



Council Offices, Almada Street,
Hamilton

Planning Local Review Body

Decision Notice

Decision by South Lanarkshire Council Planning Local Review Body (PLRB)
PLRB Reference NOR/CL/23/002

- ◆ Site address: Ard Taigh, Kilbank Road, Kirkfieldbank, Lanark, ML11 9UH
- ◆ Application for review by S Davies of the decision by an appointed officer of South Lanarkshire Council to refuse planning permission for planning application P/22/1355
- ◆ Application P/22/1355 for the change of use of agricultural land to private garden ground
- ◆ Application Drawing – Location Plan A

Decision

The PLRB reverses the decision taken by the appointed officer, in terms of the Scheme of Delegation, to refuse planning permission for planning application P/22/1355 and grants planning permission subject to the condition attached to this decision notice.

A handwritten signature in black ink, appearing to read 'G. McCann'.

Geraldine McCann
Head of Administration and Legal Services

Date of Decision Notice: 27 September 2023

1. Background

- 1.1. This Notice constitutes the formal decision notice of the Planning Local Review Body (PLRB) as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.
- 1.2. The above application for planning permission was considered by the PLRB at its meeting on 4 September 2023. The PLRB was attended by Councillors Alex Allison, Gerry Convery (Depute), Colin Dewar, Gladys Ferguson-Miller, Lesley McDonald, Davie McLachlan, Richard Nelson (Chair) and Norman Rae.

2. Proposal

- 2.1. The proposal is for the change of use of agricultural land to private garden ground at Ard Taigh, Kilbank Road, Kirkfieldbank, Lanark.
- 2.2. The options available to the PLRB were to uphold, reverse or vary the decision taken in respect of the application under review.

3. Determining Issues

- 3.1. The determining issues in this review were:-

- ◆ the proposal's compliance with the adopted South Lanarkshire Local Development Plan 2 (SLLDP2)
- ◆ the National Planning Framework 4 (NPF4) which had been adopted on 13 February 2023 and formed part of the statutory development plan
- ◆ impact on amenity

- 3.2. The PLRB established that, in terms of the adopted South Lanarkshire Local Development Plan 2, the site was located within the rural area and a Special Landscape Area. The following policies applied to the application site:-

- ◆ Policy 4 – Green Belt and Rural Area
- ◆ Policy 5 – Development Management and Placemaking
- ◆ Policy NHE16 – Landscape

- 3.3. Policy 4 states that, within the rural area the Council seeks to protect the amenity of the countryside while, at the same time, supporting small scale development in the right places that is appropriate in land use terms and is of high environmental quality that will support the needs of communities.

The rural area functions primarily for agriculture, forestry, recreation and other uses appropriate to the countryside. Development which does not require to locate in the countryside will be expected to be accommodated within the settlements identified on the proposals map. Isolated and sporadic development will not be supported.

- 3.4. Policy 5 states that, in order to ensure that development takes account of the principles of sustainable development, all proposals require to be well designed and integrated with the local area. Proposals should have no unacceptable significant adverse impacts on the local community and the environment.

- 3.5. Policy NHE16 states that development proposals within the Special Landscape Areas (SLA) identified on the Strategy Map will only be permitted if:-

1. they accord with SLLDP2 policies and guidance on Green Belt and Rural Area, and
2. 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.

Within the SLAs and the wider landscape of South Lanarkshire, development proposals should maintain and enhance landscape character including:-

- ◆ the scale, design and location of development within the landscape
- ◆ the setting of settlements and buildings within the landscape
- ◆ the pattern of woodland, fields, trees, hedgerows, waterbodies and other features, particularly where they define/create a positive settlement/urban edge
- ◆ the historical qualities of the area and its sensitivity to change
- ◆ landform features including key/notable skylines and hills and views to and from them

Development proposals should take account of the South Lanarkshire Landscape Assessment 2010 and, where relevant, the Landscape Capacity Study for Wind Energy 2016 and Tall Wind Turbines Landscape Capacity, Siting and Design Guidance 2019.

3.6. In terms of the National Planning Framework 4, the following policy applied to the application site:-

- ◆ Policy 17 – Rural Homes

3.7. Policy 17 states that:-

(a) 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 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.

(b) Development proposals for new homes in rural areas will consider how the development will contribute towards local living and take into account identified local housing needs (including affordable housing), economic considerations and the transport needs of the development as appropriate for the rural location.

(c) Development proposals for new homes in remote rural areas will be supported where the proposal:-

- i. supports and sustains existing fragile communities;
- ii. supports identified local housing outcomes; and
- iii. is suitable in terms of location, access, and environmental impact.

(d) Development proposals for new homes that support the resettlement of previously inhabited areas will be supported where the proposal:-

- i. is in an area identified in the LDP as suitable for resettlement;
- ii. is designed to a high standard;
- iii. responds to its rural location; and
- iv. is designed to minimise greenhouse gas emissions as far as possible.

