

**EAST AYRSHIRE COUNCIL**

**SOUTHERN LOCAL PLANNING COMMITTEE: 26 MARCH 2010**

**09/0837/PP: CONSENT TO ERECT 16 DETACHED HOUSES, 6 SEMI  
DETACHED HOUSES, AND 5 EXECUTIVE STYLE HOUSES TOGETHER  
WITH ALTERATIONS TO THE ACCESS ROAD, AS AN AMENDMENT TO THE  
EXISTING APPROVED LAYOUT  
AT BURNS GARDEN, BALLOCHMYLE ESTATE, MAUCHLINE**

**APPLICATION BY ARDGOWAN HOMES LIMITED**

**EXECUTIVE SUMMARY SHEET**

**1. DEVELOPMENT DESCRIPTION**

1.1 Planning permission is now sought for alterations to the existing residential layout approved under consent 05/0706/RM. These alterations consist of:

- (i) the deletion of six of the previously approved high amenity dwellinghouses and large plots;
- (ii) the substitution of these six plots with a higher density development consisting of 22 detached and semi-detached dwellings;
- (iii) the substitution of the remaining 5 high amenity dwellings with houses types under the developer's present house brands; and
- (iv) an alteration to the existing residential road layout of Burns Garden to allow access off the southern loop of the main distributor road (Ballochmyle Way) rather than from the northern loop.

1.2 The 22 dwellinghouses proposed comprise of both detached (16 units) and semi-detached (6 units) dwellinghouses that will be located within the central part of the application site. A total of 8 new house types are proposed as follows:

- (i) 3 Type T1 (3 bedroom, 2 storey detached dwelling with integral garage);
- (ii) 1 Type T2 (4 bedroom, 2 storey detached dwelling with attached garage);
- (iii) 4 Type T3 (2 bedroom, 2 storey semi-detached dwelling);
- (iv) 4 Type T4 (4 bedroom, 2 storey detached dwelling with separate garage);
- (v) 5 Type T5 (3 bedroom, 2 storey detached dwelling with separate garage);
- (vi) 1 Type T6 (4 bedroom, 2 storey detached dwelling with attached double garage);
- (vii) 2 Type T7 (3 bedroom, 2 storey semi-detached dwelling with separate garage); and
- (viii) 2 Type T8 (4 bedroom 2 storey detached dwelling with separate garage).

1.3 This change represents a considerable increase in the number of dwellings proposed as well as a significant increase in the density of this part of the residential development site. While the house types proposed are more modest than the existing and approved high amenity dwellings in terms of their

scale, plot layout and accommodation offered, they are still of a high quality design and incorporate many of the detailing features and finishes presented in the existing development.

1.4 The five remaining high amenity dwellings within the application site will be re-branded to Ardgowan Homes house types as follows:

- (i) Plot 61 – Failford Type (8 apartment, 2 storey detached dwelling with detached double garage);
- (ii) Plots 62, 63 and 67 – Ardgowan 2 Type (9 apartment, 2 storey detached dwelling with attached double garage); and
- (iii) Plot 66 – Ochiltree Type (6 apartment, single storey dwelling with detached double garage).

The proposed high amenity dwellings on plots 61 – 63 will lie in the north part of the application site fronting onto the northern loop of Ballochmyle Way. Plots 66 and 67 will lie in the south part of the application site fronting onto the southern loop of Ballochmyle Way with each plot straddling the new Burns Garden access road that will serve the cul-de-sac off which the proposed 22 dwellings will be served.

1.5 The previously approved layout under planning consent 05/0706/RM provided for considerable new core structure planting within the estate creating a series of development compartments that relate to the phasing of development on site. The approved core planting layout has therefore been amended to reduce the impact of the new Burns Garden housing development and create a separate residential compartment.

1.6 Given that the application site was the subject of extant planning consents for the erection of 11 high amenity dwellinghouses, the current application under consideration is for 5 high amenity detached dwellings and 22 more modest detached and semi-detached dwellings; this represents an increase in the total number of dwellinghouses proposed within Ballochmyle Estate by 16 units.

## **2. RECOMMENDATION**

**2.1 It is recommended that the application be approved subject to the conditions listed on the attached sheet and that the issue of the decision notice be held in abeyance until the Solicitor to the Council has concluded an amendment to the existing agreement with the applicant in terms of Section 75 of the Town and Country Planning (Scotland) Act 1997 addressing the matter noted in Sections 7.1 and 8.9 of the report.**

## **3. CONCLUSIONS**

3.1 As indicated in Section 5 of the report, the application is considered not to be in accordance with the development plan. Therefore, given the terms of Section 25 and Section 37(2) of the Town and Country Planning (Scotland) Act

1997, the application should be refused unless material considerations indicate otherwise. As is indicated at Section 6 of the report, there are material considerations relevant to this application which on balance suggest that the provisions of the development plan should be set aside in this case.

3.2 In terms of the representations received, there is genuine significant concern regarding the introduction of a much higher density residential development into the Ballochmyle development and the residents who have already subscribed to the high quality, prestigious development are clearly aggrieved at the potential diminution of the current high amenity and high quality development at Ballochmyle. In addressing this matter, the applicant has stated that while the proposed house types offered in the Burns Garden site will be smaller and will open up additional market with lower priced units, this would not be at the expense of the quality of finishes and materials specification currently used within the Ballochmyle residential development.

3.3 It is considered that while the switching of the access road serving Burn Gardens from the north loop of Ballochmyle Way to the south loop will impact on the traffic flow on the south loop, this is not considered to be significantly detrimental to public road safety. Traffic calming measures have been approved as an integral part of the approved road layout for the site and the proposed development at Burns Garden will also require the introduction of traffic calming as indicated by the consultation response from the Roads and Transportation Division. Subject to the imposition of appropriate conditions in any consent granted for the development, the Division has not objected to the proposal on road safety, road capacity or parking provision grounds.

