

EAST AYRSHIRE COUNCIL

NORTHERN AREA LOCAL PLANNING COMMITTEE: 24 NOVEMBER 2006

06/0714/FL: REMOVAL OF CONDITION 8 FROM PLANNING CONSENT 05/0677/FL TO REMOVE RESTRICTION ON THE USE OF THE TOURIST ACCOMMODATION LODGE FROM BEING SOLELY ASSOCIATED WITH COWANS LAW FISHING AND COUNTRY SPORTS BUSINESS ON LAND AT COWANS LAW, HEMPHILL ROAD, MOSCOW, GALSTON BY JAY AND LESLEY STEEL

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Planning permission is sought to remove condition 8 from planning consent 05/0677/FL and thus to remove the restriction on the use of the tourist accommodation lodge from being solely associated with Cowans Law Fishing and Country Sports Business. The tourist accommodation lodge application 05/0677/FL was approved at the Northern Area Local Planning Committee on 02 September 2005, at which time this condition was specifically added. The lodge comprises of a single storey detached building covering a total floor area of some 346 sq metres. The height of the building is 5.3m to the apex of the pitched roof. The building comprises six bedrooms, communal living spaces and kitchen area with gun room and laundry. The building is single storey and clad externally in timber with slate roofing tiles. To date no physical works have commenced on the construction of the tourist accommodation lodge.

2. RECOMMENDATION

2.1 It is recommended that the application for removal of the condition be approved.

3. CONCLUSIONS

3.1 As indicated in the report the application is considered to be in accordance with the terms of the Development Plan. Therefore it should be approved consistent with the provision of Sections 25 and 37 (2) of the Town and Country Planning (Scotland) Act 1997.

3.2 As per Section 6 of the report there are material considerations relevant to the application and its considered that these are of sufficient weight to add to the case for approval of the application.

CONTRARY DECISION NOTE

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning, Development and Building Standards, the application will not require to be referred to the Development Services Committee as that would not be a significant departure from Council policy

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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Report by Head of Planning, Development and Building Standards

1. PURPOSE OF REPORT

1.1 The purpose of this report is to present for determination a full planning application which is to be considered by the Local Planning Committee under the scheme of delegation, due to the fact that the Committee imposed the condition and the fact that the application is subject to an objection.

2. APPLICATION DETAILS

2.1 **Site Description:** The site is located approximately 2.3 kilometres north-east of the village of Moscow, there is an existing access track that leads to the site. The application site is 0.54 hectares in area and is currently an area of level scrub land. The site is bounded on four sides by mature woodland. The land east of the site is occupied by the residential property 'Blackshill Farm', to the north, west and south-west the land is forestry and the land to the south of the site comprises the existing loch and associated buildings relating to the applicant's existing trout fishing and country sports business.

2.2 **Proposed Development:** Planning permission is sought to remove condition 8 from planning consent 05/0677/FL and thus to remove the restriction on the use of the tourist accommodation lodge from being solely associated with Cowans Law Fishing and Country Sports Business. The tourist accommodation lodge application 05/0677/FL was approved at the Northern Area Local Planning Committee on 02 September 2005, at which time this condition was specifically added. The lodge comprises of a single storey detached building covering a total floor area of some 346 sq metres. The height of the building is 5.3m to the apex of the pitched roof. The building comprises six bedrooms, communal living spaces and kitchen area with gun room and laundry. The building is single storey and clad externally in timber with slate roofing tiles. To date no physical works have commenced on the construction of the tourist accommodation lodge.

3. CONSULTATIONS AND ISSUES RAISED

3.1 Moscow and Waterside Community Council object to the application on the grounds that the accommodation is located within the Rural Protection Area and a separate freestanding facility would not satisfy the site specific locational need of such a proposal and it is considered that the condition does not restrict the overall umbrella of Cowans Law Business.

It is considered that the removal of the condition will not remove the justification of site specific locational need available for the development.

4. REPRESENTATIONS

The proposal was advertised in the Kilmarnock Standard and one letter of objection has been received in relation to the proposal. The objections are summarised as follows:

4.1 During the original application for planning permission the proprietors of Cowans Law were marketing for sale the subjects currently operated at the business location of "Cowans Law Country Sports".

Noted.

4.2 Executive Summary Sheet, Section 3, Part 3.2 clearly states that the support of the application based on merit was to "reinforce the viability" of the existing business. The business is currently being marketed for sale and has appeared in 'The Shooting Times' trade journal.

It is acknowledged that the existing business at Cowans Law is currently being marketed for sale. Whilst the proposed tourist accommodation unit may not remain in the same ownership as the existing business at Cowans Law in the future, it is considered that the presence of tourist accommodation will still reinforce the viability of the existing business.

4.3 The report by the Head of Planning, Section 5, parts 5.3(ii) and 5.5(i). This heading is clearly contravened by the disposal of the existing business.

Sections 5.3(ii) and 5.5(i) of the previous committee report relate to policies SD3 and TLR4 of the Local Plan requiring a proposal to be justified in terms of site specific location need.

