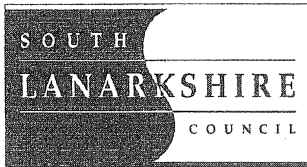


Appendix 5

Original Notice of Review, Statement of Observations and applicant's response to the Statement of Observations (superseded)



For official use: NOR/ ___ / ___ / ___
Date received by PLRB: ___ / ___ / ___

Notice of Review

Under Section 43A(8) of The Town and Country Planning (Scotland) Act 1997 (as amended) in respect of decisions on local developments
The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008
The Town and Country Planning (Appeals) (Scotland) Regulations 2008

This notice requires to be served on the Planning Authority within 3 months of the date of the decision notice or from the date of expiry of the period allowed for determining the application which is set as 2 months following the validation date of the application

IMPORTANT: Please read and follow the guidance notes provided when completing this form. Failure to supply all the relevant information could invalidate your Notice of Review.

Please complete in BLOCK CAPITALS

Applicant(s) Agent (if any)

Name: MR PATRICK BURNS

Name: WILLIAM SPEIRS

Address: MOAT HOUSE
HAWKSLAND ROAD
LESHAHAGOW

Address: 2 RAMOTH
KIRKFIELD BANK

Postcode: ML11 9PY

Postcode: (PLEASE CONTACT APPLICANT)

Contact Telephone 1:

Contact Telephone 1:

Contact Telephone 2:

Contact Telephone 2:

Fax No:

Fax No:

E-mail:*

E-mail:*

Mark this box to confirm that all contact should be through this representative:

* Do you agree to correspondence regarding your review being sent by e-mail? Yes No

Application reference number: CL10810054

Site address: MOAT HOUSE, HAWKSLAND ROAD
LESHAHAGOW ML11 9PY

Description of proposed development: CONVERSION OF COACH HOUSE

Validation date of application: OCTOBER 2007

Date of decision (if any): 31 JAN 2011

Nature of application

- 1. Application for planning permission (including householder application)
- 2. Application for planning permission in principle
- 3. Further application (including development that has not yet commenced and where a time limit has been imposed; renewal of planning permission; and/or modification, variation or removal of a planning condition)
- 4. Application for approval of matters specified in conditions

Reasons for requesting review

- 1. Refusal of application by appointed officer
- 2. Failure by appointed officer to determine the application within the period allowed for determination of the application
- 3. Conditions imposed on consent by appointed officer

Review procedure

In cases where the Planning Local Review Body considers that it has sufficient information, including the Notice of Review, the decision notice, report of handling and any further representations from interested parties, it may, under Regulation 12, proceed to determine the review. It is anticipated that the majority of cases the Planning Local Review Body deals with will fall into this category.

The Planning Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable it to determine the review. Further information may be required by one or a combination of procedures, such as written submissions, the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Please indicate what procedure (or combination of procedures) you consider most appropriate for the handling of your review. You may tick more than one box if you wish the review to be conducted by a combination of procedures.

- 1. Further written submissions
- 2. One or more hearing sessions
- 3. Site inspection
- 4. Assessment of review documents only, with no further procedure

If you have marked box 1 or 2, please explain here which of the matters (as set out in your statement below) you believe ought to be subject of that procedure, and why you consider further submissions or a hearing are necessary:

IN ORDER PRESENT WITNESS'S TO PARTICIPATE IN THE REVIEW

Site inspection

In the event that the Local Review Body decides to inspect the review site, in your opinion:

- | | | |
|--|-------------------------------------|-------------------------------------|
| | Yes | No |
| 1. Can the site be viewed entirely from public land? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 2. Is it possible for the site to be accessed safely, and without barriers to entry? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

If there are reasons why you think the Planning Local Review Body would be unable to undertake an unaccompanied site inspection, please explain here:

YES LOOSE DOGS. VISIT IS ENCOURAGED AND CAN BE EASILY ARRANGED BY CALLING

Statement of reasons for requiring the review

You must state, in full, why you are requesting a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. Note: you may not have a further opportunity to add to your statement of review at a later date. It is, therefore, essential that you submit with your Notice of Review all necessary information and evidence that you rely on and wish the Planning Local Review Body to consider as part of the review.

If the Planning Local Review Body issues a notice requesting further information from any other person or body, you will have a period of 14 days in which to comment on any additional matter which has been raised by that person or body.

State here the reasons for your Notice of Review and all matters you wish to raise. If necessary, this statement can be continued or provided in full in a separate document. You may also submit additional documentation with this form.

SEE ATTACHED SHEET : REASONS FOR REQUIRING
REVIEW.

Have you raised any matters which were not before the appointed officer at the time the determination on your application was made? Yes No

If yes, you should explain in the box below, why you are raising new material, why it was not raised with the appointed officer before your application was determined and why you consider it should now be considered in your review.

