

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)

**REGULATION 10(6) STATEMENT IN RESPONSE
TO THE UNDATED STATEMENT OF OBSERVATIONS
BY SOUTH LANARKSHIRE COUNCIL**

PLANNING APPLICATION REF: P/19/0700

**Ardochrig Farm
East Kilbride
Glasgow
G75 0QN**

- 1.1 This Statement has been prepared by Gainford Limited on behalf of Mr. Eddie Lauder under Regulation 10 (6) of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.
- 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 Changes introduced by successive governments, including most planning applications now being dealt with under delegated powers, the introduction of increasingly “woolly” development plan policies open to widely varying interpretation, and in particular the increase in size of electoral wards have all served to distance elected members from the decision making process and to hinder the build-up of local knowledge, which is vital to the councillor’s role.
- 1.4 The elected member is now increasingly reliant on being fully and properly informed by officials. In the absence of proper briefing, there is a risk that the local electorate may be better informed on local planning issues than the elected member. This is particularly evident in relation to consistency and the perceived fairness of the planning system.
- 1.5 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 on re-stating much of the content of the Delegated Report.
- 1.6 For this reason, the following response to the Council’s observations aim 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.

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

ACCURACY AND ACCOUNTABILITY

The Extent to Which the Proposal has a Significant Adverse Impact on Landscape Character?

- 2.1 The Planning Officer's observations state [Para 3.1(c)] that the justification for refusal relies on an assertion that *"The landscape setting would be **adversely affected** by the introduction of built development to the landscape to the west of the road and the intensification of the built uses in this rural landscape"*.
- 2.2 In considering this issue it is important to note that the key tests contained within Policy 4 of the adopted Local Development Plan, and Policy 5 of the emerging plan, both specifically presume against development which would have "a **significant** adverse affect". Neither policy as approved by Council authorises planning officers to refuse any proposal unless it can clearly be shown that the impact on landscape setting is **significant**.
- 2.3 Nowhere in either the Delegated Report nor in the Council's Observations on this Review has any convincing explanation been provided to explain in what way the impact of the construction of a house on non-cultivated waste land contained within a clearing in a forest would result in a **"significant adverse effect on the landscape setting."**
- 2.4 It is respectfully submitted that it is not enough to justify refusal on the basis that the landscape setting would be adversely affected. Any development will alter the immediate character of any application site. In order to justify refusal under either Policy 4 of the adopted Plan or Policy 5 of the emerging Plan it must be clearly demonstrated that the proposal has a **significantly adverse impact** on the broader landscape. No such explanation has been provided.
- 2.5 The Notice of Review makes various and frequent reference to the review site as being *"undeveloped rough grazing land"* [Para 2.3(ii)], *"undeveloped grazing land"* [Paras 2.3(iv), and 3.1(a)], *"previously undeveloped field"* [Paras 2.5, 2.7, 2.8 and 3.1(e)].
- 2.6 The reader unfamiliar with the site, would reasonably assume from these descriptions that the proposal represented an unwarranted incursion into land which served (or potentially could serve) a productive use as agricultural land.
- 2.7 In reality, the land has never been grazed in living memory and has been used together with the old quarry as a dumping ground for unwanted items associated with the farm (rubble/ machinery parts etc).
- 2.8 The cost of remediation, including removal of dumped material, draining, fencing and importation of a suitable growing medium to the former quarry area would far exceed the resultant value of the land. In the absence of approval the land will be incapable of reasonably beneficial use.

CONSISTENCY AND FAIRNESS

Was refusal of the Review Proposal Consistent with Other Decisions?

- 3.1 The Council's position relies heavily on the view that the Ardochrig application had no locational need. References to "locational need" are contained in paragraphs 2.7, 2.8, 3.1(d) and 3.1(e) of the Council Observations.
- 3.2 The Notice of Review (Appendix 3) referred to a decision to grant permission nearby at Auchenfin. The justification for approval of the house was that the proposal at Auchenfin was considered to satisfy Policy GBRA6. Policy GBRA6 allows new houses to be built within existing building groups provided that all 13 criteria listed under the policy can be met. There was no "locational need" for the proposal at Auchenfin, but that deficiency did not weigh against planning permission being issued.
- 3.3 Policy GBRA6 specifies that *"a housing group is defined as one where there are at least three detached houses grouped in close proximity to one another (no more than 50 metres apart) which share a well-defined and cohesive character"*
- 3.4 The Auchenfin proposal not only had no "locational need", but it also clearly failed to meet the basic definition of a building group. There was only one house at Auchenfin (not the three houses required to qualify as a group under Policy GBRA6). As can be seen from the aerial photograph in Appendix 3, the Auchenfin proposal also contravened the criterion in GBRA6 which specifies that *"development should not extend into a previously undeveloped field"*.
- 3.5 It is submitted that a much stronger case exists under Policy GBRA6 to support the Review proposal than was the case at Auchenfin. The two existing detached houses at Ardochrig together with the house currently under construction (EK/17/0406) will qualify Ardochrig as a "building group" within the Council's approved definition.
- 3.6 At Auchenfin the house as approved was not only sited on a previously undeveloped field, but the field was also productive grassland. In their Observations on the Review, the Council refer to the Review site as "rough grazing land" (Council Observations Paragraph 2.3(ii)). Unlike Auchenfin, there is no evidence in living memory of the Review site ever having been used for the grazing of animals.
- 3.7 Two references are made in the Council's statement to the permission granted under application EK/17/0406. No reference is made to other key decisions in the immediate vicinity which are material to the determination of this appeal.

