

Report

Report to:	Planning Committee
Date of Meeting:	8 August 2023
Report by:	Executive Director (Community and Enterprise Resources)

Reference no:	P/23/0357
Proposal:	Planning permission in principle for the erection of 25 chalets, a commercial facility, tourist/leisure use, eco village and associated landscaping (Section 42 application to remove Condition 2 - number of units of planning permission reference CL/17/0199)
Site Address:	Land 160 metres Northeast of Nether Kypeside Farm, Lesmahagow
Applicant:	NKS Renewables Company Limited
Agent:	Bidwells
Ward:	04 Clydesdale South
Application Type:	Planning Permission in Principle - Further application Section 42
Advert Type:	Non-notification of neighbours: Lanark Gazette 12 April 2023
Development Plan Compliance:	No
Departures:	N/A
Recommendation:	Refuse
Legal Agreement:	N/A
Direction to Scottish Ministers	N/A

1. Reason for Report

- 1.1. The application is required to be determined by the Planning Committee under Clause 5 of the Decision-Making Process 2015: as the site is greater than 2ha and more than 10 units is considered a major application.

2. Site Description

- 2.1. The application site comprises two distinct parcels of land in the open countryside between Strathaven and Kirkmuirhill to the north and south of the B7086 respectively, accessed via minor roads, the area that is subject to the application to amend the Planning Condition is to the south of the B7086.
- 2.2. The site to the south relates to land surrounding Nether Kypeside Farm, including the existing farm buildings, and adjacent land which had previously been used as a quad bike facility as well as clay pigeon shooting and a remote-control car track. At the steading there is a traditional farmhouse and various commercial buildings and sheds linked to the former leisure business. Beyond the steading are extensive woodland plantations. This site comprises some 19ha. The second site to the north comprises of three fishing lochans, a fishery office, hard standing and extensive woodland, planted on either side of the access road.

3. Description of Proposed Development

- 3.1. Planning permission in principle (PPP) has previously been granted for the erection of 25 chalets, a commercial facility, tourist/leisure use on the northern site and an eco-village on the southern site and associated landscaping.
- 3.2. There has been subsequent variations and removals of conditions and Matters Specified in Conditions (MSC) applications pertaining to this. This current application is made under Section 42 of the Town and Country Planning (Scotland) Act 1997 (as amended), seeking planning permission for the development of land without compliance with a condition attached to a previous consent.
- 3.3. This application seeks to remove Condition 2 of planning application reference CL/17/0199 which restricted the number of residential units to 30. CL/17/0199 itself was also a Section 42 application which sought to vary a condition that had been set out in an earlier Planning Permission CL/16/0398 which allowed an increase in the number of residential properties to 30 units and to alter access arrangements.
- 3.4. Condition 2 of CL/17/0199 which seeks to be removed under this current application states:-

“That the number of units within the eco village shall be restricted to a maximum of 30 units.

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

4. Relevant Planning History

- 4.1. The application site has an extensive planning history as detailed below:-
 - ♦ **CL/12/0391:** Permission in Principle for chalets, commercial facility, tourist/leisure use, eco village and associated landscaping - granted in November 2013. This was subject to a condition limiting the eco village to 13 units.

- ◆ **CL/16/0398:** Section 42 application to vary conditions the purpose being to enable further applications for various elements of the development to be submitted independently of each other rather than dealing with all phases together in one combined submission - granted in November 2016.
- ◆ **CL/17/0199:** Section 42 to vary conditions enabling the increase of dwellings at the eco-village from 13 to 30 and to relocate the position of the village further to the north - granted in September 2017.
- ◆ **CL/17/0209:** Full planning permission for a new vehicular link onto the B7086 was granted thereby removing the need to take access from a narrow minor road - granted in September 2017.
- ◆ **P/18/0511:** Matters Specified in Conditions application for the erection of 30 dwellinghouses, associated roads, infrastructure, amenity areas, landscaping and formation of SUDS ponds (approval of matters specified in conditions on planning permission CL/17/0199) - granted in June 2018.
- ◆ **P/19/1023:** Matters Specified in Conditions for the erection of 30 dwellinghouses, associated roads, infrastructure, amenity areas, landscaping and formation of SUDS pond (amendment to Planning Permission P/18/0511 - approval of matters specified in conditions on planning permission CL/17/0199) - granted in August 2019.
- ◆ **P/23/0089:** Section 42 application to vary condition 2 of CL/17/0199 to reduce the number of maximum units within the eco village from 30 to 29 units - withdrawn March 2023.

