# NORTH AYRSHIRE COUNCIL

**2 September 2020**

**Local Review Body**

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|---|---|
| **Title:** | **Notice of Review: 19/00669/PP – Ivybank, Lamlash, Isle of Arran, KA27 8LS** |
| **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 19/00669/PP – erection of detached garden room and decking to the rear of dwelling house (retrospective) at Ivybank, Lamlash, Isle of Arran, KA27 8LS.

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 arising from the recommendation of this report.

**Human Resources**

4.2 None arising from the recommendation of this report.

**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 arising from the recommendation of this report.

**Environmental and Sustainability**

4.5 None arising from the recommendation of this report.

**Key Priorities**

4.6 None arising from the recommendation of this report.

**Community Benefits**

4.7 None arising from the recommendation of this report.

## 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**

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**Applicant(s)**

Name: Mrs S Walker

Address:

Postcode:

Contact Telephone 1:
Contact Telephone 2:
Fax No:

E-mail*:

**Agent** *(if any)*

Name: Bruce Armstrong-Payne

Address:

Postcode:

Contact Telephone 1:
Contact Telephone 2:
Fax No:

E-mail*:

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

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

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Planning authority: North Ayrshire Council

Planning authority's application reference number: N/19/00669/PP

Site address: Ivybank, Lamlash, Brodick, Isle of Arran, KA27 8LS

Description of proposed development: Erection of detached garden room and decking to rear of dwelling house (retrospective )

Date of application: 2/09/2019

Date of decision (if any): 11/11/2019

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.

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**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 X
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:

The issues involved in this appeal are entirely subjective and not factual or policy based. Without a visual assessment of the site it will be difficult to properly understand the appellants case or make a full assessment of the development

**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? | ☐ | ☒ |
| 2 Is it possible for the site to be accessed safely, and without barriers to entry? | ☒ | ☐ |

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.

See Attached Statement with Photographs

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 Statement with Photographs

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 16/1/2020

This statement seeks a review of the Decision made on Planning Application 19/00669 which sought retrospective consent for a detached Garden Room within the residential curtilage of Ivybank Lamlash.

The Decision Notice suggests that the proposal contravenes Policy HE:1 and criterion (a) of the Local Plan. It comes to that conclusion on the basis that ;

1. the structure affects the visual amenity and historic character of Lamlash Conservation Area, and
2. the appearance of the structure with reference to local style and the materials used is inappropriate.

We consider the visual impact of the Garden Room to be minimal. It can only be seen (when the leaves are not on the trees) from one or two points on the village green. One has to look hard with raised eyes to spot it.

We attach photos taken from the few available viewpoints in the village. The photos attached to the original application were taken at very close quarters and magnified through the camera lens. This was in order to demonstrate the wood, the style and the dimensions of the structure. The photos attached now are taken from the village green looking up to the Garden Room from those places where it is visible. In the Spring and Summer months the tree foliage would make the structure even less easily seen. The structure does not sit up on the sky-line but merges in with the surrounding growth.

When it can be seen it simply appears as a garden shed which is a type of structure very common in the area.

The material used in the construction of the Garden Room is local larch. We were particularly proud to have sourced and hand-picked this from a few miles away on the Brodick Hill. It is difficult to understand why this is considered unsuitable for the area.

A further advantage of using larch is that it is known to “weather down” quite quickly and take on a grey hue which will make the structure even more difficult to spot from the village. There are many examples on the island of fencing and sheds made out of larch which has greyed over the

years. A picture of one such building is attached. This building was the yellowy hue of our structure only a short time ago.

Our Garden Room is not a permanent structure and is not for residential use. There are no services laid to the structure. It is simply an elevated area of decking with a store on top for garden furniture, providing us with a sheltered place if we want to sit inside and benefit from the view of the bay.

The structure sits below an already established hen-house and fenced run which is higher up the garden on the opposite side.

Our garden has mature trees and hedges and the idea of building the Garden Room using larch logs was to ensure it was in keeping with its surroundings. For this reason we feel that our rustic wooden structure blends in with the nature and trees which form the gap separating the historic shoreside properties like our own from those cottages higher up on Braeside.

We would like to draw attention to the fact that when we were told that planning consent was needed we stopped work on the structure. This means that it is still not entirely finished, eg we still intend to green over the roof with turf and the chicken wire balustrade is only temporary.
We are happy to accept any conditions which the committee consider are necessary. If for example it is considered that the structure would be better painted/stained green we would do this (but we do feel that the wood would be better left to age naturally).

The issues in this case are quite straightforward and relate only to the visual impact of the development. In our opinion the impact is minimal and does not justify the decision to refuse consent.

