

**15 April 2010**

**A MEETING of the LOCAL REVIEW BODY will be held within the Council Chamber, Greenfield, Alloa, FK10 2AD, on THURSDAY 15 APRIL 2010 at 1.30 pm.**

**ELAINE McPHERSON  
Head of Strategy and Customer Services**

**B U S I N E S S**

**Page No.**

1. Apologies
2. Declarations of Interest  
Members should declare any financial or non-financial interests they have in any item on this agenda, identifying the nature of their interest in accordance with the Councillors' Code of Conduct. A Declaration of Interest form should be completed and passed to the Committee Officer.
3. Application for Review: 11 Elistoun Drive, Tillicoultry, FK13 6NT  
Planning Application Ref: 09/00282/FULL
  - i. Notice of Review 01
  - ii. Decision Notice 17
  - iii. Report of Handling 21
  - iv. Responses to the Notice of Review from interested parties 27
  - v. Further submissions from the applicant (any further submissions made by 9th April 2010 will be made available prior to the meeting) ---

Note: Plans and papers relating to applications and reviews can be viewed online at [www.clacksweb.org.uk/eplanning](http://www.clacksweb.org.uk/eplanning)

**LRB Members**

Councillor Alastair Campbell (Chair)  
Councillor Tina Murphy  
Councillor Derek Stewart





Planning Department

Applications cannot be validated until all necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE                      000006469-001

The online ref number is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the Planning Authority about this application.

### Applicant or Agent Details

Are you an applicant, or an agent? \* (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

Applicant     Agent

### Agent Details

Agent Company Name:	<input type="text" value="AE Associates"/>	You must enter a Building Name or Number, or both:*
Agent's Ref. Number:	<input type="text"/>	Building Name: <input type="text" value="Toll House"/>
Agent First Name: *	<input type="text" value="Adele"/>	Building Number: <input type="text"/>
Agent Last Name: *	<input type="text" value="Ellis"/>	Address 1 (Street): * <input type="text" value="Upper Yelts O'Muckhart"/>
Telephone Number: *	<input type="text" value=""/>	Address 2: <input type="text"/>
Extension Number:	<input type="text"/>	Town/City: * <input type="text" value="Clackmannanshire"/>
Mobile Number:	<input type="text"/>	Country: * <input type="text" value="UK"/>
Fax Number:	<input type="text"/>	Postcode: * <input type="text" value="FK14 7JU"/>
Email Address: *	<input type="text" value=""/>	

### Applicant Details

Applicant's Title: *	<input type="text" value="Mrs"/>	You must enter a Building Name or Number, or both:*
Other Title:	<input type="text"/>	Building Name: <input type="text"/>
Applicant's First Name: *	<input type="text" value="Gillian"/>	Building Number: <input type="text"/>
Applicant's Last Name: *	<input type="text" value="Irvine"/>	Address 1 (Street): <input type="text"/>
Company Name:	<input type="text"/>	Address 2: <input type="text"/>
Telephone Number:	<input type="text"/>	Town/City: <input type="text"/>
Extension Number:	<input type="text"/>	Country: <input type="text"/>
Mobile Number:	<input type="text"/>	Postcode: <input type="text"/>
Fax Number:	<input type="text"/>	
Email Address:	<input type="text"/>	

## Site Address Details

Full postal address of the site (including postcode where available):

Address 1:	11 ELISTOUN DRIVE	Address 5:	
Address 2:		Town/City/Settlement:	TILlicOUNTRY
Address 3:		Post Code:	FK13 6NT
Address 4:			

Please identify/describe the location of the site or sites.

Northing	696784	Easting	292369
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## Description of the Proposal

Please provide a description of the proposal to which your review relates. The description should be the same as given in the application form, or as amended with the agreement of the planning authority: \* (Max 500 characters)

Erection of House and driveway to the rear - application for the removal of planning conditions 5 and 6 of planning application 05/00366/FULL

## Type of Application

What type of application did you submit to the planning authority? \*

- Application for planning permission (including householder application but excluding application to work minerals).
- Application for planning permission in principle.
- Further application.
- Application for approval of matters specified in conditions.

What does your review relate to? \*

- Refusal Notice.
- Grant of permission with Conditions Imposed.
- No decision reached within the prescribed period (two months after validation date) – deemed refusal.

## Statement of reasons for seeking review

You must state in full, why you are seeking a review of the planning authority's decision (or failure to make a decision). Your statement must set out all matters you consider require to be taken into account in determining your review. If necessary this can be provided as a separate document in the 'Supporting Documents' section: \*

Note: you are unlikely to have a further opportunity to add to your statement of appeal at a later date, so it is essential that you produce all of the information you want the decision-maker to take into account.

You should not however raise any new matter which was not before the planning authority at the time it decided your application (or at the time of expiry of the period of determination), unless you can demonstrate that the new matter could not have been raised before that time or that it not being raised before that time is a consequence of exceptional circumstances.

(Max 500 characters)

Review of refusal notice 09/00282/FULL issued 12 January 2010 due to the written refusal of the owners of the roadway to allow the applicants to upgrade the road as required in the original planning consent. This refusal to allow works to be carried out being a material consideration and subsequently making conditions 5 & 6 impossible to comply with by the applicant.

Have you raised any matters which were not before the appointed officer at the time the determination on your application was made? \*

Yes  No

If yes, you should explain in the box below, why you are raising the new matter, why it was not raised with the appointed officer before your application was determined and why you consider it should now be considered in your review: \* (Max 500 characters)

The written refusal to allow works to be carried out was not received before the application was determined. This refusal was subsequently received after the application was refused and a letter of intent to the owners was sent informing them of the intention to carry out the works in order to comply with the conditions imposed on the original planning consent.

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review. You can attach these documents electronically later in the process: \* (Max 500 characters)

Letter from solicitors informing refusal to allow works to be carried out.  
Letter to frontagers informing intention to carry out works.  
Refusal notice.  
Site plan

## Application Details

Please provide details of the application and decision.

What is the application reference number? \*

09/00282/FULL

What date was the application submitted to the planning authority? \*

01/12/09

Has a decision been made by the planning authority? \*

Yes  No

What date was the decision issued by the planning authority? \*

12/01/10

## Review Procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Can this review continue to a conclusion, in your opinion, based on a review of the relevant information provided by yourself and other parties only, without any further procedures? For example, written submission, hearing session, site inspection. \*

Yes  No

In the event that the Local Review Body appointed to consider your application decides to inspect the site, in your opinion:

Can the site be clearly seen from a road or public land? \*

Yes  No

Is it possible for the site to be accessed safely and without barriers to entry? \*

Yes  No

### Checklist - Application for Notice of Review

Please complete the following checklist to make sure you have provided all the necessary information in support of your appeal. Failure to submit all this information may result in your appeal being deemed invalid.

Have you provided the name and address of the applicant? \*

Yes  No

Have you provided the date and reference number of the application which is the subject of this review? \*

Yes  No

If you are the agent, acting on behalf of the applicant, have you provided details of your name and address and indicated whether any notice or correspondence required in connection with the review should be sent to you or the applicant? \*

Yes  No  N/A

Have you provided a statement setting out your reasons for requiring a review and by what procedure (or combination of procedures) you wish the review to be conducted? \*

Yes  No

Note: You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. You may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

Please attach a copy of all documents, material and evidence which you intend to rely on (e.g. plans and drawings) which are now the subject of this review? \*

Yes  No

Note: Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice (if any) from the earlier consent.

### Declare - Notice of Review

I/We the applicant/agent certify that this is an application for review on the grounds stated.

Declaration Name: Adele Ellis

Declaration Date: 26/02/2010

watersrule solicitors

76/78 high street, tillicoultry fk13 6ab

ip 8 alloa

tel 01259 753330 fax 01259 753331

**ALSO BY FAX : 01324 623512**

Marshall Wilson  
LP 13  
Falkirk

Our Ref: CD/JS/WALK0039-01 (CD DDial 01259 759876)(JS DDial 01259 759871)  
e-mail: craig.dunbar@watersrule.co.uk / julle.stewart@watersrule.co.uk

Your Ref: - BT/MD/IRV 03702

26<sup>th</sup> January 2010

Dear Sirs,

**Ben Henderson & Others -v- William & Gillian Irvine  
Alloa Sheriff Court - A314/08**

We have been forwarded a copy of a letter issued by AE Associates, your clients' planning consultants, issued to the frontagers of the private section of Ellistoun Drive and which is dated 21<sup>st</sup> January 2010. For ease of reference we attach a copy.

In the second substantive paragraph, it indicates that "Mr & Mrs Irvine have a right of access over the road but are not the legal owners". That, with respect to the planners, is a fundamental element of the Court action presently pending in Alloa Sheriff Court. It is, of course, the position of the frontagers for whom we act that the Irvines neither own the road nor do they have any right of access. It is central to the application that your clients have no legal basis whatsoever for accessing their property from Ellistoun Drive and for your clients, through their planning consultants, to write such a letter to the frontagers (including persons who are not party to the present action) is quite frankly unacceptable to our clients. The whole purpose of the present proceedings, as they are being amended at the moment, is for the Court to be asked to declare whether or not your clients have any rights of access over Ellistoun Drive. It is that very issue which is to be decided. As a result of your most recent amendment, the Court is not yet in a position to make such a decision and is not going to be in a position to make such a decision for several months to come.

