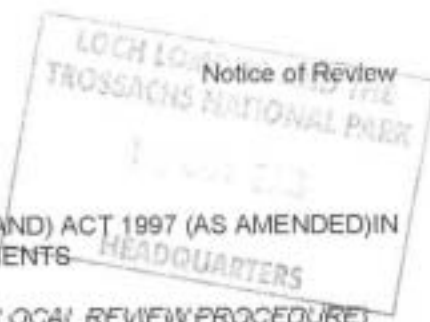


NOTICE OF REVIEW



UNDER SECTION 43A(8) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED) IN RESPECT OF DECISIONS ON LOCAL DEVELOPMENTS

THE TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND LOCAL REVIEW PROCEDURE) (SCOTLAND) REGULATIONS 2013

THE TOWN AND COUNTRY PLANNING (APPEALS) (SCOTLAND) REGULATIONS 2008

IMPORTANT: Please read and follow the guidance notes provided when completing this form. Failure to supply all the relevant information could invalidate your notice of review.

Use BLOCK CAPITALS if completing in manuscript

Applicant(s)

Name

Address

Postcode

Contact Telephone 1

Contact Telephone 2

Fax No

E-mail*

Agent (if any)

Name

Address

Postcode

Contact Telephone 1

Contact Telephone 2

Fax No

E-mail*

Mark this box to confirm all contact should be through this representative:

Yes No

* Do you agree to correspondence regarding your review being sent by e-mail? Yes No

Planning authority

Planning authority's application reference number

Site address

Description of proposed development

Date of application Date of decision (if any)

Note. This notice must be served on the planning authority within three months of the date of the decision notice or from the date of expiry of the period allowed for determining the application.

Mail Register No:

Passed To:

Internal File Ref: (if applicable)

Nature of application

- 1. Application for planning permission (including householder application)
- 2. Application for planning permission in principle
- 3. Further application (including development that has not yet commenced and where a time limit has been imposed; renewal of planning permission; and/or modification, variation or removal of a planning condition)
- 4. Application for approval of matters specified in conditions

Reasons for seeking review

- 1. Refusal of application by appointed officer
- 2. Failure by appointed officer to determine the application within the period allowed for determination of the application
- 3. Conditions imposed on consent by appointed officer

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.

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may tick more than one box if you wish the review to be conducted by a combination of procedures.

- 1. Further written submissions
- 2. One or more hearing sessions
- 3. Site inspection
- 4. Assessment of review documents only, with no further procedure

If you have marked box 1 or 2, please explain here which of the matters (as set out in your statement below) you believe ought to be subject of that procedure, and why you consider further submissions or a hearing are necessary:

Please read overleaf. →

Site inspection

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

- | | Yes | No |
|--|--------------------------|-------------------------------------|
| 1. Can the site be viewed entirely from public land? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 2. Is it possible for the site to be accessed safely, and without barriers to entry? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

If there are reasons why you think the Local Review Body would be unable to undertake an unaccompanied site inspection, please explain here:

The Applicant is entitled to a transparent and fair appeal. In this case reconsideration by the LRB. in order for the LRB to take a robust decision, thus avoiding appeals to the Courts, it must be in possession of all relevant information. The Appellant considers that insufficient explanation has been provided by the Planning Officer as to why the proposed reworded condition is unacceptable. There is also dispute about the purpose and outcome of a Section 42 planning application. The Applicant considers that all parties would benefit from a hearing where the LRB can ask questions of professional witnesses.

Statement

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. Note: 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.

If the Local Review Body issues a notice requesting further information from any other person or body, you will have a period of 14 days in which to comment on any additional matter which has been raised by that person or body.

State here the reasons for your notice of review and all matters you wish to raise. If necessary, this can be continued or provided in full in a separate document. You may also submit additional documentation with this form.

Please see statement attached.

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 new material, 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.

Not applicable.

List of documents and evidence

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.

- Application for planning permission 2013/0173/DET.
- Letter with justification for approval, 12th July 13.
- Decision Letter (refusal).
- Planning permission 2009/0156/DET.
- Local Plan policy TOUR2.
- Email correspondence with Planning Officer Worthy.
- Extracts from Circular 4/1998.
- Planning Officer's Report of Handling.

Note. The planning authority will make a copy of the notice of review, the review documents and any notice of the procedure of the review available for inspection at an office of the planning authority until such time as the review is determined. It may also be available on the planning authority website.

Checklist

Please mark the appropriate boxes to confirm you have provided all supporting documents and evidence relevant to your review:

- Full completion of all parts of this form
- Statement of your reasons for requiring a review
- All documents, materials and evidence which you intend to rely on (e.g. plans and drawings or other documents) which are now the subject of this review.

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 from that earlier consent.

Declaration

I the ~~applicant~~ agent [delete as appropriate] hereby serve notice on the planning authority to review the application as set out on this form and in the supporting documents.

Signed

Date

17 OCT 2013

Refusal of Application for Planning Permission for Development of Holiday Apartments without Compliance with Condition 1 of Planning Permission 2009/0156/DET.

Land to the Rear of Montrose House, Balmaha G63 0JQ

Regulation 9(3)(d) Statement of Reasons for Requiring Review.

Overview

The Park Authority has granted planning permission for a development of 19 Holiday Apartments, Reception Building & Associated Car Parking and Landscaping, on land to the rear of Montrose House. This was a conditional permission (ref: 2009/0156/DET).

The permission included a condition, limiting the duration of occupancy. Condition No.1 prohibits any one person or group from occupying an apartment for more than 90 days in any year.

The reason given was to ensure that no apartment was occupied as a permanent residence.

The Applicant has no difficulty with an occupancy condition. Scottish Government Circular 4/1998 allows for the use of "holiday occupancy conditions".

National Park Local Plan policy TOUR2 states that holiday apartment lets will be controlled by condition.

However, there is nothing in the Circular or Local Plan that stipulates that the length of residency be limited to 90 days.

The Applicant doesn't understand the rationale behind the 90 days. Holiday apartments are let on the basis of either the calendar month or the week.

If the Applicant was to let an apartment in the height of the summer (school holidays), for the three months of July-August-September, then that let would run to 92 days.

Similarly, if an apartment was to be rented for 13 weeks, then the let would run to 91 days.

The current condition would require the customer to vacate the apartment early. The consequence would be less income for the operator. This was explained in the letter submitted with planning application 2013/0173/DET.

The Applicant and agent are well aware of how holiday apartment lettings are controlled elsewhere in the UK. In England, there is a Good Practise Guide on Planning for Tourism, published by the Department for Communities. This specifically addresses holiday occupancy conditions and points to a model condition that simply requires an apartment to be occupied for holiday purposes only (i.e. there is no numerical limitation).

Current Application

The Applicant has applied for planning permission to develop the 19 holiday apartments without compliance with Condition 1. Instead, the Applicant has asked that the duration of any let be 92 days. *The application is made under Section 42 of the Act.*

Planning Officer Worthy erroneously states in the Report of Handling that the Applicant has sought an amendment to planning permission 2009/0156/DET. This is not the case.

The Applicant has not applied to vary permission 2009/0156/DET. The Park Authority is able to agree to variations under Section 32A of the Act.

The Applicant has applied for a new planning permission. This was clearly explained to Planning Officer Worthy in an exchange of emails.

If the Park Authority approves this application then it is required to issue a decision notice in accordance with Regulation 25 (Development Management Procedure Order, 2013). That must contain (the previously imposed) conditions and a statement about the duration of the permission granted (i.e. 3 years).

Planning application 2013/0173/DET was received by the Park Authority on 15th July. Planning permission was refused on 4th October. In an email on 31st July (copy attached) the Planning Officer told the Applicant's agent that the application would be refused, suggesting it be withdrawn. This astonished the Applicant as only two weeks had passed; no one had been consulted, nor had the application been advertised in the local newspaper.

Planning Officer Worthy carried out no consultations during the determination process.

