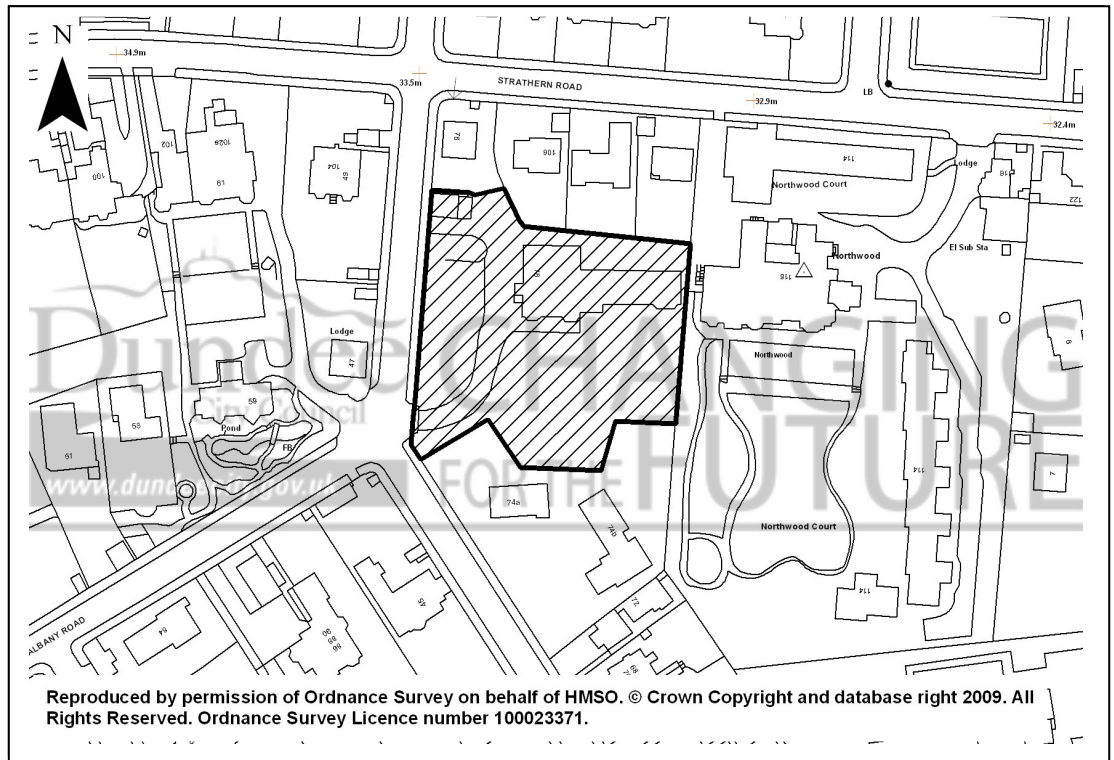


**KEY INFORMATION****Ward** The Ferry**Proposal**

Demolition and rebuilding of boundary wall

**Address**Moyness  
76 Grove Road  
Broughty Ferry  
Dundee**Applicant**Moyness Nursing Homed Ltd  
Moyness  
76 Grove Road  
Broughty Ferry  
Dundee  
DD5 1JP**Agent**James Paul Associates  
4 Brook Street  
Broughty Ferry  
Dundee  
DD5 1DP**Registered** 22 July 2009**Case Officer** Paul Macari

## New Boundary Wall Proposed in Grove Road

The demolition and rebuilding of a boundary wall is **RECOMMENDED FOR APPROVAL** subject to **conditions**. Report by Director of City Development

**RECOMMENDATION**

By controlling the species, maturity, location and amount of replacement planting by conditions, the proposals comply with the requirements of Policy 15, Policy 61 and Policy 72 of the Dundee Local Plan Review 2005. It is therefore recommended that the application is **APPROVED** subject to conditions.

**SUMMARY OF REPORT**

- Planning permission is sought to rebuild the roadside boundary wall enclosing the grounds of Moyness Nursing Home at Grove Road. It is proposed to fell 11 trees to construct the wall. The applicants state that the wall is dangerous and needs to be replaced.
- The site is in the West Ferry Conservation Area and the trees are protected by a TPO. Policies 15, 61 and 72 of the Local Plan are relevant.
- A letter of objection was received from the Community Council who are concerned about the loss of the trees.

