provisions of the plan support their interpretation, no answer has been forthcoming. If we are mistaken, then there is no reason why we should not have been enlightened and every reason why we should have been given a proper explanation. This point is also made in the Scottish Government’s publication “Right first time: A practical guide for public authorities in Scotland to decision-making and the law:”

“Your decision itself may appear to be inconsistent with previous policy, or with other decisions in similar cases, so that a decision unsupported by reasons may appear irrational, and it may be necessary to explain why there has been a departure from previous policy, or the Court may assume the decision is unlawful.” [www.scotland.gov.uk/Publications/2010/02/23134246/5]

It surely goes without saying that such an explanation should be based on matters of fact and not rely on a ‘justification’ plucked out of thin air. The absolute fact of the matter is that there is no provision in the Plan to justify the disqualification they seek.

## ***Policy ENV1A***

What the officers have insisted on, is that all those other applications differ from ours because they were granted on the grounds of compliance with Policy ENV1A, which governs applications for “Conversion Rehabilitation or Replacement of Existing Buildings” in the countryside, whereas ours cannot, because it is of relatively recent construction. Quite apart from their idiosyncratic definition of “existing,” this argument is erroneous on two other counts: first the core justification in all those cases was undoubtedly the absence of any policy obstacle, which any examination of the relevant reports will confirm; second, in order to comply with Policy ENV1A, the application must actually be for one of the *development* works it covers: conversion, rehabilitation or replacement. As the officer reporting on application 04/01204/PP put it:

“ENV1A is not relevant as the building has already been converted. No physical alterations are proposed and the property is no different to a typical dwellinghouse.” [AH 04/01204/PP] [Document 21(a)]

This is exactly the same situation as ours: no physical changes; no “conversion;” no “rehabilitation;” no “replacement;” it is already a dwelling house so no *development* works of any kind and, therefore, nothing of relevance to policy ENV 1A. When the other officers, including our case officer, concluded that the other applications ‘complied’ with its provisions, they were misdirecting themselves, as they did when they determined that ours would not. We have raised this specific point on more than one occasion with the case officer and her departmental head but, again, they have chosen not to answer it. It really should not be necessary for us to draw attention to the following point from the “practical guide” cited above:

“whatever factors you decide are relevant, you need to be sure that the facts on which you base your decision are accurate”;  
[[www.scotland.gov.uk/Publications/2010/02/23134246/5](http://www.scotland.gov.uk/Publications/2010/02/23134246/5)]

When the authority of the Council is delegated to an officer, it is more than ever necessary to be able to have confidence in the rationale supporting that individual’s decisions. When there appear to be fundamental errors in that process, even at the pre-application stage, it is not unreasonable to expect a proper response to a request for an explanation of the matter. Had we had such a response we could have taken account of it here for the purposes of this Review and it is to be hoped that, if an explanation does emerge now, we shall have a fair opportunity to address it.

In the assessment of relevance, the procedure requires that we look also at the aims and objectives of each policy. Policy ENV1A is subsidiary to Policy ENV1, which regulates development in the countryside, and which carries a presumption against it, except in certain circumstances. Policy ENV1A is concerned with one of those sets of circumstances, i.e. when the building is already there and the *development* proposal is for “Conversion, Rehabilitation or Replacement”. The focus is undeniably on the fact that the buildings already exist. In such a situation the presumption against development is over-ridden. The aim is, clearly, that existing buildings should be effectively re-used. The objective is, equally clearly, sustainable development. In such

circumstances, new houses in the countryside are permitted. Granting our application, for occupation of a house which already exists, could not with any reason be said to go against the aims or objectives of the philosophy behind this policy.

Policy ENV1A is, for all these reasons, not relevant.

### ***Policy ENV1***

The Policy which the case officer, supported by the Chief Development Management Officer, relied on for more than a year to reject our approach is this policy ENV1, governing “Development in the Countryside”. We need to establish here that their interpretation of this is not reasonable and is not sufficient to justify rejection in the face of all other considerations.

First, this is a policy concerned with primary applications for development. Our original development application, seven years ago, complied with the provisions of this policy and was therefore approved. As no further building works of any kind are proposed, and no environmental change of any kind will take place, our request to use the house as a permanent residence is not a “development” application as defined in the Act.

In extended correspondence, both the case officer and the Chief Development Management Officer took the position that Policy ENV1 governs *provision* of new houses in the countryside. Such a definition is found nowhere in the local plan or the Act, whereas “development” is properly defined. No mention was made of Policy ENV1 at any point in any of the deliberations regarding the comparable applications we have cited above, either in terms of development or provision. Once again, it is an interpretation the officers wish to apply to our case alone. We have questioned this situation, but received no direct answer and therefore repeat our argument here:

“Given that the building in question already exists and that no building works of any kind are proposed ... your choice of the term ‘provision’ can only mean that you are treating a change of use from letting cottage to dwelling house as tantamount to the creation of a ‘new’ house because this increases the supply of buildings which can lawfully be occupied as dwelling houses. Setting aside all consideration of the Scottish Use Classes Order and whether or not such a change constitutes ‘development’, as defined in the Act, the two Lakin Farm applications to which I have referred must, by this criterion, also qualify as ‘provision of new houses’ since the approvals in those cases – also for buildings which already exist – also augmented the supply where none existed before. As I have pointed out in previous correspondence, no consideration at all was given to this in the assessment of either of [these] applications ... Clearly you wish to apply this definition in our case alone, even though there is no justification for it anywhere in the provisions of the local plan”

[GB September 05, 2011] [Document 16]

The fact that the officer dealing with our case approved application 12/00028/PP referred to above, as recently as March, several months after our letter from which

this quotation comes, without even a mention of Policy ENV1, is further evidence that this particular interpretation of the policy is one which she has been determined to apply to our application alone.

It is an interpretation which is not permitted under the 1997 or 2006 Acts or the 2008 Order. As we indicated above, in the words of the officer at the time we made our original development application:

“this proposal involves the construction of dwelling houses, albeit for holiday accommodation.”

[James Miller, Chief Development Control Officer 19.05.2005]

What we received permission for, therefore, and what we have built, is a dwelling house. The development has been completed. No further development activity is proposed. The “provision” has already happened and no further “provision” is proposed.

In considering a Section 42 application, the Town and Country Planning (Scotland) Act does not permit the Council to revisit the granting of that development permission, only the conditions attached to it. It stipulates that

“the planning authority shall consider only the question of the conditions subject to which planning permission should be granted.”

Moreover, according to the advice we have received:

“the case law suggests that in deciding whether or not to grant the [Section 42] application the Council should take into account any relevant changed planning circumstances”

[M.S. Biggart Baillie LLP]

Condition 7 relates primarily to occupancy. This is the only matter which stands to be considered and it must be assessed in the context of current circumstances. Treating our application in the way the case officer chose to do – as if it were a new application for the new construction of a new house and measuring it thus against Policy ENV1, whilst completely ignoring the status quo (about which more below), is tantamount to reconsideration of the very idea of development and that would be *ultra vires*.

Whether considered as development, provision, or any other epithet, what we have already is a house. It is there. It exists. It cannot be ‘unbuilt.’ It cannot be made to disappear. In a letter dated 20 July 2011 even the case officer observed that the cottages “are already of residential use” [Document 11]. The only matter to be considered is whether or not it is acceptable to ‘vary’ the condition to allow one family to live in it permanently – which takes us back again to the fundamental fact that:

“There is no specific policy that opposes change of use of holiday letting units to full time residential”.

Since both the Use Classes Order and Circular 1/1998 seem to indicate that the conditional restriction on *use* is invalid, that clearly leaves only the question of occupancy to be considered. We will address this below.

Before that, we need to look at the aims and objectives of Policy ENV1. Perhaps this is what the officer was more concerned with (although she never actually confirmed this, in spite of there being many opportunities to do so). Clearly, the *aims* are ‘the means’ to a desirable ‘end,’ which is the *objective*.

The principal overall aims of Policy ENV1 can be deduced from the Strategic Context section of the plan, and they are:

“[to]control development in the countryside to acceptable developments with specific locational need.”

And

“by identifying sites to control the development of new housing and to provide for local needs.”

The objective is general and positive: “protection of the countryside.”

Clearly, our development was found to be “acceptable” on the grounds of its “specific locational need” when the original permission was granted. That was seven years ago. The development has been completed and no further development is proposed. Personal, economic and planning policy circumstances have changed dramatically since then, however, but it is still clear that granting our current request now would have no negative effect on the overall policy objective of protecting the countryside, because there would be no physical change of any kind to the building, its immediate surroundings or the wider environment.

Why, then, such determined opposition to changing the occupancy condition through the insistence that our application is tantamount to an application for the development of a new house? Careful scrutiny of such limited ‘justification’ as we have been given, suggests either that the case officer consistently misdirected herself on a number of fundamental matters, or that she may have set herself against approval and then interpreted the provisions of the Local Plan in a very idiosyncratic way in an attempt to support that pre-determination. Further analysis of the situation points towards the second possibility.

There are 2 principal ‘means’ towards the ‘end’ of preserving the countryside: (i) control of development other than housing by limiting it to places where there is a specific locational need; and (ii) control of housing development by identifying approved sites. Our original *development* application fell under the first category and was approved. Removing the occupancy restriction would mean that the house fell into the area of interest of the second element by a stroke of the pen, albeit rather late in the day since the house is already there. It would seem that this is perceived by the case officer as a serious problem, even though of course, in reality, nothing physical would change.

Since it has been well established that lifting the occupancy restriction would not have any negative effect on amenity and the surrounding countryside (in other words

it would not in any way compromise the stated 'goal,' 'end' or 'aim' of preserving the countryside) it must be the fact that it is on a site which had not been previously allocated for the purpose which causes her distress, since this is the only remaining element of the equation.

This might be understandable if the house hadn't already been built or if identification of sites was permanent and finite. But neither condition applies. The proposed new development plan proposes different, additional sites. Moreover, current national policy requires a more flexible approach still, with the expectation that each application will be judged in context and on its merits. There is now a presumption in favour of small-scale development where siting and design are appropriate, and particularly where the new houses are related to an existing group and are carefully designed to fit into the existing landscape, as ours are. Judged by those new national criteria, if we were making an initial application for a new development now, it would appear that our plans should be acceptable.

Could it be that the officer's concern stems from a perception that lifting the occupancy restriction now would mean we had acquired a new house by default, - even "through a loophole," perhaps? If so, this concern has been allowed to outweigh all other considerations, including the fact that there would be no change in the type of use to which the building is put, no environmental impact of any kind - and that it would "provide for local needs." If this is what is happening, what it amounts to is a determination to put planners' choices above all other material considerations. It seems to be more a case of determination to protect the power of planners, than a concern for the protection of environment and amenity. We shall argue below that if this is the case, it is entirely unreasonable.

As Policy ENV1 is a policy to control primary development and ours is not an application for authorisation to commence a new *development*, but a request to lift an occupancy restriction, Policy ENV 1 cannot reasonably be held to be of prime significance in determining the matter, outweighing all other material considerations.

V.

**CONSIDERATION OF WHETHER OR NOT THE PROPOSAL ACCORDS WITH THE DEVELOPMENT PLAN**

**Step 2 of the procedure for determining planning applications**

As there is no policy in the local plan to control or prevent the permission we seek, and as the Council has consistently approved comparable requests over many years, we would come to the same conclusion as the case officer did in all other cases except ours and say again that:

"The proposal accords with local plan policy and the Development Control Statement. Accordingly, planning permission can be granted".

It is a well established principle that planning authorities have an obligation to act with consistency in determining applications. And it is a statutory requirement that if an application accords with the development plan it must be approved, unless there are material considerations sufficiently persuasive to override the provisions of the plan. Some special and particular reason must be needed to consider our request by different criteria from all these other applications.

## VI.

### **MATERIAL CONSIDERATIONS**

#### **Steps 3 & 4 of the procedure for determining planning applications**

##### ***“An application for dwelling houses would have been refused”***

The nearest the case officer has come to stating a special and particular reason is in her repeated insistence that we would not have got permission if we had applied for a residential dwelling house in the first place. This would appear to be the “material consideration” which she has determined is sufficient to outweigh the otherwise ‘automatic’ approval which has been granted to others. In lengthy correspondence stretching well over a year, there is not even a hint of any other consideration having been considered “material” at any time in the assessment of our application – or in fact any indication of any other matter having been given any consideration at all until the intervention in the spring of this year by our local councillor.

Whilst it is acknowledged that the case officer’s speculation may be a consideration which the Review Body may wish to take into account in its deliberations, the weight given to it should not be disproportionate; seven years on from the original grant, the economic climate is dramatically different, the local plan is out of date and national policy has evolved in such a way as to suggest a very different outcome than the one which the case officer has insisted upon. It is the situation now which needs to be addressed, not the circumstances seven years ago. The Context section of the Introduction to the Local Plan offers a sensible guide:

“The Local Plan must positively address the issue of change and meet these challenges within a basic framework which, while providing a robust policy base, will ensure an element of flexibility which will enable evolving issues and situations to be addressed effectively”.

For fear that the Review Body might be advised, in spite of this, to give the same weight to the Policy ENV1 consideration as the case officer, it is necessary to list other material considerations appropriate to our application. All these – if carefully and sincerely considered - would tend to outweigh the case officer’s apparent concern and further support the granting of approval rather than justifying rejection.

#### ***National Policy***

National policy is properly regarded as a material consideration. Scottish Planning Policy 1 states that,

“The range of considerations which might be considered material in planning terms...include[s]:

National Planning Policy Guidelines, Scottish Planning Policies, Planning Advice Notes and Circulars.”

One of the first material considerations we proposed, within the first month of the application process, was related to Scottish National Planning Policy Guidance in regard to historic buildings. Scottish Planning Policy 1 states

“Planning authorities can help to safeguard historic assets through...development management decisions”

It was, of course, the urgent need for repairs to the listed building, at a time when economic circumstances prevented us from raising funds any other way, that prompted our original request. As we wrote on 21 April 2011 [Document 7] in support of our application:

“Granting permission permits the commissioning of urgent repairs to the key listed building on the property by removing the obstacle to raising finance after all other avenues have been exhausted”.

This argument made no impact for months, and was in fact eventually rejected with the observation that;

“the material considerations you have stated within your correspondence have been noted. However, these would not alter the fact that the proposal would be contrary to Policy ENV1...and would *therefore* [my italics] not outweigh the provisions of the adopted Local Plan” [JH 20July 2011] [Document 11]

“Noted” does not, of course, mean the same as ‘carefully considered’. And it remains the case that the very point about some considerations being “material” is that they can outweigh Local Plan policy provisions. It is also important to be correct in interpretation of such policy provisions, of course, and we have suggested above that the officer misdirected herself in that.

Another consideration we raised in the same April 2011 letter was based on another policy statement from Scottish Planning Policy 1:

“Opportunities...to *provide* [my italics] limited new housing along with converted rehabilitated buildings should be supported where the new development is designed to fit in the landscape setting and will result in a cohesive grouping.”

Considered retrospectively, this group would fit those criteria. The small group of new buildings is closely related to and associated with converted rehabilitated buildings, and was specifically designed to ensure a cohesive grouping. It fits very neatly into the existing landscape, as can be seen in the attached pictures. We wrote [Document 7]:

“The building is of an appropriate scale and character for its location, being conceived in the realisation that it affects the setting of a listed building and is designed to harmonise with the group. Materials, fenestration, roof profile and layout are all modelled on the originals and in accordance with the Council’s design guide”.

The notion of retrospective consideration is significant. If it is acceptable for the case officer to speculate about what would have happened if a different application had been made 7 years ago, it might also be thought appropriate to consider what would happen now. If current national policy were to be followed, both in respect of listed buildings and new construction, our development overall would neatly fit into national, conservation-minded policy, regarding sustainable development – which is even expressed in terms of *provision*! There is no evidence that this policy was given any consideration at all.

### ***National Policy Guidance on Occupancy Restrictions***

Condition 7 restricts occupancy. On 4 November 2011, Scotland’s Chief Planner and Director of the Directorate for the Built Environment, wrote to all local authority Planning Officers advising that the Scottish Government does not support occupancy restrictions being imposed on new houses [Document 20]. He wrote, among other things, of some of the difficulties associated with occupancy restrictions being exacerbated by the current economic situation. It was, of course, precisely the current economic situation which had given rise to our application. When I raised this during a meeting in Cunninghame House, the letter was dismissed out of hand by an officer of the Council as “only one man’s opinion,” with no further discussion.

The Chief Planner has since confirmed in a telephone conversation that his national planning advice note should legitimately be classed as a material consideration. And it is, in any case, inconceivable that a judge engaged in a judicial review will dismiss in such a cavalier manner the official policy advice of a senior government officer if this case has to go that far.

The content of the letter was and is significant. Our self-catering cottage is in reality a permanent dwelling house with an occupancy restriction. It should certainly not be judged by the same criteria as a chalet, mobile home or static caravan. Although the Chief Planner’s letter is clearly intended to guide planning authorities in the handling of *new* applications for the *development* of new houses rather than tourist facilities (just as the Policies ENV1 is), it reflects a significant change in philosophy, which, if given proper consideration, could have permitted a more constructive interpretation of our application for the lifting of the occupancy restriction now that the house is an undeniable reality and the economic situation is so dire. Since the case officer chose to interpret Policy ENV1 as controlling the *provision* rather than *development* of new houses in the countryside, why did she not – in the interest of consistency and fair play - apply the same interpretation to this governmental advice and take careful account of it in determining our application – especially when the word “*provision*” is actually used in the Chief Planner’s letter? It seems she had closed her ears to all other argument, because her mind was already made up.

If so (and all the evidence suggests this was the case) she was again acting contrary to the expectations of The Scottish Government's "Practical guide for public authorities in Scotland to decision-making and the law" which cautions:

"The decision-maker must keep an open mind and consider each case on its merits; otherwise there is a failure to exercise discretion properly. The authority must not "close its ears" to particular arguments." [question 4]

and

"It is important to remember that it is the factors which are used in making the decision that are important here and that you must be able to demonstrate that you have properly considered them"[question 3]

Dismissing them out of hand does not amount to proper consideration (and, of course, we have complained of the case officer's failure to demonstrate that any of the other material considerations we raised had been properly considered). Moreover, the guide refers to a 2008 decision in which the Court found that:

"in considering the application, [the Reporter]...had...misconstrued the significance of supplementary planning guidance...and did not take account of material elements. Rather he applied his own personal view of the application and failed to identify any material consideration which would properly allow for departure from the development plan."

[Aberdeenshire Council v The Scottish Ministers (2008) CSIH 28]

The case officer seems to have fallen into the same trap. Dismissing the Chief Planner's advice as "only one man's opinion" certainly seems to be a case of misconstruing its significance. In doing so, the officer, like the Reporter, "*failed to identify [a] material consideration which would properly allow for departure from the development plan.*" Even if one accepts for the moment that the officer was correct in her interpretation of the provisions of Policies ENV1 and ENV1A (which, of course, we don't) then this supplementary guidance certainly amounts to a material consideration which would properly have allowed her to depart from them.

Key observations in the Chief Planner's letter are these:

"Scottish Planning Policy promotes a positive approach to rural housing. It states that development plans should support more opportunities for small scale housing development in all rural areas, including housing which is linked to businesses. It does not promote the use of occupancy restrictions"

Ours is, of course, a small-scale development and it is linked to a business. The letter continues:

"The Scottish Government believes that a vibrant populated countryside is a desirable objective and that new housing to realise this aim should be well sited and designed, and should not have adverse environmental effects that cannot be readily mitigated."

As has been established in the comparable applications cited above, granting the permission we seek would have absolutely no “adverse environmental effects” at all.

The focus on siting and design is emphasised in this advice:

“...authorities should seek to support suitable investment in additional *provision* [my italics], focussing on the issues of location, siting, design and environmental impact rather than seeking to place restrictions on who occupies the housing.”

Since the case officer was so determined to regard our application as one regarding “provision” of a new house, she should properly have taken this advice into account, especially as the house is one of a group which was designed specifically to harmonise in form, scale, materials and hierarchy with the listed group to which they relate.

Because we are more interested in architecture, conservation and the environment than business, this has always been a paramount consideration. We could have expanded, as other have done, in a way which would have destroyed the domestic nature of the property and, in the process, damaged an important part of the island’s historic and architectural heritage. Instead, we have always regarded it as essential not to spoil or compromise in any way the very special sense of place which prevails here. The principal architectural features of the new buildings were modelled precisely on the originals, therefore. Sensitive siting and design were crucial considerations - indeed the houses have often been mistaken for a conversion of old steadings because of this. They are built on a piece of land which had been built on in the past, which had turned into “scrub” and which was of no practical use for farming because of its isolation from the rest of the farm and proximity to our other buildings. Being completely screened by dense belts of mature trees, the houses cannot even be seen from the surrounding countryside and are of a design which has frequently been praised.

The Chief Planner’s letter adds emphasis to Circular 4/2009 which also lists “the design of the proposed development and its relationship to its surroundings” as an example of a material consideration. At the time of the original development application, the then planning officer praised it with the words, “It’s good to see someone on Arran doing something good for a change.”

A thoughtful and sensitive application of all these more constructive national policy principles to consideration of our request would suggest much more than the simple fact that it can be approved ‘by default’, in the absence of any policy to prevent it; it represents a positive achievement in meeting these national aspirations.

### ***Proposed new Local Development Plan***

Consideration of future provisions in the proposed new Local Development Plan is also held to be legitimate. In her first letter, dated 4<sup>th</sup> April last year, the case officer suggested that in the proposed Plan “the restrictions to retain tourism uses are likely to be required where this has formed the justification for tourism in the countryside.” A

key point she didn't mention (and it is perhaps especially significant that she didn't) is that the draft plan included the provision to do this "by legal means if necessary". These unspecified legal means have not yet been enacted. Nor has the plan. And this policy was clearly intended to apply to all future approvals. It is demonstrably unfair to project into the future to summon up "likely" but not certain constraints, which have not yet been instituted (and may never be), in order to impose them in advance to justify a refusal now. There was, of course, no mention of this at any time in the consideration of any of the other applications I have referred to, which had also been approved for tourism purposes originally.

Since policies do not normally exist for their own sake, but to serve a particular purpose, it is appropriate to ask what aims and objectives the possible new policy would serve and what prompted it, so we can assess whether applying it in our case now would be reasonable. No specific answer is given in the modified draft plan. But radical change is proposed for our glen and we believe a clue might be found in this. If the modified plan is approved, a huge new portion of the glen will be allocated for development, where new building will be permissible, in fact right up to the boundary of our grounds, in the form of a massive new extension to the timeshare development at the Auchrannie Hotel. This one development alone more than doubles the area of the existing Auchrannie estate and would cover an area many, many times greater than that of our tiny group. In fact, it would appear that the most southerly new block would be nearer to our house than to the original Auchrannie House!

In marked contrast to our development, which is clearly linked spatially, visually and architecturally to the original buildings, and which is situated on ground which had previously been built on, as well as being entirely screened from the surrounding countryside by belts of mature trees, all this Auchrannie development will be on open countryside which has been farmed for generations. The land is currently unspoilt pasture, in the most rural part of the glen, with sheep grazing on it – indeed it is unquestionably part of the countryside which forms a significant part of "the Arran Experience" the Local Plan aims to preserve. This enormous development will represent a major departure from the principles which form the foundation of the Local Plan and a radical (and, some would say, disastrous) transformation of the environment, changing it from wholly rural to a further manifestation of creeping suburbanisation, in a very significant reversal of the current policy of conservation and "protection of the countryside". Although the proposed Auchrannie development is described for promotional purposes as a series of "clachans," it will bear very little relationship to any clachan existing on the island and will be unrelated architecturally to any other built group in the glen visible from its site.

In fact, it is abundantly clear that this part of the proposed new development plan has been drawn up specifically to accommodate this proposed expansion and that many, if not all, of the environmental considerations which would normally militate against such a dramatic change in land use – and on such a large scale - have been put into abeyance to accommodate it. Because of this, it also seems very likely indeed that the possibility of placing restrictions on future changes of use for developments "originally approved for tourism purposes" was devised specifically with the Auchrannie development in mind - which makes it doubly inappropriate for the case officer to try to apply it to us before it has even been implemented.

In marked contrast to all this proposed new construction, our buildings have no impact whatsoever on the surrounding countryside or the character of the glen. They are practically invisible from the surrounding countryside for most of the year, being entirely surrounded by belts of mature trees. Where they can be seen (which is only close up, from within our grounds), they are unmistakably related in form and function to the listed historic domestic property which is at the heart of the group. This being so, it would be entirely unreasonable to attempt to justify refusal of our request on the basis of this not yet adopted and not yet fully formed policy, devised to respond to a wholly different set of circumstances and a radically different man-made environment.

### ***Public v Private Interest***

Scottish Planning Policy 1 makes a further significant point under the heading “Working Together” (paragraph 72) :

“A fair system is one that is consistent, open and accessible with decisions taken in the wider community interest, while respecting the rights of individuals”

The Review Body will be aware that we do not believe this expectation has been achieved to date. But it is acknowledged that we are not independent arbiters. Since the officers here have granted many applications which are comparable to ours, and have determined in those cases that there will be no significant change in any area of their concern, and no effect whatsoever on the environment, the only remaining possibility is that in our case, they must have decided that approval of our application would in some other way be contrary to the public interest. If so, they should be aware of this:

“In distinguishing between public and private interest, the basic question is whether the proposal would unacceptably affect the amenity and existing use of land and buildings which ought to be protected in the public interest”

[SSP1]

It has been established beyond any reasonable doubt that, judged by the criteria which Council officers have applied in other cases, there would be no significant effect at all on “the amenity and existing use of land and buildings which ought to be protected in the public interest.” If they do believe that the public good would be harmed in some other way by approving our application, the officers have had ample opportunity over the last 18 months to specify clearly what they believe that harm to be. They have never done so.