4.4 Condition 5 clearly states that the tourist accommodation "shall not be occupied as a permanent residence". Once a successful sale is concluded for the existing house the proprietors of Cowan's Law Country Sports would have

disposed of their personal dwelling and this would lead to the new tourist accommodation unit being left at times un-occupied. A further concern in this regard is that should the premises be unoccupied there is a potential risk for safety reasons that any storage of firearms could be accessed by undesirables. The objectors raise this fear being the closest house that could be under potential risk.

It is noted that Condition 5 prevents the tourist accommodation being used as a permanent residence and the applicants have not applied to delete this condition. The applicants will require a gun license.

4.5 The next application that you may receive will be to remove condition 5 also in order that the proprietors are able to be in attendance of their business. The practical layout of the log cabin design certainly looks to favour that possibility.

The applicants have not indicated they are seeking to remove Condition 5 and should this be sought in the future a further planning application would be required which would be considered on its own merits.

4.6 The removal of condition 8 is in contradiction to policy and further permits an unjustified additional business.

It is noted that strictly speaking the removal of Condition 8 tying the proposed tourist accommodation to the existing tourist facility at Cowans Law could be considered contrary to Council policy as detailed in Section 5 below, however it is considered that the policy should be used flexibly to promote a tourist facility which will complement the use of the existing established business at Cowans Law. The policy requires a site specific locational need to be demonstrated and it is considered that the proximity to the existing business provides such regardless of whether the facilities remain in the same ownership.

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 and the Adopted East Ayrshire Local Plan (2003).

Ayrshire Joint Structure Plan

5.2 With regard to the Structure Plan, the proposal can be considered as satisfying the requirements of Policy G5, which states that:

"Development proposals in the Rural Protection Area shall normally be limited to the use of land within settlements. Outside settlements, development proposals shall conform to the structure plan only where the development:

- (A) has a demonstrated site specific locational need;
- (B) can be justified in terms of social and economic benefit to the community;
- (C) contributes to rural land diversification; or
- (D) provides for the operational needs of agriculture and forestry.

The removal of this condition would result in the lodge not having the original commercial linkage with the wider enterprise but its physical location within an existing tourist based complex is considered to amount to a site specific locational justification.

East Ayrshire Local Plan

5.3 Policy SD3 states that, within the Rural Protection Area, development proposals relating to land located outwith settlement boundaries will be acceptable to the Council only in five stated circumstances:-

- (i) Comprise an acceptable form of residential use as detailed in Policy RES13 of the Local Plan; or

Not applicable.

- (ii) Can be fully justified in terms of site specific locational need; or

The condition the applicant wishes to remove places a restriction on the use of the holiday accommodation to be used solely in conjunction with the existing Fishing and Country Sports business. If the accommodation is to be classed as a standalone development, unrelated to the existing business, then, the development cannot in a commercial sense be justified on the basis of specific locational need. However, it will provide for a demand for tourist related development in a location where such development is already established. This amounts to a site specific locational need.

- (iii) Can be fully justified in terms of social and economic benefit to the community; or

The removal of the condition would in effect mean the holiday accommodation would not be supporting the established country sports business. However, by continuing to provide accommodation for tourists, the development will still be contributing to the local economy and will therefore be of economic benefit to the community.

- (iv) Contributes to rural land diversification; or;

It is not considered that the proposal would contribute to rural land diversification.

- (v) Provides for the operational needs of agriculture or forestry.

Not applicable.

5.4 Policy TLR3 presumes in favour of tourist related development, with encouragement being given to the use of existing buildings in preference to the construction of new build facilities. Proposals will require to meet all of the following four criteria:

- (i) the proposed use and any associated structures are not visually or environmentally intrusive, is of a nature and scale compatible with surrounding land uses and is not detrimental to the character and amenity of the area within which it is proposed;

Leisure and recreation uses have been established in this area, so the removal of this condition associating the tourist accommodation with the country sports business is not likely to negatively impact upon the character and amenity of the area.

- (ii) there is no adverse impact on the natural environment and in particular on recognised natural or built heritage resources requiring conservation;

There is no foreseen adverse impact imposed on the natural environment.

- (iii) the proposal can be fully justified in terms of infrastructure, provision of services, access and car parking provision; and

No objections have been received from the Council's Roads and Transportation Division or other service providers.

- (iv) the proposal complies with the provisions of Policy TLR4.

See below.

5.5 Policy TLR4 directs all new tourist accommodation proposals to existing settlements, although new hotel and self catering accommodation may be considered acceptable in a rural location in the following circumstances:-

- (i) where there is a clearly demonstrated, site specific locational need; and

The applicants clearly justified the proposal under the original application 05/0677/FL, through its association with their present business operation. With the deletion of Condition 8, the site specific locational need would rest upon the proposals siting in close proximity to adjacent tourist related activities, and this amounts to a site specific locational need .

- (ii) where the proposal complies with the provisions of policy TLR3 above.

It is considered that the proposal generally complies with Policy TLR3 as detailed above.

5.6 In conclusion it is considered that the proposal is not generally in accordance with the relevant provisions of the Development Plan.

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of the application are the consultation responses, the representation received, the planning history of the site and the impact on the amenity of the area.

