

Argyll and Bute Council
Comhairle Earra Ghaidheal agus Bhoid

Customer Services
Executive Director: Douglas Hendry



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10 December 2014

NOTICE OF RECONVENED MEETING OF LOCAL REVIEW BODY

A meeting of the **ARGYLL AND BUTE LOCAL REVIEW BODY** will be held in the **COUNCIL CHAMBERS, KILMORY, LOCHGILPHEAD** on **WEDNESDAY 17 DECEMBER 2014** at **1.45 PM**, or at the conclusion of the Planning, Protective Services and Licensing Committee at 10.30 am, whichever is the later, which you are requested to attend.

I refer to the above and enclose herewith further written submissions requested by the Local Review Body at their meeting on 10 November 2014.

Douglas Hendry
Executive Director - Customer Services

BUSINESS

- 3. CONSIDER NOTICE OF REVIEW REQUEST: SITE 2: LAND SOUTH OF BT MAST, KILNAUGHTON, PORT ELLEN, ISLAY (REFERENCE: 14/0008/LRB)**
 - (d) Further Written Submissions
 - i) Planning (Pages 1 – 12)
 - ii) Applicant (Pages 13 - 20)
 - (e) Comments on Further Written Submissions (Pages 21 - 24)

ARGYLL AND BUTE LOCAL REVIEW BODY

Councillor Rory Colville
Councillor Donald MacMillan

Councillor David Kinniburgh (Chair)

Contact: Fiona McCallum Tel: 01546 604392

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**REQUEST FOR FURTHER INFORMATION BY
WRITTEN SUBMISSIONS**

FOR

**ARGYLL AND BUTE COUNCIL
LOCAL REVIEW BODY**

14/0008/LRB

**REFUSAL OF PLANNING PERMISSION IN
PRINCIPLE FOR THE ERECTION OF A
DWELLINGHOUSE AND INSTALLATION OF SEPTIC
TANK RELATIVE TO PLANNING APPLICATION
REFERENCE 13/01858/PPP**

**LAND SOUTH OF B.T. MAST, KILNAUGHTON, THE
OA, ISLE OF ISLAY**

19/11/2014

With reference to the above, the following requested information is hereby provided:

1. Detailed plans/maps showing the exact location of the site of the proposed development and information on the policy context within the current Development Plan and the emerging Local Development Plan in sufficient detail to allow the LRB to understand the context of the site in relation to the wider landscape.

Plan attached.

The site the subject of the LRB is located within a wider area of 'Countryside Around Settlement' (CAS) and is situated close to its western boundary. This area of CAS is bounded at this point by an area of 'Sensitive Countryside' to the west and by two areas of 'Very Sensitive Countryside', one to the north (enclosing the high ground surrounding the B.T. telecommunications mast) and one to the south west. The site also falls within an Area of Panoramic Landscape Quality (APQ). The closest 'Rural Opportunity Area' (ROA) to the site is some 375 metres to the west/north west, outwith the APQ and separated from the appeal site by an area of 'Sensitive Countryside'.

The emerging Local Development Plan does not propose to revise these boundaries except that it is proposed that the CAS and 'Sensitive Countryside' development management zones merge to become a contiguous 'Countryside Zone' wherein the provisions of draft policy LDP DM1 and SG LDP HOU 1 would continue to set out a general presumption against development of 'open countryside' locations unless consisting of small scale development on appropriate infill, rounding off or redevelopment sites, or consisting of an appropriate change of use of existing buildings. It has previously been submitted that, in the considered opinion of the Local Planning Authority, no such opportunity exists in this case.

2. Planning views on the materiality of the planning history of the site.

It has previously been submitted that whilst the planning history of the site is indeed a material planning consideration, the amount of weight afforded it is considered small in the context of the current appeal site. This is by virtue of the fact that the previous permission(s) relied upon a now long-replaced and materially different Local Plan, and because the most recent of the two previous permissions had expired some 3 years prior to the submission of the planning application the subject of this Review. Therefore the weight that can be afforded the planning history of this site, whilst material, is not considered sufficient to outweigh the relevant provisions of the current adopted Development Plan (or the emerging Local Development Plan) or to justify a departure to its approved and well-established policies.

The Agent's assertion that the long-expired planning history of the site should, in this instance, be 'afforded significant weight' is robustly disputed given the facts of this case. The Council is unable to find any legal precedent for such a claim.

It would appear that the Appellant's case is based almost entirely upon the premise that the previous historic planning approval for this site should represent an

'exceptional case' sufficient to set aside the general presumption against development that now exists within this 'Countryside Around Settlement' site following the adoption of the Argyll and Bute Local Plan in August 2009. It is claimed that setting aside the provisions of the Development Plan in this manner would not set any 'local precedent for any similar development'. The word 'local' is misleading in this context. It is clear that should this argument be accepted then it would be open to anyone with an expired planning permission to similarly claim an 'administrative error' and argue that significant material weight should be afforded to that previous decision, irrespective of any fundamental change in planning policy that may have occurred in the meantime. It is respectfully suggested that the acceptance of such an argument has the very real potential to undermine the provisions of the Development Plan and would set a harmful precedent with far-reaching implications for the whole of Argyll and Bute.

3. An explanation of Planning's proposal to amend the designation from CAS to 'Countryside Zone' within the emerging Local Development Plan.

