

**EAST AYRSHIRE COUNCIL**

**SOUTHERN LOCAL PLANNING COMMITTEE: 10 MAY 2002**

**02/0177/RM: PROPOSED CONSTRUCTION AND OPERATION OF A  
SINGLE TRACK RAIL SIDING AT DISUSED RAIL LINE FROM  
KNOCKSHINNOCH SIDING TO FORMER AFTON BRICKWORKS SITE,  
NEW CUMNOCK**

**APPLICATION BY KIER CONSTRUCTION LTD (MINING DIVISION)**

**EXECUTIVE SUMMARY SHEET**

**1. DEVELOPMENT DESCRIPTION**

1.1 Permission is sought under Reserved Matters for the re-instatement of the former mineral rail line connecting the existing Railtrack owned Knockshinnoch siding with the former Afton Brickworks site. Outline consent for the construction and operation of a coal handling and rail loading facility at the former brickworks site including the re-instatement of the former mineral rail was approved by the Council on 17 October 2001 (Ref. No. 99/0639/OL).

1.2 The proposed rail link will comprise a standard gauge single-track mineral railway siding. Although the line will then continue beyond the former brickworks site to the proposed Greenburn opencast site, this part of the line is outwith the present planning application site boundary and is covered by the planning application for the Greenburn opencast site (Ref. No. 00/0793/FL).

1.3 In the outline consent application, permission was granted for a coal handling and rail loading facility at the former brickworks site itself. However, with the resolution to approve the Greenburn opencast site, these operations will now be directly located within the Greenburn site itself. Consequently, no coal processing or rail loading operations will take place at the brickworks site.

1.4 A new level crossing will be constructed where the re-instated line crosses the C36 Boig Road immediately north of Connelwood House. The rail line is to be securely fenced on both sides with 1.5 metres high, stock-proof wire mesh fencing. The crossing will be a manually operated gated crossing. The applicant also proposes to undertake maintenance of the level crossing and the road surface immediately adjacent to the crossing during the operational period.

1.5 A new rail bridge over the River Nith will be constructed to carry the line towards the Greenburn site. This bridge will be supported on new concrete abutments, to be constructed behind the existing bridge abutments.

1.6 During the construction phase of the development, access to the site will be primarily via the former brickworks access road. Whilst some heavy

vehicles will be required to use this access during this phase for delivery of materials and equipment, these will not be regular vehicle movements and will be kept to a minimum. There will be no requirement for the provision of car parking associated with the rail link area during the operational phase as all operatives and their associated facilities will be based within the Greenburn site. However, during the construction phase, it is anticipated that temporary car parking will be provided within the former brickworks site.

1.7 Prior to the commencement of construction works, the site is to be securely fenced off to prevent unauthorised access.

## **2. RECOMMENDATION**

**2.1 It is recommended that the application be approved subject to the conditions on the attached sheet.**

## **3. CONCLUSIONS**

3.1 As indicated in Section 5 of the report, the application is considered to accord with the development plan. Therefore, given the terms of the Town and Country Planning (Scotland) Act 1997, the application should be approved unless material considerations indicate otherwise. As is indicated in Section 6 of the report, there are other material considerations relevant to the determination of the application. In this regard, it is considered that the proposed development is consistent with the policy provisions of the East Ayrshire Opencast Coal Subject Plan and the East Ayrshire Local Plan.

3.2 The proposed development is to take place on a brownfield industrial site that suffers from dereliction and the re-use of this site will result in removal of this industrial dereliction. Outline planning permission has previously been granted for the establishment of this rail line that will link into the main Glasgow - Dumfries line.

3.3 Although the proposed development impinges on two listed wildlife sites and the Scottish Wildlife Trust Local Nature Reserve at Knockshinnoch Lagoons, it is considered that there will be no significant adverse impacts resulting from the proposed development. The comments of Scottish Natural Heritage can be addressed through the imposition of a condition on any consent granted for the development to ensure that no construction works are undertaken during the bird-breeding season.

3.4 The proposed coal handling and rail loading facility is now to be located within the proposed Greenburn opencast site itself and in this respect it is considered that there will be lesser impacts on nearby residential properties and natural heritage interests under the present Reserved Matters proposals.

