

AGENDA ITEM No.!

EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 27 FEBRUARY 2009

**ASSESSMENT OF COMPLIANCE WITH OBLIGATIONS ON SECTION 75
LEGAL AGREEMENTS ASSOCIATED WITH ERECTION OF 94 DETACHED
DWELLING HOUSES AND FORMATION OF ASSOCIATED ROADS AT
BALLOCHMYLE HOUSE, MAUCHLINE AND AGREEMENT TO VARY
COUNCIL DECISION ON PROPOSED HOUSE TYPE SUBSTITUTION AT
PLOT 56, BALLOCHMYLE ESTATE, MAUCHLINE**

ARDGOWAN HOMES LIMITED

**PLANNING CONSENTS 02/0757/OL & 05/0706/RM, PLANNING
APPLICATION 06/0635/FL**

Report by Head of Planning and Economic Development

1. PURPOSE OF REPORT

1.1 The purpose of this report is to present for determination proposals that would negate the requirement for the further variance of the legal agreements associated with the planning permissions for the erection of 94 detached dwelling houses and formation of associated roads at Ballochmyle House, Mauchline and would allow for the Committee decision on the Proposed House Type Substitution At Plot 56, Ballochmyle Estate, Mauchline to be varied. The terms of these agreements were approved by committees of the Council and accordingly it is appropriate that any amendments need to be considered by the Local Planning Committee.

2. BACKGROUND

2.1 An outline planning application for the development of land for residential purposes and refurbishment of mansion house to form flats at Ballochmyle House and estate was approved on 01 February 2005; the applicant being Northkirk Limited. That outline consent (Ref. No. 02/0757/OL), was subject to a Minute of Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997, the broad purpose of which was to ensure the restoration of Ballochmyle House.

2.2 The key provisions of the 02/0757/OL consent and agreement were that, prior to the commencement of development, there be submitted a phasing scheme for the construction of the new houses relative to progress on the main house. The houses were proposed as "enabling development" to assist with the

restoration of the "B" Listed mansion and their construction was not to move ahead without commensurate progress being made on the main house that would ensure its future. Indeed, the phasing scheme was to confirm that Ballochmyle House would be made wind and watertight before any work commenced in relation to the new houses.

2.3 The Southern Local Planning Committee on 27 January 2006 approved a Reserved Matters application for the erection of 94 high amenity, executive style dwelling houses at the Ballochmyle estate together with the formation of associated roads; the applicant again being Northkirk Limited. Consent for these reserved matters was issued on 16 March 2006 subsequent to conclusion of a Minute of Variation of the earlier Agreement. This Minute of Variation defined the Initial Essential Works required to make Ballochmyle House "wind and watertight" and listed a Scheme of Renovation Works that was required to be completed by October 2007. These works basically comprised of inserting internal floors, replacing windows and other openings, completely replacing the roof, installing gutters and down pipes and cleaning stonework, all by that date.

2.4 Both outline and reserved matters consents sought to ensure that enabling development designed to save Ballochmyle House, did not advance before sufficient works to save the house had first been concluded.

2.5 During 2006, ownership of the site transferred to Ardgowan Homes which Company assumed, in terms of the concluded legal agreements, the obligations incumbent on the original applicants. Ardgowan Homes has since the date of transfer of ownership been progressing works both with respect to the listed mansion and in terms of house constructions. Notwithstanding that progress, the activity on site has been inconsistent with the terms of the original and subsequent legal agreements and consents. In essence, works on the new houses had commenced prior to the listed building being made wind and water tight as required by condition 4 of outline consent 02/0757/OL; and prior to completion of the Initial Essential Restoration Works required to make the listed building wind and watertight in terms of the legal agreement associated with outline consent 02/0757/OL as amended by the subsequent legal agreement associated with reserved matters application 05/0706/RM.

2.6 During the course of 2007 there was extensive communication with Ardgowan Homes seeking to resolve this inconsistency. The level of concern about unauthorised works at that time was such that the Division served a Planning Contravention Notice in February 2007 as a precursor to formal enforcement action. No formal planning enforcement action followed however because, in part, separate measures were undertaken in conjunction with colleagues in Building Standards that temporarily halted works on site, because negotiations with the developers were beginning to hold out the prospect of a satisfactory solution and because works were ongoing that were moving the

House towards being wind and watertight. In addition the Division had been advised on several occasions that flats in the House were pre-sold.