What they might be thinking – and we can only speculate because they have never admitted to this – is that approval of our application might “set a precedent” which would not be in the public interest. Such a concern might be based on the “loophole” perception we referred to above. Perhaps this is what the case officer had in her mind when she wrote to reject our written application in April last year and gave this as the ‘reason’ [Document 6]:

“it is considered that this restricted use should be adhered to as it originally formed the basis of the justification for the proposal.”

If so, then she has misdirected herself again because, first, every application should be judged on its merits, as the government’s guide cited above requires, second, in considering a Section 42 Application “the Council should take into account any relevant changed planning circumstances”[M.S.Biggart Baillie LLB, above], and, third, because Scottish Planning Policy 1 requires that

“where planning permission is refused...it is not enough to indicate that the proposal is contrary to the provisions of a development plan. Clear and intelligible reasons should be given...” [SSP1]

The case officer’s ‘explanation’ does not amount to “clear and intelligible” reasoning with regard to the situation now. It is simply a statement of the conclusion she has come to. The term “it is considered”, though weighty and formal-sounding, means nothing more than “I think” or “I have decided”. And the decision as a whole fails to take into account anything which might have changed in the intervening years. It fails to give a convincing, “clear and intelligible” reason why the situation now is not being addressed.

The logical absurdity of such an ‘explanation’ is that no change of use application can ever be approved for any building where the justification now differs from the justification originally: “No you cannot convert this redundant mill into flats; it is considered that the industrial use should be adhered to as it originally formed the basis of the justification for the proposal”.

This is a nonsensical and ultimately irresponsible approach to planning and to conservation. It makes no allowance for the point expressed in the very first sentence of the Local Plan: “Planning is about change”. Moreover, if we refer again to The Scottish Government’s “Practical guide for public authorities in Scotland to decision-making and the law” we see that it draws attention to the principles of administrative law, one of which includes “following a proper reasoning process and so coming to a reasonable conclusion.” It would be hard to defend the case officer’s rejection on the basis of such a criterion.

## **VII. THE WAY FORWARD OR ANOTHER WRONG TURN?**

### ***A change of mind***

In the event, the case officer’s decision was not permanent. Following the discussions with our local councillor, the officer eventually changed her mind. We think she accepted that the aims and objectives which underlie Policy BE5 “Listed Building Restoration” could be regarded as relevant to our application. It states that “ To facilitate the restoration of an exceptional listed building, limited new build enabling development shall accord with the Local Plan subject to [certain] criteria”.

We need to comment on this in case the Review Body comes to a similar conclusion.

### ***Aims and objectives of Policy BE5***

The objective is clearly the restoration of listed buildings and the means by which this is to be achieved is by raising capital from the construction and sale of new buildings. One of the criteria is that “the developer can demonstrate that sufficient financial assistance is not available from any other source.” We fulfil that requirement. A second requirement is for

“the submission of a detailed business plan for the overall development showing how funds raised from the sale of the enabling development are to be channelled into the conservation of the building to which the development relates to secure its ongoing use.”

This is perfectly reasonable. The Policy then states:

“Any permitted enabling development will be subject to a Section 75 Agreement regarding *the phasing of construction and other design and layout matters*” [my italics].”

### ***Problems with a new Section 75 Agreement***

Unfortunately, the case officer has conflated the last two conditions and required a section 75 Agreement covering not construction, design and layout (which would be superfluous, since the development has already been completed) but incorporating the business plan. She seems to have acted as if our proposal complied literally with Policy BE5 rather than simply conforming retrospectively to its evident aims and philosophy. Her draft agreement therefore incorporates requirements more appropriate to an original application for a new enabling development than to our current request. Her proposal has not been properly thought through, and so the draft agreement she proposed has a number of unacceptable consequences.

First, it requires that the entire net proceeds from any sale will be spent on the listed building, and not on any other business expenses, although we had explained that this is what we needed. Also it requires that any expenditure on the listed building, other than that which is specified in the current business plan, and in that sequence, is to be subject to approval by the development control department, which sets up dreadful echoes of the “prior written approval” this application is all about. And it fails to acknowledge that any business plan must be flexible, balancing competing claims on capital as is appropriate at the time - and particularly so in the current economic circumstances. The effect of this is to set in stone not just the overall thrust of the plan, but every last detail of it, which is unrealistic.

Second – and this completely negates the whole process – the draft agreement includes the provision that if we or our successors fail to implement any of the obligations, the Council “shall be entitled to revoke the said planning permission in principle without compensation”. Although this may be no more than a formulaic

addition, it does mean that any potential purchaser is expected to accept a situation in which the Council can revoke permission for full time occupation as a dwelling house if *we* fail to carry out *our* obligations, none of which could be even started until after the completion of the sale to the third party. No solicitor worth his salt is going to allow his clients to accept such a condition, without requiring further undertakings to safeguard his clients' interests. Even then, the new householder could not confidently have peace of mind until we had completed all our obligations, which would take many months. The housing market is depressed enough without making a potential sale even more complicated. We have already missed two 'selling seasons' in consequence of the inordinate amount of time it has taken to settle this matter and we think it is unreasonable to exacerbate this situation even more.

We have since learnt also that one of the proposed conditions attached to the planning permission in principle creates a third problem. This condition would be :

“that prior to the occupation of the permanent dwelling house, hereby approved, the pot holes along the section of the private access road from the entrance gate to the cottage, shall be repaired and *thereafter maintained* [my italics], to the satisfaction of North Ayrshire Council, as Planning Authority”

We already do this, and have done for the last 21 years, as it is clearly in our interests and that of the business to do so. But we do not own the road. Responsibility for maintenance is shared with others who have a right of access, including the Forestry Commission, although we are the only party who ever do maintain the road. The frequency is determined by the weather and the extent to which the surface is affected by it, as well as the availability of contractors. Just as the Council has found it is not always practicable to maintain the public roads on the island to the satisfaction of the population as citizens and taxpayers, so there are times when we have to wait for the right combination of circumstances to carry out maintenance on the private road which leads to our home and business. Our intention would be that a purchaser would take on a share of that responsibility in return for a right of access, but, unlike the present situation, a literal interpretation of the proposed new Condition seems to mean that the Council would have a right to determine *at any time* whether or not *we* maintained the private road to *the Council's* satisfaction - otherwise the planning permission on which the new purchasers depend could be revoked. This is hardly practicable.

While it is acknowledged that the case officer's interest and area of expertise is limited to matters of town and country planning, the consequences in reality of the Agreement she has proposed would be to extend the remit of the development management department beyond that, into telling us how we can and cannot spend our own money and creating a fear in potential purchasers that if we don't do as we are told, they could suffer by the Council then revoking planning permission. Whilst the Agreement, in law, would be 'a real burden' on the property to be sold, the obligation to fulfil the requirements of that burden would apparently remain ours. Obviously this is not acceptable.

The case officer seems to have lost sight of the purpose of a Section 75 Agreement and she has certainly not given proper consideration to the terms or necessity of its various obligations.

Policy BE5 is designed to enable development to take place when and where it would not otherwise be approved and in those circumstances a planning obligation is appropriate. But that is not the situation we are in. The development has taken place already. It was approved because it met the requirements of the appropriate policy at the time. And ours is not a development application. What we wish to do is to sell one part of that development to raise capital to meet the operational needs of the business. We cannot do that as long as the occupancy restriction stands. Major repair to the listed building is a significant part of the need, but it is not the only one. Requiring us to spend all the proceeds of the sale on works to the listed building is neither appropriate nor necessary and so we will not readily agree to the ‘solution’ of one problem by its replacement with another.

Moreover, we have to ask why we alone should be obliged to sign a restrictive and ill-conceived Section 75 Agreement when others with comparable applications have not been obliged to sign any agreement at all and the “change of use” they sought has been granted without conditions. We start from the fact that “There is no specific policy that opposes change of use of holiday letting units to full time residential” but end with an obligation to seek the consent of the case officer or one of her colleagues for every penny of our own money we spend on our own property! This is patently absurd.

## **VIII.**

### **SUMMARY**

We have demonstrated here that there is no specific policy obstacle in the adopted Local Plan to the granting of the permission we seek and that, therefore, it does not contravene the provisions of the Local Plan. In this case, according to the law, it should be approved, unless there are material considerations to prevent that.

We have highlighted other cases in which approval has been given for the occupation of other letting houses as full time dwellings, on the same policy basis, to illustrate the point that granting us the permission we seek would be consistent with the treatment of other comparable applications locally over a period of many years, whereas refusal would not, and have observed that planning authorities have an obligation to act with consistency unless there is specific justification for treating this application differently.

We have argued that the case officer’s alleged justification for refusal is based on misinterpretation of the key policy on which she relies. She has failed to identify and take proper account of material considerations which would support our application. And we have indicated other areas where we believe officers have misdirected themselves, both in the interpretation of local plan policy and in failing to follow the advice given in the Scottish Government’s guide to decision making, citing specific examples in support.

We have established, on the basis of the judgements made and criteria adopted, by council officers in other applications, that there would be no negative effect

whatsoever on environment or amenity by lifting the occupancy restriction, as we request.

We have drawn attention to the fact that at no point anywhere in the last 18 months has any officer given any indication of any other possible harm to the public interest by granting the application, in spite of countless opportunities to do so, and have concluded, therefore, that there would be none.

We have suggested that Condition 7 was incorrectly drafted, if measured against the provisions of the Use Classes Order and the expectations enshrined in several Scottish Government policy documents. We have also argued that it is both unreasonable and *ultra vires* in some of its provisions. We conclude, therefore, that Condition 7 is so defective that it should not be allowed to stand without modification.

We have cited several National Policies as material considerations in the assessment of our case and have again drawn attention to the supplementary planning guidance from the Chief Planner for Scotland that the Scottish Government does not support occupancy restrictions. In doing so we have asserted that this is a significant, pertinent and legitimate material consideration, which should not be dismissed as “just one man’s opinion,” but which should be given appropriate weight and due consideration, the effect of which would be to ensure our application is approved.

In summary, we have shown that there is no legitimate Local Plan Policy reason why our request should be refused and every reason, founded in National Planning Policy, why it should. The most efficient and effective way to do this is to strike out Condition 7 altogether and this we ask to Review Body to do.

## **IX.** **CONCLUSION**

The Local Plan is aspirational. It does not exist for its own sake. It seeks to achieve goals by establishing a framework for development, with a strong conservation emphasis. Its purpose is not only to restrict, but also to enable. Its policies are predicated on a standard route and sequence, but it cannot account for every eventuality, because the Plan can propose, but it cannot necessarily “deliver”. Changing circumstances and different routes can lead to outcomes which had not been foreseen, but which nonetheless amount to fulfilment of some or all of the plan’s aims and objectives.

What we now have at Kilmichael does just that. It is the result of 21 years of hard work, conservation and development, in a process which was not planned in detail at the outset, but which has evolved as funds and opportunities became available. At all times, the overriding concern has been the conservation and enhancement of a special place. We are confident that any independent observer will see that everything we have done here is in harmony with the local plan’s aspirations regarding protection and enhancement of the “Arran Experience” and has, in fact, been held up as a model example of this. The central question must be whether lifting the occupancy restriction would change any of this and the answer must be no.

The difficulty for the Development Management Department seems to be that redesignating one of our self-catering cottages for full-time occupation allows the house to be viewed as being in the “wrong” place – not “wrong” because it is in any way “inappropriate”, but because the place had not been previously identified by the authority as a housing development site. Had the site been so identified (which it could have been), and the development taken exactly the same form as it has now, then it would have been possible to regard it as a model development – just as the then planning officer did seven years ago.

It is also conceivable that a better development has been achieved through the evolutionary route, than if a standard path had been followed; there is no other example on the island of a small-scale new-build development which so significantly subordinates commercial considerations to concern for the conservation of a listed building and its environs. The accommodation provided in these houses is exceptionally spacious and of a very high specification – in many respects, in fact, superior to the “mansion house” to which they relate. A housing developer would have wished to emphasise this in order to maximise profitability and would certainly have wanted to market high specification properties as “detached”- but the applicants are not housing developers and have at all times wished to retain an appropriate sense of the architectural hierarchy of buildings on the site, to reinforce the historic sense of place. The original planning officer said “We do not want four bungalows in a field” and neither did we, so we have carefully designed them to be “subordinate” to the main house: internally they are spacious modern houses, but externally they look like estate workers’ cottages or a stable block conversion. What we have, therefore, is a fulfilment of the local plan’s aims and objectives regarding sensitive housing development, but achieved via a different route from the one projected, because the houses were always intended to be for holiday letting purposes.

As it stands, what exists here is a development which is in many respects wholly in accord with current Scottish Planning Policy. It has no negative effect on the surrounding countryside (from which it is barely visible); it represents a positive improvement to the immediate environment; it makes productive use of brownfield land; it respects its historic setting; it subordinates opportunities for commercial gain to the interests of conservation of the built and natural heritage, and thereby successfully balances the competing claims of conservation and development. In any attempt to determine whether “the public interest” would be harmed by granting the application, not a single concern has been identified.

Why, then, would you not give the approval sought? Doing so can do no harm, but approval can lead to an awful lot of good.

## PICTURES

1. Clock tower of Bluebird Cottage from the gardens of Kilmichael House.
2. View to the south-west, showing how the cottages are completely screened from the rest of the countryside to the south by dense growth of mature trees
3. Back view of the cottages before construction of the second pair, showing how they are screened from the countryside to the east by dense mature hardwood forest, which will not be felled. Bluebird Cottage is on the right of the picture. This exposed wide-angle view is no longer visible now the group has been completed.
4. View of the cottage site from the road on the west, showing that they are almost completely invisible from the surrounding countryside for most of the year, owing to the dense screen provided by two belts of mature hardwood trees, one on each bank of the burn.
5. A small gap in the belt of trees during construction of the second pair of cottages, revealing just one end, and showing how secluded and well-screened the site is.
6. View from an upstairs back window of Kilmichael House, showing how the new buildings fit neatly into the original group. Only the clock tower and roof ridge can be seen. Note the belt of mature trees enveloping the site in the background.
7. Close-up view, from the private drive, showing the relationship between the cottages and the original stable conversion.
8. Winter view, taken from the field on the hillside to the front of the house, showing how the cottages form an “organic” extension to the original group.
9. The same view in the summer rain.
10. A closer summer view, just about revealing the design relationship between the listed Kilmichael House and the new cottages: same roof profile, same white walls and sash windows with painted bands. White clock tower echoes the projection of white chimneys above the roof, while suggesting an agricultural function, appropriate to “outbuildings” behind the main house.
11. Finch and Bluebird Cottages. This single building contains a pair of two-bedroom houses of very high specification: all bedrooms are larger than standard, all have their own bathroom en suite, and each house has an extra cloakroom, a fully fitted kitchen and a particularly spacious sitting-dining room. The picture shows how architectural design considerations have played down any sense of what an estate agent would call “luxury” or “executive” in order to ensure that the building fits modestly and appropriately into the built group.





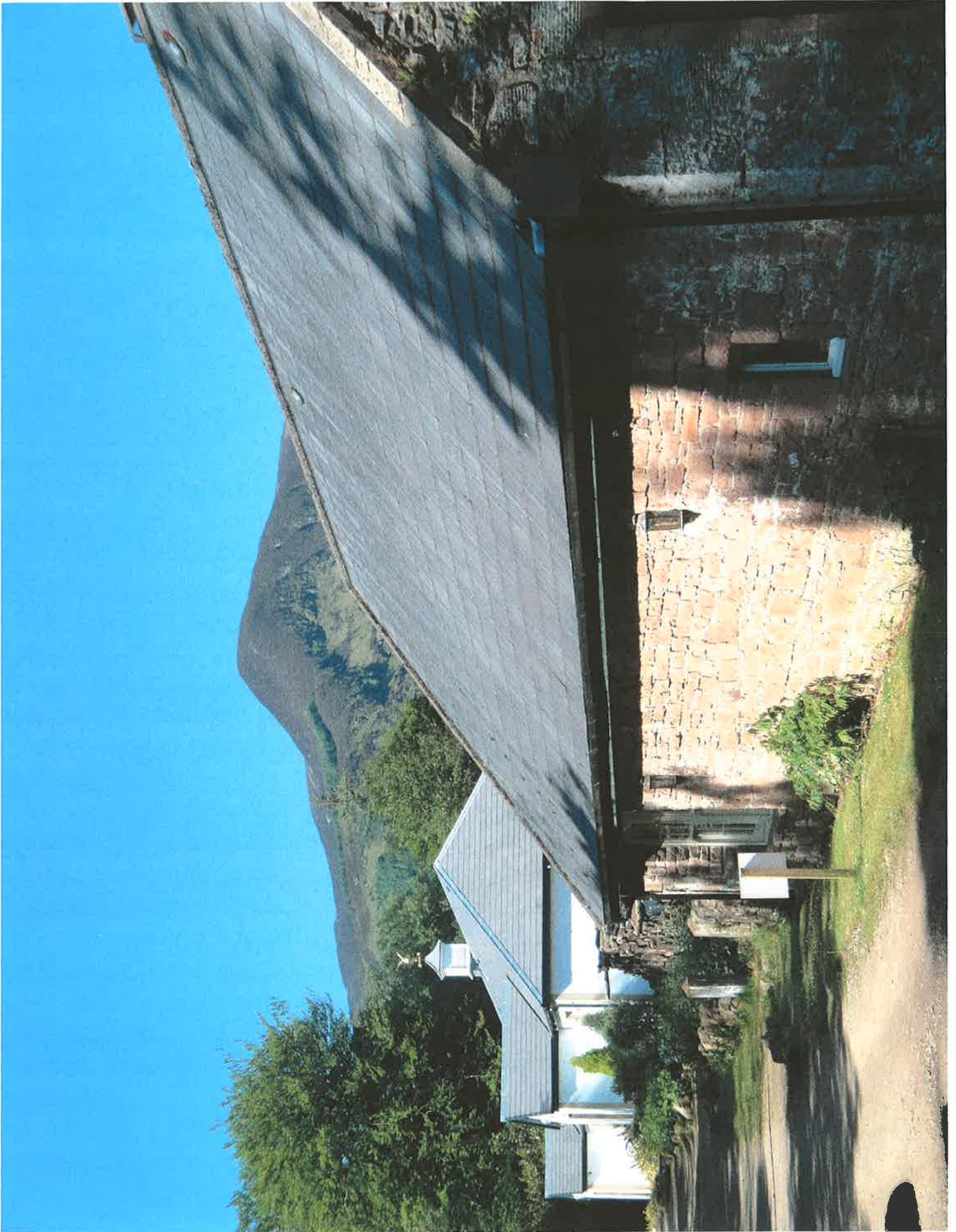


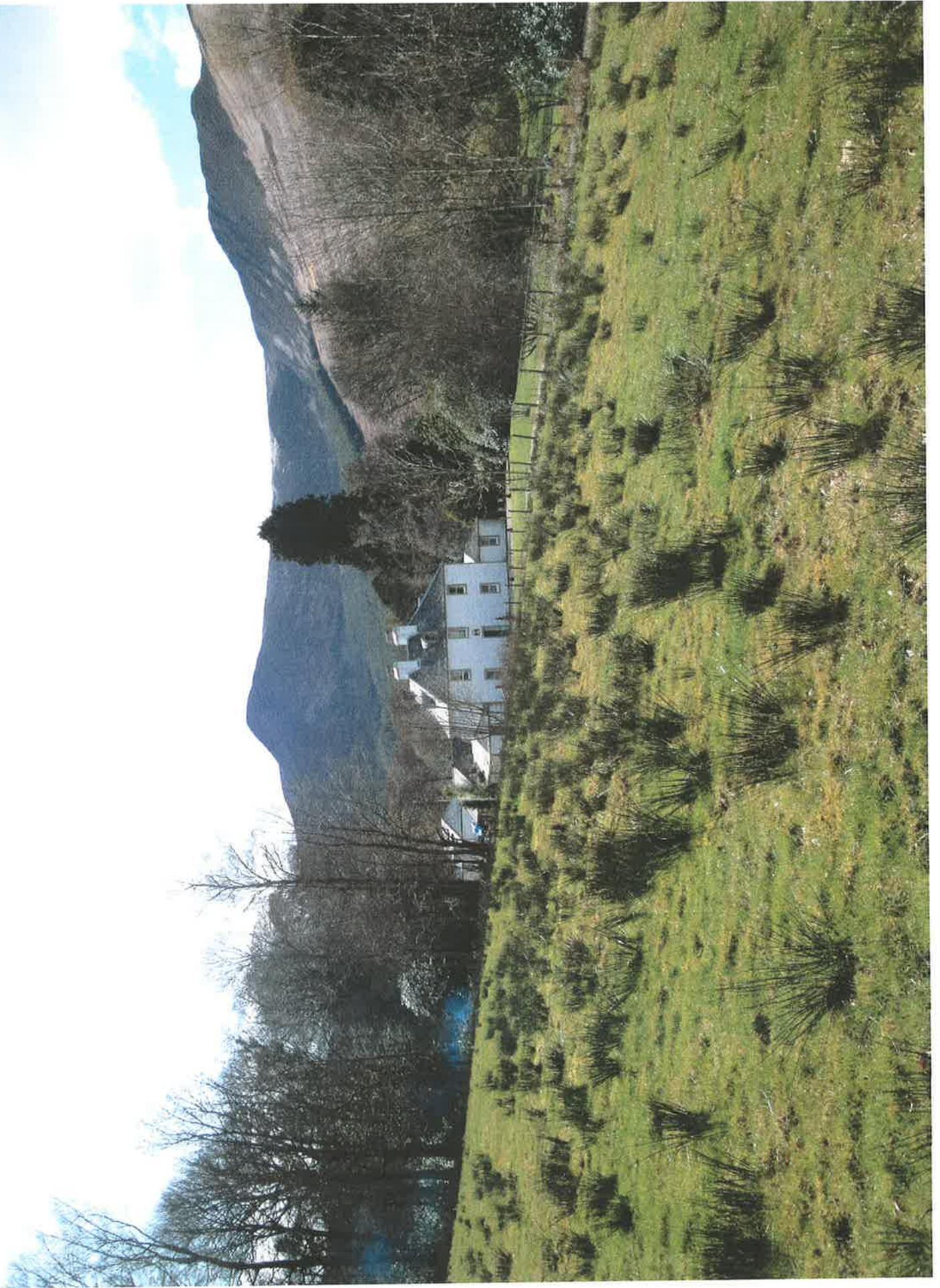


















## **Application 12/00202/PP**

### **List of accompanying documents**

1. Letter from the applicants, dated Friday June 17, 2005, addressed to the Chief Development Control Officer, declining to participate in a Section 75 Agreement (No reply received)
2. Report of handling for our application 05/00248/PP, noting that “the proposal would result in an additional four houses in the countryside” and that “the applicant is willing to accept a condition to restrict their occupancy.”
3. Notice, dated 1 July 2005, of conditional planning permission N/05/00248/PP for the original development application.
4. Copies of approved building warrant plans, showing location, block, site, and elevation.
5. Letter from the applicants, dated 16<sup>th</sup> March 2011, applying for the “prior written approval” which Condition 7 requires.
6. Reply, dated 4<sup>th</sup> April 2011, from the case officer, Ms J Hanna, indicating refusal, principally on the grounds of non-compliance with Policy ENV1
7. Letter from the applicants, dated 21<sup>st</sup> April 2011, quoting Scottish Planning Policy 1 and other material considerations in further support of the request.
8. Reply, dated 12 May 2011, from the case officer, reiterating her view regarding the central significance of Policy ENV1 and asserting that comparable applications to which we had referred had been considered under Policy ENV1A. Also covered: departmental view regarding other buildings on the site.
9. Letter from the applicants, dated June 8<sup>th</sup> 2011, requesting the officer to take a more fully rounded approach to the application, focusing on policy outcomes and questioning her interpretation of Policy ENV1. The letter accompanied a step-by-step consideration of the request, following the procedure outlined in Circular 4/2009 and the relevant House of Lords judgement.
10. E-mail, dated 25<sup>th</sup> July 2011, from the applicants to the case officer, requesting a reply to the letter sent six weeks previously.
11. Reply, dated 20 July 2011, but not received until 26<sup>th</sup>, from the case officer, responding to the letter of June 8<sup>th</sup>. In essence, simply a re-iteration of what she had said before, with no evidence of any careful assessment of the material considerations we had raised or any acknowledgement of our observations regarding what we believe to be her misinterpretation of Policy ENV1.