We trust that the Committee will come to the same conclusion once the full case has been considered and will approve our proposal, with whatever conditions are considered appropriate.

# Photographs

1. View of Lamlash Bay from the pier with wooded hills behind the shoreside buildings. The position of the Garden Room is indicated by the arrow

2 Ivy bank is on the right side with the Garden Room just visible behind the trees in the gap

3. View over the Glenisle Hotel with the Garden Room just visible over the roof line

4. The Garden Room can be seen in this photograph through the trees

5. The Garden Room can be seen above the roof of the sandstone building with the line of 3 dormer windows (Chemist Shop). Ivybank is on the far left of the picture which is taken from the pier with a zoom lens.

5. Larch Clad Building constructed in Whiting Bay showing weathered  timber on the house and fresh timber on the adjacent garage

# REPORT OF HANDLING

North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

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|---|---|
| **Reference No:** | 19/00669/PP |
| **Proposal:** | Erection of detached garden room and decking to rear of dwelling house (retrospective) |
| **Location:** | Ivybank, Lamlash, Brodick, Isle Of Arran KA27 8LS |
| **LDP Allocation:** | Residential/Housing |
| **LDP Policies:** | HE1 / General Policy / |
| **Consultations:** | None Undertaken |
| **Neighbour Notification:** | Neighbour Notification carried out on 03.09.2019<br>Neighbour Notification expired on 24.09.2019 |
| **Advert:** | Not Advertised |
| **Previous Applications:** | None |

**Appeal History Of Site:**

**Relevant Development Plan Policies**

HE1
POLICY HE 1: CONSERVATION AREAS

(a) Development within Conservation Areas:
Proposals for development which would adversely affect the visual amenity or historical/architectural character of a conservation area, including its setting, buildings,
open space or trees, shall not accord with the LDP.
(b) Development adjacent to Conservation Areas:
Proposal for development adjacent to a conservation area which has a significant adverse effect on its architectural and historical character and wider setting shall not accord with the LDP.
(c) Demolition within Conservation Areas:
Demolition of a building in a conservation area shall not accord with the LDP unless it
can be justified against the following criteria:
(i) an assessment of the importance of the building and its contribution to the local scene concludes there is little or no value in retention; OR
(ii) the repair of the building is not economically viable and that it has been marketed at
a price reflecting its location and condition to potential restoring purchasers for a

reasonable period; OR
(iii) the demolition of the building is essential to delivering significant benefits to economic growth or the wider community; AND
(iv) there is an acceptable comprehensive redevelopment proposal.

Note:
Applicants must prove that retention, restoration, and sympathetic conversion to some
other compatible use is not possible before proposals to demolish are accepted. The Council encourages pre-application discussions regarding demolition and redevelopment. Detailed plans for an acceptable replacement building should accompany applications for conservation area consent.

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.

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**Description**

This planning application relates to an area of decking and a detached garden room which have been erected in the steeply sloping rear garden of a semi-detached two storey house. The structures were erected in April 2019; a planning enforcement enquiry was received by Planning Services in May 2019 and the owner was advised, following a site visit, that planning permission was required. This retrospective planning application for the unauthorised structures was thereafter made in September 2019.

The timber deck measures 4.8m x 4.6m. It is built into the garden slope and is therefore level with the garden ground at its rear (north west) edge and 750mm above the ground at the front (south east) edge. It is c.9.5m from the rear elevation of Ivybank and is 1.5m in from the eastern boundary of the garden which is enclosed by mature hedges.

A detached log cabin has also been erected for use as a garden room near the top of the steep rear garden slope. The timber cabin itself measures 2.5m x 3m and has an overhanging flat roof 2.4m high. It sits on a raised timber deck which measures 4.5m x 4.5m. This 'cabin deck' is also built into the garden slope so that it is 1.5m above the ground at the front (south east) edge and supported by timber posts. The cabin walls are constructed from logs and it features three windows and a felt roof. The cabin deck is enclosed by a post and chicken wire balustrade 1m high.
The cabin and deck are 26m away from the rear elevation of the house; the level of the cabin deck is 4m higher than the ridge of the roof of Ivybank and the roof of the cabin itself is 6.3m above the ridge of the house roof.

A Supporting Planning Statement was submitted which indicates that: i) the structures were erected under the impression that they were Permitted Development and did not therefore require planning permission; ii) the lower deck is slightly elevated due to the slope of the garden but cannot be seen from outwith the site; iii) the garden room is on slightly more elevated land near the northern boundary and provides storage for the garden furniture used on the decks; and iv) that the deck and garden room have been positioned to take advantage of views over Lamlash Bay while minimising the possibility of overlooking of neighbouring properties. The Statement concludes that whilst glimpses of the structures may be available from outwith the site, they are not dominant and that the rustic character of the materials used are appropriate to the position at the edge of a conservation area and do not result in any harm to the character of the area.