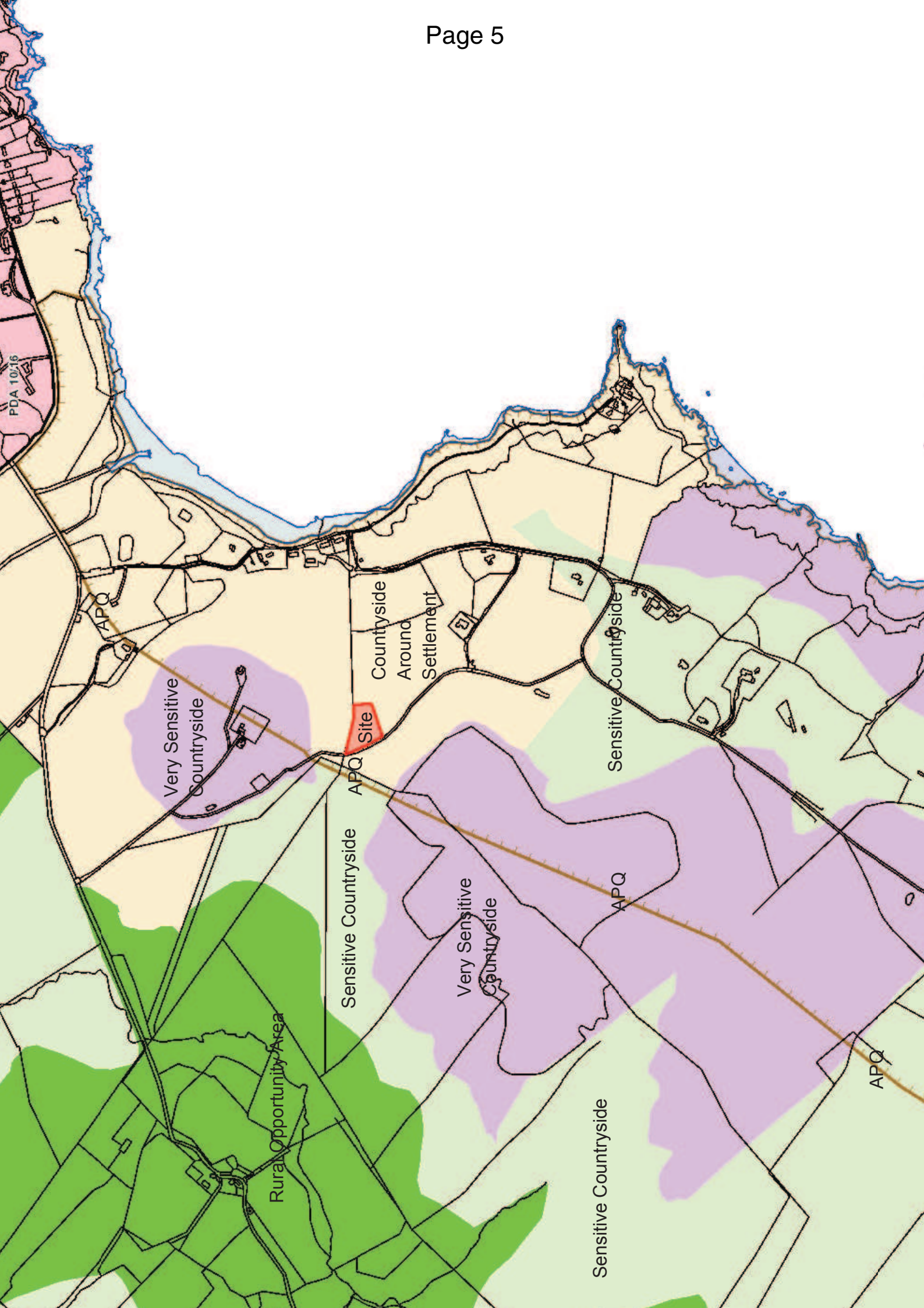
The emerging Local Development Plan proposes to replace the current CAS and 'Sensitive Countryside' development management zones with a single 'Countryside Zone' designation. This suggestion was endorsed by Members through the Council's 'Main Issues Report' and was an idea that received generally positive support from the public.

It was/is felt that the development management aims of the existing CAS and 'Sensitive Countryside' zones are almost entirely interchangeable and that the Development Plan could be simplified by merging these two zones into a single 'Countryside Zone' with the same broad policy aims.