12. E-mail message from the applicants, dated 26 July 2011, to the case officer, acknowledging receipt of her letter, dated 20 July, and expressing frustration that it “does not amount to anything more than a further repetition of the point you have made before regarding Policy ENV1. There is no convincing indication that any meaningful consideration has been given to any of the matters I raised”
13. Response, dated 8 August 2011, from the case officer, asserting that “the material considerations you have stated within all your correspondence have been noted and considered” but that “these would not alter the fact that the proposal would be contrary to the provisions of the adopted Local Plan and it is considered that the material considerations would not out weigh the provisions of the Local Plan.”
14. Letter, dated August 17<sup>th</sup> 2011, from the applicants and marked “For the personal attention of the Development Management Officer,” expressing concern that the application was being wrongly treated as a primary development application and thus differently from comparable applications which had been approved. An explanation was requested.
15. Reply, dated 29 August 2011, from the Chief Development Management Officer, reiterating the department’s position that our request “has no justification on planning grounds,” referring again to Policy ENV1 as controlling the ”provision” of new houses in the countryside and excluding our properties from compliance with Policy ENV1A because they are “recent additions”.
16. Letter from the applicants to the Chief Development Management Officer, dated September 5<sup>th</sup> 2011, asserting that his reply “ does not properly clarify the planning situation any more than previous correspondence...because it fails to respond to clearly expressed concerns about key issues and contains a number of factually incorrect assertions in matters which are germane to your justification of your department’s decisions.” Detailed analysis in support.
17. Reply from Chief Development Management Officer, dated October 5<sup>th</sup> 2011, responding in part to some of our assertions, but indicating that an application for planning permission would be required if we wished to obtain a formal opinion. He sought to bring the correspondence to an end.
18. Letter from the applicants to the Chief Development Management Officer, dated October 11<sup>th</sup> 2011, indicating that they had been under the misapprehension that, in seeking the “prior written approval” to which Condition 7 refers, they were in fact *complying* with the Condition, whereas it seems the department considered the proposal to be one seeking its variation. Request for clarification as to which type of formal application was required.
19. Letter from the case officer, dated 17 October 2011 confirming that the application would be to amend or delete the condition.
20. Letter from the Chief Planner for Scotland, addressed to Heads of Planning, dated 4 November 2011, regarding occupancy restrictions and rural housing.

21. Reports of handling:

- (a) Application 04/0124/PP for “change of use of letting unit to full time residential”
- (b) Application 10/00791/PP for “change of use from holiday letting cottage to permanent dwellinghouse”
- (c) Application 12/00028/PP for “change of use of 2 self catering houses and 2 self catering flats to 4 domestic residences”



## KILMICHAEL COUNTRY HOUSE HOTEL

Friday, June 17, 2005

Mr James Miller  
Chief Development Control Officer  
North Ayrshire Council  
Cunninghame House  
Irvine KA12 8EE

Dear Sir,

**Planning Application 05/00248/PP**  
**Erection of 4 semi-detached self-catering cottages, formation of roadway and car parking. Site to the west of Kilmichael House, Brodick, Isle of Arran**

I refer to your letter of 19<sup>th</sup> May, addressed to our agent, Mr D Schofield, and to my subsequent telephone conversation with Mr Hume. Having given the matter very careful consideration, I would be grateful for your comments on some of the matters arising from your requirement.

### 1. Conditions of planning consent

(i) We have sought planning permission in an application which, so far as we can see, accords fully with the Council's development plans. We expect any grant of planning permission to be conditional, with a restriction on the use of the property to self-catering only, as has been the case with the previous two cottages we built. We are puzzled, however, as to how circumstances have changed sufficient to bring about this new requirement for the conditions to be enshrined in the title and would be pleased to be directed to the policy statement which refers to these.

(ii) For clarification, would you please confirm whether or not you are saying that unless we submit to this agreement, planning permission will not be granted?

(iii) If, indeed, you propose that we should be refused planning permission unless we agree to the inclusion of these real burdens in the title of the property, I would make the following observations and would be grateful for your comments.

**Past Winner of *The Taste of Scotland* Country House Hotel of the Year Award**  
**Scottish Tourist Board: 5 Stars      AA: A Red Star "Premier Collection" Hotel**

We accept, of course, that section 75 of the 1997 Act to which you refer *authorises* the authority to “enter into an agreement with any person interested in land...for the purpose of restricting or regulating the development or use of the land” but note that the Act does not specifically authorise the authority to *impose* such an agreement as a condition of the granting of planning permission. The conventional interpretation of the term implies that such an agreement is willingly entered into and confers benefit (or compensation for loss) on both parties. We are at a loss to see how this would be the case here.

## 2. Duration of Conditions

(i) Your requirement for the conditions to be enshrined in title to the property implies permanence, with no account taken of changing circumstances in the future, yet the Local Plan which provides the framework for decision making in relation to the application, has, for all intents and purposes, an “expiry” date: it will be subject to review in 2009. This seems to us to be inequitable.

(ii) The fixed duration of local plans acknowledges that nothing is permanent - indeed the first sentence in the introduction to the Local Plan is “Planning is about change”. As a result of the review, the Council’s policies could well change, both in the light of regional and national policies as well as local circumstances then prevailing – just as they have since the previous Plan was made. For example, in the 15 years we have been here, 6 of the 11 hotels and guest houses along the front in Brodick have closed and different types of land use have ensued. We do not think the relevant Local Plans made specific provision for these changes, which have included the demolition of one hotel for the construction of a supermarket, the subsequent demolition of a second for extension of the supermarket carpark, the change of use of a third for conversion to a health centre, the closure of a fourth to provide staff accommodation for the largest hotel, the reversion of a fifth to use as a private house and the sixth has been through two changes: first to office space and now, apparently, to a private house. All changes have been authorised by the Council after careful consideration of conditions prevailing at the time the applications for planning consent were made. We ask to be treated no differently.

(iii) Our intention is to operate the new buildings as self-catering cottages. That is why we wish to build them and that is exactly what we have applied for. We have no intention whatsoever of using them for any other purpose. But we cannot know what circumstances will prevail in, say, 20 years time any more than the Council can. The market in which we operate is subject to constant change: we have seen our own operation change dramatically from the time we bought it and customer expectations have changed radically, too: there has been a move in recent years to concentration of accommodation in one larger “resort” hotel with extensive leisure facilities and the market is particularly price-sensitive because of the influence of budget travel and lodge-style accommodation. While there is currently a high demand for self-catering accommodation, we do have to operate in a market in which there is an element of unbalanced competition: holiday-home owners who let their property do not pay VAT or corporation tax, for example, and can charge

less. We require flexibility to ensure continuity and, once again, it appears to us to be inequitable to have conditions imposed on us in perpetuity which we know have not been imposed on other self-catering units in other similar locations elsewhere on the island.

(iv) Let us imagine, for the sake of argument, that in 25 years' time we found that, because our advanced age meant we could not manage any longer in the main house, we wished to move into one of the cottages, so that we could stay in this environment we have created, with access to the gardens we have made. We would then expect to apply to the then authority (which, on past record, would in all probability not even be North Ayrshire Council!) for a relaxation of the restriction on use - to allow us to live in it all year round. It might even be that by that time the planning policies would *encourage* such a move. We cannot know and it seems, therefore, inappropriate for the Council to maintain its present requirement.

This gives rise to our third main concern:

### **3. Equity**

(i) We are uneasy at what seem to us to be inconsistencies in the way in which our applications are dealt with when compared with similar cases we know of.

For example, your department has always been most assiduous, taking a "belt-and-braces" approach, in ensuring that our applications are publicised widely (as they should be) but we were amazed recently to discover that our immediate neighbour had not only applied for but had received planning permission without our ever receiving a neighbour notification. Neither belt nor braces there!

Similarly, the licensing board has twice previously required us to apply for a new licence in connection with planning applications (which did not relate to the licensed premises), choosing to interpret the legislation in the tightest possible way, although it has not done so in the case of other similar operations not far away. This is not an approach which inspires confidence

Now we find we are required to accept restrictions *in perpetuity* which do not seem to have been imposed on other similar developments elsewhere on the island. Indeed, the Council has even given permission for the conversion of an existing restaurant/guest house into private houses in the countryside in a decision which, on first impression, seems to conflict with local plan policy and the current fear of what someone in the future *might* seek to do here.

(ii) In the light of all this, could you please refer us to the relevant Council policy statement on this matter and assure us that all your policies are consistently applied?

### **4. Development Context**

(i) There have been three guiding principles in all the development we have carried out on this site over the past fifteen years, which may not be obvious to

you, but should provide a certain reassurance: (a) restoration of the fabric, much of which was derelict when we bought it; (b) careful conservation of the architectural integrity of the building group and (c) maintenance of the domestic character of the main house.

(ii) There can be no doubt that we could have capitalised on our investment to a much greater degree by developing more intensively: we could have extended the main house (as other businesses on the island have done); we could have sought a higher density of development on the surrounding land (again following the precedent set by other island tourist businesses); and we could have pursued the idea of timeshare development on the fields between the house and Brodick, which we were told (by the then planning officer) would be sympathetically considered by the authority. But we believe this would have compromised the integrity of the natural and built environment of this part of the glen and have therefore restricted ourselves willingly by choosing not to develop in this way.

(iii) Architecturally, our current application accords fully with this approach. That is why the proposed units have something of the character of a stable block and are designed to harmonise with the rest of the group. All development here is intended to appear organic and forms an integral part of our overall plan to protect those parts of the natural and built environment which are in our stewardship. The greatest part of the land in our ownership will remain green, with both cultivated areas and natural woodland. This application for self-catering units for short-term holiday occupation is within this overall framework. We believe this meets all the relevant requirements of the authority as described in the Local Plan.

(iv) As a building control authority, you have more than once in the past required us to take account of what use some notional person in the future might make of the building we proposed to convert or erect, even where this bore no relation to the way we (as builders, owners and occupiers) applied to use them and do in fact use them. Most remarkably, in a previous application, you would not issue the building warrant until we had made separate (rather than communal) provision for a dustbin "in case [we] wish to sell the [self-catering cottage] as a private house in future"(sic). We had always been under the impression that the onus would in fact be on anybody in the future to apply for the appropriate permissions, and on the authority (as a regulatory body) to ensure that the relevant conditions were complied with. Apparently that is not the case. You wish us to agree to a real burden now (and in perpetuity) to guard against a hypothetical situation in the future. Again, this does not seem to us to be equitable.

(v) Your letter states that the Council requires an assurance that the premises will not be let or sold for non-holiday purposes. We can give you just such an assurance, as applicants, of our intentions. The current development is the latest stage in our long term investment in this property. Although we do not believe the Council has any right to enquire into our personal circumstances, we will tell you that it is intended as "a pension plan" to guarantee (as far as it is possible to guarantee anything) a long term income for our retirement and to produce the necessary funds to maintain the grounds and buildings to the current high standards even if we are no longer able to operate the hotel side of things. Everything here is subsidiary to the main house and we will always wish to

exercise control over the whole group and its grounds. In these circumstances, the premises will not be let or sold for non-holiday purposes.

(vii) We gather that this assurance is not sufficient for your purposes. Your letter asserts that "the only effective way" such an assurance can be provided is through the agreement you seek - in part, we have been told, because there are weaknesses in the monitoring of the system. This seems to us to be unsatisfactory. The planning system should be sufficiently robust to ensure that all uses are consistent with public policy prevailing at the time and if this is not so, then it is the duty of the Council to seek from Parliament the powers and from the Scottish Executive the resources it requires. We are hostile to the growing tendency of public authorities to push communal responsibilities onto the shoulders of individuals and will not willingly be a party to this.

The question, surely, is whether or not our application represents a suitable use for the land and accords with the current local plan - which, clearly, in both cases it does. The Council has the authority, under Sections 37(1) and 44 (2) of the Act to impose relevant conditions. We would prefer the Council to do this and we shall be grateful for your reply.

Yours faithfully

Geoffrey Botterill  
Partner

Application reference 05/00248/PP

This application proposes the erection of four semi detached cottages for self catering purposes on a site to the south west of Kilmichael Country House Hotel near Brodick.

The proposed buildings would have a linear form facing onto a garden area with parking to the rear. An arched pend access (for pedestrians) would lead from the private lane through the site. Each building would be single storey and one would have a clock tower feature on the centre of the roof. Each property would have two bedrooms, and external materials would consist of slate effect tiles, smooth rendered walls, and timber sliding sash and case windows. The site was wooded, but this has largely been cleared in recent months. Several mature trees would be retained, including a scots pine in the garden area of cottage 1.

The application site is located within the countryside as identified within the Adopted Local Plan. Kilmichael House operates as an hotel and there are presently two detached self catering properties at the rear of the House. The application site is located immediately to the south west of the self-catering cottages.

The application was subject to standard neighbour notification procedures and was advertised in the Arran Banner on 27th May as affecting the setting of a listed building (Kilmichael House is category B listed). No objections or representations were received.

The relevant policies from the adopted Isle of Arran Local Plan are TOU1 and TOU3.

Since the site is in a rural location, in terms of TOU1, proposals for tourist accommodation accord with the Local Plan subject to the provisions of criterion (c), which states that the development is ancillary to a proposal which accords with TOU3.

Policy TOU3 states that proposals for the development of tourist facilities shall accord with the Local Plan provided it can demonstrate that there is:

- (a) a site specific locational need,
- (b) social and/or economic benefit to the island
- (c) it is of a scale and character which is not detrimental to the amenity of the locality.

It is considered that the existence of Kilmichael House Hotel and its associated self-catering cottages provide sufficient justification in terms of site specific locational need.

Proposals of this type are likely to generate an economic benefit to the island, since the development should generate direct employment in terms of servicing and indirectly will support businesses on the island which are geared towards tourism. The applicant has pointed out that he has built up a hotel and self catering business from scratch during a period when many of the older hotels in the Brodick area have been demolished and against competition from the Auchrannie Spa development with its timeshare lodges.

The proposal has been designed with the architecture of Kilmichael House in mind, although it will not have any effect on the main setting of the hotel (which is the front lawn to the east and visible from the approach road). The site is well concealed by the Hotel, existing self-catering houses and woodland, all of which will minimise the effect on the amenity of the locality, which is heavily wooded. There is one residential property beyond the site but this is some distance away and there are groups of mature trees in the intervening land. It is not considered that the proposal would have an adverse effect on the setting of the listed building.

Whilst noting that the proposal would result in an additional four houses in the countryside, the applicant is willing to accept a condition to restrict their occupancy. He is not willing to enter into a legal agreement to tie the houses to the hotel business, since he considers that this will add unnecessary complications to the matter.

However, it is considered that a planning condition controlling occupancy would be sufficient in this instance.

West of Scotland Archaeology have advised that there may be some interest at this location and therefore recommend that a watching brief condition is attached.

Roads Services have no objections and have recommended that a series of intervisible passing places be provided along the length of the private road, all of which is within the control of the applicant. Furthermore, it is recommended that the depth of the parking bays at cottages 3 and 4 be increased by 3 metres to enable vehicles to manoeuvre. There is sufficient land available for this to be achieved.

Scottish Water advise that there are no public sewers or water supplies in this vicinity.

SEPA have not replied to the consultation request (sent 13th May 2005). However, standard conditions can be attached.

Accordingly, it is recommended that the application is granted, subject to conditions.



**NORTH AYRSHIRE  
COUNCIL**

IAN T. MACKAY : ASSISTANT CHIEF EXECUTIVE (LEGAL AND PROTECTIVE SERVICES)

No N/05/00248/PP

**CONDITIONAL PLANNING PERMISSION**

TOWN AND COUNTRY PLANNING (SCOTLAND) ACTS  
TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) (SCOTLAND) ORDERS

To : G A Botterill



With reference to your application received on 9 May 2005 for planning permission under the above mentioned Acts and Orders for :-

Erection of 4 no semi-detached self-catering cottages, formation of roadway and car parking

at Site To West Of  
Kilmichael Country House Hotel  
Brodict  
Isle Of Arran

North Ayrshire Council in exercise of their powers under the above-mentioned Acts and Orders hereby grant planning permission, in accordance with the plan(s) docquetted as relative hereto and the particulars given in the application, subject to the following conditions and associated reasons :-

- |           |    |   |
|-----------|----|---|
| Condition | 1. | That prior to the commencement of the development the applicant shall submit for the written approval of North Ayrshire Council as Planning Authority a detailed schedule and/or samples of the proposed external finishes to be used in the development.                 |
| Reason    | 1. | In the interest of the amenity of the area.   |
| Condition | 2. | That effluent disposal arrangements shall comply with the current code of practice BS6297:1983 to the satisfaction of North Ayrshire Council as planning authority.   |
| Reason    | 2. | To meet the requirements of Scottish Water and the Scottish Environment Protection Agency.  |
| Condition | 3. | That the proposed dwellinghouse shall be provided with an adequate and wholesome water supply, details of which shall be submitted for the written approval of North Ayrshire Council as Planning Authority prior to the commencement of the development.                 |
| Reason    | 3. | To meet the requirements of Scottish Water and the Scottish Environment Protection Agency.  |
| Condition | 4. | That the developer shall secure the implementation of an archaeological watching brief, to be carried out by an archaeological organisation acceptable to North Ayrshire Council as Planning Authority, during development work. The retained archaeological organisation |

shall be afforded access at all reasonable times and allowed to record and recover items of interest and finds. Terms of Reference for the watching brief will be supplied by West of Scotland Archaeology Service. The name of the archaeological organisation retained by the developer shall be given to North Ayrshire Council as Planning Authority in writing not less than 14 days before the development commences.

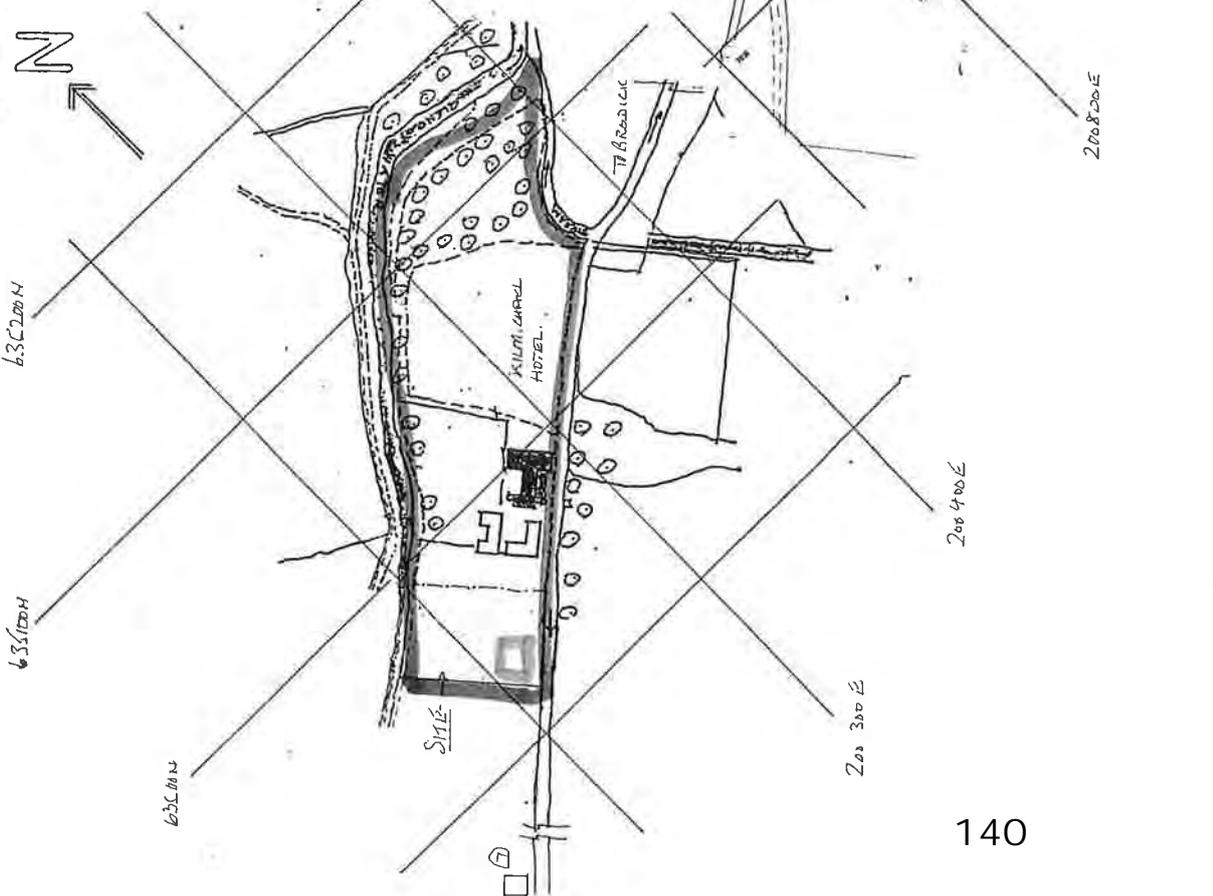
- |           |    |   |
|-----------|----|---|
| Reason    | 4. | In recognition of the archaeological significance of the site.  |
| Condition | 5. | Prior to the occupation of any of the self-catering cottages, a series of intervisible passing places shall be provided along the length of the access road leading to the site. Details of the position and dimensions of the passing places shall be submitted for the written approval of North Ayrshire Council as Planning Authority prior to their formation on site. |
| Reason    | 5. | To meet the requirements of North Ayrshire Council as Roads Authority.  |
| Condition | 6. | Notwithstanding the plans hereby approved, the parking spaces serving cottages 3 and 4 shall be formed with a depth of 7 metres.  |
| Reason    | 6. | To meet the requirements of North Ayrshire Council as Roads Authority.  |
| Condition | 7. | That the self-catering cottages shall be used only for holiday letting purposes and shall not be rented, sold or sub-let for any other purpose. For the avoidance of doubt, none of the cottages shall be occupied on a permanent basis without the prior written approval of North Ayrshire Council as Planning Authority.   |
| Reason    | 7. | To restrict the development to the terms of its justification/special need.   |

Dated this : 1 July 2005

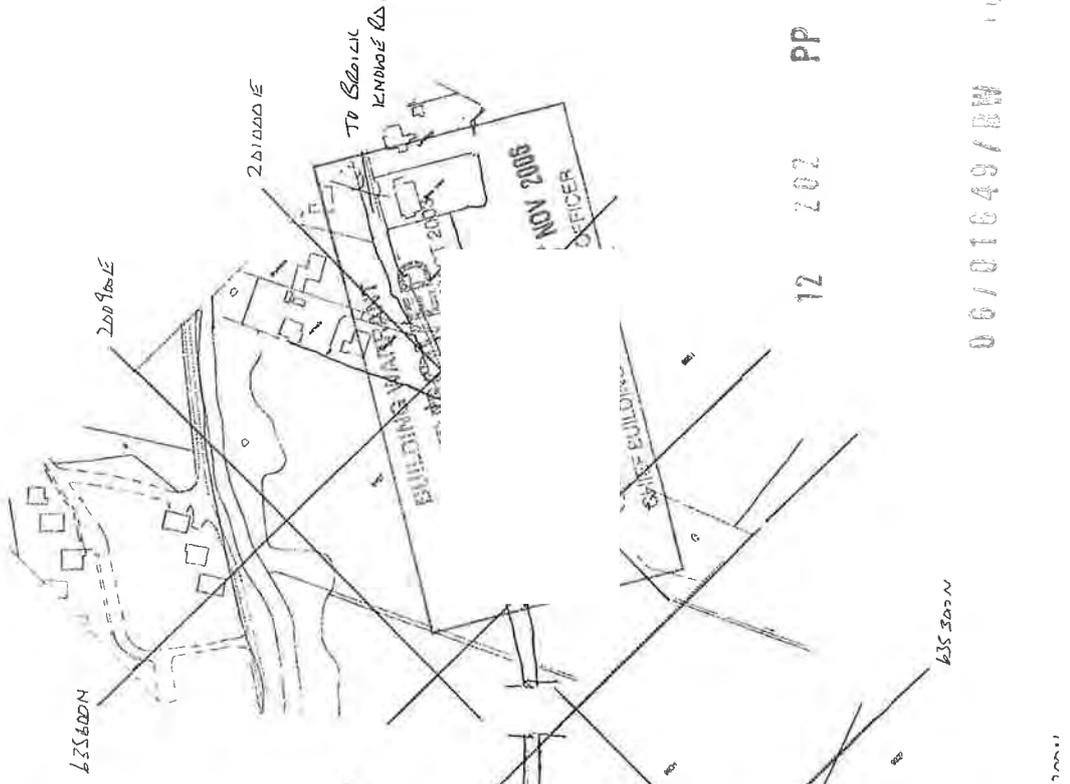


(See accompanying notes.) (The applicant's attention is particularly drawn to note 4 (limit of duration of planning permission))

<b>SCHOFIELD JOINERY &amp; BUILDING SERVICES</b> Craig Dhu, Lamlosh, Isle of Arran KA27 8LH Telephone/Fax: 01770 600276	
Job Title: PROPOSED SELF CATERING COTTAGES FOR MR G A BOTTERILL	Date: 7-03-05 Drg. No: K.M.H. +1
This is a true copy of the plan referred to in the application Signature: _____ date: 17/10/05	

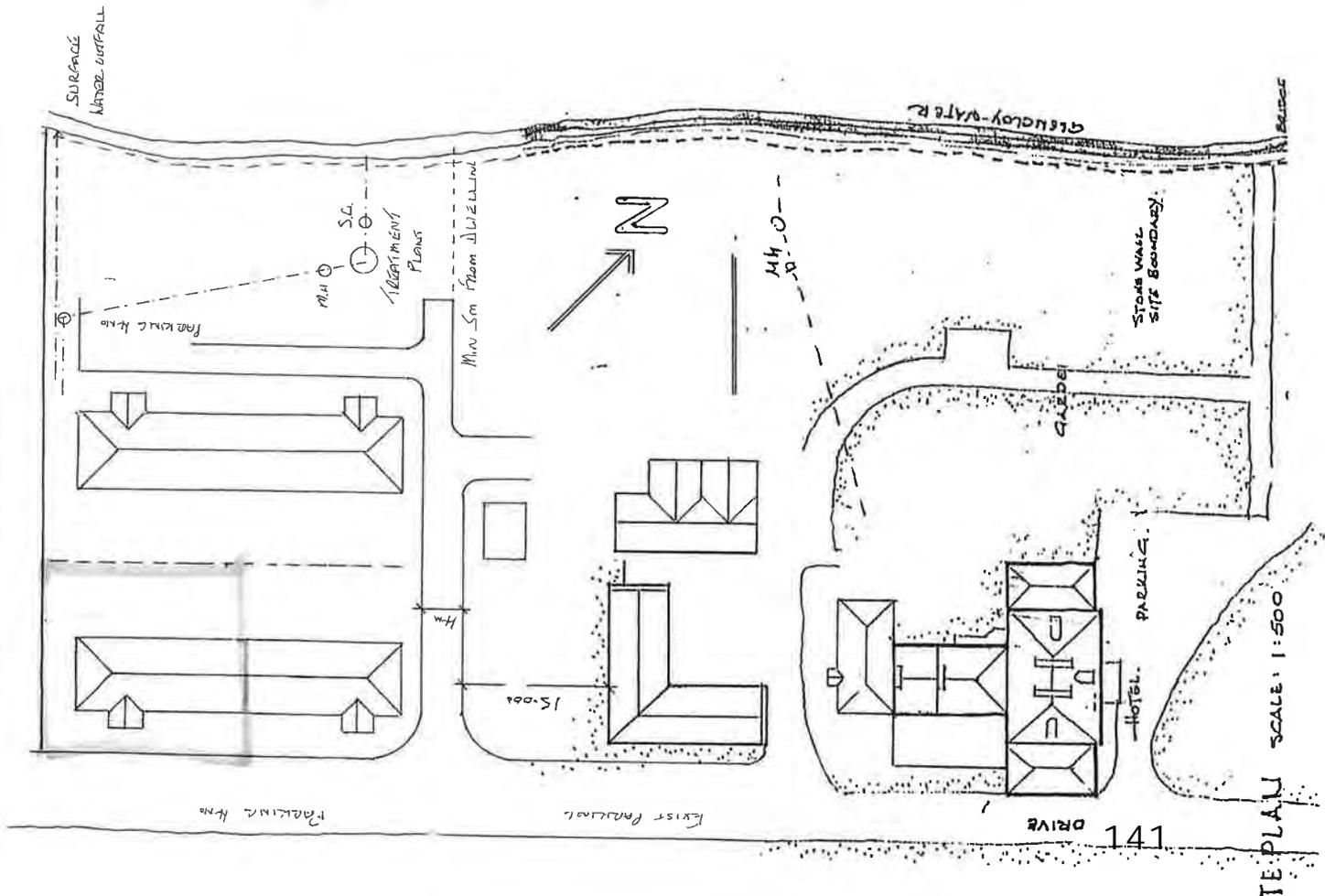


LOCATION PLAN 1:2500



- NEIGHBOUR NOTIFICATION
- (1) D. BOAL. EAST KNOW. BROODICK
  - (2) BOAL BOAL. EAST KNOW LODGE. BROODICK
  - (3) MINER BOAL. EAST KNOW BRIDGE. BROODICK
  - (4) A. DOBSON. WEST KNOW. BROODICK
  - (5) H. CORNW. GATE HOUSE. THE A'HEIL LODGE. BROODICK
  - (6) DAVID BOAL. GREENLEIGH. BROODICK
  - (7) A RICHMOND KILMICKEL. COTTAGE. BROODICK.

