

Argyll and Bute Council
Comhairle Earra Ghaidheal agus Bhoid

Customer Services
Executive Director: Douglas Hendry



Kilmory, Lochgilphead, PA31 8RT
Tel: 01546 602127 Fax: 01546 604435
DX 599700 LOCHGILPHEAD
e.mail –douglas.hendry@argyll-bute.gov.uk

6 March 2012

NOTICE OF MEETING

A meeting of the **PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE** will be held in the **THE PAVILION CAFE, ROTHESAY, ISLE OF BUTE** on **TUESDAY, 13 MARCH 2012** at **1:45 PM**, which you are requested to attend.

Douglas Hendry
Executive Director - Customer Services

BUSINESS

- 1. APOLOGIES FOR ABSENCE**
- 2. DECLARATIONS OF INTEREST (IF ANY)**
- 3. EXCEL: ERECTION OF 3 TWO STOREY DWELLINGHOUSES: LAND TO WEST OF ANNIESLEA, HYDRO ROAD, PORT BANNATYNE, ISLE OF BUTE (REF: 11/00626/PP)**
Report by Head of Planning and Regulatory Services (Pages 1 - 12)

PROCEDURE NOTE (Pages 13 – 18)

PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE

Councillor Gordon Chalmers
Councillor Robin Currie
Councillor Mary-Jean Devon
Councillor David Kinniburgh
Councillor Donald MacMillan
Councillor Alister McAlister
Councillor Alex McNaughton

Councillor Rory Colville
Councillor Vivien Dance
Councillor Daniel Kelly
Councillor Neil Mackay
Councillor Bruce Marshall
Councillor Roderick McCuish
Councillor James McQueen

Contact: Fiona McCallum

Tel. No. 01546 604406

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Argyll and Bute Council
Development and Infrastructure Services

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: 11/00626/PP

Planning Hierarchy: Local

Applicant: Excel

Proposal: Erection of 3 two storey detached dwellinghouses.

Site Address: Land to West of Annieslea, Hydro Road, Port Bannatyne, Isle of Bute

DECISION ROUTE

(i) Local Government (Scotland) Act 1973

(A) THE APPLICATION

(i) Development Requiring Express Planning Permission

- Erection of 3 two storey detached dwellinghouses;
- Formation of three vehicular accesses onto private road;

(i) Other specified operations

- Connection to public water supply and public sewerage system
 - Felling of trees in conservation area
-

(B) RECOMMENDATION:

Having due regard to the Development Plan and all other material considerations, it is recommended that, subject to the holding of a discretionary hearing, planning permission be granted subject to the conditions, reasons and informative notes at the end of this report.

(C) HISTORY:

Outline Planning Permission (470/80) granted on 3rd June 1981 for the erection of 49 chalets, a swimming pool and the change of use of the Kyles of Bute Hydro to a hotel. This permission expired in 1984 as no reserved matters submissions had been made.

Outline Planning Permission (01/91/0393/OUT) granted on 24th September 1991 for the erection of 11 dwellinghouses on land including the application site. This permission expired in 1994 as no reserved matters submissions had been made.

Outline Planning Permission (96/01606/OUT) granted on 6th December 1996 for the same 11 dwelling development as above. This permission expired in 1999 as no reserved matters submissions had been made.

Consent was granted for the felling of 19 trees (6 within the present application site) (part retrospective) and re-planting of 20 Scots pine on 14th October 2010 (10/01485/TPO).

(D) CONSULTATIONS:

Scottish Water (response received 11th May 2011) – no objections

Area Roads Manager (report dated 17th October 2011) – No objections subject to conditions

West of Scotland Archaeology Service (response received 10th May 2011) – no substantive archaeological issues.

Historic Scotland (response received 19th May 2011) – no comments to make.

(E) PUBLICITY:

Conservation Area Advert (expiry 3rd June 2011) and Masterplan Advert (closing date 10th February 2012).

(F) REPRESENTATIONS:

At the time of writing, one letter/email of representation has been received from: Mr Mark Markov, Annieslea, Hydro Road, Port Bannatyne (received 22nd May 2011); one letter has been received from Mrs J Williamson, Allt-an-Aros, 16 High Road, Port Bannatyne (letter dated 26th August 2011); and a Petition (received 6th July 2011) with 75 names opposing the development. The points raised can be summarised below:

Concern raised over the destruction of the unique and sensitive habitat with consequences to the wider natural environment.

