

Report

Report to:	Planning Committee
Date of Meeting:	22 September 2020
Report by:	Executive Director (Community and Enterprise Resources)

Application no.	P/19/1807
Planning proposal:	Formation of fishing ponds and associated facilities (Section 42 application to vary condition 25 attached to planning permission CL/12/0511, to enable an extension of the extraction period by a further 6 years)

1. Summary application information

Application type:	Further application
Applicant:	Onyx Leisure Ltd
Location:	Woodend Farm B7016 From Forth A706 To Carnwath A70 Carnwath ML11 8LR

2. Recommendation(s)

2.1 The Committee is asked to approve the following recommendation(s):-

- (1) Grant further application (subject to conditions) based on conditions attached.

2.2 Other actions/notes

- (1) The Planning Committee has delegated powers to determine this application.
 (2) A request for a pre-determination hearing has been made by objectors. The request does not accord with the Council's guidance on hearings.

3. Other information

- ◆ Applicant's Agent: Maura McCormack
- ◆ Council Area/Ward: 03 Clydesdale East
- ◆ Policy Reference(s): **South Lanarkshire Local Development Plan:**
 Policy 2 - Climate change
 Policy 3 General Urban Areas
 Policy 4 Development management and placemaking

Supplementary Guidance 3: Development Management, Placemaking and Design

Policy DM14 Tourist facilities and accommodation

Supplementary Guidance 2: Green Belt and Rural Area Policy GBRA1 Economy/business related developments

Proposed South Lanarkshire Local Development Plan 2

Policy 2 Climate change

Policy 4 Green Belt and Rural Area

Policy 5 Development Management and Placemaking

Policy 6 Visitor Economy and Tourism

Policy 19 Minerals Development

Policy GBRA2 Business Proposals within Green Belt and Rural Area

Minerals Local Development Plan

Policy MIN1 Spatial framework

Policy MIN2 Environmental protection hierarchy

Policy MIN3 Cumulative impacts

Policy MIN4 Restoration

Policy MIN5 Water environment

Policy MIN7 Controlling impacts from extraction site

Policy MIN8 Community benefit

Policy MIN12 Transport

Policy MIN15 Site monitoring and enforcement

◆ Representation(s):

▶	10	Objection Letters
▶	0	Support Letters
▶	1	Comment Letters

◆ Consultation(s):

Environmental Services

SEPA Flooding

Roads Flood Risk Management

Health and Safety Executive

SNH

Planning Application Report

1. Application Site

- 1.1 The application site lies to the east of the B7016 approximately 2km to the north of Carnwath between a conifer plantation and the Dippool Water. The site occupies a total area of 17.3 hectares, with access (approximately 1km in length) being taken from an existing track taken directly off the B7016. The existing access currently serves Woodend Farm (which sits immediately adjacent to the B7016) and Scott's peat extraction operations which neighbours the western boundary of the site.
- 1.2 The site is bounded to the north and east by open farmland, to the west by the peat extraction works, and to the south by a conifer plantation. The Kames SSSI (a geological feature formed by glacial deposits) sits along the edge of the access track and the plantation. Further east is the Glasgow – Edinburgh main railway. Couthally Castle Scheduled Ancient Monument lies 500 metres to the south of Woodend farm.
- 1.3 Work has already started on site with a pond already partly formed, access and hard standing and compound with site office has been established while over the site there are mounds of excavated sand and gravel. In addition a limited amount of inert material has been brought onto the site which will be used to create a level area for future parking and landscaping.

2. Proposal(s)

- 2.1 The application is made under Section 42 of the Town and Country Planning (Scotland) Act 1997 (as amended) and is an application for planning permission for the development of land but without compliance with a condition or conditions attached to a previous planning permission.
- 2.2 In this instance, the applicant wishes to vary the terms of condition 25 attached to planning permission CL/12/0511 which was granted in April 2013 for the creation of 4 fishing ponds through the extraction of sand and gravel from the raised mounds at the forestry edge. Most of the extracted material will be redistributed around the site to create walkways, landscaping, car parking and other associated facilities. The intention is to export approximately 45,000m³ of excess sand and gravel and import 45,000 m³ clay which will be used to line the ponds to prevent filled water soaking away. A processing area will be established in the south west corner to grade and wash the material to be exported and silt and wash lagoons will be formed to deal with silt and to recycle water. Screen mounds for the lagoons will be formed from overburden along with a series of mounds which will eventually be landscaped with a mixture of deciduous and evergreen trees. The lagoons will be allowed to silt up after which grassland will be reinstated. The existing access road will be upgraded and extended to facilitate construction, extraction and future visitors to the fishery. A car park will be established on the western extremity of the site at the end of the access track. It was anticipated, at the time the application was processed, that the creation of the ponds would take place in three phases over a three year period with 15 lorry loads a day to remove sand and gravel off the site at a rate of 1500 tonnes per week.
- 2.3 Condition 25 of the original consent states:

'All extraction operations on the site shall be discontinued not later than 3 years from the date of commencement and, within a period of 12 months from this discontinuance date, the entire site shall be restored in accordance with the approved restoration plan to the satisfaction of the Council Planning Authority.'

Notification of commencement of work was issued on 22 February 2016 before the consent expired.

- 2.4 This current Section 42 application requests that condition 25 be amended to extend the period for discontinuance of extraction until 1 February 2025. The original applicant sold the site to Southern Minerals Ltd who went into receivership in February 2018, which has resulted in, a cessation of activity and over the intervening years there has only been limited site preparation works. The site has now been purchased by Onyx Leisure Ltd who wish to complete the approved unfinished works and restore the land in accordance with the approved restoration plan. The request for an extension by a further six years represents a realistic and cautious timescale. A restoration bond has been agreed involving three phased payments – the first payment has already been received. No other changes are proposed to any of the planning conditions attached to CL/12/0511 as part of this Section 42 planning application.
- 2.5 If successful, the effect of a Section 42 application to modify a planning condition or conditions is to grant a further planning permission for the whole development again but with the amended condition or conditions replacing those that were previously issued, or with conditions removed if required. All other conditions, if relevant, are also required to be attached to any new planning permission. If the proposed changes to the condition or conditions are deemed unacceptable, then Section 42 of the Act requires the application to be refused. Any refusal of an application under Section 42 of the Act does not have any effect on the original planning permission which remains intact.
- 2.6 It should be noted that, whilst the applicant is not proposing to amend any other conditions of the Original Permission, several of the conditions on that consent related to pre-construction requirements which have now been discharged. It is, therefore, within the power of the Council, as Planning Authority, to make any other amendments to conditions if minded. In this case any recommendation of approval would only result in conditions that are still extant and required.

