
NORTH AYRSHIRE COUNCIL

22 January 2020

Local Review Body

Title: Notice of Review: 19/00704/PPP – Site to the North West of 15 Thirdpart Holdings, West Kilbride.

Purpose: To submit, for 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.

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

1. Executive Summary

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. Background

2.1 A Notice of Review was submitted in respect of Planning Application 19/00704/PPP – erection of detached dwelling house and stable at a site to the North West of 15 Thirdpart Holdings, West Kilbride.

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

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

- Appendix 1 - Notice of Review documentation;
- Appendix 2 - Report of Handling;
- Appendix 3 - Location Plan;
- Appendix 4 - Planning Decision Notice;
- Appendix 5 - Further representations from interested parties; and
- Appendix 6 - Applicants response to further representations.

3. Proposals

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

4. Implications/Socio-economic Duty

Financial

4.1 None.

Human Resources

4.2 None.

Legal

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 2013.

Equality/Socio-economic

4.4 None.

Environmental and Sustainability

4.5 None.

Key Priorities

4.6 None.

Community Benefits

4.7 None.

5. Consultation

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 and these are attached at Appendix 5 to the report.

5.2 The applicant has had an opportunity to respond to the further representations and their response is set out in Appendix 6 to the report.

Craig Hatton
Chief Executive

For further information please contact **Hayley Clancy, Committee Services Officer**, on **01294 324136**.

Background Papers

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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)

Name Caroline Santos

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Postcode KY146AL

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Contact Telephone 2 [REDACTED]
Fax No [REDACTED]

E-mail* [REDACTED]

Agent (if any)

Name Andrew Nicoll

Address 7 Tay Street,
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Contact Telephone 1 [REDACTED]
Contact Telephone 2 [REDACTED]
Fax No [REDACTED]

E-mail* [REDACTED]

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

Yes

* Do you agree to correspondence regarding your review being sent by e-mail?

Planning authority

North Ayrshire

Planning authority's application reference number

Decision 19/00704/PPP

Site address

Land to the north west of 15 Thirdpart Holdings

Description of proposed
development

A one and a half storey house with attached stables

Date of application

September 24,
2019

Date of decision (if any)

November 11, 2019

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



- 2. Application for planning permission in principle

Reasons for seeking review

- 1. Refusal of application 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.

- 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:

Site inspection

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

Yes

- 1. Can the site be viewed entirely from public land?
- 2. Is it possible for the site to be accessed safely, and without barriers to entry? Yes

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.

As set out in the additional document attached, the decision reached by the planning officer is perverse in that it disregards an earlier decision of the Local Review Body and no reasonable person, based on the evidence, could reach that decision.

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

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.

Please see the attached submission setting out my reasons for requesting a review. Marked maps and documents relating to the original submission are available here:

<https://www.eplanning.north-ayrshire.gov.uk/OnlinePlanning/applicationDetails.do?activeTab=documents&keyVal=PXZ2KPLEHZZ00>

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

12/11/19

REPORT OF HANDLING



North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

Reference No:	19/00704/PPP
Proposal:	Erection of detached dwelling house and stable
Location:	Site To North West Of , 15 Thirdpart Holdings, West Kilbride, Ayrshire
LDP Allocation:	Countryside/Rural Community
LDP Policies:	ENV2 / ENV4 / POLICY PI 8 / General Policy /
Consultations:	Yes
Neighbour Notification:	Neighbour Notification carried out on 24.09.2019 Neighbour Notification expired on 15.10.2019
Advert:	Regulation 20 (1) Advert Published on:- 02.10.2019 Expired on:- 23.10.2019
Previous Applications:	None
Appeal History Of Site:	None

Relevant Development Plan Policies

ENV2
POLICY ENV 2: HOUSING DEVELOPMENT IN THE COUNTRYSIDE

Single houses in rural areas

Proposals for a single new stand alone house within its own established setting in a rural area shall not accord with the LDP unless it can be demonstrated that:

- (a) the proposal demonstrates outstanding quality of design; AND
- (b) is distinctive and responsive to its setting, making a positive contribution to the locality of the area; AND
- (c) the proposal integrates with, complements and enhances the established character of the area and the cumulative impact on the landscape of the development is acceptable; AND
- (d) is located a sufficient distance from a village, existing grouping, building or settlement to ensure that the development is considered as part of an established rural landscape; AND

(e) account has been taken of the possibility of converting, rehabilitating or replacing an existing building in the countryside or of locating a new building in a brownfield location; AND

(f) the development is not proposed in an area of 'sensitive countryside' (see glossary), is not of a suburban character and takes cognisance of the Rural Design Guidance; AND

(g) the proposal has been closely scrutinised and positively endorsed by a design review (internal to the Council) and/or Architecture and Design Scotland.