Comment: The site has no known nature conservation designation or protected species interests

The route for access from the Gortans Road is unsuitable for construction and motor traffic and would constitute a major noise and pollution problem.

Comment: This issue is addressed in the Assessment section below.

The necessary upgrading of the track would impact on the area's present use as a leisure amenity and change the character of the area. It would mean the use of the track by walkers, runners, riders and cyclists would be severely affected.

Comment: The upgrading of the track would actually improve access. It is not considered that the erection of a further three dwellings would prove an obstacle to the use of the road for amenity purposes.

The proposed exterior finish is not sympathetic to a woodland environment.

Comment: This issue is addressed in the Assessment section below.

The overall impression is overbearing and out of character to the surroundings. The proposed 2 storey dwellings are too close together and too close to the track.

Comment: This issue is addressed in the Assessment section below.

(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: Yes**

A Design Statement forwarded by the agent, Stewart Associates, can be summarised as follows:

- Each dwellinghouse takes the form of a simple two-storey rectangular plan with two intersecting pitched roofs. Each house has been designed specifically for their plot to maximise views and privacy. The scale of each house is sympathetic to the surrounding area and neighbouring houses.
- The orientation is effectively determined by the site, as each house is sited more than 18 metres from each other it determines a narrower, rectangular plan. The houses are designed to maximise the outlook towards the River Clyde whilst respecting the privacy of each other. Each building is set back from the site boundary creating a new building line.
- Each house has a single 3.7m wide private driveway, accessed from the existing Hydro road from the east off Gortans Road. This access is used by neighbouring houses. The road at the entrance to each plot will be 5.5 metres wide, with the first 3 metres of the driveway finished with a hard surface and the remaining area of both driveway and parking finished with locally sourced washed gravel. The previous requirements for the maximum entrance gradient of 5% for the first 5 metres and 8% thereafter will be respected. 3 cars can park adjacent to each house.
- To establish a buildable area, trees will be removed from the site, although it is proposed to maintain as many of the mature trees as feasible and new trees will be planted on the site. Each proposed plot is defined by a 900 mm high post and wire fence, with an 1800 mm high timber fence to the south. In each plot, the building will be surrounded by a 900 mm wide gravel path communicating directly with the access drive and parking area. The house entrance, ground and upper floor terraces will be paved with a light grey conservation slab. The remaining enclosed area around the house will be laid in grass whilst trees and shrubs will be planted to the boundaries between each of the plots for additional privacy.

(iv) Supporting Information: N/A

(v) A report on the impact of the proposed development eg. Retail impact, transport impact, noise impact, flood risk, drainage impact etc: No

(H) PLANNING OBLIGATIONS

- (i) Is a Section 75 agreement required: No**
-

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

(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 DC 9 – Historic Environment and Development Control

Argyll & Bute Local Plan 2009

LP ENV 7 – Development Impact on Trees/Woodlands

LP ENV 14 – Development in Conservation Areas ...

LP ENV 19 – Development Layout, Setting & Design

LP HOU 1 – General Housing Development

LP HOU 2 – Affordable Housing

LP TRAN 4 – New and Existing Public Roads and Private Access Regimes

LP TRAN 6 – Vehicle Parking Provision

(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.**

Housing Needs & Demand Assessment

(K) **Is the proposal a Schedule 2 Development not requiring an Environmental Impact Assessment:** No

(L) **Has the application been the subject of statutory pre-application consultation (PAC):** No

(M) **Has a sustainability check list been submitted:** No

(N) **Does the Council have an interest in the site:** No

(O) **Requirement for a hearing (PAN41 or other):**

On the basis that there have been two individual letters of objection and a petition of opposition with 75 signatories, it is recommended that Members agree to the convening of a discretionary hearing prior to a decision being made on the application.

(P) **Assessment and summary of determining issues and material considerations**

The site is located within the settlement of Port Bannatyne and within Housing Allocation H/AL 1/5 contained within the 'Argyll and Bute Local Plan' 2009. The application

proposes the erection of three detached dwellinghouses with individual accesses onto an existing private road and connection to public services.

The scale and design of the dwellinghouses is considered appropriate and, whilst a total of 27 trees will be removed, a replanting scheme of 13 heavy standards is also proposed. Overall, it is considered that the siting, layout and design of the proposal and its impact on the landscape setting of Port Bannatyne would respect and maintain the established character of the conservation area.

The private road to the site requires upgrading and a suspensive condition is recommended which seeks the submission and implementation of a programme of improvement works prior to the commencement of the development.