The garden is enclosed by mature trees and hedges and the property is bounded by residential properties on three sides with Lamlash Green and the shore to the front.

The application site is within the settlement of Lamlash, as identified in the Adopted North Ayrshire Council Local Development Plan ("the LDP") and is also within the boundary of Lamlash Conservation Area. The application therefore requires to be assessed against Policy HE1 (Conservation Areas) and the General Policy of the LDP.

**Consultations and Representations**

The statutory neighbour notification procedures were undertaken. Five objections and one comment in support of the proposal were received. These can be summarised as follows:

Objection 1 (Precedent) - The erection of the garden room sets a disturbing precedent for this particularly sensitive historic Conservation Area as several other houses in the vicinity may also wish for similar development in their gardens.

Response: There is no 'precedent' in planning law. The Town and Country Planning Act requires all proposals to be assessed on their individual merits against the development plan in place and any other material considerations.

Objection 2 (Use/Services): If the garden building was to be approved, conditions should be applied preventing power, water or sewage connections or any accommodation use in the future. Ivybank is used as a B&B with a detached holiday rental cottage to the rear. The garden room would be used by guests of both until late in the evening. The commercial use should be taken into consideration.

Response: The proposal relates to the erection of a building within the curtilage of a dwellinghouse for purposes incidental to the enjoyment of that dwellinghouse. If it were to be approved, it could be used for such purposes under the terms of Class 3A of the General Permitted Development (Scotland) Order. This does not permit use as a separate dwellinghouse and separate planning permission would still be required in that regard. These matters are considered further in the following Analysis. Connections to services would not require planning permission but would be a Building Standards matter.

Objection 3 (Appearance): The garden building is of completely different design and materials from the row of stone built cottages.

Response: Siting, design and appearance are considered in the following Analysis.

Objection 4 (Boundary/Privacy/Overlooking): the garden room is a substantial construction on the common boundary. Due to its inappropriate location, it dominates and overlooks the entirety of the gardens and rear elevations of neighbouring properties. The elevated deck is also visible from a neighbouring property. Conversations of anyone using the structures are clearly audible from neighbouring properties.

Response: Due to the steeply sloping rear gardens, the rear of most properties in the vicinity can already be overlooked to a degree from neighbouring gardens; similarly, noise could be heard from users of a garden even where planning permission is not required and would only be a planning matter where the proposed development materially increases the likelihood of such issues to the significant

detriment of residential amenity. Matters of residential amenity are considered further in the following Analysis.

Objection 5 (Inaccuracies in the Submission): the plans exceed the boundary into a neighbouring property and do not contain a north point or scale bar. There are inaccuracies in the annotation and measurements of the submitted photographs. The planning statement and letter of support are both parts of the same document. The photographs were taken in summertime showing trees in full leaf and do not represent the year round impact of the building.

Response: The plans and documents submitted are considered sufficient to register the application and to consider the proposal. The Planning Officer has conducted a site visit to measure the structures and assess the issues.

Objection 6 (Conservation Area): The development is visible from Shore Road and Lamlash Village Green and is not in keeping with the aesthetic amenity of the conservation area. The submitted photographs do not fully represent the impact on the conservation area.

Response: This matter is considered further in the following Analysis.

Support Comment: The garden room does not obstruct views or affect the amenity of properties above on the Brae. It is well constructed of local Larch timber and the rustic appearance is in keeping with the landscape when viewed from below or out on the water.

Response: Noted.

No consultations were required.

**Analysis**

The planning application is for retrospective consent for structures already erected. The determining issue is whether the application accords with the policies of the LDP and whether there are any other material considerations. The relevant policy considerations are HE1 (Conservation Areas) and criteria (a) Siting, Design and External Appearance and (b) Amenity of the General Policy.

Ivybank is a dwellinghouse with a detached 'back house,' Ivybank Cottage, to the rear which is let as a separate self-catering holiday cottage. In response to an enquiry, the agent confirmed that Ivybank itself lets out two bedrooms for bed and breakfast which would be permitted under Class 9 (dwellinghouse) use. The deck and garden room are claimed to be for the use of the main house. It is also noted that a self-catering cottage, such as Ivybank Cottage, remains a dwellinghouse in terms of its planning status regardless of the tenure or occupation and could potentially also have benefitted from the Class 3B Permitted Development (PD) rights available to dwellinghouses for erection of domestic outbuildings or the Class 3D rights for decks.

Both the garden room and deck exceed the limits of the respective PD classes due to the location within the conservation area. Planning permission is therefore required.