BLOCK PLAN 1:500



SURFACES  
 ELECTRICAL MAINS  
 WATER MAINS MIN 200LTS STORAGE  
 FUEL WATER TREATMENT PLANT + OUTFALL TO LWAN SEE NOTES  
 SURFACE WATER OUTFALL TO BURN  
 HEATING UNDERFLOOR FLOOR BOARDER LOWN STAIRS  
 HOT WATER UNVENTED TANK ELECTRICAL SEE NOTES

1.1.1 SITE CONSISTS OF EXISTING SHEDS TO BE JUNG OUT + REMOVED (SEE NOTES)  
 TREES / LARGE STONE FINE SURFACE ROCKS JUNG OUT + REMOVED  
 TREES SMALL SYCAMORE ETC JUNG OUT + REMOVED  
 ALL EXIST BENTS TO BE GRASSED OUT + REMOVED  
 FULLY BIOLOGICALLY TREATED  
 SEWAGE PLANT SIZE + POSITION TO BE AGREED WITH SEPA + BUILDING CONTROL PRIOR TO INSTALLATION ON SITE + INSTRUCTIONS.  
 S.C. + SAMPLING CHAMBER AS PER SEE NOTES  
 BLD STRUSS 3.8.3  
 LABEL AS PER BLD STRUSS 3.8.7



NOTE PENETRATION OF CEILING AS PER BLD STRUSS 3.1.1 SEE NOTES.  
 SURFACE WATER TO BLD STRUSS 3.5.3 3.6.4  
 GAS LIVING FLAME FIELDS TO BE INSTALLED BLD STRUSS 3.17.6 + 3.17.7 + 3.17.7  
 LONGER OF FUSE TO BLD STRUSS 3.19.3 + 3.19.4 / 3.18.4 + 3.18.6  
 + 3.20.4 + 3.20.10  
 SUPPLY OF AIR TO BLD STRUSS 3.21.4  
 UNVENTED HOT WATER STORAGE TO BLD STRUSS 4.9.1 + 4.9.2 + 4.9.3

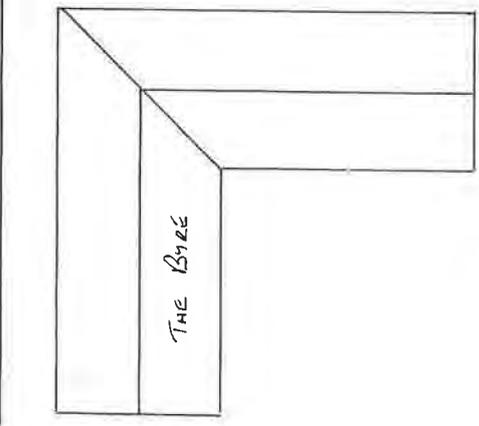
SETIC TANK to BS6297 1983 BSEN 12566-1:2000  
 Approx position of Treatment Tank & outfall to burn to be in accordance & comply with the current Code of Practice and BS6297 1983 & BSEN 12566-1:2000. Building studs 3.8.1 to 3.8.7 & SEPA approval. See SEPA letter dated ... 14-11-05. .... Consent to be submitted & agreed & compliance with this letter prior to installation on site.  
 SC=Sampling Chamber  
 DM=Disconnecting  
 Size Klargesster Bio Disc 7-18 people  
 Klargesster Air Flow 7-18 people

<b>SCHOFIELD JOINERY &amp; BUILDING SERVICES</b> Craig Dhu, Lamlash, Isle of Arran KA27 8LH Telephone/Fax: 01770 600276	
Job Title: PROPOSED SELF CATERING COTTAGES FOR MR G A BOTTERILL	Date 7-03-05
Drg. No: K.M.H.-2-	
This is a true copy of the plan referred to in the application	

141

EXIST ACCESS ROAD TO BE UPGRADED AS NECESSARY TO ACCOMMODATE VEHICLE AXLE LOAD 14 TONS WITH WIDTH 3.7m

EXISTING PEDESTAL ROAD.

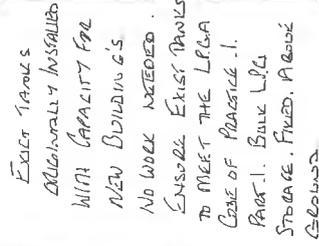


DROP OFF.



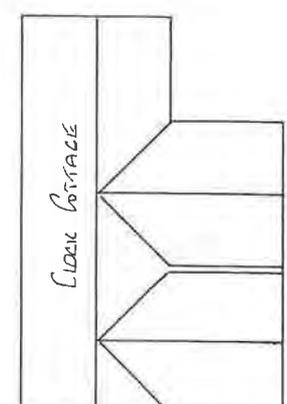
CHECK EXIST CAPACITY & APPROPRIATE INSURANCE COVER WITH TABLES AND STANDS 4111:2

EXIST TANKS ORIGINALLY INSTALLED WITH CAPACITY FOR NEW BUILDINGS. NO WORK NEEDED. ENSURE EXIST TANKS ARE DISTANCED TO MEET THE LPGA CODE OF PRACTICE 1. PART 1. BULK LPG STORAGE, FENCED, ABOVE GROUND.



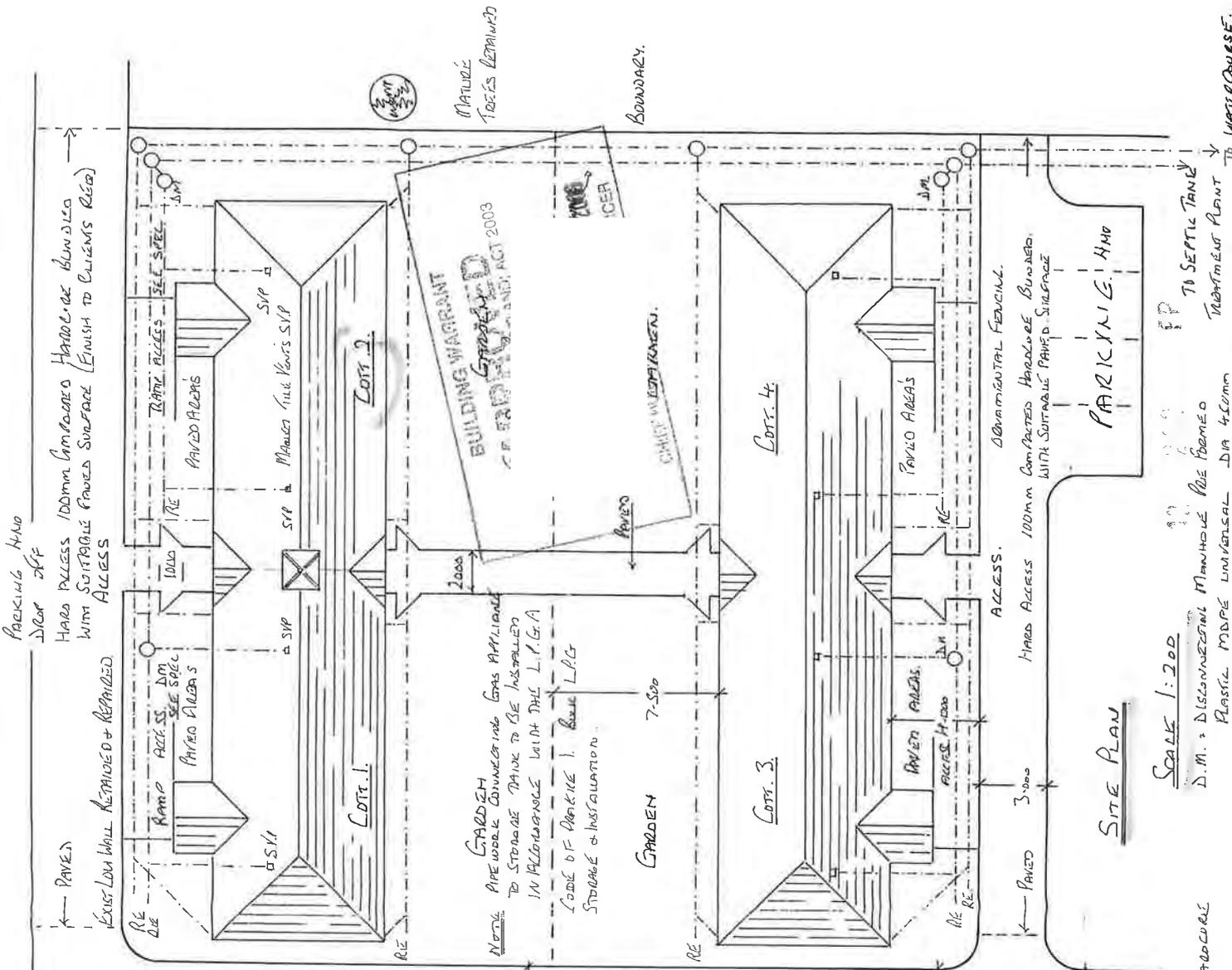
DROP OFF. LPG TANKER

EXISTING GARDENS



SWAGE WATERS - ROADS PANS & PARKING LANE TO FALL FOR DRAINAGE TO PERVIOUS AREA AS SIDE & AWAY FROM BUILDING AS NOTES 3-1:6

DISBURSE ACCESS CONSTRUCTED TO ACCOMMODATE VEHICLE AXLE LOAD 14 TONS. 200mm CONCRETE & BOUNDED IT ABOVE. EXIST ACCESS ROAD UPGRADED.



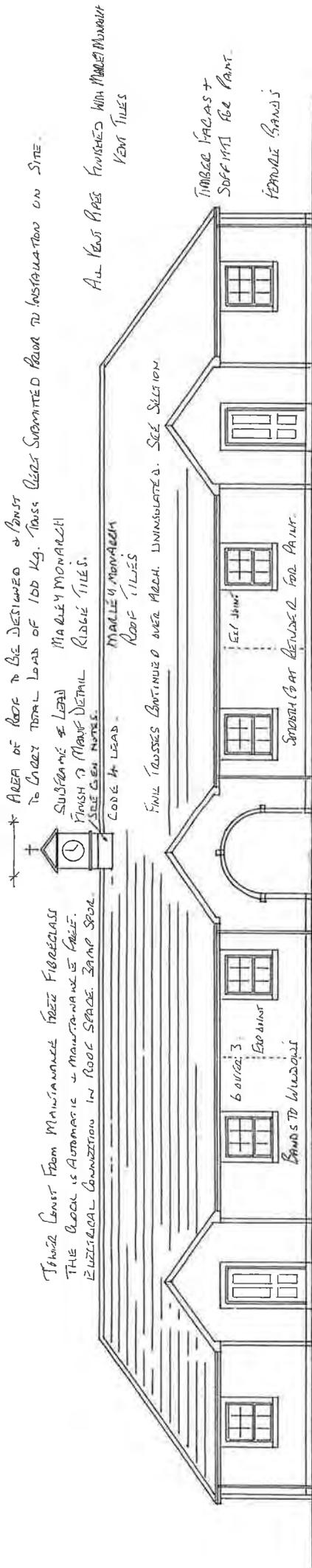
SCALE 1:200

D.M. - DISCONNECTION MAINHOLE FOR BOUNDED PLASTIC MDRPE UNIVERSAL DIA 40mm TO SEPTIC TANK TREATMENT PLANT TO WAREHOUSE.

**SCHOFIELD JOINERY & BUILDING SERVICES**  
 Craig Dhu, Lamlash, Isle of Arran KA27 8LH  
 Telephone/Fax: 01770 600276

Job Title: PROPOSED SELF CATERING COTTAGES FOR MR G A BOTTERILL	Date: 7-03-05
	Drg. No: K.M.H. - 3

This is a true copy of the plan referred to in the application  
 Signature: date: 17/10/05



FRONT ELEVATION SCALE 1:100

REAR ELEVATION SCALE 1:100

MIN TO 250MM MAX RISE 170MM MIN RISE 100MM

ALL CHAIRING TO BE PINKINGTON LOWE K GLASS. BELOW 800MM TO BE TOUNGHERD SAFETY GLASS TO BS 6262 Pt 4 1974 PLUMBERS TO WINDOWS TO BE 800MM MINIMUM GLAZING EQUAL WITH AREA OF APPOINTMENT.

THRESHOLD TO DOOR TO BE EXETER MARKED OR SIMILAR TO CONFORM TO BUILDING STANDARDS MAX 15MM THRESHOLD LEVEL OF PLANT 10MM BELOW LEADING EDGE OF LILL ACCESS RAMP FROM SUP MAX 1:12 TURNING PLANT MIN 1.2m x 1.2m ENT DOOR MIN CLEAR OPENING 775mm CARBONO FLOOR PASE DOORS MIN CLEAR OPENING

12 304 PP

100mm CONCRETE CAVITY WALL TO BRICK BETWEEN BUILDINGS CAVITY CLOSED WITH BRICKWORK.

BRICKWORK & TIMBER KIT TAKEN UP TO UNINSULATED.

ARCH FRAMED SILLING WITH CONCRETE DOOR FRAMED WITH MESH RENDEREED ROOF CHASED THREE WITH UNINSULATED BOARD FINISH TO SOFT-IT.

TYPICAL END DOUBLE GLAZED DOOR WITH ASPHALTIC FLOOR FINISH.

TIMBER END DOUBLE GLAZED DOOR WITH ASPHALTIC FLOOR FINISH.

SQUARE WATER COLLECTED IN MARLY DEEP FLOW CUTTERS CLIMED & BOG TAKEN DOWN IN 75mm DOWNPIPES TO TRAPED GOULTS IN TOWN CONNECTED TO 100mm PLASTIC BOWDIE & HAUNCHED IN ADA GREENHILL TAKEN TO WATER COURSE.

SAMP SPEC FOR LIGHT SWITCH BY SANDSINGLE FOR DOUBLE SOCKET H-SAMP DOUBLE FOR ISOLATOR O SAMP CIGUON PENDANT SMOKE DETECTOR AS SPEL MANS CHAIRPAD & IMBEL MASH EXTINGUISHER A.S. SPEC

<b>SCHOFIELD JOINERY &amp; BUILDING SERVICES</b> Craig Dhu, Lamlash, Isle of Arran KA27 8LH Telephone/Fax: 01770 600276	
<b>Job Title:</b> PROPOSED SELF CATERING COTTAGES FOR MR G A BOTTERILL	<b>Date:</b> 7-03-05  <b>Drng. No.:</b> K.M.H -5-
<b>This is a true copy of the plan referred to in the application</b> <b>Signature:</b> _____ <b>date:</b> 17/10/05	



# KILMICHAEL COUNTRY HOUSE HOTEL

## The Scottish Country House Hotel of the Year 2009

Heil March, 2011  
~~Monday, April 18, 2011~~

Mr James Miller  
Chief Development Control Officer  
North Ayrshire Council  
Cunninghame House  
Irvine  
KA12 8EE,

Dear Mr Miller,

### **Request for amendment to conditional planning consent, Planning application 05/00248/PP**

Further to my meeting yesterday with Ms Julie Hannah, I write to formally request an amendment to the planning consent for one of our self catering cottages - the written approval for permanent residence, as referred to in Condition 7.

The reasons for doing so are threefold: economic necessity; protection of our trading position; and deterioration in personal health (we have both had cancer, one of us has had a series of heart attacks leading to triple by-pass surgery and now an unexplained seizure has required the surrender of a driving licence).

Since we began the development project more than 5 years ago, the economic crisis has brought changes to the banks' lending policy, so we were unable to secure the finance necessary to complete the half-finished scheme. Trading last year was also particularly difficult, not only because of the recession but also because of a changing market; in spite of our consistently achieving award-winning standards, hotel turnover has been in decline for the last three years.

Now repairs to the roof and chimneys of the main house, a listed building, have become urgent. In addition, cracks have appeared to one of the outlets

**VisitScotland: Gold Award Hotel    AA: Red Star "Inspectors' Choice" Hotel  
Past Winner of *The Taste of Scotland* Country House Hotel of the Year Award**



# KILMICHAEL COUNTRY HOUSE HOTEL

## The Scottish Country House Hotel of the Year 2009

which form the rear part of the house, following the failure of wooden lintels, so there is now a need for structural repairs there, too. Listed building standards mean that the overhaul will be more than usually expensive, but grant aid has been refused. We had been delaying the repairs until we could earn the wherewithal to pay for them, but this is not now an option.

By last year it had become evident that the only way we could complete the development project and pay for the repairs to the house would be to sell part of our assets. The most appropriate seemed to be one of the new cottages. But Condition 7 meant that it could only be sold to another self-catering operator. This would have meant inviting a competitor into our midst, but with no possibility of regulating his activities. Any new operator could trade off our reputation and undercut our prices but fail to maintain standards, with consequent further damage to our trading position.

My brother rescued us from this situation just before Christmas. He has bought one of the cottages to which the conditional consent applies, and it will continue to be used for holiday letting, entirely in accordance with the conditional consent. We will manage it for him.

Unfortunately, the "rescue" did not go entirely to plan. We had set a discounted price, based on what he could afford and the amount we needed for completion of the project and carrying out the repairs. But because of Condition 7, the sale could not be completed as a dwelling house and therefore attracted both Capital Gains Tax (which we had expected) and VAT (which we had not). The consequence of this higher tax burden is that we still do not have the necessary funds for the repairs.

So now the urgency of the need for repairs means a second cottage will have to be sold to raise finance, and the existence of the restriction is preventing this. The prospective purchasers wish to retire from the B&B they run elsewhere on the island and would like to move into this cottage for their retirement. They would need to have it rescheduled as a permanent dwelling house to enable this.

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# KILMICHAEL COUNTRY HOUSE HOTEL

## The Scottish Country House Hotel of the Year 2009

Until their B&B sold (and, of course, the timescale cannot be predicted) they would be content for it to continue as a letting cottage under our management, but only a new status as an unburdened dwelling house would make financing possible because of the difficulty of obtaining loans for commercial property. (They have investigated this matter with brokers).

Selling Bluebird Cottage as a dwelling house would solve their housing problem and rescue our house from collapse - and using the surplus to reduce our existing loans after carrying out the repairs would also help to prevent our personal collapse from stress!

I apologise for taking up your time with this narrative, but it does seem appropriate to make clear that this request is founded on necessity. Everything we have done in our twenty years here has been in consequence of a desire to restore (and, in fact, rescue) an historic house. We thought we were well on the way to achieving that, after all this time, and it is certainly undeniable that our efforts have significantly increased the contribution this operation makes to the exchequer. It would be quite an irony if the combined demands of the tax system and the continuing demands of the house at a time of widespread economic difficulty were to bring about *our* ultimate downfall.

Yours sincerely,

Geoffrey Botterill  
Partner

VisitScotland: Gold Award Hotel    AA: Red Star "Inspectors' Choice" Hotel  
Past Winner of *The Taste of Scotland* Country House Hotel of the Year Award

**SOLICITOR TO THE COUNCIL (Corporate Services): Ian T. Mackay**  
Cunninghame House, Irvine KA12 8EE

Your Ref:                      Our Ref: Arran 1/1

If telephoning please call: **Ms J. Hanna,** (

4<sup>th</sup> April 2011

Mr G Botterill



**NORTH AYRSHIRE**  
COUNCIL

**PUBLIC**

Dear Sir

**Town & Country Planning (Scotland) Act 1997**  
**Kilmichael Country House Hotel, Glencloy, Brodick, Isle of Arran, KA27 8BY**

I refer to your letter dated the 16<sup>th</sup> March 2011 with regard to the above subject.

Planning approval (reference N/05/00248/PP) was approved subject to conditions on 1<sup>st</sup> July 2005 for the erection of 4 no. semi-detached self-catering cottages, formation of roadway and car parking at site to West of Kilmichael Country House Hotel, Brodick. Condition 7 states "that the self-catering cottages shall be used only for holiday letting purposes and shall not be rented, sold or sub-let for any other purpose. For the avoidance of doubt, none of the cottages shall be occupied on a permanent basis without the prior written approval of North Ayrshire Council as Planning Authority."

Development Plans (planning policy) have been consulted on the proposal. The self-catering cottages at Kilmichael Country House Hotel are located within an area of countryside as identified within the Isle of Arran Local Plan and were approved on the basis that they were for the self catering market. The proposal was considered against Policies TOU 1 and TOU 3 of the adopted Local Plan and it was considered that the self catering units, being in a rural location, complied with the terms of Policy TOU 1(c) and was judged to be ancillary to the Hotel and complied with related criteria under TOU 3.

The proposal to amend the previous conditional planning permission has no justification on planning policy grounds. Whilst there is sympathy to the reasoning behind the proposal, primarily due to the downturn in market conditions, the planning position is quite clear in that the provision of new houses in the countryside is controlled by Policy ENV 1, where new houses require specific justification i.e. operational need for worker to live in pursuance of agriculture, forestry or other established rural businesses, which is not the case in this instance. Had the original planning application been for 4 new permanent dwellinghouses or 1 new permanent dwellinghouse, the application would have been refused.

The existing tourism use was specifically assessed against tourism policies of the Local Plan and it is considered that this restricted use should be adhered to as it originally formed the basis of the justification for the proposal.

It should be noted that in the proposed tourism policies for the new Local Development Plan (due to be published for public consultation at the end of April 2011), the restrictions to retain

tourism uses are likely to be required where this has formed the justification for development in the countryside.

I can therefore advise that it is unlikely that planning permission would be recommended for approval.

I trust that the above information will be of assistance.

Yours faithfully

Document 7



# KILMICHAEL COUNTRY HOUSE HOTEL

## The Scottish Country House Hotel of the Year 2009

Thursday, 21<sup>st</sup> April, 2011

Your ref: Arran 1/1

Ms J Hanna

Dear Ms Hanna,

### **Town & Country Planning (Scotland) Act 1997 Kilmichael Country House Hotel, Glencloy, By Brodick, Isle of Arran**

Following our meeting today, I thought it might be helpful to write and develop some of the points we discussed.

I. I refer, first, to your letter of 4<sup>th</sup> April, 2011 in reply to mine of 16<sup>th</sup> March, requesting amendment to conditional planning consent.

In this, you suggest that approval would be unlikely to be recommended, because the proposal has no justification on planning grounds. You relate your decision to policy ENV1, which guides the provision of new housing in the countryside, and indicate that there are no material considerations which would permit departure from this. And you indicate that, had we applied for permission to build new houses, consent would have been refused. Thank you for that clarification.

