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MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE held in the HOWIE PAVILION, ROSNEATH on FRIDAY, 5 NOVEMBER 2010

Present: Councillor Daniel Kelly (Chair)

Councillor Vivien Dance
Councillor Roderick McCuish (Vice Chair)
Councillor Neil Mackay
Councillor Donald MacMillan
Councillor Al Reay

Also Present: Iain Jackson – Governance and Risk Manager
Howard Young – Planning Officer
Campbell Divertie – Roads Technician - Statutory Consultee
William Winthrop – Area Environmental Health Manager -
Statutory Consultee
Jennifer Cole – Rosneath and Clynder CC – Consultee
Gordon Harrison – Richmond Architects – Agent for Applicant
Archie Richmond – Richmond Architects – Agent for Applicant
Mr McGregor – Applicant
Mrs McGregor – Applicant
Mr Watson – Applicant
Mr Stephen Dalziel - Objector
Belinda Hamilton – Area Governance Assistant

1. APOLOGIES FOR ABSENCE

Apologies were intimated from:-

Councillor Rory Colville
Councillor Robin Currie
Councillor Mary-Jean Devon
Councillor David Kinniburgh
Councillor Bruce Marshall
Councillor Alex McNaughton
Councillor James McQueen
Councillor Alister McAlister

2. DECLARATIONS OF INTEREST

There were no Declarations of Interest.

3. MR AND MRS MACGREGOR: APPLICATION FOR DEMOLITION OF OUTBUILDINGS AND ERECTION OF 5 DWELLINGS IN COURTYARD FORMATION: LAND AT LITTLE RAHANE FARM, RAHANE, HELENSBURGH (REF: 10/00536/PP)

The Chair welcomed everyone to the meeting and general introductions were made.

Iain Jackson, Governance and Law advised the hearing there was a procedural issue which had been highlighted as a result of correspondence received by the Council regarding a piece of ground included in the application but which was not under the applicant's ownership. A copy of the correspondence was passed out to the parties to the hearing. Archie Richmond, Agent for the applicant produced a copy of a notice and it was accepted by the Planning Officer that the correct procedure of serving a notice on the owner of the land in dispute had been followed by the applicant.

Iain Jackson, Governance and Law, then outlined the hearing procedure and the Chair invited anyone who wished to speak at the meeting to come forward and make themselves known.

Planning Officer

Howard Young, Planning and Regulatory Services, gave a brief outline of the application, describing it as being in the style of a traditional farm steading in a courtyard formation with separate 'farmhouse' dwelling at the centre. He indicated the access from the main road which showed the disputed area of ground. Members were shown various views and elevations of the proposed development site. Mr Young advised that at pre-application stage the location, nature, and design of the proposed development had been satisfactory and that it had been assessed against a range of policies. The key issues raised had been that of noise and policy LPBAD2 and Mr Young concluded by saying that whilst he considered the development to be a good scheme, he had real concerns regarding the noise from the adjoining property and in this respect, he recommended refusal of the application.

Agent for Applicant

Archie Richmond, Richmond Architects, informed Members that there was sufficient ground on the right of the road, which was in the ownership of the McGregors that could be used as a lay by and that the application could be altered to show this.

He advised that the ROA designation in the Local Plan had been supported by the objectors during the Local Plan consultation process.

Mr Richmond gave a brief history of the application, explaining that following the initial application, there had been extensive pre-application consultation with senior planning officer to agree location, design, style, scale and materials etc. This had been carried out from November 2008 and continued until the application was submitted in March 2010. The issue of noise had not been raised at any stage and was only highlighted 8 weeks after the application had been validated.

The location and siting of the houses was not proposed by the applicant or the agent. Mr Richmond informed members that the current location was recommended by planning officers from the first enquiry in 2008 and throughout the consultation process. He added that Planning Officers had originally wanted to locate the development on the site of the existing outbuildings which would have been even closer to the adjoining smallholding.

The applicant and agent's preferred location would have been at the entrance from the main road at the bottom of the hill and this would have negated the need to upgrade the access road. Another suggested site had been above the log cabin, some 100m south of the current site, where planning permission for a house had previously existed but was now lapsed.

Mr Richmond said that at a previous enquiry for another client at the site entrance at the base of the hill in August, the following response had been received from Planning.

"This particular ROA is characterised by a limited amount of development which sits high above the road level. I am of the view that any development below this higher level would be out of keeping with the settlement pattern and would fail to accord with policy"

He reiterated his previous statement that from initial enquiry stage in 2008 up to the current application, that planning had insisted on this location for the houses.

Mr Richmond informed members that the one single issue in relation to this application is a perception that there may possibly be public nuisance complaints from the occupiers of the new properties and that the application would be approved if it were not for this issue. He questioned why during the 15month pre-application consultation process, there had been no issues raised regarding noise and was only highlighted some 8 weeks into the formal application process.

In June 2010, Planning had requested a 24hour Noise Impact Assessment (NIA) to be carried out to monitor possible animal and vehicle noise from the adjoining smallholding. This would not be carried out in wet weather and so was subsequently not carried out until late July and issued to planning on 13 August 2010. A Consultation assessment of the NIA by Environmental Health was received on 19th August 2010 recommending refusal on the ground of Bad Neighbour in Reverse.

Mr Richmond advised that despite continual correspondence and communication with Planning regarding these results, proposed meetings with EH and the Acoustic Consultant were continually refused until the Head of Planning agreed to hold a meeting on 18 October 2010. The Agents found it surprising that EH had discussions with the main objector and visited the site but refused to meet with them despite numerous requests to do so.