List of documents and evidence

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your Notice of Review and intend to rely on in support of your review.

REASONS FOR REVIEW
 LOCATION
 PLANNING PERMISSION CL/07/0215

Note: A copy of the Notice of Review, the review documents and any notice of the procedure of the review will be made available for inspection by prior appointment (Phone: 08457 406080) at the office of Planning and Building Standards Services, Montrose House, 154 Montrose Crescent, Hamilton ML3 6LB until such time as the review is determined. It may also be made available on the Council's website.

Checklist

Please mark the appropriate boxes to confirm that you have provided all supporting documents and evidence relevant to your review:

- Full completion of all parts of this form
- Statement of your reasons for requiring a review
- 2 copies** of all documents, materials and evidence which you intend to rely on (eg planning application form, plans and drawings, decision notice or other documents) which are now the subject of this review.

Note. Where the review relates to a further application, eg renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice from that earlier consent.

Declaration

I the applicant/agent [delete as appropriate] hereby serve notice on the planning authority to review the application as set out on this form and in the supporting documents.

Signed:

Date:

This form and 2 copies of all supporting documents should be sent to:-

**Head of Planning and Building Standards Services
 Enterprise Resources, Montrose House, 154 Montrose Crescent, Hamilton ML3 6LB**

Email: enterprise.hq@southlanarkshire.gov.uk

Phone: 08457 406080

For more information or if you want this information in a different format or language, please phone 01698 455379 or send email to enterprise.hq@southlanarkshire.gov.uk

For official use

Date stamp)

REASONS FOR REQUIRING REVIEW

We are requesting a review of the planning decision made by your department in January 2011 for the reason that we feel that we have been unfairly treated, discriminated against and been put at an unjust disadvantage by the actions and demands of South Lanarkshire Council when compared to similar applications made by other parties in close proximity.

We would like to respond to the reasons for refusal issued by your department.

- 1 Relates to drawing numbers – noted.
- 2 Alterations & extensions are excessive and not sensitively designed – a meeting was held with the planning officer and agreement made in principle to amendments that will meet the satisfaction of South Lanarkshire Council, drawings were not reissued to reflect these changes as agreement could not be made over points 3 and 4 for reasons that follow. We are satisfied that a design could be tabled that meets the satisfaction of the planning officer – drawings were not amended as were advised that the planning was unlikely to be passed with resolving the other concerns. Drawings could be redesigned and issued quickly if the ruling was overturned.
- 3 This is the existing access road onto Hawksland Road for the following farms and properties; Auchmeddan, Moat Mains, Beechfield, Moat and Bankfoot prior to a new access being built at Blackhall which then greatly reduced the volume of traffic along the original access road to only Moat House, Bankfoot and occasional farm traffic – this can be confirmed by the owner of the access road Mr G Struthers.

In relation to the statement that ‘The proposal would intensify vehicular use of a substandard access to the detriment of traffic and public safety.’ we would comment as follows. A planning application was made in the same year as ours by neighbours to build a new house planning reference CL/07/0215 (see attached) in the grounds of Bankfoot, which shares the same access road. This application was passed to build a new house and subsequently a parking provision was required by South Lanarkshire Council to accommodate 3 vehicles which was a threefold increase on vehicle access into this property. Whilst this increased the potential flow of traffic on the access road it still falls far short of the original flow of traffic along this access prior to construction of the new access at Blackhall. When considering the planning conditions attached to CL/07/0215 we presume the same criteria as our application with regards to road safety was implemented and was achieved by conditions 9, 10, 11 & 12. It is our understanding that these conditions were being undertaken during the time our application was being considered. We can clearly demonstrate that access onto the public highway from Moat House is safer than taking access onto Hawksland Road from Bankfoot. We would also argue that the total resultant amount of vehicular traffic on this access road still results in an overall reduction on the amount of traffic originally using the road prior to the new access at Blackhall.

In regards to your comments that it is a substandard access your planning officer will confirm that we have always demonstrated a willingness to upgrade and improve this access which would also assist the Roads Department to resolve an ongoing problem of persistent flooding, road deterioration, ice formation and preventing deleterious material being deposited onto the highway. As your Roads Officer will be aware this has been a constant source of complaint and expense to the council and is still to be resolved.

4 Our primary argument would be that there is no requirement for us to control any land as any improvements required to the existing vehicular access will have been achieved by planning application CL/07/0215. As both planning applications relate to use of the exact same access applied for at the same time and dealt with by the same department that both applicants and applications are treated on an equal basis.