## DESCRIPTION OF PROPOSAL

Planning permission is sought to rebuild the roadside boundary wall enclosing the grounds of Moyness Nursing Home at Grove Road. A total of some 64 linear metres of wall is involved.

The proposed new wall would be constructed of concrete blocks finished in a smooth sand/cement render and a concrete cope. It would extend to a similar height (approximately 2 metres) as the existing wall. To construct the new wall it is proposed to fell 11 trees along the roadside boundary.

A Tree report has been submitted with the application. This indicates that the proposed excavation indicated on the drawings to construct the new wall would cause severe damage to the root systems of 11 trees to such an extent that they would become dangerously unstable and even severe pruning, which would destroy their visual amenity, would not guarantee survival. A replacement planting scheme of 12 trees and 25 shrubs is proposed.

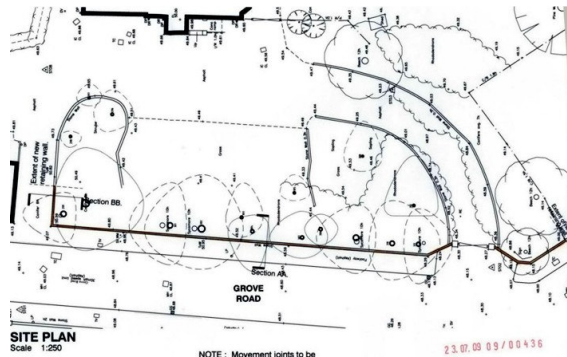
In their supporting statement the applicants say that the tree root system is exerting lateral pressure on the wall and that this will continue as the trees grow leading to eventual collapse.

An Engineers Report has been submitted with the application. Following an inspection in January 2008 the Report concludes that the present condition of the wall represents a danger to users of Grove Road and should be removed as soon as possible, that the trees are the likely cause of the movement seen in the wall and that a replacement wall will require more space than the trees allow so they will have to be removed.

In September 2008 the Engineer produced a further report on the condition of the wall indicating that it is out of plumb and overhanging the footpath to the detriment of public safety. These views are supported by the City Engineer who has issued a Dangerous Buildings Notice for the offending wall.

The Dangerous Buildings Notice requires the western boundary wall to be made safe. In this instance it is not possible to make the existing wall safe without completely removing it and

building a new retaining wall in its place. This has prompted the submission of this planning application which is the subject of this report. It should be noted that the current planning application is a resubmission of planning application ref: 08/00624/FUL which was refused by



the Development Quality Committee in October 2008.

Under Section 39 Paragraph 1 (b) of the Town and Country Planning (Scotland) Act 1997 as amended, the Council has an opportunity to consider



whether it should decline to determine the current planning application. However, there has been a significant change in circumstances surrounding the proposals whereby the continual deterioration of the boundary wall now presents a danger to public safety. This position has been endorsed by the Engineer's Reports commissioned by the Council and the Engineer's Report submitted by the applicant in support of this application.

In accordance with the Scheme of Delegation of Dundee City Council as approved by Scottish Ministers on 2 July 2009, this application is being reported to the Development Quality Committee at the request of Bailie Derek Scott and because the

Community Council has objected to the proposals.

## SITE DESCRIPTION

The site comprises Moyness Nursing Home, a 30 bedroom nursing home in a converted villa which has been significantly extended on its eastern site by a 2 storey brick extension. Moyness is an attractive villa dating from 1876 with coloured rendered walls and a slate roof. Its principal rooms face south and on the west elevation there is a balustraded entrance porch.

The site is enclosed by a cement faced wall immediately behind which is a row of large mature trees (mainly lime). All these trees (and others within the grounds of Moyness) are protected by a TPO and make a very significant contribution to the visual amenity of the West Ferry Conservation Area. There are 2 vehicular accesses off Grove Road forming an in-out one way system.

The wall is 2 metres high when viewed from the roadside but retains ground within the site approximately 1 metre above pavement level but the ground rises to higher levels at the north west corner. The footway on Grove Road is approximately 2.4 metres wide and there are 2 lamp standards along the pavement at the site frontage. The closure of the footpath between the 2 access points and the erection of barriers has been carried out by the applicants. This section of Grove Road between Strathern

Road and Albany Road is some 7.5 metres wide with footways on either side. The low density residential development typical of this area means that it is little used for parking.