Mr Richmond said that the issue of noise came down to a difference of opinion and interpretation of the NIA report by the EH Department/Officer. Once again, Mr Richmond drew Members' attention to the use of the word 'subjective' in the report stating that in his view, these opinions should be 'objective' and that there was nothing in the NIA report to support the statement on pg 13 regarding noise levels. Mr Richmond also questioned the statement in the report which suggested that triple glazing and increased insulation would be required and that the windows should remain shut whilst noise levels were at their highest. He said that this was not necessary and that normal building materials and procedures were sufficient in this instance. And that Section 5 of the New Building Regulations would address this.

Mr Richmond questioned the smallholding at Little Rahane as being a Bad Neighbour stating that if this were the case, then all farms and smallholding would also fall into that category. The adopted Local Plan and PAN 56 do not mention farms or smallholdings as Bad Neighbours. Indeed, if that were the case, no housing developments should be granted next to or adjacent to smallholdings or farm buildings in Argyll and Bute. Mr Richmond then went on to cite several examples of applications on or adjacent to farms where noise had not been raised as an issue.

Mr Richmond noted that the current owners of the smallholding do not operate as a commercial business and that there was the potential that they could move and that in that instance, their property status would revert to that of a house. He also advised that the objectors had been granted consent to relocate their double garages or to form an additional stable block some 100m to the north and that this could alleviate some of the concerns regarding animal noise.

During peak levels, the NIA report stated that the noise appears to be mainly from running water following heavy rain, vehicle movement round the noise monitor, and brief intermittent dog barking, all of these normal acceptable countryside noises.

The applicants currently operated Little Rahane Farm as a farming enterprise and are committed to improvement of the grassland quality and native woodlands on the farm. This application should be seen as an example of farm diversification which is being encouraged throughout rural areas. It is also the intention of the current owners to lease grazing land to a local shepherd and , should this application be successful, the applicants' intention is to continue to lease the area round the farm for farming purposes and therefore any potential noise levels due to animals would increase due to the development itself and not to the smallholding.

Mr Richmond suggested that any 24 hour NIA survey could be carried out on virtually any planning application site in Argyll and Bute and these would result in similar noise levels as had been recorded on this site. He stressed that what was being discussed in this instance was the perception of noise, which is very subjective.

Mr Andrew Watson of the Acoustic Consultancy Services who carried out the NIA survey had confirmed that the levels were acceptable in terms of the planning policies. However, Environmental Health, who are not acoustic specialists, disputed the findings, not in terms of planning but on the basis of the potential generation of noise complaints. Mr Richmond indicated that he felt that the report on the NIA by the EH officer was not impartial.

Mr Richmond suggested that in order to address the concerns of the smallholding, it would be possible to screen plant or fence the boundary area and that the main house at Plot 1 could be moved slightly further south . Alternatively, a clause or condition could be included in any sale to highlight the existence of an operational smallholding adjacent to the site.

Mr Richmond concluded by saying that he felt that the grounds for refusal of the application were incorrect and unreasonable and that on the basis of the points discussed, he considered that the application should be approved.

Statutory Consultee

Mr William Winthrop – Area Environmental Health Manager

Mr Winthrop referred to the application which sought to construct what was described as Farm Steading type dwellings, adjacent, or in close proximity to, an existing smallholding. The application had been made by a different party than the owners of the smallholding and would not consist of any farm-related activity.

Mr Winthrop explained that his role was to consider environmental issues arising from potential developments and to seek to ensure that such developments are unlikely to result in legal action by his Service. He described this as being proactive.

Mr Winthrop described Little Rahane as a smallholding, operating in an isolated location. It is contained within an extremely small boundary which brings the impact of its operations in direct contact with the site of the proposed development. It is not a farm where the impact of its operation can be spread far and wide.

It has all the requirements of a smallholding. Vehicles include a tractor, quad bike, dumper truck, mechanical digger and a 4x4 vehicle. Mr Winthrop also listed the various livestock and poultry on the farm. These, he said, were all housed within the small-holding in close proximity to the proposed development site. The small-holding is registered under the Food Safety Act 1990 as a food business for egg production and discussion had taken place regarding the production of honey.

Potential exists for the proposed development to impact adversely on the current activities of the small-holding and which would require them to amend or alter their activities – noise produced, intense lighting and odour from animal waste etc.

Mr Winthrop said that this application was dissimilar to other applications where dwellings are built next to farms, where, in many cases the applicants are the same persons, family, or for operational requirements such as housing for farm workers. In these instances, A Section 75 agreement is applied preventing the house and farm being sold separately, In this particular development, no Section 75 had been applied.

There is the potential, he said, for Environmental Health to take formal action under the Environmental Protection Act 1990, Section 80, against the operator of the small-holding to abate any “statutory nuisance” which exists or could recur, if complaints were received from the residents of the proposed development.

Noise would be the most likely complaint, due to the hours of operation of the small-holding. The hours of operation are currently between 04.30am and 22.00hrs. This would introduce noise from the mechanical sources ie, tractor, dumper, quad, and to a lesser extent, the mechanical digger. These noise sources are more intrusive by nature, combined with the fact that they are likely to interrupt sleep.

It is also likely to be dark, either in the early hours or late at night, which again, due to the nature of the work required around the small-holding, could introduce intrusive light pollution affecting the residents. The hour at which the lighting is likely to operate, the average person would consider as being anti-social. This has the potential to be a 'statutory nuisance'.