3.4 The proposed higher density development overall that will be created by the proposed development will have additional impacts in visual terms. However, the proposed Burns Garden development will essentially be located within the central part of the Ballochmyle residential development. The landscaping of the site approved as part of the original planning consents promotes a scheme of core structural planting as a means of mitigating the impact of the Ballochmyle development in landscape and visual amenity terms and this remains part of the current proposals. This core structural planting is intended to create compartments of development within the site and this mitigation measure will still form part of the proposed Burns Garden development. It is of course recognised that such structural planting will take time to mature and take effect; however, it is considered that as a result of this, the higher density of development proposed at Burns Garden can be accommodated within the overall Ballochmyle development landscape.

3.5 Similarly, in the extant planning consents for the Ballochmyle development, the setting of the listed Ballochmyle House has been protected by the introduction of a parkland and lochan area in front of the House, thereby creating a visual buffer zone. The proposed development at Burns Garden will not impinge on this buffer zone and it is considered to be sufficiently distant from the listed building that there will be no additional impacts on its setting.

3.6 The applicant has indicated the current difficulties presented by the severe economic down turn and the impact this has had on sales interest within the site, to the extent that the site may require to be mothballed until markets improve. Clearly this would have an impact on the progress of development on site and the downturn in sales would have a detrimental impact on the ability of the applicant to progress the refurbishment of the listed mansion house. There would also be an impact in socio-economic terms with the potential laying off of the workforce employed within the site. It should be noted that the objectors are not unsympathetic to this situation.

3.7 There is no doubt that the situation presents a clear dilemma for the Council as Planning Authority. It is acknowledged and recognised that approval of this higher density development within part of the site will impact adversely on the overall quality and high amenity value and vision envisaged for Ballochmyle estate. Equally, the scale and depth of the economic down turn has had significant impacts on this and other development sites within East Ayrshire and the refusal of the application would deny the applicant the opportunity of presenting a more affordable product that may open up additional markets thereby securing progress on site. Refusal could also potentially result in adverse socio-economic impacts with the loss of employment and could jeopardise the overall progress of development on site, including the sterling work that has taken place thus far in the refurbishment of the listed mansion house.

3.8 While this application presents a departure from the high amenity, executive style development previously approved for Ballochmyle, the quality of housing proposed remains high, with the proposed units still reflecting the overall design qualities that are unique to the existing development, albeit on a more modest scale and at considerably higher density. Outwith the context of the Ballochmyle development, the proposals for Burns Garden would otherwise be considered to be highly acceptable in planning terms.

3.9 However, there are concerns expressed that the approval of this application could nurture an argument for similar applications that would result in higher density proposals elsewhere within the Ballochmyle development, resulting in greater diminution of the high amenity quality of the development. In this regard, should the Committee be minded to approve this application, any approval should be subject to a Section 75 Agreement to restrict the overall number of new dwellings to be constructed with the Ballochmyle development to 110 (94 currently approved plus the additional 16 units that are the subject of this present application). The applicant has indicated a willingness to enter into such an agreement.

#### **CONTRARY DECISION NOTE**

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Economic Development the application would not require to be referred to the Full Council as it would not represent a significant departure from policy.

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

**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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**APPLICATION BY ARDGOWAN HOMES LIMITED**

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

### 1. PURPOSE OF REPORT

1.1 The purpose of this report is to present for determination an application for planning permission which is to be considered by the Local Planning Committee under the scheme of delegation as the application is the subject of more than 10 objections.

### 2. APPLICATION DETAILS

2.1 **Site Description:** The application site is located approximately 1.2 km south-east of the settlement of Mauchline and 0.3 km west of the village of Catrine. The site extends to 0.9 hectare in area, comprising of part of Ballochmyle Estate and its environs. The site lies within the new private residential development at Ballochmyle which also includes the restoration and refurbishment of Ballochmyle House, a Category B Listed Building. The larger site was formerly occupied by Ballochmyle Hospital, now demolished.

2.2 The site is accessed via the existing main gated site entrance from the B705 Mauchline – Catrine Road along the partially constructed southern loop of the internal residential distributor road. Ballochmyle House lies to the east of the present application site, some 325 metres away.

2.3 **Background:** A previous 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. This outline consent was subject to a Section 75 Agreement to ensure the restoration of Ballochmyle House (Ref. No. 02/0257/OL). A subsequent Reserved Matters application for the development of 94 dwellinghouses was approved on 16 March 2006 following the concluding of a Minute of Variation to the original Section 75 Agreement (Ref. No. 05/0706/RM).

2.4 Since the approval of these earlier planning applications, the site has been acquired by the present developer, Ardgowan Homes Limited. As a consequence of this, a number of planning applications have subsequently been approved for

the site, essentially changing the previous house types approved for the site to similar high amenity, executive house type brands offered for construction by the current developer. Although house types have changed on site, the layout has essentially remained as previously approved.

**2.5 Proposed Development:** Planning permission is now sought for alterations to the existing residential layout approved under consent 05/0706/RM. These alterations consist of:

- (i) the deletion of six of the previously approved high amenity dwellinghouses and large plots;
- (ii) the substitution of these six plots with a higher density development consisting of 22 detached and semi-detached dwellings;
- (iv) the substitution of the remaining 5 high amenity dwellings with houses types under the developer's present house brands; and
- (iv) an alteration to the existing residential road layout of Burns Garden to allow access off the southern loop of the main distributor road (Ballochmyle Way) rather than from the northern loop.

2.6 The 22 dwellinghouses proposed comprise of both detached (16 units) and semi-detached (6 units) dwellinghouses that will be located within the central part of the application site. A total of 8 new house types are proposed as follows:

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2.7 This change represents a considerable increase in the number of dwellings proposed as well as a significant increase in the density of this part of the residential development site. While the house types proposed are more modest than the existing and approved high amenity dwellings in terms of their scale, plot layout and accommodation offered, they are still of a high quality design and incorporate many of the detailing features and finishes presented in the existing development.