3. Background

3.1 Local Plan Status

- 3.1.1 The adopted South Lanarkshire Local Development Plan 2015 (SLLDP) contains the following policies against which the proposal should be assessed:-

- Policy 2 Climate Change
- Policy 3 Greenbelt and Rural Area
- Policy 4 Development Management and Placemaking

- 3.1.2 The following approved Supplementary Guidance documents support the policies in the SLLDP:-

- Supplementary Guidance 1: Sustainable Development and Climate Change
- Supplementary Guidance 2: Green Belt and Rural Area
- Supplementary Guidance 3: Development Management, Placemaking and Design

- 3.1.3 In March 2016, the Planning Committee decided that the Minerals Local Development Plan and the proposed South Lanarkshire Local Development Plan 2 (SLLDP2) be amalgamated into one Local Development Plan; that separate statutory

Supplementary Guidance on Minerals would be prepared; and that until SLLDP2, is approved and adopted that Non-Statutory Planning Guidance on Minerals (NSPG) be produced. The NSPG has been prepared and approved and it contains the following policies against which the proposal should be assessed:-

- Policy MIN1 – Spatial framework
- Policy MIN2 – Environmental protection hierarchy
- Policy MIN3 – Cumulative impacts
- Policy MIN4 – Restoration
- Policy MIN5 – Water environment
- Policy MIN7 – Controlling impacts from extraction sites
- Policy MIN8 - Community benefit
- Policy MIN12 – Transport
- Policy MIN15 – Site monitoring and enforcement

3.1.4 On 29 May 2018, the Planning Committee approved the proposed South Lanarkshire Local Development Plan 2 (Volumes 1 and 2) and Supporting Planning Guidance on Renewable Energy. The new plan builds on the policies and proposals contained in the currently adopted South Lanarkshire Local Development Plan. For the purposes of determining planning applications the proposed South Lanarkshire Local Development Plan 2 is now a material consideration. In this instance, the following policies are relevant:-

Volume 1

- Policy 2 Climate Change
- Policy 4 Green Belt and Rural Area
- Policy 5 Development Management and Placemaking
- Policy 19 Minerals Development

All these policies and guidance are examined in the assessment and conclusions section of this report.

3.2 Relevant Government Advice/Policy

3.2.1 Scottish Planning Policy (SPP) states that when assessing mineral proposals, the planning authority should consider aspects such as landscape and visual impacts, transportation impacts, the effect on communities, cumulative impact, environmental issues such as noise and vibration, and potential pollution of land, air and water. SPP also promotes economic activity and diversification in the rural area including development linked to tourism and leisure while ensuring that the distinctive character of the area, the service function of small towns and natural and cultural heritage are protected and enhanced.

3.3 Planning Background

3.3.1 Planning Permission CL/12/0511 was granted for the formation of fishing ponds and associated facilities in April 2013.

4. Consultation(s)

4.1 **Health and Safety Executive (HSE)** – No response to date.

Response: The reason HSE was consulted was a small section of the access track falls within the buffer zone of a high pressured gas pipe line. However, the track is existing and the proposed fishing ponds lie a significant distance from the buffer zone therefore there are no health and safety implications or impact upon the pipeline.

- 4.2 **SNH** – No response to date. However, in their response to the original application, they advised that the Carstairs Kames SSSI would not be affected by the proposal. Mitigation measures relative to badgers, otters and breeding birds outlined in the ecological report were welcomed. In addition, there should be pre-construction checks for badgers and otters at the start of each phase and at 6 monthly intervals throughout the construction period.
Response: Noted. Previous conditions requiring otter and badger surveys have been reapplied.
- 4.3 **Flood Unit** – No response to date. However, it is noted that, they did not object to the original application.
Response: Noted. Previous conditions covering drainage and flooding have been reapplied.
- 4.4 **SEPA Flooding** – No objection as there is no alteration to the proposal other than a time extension. The applicant is expected to comply with the terms of the existing CAR licence for this site.
Response: Noted.
- 4.5 **Environmental Services** – Advised on the original application that as the construction phase was to be temporary an advisory note making reference to the need to comply with under BS5228 to control noise on construction and open sites was sufficient. The time span since the approval and the proposed extension, based on the method statement, now indicates that conditions should be updated to reflect Planning Advice Note 50: Controlling the Environmental Effects of Surface Mineral Workings. Further information should be provided to determine the extent of quarrying operations within the proposed extension with a view to noise and dust mitigation
Response: The proposal still involves a temporary excavation period until the completion of the ponds. There is no change to the extent or quantity of excavated materials. Conditions covering dust management attached to the original consent have already been discharged. A condition is however now proposed requiring compliance with the approved plan throughout the excavation period. The nearest dwellings are a significant distance from the excavation area and there is no increase in anticipated vehicle numbers. Noise issues can continue to be addressed by the use of conditions or informatives.
- 4.6 **Roads and Transportation Services** – Carnwath Road is in good condition and shows no sign of deterioration near Woodend Farm and, therefore, in this instance an agreement is not required to protect against wear and tear. Whilst it is difficult to benchmark the private access wear and tear, some form of agreement should be in place between the developers and the private access proprietors.
Response: Noted. If consent is granted a condition will be attached requiring the submission and approval of a maintenance agreement covering the access road.

5. Representation(s)

- 5.1 Statutory neighbour notification was undertaken and the proposal was advertised in the local paper as a bad neighbour development and for non notification of neighbours. In response 10 letters of objection and one comment letter has been received. The issues raised have been summarised below.

a) Damage to ground by vehicles accessing the site.

Response: The developer has a legal right of access over the access track and, therefore, any damage to ground is a legal matter between the applicant and the affected landowner. Notwithstanding the applicant is currently

negotiating an agreement to use the track serving the peat extraction site which would bypass the current access thereby avoiding future conflict.

- b) **Supporting Statement refers to the funding for the restoration being predicated on the successful outcome of this application to extend the time period. This is contradictory and unclear.**

Response: The original consent was subject to a condition that required the submission of a restoration bond. This has now been agreed and submitted involving payment over three phases. The first payment has been received.

- c) **Some properties were not notified.**

Response: Ownership notices have now been served on the co-owners of the access track.

- d) **The road has not been kept clear of debris as required by condition 07 of Planning Permission CL/12/0511. A wheel wash was to be installed to address this issue.**

Response: The condition in question required the public road to be kept clear of mud. An additional condition would be attached to any new consent requiring a wheel wash facility.

- e) **Damage to the road surface.**

Response: Roads and Transportation Services have not advised that there has been damage to the road. They however have powers of investigation and enforce repair where required.

- f) **The use of unsheeted loaded vehicles is a concern with regards safety.**

Response: A condition has been added requiring all laden lorries entering and leaving the site to be sheeted.

- g) **Noise and disturbance from vehicles at all times of the day and night. Times for construction activity have not been complied with.**

Response: A condition to limit construction activity to between 8.00am and 7.00pm Monday to Friday, 8.00am to 1.00pm on Saturdays and at no time on Sundays and Public holidays will be attached to the decision notice, if consent, is granted.