Small scale growth of existing rural housing groups

Proposals for development in rural areas not defined in the LDP as a settlement or village shall accord with the LDP subject to satisfying the following criteria:

(a) the proposal constitutes a small-scale, sympathetic addition to an existing well-defined nucleated group of four or more houses (including conversions) in close proximity to one another and visually identifiable as a group with some common feature e.g. shared access. Expansion of such a group will be limited to 50% of dwellings existing in that group as of 1 January 2005 up to a maximum of four new housing units (rounded down where applicable); AND

(b) the proposal is not suburban in character and takes cognisance of the approved Rural Design Guidance; AND

(c) any individual proposal does not prejudice a future development opportunity; AND

(d) the proposal complies with relevant Roads Guidelines.

(e) the proposal is not located within an area of 'sensitive countryside' (see glossary).

The sensitive infilling of any available gap sites consolidating existing groups will be particularly encouraged.

Housing for workers engaged in a rural business

Proposals for housing for workers engaged in an appropriate rural business (such as agriculture, forestry, or other operations provided for under Policy ENV 1) shall accord with the LDP subject to the following criteria:

1. The dwelling is for a farmer who owns and operates a viable agricultural holding full time which has no farmhouse at present; OR

2. A farmer is the owner and occupier of an agricultural holding and proposes to erect a dwelling for a family member in full time employment on the farm and who intends to take over the farm in time; OR

3. A genuine operational need for a worker to live on site in pursuance of an established rural business has been demonstrated; AND

4. All proposals will also be required to demonstrate that:

(a) accommodation cannot be reasonably provided by another existing dwelling on site or in the area (including by any buildings after re-use, replacement, conversion or rehabilitation at reasonable cost) or within existing rural housing groups suitable for expansion under the other provisions of this policy;

(b) there are no existing planning consents (not time expired) for residential developments which have not commenced and would provide a suitable accommodation arrangement;

(c) the siting, design and external appearance of the new development (including any conversion) complements any existing building group on the site;

(d) the scale of the housing provided is commensurate with the need of the person or persons who will occupy it; and

(e) cognisance has been taken of the Council's Rural Design Guidance.

Note:

In the case of housing for a worker engaged in a rural business, where an operational need requires to be demonstrated, this should take the form of an independent report/business plan prepared by a suitably qualified professional. This justification should demonstrate the ongoing viability of the business and provide reasons why residential accommodation located on site is essential to the functional needs of the business and is not merely for convenience.

For housing justified as 'housing for workers engaged in a rural business', occupation of such shall be limited to persons employed (and any dependents) in agriculture, forestry or other rural activities allowed under Policy ENV 1 and this will be secured via planning condition and/or legal agreement as appropriate.

All proposals will require to be supported by a design statement, inclusive of landscaping proposals particularly in regard to urban fringe sites, to assist the Council to fully assess the proposal.

The submission of an area landscape capacity evaluation will normally be required for all development in the countryside.

It will be a condition that the development be commenced within two years to prevent land banking.

In the case of single houses in rural areas, permitted development rights may be removed in recognition of the high standard of design required from the development.

No applications for planning in principle shall be accepted for development. Pre-application discussions are encouraged prior to the submission of a full application. Provision of temporary accommodation for an agreed period in pursuance of a viable rural business, requiring an operational need for a worker to live on-site, will be in accordance with the Plan subject to compliance with other policies.

ENV4

POLICY ENV 4: FARMLAND

Proposals for development which would lead to the permanent loss of prime quality farmland on mainland North Ayrshire or the Cumbraes (grades 1, 2 and 3.1 on the Macaulay Institute Agricultural Land Classification Maps) shall not accord with the LDP unless it can be demonstrated that:

(a) The proposal is small scale development acceptable under the terms of Policy ENV1 or ENV2; OR

(b) The development is for an appropriate scale of renewable energy generation or mineral extraction, where restoration proposals will return the land to its former status.

Proposals for development on locally important non-prime agricultural land (grade 3.2 on mainland North Ayrshire and the Cumbraes and grades 3.2, 4.1 and 4.2 on the Isle of Arran) which would have a detrimental effect on the viability of a farming unit and which would lead to the permanent loss of such farmland shall not accord with the LDP unless the need for development outweighs the importance of the agricultural land.

Restoration proposals showing how land will be returned to its pre-existing status may be required.

This policy does not apply to sites allocated as RES 2 or RES 4 on the LDP maps.

POLICY PI 8
DRAINAGE, SUDS & FLOODING

Water/Waste Water Treatment Infrastructure

1. Proposals for the expansion or development of new facilities for water supply or the treatment of waste water shall accord with the LDP, subject to satisfying the following criteria:

- (a) it can be demonstrated that a range of alternative sites have been examined and that the proposed development offers the solution with least environmental impact whilst at the same time being technically feasible and financially viable;
- (b) the proposal incorporates appropriate landscape buffering, screening and design, particularly in sensitive environments.

Drainage

Development shall normally require a comprehensive Drainage Assessment (see Supplementary Guidance: Drainage, SUDS & Flooding) to be submitted to the satisfaction of the Council's Flooding Risk Management section unless it can be otherwise demonstrated that the site can be satisfactorily drained.

2. Proposals where public sewage infrastructure is available should connect to the public network, instead of providing a private drainage solution.

3. Where a private drainage solution is proposed, this will only be acceptable subject to the criteria set out within Supporting Information Paper 9.

