

**REGULATORY PANEL: 30 MARCH 2023**

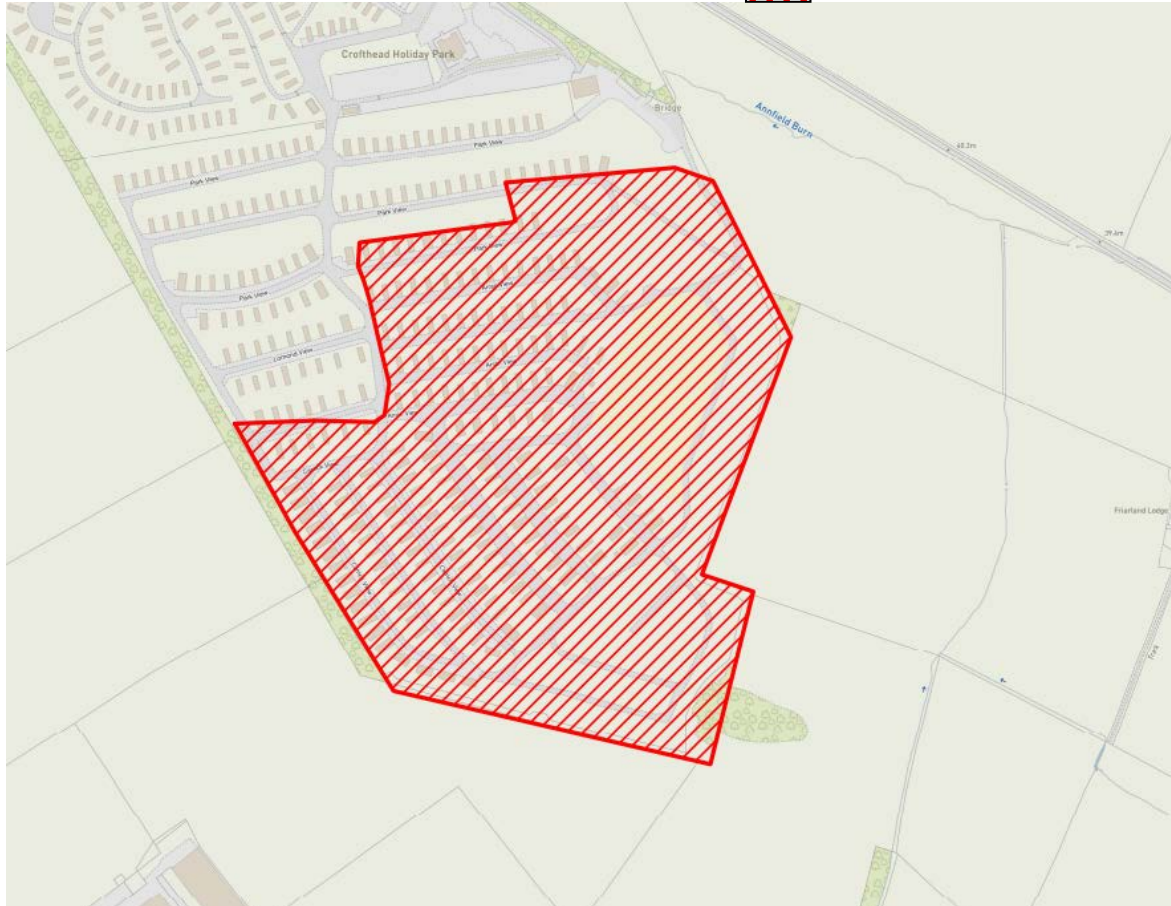
**REPORT BY HOUSING, OPERATIONS AND DEVELOPMENT DIRECTORATE**

**22/00929/FURM**

**CROFHEAD CARAVAN PARK C74 FROM B742 NORTH EAST OF BOWMANSTON TO A70 AT OLD TOLL AYR SOUTH AYRSHIRE KA6 6EN**

**Location Plan**

**APPLICATION SITE** 



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**Summary**

This application is made under Section 42 of the Town and Country Planning (Scotland) Act 1997, to seek permission to remove specific conditions associated with an earlier related planning permission Ref. 15/01231/APPM on the same site. The existing planning permission to which this Section 42 planning application relates to was for a change of use of agricultural land to form an extension to the existing caravan site on the eastern and southern side of the wider Crofthead Holiday Caravan Park and it was approved at the Council's Regulatory Panel on the 11<sup>th</sup> of April 2016. This planning application granted was subject to a suite of conditions which included conditions which limited the total number of caravan units consented, restrictions on the locations in which the caravan units/rows could be placed within the site and requirements for a revised structural landscape scheme.

Following review of the wider caravan park site as part of a separate and unrelated planning history review in May 2022, the Planning Service identified discrepancies between the approved development layout subject to application 15/01231/APPM and the development 'as built' and largely implemented on this part of the site. It was established that the alternative layout as being built on site did not conform to the specific terms of some of the conditions on the earlier planning permission 15/01231/APPM and was of a different development layout and arrangement and increased density in terms of the overall number of caravans permitted. This current Section 42 planning application has been submitted by the applicant and agent in response to this and the timeline from when these works first started in 2018 until the submission of this application are set out in detail within the 'Section 1.3 Planning Enforcement History' of the Panel Report.

## **Regulatory Panel (Planning): 30 March 2023**

Report by Housing, Operations and Development Directorate (Ref: 22/00929/FURM)

In summary, the application has been made on the basis that the applicant and their appointed agent consider that despite the non-compliance with the terms of certain conditions attached to the permission, the alternative layout and development density as largely built on the application site is still in overall terms acceptable for the site. As part of this, they have provided justification as to why they consider it acceptable for them to not comply with the terms of the conditions of the earlier planning permission Ref. 15/01231/APPM and why the site has the capacity and capabilities to host a layout and density of caravans which differs from that which was consented through the terms of the conditions attached to planning permission application Ref. 15/01231/APPM.

All previous consultees consulted as part of the earlier planning permission Ref.15/01231/APPM have been re-consulted as part of this Section 42 planning application with no objections raised. The application has also been subject to neighbour notification and public advertisement with no formal representations received from any parties at the time of writing this report.

Having considered and reviewed the conditions in question and more broadly the differences between the development layout that has been built out on site in comparison to the approved layout subject to the earlier planning application granted, it is considered that the development (subject to environmental mitigation) does still fundamentally remain in conformity with the relevant policies of the statutory development plan framework, and it is considered that the proposal is capable of favourable consideration against the terms, criteria and requirements of both NPF4 and LDP2 as a result of mitigation secured through the Section 42 application process. On this basis, it is agreed to remove Conditions 1, 2, 3, 4, 6, 8, 9 and 11, with the reasons set out for this detailed in the Panel Report below.

## REPORT BY HOUSING, OPERATIONS AND DEVELOPMENT DIRECTORATE

**REGULATORY PANEL: 30 MARCH 2023**

|                         |   |
|-------------------------|---|
| <b>SUBJECT:</b>         | <b>SECTION 42 PLANNING APPLICATION REPORT</b>   |
| <b>APPLICATION REF:</b> | <b>22/00929/FURM</b>  |
| <b>SITE ADDRESS:</b>    | <b>CROFTHED CARAVAN PARK<br/>C74 FROM B742 NORTHEAST OF BOWMANSTON TO A70 AT OLD TOLL<br/>AYR<br/>SOUTH AYRSHIRE<br/>KA6 6EN</b>      |
| <b>DESCRIPTION:</b>     | <b>SECTION 42 APPLICATION TO REMOVE PLANNING CONDITIONS 1, 2,<br/>3, 4, 6, 8, 9, 10 AND 11 OF PLANNING CONSENT REF. 15/01231/APPM</b> |
| <b>RECOMMENDATION:</b>  | <b>APPROVAL WITH CONDITIONS</b>   |

### APPLICATION REPORT

This report fulfils the requirements of Regulation 16, Schedule 2, paragraphs 3 (c) and 4 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013. The application is considered in accordance with the Council's Scheme of Delegation as well as the Procedures for the Handling of Planning Applications.

#### 1. Proposal:

##### 1.1 Site Description

The application site sits within and forms part of the wider Crofthead Holiday Park and comprises of approximately 13.2 hectares on the south-eastern side of the park itself. The wider site comprises of an existing and established holiday caravan park (with approximately 350 caravans in situ and occupied through earlier consents) alongside a few remaining parcels of agricultural land to the south at Crofthead. It is relevant to note that the extent of the holiday park as built out alongside the existing park boundary (comprising approximately 26 hectares) is Council owned with a long-term lease agreement being in place from 2006 for the applicant to operate and manage the site.

The wider park is located to the south of the Masonhill Crematorium and approximately 0.5km to the east of the A77 trunk road and vehicular access to the site is obtained from an existing entrance which feeds of the C-class minor road that runs from the A70 past the Crematorium. The application site itself rises in height from the north where it forms a plateau and then the site then slopes away to the southern portion of the site, with areas of more level and low-lying land behind the hillside. Due to this topography, the caravan park is visible from outwith the application site.

At present, the application site has already been largely 'built out' and developed with a number of caravan rows and units in situ and a large number of these already sold off and now occupied with holiday users and occupants. Development work on the site initially commenced sometime in 2018 and has progressed extensively across the site since then. At the time of writing this report, 198 physical caravan units are in place on the site and occupied for holiday use purposes, with a remaining 30 caravan plot bases and pitches prepared and awaiting the introduction of the actual physical caravan units. The internal road networks, services, ancillary infrastructure and landscaping have also primarily been implemented and installed throughout the site, with the exception of the southwest and southeast corner which has only been partially developed.

Notwithstanding the extent of the works undertaken across the application site and the advanced stage of 'build out' at this time, it is the case that the layout and density of the development implemented to date does not comply with the terms of planning application Ref. 15/01231/APPM with regards to the specific conditions attached to the permission relating to a variety of different matters. It is for this reason that this Section 42 application has been submitted and all of this is considered in more detail in the proceeding sub-sections of Section 1 below.

## 1.2 Planning Application History

The land subject to this application relates to a much larger site to the north, west and south which has an extensive planning history to it. The location plan supplied as part of this Section 42 planning application provides clarification on the extent of the surrounding land leased by the applicant/site operator from the Council (area delineated by the blue boundary) and which forms part of the wider Crofthead Holiday Caravan Park. Details of the planning history for the wider holiday caravan park situated which form this area on the Location Plan are set out below for context:

- 03/01601/COU - Change of use of agricultural land to form extension to existing caravan park. (Permitted).
- 05/00718/COU - Change of Use of agricultural land to form extension to existing caravan park. (Permitted).
- 10/01443/APP - Change of use of agricultural field to form extension to caravan park including siting of 30 static caravans and associated services. (Permitted).
- 11/01146/APP - Change of use of agricultural land to form extension to caravan park with associated services. (Permitted).
- 13/00686/APP - Change of use of agricultural land to form extension to caravan park with associated services. (Withdrawn).
- 13/01340/APP - Change of use of agricultural land to form extension to caravan park with associated services. (Permitted).
- 14/00660/APP - Change of use of agricultural land to form extension to caravan park. (Permitted).
- 14/01156/APP - Change of use of agricultural land to form extension to caravan park. (Permitted).
- 14/01667/APP - Change of use of agricultural land to form extension to caravan park. (Permitted).
- 15/01231/APPM - Change of use of agricultural land to form extension to caravan site. (Permitted).
- 19/00078/APP - Erection of a facilities block, and associated works to form a car park (Permitted).
- 22/00483/APPM - Change of use of field to form extension to an existing holiday park to site an additional 150 holiday lodges. (Pending Consideration).

