

3rd September 2010

**Corporate Services
Kilmory
Lochgilphead
Argyll
PA31 8RT**

**RE: Planning Review 10/0005/LRB – Lands SW of Ballochyle Farm,
Sandbank, PA23 8RD**

Dear Sirs

Please find enclosed documentation in response to the draft planning conditions as issued by Mr Brian Close on 30/08/2010. These documents address queries Mr Close has regarding titles and discrepancies regarding survey data in Mr Close's commentary.

Land Ownership:

Please find enclosed documentation from both the Keeper (Land Registry Scotland) and Mr & Mrs Boyd's solicitors confirming that they currently have clear title to the riverbank. Any queries raised by other parties are purely vexatious hearsay, not backed up by any official documentation and should be disregarded in light of this official confirmation. Therefore a Section 75 of any sort is not required. This relates to suggested conditions 2, 6 and 8. Please also note that the enclosed title plan from the keeper relates specifically to lands in a recent disposition. My clients own and can prove that they own, all of the lands contained within drawing 0704/LR/01. All issues relating to title are, as highlighted by the planning officer civil matters but the subject of the ownership of the river bank seems to be driving a potential Section 75 and this is plainly not required.

Dimensional Discrepancies:

The notes below Condition 4 are curious to say the least and the Planning Officer's tale of revisiting the site to check the dimensions is extremely unusual. The submitted site plan 0704_DPP_01 Rev A has been compiled using a certified, digital topographical survey, prepared by an RICS surveyor using state-of-the-art equipment and is therefore of millimetric precision. This document should be the sole source of reference to the positioning of the dwelling on the site and not rough measurements taken on site by non qualified persons, not using certified or accurate surveying equipment. Mr Boyd and I pegged out the site as a rough indication of the location and

dimensions of the dwelling to assist the LRB in visualizing the outline of the property. We informed the planning officer and the LRB of the fact that while we were confident of the pegged outline's accuracy all specific questions would have to be referred to the proposed site plan drawing. We have no way to verify if the pegs were subsequently moved or their position altered; likewise we have no way of verifying the planning officer's measurements as we were not present when the "re-measuring" took place. This entire issue is of no relevance whatsoever to either the suggested condition or the proposal as a whole.

It is curious to note that the planning officer states that he took "accurate measurement" then proceeds to inform us that $21.5 + 4.5$ equals 25! Also the planning officer should be well aware that the specified drawing (0704/DPP/005/200 Rev B) does not in fact show an "un surfaced track" but in fact shows a resurfaced and kerbed access road. This was discussed with the planning officer during the application process. This means that the planning officer was measuring from a datum point that in fact does not yet exist. All of this reinforces the fact that the proposed site plan and topographic data are the only reliable source for positioning information and this is the data that was used by Transtech when compiling their Flood Risk Assessment.

We are equally mystified by the comparisons in length between an existing two storey courtyard dwelling and the mostly single storey proposed dwelling. The planning officer has had this design on his desk for 12 months – surely he is not only now considering its dimensions?

As has been stated by an independent hydrographical surveyor as well as the council's own flood alleviation officer Ian Gilfillan, the proposed dwelling as per the proposed site plan 0704_DPP_01 Rev A is located outside the functional floodplain and no amount of re-measuring and re-evaluating an indicative site pegging out will alter this fact. Quite why the planning officer is even attempting to deduce something to the contrary from his own compromised and plainly inaccurate on-site measurements is totally beyond my explanation.

Suggested Planning Conditions:

We have no objections in principle to the suggested conditions; however we would like to make a few comments on a number of the conditions as we feel that there are too many conditions essentially saying exactly the same thing. We would be keen to avoid subsequent procedural burdens both on our clients and indeed on the planning department.

Condition 3:

This Finished Floor Level (FFL) is clearly specified in the drawings listed in Condition 2; therefore it seems an unnecessary procedural burden on both the applicant and the planning officer to produce further drawings that confirm the same.

Condition 4:

As with condition 3 the client will already be compelled to build the dwelling as per the proposed site plan – as specified in condition 2. A condition of this nature will be difficult to enforce, will require a planning officer to visit the site and thus potentially hinder the program of any development and will again be a procedural burden.

In summary we are broadly happy with the conditions however we remain concerned at the suggestion of an unwarranted Section 75 and we also remain concerned at unsubstantiated claims of land ownership and inaccurate surveying seriously compromising this review.

I would appreciate an acknowledgement of receipt of these documents and I will also be sending hard copies to the LRB.

regards

A handwritten signature in black ink, appearing to read 'Darran A Crawford', with a stylized, sweeping flourish at the end.