Given the variety and type of animals currently housed within the small-holding, there is most certainly the potential for noise complaints relating to their activities, which are totally unpredictable and intrusive. The hours at which these activities may be activated could be at any time, and the duration uncertain, again has the potential to be a 'statutory nuisance'. Mr Winthrop said that there was recent Case Law relating to a Sheriff Court judgement and subsequent unsuccessful appeal where evidence was accepted as subjective and not supported by objective noise measurements in relation to animal noises.

Mr Winthrop advised that odour complaints could arise from the storage of animal manure, given that the small-holding is restricted for space, there is the potential for manure associated pests to upset the amenity of the residents. Again this has the potential to be a 'statutory nuisance'.

The potential also exists for civil action to be taken by the residents of the proposed development under the Civic Government (Scotland) Act 1982. Section 49, which relates to "dangerous and annoying creatures". Whilst not suggesting that the animals would be dangerous, there is the potential that they would be annoying. Mr Winthrop once again referred to previous Case Law situations.

Mr Winthrop asked if Abatement notices should be served, under the Environmental Protection Act, to curtail any of the previously mentioned aspects of the operation of the small holding. He referred to the right of Appeal, part of which could invoke the defence of 'Best Available Technique Not Exceeding Cost' which could mean that it is impracticable to remedy any of the 'statutory nuisances' without incurring excessive costs ie. Soundproofing, rebuilding, relocating etc. The residents of the proposed development would then have to live with the perceived nuisance. The recent 'Case Law' on animal noise ignored the cost of remedial measures and upheld the original judgement.

Mr Winthrop informed Members that it is Environmental Health opinion that this proposed development is Bad Neighbour in Reverse, on the grounds of noise, light and smell due to the close proximity of the proposed noise sensitive development.

Noise sensitive developments can be separated from noise sources and orientated and designed to minimise the impact of noise. The location of the proposed development will not provide this benefit to the residents.

Individual sensitivity to noise, is highly subjective and is affected by a range of factors. As these can include non- acoustic matters such as attitude to the noise source, sensitivity may not always relate directly to the level of noise.

Scotland's rural areas possess an environmental quality from which people derive a range of benefits. Developments in areas that have been relatively undisturbed by noise nuisance are prized for their environmental or amenity

value. This is what the potential residents of the proposed development would be expecting, yet this would be the reverse. The pre-existing usage of the small-holding would negate this amenity.

In conclusion, Mr Winthrop said that the introduction of the development in this location was likely to give rise to complaints from new residents, relating to the operation of the small-holding and would more than likely have an adverse affect on the current operation and future development of the small-holding.

Possible mitigation measures such as barriers, bunds, planting, Section 75 etc would not be appropriate. The only effective means to reduce the impact on the operation of the small-holding would be to relocate the development at a suitable distance away from it.

Mr Winthrop advised that in his opinion this development would constitute a Bad Neighbour Development in Reverse.

Accordingly his recommendation to Planning was to object the application on the grounds of Bad Neighbour Development and loss of amenity.

Campbell Divertie – Argyll and Bute Roads Department

Mr Divertie said that he had nothing to add.

Mrs Jennifer Cole – Rosneath and Clynder Community Council

Mrs Cole said that when she had first heard about the application, both she and Mrs Katherine Wreford had visited the site. Whilst they were there, Mr Dalziel started up a mechanical digger which sounded deafening, even though they were set some distance back from the site of the potential development. In Mrs Cole's opinion, this noise would be very intrusive.

Although they quite liked the design of the proposals, and indeed, Mrs Cole remarked that the Community Council does object to every development, both she and Mrs Wreford felt that the development should perhaps be sited somewhere else in the vicinity where there would be less impact.

Objector

Mr Stephen Dalziel

Mr Dalziel read from a prepared statement in which he indicated that he had attended a Development Plan Scheme meeting in Dunoon at the initial stage. He had received an unannounced site visit by Planning Officers. Mr Dalziel drew members' attention to the report on which he said, the number of animals was incorrect although he felt that this was irrelevant as all that mattered was the clarification that there were enough animals to generate sufficient noise which would constitute Bad Neighbour Development.

He described his small-holding as typical of its kind and informed members that he also held down a full time job in addition to smallholding. This was the main reason that he would be operating in hours out with the normal day.

Mr Dalziel had acknowledged that although he had been aware of the land indicated in the ROA he had no concerns at the time. It was his opinion that the development could have been sited in an alternative area which would have necessitated little upgrade of the access road and stressed that he did not have objection to the development in principle, only the location in such close proximity. He pointed out that there was a 30 acre area on the other side of the track which he felt would be a more suitable location.

Members' Questions

Neil MacKay asked Mr Young about the potential alternative site mentioned by Mr Dalziel and if he agreed that this would be acceptable for land use. Mr Young responded to this by saying that as a general rule any application for new development would be accepted subject to certain criteria and would need to be of a sympathetic and acceptable nature.

Mr MacKay asked when the ROA had been designated, to which Mr Young responded that it had been introduced in phases, the first of which began in 2007.

Mr Mackay asked if prior to that, time was allocated for consultations of these designations. Mr Young said that they had. He referred to an example at Porkil of how residents had missed the opportunity to comment when the boundary had been extended. Mr Young explained that perhaps due to the size of the ROA in this instance, it hadn't flagged up but that the opportunity to make a representation at the time was there nonetheless.

Councillor Al Reay asked Mr Winthrop if there was a designated period of time which the noise assessment should be carried out or if 24 hours was sufficient.

