

Delegated or Committee Planning Application Report and Report of handling as required by Schedule 2 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 relative to applications for Planning Permission or Planning Permission in Principle

Reference No: 13/00593/PP

Planning Hierarchy: Local

Applicant: Mr John Cameron

Proposal: Partial clearance of protected woodland, reinstatement of unauthorised access and formation of car parking to serve existing business

Site Address: Ellangowan, Cromlech Road, Sandbank

DECISION ROUTE

(i) Local Government Scotland Act 1973

(A) THE APPLICATION

(i) Development Requiring Express Planning Permission

- Regrading of land and formation of hardstanding to create car parking;
- Formation of new internal access and drainage;
- Erection of boundary fencing;

(ii) Other specified operations

- None
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(B) RECOMMENDATION:

It is recommended that Planning Permission be granted as a 'minor departure' to the provisions of the development plan, subject to the conditions and reasons detailed.

(C) HISTORY:

Retrospective permission was granted in 1989 to use agricultural land as a LPG gas storage compound (89/00510/COU) and in 1993 for an extension to that compound (93/00183/OUT001). Drawings submitted with the 1989 application show the former agricultural buildings to be in use variously as offices and storage. Correspondence on file suggests that the former farm steading had been used as a haulage yard up until 1983 when it changed to storage (Class 6) use.

08/00098/ENFOTH – Enforcement Investigation into unauthorised Lopping of protected trees, engineering works to water course and siting of storage containers. Case Closed 5.08.09

08/00920/TPO - Felling of 6 Scots Pine, lopping of 5 Scots pine/hazel trees and replanting of 10 Scots pine (retrospective). Granted 23.12.08 requiring compensatory replanting. Replanting was not carried out.

08/01371/COU – Planning permission for the retention of formalised hardstanding area and extension to compound area (retrospective) was granted on 30 July 2009 subject to three conditions requiring tree replanting, tree protection and common boundary treatment. Conditions not discharged.

11/02421/PP - Formation of vehicular access and hardstanding, removal of trees under protection of tree preservation order (retrospective) and erection of 1.8 metre access gates and 1.8 metre perimeter fence. Application returned 8/02/12

12/01901/PP - Partial clearance of protected woodland, formation of vehicular access and formation of car parking to serve business (retrospective). Application Withdrawn 19.03.13

(D) CONSULTATIONS:

Forestry Commission (Response dated 25.04.13) object to the development on grounds that the proposal to develop an area of long established woodland directly contravenes National Planning Policy Guideline 14: Natural Heritage and the Scottish Government's policy on the control of woodland removal. The Forestry Commission advise that Government policy will only support removal of woodland where this will achieve significant and clearly defined public benefits. The Forestry Commission also advise that the felling of trees without the requisite license is an offence.

Roads Service (Response dated 27.03.13) No objections, but recommend that a positive surface water system is required for the area of car parking. Attenuation may also be required to minimise the risk of flooding in extreme conditions. The internal road gradients should not exceeding 10%.

Council Flood Alleviation Team (Response dated 3.04.13) Defer. The culvert under Cromlech Road is at risk of blockage due to erosion caused by operations to alter the flow of a burn located within the application site. A flood report and drainage impact assessment has been requested to allow full assessment of the implications of the development upon local hydrology. The response also cited inadequate construction design information detailing the car park and drainage system and there are concerns about the capacity of the roadside ditch parallel with Cromlech Road to accept the additional run-off.

(E) PUBLICITY:

The proposal has been advertised in the Dunoon Observer 5.04.13. Expiry 21 days.

(F) REPRESENTATIONS:

A letter of representation 21.04.13 has been received from Mr and Mrs Galliard, Glenshiel Pier Rd Sandbank. This letter objects to the development on grounds of visual impact of the development upon Cromlech Rd. The objectors question the requirement for a further access onto Cromlech Road and expansion of commercial activities in an area that is residential in character. The objectors also speculate about the applicant's future plans and possibility of expansion to the ground to the rear.