2.8 The five remaining high amenity dwellings within the application site will be re-branded to Ardgowan Homes house types as follows:

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2.9 The previously approved layout under planning consent 05/0706/RM provided for considerable new core structure planting within the estate creating a series of development compartments that relate to the phasing of development on site. The approved core planting layout has therefore been amended to reduce the impact of the new Burns Garden housing development and create a separate residential compartment.

2.10 Given that the application site was the subject of extant planning consents for the erection of 11 high amenity dwellinghouses, the current application under consideration is for 5 high amenity detached dwellings and 22 more modest detached and semi-detached dwellings; this represents an increase in the total number of dwellinghouses proposed within Ballochmyle Estate by 16 units.

### **3. CONSULTATIONS AND ISSUES RAISED**

3.1 East Ayrshire Council Roads and Transportation Division has no objections subject to conditions. The Division has indicated that the road layout will require to be amended to incorporate 4 unallocated visitor parking spaces as recommended in the Roads Development Guide and traffic calming measures to Roads Department standards. The Roads Division also has concerns about a section of road with no turning area ending at a security gate which would mean a long reverse for vehicles that cannot access the gates. A condition would also be required that no gating of the development will be allowed at the point indicated. Further conditions required include:

- (i) Access to the site will require to be taken via internal roads which comply with the Roads Development Guide 1996 and will require Construction Consent. This consent would cover such details as road widths, footways, road construction, street lighting, drainage etc;
- (ii) All internal roads will require to be traffic calmed;
- (iii) Junction visibility splay areas of 4.5 metres by 35 metres will be required at all internal road junctions with no obstruction to visibility greater than 1 metre in height being allowed within these areas;
- (iv) Parking to the Roads Development Guide 1996 standard will require to be provided for the development;
- (v) Any garages must be set back a minimum distance of 6 metres from the rear of the public footway;
- (vi) All private driveways will require to be paved for a minimum distance of 6 metres from the rear of the footway;

- (vii) Any gates will require to open inwards, away from the public road;
- (viii) No surface water must be allowed to discharge onto the public road;

***Conditions can be attached to any consent granted for the proposed development to meet the requirements of the Roads and Transportation Division.***

3.2 Mauchline Community Council has not responded to the consultation letter.

3.3 Scottish Water, The Scottish Environment Protection Agency, Power Systems and Scotland Gas Networks have no adverse comments to make on the proposed development.

#### **4. REPRESENTATIONS**

4.1 A total of 21 letters of representations from 20 signatories have been received objecting to the proposed development. Two additional letters of representation has been received from Ballochmyle Residents' Association, again objecting to the development. The letters of representation have considerable commonality in the points of objection or concerns raised. The main points of objection are summarised as follows:

4.2 The housing density and surrounding environment were carefully planned to be sympathetic to the listed building. The amended application is completely at odds with this intention, totally changing the character of the Ballochmyle development, placing its long term viability as a prestigious development in doubt.

***It is acknowledged that approval of this higher density development within part of the site will impact adversely on the overall quality and high amenity value and vision envisaged for Ballochmyle estate.***

4.3 The resultant increase in traffic from the 22 proposed units in Burns Garden, with traffic redirected along the currently unfinished Ballochmyle Way, will place an added burden on an already busy road and increase the risk of traffic accidents. There is a lack of parking within Burns Garden.

***The residential roads within the Ballochmyle estate development have been designed to the requirements of the Roads Design Guidance. This includes the introduction of traffic calming measures. It is unlikely, even with the increase in the number of residential units resulting from that this current application (an additional 16 units), that this will give rise to any significant adverse road infrastructure or road safety issues. The Roads and Transportation Division, subject to the imposition of appropriate conditions, does not object to the proposed development on road infrastructure, parking provision, or road safety grounds.***

4.4 The proposed development will result in being overlooked by a high density, busy, urban type housing estate, totally at odds with the original plan.

*Although the proposed amendment to the Burns Garden layout will result in an increased density of development, the core structure planting approved as part of the original planning consent should ensure that the development compartments envisaged throughout the development will afford reasonable privacy to dwellings. Even with the higher density of development, distances between dwellinghouses will still be acceptable in terms of privacy and overlooking. It is accepted however, that the proposed development will result in a diminution of the high amenity standards that prevail within the existing development and as represented by 'executive' house types within sizable plots.*

4.5 The proposed development will have an adverse effect on the setting of Ballochmyle House, the refurbishment of which is purportedly paramount to the developers.

*It is considered that the proposed development will not in itself have any significant impact on the setting of the listed Ballochmyle House. The current application site is divorced from the listed mansion house by other proposed phases of residential development already approved under extant consents. Furthermore parkland and a lochan area were introduced in the original planning consent layout to create a buffer zone to reduce the impact on the setting of the listed building by the new residential development.*

*Further mitigation was introduced through the landscaping proposals for the site where structural core planting would ensure that phases of development were contained within landscaping compartments. The structural core planting is to be maintained within the current application site and it is considered that, although the proposed development will result in a higher density of development in this part of the Ballochmyle residential development, it is unlikely to result in any significant additional impact on the setting of Ballochmyle House.*

4.6 There will be effects on the local wildlife and environment.

*It is considered that the proposed development will have no more of an impact on flora and fauna than the development already approved on this part of Ballochmyle estate.*

4.7 There will be an increase in noise pollution.

*It is accepted that the increased numbers of dwellings proposed by this higher density development may give rise to additional noise. However, it is not considered that this would be at a level that would constitute a statutory noise nuisance.*

4.8 There is concern that this may not be the only change of application that could be submitted by the developer.

***The Planning Authority is required to determine this application on its merits and cannot assume that it presages further similar applications. However approval of the application would have an effect on the prevailing character of this part of the site which might be presented as a justification for further such change.***

4.9 There would be impact on local amenities.

***While the proposed development represents an increase in the number of residential units by 16, it is considered that this will not result in any significant adverse impact on local services or amenities.***

4.10 The present proposal will desecrate the original vision of both the developer and the Head of Planning and Economic Development who stated as recently as February 2009 under the Section 75 Agreement that “the maximum number of houses for the site would be 94”.