In terms of Policy HE1 (Conservation Areas), the Council has recently undertaken a draft Conservation Area assessment for Lamlash to assess whether the special architectural or historic interest of the area's chracter and apperance. The draft report indicates that Lamlash Green gives a sense of space and importance to the streetscape and adds real character to the Conservation Area. It acknowledges that cottages high at Braehead have open views across to Holy Isle. However, it also identifies that the views back from the harbour slipway across the Green are important to the appreciation of the Conservation Area. It recommends that the Conservation Area protection which limits householder development be retained at this part of the Conservation Area.

Given this background, it is considered that any development which is detrimental to the form and development pattern of the Conservation Area should not be supported. In this regard, it is considered that the garden room, sited at the top of the garden slope, is highly visible from further afield, particularly in views back to the village from the harbour and has a significant detrimental effect on the character of the Conservation Area. The garden room disrupts the layout of the historic shoreside village properties which are visually 'separated' from the properties higher up on Braeside by mature trees. The closing of this gap is considered to have a significant effect on the charater of the Conservation Area. It is also consiered that the timber materials, which may have been suitable in a suburban garden, are not appropriate to the surrounding historic buildings in the Conservation Area particularly given the prominence of the building.

As views from the sea and shore across the historic form of the village play a significant part on the setting and special character of Lamlash Conservation Area, the adverse visual impact is considered to significantly harm the seeting and appearnace of the Conservation Area. The proposal is contrary to Policy HE1.

In terms of criterion (a) of the General Policy, for similar reasons as outlined above, it is not considered that the siting, design or appearance of the garden room are acceptable. The siting does not have regard to the visual effects of the development on the surrounding area and landscape and the appearance does not have regard to the locality in terms of its style or materials.

In terms of (b) (residential amenity), several objections referred to the adverse effects on neighbouring properties. It is noted that whilst it is a relatively unusual development for the locality given the height of the garden building above the roof ridge height of the surrounding buildings; it is also noted that the windows of the garden building are over 30m from the rear of the neighbouring properties and, given that the building is 'dug in' to the hillside slope, the height above the ground upon which it is built means that any noise disturbance issues are not intrinsically worse than what could be experienced from persons sitting on the ground at the same location at the top of the garden. It is not considered that the garden building necessarily intensifies the use of this part of the garden. The proposals do not conflict with criterion (b) on amenity.

The deck sited some 9.5m from the rear of the building, is not readily visible from outwith the garden and it is not considered to have any signifiacnt adverse impact on the Conservation Area, is of appropriate design for a rear garden and has no significant impact on amenity.
Notwithstanding, the proposal, particularly the garden room for the reasons given above, does not accord with Policy HE1 or criterion (a) of the General Policy of the LDP and planning permission should therefore be refused.

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

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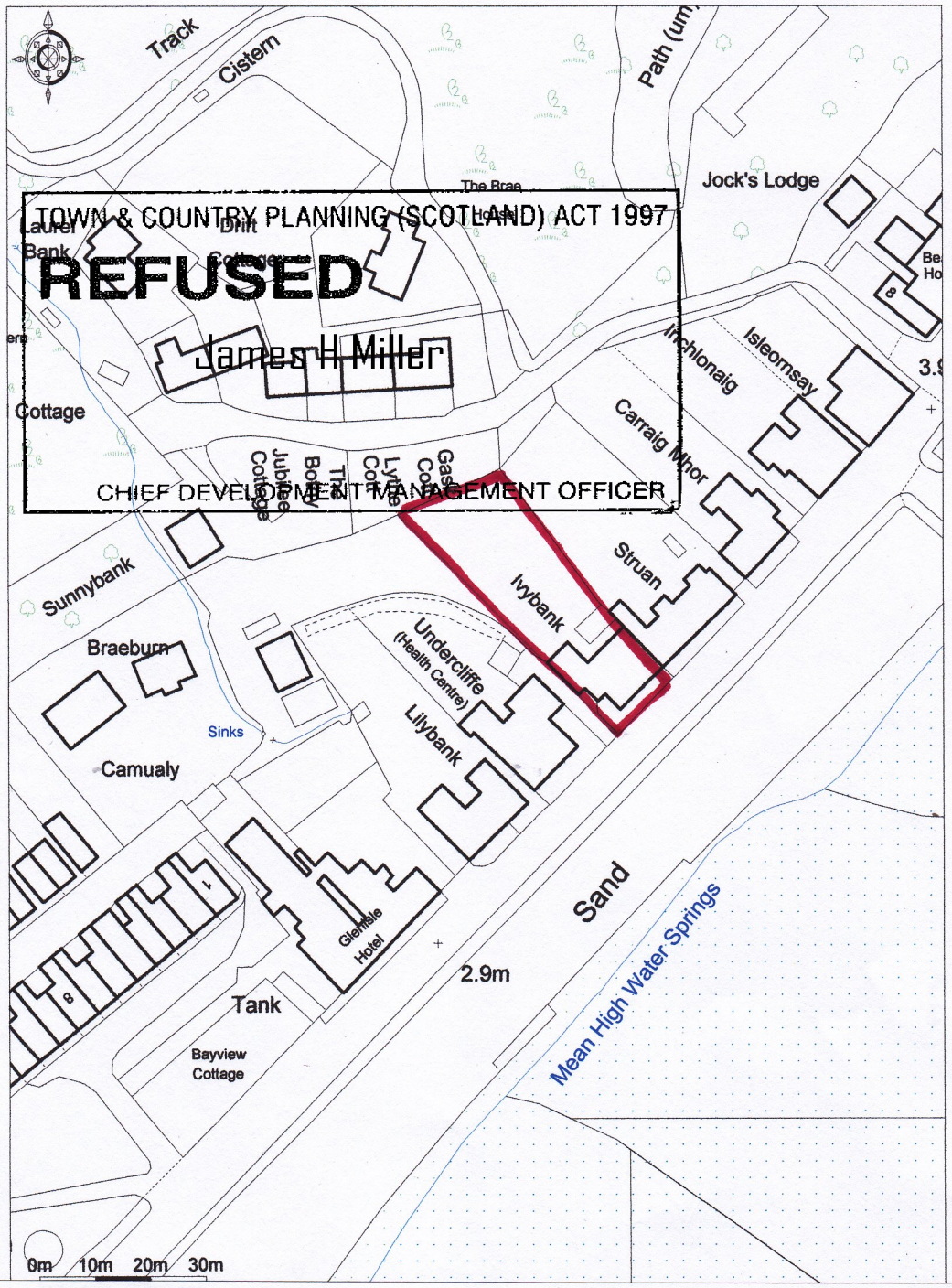
**Decision**