Comment: The impact of the development on the amenity of the locality is considered in the assessment. The application before the Council proposes reinstatement of land now forming an unauthorised access. The applicant proposes no direct access onto Cromlech Road and now shows a substantial tree belt parallel with Cromlech Rd to act as a screen.

A further letter of objection 18.04.13 endorsed by 11 signatures from address on Cromlech Road and Fir Brae has been submitted. In summary the objectors would like the land reinstated to its original woodland state and are concerned about the undue delay in resolution of the issue. The objectors are critical of the 2009 permission and query its status claiming that the previous application was not correctly administered at the time. The objectors are concerned about the loss of tree cover, spread of commercial activities towards Cromlech Road and repeated breaches of planning control which left unchallenged are likely to be repeated.

Comment: The previous grant of planning permission was an attempt to try to regularise a breach of planning control, however, the drawings subsequently approved have been of limited benefit to the current assessment given the poor quality of drawing submission and information on record. Nevertheless the applicant's agent is correct in the sense that a principle accepting the change of use and formation of hardstanding was established under 08/01371/COU and the planning permission has been implemented - although the conditions have not been met.

The Planning Service recognises that to challenge aspects of this development now would now be very difficult. This does not detract from the unlawfulness of the more recent operations, or the applicant's presumption that further encroachment into the protected woodland could proceed unchallenged. Officers accept that contractors who carried out these works may not have understood the limitations of the previous permission but the unauthorised removal of TPO protected trees remains an offence.

Notwithstanding the previous permission the Planning Service considers the majority of the operations in the woodland area to be unauthorised and to restore confidence it is necessary to resolve this matter and facilitate a solution that brings about significant restoration to the condition and appearance of the land in the interests of wider amenity.

The current application is a practical attempt to regularise the position and offer some restitution that would help to improve the appearance of the site, provide screening and a landscaped buffer to segregate the commercial storage uses from nearby residential development. If implemented correctly and given time to mature the environmental impact of the unauthorised operations will be mitigated. It represents a significant improvement over the previous planning permission.

(G) SUPPORTING INFORMATION

Has the application been the subject of:

- (i) **Environmental Statement:** No
- (ii) **An appropriate assessment under the Conservation (Natural Habitats) Regulations 1994:** No
- (iii) **A design or design/access statement:** No
- (iv) **A report on the impact of the proposed development eg. Retail impact, transport impact, noise impact, flood risk, drainage impact etc:** Yes

Two letters of representation have been received from the applicant's agent in support of the application. In essence the applicant relies upon the principle of development established by the 2009 permission and related TPO permission. The current submissions recognise previous failings and make serious attempts to regularise the situation, provide much needed private car parking in support of the authorised commercial use of Ellangowan and provide significant new tree planting to offset the loss of mature woodland resulting or still likely to result from recent engineering operations.

(H) PLANNING OBLIGATIONS

Is a Section 75 agreement required: No

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- (I) **Has a Direction been issued by Scottish Ministers in terms of Regulation 30, 31 or 32:** No

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- (J) **Section 25 of the Act; Development Plan and any other material considerations over and above those listed above which have been taken into account in the assessment of the application**

- (i) **List of all Development Plan Policy considerations taken into account in assessment of the application.**

'Argyll and Bute Structure Plan' (2002)

STRAT DC 1 – Development Within the Settlements
STRAT FW 2 - Development Impact on Woodland

'Argyll and Bute Local Plan' (2009)

LP ENV1 – Development Impact on the General Environment
LP ENV 2 – Development impact on biodiversity
LP ENV 7 – Development Impact on Trees Woodland
LP ENV 19 – development setting, layout and design
LP BUS 1 – Business and Industry proposals in existing settlements
LP SERV 3 – Drainage Impact Assessment
LP SERV2 – Incorporation of Natural features/ Sustainable drainage systems
LP SERV8 - Flood risk appraisals
LP TRAN 6 – Vehicle parking provision
LP DEP1 – Departures from the development Plan
LP ENF 1 – Enforcement Action

- (ii) **List of all other material planning considerations taken into account in the assessment of the application, having due regard to Annex A of Circular 4/2009.**