The letter, however, indicates that works to commence on the road are going to start, probably, on or about Monday 15<sup>th</sup> February 2010. We have no idea what will be involved in those works but undoubtedly it will involve, to some degree, the digging out of the road and disruption to the frontagers in Ellistoun Drive. Whatever may be the actual physical impact upon the road, it remains the position of our clients that your clients have no right to access that road nor indeed to instruct any contractors to

[www.watersrule.co.uk](http://www.watersrule.co.uk)

directors • steven r. waters, stephen rule  
solicitor • craig dunbar

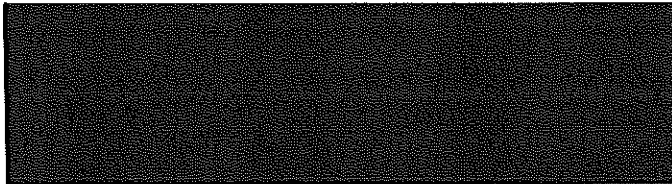
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proceed with operations upon it. As the planner's letter rightly points out, your clients have no basis to interfere with that road as it is not within their ownership.

Unless, we receive by 12 noon on Thursday 28<sup>th</sup> January 2010 a full unequivocal and irrevocable undertaking that no works will be commenced upon that private section of the road which lies within the ownership of our clients and that no further contractors will be instructed by your clients to pass over that private section of the road for any purpose associated with such works, we will have no option but to make an application to the Court for an interim interdict in terms of Crave 3 there already being a continuing order in terms of our original Crave 2, as amended. You will be aware that our previous application for interim interdict was continued until the Diet of Debate in anticipation that the Debate would take place in October. That did not take place nor did the January Debate. No impact upon the road, however, was foreseen last week when this case called in Court but there is now clearly evidence that there is about to be a major impact upon the road.

Given that the very issue at the centre of this case has yet to be decided, it seems to us that the balance of convenience clearly favours the preservation of the status quo however unusual that might appear. In all the circumstances, therefore, we look forward to receiving the relevant undertaking failing which the inevitable consequences will follow.

Yours faithfully  
watersrule



## AE ASSOCIATES

### SPECIALIST PLANNING CONSULTANCY

21 January 2010

Dear Mr & Mrs Connor

MR & MRS W IRVINE, 11 ELISTOUN DRIVE, TILlicOUNTRY, FK13 6NT

PLANNING APPLICATION FOR THE REMOVAL OF CONDITIONS 5 & 6

As you may be aware the planning application for the removal of the above conditions attached to Mr & Mrs Irvine's original planning consent has been refused by Clackmannanshire Council.

Please be aware that Mr & Mrs Irvine will be appealing against this decision but due to the very poor condition of the road and as a gesture of goodwill to their neighbours, Mr & Mrs Irvine will be instructing a contractor to begin the instigation of the works. Please note that it is anticipated that the works may commence on or around the 15<sup>th</sup> February 2010 unless any unforeseen circumstances prevent the start of the repairs. As Mr & Mrs Irvine have a right of access over the road but are not the legal owners of this section we require written consent from the frontagers in order for these works to commence. We would therefore be grateful if you could sign and complete the section below and return it to this office in the stamped addressed envelope so that the works can be arranged and commence in a timely manner.

Please note that without the written consent of the frontagers the works cannot commence.

Many thanks in advance for your assistance in this matter.

Yours faithfully



Adele Ellis

AE Associates

For and on behalf of Mr & Mrs Irvine,

THE TOLL HOUSE  
UPPER YETTS O' MUCKHART  
CLACKMANNANSHIRE  
FK14 7JU

Tel: 07758 268394

[aa.associates@btinternet.com](mailto:aa.associates@btinternet.com)

**AE ASSOCIATES**  
**SPECIALIST PLANNING CONSULTANCY**

21 January 2010

Name & Address

Dear

**MR & MRS W IRVINE, 11 ELISTOUN DRIVE, TILlicOUNTRY, FK13 6NT**

**PLANNING APPLICATION FOR THE REMOVAL OF CONDITIONS 5 & 6**

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Yours faithfully

Adele Ellis

AE Associates

For and on behalf of Mr & Mrs Irvine,

THE TOLL HOUSE  
UPPER YETTS O' MUCKHART  
CLACKMANNANSHIRE  
FK14 7JU

Tel: 07758 268394

[ae.associates@btinternet.com](mailto:ae.associates@btinternet.com)

NAME:

ADDRESS:

I/We give our consent for Mr & Mrs Irvine of 11 Elistoun Drive to commence the requisite works along the section of Elistoun Drive which is understood to be in private ownership.

Signed .....

Signed .....

Comments:

**CLACKMANNANSHIRE COUNCIL**

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACTS**

**REFUSAL OF PLANNING PERMISSION**

**Applicant**

Mrs Gillian Irvine  
11 Ellistoun Drive  
Tillicoultry  
Clackmannanshire  
FK13 6NT

**Agent**

Adele Ellis  
The Toll House  
Upper Yetts O'muckhart  
Clackmannanshire  
FK14 7JU

The Council hereby **REFUSE PLANNING PERMISSION** for the:-

Erection Of House And Driveway - Application for the Removal of Planning Conditions 5 and 6 of  
Planning Application 05/00366/FULL

11 Ellistoun Drive, Tillicoultry, Clackmannanshire, FK13 6NT,

In accordance with your application and plans Ref. No:- 09/00282/FULL dated 1st December  
2009.

For the following reasons:-

1. The application if approved would allow the proposed new house to be occupied without adequate access road arrangements to serve it, and planning permission would not have been granted for the house in the absence of a package of road improvements being in place. The application is therefore contrary to Policy RES 4 of the Clackmannanshire Local Plan 2004 and the related Supplementary Advice Note, SAN 2.

2. The reasons for the conditions are valid and there are no material changes in circumstances to indicate that they should otherwise be removed or in any other way varied.

Dated: 12 January 2010

  
DEVELOPMENT AND ENVIRONMENTAL SERVICES

Submit a Planning Application online at [www.eplanning.scotland.gov.uk](http://www.eplanning.scotland.gov.uk)

View forms, drawings and comments at [www.clacksweb.org.uk/eplanning/](http://www.clacksweb.org.uk/eplanning/)

## NOTES FOR GUIDANCE

1. Please examine your decision notice carefully. It describes the development to which the decision relates, includes any conditions that must be complied with and explains the reasons for the decision.

2. Please also read the following guidance. It contains important information regarding

- \* the duration of the permission
- \* rights of review
- \* requirements for further notification to the Council; and
- \* the publicising of the development.

3. Section 59 Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006 - Planning Permission in Principle:-

(a) In the case of matters specified by conditions, further application(s) for approval must be made to the Council not later than the expiration of 3 years beginning with the date of this permission. Otherwise, the planning permission lapses on that date.

(b) The development to which this permission relates must be begun not later than the expiration of 5 years from the date of this permission or within the expiration of 2 years from the final approval of matters specified whichever is the later. Otherwise, the planning permission lapses on the latter date.

4. Section 58 Town and Country Planning (Scotland) Act as amended by the Planning etc. (Scotland) Act 2006 - Planning Permission: Unless otherwise stated overleaf, the development to which this permission relates must be begun not later than the expiration of 3 years from the date of this permission. Otherwise, the planning permission lapses on that date.

5. If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition, in respect of the proposed development, or to grant permission for approval subject to conditions, the applicant may require the planning authority to review the case under Section 43A of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. The notice of review should be addressed to:-

The Head of Administration and Legal Services  
Clackmannanshire Council  
Greenfield  
Alloa FK10 2AD

6. The Notice of Review form is available to download on the Council website at [www.clacksweb.org.uk](http://www.clacksweb.org.uk). Alternatively, send an e-mail with your name and address to [development\\_services@clacks.gov.uk](mailto:development_services@clacks.gov.uk) and we will arrange to send a form to you.

### Notification of Intention of Development

7. Once it has been decided on the date to start work on the development to which this permission relates, the developer must inform the Council of that date as soon as is practicable and certainly before starting work. This is termed Notification of Intention of Development (NID). Failure to give such notice to the Council constitutes a breach of planning control. The notification must include:-

- (i) The date on which the development is likely to commence.

Submit a Planning Application online at [www.eplanning.scotland.gov.uk](http://www.eplanning.scotland.gov.uk)

View forms, drawings and comments at [www.clacksweb.org.uk/eplanning/](http://www.clacksweb.org.uk/eplanning/)

- (ii) The full name and address of the person intending to carry out the development.
- (iii) The full name and address of the landowner if they are a different person.
- (iv) The full name and contact address/details of the site agent or other person appointed to oversee the development.
- (v) The reference number and date of issue of the planning permission.

#### Notification of Completion of Development

8. Once the development to which this permission relates has been completed, the applicant or developer must, as soon as practicable, notify the Council accordingly. This is termed Notification of Completion of Development (NCD). If the development is carried out in phases, the notification must be issued to the Council as soon as practicable after each phase.

#### Display of Notice while Development is carried out

9. If this permission relates to a national, major or bad neighbour development (such as a public house or hot food takeaway), the applicant or developer must, for the duration of the development, display one or more signs. The sign(s) must be displayed in a prominent place at or in the vicinity of the site, and be readily visible to the public. Failure to display the sign(s)/notice while carrying out the development constitutes a breach of planning control. The information to be displayed must include:
  - (i) The location of the development.
  - (ii) Any conditions attached to the planning permission.
  - (iii) The name and address of the developer.
  - (iv) The date on which planning permission was granted.
  - (v) The planning authority reference number.
  - (vi) A description of the development.
  - (vii) A note of the Council's contact details for enquiries relating to the development, which is [development\\_services@clacks.gov.uk](mailto:development_services@clacks.gov.uk) or Development Services, Clackmannanshire Council, Killinraggs, Greenside Street, Alloa, FK10 2EB.
10. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.
11. It should be understood that this permission does not carry with it any necessary consent or approval to the proposed development under other statutory enactments. In particular, it does not constitute approval under the Building (Scotland) Acts, The Water Environment (Controlled Activities) (Scotland) Regulations or Roads (Scotland) Acts in respect of street works.

