

Notice of Review – Land 120M Northeast Of 55 Bothwell Road, Hamilton.

Statement of Observations

Planning appeal - Erection of two dwellinghouses with associated studio flats above attached garage, raised decking at rear and formation of access (P/21/0029).

1 Planning background

- 1.1 Mr. Shahid Chaudhary submitted a planning application (reference: P/21/0029) on 8 January 2021 to South Lanarkshire Council for the erection of two dwellinghouses with associated studio flats above attached garage, raised decking at rear and formation of access at land 120M Northeast of 55 Bothwell Road, Hamilton. After due consideration of the application in terms of the Development Plan and all other material planning considerations, planning application P/21/0029 was refused by the Council under delegated powers on 24 March 2022 for the reasons listed in the decision notice.
- 1.2 The report of handling dated 11 March 2022 explains in detail all material planning considerations and the reasons/justification for the decision. The reasons for refusal are listed in the decision notice.
- 1.3 The report of handling and decision notice are available elsewhere in the papers accompanying the Notice of Review

2 Assessment against the development plan and other relevant policies

- 2.1 Section 25 of the Town and Country Planning (Scotland) Act 1997, as amended requires that an application for planning permission is determined in accordance with the development plan unless material considerations indicate otherwise.
- 2.2 The development plan in this instance comprises the Adopted South Lanarkshire Local Development Plan 2 (2021) and its associated supplementary guidance. The provisions of the Clydeplan, the Strategic Development Plan, are not directly applicable given the nature and scale of the proposal (now appeal).
- 2.3 The appeal site is located within the General Urban Area in the adopted South Lanarkshire Local Development Plan 2. This reflects the urban nature of the general area and contrary to the appellants assertion it does not automatically have a presumption in favour of development. Indeed, the related policy (Policy 3) clearly states: 'Within the urban areas and settlements identified on the proposals map, residential developments *on appropriate sites* will generally be acceptable. It also advises that 'Particular consideration will also be given to likely impacts on the amenity of the area. This will include locally important greenspace ...' Furthermore, it is clearly stated that 'Developments which would

be detrimental to the amenity of residents and the wider community or to the character of the surrounding area will not be permitted'. Finally, 'Development proposals must also accord with other relevant policies. It is clearly misleading for the appellant to suggest that the proposal is acceptable in terms of Policy 3.

- 2.4 The woodland in which the site is located is the subject of a Tree Preservation Order (TPO Reference HM/35) with the largest part of the site covered by the Green Network. The site is also covered by a number of other policy considerations which are set out and discussed in detail within the report of handling. Those policies are Policy 1 - Spatial Strategy, Policy 2 - Climate Change, Policy 3 - General Urban Areas and Settlements, Policy 5 - Development Management and Place Making, Policy 13 - Green Network and Greenspace, Policy 14 - Natural and Historic Environment, Policy 15 - Travel and Transport, Policy 16 - Water Environment and Flooding, Policy NHE13 - Forestry and Woodland, Policy NHE14 Tree Preservation Orders, Policy NHE20 – Biodiversity, Policy DM1 - New Development Design, Policy DM15 - Water Supply, Policy SDCC2 - Flood Risk and Policy SDCC3 - Sustainable Drainage Systems.
- 2.5 As part of the planning application process, consultations were undertaken and statutory neighbour notification was carried out. In addition, the application was advertised in the Hamilton Advertiser under the heading Non-notification of Neighbours. As a result of the above publicity, 48 letters of representation were received by the Council comprising 44 letters of objection and 4 letters of support. A petition against the proposal was also received. These consultation responses and objections were material to the assessment of the application and provide a broad illustration of the views held by neighbours adjoining the site and the concerns of Scottish Forestry Central Scotland Conservancy, the Council's Arboricultural Officer and the Council's Biodiversity Officer. The Report of Handling concisely summarises the issues raised and provides an appropriate planning response.

3 Observations of applicants 'Notice of Review'

- 3.1 In the submitted 'Notice of Review' and associated supporting information the applicant has identified a number of matters in support of their request for a review. The applicant's statement of reasons for requesting a review of the application have been summarised below and detailed comments from the Planning Service on each of these issues are as follows:
- 3.2 **There is already a presumption in favour of development**
The 2 houses proposed will be constructed within the eastern section of the Site within land zoned as "General Urban Area" where there is a presumption in favour of development (Policy 3, LDP2). This part of the

woodland area is of poor quality, hence we assume why it was zoned within the general urban area and not part of the Council's identified green network. By comparison, the remainder of the Site between the proposed 2 houses and the Bothwell Road comprises of better-quality mature trees and is accordingly zoned as Green Network (Policy 13, LDP2). Trees within this area will remain undamaged by the proposed development. Indeed, the Applicant went so far as to alter his proposed layout to ensure that was the case.