- h) **Original report for CL/12/0511 referred to 15 lorry loads per day. Unfortunately there has been a lot more than 15 loads per day.**

Response: A condition has been attached requiring the submission and approval of a Traffic Management Plan detailing traffic movements. If permission is granted this condition will be enforced where there is evidence of a breach.

- i) **Locked gates to the site will create a parking nuisance.**

Response: The gates have been erected to prevent the theft of material. If public and contractors are aware of opening and closing times this should not be a problem.

- j) **The difficulty for two heavy goods vehicles to easily pass each other. Traffic straying off the road onto the peat bog.**

Response: The title deeds for the track allow for the upgrading and widening of the access track where necessary. It is the responsibility of the operator to co-ordinate traffic movements to avoid conflict with lorries entering and leaving the site. A Traffic Management Plan condition will be attached requiring details

of daily traffic movements. The extension of the time period will help avoid excessive vehicle movements and potential conflicts.

k) Details of surface water drainage have not been submitted.

Response: A condition has been attached requiring the submission of these details.

l) Condition 22 requires that the silt and fresh water lagoons shall be properly lined – no evidence that this has been complied with.

Response: This condition has been replicated as condition on the paper apart. This is not an issue at the moment as the ponds have not been fully excavated, however, monitoring will ensure that this is implemented.

m) Activities so far relate to quarry rather than construction of fish ponds.

Response: Ground excavation is required to enable the construction of the fish ponds. This application seeks to extend the time period for creating the ponds which has been delayed for financial reasons.

n) Lorries travelling at an unacceptable speed.

Response: A condition will be attached requiring the installation of speed signage along the access track.

o) Road entrance has not been maintained.

Response: The applicant has given a commitment that the road will be maintained to a satisfactory standard. If consent is granted this matter will be closely monitored to ensure compliance with relevant conditions covering the access road.

p) Materials have been dumped on site with no consideration on how this will affect fish and wildlife in the area.

Response: The intention was that the proposed landscaped area, carparking etc was to be formed from sand overburden however due to an overlying layer of peat this had proved to be ineffective because of ground instability. An inspection of the land has revealed the importation of material onto the site and levelling of ground between the River Dippool and the area where ponds have been excavated and overburden is being stored. SEPA have confirmed that the applicant did obtain a licence to import inert construction waste. The agent further advised that this method of creating the finalised landscape will have no affect on the reinstatement as the inert landfill will simply be covered using the sand, gravel and aerated peat as a growing medium for grassland. Operations can be effectively monitored by the annual progress report as required by condition.

q) The access track is not correctly demarcated on the site plan (attached to the original planning permission) and does not show the area where it passes close to houses and farm buildings or its junction with the B7014.

Response: This is the same location plan approved under Planning Permission CL/12/0511 and the line of the access track does show the junction with the public road. Also as referred to earlier in point a) above the applicant intends using the section of track serving the peat extraction site, once agreement has been concluded, thereby avoiding the section which runs close to the farm steading.

- r) **Why is there such an extension to the time period when there are no changes to the design of the ponds?**

Response: Given the limited progress which had been made by the previous applicants, a further 6 years is considered a more realistic timescale to avoid excessive traffic movements and to allow for the importation of materials and landscaping to complete the development.

- s) **The applicant's registered name was changed from Onyx Minerals Ltd to Onyx Leisure only a few months ago. One would have to consider whether any of these companies actually intend to create fish ponds as an ultimate objective.**

Response: The identity of the applicant is not a planning matter. However, the application is for the creation of fish ponds through the extraction of sand and gravel and as such should be assessed on its individual merits.

- t) **Biggar and District Civic Society are satisfied that there will be no peat extraction and therefore do not want to object to the application.**

Response: Noted.

5.2 These letters are available for inspection on the planning portal.

5.3 **Deferral from August Committee**

5.3.1 This item was presented to the Planning Committee on 25 August 2020. During the discussion, a number of issues were raised and to enable a full response to and clarification on these matters, a decision on this application was deferred until information was available allowing reconsideration of the proposal. Following the decision made to defer the application, the applicant has submitted additional information in order to address the points raised. The issues raised at the August Planning Committee have been summarised below along with a corresponding response based largely on further information supplied by the applicant.

- a) **The access road cuts through third party land which has not been subject of a legal agreement and does not cover access to proposed fish ponds.**

Response: The applicant has provided the following information: The access road is in the ownership of four parties. Evergreen Garden Products Limited (formerly Scotts) own the land at the entrance. The title for this land contains a burden in respect of "payment of a share along with any other proprietors entitled to use the same, and that according to user, of the cost of maintenance, repair and renewal of the internal farm roads and gateways serving the same".

The second section of land is that which is owned by a Ms M Hill whose parents acquired farmland at Woodend from Mrs M Taggart in 2009. The access track was included in the conveyance but there was a reservation in favour of Mrs Taggart, her heirs and successors in title in terms of a right of access for pedestrian or vehicular traffic along the whole length of the track as well as a right to improve or upgrade the existing road or track as may be required or necessary for vehicular traffic in connection with any extraction or proposed extraction of minerals from the benefitted property. These rights have subsequently passed to Southern Minerals Ltd (the original applicants for the 2012 application) and then the current applicants Onyx leisure Limited.

A third section is owned by a Mr R McNally. The applicant has provided evidence that a legal agreement between them has been reached to allow access over this land.

The final section of the road is owned by Forestry and Land Scotland who are bound by the same mutual access agreement as the owners of Woodend Farm when it was sold by The Secretary of State for Scotland in 1956 and other parts of Woodend Moss which were retained until sold to the Forestry Commission and Scotia Peat Products respectively.

Finally, when Southern Minerals Limited acquired the site from Mrs M Taggart in 2017, a signed affidavit was provided by both Mr and Mrs Taggart, in terms of their use of the access track, for its entire length for a prescriptive period in excess of 20 years without interruption.

It should be noted that, ownership notices have been served on each of these parties which fulfils the applicants' obligation under planning legislation to notify other owners of the application site. Whether the applicant has agreement to use that land as part of the development is a private legal matter.

b) Is the road which has been formed sufficient for purpose?

Response: Agreement has been reached between Onyx Leisure Limited and the relevant landowners whereby all traffic connected with the leisure project will use an access situated further back from Woodend Farm. This access is better suited to the commercial operations at Woodend and will reduce noise, dust and traffic impact generally in so far as the residential properties in and around the farm buildings at Woodend are concerned. Traffic Management will be included as a condition if planning permission is granted. The applicant has advised this will include a speed restriction on internal roads and a programme of works including widening, the installation of further passing places and if necessary, the installation of digital traffic control systems. It is accepted that the road fell into a poor state of repair for 2 years while in the hands of the administrator for Southern Minerals Limited, but prior to that there was no issue from commencement of operations in 2016 until 2018.

c) The access road crosses over a SSSI.

