

REGULATORY PANEL: 14 DECEMBER 2022**REPORT BY HOUSING, OPERATIONS AND DEVELOPMENT DIRECTORATE****22/00395/APP****SITE TO REAR OF 1-10 MURE PLACE MINISHANT SOUTH AYRSHIRE****Location Plan****APPLICATION SITE** 

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Summary

Planning permission is sought for the use of land which is designated as 'open space' within the Local Development Plan, to form a dog exercise area facility to the rear of 1-10 Mure Place, Minishant. The application site is bound to the north and west by open pasture and to the east and south by the residential properties of Mure Place.

There is no vehicular access to the site; pedestrian access is taken from Mure Place via an existing gated access. The proposal is intended to support the applicant's existing dog-walking business, additionally, the site will be available for customer hire by prior appointment over 60-minute sessions in order that dogs may be exercised. It is understood the site is currently informally used as a dog walking area by nearby residents. It is proposed that new perimeter fencing, and gates will be erected and a shelter, picnic benches and litter/waste bins will be sited to facilitate the use.

The application has generated 8 objections. Consultation responses have been received from the Council's Environmental Health Service and Ayrshire Roads Alliance. Environmental Health have no objection to the proposal. The Ayrshire Roads Alliance do object to the proposal on the grounds that there is no designated off-street parking to serve the proposal. Notwithstanding, the proposed development has been assessed against the relevant policies of the adopted South Ayrshire Local Development Plan and other applicable material considerations. The proposals are considered acceptable from a planning perspective as they encourage business growth and promote rural business and activity that is considered appropriate at this location. The small-scale nature of the proposal together with the proposed operational arrangements will ensure that there will not be a significant increase in on street parking to the detriment of the amenity of the locale. The site was previously an area of unrestricted public open space that generated activity to and from the site. The site, while now privately owned, will still operate as an area of open space, albeit managed and controlled for the purposes of the proposed dog exercise area.

Accordingly, it is recommended that the application is approved for the reasons specified in the report.

REPORT BY HOUSING, OPERATIONS AND DEVELOPMENT DIRECTORATE

REGULATORY PANEL: 14 DECEMBER 2022

SUBJECT:	PLANNING APPLICATION REPORT
APPLICATION REF:	22/00395/APP
SITE ADDRESS:	Site To Rear Of 1-10 Mure Place Minishant South Ayrshire
DESCRIPTION:	Part change of use of agricultural land to form commercial dog walking field
RECOMMENDATION:	APPROVAL WITH CONDITIONS

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:

The application site comprises an area of undeveloped land extending to approximately 0.65ha located to the rear of Mure Place, Minishant. The site generally slopes from north to south, with a steep gradient to the south-southeast near the access to the site. There is no vehicular access to the site; pedestrian access is taken from Mure place via an existing gated access.

The application site is bound on all sides by wire mesh fencing in various states of repair. There are also mature trees to the north and west boundaries of the site with agricultural land beyond. The residential properties of Mure Place are to the south and east.

The application site is designated as 'open space' in Local Development Plan 2. It was also designated as open space in the previous local development plan. The site was however sold by the Council in September 2016 and was described at that time as being 'grazing land.' It is understood that the site has been used as grazing land and general, informal open space since this time. Considering the site has been sold, it does not have the status of 'public' open space by virtue of it being privately owned.

Planning permission is sought by the applicant for the change of use of the land to form a secure dog exercise area facility. It is also proposed that a new 1.7-metre-high wire mesh perimeter fence and a 1.5 metre access gate will be erected together with a shelter, picnic benches and litter/waste bins to facilitate the use.