2.7 In March 2008 Committee were asked to consider a revised Scheme of Renovation Works which provided updated timescales with a completion of the renovation works by the end of November 2008. The Committee agreed to accept the amended timescale. Those works on the Mansion House have continued at pace, albeit not within the agreed timescales. Due to adverse weather conditions and difficulties with suppliers, the timescales contained within the revised scheme have slipped slightly. This slippage has meant that the works that should have been completed by November 2008 in line with the timescales on the Scheme of Renovation works presented to committee have not been met. As a consequence, the Minute of Variation required to include this amended schedule had not been concluded as it would have been unreasonable to attach a schedule to that Variation which was already out of date. The developer has confirmed that a timescale for the completion of the Scheme of Renovation, being the end of March 2009, is more realistic.

2.8 Although the timescales within the revised Scheme of Renovation Works have not been met by Ardgowan Homes, positive communication between the developer and the Division has continued throughout this process. Points 1 – 6 of the Scheme encompass the 'initial essential works' and those have been met to the satisfaction of the Division. The completion of those works allows for the obligations of clause B1.1(1) of the original Section 75 Legal Agreement to be fulfilled thus negating the need for the further minute of variations to be sought.

2.9 Prior to the Initial Essential Works being met to the satisfaction of the Council, the Committee took a decision in respect of application 06/0635/FL for Proposed house type substitution at plot 56 to seek an alteration to the existing Section 75 Agreement to allow for the construction of the new show house in advance of, but in tandem with, making Ballochmyle House wind and watertight.

2.10 This alteration to the Section 75 Agreement has never been concluded and as a consequence this decision has not been issued. In the meantime, the dwellinghouse has been constructed and is in use as the show house. Further to this, the Council agreed at the March 2008 Committee that a further clause be added to the Section 75 Agreement to prevent the commencement of work on any more than 50 of houses on site prior to the completion of the Scheme of Renovation. This additional clause would have formed part of the variation that included the revised Scheme of Renovations and as discussed in section 2.7 above. There are currently 19 dwellinghouses complete or under construction within this development and with the current economic climate in mind, the developers although not currently affected by the down turn, do not envisage this number increasing greatly in the near future. Their target for completions up to the end of March 2009 is 19 dwellinghouses by which time Scheme of Renovation works will be complete. The Initial Essential Works form the majority

of the Scheme of Renovation with the exception of the installation of rainwater goods, downpipes, cleaning of stonework and restoring of architectural features being the works that fall outwith that definition. With the Initial Essential Works being met to the satisfaction of Council, and the fabric of the building being secure, the need for further alteration to the Section 75 Agreement to allow for the show house construction or to limit the number of dwellinghouses to be constructed is negated as the original obligation requiring the making of Ballochmyle House wind and watertight, prior to the carrying out of any site clearances or construction works on the new dwellinghouse including the show house, has now been carried out.

3. GENERAL CONSIDERATIONS

3.1 Notwithstanding the above, and the poor recent weather, the progress made on Ballochmyle House is very significant and the obligations of Clause B1.1. have been met. Considerable expenditure has been invested in the house and it is clear from recent site visits that one of the main concerns being addressed by the legal agreements has receded. The commitment shown to repairing and replacing the fabric of the listed building is entirely consistent with the overarching conservation aims of the enabling planning consents and the future of the fabric of the building is secure. Consequently it is now appropriate to review the need for any further variations to the legal agreements.

3.2 Within the original Minute of Agreement there is an obligation to submit a strategic landscape woodland management scheme, including implementation details, and the remedy, in the event of the failure to implement, being the Council instructing the carrying out of the works and recovering all costs. The agreement also covers officer access to the site and confirms the maximum number of new houses on site. These provisions should remain as they have not yet been fully implemented

4. ASSESSMENT AGAINST THE DEVELOPMENT PLAN

4.1 The restoration of Ballochmyle House was approved with support from enabling residential development consistent with the terms of Policy RES 8 of the Adopted East Ayrshire Local Plan.

4.2 In addition, the site was designated in the Plan for a combination of residential, industrial, leisure or tourist uses and Ballochmyle House was specifically identified for retention as an integral part of any overall redevelopment proposals. Any negation of the requirement to amend the terms of extant legal agreements would now be compatible with the proposals in the Adopted Local Plan for the Ballochmyle site and House.