II I hope you will kindly allow me to add a clarification of my own. I suspect it is necessary to reassure the department that this is not part of a ploy to evade planning restrictions. We applied for letting units because such a project seemed a natural extension of what has evolved here over the last 20 years. It reflected what appeared to be a growing trend away from serviced

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accommodation at the quality end of the market, other than in the larger hotels with leisure facilities. But we knew from experience that significant changes in fashion, policy and circumstances happen over the years and so were anxious not to be tied *in perpetuity* to the status quo. For this reason we indicated that we could not agree to the Section 75 agreement which your department initially proposed. (We wrote on this subject in a letter dated June 17<sup>th</sup> 2005, but did not receive a reply).

We would certainly not have proceeded with the development had the council continued to insist on such a requirement and, in the absence of a formal reply, took the change in conditions attached to the permission subsequently granted as an indication of acceptance of the principle of flexibility. The reference to "written permission" seemed to be a reflection of the difficulties we had been told the Council has in monitoring unauthorised change.

At the time, we could not have anticipated the world economic recession and the change in banks' lending policy (any more than any of the world's governments could!) and we did not expect such a dramatic deterioration in personal health so soon after embarking on the project. The change in global, local and personal circumstances has come about far sooner than we ever thought, and it is against this background that we made the approach.

III With regard to policy ENV1 – and the wider consideration of which policies are applicable - it seems to us that there are material considerations, which would permit the authority to take a more favourable view, and we attach details here for your consideration. In doing so, we are mindful of the observation in Scottish Planning Policy 1 that:

*"The range of considerations which might be considered material in planning terms is, in practice, very wide and falls to be determined in the context of each case"*

and that

*"...[they] should fairly and reasonably relate to the particular application."*

Since *"...the weight to be attached to any relevant material consideration is for the judgement of the decision-maker"* we naturally hope you will agree with us that they are significant and appropriate in this context.

Material considerations:

- 1 The buildings already exist.
  - *there will be no change of any kind to the countryside environment*

- 2 The cottages were built on a brownfield site, which had been partially built on in the past, and was within the original curtilage of an existing historic house.
  - *there was no loss of agricultural or amenity land in their construction.*
  
- 3 There will be no changes to the fabric, layout or environs of the group, thereby retaining the visual status quo.
  - *we intend to attach a Deed of Conditions to any sale to constrain any future changes to the appearance of the buildings and to conserve the architectural integrity of the group*
  
- 4 The building is of an appropriate scale and character for its location, being conceived in the realisation that it affects the setting of a listed building and is designed to harmonise with the group. Materials, proportion, fenestration, roof profile and layout are all modelled on the originals and in accordance with the Council's design guide.
  - *SPP1 states "Opportunities...to provide limited new housing along with converted rehabilitated buildings should be supported where the new development is designed to fit in the landscape setting and will result in a cohesive grouping." Considered retrospectively, this group would fit those criteria.*
  
- 5 The Local Plan Development Control Statement indicates that the prime use of self-catering houses let to tourists is that of "a dwelling house." Moreover, both descriptions fall within Scottish Use Category 9, "Houses", so there is no requirement for "development" planning permission.
  - *Change of Use would be a technical formality, therefore, as there will be no material change in activity on the site*
  
- 6 Granting permission permits the commissioning of urgent repairs to the key listed building on the property by removing the obstacle to raising finance after all other avenues have been exhausted.
  - *SPP1 states "Planning authorities can help to safeguard historic assets through ...development management decisions"*
  
- 7 The application is an unintended consequence of the economic downturn. The Council's written stated response to the economic recession incorporates a specific policy initiative to "[Keep] Conditions and Section 75 agreements within planning applications to a minimum." *Granting change of use would accord with the spirit of this initiative.*
  
- 8 The cottages were constructed in accordance with the building standards appropriate to dwelling houses (as required by the relevant building warrants), are serviced with mains water and electricity and have existing access and parking, as well as waste water disposal through a septic tank registered with SEPA.

- *they are therefore already suitable for full-time residential occupation without the need for any adaptation or modification*

We are aware that the Council must consider whether our application is contrary to the public interest, but we take comfort from the guidance in SPP1: *“the basic question is whether the proposal would unacceptably affect the amenity and existing use of land and buildings which ought to be protected in the public interest.”* It is hard to see any way in which our proposal could be thought to have a negative effect in this respect.

**IV** There is another aspect of the wider context which would seem to be appropriate. In the case of an application as recent as January of this year (10/00791/PP) an amendment to planning permission was made to grant Change of Use from a self-catering cottage in the countryside to be a dwelling house for full-time occupation. This was the second such grant on that same site.

In this case, the policy identified as relevant was ENV1A (for the conversion, rehabilitation or replacement of existing buildings in the countryside)

The Report of Handling cites the Development Control Statement's determination that in the case of self-catering accommodation let to tourists *“the prime use remains as a dwelling house”* and also refers to precedent: Application No 04/01204/PP had led to the grant of Change of Use for another property on the same site in the countryside from letting accommodation to dwelling house 5 years previously.

In the course of our meeting, we touched upon the definition of *“existing.”* Of course, we recognise that the cottage to which the application relates is of relatively recent construction, but it does now have *“objective being”* and a current real use which cannot be ignored. In this context, that would seem to be a very significant material consideration.

**V** Recent government guidance has placed particular emphasis on creating sustainable places, on assessing matters in the round rather than focussing prescriptively on individual policies, and on emphasising outcomes.

In our meeting I mentioned examples of incremental development on the island which seem to have produced outcomes which are generally considered locally as surprising. In our immediate locality, Glencloy has in the recent past been subject to significant authorised change. The lower end has seen major expansion of the area designated for housing on the edge of the village, has had a new hotel built *“in the countryside”*, and has a timeshare development of a suburban layout which would not now accord with the Council's design guide for rural development. Further housing land is proposed in the new Local Development Plan and, as you will be aware, negotiations are current for a development ten to twenty times the size of ours and several times the size of the existing settlements in High Glencloy. This expansion, sited on agricultural fields, is planned to come right up to the boundary of our land, and will represent a radical change of character in the

glen. In this context, the change of use of one of our cottages to a use in the same use category must be seen as of miniscule impact.

If the planning authority is able to take an overview of what has happened overall in Glencloy and at Kilmichael over the last 20 years of our stewardship, we would be shocked if it could conclude that any of our works have been in any way inappropriate, damaging to local amenity or contrary to the public interest. We have striven to achieve high standards in both restoration of historic buildings and construction of new, as well as enhancing the immediate environment. An historic property which was semi-derelict in part and wholly derelict in others has been given new life, and we have made a strategic decision not to overdevelop or to invest in the kind of commercial expansion which would have been permissible under the local plan and would certainly have made better economic sense but which would have wholly destroyed the sense of place. The success of any development can rest as much on what is not done as what is. Would this not also count as a material consideration in the context of this case?

I am grateful to you for your time and consideration.

Yours sincerely,

Geoffrey Botterill

**SOLICITOR TO THE COUNCIL (Corporate Services): Ian T. Mackay**  
Cunninghame House, Irvine KA12 8EE



**NORTH AYRSHIRE**  
COUNCIL

**PUBLIC**

Your Ref:                      Our Ref: Arran 1/1

If telephoning please call: **Ms J. Hanna**  
e-mail:

12 May 2011

Mr G Rotterill

Dear Sir

**Town & Country Planning (Scotland) Act 1997**  
**Kilmichael Country House Hotel, Glencloy, Brodick, Isle of Arran, KA27 8BY**

I refer to your letter dated 21<sup>st</sup> April 2011 that was received on 26<sup>th</sup> April 2011, with regard to the above subject.

The content of your clarification/justification to alter the letting units to a private dwellinghouse has been noted. It is understood as to why you intend to alter the units and the background behind the case, however, unfortunately the proposal could not be justified under Policy ENV 1 of the Isle of Arran Local Plan. As you are aware, the letting units were only approved as they complied with Policies TOU 1 and TOU 3, as they were judged to be ancillary to the Hotel. From the information provided in recent correspondence, there is sympathy to the reasoning behind the proposal, however, the planning position is clear in that the provision of new houses in the countryside is controlled by Policy ENV 1 and there is no justification in this instance. The material considerations that you have stated within your correspondence have been noted, however these would not alter the fact that the proposal would be contrary to Policy ENV 1 of the adopted Local Plan.

It is therefore considered that it is unlikely that planning permission would be recommended for approval. You still have the right to submit a planning application, however it should be noted that the submission of a planning application does not guarantee that consent would be approved.

With regard to the point raised regarding a similar application in Shiskine (N/10/00791/PP), it should be noted that these do not relate to new build developments and related to the conversion of existing outbuildings. This proposal was considered under Policy ENV 1A that relates to the conversion of existing buildings in the countryside; rather than Policy ENV 1 of the adopted Local Plan.

With regard to our recent meeting and the discussion that took place with regard to your proposals for the Kilmichael Country House Hotel, the discussion revolved around 5 points, which are outlined below:

**1. Existing Hotel Building**

With regard to the use of the main hotel, you advised that you were considering converting this to residential. I can advise that this would require a planning change of use for the conversion of the hotel to a permanent residential dwellinghouse.

**2. Extension to Rear of Hotel Building**

Regarding the extension to the rear of the existing hotel and the proposal to convert this into an additional dwellinghouse. A planning condition was imposed to ensure that the premises shall be used for the purposes of a self catering unit in association with Kilmichael House Hotel and for no other purpose. As this is a new build development and is a self catering unit in association with the Hotel, there would be no justification to alter this into a permanent dwellinghouse and therefore planning permission would not receive a favourable recommendation in this regard.

**3. Detached New Build Building to Rear**

With regard to this new build development to the rear of the hotel, the same points as point 2 above would apply. A planning condition was imposed to ensure that the premises shall be used for the purposes of a self catering unit in association with Kilmichael House Hotel and for no other purpose.

**4. Detached Building to Rear of Hotel that was achieved through conversion**

With regard to the building to the rear of the hotel that was achieved through conversion, there may be scope to convert this into a permanent dwellinghouse as this did not relate to a new build development. 01/95/00110/PP was approved for the conversion of outbuildings to bedrooms with ensuite bathrooms. This would require a planning application to convert the self catering holiday let to a permanent residential dwellinghouse.

**5. Self-catering Cottages to rear of Hotel approved under N/05/00248/PP**

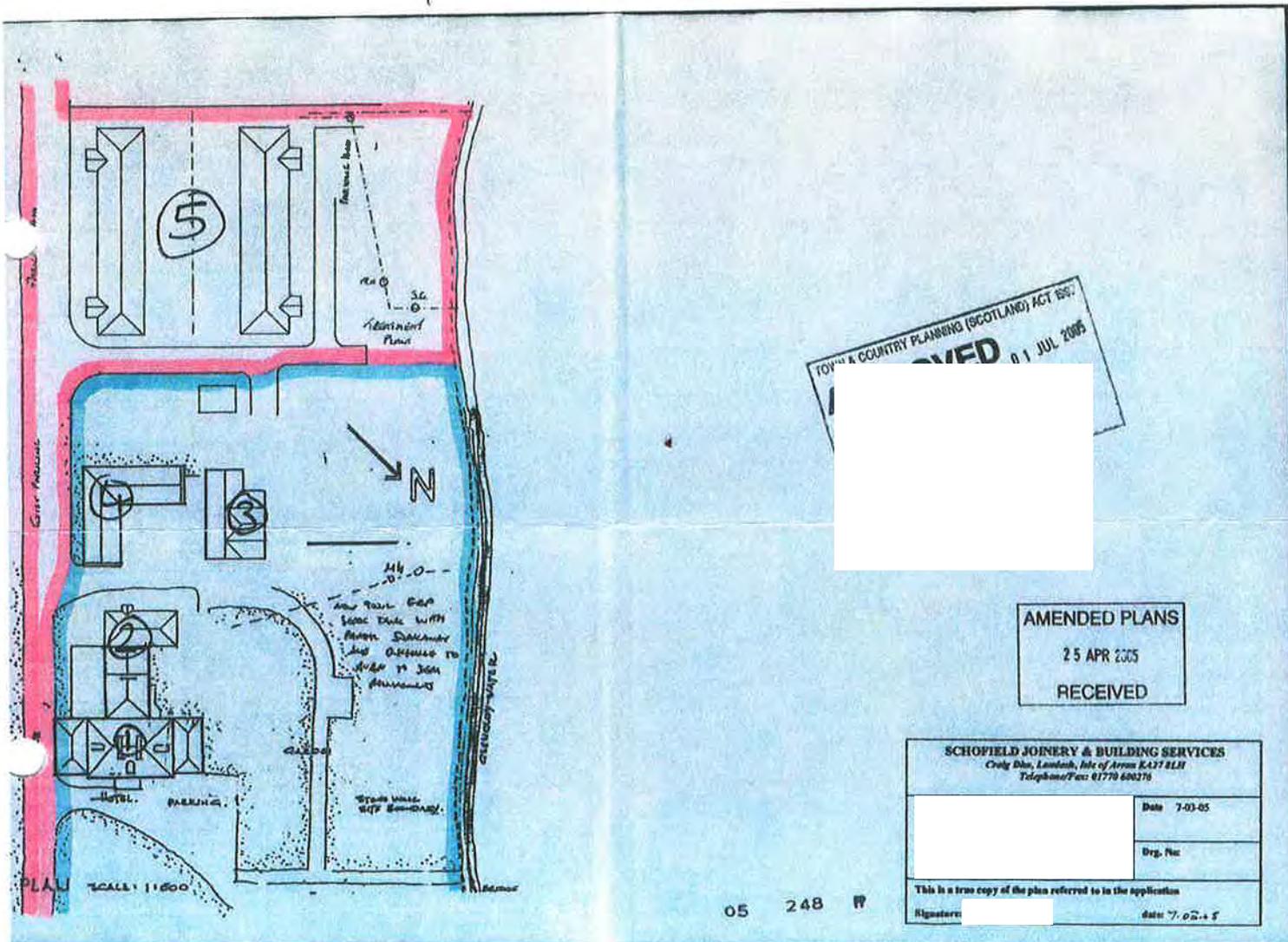
Comments for this have been provided at beginning of letter and in previous correspondence dated the 4<sup>th</sup> April 2011.

I have enclosed a location map which illustrates the exact location of the above 5 areas for clarification.

I trust that the above information will be of assistance.

Yours faithfully

For information purposes only!



- 1 - Existing Hotel Building
- 2 - Extension to Rear of Hotel Building
- 3 - Detached New Building to Rear
- 4 - Detached Building to rear - conversion
- 5 - Self catering Cottages

Document 99  
(part 1)



## KILMICHAEL COUNTRY HOUSE HOTEL

Wednesday, June 8<sup>th</sup>, 2011

Ms J Hanna  
pp Chief Development Management Officer  
North Ayrshire Council  
Cunninghame House  
Irvine  
KA12 8EE

Your ref: Arran 1/1

Dear Ms Hanna,

**Town & Country Planning (Scotland) Act 1997**  
**Kilmichael, Glencloy, By Brodick, Isle of Arran KA27 8BY**

Thank you for your letter of 12th May, in reply to mine of 21<sup>st</sup> April. I am grateful to you for your time and patience, but I am afraid we need to pursue the matter further. I know the Council is not able to take into account personal circumstances in determining an application, but personal circumstances mean that we have no choice but to continue trying to persuade you.

### **Your department's response**

The department's response seems to be that an application *must* be considered under Policy ENV1 *only* and that on this basis alone approval could not be recommended. The consequence of this seems to be that the planning condition is permanently immutable.

We are aware that the authority is required to assess proposals in accordance with the

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development plan, but there is also a requirement for development control officers to identify *all* relevant policies, and to look at the broader aims and objectives of the plan, as well as the detailed wording. You will be aware of the House of Lords judgement\* which set out this procedure and of the requirement to consider whether weight should be given to any relevant material considerations. Although you note the considerations we had listed, your letter does not explain why you do not consider them to be material. Most significantly, you do not explain why a building which has manifest being, is not accepted by the department as existing, and therefore assessable against policy ENV1A.

As for the condition attached to the permission, we must question why the wording does imply that change could be permissible, if the department does not now believe this to be so, and why the permanence of the condition was not made clear at the time it was imposed. I would refer you again to our letter of 17 June 2005 on this subject, and remind you that we did not receive a reply to it. In your letter of 4<sup>th</sup> April you explained that if our 2005 application had been for a new dwelling house it would have been refused. As our letter of June 2005 indicated, we would not have carried out any development at all if it had been clear that conditions could not be revisited in future years.

The department's previous correspondence had stressed that a Section 75 Agreement would be permanently binding and we declined to sign up for this reason. From telephone conversations with the department, we had reason to believe that the reference to "written approval" in the wording of the condition was principally a safeguard for the Council's sake, as there had previously been difficulty in monitoring unauthorised change on the island. If the department now wishes to treat the planning condition as having the same effect as a Section 75 Agreement, that is a different proposition altogether and would seem to conflict with national guidelines.

For these reasons, I must trouble you for further clarification.

\* City of Edinburgh Council v the Secretary of State for Scotland (1998), quoted in The Scottish Government's Scottish Planning Series, Circular 4 2009: Development Management Procedures

### **Our application in context**

In our letter to you, we had set our proposal in a context which seemed appropriate for proper consideration in the round, taking account of key planning issues, including the conservation of historic buildings and the protection and enhancement of the rural environment. We asked you to

take a holistic approach, identifying actual as opposed to hypothetical outcomes; and we made reference to the Council's stated policy initiatives arising from the economic crisis (Local government should know, if anyone does, that economic recession leads inextricably to policy change!). In short, we suggested that the reality here is in harmony with the Strategic Context which underpins the development plan, as well as more recent policy statements from the Scottish ministers, even though it has evolved over a period of 20 years rather than being the result of one-step forward-planning. Our demonstrable commitment to the wider aims of conservation of the built heritage, and respect for the rural environment, have produced an outcome which is not only as good as, but in some respects, better than some outcomes resulting from the standard development processes. It is all the more disappointing, therefore, that the department has not felt able to take the broader view which the House of Lords decision, and the Scottish Government, requires and has chosen to disregard the historical, environmental and economic context, as well as self-evident reality, relying instead on a single isolated policy to reject our application.

One has always assumed that individual, planning policies are not unreferenced and arbitrary, but are founded on a sound rationale, and are interrelated with other policies to produce a creative whole, with a desired collection of goals in mind. Clearly, they do not exist for their own sake and so they are not normally absolutely and irresolutely prescriptive. As you will be aware, current Scottish Government policy is that development plans should be ambitious but realistic. They should be capable of responding to changing circumstances and should be particularly concerned with sustainable development. And there is an implicit recognition that too narrow a focus can *prevent* outcomes which, when viewed in the round, might be regarded as positive. There are always non-standard cases where other significant considerations can be taken into account to see if it is appropriate to depart from the plan and it is standard practice to assert that, within the complete context of the plan, each application will be considered on its merits. Your departmental response to my letter gives no indication of any recognition of these fundamental principles, but simply reiterates what was said before and persists in taking the narrowest of views of what is appropriate in managing environmental change.

Of course, the usual sequence of events in planning – particularly in rural areas - involves regulating the process of change from what is not there to what could be. Policy ENV1 reflects this, but is clearly intended for the

regulation of a situation where there are no existing buildings. It covers proposals for building from scratch on greenfield land. Policy ENV1A, equally clearly, aims to govern situations where buildings *do* already exist. Naturally, we recognise the importance of preservation of the countryside. But, equally clearly, we are not talking about an open field and asking you to let us build on it (that is something the authority has reserved to itself in the proposed new local development plan!). We are not even asking for any material change in the use or appearance of what is there. What we were asking you to look at is the land and buildings as they exist now – and requesting formal change of use for just one of the existing houses, so that one local couple can live there all the year round.

The site of the houses had been built on in the past and now has buildings on it again. It has not served any agricultural purpose for at least 60 years. It had and still has natural boundaries on three sides and buildings on the fourth. It forms a coherent annexe to the “mansion house” group at the heart of an historic estate and is clearly not in open countryside. Indeed, from most of “the countryside” it is not even visible. And, of course, the listed main house and its ancillary group have been used and occupied domestically for *hundreds* of years.

### **Policy Outcomes**

It is somewhat ironic, therefore, that whereas all our activities here have placed the historic buildings and the environment in which they sit at the heart of things - finding new uses to raise the finance for restoration - and have done so in a manner intended to enhance the environment (with outcomes that have been widely acknowledged as successful), the department is now blocking the process and is indifferent to any other considerations, apparently on the very generalised grounds that “the countryside” needs to be protected - whilst at the same time permitting developments which will undoubtedly change irrevocably the character of the countryside immediately adjacent, because those plans do conform to other policies.

In the draft local development plan the Council proposes to allocate much more truly agricultural land, which currently has sheep grazing on it, in this same glen, for the development of new houses. These will be additional to the existing housing estate, which by any independent assessment must be seen as essentially suburban in character and which was itself built “in the countryside”. If the new houses follow the same pattern, they will extend this creeping suburbanisation. And the proposed Auchrannie development, which seems to be actively encouraged by the

Council, will be many, many times the size and extent of everything we have here, all built on land which is currently used for farming. In both cases, there will be a sprawl of new buildings on agricultural land in the countryside, completely destroying the existing sense of place. The cumulative effect of these departures (with deemed justification) from the fundamental presumption of Policy ENV1 has very real consequences for that part of "the countryside," radically transforming its very nature.

Yet, in marked and baffling contrast, in our part of the glen, your interpretation of policy places an absolute embargo on one existing house being occupied as a family home, even though the buildings already exist, were built on brownfield land, were designed to resemble estate buildings rather than "a collection of bungalows in a field," harmonise with the architecturally interesting and historically significant buildings to which they are directly related and sit comfortably in the established landscape, with natural boundaries and an appropriate vernacular architectural idiom. Is this really what "planning" is all about?

### **The future of the historic group**

In our meeting on 20<sup>th</sup> April, I suggested that your department's refusal meant we would need to have some indication of the department's attitude to the other buildings on the site, so that we could try to plan our future actions when we are no longer physically able to continue – and because it seemed sensible to take an overall view. The apparent conclusion of your deliberations is that of the 7 *de facto* houses on the site (including the 4 newest ones), none would be accepted by the department as such, because of policy ENV1, yet the only one which isn't a house, could be! It is hard to see how this could be viewed as anything other than absurd.

The department's individual conclusions tie everything into "the hotel", but if the hotel no longer existed, which is a distinct possibility (in part because of your decisions) there would surely be implications for the current use restrictions – not least of which is that the conditions could no longer meet the requirements of "the six tests". For example, they could not be enforceable, since it is impossible to operate anything "in association with" something which is not there!

And the history of the site would certainly raise questions under the test of whether such conditions could still be considered reasonable. Unless there were a willingness on the part of the department to be flexible in its

interpretation of policy, then a particularly silly situation would ensue with the building marked number 3 on your plan. This *de facto* dwelling house at the rear could not be formally reclassified as such, apparently, since it would then be regarded as “a new house in the countryside,” for which there would be “no justification”, yet its sister building opposite could be, even though this unacceptable one is, to all intents and purposes, in the same place as the justifiable one, forming as it does one side of the same square, in an architectural group which has existed for at least 200 years. It is hard to see this as reasonable by any standard test.

To further heighten the sense of the ridiculous, the site of building number 3 *was* a dwelling house (in fact the “dower house” for the “mansion house”) from at least the beginning of the eighteenth century, until it fell into disrepair and became so structurally unsound that, although we did try to save it, we had to demolish it and replace it with the current structure on essentially the same footprint and with the same elevation. No structural report was obtained (and none was requested), because the situation was clear to the naked eye, but we did make an application for listed building consent, the approval of which was taken as acceptance of the structural reality. Building number 3 is, therefore, in reality, a “replacement of an existing building in the countryside”, replacing like-for-like a dwelling house with a dwelling house on the same plot and with essentially the same elevation and fenestration. But because we applied under a different policy, it is categorised as a new-build self-catering unit with a restriction linking it to the hotel.

Applying the logic of your previous responses, it is apparent that if our original application for building 3 had been for a dwelling house conversion/rebuild under policy ENV1A, the application would have complied with the provisions of that policy and would have been approvable straight away as a dwelling house – which we could then have used for self-catering, without any further permission needed - and without the restrictive conditions associating it with the hotel and with no need to be having this discussion now.

Furthermore, by comparison with the Shiskine applications, it seems that even if we had originally applied for the same building as a *self-catering* conversion, but again under the terms of Policy ENV1A (as in Shiskine), there would have been no difficulty now in approving a change of use to full time dwelling house - as has happened twice at Shiskine.

In all cases, although the route would have been different, the physical outcome would have been *exactly* the same: exactly the same building

would have existed, in exactly the same form that it does now, in exactly the same place, with exactly the same domestic use and no material change whatsoever in its use, its condition, its appearance or its affect on any aspect of the environment or amenity.

The key building in every respect is the original “mansion house” (as it is described in several historic documents). In your letter of 12<sup>th</sup> May you confirm that planning permission for change of use would be required for us to return it to being exclusively for our own domestic purposes. Although you do not say so, I do hope it is safe to assume that the department would not deny that *this* is an existing building and insist on considering the application under the terms of Policy ENV1, treating this historic “mansion house”, which has been lived in for upwards of 300 years, as a “new house in the countryside” and rejecting the application on the grounds that it did not accord with the provisions of the local plan! I have to presume that it would be treated as an acceptable “conversion” of an existing building under the provisions of Policy ENV1A, regardless of the fact that no physical “conversion” work would be required. We really do need to have a definitive answer to this question – and perhaps an acknowledgement that no plan can anticipate every eventuality.