4. Any proposals for the culverting of a watercourse will be considered with reference to SEPA's position statement on culverting.

SUDS

5. All development, with the exception of single house developments and development discharging surface water run-off to coastal waters, shall require to incorporate SUDS techniques.

Flooding

6. Development on areas identified as at or greater than 0.5% risk of flooding annually (0.1% for essential civil infrastructure) on flood risk plans, or on areas of known or suspected incidences of flooding, shall not accord with the LDP, unless the following criteria can be satisfied:

(a) a Flood Risk Assessment, completed to the satisfaction of the Council's Flood Risk Management Section, has been submitted;

(b) the ability of any functional floodplain to store and convey water will not be impaired;

(c) the development will not increase the risk of flooding elsewhere or materially increase the number of buildings at risk of being damaged by flooding; AND

(d) the risk of flooding to the development itself can be mitigated satisfactorily (i.e. through an existing or planned flood protection scheme); OR

(e) where flood risk cannot be satisfactorily mitigated, the development has an operating requirement that makes the location essential (e.g. for emergency services coverage, agriculture related use, water based activity) and will be capable of remaining operational and accessible during extreme flooding events.

The above criteria shall generally not apply to alterations and small scale extensions, provided that such development will not have a significant material effect on the functional floodplain; will not affect local flooding issues; and will not significantly increase the number of people occupying/visiting the area.

7. Development on areas identified as having flood risk of less than 0.5% will normally be acceptable for development in respect of flood risk. A Flood Risk Assessment may be required if the nature of the development or local circumstances indicate heightened risk.

General Policy
GENERAL POLICY

(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.
- Design should have regard to existing townscape and consideration should be given to size, scale, form, massing, height, and density.
- External appearance should have regard to the locality in terms of style, fenestration, materials and colours.
- Development will require to incorporate the principles of 'Designing Streets' and 'Designing Places'.
- The particularly unique setting of North Ayrshire's rural, coastal, neighbourhood and town centre areas, and those with similar characteristics, necessitates that all development proposals reflect specific design principles unique to these areas. Coastal, Rural, Neighbourhood and Town Centre Design Guidance (four separate documents) are Supplementary Guidance to the Plan and contain further details.
- Consideration should be given to proper planning of the area and the avoidance of piecemeal and backland development.
- Design should have regard to the need to reduce carbon emissions within new buildings.

(b) Amenity:

Development should have regard to the character of the area in which it is located.

Regard should be given to the impact on amenity of:

- Lighting;
- Levels and effects of noise and vibration;
- Smell or fumes;
- Levels and effects of emissions including smoke, soot, ash, dust and grit or any other environmental pollution;
- Disturbance by reason of vehicular or pedestrian traffic.

Development should avoid significant adverse impact on biodiversity and upon natural heritage resources, including those outwith designated sites and within the wider countryside. Development proposals should further have regard to the preservation and planting of trees and hedgerows, and should also have regard to their potential to contribute to national and local green network objectives.

In relation to neighbouring properties regard should be taken of privacy, sunlight and daylight.

(c) Landscape Character:

In the case of development on edge of settlement sites, substantial structure planting will generally be required to ensure an appropriate boundary between town and country is provided. Such proposals should include native tree planting, retain natural features where possible and make provision for future maintenance.

Development should seek to protect the landscape character from insensitive development and the Ayrshire Landscape Character Assessment shall be used to assist assessment of significant proposals.

(d) Access, Road Layout, Parking Provision:

Access on foot, by cycle, by public transport and other forms of transport should be an integral part of any significant development proposal. Development should have regard to North Ayrshire Council's Roads Development Guidelines and meet access, internal road layout and parking requirements.

(e) Safeguarding Zones:

Pipelines, airports and certain other sites have designated safeguarding areas associated with them where specific consultation is required in assessing planning applications. The objective is to ensure that no development takes place which is incompatible from a safety viewpoint. The need for consultation within Safeguarding Zones is identified when an application is submitted. Supporting Information Paper No. 7 provides further information on Safeguarding Zones.

(f) The Precautionary Principle

The precautionary principle may be adopted where there are good scientific, engineering, health or other grounds for judging that a development could cause significant irreversible damage to the environment, existing development or any proposed development, including the application itself.

g) Infrastructure and Developer Contributions

For development proposals which create a need for new or improved public services, facilities or infrastructure, and where it is proposed that planning permission be granted, the Council will seek from the developer a fair and reasonable contribution in cash or kind towards these additional costs or requirements. Developer contributions, where required, will be sought through planning conditions or, where this is not feasible, planning or other legal agreements where the tests in Circular 3/2012 are met. Other potential adverse impacts of any development proposal will normally be addressed by planning condition(s) but may also require a contribution secured by agreement.

This will emerge from assessment of the impact of development proposals upon:

- Education;
- Healthcare facilities;
- Transportation and Access;
- Infrastructure;
- Strategic landscaping; and,
- Play facilities.

Further to analysis of infrastructure, indicative requirements for housing land allocations are set out within the Action Programme. Developer contributions will be further established by Supplementary Guidance (timing, costs etc.).