There was one letter of representation from a neighbour, Laura Atkinson. She wrote that 90 days occupancy was generous for holiday let. However, She did not explain why?

Indeed, despite being asked by email, Planning Officer Worthy still refuses to explain how the 90 day duration period has been arrived at. There is no justification given in the Report of Handling. The Report simply says that the condition is included in a "**manual**" introduced in 2009. The Applicant asks that the "**manual**" be produced and its content discussed at Hearing.

The Report of Handling says that the Condition 1 imposed meets the legal tests (6) in Circular 4/1998. The Applicant doesn't dispute this.

The Applicant is seeking to vary the wording by changing the figure "90" to "92". That doesn't result in the Condition no longer satisfying the 6 legal tests.

Reason for Refusal

ALL planning applications must be determined in accordance with the development plan unless material considerations suggest otherwise.

The reason for refusal contains NO references to the provisions of the National Park Local Plan. In other words, the proposal complies with policy TOUR2.

The sole reason for refusal as: "***there is no justification to increase the occupancy from 90 days to 92 days.***"

A justification has been provided, fully explained in the letter accompanying the planning application. Increasing occupancy to 92 days doesn't result in any apartment being occupied as permanent residence.

What isn't justified is the reason for refusal as it is not based on a material consideration.

Changing the figure "90" to "92" doesn't result in the Condition no longer satisfying the 6 legal tests.

Recommendation

The reason for refusal is not justified in terms of the Act. The changed figure in the Condition will not result in the Condition no longer satisfying the 6 legal tests. Similarly, increasing occupancy by 2 days will not result in an apartment becoming a permanent residence. Ergo, the Local Review Body *is requested to grant planning permission, subject to the other conditions (Nos. 2-16) previously imposed.*





Bob Cook
Development Management Manager
Loch Lomond & the Trossachs NPA
Carrochan Road
Balloch
West Dunbartonshire
G83 8EG

Euan FS Pearson
Pearson Planning,
Chartered Surveyors
34 New House
67-68 Hatton Gardens
Holburn
London
EC1N 8JY

Telephone: 07879 421193

london@pearsonplanning.co.uk

Your ref: 2009/0156/DET
Our ref: EFP/m&m

12th July 2013

Dear Bob

Section 42 of Town & Country Planning (Scotland) Act
Erection of 19 Holiday Apartments etc to Rear of Montrose House, Balmaha G63 0JQ

The Park Authority granted planning permission for the above development on 6th January 2011. This was a conditional permission, granted following a Section 75 Agreement having been signed by my client.

The enclosed application asks that the Applicant be excused from complying with the following provision of Condition 1:

"The unit shall not be occupied by any one individual or group for a period exceeding 90 days in any one calendar year."

Instead, my client wishes to restrict occupancy to a period of 92 days. This allows each apartment to be let either for a contiguous period of 13 weeks or 3 months. The current condition will result in the apartments being empty for short periods due to discontinuity of bookings. This was never the reasoning behind the imposition of the condition.

Similarly, my client considers that the current wording is not clear, and needs adjustment. If the intention is to allow occupation for a total of 90 days in a calendar year, either in a single sitting or multiple lets, then this must be made clear. The current wording suggests that occupancy is restricted to one let for not more than 90 days.

The Development Management Procedure Regulations 2013 specify what must accompany an application. Regulation 11 relates to Section 42 applications (planning permission, rather than planning permission in principle) and requires only:

- Reg. 9(2)(c) applicant & agents details;



- Reg. 9(3)(c) land ownership certificate; and
- Reg. 9(3)(d) plan (not applicable) showing neighbouring land owned by applicant;
- Reg. 9(3)(h) statement if the application relates to Crown land (not applicable);
- Reg. 9(3)(i) the statutory fee of £192.

Further, so as to meet the requirements of Regulation 11(3), sufficient information to identify the previous grant of planning permission, the following is provided:

- copy of decision 2009/0156/DET.

Notwithstanding this, I have completed the General Planning Application Form, and included a location plan (taken from a previous Committee Report).

A Design & Access Statement is not required according to Regulation 13(3)(a).

Please note that the absence of a fee for an advert under Regulation 20, DOES NOT make a planning application invalid.

Justification for Non-compliance with Condition

The National Park Local Plan ("NPLP") was adopted in December 2011, long after planning application 2009/0156/DET was granted. The NPLP contains policy TOUR2 stipulates that:

"The occupancy of new holiday letting developments will be controlled by conditions that limit the length of residency."

The narrative justifies this as a means of preventing tourism accommodation being used as normal residences (including "second homes").

My client has no difficulty with such policy provisions. However, what the NPLP misses is guidance on what constitutes a reasonable length of time for tourist occupancy.

Circular 4/1998 allows the local planning authority to impose conditions controlling seasonal occupancy and/or holiday occupancy. However, the Circular clearly states that particular care should be taken to ensure that such a condition ***"allows a reasonable period of use"***. The Annex to the Circular does not offer a model condition.

The DCLG published a Good Practise Guide on Planning for Tourism (2006) and it specifically addresses holiday occupancy conditions. It recognises that people take multiple holidays and not exclusively in the summer. That most demand is for self-catering accommodation. This, it reports, helps reduce seasonal employment and is advantageous to host communities. It points to the model condition(s) approved for use by East Riding of Yorkshire Council (which includes the tourist destinations of Vale of York and The Wolds):

***** The holiday apartments are occupied for holiday purposes only;***

**** The holiday apartments shall not be occupied as a person's sole, or main place of residence;***

**** The owners/operators shall maintain an up-to-date register of the names of all occupiers of individual apartments on the site, and of their main home addresses, and shall make this information available at all reasonable times to the local planning authority."***

There is no mention of any maximum duration of stay.

It is not clear to the Applicant how the 90 day limitation has been derived. It is not in dispute that the National Park Authority (NPA) has previously imposed this. However, the NPA is clearly susceptible to reviewing and changing its occupancy conditions.

A previous planning permission on the application site included a different occupancy condition. Condition 3 of 2003/0358/DET only permitted occupancy twice a year for a maximum of 28 days each time. That was approved in 2005. In June 2008, the Planning & Access Committee dealt with another proposal (2007/0330/DET) and it contained the same condition.

Although 90 days is more generous (for the potential occupier), it is not one to be ogled at.

This type of self-catering holiday accommodation is operated on the basis that lets are either weeks or months. This is because the accommodation suits families or groups for non-short term stays.

The figure 90 doesn't divide by 7 (to leave an integer). Anyone wishing to stay for a maximum duration, would not be able to, having to vacate at the end of 84 days (12 weeks). The operator would not allow a letting to end midweek, as it would lose revenue while the apartment sat empty awaiting the arrival of the next occupier. Weekly lets run Friday afternoon (3pm) to Friday morning (11am). Had the figure been 91 days (13 weeks) then that situation would be avoided.

Similarly the figure 90 doesn't accommodate everyone who wishes to stay on monthly basis. The highest demand for the apartments is expected to be during the school holidays (July-September). It is not possible for a let to extend to these three months, as that totals 92 days. In fact the only three month periods in the whole year of 90 days are: January-March, and February-April.

In conclusion, although my client doesn't currently expect the NPA to utilise the model condition included in DCLG guidance, it is considered reasonable that occupancy limits do practically accommodate lets based on weeks and months. Allowing 92 days, instead of 90, doesn't contravene Local Plan policy TOUR2. Therefore, it is requested that planning permission be granted.

Please acknowledge receipt.

Yours sincerely



Euan FS Pearson MRTPI MRICS

encs.

