

WEST DUNBARTONSHIRE COUNCIL

Report by the Acting Director of Housing, Regeneration & Environmental Services (Housing & Regeneration Services)

Planning Committee: 6 December 2006

Subject: Planning Application DC06-077: Bobath Scotland at Auchentoshan Estate

1. Purpose

- 1.1** To give further clarification in relation to determination of this outline planning application.

2. Background

- 2.1** The application by Bobath has been continued for further consideration since first being heard on 6 September 2006.
- 2.2** Last month there was some discussion concerning the different elements of the proposal and advice was sought by the committee on the feasibility of approving parts whilst refusing others. The advice given by officers was that this was not considered to be good practice but it was not without precedent.

3. Main Issues

- 3.1** Members decided to continue the application to allow the full committee to take an active part in the decision making process. Those not present at committee on 6 September 2006 when parties were heard were not able to take part subsequently as they had not heard all evidence submitted in relation to the determination of the application. All parties have been invited again to present their cases at a new hearing.
- 3.2** Since last committee further research has been undertaken in relation to a possible split decision (i.e. part grant, part refuse). As intimated last month, it is not good practice to split decisions although it does occasionally happen in some authorities, generally with smaller scale developments. Section 37 of the Town and Country Planning (Scotland) Act 1997 indicates that a planning authority can grant permission (with or without conditions) or refuse planning permission. Where part of a proposal is considered to be unacceptable then the whole application should be refused or the applicant can be asked to remove or amend the unacceptable elements and re-submit. Such action could involve renotification of neighbours and new press advertisement.
- 3.3** Guidance on the use of planning conditions indicates that conditions should not be used in such a way as to significantly alter a proposal. It would not therefore, for example, be appropriate in this case to grant permission for the whole development subject to a condition which disallowed development of

the housing element. In short, a condition modifying the development cannot be imposed if it would make the development permitted substantially different from that comprised in the application.

- 3.4** When dealing with appeals, reporters have greater flexibility than planning authorities. Section 48 of the Planning Act lets a reporter allow or dismiss an appeal or reverse or vary any part of the decision of the planning authority. There have been occasions where reporters have legitimately issued a split decision, granting some elements and refusing others.

4. Personnel Issues

- 4.1** There are no personnel issues.

5. Financial Implication

- 5.1** There are no financial implications.

6. Conclusion

- 6.1** Taking account of the foregoing it is concluded that it would be inappropriate, in this case, for the committee to consider making a split decision. The application should be either granted with conditions or refused.

7. Recommendation

- 7.1** It is recommended that the committee indicate that it is minded to grant the applications subject to the conditions contained within the main report. As also noted in that report the application would require to be referred to the Scottish Ministers on account of the Council's interest in the site and the fact that it would involve a departure from the statutory development plan within a defined greenbelt.

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& Environmental Services (Housing & Regeneration Services)

Date: 24 November 2006

Wards Affected:	4
Appendix:	None
Background Papers:	As on attached report
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