

## **EAST AYRSHIRE COUNCIL**

**NORTHERN LOCAL PLANNING COMMITTEE: 09 OCTOBER 2009**

**09/0203/OL: LOWLAND CROFTING SCHEME FOR UP TO 10  
DWELLINGS INCLUDING ASSOCIATED WOODLAND AND WILDLIFE  
HABITAT WITH PUBLIC ACCESS  
AT NEWFIELDS WOODLANDS, GALSTON**

**APPLICATION BY KERR INVESTMENTS LLP**

**Report by Head of Planning and Economic Development**

### **EXECUTIVE SUMMARY SHEET**

#### **1. DEVELOPMENT DESCRIPTION**

1.1 Outline planning permission is sought for the development of ten lowland crofting units within the application site. The indicative layout plan shows the development of the lowland crofting units on the west side of the Monk Road with a proposed access west from Monk Road.

1.2 As part of the development of the lowland crofting units, the proposal provides for woodland and wildlife habitat improvements, including the introduction of public access paths, bridleways, interpretation signs and a car park.

1.3 Although not included in the red line planning application site, the applicant proposes intervisible passing places within the confines of the public highway from the junction of the B7076 with the Bogside Road, incorporating the length of the Bogside Road to the application site at Monks Road.

1.4 The original information submitted with the application proposed twenty two lowland crofting units. However, subject to discussion with the Planning Division and in accordance with the terms of the pre-application discussions between the Planning Division and the developer, the applicant agreed to reduce the number of lowland crofting units from twenty two to ten units.

#### **2. RECOMMENDATION**

**2.1 It is recommended that the application be approved subject to the conditions listed on the attached sheets and that the issue of the decision notice be withheld until the Solicitor to the Council has satisfactorily concluded a formal agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 with the applicant, in respect of the matters described in Section 8.4 of this report.**

### **3. CONCLUSIONS**

3.1 As indicated in Section 5 of the report, the proposed development is considered to be in accordance with the Development Plan. Therefore, given the terms of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997, the application should be approved unless material considerations indicate otherwise. As indicated in Section 6 above, there are material considerations relevant to this application, but in this regard, these can either be addressed through obligations in a Section 75 Agreement or by means of planning conditions, or are not of sufficient weight to set aside the provisions of the development plan.

3.2 The proposed development represents an opportunity for farm diversification to revitalise the rural economy within the identified rural diversification area and promote enhancement and management of areas of woodland for the benefit of nature and habitat conservation.

3.3 It is recognised that careful controls will require to be exercised in relation to ensuring that the development meets with the principles of low density housing (lowland crofting) as indicated within the EALP, but this can be secured through a Section 75 Agreement with the applicant. This is particularly important in relation to securing business uses associated with the proposed dwellings appropriate to this rural location.

3.4 In respect of all relevant matters and material considerations to be taken into account, it is considered that the proposed development is consistent with policy and that there are environmental and community benefits to be derived from the proposals. Consequently it is considered that the application should be approved. Should the Committee agree with this view and be disposed to grant planning permission, any consent should be withheld until a Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997 has been concluded with the applicant in respect of the following matters:

- (i) The linking of the residential element of the development with an integrated business or workplace function appropriate to the rural location of the development, such that crofting units shall only be occupied by individuals employed full time in the associated and integrated business activity. The agreement shall affirm that because the Section 75 Legal Agreement applies to the land, this obligation shall transfer to all future occupiers of the premises. Appropriate rural businesses shall be the subject of discussion and agreement between the applicant and the Planning Authority.
- (ii) The production of a Woodland Management Scheme and Habitat Management Plan for the site that shall include the following:
  - A habitat survey of the woodland areas to ensure that appropriate assessment of the impact of management on flora and fauna is undertaken.

- Details of the programme of works including timing and timescale of the plan.
  - An ecological or woodland advisor is employed at the applicants expense to assist with the implementation of the woodland proposals.
- (iii) The submission of a Design Brief in respect of the proposed dwellings and any ancillary buildings associated with the business uses to be undertaken on each plot.
- (iv) A programme of work relative to the scale, nature, and implementation of the proposed recreational elements of the proposed development and phasing of the provision of these elements in relation to the development of the ten crofting units.
- (v) The provision of a developer contribution payment by the applicant to the Council in accordance with the emerging local plan.

3.5 “In as much as it is indicated in the transitional guidance offered by the Scottish Government although the application was submitted in Outline, any decision notice to be issued will be in respect of Planning Permission in Principle; given that the date of decision will be after the coming into effect of the T & CP (Development Management Procedure) (Scotland) Regs 2008”.

**Alan Neish**  
**Head of Planning, Development and Building Standards**

**Note: This document combines key sections of the associated report for quick reference and should not in itself be considered as having been the basis for recommendation preparation or decision making by the Planning Authority.**

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### **1. PURPOSE OF REPORT**

1.1 The purpose of this report is to present for determination an outline planning application which is to be considered by the Local Planning Committee under the Scheme of Delegation as the proposed development is the subject of in excess of 10 objections.

### **2. APPLICATION DETAILS**

2.1 **Site Description:** The site lies off the east side of the B 7037 Sorn – Galston Road and lies on the north side of the minor access road leading from Killochhead Cottage to the Monk Road. The site extends to approximately 117 hectares and currently forms part of the lands associated with Newfield Woodlands.

2.2 The topography of the site is such that it rises gently in a south-west to north-east direction and is bisected by the Monk Road Belt. The site is characterised by broadleaf and conifer trees of varying age and condition with some areas of clearing.