- 3.8 In April 2019 the Council was consulted regarding a proposed battery storage building on a site in close proximity to the Review site. The close relationship between the two sites is shown on Figure 1 below.

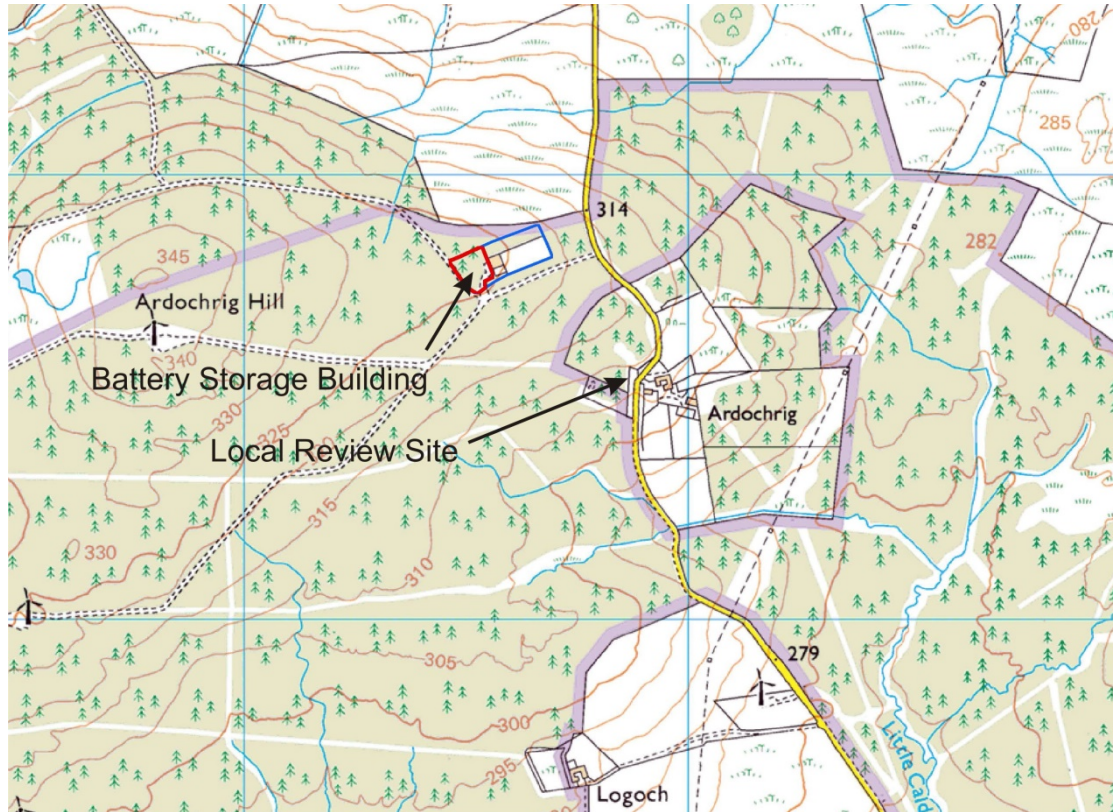


Figure 1: Proposed Battery Storage Building in Relation to the Review Site

- 3.9 The battery storage facility comprised a steel portal frame building “equivalent in size to half a football pitch” and with a height of 6.8 metres. The building will be the largest windfarm battery facility in the UK and will house 50MW of lithium ion technology.
- 3.10 Unlike the planning review site which is contained in a clearing within the forest, the battery storage building is located on rising ground at the edge of forestry planting on Ardochrig Hill.
- 3.11 The Executive Director (Community and Enterprise Resources) recommended to the Planning Committee that Scottish Government be notified that South Lanarkshire Council had no objections to the proposal on the basis that the proposal was:

“not considered to have any significant adverse impact within the surrounding area”.