APPLICATION FOR PLANNING PERMISSION

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008

Please refer to the accompanying Guidance Notes when completing this application
PLEASE NOTE IT IS FASTER AND SIMPLER TO SUBMIT PLANNING APPLICATIONS ELECTRONICALLY VIA <https://eplanning.scotland.gov.uk>

1. Applicant's Details		2. Agent's Details (if any)	
Title		Ref No.	
Forename		Forename	Euan FS
Surname		Surname	Pearson
Company Name	M & M Quality Homes	Company Name	Pearson Planning
Building No./Name		Building No./Name	34 New House
Address Line 1	36-38 Main Street	Address Line 1	67-68 Hatton Gardens
Address Line 2		Address Line 2	Hoiburn
Town/City	Stoneyburn	Town/City	London
Postcode	EH47 8AU	Postcode	EC1N 8JY
Telephone		Telephone	
Mobile		Mobile	07879 421193
Fax		Fax	
Email		Email	london@pearsonplanning.co.uk
3. Postal Address or Location of Proposed Development (please include postcode)			
Land to Rear of Montrose House, Balnaha G63 0JQ			
NB. If you do not have a full site address please identify the location of the site(s) in your accompanying documentation.			
4. Type of Application			
What is the application for? Please select one of the following:			
Planning Permission		<input type="checkbox"/>	
Planning Permission in Principle		<input type="checkbox"/>	
Further Application*		<input checked="" type="checkbox"/>	
Application for Approval of Matters Specified in Conditions*		<input type="checkbox"/>	
Application for Mineral Works**		<input type="checkbox"/>	
NB. A 'further application' may be e.g. development that has not yet commenced and where a time limit has been imposed a renewal of planning permission or a modification, variation or removal of a planning condition.			
*Please provide a reference number of the previous application and date when permission was granted:			
Reference No:	2009/0156/DET	Date:	6th January 2011

**Please note that if you are applying for planning permission for mineral works your planning authority may have a separate form or require additional information.

5. Description of the Proposal

Please describe the proposal including any change of use:

Development of Holiday Apartments without compliance with Condition 1 of Planning Permission 2009/0156/DET.

Is this a temporary permission? Yes No

If yes, please state how long permission is required for and why:

Have the works already been started or completed? Yes No

If yes, please state date of completion, or if not completed, the start date:

Date started: Date completed:

If yes, please explain why work has already taken place in advance of making this application

6. Pre-Application Discussion

Have you received any advice from the planning authority in relation to this proposal? Yes No

If yes, please provide details about the advice below:

In what format was the advice given? Meeting Telephone call Letter Email

Have you agreed or are you discussing a Processing Agreement with the planning authority? Yes No

Please provide a description of the advice you were given and who you received the advice from:

Name: Date: Ref No.:

7. Site Area

Please state the site area in either hectares or square metres:

Hectares (ha): Square Metre (sq.m.)

8. Existing Use

Please describe the current or most recent use:

Vacant backland & housing curillage

9. Access and Parking

Are you proposing a new altered vehicle access to or from a public road? Yes No

If yes, please show in your drawings the position of any existing, altered or new access and explain the changes you propose to make. You should also show existing footpaths and note if there will be any impact on these.

Are you proposing any changes to public paths, public rights of way or affecting any public rights of access? Yes No

If yes, please show on your drawings the position of any affected areas and explain the changes you propose to make, including arrangements for continuing or alternative public access.

How many vehicle parking spaces (garaging and open parking) currently exist on the application site?

N/A

How many vehicle parking spaces (garaging and open parking) do you propose on the site? (i.e. the total number of existing spaces plus any new spaces)

N/A

Please show on your drawings the position of existing and proposed parking spaces and specify if these are to be allocated for particular types of vehicles (e.g. parking for disabled people, coaches, HGV vehicles, etc.)

10. Water Supply and Drainage Arrangements

Will your proposals require new or altered water supply or drainage arrangements? Yes No

Are you proposing to connect to the public drainage network (e.g. to an existing sewer)?

Yes, connecting to a public drainage network
No, proposing to make private drainage arrangements
Not applicable – only arrangement for water supply required

What private arrangements are you proposing for the new/altered septic tank?

Discharge to land via soakaway
Discharge to watercourse(s) (including partial soakaway)
Discharge to coastal waters

Please show more details on your plans and supporting information

What private arrangements are you proposing?

Treatment/Additional treatment (relates to package sewer treatment plants, or passive sewage treatment such as a reed bed)
Other private drainage arrangement (such as a chemical toilets or composting toilets)

Please show more details on your plans and supporting information.

Do your proposals make provision for sustainable drainage of surface water? Yes No

Note:- Please include details of SUDS arrangements on your plans

Are you proposing to connect to the public water supply network?

Yes No

If no, using a private water supply, please show on plans the supply and all works needed to provide it (on or off site)

11. Assessment of Flood Risk

Is the site within an area of known risk of flooding?

Yes No

If the site is within an area of known risk of flooding you may need to submit a Flood Risk Assessment before your application can be determined. You may wish to contact your planning authority or SEPA for advice on what information may be required.

Do you think your proposal may increase the flood risk elsewhere? Yes No Don't Know

If yes, briefly describe how the risk of flooding might be increased elsewhere.

12. Trees

Are there any trees on or adjacent to the application site?

Yes No

If yes, please show on drawings any trees (including known protected trees) and their canopy spread as they relate to the proposed site and indicate if any are to be cut back or felled.

13. Waste Storage and Collection

Do the plans incorporate areas to store and aid the collection of waste? (including recycling)

Yes No

If yes, please provide details and illustrate on plans.

If no, please provide details as to why no provision for refuse/recycling storage is being made:

14. Residential Units Including Conversion

Does your proposal include new or additional houses and/or flats?

Yes No

If yes how many units do you propose in total?

Please provide full details of the number and types of units on the plan. Additional information may be provided in a supporting statement.

15. For all types of non housing development – new floorspace proposed

Does your proposal alter or create non-residential floorspace? Yes No

If yes, please provide details below:

Use type:

If you are extending a building, please provide details of existing gross floorspace (sq.m):

Proposed gross floorspace (sq.m.):

Please provide details of internal floorspace(sq.m)

Net trading space:

Non-trading space:

Total net floorspace:

16. Schedule 3 Development

Does the proposal involve a class of development listed in Schedule 3 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008?

Yes No Don't Know

If yes, your proposal will additionally have to be advertised in a newspaper circulating in your area. Your planning authority will do this on your behalf but may charge a fee. Please contact your planning authority for advice on planning fees.

17. Planning Service Employee/Elected Member Interest

Are you / the applicant / the applicant's spouse or partner, a member of staff within the planning service or an elected member of the planning authority? Yes No

Or, are you / the applicant / the applicant's spouse or partner a close relative of a member of staff in the planning service or elected member of the planning authority? Yes No

If you have answered yes please provide details:

DECLARATION

I, the applicant/agent certify that this is an application for planning permission. The accompanying plans/drawings and additional information are provided as part of this application. I hereby confirm that the information given in this form is true and accurate to the best of my knowledge.

I, the applicant/agent hereby certify that the attached Land Ownership Certificate has been completed

I, the applicant /agent hereby certify that requisite notice has been given to other land owners and /or agricultural tenants Yes No N/A

Signature:

Name:

Euan FS Pearson

Date:

12 JUL 2013

Any personal data that you have been asked to provide on this form will be held and processed in accordance with the requirements of the 1998 Data Protection Act.

LAND OWNERSHIP CERTIFICATES

Town and Country Planning (Scotland) Act 1997
Regulation 15 of the Town and Country Planning (Development Management Procedure) (Scotland)
Regulations 2008

FORM 1 OR FORM 2 MUST BE COMPLETED BY ALL APPLICANTS

FORM 1

Form 1 is for use where the applicant is the only owner of the land to which the application relates and none of the land is agricultural land.

I hereby certify that -

- (1) No person other than **myself/the applicant*** was an owner of any part of the land to which the application relates at the beginning of the period of 21 days ending with the date of the application.
- (2) None of the land to which the application relates constitutes or forms part of agricultural land.