The site lies within the West Ferry Conservation Area and is surrounded by houses. The area is generally characterised by large stone villas set in landscaped grounds enclosed by stone boundary walls. To the north west is a former lodge house now with its own curtilage and to the north are 3 large modern houses built within the former grounds of Moyness. To the south are 2 large modern houses also built within the former garden ground. To the east is Northwood, a substantial Category B listed villa, now used as offices for Servite Housing

Association. New houses and flats have been constructed within the grounds of Northwood. To the west, on the opposite side of Grove Road, is a substantial villa at the junction with Strathern Road and the Category B listed Claremont Lodge.

---

## POLICY BACKGROUND

---

### Dundee and Angus Structure Plan 2001-2016

There are no policies relevant to the determination of this application.

### Dundee Local Plan Review 2005

Policy 15 on garden ground development is applicable.

The site is within the West Ferry Conservation Area and Policy 61 requires all development proposals to preserve or enhance the character of the surrounding area.

Policy 72 requires new development to have regard to existing healthy mature trees.

### Scottish Planning Policies, Planning Advice Notes and Circulars

The Scottish Historic Environment Policy and SPP23 - Planning and the Historic Environment sets out Government advice on, amongst other matters, demolition and new development in conservation areas.

### Non Statutory Statements of Council Policy

The following policy statements are of relevance:

Breaches in Boundary Walls Policy and Guidance for Dundee's Listed Buildings and Conservation Areas.

---

## SUSTAINABILITY ISSUES

---

There are no specific sustainability policy implications arising from this application.

---

## SITE HISTORY

---

In 1988 planning permission was granted for a 19 bedroom 2 storey extension on the east side of "Moyness" and that extension has been constructed - application D12967 refers.

A total of 5 new houses have been built to the north and south of "Moyness" in what was once part of its garden ground, the consents for which date back to the mid to late 1980's.

In December 2007 the Council refused planning permission for a 2 storey extension on the west elevation of the building - application 07/00915/FUL refers. With those proposals the applicants indicated that they wished to fell a number of trees including 7 mature trees which they stated were damaging the roadside boundary wall at Grove Road. One of the reasons for refusal related to the proposed felling of the mature trees on the site.

The applicants appealed this decision and the appeal was dismissed in May 2008. The Reporter identified the roadside trees as the properties main contribution to the conservation area and concluded that there was no reason why the trees could not be retained perhaps with a lowered wall with railings.

In October 2008 the Council refused planning permission to rebuild the roadside boundary wall enclosing the grounds of Moyness Nursing Home at Grove Road - application 08/00624/FUL refers. These proposals involved the removal of the existing roadside boundary wall and its replacement with a retaining wall formed from concrete blocks as well as the felling of 11 mature trees. Although the proposals also involved the replanting of 12 trees and 24 shrubs, this application was refused due to the loss of healthy mature trees which make a significant contribution to the character and setting of the West Ferry Conservation Area.

An application for Conservation Area Consent to demolish the existing boundary wall was also refused by the Council. This application was refused due to the significant impact the loss of trees would have on the character and setting of the West Ferry Conservation Area - application 08/00599/CON refers.

As the Council has issued a Dangerous Buildings Notice for the removal of the existing boundary wall, a formal application for conservation area consent is not required for the demolition of the boundary wall. Although a formal application for conservation area consent was submitted this has since been returned to the applicant.

---

## PUBLIC PARTICIPATION

---

Statutory neighbour notification was carried out and the proposed development was advertised as affecting the setting of the West Ferry Conservation Area. No letters of representation were received.

---

## CONSULTATIONS

---

A letter of objection was received from the Community Council who are concerned about the loss of important mature trees along the boundary wall. Although the Community Council accept the need to replace the existing boundary wall, they believe that the trees to be felled should be replaced by semi-mature trees so as to minimise the impact upon the surrounding conservation area.

The Councils Forestry Officer is concerned about the proposed felling of the mature trees on Grove Road which are protected by a Tree Preservation Order. The Forestry Officer has specified that the trees to be felled should be replaced on a like for like basis apart from Sycamore trees which should be replaced by Hornbeams. It is also recommended that the maturity, species and location of the replacement planting are be controlled by conditions should the Committee be mindful to grant planning permission.

---

## OBSERVATIONS

---

### Statutory Requirements

In accordance with Section 25 of the Town and Country Planning (Scotland) Act 1997 the Committee is required to consider:

- a whether the proposals are consistent with the provisions of the development plan; and if not
- b whether an exception to the provisions of the development plan is justified by other material considerations.

In accordance with Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 the Council is required to have special regard to the desirability of preserving or enhancing the character or appearance of the Conservation Area.