Response: Although SNH did not respond to the recent consultation request, their response to the original Planning Permission CL/12/0511 confirmed that they had no objection (see para 4.2 above). The applicant further advises it is accepted that the access road passes through a small section of the SSSI. This has always been the case but it is outwith the moraines which are the subject of interest within the Carstairs Kames SSSI. Meetings have been held between the applicant and SNH with a view to negotiating an annual review of a compensation arrangement which existed between the parties over a period of 20 years.

d) Failure to comply with conditions.

Response: Since acquiring the site the applicant has made progress in addressing this issue. The applicant intends discharging the majority of the conditions within a short timescale or addressing these through the preparation of a revised long term reinstatement plan. ITP Energised as environmental consultants have been instructed to consider the hydrology/hydrogeology of the site and to liaise with SEPA in terms of PPC management and CAR activity.

e) Wear and tear on the road – is there a need for a Roads bond?

Response: Roads and Transportation Services have confirmed Carnwath Road is in good condition and shows no sign of deterioration near the development access at Woodend Farm and that in this instance there is no

need for an agreement to protect against wear and tear of the public road. It would be beneficial if a legal agreement between the developers and the private access owners is concluded however this is a private legal matter. Further the applicant advises arrangements have been made for the provision of a hard wearing surface for a distance of at least 25 m. on the farm entrance from the junction with the main road, along with a dropped kerb to delineate that junction. If planning permission is granted a condition will be attached requiring the submission and approval of a maintenance agreement for the full length of the access road.

f) Timing of vehicle movements – late night/early morning.

Response: Complaints in respect of out of hours vehicle movements relate in the main to the unauthorised removal of minerals from the site whilst in administration. Signage and clear instructions will be placed at the new entrance confirming the hours of operation of the site as determined in the planning consent and preventing access outwith those hours.

g) Why is an additional 5 years needed when originally it was to be complete in 3 years?

Response: The applicant has conducted surveys and time and motion studies and concludes that the original 3 year programme was unrealistic. Evidence of this exists on site in terms of the relatively little progress which was made during the time of operation by Messrs Taggart and Southern Minerals Limited. It is clearly in the interest of all concerned that the project reaches conclusion with reinstatement and commencement of the leisure activity as quickly as possible. Six years is however considered to be realistic and is a timescale supported by their consultant.

h) Where would the wheel wash be situated?

Response: The applicant advises that the wheel wash system will be located at a point close to the lane exit to the east of the new resurfaced area at the entrance to the site. It will be waterless, low level, unobtrusive and quiet. In this way it can work for both the peat farm and the leisure project and there will not be risk of debris remaining on the wheels of traffic using the comparatively long haul route from the site.

i) The access road is too narrow to allow two lorries to pass.

Response: The applicant advises that the use of the combined northern access route, installation of additional lay-bys and a traffic control system will resolve any issues which may have existed previously with an internal haul route which is fit for purpose.

j) The speed of lorries.

Response: An internal speed restriction will be rigorously implemented as part of the traffic management plan to be agreed with the Council.

6. Assessment and Conclusions

- 6.1 This application has been submitted under Section 42 of the Town and Country Planning (Scotland) Act 1997 (as amended), and seeks to extend the time period for excavation of sand and gravel to be carried out to form fishing ponds on land at Woodend Farm near Carnwath. Section 42 of the Act states that:

'On such an application, the Planning Authority shall consider only the question of the conditions subject to which planning permission should be granted.'

This type of application, therefore, does not revisit the principle of development on the site but only considers the appropriateness of the conditions attached to the previous consent and whether it is acceptable to amend or delete as requested. Whilst, in essence, a Section 42 is an application to vary condition(s) on an existing permission, the process requires a new, stand-alone planning permission to be issued for the original development but with a new suite of conditions, including all those still thought to be relevant as well as the varied condition(s). Should the proposed amendment to the condition(s) not be acceptable, a Section 42 application is to be refused but without affecting the status of the original permission.

- 6.2 In assessing whether any condition is still relevant there is a requirement to consider certain aspects of the development. In this instance, the applicant has requested that condition 25 is amended. However, it is noted that the nature of the legislation requires all conditions to be revisited as they may be linked or connected to these specific conditions. The main matters for consideration are, therefore, whether the proposed amendment to the condition proposed would undermine the reasons for the original conditions or the Development Plan position; and if it is considered this Section 42 application does undermine either of these, whether there are material considerations which would outweigh this to allow permission to be granted.
- 6.3 Under the terms of Section 25 of the Town and Country Planning (Scotland) Act 1997, all applications must be determined in accordance with the development plan unless material considerations indicate otherwise. In this case the adopted South Lanarkshire Local Development Plan 2015 (SLLDP) and its associated Supplementary Guidance and the approved Non- Statutory Planning Guidance on Minerals.
- 6.4 Scottish Planning Policy (SPP) promotes the use of the plan-led system to provide a practical framework for decision making on planning applications thus reinforcing the provisions of Section 25 of the Act. Scottish Planning Policy (SPP) states that when assessing mineral proposals, the planning authority should consider aspects such as landscape and visual impacts, transportation impacts, the effect on communities, cumulative impact, environmental issues such as noise and vibration, and potential pollution of land, air and water. SPP is also supportive of leisure developments appropriate to a rural setting. Whilst the application requires the granting of a new planning permission for the formation of fishing ponds, it is in essence a request to amend one condition of an existing permission. The principle of the development has therefore been established and cannot be considered contrary to National Policy.
- 6.5 In terms of the adopted South Lanarkshire Local Development Plan Policy 3 'Green Belt and Rural Area' states that support will not be given for development proposals within the Rural Area, unless they relate to uses which must have a countryside location. Policy 3 allows a relaxation for, inter alia, an extension of existing premises or uses. Supplementary Guidance 2: 'Green Belt and Rural Area' (SG2) further expands and supports the objectives of Policy 3. SG2 Policy GBRA1 'Economy/ Business Related Developments' states that new developments within the Rural Area may be acceptable where it is shown they respect existing landscape form, enhance the surrounding landscape, and involve the re-development of previously developed land. Proposals that promote leisure and tourism are considered to be appropriate countryside uses. It is considered that the principle of the development has already been deemed acceptable within the Rural Area through the granting of the original application and the proposed amendment to condition 25 has no further implications of the countryside strategy set out within the Development Plan. It is, therefore, considered that the proposals comply with the Development Plan in this regard.

