

STATEMENT OF OBSERVATIONS

Notice of Review - Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013

Planning Application No. P/22/1355

Proposal - Change of use of agricultural land to private garden ground at Ard Taigh, Kilbank Road, Kirkfieldbank, Lanark, ML11 9UH

Appellant: Mr. Stephen Paul Davies

1.0 Planning Background

- 1.1 The above planning application was submitted to the Council in September 2022. The application was originally made invalid due to the submission being incomplete. Following receipt of additional information, including payment of the appropriate planning fee, the application was validated in November 2022. Following due consideration of the proposal, especially an assessment in terms of the provisions of the development plan, the application was refused consent under delegated powers on the 10th March 2023. The related Report of Handling sets out the planning policy and other material considerations for the decision. The reasons for the refusal are listed in the decision notice. These documents are available elsewhere within the papers.
- 1.2 The application site is to the west of a detached dwelling located at Ard Taigh, Kilbank Road, Kirkfieldbank. The applicant sought planning permission for the change of use of agricultural land to extend their private garden ground at Ard Taigh, Kilbank Road in Kirkfieldbank. The site is presently agricultural land adjacent to the appellants dwellinghouse which received consent in 2019 (P/19/0615). The house is a 1.5 storey dwellinghouse with attached double garage.
- 1.3 The agricultural land owned by the appellant is approximately 40 meters wide by 32.5 meters in depth. Immediately to the east of the house an area 5 meters deep by 32.5m in width would be changed to a private garden. This area is bordered by a road to the south and neighboring agriculture land to the west and north. The application site is further described in the Report of Handling.
- 1.4 The approved block plan in relation to the original consent for the house is attached as appendix one. It must be highlighted that the approved

house had a 'rear' garden generally 7542 mm deep but 31358 mm wide providing over 233 square meters of private rear garden ground. This is an adequate area of garden ground for a detached house. Indeed, in terms of the Councils Residential Design Guide the minimum for detached houses is 70 square meters, albeit this would be related to a relatively small house.

1.5 This use of the appeal site as garden ground associated with Ard Taigh was brought to the attention of the planning Department following a complaint.

1.6 The reasons for refusal of application P/22/1355 were as follows;

01. The proposed change of use is contrary to Policy 17 of National Planning Framework 4 (2023) in that it seeks to use land in the rural area for housing purposes in a location where that site has not been allocated for residential development in the Local Development Plan.

02. The proposal is contrary to Policies 4, 5 and NHE16 of the South Lanarkshire Local Development Plan 2 (2021) in that the proposal would detract from the established character of the surrounding locale and adversely impact upon the established amenity of the area.

2.0 Assessment against the development plan and other relevant policies

2.1 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. The development plan comprises the South Lanarkshire Local Development Plan 2 (SLLDP2) (adopted 2021) and National Planning Framework 4 (NPF4) adopted by Scottish Ministers on 13th February 2023. Section 24(3) of the 1997 Act confirms that if there is an inconsistency between NPF4 policies and a Local Development Plan which was adopted before the 13th February 2023, then the policies in NPF4 prevail.

2.2 The application site is agricultural land located in the rural area. It is not part of the approved house curtilage/plot established and authorised by consent P/19/0615. It is also designated as part of a Special Landscape Area within the South Lanarkshire Local Development Plan 2021.

2.3 Policy 17 of The National Planning framework states a development proposal for new homes in rural areas (and by implication increased garden ground) will be supported where the development is suitably scaled, sited and designed to be in keeping with the character of the area and the development:

- i. is on a site allocated for housing within the LDP;
- ii. reuses brownfield land where a return to a natural state has not or will not happen without intervention;
- iii. reuses a redundant or unused building;
- iv. is an appropriate use of a historic environment asset or is appropriate enabling development to secure the future of historic environment assets;
- v. is demonstrated to be necessary to support the sustainable management of a viable rural business or croft, and there is an essential need for a worker (including those taking majority control of a farm business) to live permanently at or near their place of work;
- vi. is for a single home for the retirement succession of a viable farm holding;
- vii. is for the subdivision of an existing residential dwelling; the scale of which is in keeping with the character and infrastructure provision in the area; or
- viii. reinstates a former dwelling house or is a one-for-one replacement of an existing permanent house.