Submit a Planning Application online at [www.eplanning.scotland.gov.uk](http://www.eplanning.scotland.gov.uk)

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Clackmannanshire Council  
Planning Register

APPLICATION NUMBER: 09/00282/FULL

Case Officer: Grant Baxter  
Applicant

Mrs Gillian Irvine  
11 Ellstoun Drive  
Tillicoultry  
Clackmannanshire  
FK13 6NT

Agent

Adele Ellis  
The Toll House  
Upper Yetts O'muckhart  
Clackmannanshire  
FK14 7JU

Proposal: Erection Of House And Driveway - Application for the Removal of  
Planning Conditions 5 and 6 of Planning Application 05/00366/FULL

Location: 11 Ellstoun Drive, Tillicoultry, Clackmannanshire, FK13 6NT,

Type of Application: Full Planning Application  
Dated: 12 January 2010

Decision: REFUSED

1. The application if approved would allow the proposed new house to be occupied without adequate access road arrangements to serve it, and planning permission would not have been granted for the house in the absence of a package of road improvements being in place. The application is therefore contrary to Policy RES 4 of the Clackmannanshire Local Plan 2004 and the related Supplementary Advice Note, SAN 2.
2. The reasons for the conditions are valid and there are no material changes in circumstances to indicate that they should otherwise be removed or in any other way varied.

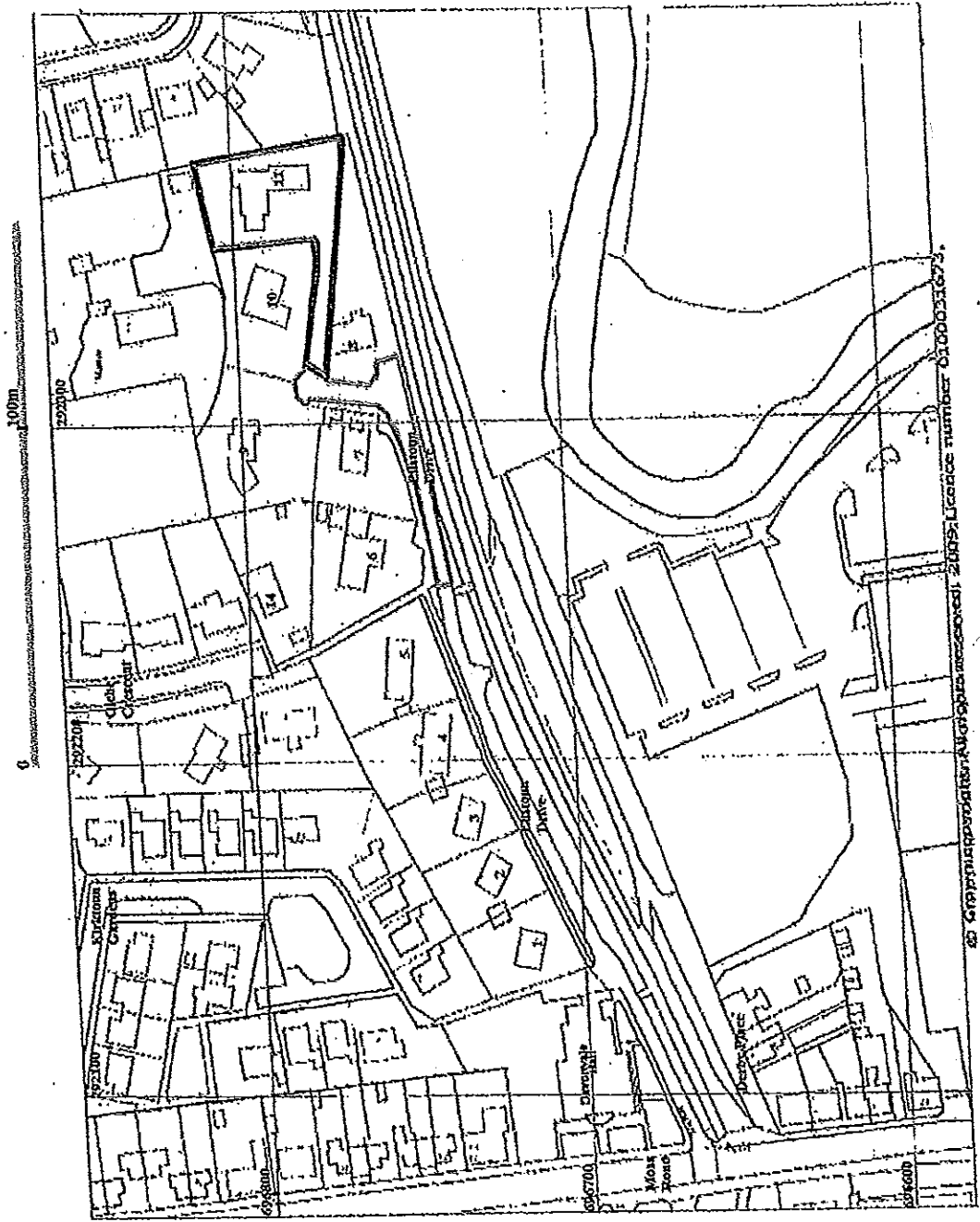
Submit a Planning Application online at [www.eplanning.scotland.gov.uk](http://www.eplanning.scotland.gov.uk)

View forms, drawings and comments at [www.clacksweb.org.uk/eplanning/](http://www.clacksweb.org.uk/eplanning/)

Application for the Removal of Planning Conditions 5 and 6 of  
 Planning Application 05/00366/FULL at 30 Eithnean Drive,  
 Tullaghan, Castlemaine, FEIG CNT - 0940282/FULL

- SITE LOCATION - 05/00366/FULL
- LAND OWNED BY CLIENTS
- SECTION OF ROAD REFERRED TO FOR REMOVAL OF CONDITIONS 5 & 6

SCALE 1:1250



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**Proposal Details**

**Proposal Name**

Review of refusal of application  
09/00282/FULL

**Proposal Description**

To review the decision to refuse the  
above application for the removal of  
conditions 5 and 6.

**Address**

11 ELISTOUN DRIVE,  
TILlicOUNTRY, FK13 6NT

**Local Authority**

Clackmannanshire Council

**Application Status**

Form

complete

Main Details

complete

Checklist

complete

Declaration

complete

Supporting Documentation

complete

Email Notification

complete

Payment Method

Incomplete

**Attachment Details**

Elistoun Drive

Attached

Elistoun Drive Amended

Attached

Notice of Review

System

Notice of Review

System

refusal notice

Attached

scotapp

System

watersrule

Attached



**CLACKMANNANSHIRE COUNCIL**

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACTS**

**REFUSAL OF PLANNING PERMISSION**

**Applicant**

Mrs Gillian Irvine  
11 Ellistoun Drive  
Tillicoultry  
Clackmannanshire  
FK13 6NT

**Agent**

Adele Ellis  
The Toll House  
Upper Yetts O'muckhart  
Clackmannanshire  
FK14 7JU

The Council hereby **REFUSE PLANNING PERMISSION** for the:-

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11 Ellistoun Drive, Tillicoultry, Clackmannanshire, FK13 6NT,

In accordance with your application and plans Ref. No:- 09/00282/FULL dated 1st December 2009

For the following reasons:-

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2. The reasons for the conditions are valid and there are no material changes in circumstances to indicate that they should otherwise be removed or in any other way varied.

Dated

.....  
DEVE

SERVICES

Submit a Planning Application online at [www.eplanning.scotland.gov.uk](http://www.eplanning.scotland.gov.uk)

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  - (b) The development to which this permission relates must be begun not later than the expiration of 5 years from the date of this permission or within the expiration of 2 years from the final approval of matters specified whichever is the later. Otherwise, the planning permission lapses on the latter date.
4. Section 58 Town and Country Planning (Scotland) Act as amended by the Planning etc. (Scotland) Act 2006 - Planning Permission: Unless otherwise stated overleaf, the development to which this permission relates must be begun not later than the expiration of 3 years from the date of this permission. Otherwise, the planning permission lapses on that date.
5. If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition, in respect of the proposed development, or to grant permission for approval subject to conditions, the applicant may require the planning authority to review the case under Section 43A of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. The notice of review should be addressed to:-

The Head of Administration and Legal Services  
Clackmannanshire Council  
Greenfield  
Alloa FK10 2AD

6. The Notice of Review form is available to download on the Council website at [www.clacksweb.org.uk](http://www.clacksweb.org.uk). Alternatively, send an e-mail with your name and address to [development\\_services@clacks.gov.uk](mailto:development_services@clacks.gov.uk) and we will arrange to send a form to you.

### Notification of Initiation of Development

7. Once it has been decided on the date to start work on the development to which this permission relates, the developer must inform the Council of that date as soon as is practicable and certainly before starting work. This is termed Notification of Intention of Development (NID). Failure to give such notice to the Council constitutes a breach of planning control. The notification must include:-

- (i) The date on which the development is likely to commence.

Submit a Planning Application online at [www.eplanning.scotland.gov.uk](http://www.eplanning.scotland.gov.uk)

View forms, drawings and comments at [www.clacksweb.org.uk/eplanning/](http://www.clacksweb.org.uk/eplanning/)

- (ii) The full name and address of the person intending to carry out the development.
- (iii) The full name and address of the landowner if they are a different person.
- (iv) The full name and contact address/details of the site agent or other person appointed to oversee the development.
- (v) The reference number and date of issue of the planning permission.

#### Notification of Completion of Development

8. Once the development to which this permission relates has been completed, the applicant or developer must, as soon as practicable, notify the Council accordingly. This is termed Notification of Completion of Development (NCD). If the development is carried out in phases, the notification must be issued to the Council as soon as practicable after each phase.

