

# Appendix 8

**Applicant's Comments on Further Representations Submitted by Interested Parties in the Course of the Notice of Review Consultation Process**



**COMMENTS TO SECOND PLANNING REPRESENTATION FROM SOUTH  
LANARKSHIRE COUNCIL ISSUED 25 July 2011  
IN RELATION TO PLANNING APPLICATION No: CL/08/0054  
DATE 8<sup>TH</sup> AUGUST 2011**



**Property being considered for residential use at Moat House.**

We would like the following comments to be read in response to the second Statement of Observations made by South Lanarkshire Council Planning issued 25<sup>th</sup> July 2011.

**1.0**

1.1 'non domestic outbuilding' - we do not believe that this is accurate. The building is the original farm house built before the building of Moat House (this has been confirmed by the Lanark Archaeological Society). It has not been used as a house for 30 years + being used for storage – this is the same as Bankfoot Cottage – see attached picture of Bankfoot and picture of the Coach house at Moat House.



Moat Cottage formerly Bankfoot.



Bankfoot 2007 - Clearly derelict at the time of visit.



Bank foot 2007 - tree growing out of the wall of the house.

#### 1.2 No comment

1.3 It is state that the Review process has had to be repeated as the list of Interested Parties was incomplete. Surely the procedure is straightforward – who is responsible for these people being missed from the process?

We are concerned that the following statement made by the Planning Officer is misleading. At the end of this section the Planning Officer states that sections 2.0 and 3.0 remain unchanged from the original statement – this is not correct there has been a change made to 3.1 (d). We comment on this change in section 3.1 (d).

#### 1.4 We would disagree with this statement for the following reasons

- Coachhouse was historically a dwelling, refer to 1.1. Therefore we do not believe that it should be considered a new additional dwelling for the same reason as Bankfoot Cottage.
- Bankfoot Cottage had and still has an access onto the private access road owned by G Struthers not as stated 'the junction on the main road.' Access is taken across this private track before entering the main road.
- In relation to Bankfoot Cottage being unfit for purpose we are not sure why this is the case when the structural engineers report clearly stated that the building was structurally suitable for renovation. Bankfoot was a building that had 2 small bedrooms that had been disused as a dwelling in excess of 30 years. There was an ability to park 1 car on the property. The replacement building was a large 6 apartment dwelling 1 & 3/4storey with an increased parking requirement of 3 places required by the council. There is clearly a net increase of pedestrian and vehicular movement, see attached pictures.
- In section 4 c) the Planning Officer states that a residential building unused for 30 years + would require a change of use application back to residential. Why then when Bankfoot has clearly been derelict for 30 years + was it considered to be a residential dwelling when it clearly was not.



The new property at Bankfoot clearly not a one for one substitution.



Additional rooms and at least double the floor area resulting in a net increase in traffic flow.

## 2.0

2.1 We note that this same criteria applies to Bankfoot Cottage.

2.2 We note that this same criteria applies to Bankfoot Cottage.

2.3 d) & e) an agreement was made in principle regarding the scale of the building – drawings were not reissued as no further monies could be spent on the project when it was going to be rejected by point f). We are more than happy to instruct the amendment of drawings if the roads issue can be resolved.

2.4 We would disagree with this statement for the following reasons

- The Roads officer had confirmed that he wanted an improvement to be made to the junction he was aware that some of this land was outwith our control and was also aware that we were in negotiation with the landowner. We made the Roads Officer aware that the Planning Officer was requiring that we provided written permission from this land owner and we explained to the Roads Officer that this would disadvantage us in our negotiations with the landowner as he was now aware that we would not get planning permission without his consent.
- The Roads Officer was appreciated our situation and stated that he had no objection to any of the requirements being conditional.
- This was then relayed to the Planning Officer who did not share this view.
- The Planning Officer was aware that the negotiation with the land owners was delicate and involved monetary sums. It was made more difficult with the requirement made by the Planning Officer and more-so when one of the principle land owners became gravely ill. All these points were relayed to the planning officer and we continually asked for the requirement for written permission to be rescinded as we felt we were being held to ransom.