The last point is at the crux of the matter. The Local Plan does not have a policy specific to *“Change of Use, of Existing Buildings Originally Approved Under Another Policy, When No Adaptation, Conversion, or Alteration is Required and When There Will Be No Material Effect On the Built or Rural Environment.”* Presumably this is why it is deemed necessary to squeeze the body of our application into clothes which do not fit, relying on a process which takes a hypothetical view of what would have happened “if....” and always coming to the conclusion “No”!

A more nuanced approach would acknowledge that what we have here is something of a special case - an historic, small, estate “mansion” house, set characteristically in its own grounds, with dense belts of trees to screen it from the countryside in all directions, and with all the trappings of an estate round about: lodge, gates, long drive, subsidiary cottages for farmworkers and outlying farms. It continues to be situationally related to all these things, but for historic reasons of social and economic change, it has become detached economically from the land and activities which supported it. One consequence of this was that it gradually fell into disrepair and, in parts, dereliction. The new use to which the house was put (as a boarding house, then private hotel) was unable to bring to an end the process of gradual decline – to the point where, had this continued,

the main listed building would have been seriously “at risk” because it simply could not earn its keep. Starting over twenty years ago, we were able to begin to halt, then reverse, this process of decline, by investing our own finances and working hard.

But the job is still not finished and the economic climate has changed dramatically. Evidence from all over Scotland (not to mention our immediate neighbours at Auchrannie) makes it clear that the group will soon become economically “unviable” as a business, unless there is further development on the site in the form of ancillary leisure facilities and, probably, a purpose-built bedroom block as well as staff accommodation. Such a process would undoubtedly comply with the provisions of Policy ENV1 and be permissible under the provisions of TOU1 & 3. But surely you can see that such a development would be contrary to the Council’s stated desire to “balance [the claims of] conservation and development” (as outlined in the statement of Strategic Context for the local plan). And it would not be exactly a model example of “conservation of the historic heritage” (as again cited in the Strategic Context) since the setting of the house and its unquestionably domestic nature would have to be destroyed in the process.

The statement of Strategic Context says that “key strands” of the strategy include “safeguard[ing] the quality of the environment by balancing the conservation of the built, natural and cultural heritage with the promotion of sensitive development.” Well, we’ve done that! Surely, you cannot for one moment imagine that such an objective would be better achieved by allowing the kind of development I have just described, than by accepting the reality of what is already there?

Much seems to revolve around notions of what is “appropriate”. May we presume to suggest that the most appropriate way to assess our application, is to see it as a special case locally, to be considered on its own merits? If comparisons are to be made, they should correctly be with other similar estate houses all over the country, where very much the same as what we have here has been considered entirely “appropriate” and justifiable. It is surely a fundamental truth that whilst every local plan incorporates strategies to achieve predetermined goals, it has never been suggested that these are the *only* strategies by which such goals can be reached.

In an attempt to understand the department’s decision, I have followed the procedure set out by the House of Lords and the Scottish Government and attach our conclusions here. I have no doubt that they will not match

exactly the deliberations of your department, but I would be grateful for an assurance that the department has followed these procedures, as required, and for an indication of your assessment of where you consider I have misdirected myself. We can then put in a formal application for permission.

Yours sincerely,

Geoffrey Botterill

**Procedure for Determining Planning Applications,  
Scottish Planning Series, Circular 4, 2009**  
(The numbering sequence is ours, for ease of reference)

**Application:** for modification of conditional planning consent to obtain written approval for occupation on a permanent basis, as referred to in Condition 7 of N/05/00248/PP **Kilmichael House, Arran**

**A. Identify any provisions of the development plan which are relevant to the decision**

1. The Strategic Context
2. The Development Control Statement
3. No specific individual policy is exactly pertinent to this application
4. Other policies which might be thought to have a bearing are:  
Policy ENV 1 Development in the Countryside  
Policy ENV1A Conversion Rehabilitation or Replacement of Existing Buildings

**B Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies**

***1. Strategic Context / aims and objectives***

The **aims and objectives** of the plan are set out in the Strategic Context outlined in the introduction.

There is a strong emphasis on conservation of the built and natural heritage.:

“The principal aim of the Local Plan is the protection and enhancement of [the key] assets [of the island]” which are:  
“the unique features of its environment, its natural features, resources, scenic quality, natural beauty, landscape interests, geological features, wildlife and its historic and architectural heritage”.

“These assets collectively contribute to the “Arran Experience”

The strategy for securing this is built on the principles of control and guidance.

“The key strands of the strategy are:

- (a) safeguard the quality of the environment by balancing the conservation of the built, natural and cultural heritage with the promotion of sensitive development
- (b) ensure that new development within a settlement is located and designed in such a manner that it respects and consolidates the settlement’s existing character
- (c) support the principle of “sustainable development” by accommodating developments appropriate to island needs
- (d) control development in the countryside to acceptable developments with specific locational need”

There is another “strand” which might be thought to be appropriate to this application

- (e) provide quality and choice of locations for new housing”

There is much emphasis on establishment of the balance between Conservation and Development:

#### Protection of the environment

- (a) by securing a balance between the competing interests of nature conservation , farming, forestry, infrastructure provision, mineral extraction, tourism, leisure pursuits and development
- (b) by ensuring that the historic heritage is conserved
- (c) by identifying sites to control the development of new housing and to provide for local needs

#### Control and direction of development

- (a) by setting out criteria for development
- (b) by providing guidance for the siting and design of new development

## **2     *The Development Control Statement /assessment criteria***

The Development Control Statement provides the criteria for assessing all development proposals.

These criteria are listed under a number of headings, including: Siting, Design and External Appearance; Amenity; Landscape Character; Access, Road Layout & Parking; Water & Sewerage; as well as consideration of “Safeguarding Zones (which are primarily concerned with public safety) and “The Precautionary Principle” (which is intended to prevent any development which might cause significant irreversible damage to the environment).

## **3     *Local Plan Policies***

- (a) There is **no specific policy** which regulates the removal of planning conditions governing the terms of occupation of existing houses.
- (b) **Policy ENV1** indicates a presumption against development in the countryside, unless the proposal meets one or more of the listed criteria. The construction of new housing is permissible, but is limited to that needed for farming, forestry and rural industry, with the intention of directing housebuilding to the existing settlements and other “identified” locations.

The policy is clearly intended to regulate proposals for the *development of new* buildings on “empty” land in the countryside, that is land which does not currently have any buildings on it. As this application relates to a building which already exists, Policy ENV1 is not immediately appropriate for assessing the application.

- (c) **Policy ENV1A** is subsidiary to policy ENV1 and is intended to regulate development in the countryside where buildings do already exist and where “development” takes the form of

conversion, rehabilitation or replacement of those existing buildings.

Housing is acceptable under this policy, with none of the occupation restrictions of policy ENV1, but no conversion, rehabilitation or replacement is planned, or necessary, in the case of this application.

**Summary:** “Planning is about change” This is the opening sentence of the introduction to the local plan. The overall aim of the plan is that such change should be regulated to ensure that it does no harm and is, where possible, positive. There is a strong emphasis on conservation of the built and natural heritage. The way in which the regulation is conceived is as a combination of preventative measures and positive requirements supported by guidance in matters such as design and layout of buildings. It does not appear to incorporate any absolute embargoes, other than where questions of public safety and the protection of the land from irreversible change arise. The strategy of “identify[ing] land on which houses and other dwellings can be built to meet estimated demand during the local plan period to 2009” is aimed to “prevent inappropriate housing development in the countryside”, but equally clearly is intended to regulate applications for building anew from the ground up. There is an evident recognition that where buildings already exist, the approach to managing change must be different. There is also recognition that the land allocation may need to be reviewed in the light of changing circumstances.

### **C Consider whether or not the proposal accords with the development plan**

**The proposal:** The application is for the lifting of a use restriction to permit full time occupancy of the house, which is currently restricted to holiday letting. The Scottish use category (9. Houses) would remain unchanged. There is no Section 75 agreement. The application does not constitute “development” within the meaning of the 1997 Town and Country Planning (Scotland) Act.

## ***1 Accordance with the Policies of the Development Plan***

There is no specific policy in the local plan governing this type of application, so it cannot be measured precisely against any single individual Policy.

The first inclination of the authority is to assess the application only against Policy ENV1, as if it were a new application for a new housing development on a greenfield site, and to refuse permission on the grounds that such a new development would not accord with the plan, because it is not on one of the new housing sites identified by the Council.

But this is not an application of that kind. The buildings already exist. As there would be no new construction, no physical adaptation, no material change of use and the Scottish Use Category would remain unchanged, no *development* permission is required. The meaning of “development” is defined in the Town and Country Planning (Scotland) Act 1997 and this application does not constitute development within the meaning of the Act.

Policy ENV 1A would come closest to being appropriate, since that policy is intended to regulate proposals affecting existing buildings and the building which is the subject of the application has a manifest existence. Use as a dwelling house would accord with the provisions of policy ENV1A. It remains the case that no development works, within the meaning of the Act, would be required.

The principles for dealing with any application for change from self-catering cottage to full time dwelling house were laid down most recently in the Report of Handling relating to application 10/00791/PP earlier this year. The responsible officer wrote:

“There is no specific policy that opposes change of use of holiday letting units to full time residential.

... planning permission 04/01204/PP was previously approved for change of use of a letting cottage to a permanent dwellinghouse at Byre Cottage, Lakin Farm, which is situated to the east of the application site and forms part of the Lakin Farm Development.

... in defining Managed Units, i.e. self catering accommodation let for tourist accommodation, the local plan states that the prime use remains a dwelling house.

It is considered therefore that the proposal is acceptable in principle subject to meeting the relevant criteria of the Development Control Statement of the adopted Local Plan.”

Those buildings differ from the one which is the subject of the current application only in that they are the result of the conversion or reconstruction of previous farm buildings. This does not alter the principles outlined in the Report, which are not described as being in any way conditional, but are clearly principles which are generally applicable. It would seem reasonable to apply these same established principles to evaluation of the current application – indeed it would be manifestly unjust not to do so.

have since discovered this does not apply to

Conclusion: this application accords with the policies of the development plan insofar as they are applicable

## ***2 Accordance with the Development Control Statement of the Development Plan***

Approval for construction of the house which is the subject of this application (and which, like the application quoted above forms part of a group) was granted in 2005. All the appropriate criteria of the Development Control Statement had to be met and approved. In addition, the carrying out of an archeological watching brief was a requirement of planning permission in view of the historic nature of the site. Building warrants requiring adherence to all the standards pertaining to a dwelling house were obtained.

Conclusion: the development of which this house forms a part accords with the relevant provisions of the Development Control Statement of the adopted Local Plan. As there would be no development works associated with the lifting of the occupancy restriction, the development would continue to be in accordance with the Statement.

### ***Accordance with the Strategic Context of the Development Plan***

The existing development of which this house forms a part:

- (a) is related to a long term project for the restoration and rehabilitation of listed buildings of historic and architectural interest and the development as a whole therefore accords with the local plan's aspirations for conservation of the island's historic

built heritage - indeed the application has arisen because the current economic climate means sale of the single house in question is the only feasible way to raise finance for urgent repairs to the roof of the listed main house.

(b) is a good example of a sensitive scheme which helps to “safeguard the quality of the environment by balancing the conservation of the built, natural and cultural heritage with the promotion of sensitive development “ – and has, indeed, been used by officers of the Council as a model for other developers during planning negotiations.

(c) is of a design conceived as affecting the setting of a listed building and is intended to fit comfortably into the hierarchy of the historic group. For this reason, the external appearance is reminiscent of a stable conversion rather than a collection of individual dwellings and the various architectural elements are modelled on the historic originals . As such, it is “located and designed in such a manner that it respects and consolidates the settlement’s existing character” and is demonstrably successful in meeting the requirements of this “key strand” of the development strategy.

Both under the terms of the original conditional permission and after the lifting of the restriction on the individual house which is the subject of this application, the entire development therefore accords with a number of key aims and objectives of the Local Plan.

By adding to “the choice and quality of locations for new houses” and by its nature as a “development appropriate to the island’s needs” (as far as housing is concerned) the group further represents the fulfilment of two more “key strands” of the local plan strategy – in spite of being on a site not previously identified for this purpose by the Council.

This last point is at the crux of the matter. The perceived obstacle to approval is that, although no building, conversion or development works of any kind would be required, and there would be no impact whatsoever on the local environment – indeed there would be no visible or tangible change whatsoever to the status quo – the Council considers that approval would mean it should be newly categorised as “a new dwelling house in the countryside” on a site which the planning authority had not previously identified for such a purpose.

Conclusion: the application accords well with many key aims and objectives of the development plan, but it is not located on an “identified site.”

**D. Identify and consider relevant material considerations for and against the proposal,**

*Against*

1. The house is not on a site previously allocated for housing in the development plan
2. Approval might be thought to create a precedent

*For:*

1. The house already exists. It cannot reasonably be treated as if it did not.
2. There is no Section 75 Agreement to restrict use in perpetuity.
3. There would be no material change in the use to which the building is put. The Scottish Use Category (9) would remain unchanged.
4. With no building works required and no material change of use, the permission sought cannot be categorised as “development” within the meaning of that term as defined in the Town and Country Planning (Scotland ) Act 1997
5. Because no associated building works are required, there would be no change of any kind to the structure, appearance, setting or visual impact of the building (which is almost completely screened from the surrounding countryside by belts of mature trees) and, therefore, no effect on the “scenic quality, natural beauty or landscape features” of the surrounding countryside, which the plan seeks to conserve .
6. As there would be no material change of any kind, no negative consequences of any kind for the immediate or wider environment can be identified.
7. Construction of the group of which the house is part took place on brownfield land which has not had any agricultural purpose for at least 60 years. Being so closely associated within the curtilage of an existing

building group, it had no identifiable impact on agricultural or amenity land in the countryside. Modifying the planning condition would not change that situation. The application cannot reasonably be assessed by the same criteria as for an application to build a new bungalow in a field.

8. The building has been erected with due regard to “the protection and enhancement of the countryside and the environment” in the determination of form, function, elevation, fenestration, materials, siting and landscaping. It therefore complies with the aims of the local plan in respect of environmental impact and the balancing of the interests of conservation and development.

9. The group to which the building belongs is a model example of the extension of an existing “settlement”, with new buildings which are appropriately related in design and hierarchy to their immediate (listed) neighbours and which sit comfortably in the landscape, as advocated by current Scottish Planning Policy.

10. The whole development of which the house forms part cannot be considered as in any way going counter to the stated principle aim of the Local Plan, which is the protection and enhancement of identified assets in order to ensure the conservation of the “Arran Experience.” Indeed in context and in association with the listed group it must be seen to make a positive contribution to this goal.

11. Lifting of the use restriction (albeit on just one house) adds to the stock of houses for the local population and for which there is an established need. (Indeed the prospective purchaser is a member of the local population who is unable to find a comparable property locally). By virtue of its completed state, this makes it an actuality rather than an aspiration. Approval reduces proportionately the need for agricultural land elsewhere in the countryside to be allocated for housing development. It qualifies, therefore, as “sustainable development”

12. The applicants question whether the retention of the condition can be considered “reasonable” and “necessary” in terms of the six tests. National government advice is that “conditions should not place unjustifiable burdens on applicants or severely limit the freedom of owners to dispose of their property”. The restriction on the use of this dwelling house to holiday *letting* accommodation, does precisely that. It means not only that the property cannot be sold as a principal residence to the local population, but it could not even be sold as a holiday home for occupation during a limited number of weeks per annum. It can only be

sold for business purposes, and since the applicants intend to continue trading with the rest of their property, the restriction means it must be sold to a competitor, with the risk of damage to the remaining business holding. As the property is physically indistinguishable from the rest of the group, such a competitor could be expected to trade on the established reputation of the applicants, but the applicants would have no power to ensure that the new owner continued to maintain and operate the property to an acceptable standard, thereby damaging the applicants' long-standing reputation for excellence. Whilst the applicants acknowledge that the Council is generally unable to take into account matters relating to competition when determining planning applications, they contend that it is *ultra vires* for the authority to impose a condition which requires the owners to dispose of their property only in circumstances which have the potential to damage their remaining interests.

13. The applicants assert that they would not have carried out the development if it had been made clear that the condition attached to the permission would be interpreted by the Council as permanent and immutable and they refer to the implication contained within it that the necessary permission could be achievable. In a letter to the Council at application stage, they had declined to enter into a Section 75 agreement, tying the houses permanently to the hotel, on the grounds that future circumstances and policies could be expected to change. They did not receive a written reply to this letter and contend that the Council is, in effect, treating the conditional permission as the equivalent of a Section 75 agreement, without such an agreement having been reached, which, if so, would be *ultra vires*.

#### **E. Assess whether these considerations warrant a departure from the development plan**

The development plan is aspirational. It does not exist for its own sake. It seeks to achieve goals by establishing a framework for development. There is a strong conservation emphasis. Its purpose is not only to restrict, but also to enable. Its policies are predicated on a standard route and sequence, but it cannot account for every eventuality; changing circumstances and different routes can lead to outcomes which had not

been foreseen, but which nonetheless amount to fulfilment of some or all of the plan's aims and objectives.

This development of which this house forms a part, comprising a closely inter-related programme of conservation, adaptation and new-build (with a kind of 'cross-subsidy' from the new to the old) meets many of the aims and objectives of the plan and, in its current form, contravenes none. Overall both the conservation and development aspects of this project must be seen to be in harmony with the local plan's aspirations regarding protection and enhancement of the "Arran Experience" and has, in fact, been held up as a model example of this. The central question must be whether lifting the occupancy restriction would change any of this and the answer must be no.

The difficulty is that redesignating one of the houses as a dwelling house for full-time occupation allows that house to be described as being in the "wrong" place – not "wrong" because it is in any way "inappropriate", but because the place had not been previously identified by the authority as a housing development site (and, of course, the development was not conceived as such). Had the site been so identified, and the development taken exactly the same form as it has now, then this would still be regarded as a model development.

It is also conceivable that a better development has been achieved through the evolutionary route, than through the standard route; there is no other example on the island of a small-scale new-build development which so significantly subordinates commercial considerations to concern for the conservation of a listed building and its environs. The accommodation provided in these houses is exceptionally spacious and of a very high specification – in many respects, in fact, superior to the "mansion house" to which they relate. A housing developer would have wished to emphasise this in order to maximise profitability and would certainly have wanted to market high specification properties as "detached" – but the applicants have at all times wished to retain an appropriate sense of the hierarchy of buildings on the site and to reinforce the historic sense of place, so have modified the design accordingly: internally they are spacious modern houses, but externally they look like estate workers' cottages or a stable block conversion. What we have, therefore, is a fulfilment of the local plan's aims and objectives regarding sensitive housing development, but achieved via a different route from the one projected.

As it stands, what exists here is a development which is in many respects wholly in accord with current Scottish Planning Policy. It has no negative effect on the surrounding countryside (from which it is barely visible); it represents a positive improvement to the immediate environment; it makes productive use of brownfield land; it respects its historic setting; it subordinates opportunities for commercial gain to the interests of conservation of the built and natural heritage, and thereby successfully balances the competing claims of conservation and development.

In any attempt to determine whether “the public interest” would be harmed by granting the application, only one issue can be identified, viz. whether doing so would create a precedent, in the sense that it might encourage future applicants to abuse the system by applying for development under one policy only to seek amendment later. This need not be so. There are specific locational considerations including linkage to the conservation of listed buildings – as well as the pressures of the current financial crisis (the Council’s stated policy for responding to the economic crisis includes relaxation of planning conditions) - which allow this to be treated as a special case and assessed on its own merits. Wholly hypothetical assumptions about what might or might not happen in the future should not be regarded as sufficient grounds for refusing to acknowledge reality with this existing building, particularly when the Council has other powers at its disposal to prevent this.

The applicants assert that, when considered in the round, this application does not represent a material departure from the aims and objectives of the development plan. Granting it would have no negative affect on “*the unique features of [the island’s] environment, its natural features, resources, scenic quality, natural beauty, landscape interest, geological feature [or] wildlife*” but would have a very positive effect on its “*historic and architectural heritage*” by enabling urgent repairs to the roof of the listed mansion house through the finance raised. It would also allow a local couple to continue to enjoy in their retirement all these contributory elements of “*the Arran Experience*” which the Council places at the heart of its local plan.

If the Council continues to insist that the application must be regarded as one seeking permission for “development”, then there are sufficient other material considerations to warrant a departure and the application should be approved.

Document 10**Kilmichael Kilmichael**

Sent: Mon 25/07/2011 08:58

**From:** [REDACTED]  
**To:** [REDACTED]  
**Cc:**  
**Subject:** Kilmichael, Arran  
**Attachments:**

25th July, 2011

Dear Ms Hanna,

I am concerned that I have not yet had a reply to my letter of June 8th. I appreciate that you have to give priority to actual applications, but it has been over six weeks since I wrote. Perhaps it is a sign of improved economic circumstances in some areas. I do hope so. But time is moving on and the economic improvement has certainly not reached the Isle of Arran yet.

Yours sincerely

Geoffrey Botterill

**SOLICITOR TO THE COUNCIL (Corporate Services): Ian T. Mackay**  
Cunninghame House, Irvine KA12 8EE  
Tel: 01294 324300 Fax: 01294 324372

Your Ref:                      Our Ref: Arran 1/1

If telephoning please call:  
e-mail:

20 July 2011

Mr G Botterill

*Document 111*



**NORTH AYRSHIRE**  
COUNCIL

**PUBLIC**

Dear Sir

**Town & Country Planning (Scotland) Act 1997**  
**Kilmichael Country House Hotel, Glencloy, Brodick, Isle of Arran, KA27 8BY**

I refer to your letter dated the 9<sup>th</sup> June 2011, with regard to the above subject. I wish to apologise for the delay in responding, however it was important to study the full extent of the letter that you submitted.

The justification and reasoning for the case is understood, however, unfortunately, as previously advised, the proposal could not be justified under the terms of the adopted Local Plan. As you are aware, the letting units were only approved as they complied with Policies TOU 1 and TOU 3, as they were judged to be ancillary to the Hotel. The planning position is clear in that the provision of new houses in the countryside is controlled by Policy ENV 1 and there is no justification in this instance. The material considerations that you have stated within your correspondence have been noted. However, these would not alter the fact that the proposal would be contrary to Policy ENV 1 of the adopted Local Plan and would therefore not outweigh the provisions of the adopted Local Plan.

Policy ENV 1A relates to the conversion, rehabilitation or replacement of existing buildings in the countryside. This policy relates to the conversion of traditional outbuildings, byres and barns etc to allow them to be used for residential purposes. However, the buildings that are the subject of this enquiry are not traditional buildings in the countryside, they are relatively new buildings and are already of a residential use.

Planning application N/05/00248/PP was solely for the erection of self-catering cottages and Condition 7 makes this clear:

"That the self-catering cottages shall be used only for holiday letting purposes and shall not be rented, sold or sub-let for any other purpose. For the avoidance of doubt, none of the cottages shall be occupied on a permanent basis without the prior written approval of North Ayrshire Council as Planning Authority."

Furthermore, this is what was initially applied for in the planning application form dated the 12<sup>th</sup> March 2005. As you are aware, planning permission for the erection of permanent dwellinghouses in this countryside location would not have received a favourable recommendation.

With regard to the case that you have mentioned in Shiskine, these are traditional buildings that were converted and therefore do not relate to new build developments. Therefore, this cannot be compared with the current case.

I can clarify that planning permission for a change of use of the existing hotel to a permanent dwellinghouse would be required (if you intend to progress with this proposal) and from the information that you have provided there would be no objections in principle to this. If you decide to progress with the proposal, you would also be required to apply for planning permission to amend the relevant planning conditions of the self-catering cottages, to allow them to operate as self-catering cottages in their own right and not to be associated with the hotel (as it would become a permanent dwellinghouse).

It should be noted that the information provided in this letter is for advice only and does not constitute a formal decision of North Ayrshire Council, nor prejudice any future decision which may be taken as a result of a planning application being submitted. This letter does not cover each and every issue that may be investigated during the planning process.

I trust that the above information will be of assistance.

Yours faithfully

**Kilmichael Kilmichael**

Sent: Tue 26/07/2011 09:42

**From:** [Redacted]  
**To:** [Redacted]  
**Cc:** [Redacted]  
**Subject:** RE: Kilmichael, Arran [PUBLIC]  
**Attachments:**

26 July 2011-07-26

Dear Ms Hanna,

Thank you for replying to my email. I have now received your response, dated 20<sup>th</sup> July.

It is disturbing that your letter does not amount to anything more than a further repetition of the point you have made before regarding policy ENV1. There is no convincing indication that any meaningful consideration has been given to any of the matters I raised.

You assert in your second paragraph that "the planning position is clear," but I cannot agree that your interpretation of it is accurate. Certainly *the procedure for determining planning applications* is very clear indeed, but there is no sign in your letter of any attempt to comply with it. I trust this will be properly demonstrated when the formal application is submitted.

As before, your decision relies heavily on the original application of more than six years ago and what would have happened "if..." I must therefore repeat my conviction that if the department had replied properly (or at all) to my letter at the time we would not find ourselves in this position today.

Nowhere in your reply can I find anything anywhere which reflects due consideration of changed times or the flexibility which government policy requires, let alone any attempt to explain or justify your rejection of material considerations.

It is evident from the failure to reply properly to most if not all of the key questions I raised in my last letter that the department is resolute in its determination to reject an application. I shall not trouble you further for yet another repetition of the same dogmatic position before formal application, therefore. Based on the experience of this lengthy consultation, however, I cannot be confident that the positive approach which government policy advocates will be adopted and I must take further professional and legal advice before submitting it.