Operationally, the submission proposes the following:

- that the site, which is unlit, will operate during daylight hours only. Operational hours are indicated as 8am – 8pm in the summer and 8am to 4pm in the winter.
- access to the site will be gained through prior booking via an online booking system
- that a secure gated access from Mure Place will be controlled by a keypad and access code. The access code is provided through the online booking system only
- The access code will change regularly to avoid abuse of the system
- 1 hour access slot per booking (only single bookings permitted within any given hour)
- A maximum of 6 dogs will be allowed at any one time with their owner(s)
- The applicant anticipates that the majority of customers will arrive on foot but if arriving by car then the intention would be for on street parking in the area. There is likely to be a maximum of 2 cars at any one time (one arriving as one is leaving).
- Separate bins provided for general waste and dog waste
- Regular maintenance of the site and emptying of bins

A previous application for the same was withdrawn following advice from the Planning service as further information was sought at that time:

21/00845/APP - Part change of use of agricultural land to form commercial dog walking field - Withdrawn - December 2021

The planning application requires to be reported to the Council's Regulatory Panel, in accordance with the Council's approved procedures for handling planning applications and Scheme of Delegation, as five or more competent written objections have been received.

2. Consultations:

Ayrshire Roads Alliance - recommend refusal due to lack of adequate parking and servicing arrangements.
Environmental Health - offer no objection and suggest that a condition regarding noise be imposed.

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.

An Operations Statement was submitted by the applicant in conjunction with their proposal. The details are summarised in section 1 of the report.

4. S75 Obligations:

In assessing and reporting on a Planning application 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, 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:

10 representations have been received, 8 of which object to the proposed development. All representations can be viewed online at www.south-ayrshire.gov.uk/planning

Two representations were submitted which neither object nor support the proposal but raised concerns around land ownership, services (more specifically, telephone lines) and livestock worrying.

The objections and concerns received are summarised as follows:

- Issuing of neighbour notification
- Increased traffic and inadequate parking arrangements
- The volume of visitors using the park
- Worrying of livestock and pets
- Impact on amenity (Noise, light and overlooking)
- Impact on wildlife
- Loss of facility for the community
- Availability of sites elsewhere
- Inadequate waste disposal arrangements and attracting pests
- Lack of services (more specifically, running water to support picnicking)
- Concerns around management of style and gate in north corner
- Concerns regarding the application submission and land ownership
- Concerns regarding underground telephone lines.

In accordance with the Council's procedures for the handling of Planning applications the opportunity exists for Representees to make further submissions upon the issue of this Panel Report by addressing the Panel directly. A response to these representations is included within the assessment section of this report.

7. Assessment:

The material considerations in the assessment of this planning application are the provisions of the development plan, other policy considerations (including government guidance), objector concerns and the impact of the proposal on the amenity of the locality.

(i) Development Plan

Section 25 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 following provisions of the local development plan are considered relevant to the consideration of this application and the policies can be viewed in full online at <http://www.south-ayrshire.gov.uk/planning/planlpdocuments.aspx>

Core Principle B7

Core Principle B8

Strategic Policy 1: Sustainable Development

Strategic Policy 2: Development Management

LDP Policy: Open Space

LDP Policy: Air, Noise and Light Pollution

LDP Policy: Land Use & Transport

The proposal has been assessed against LDP Core Principles B7 and B8 and is found to be in accordance with those principles in that, it aims to encourage business and growth in the Carrick investment area. The business is of a small, local scale and will likely present no adverse environmental impacts due to the nature of the development.

The Strategic Policy 1: Sustainable Development seeks to support the principle of sustainable development by making sure that development respects, protects and where possible, enhances natural, built, and cultural heritage resources. Strategic Policy 2: Development Management ensures development is in accordance with the site's land use and will be appropriate in terms of layout, scale, massing, design, and materials in relation to their surroundings and surrounding land use. In addition, development should be suitable in terms of its bearing on residential amenity, infrastructure implications and contribute to the efficient use of public services and facilities.

In this instance the proposal seeks to use the site as a safe and enclosed area to exercise dogs. The physical works associated with the application proposals (new perimeter fencing, gate, a shelter, picnic benches and litter/waste bins) are minor and will have a minimal impact when viewed outwith the application site. The physical works allow for the enclosure of the site to help ensure the safety of users, neighbouring residents and also livestock in adjacent fields. Further consideration of the impact of the proposals on the residential amenity of properties in the vicinity, is set out below.