Signed _____

On behalf of*

PEARSON PLANNING, CHARTERED SURVEYORS

Date

12 JUL 2013

* Delete where appropriate

FORM 2

I hereby certify that -

- (1) No person other than **myself/the applicant*** was an owner of any part of the land to which the application relates at the beginning of the period of 21 days ending with the date of the application.
- or
- (1) **I have/The applicant has*** served notice on every person other than **myself/the applicant*** who, at the beginning of the period of 21 days ending with the date of the application was owner of any part of the land to which the application relates. These persons are:

Name	Address	Date of Service of Notice

- (2) None of the land to which the application relates constitutes or forms part of agricultural land
- or
- (2) The land or part of the land to which the application relates constitutes or forms part of agricultural land and **I have/the applicant has*** served notice on every person other than **myself/the applicant*** who, at the beginning of the period of 21 days ending with the date of the application was an agricultural tenant. These persons are:

Name	Address	Date of Service of Notice

- (3) **I have/The applicant has*** been unable to give notice to every person other than **myself/the applicant*** who, at the beginning of the period of 21 days ending with the date of the application was owner of any part of the land to which the application relates.
- (3) **I have/The applicant has*** taken reasonable steps, as listed below, to ascertain the names and addresses of the other owners or agricultural tenants and **have/has been*** unable to do so.

Steps taken:

Signed _____

On behalf of* _____

Date _____

* Delete where appropriate

Decision Notice



M_M Quality Homes
c/o Mr Euan Pearson
Pearson Planning
34 New House
67-68 Hatton Gardens
Holburn
London
EC1N 8JY

APPLICATION NUMBER 2013/0173/DET

Refusal of Planning Permission

This decision notice is issued under the Town and Country Planning (Scotland) Act 1997, as amended. It should be read together with the official plans. If any details differ then the decision notice takes priority.

Description of the proposed development:

Amendment to Condition No.1 of planning permission 2009/0156/DET for erection of 19 Holiday Apartments, reception building and associated car parking and landscaping to allow the occupancy to be increased from 90 days to 92 days in any one calendar year

Location of the proposed development:

Land To Rear Of Montrose House, Main Road, Balmaha

The National Park Authority's reasons for refusal are:

This application seeks to amend Condition No.1 of planning permission 2009/0156/DET to enable the occupancy of the holiday apartments to be increased from 90 days to 92 days in any one calendar year.

In considering all the information presented, it is concluded that there is no justification to increase the occupancy from 90 days to 92 days. Condition No.1 remains reasonable and valid, meeting the six tests of conditions outlined in Circular 4/1998. The application is therefore refused.

Plan


The plan to which this decision relates is listed below:

Title	Reference	Date Received
Location Plan		15/07/13

The plan is available to download on the National Park's Online Planning Portal by following the link below:

<http://eplanning.lochlomond-trossachs.org/OnlinePlanning/applicationDetails.do?activeTab=documents&keyVal=MQ2T1OSI09M00>

If you have any problems downloading the plans then please contact the Planning Information Officer on 01389 722 024 or email planning@lochlomond-trossachs.org.



Director of Operations

Date: 4 October 2013

GUIDANCE

This guidance forms part of your Decision Notice. Should you have a specific enquiry regarding this decision please contact the planning officer, Diana Worthy on 01389 722617. If you have an enquiry on a procedural matter please contact the Planning Information Officer on 01389 722 024 or email planning@lochlomond-trossachs.org.

Rights of Appeal or Review

If you, the applicant, are aggrieved by the decision of the planning authority to refuse permission in respect of the proposed development, you 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 on this decision notice. The notice of review should be addressed to:

Local Review Body
Loch Lomond and The Trossachs National Park Authority
Carrochan
Carrochan Road
Balloch
G83 8EG

Reviews can also be submitted online. You must apply using the Notice of Review Form which can be found at www.eplanning.scotland.gov.uk.

If you have any queries or would like a hard copy of the form sent out then please phone the Planning Information Officer on 01389 722 024 or email planning_reviews@lochlomond-trossachs.org.

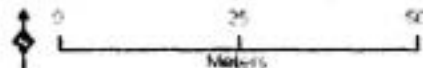
Following submission of the Notice of Review Form, you will receive an acknowledgement letter informing you of the date on which the Local Review Body will consider the case.

Additional Note

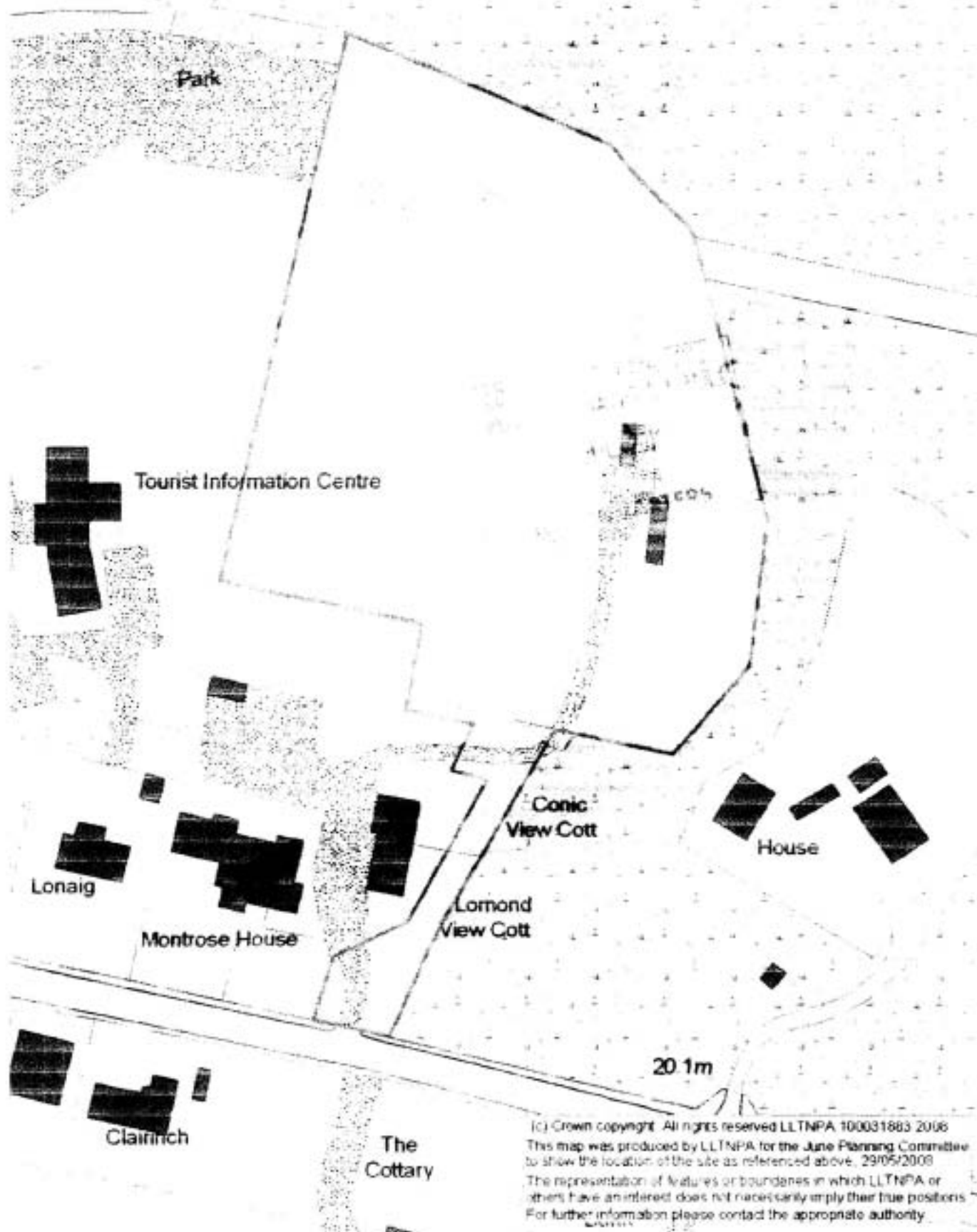
If permission to develop land is refused or granted subject to conditions, whether by the planning authority or by the Scottish Ministers, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably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

Appendix 3 - Location Plan

Land to the rear of Montrose House
2007/0330/DET



2007/0330/DET



(c) Crown copyright. All rights reserved LLTNPA 100031883 2006
This map was produced by LLTNPA for the June Planning Committee to show the location of the site as referenced above, 29/05/2008
The representation of features or boundaries in which LLTNPA or others have an interest does not necessarily imply their true positions
For further information please contact the appropriate authority

Decision Notice



M & M
c/o Bnp Paribas Real Estate
Euan F S Pearson
20 Charlotte Square
Edinburgh
EH2 4DF

APPLICATION NUMBER 2009/0156/DET

Grant of Planning Permission

Loch Lomond & The Trossachs National Park Authority **grants** Planning Permission for the proposal described below, on the application form and on the accompanying plans.

