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## NORTH AYRSHIRE COUNCIL

22nd February 2023

### Planning Committee

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**Title:** Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997: Tennox Farm, Kilbirnie

**Purpose:** To seek authority to serve notices under Section 127 of the Town and Country Planning (Scotland) Act 1997 requiring:

1. the removal of the unauthorised dwellinghouse, associated outbuildings and ancillary works at Tennox Farm which was refused planning permission under reference 22/00331/PP;
2. The restoration of the land within the boundary of the site (ref. 22/00331/PP) to its former condition prior to the development taking place.

**Recommendation:** That the Committee grants authority for the service of a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 requiring the removal of the unauthorised dwellinghouse, associated outbuildings and ancillary works at Tennox Farm (ref. 22/00331/PP) and the restoration of the land to its former condition prior to the development taking place

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### 1. Executive Summary

- 1.1 The Council has received a number of reports in recent years that land at Tennox Farm near Kilbirnie has been developed with a number of unauthorised buildings as well as formation of a large yard area.
- 1.2 An enforcement notice under Section 33A of the Act was served on the owner of the land in March 2022. Among other matters, the notice required the submission of a planning application in respect of a dwellinghouse and ancillary outbuildings, the construction of which took place during 2020/21.
- 1.3 An application for the house was duly submitted, considered and refused planning permission during 2022 under ref. 22/00331/PP.
- 1.4 A review of the decision was undertaken by the Local Review Body of the Council on 25<sup>th</sup> January 2023. The review was dismissed. The consequence of the review decision is that the development remains unauthorised.

## 2. Background

- 2.1 As noted above, an enforcement notice was served on the owner of Tennox Farm in March 2022 in relation to unauthorised building works comprising of a dwellinghouse, outbuildings and ancillary works.
- 2.2 Whilst the notice also related to various other matters at Tennox Farm, this report considers only matters relating to the erection of a dwellinghouse (under the terms of planning application ref. 22/00331/PP).
- 2.3 In response to the Section 33A Notice, served on 7<sup>th</sup> March 2022, an appeal was lodged with Scottish Ministers by the owner of Tennox Farm. The appeal was duly considered and dismissed by a Reporter appointed by Scottish Ministers on 22<sup>nd</sup> July 2022.
- 2.4 To meet the terms of the Section 33A Notice, a planning application was submitted for the consideration of the Council and subsequently determined by the Chief Planning Officer under delegated powers on 6<sup>th</sup> September 2022. The application was refused for the following reasons:

1. *The proposed development would be contrary to the provisions of the North Ayrshire Local Development Plan Strategic Policy 1 (The Countryside Objective) in respect of the following:*
  - *The locational need for a new house has not been established, given the presence of other domestic buildings at Tennox Farm;*
  - *The site is not within an established grouping of at least 4 dwellings which existed in January 2005;*
  - *The site is not a gap site between existing buildings, nor would the development consolidate or round-off the established grouping, and the house has encroached onto agricultural land beyond the original steading at Tennox;*
  - *In architectural terms, the design is not considered exceptional, bespoke nor site specific in terms of the associated 'Housing in the Countryside Note' of June 2021.*
2. *The proposed development would be contrary to the provisions of the North Ayrshire Local Development Plan Strategic Policy 2 (Placemaking) in respect of the following qualities of a Successful Place:*

### *Safe and Pleasant*

*The policy highlights that proposed development "sufficiently investigates and responds to any issues of ground instability." In response to the submitted risk assessment report, significant concerns have been raised by The Coal Authority due to historic coal working and transient mine gas. The suitability of the chosen site for the house in terms of the health and safety of current and future occupants is therefore inconclusive.*

### *Resource Efficient*

*The policy highlights that resource efficiencies can be achieved "by re-using or sharing existing resources and by minimising their future depletion." With regard to the submitted information, it does not appear that consideration has been given to*

*re-using or sharing existing building resources at Tennox to meet the applicant's requirements for on-site accommodation to manage the business enterprises. The failure to consider alternatives at an early stage in the design process has resulted in the erection of a dwellinghouse on previously undeveloped agricultural land which cannot be supported in policy terms.*

- 2.5 At the request of the applicant, a review of the case was undertaken by the Local Review Body. On 25<sup>th</sup> January 2023, the Local Review Body determined not to grant planning permission following consideration of all matters pertaining to the review. The consequence of the decision is that the development remains unauthorised.
- 2.6 The Council's LDP supports housing in the countryside only in exceptional circumstances. As noted, Tennox Farm is within a rural area of North Ayrshire. The impact of the unauthorised development of a dwellinghouse, outbuildings and ancillary development on the land is considered to be harmful to the amenity of the countryside, and contrary to the Local Development Plan, for the reasons given above.
- 2.7 Given the foregoing, it is recommended that authority for the service of a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997, as amended, (an "Enforcement Notice") be granted. An Enforcement Notice would require the removal of the unauthorised dwellinghouse, associated outbuildings and ancillary works within the boundary of planning application site 22/00331/PP and restoration of the land to its former condition prior to the development taking place. Such a Notice would take effect not less than 35 days from the date on which it is served. There is a right of appeal to Scottish Ministers within the period between the service of the Notice and the date it becomes effective.

### **3. Proposals**

- 3.1 In the interest of the amenity of the area and to remove inappropriate unauthorised development from a rural area (development which, following assessment, is contrary to Strategic Policy 1: The Countryside Objective and Strategic Policy 2: Placemaking), it is recommended that the Committee approve the service of a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 to require the following:
  - (i) The removal of the unauthorised dwellinghouse, associated outbuildings and ancillary works within the boundary of planning application site 22/00331/PP and restoration of the land to its former condition prior to the development taking place.
- 3.2 In these circumstances, the timescale for compliance with the notice should be no greater than 6 months from the date of service.