Mr Winthrop said that the time period was irrelevant and that the noise exposure categories had been inappropriate in this case. He explained that it would be difficult to determine which to use and gave an example. Sudden impact noise, he said, was unpredictable and difficult to measure as was vehicle and animal noise. It would be difficult to average out this noise to give an impact level. Mr Winthrop advised that the highest sound recorded was 91 decibels, which was the equivalent of an HGV truck passing in close proximity. He felt that in these respects, enjoyment of the location by residents of the proposed development would be adversely impacted on a daily basis.

Councillor Reay asked Campbell Divertie about the narrow access to the development and if this was capable of taking the potential increased traffic and if this would have impact on Mr Dalziel's business.

Mr Divertie responded by saying there had been consultation with the applicant over a three year period and that the main concerns were the gradient and surface water running down to the public road. Mr Divertie added that these concerns had been addressed and that he was comfortable with the proposal.

Councillor Reay asked Mr Young if there was an area of the ROA to which the proposed development could be moved and if this would be feasible.

Mr Young said that there was but that each ROA could differ due to settlement patterns and that there could be an issue if this particular development did not fit into an alternative ROA. Mr Young added that any new proposals would require a separate application.

Councillor Dance asked Mr Young if he could confirm that it would not be possible to put a condition on the sale of any house that there would be an expectation of problems due to noise. Mr Young said that this would not be possible.

Councillor Dance said that the applicant had made the claim that Planning had insisted on this particular site and location for the development and asked why it had not been possible to relocate. She also asked Mr Divertie if there was to be another passing place further up the hillside.

Mr Divertie said that there would be a number of passing places and also a turning area at the top.

Mr Young responded to Cllr Dance by reiterating that the as the characteristics could differ on different ROAs, the preferred (but not only) option had been to site the development in its present location. If it were to move too much, there may be different criteria. He said that scope for negotiation exists and that other options may be possible but that this had been the preferred option.

Councillor Dance asked members to look at the map handout as a potential alternative.

Mr Young said that his gut reaction was that this was unsuitable but he would need more time to look at it.

Councillor Dance asked Mr Dalziel about issue of relocation to which he responded that he did not knowingly support the ROA and said that a previous application to build a house on an area at the foot of the hill had been refused. He said that the suggestion on the local plan was based on countryside around settlement and that this lower site would fit into that category and would also require a shorter entrance. Mr Dalziel said that he was not an expert and highlighted again that he had no objection in principle to Mr MacGregor wanting to develop.

Councillor McCuish referred Mr Young to the second sentence in para.6 on page 24 of the report and asked if this would render the reason given for refusal of the application null and void.

Mr Young said that the amenity of any adjoining proprietors must be taken into consideration.

Mr McCuish asked Mr Richmond if he felt that he had been guided by planners regarding the choice of location for the development to which Mr Richmond said that he had been led to believe that this was the only suitable site.

Mr McCuish asked Mr Richmond if he felt more comfortable now knowing that he knew that other options could be considered. Mr Richmond replied that he couldn't see where these options would be as he had previously been told that

there was no alternative. The only option, he believed, would be at the top of the hill adjacent to the existing small-holding.

Cllr Mackay asked the applicant at what point during the two year pre-application process was the possibility of Bad Neighbour raised. Mr Richmond said that it had been raised 8 weeks into the application.

Cllr Mackay asked Mr Young asked why these policies were not brought up during the pre application process. Mr Young replied that there was a caveat on discussions at the pre application stage which was that there may be further issues which require consideration once representations are received from the objectors and consultees. He had not anticipated a noise issue at the time of the site visit, Mr Young added that although he tried to look at all aspects, it is not possible to pick everything up.

Cllr Mackay asked why it was that the policy of Bad Neighbour in Reverse only became apparent after the application had been received.

Mr Young reiterated his earlier comment that it was not possible to anticipate what any third party would raise and that he tried where possible to give a full assessment during the pre application discussions.

Cllr Mackay asked if there was a legal time for acceptable noise level.

Mr Winthrop said that on commercial construction sites this would be 7.00am – 7.00pm but that on farms this was not the case. He added that noise is difficult to determine when dealing with animals and is subjective.

Cllr Mackay said that although a number of policies had been looked at during the application, only one had used in the recommendation for refusal. Why, he asked, was this not highlighted at the time the application was received?

Mr Young replied that he could only address this once it had been raised by a third party and had decided on that basis to recommend refusal.

Cllr Mackay asked if the refusal had been dependent solely on this policy. Mr Young answered that he must deal with this as it had been recommended by Environmental Health.

Cllr Reay asked Mr Dalziel how long he had been resident in the smallholding to which Mr Dalziel said 7 years.

Cllr Reay asked if it had been considered that a caveat could be laid down following the acoustic analysis. Mr Young said that ROAs are decided by Public Consultation and with colleagues together with a public local enquiry. Specific proposals are dealt with following the designation process and are not prescriptive and detailed at that time. He added that the ROA is a limited tool which is determined by the settlement boundary.

Cllr Dance asked if there had been a figure in mind on how many properties it this ROA would tolerate and asked Mr Richmond what was meant by reinforcing a settlement plan. She added that it was a good design in a good location.

Mr Young said that new dwellings should be developed in existing settlements which showed a locational/occupational need in rural areas and would have no detrimental impact. He said that professional judgement must be used when considering any site and that in this location, the development was acceptable, with the only issue being that of noise. The number of houses would differ from site to site.

Mr Richmond acknowledged that the settlement pattern would be disrupted if the development were at the foot of the hill and that this was why the site at the top had been identified as most suitable.

Cllr McCuish asked Mr Divertie if there had been any dubiety regarding the lay-by and if there was any opportunity to move the proposed one.