***It is considered that the proposed development does not in itself result in any breach of the existing Section 75 Agreement as this relates to the original grant of outline consent and subsequent Reserved Matters application. This is a separate planning application that requires to be determined on its merits and should the Committee be minded to approve this application, then there will be a requirement to amend the Section 75 Agreement to take account of consequential changes as set out elsewhere in this report.***

4.11 In terms of the Council's regeneration strategy of attracting higher income earners into East Ayrshire, Ballochmyle has already been an outstanding success. Over 80% of the current residents moved into East Ayrshire specifically to live in Ballochmyle. Almost without exception, these incomers would not have moved to the area had the current proposals been known. While there is clear evidence already that potential buyers exist for a unique property and environment, this is less likely if what is on offer can be found routinely elsewhere.

***The comments of the objectors are noted.***

4.12 Residents are aware that the proposed amendment is driven solely by the current economic climate we find ourselves in. We have chosen to make Ballochmyle our home and are therefore as keen as anyone to see the development succeed. However, we do not believe this amendment as proposed is the only or indeed the best way forward. Surely one of the primary responsibilities on any planning department is to ensure that the environment, residents and our heritage is protected from economic expediency.

***The comments of the objectors are noted but the current application will require to be determined on its own merits taking full cognisance of the development plan and the material considerations relevant to the application.***

4.13 The current planning application to increase the number of dwellings proposed needs to be assessed against all of the criteria set out in Policy RES8 of the East Ayrshire Local Plan.

***An assessment against the policy provisions of the East Ayrshire Local Plan is set out in Section 5 below.***

4.14 The original planning application was supported but on a SUDs plan based on the original density of the build site and climatic conditions. There may be a negative impact on drainage as a result of increasing the number of units within the development site.

***Neither Scottish Water nor SEPA has raised any objections to the proposed development on surface water drainage issues. Nonetheless, the overall development incorporates a SUDs system based on the provision of the lochan feature. The developer will require to ensure that the design of the SUDs is to the satisfaction of Scottish Water and SEPA.***

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

5.1 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 ENV2(B) advises that in Sensitive Landscape Areas the protection and enhancement of the landscape shall be given full consideration in the determination of development proposals.

***The proposed development is located within the grounds of Ballochmyle House which is set within a high quality landscape located in a Sensitive Landscape Area. The proposed development at Burns Gardens, albeit at a higher density than that originally proposed under previous consents, will still benefit from a significant amount of screening provided by existing retained woodland and proposed core structural planting. It is therefore considered that the proposed development will not have any additional significant impact upon the existing physical landscape and therefore is not contrary to the spirit of this policy. Indeed the proposed additional planting and ongoing management of the woodlands is considered to have a net positive impact on the Sensitive Landscape Character Area.***

5.3 Policy COMM5 states that throughout the rural areas there shall be a general presumption in favour of housing development within existing communities....The three Councils shall identify in local plans where various types of residential development in the countryside would be acceptable.....

***The proposed development is outwith the settlement boundary. However it is identified in the Local Plan as a development opportunity site hence recognising that the site is appropriate for development and therefore complying with the above mentioned policy.***

***It is considered that the proposal is consistent with the provisions of the Structure Plan.***

Adopted East Ayrshire Local Plan (2003)

5.4 Policy RES8 states that where a proposal relates to an acceptable conversion of a large residential or institutional listed building, an associated but limited enabling development of new build housing may be considered acceptable by the Council, subject to all of the following criteria being met:

(i) funds raised from the sale of the enabling development are channelled into the conservation of the building to which the development relates;

***The existing Section 75 Agreement for the Ballochmyle Estate site ensures that funds raised from the sale of the enabling development are channelled into the refurbishment of Ballochmyle House. The applicant has not provided any further financial information to justify an increase in the numbers of dwellings. See the applicant's supporting statement in Section 6 below.***

(ii) the new build element does not result in the division and fragmentation of the building and its grounds insofar as management of the area is concerned;

***The proposed layout of the scheme, as amended, would not result in the above.***

(iii) the developer can demonstrate that financial assistance is not available from any other source;

***The applicant demonstrated at the outline stage that financial assistance is not currently available from any other source and that position has not altered.***

(iv) the extent of any new build element is restricted to the absolute minimum to unlock the development potential of the building and to facilitate its restoration;

***Comments as per (i) above.***

(v) the new build element meets the provisions of all other relevant housing policies;

***It is considered that the amended proposals do meet the provisions of all other relevant housing policies.***

(vi) the proposed enabling development is located and designed so as to have minimum impact on the architectural and historic interest, character and setting of the historic environment, including any designation of the area as an Historic Garden and Designed Landscape; and

***The layout of the amended scheme is considered to respect the setting of the listed building.***

(vii) the design of the enabling development reflects and compliments the style and design of the original building located on the site.

***It is considered that the design of the enabling development significantly reflects the style and design of the mansion house.***

The policy also states that any permitted enabling residential development will be made the subject of an appropriate Section 75 Agreement regarding the phasing of construction and other related design and layout matters, through the submission of a detailed business plan for the overall development.

***A Section 75 Agreement is currently in place to secure the refurbishment of Ballochmyle House. It is considered that the existing Agreement would require to be amended to incorporate the details of this amendment application, particularly in relation to the phasing of the proposed development in relation to refurbishment works on the mansion house.***

5.5 Policy ENV 14 states that in assessing development proposals relating to land within the rural area which has not been identified as a specific development opportunity site in the Local Plan, the Council shall ensure that these have a minimum impact on the rural environment. There will be a general presumption against development which would have a permanent adverse impact or cause irreparable damage to built heritage resources requiring conservation or their settings, including listed buildings and historic gardens and designed landscapes and have a permanent adverse impact or cause unacceptable, irreparable damage to natural heritage resources requiring conservation and to existing species and habitats.

