

Portmoak Community Council

Draft Minutes of a Meeting held to discuss business in private in accordance with para 11(h) of its Constitution, Monday 15th May 2017 at 8.00PM.

Note this meeting was held in three parts on:

- A. Monday 15th May at 08.00pm at Greenhead of Arnot. **Attendance:** Cllrs: M Strang Steel (Chairman) B Calderwood (Deputy Chair and Treasurer); R Cairncross (Secretary); S Forde; D Morris; A Robertson and T Smith;
- B. Monday 22nd May at 02.00pm at Greenhead of Arnot. **Attendance:** Cllrs M Strang Steel (Chairman) B Calderwood (Deputy Chair and Treasurer); R Cairncross (Secretary); D Morris; A Robertson and T Smith. Apologies: Cllr S Forde;
- C. Monday 29th May at 7.00pm at Portmoak Village Hall. **Attendance:** Cllrs: M Strang Steel (Chairman); R Cairncross (Secretary); S Forde; A Robertson and T Smith. Apologies: Cllrs B Calderwood (Deputy Chair and Treasurer) and D Morris.

The CC's deliberations at these meeting were further informed by reports of CC representative meetings with:

- D. *Wendy MacPhedran (past Chair CC) and Alistair Smith (past Secretary CC)* held on Sunday 21st May 2.30pm at Greenhead of Arnot: Present Cllrs M Strang Steel (Chairman) and R Cairncross (Secretary).
- E. *John Stephen, Director A & J Stephen* held on Monday 22nd May at 11.00pm at A & J Stephen Perth: present Cllrs M Strang Steel (Chairman), R Cairncross (Secretary) and T Smith.
- F. *Peter Marshall and John Russell (Perth and Kinross Council)* held on Tuesday 23rd May at 09.00am at Perth and Kinross Council, Perth: Present Cllrs M Strang Steel (Chairman), R Cairncross (Secretary), D Morris, and B Calderwood.
- G. *Supplementary Information.* The CC also took into account supplementary information supplied by the applicant to planning application 17/00680/IPL (erection of a dwelling house 50 metres south of 9 Bishop Terrace). The CC had been notified of the application on 2nd May and had been advised that that the general period for consultation expired on 19th May. The supplementary information became available to the Community Council on 22nd May.

Monday 15th May 2017 at 8.00pm at Greenhead of Arnot - Community Council (CC) Meeting:

1. **Approval of Previous Minutes.** The Minutes of 9th May were approved subject to the following amendment to 5.3.1 New Applications 17/00680/IPL *Land 50 Meters South of 9 Bishop Terrace Kinnesswood: Erection of a dwelling house and formation of an access track (In Principle)*. The sentence "This contract underpinned the Ballot on which the views of the community had been sought in May 2015." was replaced by the sentence "A ballot on the views of the community as to how the CC should react to this was held in May 2015."

2. **Review of the arrangements to take forward proposals for Stephen's Field.**

The CC considered the new planning application 17/00680/IPL taking into account the 2008 contract it had with A & J Stephens, the result of the 2015 Ballot and comments made at the CC meeting of 9th May. It was plain that the validity of the Ballot had been called into question. The application itself was sparse and lacked reference to any arrangement whereby transfer of the substantial part of the "Field" to the ownership of the CC would follow planning consent for a single house on the retained plot. The contract appeared capable of different interpretations in respect of what would trigger transfer of ownership of the larger part of the "Field" to the CC.

The CC noted that, if planning consent for this application was refused, it could explore ownership of the Field (either in total or in part) through a possible Compulsory Purchase Order or through a community buyout. They currently held no information that could sustain either approach.

The CC determined that, before taking a decision on how to respond to the planning application, it would seek to clarify how the contract should be interpreted.

Action.

To seek clarity on the matters raised, the CC will seek meetings with A & J Stephen and with Perth and Kinross Council. A further meeting with Wendy MacPhedran (past Chair CC) and Alistair Smith (past Secretary CC) was thereafter also sought.