Consultation Responses

6.2 The consultation responses do not indicate that the application should be refused.

Representation

6.3 The representation received has been summarised in Section 4 of the Report and is considered to be supportive of refusal of the application.

Impact on the Amenity of the Area

6.4 It is considered that the proposal to remove the condition tying the tourist accommodation unit to the existing Cowans Law fishing and country sports business could be accommodated as detailed with no detriment to the amenity of the area.

Planning History

6.5 Planning permission (98/0599/FL) for Erection of Managers House/Relocation of Catering Bothy/Alter Shape of Fishery Pond was approved on 15 January 1999.

6.6 Planning permission (00/0008/FL) was approved on 10 March 2000 for erection of Managers House which superseded the previous house approved under application (98/0599/FL).

6.7 Planning permission (05/0677/FL) was approved on 2 September 2005 for erection of Tourist Accommodation.

Information Provided by the Applicant

6.8 The applicants submit that the condition fails to meet the tests as set out in Circular 4/1998, where the condition is unable to be enforced as it does not relate to the development, is not specific in terms of what would require to be enforced and the wording is unclear. They submit that the wording of the condition has resulted in their inability to receive financial backing for the development as it has been perceived that the wording of the condition restricts the use of the tourist accommodation solely to users of the Cowans Law business facilities and the financiers do not view the development as viable. They submit that the condition therefore fails the test of reasonableness.

6.9 They further advise that the creation of a tourist accommodation in the grounds of Cowans Law will automatically have the benefits of availability for potential users of the outdoor sports facilities available at this location, however they consider that this is not the only potential user of such a facility and the restriction of use in this manner is detrimental to the business opportunity which has been supported through the grant of planning consent.

6.10 The applicants consider that whilst the design and layout meet the requirements of potential users of Cowans Law facilities this should not restrict the service solely to the users of Cowans Law given that the business promotes seasonal sports with the exception of clay pigeon shooting. Therefore the opportunities for business unrelated to the sporting facilities for the tourist accommodation at Cowans Law should be supported and recognised as encouraging rural diversification to enhance the rural economy. The applicants consider that this can be achieved through allowing the tourist accommodation to be promoted to its full potential by removing the restrictive condition.

6.11 The applicants consider that the site specific locational need is evident given that it can be visually associated with the available tourist uses in the area. They consider that a condition linking the tourist accommodation facility specifically with the business at Cowans Law is not required given that the

development will complement and support the existing tourist uses in this location without the application of a condition.

The condition is considered to be consistent with Circular 4/1998. It is unclear as to why the applicants should be unable to obtain finance for this part of their business, as the condition clearly associates it to their existing business and this would be viewed as an expansion of an existing, established business. Restrictive conditions are imposed on agricultural workers' houses and it is not readily known that finance is difficult to achieve to fund these projects.

The close proximity of the existing business and the visual association stated by the applicants, are however considered to be sufficient to maintain the required site specific locational justification for the tourist lodge; provided its use remains as required by Condition 5 of consent No 05/0677/FL, one of tourist accommodation.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial or legal implications for the Council resulting from the determination of this application.

8. CONCLUSIONS

8.1 As indicated in the report the application is considered to be in accordance with the terms of the Development Plan. Therefore it should be approved consistent with the provision of Sections 25 and 37 (2) of the Town and Country Planning (Scotland) Act 1997.

8.2 As per Section 6 of the report there are material considerations relevant to the application and its considered that these are of sufficient weight to add to the case for approval of the application.

9. RECOMMENDATION

9.1 It is recommended that the application for removal of the condition be approved.

CONTRARY DECISION NOTE

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning, Development and Building Standards, the application will not require to be referred to the Development Services Committee as that would not be a significant departure from Council policy.

Alan Neish
Head of Planning, Development and Building Standards

16 November 2006
(GC/MMM/RH)

FV/DVM

LIST OF BACKGROUND PAPERS

1. Application Form and Plans.
2. Statutory Notices and Certificates.
3. Letter of Representation.
4. Consultation Responses.
5. Adopted East Ayrshire Local Plan (2003).
6. Approved Ayrshire Joint Structure Plan (1999).
7. Planning Permission 98/0599/FL
8. Planning Permission 00/0033/FL
9. Planning Permission 05/0677/FL

Anyone wishing to inspect the above papers please contact Gillian Craig, Senior Planning Officer, on 01563 576769.

Implementation Officer: Dave Morris

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

06/0714/FL

Site of Proposal: Land at Cowans Law
Hemphill Road
Moscow
GALSTON
KA4 8PP

Nature of Proposal: Removal of Condition 8 from Planning Consent
05/0677/FL to Remove Restriction on the Use
of the Tourist Accommodation Lodge from
being Solely Associated with Cowans Law
Fishing and Country Sports Business

Name & Address of Applicant: Jay and Lesley Steel
Cowans Law
Hemphill Road
Moscow
GALSTON
KA4 8PP

Name & Address of Agent: James Barr Ltd
226 West George Street
GLASGOW
G2 2LN

DPOs Reference: GC/MMM/RH

The above FULL application should be approved.

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