Most notable of these for this current Section 42 planning application is planning permission application; Ref. 15/01231/APPM and this application is of direct relevance to this current Section 42 application noting that it relates to the same application site and that it is the conditions of this specific planning permission which are sought to be removed through this current application.

The proposals subject to this earlier planning permission application sought the change of use of agricultural land to form an extension to Crofthead Holiday Caravan Park, indicatively showing the siting of 242 static caravans/lodges and associated services. In effect, the proposal involved the extension, by approximately 13.2 hectares, incorporating 242 new pitches of the existing caravan site along its existing southern built out boundary.

Following review and consideration of this application at this time, the Planning Service established that the development proposals in their original submitted form would not be acceptable in terms of their impact on the locality of the site on both visual and landscaping grounds. Notwithstanding this, it was considered that the proposals would not adversely impact on the rural landscape setting or amenity of the locality with the use of conditions to ensure structural landscaping to filter and screen the development and the deletion of a number of plots and rows of caravans from more prominent locations within the site, reducing the overall density of the development as a result.

On this basis, 13 conditions were proposed in total, and this included conditions which excluded specific plots and rows of caravans in visually sensitive areas within the site, which sought additional structural landscaping and planting, and which secured adequate arrangements to be in place regarding the maintenance of the roadside hedge which abuts the site. It should be noted that the condition which excluded certain plots being built meant that the overall number of caravans that could be consented was to be reduced to 197 as opposed to the 242 originally applied for and Condition 3 of 15/01231/APPM secured this.

This planning application was considered at the Council's Regulatory Panel on the 12<sup>th</sup> of August 2016, and it was approved subject to all of the aforementioned conditions.

### 1.3 Planning Enforcement History

As previously set out, it is relevant to note that much of the development works subject to this application and the request for removal of the conditions have already been undertaken on this application site and the issues relating to the differences between the development approved through planning application Ref. 15/01231/APPM and the layout and density of what has/is being built on site have already been subject to a review by the Planning Service previously, with development works on site commencing some time in 2018.

Discrepancies on this particular part of the wider caravan park site were first identified by the Planning Service in December 2018 and a formal enforcement case and record (Council reference 19/00029/COND) was created at this time. Following on from this, there was a review of the extent of the differences to establish a course of action noting that conditions on the earlier approved application 15/01231/APPM were not being complied with. At this time and following the initial review, it was established that approximately 40 caravan units had been installed in locations and positions which were in conflict with the related planning application Ref. 15/01231/APPM. As part of this review, the Planning Service also identified that a number of the conditions attached to application Ref. 15/01231/APPM had never been formally discharged and this was despite evidence of written requests from the applicant and their agent in October 2016 to discharge a number of the suspensive conditions associated with the permission.

Between December 2018 and July 2019, the enforcement review involved extensive discussions between the applicant, their appointed agent, the Planning Service and a number of internal Council consultees and as part of this a series of site visits, meetings and consultations exercises were undertaken. The aim as set out in the various correspondence issued by the Planning Service at the time was to look to regularise the breach of conditions that had taken place and work in conjunction with both the applicant and their agent to identify the best way to minimise any further impact from the alternative layout being implemented. As is in keeping with the Planning Services approach at that time, it is relevant to note that no formal enforcement or stop notices were served by the Planning Service to either prevent the applicant from continuing to develop the site or to insist on the reinstatement of the site and land to its previous condition. Instead, the initial conclusion reached by the Planning Service at the end of July 2019 following input from the Council's Legal Services, was for the applicant and agent to submit a Section 42 planning application to consider the different layout and a revised landscape scheme for the site in relation to the conditions it was in conflict with. Underpinning this approach was a recognition that it would be unlikely that given the extent of development works undertaken at that time, that the Planning Service would be able to successfully secure the restoration needed in environmental terms and that therefore, the Section 42 application would be utilised to secure enhanced landscape to mitigate the unauthorised works to an acceptable level.

Despite the proactive engagement between parties that took place between December 2018 and July 2019 and a route being identified to address the unauthorised development layout, the progress of this enforcement assessment and review was halted by the COVID-19 pandemic and the correspondence and records available indicate that a period of almost 2 years passed before this matter picked up again and was continued by the Planning Service. When governmental COVID-19 restrictions started to ease and this enforcement case was able to be picked up again by the Planning Service in November 2020, it became apparent that further development work had taken place on the application site in the intervening period which further departed the 'as built' development layout on site from the conditions and layout approved as part of planning application Ref. 15/01231/APPM. At this time and noting the extent of the additional physical changes that had taken place on site between the 2-year time period, this reinforced the Section 42 application as the only reasonable option, with the aim still being to mitigate the 'as built' layout to a point of acceptability. On this basis, the Planning Service once again requested a Section 42 planning application to consider the removal of conditions that were not being complied with as part of the 'as built' development on the site. It should be noted that the Planning Service requested at this time that the applicant and their appointed agent engaged with them before formally submitting the Section 42 planning application in order to agree whether it sufficiently covered the extent of non-compliance identified through the enforcement review.

In the months following the Section 42 submission being confirmed and agreed as the appropriate course of action, there were significant personnel changes and the majority of the members of the Planning Service who were directly involved in this particular enforcement review left the Council. Unfortunately, there are no records beyond the request in November 2020 from the Planning Service to understand if any further discussions took place. The applicant continued to develop the site with both a recognition and an awareness that they were implementing a different and unauthorised development scheme than that which was consented through application 15/01231/APPM. As part of this, unconsented caravan bays continued to be formed and caravan units continued to be brought into the site and placed in locations which were not permitted and without the submission of a Section 42 application to try and regularise them.

This continued until the middle of July 2022 where members of the Planning Service through a completely independent and unrelated planning history review of the wider caravan park indirectly re-discovered the same discrepancies previously identified between what had been approved through application Ref. 15/01231/APPM. Through a fresh review and search of the site history the existing enforcement case was identified. From review of the content of this enforcement case, this allowed the Planning Service to gain an understanding of the chronology and timeline of the assessment undertaken between December 2018 and November 2020. As summarised above and this provided a baseline and starting point for re-commencing this review from a planning enforcement perspective.

The Planning Service in July 2022 instructed the applicant to submit a Section 42 planning application without any further delay and this was subsequently submitted in November 2022. Requesting a Section 42 application not only represented a consistent approach with the outcome of the previous review of the Planning Service between the end of 2018 until the end of 2020 but it was also seen as one of the only effective procedural planning mechanism option in the current circumstances to regain a degree of control and influence over the situation on the site, to formally consider the merits of the extent of the difference of the unconsented works and how much of a departure these represented from the conditions attached to the earlier consent granted for the site and to secure further mitigation where established as appropriate.

#### 1.4 Proposals subject to this Section 42 Planning Application

The proposals subject to this Section 42 planning application seeks to remove conditions attached to the earlier related planning application Ref. 15/01231/APPM and it has been submitted in response to the fact that the site is being developed in a different layout than that which obtained consent through the terms of conditions of planning application Ref. 15/01231/APPM.

From identifying the nature and characteristics of the differences between the approved and 'as built' layouts, it was established that conditions 1, 2, 3 and 4 of planning permission Ref. 15/01231/APPM are of particular relevance as these are the conditions which limited the location and positioning of caravan units/rows, the overall number of caravan units consented and the arrangements for structure planting, landscaping and hedge management. In turn, it is these conditions which have primarily not been complied with when looking at the development 'as built' and implemented on the site.

The application seeks to remove these same conditions and by virtue of this, obtain permission for the alternative 'as built' layout on the site which differs from that envisaged under the conditional approval for application 15/01231/APPM. In summary, the 'as built' layout comprises of the following differences:

- A different development layout from that previously approved through the conditions of the permission.
- A layout which includes siting caravan units in most of the locations and positions which had been deleted and identified as 'no build' zones by Condition 2.
- A layout which goes beyond the limitation of 197 caravan plots total as specified in Condition 3.
- A layout that has a total of 228 caravan pitches, comprising 198 pitches with physical caravan units already sited and being occupied for holiday accommodation use and 30 pitches already prepared and awaiting physical caravan units (at the time of writing this report).
- A layout which includes alternative planting and landscaping concurrently with the siting of caravans.
- A layout with an alternative road geometry and layout.

The applicant and their appointed agent have submitted this Section 42 application as they consider that despite the clear non-compliance with the terms of Conditions 1, 2, 3 and 4 attached to the earlier permission, the alternative layout, the re-positioning of caravans and the increase in caravan plot density and volume 'as built' on the application site is still in overall terms acceptable. To substantiate this position, they have provided specific justification as to why they consider it acceptable for them to not comply with the terms of the conditions of the earlier planning permission Ref. 15/01231/APPM and why the site has the capacity to host a layout and density of caravans which differs from that which was consented through the terms of the conditions attached to planning permission application Ref. 15/01231/APPM. In support of this Section 42 application, they have provided a series of comparison drawings and plans, a Planning Statement, a Landscape and Visual Impact Assessment (LVIA) and a revised landscape scheme for the site.

In addition to seeking to justify the acceptability of the alternative developments non-compliance with the primary conditions of relevancy to this Section 42 application (e.g, Conditions 1, 2, 3 and 4) which relate to the layout, the density and the structure planting approved as part of the earlier planning permission Ref. 15/01231/APPM, the applicant and their appointed agent has also sought to utilise this Section 42 planning application to remove other conditions which they consider no longer apply for various different reasons and circumstances. This includes Conditions 6, 8, 9, 10 and 11 and these relate to matters associated with an archaeological watching brief, a hedge management plan, a lighting strategy, existing, proposed and finished levels and a construction methods statement.

The exact terms and wording of each of the conditions of planning permission application Ref. 15/01231/APPM and which are relevant to this Section 42 planning application alongside a consideration and assessment of the reasons proposed for their removal are set out in full in the Assessment section below.

### 1.5 Planning Procedure Matters

#### Council's Scheme of Delegation

This Section 42 planning application is a 'Major' scale application under the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009. As previously set out, it also relates to a previous 'Major' development application (Council Reference; 15/01231/APPM) to extend the caravan park which was considered at the Council's Regulatory Panel, and this consented layout and density now differs in terms of the 'as built' development physically implemented on site. On this basis, under the Council's Scheme of Delegation, this Section 42 application requires to be presented to Regulatory Panel for both consideration and determination.

#### Environmental Impact Assessment (EIA) Regulations

In terms of EIA Regulations, it is relevant to note that this Section 42 planning application was submitted without an EIA Screening Opinion being sought from the applicant either before or at the same time as it was lodged. Regulation 11 requires the Planning Authority to screen any application received without an EIA Report where it appears to them that it is either Schedule 1 or Schedule 2 development and no Screening Opinion or Screen Direction has previously been issued.

The proposed development that the conditions related to falls within the auspices of one of the criteria of Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, namely, 'holiday village/hotel complexes outside urban areas and associated development project which exceeds 0.5 hectares'. On this basis and accordance with Regulation 11 of the EIA Regulations, the Planning Service have undertaken their own screening of the application against the criteria of Schedule 3 (Council Reference; 22/01078/EIASCRC). The conclusion reached is that the development subject to this planning application is not an EIA development and in turn this confirmed that this application did not require to be accompanied by an EIA Report.

#### Proposal of Application Notice (PAN)

In accordance with the Development Management Procedure Regulations, a Proposal of Application Notice (PAN) did not require to be undertaken or submitted as part of this Section 42 planning application. The PAN process for the earlier related parent planning permission application 15/01231/APPM has been fulfilled.

