

Appendix 7

Notice of Review Process – Further Submissions

Submission From

- ◆ Statement of Observations from Planning Officer on Applicant's Second Notice of Review
- ◆ Further representation received from Mr Gavin Struthers, Moat Mains Farm, Hawksland, Lesmahagow dated 19 July 2011

STATEMENT OF OBSERVATIONS

Planning Application No: CL/08/0054

**Conversion and alterations to outhouse to form residential dwelling
Moat House, Hawksland Road, Hawksland, Lesmahagow, ML11 9PY**

1.0 Planning Background

- 1.1 Mr & Mrs P Burns submitted a planning application for detailed planning permission (CL/08/0054) on 27 November 2007 to South Lanarkshire Council for the conversion and alterations to a non-domestic outbuilding to form a new residential dwelling within the land of Moat House. The application was subsequently registered on 2 February 2008.
- 1.2 The applicant was made aware of issues with the design of the development at the validation stage. The road safety issues raised by Roads and Transportation were discussed with the applicant and their agent at a meeting in the Council offices held on the 27th February 2008. After over two years of protracted discussions, meetings and sketch submissions and after due consideration of the application in terms of the Development Plan and all other material planning considerations, planning permission for the proposed new dwellinghouse was refused under delegated powers on 31 January 2011 (CL/08/0054). The report of handling dated 28 January 2011 explains the decision and the reasons for refusal are listed in the decision notice.
- 1.3 An undated Notice of Review of the decision to refuse planning permission was submitted by Mr Burns in May 2011. The Planning Officer subsequently prepared a statement of observations for submission to the PLRB. These representations were sent to Mr Burns for comments. However, the list of interested parties in respect of the application which had been provided at that time was incomplete and, as a result, the review process had to be repeated to afford all interested parties the opportunity to respond. This resulted in Mr Burns submitting a second Notice of Review dated 4 July 2011. The Notice states that new matters that were not before the planning officer when the application was determined are raised. Reference is made to anomalies raised by the Council, presumably in the statement of observations, although the actual nature of the issues is not clear. Mr Burns's reasons for requiring the review have been slightly amended and a response to the statement of observations has also been submitted. As a result, the statement of

observations has been updated to include a new section 4 that incorporates a response to the most salient matters raised by Mr Burns. The rest of the original statement remains unchanged.

- 1.4 In terms of the application under review, I consider it is important to note the difference with the application by Mr and Mrs Burns and that approved at Bankfoot Cottage. The application refused was for the creation of a new additional dwelling by converting an outbuilding. This would be an increase in traffic from the existing junction onto Hawksland Road. The approved property now called Bankfoot Cottage was a replacement dwelling with the original residential unit on the site being unfit for purpose. This development was considered to have no net gain in vehicle or pedestrian movements as the existing use was residential and had an existing vehicle access onto junction with the main road.

2.0 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 Plan. The site is identified as lying within the rural area where policies STRAT 4: Accessible Rural Area and CRE 1: Housing in the Countryside apply. These policies set out the circumstances in which new housing in rural areas can be given favourable consideration and includes the conversion of former agricultural buildings to residential use. The policy also states the criteria that should be met to make the development acceptable for each case. The criteria relevant to this development are:
 - (d) The building is of a size that is capable of accommodating the proposal without the need for major extensions or alterations;
 - (e) Alterations are sensitively designed in order to retain the traditional character of the building and the indigenous architectural character of the area. Similarly, landscaping, car parking provision, hardstanding and boundary treatments must be in keeping with the character of their rural location;
 - (f) The new dwelling meets access and parking standards and can be readily provided with services such as water, drainage and sewerage;

2.3 The proposal fails to comply with Policies STRAT 4 and CRE 1, in particular criteria (d), (e) and (f) of the latter policy. Criteria (d) states that the building should be of a size that is capable of accommodating the proposal without the need for major extensions or alterations. Criteria (e) requires that alterations are sensitively designed in order to retain the traditional character of the building and the indigenous architectural character of the area. Similarly, landscaping, car parking provision, hardstanding and boundary treatments must be in keeping with the character of their rural location. Both these consider the design of the development and the retention of the character of the existing building. The principle of converting this building is acceptable, however after several discussions and the presentation of alternative draft designs at meetings no amended plans were formally submitted over the two years the application was with the Council and therefore the original proposals are those that were determined. It has been demonstrated in the report of handling that the level of alterations and additions proposed on the submitted drawings are unacceptable in terms of policy.