As detailed in paragraph 2.3 above the appeal site is within the General Urban Area where in theory the principle of two house plots could generally be accommodated if all other material planning considerations were acceptable. That said, as highlighted in the Council's Report of Handling the proposal seriously challenged and undermined other policy provisions and considerations. In this regard the proposal is considered to be unacceptable as the woodland in which the application site is located and its associated habitats make a significant contribution to the amenity of the area and would be adversely affected by the proposed development. The appellant states that the remainder of the site between the proposed 2 houses and Bothwell Road comprises better quality mature trees and is accordingly zoned as Green Network and that trees within this area will remain undamaged by the proposed development. This is inaccurate as trees within this area would be lost as a result of the construction of the proposed driveway/access road which does not accord with best practice and which would be detrimental to retained trees. In addition, and based on experience, the required infrastructure relating to water supply, sewerage, surface water drainage, electricity and gas would all have an adverse impact on the woodland. In terms of surface water drainage, the appellant has not proposed a drainage design or made any indication of intended drainage proposals to date and due to insufficient information being submitted with the associated planning application the Council's Flood Risk Management Section had to defer their full consultation response to the application until these issues have been addressed.

- 3.3 As noted in the Report of Handling in relation to the design of the proposed development, the layout for the two dwellings was indeed revised by the applicant in order to reduce the impact on important areas of woodland or important individual trees within the site. However, in order to reduce any impact on important areas of woodland or important individual trees the proposed repositioning of the dwellings has resulted in a considerable reduction in the amount of usable rear garden ground being provided for the two dwellings contrary to the standards set out in the Council's Residential Design Guide. This is of importance as the two houses are of significant size and accordingly the potential rear garden space and depth should be commensurate with the size of the houses proposed. For those reasons the proposal fails to meet the terms

of Policies 5 and DM1 of the adopted Local Development Plan. Therefore, whilst it is again acknowledged that the site is located within a General Urban Area the proposed layout does not comply with local development plan policy due to the constraints highlighted above and in the report of handling.

- 3.4 The appellant suggests that the woodland where the houses will be positioned is of poor quality. In response it must be emphasized that this woodland will be the mature trees of the future and even if they are poor quality at present, they will still provide a varied and valuable habitat for all forms of animals, birds etc. and are therefore a valuable habitat and amenity asset to the overall area/woodland.

3.5 **The proposal will produce a net environmental gain (woodland management and biodiversity)**

The Applicant is proposing to remove very few trees and those that will be removed are of lower quality. These are in fact located on ground that has been fundamentally altered and regraded/relevelled just a few decades ago. Therefore, the trees to be removed are merely self-seeded, largely scrub like and there appears to have been no active management of them. The detailed Tree Survey submitted in support of the application proves this. Please refer to the photograph below showing the scrub woodland area where the 2 dwellings are proposed to be built. The trees within the woodland that will remain are mature and of better quality. These will be undamaged by the proposed construction works and enhanced by woodland management. In this regard the Applicant has offered to work with the Council to create a Woodland Management and Biodiversity Plan, designed to ensure that the remaining woodland area, stays as healthy as possible for as long as possible. It will also introduce specific measures to enhance biodiversity and encourage public access. The Tree Report and Ecology Report submitted in support of the application included suggestions with regard to these issues.

The proposal would result in the detrimental removal of 16% of the woodland. Permanently removing woodland results in a permanent net biodiversity loss not a net gain. No mitigation proposals have been proposed that would compensate for the loss of potentially ancient woodland, or at the very least of long-established origin, habitat and soils. The site has a place in the landscape as a steppingstone of habitat in the existing woodland network. The site has long been identified as a Site of Importance for Nature Conservation (SINC) and Local Nature Conservation Area (LNCS). It was assessed for its biodiversity value in 2019 and passed the criteria for becoming notified as an LNCS; though the formal process for doing so has not been completed. The site is of local value in the South Lanarkshire context and should be recognised as such. The appeal statement refers to the trees to be removed as merely self-

seeded, largely scrub like with no evidence of active management of them. However, whilst it is acknowledged that this part of the site contains some poorer quality trees it is nonetheless considered that the area involved is of value as part of the woodland network where the associated ground flora, soil, microbes and fungi are likely to be an irreplaceable biodiversity asset. It must also be highlighted that management of these trees is the responsibility of the appellant as owner of the site irrespective of the outcome of this appeal.