2.3 The application site is bounded to the north by the minor road which leads east to Threepwood, to the west by agricultural land and to the south by the minor access road which leads south to connect to the B7037. The site is bounded to the east by the North Lowther Uplands Special Protection Area, the Glenoul Burn Provisional Wildlife Site and the proposed Muirkirk Uplands Special Site of Scientific Interest.

2.4 **Proposed Development:** Outline planning permission is sought for the development of ten lowland crofting units within the application site. The indicative layout plan shows the development of the lowland crofting units on the west side of the Monk Road with a proposed access west from Monk Road.

2.5 As part of the development of the lowland crofting units, the proposal provides for woodland and wildlife habitat improvements, including the

introduction of public access paths, bridleways, interpretation signs and a car park.

2.6 Although not included in the red line planning application site, the applicant proposes intervisible passing places within the confines of the public highway from the junction of the B7076 with the Bogside Road, incorporating the length of the Bogside Road to the application site at Monks Road.

2.7 The original information submitted with the application proposed twenty two lowland crofting units. However, subject to discussion with the Planning Division and in accordance with the terms of the pre-application discussions between the Planning Division and the developer, the applicant agreed to reduce the number of lowland crofting units from twenty two to ten units.

### 3. CONSULTATIONS AND ISSUES RAISED

3.1 East Ayrshire Roads and Transportation Division states that it has no objections to the proposed development subject to the following conditions:

- All road improvement works shall be completed prior to the commencement of any works within the application site.
- The proposed road widening indicated on drawing number S/208642 must be undertaken to adoptable road standard.
- The applicant should be notified that a road construction consent will be required to be obtained prior to the commencement of works.

***A condition and an advisory note can be attached to any consent granted for the proposed development to meet the requirements of the Roads Division.***

3.2 Galston Community Council has not responded to the consultation request.

***Noted.***

3.3 East Ayrshire Outdoor Amenities Section has no objections to the proposed development but has offered the following comments:

The area of land highlighted for the proposed development has already been planted up with mainly young conifers. It is unlikely these planted up areas will require felling for a further 25 -30 years.

The landowner is likely to have received a substantial grant from the Forestry Commission to replant this area after it was clear felled a few years ago.

***The Forestry Commission Scotland (FCS) has been consulted and has indicated that there are two areas within the application site that are currently subject to a "live" grant schemes and indicates the year at which this burden expires (2012 and 2014). FCS also comments that removal of these trees prior to this point in time***

**would give rise to a liability in respect of the grant given upon these respective areas.**

**It is considered that this issue is a separate legal matter between the applicant and FCS and is not a material planning consideration.**

**However, the applicant has provided a Landscape, Habitat and Access Enhancement proposal which details existing woodland composition and includes proposals for planting of native broadleaf woodland.**

**Furthermore, should planning permission be granted the applicant will be required to enter into a Section 75 legal agreement with the Council which would include the provision and implementation of a Woodland Management Scheme and Habitat Management Plan.**

3.4 The Scottish Environment Protection Agency requests that a condition should be attached to any planning permission requiring the proposed discharge of surface water to the water environment to be in accordance with the terms of Water Environment (Controlled Activities) (Scotland) Regulation 2005.

**A condition can be attached to any consent granted for the proposed development to meet the requirements of SEPA.**

3.5 SP Energy Networks have not objected to the application.

**Noted.**

3.6 The West of Scotland Archaeology Service has indicated that there is one known archaeological site within the woodland, the former farmstead of Monk. WOSAS request that the extent of the Monk farmstead requires to be identified on the ground, demarcated and thereafter avoided by all development.

**A condition can be attached to any consent granted for the proposed development to meet the requirements of WOSAS.**

3.7 Scotland Gas Networks has not objected to the application.

**Noted.**

3.8 Forestry Commission Scotland refers to the recently published Scottish Government policy in relation to development in woodlands and specifically where it would result in permanent loss of woodland. FCS would be seeking compensatory planting of woodland for any area lost to development.

**The applicant has provided information that indicates that areas of conifer woodland will be removed and replaced with native**

***broadleaf woodland, with natural regeneration encouraged to supplement stocking levels.***

***To address this issue the applicant will be required to enter into a Section 75 legal agreement with the Council which would include the provision of a Woodland Management Scheme and a Habitat Management Plan.***

3.9 Scottish Wildlife Trust has no objection to the application but makes the following comments:

Tree felling is indicated but it is not clear which species are involved, which will remain and where they are located.

The applicant refers to the creation of "Woodland and Wildlife habitat". It is important to know the type of woodland and the nature of the new wildlife habitats before commenting on the loss of habitats.

***The applicant will require to enter into a Section 75 legal agreement with the Council which would include the provision of a Woodland Management Scheme and a Habitat Management Plan. As part of this process the Planning Authority would consult with the relevant consultees.***

3.10 Royal Society for the Protection of Birds is not aware of any bird populations of conservation importance that are likely to be affected by the proposal, but make the following comments :

The majority of the site is commercial forestry plantation and the applicant proposes woodland management and habitat proposals. The development will involve tree felling which must be done outwith the bird breeding season (March to July inclusive) to ensure compliance with the Nature Conservation (Scotland) Act.

***The applicant will require to enter into a Section 75 legal agreement with the Council which would include the provision of a Woodland Management Scheme and a Habitat Management Plan.***

3.11 Department for Neighbourhood Services – Leisure Services states that there is a core path which runs along the minor road through the site alongside Monks Road Belt. Any new access proposals should take account of this route as well as the Irvine Valley Path Network and the rights of way which lie outwith the site boundary.