Description of the proposed development:

Erection of 19 Holiday Apartments, reception building and associated car parking and landscaping.

Location of the proposed development:

Land To Rear Of Montrose House, Main Road, Balmaha,

The decision has been made with the following conditions:

- 1 Short-term holiday accommodation: The unit(s) hereby approved shall be used solely for short-term holiday use and not for permanent residential use. The unit shall not be occupied by any one individual or group for a period exceeding 90 days in any one calendar year. A register of occupants details (names and dates of stay) shall be kept and shall be made available to the National Park Authority on request

Note: This condition does not prohibit the letting of units by a management company or other management arrangement on behalf of the owner.

- 2 Agreement of Materials and Specifications: Prior to the commencement of work on site, a detailed specification of the proposed external finishing materials to be utilised on the holiday cottages and reception building, including samples as indicated, shall be submitted to, and agreed in writing by, the Local Planning Authority regarding:

- a) The natural slate and cladding to be used on the roof surfaces of the buildings as approved – sample to be submitted.
 - b) The proposed render finish to the external wall surfaces, cills, mullions and surrounds – a sample render panel a minimum 1.0m by 1.0m to be constructed on site.
 - c) The windows and door units – detailed specification.
 - d) Any facing material to be used on the basecourse of the building or any retaining wall – to be included as part of sample panel under c), as appropriate.
 - e) The colour/treatment/finishes of exposed timberwork – sample required.
 - f) The rainwater goods – detailed specification.
- 3 *Details of Hard Surfacing:* Prior to installation, details (including samples) of the proposed hard surfacing of the car parking area, walkways and the vehicular access road shall be submitted to, and approved in writing by, the Planning Authority. This submission shall address the inclusion of permeable surfacing relative to the implementation of the 'Sustainable Urban Drainage System'.
 - 4 *Implementation Utilising Agreed Materials:* The specification and materials as may be approved in accordance with the above conditions shall thereafter be undertaken and used respectively in the completion of the project, prior to the proposed development being brought into use.
 - 5 *Lighting Details:* Prior to installation, details of the design and positioning of any outdoor lighting shall be submitted to, and approved in writing by, the Planning Authority.
 - 6 *Protection of Existing Trees:* No tree shall be topped, lopped or felled other than those specifically identified on the landscape design plan prepared by Kathleen McIndoe-Jenkins and which comprises part of this permission or other than with the further prior approval of the Local Planning Authority. Trees shall be protected during the course of the development by the erection of 1m high [chestnut pale] fencing not less than 3 metres from the base of any tree or shrub or by such other means of protection as shall be agreed in writing with the Local Planning Authority. No storage of building materials, engineering operations or piling of soil shall take place within the protected areas established pursuant to this condition.
 - 7 *Submission of Landscaping Management Plan:* Prior to the commencement of work on site, a management plan pertaining to all of the landscaped area associated with the development shall be submitted to, and agreed in writing with, the Local Planning Authority. This shall include a maintenance schedule to address a minimum period of five years subsequent to the completion of the development and implementation of new landscaping.
 - 8 *Details of Trees /Shrubs to be Planted:* Notwithstanding the details on the landscape design plan as approved, the further landscaping submission as required in accordance with condition 9 above, shall include details of the nursery stock size of the tree species specified to be planted. This further information shall be submitted to, and agreed in writing by, the Local Planning Authority prior to the implementation of the landscaping works.
 - 9 *Implementation of Landscaping Scheme:* The supplementary landscaping as approved in accordance with the landscape design plan prepared by Kathleen McIndoe-Jenkins which forms part of this permission shall be implemented within the first available planting season following any of the holiday letting units becoming available for habitation or such alternative period or revision that may be agreed in writing with the Local Planning Authority.
 - 10 *Further Details of SUDS Scheme:* Prior to the commencement of work on site, further detailed design drawings of the scheme for the treatment and attenuation of surface water shall be submitted and approved in writing by the Planning Authority in consultation with Scottish Water, SEPA and the Roads Authority as appropriate. This submission shall reflect

the information outlined on the approved drainage plan, drawing No07108-D1RevA.

- 11 Implementation of SUDS Scheme: The detailed scheme as may be further approved in accordance with Condition No 12 shall be implemented prior to the development as approved becoming operational.
- 12 Implementation of Improved Access: The upgraded entrance and access to the car parking area of the development site as approved shall be completed to full specification prior to the commencement of any other operations on site covered by the terms of this planning permission.
- 13 Route for Construction Vehicles: Construction traffic shall utilise the access as formed in accordance with condition No 14 and shall specifically not access the site through the existing courtyard between Montrose House and the dwellings known as Lomond and Conic View.
- 14 Achievement of Sightlines: The alterations to the boundary features necessary, to achieve the clear visibility standard of 2.5m x 70m to the west of the vehicle access, as specified by Stirling Council as Roads Authority in their consultation response dated 13th July 2008, shall be undertaken in accordance with the supplementary plans as submitted and having regard the timescale specified in Condition No 14.
- 15 Construction of Vehicle Access: The section of the vehicle access route as cross hatched in blue on the approved plans shall be constructed utilising the "no dig" method as specified on drawing No 07108-D1 RevA by LN Henderson Consulting Engineers, which comprises part of this permission.
- 16 Delineation of Parking Provision and Phasing: The parking provision as identified on the approved plans shall be clearly set out and delineated on the ground prior to any of the holiday letting units as approved becoming operational. The method of delineating the bays shall be agreed in writing with the Planning Authority prior to the bays being set out.

The National Park Authority's reasons for imposing these conditions are:

- 1 The proposal has been assessed as a tourism development and the approval of permanent residence(s) would be contrary to the policies contained in the adopted development plan.
- 2 To ensure that the external appearance of the development complements the rural village character of the area and that the buildings are best assimilated into the landscape.
- 3 To ensure that the visual appearance of the proposed hard surfacing within the site complements the built form and the natural environment. In addition, to ensure that the proposed surfacing has due regard to the aim of achieving controlled run off from the site in accordance with sustainable drainage aims and flood prevention.
- 4 To ensure the implementation of the development in accordance with the further details as may be approved in compliance with the conditions attached to this permission.
- 5 In the interests of visual amenity, to ensure that the design and positioning of light units at the site complements the built-form and to prevent excess levels of illumination which may detract from the rural qualities of the area.
- 6 To provide protection for the remaining trees and shrubs at the site to ensure their continued contribution to the character and appearance of the area.