The meeting of the CC was adjourned and would be reconvened in the light of these meetings

Monday 22nd May at 2.00pm 2017 at Greenhead of Arnot - reconvened CC meeting:

3. Meeting with Wendy MacPhedran and Alistair Smith

The Chairman reported on the meeting he and the secretary had had with Wendy MacPhedran (past Chair CC) and Alistair Smith (past Secretary CC) on 21st May.

The initial presentation to the CC dealing with the transfer of land from A & J Stephen to the CC in February 2006 was probably at Stephen's instigation. In that presentation it was made clear that Stephens wished to retain a part of the field. In June 2006 the CC, having decided that the offer of transfer should be pursued, sought by questionnaire the views of the community on how it wanted to manage the ground. The only endowment discussed with Stephens was the £5,000 which was the figure estimated by FWAG for putting the field in order and is included in the contract. There was a second questionnaire of the whole parish in April 2007. Out of 84 replies, 3 wanted to leave the field in Stephens ownership and the others wanted to have it transferred either to a charitable trust or to the CC. 12 of the 84 asked that the retained plot be included in the transfer. In July 2007 Stephens wrote to the CC explaining that they wanted to retain the plot for a possible house site. They accepted that the CC could object to anything they proposed. In early 2008 there was discussion as to whether Stephens would apply for 9 or 10 houses on H20 (Whitecraigs final phase). They opted for 9.

The CC had thought all along that the transfer was to be conditional only on planning for 9 houses on H20. It was admitted that at the time 10 houses on the retained plot (which is what the plain meaning of the contract is) slipped past them. They had had no contact with the planners throughout.

The CC had consistently made two assumptions: (i) that the condition was always meant to relate only to the development on H20 (Whitecraigs Phase 2) and (ii) that more than one house would/could not be built on the retained plot.

Action.

Whether deliberate or not there appeared to have been errors in the contract. These were matters that now would be taken forward in discussions with A & J Stephen.

4. Meeting with John Stephen.

The Chairman reported on the meeting he, the Secretary and CClr T Smith had had with John Stephen, Director A & J Stephen on 22nd May.

John Stephen had stated that on advice he had received the 2008 contract between A & J Stephen and the CC was "dead." He acknowledged that the definition of the "Proposed Development" in the contract erroneously referred to ground to the northwest (the retained Plot), when it should have referred to the south west (Whitecraigs). John Stephen made plain that A & J Stephen will now honour the "thrust" of the contract by transferring to the CC the balance of Stephens field if

its planning application in principle for a single house on the “Retained plot” was granted. The CC sought confirmation of that in writing and clarity on how such an undertaking could be underwritten in law.

John Stephen explained that, if the application is approved, it would be the intention of A & J Stephen to sell the plot to a known interested party either as it is, or more probably having built a house for him on it first. It had never been the intention of A & J Stephen nor had it ever been considered to build more than one house on the plot despite its size. A & J Stephen would accept a planning restriction preventing sub-division of the plot for more than one house.

John Stephen confirmed that if the application was refused it will simply hang on to the ground and in due course, which might be 10 or 20 years away, apply for permission to develop the whole field. He explained that, looking at a map of Kinnesswood, it is logically the next area of expansion for the village.

The Chairman explained that, given that background, the Community Council would reserve its position over the effect of the 2008 contract. The understanding of the parties at the time was, as A & J Stephen acknowledged, that the suspensive condition only applied to the “Proposed Development” on Whitecraigs. The CC’s position is that there is not one error in the definition of “proposed development” but two. Further to the error in orientation, A & J Stephen had lodged an application for the development of Whitecraigs in 2008 - some months before the contract with the CC was signed off for nine houses rather than ten. Its position had been further explained in the letter of 18th June 2009 from James Lochhead of A & J Stephen which stated that the majority of the hill land would be transferred to the CC after all necessary consents for 9 houses had been granted.

The Chairman asked if A & J Stephen would consider transferring the ground (less the retained plot) to the CC now. John Stephen confirmed that that that would be a Board decision. As the Board would meet the following week the Chairman asked for the matter to be put before the Board.

Action.

The CC acknowledged that it had to await a response from A & J Stephen.

Three other matters were discussed.

First, the landscape plots in Whitecraigs. John Stephen reported that progress was being made towards these being handed over for maintenance to PKC, although that was not yet settled in respect of the plots in Whitecraigs phase one.