### **4. Implications/Socio-economic Duty**

## **Financial**

- 4.1 Serving Enforcement Notices can be met from within existing budgetary provision of the Planning Service.

## **Human Resources**

- 4.2 Serving Enforcement Notices can be met from within existing staff resources of the Planning Service.

## **Legal**

- 4.3 The proposed Enforcement Notice would be served in accordance with statutory procedures. There is a right of appeal to Scottish Ministers. Non-compliance with an Enforcement Notice is an offence which the Council could report to the Procurator Fiscal.

## **Equality/Socio-economic**

- 4.4 None.

## **Environmental and Sustainability**

- 4.5 The proposed Enforcement Notice would help to address the ongoing matter of unauthorised development and use of land at Tennox Farm, Kilbirnie in the interests of safeguarding the amenity of North Ayrshire's rural area.

## **Key Priorities**

- 4.6 The proposed Enforcement Notices would align with the Council Plan Priorities of 'Vibrant, welcoming and attractive places' and 'A sustainable environment'.

## **Community Wealth Building**

- 4.7 Any direct action taken under the Planning Acts can support progressive procurement.

## **5. Consultation**

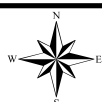
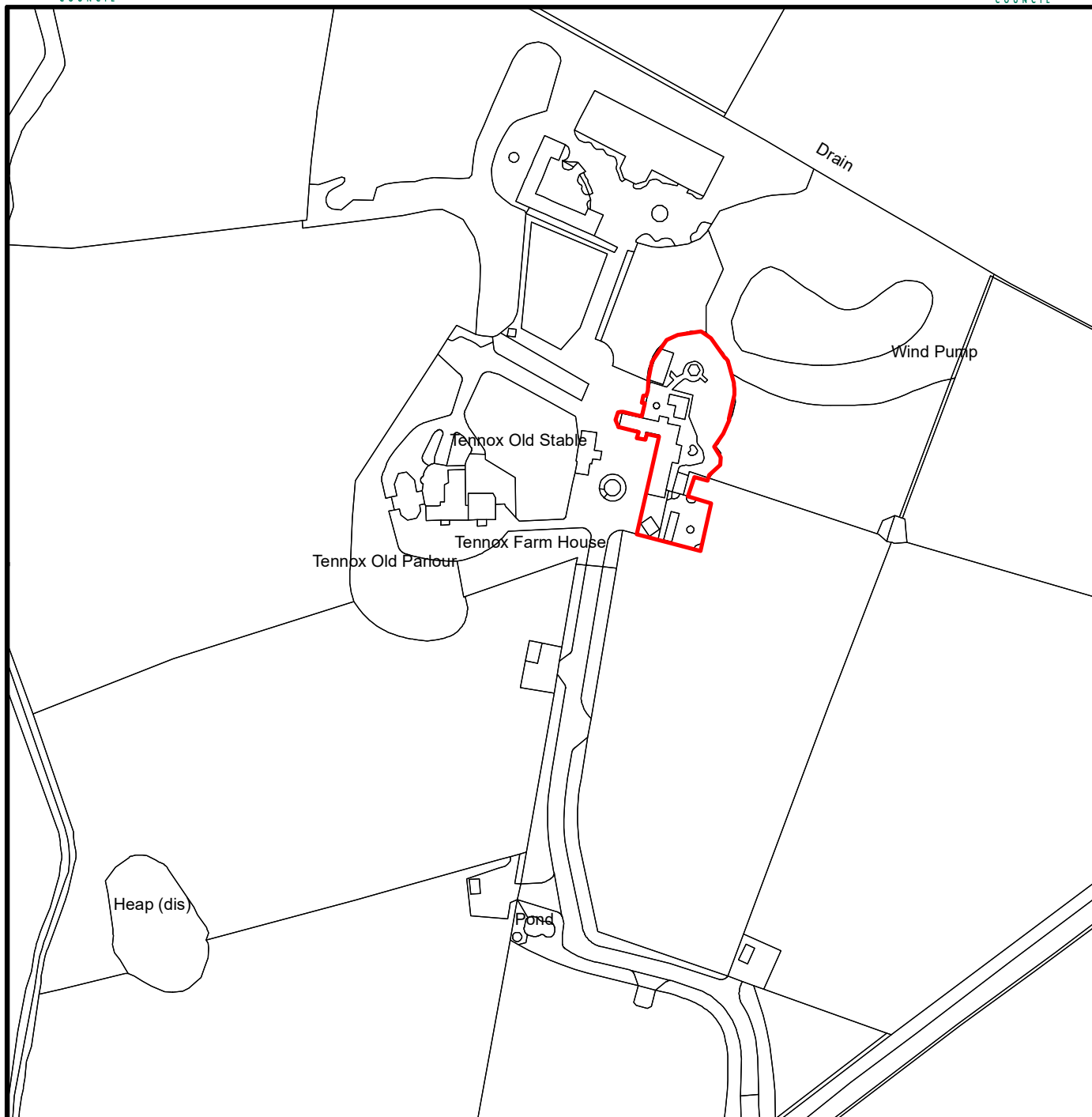
- 5.1 None.

RUSSELL McCUTCHEON  
Executive Director (Place)

For further information please contact **Mr A. Hume, Senior Development Management Officer**, on **01294 324318**.

## **Background Papers**

# Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997: Tennox Farm, Kilbirnie



1:2,500

0 30 60 120 Metres

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