### 3.0

3.1 a) The final amendments to the drawings have not been submitted for financial reasons as it is clear that we cannot get planning permission without clearing Criteria (F). We do not ask for this to be conditional we are more than happy to issue new drawings if Criteria (F) can be resolved.

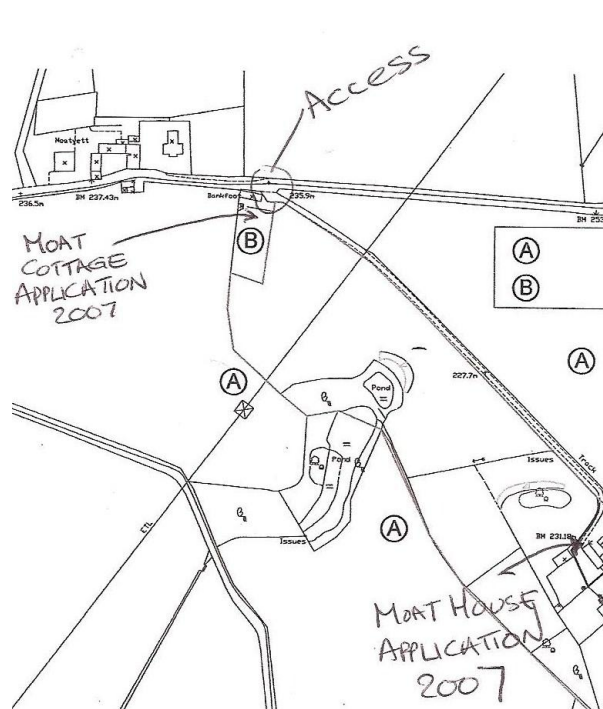
b) As noted the change in flow was created by the new road being built 30 years ago. Neither Bankfoot nor the property at Moat House were being used as a dwelling houses at that time. For this reason the planning permission of the new dwelling at Bankfoot constituted an increase to traffic flow yet still remaining below the original level. We also noted that in this application Road Safety at this junction was raised as a concern by both Roads & Planning and this was addressed by Condition 11 CL/07/0215.

Condition 11 required the public road to be widened to 5.5m with a 2m wide grass verge. Condition 12 required the 'access point from the private access road onto the public highway to be reconstructed in bituminous material for a distance of 3 metres from the edge of the public highway..' again in the interest of public safety.

From Conditions 11 & 12 we would note that the Roads department were concerned regarding the increased traffic flow at this junction and required improvements that would render the junction to be safe. We are not clear why the safety issues relating to our application were not addressed at this time.

From Conditions 11 & 12 we also note that these planning conditions required improvements to be carried out to land outwith the applicants control such as the public carriageway and the private access road owned by the same landowner. There was no requirement for written permission from this same landowner to carry out this work prior to planning permission being granted.

c) The circumstances at Bankfoot Cottage are the same as the circumstances at Moat House. Bankfoot do not have direct access onto Hawksland Road. The access of Bankfoot goes fully onto the access road before meeting the junction. Also we would argue that the Roads Department did have concerns about that application which we understand were addressed by the use of conditions to make the junction safe for use. Had the visibility or road angle been an issue to the Roads Department we would anticipate that this would have been addressed and improvements required.



Drawing of shared private access road used by both Moat House and Bankfoot (Moat Cottage)

d) We quoted five additional Planning consents granted in very close proximity CL/09/0303 CL/04/0682 CL/05/0550 CL/07/0585 CL/01/0334 in recent years. These permissions all required an improvement to sightlines across land outwith the applicants' control. All of these requirements were conditional and none of these applicants were required to provide written consent confirming that they had control of the land in place prior to their planning permission being granted.