- 6.6 Policy 2 'Climate Change' states that new developments should minimise and mitigate against the effects of climate change by being sustainably located, having no significant adverse impacts on the water and soils environments, air quality and Biodiversity (including Natura 2000 sites and protected species). The proposals are a request for a time extension of 6 years to allow the formation of fishing ponds. The method of mineral extraction and restoration of the site has not changed in any other respect and does not involve any additional material being allowed to be imported or additional infrastructure being required to be created. It is, therefore, considered that the proposals comply with the relevant criteria of this policy.
- 6.7 Policy 4 'Development Management and Placemaking' states that development proposals should have no significant adverse impacts on the local community, landscape character, habitats or species including Natura 2000 sites, biodiversity and Protected Species nor on amenity as a result of light, noise, odours, dust or particulates. Policy 4 also states that development should be integrated with the local context and landscape. The proposals are to extend the lifetime of the extraction period by a further 6 years. It is considered that, in terms of both landscape and visual impact, this time period would have a long term adverse impact upon the landscape. The site is currently well screened in the context of the wider area by woodland and topography. The distance from the nearest public road further reduces the visual impact. Once complete the fishing ponds and associated landscaping will be a feature which integrates with and enhances the landscape quality of the area. In addition, the residential amenity of the area would not be adversely affected subject to the implementation of conditions. It is, therefore, considered that the amendment to condition 25 would be in accordance with Policy 4.
- 6.8 Turning to the Non Statutory Supporting Guidance on Minerals Policy MIN 1 'Spatial Framework' states that South Lanarkshire Council will balance the economic benefit from all mineral development against the potential impacts on the environment and local communities and will seek to ensure that impacts are minimised and mitigated. Relatively the amount of extracted material being removed from the site is minimal as most of the excavations will be redistributed within the site and utilised for various aspects of the fishing pond development and associated facilities including landscaping and land remoulding. The site is visually contained and partially screened by the presence of plantation blocks. The creation of ponds along with additional tree planting will enhance the environment and create an asset in an area of limited landscape appeal. It is considered that the proposed development adheres to Policy MIN1.
- 6.9 NSPG Policy MIN 2 'Environmental Protection Hierarchy' sets out a 3 tier category of protected designations. Table 3.1 of the MLDP defines the designations within each category but they can generally be summarised as Category 1 (International), Category 2 (National) and Category 3 (Local). MIN2 states that development within or likely to affect the integrity of Category 1 sites will not be permitted. Development which will have an adverse effect on Category 2 sites or a significant adverse effect on Category 3 sites will only be permitted where it adheres to a number of tests. The application site is remotely located and no environmental designations, as listed within Table 3.1, constrain the development of the application site. SNH has previously confirmed that there would not be any impact on the adjoining SSSI. On this basis, the development is considered to comply with Policy MIN2.
- 6.10 NSPG Policy MIN3 'Cumulative Impacts' states that in assessing all mineral proposals SLC will consider the cumulative impact that the development may have on communities (and other isolated receptors), natural and built heritage designations, sensitive landscapes, the existing road network and other resources as prescribed

within MIN2 in relation to other existing mineral developments and permissions. The amount of mineral extraction and importation over the extended 6 year period is considered relatively small scale in comparison to larger operations elsewhere in South Lanarkshire and over the construction period the number of vehicle trips generated is not judged to be significant. Extraction from the adjacent peat extraction site only takes place during a limited period in the summer when ground conditions are dry therefore adverse cumulative impacts are unlikely. On that basis the proposal complies with Policy MIN3.

- 6.11 NSPG Policy MIN4 'Restoration' states that planning permission will only be granted for mineral extraction where proper provision has been made for the restoration and aftercare of the site, including financial guarantees being put in place to secure restoration. Restoration proposals should not be generic and should relate to the specific characteristics of the site and the locale. Restoration proposals should consider providing opportunities for enhancing biodiversity, community recreation and access where at all possible. The overall proposal in this case is to create fishing ponds with associated landscaping. The scheme approved under the original consent has not changed and a condition is attached to this recommendation requiring full details of the final restoration scheme to ensure it is in line with the previous approval.
- 6.12 The original planning permission had a condition requiring the submission of a bond for the site to cover restoration should the operator not fulfil their duties. A bond has now been agreed with the Council which is to be paid in three instalments during the phasing of the development. In compliance with condition 1 attached to Planning Permission CL/12/0511 the first instalment has already been paid. To ensure the restoration bond remains in place this condition has been re-attached. This condition (condition no.30) forms part of the recommendation for approval. It is, therefore, considered that, subject to the use of this condition and the previously referenced restoration condition, the proposals can accord with the relevant provisions of the Development Plan in this regard.
- 6.13 NSPG Policy MIN 5 'Water Environment' states that mineral proposals which will have a significant adverse impact on the water environment will not be permitted. Consideration should be given to water levels, flows, quality, features, flood risk and biodiversity within the water environment. The site accommodates water treatment infrastructure, such as settlement ponds, which minimises the impact of the excavation operation on the water environment. No water will be taken from the Dippool to fill the completed ponds. Furthermore, SEPA raise no objection to the proposed development. It is, therefore, considered that the development complies with policy MIN5.
- 6.14 NSPG Policy MIN 7 'Controlling Impacts from Extraction Sites' seeks to ensure all mineral development will not create an unacceptable impact through the generation of noise, dust, vibration and air pollution. Mineral Operators are to ensure that appropriate monitoring regimes are proposed and if permitted shall be carried out for the lifetime of the mineral operations. In this case the extraction area itself is remote from housing. The access runs past a small number of houses at its junction with the B7016 but traffic levels will be insignificant. As a result, there would not be an adverse effect on residential amenity. Conditions are proposed to control dust and hours of operation during extraction. Subject to these conditions, it is considered that the development complies with Policy MIN7.
- 6.15 NSPG Policy MIN 8 'Community Benefit' states that SLC will encourage operators to contribute to the South Lanarkshire Rural Communities Trust (SLRCT), Quarry Fund or the Council's Renewable Energy Fund or similar mechanism. On this occasion the

scale of the extraction is deemed to be too small to justify a contribution taking account of the limited contribution that would be accrued. In addition, the proposals will result in long term economic benefits for the local area.