In addition to the above, Mixed Use Employment Areas are identified within the LDP. These sites are allocated for a mix of uses, subject to an element of employment space creation or improvement being provided. This will be informed by a business plan and masterplan. In these specific cases, contributions to the above (and affordable housing requirements as set out in Section 5) will also be required.

h) 'Natura 2000' Sites

Any development likely to have an adverse effect on the integrity of a 'Natura 2000' site will only be approved if it can be demonstrated, by means of an 'appropriate assessment', that the integrity of the 'Natura 2000' site will not be significantly adversely affected.

i) Waste Management

Applications for development which constitutes "national" or "major" development under the terms of the Planning Etc. (Scotland) Act 2006 will require the preparation of a Site Waste Management Plan (SWMP), which will be secured by a condition of the planning consent.

Description

The application site is a 0.97ha agricultural field in Thridpart Holdings. The site is accessed of the U60 Thirdpart Road and is flat and open in character. Thirdpart Holdings is an area of countryside to the north of West Kilbride characterised by small clusters of agricultural buildings based around a loop road and separated by open fields. This is as a result of the history of the area, which was at the beginning of the twentieth century split into numerous 'small holdings', a form of agricultural division similar to a croft.

This proposal is for Planning Permission in Principle for dwellinghouse and stable. The house would contain three bedrooms and would be one and a half storeys in height. There are two proposed accesses, one at the north west corner of the site and one in the south east corner adjacent to the road junction which serves 13-16 Thirdpart Holdings. However, as the application is in principle all details are indicative. Such details would have to be determined through future planning applications, should permission in principled be granted.

In the adopted Local Development Plan the site lies within the Countryside and the proposal requires to be assessed against Policy ENV 2; Housing Development in the Countryside, Policy ENV 4; Farmland, Policy PI 8; Drainage, SuDs and Flooding and the relevant criteria of the General Policy, in this case (a) Siting, Design and External Appearance, (b) Amenity, (c) Landscape Character and (d) Access, Road Layout and Parking Provision.

The emerging North Ayrshire Proposed Local Development Plan is a material consideration, and the proposal has been assessed against the terms of the Proposed LDP. In this instance, assessing the proposal against the terms of the Proposed LDP would not alter the conclusion of the assessment of the proposal against the adopted LDP because the policies in the Proposed LDP are substantially similar to those in the adopted LDP, and it does not raise any new issues that would alter the assessment of the proposal.

Consultations and Representations

The standard neighbour notification was undertaken, and the application was advertised in the local press. There have been three letters of objection, the points raised in which are summarised below:

1. The proposed southern access has never previously been used as an access and would cause traffic congestion at the road junction. It is also adjacent to a blind corner and would pose a danger to oncoming vehicles.

Response: This is an application for Planning Permission in Principle and access arrangements would be assessed as part of a following application for full Planning Permission. North Ayrshire Council Active Travel and Transportation has no objections to the proposal subject to the applicant being able to maintain visibility splays of 2.5m by 90m.

2. There are currently no buildings on the land, and it is agricultural land.

Response: The proposed development site is identified as prime quality farmland, and therefore its development would be contrary to policy ENV4; see analysis.

3. Why was number 16 Thirdpart Holdings not notified about the development?

Response: The standard neighbour notification was undertaken, and 16 Thirdpart Holdings was outwith the 20m range for notification.

4. The site is prone to flooding.

Response: The site is at high risk of surface water flooding and no Flood Risk Assessment has been provided and the development is therefore contrary to policy PI 8; see analysis. North Ayrshire Council's Flooding Team have also objected on this basis.

5. The development of a house in this location would be detrimental to the visual appearance of the area.

Response: This is an application for Planning Permission in Principle and the visual appearance of the development would be assessed as part of a following application for full Planning Permission. Notwithstanding the above, the site is not considered suitable for a dwellinghouse and would represent ribbon development which would be detrimental to the appearance of the area.

6. The application is contrary to policy ENV2 as it does not contain details relating to siting, design and external appearance and is not allied with a clearly defined rural housing group.

Response: Agreed, see analysis.

7. The application states that the house would utilise a public water connection, however, there is no public water mains in Thirdpart.

Response: The applicant would be required to demonstrate that the site could be sufficiently serviced as part of an application for full Planning Permission.

Consultations:

North Ayrshire Council Active Travel and Transport: No objections, subject to conditions.

Response: Noted.

19/00704/PPP

North Ayrshire Council Flooding: Object to the application on the basis that the application site is at high risk of surface water flooding and no Flood Risk Assessment has been provided with the application.

Response: Noted.

Analysis

Under Policy ENV 2; Housing Development in the Countryside, all proposals for housing in the countryside need to comply with North Ayrshire Council's Rural Design Guidance. Applications for Planning Permission in Principle do not contain details on the design and appearance of the house, and it is therefore impossible to demonstrate accord with the Rural Design Guidance. Planning Permission in Principle for housing in the countryside cannot therefore be granted. The applicant did not seek pre-application advice. After submitted this application the applicant was advised of Planning's position vis-à-vis Planning Permission in Principle for housing in the countryside and was advised to withdraw and re-submit at a later date with a full Planning application. The applicant has declined to do this and has asked that the application be determined in its current form. The application does not demonstrate a design which complies with the Rural Design guidance and is therefore contrary to Policy ENV 2.