The previous statement from the Planning Department had stated that:

*'both adjoining land owners had registered objections to the application and stated that no agreement for the use of their land was in place.'*

To which our response was the following:

*It should be noted that both land owners had been neighbour notified and (where appropriate owner notified) at the application stage and neither party objected to the development. In your response to point 3 D we are concerned to note that 'both adjoining landowners had registered objections to the application..' as there were no objections by any party during any of the notification periods, we would request more information regarding these 'registered objections'.*

*A letter of concern regarding the use of the private access road was submitted in relation to the safe use of this private road listing concerns about passing places on the road and suggesting that this could be resolved by providing passing places in our own land. The planning officer was not concerned by this as it was a civil matter and made it quite clear that it would be inappropriate of the Council to interfere in this matter.*

*It is important to note that negotiation with one of the landowners has already been resolved to the satisfaction of the roads department.*

We note that the original statement by the Planning Department has been changed to remove the comments in relation to 'registered objections' and now only states that no agreement for use of their land was in place. We would agree with this revised statement as there were no objections to our development. This point is continued in 4.1 a) below.

#### **4.0 OBSERVATIONS ON THE APPLICANTS NOTICE OF REVIEW DATED 4TH JULY 2011**

In general we have grave concerns that PLRB are being deliberately misled by the Planning Department.

##### **4.1 a) Timeline of Events**

**2008** - We were told at the end of our notification period by the planning officer that they had received no objections to our development. This was in keeping with discussions we had with neighbours.

**May 2011** – We were first made aware that '**both adjoining landowners had registered objections to the application**' contained in SLC's Statement of Observations 26<sup>th</sup> May 2011. While we were concerned by this comment we assumed that there had been a mistake made by the planning officer. We responded SLC's initial Statement of Observation 9/6/11 to the effect that this was incorrect there were no objections.

**June 2011** - We were surprised when the administrator contacted us by return to state that she had noted our 'confusion' regarding the objections and said that she had checked with the planning officer and he had 3 letters, 1 comment and 2 objections. While he was going to send her a copy of these letters she referred us to seek clarification from the Delegated Report which would clearly confirm the position. She stated that the Delegated Report could be viewed on the portal but when she checked there was no information on the portal. She advised that we should go to the planning office where we could view the Delegated Report.

**Mid June 2011** - We were gravely concerned when we were contacted by Administrator to state that the whole process was being restarted because their legal department had advised that they had not followed correct procedures. The reason that we were concerned was that we believed this was an opportunity for SLC to change their Representation in light of our original responses.

We were also concerned that it had taken a considerable amount of time to respond to the previous statement from SLC and this would be the case again (which you can see that it has been again). We were advised that it should be a straight forward duplication of the original case.

**20 June 2011** – We were notified of the new Review and were to respond by 4<sup>th</sup> July 2011 – it should be straight forward as it was just the same case we were putting forward.

We attended South Vennel to inspect the Delegated Report. We inspected and copied the Delegated Report which comprised a 4 page document which confirmed that the Representation comprised **0 Objection**

**Letters 0 Support Letters 2 Comments Letters**

We were satisfied that there were no objections.

We also noted in the file that there was a note made by the planning officer regarding him contacting Mr Struthers to discuss if the negotiation had been completed we were aggrieved by this as there had been no attempt made to contact us at this time.

**21<sup>st</sup> July 2011** we got a response from SLC clarifying the situation:

- A) Regarding the number of objections this had been clarified by the administrator and the planning officer and the situation had gone from bad to worse. From having 0 objections (Delegated Report) then later having 2 (Statement of Observations) we now had one (SLC letter 21 July 2011 attached). This letter stated that the letter from G Struthers 2008 was 'being treated as an objection'. This letter makes no reference to objecting to the development. In fact the concerns raised regarding the private access road (that had been dismissed at the time as a 'civil matter and not a concern of the planning department') clearly raise concerns and then offer possible solutions concluding with *'I request that the concerns I have highlighted and the suggestions on how they can be eliminated be considered by the planning committee in favourable light as all I seek is to live in harmony with my neighbours as I have done for the last forty years.'* **This is clearly not an objection.**
- B) In relation to the fact the SLC would not permit the initial Notice of Review information to be submitted to the PLRB the letter confirms that this information will be submitted. However their appear to be dubiety over whether the PLRB would wish to consider it – we cannot find any reason why the PLRB would not want to see this information. There is no information regarding the decision making process of the PLRB whether it will be considered or not be considered and whether we will be notified of this decision. Again suspicions arise that we will not be given a fair hearing and the process is not the clear transparent process that the public expect.