2.4 Criteria (f) requires that the new dwelling meets access and parking standards and can be readily provided with services such as water, drainage and sewerage. The consultation response from Road and Transportation Services recommends refusal of the application as the existing access road serving the site is not to an acceptable standard, both at the angle it joins Hawksland Road and the lack of visibility when exiting the junction. Roads noted in their response that the applicant did not control the land required to make necessary improvements to the junction and therefore recommended refusal as a safe junction could not be achieved within the applicants ownership. Several discussions with the applicant took place on the options open to them to improve the junction to a suitable standard but all options required the applicant to demonstrate control of sufficient land to effect the necessary alterations. It became obvious that despite having several months to negotiate a solution with the land owner that this control was not forthcoming, therefore the planning department decided it could no longer delay the decision on this application.

3.0 Observations on applicants 'Notice of Review'

3.1 The applicants have submitted a statement to support their review. The grounds are summarised below.

- (a) **The appellants consider that an alternative design can be agreed to develop this outbuilding.**

Response: The principle of conversion for this building is acceptable and this has never been an issue. The applicant had made some attempts to modify the design but as no amended plans were submitted during the application process the decision notice reflected the plans submitted. The design will have to be significantly simplified and scaled down to be acceptable which could not be processed by condition.

- (b) **The appellants have stated that the access road was previously used by a greater volume of traffic and this traffic was reduced when an alternative access was built at Blackhall. They argue that this represents a net loss in traffic flow.**

Response: The access onto Hawksland Road is considered to be a road safety issue due to the acute angle it enters traffic and the very poor visibility. As an existing road junction serving only a few properties the existing use can not be controlled by the Council. However any increase created by the introduction of an additional residential unit is considered an unacceptable risk to road safety. The fact historic traffic levels on this road have been reduced is noted but this change in traffic flow was created nearly 30 years ago in the early 80's as a result of the Broken Cross open cast mine being created.

- (c) **The appellants argue that their application is no different to the approval of Bankfoot Cottage. They make reference to the conditions imposed on that application in relation to the access and parking.**

Response: As stated above, the approval at Bankfoot related to a replacement house using an existing access onto Hawksland Road and therefore an additional unit was not created. The conditions attached to the application were all designed to consolidate and improve on the existing access and create adequate parking and turning space within their site using appropriate materials in the construction. As an existing residential unit that could be repaired and extended to create a similar unit while utilising the existing access, the Roads and Transportation Service had no objections to that application. The improvements required by the conditions attached to

Bankfoot Cottage did not improve the visibility or angle of the junction onto Hawksland Road.

- (d) **The appellants feel they are being unfairly treated by the planning department in insisting that they show control over the land required to implement the required improvements to the junction. They quote several application approved over the last 10 years to demonstrate their point.**

Response: To impose conditions on an application the Council have to be satisfied that these conditions can be achieved. Each planning application is determined on its own merits and assessment of these other applications meant the Council was satisfied that the development could be implemented without prejudicing road safety. In this case the council required the improvements to be shown on the plans and evidence in writing that the land owner would allow the works to be carried out. In addition this would require the red line boundary to be adjusted to include the road improvements and accepted visibility splays. Under the planning legislation planning conditions can only be enforced if within the red line application site or on land is in the applicant's ownership or can provide evidence of control over the land. In this instance both adjoining landowners had stated that no agreement for the use of their land was in place.

4.0 Observations on the applicants Notice of Review dated 4 July 2011

- 4.1 The additional matters raised by Mr Burns are summarised below and a response is made to each point.

- (a) **The applicant notes that there are no objections to the application. This is confirmed in the three letters of comment received by the Council and the Report of Handling referring to 0 objections and two letters of comment.**

Response: Firstly it is confirmed that three letters of representation were received by the Council during the processing of the application. To clarify how these representations were considered by the planning officer, the letter received from Mr Gavin Struthers dated 23 February 2008 was treated as an objection on the basis of the contents of the

letter and the concerns that were raised by him. This letter is referred to in para 3.1 of the Report of Handling and clearly states that it is an objection. The letters from Mr S Hunter dated 6 February 2009 and Mr Gavin Struthers dated 11 November 2010 were treated as comment letters as in both cases they contain statements of fact but do not include any opinion on the merits of the proposal.

- (b) **A landowner, who the applicants were in negotiations with over gaining control over land to provide the required junction improvements, was informed that they had advised the Council that a verbal agreement was in place. They had told the Council in writing that this was not the case but that they were confident an agreement could be made.**

Response: There is no record or evidence that the landowner was advised in the manner described. Mr Struthers the landowner in question subsequently wrote unsolicited to the Council by letter dated 11 November 2010 to advise that no agreement, verbal or otherwise, had been made with the applicant to sell land. The need to improve the junction had been raised with the applicant early in the processing of the application following receipt of the consultation response from Roads and Transportation Services dated 28 February 2008.