**CONTRARY DECISION NOTE**

Should the Committee agree that the application be refused in principle contrary to the recommendation of the Head of Planning and Building Control, the application will require to be referred to the Development Services Committee for determination as such a decision would be contrary to the provisions of the East Ayrshire Local Plan (Finalised Version with Modifications) and the East Ayrshire Opencast Coal Subject Plan (Finalised Version with Modifications).

Alan Neish  
Head of Planning and Building Control

**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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SINGLE TRACK RAIL SIDING AT DISUSED RAIL LINE FROM  
KNOCKSHINNOCH SIDING TO FORMER AFTON BRICKWORKS SITE,  
NEW CUMNOCK****APPLICATION BY KIER CONSTRUCTION LTD (MINING DIVISION)****Report by Head of Planning and Building Control****1. PURPOSE OF REPORT**

1.1 The purpose of this report is to present for determination a Reserved Matters application which is to be considered by the Local Planning Committee under the Scheme of Delegation as it is a larger application which accords with the Development Plan and is of area significance.

**2. APPLICATION DETAILS**

2.1 **Site Description:** The application site lies approximately 2 miles west of New Cumnock, off the west side of the C36 Boig Road. The site comprises an area adjacent to the former Afton Brickworks and the track bed of the former mineral rail line leading east from the Afton Brickworks site to its junction with the existing Knockshinnoch railway siding.

2.2 The total site area extends to 6.13 hectares, part of which relates to the former brickworks site and this area exhibits typical remnants of industrial dereliction.

2.3 The disused mineral railway track, covering some 4.2 hectares in area, has in the main become naturalised. The approximate length of the track bed leading from the brickworks site to the junction with Knockshinnoch railway siding is 1.9 kilometres.

2.4 The application site lies partly within the New Cumnock Wetlands and the Riggside/Lanemark Wetlands Listed Wildlife Sites. The Rigghead Opencast Coal Site lies some 200 metres to the north of the former brickworks site and the western boundary of the application site lies adjacent to the River Nith.

2.5 **Proposed Development:** Permission is sought under Reserved Matters for the re-instatement of the former mineral rail line connecting the existing Railtrack owned Knockshinnoch siding with the former Afton Brickworks site. Outline consent for the construction and operation of a coal

handling and rail loading facility at the former brickworks site including the re-instatement of the former mineral rail was approved by the Council on 17 October 2001 (Ref. No. 99/0639/OL).

2.6 The proposed rail link will comprise a standard gauge single-track mineral railway siding. Although the line will then continue beyond the former brickworks site to the proposed Greenburn opencast site, this part of the line is outwith the present planning application site boundary and is covered by the planning application for the Greenburn opencast site (Ref. No. 00/0793/FL).

2.7 In the outline consent application, permission was granted for a coal handling and rail loading facility at the former brickworks site itself. However, with the resolution to approve the Greenburn opencast site, these operations will now be directly located within the Greenburn site itself. Consequently, no coal processing or rail loading operations will take place at the brickworks site.

2.8 A new level crossing will be constructed where the re-instated line crosses the C36 Boig Road immediately north of Connelwood House. The rail line is to be securely fenced on both sides with 1.5 metres high, stock-proof wire mesh fencing. The crossing will be a manually operated gated crossing. The applicant also proposes to undertake maintenance of the level crossing and the road surface immediately adjacent to the crossing during the operational period.

2.9 A new rail bridge over the River Nith will be constructed to carry the line towards the Greenburn site. This bridge will be supported on new concrete abutments, to be constructed behind the existing bridge abutments.

2.10 During the construction phase of the development, access to the site will be primarily via the former brickworks access road. Whilst some heavy vehicles will be required to use this access during this phase for delivery of materials and equipment, these will not be regular vehicle movements and will be kept to a minimum. There will be no requirement for the provision of car parking associated with the rail link area during the operational phase as all operatives and their associated facilities will be based within the Greenburn site. However, during the construction phase, it is anticipated that temporary car parking will be provided within the former brickworks site.

