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FAO Mr Moray Thomson
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Our ref: PPA-200-242

04 December 2009

Dear Sir

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
PLANNING APPEAL: LOWER KILMARDINNY/WESTPARK, MILNGAVIE ROAD,
BEARSDEN, G61 3DH**

The Reporter apologises for not responding to the appellants' letter and enclosures of 2 October and the Council's letter of 12 October sooner, but her time over the last few weeks has been taken up on another significant inquiry. She has now had the opportunity to consider these letters, together with the Council's letter of 30 November.

Firstly, she is disappointed that an agreement covering the matters listed in the Notice of Intention has not been completed. The Notice made clear that she considered that a legal agreement ought to be completed in order to be confident that the development opportunity proposed in the application was realised in a suitable form and that the local benefits identified in the Notice were secured. An agreement remains very much the Reporter's preferred option. As far as she is concerned, any agreement need only cover the 3 matters listed in the Notice. The Council did not suggest at the inquiry that the agreement should encompass the business units and there is nothing that persuades her that these ought to be included now.

In any event, according to the Council's letter of 30 November, the only difference between the parties is the indexation of the financial contributions to the A81 Corridor Strategy and the replacement sport centre. In that regard, the Notice of Intention states that, while a £10 million contribution would not ensure that a new



centre was built and the Council might have to find additional funds to achieve the specification it elected to provide, the contribution would significantly improve the prospect of a new, up-to-date, facility. The Reporter recognises that some form of indexing is likely to assist further in delivering a replacement centre. She therefore wishes to know, within 14 days of the date of this letter, whether the parties see a reasonable prospect of completing an agreement on the basis of the 2% figure offered by the appellants. If they do, in the light of the Council's comments regarding titles, and to take account of the forthcoming Christmas/New Year holiday period, she is prepared to extend the period for completing an agreement by a further 4 months.

Both parties will recollect that the Notice of Intention also states that, if no agreement was forthcoming within a 3 month period, the Reporter would have to consider whether to refuse permission, or whether to grant it without an agreement. Accordingly, if the appellants and the Council consider that they are unlikely to reach an agreement on the basis described above, then, without prejudice to her final decision on the appeal, the Reporter is willing to explore the possibility of the matters that were intended to be included in the agreement being adequately controlled by conditions that satisfied the tests in SODD Circular 4/1998 and provided at least for the following:

The sports centre contribution

- making a site start contingent upon parties agreeing the terms of a land excambion in respect of the former bus garage site and the existing sports centre site (less the land reserved for a rail halt), including an entitlement for the Council to call upon the transfer of title to the bus garage site, following decontamination, and the appellant to call upon transfer of the existing sports centre site;
- an obligation for the developer to undertake the decontamination of the former bus garage and a timescale for completing these works;
- the means by which the Council would require to demonstrate to the developer, prior to the decontamination works being undertaken, that the council was committed to building a replacement sports centre and the timescale in which this would be built;
- reassurance for the Council that, before committing to build a sports centre, it could rely upon receiving a £10 m contribution (indexed in so far as the parties can agree), and when this would be paid, in instalments or otherwise; and
- a mechanism for the reimbursement of the contribution in the event that the sports centre did not proceed.

The A81 Corridor Strategy contribution

- an obligation for the developer to make the contribution described in the Notice of Intention (indexed in so far as the parties can agree);
- a timescale within which this payment is to be made (in instalments or otherwise) relative to the completion of other traffic-related works associated with the development;

- reassurance for the Council that it could rely upon this contribution in the event that it incurred the expenditure concerned; and
- a mechanism for the reimbursement of the contribution in the event that the Council did not spend the contribution within a specified timescale.

Land for affordable housing

- a mechanism for the transfer to the Council or another specified housing provider of land for affordable housing sufficient to accommodate a 10% proportion of the total number of housing units to be built on the appeal site, together with a timescale within which this transfer is required to take place; and
- a mechanism whereby the land would be required to be re-conveyed to the developer if it had not been, or was not being, developed for affordable housing within a specified timescale.

The Reporter understands the Council's concerns regarding the terms of the conditions that have been proposed by the appellants. Accordingly, if parties do not expect to be able to complete an agreement, she invites their suggestions, also within 14 days, as to how conditions might be worded to reflect the principles listed above. These are not necessarily exhaustive. As the Reporter was not involved in the discussions held between the parties, and would not have expected to be, she is not aware of all the points that may have featured in these discussions and that the parties consider should be reflected in any conditions.

Finally, the Reporter has also asked me to give both parties the opportunity to comment, if they wish, on any new matter of fact they consider is contained in the enclosed letter of 24 September from the Kilmardinny Westpark Action Group and which they consider they have not already addressed, and on the photographs which were sent to DPEA by E-mail on 19 November.

I have written in the same terms to the appellants. A copy of the letter will be sent to the Kilmardinny Westpark Action Group for information.

Yours faithfully

MR SCOTT MACKENZIE
Specialised Case Officer
Directorate of Planning & Environmental Appeal