***It is considered that the proposed Burns Garden development would not have any additional adverse effect on the immediate setting of the category 'B' listed Ballochmyle House as the mature trees adjacent to the house would be retained, the proposed housing development would be set well back from that building and the creation of a lochan in front of the house would enhance its setting.***

*It is considered that the proposal does not conflict with Policy ENV14.*

*Nonetheless, the additional dwellinghouses proposed, in the absence of financial information justifying the additional requirement, are considered to be contrary to the provisions of Policy RES8 of the Adopted Local Plan.*

## 6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of the application are the consultation responses, the representations received, the supporting statement by the applicant, the Alteration to the East Ayrshire Local Plan (Finalised Version with Modifications 2009) and the planning history of the site.

### Alteration to the East Ayrshire Local Plan

6.2 Policy RES8 states that where a proposal relates to the conversion of a large residential or institutional building located within its own grounds to a sympathetic alternative use, an associated but limited enabling development of new build housing may be considered acceptable by the Council in order to help finance the proposed development. Such an enabling development will only be entertained by the Council where the following applicable criteria are met:

(i) the existing building to which the enabling development would relate constitutes a Category A or B listed building which is in a derelict or potentially derelict condition and which is, in the opinion of the Council, worthy of retention and reuse;

***The proposed alteration is related to the restoration of Ballochmyle House, which is a category B Listed Building and is worthy of retention and reuse.***

(ii) it can be demonstrated conclusively to the Council that economic conversion or reuse of the building is not otherwise financially viable and that financial assistance is not available from any other source;

***The applicant has not, apart from the information contained within the Supporting Statement, provided information to demonstrate conclusively that the additional residential units are required to fund the restoration of the building and that financial assistance is not available from any other source in this regard.***

(iii) it can be demonstrated conclusively to the satisfaction of the Council that any potential adverse effects the proposed new enabling development may have on the character and appearance of the general area within which it is proposed, are outweighed by the benefits of retaining and converting the existing building on the site;

***It is considered that the any potential adverse impacts associated with the proposed new development on the character and appearance of the general area would be outweighed by the benefits of retaining, converting and securing progress at Ballochmyle House.***

- (v) all profits from the sale of the enabling development are channelled into the conservation of the building to which the development relates;

***Profits from the sale of the proposed development would continue to be channelled into the conservation of the Listed mansion.***

- (viii) the new build element meets the provisions of all other relevant housing policies and does not impact adversely on the viability of housing sites identified / approved for residential purposes in those settlements in closest proximity to the proposed development site;

***It is considered that the new build element does meet the provisions of all other relevant housing policies and does not impact adversely on the viability of housing sites identified / approved for residential purposes in those settlements in closest proximity to the proposed development site.***

- (ix) the proposed enabling development is located and designed so as to have minimum impact on the architectural and historic interest, character and setting of the historic environment, including any designation of the area as an Historic Garden and Designed Landscape;

***It is considered that the new build element is located and designed so as to have minimum impact on the setting of Ballochmyle House.***

- (x) the design of the enabling development complements the style and design of the original building located on the site; and

***It is considered that the design of these new residential units reflect and compliments the style and design of Ballochmyle House albeit that it is not of the same high amenity standard as the adjacent executive dwellinghouses.***

- (xi) no work is commenced on any part of the authorised enabling element of the development before the main property to which the enabling development is linked has been stabilised and/or rendered wind and water tight.

***Through the original consents gained for enabling development, Ballochmyle House has now been stabilised and rendered wind and water tight.***

6.3 Policy RES 26 states that all developers for new housing developments will be required to observe the minimum private open space criteria and standards detailed in Schedule 5 of the Local Plan. The standards quoted may however, be relaxed at the discretion of the Council in respect of the conversion of existing properties where the case for such a relaxation can be fully justified by the developer and where considered appropriate by the Planning Authority.

***It is considered that that the minimum standards for the provision of private open space are met by the new units.***

***Nonetheless, the additional dwellinghouses proposed, in the absence of financial information justifying the additional requirement, is considered to be contrary to the provisions of Policy RES8 of the Alteration to the Local Plan. However, most weight should be given to the adopted Local Plan as there is an outstanding objection to Policy RES 8 of the Local Plan Alteration.***

#### Consultations Responses

6.4 There are no consultation responses that would suggest that refusal of the application is warranted.

#### Representations

6.5 It is considered that the representations received regarding the significant increase in the density of residential development within the current application site and its impact overall to the high amenity value of the current development carry significant merit. The concerns are material considerations in the determination of the application. It is considered however, that other matters raised can either be addressed by the imposition of appropriate conditions in any consent granted or by means of a Section 75 Agreement, particularly in respect of restricting further additional increases in the overall numbers of dwellings developed within the Ballochmyle development. The applicant has indicated a willingness to enter into such an agreement.

#### Supporting Statement by Applicant

6.6 The applicant has indicated that the current consent which they inherited for Ballochmyle comprises 94 detached properties and 20 apartments in the Listed Building. The applicant has currently completed and occupied 20 detached houses with one further property pre-sold and under construction. These properties have sold in the price range £395,000 to £950,000. Nine of the apartments within the listed mansion house are either reserved or missed.

6.7 The applicant has been marketing the development continuously for over 3 years and sales interest has slowed noticeably in the last 7 months with only two reservations taken in that time. The applicant has however noticed that there is significant interest for properties in the price range £200,000 to £300,000. The potential purchasers do not want to purchase an apartment and vary from professional couples, older people trading down, to young families attracted to

everything that the estate has to offer. One facet which they all have in common is that they do not want to be burdened by purchasing the larger properties which are typically set in at least half an acre of land.

6.8 The applicant's strategy behind the new application is to position 22 smaller properties on the site of 6 detached houses. These would vary from 2 bedroom semi-detached properties at 820 sq.ft. to small 4 bedroom detached properties at 1670 sq.ft. the applicant has stated that these are deliberately tucked behind the larger properties which would continue to be representative of the Ballochmyle development.