- 7 To ensure that the provision is made for supplementary landscaping for the site, to reinforce the site boundaries with additional planting of appropriate type, character and maturity to best integrate the development with its surroundings and to best address matters of screening and privacy as appropriate. To ensure that provision is made for the health and maintenance of the landscaping scheme, as may be agreed, in order that it may become an established feature making a positive contribution to the development.
- 8 To ensure that the provision is made for supplementary landscaping for the site, to reinforce the site boundaries with additional planting of appropriate type, character and maturity to best integrate the development with its surroundings and to best address matters of screening and privacy as appropriate. To ensure that provision is made for the health and maintenance of the landscaping scheme, as may be agreed, in order that it may become an established feature making a positive contribution to the development.
- 9 To ensure the timeous implementation of the agreed landscaping works.
- 10 To secure a sufficient level of information to fully assess the proposed surface water treatment and control system in order to ensure that a standard of development is achieved to enable the development to be assimilated within the rural area and National Scenic Area.
- 11 To ensure the timeous implementation of the SUDS scheme.
- 12 To ensure the timeous upgrading of the vehicle access in the interests of highway safety.
- 13 To avoid unacceptable levels of nuisance to neighbouring proprietors as a result of noise and vibration associated with construction vehicle movements.
- 14 In the interests of visual amenity to ensure that the wall as reconstructed continues to contribute to the visual qualities of the established streetscape.
- 15 In order to minimise the level of damage and disruption to the roots of trees located in close proximity to the vehicle access in order that they may continue to contribute to the character of the area.
- 16 To ensure the appropriate and timeous designation of parking at the site in a manner which will enhance the character of the area.

Planning Obligations

The Section 75 Agreement dated 26 October 2010 relating to the above development, has been signed on the basis of the following clause:

- The owner undertakes to submit to the Planning Authority the full details of all proposed hard and soft landscape works within the Development Site in the form of a Landscape Plan. The Landscape Plan must be approved in writing by the Planning Authority prior to the commencement of the Development. Thereafter, the owner undertakes to manage and maintain the Development Site in accordance with the provisions of the Landscape Plan in all time coming.

Any proposed variation of the Landscape Plan will require to be approved by the Planning Authority.

Informatives

Duration of permission: In accordance with section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended), this permission lapses on the expiration of 3 years beginning from the date of this permission, unless the development to which this permission relates is begun before that expiration.

Notification of Initiation of Development: Under section 27A of the Town and Country Planning (Scotland) Act 1997 (as amended) the person undertaking the development is required to give the planning authority prior written notification of the date on which it is *intended to commence the development*. We recommend this is submitted 2 weeks prior to the start of work. A failure to submit the notice, included in the decision pack, would constitute a breach of planning control under section 123(1) of that Act, which may result in enforcement action being taken.

Notification of Completion of Development: As soon as practicable after the development is complete, the person who completes the development is required by section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended) to give written notice to the planning authority of the completion of the building works. As before, there is notice for you to complete for this purpose included in the decision pack. In larger, phased developments, a notice of completion is to be submitted as soon as practicable after each phase is finished by the person carrying out the development.

Reason for Decision

The proposal complies with Policies E14, B19, B20 and Proposal BALM.B1 of the Stirling Council Local Plan 1999.

List of Plans

Title	Number	Date on Plan	Date Received
Site Plan/Location Plan	07/102/09/pl02b	May '07	30/07/09
Site Plan	07/102/09/pl01d	May '07	30/07/09
Section/ Site Plan	07/102/pl04	July '07	05/06/09
Floor Plan - ground	07/102/09/pl04	Mar '09	05/06/09
Ground Floor Plan – 1 of 2	07/102/09/pl05	Mar '09	05/06/09
Ground Floor Plan – 2 of 2	07/102/09/pl06a	Mar '09	05/06/09
First Floor Plan – 1 of 2	07/102/09/pl07	Mar '09	05/06/09
First Floor Plan – 2 of 2	07/102/09/pl08a	Mar '09	05/06/09
Elevations plan – 1 of 2	07/102/09/pl10	Mar '09	05/06/09
Elevations plan – 2 of 2	07/102/09/pl11a	Mar '09	05/06/09
Elevations Colour Plan	07/102/09/pl12	May '09	05/06/09
Section elevation plan	07/102/09/pl13	May '09	05/06/09
Drainage layout plan	07108-D1 Rev.A	13/08/07	05/06/09
Landscape Plan	Rev E	n/a	30/07/09
Artist's Impression	n/a	n/a	05/06/09



Director of Planning and Rural Development

Date: 6 January 2011

This decision notice is issued under the Town and Country Planning (Scotland) Act 1997, as amended by Section 20 of the Planning Etc. (Scotland) Act 2006. It should be read together with the accompanying plans; if any details differ, then the decision notice takes priority.

Sub-Destination	Visitor Destination Management Strategy	Tourism Opportunities/Constraints
The Parkways	<p>The parkways include the great journey experiences through the National Park, specifically:</p> <ul style="list-style-type: none"> • A82 (Balloch to Tyndrum) • A84/85 (Callander to Tyndrum) • A83/A815 (Tarbet to Dunoon) • West Highland Rail Line • West Highland Way • National Cycle Route 7 <p>These routes offer a range of opportunities to enjoy the scenic qualities of the Park as part of the journey experience. There are opportunities to enhance this through infrastructure improvements.</p>	<ul style="list-style-type: none"> • Support improvements to existing visitor infrastructure and facilities along these routes. • Use opportunities from infrastructure upgrades to road and rail networks to deliver improvements that enhance the visitor experience (such as new lay-by provision, vegetation management). • Support infrastructure improvements that encourage modal shift to buses, boats, cycling and walking.

Policy TOUR2 Supporting and Retaining a Range of Quality Tourism Accommodation

(a) New Tourism Accommodation

New tourism development will be assessed against Policy TOUR1 and the Supplementary Planning Guidance on Design. Policies L1 and D1, concerning landscape and design matters, will be particularly important considerations.

(b) Maintenance and Management of Tourism Accommodation

The planning authority will require to be satisfied that arrangements for the long-term management and maintenance of features such as landscaping, woodland, or a communal drainage scheme, on new holiday accommodation developments will be put in place, including, where appropriate, by means of a legal agreement.

The occupancy of new holiday letting developments will be controlled by conditions that limit the length of residency.

Proposals for new tourism accommodation potentially suitable for permanent residential use or as second homes may require to be accompanied by a business plan.

Reason for Policy

Development proposals for tourism accommodation must be high quality and contribute to improving provision across all sectors, year-round tourism, lengthening visitor stays and supporting visitor management objectives. Development must be carefully located, sited and designed to ensure that it does not compromise the special qualities of the Park and in particular *fragment important features*. Within settlements or small rural communities, this may be less of a consideration. However the layout and design will still be important in terms of the scale and nature of the development. This policy seeks to ensure new accommodation capacity contributes as fully as possible to the tourism economy and the enjoyment of the Park and is sensitively operated and managed.

There has been pressure in the past to use accommodation originally intended for tourism use as permanent residential dwellings or second homes and this policy seeks to control this. In rural locations this raises issues in relation to housing in the countryside and can also result in buildings being vacant for long periods and taking on a more permanent residential character. It is important that the ongoing management and maintenance of whole sites is retained to ensure that the integrity of landscaping and other site features is respected as part of the continued operation of the site. Larger developments may be required to prepare a five-year management plan.



Pearson Planning Chartered Surveyors < london@pearsonplanning.co.uk >

RE: 2013/0173/DET Land to the Rear of Montrose House, Balmaha

Diana Worthy < diana.worthy@lochlomond-trossachs.org >

Fri, Aug 23, 2013 at 5:22 PM

To: "london@pearsonplanning.co.uk" <london@pearsonplanning.co.uk >

Cc: Bob Cook <bob.cook@lochlomond-trossachs.org >

Dear Euan,

Just to let you know that I am finishing up on annual leave today and will not be back in the office until Monday 23rd September. I will be passing your application over to a colleague to deal with in my absence.

Regards, Diana

From: london@pearsonplanning.co.uk [mailto:london@pearsonplanning.co.uk]

Sent: 12 August 2013 15:38

To: Diana Worthy

Subject: Re: 2013/0173/DET Land to the Rear of Montrose House, Balmaha

Dear Madam

I read *nothing* in Local Plan policy TOUR2 that states that 92 days is an unacceptable length of residency. Therefore, it is baffling as to how you can be minded to refuse the application after 16 days. The fact that this is a 'local' application, with no automatic right of appeal, that shouldn't be used as a tool to ensure that 90 days limit is ruthlessly imposed.