Notwithstanding the above, it is not considered that the site is a suitable location for a new dwellinghouse under Policy ENV 2. In the Design Statement the applicant argues that the development site would constitute small scale growth of an existing rural housing group comprising of 13, 14, 15 and 16 Thirdpart Holdings. A recent decision by the Local Review Body with relation to planning application ref. 18/00469/PP took the view that these four houses do represent a rural housing group. It is not however considered that the proposed site would be attached to this grouping as any house would not be in line with the existing houses and would be approximately 250m away from nos. 13 and 14 Thirdpart, the houses at the end of the grouping. The erection of a house on the site would represent ribbon development along Thirdpart Road and does not meet the requirements of Policy ENV2.

The proposed site is identified in the Macaulay Institute Agricultural Land Classification Map as high-quality agricultural land (grade 3.1) capable of producing consistently high yields of a narrow range of crops and/ or moderate yields of a wider range. Development of prime quality farmland is not supported under policy ENV 4, Farmland, unless it is acceptable under the terms of Policy ENV 1 or ENV 2, which this proposal is not. The proposed development is therefore contrary to Policy ENV 4.

The proposed development site is identified by SEPA flood mapping as being at high risk of surface water flooding. Under Policy PI 8, development on areas identified as being at or greater than 0.5% flood risk annually shall not accord with the LDP unless a Flood Risk Assessment (FRA) completed to the satisfaction of the Council's Flood Risk Management Section has been submitted. No such assessment has been received and the application is therefore contrary to Policy PI 8. Criterion (f) of the General Policy states that the precautionary principle may be adopted where there are good scientific, engineering, health or other grounds for judging that a development could cause significant irreversible damage to the environment, existing development or any proposed development including the

application itself. In the absence of an FRA or details of drainage measures, the impact of the development on flooding is not known. The proposal is therefore also contrary to criterion (f) of the General Policy.

In terms of General Policy criteria (a) and (b), no specific design details have been submitted and it is not therefore possible to carry out an assessment of whether the proposal would comply with these criteria. It is also important to note that no details have been given with regards to the proposed stable and it is not evident whether this would be a commercial or private stable.

With regards to criterion (c), it is considered that erecting a house on this site would have a negative impact on the landscape of the area due to the high visibility of the site and its lack of a relationship to nearby development. The applicant has submitted a plan showing two proposed accesses to the site. The southern access would be out onto a three-way road junction and adjacent to a blind corner. While NAC Active Travel and Transport has not objected to this access, it seems unlikely that the southern access would meet the required visibility splays. The northern access may be more acceptable in terms of road safety but would open onto a different road from the rest of the houses in the rural grouping which the applicant argues the proposed house would be a part of. There is not enough information to assess whether the proposal complies with criteria (a), (b) and (d) and it conflicts with criteria (c), and therefore the proposal cannot be said to be in accordance with the General Policy.

The proposal is contrary to policies ENV 2, ENV 4, PI 8 and criteria (a), (b), (c), (d) and (f) of the General Policy of the adopted North Ayrshire Local Development Plan and therefore it is recommended that the application be refused.