5. Supporting Information

- 5.1. A supporting statement prepared by the agent has been submitted with the application which sets out the planning history of the site and the requirements for a Section 42 application.

The agent has submitted various correspondence to justify the S42 application outlining that the current application seeks to remove condition no.2 of planning permission CL/17/0199 because the condition duplicates what is already covered in the detailed description of the application CL/17/0199: *Section 42 application to vary condition 2 and deletion of conditions 10 and 14 attached to Planning Permission CL/16/0398 to enable an increase in number of dwellings to 30 units and to alter access arrangements* - and considers that it is therefore already stated on the planning permission granted.

The applicant's agent states that the condition is unnecessary and fails to meet the tests for a condition as set out in the Circular 4/1998 and can be removed. The agent considers that this approach would then be consistent to that set out in the original PPP CL/12/0391: *Erection of 25 chalets, a commercial facility, tourist/leisure use, eco village and associated landscaping (Planning Permission in Principle)*.

- 5.2 Further supporting correspondence provides context to the development and planning history outlining that: "the number of chalets (25) was approved by the council as part of the original approval (CL/12/0391). At that time the eco village units (13) were to take their access from the farmyard beside the house and farm buildings which sit to the south of the B7086.

- 5.3 The nature of the access proposed at that time limited the development to 13 “eco village” units. No developer contributions were required by the Council as part of the original approval.
- 5.4 However, in order to increase the viability of the project, the number of eco village units increased from 13 to 30 as part of the Section 42 application submitted in 2017 under application CL/17/0199. This application also sought to alter the proposed access arrangements to the development and develop the eco village units closer to the access.
- 5.5 Access is now proposed from a point off the B7086 which, prior to 2017, hadn’t been in the ownership of the applicants. The increase in the number of units to 30 was therefore to cover the infrastructure costs to a site that included a new access road and additional sewage and drainage arrangements. This justification was accepted by the Council as part of the approval of the 2017 application.”

6 Consultations

- 6.1. None

7 Representations

- 7.1. Following the statutory period of neighbour notification and advertisement, no valid representations have been received.

8 Development Plan

- 8.1. Under 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.

8.2. National Planning Framework 4

National Planning Framework 4 (NPF4) is Scotland’s national spatial strategy for Scotland. It sets out spatial principles, regional priorities, national developments and national planning policy. NPF4 supports the planning and delivery of sustainable places, liveable places and productive places.

National Planning Framework 4 Policies

Policy 1 - Tackling the climate and nature crises

Policy 2 - Climate mitigation and adaptation

Policy 3 – Biodiversity

Policy 6 – Forestry, woodland and trees

Policy 9 - Brownfield, vacant and derelict land and empty buildings

Policy 14 - Design, quality, and place

Policy 15 - Local living and 20-minute neighbourhoods

Policy 16 - Quality Homes

Policy 17 - Rural Homes

Policy 30 – Tourism

8.3. South Lanarkshire Local Development Plan 2 (2021)

For the purposes of determining planning applications the Council assesses proposals against the policies contained within the adopted South Lanarkshire Local Development Plan 2 (SLLDP2). In this regard the application site and associated proposals are affected by the following policies contained in the SLLDP2:-

SLLDP2 Volume 1 Policies

Policy 2 - Climate Change

Policy 4 - Green Belt and Rural Area

Policy 5 - Development Management and Placemaking
Policy 6 – Visitor Economy and Tourism
Policy 14 - Natural and Historic Development
Policy 15 - Travel and Transport
Policy 16 – Water Environment and Flooding

SLLDP2 Volume 2 Policies

Policy VET2 - Visitor Accommodation
Policy DM15 – Water Supply
Policy DM16 – Foul Drainage/Sewerage Provision
NHE13 – Forestry and Woodland
Policy SDCC2 – Flood Risk
Policy SDCC3 – Sustainable Drainage Systems

South Lanarkshire Council (SLC) Supporting Planning Guidance

None

9 Guidance

9.1. Planning circular 3/2022: Development Management Procedures

This sets out that in determining a Section 42 application, authorities may consider only the issue of the conditions to be attached to any resulting permission. However, in some cases this does not preclude the consideration of the overall effect of granting a new planning permission, primarily where the previous permission has since lapsed or is incapable of being implemented.