Darran A Crawford MArch ARB
Architect

for `lineararchitecture`

mob: 07786131764
tel: 0141 334 8024

DALLAS McMILLAN

SOLICITORS AND ESTATE AGENTS

Thanks Ffiona

Thanks for clarifying

There is no evidence that Mr Welstead's client owns the riverbank. Yes she has tried to make a claim on part of this title and a note of that will be recorded on your land certificate (when it is finally issued) but the letter from the Registers of Scotland dated 28 October 2009 clearly sets out the position

The sentence which says "Let me assure you that your client has a fully indemnified title (other than the natural water boundary note) and is entitled to rely upon it" should put any doubt to rest. It is unfortunate that your land certificate has not as yet been issued

I will also scan & email an earlier letter from the Keeper from 18 Sept 2009 which makes clear that while ARG4241 (which I have assumed is Mrs Moffat's title) has an exclusion of indemnity for the land she has claimed, your title will not show such an exclusion of indemnity as you possess legal title to it

I have also attached a copy of the plan showing the extent of what you acquired ie the areas coloured red and yellow...

I hope this assists

Kind regards

Anne Hunter

Associate
Dallas McMillan
Solicitors

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Regent Court
70 West Regent Street
GLASGOW G2 2QZ
Direct tel : 0141 333 6756
Office Tel: 0141 333 6750
Fax: 0141 333 6777

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Telephone: 0141 306 1536

Fax: 0141 306 1507

E mail: Pat.Maguire@ros.gov.uk

Your Ref:AH/BOYD08/1

Our Ref:PLM

Date:28th Oct. 2009

Dear Ms Hunter,

Title Number: ARG12490
Subjects: at Ballochyle, Sandbank, Dunoon
Proprietor/Applicant:F E Boyd

I refer to your letter of 14th October 2009.

I can assure you that there will be no exclusion of indemnity on your client's Title Sheet other than the normal Natural Water Boundary note. There will however, be a note explaining that another party has laid claim to part of your clients subjects (the Keeper having excluded indemnity on the other partys Title Sheet). The note will be in the following form;- "Margaret Whyte Moffat also has title to the area tinted.... on the Title Plan by Disposition registered in the Land Register on 28th June 2002." This does not amount to an exclusion on your clients Title Sheet, rather it is simply a warning for your client that an attempt has been made by a third party to lay claim to part of her title and she should therefore ensure that the operation of prescription does not affect her title. Let me assure you that your client has a fully indemnified Title (other than the natural water boundary note) and is entitled to rely upon it.

I hope this clarifies matters for you but feel free to contact me should you wish.

