

EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 20 MARCH 2008

PROPOSED VARIATION TO THE TERMS OF SECTION 75 LEGAL AGREEMENTS ASSOCIATED WITH ERECTION OF 94 DETACHED DWELLING HOUSES AND FORMATION OF ASSOCIATED ROADS AT BALLOCHMYLE HOUSE, 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 necessitate the amendment of the terms 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. The terms of these agreements were approved by committees of the Council and accordingly any amendments need to be considered by 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 applicants 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 It is understood that 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 prior 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 has been advised on several occasions that the 21 flats in the House are all pre-sold.

3. GENERAL CONSIDERATIONS

3.1 Notwithstanding the above, and the poor recent weather, considerable progress has now been made on Ballochmyle House and considerable expenditure invested. It is clear from recent site visits that one of the main concerns 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 immediate future of the building is secure. Consequently it is now appropriate to consider revisions to the legal agreements in place to address the mid to longer term.

3.2 The developers have submitted proposals intended to maintain the overarching conservation aims and to tie more realistically into their progress on site. Ardgowan Homes' revised programme makes reference to the scheme of renovation works covered in the legal agreements originally to have been completed in respect of (a) to (c) by January 2005 and in respect of (d) to (h) by October 2007.

a) Removal of roof structure, mid floors and debris	completed
b) Shoring up of existing walls	completed
c) Basement area cleared of debris	completed
d) Internal flooring to all floors replaced	substantially completed and to be finished by June 2008
e) Replace existing windows and external openings	Windows on order delivery April and installation to be completed by July 08
f) Replace timber roof structure, sarking and slates	50% complete and to be finished by June 08
g) Install rainwater gutters and downpipes	All to be completed by August 2008

h) Clean stonework and restore architectural features Ongoing since Aug 07, to be completed by Nov 08.

3.3 Planning application 06/0635/FL for substitution of house type at plot 56 (the show house) has been agreed, (Development Services Committee, 11 October 2006), but the consent has not been issued as that was dependent upon a revision to the legal agreement to permit its construction prior to the mansion house being made wind and watertight. That revision has never been concluded due to the wider construction delays. However the amendment of the legal agreements to incorporate the provisions listed in paragraph 5.3 of this report, would remove the current impediment to the issue of the planning permission.

3.4 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 in so far as not yet implemented should be continued.

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 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. The proposed amendment to the terms of extant legal agreements would remain 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 For the reasons considered in Section 3 above, it would be appropriate for the legal agreements to be amended as follows:-

- The two extant legal agreements should be varied and simplified to reflect the current position on site .
- The amended agreements should embrace the deadlines and specific works indicated by Ardgowan Homes in paragraph 3.2 above, (bullet points d– h).which will be substituted for the earlier approved implementation schedule
- 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 implementation of initial essential restoration works, shall be removed.

6 CONCLUSIONS

6.1 The proposals to revise the extant legal agreements 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. 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.

6.2 The progression of works on site at this point gives sufficient confidence that the mansion has been saved. Consequently, strict compliance with condition 4 is no longer expedient and it is not proposed to pursue compliance by means of enforcement action, because the works undertaken thus far give sufficient reassurance that the building’s future is secure.

6.3 As referred to in Paragraph 3.3 above, the decision notice relative to Planning Application 06/0635/FL can 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. The amendments to the Agreements detailed in 5.3 above would allow for the issue of planning consent 06/0635/FL.

7 RECOMMENDATION

7.1 It is recommended that 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 be amended under section 75 of the Town and Country Planning (Scotland) Act 1997; in the terms detailed in paragraph 5.3 of this report.

7.2 It is further recommended that the Committee note that the amendment of the two Agreements referred to in 7.1 above will discharge the decision of the Development Services Committee, (11/10/06), that planning consent 06/0635/FL be issued only after the extant legal agreements have been amended to remove the prohibition on any new house building prior to the main House being made wind and water tight.

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

07 March 2008

DVM/FV

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
Anna Gallagher (Legal Services)**