The LDP policy on open space states development on land designated as open space may be acceptable if the proposals offer a replacement facility of a similar type, should the development result in a loss of such a facility. The council states that it will make every effort to protect public open space and the measures put in place from development should strive to protect open space from the potential negative impacts of a development which may affect the public's access to open space.

As noted above, the site was sold by South Ayrshire Council in September 2016 and therefore, notwithstanding the designation of open space within the Local Development Plan, it no longer has the status as 'public' open space. However, the proposed use of the site would remain as open space, albeit privately owned, controlled open space. The applicant has stated their intention to improve and maintain the site which would not only provide a secure dog exercise facility for the local community, but also improve the amenity value of the site for the benefit of residents who have properties that have rear gardens that border the site and the wider community. Furthermore, the site would be available to the local community for their use via a booking system. There remain alternative areas of unrestricted, publicly accessible open space within proximity to the site which the community still has access to including the open space and swing park at Monkwood Crescent, directly to the south-west of the application site.

With regards to noise and light pollution, the council will not support applications which add unacceptable amounts of pollution as a result of the development. In this case, no lighting is proposed as the site is only intended to be accessible during day light hours as per the Operational Statement. Furthermore, it is noted in the applicant's operational statement that access to the site will be limited, in terms of both the time of the day and the number of users. It is considered that the limit of 6 dogs per booking is unlikely to cause undue noise pollution within the area, and with the access to the park not being permitted beyond 8pm in the summer and 4pm in the winter months, there is unlikely to be noise from the use in the evening. The site was previously used as unrestricted, publicly accessible open space, so the proposal is not considered to introduce a use or activity that is incongruous or out of character with the site and area. While the Environmental Health Service has recommended a condition with regards the assessment of noise, this is a matter that is more appropriately dealt with by the Environmental Health service itself as the Council's regulatory body for noise related matters. Should noise nuisance occur, it would be for that service to investigate and action as appropriate under their regulatory powers. As noted above, the small scale and controlled nature of the proposal is not expected to give rise to significant noise issues.

Regarding traffic/parking and road safety implications associated with the development proposals, the Ayrshire Roads Alliance has been consulted on the application and recommend refusal as there is no designated parking proposed. However, it is considered from a planning perspective that the comments of the Ayrshire Roads Alliance can be addressed by way of appropriate planning conditions ensuring the site is managed in accordance with the Operating Statement submitted; specifically, that the development will limit the number of users per hour (this is to be monitored) therefore the 'worst-case scenario' would likely be one car leaving as one is arriving. It is considered that this level of on street parking can be reasonably absorbed within the local road network. Furthermore, it is considered that the site and secure dog exercise area is of a sufficiently small, local scale that is unlikely to generate a significant demand for on street parking in any case.

Given the above policy context and subsequent considerations, the principle of the development proposal is considered to be in accordance with the afore-mentioned policy provisions of the local development plan. The provisions of the Adopted South Ayrshire Local Development Plan 2 must be read and applied as a whole, and as such, no single policy should be read in isolation. The application has been considered in this context.

The provisions of the Adopted South Ayrshire Local Plan must be read and applied as a whole, and as such, no single policy should be read in isolation. The application has been considered in this context.

(ii) Other Policy Considerations (including Government Guidance)

o Scottish Planning Policy

Scottish Planning Policy Scottish Planning Policy seeks to protect, enhance, and promote green infrastructure, including open space, as an integral component of successful placemaking; improving access to open space seen as helping build stronger, healthier communities, an essential part of long-term environmental performance and climate resilience and improving places and spaces. It also aims to promote rural business activity.

o Planning Advice Note 65 - Planning and Open Space

Planning Advice Note (PAN 65) Planning and Open Space recognises that "open spaces are important for our quality of life. They provide the setting for a wide range of social interactions and pursuits that support personal and community well-being. They allow individuals to interact with the natural environment and provide habitats for wildlife. They can also be important in defining the character and identity of settlements".

o South Ayrshire Open Space Strategy 2012

The Council has produced an Open Space Strategy. The Strategy, which is based on a quantitative and qualitative audit of open space in South Ayrshire, sets out a vision for the provision, management, and maintenance of open spaces within the Council's area. Whilst generally seeking to protect and improve open spaces, the Strategy does not preclude them from being developed - particularly when the development improves the facilities associated with the open space. However, development proposals also require to be considered based on the provisions of the development plan, merits of the proposal and any individual site-specific circumstances arising, and also the planning history of the site.