Mr Divertie said that the existing lay-by was already being utilised and that its location on the bend was important for visibility. There was no need for the passing place to be on any particular side of the track.

Mr Young said that although the existing lay-by was out-with the ownership of the applicant, the land on the other side was and could therefore be utilised.

Cllr Dance asked Mr Dalziel if he thought that the development would be beneficial to the roads issue. Mr Dalziel said that it was not and that he felt that the increased traffic would be too much. He felt that the presence had been largely ignored during the pre-app stage as had other issues. Once again, Mr Dalziel said that he was not against the development in principle but that 5 houses in such close proximity would be detrimental to the running of his business and that further relaxation could be used. He felt that with further discussion, a mutually suitable location which could reinforce the settlement pattern could be identified. Mr Dalziel felt that the road could prove problematic during construction as he required 24hr access and that the proposed finish would not be satisfactory. He acknowledged that the key issue was that of noise.

Cllr Kelly asked Mr Richmond if there was anything in the construction of the houses that would limit noise. Mr Richmond said that they were double glazed and of timber construction and that normal building requirements were sufficient.

The Chair then asked for the summing up process to commence and advised that no new information could be introduced.

Summing Up

Planning Officer

Mr Young said that he had nothing to add.

Mr Richmond – Agent for Applicant

Mr Richmond said that it was correct to deal with the application being submitted and stressed that alternative options were never discussed. Any complaints arising from animal noise would be a legal issue.

He added that regarding the Bad Neighbour policy, there had been no listing of the small-holding as a commercial business. The roads access had already been agreed with the Roads department and the noise issue raised by Environmental Health was, in his opinion, irrelevant as it could not be ascertained where the noise was actually coming from. The issue of light and smell now highlighted by EH has never been mentioned in the report. The issues of noise were perceived and complaints only potential. Mr Richmond was concerned that an application could be refused on perception and that it could set a precedent. He advised members that if the application was refused on this basis, an appeal to Scottish Government would be forthcoming.

William Winthrop – Environmental Health

Mr Winthrop referred to the Bad Neighbour policy and what it entailed. He felt that the noise category could not be applied in this instance and that much of the Noise Officer's report was assumed noise and was therefore not a feasible assessment.

Campbell Divertie – Transportation and Roads

Mr Divertie advised that if members were minded to go against the Planning Officer's recommendation, an additional condition could be put in place to address the issue of flooding.

Mrs Jennifer Cole – Rosneath and Clynder Community Council

Mrs Cole said that there had been no objection from the Community Council at the draft local plan stage as the site was at that time a livery stable and riding school and that circumstances would change in the meantime.

Mr Stephen Dalziel

Mr Dalziel wished to reinforce all that he had said previously. He was now registered as a worker in a small business and that he had plans to retire and work full-time on the small-holding. He would like to take the alpaca and bee part of the business further. He said common sense must be used regarding the issue of noise and that it was unavoidable as he required to leave at 6.45am to get the ferry to his workplace. Mr Dalziel was in no doubt that this issue would generate complaints from the new residents and that this could be easily avoided by identifying an alternative site. He suggested that fees for the submission of a new application could be at the discretion of the Head of Planning and highlighted again that the identified site had been at the suggestion of the Council.

Debate

Cllr Mackay said that he acknowledged that each application was unique and appreciated Mr Dalziel's concerns. He did not feel that there were enough grounds for refusal of the application and suggested that an amendment be put forward. He felt that there could be some kind of compromise and that there was room for manoeuvre to find a way forward.

Cllr Reay said that although he agreed with the principles, he was disappointed to find that the conflict was only in the noise. He agreed that this was a subjective opinion and that he had major concerns with the road access and quality.

Cllr McCuish felt that the whole issue could have been avoided through discussion with the three parties and would support the amendment to the Planners' recommendation.

Cllr Dance was mindful of the fact that the decision stands the test of time. She was content with the noise issue and with the design. The placement of the development site was her only issue. She appreciated that there was a need for new homes. Cllr Dance felt that Mr Richmond would have good grounds for appeal should the application be rejected and asked if there was some facility to 'get round the table' in order that discussions could take place to reach a common sense resolution of the issues. She felt that whilst she appreciated the need to protect small businesses, there was also a need for the opportunity for families to live in a rural location, but that Mr Dalziel should also be entitled to peace and quiet. She asked for advice from Mr Jackson, Governance and Law.

Mr Jackson said that his understanding of what had been said during the Hearing process was that the Applicant wanted the Committee to make a decision based on the application as it stood and as such were not wanting to be involved in further discussion about moving the site. The position therefore was that the Committee should take a decision based on the current application and if they were minded to go with the recommendation of the planning department then the Applicant would have the right to appeal that decision.

Cllr Dance asked about the allegation that Planning Officers had guided the applicants to choose only this site.

Mr Jackson reiterated that any decision should be made on the application in its current form and on the evidence submitted with it.

Cllr MacMillan said that he was all in favour of new developments but that previous experience had highlighted potential problems. He felt that it would be the same with this application and therefore supported the Planning Officer's recommendations.

Cllr Kelly, Chair, agreed that this was a difficult application and suggested that an appropriate condition would be added which would resolve the issues raised by all parties.

The Chair then ascertained that all parties considered they had had a fair hearing to which they confirmed they had.

Decision

Motion

To agree to the Planning Officer's Recommendations.

