

EXECUTIVE COUNCIL

CONFIDENTIAL

Title of Report: Planning Appeal: Against condition No 4 (prohibition of new access onto Moody Brook Road, Stanley) imposed on outline planning permission for the erection of a dwelling within Bennett's Paddock (Ref: 23/11/P)

Paper No: 219/11

Date: 28 September 2011

Report of: Clerk of the Executive Council

1.0 PURPOSE

1.1 Stuart and Lilian Wallace have appealed under section 47 of the Planning Ordinance against the imposition of condition 4 (prohibition of new access onto Moody Brook Road Stanley) on outline planning permission for the erection of a dwelling within Bennett's Paddock.

2.0 RECOMMENDATION

2.1 Executive Council is requested to determine this appeal.

3.0 FINANCIAL IMPLICATIONS

None

4.0 BACKGROUND

4.1.1 The following are annexed to this paper for consideration by Executive Council.

- Annex 1 - Original Planning Application and site map;
- Annex 2 – Outline Planning Permission subject to conditions;
- Annex 3 – Notice of Appeal against condition 4 of outline planning permission;
- Annex 4 - Letter from appellants to the Planning and Building Committee in support of the appeal; and
- Annex 5 – Statement by Environmental Planning Officer on behalf of the Planning and Building Committee.

4.1.2 The appellant was given opportunity as per the Planning Appeal process to comment further but has chosen not to do so.

4.2.1 Executive Council are reminded that under section 112 of the Planning Ordinance, no Member of the Planning and Building Committee or public officer who was present at the Committee meeting when the application was considered may also be present at the meeting of Executive Council when the appeal is determined. However, section 112(2) of the Planning Ordinance which excludes the Planning Officer from Executive Council discussions on planning appeals was repealed under the Planning (Amendment) Ordinance 2007.

5.0 FINANCIAL IMPLICATIONS

None

6.0 LEGAL IMPLICATIONS

The revised Planning Appeal Process as agreed by Executive Council in August 2007 has been followed although due to the heavy workload of the Attorney General's Chambers the required amendments to the Planning Ordinance and the Planning (General) Regulations to accommodate the new procedures have not yet been made.

7.0 HUMAN RESOURCES IMPLICATIONS

None

FALKLAND ISLANDS GOVERNMENT

ANNEX 1

Planning Ordinance 1991

Application for Planning Permission or a Building Permit

Registration Date: 23 MAR 2011

Please submit three copies of this form with three copies of plans

Ref. No: 23/11/P *A. Wallace*

| | |
|--|---|
| <p>1. APPLICANT (Use Block Capitals)</p> <p>Name: <u>MR & MRS S. B WALLACE</u></p> <p>Address: <u>38 ROSS ROAD WEST</u> <u>STANLEY</u></p> <p>Tel No: <u>21290</u></p> <p>Email: <u>swallace@horizon.co.fk</u></p> | <p>AGENT (if any)(Use Block Capitals) (All correspondence and the decision notice will be sent to this address when documents submitted by an agent acting for the applicant)</p> <p>Name:</p> <p>Address:</p> <p>Tel No:</p> <p>Email:</p> |
|--|---|

Planning Ordinance 1991

APPROVED

Date: 05 MAY 2011

2. Is this an application for -

| | | | |
|-------------------------|--|--------|--|
| (a) A Building Permit | Yes <input type="checkbox"/> | and/or | No <input checked="" type="checkbox"/> |
| (b) Planning Permission | Yes <input checked="" type="checkbox"/> (see 2c) | | No <input type="checkbox"/> |

(2c) If you are applying for Planning Permission please state if this is an application for -

| | |
|---|-------------------------------------|
| Outline Planning Permission | <input checked="" type="checkbox"/> |
| Full Planning Permission | <input type="checkbox"/> |
| Approval of details following grant of outline permission | <input type="checkbox"/> |

(application number:.....)