A Masterplan for the remainder of the housing allocation has been submitted which identifies how a further sixteen dwellings can be successfully incorporated into this part of the Rothesay Conservation Area.

(Q) Is the proposal consistent with the Development Plan: Yes

(R) Reasons why planning permission or a Planning Permission in Principle should be granted

The proposal accords with policies STRAT DC 1 and STRAT DC 9 of the Argyll and Bute Structure Plan 2002 and policies LP ENV 7, LP ENV 14, LP ENV 19, LP HOU 1, LP HOU 2, LP TRAN 4 and LP TRAN 6 of the Argyll and Bute Local Plan (2009) and the proposal raises no other material consideration which would justify refusal of permission.

(S) Reasoned justification for a departure from the provisions of the Development Plan Not applicable

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

Author of Report: Steven Gove

Date: 31/1/2012

Reviewing Officer: David Eaglesham

Date: 6/2/2012

Angus Gilmour
Head of Planning & Regulatory Services

CONDITIONS AND REASONS RELATIVE TO APPLICATION REF: 11/00626/PP

1. The development shall be implemented in accordance with the details specified on the approved drawings numbers: Drawing No. 0918/P01; Drawing No. 0918/P02; Drawing No. 0918/P03; Drawing No. 0918/P04; Drawing No. 0918/P05; and Drawing No. 0918/P08 unless the prior written approval of the Planning Authority is obtained for other materials/finishes/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, to ensure that the development is implemented in accordance with the approved details

2. The landscaping scheme shown on the plan titled 'Site Plan as Proposed' (Drawing Number 0918/P03) shall be implemented no later than the first planting and seeding season following the commencement of the development (or such other timescale agreed with the Planning Authority prior to the commencement of the development) and, thereafter, shall be maintained to the satisfaction of the Planning Authority for a period of ten years. No trees shall be felled or lopped within the landscaping scheme without the prior written consent of the Planning Authority and any losses of plant species through disease, weather exposure, neglect or damage shall be replaced with equivalent species within one growing season.

Reason: In the interests of visual amenity in order to successfully integrate the proposal into its surrounding townscape setting and having due regard to Policies LP ENV 7 and LP ENV 14 of the Argyll and Bute Local Plan 2009.

3. The root system of the trees to be retained within the site shall be suitably protected in accordance with BS 5837 'Trees in Relation to Construction' (2005) prior to the commencement of the development and during the course of the development. Prior to works commencing on site, fences shall be erected below the canopy edge of the trees to prevent encroachment by machinery and vehicles and these fences shall be maintained during building works on site.

Reason: In the interests of visual amenity in order to ensure that reasonable and appropriate measures are taken to secure the viability of the trees within the site.

4. Prior to the commencement of the development, a programme of works to improve the road between the site and Ardbeg Road shall be submitted to and approved in writing by the Planning Authority. Such a programme shall, at a minimum, include the following:
 - i. The surfacing and drainage of the private road between Gortans Road and the site frontage;
 - ii. The provision of two passing places along the section of the private road between Gortans Road and the site frontage;
 - iii. The widening of the carriageway along the frontage of the site to 5.5 metres;
 - iv. The implementation of a 'Twenty's Plenty' traffic calming scheme for the entire length of Gortans Road with signage defining the extent of the adopted road.

No development shall commence until the works have been undertaken in accordance with the approved programme unless the prior written consent of the Planning Authority is obtained for variation.

Reason: In the interests of road safety having regard to policy LP TRAN 4 of the Argyll and Bute Local Plan 2009.

NOTES TO APPLICANT

1. This planning permission will last only for three years from the date of this decision notice, unless the development has been started within that period. [See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).]
2. In order to comply with Section 27A(1) of the Town & 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.
3. In order to comply with Section 27B(1) of the Town & 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 complete.
4. The Area Roads Manager has advised that a Road Opening Permit will be required for the signage associated with the "Twenty's Plenty" scheme.

ANNEX A – RELATIVE TO APPLICATION NUMBER 11/00626/PP

PLANNING LAND USE AND POLICY ASSESSMENT

A. Settlement Strategy

The application site is located within the settlement of Port Bannatyne and is part of Housing Allocation (ref: H/AL 1/5). At the Planning, Protective Services and Licensing Committee in November 2011, Members decided to introduce a protocol for dealing with applications proposing the development of part(s) of a Potential Development Area or Housing Allocation. This has resulted in a masterplan being produced by Stewart Associates for the whole of the housing allocation, which has been subsequently advertised for public consultation purposes.