Proposed by: Councillor Donald MacMillan

Seconded by: Councillor Al Reay

Amendment

The proposed development is of a high standard of finish and design, it is appropriately sited and is consistent with the settlement and landscape structure of the area. The proposal is consistent with the settlement strategy set out in both the Argyll & Bute Local Plan 2009 and the A & B Structure Plan 2002. The proposal is a minor departure from policy LP BAD 2 of the Local plan as the noises and general sounds associated with type of holding are consistent with what might be expected in a rural area. The noises from the existing holding are considered to be limited, intermittent and can be mitigated through appropriate conditions. For the reasons stated above I recommend this application be approved as a minor departure to Policy LP BAD 2 of the Argyll & Bute Local Plan adopted 2009 with appropriate conditions to be agreed by the Head of Planning and the Chair & Vice Chair of this committee.

Proposed by: Councillor MacKay

Seconded by: Councillor McCuish

Decision

On a show of hands, the Motion received 3 votes and the Amendment received 3 votes. The Chair exercised his casting vote in favour of the Amendment. The Committee resolved accordingly.

(Ref: Report by Head of Planning dated 29 October 2010, submitted)

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MACFHEARGHUIS, MACSUAIN AGUS STIUBHAIRT
Fir-lagha agus Notairean

Rathad na Drochaid, Port Ruighe, An t-Eilean Sgitheanach

Minute Item 3
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F.A.O. Melissa Stewart

Dear Sirs,

2nd November, 2010.

MR. & MRS. DUNCAN ALEXANDER MacINTYRE
LAND AT LITTLE RAHANE FARM, RAHANE, HELENSBURGH
PLANNING APPLICATION BY MR. & MRS. MacGREGOR
REFERENCE NO: 10/00536/PP

We enclose for your attention a copy of our letter of to-day's date to Messrs. Richmond Architects along with a copy of the title plan therein referred to. Can you please note that our clients have not and will not consent to any part of their land being encroached upon to provide a lay-by or passing place or to accommodate the requisite bellmouth. We shall be obliged if you will kindly acknowledge receipt of this letter and confirm that you have noted its contents.

Yours faithfully,

Ferguson, MacSween & Stewart

Enc:



MACFHEARGHUIS, MACSUAIN AGUS STIUBHAIRT
Fir-lagha agus Notairean

Rathad na Drochaid, Port Ruighe, An t-Eilean Sgitheanach

FERGUSON MACSWEEN & STEWART
Solicitors and Notaries

Bridge Road, Portree, Isle of Skye, IV51 9ER

Telephone: 01478 612991
Fax: 01478 612709
e-mail: admin@fmsslaw.co.uk

Richmond Architects,
10 G/R Castle Terrace,
DUMBARTON,
G82 1QY.

Our Ref: MMacS/CC/288

Your Ref:

Dear Sirs,

2nd November, 2010.

MR. & MRS. DUNCAN ALEXANDER MacINTYRE
MR. & MRS. MacGREGOR
LAND AT LITTLE RAHANE FARM, RAHANE, HELENSBURGH

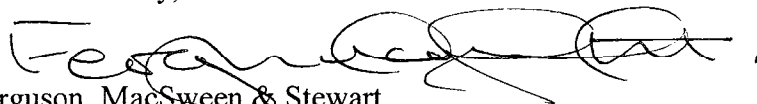
We act for Mr. & Mrs. MacIntyre who have consulted us regarding the Planning Application which you have submitted to Argyll & Bute Council on behalf of Mr. & Mrs. MacGregor in respect of the demolition of outbuildings and the erection of five dwellings at land owned by your clients at Little Rahane Farm, Rahane, Helensburgh. Our clients have had sight of the Planning Application and relative plans submitted by you on behalf of Mr. & Mrs. MacGregor. The plans you have prepared suggest that there is adjacent to the access road which serves our clients' property and your clients' property and located entirely within our clients' property, a passing place or lay-by.

We enclose a copy of the plan from our clients' Land Certificate, the extent of our clients' land is shown delineated in red and it will be noted there is no lay-by or passing place within the curtilage of our clients' land.

Furthermore, our clients have noted that your plans as submitted envisage the provision of a bellmouth as the private road meets the B833 public road. The manner in which you have configured the bellmouth on the plans submitted with your clients' application, shows part of the bellmouth to be formed within our clients' land.

Our clients wish to record that they have given no consent for the formation of either a bellmouth or a passing place or lay-by within their land and if your clients' application is reliant on either or both of these accommodations, please note that these are not available.

Yours faithfully,



Ferguson, MacSween & Stewart

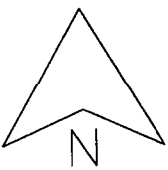
Enc:

Partners: Murdo MacSween, LL.B., N.P., Sorley T Henderson, LL.B., Dip. L.P., N.P.
Practice Manager: Margaret Bond