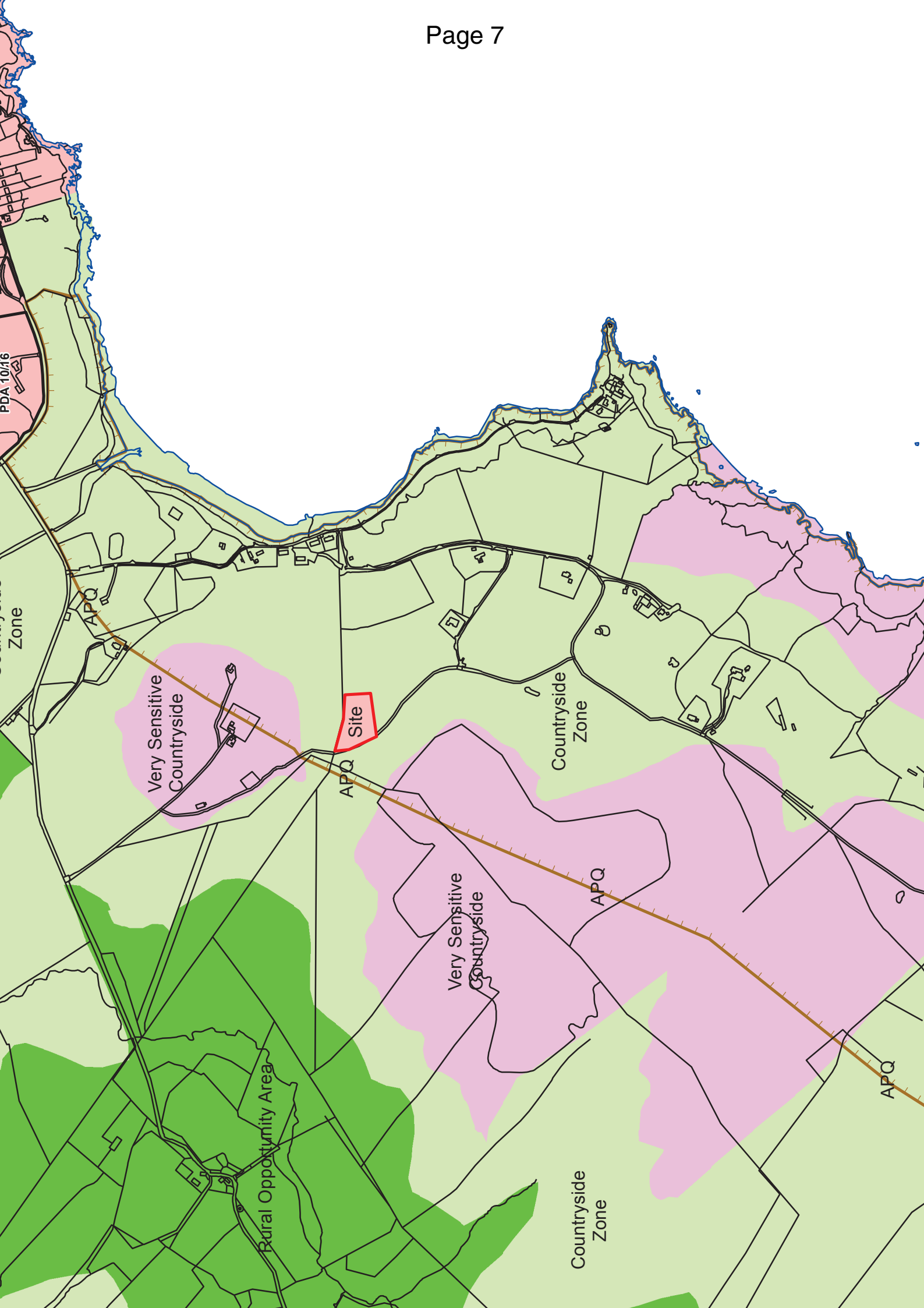
4. A copy of Circular 9/1990

It is understood that the reference to Circular 9/1990 is a typographical error. Circular 6/1990 relates to issues of 'unreasonable behaviour' as alleged by the Appellant and is hereby attached without further comment.

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Circular 6/1990

Description	Circular 6/1990 AWARDS AND EXPENSES IN APPEALS AND OTHER PLANNING PROCEEDINGS AND IN COMPULSORY PURCHASE ORDER INQUIRIES
ISBN	
Official Print Publication Date	
Website Publication Date	March 22, 1990

Circular 6/1990

Circular 25/1966 is cancelled

The Chief Executive
Regional and Islands Councils

The Chief Executive
District Councils (except in Highland, Borders and Dumfries and Galloway Regions)

Our ref: PGG/1/5
22 March 1990

Dear Sir

AWARDS AND EXPENSES IN APPEALS AND OTHER PLANNING PROCEEDINGS AND IN COMPULSORY PURCHASE ORDER INQUIRIES

Introduction

1. This Circular provides advice on the manner in which the Secretary of State's power to order one party to certain proceedings to meet the expenses of another party is exercised. It applies to planning appeals and other planning proceedings under Parts III, IV, V, IX, X of the Town and Country Planning (Scotland) Act 1972 and also to inquiries into compulsory purchase orders. A copy is enclosed for your Director of Planning.
2. This Circular also explains the conditions which require to be met before an award of expenses will be made. It sets out examples of some of the situations in which an award of expenses may be made either against a planning authority or against an appellant or other party. It also covers the award of expenses in respect of compulsory purchase orders and analogous orders and gives guidance on partial awards and making an application for expenses.

Background

3. Section 267(7) of the Town and Country Planning (Scotland) Act 1972 (the 1972 Act) empowers the Secretary of State to make an order as to the expenses of the parties to an inquiry. Section 267A of the 1972 Act enables the Secretary of State to make an award of expenses in relation to proceedings which do not give rise to an inquiry, in particular in cases determined by written submissions. Paragraph 5 of Schedule 7 to the 1972 Act also enables Reporters to exercise the Secretary of State's power to award expenses in specified cases. These provisions were inserted into the 1972 Act by the Housing and Planning Act 1986 and come into force on 31 March 1990.
4. In planning proceedings the parties are normally expected to meet their own expenses and expenses are only awarded on grounds of unreasonable behaviour. Awards of expenses do not necessarily follow the decision on planning merits. An appellant is not awarded expenses simply because his appeal has succeeded, nor is the planning authority awarded expenses simply because the appeal is dismissed. In the case of compulsory purchase and analogous orders, however, where an inquiry has been held, the Secretary of State will normally make an award of expenses as a matter of course to a successful statutory objector against the authority which made the order. This represents no change in the Secretary of State's policy on the awarding of expenses in compulsory purchase order inquiries.