The masterplan shows the erection of a total of nineteen dwellinghouses and, whilst this is in excess of the seventeen mentioned in the Local Plan 2009, it is within the 125% that has been previously accepted as the limit for increasing the number of units within a housing allocation. Stewart Associates have explained that the housing allocation is in two separate ownerships and the current applicant has an interest in developing only one further plot within his ownership. The other part of the site (owned by the Lay Partnership) is earmarked for the erection of fourteen units to be served by a road to adoptable standard entering the site from the west. Affordable housing is shown at the western edge of the allocated site, closest to the amenities of Port Bannatyne. According to Stewart Associates, an application for the single dwellinghouse is likely to be submitted upon the determination of the current application whilst there are no plans to submit for the fourteen dwellings in the foreseeable future.

It is considered that the submitted masterplan demonstrates how the allocated site could be developed in the future in a satisfactory manner and that the current application for three dwellings would not interfere negatively with the overall vision for the site.

On this basis, the proposal is considered to accord with STRAT DC 1 of the Structure Plan 2002 and LP HOU 1 of the Argyll & Bute Local Plan 2009.

B. Location, Nature and Design of Proposed Development (Including Impact upon Built Environment)

The proposed development relates to the erection of three detached dwellinghouses in an area of land covering 0.38 hectares. The site is located to the west of the property known as 'Annieslea' and is presently wooded. The proposal would involve the formation of a separate access for each plot onto an existing private access road. The dwellinghouses would be two storey in height and would have a self-coloured white and light grey contrast acrylic render with translucent grey timber cladding. The roofs would be natural slate whilst the fenestration would be dark grey timber. Connection is proposed to public services.

The application site is part of a larger housing allocation with the consequence that the principle of residential development is supported. The site itself is somewhat divorced from the built-up part of the Conservation Area and has two existing dwellinghouses located to the east. The High Road through Port Bannatyne runs parallel to the northern boundary of the site; however, there is a bank of woodland between the site and High Road which means that the development would only be glimpsed through the trees.

It is considered that the detached nature of the dwellinghouses and their two-storey scale would not be out of place having regard to the neighbouring properties. The use of render, timber cladding and natural slate is also considered to be appropriate.

There will be an inevitable loss of some trees on the site (a total of 27). However, the trees to be lost are poorly formed, self-sown specimens of mainly birch and sycamore which have become established in the formerly more open, landscaped grounds of the hotel following its demolition. Although the wooded character of the site will be affected when immediately passing the site, the site is well screened on the lower (northern) side by more established woodland, while the submitted masterplan indicates that the bulk of the more extensive woodland above the development will be retained. Consequently, the impact of the development on the woodland cover will be much reduced from wider and more public viewpoints, such as across Kames Bay. Furthermore, the development proposes the planting of 13 heavy standard trees with a mixture of Birch, Ash and Beech which will help assimilate the proposed dwellings into the landscape.

Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of conservation areas. Overall, it is considered that the siting layout and design of the proposal and its impact on the landscape setting of Port Bannatyne would respect the established character of the conservation area.

On the basis of the foregoing, it is considered that the proposal can be justified in terms of its '*neutral*' impact upon this part of the Rothesay Conservation Area. **The proposal is therefore in accordance with Policy STRAT DC 9 of the Structure Plan and policies LP ENV 7, LP ENV 10, LP ENV 14 and LP ENV 19 of the Argyll & Bute Local Plan.**

C. Affordable Housing

The site forms part of housing allocation H/AL 1/5 which has an indicative capacity of 17 units with 25% affordability. The submitted masterplan shows an increase to 19 units with four units of affordable housing being identified at the western edge of the allocated site. In this respect, and having regard to the contents of the masterplan, the current proposal for 3 units need not prejudice the eventual contribution of affordable housing within the wider allocated site.

Furthermore, the Council's Housing Needs & Demand Assessment has demonstrated a significant surplus of social housing on the Isle of Bute. Under these circumstances, the insistence of a contribution towards affordable housing from this small development would only serve to inhibit a welcome private sector housing development in the current economic climate.

The proposal is considered not to conflict with Policy LP HOU 2 of the Argyll & Bute Local Plan.

D. Road Safety

The site is served by a 300m road that leads from Gortans Road and which serves three existing dwellinghouses. The access road will require upgrading due to its poor surface and it is likely that a number of passing places will require to be formalised. In this regard, it is proposed to attach a suspensive condition that requires a programme of works to be agreed and undertaken prior to the commencement of development on the site.