Planning History
Scottish Planning Policy
Town & Country Planning (Tree Preservation Order and Trees in Conservation Areas (Scotland) Regulations 2010.
Scottish Government Policy: Control of Woodland Removal

- (K) **Is the proposal a Schedule 2 Development not requiring an Environmental Impact Assessment:** Yes
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- (L) **Has the application been the subject of statutory pre-application consultation (PAC):**
No
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- (M) **Has a sustainability check list been submitted:** No
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- (N) **Does the Council have an interest in the site:** No
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- (O) **Requirement for a hearing (PAN41 or other):** No
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- (P) **Assessment and summary of determining issues and material considerations**

The application site forms an expansion into woodland of the existing mixed commercial and storage use at Ellangowan, Cromlech Road, Sandbank. The application is retrospective in nature and seeks authorisation for works that have already taken place and additional works yet to be carried out. The applicant seeks an amendment to planning permission 08/01371/COU that previously authorised a change of use of land to permit hardstanding and new operations not covered by the previous permission. The application has attracted objection from 13 local residents.

Proposal

The applicants propose development involving regrading of land to form an area of hardstanding to create car parking in association with the existing business use. Earthworks have already taken place to form a level platform and some alterations to a small watercourse, new drainage operations and installation of a culvert have also been carried out. A new vehicular access has been formed onto Cromlech Road.

The operations have already involved removal of mature trees. Because heavy machinery has been used in vicinity to trees; also the significant alteration of ground levels and absence of any tree protection, the operations have likely stressed a number of remaining trees which is likely to put their future wellbeing in question.

The applicants propose to complete the gravel surfaced car park, provide a vehicular link between the main compound area and the car parking area proposed on lower ground

adjacent to Cromlech Road. The car parking court is intended to provide vehicular car parking for businesses based at Ellangowan and for visitors. Two pedestrian path links will be formed to connect the new car parking to the commercial accommodation.

Some restitution is proposed. The applicants will provide compensatory tree planting and screening in five separate compartments to replace lost and damaged trees. The unauthorised access to Cromlech Road will be stopped up and the unauthorised culvert will be removed to reinstate an open drainage ditch parallel with Cromlech Rd. The frontage and Eastern site boundaries of the site will be delineated by new fencing.

Policy Assessment

The Development Plan militates against new development that might adversely impact upon woodland particularly where this is protected under a tree preservation order. The woodland at Ellangowan is included in the Inventory of Ancient Woodland and has been protected under a Woodland Tree Preservation Order since 1995.

The operations proposed are assessed to be contrary to development plan policies STRAT FW 2 and LP ENV 7. Given the absence of requested flood and drainage assessments and proposed alteration to an existing small watercourse the proposal is also assessed to be contrary to Local Plan policies LP SERV 2 , LP SERV 3 and LP SERV 8 although a satisfactory technical solution is considered attainable.

The removal of the protected trees which forms part of an area of ancient woodland is also held to be contrary to national planning policy as set out in Scottish Planning Policy and policy on control of woodland removal. The Forestry Commission response fairly summarises the Central Government view on works affecting woodland.

Other Material Considerations

The applicant has submitted a supporting statement and business case for the proposal citing health and safety factors, the need for additional car parking to support an existing business use and Local Plan policy support for business.

The applicant's agent states that they are under no obligation to reinstate the land beyond the requirements of the 2009 planning permission and the principle of encroachment into the TPO woodland and change of use to permit hardstanding was established by the 2009 permission.

The current application is of better quality with site levels, sections and some landscape information now provided but unfortunately it is still lacking in information on surface water management and adequately detailed drainage arrangements. The applicants propose significant compensatory planting to mitigate the harm resulting from the more recent unlawful operations. The planting scheme submitted proposes mainly broadleaf planting in 4 compartments across the application site numbering 256 trees. By contrast the previous planning permission required the planting of only 30 trees. The current proposals are regarded as a significant improvement and a serious attempt to resolve the matter.