2.11 Prior to the commencement of construction works, the site is to be securely fenced off to prevent unauthorised access.

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

3.1 The Coal Authority and Scottish Power have not responded to the consultation letter.

***Noted.***

3.2 Scottish Natural Heritage has no objection to the proposal in principle, however would seek clarification of a number of points. The principal natural heritage impact likely to arise from the proposal relates to the impacts of construction and operation of the rail link on the Knockshinnoch Lagoons, a reserve owned and managed by the Scottish Wildlife Trust (SWT). Likely effects include disturbance to breeding birds using the reserve. The original Environment Impact Assessment of February 2001 stated that resolution of this matter was a requirement of the earlier outline planning consent for the Afton Railhead (consent 99.0639/OL) and that various mitigation measures would be implemented towards this end. These included avoidance of construction during the main bird-breeding season (March – May inclusive), limitation of train movements to during daytime hours, plus a number of other measures agreed between the applicant and SWT. The latter was to include a contribution of £1000 per year to facilitate the implementation of SWT management plan objectives within the reserve, the employment of a part-time 'Knockshinnoch Reserve Worker and Restoration Co-ordinator' and the further restriction of rail movements to two per day. SNH is not aware of any progress on these matters, and no mention of them is made in the current Reserved Matters application other than to note a seasonal restriction on construction works as noted above. SNH would wish to be assured that a commitment to the appropriate mitigation measures has been secured prior to approval of the Reserved Matters.

***The applicant has advised that discussions are currently taking place with the Scottish Wildlife Trust regarding the issues raised by SNH, particularly with regard to the mitigation measures to be implemented to minimise any adverse impacts on the Knockshinnoch Lagoons SWT Reserve. These mitigation measures are in line with the proposals presented in the Environmental Statement forming part of the planning application for the Greenburn project. SWT, as noted below, has no objections to the proposed development and has confirmed that discussions are taking place with the applicant about progressing previously agreed mitigation measures that would benefit the reserve.***

3.3 East Ayrshire Council Roads and Transportation Division has no objections to the proposed development subject to the following conditions:

- (i) the C36 public road must be maintained for a distance of 5 metres either side of the centre line of the proposed level crossing during the life of the site
- (ii) the C36 public road must be drained, kerbed and widened to 6 metres over a length of 45 metres on approach and departure to/from the proposed level crossing.
- (iii) on completion of coaling, the level crossing and associated lighting/signalling must be removed and the road re-instated at the applicant's expense with the rail line fenced off and made safe.

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

3.4 Scottish Water has no comments to make on the application regarding any sewerage or water issues.

**Noted.**

3.5 Railtrack has no objection in principle to the proposed development. It should be noted that the only interface with Railtrack will be the connection to the Knockshinnoch branch line. Railtrack will not be responsible for the siding. It is both Railtrack's and Her Majesty's Rail Inspectorate's policy not to introduce new level crossings and I would strongly suggest consultation with HMRI in this respect as it is highly likely that they will not allow the crossing to be put in place.

***In response to the comments of Railtrack, HMRI has been consulted although no formal response has yet been received. The applicant, in response to the comments of Railtrack, has confirmed that the installation of a new level crossing requires a Level Crossing Order, made by the Secretary of State for Transport under the Level Crossings Act 1983. Consideration of an order is made by Her Majesty's Rail Inspectorate. The applicant has entered into dialogue with HMRI, who is currently reviewing the proposals. At no time during the applicant's discussions to date has HMRI indicated that it is its policy not to allow the introduction of new level crossings, nor has it indicated that a level crossing order will not be made.***

3.6 The Scottish Wildlife Trust has no objection to the development. The Trust is currently in communication with Kier Mining about progressing previously agreed mitigation measures that would benefit Knockshinnoch Lagoons SWT Reserve.