5. FINANCIAL AND LEGAL IMPLICATIONS

5.1 There are no financial implications for the Council in the consideration of the proposals within this report.

5.2 Legal implications arise from the following. As indicated previously, two legal agreements are in place to regulate restoration of the mansion house relative to residential new build. Amongst other things, these sought to:-

- Have the house wind and watertight before any new house building,
- Define Initial Essential Restoration works to render the House “wind and watertight”,
- Regulate new build in defined areas of the site against progress on the House and although a phasing programme was sought this was never agreed,
- Set a deadline for the more substantial Scheme of Renovation works,
- Define the content of the Scheme of Renovation works.

5.3 It is no longer necessary to have further variations to the existing legal agreements and it would be appropriate to allow the Committee decision on the Proposed House Substitution at Plot 56, Ballochmyle Estate, Mauchline to be varied due to the following :-

- The initial essential restoration works to render the House “wind and watertight” have been completed, therefore the enabling aspect of this development has achieved its goal and Ballochmyle House has been secured.
- The requirement for the legal agreements to be amended further would be unreasonable as the Scheme of Renovation works specified in the schedule attached to the signed Minute of Variation are very nearly complete, albeit not within the agreed timescales, and its purpose and the main aims of the original Variation have been achieved.
- The existing provisions relating to maximum house numbers and access to the site shall subsist as shall the requirements in respect of the submission and implementation of the landscape and woodland management scheme in so far as not implemented.
- The prohibition within Clause B.1.2 of the original Minute of Agreement that prevented the construction of any new dwellings prior to the mansion house being made “wind and weather tight” through the implementation of Initial Essential Restoration works, has now fulfilled its purpose, with completion of those works to the mansion house. There is therefore, no need to further vary the legal agreement and to limit the commencement of works on dwellinghouses to 50 in number, as the removal of the prohibition, means that the construction of new dwellinghouses can now continue without breaching the terms of any of the extant legal agreements or planning consents subject to the numbers previously

agreed and would now allow for the issue of the Plot 56 show house consent. The current development rate provides confidence that the number of houses completed would not exceed 50 in any case prior to the completion of the Scheme of Renovation by the end of March 2009.

6 CONCLUSIONS

6.1 The progress of development on site has been monitored on an ongoing basis. The commitment shown by Ardgowan Homes not only in financial terms but in respect of the high standard of workmanship and materials used in the refurbishment of Ballochmyle House, confirms that the enabling commitment has been fulfilled. Progress has been such that it is no longer necessary to revise the extant legal agreements further and this will not impact negatively on the main thrust of the planning consents and legal agreements in place at Ballochmyle. The developers have submitted phasing proposals, as required by Condition 4 of the original outline planning consent 02/0757/FL. These clearly cannot indicate as required by that condition that the House was "wind and watertight" before works commenced on the new build dwellings. However, that condition was applied to ensure that the mansion house was suitably refurbished and this has now been achieved with the exception of the installation of rainwater goods and stone cleaning.

6.2 The progression of works on site so far gives sufficient confidence that the mansion has in fact been saved. Consequently, strict compliance with condition 4 (of 02/0757/FL) is no longer expedient and it is not proposed to pursue that by means of enforcement action.

6.3 As referred to in Paragraph 2.9 above, the decision notice relative to Planning Application 06/0635/FL for the show house was to be issued only after amendment of the extant Agreements consistent with the requirement of the Development Services Committee on 11 October 2006. This permitted the erection only of the proposed show house before Ballochmyle house was wind and water tight. This having now been achieved as detailed in 5.3 above, it would be appropriate to issue planning consent 06/0635/FL for the show house.

7 RECOMMENDATION

7.1 It is recommended for the reasons detailed in paragraph 5.3 of this report, that there are no further amendments made to the minute of agreement associated with Outline Planning Consent 02/0757/OL and the Minute of Variation of Agreement associated with Reserved Matters Consent 05/0706/RM under section 75 of the Town and Country Planning (Scotland) Act 1997.

7.2 It is further recommended that because Ballochmyle House has been made 'wind and watertight', the Committee agree to vary the decision of the Development Services Committee, (11/10/06); in the terms of paragraph 5.3 of this report and that planning consent 06/0635/FL be issued.