The Area Roads Manager has also mentioned that a 'Twenty's Plenty' scheme should be introduced for the complete length of Gortans Road with signage defining the extent of the adopted carriageway. The developer would be responsible for the fees and costs relative to this traffic calming scheme.

The number of parking spaces is considered to be acceptable having regard to the size of the dwellinghouses.

On the basis of the foregoing, and subject to suitably-worded conditions, **the proposal is considered to accord with policies LP TRAN 4 and LP TRAN 6 of the Local Plan 2006.**

E. Water Supply and Sewerage System

The application shows connection to the public water supply and the public waste water treatment system. Scottish Water has advised that these connections are available.

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ARGYLL AND BUTE COUNCIL

PROCEDURE NOTE FOR USE AT

- | | |
|--|--------------------------|
| (1) Statutory Pre Determination Hearing | <input type="checkbox"/> |
| (2) Pan 41 Hearing | <input type="checkbox"/> |
| (3) Council Interest Application | <input type="checkbox"/> |
| (4) Discretionary Hearing | x |

HELD BY THE PLANNING, PROTECTIVE SERVICES & LICENSING COMMITTEE

1. The Director of Customer Services will notify the applicant, all representees and objectors of the Council's decision to hold a Hearing and to indicate the date on which the hearing will take place. The hearing will proceed on that day, unless the Council otherwise decides, whether or not some or all of the parties are represented or not. Statutory consultees (including Community Councils) will be invited to attend the meeting to provide an oral presentation on their written submissions to the Committee, if they so wish.
2. The Director of Customer Services will give a minimum of 7 days notice of the date, time and venue for the proposed Hearing to all parties.
3. The hearing will proceed in the following order and as follows.
4. The Chair will introduce the Members of the Panel, ascertain the parties present who wish to speak and outline the procedure which will be followed.
5. The Director of Development and Infrastructure's representative will present their report and recommendations to the Committee on how the matter should be disposed of.
6. The applicant will be given an opportunity to present their case for approval of the proposal and may include in their submission any relevant points made by representees supporting the application or in relation to points contained in the written representations of objectors.
7. The consultees, supporters and objectors in that order (see notes 1 and 2), will be given the opportunity to state their case to the Council.
8. All parties to the proceedings will be given a period of time to state their case (see note 3). In exceptional circumstances and on good case shown the Panel may extend the time for a presentation by any of the parties at their sole discretion.

Ref: ABH1/2009

9. Members of the Panel only will have the opportunity to put questions to the Director of Development and Infrastructure's representative, the applicant, the consultees, the supporters and the objectors in that order.
10. At the conclusion of the question session the Director of Development and Infrastructure's representative, the applicant, any consultees present, the supporters and the objectors (in that order) will each be given an opportunity to comment on any particular information given by any other party after they had made their original submission and sum up their case.
11. The Chair will ascertain from the parties present that they have had a reasonable opportunity to state their case.
12. The Panel will then debate the merits of the application and will reach a decision on it. No new information can be introduced at this stage.
13. The Chair or the Committee Services Officer on his/her behalf will announce the decision.
14. A summary of the proceedings will be recorded by the Committee Services Officer.
15. If at any stage it appears to the Chair that any of the parties is speaking for an excessive length of time he will be entitled to invite them to conclude their presentation forthwith.

NOTE

- (1) Objectors who intend to be present and speak at a hearing are encouraged to appoint one or a small number of spokespersons to present their views to concentrate on the matters of main concern to them and to avoid repetition. To assist this process the Council will provide a full list of the names and addresses of all objectors.
- (2) Supporters who intend to be present and speak at a hearing are encouraged to appoint one or a small number of spokespersons to present their views to concentrate on the matters of main concern to them and to avoid repetition. To assist this process the Council will provide a full list of the names and addresses of all supporters.
- (3) Councillors (other than those on the Panel) who have made written representations and who wish to speak at the hearing will do so under category (1) or (2) above according to their representations but will be heard by the Panel individually.
- (4) Recognising the level of representation the following time periods have been allocated to the parties involved in the Hearing.

Ref: ABH1/2009

The Director of Development Services' representative – not more than half an hour

The Applicant - not more than half an hour.

The Consultees - not more than half an hour.

The Supporters - not more than half an hour.

The Objectors - not more than half an hour.