#### Display of Notice while Development is carried out

9. If this permission relates to a national, major or bad neighbour development (such as a public house or hot food takeaway), the applicant or developer must, for the duration of the development, display one or more signs. The sign(s) must be displayed in a prominent place at or in the vicinity of the site, and be readily visible to the public. **Failure to display the sign(s)/notice while carrying out the development constitutes a breach of planning control.** The information to be displayed must include:-

- (i) The location of the development.
- (ii) Any conditions attached to the planning permission.
- (iii) The name and address of the developer.
- (iv) The date on which planning permission was granted.
- (v) The planning authority reference number.
- (vi) A description of the development.
- (vii) A note of the Council's contact details for enquiries relating to the development, which is [development\\_services@clacks.gov.uk](mailto:development_services@clacks.gov.uk) or Development Services, Clackmannanshire Council, Kilncraigs, Greenside Street, Alloa, FK10 2EB.

10. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

11. It should be understood that this permission does not carry with it any necessary consent or approval to the proposed development under other statutory enactments. In particular, it does not constitute approval under the Building (Scotland) Acts, The Water Environment (Controlled Activities) (Scotland) Regulations or Roads (Scotland) Acts in respect of street works.

Submit a Planning Application online at [www.eplanning.scotland.gov.uk](http://www.eplanning.scotland.gov.uk)

View forms, drawings and comments at [www.clacksweb.org.uk/eplanning/](http://www.clacksweb.org.uk/eplanning/)



DEVELOPMENT SERVICES  
CLACKMANNANSHIRE COUNCIL

REPORT OF HANDLING  
PLANNING APPLICATION DELEGATED REPORT

Application Ref. No.      09/00282/FULL      Date of Site Visit: Various

Description Of Proposal      **Erection Of House And Driveway - Application for the Removal of Planning Conditions 5 and 6 of Planning Application 05/00366/FULL**

Location:      **11 Elistoun Drive, Tillicoultry, Clackmannanshire, FK13 6NT**

**Summary of Consultation Responses**

Roads: The eastern section of the road is unadopted. The road has deteriorated during the construction phase of the house. The application should be refused.

Number Of Neighbours Notified

14

Number of Objections

26

**Summary of Representation(s)**

A total of 14 neighbouring properties were notified of the application.

Twenty six objections and two letters of support have been received from the parties listed in Appendix 1 to this report.

Objections are summarised below:

- The applicant agreed to upgrade the road and should abide by the planning conditions.
- The condition of the road has deteriorated since construction of the house began, and as a result of construction traffic over and utilities being installed under it, to service the house. *Comment: Whilst there has clearly been a deterioration in the condition of the road over the period the house has been under construction, the Service is unable to say with accuracy, to what extent this deterioration is attributable to the construction of the house. The purpose of Conditions 5 & 6 are nonetheless still relevant to the road in its current condition.*
- The road in its current condition is unsafe for vehicles and pedestrians.
- The road in its current condition is detrimental to the amenity and environment of Elistoun Drive.
- The applicant has had several years to comply with the condition this is a prerequisite of occupying the house.
- Statements in the applicant's supporting letter are not accurate and there are no impediments to the works being carried out. *Comment: The Council has received submissions for the applicant's agent and also from owners of the*

*private section of road regarding the carrying out of the works required by the planning conditions. Based on the evidence in front of it, the Service has concluded that no compelling evidence has been submitted to demonstrate any impediment, physical, legal or otherwise, to the applicant carrying out the required improvement works on the private section of road.*

Letters of support are summarised below:

- The road has always been in poor condition, and recent damage has largely been from flooding, rather than construction of the house. *Comment: Whilst there has clearly been a deterioration in the condition of the road over the period the house has been under construction, the Service is unable to say with accuracy, to what extent this deterioration is attributable to the construction of the house. The purpose of Conditions 5 & 6 are nonetheless still relevant to the road in its current condition.*
- The applicant should be allowed to occupy their house. *Comment: The terms of the conditions require road upgrading and a submission/approval of a maintenance regime to be in place prior to occupation of the house, and are part of the Planning Approval granted on 1 February 2006.*
- Parties responsible for the road should maintain it.

### Summary of Supplementary Statements

The applicant's agent submitted a Justification for Removal of the Planning Conditions, the key elements of which are summarised below:

- The house is now nearing completion, and could soon be capable of occupation.
- The Council's website indicates that the section of road in question is not private but adopted by the Council.
- The road changed ownership without the applicant's knowledge and without any clause or stipulation requiring upgrading of the road in association with the construction of the new house at 11 Elistoun Drive. The Conditions are therefore now unenforceable.
- In a gesture of goodwill, the applicants have sought permission from the owners of the road to allow work to upgrade it to be carried out. This has not been successful.
- The owners of the road have declined to meet to discuss a resolution to the impasse.
- The requirements of the conditions is disproportionate to the scale of development and cannot be reasonably enforced.
- Bringing the road up to adoptable standard requires agreement between the owners and Council and no such agreement is in place.
- Works to upgrade the road cannot take place until flood prevention works are complete. It is unclear as to when this will be.
- The applicants cannot occupy their house without removal of the conditions.
- The conditions could be amended to allow occupation, and an alternative arrangement for road enhancement agreed.

## **Summary of Section 75 Planning Obligations.**

None.

### **Site History**

05/00366/FULL - Erection Of House And Driveway To The Rear of 10 Elistoun Drive, Tillicoultry - Approved on Conditions - 01/02/2006

The original application to which this current application relates was to erect a single house in the grounds of 10 Elistoun Drive ( at that time owned by the applicants). No.10 was sold to a third party prior the commencement of works on the proposed new house.

Elistoun Drive is a cul-de-sac off Moss Road, Tillicoultry. The road is 251m long, the first 159m of which are adopted by the Council. The remainder is a private unadopted road serving, at that time 5No. houses.

Conditions 5 & 6 of 05/00366/FULL:

5. *Prior to occupation of the proposed house, improvements to the private section of Elistoun Drive, from the end of the publicly adopted section, shall be fully implemented, in accordance with the details specified on stamped approved drawing ref: PL-01 "PROPOSED SITE PLAN" .*

6. *Prior to occupation of the proposed house, a schedule of maintenance for the private section of Elistoun Drive shall be submitted to and approved in writing by this Council. Thereafter, maintenance of the road shall be carried out in accordance with the approved schedule.*

Reasons 5 & 6

5. *In order to ensure a satisfactory standard of access to serve the proposed development.*

6. *In order to ensure the ongoing maintenance of a satisfactory standard of access to serve the proposed development.*

### **Relevant Development Plan Policies**

Clackmannanshire Local Plan 2004

Policy RES 4 Infill and Backland Development - states that developments will be considered favourably where they meet the requirements of SAN 2 (Infill Residential Development) and in particular they must (amongst other criteria) provide appropriate access and parking to meet the Council's Development Roads Guidelines and Specification.

### **Other Material Considerations**

- Representations
- Current condition of the road
- Current status of the development

## Key Planning Issues

- In its assessment of application 05/00366/FULL, the Council as Planning Authority considered that the condition of the private section of road was a material consideration. The road at that time being of a broken, uneven surface with several large potholes that were often filled with water.
- Roads and Transportation, in their consultation response, recommended refusal, largely based on the issue of additional development being served off a section of sub-standard private road, and also indicated that it was unlikely the road could be brought up to adoptable standard.
- Policy RES 4 of the Local Plan requires new infill developments to provide appropriate access to meet the Council's Development Roads Guidelines and Specification (DRGS).
- Whilst it was considered inappropriate to approve additional development off the road in its current condition, and bringing the road up to the standard specified in the DRGS was, based on Roads and Transportation advice, not possible, it was nevertheless considered that a package of road improvement, commensurate with the scale of the development, was both reasonable and necessary if the application were to be approved. This approach is in line with the aims of Policy RES 4, in terms of ensuring suitable access arrangements for new houses.
- The applicant agreed to prepare a package of road improvements to be carried out by them in relation to the development of the proposed house. The applicant's agent prepared a plan showing such improvements (PL-01 PROPOSED SITE PLAN), and the application was duly approved on 1 February 2006, subject to conditions, including Conditions 5 & 6, requiring such improvements, and a maintenance regime to be in place before occupation of the house.
- Following the grant of planning approval, construction of the house did not start immediately, and once underway has taken considerable time to complete. Authority for Temporary Occupation or Use has in fact only recently been issued by Building Standards, on 18th December 2009.
- Since the grant of planning approval, the condition of the private section of road has deteriorated further. During that time the road has been subject to not only normal wear and tear from domestic traffic and weather, but also a serious flood, activity related to installation of flood prevention measures and construction traffic/installation of utilities related to the new house. It is not possible for the Service to estimate with any great accuracy the extent to which any of these events/activities on their own has impacted on the condition of the road, although many representations attempt to do so.
- On 10th March 2009, the Council were advised that the ownership of the private section of the road had changed, and that three of the frontagers (not including the applicants) had acquired it.
- Construction work on the house has continued towards completion and as noted above, Authority for Temporary Occupation or Use was issued by Building Standards on 18th December 2009.