**Noted.**

3.7 East Ayrshire Council's Environmental Health Division has not responded to the consultation letter.

**Noted.**

3.8 The Scottish Environment Protection Agency notes that the construction of the bridge over the River Nith will not involve disturbing the immediate banks or the bed of the river. However care should still be taken to ensure that no silty water, oil or cement is allowed to enter the river while the bridge is being constructed. As stated in the application, the applicant should consult with SEPA regarding the control of site run-off. The permanent drainage from the rail link should not be allowed to discharge directly into

watercourses or the existing ponds. The drainage should be directed into soakaways or vegetated land. This will minimise the risk of pollution of these waters. The applicant should also ensure that the operation of this rail link does not cause any significant change in the water levels in the surrounding ponds. No mention is made regarding the foul drainage from the temporary office accommodation. If this is by means of a septic tank, then SEPA will require to be notified. The surface water drainage from the temporary car park area should be to soakaways and any oil storage tanks on site should be banded.

***Appropriate notes and conditions can be attached to any consent granted for the proposed development to meet the requirements of SEPA.***

3.9 New Cumnock Community Council and The Royal Society for the Protection of Birds have not responded to the consultation letter.

***Noted.***

#### **4. REPRESENTATIONS**

5.1 There are no representations.

#### **5. ASSESSMENT AGAINST THE 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 (1999), and the Adopted New Cumnock Local Plan (1993). The Adopted Local Plan was prepared within the context of the then emerging Strathclyde Structure Plan.

5.2 In terms of the Approved Ayrshire Joint Structure Plan, Policy T1(H) is relevant to the proposed development.

***Policy T1(H) states that the three Ayrshire Councils shall seek to maximise the use of non-road based freight transport. It is considered that the establishment of a railhead at Afton Brickworks would be consistent with the objectives of the Structure Plan.***

5.3 Notwithstanding the age of the Adopted Local Plan, the proposed development requires to be considered principally against Policy MIN 26 which states that British Coal, and other minerals and peat extraction operators, will be strongly encouraged to utilise and/or provide wherever possible, railway facilities for the removal of materials from their operative sites.

***The proposed development would not conflict with the provisions of the stated policy.***

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

6.1 The principal material considerations relevant to the determination of the application are the East Ayrshire Opencast Coal Subject Plan (Finalised Version with Modifications) 2001, the East Ayrshire Local Plan (Finalised Version with Modifications) 2002, NPPG 16 – ‘Opencast Coal and Related Minerals’, the consultation responses and relevant planning history.

### East Ayrshire Opencast Coal Subject Plan

6.2 The Adopted Local Plan covering the development site is considerably out of date and therefore it is considered appropriate that greater weight should be attached to more recent expressions of policy. The Council has agreed that the East Ayrshire Council Opencast Coal Subject Plan (Finalised Version with Modifications) 2001, (EAOCSP), should be considered as a prime material consideration. The application now requires to be assessed against relevant pertinent policies promoted within this modified plan and the application site is affected by Policy MIN18 which states:

*Operators will be strongly encouraged to transport coal by rail which is not specifically destined for local domestic Ayrshire markets. Where particular market destinations can be serviced by rail, opencast operators will be expected to make a firm commitment to transporting coal using the rail facilities available, taking coal from the extraction site to the nearest rail disposal point for onward delivery along haulage routes which, where possible, avoid passing through the area’s settlements.*

***It is considered that the establishment of a rail line to serve the proposed Greenburn site would be consistent with the provisions of the Finalised East Ayrshire Opencast Subject Plan.***

### East Ayrshire Local Plan Finalised Version with Modifications

6.3 In terms of the East Ayrshire Local Plan (Finalised Version with Modifications), the proposed development site is affected by Policies SD4, SD6 and ENV10(iii).

***Policy SD4 states that within the Rural Diversification Area, developments on land outwith the settlement boundaries will be acceptable to the Council where the development provides for sensitive industrial development with a site specific locational need and can be fully justified in terms of economic benefit to the community. Due to the opportunity for accessing the existing rail network and the provision of employment that the proposed***

**development will bring to local communities, it is considered that the proposal is consistent with the provision of Policy SD4.**

**Policy SD6 states that the Council will positively encourage the re-use and redevelopment of brownfield land in the rural area. As the proposed development site is subject to industrial dereliction, it is considered that the redevelopment and re-use of this area of land would be fully consistent with Policy SD6.**