- 3.12 It is clear that the decision on the battery storage building, and in particular the view expressed by the Executive Director that a 1,513 sq metre building would not have any significant adverse impact on the landscape was a material consideration, and ought to have informed the decision at Ardochrig Farm. It is incomprehensible how a totally contradictory view could be reached of the landscape impact of the review proposal, without a second opinion being sought from a landscape expert. No such opinion was sought.

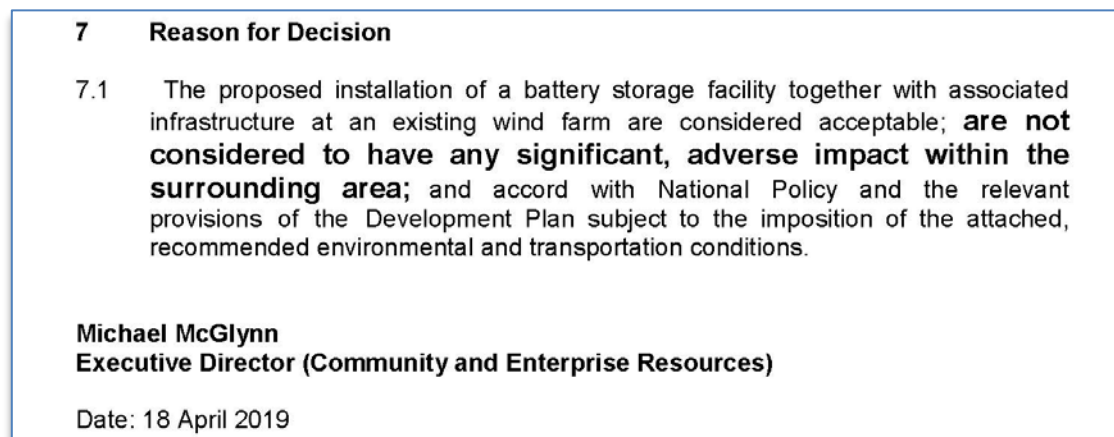


Figure 2: Extract From Committee Report on Battery Storage Proposal

- 3.13 The decision to refuse the house at Ardochrig Farm was taken under delegated powers on 10th December 2019. At that time the planning officer would have been aware of the decision and the judgement made in relation to the battery storage building (18th April 2019) and also of the decision to approve the construction of a house at Auchenfin without any development plan support for such a decision.(11th December 2017). Both documents were before the Council at that time.

CONCLUSION

- 4.1 In the past month the Scottish Government's Chief Planner, jointly with the Minister for Local Government Housing and Planning, has written to all planning authorities in response to the COVID-19 crisis. The letters from Government highlight that planning has a crucial part to play within and beyond the current emergency, but that planning authorities must recognise the current exceptional circumstances and accordingly must relax controls specifically to date in relation to food delivery and distribution, and to takeaway services offered by public houses and restaurants. .
- 4.2 The current lockdown in the construction industry will have far reaching consequences not just on housing completions, but more significantly on the economic survival of small builders, tradespeople and suppliers. It is likely that further policy changes may emerge on this issue in the revised National Planning Framework.
- 4.3 In 2007 the Scottish Government set a target of achieving 35,000 new homes by the current decade. Since the 2008/09 financial crisis, and the associated housing market crash, the 20,000 new homes now built annually in Scotland

still represent only 80% of the pre-recession level and remain well below the Government's 35,000 target.

4.4 The coronavirus shutdown will further reduce completion rates, and will impact particularly on small builders whose future relies on a forward supply of one-off sites. In this context every single house is important in contributing to housing supply, and by contributing to the local economy and reducing unemployment. The Council has a key role to play and must continue to reconcile the need to promote development whilst safeguarding South Lanarkshire's most precious landscapes.

4.5 Having regard to consistency, accountability and fairness, it is respectfully submitted that the key question which the Planning Review Body must address in this appeal is:

Whether the approval of a traditionally-styled cottage on wasteland at Ardochrig Farm will have a significant adverse impact on the rural character of the area?

4.6 For the reasons set out above, it is submitted that the review proposal will have minimal impact on its landscape setting and can be fully and reasonably justified against the provisions of the approved and emerging local development plans, and to relevant material considerations which were not taken into account in the officer's decision.

4.7 Accordingly, it is respectfully requested that the Local Review Body grant planning permission in detail for this proposal.

Gainford Limited
13 April 2020