

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

By email to 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

⁴12. 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 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."

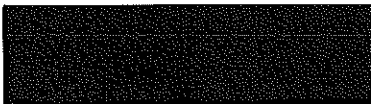
Nothing has changed since the refusal to remove Planning Conditions 5 and 6 – the only impediment to fulfilment of the planning conditions is the unwillingness of the applicant to carry out the necessary work; the claim that the owners of the roadway are refusing access is false.

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 25 March 2010-03-25

FAO: Ms Adele Ellis, AE Associates

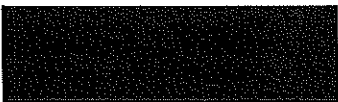
Reference your:

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 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 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

TILlicOLTRY PARISH CHURCH OF SCOTLAND

Treasurer
Mr Andrew Wilson
1 Melloch Crescent,
Tillicoultry, FK13 6QJ
Tel. 01259 750702

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 752997

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 12th 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 3rd 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

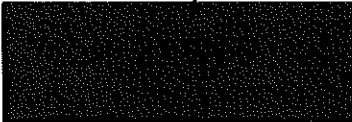
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Questions of access and the ownership of the road are entirely separate from that of the fulfilling of the terms of the original planning application and should in no way enter into the Council's thinking. These will no doubt be ruled on in due course 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**):

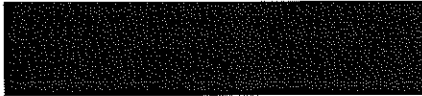
1. Letter from Stephen Bell, Head of Development Services to Watersrule 10 March 2010
2. Letter from Watersrule to Stephen Bell, Head of Development Services 15 March 2010

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

2nd 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 15th 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.

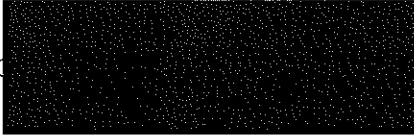
Our concern is **when and how** planning conditions are to be fulfilled. We would ask that we are kept fully informed of specification of finish and that a schedule of works is established to manage road repairs within a specified timescale, and road owners provided with details of this. Furthermore, 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
Date: 10 March 2010

Dear Mr Dunbar,

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

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.

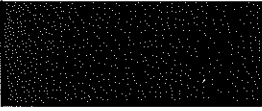
As you may appreciate, my locus in this matter is to secure compliance with the planning conditions. I cannot therefore compel Mr and Mrs Irvine to provide you and your clients with a schedule of works and a timescale for completion, although I would hope that Mr and Mrs Irvine would cooperate directly 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

15th March 2010 (Dictated 12th March)

Dear Mr Bell

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

Thank you for your email of 10th 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 2nd 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 2nd 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)