***The applicant has provided a Landscape, Habitat and Access Enhancement proposal which detail woodland and wildlife habitat improvements and also indicates public access paths, bridleways, interpretation signs and a car park.***

***The applicant will require to enter into a Section 75 legal agreement with the Council which would include the provision of a Woodland Management Scheme, a Habitat Management Plan and would also include any public access proposals.***

3.12 Scottish Natural Heritage has no objection to the proposal subject to the following conditions:

- No development or construction work on housing or other infrastructure should be undertaken within 600m of the Special Protection Area.
- Management of forest edge to optimise the habitat for black grouse, including marking of new or renewed fencing, in particular the eastern edge of Monk Muir Belt.
- The woodland proposals are implemented as per the applicants Landscape, Habitat and Access Enhancement document.
- An ecological or woodland advisor is employed to assist with the implementation of the woodland proposals.

***Should planning permission be granted, the above issues can be addressed by the imposition of planning conditions.***

***In relation to issues of habitat and woodland management the applicant will require to enter into a Section 75 legal agreement with the Council which would include the provision of a Woodland Management Scheme and a Habitat Management Plan.***

3.13 Scottish Water – no response received to the consultation request.

***Noted.***

3.14 Environmental Health – no objection to the proposal but offered the following comments on issues relevant to the proposal.

- Noisy work on the site during construction should be restricted to 7am to 7pm Monday to Friday, 8am – 1pm on a Saturday, and no noisy work on a Sunday.
- Noise from the works during construction should at no time cause the underlying background noise level LA90(1hour) to rise by more than 3dB(A), measured at the nearest noise-sensitive location.
- Our Contaminated Land Officer has not identified any specific area of concern but has suggested the inclusion of a general caveat on any conditions of approval to the effect that if any unsuspected contamination is encountered during the proposed works, the Council should be informed accordingly along with any required remedial measures formulated to address the risk of exposure to

key receptors and subsequent confirmation of completion of works.

***Should planning permission be granted, the above issues can be addressed by the imposition of planning conditions or advisory notes.***

#### **4. REPRESENTATIONS**

4.1 The application was advertised in the Kilmarnock Standard on 10<sup>th</sup> April 2009. Twenty two letters of objection have been received from twenty four objectors in connection with the application. The main points of objection can be considered under the following headings:

- effect on wildlife habitat and woodland habitat
- road traffic
- infrastructure
- visual impact and amenity of area
- lowland crofting
- grant assisted woodland

##### Effect on wildlife habitat and woodland habitat

4.2 The area of the proposed scheme contains breeding barn owls, foxes and badgers, will there be a Council guarantee that these will not be disturbed.

***As part of the application a Protected Species survey was carried out which showed that no European Protected Species or legally protected species were recorded in the site during the survey. The Council Local Plan Policy requires that should planning permission be granted the applicant will require to enter into a section 75 legal agreement with the Council which would include the provision of a Woodland Management Scheme and a Habitat Management Plan which would outline schemes on habitat enhancement to offset any possible adverse impacts.***

4.3 Although the application is in outline, the areas to be cleared of trees have been indicated. The area for housing contains trees that are 3 – 10 years old. It is a waste of potential timber resources to remove these trees and unsustainable.

***The applicant has provided a landscape, habitat and access enhancement proposals document which provides information on woodland management and habitat management proposals for the application site. Notwithstanding this, the applicant will be required to enter into a section 75 legal agreement with the Council which would outline a woodland management scheme***

**and habitat management plan to enhance any existing woodland in order to offset any possible adverse impacts of the proposal.**

#### Road Traffic

4.4 Impractical solution to the envisaged increase in road traffic. How would the development traffic be policed to ensure the “Bogend Road” would be used solely?

***The Councils Roads Division has not offered any objection to the application subject to the applicant completing the proposed roadworks prior to the commencement of the development and that the applicant should obtain a road opening permit.***

***Should planning permission be granted the routing of construction traffic can be addressed through the imposition of a condition and an advisory note.***

4.5 I object to the large increase in the volume of traffic passing through farms en route to the application site. All of the construction, building, residents and servicing vehicles will effect the day to day running of farms on this road, especially the moving of livestock from building to building and from pasture to pasture. The passing places are mainly field gates and private farm residences, we object to them being used for that purpose.

***It is acknowledged that access to the application site will require to use the public road that includes access through farm steadings and over areas of road verge. However the Council’s Roads Division has not objected to the proposal and requires the applicant to complete any road works for passing places or sightlines to adoptable standards prior to commencement of the development. Should planning permission be granted a condition would be attached to any consent to address this issue.***

4.6 The Council’s Roads Division will have on file the complaints and consultation letters from the Burnawn Residents Group and other roads users concerning the roads that will be used by the plot owners if this application goes through. The routes are on the timber transport preferred route and are used for 45ton lorries taking felled timber from the plantations at harvesting times. Another 10 households with their potential car ownership and businesses would be a step too far.

***The applicant has provided detailed plans (drawing number 10) indicating the intervisible passing places proposed for the development. The Council’s Roads Division has not objected to this proposal but has requested that any planning permission granted should include a condition requiring the developer to complete the roadworks to adoptable standard prior to the commencement of the development.***

***Should planning permission be granted a condition would be attached to any consent to address this issue.***

4.7 Currently the public access road is poorly maintained with large potholes recently patched. Increased traffic density will cause more rapid road surface deterioration.

***The condition of the road surface is a separate matter for the Roads Division of the Council. This matter has been passed to the relevant Council section for investigation.***

#### Infrastructure

4.8 No provision indicated for surface water or foul drainage discharge. The waste water from the site could contaminate the private water supply.