## The Development Plan

The provisions of the development plan relevant to the determination of this application are specified in the Policy background section above.

Policy 15(g) relates to boundary walls and 15(h) and (i) to tree protection in the context of Development in Garden Ground. Policy 61 requires all development proposals to preserve or enhance the character of the surrounding conservation area. Finally Policy 72 requires new development to have regard to existing healthy mature trees.

Essentially the issues that need to be addressed are whether the proposed replacement wall is of satisfactory design in terms of its visual impact on the conservation area and whether the linked proposal to fell the mature trees protected by a TPO complies with Local Plan policy and preserves the character and appearance of the West Ferry Conservation Area.

The preamble to Policy 15 states that its aim is to protect the architectural appearance and landscape features of low density parts of the city. Sub-section (g) states that proposals should conform to the Council's non statutory guidance on Breaches in Boundary Walls.

This guidance does not directly address the current proposals where the demolition and replacement of the existing wall is proposed not to accommodate new development or provide an access but rather to address a public safety issue. Furthermore unlike most other walls in the conservation area, this is not a traditional masonry wall but rather a rubble wall faced in cement mortar. Although 10m of the wall to be removed is stone built the condition and appearance of the stone is such that it no longer makes a valuable contribution to the character of the property it serves or the surrounding West Ferry Conservation Area.

It is considered that to all intents and purposes the proposed new wall will have an almost identical appearance to the existing wall with no resulting loss of enclosure. Although the non statutory guidance recommends that walls requiring significant rebuilding should be rebuilt using the original material as far as possible it is considered in this case that as the majority of the wall to be replaced is of

a rubble construction faced with cement and the proposed wall will be cement faced there would be no impact on visual amenity by permitting block construction. It is concluded that the design of the new wall does not depart from the principles set out in the non statutory policies.

However the proposal to rebuild the wall cannot be separated from the linked proposal to fell 11 trees along the roadside boundary as the particular design proposed cannot be implemented without this happening. The trees to be felled make a very strong contribution to the visual amenity of the West Ferry Conservation Area and their loss would have a very detrimental impact on both the character and appearance of the conservation area. The replacement planting proposed would take many years to mature and due to the species of tree proposed would not retain the character or setting of the West Ferry Conservation Area. However, the species, maturity and location of the replacement planting can be controlled by way of condition should the Committee be mindful to grant planning permission. This would ensure that the proposed development although essential to public safety would not have a significant impact upon the character and setting of the West Ferry Conservation Area.

It is therefore concluded that while the felling of the mature roadside trees is far from ideal, their replacement with semi-mature trees on a like for like basis will not have a marked or prolonged effect on the character and setting of the West Ferry Conservation Area. Through the use of planning conditions the proposals will comply with the criteria of Policy 15 (h), 61 and 72 of the adopted Local Plan.

The Statutory duty set out in Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

This requires the Council to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. As explained above in the context of the assessment of the proposal under Policy 61 of the adopted Local Plan, the proposed felling and replacement of mature trees with different species would not preserve the character or appearance of the West Ferry Conservation Area. However, should

the mature roadside trees be replaced by semi-mature trees on a like for like basis the proposals are unlikely to have a marked or prolonged effect on the character and setting of the West Ferry Conservation Area.

## Other Material Considerations

The other material considerations to be taken into account are as follows:

A - The Various Reports Justifying the Replacement of the Wall and the Felling of Trees - the Council has independently assessed the condition of the wall taking into account the Engineers reports submitted by the applicants and has concluded that the wall is approaching the limit of stability, that a timescale for when this will be reached is indeterminate and that it needs to be replaced. There are also other sections of wall at Moyness which are leaning to a greater extent but which are not fenced off from the public.

The findings of the independent Engineer's Report are similar to the findings of the Engineer's Report submitted by the applicant whereby the condition of the existing wall is considered to impact upon public safety.

Therefore whilst it is accepted that a case for the replacement of the wall has been made, an acceptable solution involving the retention of the trees has not been put forward. However, it is accepted that the existing trees along the western boundary of the application site have contributed to the decay of the boundary wall and in order to replace the boundary wall with a suitably designed retaining structure some of the offending trees require to be removed.