The application is nevertheless incomplete in some respects. The landscaping proposals are incomplete, as the size of the tree specimens proposed has not been specified and moreover, there is no explanation to how the site will be prepared for replanting or how the replacement planting will be managed or dieback replaced. The applicant has offered no information on the remaining tree cover or how this is to be protected. The operations to

alter ground levels have exposed tree roots and potentially compromised the viability of a number of trees on site but no survey of existing tree cover or condition has been provided.

New development involving loss of protected woodland does not comply with National Policy or the policies of the adopted Development Plan. Officers concur with the applicant's agent that a principle of a change of use of land has been established, covering part of the extent of the woodland, however, in no way were the operations undertaken by the applicants in 2011 expressly authorised by the Planning Authority. Rather than attempt to discuss or clarify the matter with the Council the applicant elected to proceed with tree clearance and land engineering operations that have further degraded the land and compromised the viability of a number of other protected trees.

The applicant's agent acknowledges that the requirements of the previous permissions have not been met and the new operations have no consent. The agents have engaged in meaningful discussion with Council officers to agree upon a strategy of restitution that mitigates the harm and commits to substantial replanting around the periphery of the land but they are not prepared to compromise upon the principles established by the 2009 planning permission authorising a change of use. The current application is therefore a negotiated solution that has involved compromise by the applicants and Council officers.

In order to bring clarity to a previously imprecise permission and secure restitution and a commitment to replant without recourse to enforcement or court action the application is supported by officers and recommended for approval.

(Q) Is the proposal consistent with the Development Plan: No

The proposal is considered to represent a 'minor departure' from the development plan since it involves development of an area of established woodland under protection of a TPO and the application is insufficiently detailed in respect of surface water management.

(R) Reasons why Planning Permission should be granted

The proposed development will provide improved parking for an existing business complex which accords with Policy LP BUS 1 of the adopted Argyll & Bute Local Plan. Although encroaching into woodland which is the subject of a Tree Preservation Order, some loss of trees was authorised by the previous grant of planning permission for change of use of the land. The granting of planning permission will help to clarify aspects of the previous planning permission that are unsatisfactory due to imprecision, and importantly will also achieve restorative landscaping and tree planting. Matters relating to the avoidance of flooding can be appropriately addressed by condition.

(S) Reasoned justification for a departure from the provisions of the Development Plan

The proposed development will provide improved parking for an existing business complex which accords with Policy LP BUS 1 of the adopted Argyll & Bute Local Plan. Although encroaching into woodland which is the subject of a Tree Preservation Order, some loss of trees was authorised by the previous grant of planning permission for change of use of the land. The granting of planning permission will help to clarify aspects of the previous planning permission that are unsatisfactory due to imprecision, and importantly will also achieve restorative landscaping and tree planting. Matters relating to the avoidance of flooding can be appropriately addressed by condition.

(T) Need for notification to Scottish Ministers or Historic Scotland: No

Author of Report: Martin Hannah

Date: 3 June 2013

Reviewing Officer: David Eaglesham

Date: 3 June 2013

Angus Gilmour
Head of Planning & Regulatory Services

CONDITIONS AND REASONS RELATIVE TO APPLICATION: 13/00593/PP

1. The development shall be implemented in accordance with the details specified on the application form dated 19 March 2013 and the approved drawing reference numbers:

- Planting proposals prepared by Andrew Rees numbered plan 1 of 5.
- Location Plan numbered plan 2 of 5.
- Location and Site Plan numbered plan 3 of 5.
- Car Parking layout and sections prepared by Cowal Design numbered plan 4 of 5.
- Site Survey at 2007 prepared by Cowal Survey Services numbered plan 5 of 5.

unless the prior written approval of the planning authority is obtained for an amendment to the approved details under Section 64 of the Town and Country Planning (Scotland) Act 1997.

Reason: For the purpose of clarity and to ensure that the development is implemented in accordance with the approved details.

2. Notwithstanding the provisions of condition 1 no development shall commence until a combined Flood Risk Assessment and Drainage Impact Assessment, which includes a scheme for management of surface water within the development site, has been submitted to and approved by the Planning Authority. The duly approved scheme shall be implemented in full concurrently with the development that it is intended to serve and shall be operational prior to the occupation of the development and shall be maintained as such thereafter for the lifetime of the development..