***The Scottish Environment Protection Agency (SEPA) has confirmed that an agreement has been reached with the developer with regard to a sustainable foul drainage solution.***

***In relation to the discharge of surface water, should planning permission be granted, a condition would be attached to any consent to address this issue.***

4.9 An area of the proposed scheme would impact on the private water supply catchment for at least 4 properties. Will the Council guarantee that these will be safeguarded?

***It is noted that the Council's Environmental Health Section has not objected to the proposal. However, to ensure the protection of private water supplies a condition could be added to any planning consent granted.***

#### Visual Impact on the amenity of the area

4.10 This development represents a complete and irreversible change to a quiet and settled rural area. In effect, changing the environs from lowland isolation to one of urbanisation and inevitable erosion of a way of life.

***It is acknowledged that the proposal will result in some visual impact on the character of the area. However, the proposal does include for lowland crofting which accords with the overall aim of the Council's Local Plan to encourage the economic regeneration of the remoter peripheral rural areas. The current application is in outline only and should planning permission be granted details of the proposed crofting units would be required to be submitted through the submission a further planning application for Approval of Matters Specified in Conditions.***

4.11 The proposed scheme is sited on rising ground and would be visible from adjacent roads. The area has ancient woodland belts and is used by walkers, horse riders, cyclists and bird enthusiasts. The thought of a development of this size spread out through this special area is definitely out of context for this area.

***As the application is in outline there are no detailed proposals of house type size or scale. Should outline planning permission be approved any future proposed lowland crofting unit design would be required to be assessed against the relevant local plan housing policies and design guidance.***

#### Lowland Crofting

4.12 The proposal does not conform to Local Plan Policy RES17 or Local Plan Policy RES18.

***See policy response at part 6 of this report.***

4.13 What kind of businesses would be allowed to be conducted by the individual plot owners? It will be difficult to find small business concerns which will be compatible with one another and will be economically viable.

***The current application is in outline only and as such no details of the residential units or their associated workplace or business elements are provided.***

***In terms of any proposed business or workplace elements associated with the lowland crofting proposal the applicant will require to enter a Section 75 Legal Agreement with the Council.***

4.14 It would appear that lowland crofting, a concept now removed from the new Local Plan only benefits the land owner and the purchaser of a cheap plot in a rural area, where there is no other real justification for location.

***It is acknowledged that the Lowland Crofting policy (RES18) has been removed from the Council's Finalised Draft of the East Ayrshire Local Plan. However the policy remains relevant in the Adopted East Ayrshire Local Pan.***

***Any individual financial benefits accrued through a business transaction or the value of land are not a material consideration in the determination of a planning application.***

## Grant Assisted Woodland

4.15 The development if allowed to progress would ignore one of the sustainability reasons for the grant assisted woodland being planted.

***The applicant has provided a Landscape, Habitat and Access Enhancement document which provides information on forestry proposals for the development which details existing woodland composition and includes proposals for planting of native broadleaf woodland.***

4.16 The area in question is in receipt of a grant from the Forestry Commission and has been planted out for the last 4-5 years with commercial trees with the minimum planting required for hardwood/native tree species. It would appear that this is a waste of public money.

***The Forestry Commission Scotland (FCS) has been consulted and has indicated that there are two areas within the application site that are currently subject to a "live" grant schemes and indicates the year at which this burden expires (2012 and 2014). FCS also comments that removal of these trees prior to this point in time would give rise to a liability in respect of the grant given upon these respective areas.***

***It is considered that this issue is a separate legal matter between the applicant and FCS and is not a material planning consideration in the determination of the application.***

## **5. ASSESSMENT AGAINST DEVELOPMENT PLAN**

5.1 Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of this application the development plan comprises the Approved Ayrshire Joint Structure Plan (2007) and the Adopted East Ayrshire Local Plan (2003).

### Ayrshire Joint Structure Plan

#### 5.2 Policy ECON 14 Rural Diversification

The three Ayrshire Councils shall:-

- A Support the principle of rural diversification, particularly through proposals for small scale renewable energy; forest-based products and industries; leisure, recreation and tourism; non-food crops and local quality food initiatives; appropriate rural housing and small business development; and

***Lowland Crofting developments are generally considered to contribute to rural land diversification.***

- B Identify appropriate criteria for the assessment of proposals related to the diversification and growth of existing rural businesses and for the establishment of appropriate new business development in rural areas.

***Policy RES 18 of the East Ayrshire Local Plan set out below identifies criteria for the establishment of new business development attached to residential properties.***

### 5.3 Policy COMM 5 Housing in the Countryside

Throughout the rural areas there shall be a general presumption in favour of housing development within existing communities, the reuse and redevelopment of redundant buildings for housing, the development of infill sites within existing housing groups and clusters and the development of housing to meet the operational requirements of agriculture and other rural businesses.

The three Councils shall identify in local plans or supplementary planning guidance policies where various types of residential development in the countryside would be considered acceptable, and establish criteria against which single or small scale residential development in the countryside can be assessed.

***Although lowland crofting does not fit into any of the types of housing listed in the first paragraph of policy COMM 5, paragraph 2 states that local plans shall identify where residential development in the countryside would be acceptable. Given that the adopted East Ayrshire Local Plan contains a policy on Lowland Crofting, it could be considered that, in principle, the proposal generally meets with the provisions of policy COMM 5 as far as the adopted East Ayrshire Local Plan is concerned.***

### **East Ayrshire Local Plan**

- 5.4 Policy SD4 states that within the Rural Diversification Area, development proposals relating to land outwith settlement boundaries will be acceptable to the Council only in three stated circumstances. Only one of these stated circumstances is pertinent to the application, this being where the development:-

- (i) comprises an acceptable form of residential use as detailed in Policy RES 14 of the Local Plan.