Decision

Refused

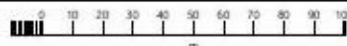
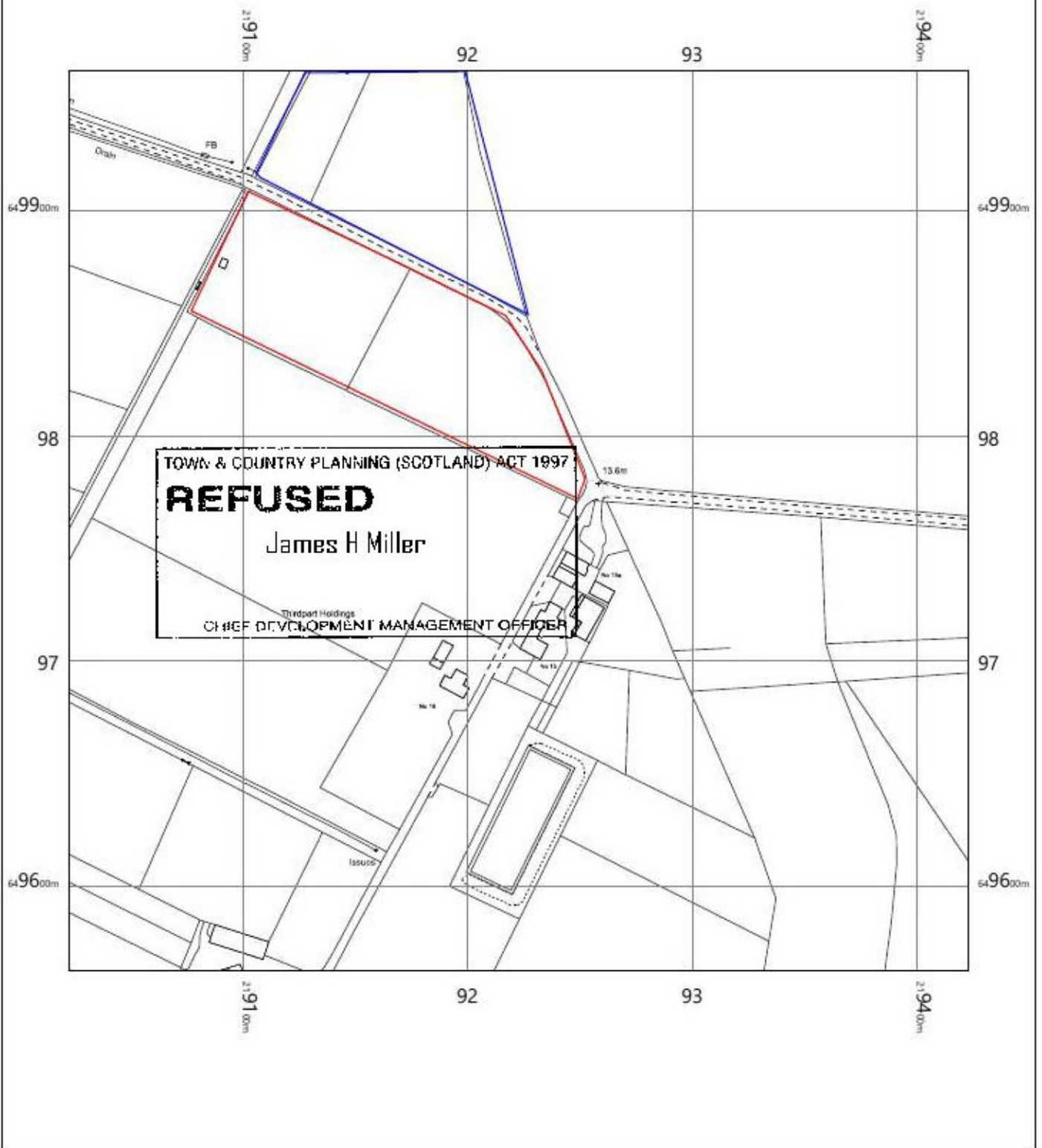
Case Officer - Mr John Mack

Appendix 1 - Drawings relating to decision

Drawing Title	Drawing Reference (if applicable)	Drawing Version (if applicable)
Block Plan / Site Plan		
Location Plan		

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Site To North West Of 15 Thirdpart Holdings, West Kilbride

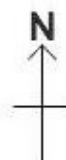


The Stables
15a Thirdpart Holdings,
West Kilbride,
Ayrshire
KA23 9QD

OS MasterMap 1250/2500/10000 scale
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North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

KAREN YEOMANS : Executive Director (Economy & Communities)

No N/19/00704/PPP

(Original Application No. N/100180291-001)

REFUSAL OF PLANNING PERMISSION IN PRINCIPLE 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 2013

To : Ms Caroline Santos
 7 Tay Street
 Newburgh
 KY14 6AL

With reference to your application received on 24 September 2019 for planning permission in principle under the above mentioned Acts and Orders for :-

Erection of detached dwelling house and stable

at Site To North West Of
 15 Thirdpart Holdings
 West Kilbride
 Ayrshire

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

1. The proposal is contrary to Policy ENV 2 and criteria (a), (b)and (c) of the General Policy of the adopted North Ayrshire Local Development Plan. The development would be of a new house in the Countryside which would not be within its own established setting or form small scale growth of an existing housing group. In the absence of detailed design, no cognisance of the Council's Rural Design Guidance nor outstanding quality of design has been demonstrated. The erection of a house in this location would have a negative impact on landscape character by way of the high visibility of the site.
2. That the proposal would be contrary to Policy ENV 4 of the adopted North Ayrshire Local Development Plan, as the proposal would result in the loss of prime quality farmland and the proposal is contrary to Policy ENV2.
3. That the proposal would be contrary to criterion (d) of the General Policy of the adopted North Ayrshire Local Development Plan, as insufficient information has been submitted to demonstrate that safe access and egress arrangements, including adequate visibility splays, could be achieved.
4. That the proposal would be contrary to Policy PI8 and criterion (f) of the General Policy of the adopted North Ayrshire Local Development Plan, as the site is located within an area of high risk of surface water flooding. No details have been submitted to assess the impact of the any flooding of the proposed development site and surrounds.

No N/19/00704/PPP

Dated this : 11 November 2019

.....
for the North Ayrshire Council

(See accompanying notes)



North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

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 2013 – REGULATION 28

KAREN YEOMANS : Executive Director (Economy & Communities)

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.

As discussed, I enclose the email correspondence between myself and Mr Mack dated **23rd October 2019** which highlights and details the unauthorised copyrighting which has taken place to support application **19/00704/PPP**;

In recent informs in relation to application **19/00704/PPP**, Mr Andrew Nicol has submitted an '**Appeal Statement**' of which continues to reference application **18/00469/PP** either directly and/or indirectly.