Reason: To ensure the provision of an adequate surface water drainage system, adoption of SUDS principles and to prevent flooding.

3. Prior to commencement of development a scheme of boundary treatment, surface treatment and landscaping shall be submitted to and approved in writing by the Planning Authority. The scheme shall comprise a planting plan and schedule which shall include details of:

- i) Existing and proposed ground levels in relation to an identified fixed datum;
- ii) Existing landscaping features and vegetation to be retained;
- iii) Location design and materials of proposed walls, fences and gates;
- iv) Proposed soft and hard landscaping works including the location, species and size of every tree/shrub to be planted;
- v) A programme for the timing, method of implementation, completion and subsequent on-going maintenance.

All of the hard and soft landscaping works shall be carried out in accordance with the approved scheme unless otherwise approved in writing by the Planning Authority.

Reason: Insufficient information has been provided by the applicant.

4. Notwithstanding the effect of Condition 1, no development shall commence until samples of materials to be used in the construction of the internal access road, car parking area, pedestrian footpaths; have been submitted to and approved in writing by the Planning Authority. The development shall thereafter be completed using the approved materials or such alternatives as may be agreed in writing with the Planning Authority.

Reason: To assist with the integration of the proposal with its surroundings in the interest of amenity.

5. The development shall not be brought into use until the landscaping scheme approved under condition 3 has been implemented in full.

Reason: To ensure early implementation of the approved landscaping and tree planting proposals and in interests of local amenity.

6. Prior to commencement of development a scheme for the retention and safeguarding of trees during construction shall be submitted to and approved by the Planning Authority. The scheme shall comprise:

- (i) Details and condition survey of all trees to be removed and the location and canopy spread of trees to be retained as part of the development;
- (ii) A programme of measures for the protection of trees during construction works which shall include fencing at least one metre beyond the canopy spread of each tree in accordance with BS 5837:2005 "Trees in Relation to Construction".

Tree protection measures shall be implemented for the full duration of construction works in accordance with the duly approved scheme. No trees shall be lopped, topped or felled other than in accordance with the details of the approved scheme unless otherwise approved in writing by the Planning Authority.

Reason: In order to retain trees as part of the development in the interests of amenity and nature conservation.

7. The hardstanding area and access road hereby approved shall be used only for the movement and parking of private motor vehicles. The parking of Heavy Goods Vehicles and the storage or siting of materials, plant, steel containers, caravans, modular buildings, trailers, or waste shall not be permitted.

Reason: In the interests of the amenity of the locale.

8. Notwithstanding the provisions of Condition 1, the gradient of the internal access road shall not exceed 10%.

Reason: In the interests of road safety.

9. Prior to development commencing and notwithstanding the provisions of Condition 1, details for the permanent closure of the existing unauthorised vehicular access to the site by physical means shall be submitted to and approved in writing by the Planning Authority in consultation with the Council's Roads Engineers. The duly approved scheme shall be implemented in full concurrently with the development and the unauthorised means of access shall remain closed to vehicular traffic thereafter.

Reason: In the interest of road safety and in order to regularise a breach of planning control.

NOTE TO APPLICANT

- In order to comply with Section 27A(1) of the Town and Country Planning (Scotland) Act 1997, prior to works commencing on-site it is the responsibility of the developer to complete and submit the attached 'Notice of Initiation of Development' to the Planning Authority specifying the date on which the development will start.
- In order to comply with Section 27B(1) of the Town and Country Planning (Scotland) Act 1997, it is the responsibility of the developer to submit the attached 'Notice of Completion' to the Planning Authority specifying the date upon which the development was completed.
- The planning permission contains a number of suspensive conditions that require to be discharged prior to recommencement of operations. Failure to observe the conditions will result in enforcement action by the Council as Planning Authority

APPENDIX – RELATIVE TO APPLICATION NUMBER: 13/00593/PP

PLANNING LAND USE AND POLICY ASSESSMENT

A. Settlement Strategy

The development is situated within the settlement boundary of Sandbank. The development represents an extension of an existing commercial use. The application site is not presently allocated for commercial or industrial use. A previous planning decision accepted the principle of a change of use to allow part of the site to be used as hardstanding. The adopted land use strategy militates against inappropriate development on land affected by a TPO.