- (c) **It is claimed that the description of the outbuilding the subject of the application as non-domestic is inaccurate. It was the original farm house and has been used for storage for 30 years. This is the same as Bankfoot Cottage.**

Response: The applicant confirms elsewhere that the building has not been in use as a house in that 30 year period. Therefore a change of use to of the building to residential use is required. In contrast the application at Bankfoot was for the erection of a replacement house as there was no evidence at the time of processing it that it had fallen out of use as a dwellinghouse. The proposal involved a one for one replacement which was not considered to involve an increase in traffic.

- (d) **The applicant states he is unclear why the road safety issues relating to their proposal were not addressed at the time the application for Bankfoot Cottage was under consideration.**

Response: The Bankfoot application was granted planning permission on 29 May 2007. The applicants proposal was not submitted until February 2008 and therefore could not have been taken into account.

- (e) **Negotiation with one of the landowners has already been resolved to the satisfaction of the Roads department.**

Response: No evidence has been provided that this is the case nor has the identity of that party been revealed.

- (f) **Road safety was raised as a concern by both Planning and Roads at the time the application at Bankfoot was considered. The applicant refers to conditions that were attached to the consent for the replacement house, namely condition 11 requiring the widening of the public road to 5.5m and provision of a 2m wide verge along the frontage of the site and condition 12 which required the first 3m of the private road to be resurfaced in a bituminous material.**

Response: As noted in 3 (c) above, no objections were raised by Roads and Transportation Services to the Bankfoot application as they recognised there would not be an increase in traffic as the proposal involved a one for one replacement house. Their consultation response specifically states that sightline improvements were therefore not required. The road widening and creation of the verge required under condition 11 could all be carried out on land either in the applicants title or within the extent of the public highway. Control of third party land to carry out these works was not required.

The works required under condition 12 are minor and involve land in the ownership of a third party. An ownership notice was served on the landowner and no objections were received from that party. It could therefore be assumed that there would not be an issue with implementing the works. In addition, the red line defining the application site included the necessary land.

In the case of this application, an ownership notice has been served on the owners of Bankfoot. In contrast to the earlier application for the replacement house at that property, representations were made by Mr

Hunter that permission had not been given to use land in his ownership.

An ownership notice has also been served on Mr Struthers in terms of his ownership of the access road to the site from the public road. Discussions did take place with the applicants in respect of improving sightlines at the junction of those two roads. However, proposals were not submitted to demonstrate how this could be achieved nor were a speed survey carried out that may have led to a reduction in the extent of the sightlines. In any event it has not been shown that control of the land in the ownership of Mr Struthers is not required. Representations have been received from him advising that an agreement has not been reached with the applicants. In addition, the applicant has failed to extend the red line boundary to include the land required to form the sightlines. As a result a suspensive condition could not be employed to require junction improvements to be carried out.

5.0 Conclusions

- 5.1 In summary, the proposed development does not accord with the provisions of the adopted local plan and would create an unacceptable road safety issue with the creation of an additional residential unit on this access. In addition, there are no material considerations which outweigh the reasons for refusal as listed on the decision notice. Subsequently, the Planning Authority therefore requests that the Review Body refuse Detailed Planning Permission.

Sent: 19 July 2011 16:26

To: Planning LRB

Subject: Further representation of planning review CL/08/0054

Importance: High

Dear Planning Officer,

Further to review of planning case documents regarding the conversion of Coach building (application number CL/08/0054) I would like to inform you that the access road used by the Moat House was changed for all farms via Blackhall entrance by the Beattie Brothers and subsequently National Coal to improve vehicular access and safety in the late 1940's. Moatmains Farm has been under management of G & M Struthers since the late 1940's and ownership was secured in 1953. I can confirm that access for the farms has been via the Blackhall route since this time.

I can also confirm that the Coach building has never been used as a residential dwelling in this time.

I understand that as landowner I am responsible for the private access road to the tar junction of the public highway to Hawksland road.

I remain convinced that the junction and access road is unsuitable for additional residential traffic and therefore my position on transferring land to allow widening of the junction remains the same and I have no intention in selling land for this purpose.

I feel that the previous refusal of planning on the grounds of road safety are highly appropriate and trust the initial outcome is upheld.

Yours sincerely,

Gavin Stuthers.