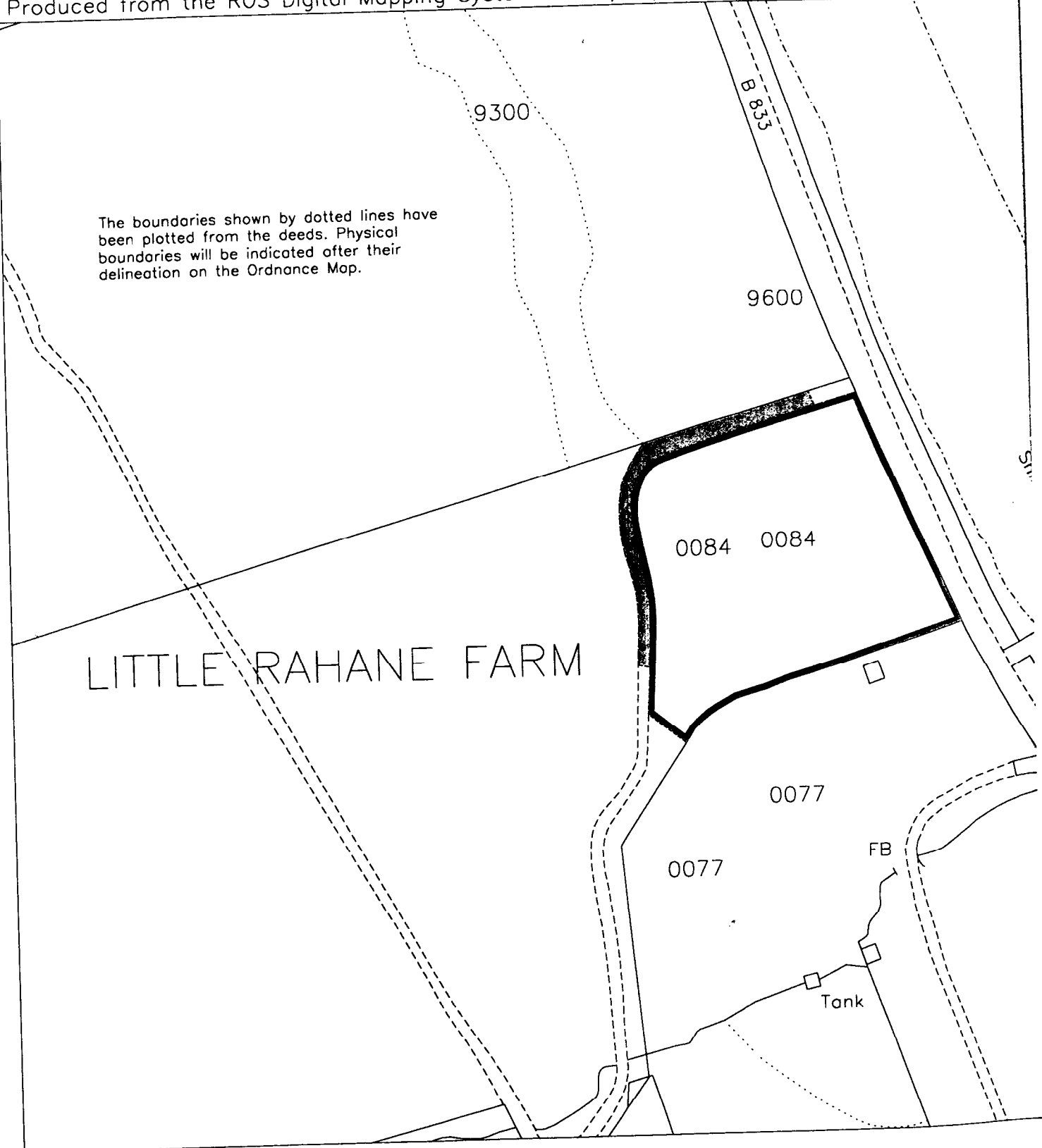
Also at Main Street, Kyle of Lochalsh, Ross-shire, IV40 8AB. Telephone 01599 534500. Fax 01599 534480.
Finance and Administration PO Box 26 Ullapool, IV26 2SZ. Telephone 01854 612826. Fax 01854 612826.



INVESTOR IN PEOPLE

| | | |
|---|--|------------------------|
| LAND REGISTER OF SCOTLAND | Officer's ID/Date | TITLE NUMBER |
| | 2989 23/1/1998 | DMB51384 |
|  | ORDNANCE SURVEY NATIONAL GRID REFERENCE | Scale |
| | NS28NW NS2385 NS2485 NS2386 | 1/1250 |
| | | Survey Scale 1/2500 |

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The boundaries shown by dotted lines have been plotted from the deeds. Physical boundaries will be indicated after their delineation on the Ordnance Map.

LITTLE RAHANE FARM

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0077

0077

Tank

FB

9300

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B 833

**Little Rahane Farm
Information for Discretionary Hearing
Re. Planning Application 10/00536/PP**

Having attended the PPSL meeting in Dunoon, we wish to make the following points to clarify the situation at Little Rahane Farm:

- **The recommendation for refusal is based on the results of an holistic Noise Impact Assessment** and a site visit by an Environmental Health Officer. Noise nuisance in this case is a key material consideration. In addition, an independent value judgement report by a very experienced Environmental Health professional – Sandy Taylor – concurs with this view.
- **We purchased Little Rahane Farm in 2003 and have been working and improving the registered smallholding since then.** We run this as a business and as such this has been an established land use for the last seven years. We have, as an integral part of our smallholding business: pigs, geese, ducks, hens, sheep, alpacas, goats, horses, donkeys, and we are ready to begin beekeeping in the spring.
- **To assist in running our smallholding business we have various types of machinery** in operation on a daily basis. We have a dumper truck (100dB sound power level), tractor, quad bike, JCB excavator, pickup truck, Land Rover, 7.5 ton HGV lorry and various trailers, plus implements for the tractor. **These are noisy vehicles and they will, in a regular and sustained manner, be in operation at the boundary of the proposed development.**
- **Our working day begins early - 4:45am in winter and 5:45am in summer.** This involves the use of mechanical equipment and together with animal noise would cause disturbance and nuisance to neighbours in such close proximity, as established by the Noise Impact Assessment. Weekends and holidays are particularly busy times throughout the day. Accordingly, **this is a typical bad neighbour development.**
- **Should this application be approved, the potential residents would constantly experience high noise levels** as advised by the Council's Environmental Health Officer and the independent Environmental Health Advisor. This would clearly require - in terms of legislation - the Council to investigate such matters on a regular basis. This would come at a considerable cost to Council taxpayers, as well as inconvenience and stress to all those involved.
- **We are not against residential development by the applicants on their land,** but the current proposal, sitting cheek by jowl with our established working smallholding, would result in unacceptable noise levels and complaints from the potential householders.
- **In terms of a resolution to these circumstances** we respectfully consider that there **are alternative sites** identified in the local plan within the land owned by the applicants. They own over 200 acres of which around 30 acres have the potential for development; particularly the land next to current residential properties (see map). This is a more acceptable location for a residential development.