3. Address or location of the site for which you are making this application

AREA WITHIN 'BENNETT'S PADDOCK', HOODY BROOK ROAD, STANLEY

4. Area of Site (square metres or hectares) 1600m²

5. What are you applying to do

OUTLINE APPLICATION FOR ERECTION OF GARAGE
SINGLE-STOREY DWELLING, & PROVISION OF OFF-STREET PARKING

(include any overhead cables such as a telephone service line in your description)
(If you are applying for something temporary state how long you will need it -)

6. What is the site used for at the moment? (e.g. Vacant, Dwelling, Warehouse etc).....

VACANT

7. Please state how you will deal with the following -

Disposal of foul sewage..... SEPTIC TANK / BIO-DISC

Disposal of surface water (roofs, drives etc)..... SOAKAWAY

Provision of water supply..... TO EXISTING MAINS

Provision of electricity supply..... TO EXISTING MAINS

Proposed finishing materials and colours.....

9. Do you intend to make or alter an access onto a public road?

Yes
No

Please tick one box and show position on the Site Plan

10. If proposal is of a COMMERCIAL or INDUSTRIAL nature please give the following information -

How will you deal with disposal of trade refuse.....

How will you deal with disposal of trade effluent? (state details of its composition).....

Maximum number of employees when building in operation -- male..... female.....

If a new retail unit is proposed, please advise nature of goods to be sold.....

Daily requirements for water.....litres, and max elec. load (kW).....

The following certificate must be complete by applicants for Planning Permission or by their agent. If you are only applying for a Building Permit you need not complete the certificate.

LAND OWNERSHIP CERTIFICATE

1. (a) The applicant owns all the land which makes up the application site

(a)

Tick (a) or (b)

(b) The land is owned by the person(s) listed below and the applicant has notified them that he/she is making this application --

(b)

Name

Address

Date of Notification

MR. R. ROWLANDS

13. CALLAGHAN ROAD

10.02.11

2. (a) None of the land which makes up the site forms part of an agricultural holding

(a)

Tick (a) or (b)

(b) All or part of the land is within an agricultural holding and the applicant has notified the following agricultural tenants that he/she is making this application

(b)

Name

Address

Date of Notification

IMPORTANT - Prior to submitting your application please check that you have provided:

(1) A site plan showing the location of the proposed development and footprint of all neighbouring buildings or structures (it is the applicant's responsibility to ensure that the site plan is up to date)

(2) A site plan to a scale of 1:500 and other drawings that have been drawn to a recognised scale

(3) Where application is for Planning Permission, ensure that the Land Ownership Certificate above is complete

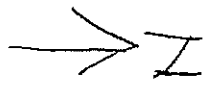
Failure to comply with the above may mean that your application cannot be registered

For assistance with your application and advice on how to draw plans refer to the following provided booklets: "A Simple Guide to Plan Drawing" and "Planning Permissions and Building Permits".

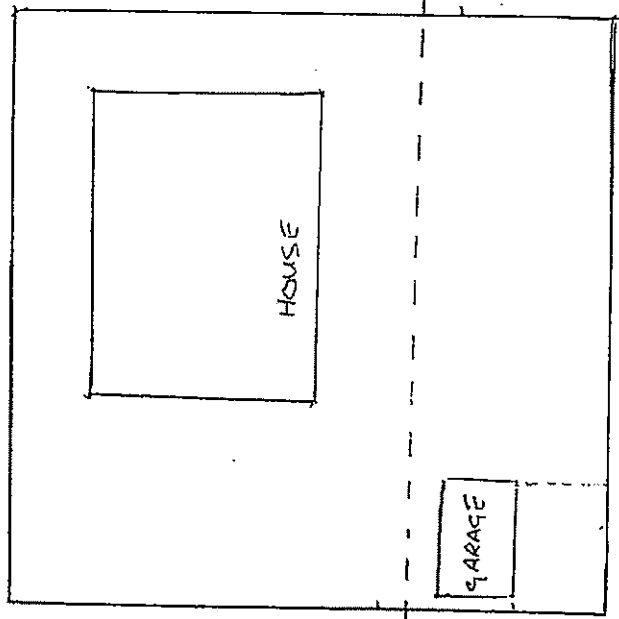
Signature..... (applicant/agent)

Date..... 22/3/11

ML+SB WAIACF
MARCH 2011
SCALE 1:500



WATERMAIN



Planning Ordinance 1991
Registration Date: 23 MAR 2011
Ref. No: 23/11/P

Planning Ordinance 1991
APPROVED
Date: 05 MAY 2011

STANLEY HARBOUR

1 MOODY BROOK ROAD

MOODY BROOK ROAD

"MAIDEN HAVEN"