The proposal would be located within the settlement boundary for Minishant where there is a general presumption in favour of development. Though access to the field will be restricted through the current proposal, it will remain as 'open space' as defined in PAN 65; furthermore, the site will remain largely undeveloped, and the proposed structures/furniture could be removed (by condition) should the owner cease operations at the site. It is also worth noting that the access to and topography of the site means it is not readily accessible for those with mobility issues and does not lend itself to intense usage. As such, it is considered that the proposal is acceptable in terms of the above provisions of SPP, PAN 65 and the Council's Open Space Strategy.

o South Ayrshire Council Rural Business Procedure Note

As the proposals are located on a designated greenfield site, they should be subject to the Council's Rural Business Procedure Note (RBPB). Whilst only a note and not policy, this can be used to assess the appropriateness of the application. According to the RBPB, the council will have an overarching general presumption against developments outwith settlement boundaries unless there is a specific justification. The council will support rural diversification where appropriate in order to provide rural areas with a stronger local economy, assuming the proposed development does not: Cause a significant increase in car trips. Is otherwise sustainable in its operation.

The proposal is considered to meet the requirements set out within the Rural Business Procedure Note in that it is within the Minishant settlement and is unlikely to significantly increase car trips to the area if operated in accordance with the applicant's operational statement, particularly that the development will limit the number of users per hour. Also, in terms of the RBPB, the development is likely to be considered sustainable in its operation due to its accessible location within the settlement of Minishant and usage as a dog-walking facility, encouraging users to partake in active outdoor exercise. The business is likely to fall into the category of a 'micro business,' as it is unlikely there will be more than 10 full time employed members of staff required, further meeting the guidance of the RBPB.

(iii) Objector Concerns

The representations received in relation to the proposal are noted, and the following response is offered in respect of the objections received:

- Neighbour notification was not timeously issued:

Neighbour Notification was issued to 15 addresses on 13 May 2022 and allowed a period of at least 21 days for responses. The Council's Planning Service apply flexibility and accept representations until the recommendation is being prepared.

- Traffic/Parking:

The applicant has stated that customers will be requested to use the facility with consideration of the neighbours and has identified areas of on street parking within Minishant. While the position of the Ayrshire Roads Alliance is one of objection as no designated off-street parking is proposed for the use, it is the view of the planning service in this case that the use of the site as a secure dog exercise area will not generate a significant increase in road traffic or demand for on-street parking in the area. This view is formed on the basis of the operational statement and the small-scale nature of the site and the proposals.

- The volume of visitors using the site:

In order to manage the site appropriately the applicant has stated that its use will be controlled by an online booking system whereby users book a 60-minute slot and access the site via a secure access gate with a keypad. The keypad code will be changed regularly to avoid users abusing the system. Bookings would be restricted to daylight hours (Summer: 0800-2000 Winter: 0800-1600). These arrangements allow greater control over the current situation whereby any number of people/vehicles could arrive to use the field.

- Worrying of livestock and pets:

The proposals include the erection of a 1.7-metre-high metal mesh perimeter fence to ensure that the site is secure and dogs do not access surrounding fields.

It should be noted however that under the Control of Dogs (Scotland) Act 2010 dog owners are responsible for the actions of their dog. It is understood that Livestock worrying is a crime under The Dogs (Protection of Livestock) (Amendment) (Scotland) Act 2021 and should it occur, it should be reported to Police Scotland.