6.9 It is fundamentally the applicant's intention that the new houses will be recognisable as coming from the Ballochmyle "family" of house types. External materials would be exactly as they have specified to date on the larger houses, namely slate effect roofs, mixture of roughcast and facing brick walling with stone detailing and light oak PVCU windows and doors as before.

6.10 The applicant states that the economics of such a strategy mean that the build costs will substantially increase not least because of the increase in the number of kitchens, bathrooms and heating systems, but also the significant increase in infrastructure costs. The net result is there will be a neutral effect on the profitability of the company. The applicant indicates that the only reason behind this request is to bring the price point available at Ballochmyle down to a more affordable level and to widen the interest in the award winning product of which the applicant states they are justifiably proud.

6.11 The other benefit to the wider economy of East Ayrshire is that the applicant will be able to keep its large workforce in employment, as the alternative to finding a wider marketplace for the company's product is for Ardgowan Homes to slow down or mothball the site as most of their competitors seem to have done.

### Planning History

6.12 Relevant planning history on the Ballochmyle House and Estate is as follows:

- (i) An outline planning application (Ref. No. 02/0757/OL) for the development of land for residential purposes and refurbishment of Ballochmyle House to form flats was approved on 01 February 2005. This application was also the subject of a Section 75 Agreement for the site.
- (ii) A Listed Building Consent Application (Ref. No. 03/0410/LB) for the proposed refurbishment of Ballochmyle House to form flats was approved on 09 November 2004.
- (iii) A full planning application (Ref. No. 04/0958/FL) for the proposed road and drainage network including pond and part demolition and refurbishment of Ballochmyle House to form 14 residential units was approved on 16 March 2006.

- (iv) A Reserved Matters application (Ref. No. 05/0706/RM) for the erection of 94 dwellings and formation of associated roads at Ballochmyle was approved 16 March 2006. This application was subject to a variation of the existing Section 75 Agreement for the site.
- (v) A Listed Building Consent application (Ref. No. 06/0858/LB) and an associated full planning application (Ref. No. 06/0876/FL) for the refurbishment of Ballochmyle House to form 21 units were both approved on 10 March 2007.
- (vi) A Reserved matters application (Ref. No. 06/1080/RM) for an amendment to consent 05/0706/RM for change of house types within Phase 1 at Ballochmyle was approved on 27 February 2007.
- (vii) A Reserved Matters application (Ref. No. 08/0019/RM) for house type substitution comprising 27 dwellings in Phase 2, Ballochmyle was approved on 10 March 2008.

## **7. FINANCIAL AND LEGAL IMPLICATIONS**

7.1 There are no financial implications for the Council in the determination of this application. However the proposed development will require amendments to the existing legal agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 relating to the Ballochmyle Estate. The amendments will relate to the securing of appropriate phasing of the additional new build housing relative to the refurbishment of Ballochmyle House and to potentially limit the overall number of dwellings constructed as described in Section 8.9 below.

## **8. CONCLUSIONS**

8.1 As indicated in Section 5 of the report, the application is considered not to be in accordance with the development plan. Therefore, given the terms of Section 25 and Section 37(2) of the Town and Country Planning (Scotland) Act 1997, the application should be refused unless material considerations indicate otherwise. As is indicated at Section 6 of the report, there are material considerations relevant to this application which on balance suggest that the provisions of the development plan should be set aside in this case.

8.2 In terms of the representations received, there is genuine significant concern regarding the introduction of a much higher density residential development into the Ballochmyle development and the residents who have already subscribed to the high quality, prestigious development are clearly aggrieved at the potential diminution of the current high amenity and high quality development at Ballochmyle. In addressing this matter, the applicant has stated that while the proposed house types offered in the Burns Garden site will be smaller and will open up additional market with lower priced units, this would not

be at the expense of the quality of finishes and materials specification currently used within the Ballochmyle residential development.

8.3 It is considered that while the switching of the access road serving Burn Gardens from the north loop of Ballochmyle Way to the south loop will impact on the traffic flow on the south loop, this is not considered to be significantly detrimental to public road safety. Traffic calming measures have been approved as an integral part of the approved road layout for the site and the proposed development at Burns Garden will also require the introduction of traffic calming as indicated by the consultation response from the Roads and Transportation Division. Subject to the imposition of appropriate conditions in any consent granted for the development, the Division has not objected to the proposal on road safety, road capacity or parking provision grounds.

8.4 The proposed higher density development overall that will be created by the proposed development will have additional impacts in visual terms. However, the proposed Burns Garden development will essentially be located within the central part of the Ballochmyle residential development. The landscaping of the site approved as part of the original planning consents promotes a scheme of core structural planting as a means of mitigating the impact of the Ballochmyle development in landscape and visual amenity terms and this remains part of the current proposals. This core structural planting is intended to create compartments of development within the site and this mitigation measure will still form part of the proposed Burns Garden development. It is of course recognised that such structural planting will take time to mature and take effect; however, it is considered that as a result of this, the higher density of development proposed at Burns Garden can be accommodated within the overall Ballochmyle development landscape.

8.5 Similarly, in the extant planning consents for the Ballochmyle development, the setting of the listed Ballochmyle House has been protected by the introduction of a parkland and lochan area in front of the House, thereby creating a visual buffer zone. The proposed development at Burns Garden will not impinge on this buffer zone and it is considered to be sufficiently distant from the listed building that there will be no additional impacts on its setting.

8.6 The applicant has indicated the current difficulties presented by the severe economic down turn and the impact this has had on sales interest within the site, to the extent that the site may require to be mothballed until markets improve. Clearly this would have an impact on the progress of development on site and the downturn in sales would have a detrimental impact on the ability of the applicant to progress the refurbishment of the listed mansion house. There would also be an impact in socio-economic terms with the potential laying off of the workforce employed within the site. It should be noted that the objectors are not unsympathetic to this situation.