## Summary

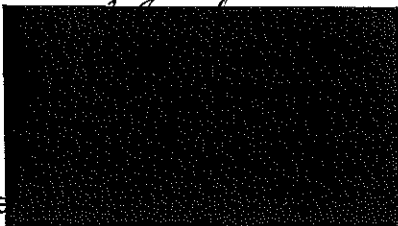
- Planning application ref: 05/00366/FULL for the erection of the house was submitted on 31 October 2005.
- The applicant's agent submitted a plan showing a package of improvements proposed for the private section of road on 22 December 2005.
- Planning permission was granted on 1 February 2006, subject to conditions (notably conditions 5 & 6).
- Works commenced on construction of the house.
- The current application to remove Conditions 5 & 6 was submitted on 17 November 2009.
- A Temporary Habitation Certificate was issued to the applicants Authority for Temporary Occupation or Use was issued by Building Standards on 18th December 2009.
- It is considered that the Conditions 5 & 6 are both reasonable and necessary, and they relate to a package of road improvements proposed by the applicant prior to the grant of planning approval.
- In reviewing the road in its current condition the purpose of the conditions is still valid.
- Having reviewed the applicant's submission and representations, the Service can see no compelling argument that indicates the conditions should be set aside, nor clear evidence of any impediment, legal or otherwise, preventing the approved road improvement works from being carried out.
- Taking account of the above considerations, the Service sees no reason to allow removal of the conditions, nor suitable variations to the conditions that would satisfy the requirements of the planning permission in respect of the road.
- In addition, the Service will require to consider the use of enforcement powers should the house be occupied without the requirements of Conditions 5 & 6 being fulfilled.

**Recommendation**

Delegated	<input checked="" type="checkbox"/>	Referral	<input type="checkbox"/>
Approve	<input type="checkbox"/>	Approve with conditions (see below)	<input type="checkbox"/>
Refuse	<input checked="" type="checkbox"/>	Referral to Historic Scotland	<input type="checkbox"/>
Notification Letter	<input type="checkbox"/>		

**Final Checklist**

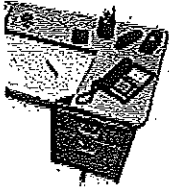
Photographs on file	<input type="checkbox"/>	2 complete sets of plans	<input type="checkbox"/>
Plans annotated or coloured	<input type="checkbox"/>	Letter(s) to objectors	<input type="checkbox"/>
Covering letter to applicant/agent	<input type="checkbox"/>	Instructions to admin support	<input type="checkbox"/>

Signed ..  (Case Officer) Date 11/1/10  
.....  
Authorise  (Team Leader  
Dev Quality) Date 12/1/10 .....

**Reasons for Refusal**

- 1. The application if approved would allow the proposed new house to be occupied without adequate access road arrangements to serve it, and planning permission would not have been granted for the house in the absence of a package of road improvements being in place . The application is therefore contrary to Policy RES 4 of the Clackmannanshire Local Plan 2004 and the related Supplementary Advice Note, SAN 2.**
- 2. The reasons for the conditions are valid and there are no material changes in circumstances to indicate that they should otherwise be removed or in any other way varied.**

Plans relating to the decision:-



Peter Broadfoot/CLACKS  
26/03/2010 09:40

To Gillian White/CLACKS@CLACKS  
cc  
bcc  
Subject Fw: Planning Application refs; 05/00366/FULL;  
09/00282/FULL

Gillian

See below for another submission to the LRB.

Peter

----- Forwarded by Peter Broadfoot/CLACKS on 26/03/2010 09:40 -----



"Ben Henderson"

25/03/2010 22:37

To <pbroadfoot@clacks.gov.uk>  
cc  
Subject Planning Application refs; 05/00366/FULL; 09/00282/FULL

Dear Mr Broadfoot,

Removal of Planning Conditions 5 and 6 of Planning Application Reference 05/00366/FULL  
Application for review of decision

Further to my submission in respect of the Local Review Body's consideration of the above:-

I wish to draw to your attention the passage in Stephen Bell's email, highlighted in red below, which I consider relevant to the applicants' contention that they are being denied access by the owners of the private roadway, and are therefore unable to comply with Planning Conditions 5 and 6.

To date the Irvines have not acted upon Mr Bell's advice - they did not contact myself, the Walkers or the Connors.

No work has been done on the road and the Irvines failed to meet the deadline for completion of the works.

Yours faithfully,

Ben Henderson

----- Original Message -----

From: Stephen Bell

To: Ben Henderson

Cc: [REDACTED]

Sent: Thursday, March 25, 2010 2:33 PM

**Subject:** Re: Elistoun Drive: Access for compliance with planning conditions.

Dear Mr Henderson.

Thank you for your e-mail.

The background information on the court action is very helpful in understanding the context. This is of course the first time I, or any officer of the Council, has had such a clear and fulsome explanation of the background to the court action you and your neighbours have taken.

Following previous reassurances from your solicitor, that there were no barriers to Mr and Mrs. Irvine completing the work in order to comply with the conditions, I wrote to them advising that they should urgently seek agreement with yourselves to proceed and complete the work to the road by the due date of 22nd March. This would then allow them to occupy the house in compliance with the conditions and the terms of the Notice.

I have instructed officers to inspect the site this week to establish whether or not the house is occupied, for the purposes of the planning conditions and the notice, and whether or not the work to the road has been completed.

Meanwhile you may be aware that Mr and Mrs Irvine are seeking a Review of the officer decision to refuse to vary the planning permission by deleting Conditions 5 and 6.

I understand that the Local Review Body will consider the case on 15th April.

Pending the outcome of the Review it would be inappropriate for officers to take any further action with regard to the Breach of Condition Notice.

Yours sincerely,

Stephen M Bell  
Head of Development Services  
Clackmannanshire Council  
Kilncraig  
Greenside Street  
Alloa  
FK 10 1EB  
Tel 01259 452514

\*\*\*\*\*

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[www.clearswift.com](http://www.clearswift.com)

\*\*\*\*\*

By email to [pbroadfoot@clacks.gov.uk](mailto:pbroadfoot@clacks.gov.uk) 25 March 2010-03-25

7 Elistoun Drive  
Tillicoultry  
FK13 6NT

Mr Peter J Broadfoot  
Head of Administration and Legal Services  
Clackmannanshire Council  
Greenfield House  
Alloa  
FK10 2AD

25 March 2010

Dear Sir,

Removal of Planning Conditions 5 and 6 of Planning Application Reference 05/00366/FULL  
Application for review of decision

Thank you for your letter of 12 March 2010 anent the above.

In respect of the applicant's request for a review by the Local Review Body of the Appointed Person's rejection of their application for removal Planning Conditions 5 and 6 :-

Watersrule letter of 26 January 2010

1. During 2008 a pattern was set of construction works being carried out on the Fairways / 11 Elistoun Drive development which directly impacted upon the other residents of Elistoun Drive and their properties. These works were carried out without notification of, or consultation with, those affected by them. Scant regard was shown for the convenience or safety of the residents, or for their rights of access to their properties. Works were carried out which damaged the properties of others, disregarded property boundaries, and damaged existing services / utilities.
2. In late 2008 the developer unilaterally declared an intention to excavate along a 50+ metre length of Elistoun Drive in a manner which would again infringe residents' rights of access to their properties and leave behind both open and temporarily back-filled excavations for an extended and indeterminate period.
3. Not being owners of the roadway at that time, the affected residents had little leverage to protect their interests in the face of this threat of further damage, disruption and inconvenience. The only rights which they could exercise were their existing servitude rights of access to their properties as recorded in their property deeds.
4. The court saw fit to protect these rights from impediment, obstruction or interference by the developers by grant of an Interim Interdict on 23 December 2008.

#### Effect of the Interim Interdict

5. The effect was, that in order to carry out works which, even temporarily, caused impediment, obstruction or interference with the residents' rights of access to their properties, the developer required to obtain the agreement of individual residents to permit this temporary compromise of their access rights.

6. Prior to granting this permission, the residents quite reasonably required details of the nature and timescale of the works, and the proposed duration of the unavoidable impediment to accessing their properties. On receipt of this information, permissions for the works affecting access to properties were duly given, thereby enabling their execution

7. In my own case, I was provided with a description of the works affecting access to my property, their maximum duration, and reassurance that the excavations would be back-filled and the road surface made good without undue delay. I promptly indicated my agreement. The works were carried out, the excavation back-filled with soil / subsoil and to date, the road surface has not been made good as agreed.

8. In January 2010, via their agents AE Associates, the Irvines again, without consultation with the residents, unilaterally declared an intention to commence works on the roadway which, by their nature, would inevitably cause impediment, obstruction or interference to residents' access to their properties, contrary to the terms of the interdict.

9. Our solicitor's letter of 26 January 2010 simply reminds the Irvines of the interdict in force. The changed ownership status of the roadway has no bearing on the interdict, the effect of which is unchanged - the Irvines require to obtain the agreement of individual residents to permit, temporarily, compromise of their access rights so that the works can be carried out. The interdict does NOT concern rights of access over or under the roadway itself, and the issue of roadway ownership is irrelevant to its provisions..

10. As in 2008, all the Irvines have to do to obtain permission is to provide similar information on the nature and duration of the proposed works. It is a reasonable requirement that the residents should know in advance the nature and duration of what they are being asked to permit.

11. Since in 2008 it suited the Irvines to provide this information, it is reasonable to conclude that they are not simply being perverse, but that it now suits their purpose to refuse it. It takes no great powers of intellect to deduce that this purpose is connected with their attempt to have Planning Conditions 5 and 6 removed.

#### Offers of access to enable compliance with Planning Conditions 5 and 6

<sup>4</sup>12. Far from preventing the works on the roadway being carried out, as long ago 11 March 2009 the co-owners of the roadway requested via a letter from Watersrule Solicitors that the Irvines fulfill their obligations under Planning conditions 5 and 6. Another solicitor's letter dated 02 February 2010 also offers access for these works. (I have previously provided copies of these letters to the council).

13. In January 2010 the co-owners wrote separately to the Irvines' agent (AE Associates) again informing them that access would be afforded to enable compliance with Planning Conditions 5 & 6. (Copy of my letter of 26 January 2010 is attached).