**Policy ENV10(iii) promotes the protection and enhancement of nature conservation interest and states that development likely to adversely affect local nature reserves and listed wildlife sites will be resisted and all sites of recognised nature conservation value will be safeguarded wherever possible. Where development is approved for such sites, appropriate measures should be taken to conserve and manage, as far as possible, the sites' biological interest. In this respect the route of the re-instated rail line partially passes through the New Cumnock Wetlands Listed Wildlife Site and also the Scottish Wildlife Trust Local Nature Reserve at Knockshinnoch Lagoons. It is considered however that there will be no significant adverse impacts on these areas of nature conservation interest as a result of the proposed development. This is borne out by the consultation process that has been undertaken. Scottish Natural Heritage raises no objection to the proposal subject to avoidance of construction works during the bird-breeding season. The Scottish Wildlife Trust has also not objected to the proposed development. It should be noted that the existing Knockshinnoch rail siding passes directly through the SWT Local Nature Reserve and the New Cumnock Wetlands LWS without significant impact on the nature conservation interests in the area.**

#### National Planning Policy Guidelines

6.4 National Planning Policy Guideline 17 relates to Transport and Planning and is relevant to the proposed development.

**Paragraph 37 of NPPG17 indicates that the strategic importance to the economy of freight access to industry and commerce should be recognised and appropriate arrangements made. Planning Authorities should encourage the carriage of freight by rail rather than by road wherever it can provide a feasible alternative for all or part of the journey. The proposed development would be consistent with NPPG17 objectives.**

6.5 National Planning Policy Guideline 16 relates to Opencast Coal and Related Minerals and is relevant to the proposed development.

**Paragraphs 48 and 49 indicate that the Government wishes to seek a better balance between lorry and rail transport with an**

***increased tonnage of coal being moved by rail from as near as practicable to the extraction site. Accordingly, as part of the overall assessment of opencast development, proposals which provide for rail transport should be more favourably considered than those wholly dependent on road transport. The Council has agreed, subject to an appropriate Section 75 Agreement being concluded with the applicant, to approve the proposed opencast development at Greenburn, which will be served by the rail line that is the subject of this application.***

### Planning History

6.6 An outline planning application for the construction and operation of a coal handling and rail loading facility at the former Afton Brickworks site was approved on 17 October 2001(Ref. No. 99/0693/OL). This is subject to a Section 75 Legal Agreement addressing the setting up of noise and dust monitoring programmes and the undertaking of structural surveys of residential properties.

### Consultations

6.7 No consultation replies have been received which would indicate that the application should be refused.

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

7.1 There are no financial implications for the Council in the determination of this application. In terms of legal implications, there is currently a Section 75 Agreement in place relating to the development of this rail line.

## **8. CONCLUSIONS**

8.1 As indicated in Section 5 of the report, the application is considered to accord with the development plan. Therefore, given the terms of the Town and Country Planning (Scotland) Act 1997, the application should be approved unless material considerations indicate otherwise. As is indicated in Section 6 of the report, there are other material considerations relevant to the determination of the application. In this regard, it is considered that the proposed development is consistent with the policy provisions of the East Ayrshire Opencast Coal Subject Plan and the East Ayrshire Local Plan.

8.2 The proposed development is to take place on a brownfield industrial site that suffers from dereliction and the re-use of this site will result in removal of this industrial dereliction. Outline planning permission has previously been granted for the establishment of this rail line that will link into the main Glasgow - Dumfries line.

8.3 Although the proposed development impinges on two listed wildlife sites and the Scottish Wildlife Trust Local Nature Reserve at Knockshinnoch Lagoons, it is considered that there will be no significant adverse impacts resulting from the proposed development. The comments of Scottish Natural Heritage can be addressed through the imposition of a condition on any consent granted for the development to ensure that no construction works are undertaken during the bird-breeding season.

8.4 The proposed coal handling and rail loading facility is now to be located within the proposed Greenburn opencast site itself and in this respect it is considered that there will be lesser impacts on nearby residential properties and natural heritage interests under the present Reserved Matters proposals.

