

NOTICE OF REVIEW UNDER SECTION 43(A)8 OF THE
TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (As Amended)
TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND LOCAL
REVIEW PROCEDURE) (SCOTLAND) REGULATIONS 2013

**APPELLANT'S REGULATION 10(6) STATEMENT
IN RESPONSE TO THE UNDATED STATEMENT OF OBSERVATIONS
BY SOUTH LANARKSHIRE COUNCIL
AND IN RESPONSE TO REPRESENTATIONS
DATED 2nd JULY 2020 FROM
MRS D MUTUMHA**

**PLANNING APPLICATION REF: P/19/1861
Residential Development (Permission in Principle)
Land 65 Metres Northwest Of 16 Craighill Road
Kilncadzow
Carluke**

1.0 INTRODUCTION

1.1 This Statement has been prepared by Gainford Limited under Regulation 10 (6) of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013. on behalf of Mr. Andrew Blair.

1.2 The Scottish Government expect that local authorities in Scotland should operate the planning system under the legislation and national planning policy as agreed by government. The core values at the heart of the planning system are transparency, consistency and fairness.

“Consistency and transparency of information are central to the reputation and smooth running of the development management system. A balance is required between consistency of process across the country and providing flexibility to suit local circumstances”.¹

1.3 The decision-maker, whether an official or Local Review Body, can only be guided by the information before them at the time when a decision is taken. It is disappointing in this context that the perfunctory manner in which the Planning Officer’s Statement of Observations disregards key issues raised in the Notice of Review and instead focuses only on re-stating much of the content of the Delegated Report.

1.4 For this reason, the following response to the Council’s observations aims to highlight for the attention of the Local Review Body, those matters raised in the Notice of Review, and on which no substantive response has been offered in contravention of the Scottish Government’s requirement for accountability, accuracy, consistency and fairness in the operation of the planning system.

2.0 RESPONSE TO THE COUNCIL'S STATEMENT OF OBSERVATIONS

2.1 The purpose of the Planning Review process is to allow the Council the opportunity to explain and justify the rationale behind the reasoning of the Decision Notice. It is not enough for the Council merely to repeat that the proposal does not comply with policy. The Review process requires the Council to explain in detail the ways in which the proposal fails to comply with adopted policy. The Council’s Statement fails completely to explain or justify the refusal reasons.

2.2 The Notice of Review sets out the grounds for the appeal. This Statement comments on the Council’s response to each of these grounds.

(a) Backland Development

2.3 The Council acknowledge that there is no statutory definition of ‘*backland development*’ and that there is no reference to ‘*backland development*’ in any planning policy adopted by South Lanarkshire Council, or in any national planning policy approved by the Scottish Government. The Council’s

¹ Empowering Planning: An Independent Review of the Scottish Planning System: Scottish Government May 2016 ISBN 978-178652-294-8

response fails to clarify what is meant by '*backland development*' and similarly fails to clarify in what way the term '*backland development*' is injurious to amenity. The appellant's rights to comprehend and to be able to respond to the refusal reasons have been substantially prejudiced by the Council's failure to explain the meaning of the term, "*backland development*" as used by the Council.

(b) Consistency of Decision Making Relative to Council Policy

- 2.4 In the absence of any statutory, Scottish Government or South Lanarkshire approved definition of what is meant by '*backland development*' it is inevitable that different planning officers will apply different interpretations to different planning applications. This results in a total lack of consistency of decision making.
- 2.5 This inconsistency is illustrated in the Council's Observations under Paragraph 4.1.2. The Council refer to the Appellant Productions 4A-4D and to Production 6, and seek to justify the Carluke examples (where the approved houses are less than 3 metres from the site boundary) as being justified because the sites are in a town. In the Kilncadzow Review proposal the house if approved would be 20 metres from the site boundary and over 46 metres from the nearest house.
- 2.6 The Council approved policies apply uniformly. There is no approved Council policy which sets out different standards for proposals in urban and rural situations.
- 2.7 Policy 4 of the adopted Local Development Plan sets out the criteria against all applications must be assessed, whether in an urban, or a rural situation. The criteria include:
- Layout, scale, massing, design, external materials
 - Landscape, impact on Natura 2000 sites
 - Impact on Protected Species
 - Loss of amenity due to light overshadowing or noise
 - Loss of amenity due to noise, dust, odours and particulates
 - Adverse impact on public safety
 - Impact on the water environment
 - Impact on soil quality
 - Impact on Green Infrastructure
- 2.8 The Council had the opportunity through the Statement of Observations to specify which of the Policy 4 criteria apply to the Review Proposal, and to elaborate the way in which amenity is adversely affected.
- 2.9 The Council's Statement of Observations is completely silent on which of the Policy 4 criteria the Review Proposal offends. The refusal reasons are totally unsubstantiated.

2.10 The Council's position is summarised in the Delegated Report on Application P/19/1861 (The Review Proposal) in which the Delegated Report clearly states that the application has:

- *"No impact on privacy"*
- *"No impact on sunlight/daylight"*
- *"No impact on amenity"*

2.11 The refusal of Application is totally inconsistent with these findings, and no attempt has been made by the Council to correct or refute these statements as contained in the Delegated Report.

2.12 In assessing the impact of proposals under Policy 4 it is not enough merely to state that any particular proposal would impact on one or other of the criteria. The wording of Policy 4 clearly states that *"proposals should have no **significant** adverse impacts"*. In other words, proposals which may be considered only to have a minor impact on a particular issue would not offend Policy 4.

2.13 The *"**significant adverse impact**"* clause of Policy 4 necessitates not only an explanation of which criterion, or criteria, may be offended by the proposal, but it also necessitates a qualitative assessment from the Council of the extent to which the proposal impacts beyond that which might reasonably be regarded as being within the bounds of acceptability. Again, the Council's Statement is completely silent on this matter. No attempt has been made to justify the refusal decision against the policy wording approved by Council in the adopted Local Development Plan..

(c) Impact on the existing character of Kilncadzow

2.14 The Council do not challenge the fact that the historic development pattern is other than linear, and similarly do not dispute that recent permissions, whether within the settlement boundary or not, serve to consolidate the non-linear development pattern, and set a precedent for approval of the Review Proposal.

3.0 RESPONSE TO THE OBSERVATIONS OF MRS D MUTUMHA

3.1 The representations by Mrs Mutumha raise issues which were not before the Council when the decision was taken on 5th May 2020. In addition, the photographs are not dated and no indication has been provided of the location of each photograph. For these reasons little or no weight can be attached to these submissions.

3.2 Mrs Mutumha indicates that the surface water as illustrated on the photographs attached to her submission is the result of a damaged culvert, and that the resultant surface water affects the Review Site. If Mrs Mutumha is correct in her analysis, it is respectfully suggested that the most effective remedy is to allow the Review Proposal and present an incentive to the developer and subsequent occupier of the house on the Review Site to improve the drainage and to repair the culvert as part of the overall development.

4.0 CONCLUSION

- 4.1 It is respectfully suggested that the Council have failed to substantiate the reasons for refusal of the Review Proposal (Application P/19/1861)
- 4.2 No explanation has been provided in the Council's Statement of Observations as to how, or to what extent the Review Proposal adversely impacts in a significant way on the either the immediate locality of the Review site or on the established character of Kilncadzow.
- 4.3 For the reasons set out above, it is submitted that the application proposals can be fully and reasonably justified against the provisions of the approved local development plan.
- 4.4 Accordingly, it is respectfully requested that the Planning Local Review Body allow the proposal and grant planning permission in principle for this proposal.

Gainford Limited
29th July 2020