GOLF COURSE

Telephone cables in Asbestos Pipe

ROSS ROAD WEST

BEAVER HANGER

38 1

39 RRW

40 RRW

41 RRW

4 C ROAD

1 BE

3 BE ROAD

5 BEAVER ROAD

6 BEAVER ROAD

7 BEAVER ROAD

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11 BEAVER ROAD

5 CAPRICORN ROAD

6 CAPRICORN ROAD

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Date: 01

Reccourse

Planning

Registration D:

Ref No. 75

Proposed Road Reserve
10x321.87m
0.80 acres

Overhead Power Lines

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Falkland Islands Government

The Planning Ordinance 1991

PLANNING PERMISSION SUBJECT TO CONDITIONS

Reference Number: 23/11/P

To: Mr & Mrs S Wallace
38 Ross Road West
Stanley

Outline Planning Permission is hereby **GRANTED** for erection of single-storey dwelling at area within **Bennett's Paddock, Moody Brook Road, Stanley** for **Mr & Mrs S B Wallace** in accordance with your application received on **23 March 2011** and the plans, drawings and documents which form part of the application subject to the Standard Condition printed overleaf and the following conditions:

1. No development shall occur within 3 metres of the water main which crosses the site.
2. Foul drainage shall be into a bio-disc.
3. The applicant shall liaise with Cable & Wireless Plc over the impact the development may have on a service duct which crosses the site and implement any measures agreed with the company to safeguard the infrastructure and the environment.
4. No new access shall be formed onto Moody Brook Road. Details of the proposed access arrangements from the road into the site shall be submitted as part of a full planning application to develop this site.
5. Two off-street parking spaces shall be formed within the plot.

Reasons for Conditions

1. In order to safeguard and provide access to the water main.
2. In the interests of public health.
3. To safeguard telecommunications infrastructure enclosed within an asbestos duct which will give rise to health and safety issues if disturbed, damaged or removed.
4. In the interests of highway and pedestrian safety.
5. In the interests of highway and pedestrian safety.

THIS NOTICE DOES NOT IMPLY ANY DECISION ON AN APPLICATION FOR A BUILDING PERMIT UNDER THE BUILDING REGULATIONS 1999

Signed by authority of the Planning and Building Committee:

Date: 5 May 2011

THE PLANNING ORDINANCE 1991
THE GENERAL DEVELOPMENT ORDER 1991

NOTICE OF APPEAL

Planning Application reference number 23 / 11 / P

I give notice that (a) STRAITS - LHM HOUSES of

(b) 38 ROSS ROAD WEST, SANDHAY having applied

to the Falkland Islands Government to (c) ERECTION of SINGLE

STOREY DWELLING at (d) BENNETT'S

ROAD, MORAY BEACH ROAD, SANDHAY

is appealing to the Governor in Executive Council

- against the refusal of Planning Permission by the Planning and Building Committee.
- against the decision by the Planning and Building Committee to impose Condition number(s) (e) 4 on the Planning Permission.
- against the decision by the Planning and Building Committee to refuse permission for details submitted in accordance with Condition number(s) (e) on the Planning Permission.
- against the failure of the Planning and building Committee to give notice of a decision on the Planning Application.
- against the failure of the Planning and Building Committee to give notice of a decision on details submitted in accordance with Condition number(s) (e) on the Planning Permission.

Signed [Signature]

*On behalf of

Date 14-6-11

- Delete if inappropriate

Insert

- (a) name of applicant
- (b) address of applicant
- (c) description of proposed development
- (d) address or location of the proposed development
- (e) the number of the relevant condition(s) as typed on the planning permission.

38 Ross Road West
Stanley

14 June 2011

The Secretary
Planning and Building Committee
Stanley

Dear Fiona

**Planning permission reference number 23/11/P
Erection of dwelling within Bennett's Paddock**

We wish to appeal against the imposition of condition 4 of this outline planning permission which prohibits any new access to Moody Brook Road.

This condition is inconsistent, unjust and unnecessary.