## **9. RECOMMENDATION**

**9.1 It is recommended that the application be approved subject to the conditions on the attached sheet.**

### **CONTRARY DECISION NOTE**

Should the Committee agree that the application be refused in principle contrary to the recommendation of the Head of Planning and Building Control, the application will require to be referred to the Development Services Committee for determination as such a decision would be contrary to the provisions of the East Ayrshire Local Plan (Finalised Version with Modifications) and the East Ayrshire Opencast Coal Subject Plan (Finalised Version with Modifications).

Alan Neish  
Head of Planning and Building Control

29 April 2002  
HM/HM  
FV/DVM

### **LIST OF BACKGROUND PAPERS**

1. Application Form and Plans.
2. Statutory Notices and Certificates.
3. Consultation Responses.
4. East Ayrshire Local Plan (Finalised Version with Modifications) 2001
5. East Ayrshire Opencast Subject Plan (Finalised Version with Modifications) 2001
6. Adopted New Cumnock Local Plan (1992)
7. Approved Ayrshire Joint Structure Plan (1999)
8. Approved Strathclyde Structure Plan (1989)
9. NPPG16: Opencast Coal and Related Minerals
10. NPPG 17: Transport and Planning
11. Previous application 99/0693/OL

Any person wishing to inspect the background papers listed above should contact Mr H Melvin on 01563 555481.

**Implementation Officer: Dave Morris**

Form TP24A

EAST AYRSHIRE COUNCIL

TOWN &amp; COUNTRY PLANNING (SCOTLAND) ACT 1972

Application no: 02/0177/RM

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Location	Afton Railhead, NEW CUMNOCK
Nature of Proposal:	Proposed construction and operation of a single track rail siding.
Name and Address of Applicant:	Kier Construction Ltd (Mining Division) Tempsford Hall, SANDY, Beds SG19 2BD
Name and Address of Agent:	Mark Harrington Kier Mining, Tempsford Hall, SANDY, Beds SG19 2BD

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DPO's Ref: [ HUGH MELVIN ]  
PPO's Ref; [ ]

The above **RESERVED MATTERS** application should be granted subject to the following conditions.

- (1) The C36 public road shall be maintained, at the applicant's expense, for a distance of 5 metres either side of the centre line of the proposed level crossing during the life of the site.

REASON – In the interests of public road safety.

- (2) The C36 public road shall be drained, kerbed and widened to 6 metres over a length of 45 metres on approach and departure to and from the proposed level crossing.

REASON – In the interests of public road safety.

- (3) On completion of coaling at the proposed Greenburn opencast site, the level crossing and associated lighting and signalling shall be removed and the C36 public road reinstated at the applicant's expense with the rail line fenced off and made safe.

REASON – In the interests of public road safety.

- (4) The existing access road to the former Afton Brickworks site and its junction with the C36 public road shall be maintained in good order during the use of the road by construction traffic.

REASON – In the interests of public road safety.

- (5) No construction works on the rail line shall take place during the most sensitive period of the bird-breeding season, i.e. the months of March, April and May inclusive.

REASON – In the interests of reducing any potential adverse impact on the Listed Wildlife Sites and the Local Nature Reserve.

- (6) Prior to excavation works commencing on site statutory undertakers' apparatus shall be protected and diverted as required, to the satisfaction of the respective statutory undertakers and at the expense of the developer.

REASON – In the interests of public safety

- (7) All fuel, oil or other chemical storage tanks on the site shall be sited on impervious bases and surrounded by tank bund walls. The bunded areas shall be capable of containing 110% of the tank's volume and shall enclose all fill land draw pipes. If the storage tanks are to be sited at a single compound, the bund wall shall be capable of containing 110% of the volume of the largest storage tank. All fill and draw points shall be padlocked when not in use.

REASON – In the interests of public safety and to prevent any pollution of watercourses.

**NOTE TO APPLICANT**

1. The applicant is advised to make early contact with the Scottish Environment Protection Agency, Rivers House, Irongray Road, Dumfries with respect to the drainage of the site.

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THE MAP IS AVAILABLE FOR VIEWING AT THE COUNCIL'S  
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VIEWING PLEASE CONTACT (01563) 555320.**

**AGENDA**