Whilst we did not agree with South Lanarkshire Council's decision that improvements were required we have demonstrated our willingness to achieve an acceptable compromise by agreeing improvements with the roads department. We were then very surprised to find out that these improvements we were committing to would not be conditioned as part of the planning permission but would require to be formalised prior to planning permission being granted in any form. We did not feel that we were being treated fairly by South Lanarkshire Council as we were aware that junction improvements were generally conditioned, demonstrated by the following planning permissions that have all been granted on adjacent properties to ours on Hawksland Road: CL/07/0215 CL/09/0303 CL/04/0682 CL/05/0550 CL/07/0585 CL/01/0334. It should be noted that the Roads officer had no concerns about the improvements being conditional.

Despite this we then attempted to commence negotiation with respective landowners and were dismayed to discover that it was quite clear that they had been informed by South Lanarkshire Council that without written authorisation planning permission would not be granted. This completely disadvantaged our negotiation position as these parties were now correctly of the belief that it was their decision whether we got planning permission or not. South Lanarkshire Council had effectively passed the determination of planning over to members of the public. Individuals who had not objected to the original planning application were now the decision makers which totally disadvantaged our negotiation and it became evident that we were being held to ransom.

As the property had no planning permission it effectively had little financial value. It was impossible to determine a value for the control of land when it was becoming evident that more and more obstacles were being put in our way and as a result our confidence in planning being granted was diminishing. We were reluctant to make payments that would be unrecoverable in the event of planning being refused.

In relation to point 4 we feel that the requirements imposed on us by South Lanarkshire Council have been unfair and the actions of South Lanarkshire Council have undermined and disadvantaged our negotiations with third parties.

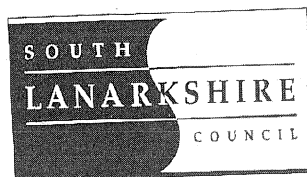
In summary

We don't ask to have rules waived or be treated differently, all we ask is that we are treated equally and fairly. Considering the points we have raised above we ask that the review board reconsider and overturn the decision made by the Planning Department 31/01/11. We ask that in relation to point 2 we can have the opportunity to submit amended drawings that satisfy the planning department. It is our understanding that there are currently no objections to this planning application and that the Planning Department are in principle sympathetic to this development.

We would urge that the review board dismiss points 3 & 4 on the basis of the aforementioned evidence presented.

Should it be the opinion of the review board that points 3 & 4 should form part of their final decision on this matter we would ask that we are treated equal to other applicants in the area whereby planning permission is granted and any concerns are resolved by imposing planning conditions.

CONDITIONAL PLANNING
PERMISSION



APPLICATION NO:

CL/07/0215

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

To: **Mr S Hunter**
Landmark House
126 D Burnley
Padiham BB12 8SJ

Per **Mrs J Barbour**
13 Cherry Tree Drive
Blackwood
ML11 9TF

With reference to your application dated 09 March 2007 for Planning Permission under the above mentioned Act:

Description of Proposed Development:
Erection of 1 ¼ storey replacement dwellinghouse

Site Location:
Moat Cottage
Hawksland Road
Lesmahagow ML11 9PY

SOUTH LANARKSHIRE COUNCIL in exercise of their powers under the above mentioned Act hereby :

GRANT PLANNING PERMISSION

for the above development in accordance with the accompanying plan(s) and particulars given in the application, subject to the condition(s) listed overleaf in the paper apart. The condition(s) are imposed by the Council for the reasons detailed.

Date : 29/5/2007

Colin McDowall, Head of Planning and Building Control Services

This permission does not grant any consent for the development that may be required under other legislation, e.g. Building Warrant or Roads Construction Consent.

SOUTH LANARKSHIRE COUNCIL
ENTERPRISE RESOURCES
Planning and Building Control Services

