

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

Number of Objections

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:-