The report by Aboretum Internationale Ltd dated 3rd September 2007 and the reports by McKinney Nicolson Associates Ltd dated 24 January 2008, 18 March 2008 and 7 November 2008 which form part of the applicant's submission are considered to recommend excessive tree felling and the planting of replacement trees that will not contribute to the character and setting of the West Ferry Conservation Area. The report by PR Trees Ltd dated 23 July 2009 which was commissioned by the Council and is endorsed by the Council's Forestry Officer is considered to give an accurate reflection of the level of tree felling required to enable the existing

boundary wall to be removed and the new retaining wall as detailed on drawing number: 1258/FE/001 to be built. A condition specifying which trees have approval to be felled in accordance with the findings of the report by PR Trees Ltd dated 23 July 2009 will form part of the grant of planning permission should the Committee be minded to approve this application. Similarly conditions relating to the type, maturity and location of the replacement trees will be incorporated into the grant of planning permission should the Committee be minded to approve this application.

B - The Councils Non Statutory Policy on Breaches in Boundary Walls and Government advice in the Scottish Historic Environment Policy.

The Councils Non Statutory Policy has been considered in the context of the assessment of the proposal against the Local Plan and it was concluded that the design of the new wall does not depart from the principles set out in this document.

The Scottish Historic Environment Policy and SPP23 - Planning and the Historic Environment sets out the procedures involved in assessing demolition and new development conservation areas. The Guidance is similar to that in the Councils Non Statutory Policy.

C - The Concerns of the Community Council - the Community Council are concerned about the loss of important mature trees along the boundary wall. The Community Council accept that the existing boundary wall has to be replaced due to its poor condition. The views of the Community Council on the loss of significant mature trees are supported and it has been concluded elsewhere in this Report that this loss can only be justified if the trees to be felled are replaced on a like for like basis.

It is concluded from the foregoing that the proposals in their original form do not preserve or enhance the character and setting of the West Ferry Conservation Area. However, by controlling the species, maturity, location and amount of replacement planting by conditions, the character and setting of the West Ferry Conservation Area will be preserved. It is therefore recommended that planning permission is granted subject to conditions.

## Design

It is considered that to all intents and purposes the proposed new wall will have an almost identical appearance to the existing wall with no resulting loss of enclosure.

## CONCLUSION

By controlling the species, maturity, location and amount of replacement planting by conditions, the character and setting of the West Ferry Conservation Area will be preserved. The proposals are therefore comply with the requirements of Policy 15, Policy 61 and Policy 72 of the Dundee Local Plan Review 2005. It is therefore recommended that planning permission is granted subject to conditions.

## RECOMMENDATION

It is recommended that consent be GRANTED subject to the following conditions:

- 1 the development hereby permitted shall be commenced within three years from the date of this permission.
- 2 The report and its content by Aboretum Internationale Ltd dated 3rd September 2007 and the reports and their contents by McKinney Nicolson Associates Ltd dated 24 January 2008, 18 March 2008 and 7 November 2008 are not approved and do not form part of the planning permission hereby approved. For the avoidance of doubt only drawing number: 1258/DE/001 Revision B and the Site Location Plan are approved by this planning permission.
- 3 Permission is hereby granted for the removal of Tree Nos: 299 Western Red Cedar, 978 Sycamore, 300 Common Lime, 301 Sycamore, 302 Common Lime, 303 Purple Plum, 304 Silver Birch, 307 Silver Birch, 309 Common Lime, 310 Common Lime and 311 Sycamore and their respective stumps only. For the avoidance of doubt, only the felling of the above numbered trees is approved by this planning permission. Under no circumstances are any other trees on site to be felled without

written permission from the Council as Planning Authority. The tree numbers referred to in this condition and subsequent conditions of this planning permission are as tagged on site or detailed in the report by PR Trees dated 23 July 2009.

- 4 Prior to the commencement of work on site, the applicant or appointed Arboricultural Operator shall contact this Department to arrange a site meeting whereby the Council's Forestry Officer will identify to the applicant/ appointed Arboricultural Operator the trees to be felled and stumps removed as detailed in Condition 1 of this planning permission. No work shall commence on site until the applicant is in receipt of written confirmation that the Council's Forestry Officer has visited the application site and identified to the applicant/ appointed Arboricultural Operator the trees to be felled in accordance with Condition 1 of this planning permission.
- 5 Trees 296 Silver Birch, 297 Lawson's Cyprus, 298 Sawara Cyprus, 305 Silver Birch, 306 Irish Yew, 308 Cherry, 312 Silver Birch shall be protected during the felling of trees 299 Western Red Cedar, 978 Sycamore, 300 Common Lime, 301 Sycamore, 302 Common Lime, 303 Purple Plum, 304 Silver Birch, 307 Silver Birch, 309 Common Lime, 310 Common Lime and 311 Sycamore, the removal of their respective stumps, the removal of the existing wall and the building of the new wall as detailed in drawing no 1258/DE/001 approved by this planning permission. Details of the protective measures to be employed/ erected and a plan indicating the position of such protective measures in accordance with BS 5837:2005 shall be submitted to the Council for written permission. Thereafter the protective measures will be erected and positioned in accordance with the details approved by this condition prior to the commencement of works on the site. Once the protective measures approved by