#### Design & Access Statement

In accordance with the Development Management Procedure Regulations, this type of application (Section 42 planning application) is exempt from the requirement to provide a Design and Access Statement. The Design and Access Statement for the earlier related parent planning permission application 15/01231/APPM has been fulfilled.

**2. Consultations:**

- **Scottish Environmental Protection Agency (SEPA):** No objections.
- **Scottish Water:** No objections.
- **Nature Scot:** No objections.
- **West of Scotland Archaeological Service (WoSAS):** No objections.
- **Ayrshire Roads Alliance (ARA):** No objections subject to conditions.
- **South Ayrshire Council Biodiversity and Ranger Services:** No objections subject to conditions.
- **South Ayrshire Council Environmental Health Service:** No objections.
- **South Ayrshire Council Development and Advice Officer:** No objections subject to conditions.
- **South Ayrshire Council Economy and Regeneration Service:** No response at the time of writing this report.
- **Visit Scotland:** No response at the time of writing this report.
- **Carol Anderson Landscape Associates Ltd:** No objections subject to conditions.

In the interests of both consistency and transparency, all consultees consulted as part of the earlier planning permission application 15/01231/APPM which the conditions subject this Section 42 application relate to have been formally consulted as part of this current application.

In addition to this, Carol Anderson Landscape Associates Ltd has also now been formally consulted as an external Landscape Architect and Adviser to give an independent, professional review of the 'as built' development from a visual and landscape perspective. Their findings and recommendations have informed the Planning Services overall position, and this is set out in the assessment section below.

Furthermore, and to comply with Section 23 of the Planning (Scotland) Act 2019 which now applies, it is relevant to note that all ward Councillors, MSPs and MPs have been formally notified about this Section 42 application.

**3. Submitted Assessments/Reports:**

In assessing and reporting on a planning application the Council is required to provide details of any report or assessment submitted as set out in Regulation 16, Schedule 2, para 4(c) (i) to (iv) of the Development Management Regulations.

This Section 42 planning application has been accompanied by a Planning Supporting Statement, a Landscape and Visual Impact Assessment and a series of other plans including the plans which formed part of the earlier permission Ref.15/01231/APPM (to allow for comparisons) alongside topographical and levels plans, cross sections, landscaping plans and 'as built' site plans of the current alternative layout and development as implemented on site. It should be noted that following a request from the Planning Service (and consultees to the process), the landscape plans have been updated and the originals as proposed have been superseded.

**4. S75 Obligations:**

In assessing and reporting on a planning application (including an application made under Section 42) the Council is required to provide a summary of the terms of any planning obligation entered into under Section 75 of the Town and Country Planning (Scotland) Act in relation to the grant of planning permission for the proposed development.

**None.**

**5. Scottish Ministers Directions:**

In determining a planning application (including an application made under Section 42), the Council is required to provide details of any Direction made by Scottish Ministers under Regulation 30 (Directions requiring consultation), Regulation 31 (Directions requiring information), Regulation 32 (Directions restricting the grant of planning permission) and Regulation 33 (Directions requiring consideration of condition) of The Town and Country Planning (Development Management Procedure)(Scotland) Regulations 2013, or under Regulation 50 (that development is EIA development) of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017.

**None.**



## **6. Representations:**

No representations have been received at the time of writing this report.

It is relevant to note that as revised plans and drawings for additional landscaping and changes to the site layout were submitted as part of this application (which constituted new, material information in the context of this proposal), this application was subject to a further public advertisement beyond the original one undertaken when this Section 42 application was first submitted. This is in line with Section 32A Subsection 4) of the Town and Country Planning (Scotland) Act 1997.

## **7. Assessment:**

The considerations in the assessment of this Section 42 application are primarily the merits of the removal of the conditions considered in the context of the statutory development plan framework comprising of Local Development Plan 2 (LDP2) and National Planning Framework 4 (NPF4) (Part 7.1) below) alongside material considerations which include the planning application and planning enforcement history, the impact of the proposal on the amenity of the locality and the consultation responses and input received (Part 7.2) below).

### **7.1 Statutory Development Plan Framework**

#### *7.1.1 National Planning Framework 4*

On 13th February 2023, Scottish Ministers published and adopted National Planning Framework 4 ('NPF4'). NPF4 sets out the Scottish Ministers position in relation to land use Planning matters and now forms part of the statutory development plan, along with the South Ayrshire Local Development Plan 2 ('LDP2') (adopted August 2022).

Sections 25(1) and 37(2) of The Town and Country Planning (Scotland) Act 1997 (as amended) indicates that in making any determination under the Planning Acts, regard is to be had to the development plan. The determination shall be made in accordance with the plan unless material considerations indicate otherwise. The application is determined on this basis.

Legislation states that in the event of any incompatibility between a provision of NPF4 and a provision of an LDP, whichever of them is the later in date is to prevail (The Town and Country Planning (Scotland) Act 1997 ("the 1997 Act"); Section 24(3)). NPF4 was adopted after the adoption of LDP 2, therefore NPF4 will prevail in the event of any incompatibility.

In this specific case, the application has been submitted under Section 42 of the Act. Section 42(2) of the Act requires that the Planning Authority shall consider only the question of the conditions subject to which the previous permission was granted. The principle of the proposed development cannot therefore be reconsidered as part of this assessment and due weight also requires to be given to the specific terms of the conditions sought for removal when considering the applicable policies of the statutory development plan.

The following policies of NPF4 are relevant in the assessment of the application and can be viewed in full online at <https://www.gov.scot/publications/national-planning-framework-4/>.

- Policy 3 Biodiversity
- Policy 6 Forestry Woodland and Trees
- Policy 14 Design, Quality and Place
- Policy 22 Flood Risk and Water Management
- Policy 29 Rural Development
- Policy 30 Tourism

The following policies of the South Ayrshire Local Development Plan 2 are relevant in the assessment of the application and can be viewed in full online at [Local development plan 2 - South Ayrshire Council \(south-ayrshire.gov.uk\)](https://www.south-ayrshire.gov.uk):

- LDP Policy Spatial Strategy
- Strategic Policy 1: Sustainable Development
- Strategic Policy 2: Development Management
- LDP Policy: Tourism
- LDP Policy: Landscape Quality
- LDP Policy: Preserving Trees
- LDP Policy: Water Environment
- LDP Policy: Flood and Development
- LDP Policy: Air, Noise and Light Pollution
- LDP Policy: Land Use and Transport

In essence, NPF4 and the policies which apply in the context of this development proposals subject to the application as scheduled above largely overlap with the policy considerations and requirements of LDP2. Whilst there are some differences in specific criteria requirements within certain policies, it is not considered that any of these would constitute an apparent material policy conflict or contradiction which would require a particular policy of NPF4 to be considered in place of a policy in LDP2.

The provisions of NPF4 and LDP2 must be read and applied as a whole, and as such, no single policy of either should be read in isolation. In this context, the principle of development has already been established through the earlier planning permission application granted (15/01231/APPM) and as such the policies referenced above are only considered in so far as how they relate to the consideration on the scope of works and development associated with the conditions which are sought to be removed respectively. This Section 42 application has been considered in this context below and the relevant aspects of the policies of NPF4 and LDP2 have informed the assessment below.

As previously outlined, this Section 42 application has been submitted to remove conditions attached to the parent planning permission Ref.15/01231/APPM. The assessment of the current application in relation to the conditions of permission 15/01231/APPM is set out below with each condition sought for removal through this Section 42 application scheduled out and a response to it set out below it in bold. The conditions relevant to this application follow the same chronology and sequence as set out on the decision notice for 15/01231/APPM.

1. That the development hereby granted shall be implemented in accordance with the approved plan(s) as listed below and as forming part of this permission unless a variation required by a condition of the permission, or a non-material variation has been agreed in writing by the Planning Authority.

Reason: To ensure that the development is carried out in accordance with the approved plans unless otherwise agreed.

**The applicant seeks to remove this overarching condition on the basis that they consider that the alternative 'as built' development on this site (which differs from the layout, density and arrangements from that approved under Ref. 15/01231/APPM), is still in overall terms acceptable in planning terms.**

**As part of this, the Planning Statement and the Landscape and Visual Impact Assessment provided makes a number of points which seek to demonstrate that despite non-compliance with the terms of permission Ref. 15/01231/APPM and more specifically Condition 1 above which stipulated a specific requirement for the development to be implemented in accordance with the approved plans, that the alternative 'as built' is still suitable for positive consideration by the Council.**

**For the reasons set out below (in response to Conditions 2, 3 and 4) it is considered that this broad and overarching Condition 1 can be removed as part of this Section 42 application.**

2. That, notwithstanding the provisions of Condition 1, above, no permission is hereby granted for indicative plots/stances as defined on drawing "Plot numbering 1 to 242 - dated January 2016" and numbered 1 - 3; 10 - 11; 25 - 34; 162 - 167; 174 - 179; 141 - 155; 203; and 210 - 211 (inclusive), unless otherwise agreed, in writing, with the Planning Authority.

Reason: To clarify the terms of this permission and in the interests of visual amenity and to ensure a satisfactory standard of local environmental quality.

The applicant seeks to remove this condition on the basis that they consider that the 'as built' development layout despite building over and across the majority of the plots which was prohibited by Condition 2 above, is acceptable subject to justification. As part of this, through their Planning Statement and the Landscape and Visual Impact Assessment (LVIA), they make a case that the 'as built' development has no more of a landscape impact than the layout approved under Condition 2. The supporting information also seeks to evidence that Condition 2 would not have had the desired effect as intended, that not building on the plots deleted would not have achieved the outcome sought and through specific examples and that the alternative 'as built' development layout implemented on site is not significantly more impactful (to a point of unacceptability) in visual or landscape terms than the layout and development consented through earlier planning permission Ref. 15/01231/APPM.

In the Planning Statement, it acknowledges that the development layout is different to the layout that was previously approved, and reference and acceptance is made to the clear departure from the consented layout which approved caravan rows following the contours of the landscape to them being implemented in a more rigid and straight-line arrangement. Notwithstanding this, they contest that the alignment and layout of the pitches in continuous straight lines is more compatible with the layout relating to the existing site comprising of approximately 300 caravans and that this arrangement is consistent with the layout approved by the Planning Service for extensions in the western parts of the site. They also consider that the 'as built' layout has other benefits and is more efficient in terms of the provision of drainage and access roads and to provide level bays over a larger area and that it has also allowed spacing to increase from the previous layout to between 6m and 8m between each caravan plot.

In terms of the specific rows that were prohibited to be developed on by Condition 2 but have now been built over through the 'as built' alternative development layout, the applicant seeks to address this directly in the Planning Statement and LVIA. As previously noted, they firstly argue that deleting the plots would not have had the intended effect sought by the Planning Service at the time and through examples and assessment they seek to make the case that irrespective of the applicant complying with the terms of Condition 2, the extension granted would have still have notably and materially impactful effect on the skyline and surrounding environment and landscape.