- 6.16 NSPG Policy MIN 12 'Transport' requires an assessment of potential traffic and transportation impacts of any new proposal to accompany the application for planning permission, including any cumulative impact. Proposals will not be supported by SLC if they are considered to create significant adverse traffic and transportation impacts. Roads and Transportation did not object to the original application and the approval of this application will not adversely impact upon the local road network.
- 6.17 NSPG Policy MIN 15 'Site Monitoring and Enforcement' states that SLC will monitor minerals sites to ensure that they are carried out in accordance with planning legislation, approved plans, conditions and where appropriate, legal agreements. If planning permission is granted, appropriate monitoring procedures would be put in place.
- 6.18 On 29 May 2018, the Planning Committee approved the proposed South Lanarkshire Local Development Plan 2 (Volumes 1 and 2) and Supporting Planning Guidance on Renewable Energy. Therefore the Proposed SLLDP2 is now a material consideration in determining planning applications. The proposed development has been considered against the relevant policies in the proposed plan and it is noted that these policies are broadly consistent with the current adopted South Lanarkshire Local Development Plan 1. It is considered that the proposals section 42 application does not compromise Policies 2, 4, 5, 6, 19 and GBRA2 in the proposed local plan.
- 6.19 There have been a number of objections, principally from residents at Woodend Farm concerned about access of vehicles passing close to their properties, the condition of the access and associated amenity issues relating to noise, dust and disturbance. Also members raised issues when the application was discussed at the Planning Committee on 25 August 2020 reiterating many of these objections whilst seeking clarification on legal rights of access, non compliance of conditions, the suitability of the access track to accommodate vehicle usage, encroachment onto SSSI and questioned the need to extend the permission by a further six years. The response to these points has been summarised in paras 5.1 and 5.3 above. Importantly planning procedure has been correctly followed in terms of the applicant serving ownership notices on the third party owners of the access track. The applicant has given a commitment to early discharge of conditions and a Traffic Management Plan covering traffic speeds, passing places, installation of signage and upgrading of the access track will be submitted and implemented. In addition, a revised reinstatement plan will be submitted. At present on site, the development is half complete with piles of excavated material and disturbed ground. This is an unsatisfactory situation which impacts upon the quality of the landscape and surrounding countryside. It is in the interests of the local community that the development progresses to completion allowing the creation of a leisure facility which integrates into its surroundings and benefits the local economy. It is considered that appropriate conditions, including the hours of operation, can be attached and subject of on-going monitoring which addresses both the concerns of the objectors and Planning Committee.
- 6.20 In view of the above, it is considered that the extension of the lifetime of the extraction period for a further 6 years is acceptable as it will not prejudice the development plan nor have an adverse impact on landscape character, residential and visual amenity and road safety. It is therefore recommended that permission be granted. Under the terms of Section 42 of the Town and Country Planning (Scotland) Act 1997, if a Planning Authority is content that the proposed changes to conditions are acceptable,

as in this instance, a new planning permission with amended conditions could be issued. It is considered that whilst it is acceptable to amend condition 25 as requested, other conditions attached to the Original Permission are still valid and as such should be attached to any new permission issued. This ensures that the new permission is consistent with the Development Plan and previous assessment. In addition a number of additional conditions are proposed which reflects the effects of the development to date.

7 Reasons for Decision

- 7.1 The amendment to condition 25 is considered acceptable .Extending the extraction period by a further 6 years, does not contravene National Policy or the relevant provisions of the Development Plan subject to the imposition of the attached environmental conditions as allowed under Section 42 of the Town and Country Planning Act (Scotland) 1997 as amended.

Michael McGlynn
Executive Director (Community and Enterprise Resources)

Date: 14 September 2020

Previous references

- ◆ CL/12/0511

List of background papers

- ▶ Application form
- ▶ Application plans
- ▶ South Lanarkshire Local Development Plan 2015 (adopted)
- ▶ Proposed South Lanarkshire Development Plan 2
- ▶ Neighbour notification letter dated

- ▶ Consultations
 - Environmental Services 22.01.2020
 - SEPA Flooding 13.01.2020
 - Roads Flood Risk Management
 - Health & Safety Executive
 - SNH

- ▶ Representations
 - Dr L Carmichael, Woodend Cottage, Braehead Road, Carnwath, ML11 8LR Dated: 27.01.2020
 - Mr D Carmichael, Woodend Cottage, Braehead Road, Carnwath, ML11 8LR 27.01.2020
 - Miss H Carmichael, Woodend Cottage, Braehead Road, Carnwath, ML11 8LR 27.01.2020
 - Robert McNally, Woodend Farm Steading, Carnwath, ML11 8LR 27.01.2020

Beth Hill, Woodend Farm, Carnwath, ML11 8LR	27.01.2020
Kenneth Hill, Woodend Farm, Carnwath, ML11 8LR	27.01.2020
Mrs Ray Hill, Woodend Farm, Carnwath, ML11 8LR	27.01.2020
Trevor Black, Woodend Farm, Carnwath, ML11 8LR	28.01.2020
Fiona Black, Woodend Farm, Carnwath, ML11 8LR	29.01.2020
Janet Moxley, Received Via Email	13.01.2020
Fiona Black, Woodend Farm, Carnwath, ML11 8LR	31.01.2020

Contact for further information

If you would like to inspect the background papers or want further information, please contact:-

Ian Hamilton, Planning Officer, Montrose House, 154 Montrose Crescent, Hamilton, ML3 6LB

Phone: 01698 455174

Email: ian.hamilton@southlanarkshire.gov.uk

Conditions and reasons

01. That the applicant shall at all times deal with the areas forming the subject of Planning Permission CL/12/0511 in accordance with the provisions of that application, statement of intentions and plans submitted except as otherwise provided for by this consent, and shall omit no part of the operations provided for therein except with the prior written consent of the Planning Authority.

Reason: To ensure that the Planning Authority retains effective control of the development.

02. That any stripping, stacking and replacement of topsoil shall be carried out when conditions are dry enough to avoid unnecessary compaction of the soils at any stage. The applicant shall give at least 7 days notice to the Planning Authority prior to the commencement of any period of soil movements and the Planning Authority reserves the right to suspend operations during adverse weather conditions or to impose such conditions as it sees fit for the safekeeping of the topsoil.

Reason: To preserve the quality of the soils.

03. The operator shall abide by the approved dust monitoring and management plan, unless otherwise agreed in writing by the Council as Planning Authority.

Reason: To minimise any nuisance; to protect the amenity of nearby properties; and to minimise the chance of dust being transmitted onto the public highway.

04. The applicant or subsequent operator(s) shall at all times be responsible for the removal of mud or other materials deposited on the public highway by vehicles entering or leaving the site.

Reason: In the interest of road safety.

05. That within 4 months from the date of this permission (and each year thereafter) the operator shall submit to the Planning Authority an annual progress plan detailing:
The extent of ongoing extraction operations;
Areas prepared for extraction;
The extent of backfilling or restoration operations carried out;
The extent of landscaping, nature conservation and agricultural works that have been implemented;
Current and anticipated production figures;
Remaining reserves;
Compliance with statutory permissions;
Site complaint logs and actions taken.

Reason: To ensure that the Planning Authority is informed at regular intervals of the progress of the site.

06. That within two months of the date of this Planning Permission, a scheme showing the details of peat/soil stripping at the site and the storage and proposed use and replacement of peat/soil and subsoil shall be submitted to the planning authority. The scheme shall have regard to the drainage implications of soil movement and storage.