B. Location, Nature and Design of Proposed Development

The applicant and developer Mr Cameron is the proprietor of Argyll 1st. The company, based at Ellangowan, Cromlech Road, Sandbank, leases portable toilets and containerised storage and also rents storage space and yard space to a number of small businesses. Business use at this location is longstanding.

The application site is generally sloping from south to north towards Cromlech Road. The application is for development involving regrading of land to platform an area adjacent to Cromlech Rd to create car parking in association with the existing business use.

The new car parking area will be accessed via the existing hardstanding and internal access road serving Ellangowan. Two pedestrian paths will link the new car park with the commercial accommodation on the upper part of the site. The unauthorised new road opening to Cromlech Road will be stopped up. In addition the applicant proposes landscaping, tree planting and common boundary fencing.

The unauthorised operations have involved the clearance of mature trees and potentially compromised other trees because of the level alterations. The application site is identified on the Inventory of Ancient Woodland and has been protected under a Woodland Tree Preservation Order since 1995. The proposed development is not compliant with STRAT SI 1 and the sustainable checklist (Appendix A) of the Argyll and Bute local Plan 2009.

It is assessed that the commercial benefits of this development do not outweigh the strong policy presumption against destruction of protected woodland but the previous planning permission (08/01371/COU) authorising the change of use is a significant material consideration in this case and cannot be set aside.

The current application is of better quality than previous submissions by the applicant with site levels, sections and some landscape information now provided but unfortunately it is still lacking in information on surface water management and drainage arrangements. The applicants propose compensatory planting to mitigate the harm resulting from the more recent unlawful operations. The planting scheme submitted proposes mainly broadleaf planting in 5 compartments across the application site numbering 256 trees. By contrast the previous planning permission required the planting of only 30 trees. The current proposals are a significant improvement.

The landscaping proposals are incomplete as the size of the tree specimens proposed has not been specified. Compartment B has been erroneously described in the Andrew Rees document as compartment E (the tree belt proposed for the frontage with Cromlech Road)

which is probably a simple drafting error. Moreover, there is no explanation as to how the site will be prepared for replanting or how the replacement planting will be managed. The applicant has offered no information on the remaining tree cover or how this will be protected. The operations to alter ground levels have exposed tree roots and potentially compromised the viability of a number of trees on site but no survey of existing tree cover or condition has been provided.

C. Natural Environment

The loss of trees from the site will inevitably have had some adverse impact on habitat. The land take involved is nevertheless modest and given its proximity to industrial and residential development the habitat impact is assessed to be limited.

D. Built Environment

The current degraded appearance of the site is due to the applicant's unlawful actions. However, the current application offers restitution and compensatory planning that is judged adequate to restore the condition and appearance of the land and is a significant improvement upon the previous planning permission. The addition of a small area of car parking is likely to be beneficial to the businesses that use Ellangowan and will reduce on street car parking and congestion within the small business estate.

E. Impact on Woodland/Access to Countryside.

The development site previously had a mature wooded character and appears in the Council's inventory of ancient woodland. The operations have eroded the woodland character and degraded the appearance of the land.

The proposed development will alter the character of the site which will acquire some of the commercial characteristics of Ellangowan.

The development is assessed to be contrary to Structure Plan policy STRAT FW2 and Local Plan policy ENV 7 as it is assessed to undermine the integrity of long established woodland under protection of a Tree Preservation Order.

Although significant compensatory planting is proposed, the change of use of land to create car parking will inevitably impact upon the attractiveness and environmental features of the woodland and the new planting will take many years to take establish to mitigate this impact.