In relation to the first line of units as built on the north side that were deleted in the 2015 application, the agent sets out that the approval still allowed a row of units behind this which were at a higher level and that this example raises questions about the purpose and role of Condition 2. To substantiate this, they reference the cross sections drawing provided as part of this application (Appendix 4 of the LVIA) which highlights the first row which is the original historical consented site had a Finished Floor Level (FFL) of 53.9m, that the second row 'as built' which were deleted had an FFL of 56m, and that the row behind that which was previously consented which is situated on the FFL of 57.7m. They argue that there is no obvious logic around the decision to prohibit units at a specific height then allow others at a higher height in the row behind, particularly when the purpose of the condition was to prevent the development from affecting the skyline. In addition to this, they also go to provide examples which further questions the logic and role of Condition 2 in preventing development on the higher parts of the site which are more visible. This is considered in detail in the LVIA, and the agent quotes some examples which they consider demonstrates the lack of logic and effect of Condition 2 and more specifically how the condition essentially let rows of caravans behind the deletions which are at a higher level than others deleted. The examples cited includes:

- Pitches 1-3 and 10-11 which were deleted by Condition 2, but this still left pitches 4-9 in the exact same row as being acceptable.
- Pitches 210-211 which were deleted by Condition 2, but this leaves pitches 212-220 in the exact same row as being acceptable.

Looking at the merits of Condition 2 of Ref. 15/01231/APPM as set out above, this defines the plots where permission was not granted for caravan bays/stances to be formed on site. As part of the condition, it specifically references approved 'Plot Number 1 – 242 (Jan 2016)' which is a plan which forms part of the approved consent. The plots which did not form part of the permission as deleted through this condition were 1-3, 10-11, 25-34, 162-167, 174-179, 141-155, 203 and 210-211. From comparing the locations of these plots on 'Plot Number 1 – 242 (Jan 2016)' plan to the 'as built' site layout plan supplied as part of this Section 42 application, it is apparent that the condition has not been adhered to. With the exception of plots 1-3 and 10-11, the cross-checking and comparison exercise between the two plans shows that caravan bays/stances have been/are being formed as part of the 'as built' alternative layout on top and across all other plots which were explicitly denied permission through this condition.

On this basis and noting the purpose and role of Condition 2, the central consideration for the potential acceptability of the removal of this condition is to assess the existing and current landscape and visual impact of the park and development and establish whether the 'as built' layout, is acceptable as a result of the case and justification presented by the applicant. As part of this, consideration requires to be given to whether the 'as built' layout unacceptably impacts landscapes and views which were previously unaffected and/or whether it intensifies the impacts on landscapes and viewpoints which were already accepted as being impacted when the original permission granted to an unacceptable level or extent.

To be able to consider this, the Planning Service and the Council's external professional Landscape Architect and Adviser have undertaken site visits and subsequent desktop assessments to understand of the current situation and the extent and visual reach of the park and 'as built' development site from the surrounding environments and landscapes. From review, it was firstly considered that there is little visibility of the caravan park extension from the Masonhill Crematorium to the north-west due to screening from vegetation and landform with the existing older part of the site more prominent in often filtered views through trees. Whilst it was observed that there may be some visibility from the upper windows of properties on Sandyhill Terrace to the north of the caravan site, it is the original part of the caravan park and not the more recent extension which is likely to be seen. In addition to this, it is noted that there is an existing coniferous plantation on the south-eastern side of the road will screen views of the caravan park in its entirety for these properties within approximately 5 years (assuming that this is a commercial plantation rather than a Christmas tree crop). Through the assessments undertaken, it has also been established that in longer views of the development on this site from other locations such as from the A77 heading south, these would remain to be seen in the context of the wider holiday park that and that these would be transient and for such a temporary and fleeting period and they could not be deemed to be materially significant from the changes incurred through the 'as built' layout. In addition to this and despite the changes that have taken place through the 'as built' layout, there remain no views to this development site from the A713 road network to the south of the site noting the intersecting rolling landform and existing sections of woodlands.

On this basis, the site visits and desktop assessments undertaken has allowed both the Planning Service and the external Landscape Architect to agree with the findings of the primary LVIA which note that despite the clear deviations in layout, the 'as built' development does not affect any new views and or previously uninterrupted landscape settings beyond those established as being affected as part of the assessment of the earlier planning permission Ref. 15/01231/APPM and that the 'as built' layout would still essentially only affect the same views previously identified e.g. primarily from the east and northeast of the site along the C class road network. On this, although the 'as built' layout for the development site has contributed to a change in the impact of the views from the east and northeast from outwith the site, at the same time it is not readily distinguishable as to where the existing and previously extension to the park ends and another begins, including those subject to this site and this in itself also further contributes to the overall acceptability of the 'as built' layout.

On balance and taking the findings of the separate assessment undertaken by the Planning Service and the professional Landscape Architect views to establish visual and landscape impacts within the locality combined with the case and arguments presented by the applicant and their agent in the supporting information accompanying the Section 42 application, it is considered that a justifiable and sufficiently compelling enough case has been made which demonstrates the limitations in the extent of the differences in the visual impact between the consented layout (which prohibited the development of certain parts of the site) and the 'as built' layout (which builds over those areas which were prohibited). More specifically, it is considered that a rational and informed case has been presented through the detailed LVIA which demonstrates that the impact of developing the previously prohibited rows would not be of such a departure and significance from the earlier consented layout, that it would make the 'as built' layout unacceptable.

**Whilst the Planning Service does not endorse the applicant's approach in terms of implementing an alternative development layout which built over most of the areas prohibited by Condition 2, it is considered that the Planning Statement and LVIA has effectively demonstrated that the site can accommodate the alternative layout, and this is despite caravans being built across the areas previously prohibited through the condition. On this basis, it is considered acceptable for Condition 2 to be removed as part of this Section 42 application.**

It is relevant to note that the position reached here regarding the acceptability of the removal of this particular condition also heavily relies on an amended landscaping scheme and hedge management plan which has been secured through this Section 42 application. It is considered that the revised landscape scheme will help reduce the additional visual impact of the alternative layout and re-positioned caravan units which form part of the 'as built' layout from existing established locations and viewpoints from the east and northeast to a point which would allow them to be considered acceptable. These specific matters are considered in detail in response to Conditions 4 and 6 below.

In addition to the visual and landscape considerations set out in detail above, Ayrshire Roads Alliance (ARA) as the Council's Roads and Flooding Authority have been consulted on this Section 42 application to establish if the alternative 'as built' layout (which also changes the layout of the internal road networks) has any implications from their remit. In response, ARA have confirmed that despite the changes in the layout and the internal road networks within the development, these are of a sufficient distance from the access point that any internal traffic issues are unlikely to directly impact on the public road network. It is for this reason that ARA do not require the submission of a swept path analysis as part of the changes and offer no objections. The only request from ARA as Roads Authority is that the conditions attached to the earlier permission which relate to a Travel Plan and a cycle storage facility are reattached to this Section 42 application. These conditions have been slightly modified and attached as set out in Section 9 below.

In terms of flooding considerations, ARA as Flooding Authority confirm that the response previously provided as part of application 15/01231/APPM remains valid, irrespective of the changes in layout, a sufficient drainage system which complies with the principles of SUDS is required to control the volume of surface water flow to the watercourse to pre-development rates, to ensure flood risk is not increased. On this basis, the only requirement of ARA as Flooding Authority is that the condition previously attached to the earlier permission which relates to a requirement for the development to comply with the principles of SUDS is reattached to this Section 42 application. This condition has been attached as set out in Section 9 below. In addition to this, SEPA have also been formally consulted and have confirmed that they have no objections noting that none of the conditions subject to this Section 42 application were requested by them as part of the earlier planning application granted.

3. That notwithstanding condition 1 above, before any work commences on site, a revised masterplan reflecting the deletion of plots as stipulated in condition 2 and the enhanced structural landscaping as stipulated in condition 4, shall be submitted to the Planning Authority for prior written agreement. There shall be no more than 197 plots/stances within the development site, unless otherwise agreed, in writing, with the Planning Authority. All development shall be in general accordance with the revised masterplan.

Reason: In the interests of visual amenity and to enhance the ecological and wildlife value of the site.

**The applicant seeks to remove this condition on the basis that they consider that the 'as built' development layout which specifically includes a volume and density of caravans as part of it which exceeds the total number of caravans set by Condition 3 above, it is still acceptable. As part of this, the agent makes a case through both their Planning Statement and the LVIA that the site is capable of accommodating the additional and increased number of caravans proposed through the alternative 'as built' development layout implemented on site without constituting overdevelopment or having additional significant visual impact to a point whereby it would be deemed unacceptable. As part of their case, they place particular weight on the earlier planning permission Ref. 15/01231/APPM which sought permission for 242 caravans in total. They consider that the proposals subject to this application (alongside all of the technical supporting information including the Transport Assessment), successfully demonstrated that the site was capable of hosting a caravan development of 242 in total.**

As set out above and notwithstanding the overall caravan numbers/plots as originally proposed as part of the earlier application Ref. 15/01231/APP, the decision made following the assessment of that development at that time was that the 242 caravan units sought was too many and that this amount would have both a significant and adverse an impact in visual and landscape terms. As a result of conclusions reached at that time, Condition 2 was attached to the permission and, as a set out, this deleted certain rows and plots which were considered to be in locations that would be particularly sensitive to development. The consequence of imposing Condition 2 meant that in turn this indirectly dictated the overall number of caravans that would be acceptable within the application site. As a result, Condition 3 was attached, and this dovetailed with Condition 2 and set a limit that there shall be no more than 197 caravan plots/stances within the development site unless otherwise agreed in writing with the Planning Authority.

From comparisons between the plans approved under application Ref. 15/01231/APP to those supplied as part of this Section 42 application, the alternative 'as built' development layout implemented to date (and the remaining phase still proposed) show a current caravan park development comprises of 228 caravan units in total. This means that the alternative and unconsented 'as built' layout accounts for 31 more caravan units than the amount that was ultimately consented through earlier planning application Ref. 15/01231/APP and in particular, Condition 3.

With regards to visual impact of the increase of caravan specifically, irrespective of the breaches of planning control undertaken on the site, consideration requires to be given to the extent of intrusion of the existing caravan park, and the extent to which the landscape has already been permanently altered and changed by its presence, particularly noting the series of extensions to the park which have been granted and implemented over recent years before this one was consented. Specifically, there is an area comprising 200 caravans already established on the upward slope towards this site and these units have been established for approximately 40 years. In addition to this, there have been various extensions to the park in more recent years including extensions to the west of the application site granted in 2014 and 2015 (Council References: 14/01156/APP and 14/01667/APP) which have further contributed towards a marked change in the overall landscape and environment. The continual expansion and intensity of development in the area has served to reinforce the role of the site as a permanent caravan park and increased its influence and presence on the locality. In this context and noting the extent of the built out and expansion of the park to date, due weight needs to give to the fact that the wider caravan park now hosts over 300 established caravan units when assessing whether the increase of caravan units on this part of the site is capable of being accommodated.

The Planning Service has considered the development in this context and whilst it is accepted that the density and volume of caravans within the site has increased beyond the limits set by Condition 3 of the previous planning permission and that this has resulted in a more concentrated development on this site, this part of the site is still primarily seen in the context of the wider established and sizeable holiday park. On this, the existing site dominates the view of the application site and from most viewpoints from outwith the site it is not readily distinguishable as to where the existing and previous extensions to the park ends and another begins, including those that are subject to this application site. In this regard and looking at the presence and visual impact of the caravan park site more broadly (as opposed to this particular site in complete isolation), it is considered that the increase in caravans on this particular parcel of the wider caravan site will not influence landscape characteristics of otherwise unaffected views and landscapes in the locality and setting of the park to a point which would be deemed unacceptable. In addition to this, and whilst the Planning Service do not condone the disregard had for this condition (by installing more caravans on the site than was allowed through its terms), on balance of all factors, it is still considered that the site in overall terms is capable of accommodating the further 31 caravans bays without it constituting overdevelopment or having further additional visual impacts to a point which would be deemed unacceptable. This view is supported by the Council's independent Landscape Architect and Adviser, Carol Anderson of Carol Anderson Associates.