8.7. There is no doubt that the situation presents a clear dilemma for the Council as Planning Authority. It is acknowledged and recognised that approval of this higher density development within part of the site will impact adversely on the overall quality and high amenity value and vision envisaged for Ballochmyle

estate. Equally, the scale and depth of the economic down turn has had significant impacts on this and other development sites within East Ayrshire and the refusal of the application would deny the applicant the opportunity of presenting a more affordable product that may open up additional markets thereby securing progress on site. Refusal could also potentially result in adverse socio-economic impacts with the loss of employment and could jeopardise the overall progress of development on site, including the sterling work that has taken place thus far in the refurbishment of the listed mansion house.

8.8 While this application presents a departure from the high amenity, executive style development previously approved for Ballochmyle, the quality of housing proposed remains high, with the proposed units still reflecting the overall design qualities that are unique to the existing development, albeit on a more modest scale and at considerably higher density. Outwith the context of the Ballochmyle development, the proposals for Burns Garden would otherwise be considered to be highly acceptable in planning terms.

8.9 However, there are concerns expressed that the approval of this application could nurture an argument for similar applications that would result in higher density proposals elsewhere within the Ballochmyle development, resulting in greater diminution of the high amenity quality of the development. In this regard, should the Committee be minded to approve this application, any approval should be subject to a Section 75 Agreement to restrict the overall number of new dwellings to be constructed with the Ballochmyle development to 110 (94 currently approved plus the additional 16 units that are the subject of this present application). The applicant has indicated a willingness to enter into such an agreement.

## **9. RECOMMENDATION**

9.1 It is recommended that the application be approved subject to the conditions listed on the attached sheet and that the issue of the decision notice be held in abeyance until the Solicitor to the Council has concluded an amendment to the existing agreement with the applicant in terms of Section 75 of the Town and Country Planning (Scotland) Act 1997 addressing the matter noted in Sections 7.1 and 8.9 of the report.

## **CONTRARY DECISION NOTE**

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Economic Development the application would not require to be referred to the Full Council as it would not represent a significant departure from policy.

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

16 March 2010  
HM/HM  
FV/DVM

### LIST OF BACKGROUND PAPERS

1. Application Form, Plans and accompanying supporting information.
2. Statutory Notices and Certificates.
3. Consultation responses.
4. Letters of representation.
5. Adopted East Ayrshire Local Plan (2003).
6. Alteration to the East Ayrshire Local Plan (Finalised Version with Modifications, 2009)
7. Approved Ayrshire Joint Structure Plan (2007).
8. Previous applications as described in Section 6.12

Anyone wishing to inspect the above background papers should contact Mr. Hugh Melvin on 01563 555481.

***Implementation Officer: Dave Morris***

Form TP24A

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application No: 09/0837/PP

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Location	Ballochmyle Estate MAUCHLINE KA5 6QH
Nature of Proposal:	Proposed alteration to approved residential layout to allow for the erection of 16 detached and 6 semi-detached dwellings at Burns Garden, Ballochmyle Estate, Mauchline
Name and Address of Applicant:	Ardgowan Homes Limited Ballochmyle Estate, Catrine Road, MAUCHLINE KA5 6LQ
Name and Address of Agent	Archial Architects Limited Elliot mews 40 Elliot Street GLASGOW G3 8DZ

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PPO's Ref: Hugh Melvin

The above PLANNING PERMISSION application should be granted subject to the following conditions:-

1. Prior to the commencement of any development on site, the applicant shall submit to and have approved by the Planning Authority details and samples of the proposed external wall finishing materials and roof finishing materials to be used in the proposed new dwellinghouses and proposed finishes to shared driveways and accesses.

REASON – In the interests of visual amenity and to protect trees within the site.

2. Junction visibility splay areas of 4.5 metres by 35 metres shall be formed at all internal road junctions with no obstruction to visibility greater than 1 metre in height being allowed within these areas.

REASON – In the interests of public safety.

3. Parking to the Roads Development Guide 1996 standards shall be provided for the development. This shall also include the provision of 4 unallocated visitor parking spaces within the proposed development.

REASON – In the interests of residential amenity.

4. All proposed garages shall be set back a minimum distance of 6 metres from the rear of the public footway;

REASON – In the interests of public road safety.

5. All private driveways will require to be paved for a minimum distance of 6 metres from the rear of the footway.

REASON – In the interests of public road safety.

6. Any gates shall open inwards, away from the public road.

REASON – In the interests of public safety.

7. No surface water shall be allowed to discharge onto the public road;

REASON – In the interests of public road safety.

8. Construction works on site shall not be carried out prior to 0800 hours and after 1700 hours on Mondays to Fridays, only between 0800 and 1300 hours on Saturdays, and not at any time 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.

9. Notwithstanding the plans hereby approved, and the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, no boundary walls or fencing shall be constructed along the frontage or other boundaries of each plot without the prior written approval of the Planning Authority.

REASON – In the interests of visual amenity and to ensure continuity and uniformity of boundary treatment which is stated in the application to be hedgerow planting.

10. Prior to the commencement of development on site, the applicant shall submit to and have approved by the Planning Authority a detailed landscaping plan for the development site. The plan shall provide details of the numbers, species and sizes of trees and shrubs to be planted as core structure planting within the development site. The submitted information shall include details for the future maintenance of these areas. The landscaping plan as approved shall

thereafter be implemented simultaneously with the development and construction of the proposed dwellinghouses hereby approved.

REASON – In the interests of visual amenity and to ensure that core structure planting for this part of the development site is implemented within an acceptable timescale in the interests of residential amenity.

11. Prior to the commencement of development within the application site, the developer shall submit the details of the Sustainable Urban Drainage system (SUDs) to be installed and shall specify a programme for the future management and maintenance of the scheme. The design of the SUDS scheme, relevant to the proposed lochan, shall take cognisance of the principal function of the lochan to serve as a landscape feature within the development site.

REASON – To ensure an appropriate means of surface water runoff in the interests of public health and safety and in the interests of visual amenity.

12. Prior to the commencement of development, the applicant shall submit to, and have approved by the Planning Authority details of the proposed detached garages to be constructed within the development site, which shall be finished externally to match the finishes of the dwellings to which they relate.