Refused

Case Officer - Mr Neil McAteer

**Appendix 1 - Drawings relating to decision**

| Drawing Title | Drawing Reference (if applicable) | Drawing Version (if applicable) |
|---|---|---|
| Location Plan | 19/27/1 | |
| Block Plan / Site Plan | 19/27/2 | |
| Annotated Photos | Photo 1 | |
| Annotated Photos | Photo 2 | |
| Annotated Photos | Photo 3 | |
| Annotated Photos | Photo4 | |
| Annotated Photos | Photo 5 | |
| Sections | | |




TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

REFUSED

James H Miller

CHIEF DEVELOPMENT MANAGEMENT OFFICER

**B Armstrong-Payne, Dip TP MRTPI**
**Planning Consultant**

**RETROSPECTIVE APPLICATION FOR GARDEN ROOM AND DECKING**
**IVYBANK, LAMLASH, ISLE OF ARRAN**

**Location Plan No 19/27/1** **SCALE1:1250**

North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

KAREN YEOMANS : Executive Director (Economy & Communities)

No N/19/00669/PP
(Original Application No. N/100178621-001)

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 2013

To : Mrs S Walker
c/o Bruce Armstrong-Payne
Meadow House
Snuff Mill Lane
Stainton
Penrith
CA11 0ES

With reference to your application received on 3 September 2019 for planning permission under the above mentioned Acts and Orders for :-

Erection of detached garden room and decking to rear of dwelling house (retrospective)

at Ivybank
Lamlash
Brodick
Isle Of Arran
KA27 8LS

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 garden room is contrary to policy HE1 of the Adopted North Ayrshire Council Local Development Plan in that the siting of the garden building significantly affects the visual amenity and historical/architectural character of Lamlash Conservation Area, including its setting and open spaces.

2. That the garden room is contrary to criterion (a) of the General Policy of the Adopted North Ayrshire Council Local Development Plan in that (i) the siting of the development does not have regard to the visual effects of the development on the surrounding area and landscape and (ii) the external appearance does not have regard to the locality in terms of style or materials.

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.

The above Planning Application was rightly refused on the grounds that it contravenes criteria a) of the General Policy 'Development within Conservation Areas, in particular setting, design and appearance. Please note the following points directly addressing this point and other issues which I would ask you to take into consideration.

**criteria a)**

1. Setting - The Garden Room has been set at a high point in the garden above the height of the adjacent building rooflines, this setting clearly has an impact on the Conservation Area.