**As a result of this, it is considered that the additional caravan units that form part of the 'as built' layout does not have a significant or adverse visual consequence and that these can be accommodated for within the 13.2-hectare area application site without constituting overdevelopment or exceeding a capacity threshold. On this basis, Condition 3 can be removed through this Section 42 application. As part of this conclusion and similar to Condition 2 above, it is relevant to note that the position reached here is also heavily underpinned and informed by a revised landscaping scheme and hedge management plan for the site which has been secured through the assessment of this Section 42 application. As part of this, 2 caravan unit plots that formed part of the initial 'as built' have been agreed to be deleted to allow for an increase in landscaping and this has reduced the additional units proposed through the 'as built' layout from 33 to 31 (total 228). It is considered that the revised landscape scheme secured will help reduce the visual impact of the additional 31 caravan units which form part of the 'as built' layout to a point which would allow them to be considered acceptable. These specific matters are considered in detail in response to Conditions 4 and 6 below.**

**Ayrshire Roads Alliance as the Council's Roads have been consulted on the application to establish if the increased volume and density of caravan units has any implications from their remit. In response, Ayrshire Roads Alliance have confirmed that despite the changes in the layout and the increase with the additional 31 caravans, from the road network/capacity the ARA are of the opinion that these additional caravans are unlikely to materially change the conclusions of the supporting information associated with application Ref. 15/01231/APPM (this includes the Transport Assessment at the time which considered and demonstrated the suitability of the site to be able to host 242 caravans). On this basis, the ARA have confirmed that they did not need to seek an updated Transport Assessment as part of this Section 42 application and that subject to the conditions mentioned in response to Condition 2 above being re-attached, they have no objections to the 'as built' alternative development layout with regards to the increase in volume of caravan units.**

4. That before work commences on site, a phasing plan for the development of the site and advanced structural landscape proposals, shall be submitted to, and approved in writing by the Planning Authority. The scheme of landscaping shall indicate the siting, numbers, species and heights (at time of planting) of all trees, shrubs and hedges to be planted, and the extent and profile of any areas of earthmounding. The scheme as approved shall be implemented within the first planting season following the completion or occupation of the relevant phase of the development, whichever is sooner. Land to the North of the application site boundary as detailed on the approved plans, but within the existing caravan park shall be incorporated in the advanced structural landscaping proposals.

Reason: In the interests of visual amenity and to enhance the ecological and wildlife value of the site.

**The applicant initially requested the removal of this condition on the basis that they have already implemented the majority of what they consider to be an alternative appropriate planting scheme within the application site. As part of the initial submission for the Section 42 application, they provided a landscape plan which indicated the locations of trees and shrub species that have been planted and the remaining locations where they will be planted as the last remaining part of this alternative development layout for the site on the southern edge which still requires to be completed.**

**In the Planning Statement, it is noted that the structural landscaping previously proposed by the applicant in 2016 was not approved by the Council and the plans submitted by them in 2016 to discharge Condition 4 of application 15/01231/APPM were never responded to or approved by the Planning Service. They advise that in mitigation for the lack of an agreed scheme for structural planting between them and the Planning Service, the applicant proactively purchased and planted several thousand tree whips and that these have now grown very quickly with some at the height of standard trees. As a result, they suggested that as the applicant been planting out shrubs and trees in each row of caravans and in corner sites, a sufficient programme of planting and landscaping is in place as the site has been developed out. The Planning Statement goes on to state in addition to the above that the mature screen of trees which are sited on the west of the site have been retained and the roadside hedge along the C74 has been retained and left to grow to a height of approximately 2 metres. They therefore considered that this forms an effective buffer from the C74 which is supplemented by the retention of other mature trees and hedgerows to the east of the application site alongside the additional planting introduced by the applicant.**

In the first instance and in response to the case made through the supporting submissions, it is acknowledged as part of the wider consideration of the removal of this particular condition that the applicant did seek to discharge this pre-commencement condition previously with a landscape plan submitted to the Planning Service on the 13<sup>th</sup> of October 2016. This landscape plan and scheme included details of the development layout and specific information relating to the locations, species and volume of structural planting proposed as part of the earlier development layout. Despite this request for discharge, there is no record that this condition was ever formally discharged by the Planning Service. Notwithstanding this, the relevancy of the discharge of condition process as justification for the removal of this condition is limited noting that the applicant has implemented an alternative development layout with a different landscape scheme than shown on the plans previously supplied as part of the discharge request for Condition 4. In other words, even in the scenario of an effective discharge of the condition by the Planning Service, this would be irrelevant to the consideration of this Section 42 application noting that a completely different landscaping scheme has been undertaken within the application site than the plan provided to discharge Condition 4 in 2016.

Given the above, the central part of the consideration of the acceptability of the removal of this condition as part of this application is to establish the extent of the difference in the landscaping shown as part of the original development layout (and the landscaping plan supplied in response to Condition 4) when compared to the alternative layout 'as built' on site (which includes an updated landscape scheme) and establish as a result if the current landscape scheme is still acceptable. The Planning Service have assessed and reviewed the landscaping that has been undertaken on the site as part of the 'as built' and alternative layout and have compared this to the landscape scheme previously proposed for the approved layout and scheme granted as part of application 15/01231/APPM. As part of this assessment, the Planning Service have specifically cross checked the proposed landscaping shown on the plan provided as part of the discharge of Condition 4 of planning permission 15/01231/APPM and compared these to the 'as-built' landscape plan provided as part of this current Section 42 application.

From review and as set out above it was apparent that when compared to the previously approved application, that the increased number of caravans as part of the 'as built' layout that are now aligned in straight lines and not following existing land contours as proposed before, makes the current 'as built' development to be more noticeable on the local character and landscape setting, particularly from views in the east and north-east. In addition to this and compared to the previous application 15/01231/APPM, the current 'as built' layout and density of the development also now clearly provides far less scope for larger areas of structural and screen pocket planting, and this in itself is evidenced by the fact that the initial updated landscape plan provided with this Section 42 application for the 'as built' offered significantly less planting overall than compared to the previous. At the same time and whilst the Planning Service accept that the alternative layout does not lend itself to as sizeable areas of landscaping as it did before, upon initial review it was considered that far more could be achieved and proposed as part of the 'as built' layout to better screen it than has been implemented to date and proposed for the remaining parts of the site.

On this point, it is relevant to note that prior to the submission of this Section 42 application, the Planning Service set clear instructions to the applicant that the LVIA should also inform a revised programme for structural planting masterplan arrangement with particular attention paid to the more elevated parts of the site which have been built out (contrary to the terms of condition 2 and 3 of the permission) and again demonstrate why this allows the layout, volume and positioning of the alternative and increased caravan development to be acceptable. Notwithstanding this, the current 'as built' and proposed proposals for a caravan park with a differing layout and arrangement and of a greater density but with significantly less landscaping and structural planting than that which was proposed through the condition discharge for the earlier planning application 15/01231/APPM. Following review, the initial alternative landscape proposals submitted as part of this Section 42 were established as being unacceptable, and, on this basis, the position reached by the Planning Service was that it would not be appropriate to accept the removal of this condition based on the landscape scheme presented upfront as part of the Section 42 application.



To inform this position, the Planning Service have had input from the Council's Design and Advice Officer and an external professional Landscape Architect and Adviser (Carol Anderson Landscape Associates Ltd) as formal consultees to this Section 42 application. In short, they agreed following detailed review and consideration that the initial landscape proposals were not sufficient and that a further and revised detailed landscape scheme would be needed to offset the additional visual and landscape impacts of the 'as built' development. From review of the current 'as built' layout, they both highlighted that the whole of the caravan park is densely developed with little greenspace and tree planting between caravans reducing the amenity for residents as well as increasing intrusion from the surrounding rural area. In particular, they raised concerns with the unnaturally steep banks, formed to provide building platforms for caravans, and the caravans and associated timber decking structures within the south-eastern extension to the site, which are considered intrusive from the north-east and particularly from the minor road which is aligned close to the boundary of the caravan park. They also both considered that the increased siting of caravans on the highest part of the site has significantly increased visual intrusion from the surrounding rural area in views to the east and north-east.

In response to these observations and this input, both consultees have provided professional advice and input to inform where additional planting and landscaping would be best directed on the 'as built' site and this included recommendations for the deletion of 2 caravan unit plots (where pitches partly formed on site) to deliver further landscaping and stipulations on the types and species of trees and plants to be used to screen sensitive and exposed parts of the site. Taking the professional landscape advice provided on board and noting the fundamental need to ensure screening is in place to mitigate the visual impact to some extent and the increased impact of this alternative development on the local landscape, the Planning Service advised the applicant and their appointed agent that further significant additional pocket areas and strips for increased and diversified vegetation structure within the site would be necessary. Following on from this, the Planning Service instructed the applicant and their appointed agent in early January 2023 to appoint an independent Landscape Architect to undertake and supply a revised landscape scheme for the site so it could be considered as part of the wider assessment of the removal of Condition 4 of this Section 42 application.

In response to this request, the applicant and their agent appointed an independent, professional Landscape Architect (Ironsides Farrar) who has since produced a suite of plans comprising of a revised landscape scheme for the site with the final versions of these submitted to the Planning Service in early February 2023. Following their submission, the Planning Service re-consulted the Council's Design and Advice Officer and their external professional Landscape Architect (Carol Anderson Landscape Associates) and further to some minor amendments and revisions being made, in final consultation responses both consultees have advised that the revised landscape scheme and arrangements are now acceptable with them generally aligning with their recommendations and amendments suggested. In particular, securing the deletion of 2 caravan bay plots on the northeastern boundary edge is considered to represent a positive improvement to the 'as built' development overall. As part of this, the applicant and their appointed agent have agreed not to progress with these particular units and the updated site layout and amended landscape scheme indicates that the foundations will be removed and that these areas now being planted up. This is considered an improvement for this development as the removal of these plots now allows for the holistic and uninterrupted continuation of structure planting from the boundary edges of the site in order to screen the embankment area whilst at the same offering an arrangement which more closely resembles the proposed landscaping arrangements approved in this location as part of the earlier planning permission 15/01231/APPM.

The updated landscape scheme now also includes proposals for the temporary storage area on the northeast corner of the site through this Section 42 application, with arrangements in place for the compound to be removed and landscaping to be introduced as part of the wider landscape scheme. The revised landscape scheme also addresses the most elevated part of the site and includes plans to introduce further greenery across the highest platform through the formation of a pocket park (comprising of a number of heavy standard native trees, seating areas and paths) on the top plateau alongside provision for distributed tree and shrub planting in between the caravan bay units where spacing is wider in these areas. This will help considerably in terms of breaking up the visual mass and presence of the caravans occupying the higher platforms on the site and will contribute towards screening the aspects of the 'as built' layout which were of earlier concern.

In addition to the specific improvements referenced above, the overall provision of landscape has also substantially increased from the initial proposals with the current revised landscape scheme including significant additional reinforcement planting along the northeastern and eastern boundary edges of the site which will bolster the existing woodland and hedgerows in these locations as well as help to better screen the otherwise bare embankments between the platforms and rows of caravans. In total, 195 individual trees comprising of 11 native species and a woodland planting mix made up of approximately 3880 trees and plants comprising of 18 different species have been secured through the scheme. Crucially, the amount and volume of landscaping now proposed through this revised landscape scheme is now considered to be more proportionate and is closer to the amount proposed through the earlier planning permission 15/01231/APPM.