Yours faithfully

PAT MAGUIRE
for Keeper of the Registers of Scotland



LAND REGISTER
OF SCOTLAND

Officer's ID / Date

4841
7/4/2005

TITLE NUMBER

ARG5736



ORDNANCE SURVEY
NATIONAL GRID REFERENCE

Scale

1/2500

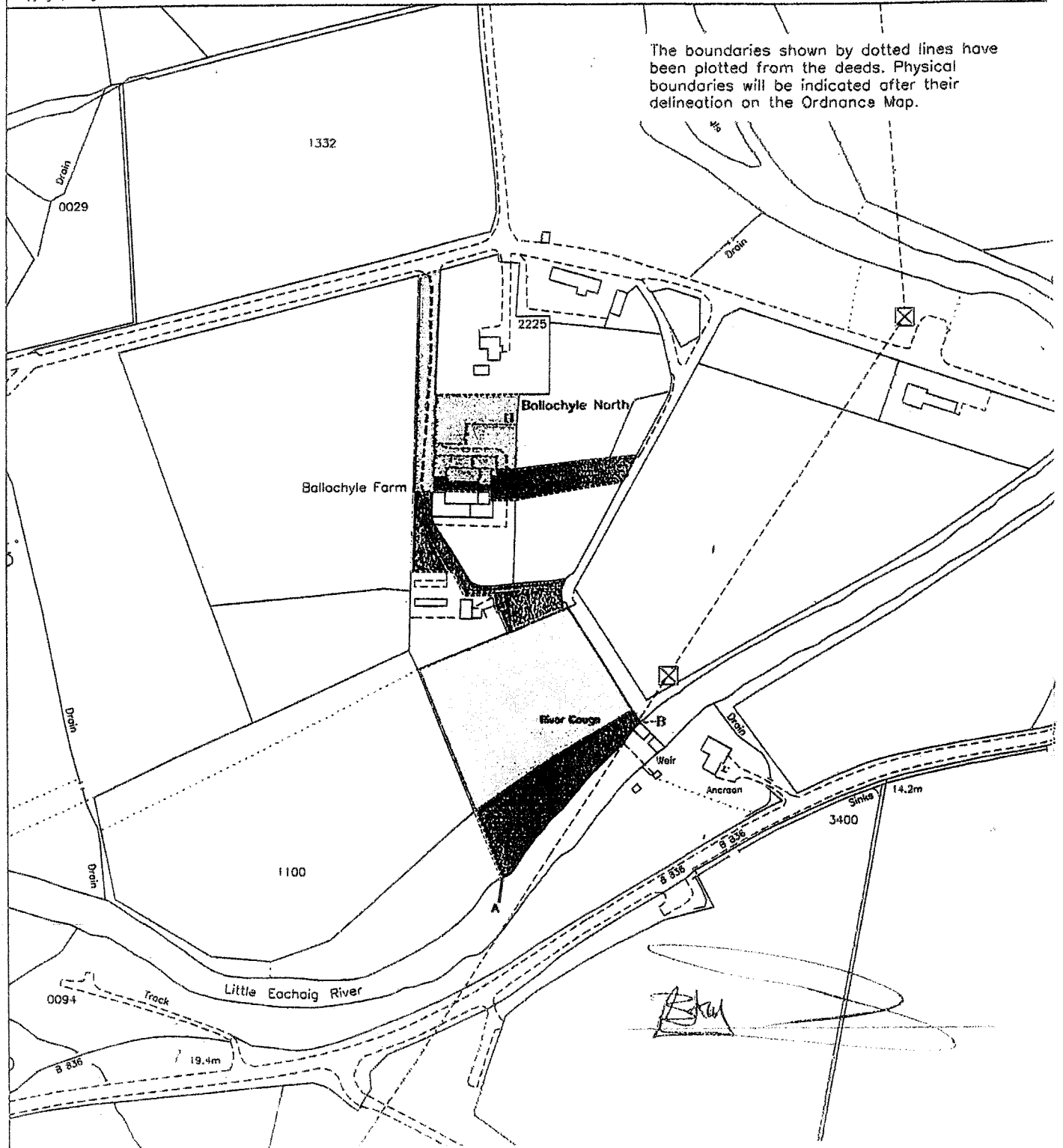
NS1481 NS1482 NS18SW

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.





Reply to Glasgow office
 Telephone: 0141 306 1663
 DX 501749 GLASGOW 9/LP 70 GLASGOW 5

Date: 18 September, 2009

FAO: Anne Hunter

Dallas McMillan
 Solicitors
 DX GW 30
 GLASGOW

Our Ref: ARG12490/TP/OV
 Your Ref: AH/BOYD008/2/JLD

Dear Sir,

Title Number: ARG12490

Applicants: FFIONA EILEEN BOYD COTTAGE 3, BALLOCHYLE ESTATE, DUNOON, PA23 8RD.

Subjects: FIELDS AT BALLOCHYLE, SANDBANK, DUNOON.

Parent Title Number: ARG5736

I thank you for your letter (and enclosure therewith) of 15th. inst. relating to the above subjects, and apologise for my delay in responding thereto.

In light of your comments, I have sought further clarification from the Senior Legal Advisor who authorised the exclusion of indemnity in respect of Title ARG4241 over the area tinted blue on Ordnance Map extract marked 'Print A' enclosed with my letter to you of 4th. inst., and I regret that it appears that I have given you incorrect information in this regard.

Whilst it is true that indemnity is excluded in respect of Title ARG4241 over the said area, indemnity will **not be excluded in respect of your client's Title over this area, as she possesses legal title to it** (via Parent Title ARG5736). If your client remains in possession of (ie occupies) the area concerned for the prescriptive period, her ownership thereof cannot be disputed by another party. However, this situation requires to be reflected in your client's Land Certificate, and the following note will be added to the Proprietorship Section thereof accordingly:-

'Margaret Whyte Moffat also has title to the area tinted on the Title Plan by Disposition registered in the Land Register on 28th. June 2002'.

For your information, I enclose a printout of the Proprietorship Section for the Land Certificate for Title ARG4241, on which a note referring to the aforementioned exclusion of indemnity in respect of that Title is

shown highlighted in blue.

As you note, there is an exclusion of indemnity over Parent Title ARG5736 in respect of the Natural Water Boundary between points arrowed and lettered 'A' and 'B' in blue on the Title Plan therefore, and this will naturally be carried over to your client's subjects.

I hope that this satisfactorily clarifies the matter for you, and apologise for any confusion or inconvenience the incorrect advice I gave you in this regard in my said letter to you of 4th. inst. may have caused. If you are satisfied with this, no further action need be taken by you in relation to this application, and I now look forward to hearing further from you with regard to points (i) and (iii) raised in my said lastmentioned letter to you.

Yours faithfully

OWEN VALENTINE
for Keeper of the Registers of Scotland

Kelly, Hazel

From: Close, Brian
Sent: 06 September 2010 11:31
To: 'AD Crawford'
Cc: Kelly, Hazel; localreviewprocess
Subject: RE: Planning Review 10/0005/LRB

Darran,

My apologies and thanks for spotting the typo. The difference should be 3.5 metres and not 4.5 metres as stated in my report. We measured the distance between the long pegs in situ as 21.5 metres, the plan depicted 25 metres. No further comments to add.

Regards

Brian Close
Planning Officer
Development & Infrastructure Services,
Argyll & Bute Council.

T: 01369 708604

E: brian.close@argyll-bute.gov.uk

W: <http://www.argyll-bute.gov.uk>

From: AD Crawford [<mailto:dc@lineararchitecture.net>]
Sent: 03 September 2010 10:21
To: localreviewprocess; Kelly, Hazel
Cc: 'James Boyd'; ffiona.boyd@gmail.com; Close, Brian
Subject: Planning Review 10/0005/LRB

RE: Planning Review 10/0005/LRB

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