Second, ownership of the path along the golf course boundary. The CC regarded this as a liability and if A & J Stephen want to transfer that to the CC along with the Field there would have to be an increase in the endowment. John Stephen said that there might be a possibility of transferring it to PKC along with the other landscape plots.

Third, the matter of taking forward the Kinnesswood in Bloom project on a piece of land on the main road close to the golf club house in Kinnesswood which is owned A & J Stephen. Mr Stephen noted that there had been delays with the completion of a lease and said he would chase up the lawyers. He suggested that KIB contact him directly to ensure a timely and supportive response.

5. The supporting statement to the planning application 17/00680/IPL.

This statement which had now been lodged with PKC and was considered. It contained material information but it had been lodged outwith the consultation period. At the meeting with the planners the CC representatives would ask that either the application be withdrawn and resubmitted or that it be readvertised for consultation when full information is available.

Action.

To pursue matters concerning Stephen's Field raised in this meeting with the Perth and Kinross Council.

The meeting of the CC was adjourned and would be reconvened following the meeting with Perth and Kinross Council.

Monday 29th May at 7.00pm 2017 at Portmoak Village Hall - reconvened CC meeting:

6. Code of Conduct for Community Councillors.

The Chairman drew councillors' attention to the Code of Conduct which bound all community councillors. He referred to the Principle of "Objectivity" which stated: *"In all your decisions and opinions as a community councillor, you must endeavour to represent the overall views of your community, taking account of information which is provided to you or is publicly available, assessing its merit and gathering information as appropriate, whilst laying aside personal opinions or preferences."*

7. Meeting with Perth and Kinross Council

The Chairman reported on the meeting he, the Secretary and Cllrs D Morris and B Calderwood had had with Perth and Kinross Council (Peter Marshall and John Russell of the Environment Service - Planning) on 23rd May.

The status of the planning application in light of the late submission of significant material information by A & J Stephen was reviewed. CC representatives reported that the supplementary information to application 17/00680/IPL, submitted by the agent of A & J Stephens - EMAC Planning LLP, had only come to the notice of the CC on 22nd May after the statutory period for consultation had closed. This information was critical to the planning application. PKC acknowledged that it had also been advised of this late submission at the same time the CC had learned of it. It was acknowledged that the information was highly relevant to the agreement that A & J Stephen were intent on pursuing and that there were flaws in it - not least that no site for the proposed single house on the "Retained plot" had been shown. This was relevant as the argument for granting consent turned on application of the Council's Housing in the Countryside policy; in particular provision for consent to be granted under accepted and identified "Building Groups." PKC acknowledged that there were problems with the application and would, further to discussion with A & J Stephen, consider what action to take and advise the CC accordingly.

In general discussion the possibility of PKC leading a Compulsory Purchaser Order for the entire Field was raised but, in light of the circumstances and the criteria likely to be applied, this was thought to be highly unlikely. Whether or not a community buyout for the Retained plot could progress would depend in the first instance on whether such an approach was deemed admissible by Scottish Ministers and whether in due course funding could be found.

Action.

The CC agreed that no action would be taken pending a response from both A & J Stephen and Perth and Kinross Council to the matters raised.

8. Planning:

1. New applications:

- a) 17/00756/FLL Land 20 metres east of Carraigen Leslie. Erection of a dwelling house. No Comment.
- b) 17/00505/ADV. Poet's House, The Cobbles, Kinnesswood, Kinross. Display of sign. No comment.
- c) (16/00680/FLL) (Removal of Condition 2 - visibility splays). Request to CC from PKC to consider removal of its objection to the removal of condition 2 in respect of the consent

already granted for application (14/01482/FLL): the erection of a dwelling house at 50 metres SE of Moucums View, Leslie, Road Scotlandwell. Matter deferred to Council meeting on 13th June.

9. AOCB: None.

10. Date of next Meeting: The next meeting of Portmoak Community Council will be held at **7.00pm on Tuesday 13th June** in Portmoak School Kinnesswood. The Chairman thanked everyone for their attendance and the Meeting closed at 8.40pm.