EXPENSES IN RESPECT OF APPEALS AND OTHER PLANNING PROCEEDINGS

5. Before an award of expenses is made, the following conditions will normally need to have been met:-

- 5.1 One of the parties has applied for an award at the appropriate stage of the proceedings. In the case of a public local inquiry this will normally be before the inquiry is concluded. In the case of written submissions procedure, the claim for expenses should normally accompany the party's final written submissions.
- 5.2 The party against whom the claim is made has acted unreasonably.
- 5.3 This unreasonable conduct has caused the party making the application to incur unnecessary expense, either because it should not have been necessary for the case to come before the Secretary of State for determination or because of the manner in which the party against whom the claim is made has conducted his part of the proceedings.

6. Listed below are examples of unreasonable behaviour which may give rise to an award of expenses. It should be emphasised that this list is illustrative, not exhaustive, and claims for expenses which fulfil the conditions outlined in paragraph 5 will be considered, even though they do not come within any of the examples listed. What is unreasonable remains a matter of judgement in the circumstances of each case and each application for expenses will be decided on its merits in the circumstances of each particular case.

Examples of Unreasonable Behaviour

7. Unreasonable behaviour on the part of the planning authority may include:-

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Failing to give complete, precise, and relevant reasons for refusal of an application. As stated in SDD Circular 17/1985, there is a presumption in favour of granting planning permission having regard to all material considerations, unless there are sound and clear cut reasons for refusal. The planning authority must be able to support its reasons for refusal and they will be expected to show that they have reasonable planning grounds for their decision. A partial award may be appropriate in respect of one or more reasons which were not adequately supported by the planning authority in the course of the appeal proceedings (see paragraph 13).

Reaching their decision, without reasonable planning grounds for doing so.

Refusing an application for planning permission solely on the grounds that it does not accord with the provisions of the development plan and without having had regard to other material considerations. Proper consideration should also be given to the merits of the application, the age of the development plan and to relevant changes in circumstances since the development plan was approved or adopted.

Refusing an application because of local opposition, where that opposition is not founded upon valid planning reasons. While the planning authority will need to consider the substance of any local opposition to a particular application, their duty is to decide a case on its planning merits.

Refusing an application if an earlier appeal against the refusal of a similar application in respect of the site has been dismissed, where it is clear from the decision on that appeal that no objection would be seen to a revised application in the form submitted.

Failing to take account of relevant statements of Government policy in Departmental Circulars or of relevant precedents of which the planning authority were aware.

Imposing conditions on a grant of planning permission which clearly fail to meet the criteria set out in SDD Circular 18/1986 or which so limit an appellant's freedom to dispose of his property as to amount to an unreasonable restriction.

Serving an enforcement notice without undertaking reasonable investigations to establish whether there has been a breach of planning control or without taking account of case law and of policy and advice set out in Departmental Circulars.

8. Examples of unreasonable behaviour on the part of the appellant may include:-

Pursuing an appeal in circumstances where there is no reasonable likelihood of success. It may have been clear from a decision on a previous appeal in respect of the same site and the same or similar development that the development would not be permitted. If circumstances had not changed materially in the meantime and the appellant was aware of the decision, expenses may be awarded. Alternatively, it may have been obvious from Government statements of policy or judicial authority that the appeal had no reasonable prospect of being successful.

Withdrawing the appeal without giving sufficient time for reasonable notice of the cancellation of the inquiry to be given to the parties.

Deliberately unco-operative behaviour by any appellant, whether or not professionally represented. This may include refusing to explain the grounds of appeal or refusing to discuss the appeal.

9. Unreasonable behaviour on the part of either party may include:-

Introducing a new matter (eg a new reason for refusal or new ground of appeal) at a late stage in the proceedings.

Refusing to supply adequate grounds of appeal or to co-operate in settling agreed facts or supplying relevant information which unnecessarily prolongs the proceedings.

Refusing to co-operate in setting a date for an inquiry or accompanied site inspection.

Failing to comply with the requirements of any statutory procedural rules by, for example, not providing a pre-inquiry statement when required to do so, or failing to submit written submissions within the prescribed time limits. In these circumstances account will be taken of the extent to which an appellant has the benefit of professional advice.

Failure to comply with procedural requirements to the serious prejudice of the other party and leading to the adjournment of the inquiry. In these circumstances an award may be made relating to the extra expense arising from the adjournment.

Third Parties

10. Awards of expenses either in favour of or against third parties will be made only in exceptional circumstances. In general, third parties will not be eligible to receive expenses where unreasonable behaviour by one of the main parties relates to the **substance** of that party's case (eg the grounds of appeal or the reasons for refusing planning permission are considered unreasonable). But where unreasonable conduct **at a public local inquiry** causes unnecessary expense, third parties may be awarded expenses, or have expenses awarded against them. An example would be an adjournment caused by unreasonable conduct whether of the third party or of another party.