All soil stored on site shall be stored in accordance with BS 3882. Thereafter, all soil stripping, storage and replacement operations shall accord with the approved details as approved by the planning authority. In particular the scheme shall incorporate a method statement setting out the measures to protect, store and replace peat/soil and any necessary mitigation measures.

Reason: In the interests of amenity and in order to retain effective planning control.

07. That within one month of the date of this Planning Permission a Pollution Prevention and Incident and Waste Management Plan which includes mitigation measures against environmental pollution during the life of the site shall be submitted to the Planning Authority in consultation with SEPA.

Reason: In the interests of pollution and waste control.

08. That within one month of the date of this Planning Permission a hydrogeological assessment which includes plans/diagrams or conceptual model of ground water flows in the site, details of boreholes, cross sections of ponds showing where the ground water is in relation to their deepest point and information about ground water infiltration and how it will be dealt with, shall be submitted to and approved by the Council as Planning Authority in consultation with SEPA.

Reason: To avoid adverse impacts upon the flow and quality of ground water.

09. That within one month of the date of this Planning Permission, a scheme of landscaping shall be submitted to the Council as Planning Authority for written approval and it shall include: (a) an indication of all existing trees and hedgerows plus details of those to be retained and measures for their protection in the course of development; (b) details and specification of all trees, shrubs, grass mix, etc., including, where appropriate, the planting of fruit/apple trees; (c) details of any top-soiling or other treatment to the ground; (d) sections and other necessary details of any mounding, earthworks and hard landscaping; (e) proposals for the initial and future maintenance of the landscaped areas; (f) details of the phasing of these works; and no work shall be undertaken on the site until approval has been given to these details.

Reason: In the interests of the visual amenity of the area.

10. That the approved landscaping scheme shall be completed to the satisfaction of the Council as Planning Authority during the first available planting season following completion of each phase of the development hereby approved, and shall thereafter be maintained and replaced where necessary to the satisfaction of the Council.

Reason: In the interests of amenity.

11. That within one month of the date of this Planning Permission the existing access shall be cleared of loose material, chips, etc and sealed/resurfaced for a minimum of 8 metres from the edge of the public road. Kerbs shall be laid flush to delineate the edge of the public road.

Reason: To prevent deleterious material being carried into the highway.

12. That before the development hereby approved is completed, a drainage system capable of preventing any flow of water from the site onto the public/access road or into the site from surrounding land shall be provided and maintained to the satisfaction of the Council as Roads and Planning Authority.

Reason: To ensure the provision of a satisfactory drainage system.

13. A full survey of surface water features within the application site shall be undertaken within one month of the date of this Planning Permission and submitted to and approved by the Council as Planning Authority in consultation with SEPA.

Reason: In the interests of water flow and quality and in order to retain effective planning control.

14. Surface water in field drains shall not be allowed to drain into excavations until the completion of the ponds.

Reason: To avoid pollution of water courses.

15. That within one month of the date of this permission the developer shall ensure a programme of archaeological works, in accordance with the approved written scheme of investigation, is fully implemented and that all recording and recovery of archaeological resources within the development site is undertaken to the satisfaction of the Planning Authority in agreement with the West of Scotland Archaeology Service.

Reason: In order to safeguard any archaeological items of interest or finds.

16. The mitigation measures for birds, otters and badgers as outlined in the Walkover Constraints Survey - Carstairs/Kaimes (Wild Surveys Ltd, December 2012) shall be fully implemented during all phases of construction.

Reason: In the interests of wildlife.

17. That prior to the commencement of work on each phase a survey of badgers (covering the working boundary of that phase including a 50 metre buffer) shall be undertaken and thereafter at 6 monthly intervals through the construction phase.

Reason: In the interests of badgers.

18. That prior to the commencement of work on each phase a survey of otters (covering the working boundary of that phase including a 100 metre buffer) shall be undertaken and thereafter at 6 monthly intervals through the construction phase.

Reason: In the interests of otters.

19. The silt and fresh water lagoons shall be properly lined and located at least 5 metres away from the Dippool Water in accordance with a scheme to be submitted to and approved by the Council as Planning Authority.

Reason: To limit pollution and to prevent erosion of the river bank.

20. That within one month of the date of this permission details of the parking area shall be submitted to and approved by the Council as Planning Authority and before the completion of the development the approved car park shall be implemented to the satisfaction of the said Authority.

Reason: To ensure the provision of adequate parking facilities to serve the development.

21. All extraction operations on the site shall be discontinued not later than 01 February 2025 and, within a period of 12 months from this discontinuance date, the entire site shall be restored in accordance with the approved restoration plan to the satisfaction of the Council Planning Authority.

Reason: To ensure that the Planning Authority retains effective control of the development and to ensure that the site is satisfactorily restored.

22. That, within 6 months of the date of this permission, a detailed restoration and 5 year aftercare scheme for the entire site shall be submitted for the written approval of the Council as Planning Authority.

Upon the termination of extraction operations, all plant, machinery, buildings and the foundations thereof shall be removed from the site, and the areas so occupied restored in accordance with the approved restoration and 5 year aftercare scheme shall be carried out to the satisfaction of the Planning Authority in accordance with the approved details and within the agreed timescale.

Reason: To ensure that the Planning Authority retains effective control of the development and to ensure that the site is satisfactorily restored.

23. That within one month of the date of this approval details of surface water drainage arrangements have been submitted to and approved in writing by the Council as Planning Authority; such drainage arrangements will require to comply with the principles of sustainable urban drainage systems and with the Council's Sustainable Drainage Design Criteria and requirements.

Reason: To ensure that the disposal of surface water from the site is dealt with in a safe and sustainable manner, to return it to the natural water cycle with minimal adverse impact on people and the environment and to alleviate the potential for on-site and off-site flooding.

24. That within one month of the date of this permission, a Flood Risk assesment and Drainage Assessment in accordance with 'Drainage Assessment - A Guide for Scotland', shall be submitted to and approved in writing by the Council as Planning and Roads Authority.

Reason: To demonstrate that a satisfactory means of waste and surface water drainage can be achieved.

25. That before work starts on site, details of the future maintenance arrangements of the ponds herby approved shall be submitted for the approval of the Council as Planning Authority.

Reason: In the interests of amenity and in order to retain effective planning control.

26. The developer shall ensure that any vehicle transporting excavated material on or off the site must be treated by means of adequate wheel washing facilities. The facility will require to be in operation at all times during earth moving operations. The wheel washing facility shall be fully operational prior to works commencing on site. A "clean zone" shall be maintained between the end of the wheel wash facility and the public road. Furthermore the developer shall ensure a road brush motor is made available throughout the construction period to ensure adjacent roads are kept clear of mud and debris.

Reason: In the interests of road safety.