All planning applications ought to be accessed individually of which should be based on the councils planning policies and circumstances, constraints and/or justifications for a new housing development in the countryside.

Evidently, not all applicants agree with the councils ruling in relation to their applications of which they have a right to appeal.

However, the applicants of **19/00704/PPP** clearly believe that the same decision should be taken on their application despite separate constrains and location including site amenities being entirely divergent to application **18/00469/PP**.

I would also like to point out the comparative in the name of the formal application made, of which has been fully submitted; **19/00704/PPP Erection of detached dwelling house and stable**, application **18/00469/PP** was named - **Erection of detached dwellinghouse with stables** this seems to be a blatant attempt to mimic the same antecedence of application **18/00469/PP**.

Many of the statements made by Mr Andrew Nicol within the '**Appeal Statement**' in regard to co-common shared access with neighbouring properties such as **13, 14, 15, 15a** and **16** Thirdpart holdings are false. This agricultural land does not share the co-common features or shared access with these properties and is separated by a public road and land mass. Properties such as **13, 14, 15, 15a** and **16** have shared co-common access and right to the shared-common access road by the right of title deed.

I would very much like to echo the concerns raised on the **23rd of October 2019** and from our telephone conversation to ask that the LRB be notified in regard to the similarity and unauthorised use of application documentation from **18/00469/PP**, including imagery to support application **19/00704/PPP**.

Dear John,

Thank you for your time this morning and your e-mail below.

I understand the formal position of the council on this matter, thus the reasoning behind my calls this morning to you and to **Jean Law** as pose to perusing private legal matters.

I have appended for you only some of the copyrighting infringements which have been taken from our documents of which have been consciously copied to support the application **19/00704/PPP**.

As I specified this morning even the image contained within the application named above to propose and or to support and illustrate the southern access point has been taken from the application **18/00469/PP**'s document ("**Planning Design Statement**") which appears on page seven (7) photograph three (3).

As stated to **Jean Law** some of the copyrighting has also been taken from the document ("**Review Statement Document**") of which was created by a UK incorporation which the contractual consultancy agreement terms are between Mr & Mrs Macdonald and that incorporation of which contains exclusivity provisions which can only be used in relation to and in support of application **18/00469/PP** unless otherwise authorised in writing by both parties.

Inclusive of the above **Ms Caroline Santos** would also appear to be breach of North Ayrshire Councils own terms and conditions within the NAC e-Planning portal under the **Copyright** section and the sub section conditions of use.

The NAC e-Planning portal clearly outlines that all material contained within the website is the copyright of North Ayrshire Council and any copyrighting is only permitted provided that the source of such materials is clearly acknowledged of which this has not been acknowledged as part of the formal application **19/00704/PPP** nor has **Ms Caroline Santos** been given expressed written permission by the original sources of the material to use as part of her application.

Thank you, for acknowledging this the above and I understand that the application will still be accepted in good faith and that this may not be a planning matter and is subject to legal proceedings.

I support North Ayrshire Councils legal teams recommended to the letter which expectantly will cease and desist all unlawful copyrighting conducted by **Ms Caroline Santos** going forward and or in pursuant to the process of her planning application **19/00704/PPP**.

I will confirm to you and to North Ayrshire Council that should **Ms Caroline Santos** continue to use any such documentation that is related to our planning application **18/00469/PP** to support her own planning application **19/00704/PPP** after receiving said letter of allegation. I will have no choice but to enact "**willingful Infringement**" and seek the necessary legal actions and associated relief for the copyright infringements that have taken place of which will be **pursuant to the Intellectual Property Act 2014 and the Copyright, Designs and Patents Act 1988**.

Copywriting Infringements Taken From Application 18/00469/PP Taken By Ms Caroline Santos To Support The Application 19/00704/PPP :

Policy ENV2 of the adopted North Ayrshire Local Development Plan sets out the circumstances in which a new dwellinghouse in the Countryside would be acceptable. Taken from ("Review Statement Document") For Application 18/00469/PP

The first circumstance for a new dwelling under ENV2 is for a single house in its own established setting in a rural area. Taken from ("Review Statement Document") For Application 18/00469/PP

The second circumstance relates to a small scale, sympathetic addition to an existing well-defined nucleated group of four or more houses. Taken from ("Review Statement Document") For Application 18/00469/PP

Policy ENV2 in relation to small scale growth of existing rural housing groups states that proposals for development in rural areas not defined in the LDP as a settlement or village shall accord with the LDP subject to satisfying the following criteria: the proposal constitutes a small scale, sympathetic addition to an existing, well defined, nucleated group of four or more houses and visually identifiable as a group with some common features, eg shared access. Taken from ("Review Statement Document") For Application 18/00469/PP

Expansion of such a group will be limited to 50 per cent of dwellings existing in that group as of 1 January 2005 up to a maximum of four new units. The proposed development will fully accord with those principles. Taken from ("Review Statement Document") For Application 18/00469/PP