Making an Application for Expenses

11. Where a case has been dealt with by means of public inquiry, an application for expenses should be made to the Reporter at the inquiry. Expenses are awarded because of unreasonable conduct and not on the basis of success and it is normally clear by this stage whether there are grounds for an application. An application made to the Reporter before the inquiry is over enables him to consider the arguments for and against an award. It can be dealt with simply and speedily and the Reporter's decision on the appeal will not be affected in any way by the fact that an application for expenses has been made to him. If the appeal is one which has been delegated to the Reporter for decision, the application for expenses will also be determined by him in future. If the appeal is to be decided by the Secretary of State, the Reporter will report the application and make a recommendation.

12. Where a case has been dealt with on the basis of written submissions, unreasonable behaviour which may justify an award of expenses may not become apparent until fairly late in the proceedings, for example where there has been failure to submit written submissions within the prescribed time limits, or where new evidence is produced at a late stage. In written submissions cases, therefore, an application for an award of expenses may be made at any time up to the submission of the party's final written submissions. Applications for awards of expenses should be made in writing to The Scottish Office Inquiry Reporters Unit in these cases.

13. An application for expenses made after the conclusion of a public local inquiry, or after the final written submissions have been made in a case being dealt with by written submissions procedures, will only be entertained if the party claiming expenses can show good reasons for not having submitted the application earlier. In the circumstances where such an application is entertained, the decision will in all cases be taken on the basis of an exchange of written submissions. Such late claims should be submitted at the earliest opportunity. If the Secretary of State agrees to entertain the claim, the parties involved should be concise and sparing in their exchange of submissions and observe the time limits set by the Secretary of State. If this is not done, the application may be determined on the basis of submissions already before the Secretary of State without waiting for further submissions to be received.

Amount of Award

14. Section 267(7) of the 1972 Act entitles the Secretary of State to make orders as to "the expenses incurred by the parties to the inquiry". Section 267A gives the Secretary of State the same powers in respect of cases dealt with by written submissions. The Secretary of State interprets this as enabling him to award to a party the expenses necessarily and reasonably incurred in relation to the proceedings before him. The Secretary of State does

not himself determine the amount of expenses payable. The party awarded expenses should in the first instance submit details of their expenses to the other party with a view to reaching agreement on the amount. If they are unable to reach agreement the party awarded expenses can refer the case to the Auditor of the Court of Session who will tax such accounts in a manner similar to that in which the taxes judicial accounts in the Court of Session. Submission of accounts to the Auditor will involve agreement to pay the auditor's fee but this is not likely to be more than a small proportion of the expenses in any particular case.

Partial Awards

15. Some cases do not justify a full award of expenses, and in these circumstances a partial award may be made. One example is where a planning authority have failed to substantiate only one of several reasons for refusing a planning application. In this case an award would be limited to the expenses incurred in appealing against that reason. Similarly, where an adjournment of an inquiry is caused by the unreasonable conduct of one of the parties, the award of expenses would be limited to the extra expense caused by the adjournment or delay.

EXPENSES IN RESPECT OF COMPULSORY PURCHASE AND ANALOGOUS ORDERS

General Principles

16. There is a distinction between cases where applicants take the initiative, such as in applying for planning permission or undertaking development allegedly without planning permission, and cases where objectors are defending their rights or interests which are the subject of a compulsory purchase order. If a statutory objector to a compulsory purchase order is successful, an award of expenses will be made in his favour unless there are exceptional reasons for not doing so. To enable an award to be made on grounds of success the claimant must have made formal objections to the order; the order must have been the subject of a public local inquiry; and the claimant must normally have attended (or been represented at) the inquiry and been heard as a statutory objector. In addition, the claimant must have had his objection sustained by the Secretary of State's refusal to confirm the order or by his decision to exclude the whole or part of the objector's property. The award will be made against the authority which made the order and does not of itself imply unreasonable behaviour on the part of the authority.

17. Occasionally circumstances arise in which an award of expenses may be made to an unsuccessful objector or to the order making authority because of unreasonable behaviour by the other party. In practice such an award is likely to relate to circumstances in which one party has acted unreasonably and this unreasonable conduct has caused the other party unnecessary expense.

Partly Successful Objectors

18. Where a statutory objector is partly successful in opposing a compulsory purchase order the Secretary of State will normally make an award of a proportion of the relevant expenses. Such cases arise for example where the Secretary of State excludes part of the objector's land when confirming a compulsory purchase order.

Analogous Orders and Proposals

19. The Secretary of State normally awards expenses to successful objectors to orders and proposals which are analogous to compulsory purchase orders. In general the Secretary of State will consider an order or proposal to be analogous to a compulsory purchase order if its making or confirmation takes away from the objector some right or interest in land. Some examples of orders and proposals which are considered to be analogous to compulsory purchase orders are set out in the Appendix.

Plural Objections

20. Sometimes a single inquiry is held into 2 or more proposals, only one of which is a compulsory (or analogous) order - for example an application for planning permission and an order for the compulsory acquisition of land included in the application. Where a statutory objector to both proposals appears at such an inquiry and is successful in objecting to the compulsory purchase order, he will be entitled to an award in respect of that part of his expenses which has been incurred in relation to the compulsory purchase order only. He is not however precluded from making an application for the remainder of his expenses if he considers that the authority has acted unreasonably.

Further Copies and Enquiries

21. Further copies of this Circular and a list of current planning Circulars may be obtained from Room 6/84, New St Andrew's House (031-244-4082) and any enquiries should be addressed to Mr S Farrell (031-244-4209).