I'm happy to hear how the '90' figure was arrived at.

If it is a reasoned justification, then my client will consider withdrawing the current application.

Sincerely

Pearson Planning, Chartered Surveyors

Sent using BlackBerry.

From: Diana Worthy <diana.worthy@lochlomond-trossachs.org >

Date: Mon, 12 Aug 2013 14:13:13 +0000

To: 'Pearson Planning Chartered Surveyors' <london@pearsonplanning.co.uk >

Cc: Bob Cook <bob.cook@lochlomond-trossachs.org >

Subject: RE: 2013/0173/DET Land to the Rear of Montrose House, Balmaha

Dear Euan,

Thank you for your email and I note your comments below. For the avoidance of doubt, I would clarify that I am initially minded to refuse the application after undertaking a policy assessment of the application. This initial assessment does not prejudice the planning process as the National Park's local plan and supporting documentation guides our planning decisions. Nevertheless, I acknowledge that there remains a statutory period of time in which responses may be received from interested parties in relation to this application, and these responses will be used to inform my final officer recommendation.

Regards, Diana

Diana Worthy

Planner (Development Management)

Loch Lomond & The Trossachs National Park

Direct: 01389 722617

www.lochlomond-trossachs.org

From: Pearson Planning Chartered Surveyors [mailto:london@pearsonplanning.co.uk]

Sent: 31 July 2013 20:58

To: Diana Worthy

Subject: Re: 2013/0173/DET Land to the Rear of Montrose House, Balmaha

Dear Madam

This is an application under s42 of the Act.

If the proposal is acceptable, planning permission is granted without the aforementioned condition.

In granting the application, a new planning permission is created.

I draw your attention to another planning appeal, PPA-400-227, that clearly shows that this is the correct interpretation.

The planning permission would come with a statement confirming that planning permission expires after 3 years.

This is not a request to vary the extant permission under s32A.

That does not require submission of an application.

In pre-application discussion, the Authority, said it would not agree to such a variation.

Contrary to what you suggest, it is not possible to "renew" permission 2009/0156/DET .

The reasoning behind the s42 application has been fully explained in the accompanying lengthy letter.

Your determination must follow s25 of the Act.

I appreciate that you were not involved in planning appeal PPA-002-2006, so you can be forgiven for misunderstanding what happened.

The appeal was against refusal of an application. That decision was taken by the Committee, contrary to recommendation of the Director. The recommendation included draft conditions. Condition No.1 contained the 90 days occupancy restriction.

The Appellant did not dispute imposition of this condition, when asked to comment by the Reporter.

The Reporter, therefore, did not venture an opinion on the acceptability of the condition.

To use your words, there was no "scrutiny" of the condition.

The DM Regulations require you to advertise this s42 application in a newspaper circulating locally (r20).

The public are given 14 days within which to make submissions (starting 2nd August).

Consultees are also allowed at least 14 days within which to respond.

The following are statutory consultees under r25: SEPA, the Community Council, and the roads authority.

You are prejudicing this process by stating in an email, after only 16 days from validation, that you will recommend refusal.

Yours faithfully

Pearson Planning

34 New House

67-68 Hatton Gardens

Holburn
London
EC1N 8JY

bettertogether

Pearson Planning, Chartered Surveyors

RICS Regulated Firm No.716764

On Wed, Jul 31, 2013 at 5:14 PM, Diana Worthy <diana.worthy@lochlomond-trossachs.org> wrote:

Dear Euan,

I am writing to you in regards to the above application which we validated on 15 July 2013.

Having reviewed the information provided, I would like to advise you that my officer recommendation is to refuse the application to increase the occupancy restriction from 90 days to 92 days (Condition 1 of 2009/0156/DET). I acknowledge that this is a standard condition that the Park Authority has attached to approved planning applications in recent years. The wording is appropriate and it does not restrict the use of the building(s) to only a 90 day occupancy, rather to restricts each individual/group to a maximum 90 day occupancy per calendar year. This provides an appropriate letting period and ensures that the building(s) is not used as a permanent dwellinghouse(s) by any one individual or group. The condition remains relevant and up to date, meeting the 'tests' of being a condition. I would also note that this condition was attached to a planning application which was recently considered by a Scottish Government appointed Reporter on appeal, and withstood this scrutiny, the application being approved (Planning Appeal Reference: PPA-002-2006).

I note that had I been minded to approve the current application, this would not have extended the duration of the original planning permission (2009/0156/DET). Having taken legal advice on the matter, in the absence of the application specifically applying for amendment of the duration of the planning permission, the original period would remain effective. 2009/0156/DET will expire on 6 January 2014 unless it is lawfully implemented prior to this date.

In considering the above situation, we would be supportive of you withdrawing the current application and as a gesture of good will, we are willing to transfer the fee incurred towards a new application for the renewal of 2009/0156/DET. If you are not agreeable to this, my alternative option will be to continue to process the application and determine it with my recommendation for refusal.

I am happy to discuss these options further with you and look forward to receiving further instruction on how you would like us to proceed with the current application.

Regards, Diana

Seasonal Occupancy Conditions

111. Occasionally it may be acceptable to limit the use of land for a particular purpose to certain seasons of the year. For example, where planning permission is being granted for a caravan site, the planning authority may think it necessary to impose a condition to ensure that during the winter months the caravans are not occupied and are removed for storage to a particular part of the site or away from the site altogether. Where such a condition is imposed, particular care should be taken to see that the condition allows a reasonable period of use of the caravans in each year. A similar approach may be taken where it is necessary to prevent the permanent residential use of holiday chalets, which by the character of their construction or design are unsuitable for continuous occupation. Seasonal occupancy conditions may also be appropriate to protect the local environment, or example, where the site is near a fragile habitat which requires peace and quiet to allow seasonal breeding or winter feeding to take place.

* **Holiday Occupancy Conditions**

112. In recent years there has been an increased demand for self-catering holiday accommodation - whether new buildings (including mobile homes) or converted properties - which may be constructed to a standard that would equally support permanent residence in some comfort. But this accommodation may also be located in areas in which the provision of permanent housing would be contrary to national policies on development in the countryside or not in accordance with development plan policies, or both. The Secretary of State considers that the planning system should respond to these changes without compromising policies to safeguard the countryside.

113. There may be circumstances where it will be reasonable for the planning authority to grant planning permission for holiday accommodation as an exception to these policies, with a condition specifying its use as holiday accommodation only. For example, conversions of redundant buildings into holiday accommodation where conversion to residential dwellings would not be permitted may reduce the pressure on other housing in rural areas. A holiday occupancy condition would seem more appropriate in those circumstances than a seasonal occupancy condition. But authorities should continue to use seasonal occupancy conditions to

ANNEX

prevent the permanent residential use of accommodation which by the character of its construction or design is unsuitable for continuous occupation, particularly in the winter months.

Delegated Report
Report of Handling

Application Number:	2013/0173/DET
Location:	Land To Rear Of Montrose House Main Road Balmaha
Proposal:	Amendment to Condition No.1 of planning permission 2009/0156/DET for erection of 19 Holiday Apartments, reception building and associated car parking and landscaping to allow the occupancy to be increased from 90 days to 92 days in any one calendar year
Case Officer:	Diana Worthy
Target Decision Date:	14 Sep 2013
Decision Level:	Delegated

1. Introduction:

This application relates to a 1ha site located immediately to the east of the public car park and National Park Visitor Centre in Balmaha. The site comprises principally a former playing field previously associated with Montrose House, which is a substantial, red sandstone villa with a frontage to the B837. The land was last in use as a playing field at the time when Montrose House was in use as an outdoor centre. The building has since been converted to a number of flats and is in separate ownership.

In 2011, planning permission was approved for the erection of 19 holiday apartments, reception building and associated car parking and landscaping on the application site (2009/0156/DET). At the time of writing this report, the conditions associated with the planning permission had not been discharged and the development had not commenced on site.