14. To date, there has been no response to these offers of access.

#### Misrepresentation

15. I consider the submission of the 26 January Watersrule letter as evidence of a refusal to allow the works to be carried out to be a deliberate misrepresentation of the facts, and the non-disclosure of the

By email to [pbroadfoot@clacks.gov.uk](mailto:pbroadfoot@clacks.gov.uk) 25 March 2010-03-25

correspondence both offering access and requesting that Planning Conditions 5 and 6 be fulfilled, to be deliberately and knowingly selective.

16. In the Report of Handling Planning Application Delegated Report Application. No. 09/00282/FULL It states:-

*" The Council has received submissions for the applicant's agent and also from owners of the private section of road regarding the carrying out of the works required by the planning conditions. Based on the evidence in front of it, the Service has concluded that no compelling evidence has been submitted to demonstrate any impediment, physical, legal or otherwise, to the applicant carrying out the required improvement works on the private section of road."*

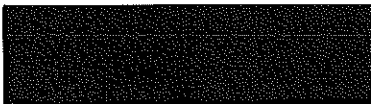
Nothing has changed since the refusal to remove Planning Conditions 5 and 6 – the only impediment to fulfilment of the planning conditions is the unwillingness of the applicant to carry out the necessary work; the claim that the owners of the roadway are refusing access is false.

It is a transparent deception which I foresaw when I wrote a letter to the Principal Planner on 22 Dec 2009 - copy attached, see paragraph 6a.

18. Any decision to permit removal of Planning Conditions 5 and 6 in the face of the evidence presented by the co-owners of the roadway could only be described as perverse.

19. Should you require clarification or further information in respect of this issue please do not hesitate to contact me – preferably by email as I work away from Tillicoultry.

Yours faithfully,



Ben Henderson

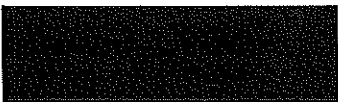
By email to [pbroadfoot@clacks.gov.uk](mailto:pbroadfoot@clacks.gov.uk) 25 March 2010-03-25

FAO: Ms Adele Ellis, AE Associates

Reference your:

Mr & Mrs W Irvine 11, Ellistoun Drive Tillicoultry FK13 6NT, Planning Application for the removal of conditions 5 & 6 dated 21 January 2010.

1. As Planning Conditions 5 & 6 have not been removed, I do not consider action taken to comply with them to be a 'gesture of goodwill', but simply an overdue fulfillment of obligations required by the planning permission.
2. There is no right of access over or under the privately owned section of Ellistoun Drive attaching to the land-locked Fairways plot on which the property designated No. 11 Ellistoun Drive stands. It is also legally debatable whether access rights over the roadway attach to the strip of land, formerly part of the garden of No 10 Ellistoun Drive, which is being used to access the Fairways plot from Ellistoun Drive.
3. I draw your attention to a letter of 11 March 2009 (copy of text attached) from our (the co-owners of the private roadway) solicitor to the Irvine's solicitor which states:- Quote - *Furthermore, our clients require your clients to provide a specification and timetable for the road surface being made good, in accordance with the terms of the planning permission* - Unquote. Consent to access the privately owned roadway solely for the purpose of carrying out the works required by the planning conditions (and the other works indicated) is implicit in this letter.
4. Contrary to your statement that "without the written consent of the frontagers the works cannot commence" – only the consent of the co-owners of the private roadway is required; the other two frontagers, not being owners of the roadway, can neither permit nor deny access.
5. As is obvious from paragraphs 3 & 4 above, since March 2009 there has been no impediment to the Irvine's complying with Planning Conditions 5 & 6, only their apparent unwillingness to do so.
6. That said, be aware that the co-owner's consent is contingent upon:-  
  
the provision of a specification and timetable for the works being provided for approval in advance of commencement of the works;  
  
the specification for the works being in accordance with the specification given in the planning permission for the roadway upgrade (N.B. Core samples will be taken for analysis on completion of the works)..
7. Should the Irvines wish to make a gesture of good will to their neighbours, it is suggested that an appropriate course of action would be the provision of a costing of upgrading the roadway to the required specification and, as an indication of good faith, the lodging of a performance bond to that value in advance of the works commencing.



B Henderson

26 January 2010

By email to [pbroadfoot@clacks.gov.uk](mailto:pbroadfoot@clacks.gov.uk) 25 March 2010-03-25

7 Elistoun Drive  
Tillicoultry  
FK13 6NT

Grant Baxter  
Principal Planner  
Development Quality  
Clackmannanshire Council  
Kilnerraigs  
Alloa  
FK10 1EB

22 December 2009

Dear Sir,

Application for the Removal of Planning Conditions 5 & 6 of Planning Application 05/00366/FULL

Reference: Your GB/DS/09/00282/FULL dated 15 December 2009.

1. As stated in my letter of 11 December 2009 objecting to the Application for the Removal of Planning Conditions 5 & 6 of Planning Application 05/00366/FULL submitted by AE Associates on behalf of the Irvines --

“ the applicant is already aware that the co-owners of the road section agree to it being upgraded in compliance with the planning conditions”.

2. I also stated that a letter of 11 March 2009, from our solicitor to the applicant's solicitor, confirmed the agreement of the co-owners of the privately owned section of Elistoun Drive to the applicant making good the road surface in accordance with the planning conditions.

3. The text of the solicitor's letter of 11 March 2009 is attached with the relevant section highlighted. In the 9+ months which have passed, no response has been forthcoming to the request made in the letter for “ *a specification and timetable for the road surface being made good, in accordance with the terms of the planning permission*”.

By email to [pbroadfoot@clacks.gov.uk](mailto:pbroadfoot@clacks.gov.uk) 25 March 2010-03-25

4. The solicitor's letter, and the lack of a response to it, clearly demonstrates that the claim that:-

"...the applicants have tried, unsuccessfully, to obtain an agreement between the road owners to upgrade the road to the benefit of all frontagers in a viable and sustainable manner. However, the gesture to resolve the outstanding matters has not been successful..."

is FALSE on two counts, in that :-

a. the road owners agreement has already been indicated;

and,

b. no proposal regarding the restoration and maintenance of the private roadway has been made by the applicant to the road owners.

5. I trust that the above provides a full answer to the points raised in your letter of 15 December 2009.

6.

a. In order to pre-empt further attempts by the applicant to avoid and / or delay fulfillment of their obligation to make good the privately owned section of roadway, be informed that the owners of the roadway are concerned ONLY that the roadway is restored and maintained to the specification and standards detailed in Planning Conditions 5 & 6.

b. We are NOT interested in the proposal mooted by Mac West of upgrading the roadway to adoptable road standard.

c. On this issue at least, we would appear to be at one with the Irvines, who, to the best of our knowledge, have not responded to Mac West's proposal in the 10 months which have passed since it was first made.

Yours faithfully,



B Henderson

# TILlicouLTRY PARISH CHURCH OF SCOTLAND

Treasurer  
Mr Andrew Wilson  
1 Melloch Crescent,  
Tillicoultry, FK13 6QJ  
Tel. 01259 760702

Minister  
Rev. James P. N. Cochrane  
Tillicoultry Manse,  
17 Dollar Road,  
Tillicoultry, FK13 6PD  
Tel/Fax 01259 750340

Session Clerk  
Mr Alan Hunter,  
Tillicoultry, FK13 6NZ  
Tel 01259 762997

FAO Mr Grant Baxter  
Case Officer  
Development Services  
Clackmannanshire Council  
Kilncraigs  
Greenside Street  
Alloa  
FK10 1EB

Property Convenor  
28 Devonvale Crescent  
Tillicoultry  
FK13 6NR

25 MAR 2010

23/03/10

Dear Sir

**Planning application 09/00282/FULL:**

I refer to the "Report of Handling Planning Application Delegated Report" dated the 12<sup>th</sup> March 2010 regarding the appeal against the Council's decision to uphold conditions 5 and 6 of the original application.

As previously noted the Kirk Session discussed the details of the application on the 3<sup>rd</sup> December 2009. It was agreed that no objection had been raised against the original application as the particular development and its construction did not impinge directly on the Manse property at 17 Dollar Road. Objections were not needed as it was understood that the application would be granted with strict conditions attached that would address the "material conditions" and protect the interests of our neighbours.

Having reviewed the attached documents to the report we are still of the opinion that the original conditions laid out in 5 and 6 should not be rescinded. The conditions under "material conditions" should still apply and we are therefore still against their removal.

Yours sincerely

Ian Young  
Property Convenor

Registered Scottish Charity Number SCO 16570



"Hamewith"  
13 Manse Road  
Dollar  
FK14 7AL

Mr Peter Broadfoot  
Head of Administration and Legal Services  
Clackmannanshire Council  
Greenfield House  
Alloa FK10 2AD

16 March 2010

Dear Mr Broadfoot

**Appeal by Mr and Mrs Irvine for Relaxation of Conditions 5 and of  
Planning Application 05/00366/FULL**

Thank you for your letter of 15 March with associated papers relating to the above Appeal which we feel the Council must reject in the absence of any new factors that might judge in its favour.

We are frankly surprised that in a long-standing and involved matter of this nature, Mr and Mrs Irvine can only find letters from the month of January to present (selectively?) in favour of their case. What developments have taken place since then and what is the current state of the parties concerned? We understand that there is no objection by the owners of the eastern end of Elistoun Drive to the up-grading work taking place – nor has there been – simply a request for a plan of action with dates for the work to be undertaken. No such plan and timetable have as yet been offered.