I have just one final question and I should be grateful for a timely reply. Will determination of the application be a delegated one, or one made by the committee?

A hard copy of this letter will be posted today.

Yours sincerely

Geoffrey Botterill

**From:** [Redacted]  
**Sent:** Mon 25/07/2011 09:01  
**To:** [Redacted]  
**Subject:** Re: Kilmichael, Arran [PUBLIC]

Document B3

**SOLICITOR TO THE COUNCIL (Corporate Services): Ian T. Mackay**  
Cunninghame House, Irvine KA12 8EE  
Tel: 01294 324300 Fax: 01294 324372



**NORTH AYRSHIRE**  
COUNCIL

**PUBLIC**

Your Ref:                      Our Ref: Arran 1/1

If telephoning please call:  
e-mail:

8 August 2011

Mr G Botterill

Dear Sir

**Town & Country Planning (Scotland) Act 1997**  
**Kilmichael Country House Hotel, Glencloy, Brodick, Isle of Arran, KA27 8BY**

I refer to your letter and email correspondence dated the 26<sup>th</sup> July 2011, regarding the above subject.

The material considerations that you have stated within all your correspondence have been noted and considered. However, these would not alter the fact that the proposal would be contrary to the provisions of the adopted Local Plan and it is considered that the material considerations would not outweigh the provisions of the adopted Local Plan. In some cases, material considerations can outweigh the provisions of the Local Plan, however this would not be the case in this instance. During the planning process, the Report of Handling would clearly consider each material consideration, in coming to a determination of the application.

As advised by recent email correspondence, any future application is likely to be a delegated decision.

It should be noted that the information provided in this letter is for advice only and does not constitute a formal decision of North Ayrshire Council, nor prejudice any future decision which may be taken as a result of a planning application being submitted.

I trust that the above information will be of assistance.

Yours faithfully



## KILMICHAEL COUNTRY HOUSE HOTEL

Wednesday, August 17, 2011

**For the personal attention of the Chief Development Management Officer**

Chief Development Management Officer  
North Ayrshire Council  
Cunninghame House  
Irvine KA12 8EE

Dear Sir,

### **Kilmichael House, Isle of Arran**

I refer to previous correspondence with your department regarding a proposed change of use of one of our cottages from letting accommodation to dwelling house. The conclusion is that an application could not be approved because it would be contrary to the Local Plan and there are no material considerations to outweigh this. I am unable to understand the rationale behind this decision, or to reconcile it with the outcome of comparable applications which have been granted, and so write to ask you, as head of the department, to explain your department's position.

At the root of the determination in our case seems to be a concern that if the original development application six years ago had been for dwelling houses, it would have been refused. In consequence, the proposed application is being treated as if it were for a new development, rather than an application for a non-material change from one use to another in the same use class. This was not so with the comparable applications to which I refer, even as recently as two months before my first approach to the department, so it does not seem unreasonable to ask for an explanation.

**Scottish Tourist Board: 5 Stars Small Hotel**  
**Past Winner of *The Taste of Scotland* Country House Hotel of the Year Award**  
**AA: Red Star "Premier Collection" of the Top 200 Hotels in Britain and Ireland**

The planning records I have examined show that in both these approved cases - at Lakin Farm, Shiskine - the justification for the original development was also tourism related, and the records also show that if the original applications had been for development of dwelling houses, they too would have been refused. Yet nowhere in any of the assessment of the two change of use applications does the original justification for the site enter into the deliberations. Could you please explain why, then, this consideration is seen to be central and definitive in our case?

In our case, it is said that "The planning position is clear in that the provision [sic] of new houses in the countryside is controlled by Policy ENV1.." In marked contrast, nowhere in the two Shiskine applications is any reference at all made to Policy ENV1 and there is certainly no indication that the two approvals are seen as being tantamount to the "provision" of "new" houses in the countryside, even though the most recent related to a new-built house (and not the converted traditional building as claimed). Indeed, in both those cases the officers responsible for the delegated decisions concluded that, "there is no specific policy [in the Local Plan] that opposes change of use of holiday letting units to full time residential... It is considered therefore that the proposal is acceptable in principle..". Could you please explain why the established principle and the provisions of the local plan apply in these two cases but not in ours?

Legislation specifically "excludes from the definition of development... any change of use where both the existing and proposed uses fall within the same use class in an Order" and the reports of handling for both the two Shiskine cases accept this principle, referring for further support to both the local plan definition of managed units as dwelling houses and to well established precedent, whereby "It has always been asserted that any proposal for holiday letting should be considered on the same basis as that for a dwelling house". The exception is - once again - our case. Could you please explain why this is so?

It seems to me that the three applications are directly comparable. All three are for change of use of existing buildings in the countryside which were originally restricted for tourism use as letting cottages. Two are treated exactly as one would expect, based on careful reference to the local plan and to legislation. Only one - ours of course - is subjected to a wholly different assessment process. In all three cases the buildings already exist. In two cases that fact is acknowledged, but in our case the application is assessed as if it did not. In two cases, the change of use is not seen as material, but in ours it is. In two cases the original justification for development is not seen as significant, but in our case it is. In two cases, the applications are judged not to contravene the provisions of the Local Plan, but in our case it is deemed to be so significantly contrary that no material considerations could outweigh this.

The Scottish Government has expressed the expectation that its new planning arrangements "will follow a process that is demonstrably fair and transparent." [Circular

4/2009]. I sincerely hope you would agree and will offer an explanation as to why the opposite seems to obtain in our case.

Yours faithfully,

Geoffrey Botterill  
Partner

cc. Ms J Hanna

Document 15

**SOLICITOR TO THE COUNCIL (Corporate Services): Ian T. Mackay**  
Cunninghame House, Irvine KA12 8EE  
Tel: 01294 324300 Fax: 01294 324372

Your Ref: Our Ref: Arran 1/1

If telephoning please call:  
e-mail:

**NORTH AYRSHIRE**  
COUNCIL

**PUBLIC**

29 August 2011

Mr G Botterill

Dear Sir

**Town & Country Planning (Scotland) Act 1997**  
**Kilmichael Country House Hotel, Glencloy, Brodick, Isle of Arran, KA27 8BY**

I refer to your letter dated the 17<sup>th</sup> August 2011 regarding the above subject. From previous correspondence, it has been noted that you are proposing to change the use of one of the cottages from letting accommodation to a dwellinghouse.

The policy position regarding this proposal was carefully considered on receipt of your initial query. The self-catering cottages at Kilmichael Country House Hotel are located within an area of countryside as identified within the Isle of Arran Local Plan and were solely approved on the basis that they were for self-catering purposes. At the time of the planning application (reference N/05/00248/PP), the proposal was considered against Policies TOU 1 and TOU 3 of the adopted Local Plan and it was considered that the self catering units, being in a rural location, complied with the terms of Policy TOU 1(c) and was judged to be ancillary to the Hotel and complied with related criteria under TOU 3.

The proposal to amend the conditional planning permission N/05/00248/PP has no justification on planning policy grounds. Whilst there is sympathy to the reasoning behind the proposal, the planning position is quite clear in that the provision of new houses in the countryside is controlled by Policy ENV 1, where new houses require specific justification i.e. operational need for worker to live in pursuance of agriculture, forestry or other established rural businesses, which is not the case in this instance. Had the original planning application been for 4 new permanent dwellinghouses or 1 new permanent dwellinghouse, the application would have been refused.

With regard to the point raised regarding similar applications at Lakin Farm, Shiskine, as advised in previous correspondence dated the 12<sup>th</sup> May 2011, these do not relate to new build developments and related to traditional outbuildings prior to their use as letting cottages. These proposals were considered under Policy ENV 1A that relates to the conversion of existing buildings in the countryside; rather than Policy ENV 1 of the adopted Local Plan. In these cases, a planning application could have been submitted for the conversion of the outbuildings to form a dwellinghouse in the first instance, which would have been supported under the terms of Policy ENV 1A. In order to comply with Policy ENV 1A, the existing building in the countryside is to relate to a traditional outbuilding, byre or barn etc. In the case that you are proposing, the self-catering cottages are not traditional buildings and

are recent additions to the Kilmichael Country House Hotel. The conversion of the cottages could not therefore comply with Policy ENV 1A. In conclusion, the two applications at Shiskine are comparable as they related to traditional buildings in the countryside, whilst this current proposal is not comparable to the Shiskine examples, as it relates to a relatively new addition to the Kilmichael Country House Hotel and is therefore not a traditional building.

It is accepted that the adopted Local Plan defines managed units as "self catering accommodation such as chalets and static caravans let for tourist accommodation for short term use, managed by a central agent. Can also be part of a larger tourist facility. Where houses are let to tourists, the prime use remains as a dwellinghouse." However, in the case that you are proposing, a planning condition was imposed to restrict the cottages to holiday letting purposes only and not to be occupied on a permanent basis. If the site was within the settlement of Brodick, the planning policy position would have been different.

I can therefore advise that the change of use of one of the cottages from letting accommodation to a dwellinghouse could not be supported.

I trust that the above information clarifies the planning situation.

Yours faithfully



## KILMICHAEL COUNTRY HOUSE HOTEL

Monday, September 05, 2011

Mr J Miller  
Chief Development Management Officer  
North Ayrshire Council  
Cunninghame house  
Irvine  
KA12 8EE

Dear Sir,

### **Town & Country Planning (Scotland) Act 1997 Change of Use Application**

Thank you for your letter of 29 August 2011, in reply to mine of 17 August 2011. I had asked you for an explanation of the rationale behind your determination that our application would not accord with the local plan and an explanation of why comparable applications appeared to have been treated differently. Regrettably, your reply does not properly clarify the planning situation any more than previous correspondence with your department, because it fails to respond to clearly expressed concerns about key issues and contains a number of factually incorrect assertions in matters which are germane to your justification of your department's decisions. Although all these have been brought to your attention before, you seem to have overlooked them again, so I must reiterate them, but this time in a form which, I hope, you can no longer miss. I apologise for metaphorically thumping the table, with heavy dependence on underlining and italic script for emphasis, but it seems there is no other way to ensure focus on matters of fact which can no longer be ignored.

First, with regard to the similar applications at Shiskine, your explanation of why you do not believe them to be comparable is founded on assertions which have no basis in fact.

Central to your argument is the relevance of Policy ENV1A. Your letter repeated your department's insistence that both the Shiskine applications were assessed against this policy. In reality, and as a matter of recorded fact [*see the Report of Handling*], the officer responsible for application 04/01204/PP concluded in his analysis that, "ENV1A is not relevant"!

**Scottish Tourist Board: 5 Stars Small Hotel**  
**Past Winner of *The Taste of Scotland* Country House Hotel of the Year Award**  
**AA: Red Star "Premier Collection" of the Top 200 Hotels in Britain and Ireland**

It is therefore a matter of recorded fact that in the first of the Shiskine cases, approval of the change of use application was *not* dependant on compliance with policy ENV1A.

The officer had concluded that “ENV1A is not relevant as the building has already been converted. No physical alterations are proposed and the property is no different to a typical dwelling house”. Since Policy ENV1A governs “Proposals for *conversion, rehabilitation or replacement* of existing buildings in the countryside” the officer correctly concluded that the Policy had no relevance; none of these actions was being proposed. This is, of course, no different from our case.

In your letter of 29 August, you asserted that, “In order to comply with Policy ENV1A, the existing building in the countryside is to relate to a traditional outbuilding, byre or barn etc.” In fact, nowhere in any of the provisions of the local plan is such a requirement indicated and I note that in none of your department’s responses have you been able to demonstrate evidence of any such definition. Moreover, as the officer in the above case concluded, in order to be correctly assessed against the provisions of Policy ENV1A there is an even more fundamental requirement, namely that the proposal must actually be for one of the development activities it governs!

Nevertheless, regardless of this, and in spite of the fact that again no development works were proposed in the second application<sup>4</sup> at Shiskine (making that application identical to the first), the officer responsible for the second change of use application (10/00791/PP) did choose to assess it against Policy ENV 1A. There was, though, one significant difference: this application did not relate to “ a traditional outbuilding, byre or barn etc.” Forge Cottage is in fact a totally new-built construction which *replaced* a traditional building via development application number 00/00375/PP. Clearly it could not be legitimately claimed that it was a structure which had been a “traditional outbuilding prior to [its] use as [a] letting cottage”. Consequently the application the officer was dealing with (10/00791/PP) was, undeniably, a change of use application for an existing but “new” building in the countryside, just as ours is.

It is, therefore, a matter of recorded fact that the second approval for change of use at Shiskine was *not* for a structure which had been a “traditional outbuilding prior to [its] use as [a] letting cottage” and this was *not* held to be a requirement for compliance with Policy ENV1A.

Both in your last letter and in previous correspondence, you have insisted that in both the Shiskine cases “ a planning application could have been submitted for the conversion of the outbuildings to form a dwelling house in the first instance, which would have been supported under the terms of Policy ENV1A.” This assertion is also false. As a matter of recorded fact, in commenting on the application to demolish the existing traditional buildings and replace them with the new-built Forge Cottage, the Development and Promotion Department made the following observation:

“The relevant local plan policies are HOU5 or TOU6, depending on whether the proposal is considered to be a housing or a tourist development. As the

proposed development is located in the countryside and does not seem to meet the criteria in Policy HOU5 it would need to be justified as an exceptional case based on a unique need. The existing buildings do not appear to be an approved tourist undertaking so the proposed development would not comply with Policy TOU6. *Unless the proposal can be justified under one of these policies it would not be supported.* [Committee report]

The outcome was that the new building was approved under the only policy which permitted it – tourism (just as ours was) - after the case had been made for treating it as part of a new tourism development.

It could not be clearer that a planning application for the construction of a new dwelling house with unrestricted occupancy would *not* have been approved!

There is a disturbing degree of inconsistency in the analytical processes followed by your department in the assessment of two identical applications for the same type of permission on the same site in Shiskine, but three significant conclusions are undeniable: the true situation with the Shiskine applications is that approval was *not* consistently dependant on Policy ENVIA, *nor* on a requirement for the existing building to be a “traditional” one, *nor* on a correct evaluation of whether the building could or could not have been approved as a dwelling house in the first instance. Your explanation of why our proposal is not comparable to the Shiskine ones, resting as it does on these three key points, is without foundation and consequently unacceptable.

There are more matters of fact which are pertinent. In both the Shiskine cases, the approval for change of use was actually founded on a more fundamental aspect of the Local Plan. In the words of the first officer, “The adopted Local Plan has no specific policy to control the change of use of a holiday letting unit to a full time residential unit.” And in the words of the second officer, “There is no specific policy that opposes change of use of holiday letting units to full time residential.” This position is further supported by the observation that, “It has always been asserted that any proposal” -by which he clearly means any *development* proposal – “for holiday letting should be considered on the same basis as that for a new dwelling house”. The factual accuracy of this latter observation is demonstrated in the letter you wrote to our agent on 19<sup>th</sup> May, 2005 in which you comment that “this proposal involves the construction of dwelling houses, albeit for holiday accommodation.” And in your latest letter to us you conceded that one of the provisions of the local plan is that, “Where houses are let to tourists, the prime use remains a dwelling house. ”

In summary, then, and based on the recorded written conclusions of both you and other officers in your department, a letting cottage *is* a dwelling house and there is no specific policy in the adopted local plan which opposes change of use from one to the other.

All my observations above are founded on written records of what actually happened in the Shiskine cases. They relate to matters of fact, not my opinion. As a matter of fact, therefore, nothing – absolutely nothing - which you say in the fourth paragraph of your letter of 29<sup>th</sup> August justifying the different treatment of the Shiskine applications, is factually correct. Your justification is, in consequence, unsound.

The fact of the matter – recorded and demonstrable -is that you have not been able to demonstrate any legitimate grounds for treating our proposal differently from the way in which you dealt with comparable applications near Shiskine.

Your department has repeatedly insisted that the only policy against which our proposal can be measured is Policy ENV1, which, you say, controls “the *provision* of new houses in the countryside”. In fact, and as you well know, Policy ENV1 regulates “Proposals for *development* within the countryside.” That development has already taken place. What we are now concerned with is the status quo. As you are aware, an application for change of use within the same use class falls under the provisions of the Scottish Use Classes Order and is not, therefore, an application for *development* as defined under the Act. This, too, is a matter of fact. Policy ENV1 – clearly a policy intended to control *development* - cannot rationally or reasonably be appealed to as the sole justification for rejection of a non-material change of use application where no development is proposed. You and your department have consistently failed to address this issue directly even though I have raised it several times. I must now ask you finally to do so and to give an indication of the legislative position which permits you to act in this way.

Meanwhile, if we accept for the moment your interpretation of the policy as one governing “provision” of new houses, we must ask – in the absence of any clear explanation – what you mean by it. Given that the building in question already exists and that no building works of any kind are proposed (so there can be no question of describing this as a new *building*), your choice of the term “provision” can only mean that you are treating a change of use from letting cottage to dwelling house as tantamount to the creation of a “new” house because this increases the supply of buildings which can be lawfully occupied as dwelling houses. Setting aside all consideration of the Scottish Use Classes Order and whether or not such a change constitutes development, the two Lakin Farm applications to which I have referred must, by this criterion, also qualify as “provision of new houses” since the approvals in those cases – also for buildings which already exist - also augmented the supply where none existed before. As I have pointed out in previous correspondence, no consideration at all was given to this in the assessment of either of the Shiskine applications and you have again failed to address the matter in your letter of 29 August. Clearly you wish to apply this definition in our case alone, even though there is no justification for it anywhere in the provisions of the local plan.

Six months have passed since I first approached the Council for guidance. I described then the exceptional circumstances which have led to our proposed application for this one cottage, because I felt the department was entitled to an explanation. Subsequent to the first indication of a refusal, I have attempted to set the proposal into a planning, environmental and economic context, which some have thought persuasive and which would allow permission to be granted. I did this because I took at face value both the “Council Response to the Economic Recession”, published on the web, and the Context statement in the Introduction to the Local Plan, which says:

“The Local Plan must positively address the issue of change and meet these challenges within a basic framework which, while providing a robust policy base, will ensure an element of flexibility which will enable evolving issues and situations to be addressed effectively.”

I have also “played devil’s advocate” in trying to understand what harm would be done by granting it. In doing so, I have been conscious of Circular 4/2009 which says:

“In distinguishing between public and private interest, the basic question is whether the proposal would affect the amenity and existing use of land and buildings, which ought to be protected in the public interest”

Since there would not be any physical works of any kind and no material change of use from the existing domestic one, I cannot see how there would be any effect at all on “the amenity and existing use of the land or buildings”. At first, I thought I must be missing something. Now it is clear that I was simply being naïve. There is not a shred of evidence in any of the lengthy correspondence with your department that any consideration at all has been given to any of the justificatory points I raised in my letter, in spite of the well-established principle that this would be a valid procedure to follow and the legal requirement that it must. All my approaches have been met with an erroneous insistence that the application *cannot* be approved, based on fallacious analysis and reflecting the narrowest possible interpretation of “planning.”

Disappointing as that is, I can now see that it would be pointless to make any further attempt to have our application considered with the creative approach to sustainability which national policy advocates, or with the sensitivity to what is reasonable at the heart of all national planning circulars on the subject; there is a clear and resolute determination to refuse, for reasons best known to yourselves. What cannot be ignored is the flawed analysis underlying the projected refusal, ignoring as it does the provisions of the law and the indefensible departure from the process by which other comparable applications have been evaluated and determined.

In this letter I have drawn your attention, therefore, to matters of recorded fact which I believe invalidate the justification you offered in your letter of 29 August for the differing treatment of the Shiskine applications and our proposal. I have also asked you to address directly the question of whether or not our proposal can be correctly considered an application for development permission. I have done so as a second request to you as head of the department, for a convincing explanation of your department’s position and a second request, again to you as head of department, for an appropriate and convincing reassurance that the handling of our application “will follow a process that is demonstrably fair and transparent” as the Scottish Government requires and we have a right to expect. I should be grateful for a convincing and accurate reply.

Yours faithfully,

Geoffrey Botterill  
Partner

Document 17

**SOLICITOR TO THE COUNCIL (Corporate Services): Ian T. Mackay**  
Cunninghame House, Irvine KA12 8EE  
Tel: 01294 324300 Fax: 01294 324372



**NORTH AYRSHIRE**  
COUNCIL

**PUBLIC**

Your Ref:                      Our Ref: Arran 1/1

If telephoning please call:  
e-mail:

5 October 2011

Mr G Botterill

Dear Sir

**Town and Country Planning (Scotland) Act 1997**  
**Kilmichael Country House Hotel, Glencloy, Brodick, Isle of Arran, KA27 8BY**

I refer to your letter dated 5<sup>th</sup> September 2011 regarding the above subject. I wish to take this opportunity to apologise for the delay in responding.

The issues with the self catering cottages at Kilmichael Country House Hotel have already been discussed in previous correspondence, dated 29<sup>th</sup> August 2011, 8<sup>th</sup> August 2011, 20<sup>th</sup> July 2011, 12<sup>th</sup> May 2011 and 4<sup>th</sup> April 2011. On receipt of your initial correspondence, the Development Plan Section were consulted regarding the proposed development. In correspondence dated 4<sup>th</sup> April 2011, the response from the Development Plans Section was included and I have enclosed a copy of this letter for your information and attention.

I can advise that you should apply for planning permission, if you wish to obtain a formal opinion on this matter. In the event of a planning application being refused, there is a right of a local review of the decision to the Local Review Body.

Regarding the other similar applications in Shiskine that you have referred to, I can advise that each application is dealt with on its own merits. I wish to advise that Policy ENV 1A was considered in all cases. It is accepted that with planning application (reference N/04/01204/PP), Policy ENV 1A was considered, however during the process, it was considered that Policy ENV 1A was not relevant in this case. I wish to draw your attention to the more recent planning applications in this locality (reference N/05/00304/PP, N05/01168/PP and N/10/00791/PP), where the proposals were assessed against Policy ENV 1A of the adopted Local Plan.

With regard to planning application N/04/01204/PP, the points that you have raised within the Report of Handling have been noted. This building related to a traditional outbuilding, and therefore, under the terms of Policy ENV 1A, planning permission could have been obtained in the first instance for the conversion of the outbuilding to a permanent dwellinghouse. In this case, as the building related to an established outbuilding, it was considered that there would be no policy objection with converting the letting cottage to a permanent dwellinghouse. It should be noted that this was not in relation to a new build development and related to a traditional outbuilding.

Regarding planning application N/10/00791/PP at Forge Cottage that you have referred to, I can advise that this was assessed against Policy ENV 1A. The replacement dwellinghouse at Forge Cottage was previously allowed (under planning approval 00/00375/PP) as it related to a replacement building. The difference between this case and the proposal at Kilmichael Country House Hotel is that Forge Cottage related to a replacement dwellinghouse, whereas the letting cottages at Kilmichael Country House Hotel are new build developments that were solely justified for tourism. As you are aware, planning permission would not have been approved for new dwellinghouses at Kilmichael Country House Hotel for permanent occupancy as this would have been contrary to Policy ENV 1.

In the section of your letter where you have referred to the recommendation by the Development and Promotion Department regarding the demolition of the existing Forge Building and the erection of a letting cottage, (00/00375/PP), I can advise that this was considered under a previous Local Plan, where different policies applied. The current Isle of Arran Local Plan was adopted in February 2005. It should be noted that this planning application was for a replacement building and not solely for a new build development. If it was the case that the letting cottages at Kilmichael Country House Hotel had constituted a conversion or a replacement of existing buildings in the countryside, I can advise that this would have been a different matter in terms of planning policy.

The points that you have raised in relation to a letting cottage and the fact that there is no specific policy in the adopted local plan which opposes a change of use from a letting cottage to a permanent dwellinghouse have been noted. However, I wish to remind you of Condition 7 of planning approval N/05/00248/PP that was imposed for the self-catering cottages at Kilmichael Country House Hotel. This condition ensures that the cottages are used solely for holiday letting purposes and should not be rented, sold or sub-let for any other purpose. Furthermore, the cottages are not to be occupied on a permanent basis.

Policy ENV 1 of the Isle of Arran Local Plan relates to new development in the countryside. When your planning application was initially submitted, if it had not been justified under tourism, I can advise that it would have been refused under the terms of Policy ENV 1, as there was no justification for the development of dwellinghouses within the countryside.

I trust that this clarifies the planning position at Kilmichael Country House Hotel and shall bring the exchange of correspondence relating to this particular matter to a close.

Yours faithfully

Document 18

Sent  
11/10/11



## KILMICHAEL COUNTRY HOUSE HOTEL

Tuesday, October 11, 2011

Mr J Miller  
Chief Development Management Officer  
North Ayrshire Council  
Irvine KA12 8EE

Dear Sir,

**Town and Country Planning (Scotland) Act 1997  
Proposed Change of Use, Cottage at Kilmichael, Arran**

I refer to your letter of 5<sup>th</sup> October in reply to mine of 5<sup>th</sup> September. I note your desire to bring to a close the exchange of correspondence on this matter and assure you that I am equally anxious to do so.

In my earliest contact with your department, I was told that we "might not need to make a formal [planning] application because of the wording" of the condition. I therefore wrote in letter form, as advised, requesting the permission. The response implied a different view: that a formal application for amendment of the original consent would be required, but indicated that it would be unlikely to be recommended for approval. From that point on, I believed there would need to be a new application for a new consent and for this reason was unable to comprehend why, in subsequent exchanges, there was a persistent concentration on the origin of the development and a refusal to address the status quo. It is now clear to me that you continue to treat a request for the written approval required by Condition 7 not as a matter of compliance, but as a proposal seeking the *variation* of an existing planning consent. I am sorry I did not realise that sooner.