Yours faithfully

J S GRAHAM

COMPULSORY PURCHASE

ANALOGOUS ORDERS

Orders under Section 3 of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 extinguishing a public right of way over land.

Unfitness Orders under Schedule 2 to the Land Compensation (Scotland) Act 1963.

Orders under Section 14 of the Countryside (Scotland) Act 1967 ("the 1967 Act") regarding access to open country as defined by Section 10 of the Act.

Orders under Section 31 of the 1967 Act creating a public path.

Orders under Section 34 of the 1967 Act regarding the extinguishment of a public path.

Orders under Section 35 of the Countryside (Scotland) Act 1967 diverting a public path.

Orders under Section 42 of the Town and Country Planning (Scotland) Act 1972 ("the 1972 Act") revoking or modifying a planning permission.

Orders under Section 49 of the 1972 Act requiring:-

- a. Discontinuance of a use of land, or imposing conditions on the continuance of a use of land; or
- b. the removal or alteration of buildings or works; or
- c. the removal or alteration of plant or machinery used for winning or working minerals.

Orders under Section 49A of the 1972 Act prohibiting the resumption of winning and working of minerals.

Orders under Section 49B of the 1972 Act requiring that steps be taken for the protection of the environment following the suspension of winning and working of minerals.

Orders under Section 56J * of the 1972 Act revoking or modifying a hazardous substances consent.

Orders under Section 203(1)(b) of the 1972 Act extinguishing a public right of way over land.

Orders under paragraph 9 of Schedule 8 to the Housing (Scotland) Act 1987 extinguishing a public right of way over land.

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Page updated: Thursday, August 04, 2005

Date 14th November 2014
Ref 14/0008/LRB

Committee Services
Local Review Board
Kilmory
Lochgilphead
Argyll
PA31 8RT

FAO: Fiona McCallum

BY POST AND EMAIL

Dear Sir/Madam,

NOTICE OF REVIEW – 14/0008/LRB

Site 2: Land South of BT Mast, Kilnaughton, Port Ellen, Isle of Islay

I write on behalf of my client, Mr Colin Peacock, in response to your letter of 11th September, advising of the Local Review Body's request for further written information.

The request for further information from ourselves is: *"An explanation of what was meant by an 'administrative error' which led to the lapse of the previous planning permission on 26th September 2010"*.

I have outlined below an explanation of the circumstances, and the 'administrative error', which led to the lapse of the previous permission. Having received further information from the applicant in order to provide this response, as explained below, it is now clear that this administrative error was not only by the applicant, but largely as a result of incorrect advice from Council officers with regards to the expiry date of the 2007 consent (in that it did not lapse in September 2010, but rather lapsed in September 2012).

The indicative timeline below is presented as an explanation of circumstances relating to the administrative error:

- Previous Outline Planning Permission (07/01618/OUT) granted permission on **26th September 2007**, with Mr Peacock believing the consent was valid for 5 years (until September 2012);
- Mr Peacock contacted the Council planning officer on **18th September 2012** to discuss renewal of application;
- Council officer advised Mr Peacock on **18th September 2012** that the consent had lapsed in September 2010, and that a completely new application would require to be submitted for Planning Permission in Principle for a new house, but was **advised to delay the submission until early 2013** when the draft Local Development Plan was published to which a representation should be made to seek a change in policy position;
- Mr Peacock wrote to local Members (letter to Cllr Anne Horn attached as example) on **20th September 2012** to seek advice and support;
- Mr Peacock submitted a representation to the proposed Local Development Plan in **April 2013**, following its publication in February 2013;
- Mr Peacock prepared a submitted a fresh PPP application to the Council in **August 2013**;
- PPP application refused by Council in **July 2014**.

As above, this 'administrative error' stemmed from Mr Peacock originally believing that the earlier 2007 consent would not expire until September 2012, only to then be advised by the Council officer that it had actually lapsed in September 2010. Further advice from Council officer led to Mr Peacock

delaying his new application until the summer of 2013, following the publication of the proposed Local Development Plan.

Having now learned of the above advice from officers, I can advise the Local Review Body that it appears that incorrect advice was given to Mr Peacock by officers, and at the time of raising the issue with officers in September 2012, the earlier 2007 consent **had not lapsed in September 2010, but rather was still valid until 26th September 2012**. For ease of reference, I have attached a copy of this consent notice, dated 26th September 2007. Condition 3 of this consent makes quite clear that development required to be begun within **5 years** from the date of the permission – this is the period for which the consent is valid.

Members will be aware that section 42 of the Town and Country Planning (Scotland) Act 1997 (as amended 2006) can be invoked to vary, or not comply with, conditions placed on a consent. At both the time of the original consent in 2007, and the discussions with officers in spring 2012, section 42 could have been invoked to vary a 'reserved matters' time limit even where the date for the submission of the reserved matters application (i.e. the 3 years referred to) has passed. The only limitation upon the exercise of section 42 is that contained within section 42(4), namely that the time limit for the actual commencement of development has not expired. As illustrated in the attached copy of the 2007 consent, this commencement of development period did not expire until **26th September 2012**.

Simply, therefore, this consent was still live until 26th September 2012, and at the time of discussing the position with officers on 18th September, the **consent had not lapsed** and Mr Peacock could have submitted a section 42 application within the next 8 days – which is easily achievable. However, incorrect advice from Council officers regarding the expiry date of the consent, and the advice to delay the further submission, led to the expiry date of the consent on 26th September 2012 passing before any further applications were made.