- 9.2 Where it is considered that permission should be granted subject to different conditions, a new permission would need to be granted with all the conditions to which the development should be subject attached. If it is considered that planning permission should be granted subject to the same conditions as the previous permission, the section 42 application should be refused. The making, granting, or refusal of a section 42 application does not alter or affect the previous permission or its conditions.

9.3 Planning Circular 4/1998: The Use of Conditions in Planning Permissions

This circular provides guidance on the use of conditions attached to planning permissions. Conditions should only be imposed where it satisfies the following tests: necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise; reasonable in all other aspects.

10 Assessment and Discussion

10.1. Section 42 Process

Consent is sought under Section 42 of the Town and Country Planning (Scotland) Act 1997 (as amended) for non-compliance with Condition 2 (number of units) of CL/17/1099 for the erection of 25 chalets, a commercial facility, tourist/leisure use, eco village and associated landscaping. Effectively, the application seeks to remove the condition limiting the housing numbers within the approved eco-village.

- 10.2 Section 42 of the Town and Country Planning (Scotland) Act 1997 allows the determination of applications to develop land without compliance with conditions previously attached to any planning permission granted or with different conditions. As outlined above, the legislation identifies that the Planning Authority shall consider only the question of the conditions subject to which planning permission should be granted.

- 10.3 Planning permission should be granted accordingly subject to conditions that differ from those attached to previous consent. Otherwise, if the planning authority feel the condition should be complied with the application shall be refused. Taking this into account, the acceptability of the removal of this condition - which relates to a restriction on the number of units at this location - is the main consideration in the determination of this application. The policies contained within National Planning Framework 4 and the South Lanarkshire Local Development Plan 2 are applicable in this case, together with an assessment of any other material planning considerations.
- 10.4 Permission was originally granted in 2012 under CL/12/0391 on the basis that the wider proposals for the sites north and south had the potential to generate economic development benefits and at that time the eco village housing was intended to subsidise and enable funding for the proposed tourist element of the development, and this element of the proposal was limited by way of condition to 13 units. Further applications, including a new access route enabled an increase to 30 units and a subsequent S42 application, reference CL/17/1099, granted a variation of the condition to increase the limitation from 13 to 30. Subsequent MSC applications were granted, however, all applications have now expired.
- 10.5 As this application seeks to remove Condition 2 of CL/17/0199 it would effectively remove any restriction on the limit of housing numbers at this site, and it must therefore be considered whether removal of the limitation on housing units would be acceptable, and the application approved; or whether the condition should remain attached, and the application be refused; or whether a varied condition should be applied. In considering this, the aforementioned policy considerations are applicable as well as an assessment of any material considerations.
- 10.6 Principle of Development
The extant permission granted under CL/17/0199 which would have expired on 31 March 2023 after this application was submitted is a material consideration. This establishes the principle of development on this site as per the description. While only the question of the condition should be considered in terms of S42 applications, as outlined in Planning Circular 3/2022, the consideration of the overall effect of granting a new planning permission can be taken into account and therefore, in this case it is considered appropriate to assess the effect of the development in principle now under NPF4 and SLLDP2 as new policy documents since the original permission was granted and thus forming new material considerations.
- 10.7 In terms of NPF4, the site lies within the rural countryside where Policies 9 and 17 apply. Part of the site is previously developed land, however, substantial areas of the site have naturally regenerated and are covered by extensive woodland. Policy 17 seeks to encourage, promote and facilitate the delivery of high quality, affordable and sustainable rural homes in the right locations. It states that development proposals for new homes in rural areas will be supported where the development is suitably scaled, sited and designed to be in keeping with the character of the area and sets out criteria for the development including: allocated sites, reuse of brownfield land, reuse of a redundant building, use of a historic asset, required to support a rural business or essential worker, for a retiring farmer, the subdivision of an existing dwelling, or is a one for one replacement. Development proposals in rural areas need to consider how it will contribute towards local living and in remote rural areas should support fragile communities, identified housing outcomes, and be suitable in terms of environmental impact.