This application seeks to amend Condition No.1 of planning permission 2009/0156/DET to enable the occupancy of the holiday apartments to be increased from 90 days to 92 days in any one calendar year.

2. Relevant Planning History

- S/93/0094/OUT – Erection of 12 holiday chalets granted Dec 1993.
- S/97/0339/DET - Permission granted August 1999 for the erection of 17 holiday letting apartments.
- 2003/0358/DET – Erection of 16 holiday letting units and managers house - granted April 2005 (*note that this permission remains 'live' and could be implemented*)

- 2007/0330/DET - Erection of 23 holiday units – refused June 2008 – appeal dismissed Jan 2009.
- 2009/0156/DET - Approve subject to Section 75 - 21 September 2009: Erection of 19 Holiday Apartments, reception building and associated car parking and landscaping.

3. Policy Context

National Park Aims

The four statutory aims of the National Park are a material planning consideration. These are set out in Section 1 of the National Parks (Scotland) Act 2000 and are:

- (a) to conserve and enhance the natural and cultural heritage of the area,
- (b) to promote sustainable use of the natural resources of the area,
- (c) to promote the understanding and enjoyment (including enjoyment in the form of recreation) of the special qualities of the area by the public and
- (d) to promote sustainable economic and social development of the area's communities.

National Park Local Plan (Adopted 2011)

Relevant Policies:

- Policy TOUR2 Supporting and Retaining a Range of Quality Tourism Accommodation

Other Material Considerations

National Park Partnership Plan (2012-2017)

Relevant Policies:

- RD Policy 2: Spatial Development Strategy

4. Consultations

None.

It is noted that the planning officer who processed 2009/0156/DET, consulted Buchanan Community Council, Scottish Water and Stirling Council Roads. It is considered that these consultees would not have an interest in relation to the current application regarding the change in occupancy from 90 to 92 days (Condition No. 1 of 2009/0156/DET). It is however noted that all statutory consultees are able to view the Park Authority's 'weekly list' on our website and can provide comments on any application should they wish to do so. On this basis, no comments were received.

5. Summary of Representations

At the time of writing this report, only one objection had been received by a neighbour. In relation to Condition No. 1, they state that they 'see no reason why this application should have any preference over other holiday lets and would think that the National Park's 90 days occupancy policy is more than generous for holiday letting'. It is noted that other comments were made in relation to the proposed access road and trees; flood risk; and site car park/entrance although these issues are not pertinent to this current application regarding Condition No. 1.

6. Summary of Supporting Information

- Copy of Decision Notice for 2009/0156/DET
- Cover letter from Applicant (Euan FS Person, Pearson Planning) providing justification for application (dated 12 July 2013).

7. Planning Assessment

This application seeks to amend Condition No.1 of planning permission 2009/0156/DET to enable the occupancy of the holiday apartments to be increased from 90 days to 92 days in any one calendar year.

Local Plan Policy TOUR2 states that 'the occupancy of new holiday letting developments will be controlled by conditions that limit the length of residency'. This is to ensure that accommodation

originally intended for tourism use is not used as permanent residential dwellings or second homes.

Condition No.1 of planning permission 2009/0156/DET states:

1. ***Short-term holiday accommodation:*** *The unit(s) hereby approved shall be used solely for short-term holiday use and not for permanent residential use. The unit shall not be occupied by any one individual or group for a period exceeding 90 days in any one calendar year. A register of occupants details (names and dates of stay) shall be kept and shall be made available to the National Park Authority on request.*

Note: This condition does not prohibit the letting of units by a management company or other management arrangement on behalf of the owner.

REASON: The proposal has been assessed as a tourism development and the approval of permanent residence(s) would be contrary to the policies contained in the adopted development plan.

It is noted that the above condition is the 'model' holiday accommodation occupancy condition which the Park Authority attaches to all new approved holiday lets, in accordance with Policy TOUR2.

The applicant's cover letter states that his client wishes to restrict the occupancy to a period of 92 days to allow each apartment to be let either for a contiguous period of 13 weeks or 3 months, noting that the current condition will result in the apartments being empty for short periods due to discontinuity of bookings. He states that his client has no difficulty with the policy provisions of local plan Policy TOUR2. Rather, the issue is that the local plan does not take account of Circular 4/1998 – particularly that the planning authority in imposing a condition regarding holiday occupancy should ensure that such a condition 'allows a reasonable period of use'. The applicant states that it is not clear how the 90 day limitation has been derived.

Condition No. 1 is a standard condition and is included in the Park Authority's 'Model Conditions and Informatives Manual' which is updated as necessary. The condition was revised in 2009 to its current wording. This revision enabled the condition to be explicit and provide a more up to date approach to the occupancy of holiday lets within the National Park. The condition also enables a reasonable degree of flexibility, as the revised wording ensures that the condition does not prohibit the letting of units by a management company or other management arrangement on behalf of the owner. The condition allows each holiday let to be occupied all 365 days of the year, although any one individual or group can only occupy the holiday let for a total of 90 days within a year – this is to ensure that the building is not used as a permanent dwelling or second home. Any one individual or groups' period of occupancy can be for a continuous 90 days or spread out over the calendar year, and this can be monitored through a register of occupants' details as required by the condition.

The Park Authority is of the view that the 90 day limit is a 'reasonable' occupancy period, consistent with Circular 4/1998. Indeed, the preceding version of this condition, which was previously attached to similar approved planning permissions on the application site, only permitted occupancy twice a year for a maximum of 28 days (refer to 2003/0358/DET and 2007/0330/DET). As far as the Planning Officer is aware, this is the first time the 90 day limit has been questioned by an applicant and it could be surmised that this is an indication that the condition is fair, reasonable and appropriate. The Park Authority considers that Condition No.1 meets the six tests of conditions as outlined in Circular 4/1998.

The applicant's cover letter states that this type of self-catering holiday accommodation suits families or groups for non-short term stays, and lets are operated on the basis of week(s) or months. The figure of 90 days does not divide by 7 days (a 1 week booking). Weekly lets run from Friday afternoon (3pm) to Friday morning (11am), and therefore the operator would lose revenue while the let sat empty awaiting the arrival of the next occupier. However, on the basis of this justification it is not clear why the applicant is seeking to extend the time period to 92 days as this is also not divisible by 7 days (a 1 week booking).

It is noted that there is currently no holiday accommodation business in operation on the site as the development approved under 2009/0156/DET is yet to be built. Therefore, a business plan or supporting statement has not been provided to evidence that the condition of a 90 day occupancy limit is causing the holiday let operator to lose revenue. Notwithstanding, if the business was in operation, there still remains no valid justification for the occupancy period to be extended to 92 days.

The adjacent neighbour, who objects to the application, states that they see no reason why this application should have any preference over other holiday lets and would think that the National Park's 90 days occupancy policy is more than generous for holiday letting. On the basis of the above planning assessment, the Planning Officer agrees with these comments.

In considering all the information presented, it is concluded that there is no justification to increase the occupancy from 90 days to 92 days in any one calendar year. Condition No. 1 of 2009/0156/DET remains reasonable and valid, meeting the six tests of conditions outlined in Circular 4/1998. It is therefore recommended to refuse the application.

Recommendation: Refuse**Planning Obligations**

N/A

Reason for Decision

This application seeks to amend Condition No.1 of planning permission 2009/0156/DET to enable the occupancy of the holiday apartments to be increased from 90 days to 92 days in any one calendar year. In considering all the information presented, it is concluded that there is no justification to increase the occupancy from 90 days to 92 days. Condition No.1 remains reasonable and valid, meeting the six tests of conditions outlined in Circular 4/1998. The application is therefore refused.

List of Plans

Title	Reference	Date Received
Location Plan		15/07/13

Informatives

N/A

Signed:
Diana Worthy
Development Management Planner

Dated:
30 September 2013