27. That prior to any further work starting on site, a programme indicating the phasing of construction of development and number and rate of heavy goods vehicles entering and leaving the site on a daily basis together with a Traffic Management Plan indicating the circulation of vehicles and pedestrians, shall be submitted to the Council as Planning Authority for approval. The approved details shall be implemented throughout the period of the development of the site.

Reasons: In the interests of road safety.

28. That all laden lorries entering the site via the private access shall be sheeted and all laden lorries leaving the site shall be sheeted before entering the private access which links onto the public highway.

Reason: In the interests of road safety.

29. The prior to any further heavy goods vehicle movement along the access track details of speed signage along the access track shall be submitted to and approved by the Council as Planning and Roads Authority and thereafter the approved speed signage shall be installed to the satisfaction of the said Council and before heavy goods vehicles resume movements along the access track.

Reason: In the interests of public safety.

30. At least one month prior to the commencement of the development, a guarantee to cover all site restoration for each phase of the construction in the event that the development is not satisfactorily completed shall be submitted for the written approval of the Council as Planning Authority. Such guarantee must, unless otherwise agreed in writing;
- i) be granted in favour of the Council as Planning Authority
 - ii) be granted by a bank or other institution which is of sound financial standing and capable of fulfilling the obligations under the guarantee;
 - iii) be for a specified amount which covers the value of all site restoration and aftercare liabilities as agreed between the developer and the planning authority at the commencement of development
 - iv) either contain indexation provisions so that the specified amount of the guarantee shall be increased on each anniversary of the date of this consent by the same percentage increase in the General Index of Retail Prices (All Items) exclusive of mortgage interest published by or on behalf of HM Government between the date hereof and such relevant anniversary or be reviewable to ensure that the specified amount of the guarantee always covers the value of the site restoration and aftercare liabilities
 - v) come into effect on or before the date of commencement of development, and expire no earlier than 12 months after the end of the construction period.

No work shall begin at the site until (1) written approval of the Council as Planning Authority has been given to the terms of such guarantee and (2) thereafter the validly executed guarantee has been delivered to the Council as Planning Authority.

In the event that the guarantee becomes invalid for any reason, no operations will be carried out on site until a replacement guarantee completed in accordance with the terms of this condition is lodged with the Council as Planning Authority.

Reason: To ensure that provision is made for the restoration and aftercare of the site.

31. That the hours of operation during the creation of the fishing ponds through the excavation of sand and gravel and lorry movements associated with the export/import of material from the site shall be limited to between 8am and 7pm Monday to Friday; 8am and 1pm on Saturday and at no time at all on Sunday or public holidays

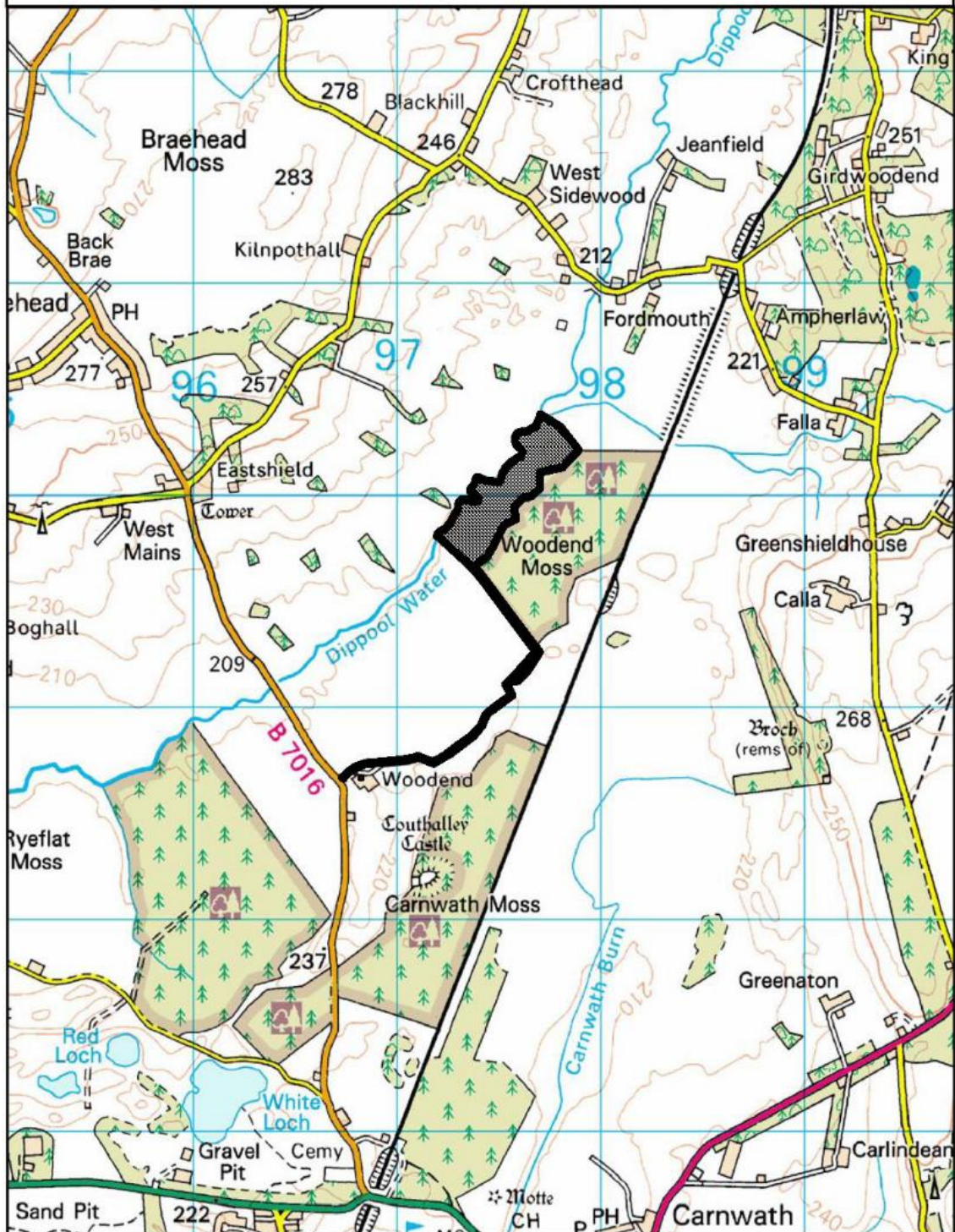
Reason: In the interests of residential amenity.

32. That within one month of the date of this permission written details of a maintenance scheme for the future maintenance of the access road shall be submitted and this scheme shall include a maintenance management schedule, all for the approval of the Council as Roads and Planning Authority.

Reason: To ensure that the developer contributes to the maintenance of the access road.

P/19/1807

Woodend Farm, B7016 from Forth to Carnwath A70, Carnwath



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1:25,000
Date:
23/07/2020



South Lanarkshire Council
Community and Enterprise Resources
Planning and Economic Development