Alan Neish
Head of Planning and Economic Development

17 February 2009

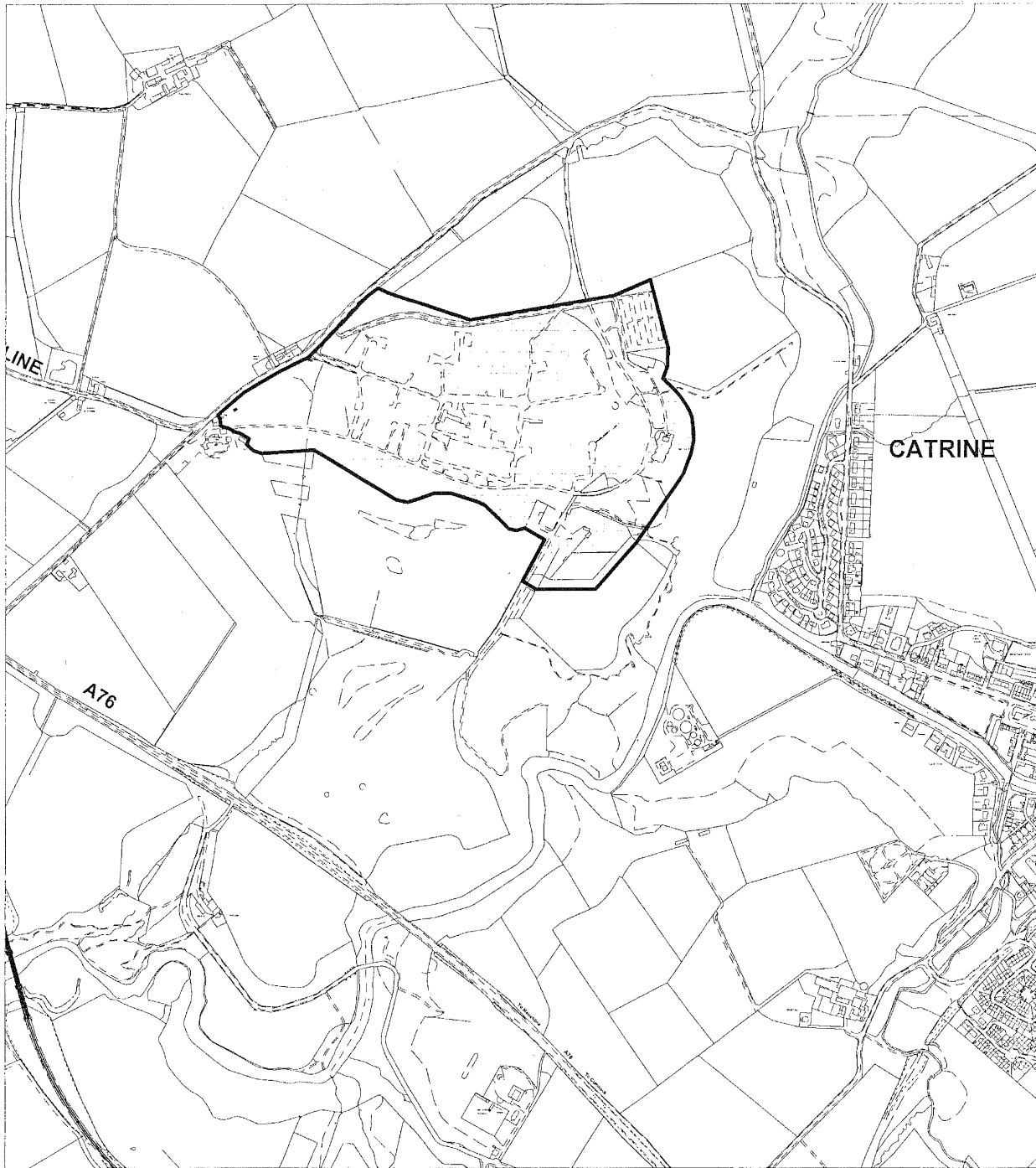
CM/DVM/AN

LIST OF BACKGROUND PAPERS

1. Minute of Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 associated with 02/0757/OL.
2. Variation of Minute of Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 associated with 05/0706/RM.
3. Planning Consent numbers 02/0757/OL and 05/0706/RM.
4. Planning Application Number 06/0635/FL

Any person wishing to inspect the background papers listed above, should contact David Morris on 01563 576753.

Implementation Officers: Dave Morris



Title/Location **Ballochmyle Estate**
Mauchline
 Application No. 02/0757/OL 05/0706/RM 06/0635/FL

East Ayrshire Council

Planning & Economic
 Development Division.
 6 Croft Street
 Kilmarnock KA1 1JB

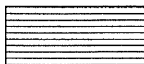
Tel: (01563) 576790 Fax: (01563) 576774

E-Mail : Planning@east-ayrshire.gov.uk

Com Date: 27/02/09 Checked By *DM*



Key



Application Site