It is relevant to note that this position reached by the Planning Service is also corroborated by the conclusions reached by Carol Anderson Landscape Associates in their final consultation responses who advises that while the intrusive effects of steep earth banks, building platforms, caravans and decking will persist in the short term, the woodland planting should cover unsightly raw banks within approximately 5-10 years providing good establishment is achieved. Equally, they also advise that whilst the caravans and decking (some of which are prominently located on a small hilltop) cannot be entirely screened from views outside the caravan park, their stark profile would be softened by trees planted between them and within the pocket park. They conclude by stating that they consider that the extent of planting proposed in the applicant's current plans will be broadly compatible with the planting which formed part of the consented extension when taking into account the larger trees that will be additionally planted between caravans and in the pocket park.

On this basis and taking all of the above into account it is considered that as a result of the revised landscape scheme secured through this Section 42 application, Condition 4 in its current format can be removed through this Section 42 application.

As one final point, it is relevant to note that it was observed during the site visit that many of the existing trees planted throughout the whole caravan park did not appear to be thriving. As highlighted in the response from Carol Anderson Landscape Associates Ltd, this is likely to be a fault in planting technique and ongoing management with grass insufficiently suppressed around the base of trees to reduce competition. Following discussion, it has been agreed between the Planning Service, the Landscape Architect and the applicant that a more consistent and professional approach to planting and maintenance is needed to ensure good establishment of the revised landscape scheme in the long term. As it is important that the planting and its maintenance is undertaken in a professional manner and thereafter given the best chance of good growth, it has been agreed that the planting works should be undertaken, supervised and regularly checked by a suitably qualified and independent professional landscape contractor or arborist to ensure establishment and maintenance is satisfactory. Inspections should be undertaken twice a year during the first 2 years of establishment with annual checks undertaken thereafter up to 10 years from planting and as set out in the planting schedule of the landscape scheme, replacements should be made of all failed plants with tree shelters/guards and stakes removed after approximately 5 years.

Taking these recommendations into account, separate conditions have been attached which will require the applicant to appoint an independent, professional landscape consultant/contractor to implement the landscape scheme and thereafter maintain and monitor it for a defined period. The terms of this appointment will require to be agreed in writing with the Planning Service in consultation with the Council's Design and Advice Officer and the external Landscape Architect Carol Anderson Landscape Associates. In addition to this, conditions have been attached which would require the landscape scheme to be implemented in strict accordance with the approved plans and within a 2-month timescale of the agreed appointment of the landscape contractor. These conditions will safeguard the implementation and establishment of the revised landscape scheme and are set out in full in Section 9 below.

6. No development shall take place on site until a scheme for the management of the hedge running along the C-class road heading east past the site has been agreed in writing by the Planning Authority. The scheme shall include provision for such other agreements (if any) as may be necessary for delivery of the required management of the hedge to provide screening of the development from the C-class road.

Reason: In the interests of visual amenity.

The applicant and their appointed agent initially requested the removal of this condition as they considered that despite never getting this condition formally discharged by the Planning Service previously, that appropriate arrangements have been and are in place for the maintenance and retention of the hedge, and these have been and will continue to be undertaken in perpetuity going forward. More specifically, the agent confirmed in their Planning Statement provided that the applicant/site operator has retained the hedge in situ and cuts it once a year to ensure it is maintained at a reasonable height and volume of 2 metre to provide sufficient screening. Given the applicant/site operator is undertaking this activity already, the agent initially considered that appropriate arrangements are in place and that a condition requiring a hedge management plan is no longer necessary. As a result, they seek to make the case that this condition can be removed.

The Council's Biodiversity and Ranger Services have been consulted as part of this Section 42 application in order to provide a response on the proposal to remove this specific condition. In their response, they have advised that they consider the hedge management arrangements and details provided by the agent to be more of a statement as opposed to an actual hedge management plan that could reasonably be considered as a response to Condition 6 of the earlier planning permission 15/01231/APP. In addition to this, they have also confirmed that they did not agree with much of the arrangements as set out and in particular they do not recommend an annual cut which is being undertaken is appropriate (unless there is clear safety or sightline reasons). Instead, they advised that it is better practice to cut hedges on rotation so that only a half or a third of hedges are cut in any one year. As part of this, they indicated that this generally improves the hedges health, and it allows for thickening of the hedge and increases flower and berry abundance in the interests of biodiversity. In addition to this, they have also stipulated that the hedge should never be cut in the bird breeding season which extends from 1<sup>st</sup> March to 31<sup>st</sup> August each year.

Given a combination of factors, including the fact that this condition was never formally discharged by the Planning Service (and a hedge management plan has never been in place) alongside the position of the Council's Ranger and Biodiversity Services as a consultee to this process, it was initially considered that it would not be appropriate to remove this condition based on the information presented for hedge management. Instead, and noting the specific comments and recommendations from the Council's Ranger and Biodiversity Services alongside wider landscape comments provided by Carol Anderson Landscape Associates Ltd, it was established that it would be necessary for a carefully considered and informed hedge management plan to be formed so that that the hedge which runs along the perimeter edge of the holiday park closest to this application site, is properly maintained and enhanced in conjunction with the development on site. In addition to the biodiversity and health benefits that an effective hedge management plan could have for this particular hedge, it was also considered that an appropriate and informed hedge management plan could provide benefits from a visual and landscape perspective with a fuller and more established hedge offering generally better screening from the views along the unnamed road in particular.

On this basis and taking all of the above into account, a formalised hedge management plan was requested by the Planning Service in January 2023 and the applicant, and their appointed agent were instructed to undertake and provided this as part of the revised landscape scheme required for Condition 4 above. In response, a hedge management plan has been produced by the applicants appointed Landscape Architect (Ironside Farrar) and this has been submitted to the Planning Service alongside and as part of the revised landscape scheme for the site as provided in February 2023. Following receipt of this, the Planning Service re-consulted the Council's Biodiversity and Ranger Services and Carol Anderson Landscape Associates and in response they have confirmed that the hedge management plan produced is acceptable given all of their recommendations and measures identified to ensure the hedge will be healthy, offer biodiversity gain and effectively screen the development have been adopted and reflected in the revised landscape scheme provided.

On this basis and taking into account all of the above into account, including the formalised hedge management plan now secured for this development through this Section 42 application, it is considered that Condition 6 as attached to the earlier planning permission, can be removed. A separate condition has been attached which will secure the implementation and ongoing adherence to the hedge management plan for the lifetime of the development and this is set out in full in Section 9 below.

8. That before any work commences on site a suitably scaled block layout plan showing:
- a) Existing ground levels;
  - b) Proposed ground levels; and
  - c) Finished floor levels of each proposed plot/stance;

shall be submitted for the prior written approval of the Council as Planning Authority. The finished floor level of caravans or associated decking shall not exceed 1.5m above the agreed proposed ground level for its plot/stance.

Reason: In the interests of visual amenity.

**The applicant and their appointed agent request the removal of this condition as they essentially consider it is no longer required. In the Planning Statement, the agent advises that the levels as shown on the 'as built' plans provided as part of this Section 42 application have already been built on and are already implemented across the development site. They also confirm that whilst differences do exist between the levels for the development layout approved through application Ref. 15/01231/APPM and the 'as built' alternative scheme undertaken on the site, importantly, they still conform to and sit below the overall height limits and parameters previously established through the earlier consented development.**

In the first instance, it is relevant to note as part of the wider consideration of the removal of this condition that the applicant/agent did seek to discharge this pre-commencement condition previously with a levels plan submitted to the Planning Service on the 23<sup>rd</sup> of March 2017. This level plan included details of the development layout and specific information relating to the existing and proposed ground levels and finished floor levels for each caravan plot. Despite this request for discharge, it is acknowledged that this condition was never formally discharged by the Planning Service at the time. Notwithstanding this and similar to the considerations of Condition 4 above, the relevancy of the discharge of condition process as justification for the removal of this condition is limited noting that the applicant has implemented an alternative development layout with different levels than the levels arrangements shown on the plan supplied as part of the discharge request for Condition 8. In other words, even in the scenario of an effective discharge of the condition by the Planning Service, this would be irrelevant to the consideration of this Section 42 application noting that completely different levels have been undertaken within the application site than those shown on the levels plan provided to discharge Condition in 2017.

Given the above, the central part of the consideration of the acceptability of the removal of this condition as part of this application is dependent upon establishing the extent of the difference in the levels as shown as part of the original development layout (and the levels plan supplied) when compared to the alternative 'as built' site layout (which includes a topographical survey). As a result, the Planning Service have assessed and reviewed the levels works that have been undertaken on the site to develop the 'as built' and alternative layout and have compared this to the levels previously proposed for the approved layout and scheme granted as part of application Ref. 15/01231/APPM. As part of this assessment, the Planning Service have specifically cross checked the proposed site levels and finished floor levels shown on the plan provided as part of the discharge of Condition 8 of the planning permission and compared these to the 'as-built' topographical plan and cross section provided as part of this current Section 42 application. In this context, weight requires to be given to the fact that in any case and irrespective of the exact differences, a substantial change in levels to the site was already indirectly accepted and anticipated when the original planning permission Ref. 15/01231/APPM was being considered and indeed when it was approved given the need to deliver level and flat platforms to form and accommodate the 197 caravan bays across the site.

In addition to the above cross-checking assessment, the Planning Service have also sourced copies of Ordnance Survey maps to ensure that there is a separate understanding of the baseline levels of the landscape and topography of the site before any works subject to the planning permission had taken place. From obtaining Ordnance Survey maps which show accurate depictions of the existing site levels before works took place, the Planning Service were able to gain an understanding that the topography and the landscape along the boundary of the caravan park site was already steep and forming an inclining profile. This understanding was further reinforced by reviewing a series site visit photographs available on the earlier planning permission Ref. 15/01231/APPM which show the rising gradient and profile of the landscape along the north-eastern and eastern side from views looking both north and south.

The conclusion of this cross-checking exercise and the series of follow-up assessment undertaken is that, despite the apparent differences in the development layout between that which was approved through application Ref. 15/01231/APPM and that which is 'as built' on site, the levels and topographical conditions as they currently exist on site 'as built' are not of such a difference that they would be considered to be unacceptable in planning terms. Whilst the Planning Service do acknowledge that site levels have been modified and have in locations modestly increased and decreased to enable the alternative layout for the extension to the caravan park to be facilitated, it is not considered that any of these are of such a degree or extent from the previous levels to now be considered unacceptable in visual, landscape, environmental or amenity terms. Instead, the assessment undertaken by the Planning Service actually identifies that in most areas within the site (particularly the more elevated parts of the site), the maximum finished levels created as a result of the 'as built' layout are less and have been reduced when compared to the levels proposed through the earlier consented layout alongside the extension which came before this one and granted in 2014.

It is recognised that the findings indicate that there are minimal differences between the levels of the approved and 'as built' layout albeit that this is largely down to the fact that the alternative 'as built' layout has built over and across the more elevated parts of the site which were previously prohibited through the permission. Notwithstanding this, through a combination of factors including the conclusions reached from the comparison and cross-checking between the levels of the approved and 'as built' layout, alongside the physical appearance of the development site which has been built out with all of the levels of the alternative and deviated layout implemented on site, it is considered acceptable for Condition 8 to be removed as part of this Section 42 application.

9. A site-specific Construction Method Statement shall be submitted to and approved in writing by the Planning Authority. All work shall be carried out in accordance with the approved plans and statement. Furthermore, should any vegetation require to be removed, it shall be done so outwith the breeding bird's season, specifically March - August.

Reason: To protect or enhance ecological and wildlife interests.