The matter appears to narrow down to the question of right of access which Mr and Mrs Irvine should have settled with their neighbours long ago, but one in which they seem to have been able to stall on two separate occasions when it has come to court. We fully accept that this is a legal matter in which the Council has no direct locus, nevertheless it is foundational to the whole issue and is now being used by Mr and Mrs Irvine to justify their unwillingness to fulfil the terms of their original planning application. We feel that residents of Elistoun Drive – and the Council itself – are in danger of being held hostage to the unwillingness of Mr and Mrs Irvine to settle this basic issue.

Chief Executive

17 MAR 2010

Services

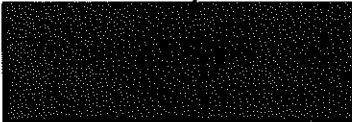
37

Questions of access and the ownership of the road are entirely separate from that of the fulfilling of the terms of the original planning application and should in no way enter into the Council's thinking. These will no doubt be ruled on in due course regardless of any further delaying tactics engaged in by Mr and Mrs Irvine.

In the light of the above we see no justification for any change in the Council's position in refusing the appeal and would urge simply that the Council proceed without further delay to the implementation of Conditions 5 and 6 of the original Planning Application, thus sparing the residents and users of Elistoun Drive any further inconvenience.

We are

Yours sincerely



(Rev) Ray Gaston



(Mrs) Evelyn Gaston

cc. Mr Alistair Campbell, Cllr.  
Mr Walter McAdam, Cllr.

Gail and Michael Walker  
8 Elistoun Drive  
Tillicoultry FK13 6NT

Mr. Peter Broadfoot  
Head of Administration and Legal Services  
Clackmannanshire Council  
Greenfield House  
Alloa FK10 2AD

22 March 2010

Dear Mr. Broadfoot

**The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008**

Thank you for your letter dated 12 March 2010 and associated paperwork.

We understand that the Irvines are appealing the Council's decision of 12 January 2010 to refuse permission to remove planning conditions 5 and 6 of Planning Application 05/00366/FULL. The basis of their case is that they are claiming the owners of the private section of Elistoun Drive are currently preventing them from doing so.

We note that the documentation accompanying the appeal is an incomplete record of correspondence and facts, and that it has been selected out of context. The effect of this is a distortion of the truth designed to deliberately misrepresent the co-owners of Elistoun Drive and to mislead the Local Review Body. In summary, it is divisive.

I enclose the omitted paperwork which clearly outlines the co-owners' position which is that access will be granted to allow the completion of conditions 5 and 6 of Planning Application 05/00366/FULL. We have asked for a schedule of works and timescales for work to be carried out which, we feel given the circumstances, is a perfectly reasonable request as alternative arrangements will have to be made by residents to accommodate the obvious disruptions caused by road works. This will affect all Elistoun Drive residents, not just those in the private end of the road. To date, we have received no such schedule of works from the Irvines or any *request* to begin such work (the letter from AE Associates dated 21 January 2010 being viewed as an intimation not a consultation necessitating the response from Watersrule dated 26 January 2010).

Omitted documentation includes:

1. Letter from Mr. and Mrs. Walker to AE Associates 28 January 2010
2. Letter from Watersrule to Marshall Wilson (Irvine's solicitor) 2 February 2010

Chief Executive

23 MAR 2010

Services

Additional paperwork includes:

1. Letter from Mr. and Mrs. Walker to Grant Baxter 23 December 2009

Also (and to be made available to the Local Review Body **only**):

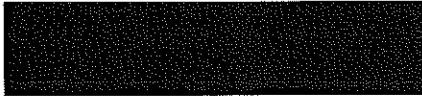
1. Letter from Stephen Bell, Head of Development Services to Watersrule 10 March 2010
2. Letter from Watersrule to Stephen Bell, Head of Development Services 15 March 2010

Further to our letter dated 30 November 2009 to Grant Baxter, we still strongly object to the removal of conditions 5 and 6. In addition, we have sent numerous emails and letters to Stephen Bell, Head of Development Services and Angela Leitch, Chief Executive stating our position. These will be made available on request. If necessary, we are happy to make a representation at the Local Review Body.

We are of the opinion that this latest appeal is confirmation that the applicant has never had any intentions of fulfilling Planning Conditions 5 and 6. The granting of this appeal could set a dangerous precedent for future developers wishing planning permission with no intention of fulfilling obligations to which they have committed, which in this case, appears to be true.

We trust this more than adequately furnishes the Local Review Body with an accurate and complete statement of facts.

Yours sincerely

A solid black rectangular box redacting the signature of Gail M. Walker.

Gail M. Walker

Michael and Gail Walker  
8 Ellstoun Drive  
Tillicoultry  
FK13 6NT

AE Associates  
The Toll House  
Upper Yetts O'Muckhart  
Clackmannanshire FK14 7JU

28 January 2010

Dear Ms. Ellis

**Planning Application for the Removal of Conditions 5 & 6**

Further to your letter dated 21 January 2010, we respond as follows:

**1. Situation**

**a. Section of Roadway in Private Ownership – Ellstoun Drive, Tillicoultry**

The eastern section of Ellstoun Drive is in private ownership.

The co-owners are the current proprietors of the properties at 7, 8 & 10 Ellstoun Drive, Tillicoultry – Henderson, Walker and Connor respectively.

**b. Fairways / 11 Ellstoun Drive – Mr & Mrs Irvine**

The Fairways plot, on which the property designated 11 Ellstoun Drive is under construction is land-locked.

There is no right of access to this property over or under the privately owned section of Ellstoun Drive.

**2. Driveway constructed on land formerly part of the grounds of 10 Ellstoun Drive**

A strip of ground, formerly part of the gardens of the property at 10 Ellstoun Drive is being used to access Fairways / 11 Ellstoun Drive from the privately owned section of Ellstoun Drive.

This strip of ground was retained by Mr & Mrs Irvine when they sold 10 Ellstoun Drive to Mr & Mrs Connor.



3. **Rights of access over / under the privately owned section of roadway**

- a. Rights of access over & under the privately owned section of roadway attach to the properties at 6, 7, 8, 9 & 10 Elistoun Drive.
- b. There is no right of access to Fairways / 11 Elistoun Drive over or under the private roadway.
- c. There is no right of access over or under the private roadway to the strip of land forming the driveway constructed to access 11 Elistoun Drive (described at 1c) above. The access rights remain solely with the 10 Elistoun Drive property.

4. **Granting of Temporary Rights of Access to Fairways / 11 Elistoun Drive – Mr & Mrs Irvine**

- a. The co-owners of the privately owned section of Elistoun Drive are prepared to grant, temporarily, access rights over that section of roadway, to enable:-

(1) the repair and upgrade of the roadway in accordance with Planning Conditions 5 & 6 of the Planning Permission for the Fairways / 11 Elistoun Drive development;

(2) the completion of the other works indicated in the letter dated 11 March 2009 from Watersrule Solicitors to Mr & Mrs Irvine's solicitors.

Granting of this permission is contingent upon the preparation and prior submission for approval of a schedule and timetable of the works to be undertaken.

5. **Granting of Rights of Access to Fairways / 11 Elistoun Drive – Mr & Mrs Irvine**

Contingent upon the satisfactory completion of the works for which temporary access was granted, the co-owners are prepared to discuss with Mr & Mrs Irvine (or their representatives) the granting of future access rights to their property at Fairways / 11 Elistoun Drive.

I trust this clarifies our position. If you require any further information, please contact our solicitor Mr. Craig Dunbar, Watersrule, Tillicoultry.

Yours sincerely



Gail Walker

c.c. Mr. Craig Dunbar, Watersrule

Mr. Stephen Bell, Clackmannanshire Council

Marshall Willson  
LP 13  
Falkirk

Our Ref: CD/JS/WALK0039-01 (CD DDial 01259 759876)(JS DDial 01259 759871)  
e-mail: [REDACTED]

Your Ref: - BT/MD/IRV 03702

2<sup>nd</sup> February 2010

Dear Sirs,

**Ben Henderson & Others -v- William & Gillian Irvine**

As we are sure you will be aware, your clients' Planning Consultants, AE Associates Limited of Yetts o' Muckhart, have written directly to, inter alia, the Pursuers in the present Court action in relation to the recent refusal by the Local Authority of your clients' application to remove conditions 5 & 6 from the Planning Application. At the same time, the Planning Consultants have intimated to our clients (and others) that your clients intend to commence work on the upgrading of the road to comply with the Planning Conditions notwithstanding their intention to appeal and that to do so, as they have styled it, as a gesture of goodwill.

It is, of course, our clients' position that your clients have no right of access whatsoever over that portion of Elistoun Drive which is privately owned, now by them. They have written, however, to AE Associates intimating the basis upon which they would be prepared to consider allowing temporary rights of access for the purpose of complying with the Planning Conditions which have been imposed upon them by Clackmannanshire Council. We enclose, for your information, a copy of a schedule which was prepared by Mr Henderson on behalf of the co-proprietors (our current Pursuers) and we would refer you, in particular, to the basis upon which all of our clients would be prepared to allow temporary access to the private road for the purpose of its implementation of Conditions 5 & 6 of your clients' Planning Permission. It is a necessary part of any such grant of temporary consent, however, that our clients are apprised of the full schedule of works and timetable in relation to the upgrading of the road and that they are satisfied that, before any ground is broken at all, the works will be carried out to a standard which are satisfactory to them. This is not to be seen as attempting to impose any "super" conditions or extraordinary or unusual conditions: it is merely an attempt to ensure that the road is going to be brought up to a standard which is satisfactory to the local authority. Clearly, if a schedule of works has been put before the local authority (and we are not aware that any has) and they are satisfied with it then it seems likely that our clients will

grant the temporary licence to which we have referred in this letter and to which our clients have referred in their correspondence with your clients' Planning Consultants.