2. Design - The Garden Room is of a contemporary design not in keeping with the Conservation Area.

3. Materials / Appearance - The Building is constructed in larch which is not evident nor considered acceptable in the Conservation Area

**Residential Amenity**

The Planning Officer claims that the Garden Room does not affect residential amenity however fails to acknowledge that the rear private garden is amenity space which has been directly affected by the Garden Room. The Garden Room immediately overlooks and looks down onto the private garden space, please note the following points made in his 'Report of Handling' (undated) and my own observations;

1. *'the height above the ground upon which it is built means that any noise disturbance issues are not intrinsically worse than what could be experienced from persons sitting on the ground at the same location at the top of the garden'*

This statement is incorrect the garden room and its associated balcony are elevated approx 2 m from the ground level from where they are located. An elevation of this magnitude results in the adjacent garden being directly overlooked / looked down onto where previously the occupants where able to enjoy the amenity of their private rear garden. This elevated position will also increase noise and disturbance especially as the Garden Room is being used late into the evening / night by B & B guests.

2. *'It is not considered that the garden building necessarily intensifies the use of this part of the garden'*

This statement is incorrect, the garden room is located on steeply sloping ground which would not be usable for 'sitting and enjoying views' which includes the view directly down onto the adjacent private garden.

3. *'the deck and garden room have been positioned to take advantage of views over Lamlash Bay while minimising the possibility of overlooking of neighbouring properties'*

This statement is incorrect, a garden room window has been specifically angled to directly overlook the adjacent neighbours garden. There are substantial views over Lamlash Bay across the applicants own garden however they have chosen to direct the views from this window over and down upon the neighbours garden. This window

(there are others) should at least be blocked off and the adjacent balcony screened as the other larger windows / balconies offer sufficient views across Lamlash Bay.

**Permitted Development**

The garden room and decking exceed the limits of permitted development and therefore contravene what is deemed acceptable.

**Objection 5 : The plans exceed the boundary into a neighbouring property**

The Planning officer fails to address the point that the garden room exceeds the boundary into a neighbouring property.

I would be grateful if you would take all of the above into consideration when reviewing the planning refusal.

Further to your Notice of Review of Planning Application 19/00669/PP Ivybank, Lamlash, I attach further comments for your consideration.

In connection with HE 1 b) Amenity i.e. ' regard should be taken of privacy, sunlight and daylight' and Objection 4 response which states that the neighbouring properties are already overlooked to some extent by houses at the top of the slope I make the following comment.

Privacy My property is not overlooked by the other houses mentioned in the 'response' because these houses are completely screened by the mature trees along the raised beach and hedges and fencing to the rear of gardens. A visit to affected properties would have made this apparent. There is no 'overlooking' of my house windows or my garden from any property other than the 'garden room'.

In an attempt to partially minimise the impact of loss of privacy resulting from the erection of the garden room in such an elevated position, I have allowed hedges and trees to grow around my own outdoor patio resulting in significant loss of sunlight for most of the day and evening and subsequent loss of utility.

Noise

Any general garden 'noise' from voices in neighbouring gardens is muffled by vegetation acting as a baffle. However, the elevated position of the garden room and the absence of any screening or sound baffle results in virtually every word from the outdoor seating platform being plainly audible and intrusive. This also reduces my privacy as I have no wish to be party to the unavoidable conversations of others.

Planning Services

North Ayrshire Council

Cunninghame House

Irvine

KA12 8EE

19 September 2019

Dear Sir/Madam

**19/00669/PP** | Erection of detached garden room and decking to rear of dwelling house (retrospective) | Ivybank Lamlash Brodick Isle of Arran KA27 8LS

I am writing to object to the above development. I am the owner of the neighbouring property,

This is supplemental to the comments submitted online on 19 September 2019.

The enclosed photographs were taken on Saturday 14 September 2019 from my property using an iPhone 6s held at eye level, and from a standing position.

Ivybank operates as a Bed & Breakfast business with accommodation in three bedrooms for up to four adults and two children. The property also includes a letting cottage which is available for short term rentals and can accommodate up to four adults (see ivybankarran.co.uk). The Decking and the "Garden Room" are used by guests staying at Ivybank, from early morning until late evening, and we request that the commercial nature of the development be taken into consideration.

**Decking**

The large area (4.75 x 4.70m) decking is less than 1 metre from the boundary with our property and is visible from our property (photograph 1).

Three corners of the decking are elevated, including the two corners adjacent our property.

**Garden Room**

The Garden Room is a substantial structure formed from heavy timbers. The designer/builder indicated to me that he had used 3 tonnes of cement in the construction of the foundations. The windows are fitted with double-glazed units of modern design.

The Garden Room has been constructed on an elevated site, atop a small cliff. The structure is built hard on the boundary of our property (photograph 2). During construction of the Garden

Room the designer/builder removed several mature trees on the boundary. Branches from the trees have been used to construct an unstable barrier on the boundary below the Garden Room (photograph 3).