this condition have been erected they shall be retained and thereafter maintained in place throughout the construction period. The tree numbers referred to in this condition and subsequent conditions of this planning permission are as tagged on site or detailed in the report by PR Trees dated 23 July 2009.

- 6 The trees felled must be replaced on a like for like basis apart from tree nos: 298, 301 and 311 Sycamore which will be replaced with 3 Hornbeam Trees. The replacement deciduous trees must be root balled in accordance with BS4043 and have a girth of 20/25cm. The replacement coniferous trees must have a height of no less than 3m. Prior to the commencement of work on site full details including receipts of purchase of 4 no. Common Lime Trees, 1 no. Purple Plum Tree, 2no. Silver Birch Trees, 3 no. Hornbeam Trees, 1 no. Western Red Cedar must be submitted to the Council as Planning Authority for written approval. Thereafter, only the replacement trees approved by this condition will be planted along the western boundary of the application site. Should any of the replacement trees be removed without written consent from the Council or dying, or being severely damaged or diseased, shall be replaced with trees and shrubs of such size and species as may be directed by the Council and to the standard as approved by the Council. The tree numbers referred to in this condition and subsequent conditions of this planning permission are as tagged on site or detailed in the report by PR Trees dated 23 July 2009.
- 7 The stumps of Tree Nos: 299, 978, 300, 301, 302, 303, 304, 310 and 311 will be dug out and removed from the application site prior to the building of the replacement wall approved by this planning permission. The stumps of Trees 307 Silver Birch and 309 Common Lime will be ground down prior to the erection of the replacement wall and maintained on site in perpetuity. The tree numbers referred to in this condition and subsequent

conditions of this planning permission are as tagged on site or detailed in the report by PR Trees dated 23 July 2009.

- 8 The replacement trees stipulated by Condition 6 will be planted no less than 3m from the replacement wall approved by this planning permission. Prior to the planting of the replacement trees, the applicant or appointed Arboricultural Operator will contact the Council as Planning Authority to arrange a site meeting with the Council's Forestry Officer to inspect the tree removal works and finalise the position of the replacement trees stipulated in Condition 4 of this planning permission. Thereafter, the Arboricultural Operator appointed by the applicant will submit a detailed plan illustrating the location of the replacement trees to the Council for written approval. Once the locations of the replacement trees have been approved in writing by the Council, the replacement trees stipulated by Condition 4 of this planning permission will be planted before 30 May 2010.
- 9 The trees and shrubs to be retained shall not be cut down, grubbed out topped, lopped, uprooted or root pruned without the written consent of the Council. Any trees or shrubs removed without such consent or dying, or being severely damaged or diseased, shall be replaced with trees and shrubs of such size and species as may be directed by the Council and to the standard as approved by the Council.

### Reasons

- 1 To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997 as amended.
- 2 In the interests of safeguarding the character and setting of the West Ferry Conservation Area and to ensure clarity of the development which this permission relates.
- 3 In the interests of minimising the impact of loss of significant mature trees on the character and setting of the West Ferry Conservation Area.

- 4 To protect those trees which are of significant amenity value to the area and which would ensure an enhanced and satisfactory standard of appearance of the development.
- 5 To ensure the remaining trees located along the western boundary of the application site are protected during the felling of trees, removal of the existing wall and building of the replacement wall.
- 6 In the interests of maintaining control over the level of tree cover along the Moyness frontage of Grove Road.
- 7 In the interests of safeguarding the health and stability of Tree 306 Irish Yew which has a significant contribution to the character and setting of the West Ferry Conservation Area.
- 8 In the interests of safeguarding the integrity of the new retaining wall approved by this planning permission and the health of the retained trees.
- 9 To protect those trees and shrubs which are of significant amenity value to the area and which would ensure an enhanced and satisfactory standard of appearance of the development.