

STATEMENT OF OBSERVATIONS

Planning Application No: P/19/1861

Residential Development (Permission in Principle)

Land 65M Northwest Of 16 Craighill Road

Craighill Road

Kilncadzow

Carluke

South Lanarkshire

1.0 Planning Background

- 1.1 Planning permission was sought for residential development (Permission in Principle) on Land 65M Northwest of 16 Craighill Road, Kilncadzow, Carluke. After due consideration of the application in terms of the Local Development Plan and other material planning considerations the application was refused by the Council under delegated powers on 05 May 2020. The report of handling dated 14 February 2020 explains the decision and the reasons for refusal are listed in the decision notice.
- 1.2 It should be noted that on 11 January 2017 the site had a planning application for residential development (permission in principle) application no: CL/16/0435, refused. The applicant appealed to the Council's Planning Local Review Body to review the decision to refuse planning application. The review body upheld the decision to refuse planning permission on 19 June 2017 Reference No: NOR/CL/17/001 dated 10 July 2017.
- 1.3 It should also be noted that the review site is currently being used as a riding arena.

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. The development plan in this instance comprises the adopted South Lanarkshire Local Plan and an assessment of the development proposal against the relevant policies is detailed in the officer report, dated 14 February 2020.

3.0 Other Material Considerations

- 3.1 On 29 May 2018 the planning committee approved the proposed South Lanarkshire Local Development Plan 2 (Volumes 1 and 2) and it is now a material consideration in determining planning applications. The proposed development was considered against the relevant policies in the proposed plan and it is noted that these policies are broadly consistent with the current adopted South Lanarkshire Local Development Plan. The relevant Policies are 4 – Green Belt and Rural Area and 5 – Development Management and placemaking of the approved Proposed South Lanarkshire Local Development Plan 2.

4.0 Observations on applicants 'Notice of Review'

4.1 The appellant's grounds for the review relate to 4 key issues which should be addressed in the review. The issues are summarised as follows:-

4.1.1 What is backland development?

The applicant states that reasons 2 and 4 of the Decision Notice P/19/1861 rely on the development constituting 'backland development'. The appellant admits that there is no definition in statute, or in established planning case law of what is meant by 'backland development'. Rather, it is a pejorative term commonly used in planning practice to justify the rejection of proposal for developments on sites which do not benefit from direct frontage to public roads. The appellant states that the term backland development has its origins in an era in which the essence of planning control was to ensure uniformity and to secure compliance with rigid standards. Recent Scottish Government advice in the importance of design has moved away from the former emphasis described above. The appellant states that the new approach does not disregard the need to respect privacy and overlooking considerations but there is no presumption in national policy against 'backland development'. The council has no specific planning policy which prohibits or contains any presumption against 'backland development'.

Response: The Council's policies contained in the adopted local development plan provide the basis for assessing and determining planning applications. Whilst not referring specifically to the term 'backland development' these policies set out criteria which attempt to ensure that proposed developments do not erode the character and amenity of the area and form an acceptable relationship with existing development whilst meeting current day standards in terms of privacy, amenity etc. As explained in the report of handling, the appeal proposal fails to comply with these policies.

4.1.2 In what way is the refusal of the Review proposal on Grounds of "Backland Development" consistent with comparable recent Council Decisions?

The appellant states that the key issue raised by the above question is whether there is any legal or moral obligation on the Council to determine like planning applications in a like manner. The standard defence frequently presented by planning authorities is that each application must be dealt with on its individual merits and as each application is materially different in one or another there is no common denominator which obliges planning authorities to adopt a consistent approach to decision making. The appellant refers to a Supreme Court judgement in the case of Tesco Stores V Dundee City Council (extract quote in 5.4 of appellant's statement) as the accepted dictum on the correct interpretation of local planning policy.