As you will be aware, Section 64 of the Act confers on the planning authority the power to vary an existing consent when it does not consider such a variation to be material. All the correspondence indicates that you do consider the change to be material. This being so, the authority does not have the power to grant such a variation. In consequence it appears that the only way to obtain written approval is to make a new application for full planning permission for a change of use of an existing building.

I should be grateful for confirmation that this is the correct form. I shall then, finally, be in a position to make the application referred to in the third paragraph of your letter.

Yours faithfully,

G A Botterill

**VisitScotland: Gold Award Country House Hotel    AA: Red Star "Inspectors' Choice" Hotel  
Past Winner of *The Taste of Scotland* Country House Hotel of the Year Award  
Hotel Review Scotland Country House Hotel of the Year 2009 AA Rosettes for Culinary Excellence**

**SOLICITOR TO THE COUNCIL (Corporate Services): Ian T. Mackay**  
Cunninghame House, Irvine KA12 8EE  
Tel: 01294 324300 Fax: 01294 324372

Your Ref:                      Our Ref: Arran 1/1

If telephoning please call:  
e-mail:

17 October 2011

Mr G Botterill



**NORTH AYRSHIRE**  
COUNCIL

**PUBLIC**

Dear Sir

**Town & Country Planning (Scotland) Act 1997**  
**Kilmichael Country House Hotel, Glencloy, Brodick, Isle of Arran, KA27 8BY**

I refer to your letter dated 11<sup>th</sup> October 2011, regarding the above subject.

I can advise that you should apply for planning permission, if you wish to obtain a formal opinion on this matter. This would constitute an application to amend or delete condition 7 of planning approval N/05/00248/PP to allow the relevant cottage(s) to be used as permanent dwellinghouse(s).

It should be noted that the submission of a planning application does not guarantee that planning permission would be approved.

Yours faithfully



Heads of Planning



4 November 2011

Dear Sir/Madam

## **OCCUPANCY RESTRICTIONS AND RURAL HOUSING**

I am writing to clarify the Scottish Government's views on the use of conditions or planning obligations to restrict the occupancy of new rural housing.

Occupancy restrictions are typically used in Scotland to limit the occupancy of new houses in the countryside either to people whose main employment is with a farming or other rural business that requires on-site residency, or to people with a local connection. Sometimes new houses are tied to particular land holdings, preventing them being sold separately. Such restrictions have been applied either through planning conditions or Section 75 planning obligations.

A number of issues have arisen with the use of occupancy restrictions, some of which have been exacerbated by the current economic situation. Some people have found it difficult to get a mortgage to buy a house with an occupancy restriction. Others have found it difficult to sell the house, or have the restriction lifted, when they are forced by necessity to move.

While it may be possible to include provisions in the condition or obligation that attempt to address these issues, any use of occupancy restrictions introduces an additional level of complexity (and potentially expense) into the process of gaining consent for a new house. Occupancy restrictions can also be intrusive, resource-intensive and difficult to monitor and enforce.

Scottish Planning Policy promotes a positive approach to rural housing. It states that development plans should support more opportunities for small scale housing development in all rural areas, including housing which is linked to rural businesses. It does not promote the use of occupancy restrictions.

**The Scottish Government believes that occupancy restrictions are rarely appropriate and so should generally be avoided.**



In determining an application for a new house in the countryside, it may be appropriate for the planning authority to consider the need for a house 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 for the house against its impact, 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. Where the authority is satisfied that an adequate case has been made, it should not be necessary to use formal mechanisms to restrict occupancy.

The Scottish Government believes that a vibrant populated countryside is a desirable objective and that new housing to realise this aim should be well sited and designed, and should not have adverse environmental effects that cannot be readily mitigated. In areas, including green belts, where, due to commuter or other pressure, there is a danger of suburbanisation of the countryside or an unsustainable growth in long distance car-based commuting, there is a sound case for a more restrictive approach. In areas where new housing can help to support vibrant rural communities or sustain fragile rural areas, planning authorities should seek to support suitable investment in additional provision, focussing on the issues of location, siting, design and environmental impact rather than seeking to place restrictions on who occupies the housing.

Where sites are considered unsuitable for new housing, more acceptable locations will often exist elsewhere on the same landholding or nearby, and planning authorities can assist applicants by advising where these are.

Yours faithfully

**JAMES G MACKINNON**



COPY.

Application reference 04/01204/PP

This application proposes the change of use of a holiday letting cottage to a permanent dwelling house within a group of buildings at Lakin Farm, which is located in the Torbeg area of Shiskine, to the east of the A841 Blackwaterfoot-Machrie road.

The proposal does not involve any physical changes to the existing 1½ storey building, which is a two bedroom cottage, formerly a cow byre.

The building group at Lakin includes:

Four dwellinghouses (one of which is currently used for holiday letting)  
A former granary and mill (now operating as a shop)  
A stable and milking parlour  
Several ruined buildings and a dutch barn (the latter to be demolished)  
A disused farriery which has planning permission to be replaced with a new dwelling, granted on 10.09.2004 (ref. 03/01130/PP). This has not yet been implemented and would take the total number of dwellings in the group to five.

Neighbour notification was certified in accordance with statutory procedures by the applicant's agent. In addition, the application was advertised as contrary to the adopted Local Plan in the Arran Banner on 22nd January 2005. This expired on 11th February 2005 and no representations were received.

The proposal is located within the countryside as identified in the recently adopted Isle of Arran Local Plan, where policies ENV 1A, BE 12 and the Development Control Statement are applicable.

The adopted Local Plan has no specific policy to control the change of use of a holiday letting unit to a full time residential unit. It has always been asserted that any proposal for holiday letting should be considered on the same basis as that for a new dwelling house.

In this instance, it is considered that the proposal at Lakin Farm is acceptable in principle subject to meeting the usual development control considerations outlined under Policies ENV 1A/ BE 12 and the Development Control Statement.

In terms of policies ENV 1A and BE 12:

ENV 1A is not relevant as the building has already been converted. No physical alterations are proposed and the property is no different to a typical dwellinghouse.

BE 12 - refers to Design Guidance - in this case, the Rural Design Guidance. As the building has already been converted and no physical changes are proposed, there is nothing that requires to be amended as part of the change of use. The policy is therefore not relevant.

Roads Services have no objections.

It is not considered that the removal of permitted development rights is justified in this instance, since the building is free standing rather than a part of a courtyard or other linked building group. There is adequate ground to the rear and sides of the building for extensions, if desired, without affecting the front elevation which faces the access road.

Accordingly, it is recommended that the application is granted.

PUBLIC

REPORT OF HANDLING

Reference No: 10/00791/PP

Proposal: Amendment to 00/00375/PP for change of use from letting cottage to dwellinghouse

Location: Forge Cottage, Shiskine, Isle of Arran, KA27 8DU

Local Plan Allocation/Policies: Countryside/Development Control Statement of Isle of Arran Local Plan

Consultations: Infrastructure and Design Services (Roads)

Neighbour Notification/Advert: Carried out/ application advertised in local press on 14th January 2011

Objections/Representations: None

Previous Applications: 99/00634/PP approved on 27th October 1999 for alteration of existing cottage and change of use and conversion of existing farm buildings to letting cottages (5 in number) at Lakin Farm, Shiskine. 00/00375/PP approved on 26th September 2000 for demolition of existing forge and ancillary room and erection of letting cottage at Lakin Farm, Shiskine. 04/01204/PP approved on 18th February 2005 for change of use from holiday letting cottage to permanent dwellinghouse at Byre Cottage, Lakin Farm, Shiskine

Supporting Information: Additional information submitted

DESCRIPTION

Forge Cottage is situated within the Lakin Farm development on the eastern side of the C 147 and is within countryside to the west of Shiskine. It is one of several cottages that have been developed around Lakin Farmhouse. It is proposed to change the use of an existing letting cottage to a permanent dwellinghouse. No external alterations are proposed.

The applicant has submitted additional information in support. He has advised that the cottage has been marketed since September 2010. The cottage was sold, but the purchasers are not prepared to go ahead with the sale unless permanent residence is possible. The applicant has stated that he needs to dispose of the property since he and his wife are now past retirement age and operating and maintaining a letting property is increasingly burdensome and problematic. He states that the property is owned by their limited company which they need to dissolve, disposal of the cottage is financially imperative.

The application site is located within a countryside area as identified in the Isle of Arran Local Plan. Policy ENV 1A relates to the conversion, rehabilitation or replacement of existing buildings in the countryside.

The proposal also requires to be assessed against the Development Control Statement of the adopted Local Plan, which states that the development should have regard to the amenity of the surrounding area with respect to siting, design and privacy etc.

CONSULTATIONS AND REPRESENTATIONS

Consultations:

Infrastructure and Design Services (Roads) - no objections. No surface water should issue from the access onto the public road and the first 5 metres of the access from the main road (C147) shall be 5.5 metres wide and hard surfaced.

Response: noted. A relevant planning condition could be imposed.

ANALYSIS

With regard to Policy ENV 1A, it is considered that the building is suitable for its proposed use and is of an appropriate scale and character. The property is capable of being converted into a permanent residence, is currently serviced and there is existing access and parking in relation to the property. It is therefore considered that the proposal would comply with Policy ENV 1A.

There is no specific policy that opposes change of use of holiday letting units to full time residential. As noted above, planning permission 04/01204/PP was previously approved for change of use of a letting cottage to a permanent dwellinghouse at Byre Cottage, Lakin Farm, which is situated to the east of the application site and forms part of the Lakin Farm development. Furthermore in defining Managed Units, i.e. self catering accommodation let for tourist accommodation, the local plan states that the prime use remains as a dwellinghouse. It is considered therefore that the proposal is acceptable in principle subject to meeting the relevant criteria of the Development Control Statement of the adopted Local Plan.

In this case, the relevant Development Control Statement criterion is that of the impact of the proposal on amenity. It is considered that the change of use of the letting cottage to a dwellinghouse would be acceptable and would not have a significant adverse impact on the amenity of the area. It is considered that the dwellinghouse would have an acceptable level of residential amenity and would not be unduly affected by the remaining letting business.

DECISION

Grant.

## REPORT OF HANDLING



**NORTH AYRSHIRE  
COUNCIL**

<b>Reference No:</b>	12/00028/PP
<b>Proposal:</b>	Change of use of 2 self catering houses and 2 self catering flats to 4 domestic residences
<b>Location:</b>	Oakbank Farm, Lamlash, Brodick, Isle Of Arran KA27 8LH
<b>Local Plan Allocation:</b>	Countryside/Rural Community
<b>Policies:</b>	Development Control Statement POLICY ENV1A
<b>Consultations:</b>	Yes
<b>Neighbour Notification:</b>	Neighbour Notification carried out on 08.02.2012 Neighbour Notification expired on 29.02.2012
<b>Advert:</b>	Regulation 20 (1) Advert Published on:- 17.02.2012 Expired on:- 09.03.2012
<b>Previous Applications:</b>	98/00555/PP for Change of use from 6 self catering houses to 6 domestic residences was Approved subject to Conditions on 16.02.1999

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### Description

Oakbank Farm is situated approximately 100 metres to the north of Clauchlands Road. It is proposed to convert existing self catering properties (2 houses and 2 flats) to 4 domestic residences. These properties comprise the former steading buildings of Oakbank Farm. No external alterations are proposed. Information has been submitted to show amenity ground and parking areas in relation to each unit.

In support, the owners of the properties who live in the original farmhouse and have operated the letting properties, advise that changing family circumstances and a reduction in the income generated by the business has affected the viability of the current arrangements. Planning permission to change the use of these properties to dwellinghouses was granted in 1999 but has now lapsed (Ref 01/98/0656). The applicant states that the granting of this permission would allow these properties to be offered for long-term rental or sale. The size of these properties makes them ideal for small families or professional people looking for long-term accommodation. This section of the property market is poorly served on Arran. The applicant has contacted Scottish Water and SSE with regard to the statutory service provision for the properties and has received written quotations for individual services to the properties.

The site is located within an area of countryside as identified within the Isle of Arran Local Plan. Policy ENV 1A relates to the conversion, rehabilitation or replacement of existing buildings in the countryside. The proposal also requires to be assessed against the Development Control Statement of the adopted Local Plan, which states that the development should have regard to the amenity of the surrounding area with respect of siting, design and privacy etc.

### **Consultations and Representations**

Neighbour notification has been carried out and the application was advertised in the local press on 17th February 2012. No objections/representations have been received.

Consultations:

Infrastructure & Design Services (Roads) - no objections.

Arran Community Council: - no objections.

### **Analysis**

With regard to Policy ENV 1A, it is considered that the buildings (that comprise the former steading buildings of Oakbank Farm) are suitable for the proposed use, are of an appropriate scale and character, are capable of being converted into permanent residences with adequate private amenity space and services and there is an existing access and acceptable parking provision in relation to the units. It is therefore considered that the proposal would comply with Policy ENV 1A.

There is no specific policy that opposes change of use of holiday letting units formed from former steading buildings to full time residential units. Planning permission (reference 01/98/0656) has previously been approved for the change of use from 6 self catering houses to 6 domestic residences. Therefore, the principle of this development has previously been established. Furthermore, in defining managed units, i.e. self catering accommodation let for tourist accommodation, the local plan states that the prime use remains as a dwellinghouse. It is therefore considered that the proposal is acceptable in principle subject to complying with the Development Control Statement of the adopted Local Plan.

In this case the relevant criterion relates to amenity impact. The change of use of the self catering properties to permanent residences would not have a significant adverse impact on the amenity of the area. The residential units would have an acceptable level of residential amenity. The proposed use is similar in nature to that existing and there should be minimal impact on the amenity of other nearby residential properties. As no external alterations are proposed, there would be no implications for visual amenity, privacy, etc as a result of the change of use. It is acknowledged that permitted development rights were removed in planning approval 01/98/0656. However in light of the recent revisions to the householder permitted development rights, the limited range of permitted development rights available to flatted properties and the acceptable amount of private amenity space allocated to the two dwellinghouses, it is considered that it would not be necessary to remove permitted development rights in this instance.

With regard to access, road layout and parking provision, Infrastructure & Design Services (Roads) had no objections.

The proposal accords with local plan policy and the Development Control Statement. Accordingly, planning permission can be granted.

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**Decision**

Approved subject to Conditions

Case Officer - Ms Julie Hanna

## REPORT OF HANDLING



**NORTH AYRSHIRE**  
COUNCIL

<b>Reference No:</b>	12/00202/PP
<b>Proposal:</b>	Modification of condition no. 7 of planning permission N/05/00248/PP to permit change of use from holiday letting cottage to permanent dwellinghouse (cottage no 2)
<b>Location:</b>	Site To West Of, Kilmichael Country House Hotel, Brodick, Isle Of Arran
<b>Local Plan Allocation:</b>	Countryside/Rural Community
<b>Policies:</b>	POLICY BE5 Development Control Statement
<b>Consultations:</b>	Yes
<b>Neighbour Notification:</b>	Neighbour Notification carried out on 24.07.2012 Neighbour Notification expired on 14.08.2012
<b>Advert:</b>	Regulation 20 (1) Advert Published on:- 18.05.2012 Expired on:- 08.06.2012
<b>Previous Applications:</b>	05/00248/PP for Erection of 4 no semi-detached self-catering cottages, formation of roadway and car parking was Approved subject to Conditions on 01.07.2005

### Description

Kilmichael Country House Hotel, a B-Listed Building, is situated at Glencloy in countryside to the south-west of Brodick. Planning permission is sought for change of use of a holiday letting cottage in the grounds of the hotel to a permanent dwellinghouse (cottage no. 2).

Planning permission (N/05/00248/PP) was approved on 1st July 2005 for erection of 4 semi-detached self-catering cottages at the hotel. Condition 7 states "that the self-catering cottages shall be used only for holiday letting purposes and shall not be rented, sold or sub-let for any purpose. For the avoidance of doubt, none of the cottages shall be occupied on a permanent basis without the prior written approval of North Ayrshire Council as Planning Authority."

The applicants state that funds raised from the sale of the cottage would be used for urgent repairs that require to be carried out to the hotel. These repairs include internal damage caused by ingress of water from defective chimneys, replacement

of roof material, repairs to a gable caused by failed wooden lintels, improvement of thermal insulation in the attic and replacement of the heating system with one which is more efficient and environmentally sensitive. The applicants have agreed to enter into a legal agreement to ensure that the funds from the sale of the cottage are used for the works to the Listed Building.

A justification statement, pre-application correspondence and a business plan were submitted by the applicants. They state that the request for approval is an essential step to enable the reluctant “liquidisation” of an asset to produce the necessary funds for repair of the listed building and to reduce the threat to the financial viability of the business in this extended period of recession. The business plan summarises the works required to be carried out with estimated costs and sale price of the cottage. They confirm that the works would commence at the end of the first season following receipt of sale proceeds, or earlier if practicable without business disruption. Once started all works would be completed without interruption.

In the adopted Isle of Arran local plan the site is located within a Countryside area and is unaffected by any site specific policies therein. The proposal seeks to fund the repairs of Kilmichael House, from the sale of a holiday letting cottage as a permanent dwellinghouse. This constitutes enabling development for consideration under Policy BE 5 (Listed Building Restoration) of the Isle of Arran Local Plan. To facilitate the restoration of an exceptional listed building (category A or B), Policy BE 5 states that limited new build enabling development shall accord with the local plan subject to the following criteria:

- (a) the submission of a detailed business plan for the overall development showing how funds raised from the sale of the enabling development are to be channelled into the conservation of the building to which the development relates to secure its ongoing reuse;
- (b) the proposed restoration has the support of Historic Scotland;
- (c) the new build element does not result in the division and fragmentation of the building and its grounds in terms of management of the area;
- (d) the developer can demonstrate that sufficient financial assistance is not available from any other source;
- (e) the extent of any new build is restricted to the minimum necessary to facilitate the restoration and reuse of the listed building;
- (f) the enabling development is located and designed to have minimum impact on the listed building; and
- (g) The design of the enabling development reflects and compliments the style and design of the listed building.

Any permitted enabling development will be subject to an appropriate Section 75 Agreement regarding the phasing of construction and other design and layout matters.

The proposal also requires to be assessed against the relevant criteria of the Development Control Statement of the Isle of Arran Local Plan.

### **Consultations and Representations**

Neighbour notification has been carried out and the application was advertised in the local press on 18th May 2012. One letter of support has been received

Consultations:  
12/00202/PP

Historic Scotland – no comments.

Infrastructure and Design Services (Roads) – no objections subject to pot holes being repaired along the section of the private access road from the entrance gate to the cottage.

Response: noted. A planning condition could be imposed in this regard.

Arran Community Council – no objection.

## **Analysis**

The applicant seeks to fund repairs to Kilmichael Country House Hotel, a B-Listed Building, situated outside Brodick, through the sale of a holiday letting cottage as a permanent dwellinghouse. This would constitute an enabling development applicable for consideration under Policy BE 5 of the Isle of Arran Local Plan.

In terms of criterion (a) of Policy BE 5, a business plan has been submitted, which illustrates how funds raised from the sale of the property would be channelled into the repairs of the listed building. The business plan would assist in the formulation of the Section 75 Agreement. In terms of criterion (b), Historic Scotland encourages sympathetic repairs and good maintenance of Listed Buildings and would be in support of the proposal as the funds would be secured for the conservation of the building. Historic Scotland were consulted, however they advise that they have no locus to comment as the development would not affect the setting of an A Listed Building. In relation to Criterion (d), the applicant has demonstrated that sufficient financial assistance was not available from any other source and this is contained within the business plan. Criteria (c), (e), (f) and (g) are not relevant considerations in this case, as the visual appearance of the holiday letting cottage and the setting of Kilmichael House, would not change as a result of the application.

In terms of tourism, the loss of a single holiday cottage would be outweighed, it is considered, by the securing of the long term future of a popular and unique attraction on the island. Furthermore, it would not set an undesirable precedent for change of use of the other letting cottages, as it is justified on grounds of generating funds for urgent repairs to the listed building, through the mechanism of a Section 75 legal agreement.

The proposal also requires to be assessed against the relevant criteria of the Development Control Statement of the Isle of Arran Local Plan, relating to impact on amenity and access, road layout and parking provision.

In terms of amenity, it is considered that the change of use of the holiday letting cottage to a permanent dwellinghouse would not have a significant adverse impact on the amenity of the area. The dwellinghouse would have an acceptable level of residential amenity and would not be unduly affected by the use of the remaining properties for holiday letting.

With regard to access, road layout and parking provision, Infrastructure and Design Services (Roads) had no objections subject to a condition regarding improvements to the access road surface. A planning condition could be imposed in this regard.

There are no other material considerations to address and therefore planning permission can be granted subject to the applicant entering into a Section 75 Agreement to ensure that the funds from the sale of the property are used for the urgent repairs to the B-Listed Building.

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**Decision**

Approved subject to Conditions

Case Officer - Ms Julie Hanna

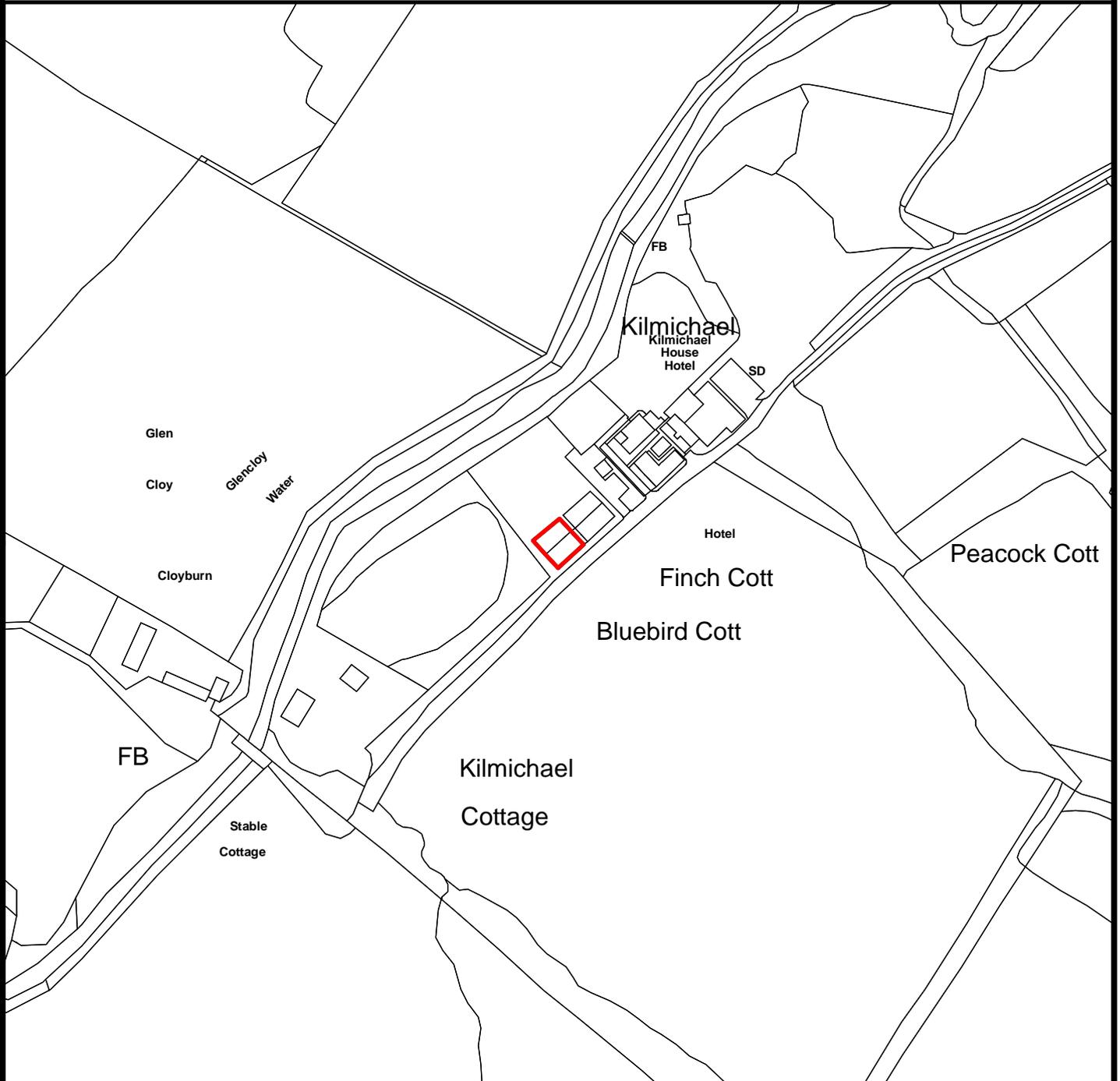
**Appendix 1 - Drawings relating to decision**

<b>Drawing Title</b>	<b>Drawing Reference (if applicable)</b>	<b>Drawing Version (if applicable)</b>
Location Plan	KMH 1	
Block Plan / Site Plan	KMH 2	
Block Plan / Site Plan	KMH 3	
Existing and Proposed Elevations	KMH 5	
Proposed Plan	KMH 4	A



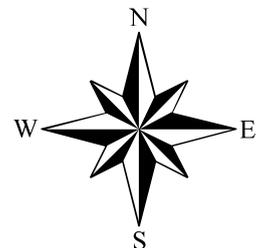
# Local Review Body

12/00202/PP



**NORTH AYRSHIRE**  
COUNCIL

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