- 10.8 This site is no longer considered brownfield as a whole, as despite some evidence of quad biking tracks, the ground has returned to a predominantly natural state. It is not in a settlement or an allocated housing site, it is not well connected, nor seeking the reuse of redundant or brownfield land/buildings, and does not satisfy local living requirements as set out in Policy 15 which seeks to encourage, promote and facilitate the application of the Place Principle and create connected and compact neighbourhoods where people can meet the majority of their daily needs within a reasonable distance of their home, preferably by walking, wheeling or cycling or using sustainable transport options.
- 10.9 As such, it is considered that removing the condition would not define the number houses for the development site and would result in an unrestricted number of units within the site boundary being granted in principle - which not only fails on policy grounds as mentioned, but would also not be satisfactory as subsequent infrastructure impacts would not be considered in terms of roads, education, affordable housing and community contributions as per Policy 16 of NPF4.
- 10.10 Therefore, the proposal in principle which is ultimately an undefined number of housing units to form an eco-village in the southern site would be unacceptable. The development of any number of units in this location would not be compatible with the aims of NPF4 and the specific criteria set out in the above policies.
- 10.11 This is further contrary to the relevant policies contained within the South Lanarkshire LDP2. Policy 4 states that within the Rural Area, the Council seeks to protect the amenity of the countryside, while supporting small scale development in the right places that is appropriate in land use terms and of high environmental quality, supporting the needs of communities. Development which does not require to locate in the countryside will be expected to be accommodated within settlements, isolated and sporadic development will not be supported.
- 10.12 Separately, the proposed removal of condition is not considered to affect the tourism element to this application, as the tourism case can be made by exploiting the existing fishery. This is considered compliant with the terms set out in Policy 30 of NPF4 and Policy 6 and VET2 of SLLDP2 which together support sustainable economic tourist development.
- 10.13 Climate Change and Biodiversity
NPF4 Policy 1 Tackling the Climate and Nature Crises, NPF4 Policy 2 Climate Mitigation and Adaptation and Policy 2 of the South Lanarkshire Local Development Plan 2 aim to ensure that proposals for new development must, where possible, seek to minimise and mitigate against the effects of climate change. In addition, Policy NPF4 Policy 3 Biodiversity aims to protect biodiversity, reverse biodiversity loss, deliver positive effects from development and strengthen nature networks.
- 10.14 While details of the proposal would be obtained at MSC stage should permission be granted, ultimately the nature of the development as a whole within a rural location fails to meet the objectives of NPF4 in that it is situated in an unsustainable location, it is not well connected, thus deeming reliance on the private car, and therefore would result in an impact on climate change through not being sustainably sited and serviced. As such, the proposal fails to comply with Policy 1 and 2 of NPF4 and Policy 2 of SLLDP2. Details of biodiversity improvements could be obtained at MSC stage in line with Policy 3 of NPF4, however given the extensive tree coverage at this site and subsequent the potential impact for significant woodland loss, the proposal would be unacceptable in terms of Policy 6 of NPF4 which seeks to protect and expand woodlands and trees. Furthermore it would fail to comply with Policy 14 and NHE13

of SLLDP2 in terms of woodland loss where protection and enhancement of woodlands is encouraged. No public benefits would outweigh this loss, however it is recognised that details of this would be considered at future MSC stage.

10.15 Layout, Siting and Design

As the proposal is for PPP only, full details to demonstrate compliance with Policy 14 of NPF4 and Policy 5 of SLLDP2 would be considered at a future MSC stage. However, as outlined above, the proposal would not meet the requirements of local living as set out in Policy 15 of NPF4 in terms of its unsustainable location, lack of connectivity and it does not demonstrate compliance with Policy 16 in terms of quality homes. Furthermore, in terms of Policy 14 it fails to achieve the characteristics of a sustainable and connected place.