- (4) The purpose of the meeting is to ensure that all relevant information is before the Panel and this is best achieved when people with similar views co-operate in making their submissions.
- (5) Everyone properly qualified as a representee recorded on the application report who wishes to be given an opportunity to speak will be given such opportunity.
- (6) The Council has developed guidance for Councillors on the need to compose a competent motion if they consider that they do not support the recommendation from the Director of Development and Infrastructure which is attached hereto.

I:data/typing/planning/procedure note

COMPETENT MOTIONS

- Why is there a need for a competent motion?
 - Need to avoid challenge by “third party” to local authority decision which may result in award of expenses and/or decision being overturned.
 - Challenges may arise from: judicial review, planning appeal, ombudsman (maladministration) referral. All appeal/review processes have rights to award expenses against unreasonable/unlawful behaviour.
- Member/Officer protocol for agreeing competent motion:
 - The process that should be followed should Members be minded to go against an officer’s recommendation is set out below.
- The key elements involved in formulating a competent motion:
 - It is preferable to have discussed the component parts of a competent motion with the relevant Member in advance of the Committee (role of professional officers). This does not mean that a Member has prejudged the matter but rather will reflect discussions on whether opinions contrary to that of professional officers have a sound basis as material planning considerations.
 - A motion should relate to material considerations only.
 - A motion must address the issue as to whether proposals are considered consistent with Adopted Policy or justified as a departure to the Development Plan. Departure must be determined as being major or minor.
 - If a motion for approval is on the basis of being consistent with policy reasoned justification for considering why it is consistent with policy contrary to the Head of Planning’s recommendation must be clearly stated and minuted.
 - If a motion for approval is on the basis of a departure reasoned justification for that departure must be clearly stated and minuted. Consideration should be given to holding a PAN 41 Hearing (determined by policy grounds for objection, how up to date development plan policies are, volume and strength of representation/contention)
 - A motion should also address planning conditions and the need for a Section 75 Agreement.
 - Advice from the Scottish Government on what are material planning considerations is attached herewith. However, interested parties should always seek their own advice on matters relating to legal or planning considerations as the Council cannot be held liable for any error or omission in the said guidance.

DEFINING A MATERIAL CONSIDERATION

1. Legislation requires decisions on planning applications to be made in accordance with the development plan (and, in the case of national developments, any statement in the National Planning Framework made under section 3A(5) of the 1997 Act) unless material considerations indicate otherwise. The House of Lord's judgement on *City of Edinburgh Council v the Secretary of State for Scotland* (1998) provided the following interpretation. If a proposal accords with the development plan and there are no material considerations indicating that it should be refused, permission should be granted. If the proposal does not accord with the development plan, it should be refused unless there are material considerations indicating that it should be granted.
2. The House of Lord's judgement also set out the following approach to deciding an application:
 - Identify any provisions of the development plan which are relevant to the decision,
 - Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies,
 - Consider whether or not the proposal accords with the development plan.
 - Identify and consider relevant material considerations for and against the proposal, and
 - Assess whether these considerations warrant a departure from the development plan.
3. There are two main tests in deciding whether a consideration is material and relevant:
 - It should serve or be related to the purpose of planning. It should therefore relate to the development and use of land, and
 - It should fairly and reasonably relate to the particular application.
4. It is for the decision maker to decide if a consideration is material and to assess both the weight to be attached to each material consideration and whether individually or together they are sufficient to outweigh the development plan. Where development plan policies are not directly relevant to the development proposal, material considerations will be of particular importance.
5. The range of considerations which might be considered material in planning terms is very wide and can only be determined in the context of each case. Examples of possible material considerations include:
 - Scottish Government policy, and UK Government policy on reserved matters
 - The National Planning Framework
 - Scottish planning policy, advice and circulars
 - European policy
 - A proposed strategic development plan, a proposed local development plan, or proposed supplementary guidance

Ref: ABH1/2009

- Guidance adopted by a Strategic Development Plan Authority or a planning authority that is not supplementary guidance adopted under section 22(1) of the 1997 Act
 - A National Park Plan
 - The National Waste Management Plan
 - Community plans
 - The Environmental impact of the proposal
 - The design of the proposed development and its relationship to its surroundings
 - Access, provision of infrastructure and planning history of the site
 - Views of statutory and other consultees
 - Legitimate public concern or support expressed on relevant planning matters
6. The planning system operates in the long term public interest. It does not exist to protect the interests of one person or business against the activities of another. In distinguishing between public and private interest, the basic question is whether the proposal would unacceptably affect the amenity and existing use of land and buildings which ought to be protected in the public interest, not whether owners or occupiers of neighbouring or other existing properties would experience financial or other loss from a particular development.