- Impact of the proposed development on the residential amenity (noise, light pollution and overlooking/loss of privacy) of neighbouring properties at Mure Place:

These points are responded to as follows:

Noise -

This is considered in section (i) above.

Light -

There are no lighting proposals as part of this application. The proposed operational hours mean there will likely be no need for lighting to be added, as it will only be in use for daylight hours, ensuring no light pollution as a result of development. Notwithstanding, a condition can be added to any permission to ensure the use only operates during the times as set out in the operational statement.

Overlooking/loss of privacy -

The field is currently enclosed by a wire mesh fence approximately 1 metre in height. Considering this and the topography of the site (which sits at a higher level than the surrounding properties, there are unrestricted views into the gardens of neighbouring properties. Accordingly the field is open to views from the same. The installation of a wire mesh fence to a height of 1.7 metres would not introduce or exacerbate any overlooking issues or loss of privacy.

The proposed shelter is to be located toward the northwest corner of the field approximately 60 metres from the boundary with the nearest dwellinghouse. The picnic tables are to be placed toward the north-eastern and western boundaries of the field approximately 45 metres and 37 metres respectively from the boundary with nearest dwellinghouse. These separation distances are considered to be acceptable in safeguarding neighbouring amenity.

- Impact on wildlife:

The site is a former grazing field and is not a designated wildlife site, there is one tree within the site itself and some shrubbery; there are trees on the boundary of the site however the application does not propose any tree felling or works to trees. There are no trees afforded protection through the planning system located within the application site. Therefore, planning permission would not be required to prune or fell trees. It would be the responsibility of the applicant to establish if trees have bat roosting potential prior to any works, including management of trees in the future. There is a Provisional Wildlife Site approximately 70 metres north of the site including an area of semi-natural and ancient woodland; given the nature of the application proposal and the separation distance involved, the proposal is not considered to have an adverse impact on this site..

- Loss of public open space:

This is considered in sections (i) and (ii) above.

- Availability of sites elsewhere:

Each application is considered individually on its own merits, and therefore the purpose is to consider the planning merits of the development being presented under this application.

- Inadequate waste disposal arrangements and attracting pests:

This is an operational matter for the operator to control appropriately, in order to ensure that customer behaviour safeguards the local environment and amenity. The applicant has stated that signage will be posted to remind users of their responsibilities and that bins will be emptied daily or as required. Any complaints with regard to littering and dog fouling fall to be regulated by the Council's Environmental Health Service.

- Lack of services (more specifically, running water to support picnicking):

This is an operational matter and not a material consideration that should be given weight in the consideration of this application proposal. The purpose of this assessment is to consider the planning merits of the development being presented under this application.

- Concerns around management of a stile and gate in north corner:

Issues regarding the usage and functionality of the gate and stile are a private matter between the parties involved.

- Concerns regarding the application submission and land ownership

The onus is on the applicant to provide accurate information to allow the planning authority to appropriately assess the application proposals. In this case, it was considered that there was sufficient and relevant information provided to allow Planning service to undertake their assessment of the application. The applicant has stated within their application form that they are the sole owner of the land to which the development relates.

- Concerns regarding underground telephone lines:

The purpose of the planning application is to consider the resultant development, rather than the construction process. Details of the implementation of the proposal have not been included in the application submission. Any damage to property which may occur is a private matter more appropriately dealt with by the respective parties involved to resolve, rather than a matter for the Council, as planning authority.

(iv) Impact on the Locality

Planning permission is sought for the use of the land as a secure dog exercise area with associated fencing, shelter, and picnic tables. The proposal is considered to be in accordance with Local Development Plan Core Principles B7 and B8 in that it aims to encourage business and growth in the Carrick investment area, the business is of a small scale and will likely present no adverse environmental impacts due to the nature of the development.

The site will remain an area of open space available for community use, albeit privately managed. It will introduce an element of control and natural surveillance that does not currently exist with the unrestricted use of the site.