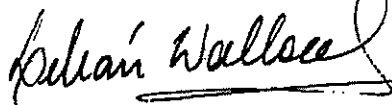
It is inconsistent because all houses up Ross Road West to within a few hundred metres of this site have such access. The property on the north side of the road has two such accesses, the properties at Felton Stream have such access and the three houses facing the road at Mink Park also have such access.

It is unnecessary because the traffic flow is demonstrably unhindered by so many houses having access to the road. The area is one of the most identifiable and appropriate sites for private development. There is already a very good case to change the speed limit on this part of the road to that which applies in the rest of Stanley.

The imposition of such a condition is an effective deterrent to the incremental development of good building sites in this area facing the road. The cost and other resources required to put in the access roads that would be required immediately if this condition remains for everyone will impede much needed housing development on this excellent privately owned site for years.

We therefore ask that this condition be removed.

Yours sincerely



Stuart and Lilian Wallace

Appeal against condition 4 (prohibition of new access onto Moody Brook Road, Stanley) associated with application 23/11/P for the erection of a single-storey dwelling within Bennett's Paddock, Moody Brook Road, Stanley for Mr & Mrs S Wallace

**Statement by Environmental Planning Officer
on behalf of the Planning and Building Committee**

1. Background

- 1.1 On 23 March 2011 an outline planning application was received from Mr and Mrs Wallace for the erection of a single-storey dwelling, garage and provision of off-street parking area within Bennett's Paddock, Moody Brook Road, Stanley.
- 1.2 At its meeting on 5 May 2011 the Planning and Building Committee granted planning permission for this development subject to five conditions. Condition 4 stated that "no new access shall be formed onto Moody Brook Road. Details of proposed access arrangements from the road into the site shall be submitted as part of a full planning proposal to develop this site". The reason for imposing this condition was in the interests of highway and pedestrian safety.
- 1.3 The Committee Minute for this application reads:

This application generated considerable debate regarding future developments within the site and access thereto from Moody Brook Road.

BS reminded Members that, whilst one previous application for a site further to the east of this application was approved in the past, another was also refused pending the production of a development plan for the entire area. In regard to this application he expressed his concern that the applicants could lose their access onto Moody Brook Road should a future application be approved for a site immediately to the east. DPW advised that it was unlikely that the P&BC would approve such an application on the basis that it would remove access to this site. JC added that there were five access points along the paddock on Moody Brook Road and it could be the case that the owner/developer may wish to create roads into the site from them, thus opening up the entire site for development. As it is, she did not share BS' concern about this application.

DPW commented that, to his mind, the proposed site was satisfactorily situated inasmuch as it could gain access using the access point to the east, without straddling it (and thus restricting its use to just one property).

Members ultimately agreed to approve the application but asked that EPO amend condition 4 to require that the applicants provide details regarding their proposed access arrangements from Moody Brook Road into the site as part of their full planning permission submission.

- 1.4 The applicants have decided to appeal this condition, which they believe is inconsistent, unjust and unnecessary.

2. Proposed development

- 2.1 The proposed dwelling plot is located 120m to the west of the last dwelling on Ross Road West (number 41). The plans show a footprint of a large dwelling of about 300 sq m. and a garage sited within a plot of approx 1,500 sq m. The house will therefore take up about 20% of the plot. Foul water is to be discharged either to a septic tank or bio-disc.
- 2.2 Bennett's Paddock is separated from Moody Brook Road by a large drainage ditch. Five crossing points have been provided between the paddock and the road, one of which is close to the application site.

3. Planning Policy and other considerations

- 3.1 The proposed site lies within Bennett's Paddock, which is allocated in the Town Plan under Policy H5 for residential development. This is a large (13 ha) field that could accommodate in excess of 100 dwellings, for which an overall plan will be required.
- 3.2 In 2007 Committee granted full approval for a dwelling in the same field just 45m to the east of the proposed plot. At the time of the application Moody Brook Road had not been improved. The drainage ditch was much smaller and there were no defined crossing points and therefore no requirement to utilise one of them to secure access into the paddock.
- 3.3 The Director of Public Works considered that current the proposal was premature as there was no plan for the development of the surrounding site but was content for the site to be developed providing access to Moody Brook Road was via an existing access point.
- 3.4 There were no representations received from the public.