Access is available there, in accordance with ENV2, or at the northern end of the site, with more than adequate space for parking within the site. Any visitor to the location would find themselves in a rural area with a mixture of residential properties, agricultural buildings and related land. Taken from ("Review Statement Document") For Application 18/00469/PP

The site forms part of the Thirdpart Holdings and sits on a low coastal saddle between the gentle rises of Waterside/Auld Hills and Drummilling Hill within the former Hunterston Estate. Taken from ("Planning Design Statement") For Application 18/00469/PP

The proposed additional dwelling can be justified as a sympathetic addition to this group. The policy allows only a limited expansion of groups by up to 50% and the proposal would meet this criterion. Taken from ("Review Statement Document") For Application 18/00469/PP

Good Afternoon Mr Macdonald,

I am writing in response to our phone call this morning regarding the potential breach of copyright of documentation from Planning Application ref. 18/00469/PP.

On the advice of our legal team I will be writing to the applicant to advise that the Council has received your allegation, however, the Council is obliged to accept the applicant's application in good faith.

I would therefore suggest that you consult with a solicitor in a private practice. I would also add that the Council may be required to reconsider its position should it receive notification of legal action concerning the dispute.

Regards,

John

*John Mack
Planning Officer
Planning Services
North Ayrshire Council
Cunninghame House
Irvine KA12 8EE*

Applicants Response to Further Representations

I have attempted to honestly interpret the meaning of your correspondent's complaints. All comments and complaints made by your correspondent are reproduced here verbatim and exactly as they were passed to me.

To deal with the points raised as they occur:

Your correspondent avers: "In recent informs in relation to application 19/00704/PPP, Mr Andrew Nicol has submitted an 'Appeal Statement' of which continues to reference our application either directly and/or indirectly."

Response : Agreed. My appeal is based entirely on the fact that the LRB ruled that the development at 15a Thirdpart Holdings was in compliance with policy ENV2 and, in my submission, the application in the name of Ms Santos must therefore be in accordance with Policy ENV2 also.

Your correspondent avers: "All planning applications ought to be accessed individually of which should be based on the councils planning policies and circumstances, constraints and/or justifications for a new housing development in the countryside."

Response: Also agreed insofar as all applications are given equal treatment.

Your correspondent avers: "Evidently, not all applicants agree with the councils ruling in relation to their applications of which they have a right to appeal."

Response: Agreed.

Your correspondent avers: "However, the applicants of 19/00704/PPP clearly believe that the same decision should be taken on their application despite separate constrains and location including site amenities being entirely divergent to our application 18/00469/PP."

Response: Agreed. With no admission regarding constraints, the applicant wholeheartedly agrees that the same decision must be taken on two, exactly similar applications regarding properties separated by the width of a common access road.

Your correspondent avers: "I would also like to point out the comparative in the name of the formal application made, of which has been fully submitted; 19/00704/PPP Erection of detached dwelling house and stable our application was named 18/00469/PP | Erection of detached dwellinghouse with stables this seems to be a blatant attempt to mimic the same antecedence of our application."

Response: Agreed. The application is intentionally designed to be in exactly the same terms as the application 18/00469/PP, approved by the LRB in November of last year in order that, like the application approved in November last year, it should also fall within the terms of Policy ENV2.

Your correspondent avers: "Many of the statements made by Mr Andrew Nicol within the 'Appeal Statement' in regard to co-common shared access with neighbouring properties such as 13, 14, 15, 15a and 16 Thirdpart holdings are false. This agricultural land does not share the co- common features or shared access with these properties and is separated by a public road and land mass. Properties such as 13, 14, 15, 15a and 16 have shared co-commonaccessandrighttotheshared-commonaccessroad bytherightoftitledeed."

Response: Not agreed. A reference to the map, a brief site visit or, indeed, reference to the disputed photograph will show clearly that the land in question is accessed by the same, single-track road which serves the properties listed above. Such investigation

Applicants Response to Further Representations

would also confirm that the so-called “land mass” separating the sites is nonexistent and, to put it kindly, imaginary.

Your correspondent avers: “I would very much like to echo the concerns raised on the 23rd of October 2019 and from our telephone conversation to ask that the LRB be notified in regard to the similarity and unauthorised use of our application documentation including imagery to support application 19/00704/PPP.”

Response: Agreed. The applicant would also very much like the LRB to be notified of the similarity between the two applications. In fact the applicant *insists* that members of the LRB should be fully appraised of the similarity since that can only strengthen the case for appeal.

To turn to the alleged copyright infringements listed by your correspondent.

Response: except in the case of the use of a photograph of the access gate to the applicant's property, this is not agreed. The applicant would invite members of the LRB to study the disputed photograph in detail as that photograph- supplied by your correspondent - completely undermines their claim that there is no shared access. In all other cases copyright infringement is denied. The complaints by your correspondent are nonsensical. To quote the council's publicly available planning rules in correspondence regarding a planning application falls clearly within fair usage. Indeed to forbid its usage would make such an appeal as that currently before the LRB impossible, which is obviously not the intention of the council.