All we are asking for is a common sense, practical and sensible solution - housing is acceptable in this locale, **BUT not on this specific site** because of the close proximity to the already established land use of our registered, working smallholding business, with its related noisy activities.

The key determining factor in this case is: is this an acceptable land use?

We contend, for the reasons stated above, it is not!

Accordingly, we would urge the Council to engage in meaningful discussion with the applicants with a view to finding a more appropriate location for residential land use in this locale, and within the ownership of the applicants, avoiding the noise and disturbance created by an already existing and established land use.

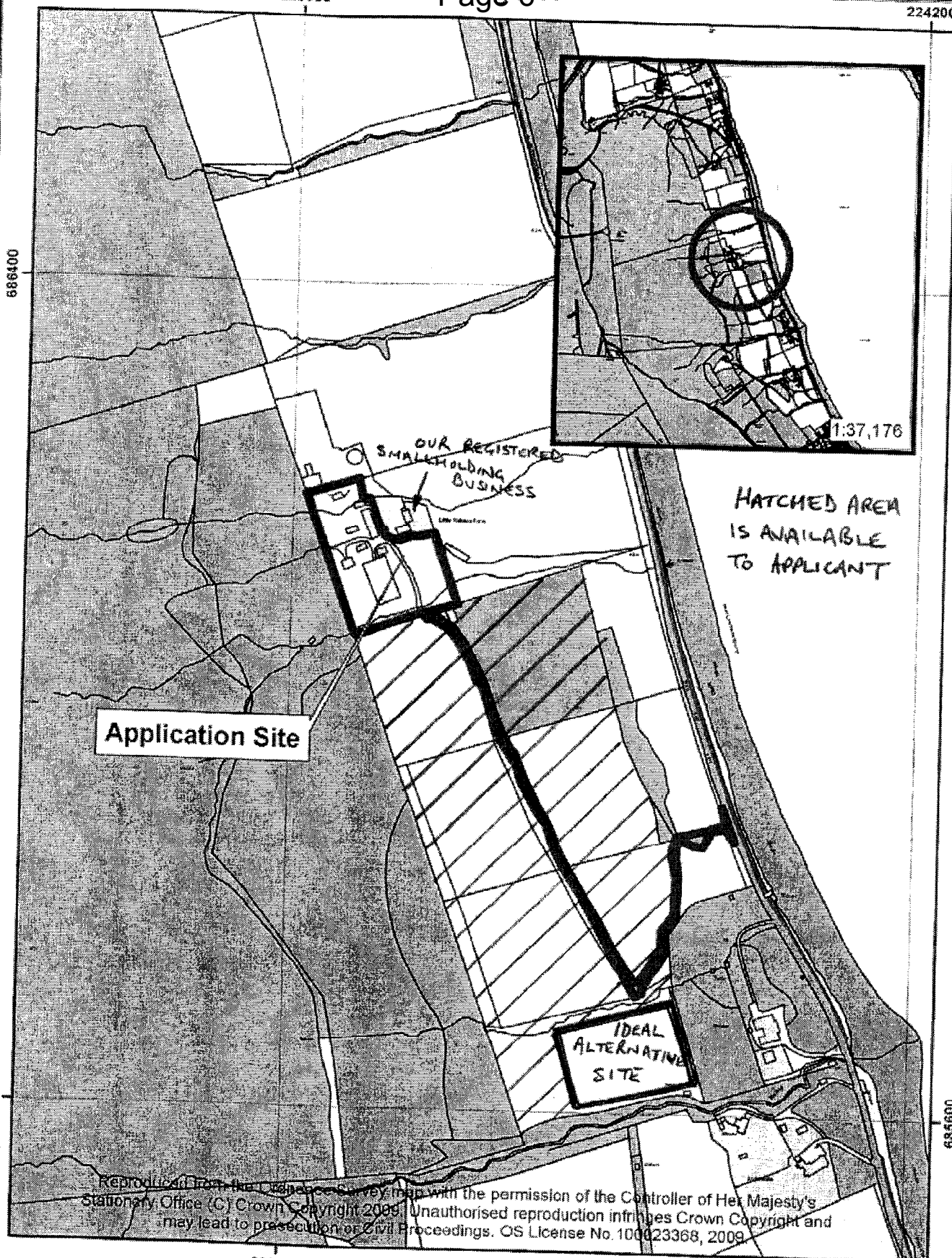
Although not planning experts, we respectfully suggest that there are alternative sites on the applicants' land which we have indicated on the following map:

686400

686400

685600

685600



Application Site

OUR REGISTERED SMALLHOLDING BUSINESS

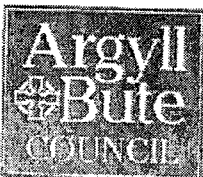
HATCHED AREA IS AVAILABLE TO APPLICANT

IDEAL ALTERNATIVE SITE

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223600

224200



**Location Plan relative to
Application Ref: 10/00536/PP**

Date: 23.08.10

Scale: 1:5,000