Please note that this issue was not raised in the original submissions to the Local Review Body, as I was not aware of the discussions between Mr Peacock and Council officers in advance of the September 2012 expiry date.

It will also be clear that the communications between Mr Peacock and both Council officers and local Members were clearly before the **actual expiry date** of 26th September 2012 (to which Mr Peacock was adhering to in good faith, given the terms of the 2007 consent and clear reference to 5 years in Condition 3), and the 2007 consent was not "allowed to lapse" as has been suggested by Council planning officers.

Also, please also note that the Circular requested from the Planning Department is actually 6/1990, and not 9/1990.

I trust all of the above is in order, and will allow the Review by the Local Review Body to be progressed timeously. Should you wish to discuss any of the above, or require any further information, please don't hesitate to contact me.

Yours sincerely,



Chris Mitchell
Associate
cmitchell@keppiedesign.co.uk

Cc Mr Colin Peacock, 26 Paddockdyke, Skelmorlie, PA17 5DA (by email)
Ross McLaughlin, Development Manager, Argyll and Bute Council, Blairvadach House,
Helensburgh, G84 8ND

Area Roads – Mid Argyll Kintyre and Islay, Manse Brae, Lochgilphead, PA31 8RD
Andrew Hill, Environmental Health, Planning and Regulatory Services, Manse Brae,
Lochgilphead, PA31 8RD
Mr D MacRae, An Cala, Port Ellen, Islay, PA42 7AL
Mr Paul McClure, 103 Frederick Crescent, Port Ellen, Islay, PA42 7BQ
Miss Fiona McFarlane, Kilnaughton House, Port Ellen, Islay, PA42 7AX
Mrs Keren McClure, 103 Frederick Crescent, Port Ellen, Islay, PA42 7BQ
Mr Arthur Woodrow, Ardloch, Glen Road, Bridgend, Islay, PA44 7PY
Miss Susan McFarlane, 142 Frederick Crescent, Port Ellen, Islay, PA42 7BQ

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TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE)
(SCOTLAND) ORDER 1992

OUTLINE PLANNING PERMISSION

REFERENCE NUMBER: 07/01618/OUT

Colin Peacock
26 Paddockdyke
Skelmorlie
Ayrshire
PA17 5DA

I refer to your application dated 22nd August 2007 for outline planning permission for the following development:

Renewal of previous consent ref. 04/01234/OUT - erection of dwellinghouse and installation of septic tank
AT:

Site 2 Land South Of BT Mast Kilnoughton The Oa Isle Of Islay Argyll And Bute

Argyll and Bute Council in exercise of their powers under the above mentioned Act and Order hereby grant outline planning permission for the above development in accordance with the particulars given in the application form and docketed plans, subject however to the following conditions:

- (1) This permission is granted under the provisions of Article 4 of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 on the basis of an outline application for planning permission and that the further approval of Argyll and Bute Council or of the Scottish Executive on appeal shall be required with respect to the undermentioned reserved matters before any development is commenced:
 - (a) the siting, design and external appearance of the proposed development;
 - (b) the landscaping of the site of the proposed development;
 - (c) details of the access arrangements;
 - (d) details of the proposed water supply and drainage arrangements.
- 2) In the case of the reserved matters specified in (1) above, an application for approval of the reserved matters in terms of Article 6 of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 must be made to Argyll and Bute Council no later than the expiration of 3 years beginning with the date of this permission.
- 3) That the development to which this permission relates must be begun not later than the expiration of 5 years from the date of this permission or within the expiration of 2 years from the final approval of all reserved matters, whichever is the later.

Reasons: (1) (2) & (3) to comply with Section 59 of the Town and Country Planning (Scotland) Act 1997

AND

Subject to the additional conditions and reasons on the attached list.

It should be understood that this permission does not carry with it any necessary consent or approval for the proposed development under other statutory enactments and is not a Building Warrant.

Dated: 26 September 2007



Angus J. Gilmour
Head of Planning

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Councillor Anne Horn
4 Lochgair Place,
Tarbert
PA29 6XH

Mr Colin Peacock
26 Paddockdyke,
Skelmorlie,
Ayrshire,
PA17 5DA

Mobile Nr 07931 588737

Email : colin@crawfordmech.co.uk

Thursday 20th September 2012

Dear Madam,

SITE 2 – LAND SOUTH OF BT MAST, KILNAUGHTON, PORTELLEN, ISLE OF ISLAY.

PLANNING REFERENCE NR 04/01234/OUT.

I write in connection with the renewal of Outline Planning Permission for a single dwelling house at the above site.

I purchased the plot of land from Mr Arthur Woodrow in 2007 and believe he obtained the original Outline Planning Permission in 2004.

During the initial years following purchase of the site, I invested in new perimeter fencing, drainage and the formation of a hard-standing area in preparation for future construction. At this stage I was investigating the possibilities of alternative house designs in anticipation of a detailed planning application. I then experienced a down-turn in workload due to the credit crunch and the recession and things were put on hold.

I have worked hard over the past few years and now have renewed confidence in progressing with the investment of building a dwelling house as originally planned.