As Mr Henderson has pointed out to us, a form of temporary consent was discussed in correspondence in the Spring of 2009 and that, effectively, remains the position of all of the clients for whom we act. Mr Hamilton, the proprietor of number 9 Ellistoun Drive, is not a co-proprietor of the private road and is not, therefore, in a position to give any consent to the works on the road although clearly any work which interfered with any right of access which he does have in terms of his title would entitle him to his own remedies should he be so minded.

Obviously, with the intimation that the work is to commence on 15<sup>th</sup> February having already been given, our clients require to be satisfied before then that your clients are prepared to accept the conditions upon which access will be afforded to them. Our clients have never had a difficulty in the road being upgraded in accordance with the Planning Permission. That, however, is an entirely separate and distinct issue from whether or not, thereafter, your clients do possess any legal right, title or interest to use that part of the private road as an access to their property at Fairways, 11 Ellistoun Drive. Again, we would refer you to the foot of the attached schedule from Mr Henderson which sets out the position of all of our clients. In other words, the granting of the temporary licence to comply with the Planning Permission is not to be seen as implying any waiver on the part of our clients in their primary position in the present proceedings which is that your clients possess no right or title to use any part of the private roadway into their property. You may also note, however, that our clients have expressed a willingness, in principle at least, to discuss methods whereby your clients may acquire such a right by the granting of a formal Deed of Servitude from the current proprietors although that will, of course, be dependent upon the negotiation to their absolute satisfaction of conditions which are satisfactory to them as the owners of the road.

At this stage, therefore, we are writing to you to put your clients on notice that our clients are prepared to consider the granting of such a temporary licence on a without prejudice basis and should be grateful if you would get back to us to confirm whether or not your clients are willing to enter into discussions regarding that. It seems sensible that, whatever else may occur in the present litigation, the roadway is made up in terms of the Planning Permission.

We look forward to hearing from you.

This letter is written entirely without prejudice to all rights and pleas open to our clients in the matter generally and in particular is not to be founded upon save with our consent.

Yours faithfully  
Watersrule

**P.S. We await hearing from you in respect of the expenses under orders dated 16.10.09 and 19.01.2010**

Gall and Michael Walker  
8 Ellstoun Drive  
Tillicoultry  
FK13 6NT

Mr. Grant Baxter  
Case Officer  
Development Services  
Clackmannanshire Council  
Kilncraigs  
Alloa FK10 1EB

23 December 2009

Dear Mr Baxter

**Re: Erection of House and Driveway -- Application for Removal of Conditions & 6 of Planning Permission 05/00366/FULL**

Thank you for your letter dated 15 December 2009.

In response to whether or not we have or indeed would prevent the applicants from completing the approved roads improvement scheme in order to fulfil conditions 5 and 6 of their Planning Conditions, I can state that to date, we have never prevented the applicants from completing an approved road improvement scheme nor do we have any intention of preventing them from doing so.

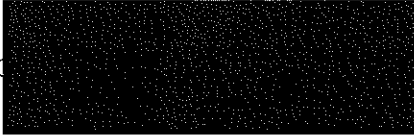
Our concern is **when and how** planning conditions are to be fulfilled. We would ask that we are kept fully informed of specification of finish and that a schedule of works is established to manage road repairs within a specified timescale, and road owners provided with details of this. Furthermore, we would like to know how the Council intend to enforce completion of conditions 5 and 6 prior to occupation being granted. As with previous attempts made by the applicant to occupy the property, it would appear that yet again, the house is currently occupied by Mr. and Mrs. Irvine and their son despite our registered objection to this on the basis that planning conditions have not been completed i.e. completion of the retaining walls, fulfilment of conditions 5 and 6.

In response to the statement from the applicant's agent, AE Associates that you have quoted in your letter, we have **not** been approached by the applicants before or during the construction of no. 11 Ellstoun Drive to obtain an agreement to upgrade the road. To report otherwise is a blatant fabrication and does not change the fact that **as per conditions 5 and 6, the responsibility to upgrade the road remains with the applicant, not the road owners.**

As stated in our letter of objection dated 30 November 2009 *'at an early stage an approach was made by residents to the applicant's lawyer to attempt negotiation and settlement of matters outstanding and conditions were offered. However this approach was rejected out of hand by the applicants and no further communication has been received on this matter'*. I understand that my neighbour Ben Henderson is forwarding you a copy of the letter dated 11 March 2009 from our solicitor to the applicant's solicitor.

We have been left to deal with the applicant's non compliance of conditions 5 and 6 and their attempts to avoid any responsibility for implementing a road improvement scheme for almost a year now; **this is unacceptable**. Rather than allowing this matter to drag on any longer, we trust that it will be resolved as soon as possible and we look forward to hearing from you.

Yours sincerely

A large black rectangular redaction box covering the signature area.

Gail and Michael Walker

c.c: 7, 10 Ellstoun Drive, Tillicoultry  
Cllr. McGill, Cllr. McAdam, Cllr. Balsillie, Cllr. Biggam, Cllr. Womersley, Cllr. Campbell  
Ms. Angela Leitch, CEO Clackmannanshire Council  
Steven Waters, Watersrule Solicitors

**Garry Dallas**  
Director

Kilncraigs, Greenside Street, Alloa, FK10 1EB

Mr Dunbar  
Watersrule Solicitors  
76/78 High Street  
Tillicoultry  
Clackmannanshire  
FK13 6AB

Contact: **Stephen Bell**  
Direct Tel: **01259 450000**  
Our Ref: **SB/MG**  
Your Ref:  
E:Mail [development\\_services@clacks.gov.uk](mailto:development_services@clacks.gov.uk)  
Date: **10 March 2010**

Dear Mr Dunbar,

**MESSRS HENDERSON WALKER AND CONNOR  
MR AND MRS WILLIAM IRVINE  
ELISTOUN DRIVE, TILlicOUNTRY**

I refer to your e-mail of 25 February.

Thank you very much for clarifying that your clients are not in any way attempting to prevent the upgrading of the road in terms of planning conditions 5 and 6 of the original Planning Permission. This is very helpful, particularly as a letter from you to Mr and Mrs Irvine's solicitors (on 26 January) made it quite clear on page 2 that you were looking for an unqualified undertaking from Mr and Mrs Irvine that no works would be commenced upon the private part of the road otherwise you would make further application to the court for Interim Interdict to prevent any such works being carried out.

Despite your above clarification the third paragraph of your e-mail to me seems to advise that there is an interim court order in place which would prevent any works being carried out which would interfere with the right of access of the various frontagers. Whilst I would expect any contractors on behalf of Mr and Mrs Irvine to minimise the disruption to legitimate users of the road, the nature of the road works is such that it must at least restrict access, albeit temporarily, or impede the use of the road by the frontagers.

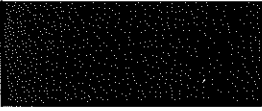
As you may appreciate, my locus in this matter is to secure compliance with the planning conditions. I cannot therefore compel Mr and Mrs Irvine to provide you and your clients with a schedule of works and a timescale for completion, although I would hope that Mr and Mrs Irvine would cooperate directly with your clients in this respect. That said, I am limited to what has been specified in the Breach of Condition Notice (BCN) served on Mr and Mrs Irvine and the timescale set out in the Notice.

To enable me to make real and positive progress, I need an absolute assurance from your clients that Mr and Mrs Irvine may proceed with the works to repair the road as required by the BCN and that the Court Order will not be used to prevent them from doing so. As you know, and as I have already pointed out in correspondence to your clients, the completion of the

road works to comply with the BCN has no bearing whatsoever on the various legal rights of the parties. I hope therefore that your clients feel able to cooperate in this respect especially in the light of your clarification to me of their position.

I look forward to hearing from you as soon as possible once you have obtained your clients' instructions.

Yours sincerely



**STEPHEN BELL**  
**HEAD OF DEVELOPMENT SERVICES**  
**DEVELOPMENT SERVICES**



76/78 high street, tillicoultry fk13 6ab

lp 8 alloa

To : Stephen Bell  
Clackmannanshire Council  
Development Services  
LP 14  
Alloa

**BY EMAIL ONLY**

Our Ref: CD/JS/ WALK0039-01 (CD DDial 01259 759876/JS DDial 01259 759871)

Your Ref: - 05/00366/FULL&09/00282/FULL

15<sup>th</sup> March 2010 (Dictated 12<sup>th</sup> March)

Dear Mr Bell

**Messrs Henderson, Connor & Walker  
William & Gillian Irvine  
Ellstoun Drive, Tillicoultry**

Thank you for your email of 10<sup>th</sup> March. I have been out of the office for most of Thursday and just catching up with your email now.

The letter which you have clearly seen which we sent to Messrs Marshall Wilson was in fact followed up by a subsequent letter dated 2<sup>nd</sup> February 2010 in which it was made quite clear that our clients would be prepared to discuss the question of rights of access to allow the road to be upgraded. It will also be quite clear from the third last paragraph in the letter that we were waiting for Marshall Wilson to revert to us to confirm whether or not their clients were prepared to enter into discussions regarding the question of access but, as has been common with all of our correspondence to that firm in recent months, there has been no response whatsoever. A copy of that letter is attached for clarification of the position. Our clients' position has not altered. The position is that they wish the road upgraded in terms of Conditions 5 & 6. They maintain an entirely different position regarding the legalities of the rights to use the road but are not going to stand in the way of the Irvines complying with their Planning Permission. That said, however, the offer is on the table for the Irvines to accept, reject or negotiate. They have done none of them.

Yours sincerely  
**Craig Dunbar**

**Enc – letter to Marshall Wilson dated 2<sup>nd</sup> February 2010  
Dictated by Mr Dunbar and sent on his behalf**

e-mail

directors • steven r. waters, stephen rule  
solicitor • craig dunbar

watersrule is the trading name of watersrule limited (company number SC251414)