3.6 Woodland management and biodiversity works secured by applicant's financial offering

It is understood that the Applicant had offered to transfer the remaining woodland area to the Council or a community body. The practicalities/delivery of that could prove difficult, mainly because such parties appear unlikely to want the land. Accordingly, it is proposed by the Applicant that the woodland remains in private ownership and that he makes monies available to complete agreed woodland management and biodiversity improvement works. This obligation and financial commitment can be secured legally for example via a s.75 agreement ensuring that works are implemented. It is possible for example that the monies could be held in an Escrow account which can be drawn down upon by the Council if needs be.

Whilst the above points are noted the proposal is still contrary to local development plan policy for the reasons listed in the decision notice and the suggested woodland management plan is not of sufficient weight or merit to overcome the policy provisions of the adopted Local Development Plan. Indeed the suggestion for financial investment and a related Section 75 agreement is new information and was not made available prior to the determination of application P/22/0029. The relevance of this aspect is therefore questionable in terms of this appeal.

3.7 The remaining woodland will be protected

The entire woodland is protected by a Tree Preservation Order (TPO). That is a blanket Woodland TPO of the type often used for simplicity to cover an entire area of woodland, but it does not recognise or discriminate between good areas and bad areas of woodland. The vast majority of the woodland will remain after construction of the 2 dwellings (circa 86%) and will still be protected by the TPO. Also, please note that strict tree protection measures will be implemented to ensure that no trees within the remaining woodland can be damaged by the Applicant's proposed construction works.

The site comprises of an area of established woodland which makes a very valuable contribution to the overall character and amenity of the area in general.

The site is, therefore, considered to be worthy of its Tree Preservation Order (TPO) designation. Whilst it is accepted that tree protection measures could potentially be put in place to ensure that no trees within the remaining woodland were damaged by construction works this does not alter the fact that there would be an adverse impact on the woodland in any case as a result of the proposed development due to tree loss. As discussed, the construction of the proposed driveway/access road and the required infrastructure relating to water supply, drainage, electricity and gas would have an additional adverse impact on the woodland. The proposed development would open the woodland to windthrow and would put the remaining trees under threat from removal due to being considered overbearing and perceived as a potential risk by future landowners, particularly in high wind. The juxtaposition of the trees and proposed development is considered to be unacceptable and the trees would be under threat from removal by future owners due to light obstruction and minor season nuisance etc. Again it must be emphasised that the Council's Arboricultural Manager and Bio-diversity Officer amongst others did not support the proposal due to its unacceptable impact on the trees.

3.8 There will be no unacceptable impact on the landscape character of the area

The loss of a small area of scrub woodland and the introduction of the 2 dwellinghouses will have negligible impact on the landscape character of the area. The proposed dwellings will effectively nestle against a backdrop of mature trees. Their inclusion into the landscape will not damage any key landscape features. It should be noted that there is already built form within the locale, some of it much greater in scale than the Applicant's proposal and permitted by the Planning Authority only relatively recently. That built form appears to exist successfully without causing any significant landscape concerns. In this regard the immediate area is very varied and contains a large school, large blocks of residential flats, Hamilton Racecourse (and its various built forms, many of which are substantial), a golf course, green space and the M74.

The wider locality is urban in nature and it is therefore not surprising that there is a range and variety of building/structures. Undoubtedly however the appeal site is an area of established woodland which provides a strong landscape context for the area as well as making a valuable contribution to the overall character and amenity of the area in general. The photographs at appendix 3 in the papers clearly show the quality of the woodland involved in terms of the positive contribution that it makes to placemaking, landscape character and the visual amenity of the area. Through the consultation process it has been acknowledged that this area of relatively undisturbed woodland provides a strong landscape context for the adjacent residential area as well as making a valuable contribution to the overall amenity of the area in general with Forestry

Scotland, the Council's Arboricultural Services and the Council's Biodiversity Officer expressing considerable concerns that any work in this area could have an adverse impact on the surrounding trees and the integrity of the woodland as a whole. To develop the site as proposed would introduce two very large houses into a mature woodland setting where the trees are of such amenity value that they have been protected by a Tree Preservation Order for many years. Clearly the contribution of the woodland to the landscape character and amenity of the area was recognised by the Council many years ago and to introduce urban development into the site/wider woodland would have a significant, adverse and irreversible impact on the landscape character of the area primarily as a result of tree loss.

3.9 There will be no unacceptable impact on the visual amenity of the wider area due to tree loss

It would be rare to find a development proposal that will have a lesser impact on the visual amenity of its locale. The proposed houses will be invisible from Bothwell Road to the west. It would be a stretch to argue that it is likely to cause a visual amenity problem with regards to the adjacent Hamilton College carpark to the south. Or indeed the 4 story flats to the northwest. As previously mentioned, the area is very varied and contains a large school, large blocks of residential flats and Hamilton Racecourse (and its various built forms, many of which are substantial).