PAPER APART

CONDITIONAL PLANNING PERMISSION
APPLICATION NUMBER: CL/07/0215

CONDITIONS

- 1 That the development hereby permitted shall be started within five years of the date of this permission.
- 2 That the development shall be carried out strictly in accordance with the plans hereby approved and no change to the design or external finishes shall take place without the prior written approval of the Council as Planning Authority.
- 3 That notwithstanding the terms of Condition 2 above, the roof of the dwellinghouse hereby approved shall be finished in slate or a good slate substitute and the windows to be timber with a painted finish.
- 4 That before any development commences on site or before any materials are ordered or brought to the site, details and samples of all materials to be used as external finishes on the development shall be submitted to and approved by the Council as Planning Authority.
- 5 That before development starts, full details of the design and location of all fences and walls, including any retaining walls, to be erected on the site shall be submitted to and approved by the Council as Planning Authority.
- 6 That the existing trees and hedges on site to be retained and must be protected in accordance with methods as set out in BS5837/1991 during and until completion of all site operations and building works.
- 7 That before any work commences on the site, a scheme of landscaping shall be submitted to the Council as Planning Authority for written approval and it shall include:(a) an indication of all existing trees and hedgerows plus details of those to be retained and measures for their protection in the course of development; (b) details and specification of all trees, shrubs, grass mix, etc.; (c) details of any top-soiling or other treatment to the ground; (d) sections and other necessary details of any mounding, earthworks and hard landscaping; (e) proposals for the initial and future maintenance of the landscaped areas; (f) details of the phasing of these works; and no work shall be undertaken on the site until approval has been given to these details.
- 8 That the approved landscaping scheme shall be completed to the satisfaction of the Council as Planning Authority during the first available planting season following occupation of the building or completion of the development hereby approved, whichever is the sooner, and shall thereafter be maintained and replaced where necessary to the satisfaction of the Council.
- 9 That before the dwellinghouse hereby approved is completed or brought into use, a turning space shall be provided within the site to enable vehicles to enter and leave the application site in forward gears at all times.
- 10 That before the dwellinghouse hereby approved is completed or brought into use, a private vehicular access or driveway of at least 12 metres in length shall be provided and the first 6 metres of this access from the heel of the footway/service strip shall be hard surfaced across its full width to prevent deleterious material being carried onto the road.
- 11 That before any development starts, the carriageway of the public road shall be upgraded and widened over the frontage of the site to 5.5m with a 2m wide grass verge at the expense of the developer, all in accordance with the specification of the Council as Roads and Planning Authority.
- 12 That the access point from the private access road onto the public highway shall be reconstructed in a bituminous material for a distance of 3 metres from the edge of the public highway, to the satisfaction of the Planning Authority.
- 13 That before the dwellinghouse hereby approved is completed or brought into use, 3 no. parking spaces (2.5m x 5m modules) shall be laid out, constructed and thereafter maintained

NA



*

- to the specification of the Council as Roads and Planning Authority.
- 14 Prior to development commencing on site, a scheme for the control and mitigation of dust shall be submitted to and approved in writing by the Council as Planning Authority. No changes to the approved scheme shall take place unless agreed in writing by the Council as Planning Authority. The scheme shall thereafter be implemented in accordance with a programme to be agreed in writing with the Council as Planning Authority.
 - 15 That no development shall commence until details of surface water drainage arrangements have been submitted to and approved in writing by the Council as Planning Authority; such drainage arrangements will require to comply with the principles of sustainable urban drainage systems and with the Council's Sustainable Drainage Design Criteria and requirements.
 - 16 That no development shall commence on site until the applicant provides written confirmation from Scottish Water and SEPA to the Council as Planning Authority that the site can be satisfactorily served by a water supply and sewerage scheme designed in accordance with their standards.
 - 17 That before development starts, the results of soil porosity testing on the site to assess the suitability of the sub-soil for effluent disposal shall be submitted to and approved by the Council as Planning Authority.
 - 18 The area of private garden ground for the approved dwelling house is restricted to the area outlined in blue on the approved plans. Remainder of land in applicants ownership to remain as agricultural land.

REASONS

- 1.1 To accord with the provisions of the Town and Country Planning (Scotland) Act 1997.
- 2.1 In the interests of amenity and in order to retain effective planning control.
- 3.1 To ensure a satisfactory integration of the proposed development with the existing building both in terms of design and materials
- 4.1 In the interests of amenity and in order to retain effective planning control.
- 5.1 These details have not been submitted or approved.
- 6.1 To ensure that adequate steps are taken to protect existing trees on the site throughout the period of the proposed building operations.
- 7.1 In the interests of the visual amenity of the area.
- 8.1 In the interests of amenity.
- 9.1 In the interest of public safety
- 10.1 To prevent deleterious material being carried into the highway.
- 11.1 In the interest of road safety
- 12.1 In the interest of public safety
- 13.1 To ensure the provision of adequate parking facilities within the site.
- 14.1 To minimise the risk of nuisance from dust to nearby occupants.
To ensure that the disposal of surface water from the site is dealt with in a safe and
- 15.1 sustainable manner, to return it to the natural water cycle with minimal adverse impact on people and the environment and to alleviate the potential for on-site and off-site flooding.
To ensure that the disposal of surface water from the site is dealt with in a safe and
- 16.1 sustainable manner, to return it to the natural water cycle with minimal adverse impact on people and the environment and to alleviate the potential for on-site and off-site flooding.

- 17.1 To ensure that ground conditions are suitable for a soakaway to dispose of effluent.
- 18.1 In the interests of amenity and in order to retain effective planning control.

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 16 April 2009 (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 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 ownwersip. 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 registered objections to the application and stated that no agreement for the use of their land was in place.

4.0 Conclusions

- 4.1 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.

COMMENTS TO PLANNING REPRESENTATION

IN RELATION TO PLANNING APPLICATION No: CL/08/0054

We would like the following comments to be read in response to the Statement of Observations made by South Lanarkshire Council Planning.

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.

1.2 No comment

1.3 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 not as stated 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.

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. 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.

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.

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.

4.0 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 feel we have been unfairly treated namely that 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