The appellant argues that as planning policies contained within the adopted Plan make no reference to "backland development" and the Glossary which forms part of the Plan similarly contains no reference to, or definition of, what is meant by "backland development", the Planning Local Review Body has no basis on which to determine that "backland development" is contrary to the policies of the Local Development Plan.

The appellant refers to Productions 4A to 4D to illustrate the inconsistency in recent Council decisions on planning applications relative to "backland development" including the refusal of the review proposal under delegated powers. The difference is that all of the "backland development" described in Productions 4A 4D were approved.

The appellant briefly describes the proposals in the productions referred to above and pays particular attention to Production 4B, a site in Lanark which the Delegated Report describes as "backland development". Despite being "backland development", the Lanark proposal was considered to comply with Policy 4 of the adopted plan insofar as

the site was “spacious “ and a house built on the site would be 10 metres from the nearest boundary. The appellant argues that the Review Site is almost exactly the same size as the site shown on Production 4B, and a house centrally positioned on the review site would be at least 20 metres from the nearest boundary and some 46 metres from the nearest house (Ref: Production 6). If the test which justified approval of the Lanark site are applied to the Review proposal it must be concluded that the Review site also complies with Policy 4.

Response: The determining issues in the consideration of this application were its compliance with the adopted local development plan and associated supplementary guidance, the impact on both residential and visual amenity of the surrounding area, relevant government advice and policy and other material consideration in the determination of the application. The Council determine all applications on the merits of their submissions. The appellant has based the comparison of the review site on one parameter – size, in which the appellant argues that the review site is almost exactly the same size as the site shown in Production 4B and a house centrally positioned on the review site would be at least 20 metres from the nearest boundary and 46 metres from the nearest house (Reference Production 6). The Council feel that the above comparison lacks a sound basis, particularly in view of the fact that the case referred to lies within the built up area of a town whereas the review site lies out with any settlement boundary.

4.1.3 In what way does the review proposal conflict with and adversely affect the existing character and established pattern of development in Kilncadzow?

The appellant refers to refusal reason 1 which states that “The proposed development does not comply with requirements of Policy 3 of the South Lanarkshire Local Development Plan (2015), Policy 4 and Policy GBRA4 of the Supplementary Guidance on Green Belt and Rural Area. The application is also contrary to Policy 4, Policy 5 and Policy GBRA7 of the proposed SLLDP2”, and argues that Policy 3 does not provide any sound basis to reject the proposal as being an “inappropriate form of development”.

The appellant considers 2 elements of Policy 3 – Green Belt and Rural Area and admits that the review site is located in the Rural Area and is located adjoining but outwith the defined settlement boundary. However, as part of Policy 3 states that limited expansion of an existing settlement may be appropriate where the proposal is proportionate to the scale and built of the settlement, Policy 3 does not preclude development of the review site provided that the proposal is proportionate in scale, built form, supportive sustainably and a defensible settlement boundary is maintained. The appellant also tries to ascertain under Policy 3 whether the review proposal is proportionate to the built form of Kilncadzow and states that the decision notice does not state in what way the review proposal contrasts with the established character of Kilncadzow but it is assumed by reference in the delegated report to the village being ‘linear’ and the multiple references in the refusal reasons to backland development suggest that the Council consider the proposal offends Policy 3 only by reason of being backland development.

The appellant states that the origins of the shape and form of Kilncadzow village date back to the 19th Century during the working of limestone at the local Craighenhill Lime Works. The settlement pattern of the village was established during this period as shown in production 7 and dispute that the original village was not linear as stated in the delegated report. The appellant refers to recent Council decisions on applications recently determined in Kilncadzow, CL/12/0421 and P/20/0156 (Production 5A) and argues that these proposals are on land out with the settlement boundary. The appellant feels that the decisions by the planning committee in respect of Applications,

CL/12/0421 and P/20/0156 are material considerations which the Planning Local Review Body must take into account in reaching a decision on the review.