2.4 The proposal relates to an increase in the garden area associated with a new house and therefore is essentially residential in nature. The appeal proposal would extend the residential plot into agricultural land without any justification and ultimately would result in the expansion of residential development onto agricultural land/designated countryside. Such an expansion is not on a site identified for housing in the Local Development Plan, re-uses brownfield land (previously developed land) or is an appropriate re-use of a historic environmental asset. In addition, the appeal proposal does not accord with any of the other related policy criteria or considerations listed in paragraph 2.3 above. The appeal proposal is clearly contrary to the requirements of Policy 17.

2.5 Policy NHE16 – Landscape advises that development proposals within Special Landscape Areas will only be permitted where they can be accommodated without having an unacceptable significant adverse effect on the landscape character, scenic interest and special qualities and features for which the area

has been designated. All development should take into account the detailed guidance contained in the South Lanarkshire Landscape Character Assessment 2010. The site falls within the Rolling Farmland landscape type in the Middle Clyde Valley where landscape planning and management should aim to conserve the open and undeveloped character and profiles of the foothills and the quality of the panoramic views. The expansion of garden ground into such areas will change the landscape character of the area and cannot be supported in planning terms. Indeed, whilst it is acknowledged that the appeal site is relatively small in terms of the wider landscaped area, it is the principle of the development that conflicts with the policy requirements of NHE 16 which aims to protect, conserve and enhance the undeveloped, countryside character of the area.

- 2.6 In terms of Policy 4 – Greenbelt and Rural Area and Policy 5 – Development Management and Placemaking of the Local Development Plan 2, the appeal proposal cannot be supported. Within the rural area Policy 4 seeks to promote the amenity of the countryside recognizing that both the Greenbelt and Rural Area function primarily for agriculture, recreation and other uses appropriate to the countryside. The expansion of residential curtilages is not an identified function of the rural area. By default, therefore the appeal proposal does not merit support. Furthermore Policy 5 has as an underlying requirement to protect the natural environment. The proposed inclusion of the appeal site within a residential garden area undermines this requirement and if repeated throughout the rural area would seriously erode the character and landscape quality of the rural area.
- 2.7 In view of the above, it was concluded that the proposed extension of garden ground into the protected special landscape area within the countryside was inappropriate and does not comply with the requirement of the applicable policies within National Planning Framework 4 or the South Lanarkshire Local Development Plan 2. Accordingly, application P/22/1355 was refused consent.

3.0 Observations on applicants Notice of Review

- 3.1 The appellant has submitted a statement to support the review. The grounds are summarised below in bold. It must be emphasized however that the statement is somewhat silent in terms of responding to the provisions of the development plan policies against which, by law, the appeal proposal must be considered.
- 3.2 **Firstly, basic common sense in that it is a reasonable request to allow a new build house to have a rear garden. Every other residential property in the area has a garden, so for us to be allowed to have one would simply align us with all other houses in the area. Prior to the new house,**

Ard Taigh, being built, a tree survey was required, and this resulted in 15 trees being protected for the duration of the build. The location of these trees resulted in the house being located on the building plot closer to the Western boundary so that the Eastern entrance, through the front door was physically possible. This reduced the remaining plot width at the rear or Western side to approximately three metres, and of course resulted in our planning application to make the area larger and useable as a rear garden. It also begs the question as to why planning permission for a residential property was allowed in the first place if it was not going to be allowed to function in a normal manner. By normal, I mean amenities like all other properties in the area.

Reason: The appellant was the applicant for application P/19/0615. The approved drawings indicate a reasonable and useable rear garden area. If the house has been repositioned contrary to the approved drawings as indicated by the appellant, this would be contrary to the approved drawings. The Drawings for the applications can be reviewed using the links below. P/19/0615 '*BLOCK PLAN PROPOSED*' and '*EXISTING BLOCK PLAN*' along with the drawing from the recent applications P/22/1355 & P/22/1656 '*LOCATION PLAN*'. The drawings from all three applications do not show a change in orientation and observations of the land on google earth match the drawings.