In general this response from SLC was not what we had expected as confusingly the situation had changed from 2 objections down to 1. There was a reference to section 3.1 of the Delegated Report clarifying this objection yet this was not present in our copy of the report – we assume that this is another mistake and we replied requesting clarification on **27<sup>th</sup> July 2011** see extract below:



*In relation to our first query, we are concerned to find that the Planning Department is advising that there was one objection made to our planning application. Initially we were told by the planning officer, in 2008, that there were no objections and this was confirmed in the Delegated Report produced 2010/2011 – at the time of refusal. As you are aware this is the reason that we were surprised to read comments from the Planning Office in response to our Review indicating that both adjoining landowners had lodged objections.*

*As we were confused by this change of status we had asked you to clarify the issue, which we are grateful that you have done, but unfortunately now we remain confused as the number of objections has changed again this time to one. The source of this 'objection' is taken from a letter received by the Planning Department that clearly makes no reference to an objection to our development. The letter raises concerns and then puts forward a range of possible solutions. This letter was not considered to be a letter of objection at the time of refusal (refer to Delegated Report) so we are not clear why it is now considered to be an objection when the planning process has been completed. We are sure that you have asked the Planning Department to clarify this matter and would be grateful to know their reasons for this.*

*You are aware that our principle complaint regarding our refusal is that we are not being treated equally to other applicants, these inconsistencies only serve to substantiate our concerns.*

*In relation the second concern we had that South Lanarkshire Council wanted to with-hold their initial representation from Review Body, we are grateful that this information will be included in the submission and would ask to be informed of the date when the PLRB will be reviewing our case and ask that we can attend this process.*

Meantime **25<sup>th</sup> July 2011** we were provided with our second round of Representations that we need to make comment to and as you see it is not the straight forward duplication process that was intimated when SLC decided that they wanted to restart the process. In addition we now also have a representation to repond to from Mr Struthers who had chosen not to make representation the first time.

Our straightforward resubmission became on the **4<sup>th</sup> July 2011**. After discussing with the administrator what was required we stated that we were just submitting the original information plus additional paper work such as copies of the 3 comments letters in order to prevent the confusion that had arisen in the first submission. To this we were told that these didn't need to be included as they were part of our Planning file which would be submitted to the PLRB. Because of our suspicion that was growing on what SLC's intention was with this second review we felt that we had to include these letters plus a copy of the initial statements made in the review.

About 30 minutes after submitting our submission we were contacted to be told that

- a) to our amazement we could not include a copy of the initial planning review as we were told by the Administrator that **'as far as we (SLC) are concerned it no longer exists'**.
- b) We were asked if we wanted to submit a general plan that had been submitted before. The reason this was not included in the second submission was because it was in our Planning file. When we stated that we believed that it would be included in the process as it was part of the file we were then told that not all of our file would be submitted to support the review just selected information.

Immediately we lost any confidence we had remaining in this process and realised that SLC were closing ranks and going to do anything they could to prejudice our case. We asked that this situation would be clarified by SLC.

**7-8<sup>th</sup> August 2011** after spending a number of hours finalising our submission we visited South Vennel to get a copy of the note in the file regarding the contacting of Mr Struthers. We were shocked to discover that the Delegated Report in the file now included an additional 2 pages of material that have been inserted into the document retrospectively. On reading the material it is clear it has been written after our review process started yet it is inserted before a signature and date of January 2011. In case this was an amendment we asked the officer to confirm if there had been an amendment to the document since June – the Planning Officer confirmed that there had been no amendments.