REASON – In the interests of residential and visual amenity.

13. Prior to the commencement of works on site, the applicant shall submit to, and have approved by the Planning Authority, details of any enclosures, structures or other apparatus required in respect of the provision of servicing infrastructure for the proposed development.

REASON – In the interests of visual amenity.

14. Notwithstanding the plans hereby approved, the gated access feature is not hereby approved.

REASON - In the interests of public road safety.

## **NOTES TO APPLICANT**

1. East Ayrshire Council Roads and Transportation Division has advised that Construction Consent will be required for the construction of the residential roads and footpaths, street lighting etc. The Division can be contacted on Tel 01563 555330. The internal roads must comply with the Roads Development Guide 1996. This consent would cover details such as road widths, footways, road construction, street lighting, drainage, traffic calming, internal junction visibilities etc.

2. The developer should make early contact with Scottish Water and the Scottish Environment Protection Agency regarding drainage of the site and to confirm the request to utilise a Sustainable Urban Drainage System (SUDS) with regard to surface water. These Authorities require this development to be drained in accordance with the recommendations contained in the CIRIA manual on SUDS.

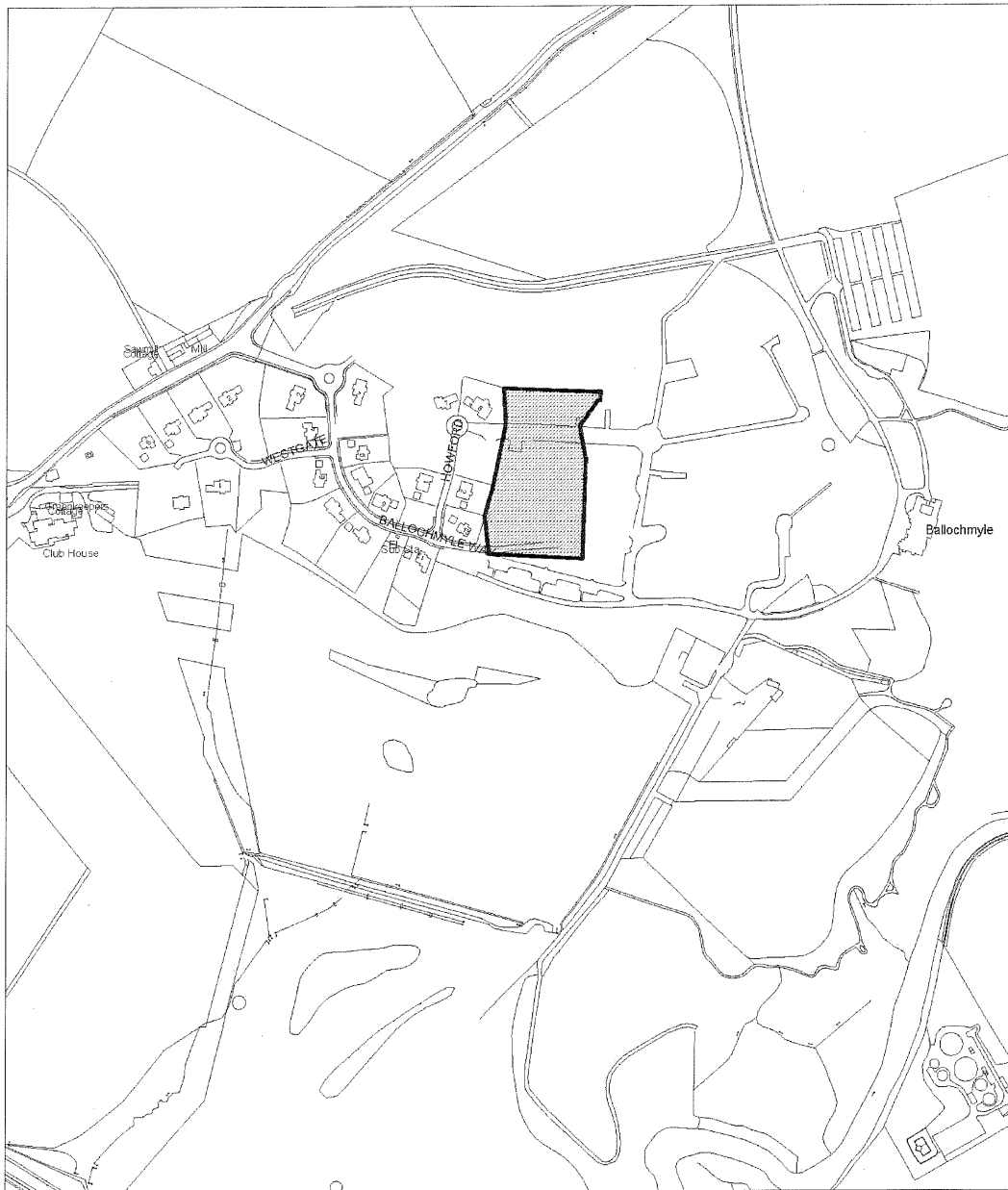
3. The Council does not currently have a general agreement with Scottish Water in relation to the maintenance of public SUDS. Proposals for site specific agreements which may require to involve the developer or other third parties will be considered within the overall framework recommended in the design manual for SUDS published by CIRIA.


4. The applicant should make early contact with Power Systems and Transco with regard to the protection or diversion of apparatus that may be affected by the proposed development.

5. All waste to be removed from the site (construction waste etc.) shall be removed by a licensed waste carrier to an appropriately licensed or exempted site.

**The Council has granted this consent for the following reasons:**

Although the proposal is contrary to the Development Plan the material considerations, in terms of securing continued progress on site and continued economic benefits arising from the development process, together and on balance indicate that it would be appropriate to approve the proposals subject to an Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 which would restrict any increase in overall unit numbers.



<p>Title/Location    <b>Ballochmyle House</b> <b>Mauchline</b> <b>Application No. 09/0837/PP</b></p>	<p>East Ayrshire Council 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: 26/3/2010    Checked By</p>	

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