I recently contacted Argyll and Bute Council Planning Department and have been informed that a new 'Countryside around Settlements' policy was introduced in 2009. Unfortunately my Outline Planning Permission has now expired and I have been informed that renewal of the Outline Planning Permission would probably not be possible.

Due to substantial investment in purchasing and preparing the building plot, I feel I have no alternative but to go ahead and submit an application for renewal of the previously issued Outline Permission and intend to do so in the near future.

I am therefore writing to inform you of my predicament and hope to gain your support of my application.

I would be very grateful to receive any advice you could offer me in resolving this matter.

Should you require any further details or information please do not hesitate to contact me at any-time, by telephone, email or post.

I thank you in anticipation of your help.

Yours Faithfully,

**COMMENT ON FURTHER INFORMATION BY
WRITTEN SUBMISSIONS**

FOR

**ARGYLL AND BUTE COUNCIL
LOCAL REVIEW BODY**

14/0008/LRB

**REFUSAL OF PLANNING PERMISSION IN
PRINCIPLE FOR THE ERECTION OF A
DWELLINGHOUSE AND INSTALLATION OF SEPTIC
TANK RELATIVE TO PLANNING APPLICATION
REFERENCE 13/01858/PPP**

**LAND SOUTH OF B.T. MAST, KILNAUGHTON, THE
OA, ISLE OF ISLAY**

09/12/2014

Response to issues raised in the submission by Keppie Planning & Development dated 14th November 2014

Comments re. expiration date of 07/01618/OUT

Within this correspondence Chris Mitchell of Keppie Planning and Development makes the wholly erroneous and mischievous allegation that the 'administrative error' referred to in his original submission was, *'largely as a result of incorrect advice from Council officers with regards to the expiry date of the 2007 consent (in that it did not lapse in September 2010, but rather lapsed in September 2012)'*. In order to evidence this claim, Mr Mitchell has provided a copy of the decision notice for application 07/01618/OUT and has highlighted Condition 3 of that approval notice with the comment that Condition 3, *'makes quite clear that development required to be begun within 5 years from the date of the permission'*.

However, Mr Mitchell omits totally any commentary relating to Conditions 1 and 2 of that approval notice and appearing immediately above his highlighted paragraph.

The decision notice for application 07/01618/OUT follows, for Conditions 1, 2 and 3, the standard form for all outline planning permission decision notices issued by the Council during this period and makes clear in Condition 1 that the permission is granted under the provisions of the then extant Article 4 of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 on the basis of an outline application for planning permission and states unequivocally that, *'the further approval of Argyll and Bute Council... shall be required with respect to the undermentioned reserved matters before any development is commenced'*. The 'reserved matters' being the subsequent approval of the siting, design and external appearance of the development; the landscaping of the site of the proposed development; details of the access arrangements; details of the proposed water supply and drainage arrangements. To date, no such application has been made to discharge any or all of these reserved matters.

Condition 2 of this decision notice further states that an application for the approval of these reserved matters must be made to the Council, *'no later than the expiration of 3 years beginning with the date of this permission'*, i.e. by 26th September 2010.

Condition 3 of the decision notice goes on to state that, following the necessary approval of all reserved matters, the development itself must be begun either no later than five years from the date of the outline permission, or within two years from the final approval of the reserved matters, whichever is the later.

Clearly, then, as no application was made at all for the approval of any of the reserved matters, any conventional reading of this document makes it clear that the outline permission expired after three years, i.e. on 26th September 2010. Therefore, Mr Mitchell's claim that an application under S42 of the Act could have been entertained by the Planning Authority if received prior to 26th September 2012 is erroneous - in this respect, and for the purpose of clarity, it is confirmed that it would not be procedurally competent to vary the time limit condition on a permission which has already expired.

It is further noted that the original outline planning permission under application reference 04/01234/OUT contained exactly the same wording of its Conditions 1, 2 and 3 as that of the subsequent renewal under 07/01618/OUT. At this time the Appellant, Mr Peacock, (who had

purchased the site and its outline planning permission from the original applicant) was sufficiently aware of the wording of these Conditions to ensure that he applied to have this 2004 permission renewed within the required three year period. Yet when faced with a near-identical decision notice following his successful application in 2007 his claim now is that he was somehow misled by the Planning Authority into thinking that his new outline permission would afford him five years before making any follow-on application.

Comments re. advice provided by Officers to delay submission:

Within the correspondence dated 14th November 2014 it is alleged that the appellant, Mr Peacock, has been misadvised by Officers on 18th September 2012 to delay the submission of his planning application until early 2013 when the draft Local Development Plan was due to be published and to which Mr Peacock would have the opportunity to make representations with a view to seeking a more positive policy position.

It is confirmed that whilst Mr Peacock was advised by Officers that the position set out above was an option it was also advised that this approach was not without risk of failure. The allegation that Mr Peacock was misadvised by Officers is strenuously denied and in this respect it is confirmed that Mr Peacock was also provided with advice at that time in respect of his ability to make a fresh application for planning permission at any time which would come with the right to appeal/review in the expected event of the application being refused as development contrary to the provisions of STRAT DC 2 and LP HOU 1 of the adopted Argyll and Bute Local Plan 2009.

In summary, the claims advanced by Mr Mitchell simply do not stand up to scrutiny. There has been no administrative error on the part of the Council as Planning Authority, nor has the appellant been misadvised in respect of his ability to make fresh submissions; accordingly the Local Review Board is respectfully requested to dismiss these allegations.

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