The application site is bound to the east and south by garden ground associated with neighbouring residential properties located at Mure Place. The site was previously used as unrestricted, publicly accessible open space, so the proposal is not considered to introduce a use or activity that is incongruous or out of character with the site and area. It is considered that proper management of the facility through the implementation of the Operational Statement will ensure that the residential amenity of neighbouring properties will not be adversely compromised. Noise issues, should they occur, would be managed by the Council's Environmental Health Service.

The Ayrshire Roads Alliance has recommended refusal as no off-road parking is proposed. Though, it is considered from a planning perspective that the management of the site can be upheld by appropriate conditions attached to any permission to ensure it operates as per the submitted operating statement. The small-scale, local nature of the proposals is such that it is not anticipated to generate such a significant demand for on-street parking that would warrant refusal of this application.

Overall, the principle of the proposed development complies with the relevant policies of the development plan. The consultation responses do not raise any issues of over-riding concern that cannot be addressed by condition. Given the above and having balanced the applicant's rights against the general interest, it is recommended that the application be approved subject to conditions.

8. Conclusion:

The application has been assessed against the various material planning considerations which include the provisions of the development plan, consultations, representations received and the impact of the proposed development on the locality. The assessment concludes that the proposed development complies with the development plan. The consultation responses do not raise any issues of over-riding concern that cannot be addressed by condition. Equally, the points raised in the letters of objection have been fully considered, but do not raise any issues that would merit a recommendation of refusal of the application. Overall, there are no policy objections and following the above assessment; it is considered that the proposal will not have an adverse impact on the amenity of the locality. Given the above assessment of the proposal and having balanced the applicant's rights against the general interest, it is recommended that the application be approved subject to conditions.

Given the above assessment, it is recommended that the application is approved, subject to conditions.

9. Recommendation:

It is recommended that the application is approved, subject to conditions.

- (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.
- (2) That the development hereby permitted must be begun within three years of the date of this permission.
- (3) Unless, as may otherwise be agreed in writing by the Planning Authority, the site and dog exercise facility area shall operate and be managed in accordance with the Operating Statement dated 4 May 2022 and only between the hours of 0800-2000 (BST) and 0800-1600 (GMT).
- (4) That, notwithstanding the plans hereby approved, details of the proposed location and design of the shelter are submitted for the prior written approval of the Council as Planning authority. Thereafter, the shelter shall be implemented as approved.
- (5) In the event that the site as a dog exercise facility area becomes redundant or obsolete, all structures and furniture including the shelter, picnic tables and waste bins shall be removed, and the site reinstated to a standard acceptable by and to the satisfaction of the Planning Authority within one month of the use of the site becoming redundant or obsolete.

9.1 Reasons:

- (1) To ensure that the development is carried out in accordance with the approved plans unless otherwise agreed.
- (2) To be in compliance with Section 58 of The Town and Country Planning (Scotland) Act 1997 as amended by Section 32 of The Planning (Scotland) Act 2019.
- (3) In the interests of residential amenity.
- (4) The shelter is of a temporary nature and is only acceptable as a temporary expedient.
- (5) To minimise the level of visual intrusion and ensure the reinstatement of the site to a satisfactory standard.

Regulatory Panel (Planning): 14 December 2022

Report by Housing, Operations and Development Directorate (Ref: 22/00395/APP)

9.2 Advisory Notes:

N/A

9.3 List of Determined Plans and documents:

Drawing - Reference No (or Description): 22-0584-LOC-01 Rev. A

Drawing - Reference No (or Description): 22-0584-SITE-02 Rev. A

Operating Statement dated 4 May 2022

Background Papers:

- (1) Planning application form, plans and supporting information
- (2) Representations
- (3) Adopted South Ayrshire Local Development Plan 2
- (4) Scottish Planning Policy (SPP)
- (5) Planning Advice Note 65 (PAN 65)
- (6) South Ayrshire Council Rural Business Procedure Note

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:

Mr Del Delury, Planning Assistant - Place Planning - Telephone 01292 616 189