10.16 Technical Matters

Technical matters including access, drainage and servicing have not been considered in detail in this case as the proposal is for planning permission in principle only, therefore the specific details of such issues can be dealt with through future MSC applications and because the S42 process only considers the matter of the condition in question. LDP Policies 14, 15 and 16, DM15, DM16, SDCC2 and SDCC3 relate to any potential flood risk and impact on the water environment from the proposed development which would be fully assessed at the MSC stage.

10.17 Conclusion

In conclusion, the proposal seeks a large development in the countryside which fails to meet the requirements of NPF4 and SLLDP2. The impact of removing a condition which restricts the number of units being removed would result in an undefined number of houses in the countryside which conflicts with sustainable development aims of NPF4. Furthermore, an alternative figure could not be stipulated in a varied condition as no justification is provided to address current policy requirements, and an assessment of infrastructure impacts has not been carried out to this effect.

10.18 As per planning circular 4/1998, the condition is still considered necessary under the six tests. It is relevant to planning in that it controls development at this location; it remains relevant to the development to be permitted; it is enforceable in terms of placing an upper restriction; precise; and is considered reasonable in all other aspects as any level of development and no restriction on numbers would be contrary to policy as set out above.

10.19 The overall effect of the Section 42 application is that it would result in an undefined number of houses in the countryside which fails to meet the policy requirements of National Planning Framework 4 and the South Lanarkshire Local Development Plan 2. It is therefore considered that the condition cannot be varied, and the development should be subject to the same condition, therefore the Section 42 application in question is unacceptable and recommended for refusal.

11 **Recommendation and Conditions**

11.1. The Committee is asked to agree the following recommendation:-

Refuse Planning Permission in Principle for the reasons outlined below:-

01. The removal of Condition 2 would result in consent being granted for an undefined number of houses in the countryside which would have an adverse impact on the qualities of the rural area and result in unsustainable development contrary to Policy 17 of National Planning Framework 4.

02. The removal of Condition 2 would result in consent being granted for an undefined number of houses in the countryside which would have an adverse impact on the qualities of the rural area and result in unsustainable development contrary to Policy 4 of the South Lanarkshire Local Development Plan 2.
03. The proposal is contrary to Policy 14 of National Planning Framework 4 as it is not consistent with the 6 qualities of successful places. Specifically, it fails to achieve the characteristics of a sustainable and connected place.
04. The proposal is contrary to Policy 15 of National Planning Framework 4 as it fails to create a connected neighbourhood and would result in an unsustainable development and would not contribute to local living principles.
05. The proposal is contrary to Policy 16 of National Planning Framework 4 as it would result in an unsustainable development and unacceptable infrastructure impacts.
06. The site is located within the countryside, disconnected from settlements and active travel opportunities and therefore the proposal is not considered to be sustainable development and will increase emissions by encouraging vehicular travel. As such, the proposal is contrary to Policies 1 and 2 of the National Planning Framework 4 and Policy 2 of the South Lanarkshire Local Development Plan 2.
07. The site is located within the countryside, where there is extensive tree and woodland coverage. The potential loss of this would have a negative effect on character, nature and biodiversity of the area contrary to Policy 6 of National Planning Framework 4.
08. The site is located within the countryside, where there is extensive tree and woodland coverage. The potential loss of this would have a negative effect on character, nature and biodiversity of the area contrary to Policy 14 and NHE13 of SLLDP2.

David Booth
Executive Director (Community and Enterprise Resources)

Date: 31 July 2023

Background Papers

Further information relating to the application can be found online:

[P/23/0357 | Planning permission in principle for the erection of 25 chalets, a commercial facility, tourist/leisure use, eco village and associated landscaping \(Section 42 application to remove Condition 2 number of units of planning permission reference CL/17/0199\). | Land 160M Northeast Of Nether Kypeside Farm Lesmahagow \(southlanarkshire.gov.uk\)](#)

Corporate Considerations

The report raises no impacts or risks in terms of equalities or financial implications. Any implications in terms of climate change, sustainability or the environment will have been considered above in terms of the relevant national and local policies.