Due to its design, size, and elevation, and its inappropriate location hard on our boundary, the Garden Room dominates and overlooks the entirety of the rear of our property. When standing in the elevated section of our garden adjacent the front of the development the corner of the associated decking is above head height; the front corner of the deck is 1.9m above ground level on the boundary (this suggests the roof of the Garden Room is 4.3 metres above our property at this point). See photographs 4 & 5.

The Garden Room features an angled floor-to-ceiling window directly overlooking our property (photograph 6).

The Garden Room provides unobstructed views of our garden and provides an unobstructed view into all our rear-facing windows, including three of our bedrooms.

The Garden Room and the associated deck (and anyone on the deck) are clearly visible from all rear windows of our property and from the major part of our garden (see photograph 7, taken from a bedroom window). The proximity, elevated location and orientation of the development also result in the conversations of anyone using the deck being clearly audible from our property, this being particularly noticeable when guests staying at Ivybank have drinks on the deck in the late evening.

In summary, the Garden Room and its associated deck have resulted in a complete and unacceptable loss of our privacy, compounded by use of the Garden Room and associated deck by Ivybank's paying guests. Accordingly, we request that the planning application be refused.

The Planning Application was refused on the grounds that it contravenes criteria a) of the General Policy 'Development within Conservation Areas, in particular setting, design and appearance. Please note the following points directly addressing this point and other issues which I would ask to be taken into consideration.

Siting, Design & External Appearance Criterion (a)

1. Siting - The Garden Room is set at an elevated point in the garden above the roof ridges of adjacent buildings. The Garden Room is clearly visible from Lamlash Village Green and accordingly has a substantial impact on the Conservation Area. Attached photograph 8 (taken 22 September 2019) shows the view of the Garden Room from Lamlash Green, opposite my property.

2. Design - The Garden Room was designed and built by an individual with no training in architecture or building. The Garden Room is of idiosyncratic design, for example the building features vertically arranged heavy external timbers, a corrugated metal roof, and oddly-placed contemporary double-glazed window units. Glass fibre insulation is spilling out of the structure. The design not in keeping with the Conservation Area.

3. External Appearance - The Building is constructed from heavy larch logs interspersed with oddly positioned window units, has no redeeming aesthetic features and should not be acceptable in the Conservation Area

Criterion (b) Residential Amenity

The Planning Officer claims that the Garden Room does not affect residential amenity. This fails to acknowledge that the rear private gardens of the adjacent affected properties is amenity space which has been directly and adversely affected by the Garden Room. The Garden Room immediately overlooks and looks down onto the private garden spaces.

The "Report of Handling" contains a number of conclusion and statements which must be challenged:

1. *'the height above the ground upon which it is built means that any noise disturbance issues are not intrinsically worse than what could be experienced from persons sitting on the ground at the same location at the top of the garden'*

This statement is patently incorrect. A person sitting on the ground would be: 1) at least 2 metres lower than a person sitting on the balcony to the front of the Garden Room; 2) surrounded by sound-absorbing materials, and 3) separated from the adjacent garden by a fence, hedge or the like which would reflect or absorb sound. On the other hand, a person sitting on the balcony is elevated above any hedging or fencing and is surrounded on three sides by the Garden Room front wall and roof, and the balcony itself. Sound is wave-based energy and is reflected by hard surfaces, such as windows and the heavy larch timbers used in the construction of the Garden Room. Accordingly, noise generated on the balcony is reflected and focussed by the hard surfaces of the Garden Room and is transmitted, without interruption, towards the rear of the adjoining properties; the effect is akin to a "whispering gallery".

The elevation of the balcony and its location on/above the boundary results in our garden being directly overlooked – even a 2 metre high fence on the boundary would barely conceal the feet of someone on the balcony such that the construction of the Garden Room has resulted in complete loss of privacy in our garden.

Guests at the Ivybank B&B are encouraged to use the Garden Room, for example to take morning coffee or for late-evening drinks. Of course these guests are strangers to us with the result that our previously secluded and private garden space is effectively now open to public view.

2. *'It is not considered that the garden building necessarily intensifies the use of this part of the garden'*

This statement is incorrect. As noted, above, guests at Ivybank B&B are encouraged to use the Garden Room. The balcony provides a flat and stable location for garden chairs. The roof protects the balcony from rain. The Garden Room also provides shelter from the wind. Further, were it not for the views over our house and garden to Lamlash Bay afforded by the elevated balcony there would be very little reason to sit in that part of the garden.

The Review Body is also asked to consider that, particularly in the Summer months and following the introduction of the RET for the Ardrossan – Brodick ferry, the Shore Road is very busy and vehicles often park directly in front of our shallow front gardens, which front directly on Shore Road. The resulting traffic noise and fumes render our front garden unusable and unsafe for small children and pets. The peace and privacy of our rear garden was thus an important amenity, now much diminished by the construction of the IvyBank Garden Room.