As stated previously, the site comprises of an area of established woodland which provides a strong landscape context for the adjacent residential area as well as making a valuable contribution to the overall amenity of the area in general. The photographs clearly show the quality of the woodland involved in terms of the positive contribution that it makes to placemaking and the enhancement to health and quality of life through visual amenity. There are significant concerns that any work in this area could have an adverse impact on the surrounding trees and the integrity of the woodland as a whole. Consequently, it is considered that the proposal would have a negative and unacceptable impact on the visual amenity of the wider area primarily as a result of tree loss.

3.10 No adverse impact on the Green Network

The area where the 2 proposed houses are located is outwith the Green Network. The remaining woodland is within the Green Network and will be protected from construction works, enhanced via a Woodland Management and Biodiversity Plan and remain protected by a TPO.

The Green Network is a series of high quality connected greenspaces which delivers a range of multiple benefits. This includes contributing towards placemaking, helping to improve air quality, mitigating greenhouse gases

through carbon storage, supporting biodiversity enhancing health and quality of life and providing flood storage and areas for leisure activity. As discussed in Paragraph 3.2 above, whilst the amended site layout shows the proposed houses located outwith the Green Network the area of the site which would be used to form the access to the proposed dwellings is covered by the Green Network. The construction of the proposed driveway/access road and the required infrastructure relating to water supply, drainage, electricity and gas would be through the Green Network area and would result in tree loss with resultant additional adverse impact on the woodland and consequently the Green Network. The proposed development would open the woodland to windthrow and would put the remaining trees under threat from removal due to being considered overbearing and perceived as a potential risk by future landowners, particularly in high wind. In view of all of the above, it is considered that the proposal would have an adverse and irreversible impact on the Green Network as a result.

3.11 No adverse impact on the future designation of the site as part of a Local Nature Conservation Area

The possibility of the site being designated as part of a Local Nature Conservation Area is not adversely affected by the proposal; indeed it is enhanced. The Applicant is proposing to implement an agreed Woodland Management and Biodiversity Plan, the terms of which would be agreed with the Planning Authority. The Applicant submitted both a Tree Report and an Ecology Report in support of his application which included suggested works in these regards.

The site has long been identified as being of local biodiversity interest and is currently noted as a potential Local Nature Conservation Site (LNCS). As stated previously it was assessed for its biodiversity value in 2019 and passed the criteria for becoming notified as an LNCS, though the formal process for doing so has not been completed. The proposal would result in the detrimental removal of 16% of the woodland. It is acknowledged that the relatively undisturbed woodland provides many benefits including habitat for many forms of wildlife. The area is potentially Ancient Woodland, and at the very least of long-established origin. Its value as a key part of the woodland network in this area cannot be underestimated; the associated ground flora, soil, microbes and fungi are therefore likely to be an irreplaceable biodiversity asset. It is undeniable that the proposal would result in the unacceptable loss of woodland within the site along with a permanent net loss of biodiversity. For the above reasons and those discussed previously it is considered that the proposal will have an adverse impact on the future designation of the site as part of a Local Nature Conservation Site.

4 Summary and Conclusions

- 4.1 In relation to the consultation process undertaken as part of the assessment of the associated planning application the Council's Report of Handling notes that Scottish Forestry, the Council's Arboricultural Service and the Council's Biodiversity Officer were unable to support the appellant's proposal due to the proposal's impact on trees, wildlife, natural habitat/environment or the amenity of the wider area. Similar concerns in relation to the proposal were highlighted in many of the 48 letters of representation and petition submitted.
- 4.2 Also highlighted in the Report of Handling were the two previous planning applications for residential development at the site that were refused and the related appeals that were dismissed. Although the details of the proposed vehicular access with the planning application were revised, the generality of residential development and its negative impact on individual trees, the woodland overall and biodiversity remain. Such aspects were material to the determination of these historical applications and appeals. There has been no material change in such aspects since the previous decisions (although it could be advanced that the focus/move towards increased protection of the natural environment has intensified due to the adopted South Lanarkshire Local Development Plan 2 and worldwide climate concerns). The determination of planning applications must be on a consistent footing/basis and there are no planning reasons whatsoever to come to a different conclusion in relation to the proposal's impact on trees, wildlife, natural habitat/environment or the amenity of the wider area.
- 4.3 As required by planning law, application P/21/0029 has been assessed in terms of the development plan and all other material considerations. In this respect the Report of Handling provides a detailed summary of all relevant considerations and a reasoned justification as to why the appeal proposal did not accord with Local Development Plan policy. The proposed development is contrary to the provisions of the adopted South Lanarkshire Local Development Plan 2. It is, therefore, respectfully requested that the Planning Local Review Body support the decision to refuse consent and dismiss the applicant's request to overturn the refusal of planning permission P/21/0029 based on the information contained in the report of handling and associated reasons for refusal.