4.0 Appellants Grounds of Appeal

- 4.1 The appellant is appealing against the imposition of Condition 4 on the following grounds:

1. It is inconsistent because all houses up Ross Road West to within a few hundred metres of this site have such accesses. The property on the north side of the road has two such accesses, the properties at Felton Stream have such access and the three houses facing the road at Mink Park also have such access.

EPO observation: The houses fronting Ross Road West pre-date the Planning Ordinance. They have a type of frontage development which encourages on street parking and the undertaking of reversing manoeuvres which can disrupt the flow of traffic along the road. This form of development and parking is perfectly acceptable on small residential estate roads with low local traffic flows. This is not the case with Ross Road West which is the only route into the town centre from

the west. Until recently the level of traffic travelling beyond Beaver Hanger was very modest. However, the development of Mink Park and adjacent Old Butchery site for residential use, coupled with improvements to the road to Murrell Farm and golf course developments will lead to a noticeable increase in traffic along this road. A further increase could be expected if the new port was to be sited in Port William to the west of Navy Point. A proliferation of individual accesses along this road increases risks to drivers and pedestrians and is generally considered to be an undesirable form of development for main roads on grounds of road safety.

With regard to the properties at Felton Stream, the Committee refused an application to have separate access to serve the dwellings on the same grounds but eventually granted permission for a shared access for the two new dwellings. Although the first few houses at Mink Park were allowed individual accesses to Moody Brook Road, subsequent proposals for the estate development and the adjacent old butchery site do have conditions restricting direct access onto the road.

Even in relation to the existing housing on Ross Road West, the two houses west of the Ross Road West/Capricorn Road junction, which sites front on to the first section of 40mph limited road take their access from Capricorn Road as does one of the first two east of that junction.

2. It is unnecessary because the traffic flow is demonstrably unhindered by so many houses having access to the road. The area is one of the most identifiable and appropriate sites for private development. There is already a very good case to change the speed limit on this part of the road to that which applies to the rest of Stanley.

EPO observation – as has been previously stated, although the traffic flow along this part of Moody Brook Road is currently light, it will increase significantly by virtue of the 39 dwellings which have been granted planning permission to the west of the site. These developments, when built, can be expected to lead to a five fold increase in traffic along the road (from around 26,000 journeys a year at present to 124,000). A second consideration is that, if approved, it will be hard to resist further dwellings taking direct access off Moody Brook Road. The proliferation of individual accesses will make this part of the road less safe. Lowering the speed limit from the current 40 mph to the 25 mph, as advocated by the appellant, would partly address this but would extend journey times for others residents who live further to the west. The Committee did not support further frontage development at Mink Park/Old Butchery site for the very same reasons.

3. The imposition of such a condition is an effective deterrent to the incremental development of good building sites in this area facing the road. The cost and other resources required to put in the access roads that would be required immediately if this condition remains for everyone will impede much needed housing development on this excellent privately owned site for years.

EPO observations – Bennett’s Paddock is a large site that requires a comprehensive plan to secure its development. This would cover road layout, servicing, drainage and the provision of public open space. The Committee has accepted that there is some scope for frontage development by approving this application and may be minded to support others in the future, providing they do not limit the scope for developing the whole of the area and do not increase the number of accesses onto Moody Brook Road beyond the five already constructed. Based on plot widths of properties fronting Ross Road West, a further 12 dwellings could be permitted along the frontage between Bennett’s Paddock and Moody Brook Road. There will be a cost to developers to provide additional accesses over the ditch to connect with Moody Brook Road that could used instead to link in with the existing points already built. The Committee does not therefore accept that a requirement to limit access to the road to the five points already created will deter other frontage development.

5.0 Summary of Committee’s views

- 5.1 The Committee does not wish to see a continuation of dwellings with a direct access onto the main road beyond that already built along Ross Road West. Although this appeal is for just one dwelling, if upheld it will set a precedent and make it hard for Committee to resist similar developments. A proliferation of individual access points are inherently less safe to road users and pedestrians than access being taken via a limited number of access points. The creation of multiple access points will also encourage parking on Moody Brook Road, which will slow through traffic down and create further risk of accidents due to visibility being impaired by those parked vehicles. One outcome is likely to be a further extension of the town speed limit westwards. This will in turn increase journey times for residents who live west of the former Beaver Hangar where the speed limit changes from 25 to 40 mph.