***Lowland crofting is one of the acceptable uses detailed in policy RES 14 therefore, in principle, the proposal complies with policy SD4.***

5.5 Policy RES14 is supportive of small scale residential developments within the identified Rural Diversification Area, in one of three stated circumstances. One of those circumstances is pertinent to the application, this being where:

- (iii) the proposed development constitutes very low density housing development, forming part of an integrated group of properties with a dual residential and workplace function supporting the rural economy as detailed in Policy RES18 below.

***The proposal is for lowland crofting therefore, in principle, the proposal meets with the provisions of policy RES 14.***

5.6 Policy RES18 is supportive of proposals for very low density housing developments (also known as 'Lowland Crofting') within the Rural Diversification Area, subject to a series of six stated criteria being met, as follows:

- (i) the proposal comprising an integrated farm restructuring for a whole farm unit or for other areas, not less than 20ha in extent. The density of any residential development permitted shall not exceed 10 houses per 50ha of site area and the minimum plot size shall be 1.0ha;

***The proposal as it stands appears to comply with the above density standards. The zone identified for housing could accommodate 10 houses having a plot size each in excess of 1 hectare. However, as the submitted application is in outline only, no specific details of size and scale of individual plots of house sizes has been provided.***

- (ii) a minimum of 30% of the gross area involved being devoted to woodland and wildlife habitat uses with full access afforded to the general public.

***Given that the area is largely woodland at present, it would appear that more than 30% of the area would be devoted to woodland uses and that access would be afforded to the public by way of bridlepaths and footpaths.***

- (iii) each residential unit incorporating an integrated workplace or business function appropriate to and compatible with its rural location. Intrusive developments of a business or commercial nature, detrimental to the amenity, character and appearance of the rural area will not be permitted;

***It is stated in the applicant's supporting information that each residential unit will have an integrated business element. No details have been supplied at this outline application stage but a condition will be added to any consent issued to ensure that such***

**business elements will be compatible with the locality in which they are located.**

- (iv) all elements of the proposed development requiring to be sympathetic to its rural location in terms of size, scale, design, siting, material finish, landscaping and screening;

**With the application being in outline, no detailed siting of the residential units is shown in the application. One indicative residential zone is, however, shown on the plans to the west of Monk Road. However, should outline planning permission be issued these elements will require to be the subject of a further application for the approval of matters specified in conditions.**

- (v) the residential units and their associated workplace or business elements being, wherever possible, grouped together in discreet areas to facilitate servicing and to reduce their environmental impact; and

**No indicative layout has been submitted to show the relationship of the proposed residential units to one another or in relation to the business elements which will require to be provided in connection with the development. However, should outline planning permission be issued these elements will require to be the subject of a further application for the approval of matters specified in conditions.**

- (vi) the development requiring to be subject to a formal Section 75 Agreement with the Council, guaranteeing and controlling:

- (a) the implementation, management and maintenance of all woodland planting, landscaping, nature conservation and public access arrangements in respect of the development; and

- (b) the use and maintenance of all land associated with the development and, in particular, the business or workplace elements forming an integral part of the development proposal.

**The general requirements of the Section 75 Agreement can be set out at this stage. The section 75 agreement will require to be refined with the applicant when the application for approval of matters specified in conditions is being assessed as there is insufficient information to detail all matters at the outline stage.**

5.7 Under Policy ENV 10 (iii) development likely to affect local nature reserves and provisional wildlife sites will be resisted and all sites of nature conservation value will be safeguarded whenever possible. Where development is approved for such sites, appropriate measures should be taken to conserve and manage, as far as possible, the sites' biological or

geological interest and to provide for replacement habitats or features where damage is unavoidable.

***The woodland and other works proposed would be at the headwaters of the Burn Anne which has been identified by the Scottish Wildlife Trust as a valuable Provisional Wildlife Site (Burn Anne & Holywell) described by them as a stream of entomological value bordered by grassland and woodland of some botanical and ornithological interest. It is noted that SNH had required the applicants to provide detailed survey information on European Protected Species within or adjacent to the site which might be affected by the proposal but that from these surveys it would appear that the development would not result in any adverse effects on such species. As SNH has not commented on any other potential adverse effects on local biodiversity (eg. in relation to the Burn Anne and its tributaries including the adjacent Burn Anne and Holywell Provisional Wildlife Site), the proposal would be held to accord with Policy ENV 10.***

5.8 Under Policy ENV 15 the Council will, (i) strongly encourage the protection and positive management of remaining areas of ancient and semi-natural woodland.

***The application site contains the designated Ancient Woodland of Monks Road Belt, Monk Muir Belt and Cairnhill Belt. The more westerly of the potential development zones is shown adjacent to Monks Road Belt. The supporting documents for the application indicate that, as vehicular access to the above zone would be from Monk Road, there would be a potential loss of woodland within Monks Road Belt. SNH has made no adverse comments regarding the potential loss of Ancient Woodland through the development and it is noted that the applicant's stated landscape objective is to convert significant parts of the existing coniferous areas to form woodlands with a predominantly native broadleaf character. In this regard it is considered that retention of any naturally regenerated native species within the application site and retention of healthy trees in mature broadleaved tree belts should also be considered in finalising any detailed scheme for the proposal to meet the provisions of Policy ENV 15.***

- (i) encourage the development of Community Woodlands within, in close proximity to, and forming linkages between the area settlements.

***Any proposed path routes should take account of the Council's finalised Core Path Plan which includes the Core Path IV 5 (Irvine Valley Southern Link Route). This is essentially an on-road route part of which uses the minor road running alongside (east of) the Monk Road Belt.***

## **6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS**

6.1 The principal material considerations relevant to the determination of the application are the consultation responses, letters of representation, the Alteration to the East Ayrshire Local Plan, applicant's supporting statements, the impact on the amenity of the area and the planning history.