The applicant and their appointed agent request the removal of this condition as they consider it is no longer required as the development is largely complete in so far as the formation of plots/pitches has already been complete and the majority of the development works associated with the site are now 'built out'.

From review, it does not appear that a request was ever made to the Planning Service to formally discharge this condition following approval of the earlier planning permission application however the situation at this time is that the site has been developed and largely 'built out' and this in effect makes the condition irrelevant to the current stage of development on site.

In addition to this, it is noted in the Planning Statement that the agent has confirmed that no vegetation has been removed and whilst this has not been specifically evidenced, the Planning Service are aware that before the development works took place, that the site predominantly comprised of low level maintained agricultural grassland. It has also been possible to establish from review of photographs supplied as part of the earlier planning permission Ref. 15/01231/APPM when compared to observations on recent site visits to the application site that the mature trees which were existing and present within the site at the time of the earlier planning application have not been compromised or removed as part of the 'as built' alternative development implemented on the site and this further reduces the risks in this context.

The Council's Biodiversity and Ranger Services have been consulted to provide specific comment on the proposal to remove this condition and they have agreed that given the previous site conditions, the current site conditions and the level of 'built out' to date, the condition no longer applies, and it can therefore be removed.

Through the combination of factors referenced above, it is considered acceptable to remove Condition 9 as part of this Section 42 planning application.

10. That a lighting strategy, demonstrating how any external lighting scheme will minimise light spillage and pollution shall be submitted for the prior written approval of the Planning Authority before any work commences on site.

Reason: In the interests of environmental quality and the prevention of light pollution.

**The applicant and their appointed agent request the removal of this condition on the basis that they have already sought to discharge the lighting arrangements previously and on the basis that the lighting scheme has already been largely implemented across the application site. Whilst the development layout and density differ from the previous one approved under application Ref. 15/01231/APPM, the agent advises that the lighting strategy proposed (and largely implemented at this this) has not and this follows the same arrangements previously proposed which is to have low level lighting bollards in each pitch and along each access route and to avoid the use of high-level lighting poles.**

**Whilst Condition 10 was never formally discharge by the Planning Service following the approval of planning application Ref. 15/01231/APPM, the arrangements for lighting are still considered to be acceptable, particular given they have not changed and follow the established arrangements which were indicated through application 15/01231/APPM, and which have been rolled out across the expansion and extension of the wider caravan park site through other permissions.**

**The Council's Biodiversity and Ranger Services have also been consulted on this specific condition and have confirmed that as the lighting comprises of low-level bollards which are downward lit, there is no concerns with the lighting strategy implemented from an ecology perspective.**

**On this basis and noting the combination of factors above, it is considered acceptable that Condition 10 can be removed as part of this Section 42 application.**

11. That no development shall take place within the development site as outlined in red on the approved plan until the developer has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation which has been submitted to, and approved by the Planning Authority, in agreement with the West of Scotland Archaeology Service. Thereafter the developer shall ensure that the programme of archaeological works is fully implemented and that all recording and recovery of archaeological resources within the development site is undertaken to the satisfaction of the Planning Authority in agreement with the West of Scotland Archaeology Service.

Reason: To establish whether there are any archaeological interests on this site and allow for archaeological excavation and recording.

**The applicant and their appointed agent request the removal of this condition on the basis that it has already been formally discharged by the Planning Service in December 2016 with input received from West of Scotland Archaeological Service (WoSAS).**

**The Planning Service holds records relating to this condition in the planning application file for Ref. 15/01231/APPM and this includes a formal consultation response from WoSAS dated from the 24<sup>th</sup> of November 2016. In this response, WoSAS confirm that they have reviewed and considered the archaeological report produced by professional consultants 'Guard Archaeology' which undertook an archaeological evaluation of the full application site. They also confirm that the findings of this report revealed that the site comprises of much previously disturbed ground, heavy soils and plough truncation to subsoil level and on this basis, no significant buried remains were identified and there were no requirements for any further archaeological works on the site. they conclude this consultation response by stating that Condition 11 could be discharged by the Planning Service and shortly after receiving this letter from WoSAS, this condition was formally discharged by the Planning Service and an email was sent to the agent to this effect.**

WoSAS have now been formally consulted as part of this Section 42 application to consider the proposal to remove this condition entirely. They have responded to advise that they have reviewed the material and that the development, 'as built' (although not consented), do not raise any significant archaeological issues. They confirm that new issues from an archaeological perspective would be from disturbance of ground outwith the application boundary. Notwithstanding this, they note the overall application site (which was the subject of the earlier archaeological report/assessment) has not changed, and such the findings and conclusions previously reached remain the same. As a result, they confirm that they accept the removal of Condition 11.

Given the findings and conclusions of the original archeologically report, the original position of WoSAS in response to this condition and now in relation to this Section 42 application and the previous confirmation of discharge of this condition by the Planning Service, there is sufficient evidence to confirm that this condition has already been formally addressed. Whilst the development as 'built out' on site has deviated from the layout and density which obtained permission through Ref. 15/01231/APPM (and this has been considered in detail above), it is not considered that this in itself compromises archaeology matters noting the agreed conclusions that no records were found across the site and no mitigation was established as being necessary in order to develop the site. Crucially, and as set out by WoSAS, the overall application site remains the same and no new areas have been developed which previously did not form part of the earlier application site and this eliminates any risk in terms of archaeological impacts.

On this basis, it is considered acceptable for Condition 11 to be removed through this Section 42 application.

### 7.3 Material Considerations

#### 7.3.1 General Impact on the Locality (Residential and Visual Amenity)

Taking residential amenity factors into consideration first, whilst the 'as built' development layout and orientation of caravan plots and rows differs and the density and volume of caravans on the site has increased from what obtained planning permission through application Ref. 15/01231/APPM, it is not considered that these changes will have any material impact on the residential amenity of the nearest isolated properties. Outwith the wider park boundary, the nearest properties constitute a few residential properties and farm steadings to the north, northeast, southeast and southwest of the site and this includes the row of residential properties of Sandyhill Terrace alongside Burnton Farm and Cottage to the north and northwest, Friarland Farm and Lodge and Abbothill Farm to the east and southeast and Braston Farm and House to the south/southwest. In each case, weight is given to the fact that these all remain a sufficient distance away from the development site and are intersected by rolling landform, agricultural parcels of land and areas of woodland which provide a degree of separation and minimise any potential for any direct amenity impacts. Whilst 'right to a view' is not a material planning consideration, the existing hedgerow and tree belt which run along the eastern, southern and part of the western side (which will be retained and enhanced and secured through the revised landscape scheme secured) will further contribute to providing a degree of separation and screening for the development from the direction of most of the properties and this will be of benefit in the interests of the general amenity terms.

With regards to visual and landscape impacts specifically, as previously outlined, regard requires to be given to the extent of intrusion of the existing caravan park, and the extent to which the landscape has already been altered and changed by its presence, particularly noting the series of extensions to the park which have been granted and implemented over recent years before this one in 2015. Whilst the alternative layout undertaken on the site does differ in orientation, arrangement and density from what obtained planning permission through application Ref. 15/01231/APPM, in the context of the wider caravan park to which this site sits within, it is considered that the site does have the capacity to accommodate the further 31 caravans and the orientation and arrangement as has been built on site, without it reaching a threshold where it would be considered unacceptable in visual and landscape terms. As was the case with the layout approved before through the earlier application Ref. 15/01231/APPM, the 'as built' development on this site will primarily be seen in the context of the wider holiday park and it is not considered that any new or previously uninterrupted viewpoints or landscapes will be affected as a result of the changes. Whilst it is accepted that areas have now been developed that were previously prohibited and that this has resulted in a more concentrated development on the site from previous sensitive viewpoints to the east and northeast, the deletion of specific plots and the introduction of further pockets of structural and reinforced planting which have been secured through a revised landscape scheme, will help to further mitigate the overall visual presence of the alternative layout of different arrangement and density from views to the northeast and east to a point where it can be considered acceptable.

On this basis, it is considered that the removal of conditions 1, 2, 3, 4, 6, 8, 9, 10, 11 and the alternative caravan park extension layout and density associated with this will not result in any additional impact on the locality in comparison with the development currently approved to an extent which would make it unacceptable to a point of refusal of this application.

### 7.3.2 Planning History

As set out above and detailed throughout this report, this site has both an extensive planning history and planning enforcement history, with all of the assessments undertaken to date in effect culminating in the submission of this Section 42 planning application submission.

Understanding both the planning application and planning enforcement history to this site is considered to be material to the overall consideration of this application and noting the circumstances and nature of each of these, it is considered that both of these are relevant to the assessment in so far as understanding the background to the development subject to this current Section 42 application.

### 7.3.3 Consultations Received

As set out in the relevant consultation sub-section above, all consultees who were consulted on the earlier planning permission application Ref. 15/01231/APPM were re-consulted as part of this Section 42 application to ensure consistency and more importantly that they had the opportunity to consider the conditions sought for removal and the changes associated with the 'as built' layout.

Weight is given to the fact that none of the consultation responses received in response have raised any objections to this Section 42 application and this included statutory consultees to the process. Some consultees have requested further mitigation and it is considered that these can all be addressed through the imposition of appropriately worded planning conditions and advisory notes which are all included in the recommendations below.

Whilst not a previous consultee to the earlier planning application Ref.15/01231/APPM, Carol Anderson Landscape Consultants Ltd were formally engaged and consulted as part of this Section 42 application to assess and consider the proposals to remove the conditions. Noting the changes to the layout and the potential impacts in landscape and visual terms, it was considered that the assessment of an external professional Landscape Architect would be particularly helpful in determining the extent and reach of visual impacts and establishing the level of mitigation required to offset any visual and landscape impacts identified. As set out in detail in response to Condition 4 above, the outcome of this assessment and the recommendations made by the Landscape Architect has informed a revised landscape scheme for the 'as built' site and as part of this, this scheme will deliver:

- Creation of a 'Pocket Park' on the highest part of the site. This includes a grove of 20-25 Extra Heavy Standard trees within this small open space which would ultimately achieve a large stature (such as oak and beech which would additionally fit with the character of surrounding woodlands). The intention being that this planting will partially screen some of the most visually intrusive caravans in time as well as provide a focal point for quiet recreation for users given the lack of functional and properly designed greenspace within the caravan park.
- Planting of native woodland on the most visually intrusive steep banks seen from the minor road on the north-eastern boundary of the caravan park. This woodland planting will extend up into the site (necessitating the removal of two concrete bases for caravans which has been secured) in order to increase screening of caravans and angular built platforms from the adjacent minor road and the surrounding rural area.
- Planting of native woodland on the lower south-eastern end of the site linking with existing woodland in adjacent farmland and extending into the yet undeveloped part of the site.
- Planting of trees in wider spaces between caravan bays, the purpose of which will soften their stark outlines and reduce intrusion particularly where they are located on the higher parts of the site.

As a result, the professional and expert input and advice from the external Landscape Architect as a consultee to this Section 42 application has been central to the assessment of this application and the outcome achieved from their involvement has now secured a sufficient level of mitigation through the revised landscape scheme which in turn contributes to allowing the overall acceptability of the 'as built' layout in planning terms. This in turn has informed the conclusion for the removal of certain conditions, including conditions 1, 2, 3, 4 and 6 whilst at the same time ensured that sufficient environmental mitigation and biodiversity gain is being delivered as part of the 'as built' development to comply with the requirements of NPF4.