The common boundary treatment involving fencing and tree protection will help safeguard the integrity of the adjoining woodland. The new tree planting will help to restore the visual appearance of the land and help to restore strong landscape buffer segregating the commercial activities from cromlech Road. The erection of fence enclosures will inhibit public access to the woodland at this point.

F. Road Network, Parking and Associated Transport Matters.

The existing unauthorised access will be discontinued. The Roads service offers no objections to the proposed development. The internal road gradient depicted on the applicant's submitted drawings appears to exceed the 10% limit recommended. . The internal access road should be constructed to the gradient standards recommended for safety reasons. A planning condition can be used to achieve this outcome. This matter can be dealt with by condition.

G. Infrastructure

The applicant has been asked to address and respond to the concerns of the Flood Alleviation Team and provide additional information to support the proposal. The applicants are of the view that the information requested is excessive and too costly to commission and have declined to supply the design calculations or assessments of development impact on surface water flows or potential impact upon flood risk. This is unfortunate as the Planning Authority is aware of some localised issues with flooding and this information is generally required to inform professional assessment of the application. The application requires to be assessed as it stands. However, the technical requirements of the flood team should be met to ensure that water flows are appropriately managed.

The application raises no other infrastructure supply concerns. Given the absence of detail about the proposed alteration to an existing small watercourse, the proposal is also assessed to be potentially contrary to Local Plan policies LP SERV2, LP SERV 3 and LP SERV 8. Further investigation of the impact of the development on local hydrology and surface water run-off is required to answer these points satisfactorily but the applicant is reluctant to resource this analysis or further infrastructure design until a planning decision has been reached. The expectation is that the development will adopt a surface water management regime designed to attenuate run off to pre-development levels to mitigate risk of flooding. Since further investigation and survey work is required it is proposed to manage this aspect through planning conditions.

H. Other Key Policy Matters

Policy LP ENF 1

When the unauthorised operations were reported and investigated in September 2011 the operations were immediately challenged by the Planning Service and works ceased with the cooperation of the landowner Mr Cameron.

The landowner advised the investigating officer that planning permission had previously been granted authorising a change of use and operations to form hard standing. Permission had also been given previously that authorised removal and replacement of trees under protection of the TPO (08/00920/TPO) however Mr Cameron also admitted that the new operations had gone further than previously agreed with the Council.

The background to the previous permissions was further investigated. Permissions had been granted (retrospectively) to regularise a previous similar breach of planning control, although none of the conditions had been observed. The terms of the permission governing the change of use permitted were imprecise and difficult to interpret and therefore presented a practical enforcement challenge.

At this point Mr Cameron was advised to seek fresh approval for the entire operations in order to prevent enforcement or court action as a previous warning had been issued. The applicant has complied with officer advice and two prior abortive attempts have been made to regularise the breach of planning control. The applications could not be supported by planning officers due to lack of information.

The current application is the result of a negotiation between the applicant's agents and Council officers intended to regularise the breach of planning control.

I. Other Scottish Government Advice

The Forestry Commission has objected to the application citing National Planning Guidelines. NPPG14 has been superseded by Scottish Planning Policy; Policy on control of woodland removal is still valid. The objections of the Forestry Commission are noted as a material consideration. The Commission have not however proffered any views about the significance of the replacement planting proposed by the applicants.

The history of planning and TPO permissions and the offer of significant compensatory planting is material to the assessment and must be taken into full consideration by the Planning Authority. Scottish Planning Policy advises that established woodland should not be lost unless there are clear public benefits arising. There is no clear public benefit associated with the development, but as stated the development is retrospective in nature and is considered the best means to achieve some restitution and restoration of the land. The development if approved will regularise a breach of planning control, and achieve meaningful improvements to the visual appearance of the land.

J. Conclusion.

The proposed development is assessed to be contrary to the Development Plan since it involves removal of protected woodland.

The previous grant of planning permission is an important material consideration in this case as it established the lawfulness of a change of use and accepted incursion of a commercial use into this woodland area.

It is concluded that the current submission represents a significant improvement on the previous planning permission and it should be approved in order to secure the offered restitution in the form of substantial new tree planting. Accordingly planning permission should be granted subject to the conditions attached.