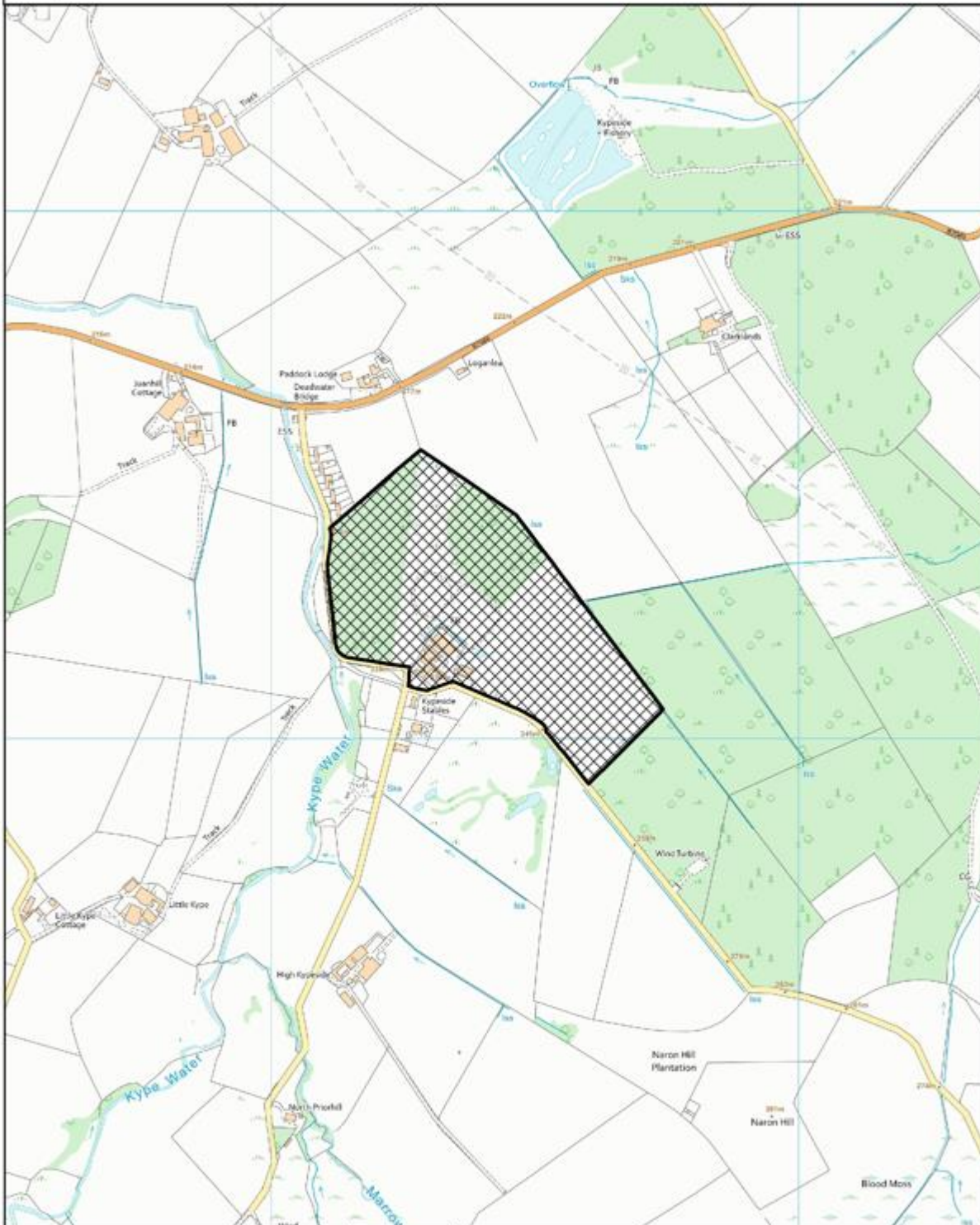
Contact for Further Information

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

Tel: 01698 454867

E-mail: planning@southlanarkshire.gov.uk

P/23/0357 Land 160M Northeast Of Nether Kypeside Farm, Lesmahagow



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Scale:
1:10,000
Date:
18/07/2023



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