3.8. In considering the case, the PLRB had regard to the applicant's submission 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 the applicant to be allowed to have a garden would simply align 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 3 metres and resulted in the planning application to make the area larger and useable as a rear garden.
- ◆ they questioned 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 ie, with amenities like all other properties in the area.
- ◆ the metrageage affected by the above planning application is in fact sloping ground where the level drops some 1.2 metres 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 for safety reasons.
- ◆ in addition, over decades there was originally a stone wall running from south to north near the top of the slope, which is now almost completely in ruins resulting in the stones it was built from being strewn over the area.
- ◆ presumably it's because of the stone wall collapsing that a wooden post with wire fencing was installed some 1.2 metres west of the original site of the stone wall.
- ◆ the 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.
- ◆ the planning refusal quotes Policies 4, 5, and NHE 16 of the South Lanarkshire Local Development Plan 2 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.
- ◆ they were 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.
- ◆ the intention is to not have any fencing but to build, out of timber, several rectangular frames filled with soil and plant pollen bearing flowers inside them, to provide improved foraging for the bees from the applicant's beehives.
- ◆ the photographs provided by the applicant showed the:-
 - ◆ wreckage of the stone wall
 - ◆ dilapidated wire fence with wooden support posts
 - ◆ recently harvested field and the berth given by the tractor so as to avoid all the boulders and the slope. The grass closer to the house has been strimmed by the applicant
 - ◆ slope so that you can see it would be unsafe for the tractor to be on this area
 - ◆ existing rear garden area, as yet without the timber frames for wild flowers
- ◆ the application is for 5 metres, but only half of this will be garden. The other 2.5 metres will be the unusable slope where, over time, the applicant hoped to remove the stones and boulders and grass it.
- ◆ the applicant believed that the application and planned improvements to this 5 metre strip of land will make it more pleasing to the eye and attain "A special landscape character" and achieve the aims of the Council's Development Plans and Policies.
- ◆ it most certainly will not have a detrimental impact.
- ◆ the length of the plot, north to south is 31.358 metres. The depth of the garden is currently 3 metres deep, not 7.542 metres as claimed. If they had 7.542 metres depth there would be no need for any garden extension application.
- ◆ to protect existing mature trees at the rear to both the north and south of the plot, they are not and will not in the future be making use of 9 metres to the south and 9.3 metres to the North as rear garden.
- ◆ this means the current width of the rear garden is 13.058 metres by 3 metres, or 39.174 square metres. If the appeal is successful, it would add 13.058 metres by 2 metres only (the other 3 metres is simply the slope down to the field) or 26.116 square metres.

- ◆ this means if the appeal is successful the total rear garden area will be 65.29 square metres, still less than the 70 square metres minimum stated.
- ◆ common sense and logic dictate that the proposed change of use cannot be contrary to Policy 17 of the National Planning Framework 4 (2023) or, by its own definition, there would be no planning approval for the house, Ard Taigh, in the first place.
- ◆ it is nonsensical to suggest that a reasonable sized rear garden to a residential house would detract or adversely impact on the surrounding locale, or established amenity of the area.
- ◆ the proposed change to useable garden area is, "Suitably scaled, sited, and designed to be in keeping with the character of the area and the development."
- ◆ the entire rear garden including the change of use area is to be hard standing with a timber edging, both of which fall within the definition of "Agricultural."
- ◆ the only addition to this will be wooden planters at both rear corners holding soil and pollen bearing flowers for the applicant's 3 beehives.
- ◆ with respect to Policy NHE16, the applicant is in total agreement with the description in this section, however, the applicant queried how one is supposed to support these aims if one is not allowed to reside in the area in an acceptable abode including a rear garden, which every other house in the area already has.
- ◆ the house has not been repositioned contrary to approved drawings and, if the applicant's memory is correct, their architect agreed the positioning with the planning department, taking into account tree locations which needed to be protected. There was no change in orientation.
- ◆ the state of disrepair at the rear of the property was inherited by the applicant upon purchase of the building plot and the adjoining land. Since then, the wreckage of the wire fence has been removed and similarly the loose stones and boulders have been dealt with.
- ◆ use of the slope for agricultural purposes would be unsafe due to its steepness.
- ◆ throughout the entire planning process, a highly respected and hugely experienced professional architect, with all associated indemnities etc, was totally in control and dealt with all the applications with the Council's planning officers.
- ◆ all appropriate planning approvals were sought and gained throughout the process. During the building process the architect and planning officers "signed off" the build at each relevant stage.

3.9. The PLRB considered the applicant's request that further written submissions be sought prior to determining the review case, however, it took the view that further written submissions were not required as it had sufficient information and adequate plans to allow proper consideration of the proposal.

3.10. The PLRB further considered that the proposal was in accordance with Policies 4, 5 and NHE16 of the adopted South Lanarkshire Local Development Plan 2 and Policy 17 of the National Planning Framework 4 on the grounds that the proposal was not contrary to the development plan.

4. Conclusion

4.1. The PLRB considered a request to review the decision taken by the appointed officer, in terms of the Scheme of Delegation, to refuse planning permission for planning application P/22/1355 for the change of use of agricultural land to private garden ground at Ard Taigh, Kilbank Road, Kirkfieldbank, Lanark. The PLRB concluded that the proposal was in accordance with Policies 4, 5 and NHE16 of the adopted South Lanarkshire Local Development Plan 2 and Policy 17 of the National Planning Framework 4, on the grounds that the proposal was not contrary to the development plan, and that planning consent for the proposal could be granted, subject to a specified condition.

4.2 The PLRB, therefore, reversed the decision to refuse planning permission and granted planning permission for planning application P/22/1355 subject to the undernoted condition.

5. Accompanying Notice

- 5.1. Attached is a copy of the Notice to Accompany Refusal, etc in the terms set out in Schedule 2 to the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.

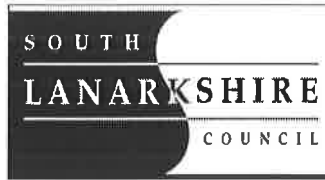
Application P/22/1355 - Condition and Reason

Appendix

Change of Use of Agricultural Land to Private Garden Ground at Ard Taigh, Kilbank Road, Kirkfieldbank, Lanark

1. The development to which this permission relates shall be begun no later than the expiration of three years beginning with the date of grant of this decision notice.

Reason: To comply with Section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).



NOTICE TO ACCOMPANY REFUSAL ETC

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

1. If the applicant is aggrieved by the decision of the planning authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.
2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.