### Consultation Responses

6.2 The consultation responses do not indicate that the application should be refused subject to the imposition of appropriate conditions on any grant of planning consent and the applicant entering into a section 75 legal agreement with the Council.

### Representations

6.3 The points of objection relate to effect on wildlife and habitat, road traffic, infrastructure, visual impact, amenity of the area, grant assisted woodlands and the local plan. The issues raised by the objectors are addressed at section 4 of this report and are not considered to be of sufficient weight to merit the refusal of the application.

### Alteration to the East Ayrshire local Plan: Finalised Draft with Modifications

6.4 For clarity, whilst development proposals will continue to be assessed first and primarily against the Adopted Local Plan, the Council has now given Authority for an appropriate and proportionate degree of weight to be given to the Alteration to the East Ayrshire Local Plan in the determination of planning applications. In this case, the Adopted Local Plan is the primary document as objections have been received to the removal of the Lowland Crofting Policy from the Alteration to the East Ayrshire Local Plan and to the emerging housing in the countryside policies.

### RES 29

6.5 The applicant has provided written confirmation in line with this policy RES 29 that a developer contribution payment in accordance with the rate applicable with the emerging local plan will be provided in connection with the application.

### Supporting Statements

6.6 The applicant has provided a supporting statement indicating an appraisal of the landscape and visual effect of the proposal. The landscape appraisal assesses changes in the fabric, character and quality of the landscape resource that is predicted would result from the proposed development and the visual effects measure specifically the impact of the proposals on the visual receptors.

6.7 In addition to the Landscape Visual Assessment the applicant has provided a landscape, habitat and access enhancement document which describes the Newfield Woodlands, sets them in context, provides an evaluation, and outlines recommendations and proposals for restructuring and management of the woodlands based on the opportunities presented by the proposal.

6.8 The applicant has also provided a planning statement in support of the application which examines the planning merits of the proposal with reference to the Development Plan and material considerations.

6.9 A Protected Species document has been provided by the applicant which details survey information of legally protected species such as otter, water vole and badger. The applicant's survey concludes that no European Protected Species or legally protected species were recorded within the site at the time the survey was undertaken.

#### Impact on Amenity

6.10 It is acknowledged that the proposal would have an impact on both the visual appearance of a predominantly rural area and the character of the surrounding landscape. However as previously stated the applicant has provided supporting information which recognises these issues and seeks to provide mitigation measures through the provision of proposals enhancing broadleaf woodland, habitat management and providing public access and recreation facilities within the site. These proposals are considered to provide an opportunity to promote enhancement and management of areas of woodland for the benefit of nature and habitat conservation.

#### Planning History

6.11 Planning Application 08/0310/OL was submitted by the applicant for a proposed lowland crofting scheme for up to 22 dwellings including associated woodland and wildlife habitat with public access. After discussions with the Planning Division the applicant agreed to withdraw the application and resubmit an application which reduced the number of lowland crofting units proposed from 22 to 10 and included the provision of intervisible passing places.

## **7. FINANCIAL OR LEGAL IMPLICATIONS**

7.1 There are financial and legal implications for the Council in the determination of this application.

7.2 The applicant's agreement to make a developer contribution to the Council in connection with the application will require a formal Section 75 legal agreement to be entered into between the Council and the applicant, should the application be approved.

7.3 Legal implications will arise through the concluding of a Section 75 Agreement in respect of the matters detailed in Section 8.4 below.

## **8. CONCLUSIONS**

8.1 As indicated in Section 5 of the report, the proposed development is considered to be in accordance with the Development Plan. Therefore, given the terms of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997, the application should be approved unless material considerations indicate otherwise. As indicated in Section 6 above, there are material considerations relevant to this application, but in this regard, these can either be addressed through obligations in a Section 75 Agreement or by means of planning conditions, or are not of sufficient weight to set aside the provisions of the development plan.

8.2 The proposed development represents an opportunity for farm diversification to revitalise the rural economy within the identified rural diversification area and promote enhancement and management of areas of woodland for the benefit of nature and habitat conservation.

8.3 It is recognised that careful controls will require to be exercised in relation to ensuring that the development meets with the principles of low density housing (lowland crofting) as indicated within the EALP, but this can be secured through a Section 75 Agreement with the applicant. This is particularly important in relation to securing business uses associated with the proposed dwellings appropriate to this rural location.

8.4 In respect of all relevant matters and material considerations to be taken into account, it is considered that the proposed development is consistent with policy and that there are environmental and community benefits to be derived from the proposals. Consequently it is considered that the application should be approved. Should the Committee agree with this view and be disposed to grant planning permission, any consent should be withheld until a Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997 has been concluded with the applicant in respect of the following matters:

- (i) The linking of the residential element of the development with an integrated business or workplace function appropriate to the rural location of the development, such that crofting units shall only be occupied by individuals employed full time in the associated and integrated business activity. The agreement shall affirm that because the Section 75 Legal Agreement applies to the land, this obligation shall transfer to all future occupiers of the premises. Appropriate rural businesses shall be the subject of discussion and agreement between the applicant and the Planning Authority.
- (ii) The production of a Woodland Management Scheme and Habitat Management Plan for the site that shall include the following:

- A habitat survey of the woodland areas to ensure that appropriate assessment of the impact of management on flora and fauna is undertaken.
  - Details of the programme of works including timing and timescale of the plan.
  - An ecological or woodland advisor is employed at the applicants expense to assist with the implementation of the woodland proposals.
- (iii) The submission of a Design Brief in respect of the proposed dwellings and any ancillary buildings associated with the business uses to be undertaken on each plot.
- (iv) A programme of work relative to the scale, nature, and implementation of the proposed recreational elements of the proposed development and phasing of the provision of these elements in relation to the development of the ten crofting units.
- (v) The provision of a developer contribution payment by the applicant to the Council in accordance with the emerging local plan.