**8. Conclusion:**

This Section 42 application as submitted requires to be assessed on its individual merits, with the principle of a change of use of the land to form an extension to the existing caravan park already established through the earlier planning permission granted. It should be noted that despite the submission of this formal Section 42 planning application and the considerations as set out, the Planning Service does not condone or endorse the applicant's approach to the development of this site to date and the extent of unauthorised works already undertaken and implemented in the first instance. Both prior to the submission of this application and during the assessment of this application, the applicant has been made fully aware and clear of the Planning Services stance on the approach undertaken which could only be considered as a clear and intentional departure from the development scheme and layout approved under the relevant planning permission Ref. 15/01231/APPM given their awareness of the issues initially sent to them in dialogue with the Council from at least December 2018.

Notwithstanding this, the purpose of planning enforcement is not a punitive role. Instead, and as set out in the Council's Enforcement Charter, it is to resolve and regularise identified enforcement matters through discussion and negotiation. In this context, the Planning Service has to consider each case on its own merits and decide thereafter on the most appropriate solution to address and regularise the breach of planning control. In this case and noting the previous enforcement considerations combined with the extent of development 'as built' on site at this time, the most appropriate action was to pursue the submission of a Section 42 application with a case for justification for the non-compliance of the conditions attached to the earlier planning permission granted. This was seen as the most effective procedural planning mechanism in the circumstances for the Planning Service to obtain a degree of control and influence over the situation on the site, to consider the extent of the difference of the works between the approved and 'as built' and establish how much of a departure these represented from the conditions attached to the earlier consent granted for the site and to secure further mitigation to offset additional impacts (most notably a revised landscape scheme for the site).

On balance and subject to both the justification provided and the further environmental mitigation secured through this Section 42 application, the changes to the layout and density of the caravan park extension development 'as built' and which have been implemented on site in non-compliance with the relevant conditions are still fundamentally considered capable of being in general conformity to the statutory development plan and there are no material considerations which would be of significant as to reach an alternative conclusion. On this basis, following detailed consideration and assessment (including input from a number of consultees), it has been established that the removal of conditions 1, 2, 3, 4, 6, 8, 9 and 11 is acceptable for the reasons set out in the assessment section of the report above.

Finally, as the effect of granting planning permission for Section 42 application is such that a new and separate standalone permission exists for the development, all other relevant conditions associated with planning permission 15/01231/APPM which would be relevant to this new permission require to be re-imposed to this new permission with the exception of those conditions agreed to be removed as part of this Section 42 application. Additional conditions are also attached and included below which cover the implementation and adherence of the revised landscape scheme secured for the site in response to the removal of specific conditions of the earlier permission.

**9. Recommendation:**

It is recommended that the Section 42 planning application is approved with the following condition(s).

**Conditions:**

1. No further development shall commence on site until the Planning Authority has approved in writing the terms of appointment by the applicant of a suitability qualified and professional landscape consultant/contractor to implement and undertake the approved landscape scheme within the site and thereafter provide maintenance and monitoring of the landscaping for a period of 5 year from the date of its completed implementation. The terms of appointment shall:
  - Impose a duty on the landscape consultant/contractor to implement the revised landscape scheme in strict accordance with approved landscape plans and arrangements subject to the Section 42 planning permission and undertake and complete these by the timescales set in Condition 2 and Condition 3 of this permission below. Thereafter, the landscape consultant/contractor will notify the Planning Authority in writing once the landscape scheme has been completely implemented in full across the site.
  - Require the appointed landscape consultant to monitoring the completed landscaping scheme on the site for a period of 5 year from the date in which the landscape scheme has been completely implemented. Inspections shall be undertaken twice a year during the first 2 years of establishment with annual checks undertaken thereafter up to 5 years from the completion planting. Following each inspection, the appointed landscape consultant/contractor will provide and submit in writing to the Planning Service, a report which confirm the findings of the monitoring programme.
  - In accordance with approved 'Landscape Proposals Schedule (Drawing S4-P02)' any trees, shrubs, plants, or grass forming part of the approved landscape scheme which die, are removed or become seriously damaged or diseased, within a period of 5 years from the date of their planting, shall be replaced by the appointed landscape consultant/contractor with others of similar sizes and species unless the Planning Authority gives written approval to any variation.
2. Further to Condition 1 above, within 2 months of the date of the appointment of the landscape consultant/contractor, the approved detailed landscape scheme for additional structural landscaping and diversified vegetation to be introduced within the 'as built' caravan development layout shall be implemented in full within the site. Thereafter, the approved detailed and additional landscape scheme once complete and in place shall be maintained in strict accordance with the management and aftercare arrangements as detailed on approved plan 'Landscape Proposals Schedule (Drawing S4-P02)' for the lifetime of this development, unless otherwise agreed in writing by the Planning Authority.
3. Further to Condition 1 above and within 1 month of the date of the appointment of the landscape consultant/contractor, the approved revised scheme for the management of the hedge running along the C-class road heading east past the site shall come into full effect. Thereafter, the hedge shall be maintained in strict accordance with the approved hedge management plan as detailed on approved plan 'Landscape Proposals Schedule (Drawing S4-P02)' for the lifetime of this development, unless otherwise agreed in writing by the Planning Authority.
4. That all existing and proposed caravans associated with this development shall not be promoted, advertised, let, or used for any purpose other than as holiday accommodation.
5. Surface water from the site shall be treated in accordance with the principles of the Sustainable Urban Drainage Systems (SUDS) Manual published by CIRIA in March 2007.
6. Within 1 month of the date of this consent, precise details of the siting and specifications of a cycle stand to be situated within the Crofthead Caravan Park boundary shall be submitted to and approved in writing by the Planning Authority (in consultation with the Council as Roads Authority). The details provided shall show a cycle stand which is lockable and covered and which accommodate a minimum of 20 bikes. The approved cycle stand shall be installed in line with the approved arrangements within 1 month of the date of the Planning Authorities approval and once installed shall thereafter be maintained as such for the lifetime of the development unless otherwise agreed in writing by the Planning Authority.

7. Within 1 month of the date of this consent, a Travel Plan shall be submitted to and approved in writing by the Planning Authority (in consultation with the Council as Roads Authority). The Travel Plan shall identify the measures to be implemented, the system of management, monitoring, review, reporting and the duration of the plan and it shall incorporate measures designed to encourage modes of travel other than private car. The approved Travel Plan and all associated measures and actions shall become effective within 1 month of the Planning Authorities approval and thereafter these measures shall be maintained as such for the lifetime of the development, unless otherwise agreed in writing by the Planning Authority.

**Reasons:**

1. *To ensure that the approved revised landscape scheme for the site is implemented and monitored by a professional and suitably qualified landscape consultant with the relevant experience and expertise and to ensure that the landscape and planting is effectively monitored, and provisions are in place so that it can successfully establish within the site and serve its purpose in terms of screening.*
2. *To ensure that the revised landscape scheme is implemented in a timely manner to offer sufficient screening from the increased number of caravans that are now aligned in a different arrangement than that which was previously approved through application 15/01231/APPM.*
3. *In the interests of visual amenity, biodiversity gain and securing the health and vitality of the hedge and to ensure it can be as effective as possible in a timely manner to contributing to screening the increased number of caravans that are now aligned in a different arrangement than that which was previously approved through application 15/01231/APPM.*
4. *In order to retain full control over the development and to avoid the creation of any permanent additional dwellinghouses.*
5. *To ensure the site is drained in an acceptably sustainable manner and the drainage infrastructure is properly maintained.*
6. *To ensure adequate provision of a lockable and covered cycle storage on the site and to encourage and facilitate more sustainable means of travel.*
7. *To encourage and promote sustainable means of travel.*

**Advisory Notes:**

**Biodiversity and Ranger Services**

- *Further to Condition 1 above, this service highlights that guidance and advice can be found online from SAC Consulting, the Scottish Rural Agricultural College (SRUC), or Nectar Network all of which can assist and advise the applicant should they have any questions regarding hedge management practices associated with the approved hedge management plan.*

**Environmental Health Service**

- *All remaining work should be undertaken in compliance with legislation and guidance relating to pollution prevention, information can be found at the website of the Scottish Environment Protection agency as follows [www.sepa.org.uk](http://www.sepa.org.uk)*
- *If permission is granted, then you should contact South Ayrshire Council Environmental Health Service to update your current caravan site licence before the site opens and the site must meet the conditions stated in the Caravan sites and control of Development Act 1960 and amendments therewith included in the Act.*
- *This response with recommendation(s) was prepared by Elaine Little, Environmental Health Officer, to whom any further enquiries can be made on 01292 616341. This includes any enquiries about an updated caravan site license.*

**Scottish Water**

- *If the applicant is looking for a new connection to the public network, they should submit a Pre-Development Enquiry application through Scottish Water's customer portal: <https://www.scottishwater.co.uk/Business-and-Developers/Connecting-to-Our-Network>*

**List of Determined Plans:**

- Location Plan.
- Planning Statement (Dated November 2022, Alan Neish Consulting Ltd).
- Landscape and Visual Impact Assessment (LVIA) (Dated November 2022, Alan Neish Consulting Ltd).
- Appendix 1 of LVIA – Appraisals/Plans submitted with 2015 application 15/01231/APPM.
- Appendix 2 of LVIA – Plan denoting pitches deleted under Condition 2 of 15/01231/APPM.
- Amended Appendix 3 of LVIA – Site Plan ‘As Built’ (Drawing No. Appendix 3 Revision B).
- Appendix 4 of LVIA – Cross Section A-A through the historic site and site ‘as built’.
- Amended Appendix 5 of LVIA (Part1) – Site Plan ‘As Built’ with Landscape Proposals General Arrangement (Drawing No. 64048.00.001 S4-PO3).
- Amended Appendix 5 of LVIA (Part 2) – Planting Plan 1 of 3 (Drawing No. 6408.00.002 S4-PO3).
- Amended Appendix 5 of LVIA (Part 3) – Planting Plan 2 of 3 (Drawing No. 6408.00.003 S4-PO3).
- Amended Appendix 5 of LVIA (Part 4) – Planting Plan 3 of 3 (Drawing No. 6408.00.004 S4-PO3).
- Amended Appendix 5 of LVIA (Part 5) – Planting Schedules (Drawing No. 6408.00.005 S4-PO3).
- Amended Appendix 5 of LVIA (Part 6) – Planting Details (Drawing No. 6408.00.006 S4-PO3).
- Amended Appendix 6 of LVIA – Site Plan ‘As Built’ with Topographical Survey (Drawing No. Appendix 6 Revision A).
- Addendum to Planning Supporting Statement and LVIA (Dated 15<sup>th</sup> February 2023, Alan Neish Consulting Ltd).
- Copy of Decision Notice for permission 15/01231/APPM.

**Reason for Decision (where approved):**

The removal of conditions 1, 2, 3, 4, 6, 8, 9 and 11 of planning permission 15/01231/APPM are considered to be acceptable for the reasons set out in the Panel Report. Subject to the environmental mitigation secured through this Section 42 application which includes a revised landscape scheme for the site, the subsequent changes to the layout and density of the development are still considered to accord with the provisions of the statutory development plan framework and there is no additional significant or adverse impact on the amenity of neighbouring land or the surrounding environment and landscape to a point which would warrant refusal of the application.

**Background Papers:**

1. Application form, plans and submitted documentation(s)
2. National Planning Framework 4 (NPF4)
3. Adopted South Ayrshire Local Development Plan (LDP2)
4. Consultations

**Equalities Impact Assessment**

An Equalities Impact Assessment is not required because the proposed development is not considered to give rise to any differential impacts on those with protected characteristics.

**Person to Contact:**

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