[P/19/0615 | Erection of dwellinghouse | Kirkfield Lodge](#)

[P/22/1355 | Change of use of agricultural land to private garden ground. | Ard Taigh Kilbank](#)

- 3.3 The metreage affected by the above planning application is in fact sloping ground where the level drops some 1.2 to 1.5 metres across the entire width of the plot. This means that any crop on this agricultural field cannot be planted or harvested here for safety reasons. In addition, over decades there was originally a stone wall running from South to North near the top of this slope, which is now almost completely in ruins resulting in the stones it was built from being strewn over this area. Presumably because of this stone wall collapsing is why a wooden post with wire fencing was installed some 1.2 metres West of the original site of the stone wall. This wire fence was installed so long ago that this has also fallen into disrepair but at least was recognisable and indeed used as the building plot boundary.**

Reason: The applicant owns the appeal site and further adjoining agricultural land. The fact that an old stone wall and fence has fallen into a state of disrepair is at the owner's discretion. Indeed, any necessary repairs can be conducted without the need for planning consent if the fence/wall is re-instated

in a similar manner to the original. Furthermore, the removal of stones can be actioned without consent and even with the change of level highlighted the ground still makes a valuable contribution to the open character of the countryside and surrounding area. In addition, it must be accepted that not all parts of the rural countryside has to be agriculturally productive.

- 3.4 In the 3rd paragraph I have done my best to accurately describe the state of the ground area where the planning application would change it from agricultural to private garden. Basically, I am trying to change what was a run down, debris strewn area, with the wreckage of two boundaries, one stone, and one a rotten and falling down fence, into a planned and pleasing to the eye area.**

Reason: The appeal site can be improved without the change of use to a private garden as proposed. The land does not need to be left as rundown or a debris strewn area. The appellant is the landowner and has a responsibility to maintain the ground in a reasonable manner.

- 3.5 The planning refusal quotes “4, 5, and NHE 16 of the South Lanarkshire Local Development plan 2 (2021) and Policy 17 of the NPF4 in that change of use from agricultural land to private garden ground detrimentally impacts upon the special landscape character of the area and that would conflict with the rural designation set out in the development plan.**

Reason: The appellant has made a brief reference to Policies 17 of the National Planning Framework 4 (NPF4) along with policies 4,5 and NHE16 of the Local Development Plan 2. However as highlighted earlier the associated appeal must be determined in accordance with the policies of the Development Plan and the appellant has not substantially elaborated or challenged the assessment and determination of his proposal in terms of the aforementioned policies.

4.0 Conclusion

- 4.1** In summary, the proposed development does not comply with the provisions of Policy 17 of the adopted National Planning Framework 4. The appeal proposal seeks to use land in the rural area for a purpose related to residential use in a location where the site is not allocated for residential development in the Local Development Plan.
- 4.2** Furthermore, the proposed development does not comply with the terms of Policies 4, 5 and NHE16 of the adopted Local Development Plan 2 in that the proposal would detract from the established character of the surrounding

locale and adversely impact upon the established countryside without proper justification. In this respect, the proposal would directly contradict Policies 4, 5 and NHE16.

- 4.3 The Report of Handling associated with application P/22/1355 provides a detailed assessment of all material planning considerations associated with this appeal. As such, it is clear that the proposal does not comply with the terms of Policy 17 of the National Planning Framework 4 nor Policies 4, 5 NEH16 of the South Lanarkshire Local Development Plan 2. There are no other material planning considerations that would outweigh the provisions of the Development Plan. It is a statutory requirement that when making any determination under the Planning Act regard must be had to the development plan, and the determination shall be in accordance with the provisions of the development plan unless materials considerations indicate otherwise.
- 4.4 In conclusion, it is respectfully requested that the Review Board uphold the original decision to refuse consent for the proposed change of use of agricultural land to private garden ground and dismiss this appeal.