8.5 “In as much as it is indicated in the transitional guidance offered by the Scottish Government although the application was submitted in Outline, any decision notice to be issued will be in respect of Planning Permission in Principle; given that the date of decision will be after the coming into effect of the T & CP (Development Management Procedure) (Scotland) Regs 2008”.

## **9. RECOMMENDATION**

**9.1 It is recommended that the application be approved subject to the conditions listed on the attached sheets and that the issue of the decision notice be withheld until the Solicitor to the Council has satisfactorily concluded a formal agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 with the applicant, in respect of the matters described in Section 8.4 of this report.**

**Alan Neish**  
**Head of Planning and Economic Development**

2 October 2009  
 FV/DVM

## **LIST OF BACKGROUND PAPERS**

1. Application form and plans.
2. Statutory Notices/Certificates.
3. Consultation responses.
4. Letters of representation.
5. Approved Ayrshire Joint Structure Plan (2007).
6. Adopted East Ayrshire Local Plan (2003).
7. Alteration to the East Ayrshire Local Plan (February 2009)
8. Applicants supporting documents; landscape habitat and access enhancement proposals, planning statement and visual assessment.

Any person wishing to inspect the background papers listed above should contact Jane Little on 01563 576768

**Implementation Officer: Dave Morris**

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application no: 09/0203/OL

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Site of Proposal:	Land At Newfield Woodlands, Galston, KA16 9LS
Nature of Proposal:	Lowland Crofting Scheme for up to 10 dwellings including associated woodland and wildlife habitat with public access
Name & Address of Applicant:	Kerr Investments LLP Milnfield Sawmill Annan Dumfriesshire DG12 5QP
Name & Address of Agent:	Keppie Planning And Urban Design 160 West Regent Street Glasgow G2 4RL

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DPO's Reference: JL/KW

The above outline application (Planning Permission in Principle) should be approved subject to the following conditions:-

1. Before any development commences on the site, the further approval of the Planning Authority shall be obtained in respect of the matter specified in the conditions below.

- (a) The layout of the site;
- (b) The size, height, design and external appearance of the proposed dwellinghouses and business related outbuildings;
- (c) The means of drainage and sewage disposal including the use of SUDS for surface water drainage;
- (d) Details of the access arrangements;
- (e) The provision for woodland planting and associated maintenance arrangements;
- (f) The provision for residential or business related car parking,
- (g) The boundary walls/fences to be erected;

- (h) The full details of the recreational elements including access footpaths, pond and public car park and the phasing of their provision and future maintenance.
- (i) Existing and finished site levels/floor levels.

REASON – The approval is in outline only.

2. Prior to the commencement of development all road improvement works shall be to adoptable roads standard and completed in accordance with the approved drawings S/208642 number 10 S/208642 number 11 and S/208642 number 12 all dated 05.08.09. Details of the completed road improvement works shall be submitted for the written approval of the Planning Authority prior to the commencement of the lowland crofting scheme.

REASON – In the interests of public road safety.

3. Prior to the commencement of development , details of a Sustainable Urban Drainage System in accordance with the terms of the Water Environment(Controlled Activities) (Scotland) Regulations 2005 (as amended) and its maintenance following installation shall be submitted to and approved by the Planning Authority in writing. Surface water from the site shall be treated in accordance with principles of SUDS manual (C697) published by CIRIA in March 2007. The Sustainable Urban Drainage System shall thereafter be installed on site prior to the occupation of the first dwellinghouse.

REASON – In the interests of the amenity of the surrounding area.

4. Prior to the commencement of development written details of protective fencing to be erected around the extent of the archaeological site at the former farmstead at Monk shall be submitted to the Planning Authority for approval in writing. Thereafter the approved fencing shall be installed on site as approved until the last dwellinghouse has been occupied. At no time shall any development be undertaken within the area protected by the approved fencing.

REASON – In the interests of the protection of archaeological remains

5. Notwithstanding the approved plans, no development or construction work on housing or associated infrastructure should be undertaken within 600 metres of the boundary of the North Lowther Uplands Special Protection Area.

REASON – In the interests of the protection of the North Lowther Uplands SPA

6. Prior to the commencement of development, written details of the management of the forest edge to optimise the habitat for black grouse, including marking of new or renewed fencing with particular reference to the eastern edge of the Monk Muir Belt shall be submitted for the approval in writing of the Planning Authority and thereafter implemented as approved.

REASON – To enhance biodiversity.

7. Notwithstanding the plans hereby approved the woodland proposals shall be implemented to comply with the approved Landscape, Habitat and Access Enhancement Proposals document dated February 2009.

REASON – To enhance biodiversity

8. The details to be submitted further to condition 1 above shall allow for the proposed crofting dwellings being designed with either a clearly defined integrated business floorspace or with details of ancillary buildings to accommodate a business function.

REASON – To meet the terms of Policy RES18 of the East Ayrshire Local Plan that requires an integrated residential and business function in crofting units.

9. Construction work shall be restricted to the hours of 0700 to 1900 hours Monday to Friday, 0800 hours to 1300 hours on a Saturday and not at all on Sundays.

REASON - To prevent noise and disturbance extending into hours during which other sources of noise have subsided, in the interest of residential amenity.