The appellant refers to Policy GBRA4 (SLLDP) and Policy GBRA7 (SLLDP2) that relate to refusal reasons 2 and 3 respectively, and outlines the criteria that any development which may be permitted needs to satisfy – be of a small scale; respect the specific local character and the existing pattern of development of the community; maintain a defensible settlement boundary; have no adverse on road safety and be readily served by all necessary infrastructure. The appellant states that the review proposal has no tension with the development plan policy in respect of first point, principle of backland development not only has been a long-term characteristic of the development pattern of Kilncadzow but also been endorsed and consolidated by decisions taken by the South Lanarkshire Council as recently as May 2020; there would be no loss of amenity, overlooking issues or loss of privacy in the event of the approval of the review proposal and the review proposal is not an inappropriate form of development in Kilncadzow.

The appellant provides a list of Planning Applications approved outwith settlement boundaries under SLLDP to illustrate the exceptional nature of the decision to refuse the review proposal.

Response: The Council would re-affirm that all the applications referred to were determined on the merits of their submissions and the decisions justified in each case. In the case of application CL/12/421, approval of residential development outwith the settlement boundary was justified based on the funding of a rural business. Application CL/20/156 relates to a site within the settlement boundary.

5.0 Other Material Considerations

The appellant feels that the section of the delegated report relating to the Scottish Planning Policy (SPP) on the review proposal omits any reference to the objectives of SPP and instead focused only on a selective quotation from SPP which supported the decision on the application. It is misleading in the light of the context of Paragraph (v) of SPP for planning officers to extract particular statements from SPP and to disregard other key policy statements contained within the document which may point in a different direction from the outcome proposed by planning officials in the recommendation, or in this case to their decision, taken under delegated powers.

The appellant is of the view that Application P/19/1861 has not been subject to a proper balanced planning consideration and members of the Planning Local Review Body should be aware that Officer's decision on the review proposal is unsound in a number of respects.

The appellant states the delegated report acknowledges that planning permission was granted on the review site for the formation of an equestrian riding arena and associated stables; the equestrian arena was implemented and remained in regular use for over 10 years. Reference is made to one of the key principles inherent in the SPP which requires planning authorities to promote the re-use of previously developed land before considering approval of any development on greenfield sites.

The appellant states that submissions to the examination into the objections to the SLLDP2 suggest that there is a shortfall in effective housing land in the Clydesdale Housing Market Area. Confirmation by the Reporters of the existence of a shortfall in effective housing land would invoke Policy 12 of the adopted SLLDP.

The appellant gives an estimate of the cost of restoration of the site back into agricultural use and argues that there is no realistic prospect of the site reverting to agricultural use based on the estimated costs contained in Production 11. Unless reversed by the Review Body, the planning officer's decision allows no reasonable alternative future for the site.

Response: The Council is satisfied that the Officers' extract from the SPP is relevant for the consideration and assessment of the review proposal. It was not considered necessary to make reference to the objectives and not misleading to the extent that the outcome of the submission could have been different even if the objectives of the SPP were quoted in verbatim in the report. It is considered that the application has been subject to a proper balanced planning consideration based on the Council's adopted local development plan policy and the decision reached is considered sound in all respects.

The appellant's comments regarding a probable shortfall in effective housing land in the Clydesdale Housing market based on ongoing examination of objections to SLLDP2 is not only speculative but unfounded. There is no such shortfall.

The appellant's cost estimates on the restoration of the site back into agricultural use and the argument that there is no realistic prospect of the site reverting to agricultural use is not relevant to the assessment of this proposal as the current use represents an appropriate development and use of land within the rural area.

6.0 Conclusions

The proposed development does not comply with the requirements of Policy 3 of the South Lanarkshire Local Development Plan (2015), Policy 4 and Policy GBRA4 of the Supplementary Guidance on Green Belt and Rural Area. The application is also contrary to Policy 4, Policy 5 and Policy GBRA7 of the proposed SLLDP2. It is respectfully requested that the Review Body refuse planning permission for the proposed development.