The 2 pages included referred to the '1 objection' a figure it would appear that had only been settled on in June 2011. We were appalled by this flagrant attempt to change information retrospectively.

The note regarding the contact with Mr Struthers was no longer in the file.

In summary to point 4.1 (a) we believe that Planning is deliberately attempting to mislead the PLRB, we are not clear what the reason for this is. No objections were made to this development during the notification period.

- 4.1 b) The point summarised does not make sense particularly as we were negotiating getting control of the land to improve visibility at no time were we asked to purchase this land. Our letter of 21<sup>st</sup> July 2010 reflects the basis of the information that was tabled to the Planning Officer

*Further to our meeting dated 25/06/10 I am writing to confirm that unfortunately the landowner we are in talks with is currently very ill and we are unable to complete the agreement at this time. I would confirm that I remain confident that an agreement can be made with the landowner but am unable to progress the agreement until his health returns.*

*Our preference remains that it would be better to condition this particular concern, if you require to discuss the matter further please call the above number.*

We note that the Planning Officer states that Mr Struthers wrote 'unsolicited' to the department this was contrary to what we believed so we attempted to get a copy of the note demonstrating contact with Mr Struthers but it was no longer in the file. Mr Struthers letter starts by stating that he was writing 'further to information presented to me..'

Irrespective of this we had not been asked at any point by the planning officer to purchase the land only that we had to provide a letter demonstrating that control could be achieved.

- c) The property at Bankfoot had clearly fallen out of use as a dwelling house for at least 30 years – this would have been clear at the time of the site visit by the same Planning Officer – pictures have been previously attached.

The property at Bankfoot therefore required a change of use of the building to residential use. This was not requested by the Planning Department when it is clearly the same type of property as ours.

We refer to the previously attached pictures of Bankfoot which show clearly that it is not a 'one for one' replacement. There was a huge increase in floor area and rooms and Bankfoot had not been used as a dwelling therefore there was clearly a net increase in traffic.

d) The summary is misleading, our query was that if there were concerns regarding road safety when considering Bankfoot (which there clearly were as there were planning conditions relating to road safety) – then the conditions attached would have ensured that the junction was considered safe for use when the conditions were cleared.

We would also note that our proposal was not submitted until February 2008 – which was not the case our proposal was submitted in November 2007 but was not considered to be valid until 2008.

e) Negotiations with Moat Cottage were not required as Robert Forrest agreed that the entry to the road was adequate and sight lines to the left were acceptable. He requested an improvement to the sight lines to the right which we were trying to negotiate with Mr Struthers. He was also satisfied that these could be suspensive conditions.

f) Bankfoot was a derelict building that required planning consent for a change of use to residential, this was clearly not a one for one replacement. The road widening and creation of a verge could not be carried out entirely with the applicants or council land, control of third party land was required.

We are gravely concerned that the Roads Department have stated that no improvement to visibility was required during this visit yet the circumstances were the same for both applications.

Condition 12 is required in the interest of public safety and it is not appropriate for the Planning Officer to dismiss this condition as ‘minor’ . The ‘council have to be satisfied that these conditions can be achieved.’ refer to SLC statement of Observation point 3. d). We would also note that the landowner was not notified either as a neighbour nor as an owner as we had discussed the matter with him at that time. We did however owner notify him of our intentions and there was no objection made by him at that time.

In relation to the statement about Mr Hunter at Bankfoot we are not sure what this statement means but it is not relevant as there was no requirement to change any land under control of Mr Hunter.

Again the point is raised that sightlines were not shown on our drawings yet despite attempts to get drawings showing sightlines on five neighbouring applications we have not been successful, refer to CL/09/0303 CL/04/0682 CL/05/0550 CL/07/0585 CL/01/0334. Again we believe that we are the only party that have been requested to show this information unless SLC can provide us with information to the contrary.