10. Prior to the commencement of the development, the applicant shall submit to the relevant Planning Authority an assessment of the effects of the development on the quantity and quality of water supplied to all properties with private water supplies that may be affected by the development. Thereafter, any mitigation measures as identified in the risk assessment, amended, as the case may be by the Planning Authority shall be implemented in order to maintain a secure and adequate quality water supply to all properties with private water supplies that may be affected by the development.

REASON - To ensure the protection of private water supplies.

11. Prior to the commencement of development on site the applicant shall submit for approval a Method Statement indicating the proposed routing of construction traffic and details of the location of the site compound. All measures arising from the approved Method Statement shall be implemented prior to the commencement of the development and maintained thereafter for the duration of the development.

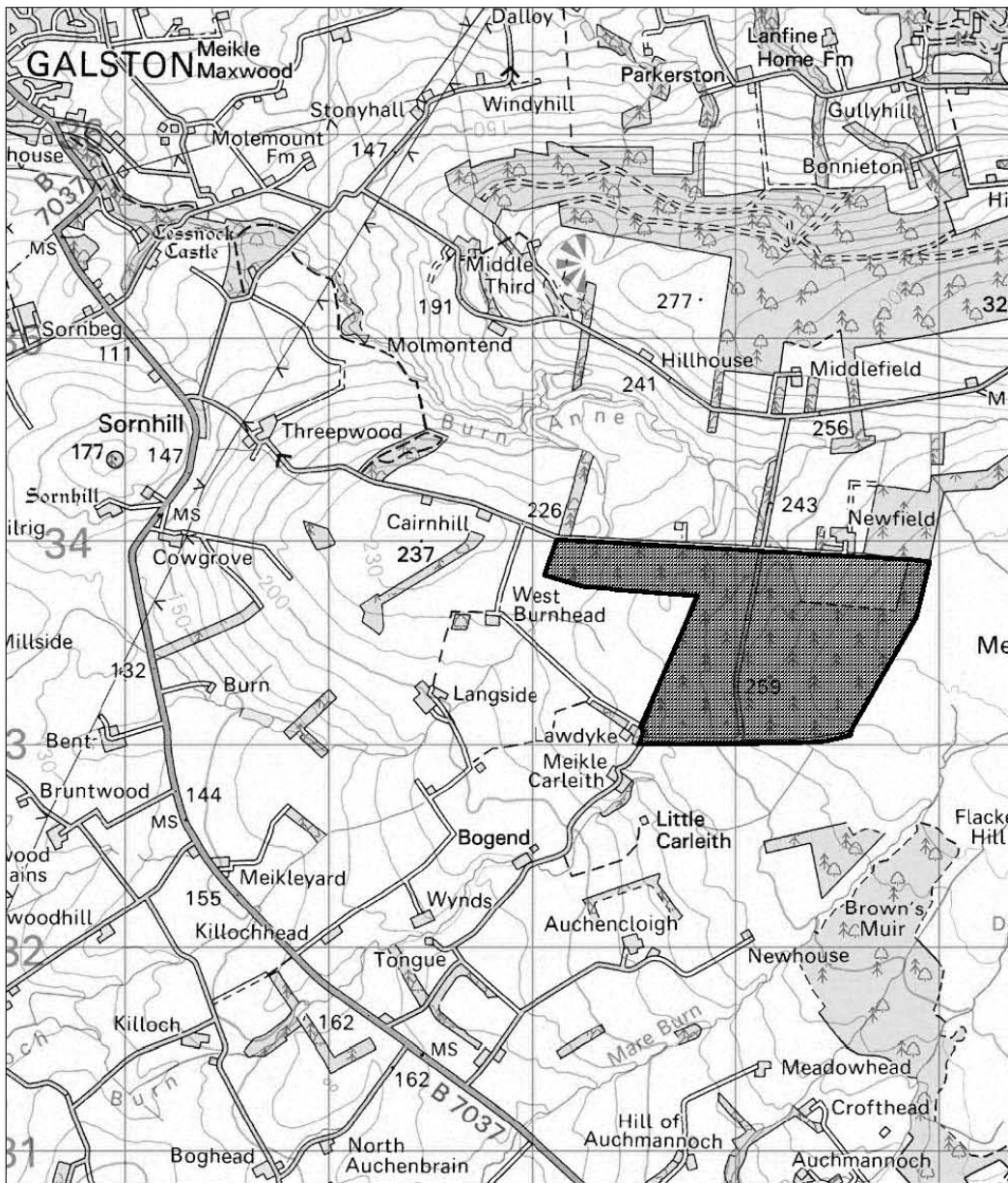
REASON - To ensure construction traffic utilises the appropriately upgraded roads.


#### **NOTES TO APPLICANT**

1. The developer will require to obtain a Roads Construction Consent from the Council's Roads Division.

2. If any unsuspected contamination is encountered during the proposed works, the Council should be informed accordingly along with any required remedial measures formulated to address the risk of exposure to key receptors and subsequent confirmation of completion of works.

3. Noise from the works during construction should at no time cause the underlying background noise level LA90(1hour) to rise by more than 3dB(A), measured at the nearest noise-sensitive location.



<p>Title/Location <b>Newfield Woodlands</b></p> <p><b>Galston</b></p> <p><b>Application No. 09/0203/OL</b></p>	<p><b>East Ayrshire Council</b></p> <p>Planning &amp; Economic Development Division. 6 Croft Street Kilmarnock KA1 1JB Tel: (01563) 576790 Fax: (01563) 576774 E-Mail : <a href="mailto:Planning@east-ayrshire.gov.uk">Planning@east-ayrshire.gov.uk</a></p>
<p>Key</p> <p> <b>Application Site</b></p>	<p>Com Date: 09/10/09      Checked By</p>

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