<u>Further Observations</u>

<u>Overlooking/Loss of Privacy</u>

All of the rear windows of our property are directly overlooked by the Garden Room. For example, there is an unobstructed line of sight from the Garden Room balcony into our main bedroom and two further bedrooms. This was pointed out to the designer/builder, who acknowledged the issue but suggested that we stop pruning our apple trees to retain a degree of privacy in our main bedroom, at least in the Summer months.

The Garden Room has thus had a significant and detrimental effect on our privacy and enjoyment of our home, the rear rooms of which are now in clear and direct view of any guests staying at Ivybank B&B who choose to use the Garden Room.

<u>Safety issues</u>

As noted in my letter of 19 September 2019, and as is apparent from the accompanying photographs, the applicant felled a number of mature trees on the boundary with our property to allow the Garden Room to be constructed directly on the boundary. Cut timber from these felled trees has been placed in a unstructured and unsecured stack on the boundary, apparently to conceal the void beneath the Garden Room. This stack appears unstable and could fall into our property causing injury to any person or pets in our garden.

The elevated balcony is currently surrounded by insubstantial chicken wire, offering minimal protection from the 2 metre drop into our property (or the further 2 – 3 metre drop over the cliff in our garden which lies directly below the area adjacent the Garden Room).

Permanent Structure

I note the applicant's representative has made a further submission, which includes the claim that the Garden Room is not a "permanent structure". The designer/builder of the Garden Room indicated that he had built extensive foundations and had used 3 tonnes of cement in the process. A significant volume of heavy timbers were used in the construction and the structure, which includes double-glazed window units and has been insulated with glass fibre. The Garden Room has been used as sleeping accommodation on a number of occasions.

If indeed the Garden Room is not a permanent structure I am puzzled why the applicant has not offered to move the Garden Room to another location, away from the boundary, where many of the issues relating to the structure would be substantially diminished.

**APPLICANTS RESPONSE TO ADDITIONAL COMMENTS RECEIVED BY NORTH AYRSHIRE COUNCIL ON THE NOTICE OF REVIEW FOR 19/00669**

The request for a review of Decision Notice N19/00669/PP has attracted several further comments, the majority of which have no planning merit.

The application was refused on the grounds of the impact it allegedly had on the character and appearance of the Conservation Area and the evidence submitted in support of the review therefore concentrated on that issue.

The further comments from neighbours that have now been received are primarily concerned with residential impact which the Planning Officer has already determined is not an issue in this case.

It would appear that the only comments relevant to the Review are within the section of Further Rep3 which deals with "Siting Design & External Appearance (a)".

In this section the objector suggests that the Garden Room is "set at an elevated point in the garden above the roof ridges of adjacent buildings". It goes on to say that the Garden Room is clearly visible from Lamlash Village Green and accordingly has a substantial impact upon the Conservation Area.

It is accepted that the Garden Room is in an elevated position and is above the ridge lines of the properties that front onto the Shore Road. It is not accepted however that this elevated position means it is widely visible from the Green. It can be seen at this time of year in some restricted views against the background of the rising ground with houses behind. It can be quite difficult to find in this view as members will see, if they decide to undertake a site visit. Once the leaves are out on the trees that surround the Room, it will hardly be seen.

The second point raised in this section of the objection letter is concerned with the design of the Room. The objector suggests that it is idiosyncratic in design and that comment is accepted. It is not accepted however that being "different" makes it automatically unacceptable, there are other timber properties in the locality including the timber Garden Houses behind the back houses of Hamilton Terrace. Just because the Area has been designated does not mean that there is no room for different styles or designs.

The building has been constructed with vertical local timber logs that replicate the vertical nature of the surrounding undergrowth. The structure has not yet been completed and the addition of a grass roof and an appropriate style of balustrade will complete its landscape setting.

Finally this objector suggests that the use of timber in the form of logs should not be acceptable in the Conservation Area. The applicant would dispute this and considers that the use of local materials is perfectly acceptable in this Area.

All the other issues concerned with residential amenity that are raised in the objection letters have already been addressed by the Planning Officer and dismissed.

There are some new allegations made about my clients business in the letters which are entirely wrong and are unsubstantiated. The suggestion for example that guests are encouraged to use the Garden Room is simply untrue and should not be given any weight. The Garden Room is intended for purely domestic use.

On balance the great majority of comments set out in these additional statements are considered to be not relevant to the debate on this proposal which is concerned solely with the visual impact the Room may have on the character and appearance of the Conservation Area.

On that basis it is considered that the development is perfectly acceptable and should now be approved.