We also remain satisfied that had our discussions with neighbours not be compromised by the inappropriate actions of South Lanarkshire Council we would have been able to get agreements in place.

**COMMENTS TO PLANNING REPRESENTATION FROM INTERESTED  
PARTY – MR STRUTHERS EMAIL 19/07/11**

**IN RELATION TO PLANNING APPLICATION No: CL/08/0054  
DATE 8<sup>TH</sup> AUGUST 2011**

We would like the following comments to be read in response to the comments made by Mr Struthers 19/07/11. (We would note that there was no response from Mr Struthers during the first review process. )

1. Mr Struthers confirms the net loss in traffic volume.
2. Mr Struthers confirms that he is the landowner of the access road up to the public highway – this includes the section of access road that Bankfoot makes access onto before they enter the public highway.
3. He comments that in his opinion the private access road is unsuitable for additional residential traffic. This statement is in keeping with his letter of concern dated 23<sup>rd</sup> February 2008 which he submitted to the planning department during the notification period. In this letter he identified his concerns and put forward a number of solutions that could resolve these concerns. We have always and still intend to take these concerns into consideration and come to an agreement with Mr Struthers.
4. Mr Struthers has now added that he ‘ remains convinced that the junction and access road is unsuitable for additional residential traffic. ‘ This is an opinion that has not been raised by Mr Struthers until this time. His original letter of February 2008 makes no comment regarding his opinion on the safety of the junction with Hawksland Road – for this reason this comment should be disregarded by the review panel.
5. Mr Struthers comments regarding his refusal to sell land at the junction may well be correct we have had no discussions with him regarding purchasing this land. We have been trying to negotiate demonstrating control in relation to visibility.
6. The comments are exactly those we would expect from a businessman and demonstrates how deeply the actions of South Lanarkshire Council have compromised our negotiations as Mr Struthers is very aware that we will not get planning without agreement to control the visibility.
7. Mr Struthers final opinion summarises our entire concern with this situation. It is not in keeping with his original letter 2008 but has changed on the basis that he believes that it is up to him whether we get planning permission or not.

In general Mr Struthers retrospective concern regarding safety at the junction should be discounted as this was not an issue he had ever raised until he was made aware that it was a useful lever for him. His letter instead should be used as evidence of how South Lanarkshire Council managed to make a straight forward amicable negotiation into farce where a member of the public has effectively been given the key decision making role in the planning process.

Irrespective of what Mr Struthers states at this time we remain fully convinced that as a suspensive condition an agreement would be reached between both parties.

## 6.0 CONCLUSIONS

We again stress that we do not ask for any preferential treatment from South Lanarkshire Council in relation to planning conditions and road safety matters – we only ask to be treated fairly and equal in comparison to the other applicants aforementioned. We would now request clarity regarding the failure of the initial Review Process. There should some accountability for the failure to follow the procedure. We are sure that the repetition of this process has compromised our position.

We are now even more concerned that have and continue to be unfairly treated namely for the numerous reason mentioned. Our key concern remains the requirement to provide written permission from the landowner that we are in negotiation with, prior to granting planning permission, has disadvantaged us in these negotiations. SLC by their actions have placed the landowner in a position to ‘ransom’ any negotiation. South Lanarkshire Council’s interference in a negotiation relating to a civil matter which may involve monetary compensation has unfairly disadvantaged us.

Whilst the details of this civil matter remain confidential we continue to stress that should safety issues relating to the use of this junction be made conditional we are confident that all matters relating to these concerns can be overcome.

We request that South Lanarkshire Council treat any dialogue or correspondence from any party involved in this civil negotiation with extreme caution as SLC may be used as a pawn to prosper another party.

We feel that this situation has occurred as a direct result of interference by the Planning Department in a civil matter.

We feel that the matter would be resolved, as agreed with the Roads Officer, by conditioning any road safety issues in the planning permission.

It should be noted that we are currently seeking legal advice in this matter.

**Mr & Mrs Burns**  
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