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GVA James Barr

Our ref: 06B505776  
Your ref: 12/0007/LRB

10 July 2015

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Dear Sirs

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**Local Review Body Reference 12/0007/LRB  
Land North West of Ardare, Colintraive**

Further to your letter dated 29 June 2015, GVA James Barr wish to take this opportunity on behalf of the applicant and landowner Mr Staunton, to provide further representations in support of the application subject to review, as identified above. We request that these comments are taken into consideration in the determination of the application.

Due to the passage of time since the last meeting of the Local Review Body, we wish to take this opportunity to reiterate key points in this case, and address matters as they have progressed since 2013 when the LRB previously met.

**Argyll & Bute Local Development Plan – Examination Report**

Whilst our submission on 6 December 2012 stated that we did not believe the promotion of the site through the Local Development Plan as an extension to the settlement boundary was required to justify this proposal, it is our view that the allocation of the site as Countryside in the Argyll & Bute Local Development Plan 2015, and the Reporter's comments in response to the promotion of this site for inclusion in the settlement of Colintraive by the Local Review Body, assists with the consideration and determination of this case.

Specifically, the Reporter has stated that the allocation of the site within the designated countryside does not preclude it from development, as local planning policy allows for gap and infill development in countryside locations, where appropriate.

In addition, with relevance to the context of the site in the wider local area, the Reporter has stated that there is little difference between the built form of the settlement cluster and the north part of the row of houses to the south. However, he considered the site more related to the dispersed pattern of houses to the south designated countryside, due to the tree coverage on site which is covered by the wider Tree Preservation Order in the local area.

This decision supports our client's viewpoint that this site is countryside, where development would not expand the designated settlement boundary due to the fact that:

1. The site is infill, and therefore there is no further room for development or expansion.
2. The Reporter has demonstrated that the site itself is more related to the countryside due to the tree presence on site and in the wider locale, and therefore development on this site does not support the extension of the settlement boundaries as defined at Colintraive.



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The Reporter has clearly stated in his comments that it would not be appropriate to extend the settlement zone in this location, for which his reasoning included the fact that the site appears to relate more to the dispersed houses to the south and their countryside designation due to the wider tree coverage in this location.

As such, we believe that proposed development can be supported as an acceptable infill development in a countryside location, without raising concerns about the potential extension of the settlement boundary of Colintraive.

### **Policy Assessment**

The proposal must be assessed against Policy LDP DM1 Development within Development Management Zones of the Argyll & Bute Local Development Plan 2015, which states:

*"Encouragement shall be given to sustainable forms of development as follows: ...*

*E) Within the Countryside Zone up to small scale on appropriate infill, rounding off and redevelopment sites and changes of use of existing buildings. In exceptional cases development in the open countryside up to and including large scale may be supported on appropriate sites if this accords with an Area Capacity Evaluation (ACE). There is a presumption against development that seeks to extend an existing settlement into the Countryside Zone."*

This is generally the same policy principles as were set out in Local Plan Policy LP HOU 1 of the previously adopted Argyll & Bute Local Plan 2009, providing instances where development in the countryside is deemed acceptable. We have previously provided justification in our submissions about the identification of the site as an infill site, in compliance with planning policy.

As previously stated in our original submission and further written submissions made to the Local Review Body, the definition of infill, and character of the site proposed for development lends itself to identification as an infill site.

Ultimately, the site is bounded by existing residential properties on each side can therefore be identified as an infill site. There is no potential for further development or expansion as a result of the proposed dwelling, due to the site being bounded by other existing properties. In addition, the recent decision by the Scottish Government Reporter has clearly stated that he does not believe this site should be included within the settlement boundary, and as such there is no question of the settlement boundary being extended as a result of development taking place on this site.

We believe that there is full policy justification provided in the adopted Argyll & Bute Local Development Plan 2015 for development in a countryside location, supporting small scale development on an infill site that will not result in the extension of a settlement into the countryside.

It is a matter for the discretion of the LRB as planning authority to determine whether the application site constitutes infill development and therefore complies with policy DM 1. They must come to their own view on this, based on the particular circumstances of the case, and are not bound by the advice of officers. There is a clear basis on which the LRB can come to the conclusion that the application site constitutes infill. Each case requires to be determined on its own merits and no issue of precedent therefore arises.

In relation to the other relevant policies which must be taken into consideration in the on-going assessment of this case, we wish to make the following comments:

SG LDP ENV 6 – Development Impact on Trees/Woodland should be considered in relation to the Tree Preservation Order on the site and the proposed tree removal and tree planting that is promoted as part of this application.

Our client is wholly aware of the Tree Preservation Order on site and this has been taken into account in the planning of the proposed house. Whilst it is proposed to remove 7 trees from the site to allow the development to proceed, our client has ensured that there is minimal impact by replanting 10 trees, more than that lost as a result of the proposed development. This is to ensure that the wider character of the Tree Preservation Order is not affected by the loss of a small amount of trees within the wider wooded area.

The response from the Horticultural Officer during the application process accepted that the new planting on site, which can be dealt with by way of a condition on any consent, would assist with the longevity of wood cover. In addition, she stated that in the wider context tree cover is generally good in the immediate area, and management of this portion of the TPO will not result in the overall deforestation of the wider area.

In summary, it was not considered that the proposed development would have a significant detrimental impact on the wider Tree Preservation Order, or the general character or appearance of the landscape in this location, and that new planting would be acceptable to address the proposed removal of some trees on site.

It is therefore considered that the proposed development would not have a significant impact on the trees, and complies with local planning policy by ensuring adequate provision had been made for the preservation of trees, and new compensatory planting.

It has previously been stated, and continues to be our opinion, that presumptions had been made in the determination of this application about potential additional tree removal which is not promoted as part of this application. As a Tree Preservation Order area, it is worthwhile noting that any additional tree works would require approval by Argyll & Bute Council, and therefore can be monitored accordingly. There is no justification, based on the response from the Horticultural Officer, that the proposed tree works and new planting would be a sufficient reason to consider the proposal to be contrary to policy, and refuse planning permission.

As such, the reason for refusal stating that the proposed development would result in the loss of the distinctive wooded appearance is unfounded in this case.

SG LDP ENV 12 – Development Impact on National Scenic Areas requires the Council to resist any development in or affecting National Scenic Areas where it would have a significant adverse effect on the landscape quality.

It is considered that due to the surrounding built environment, the small scale nature of the development proposed, and the landscaping and tree planting promoted as part of this proposal (as detailed above), there will be no significant impact on the wider National Scenic Area. As such, the proposal complies with SG LDP ENV 12.

Therefore, the reason for refusal stating that the development would erode the character of the National Scenic Area is also unfounded in this case.

### **Determination of Application**

Ultimately, the Local Review Body has the power to determine this application as they see fit, based on the information provided in the application and review process.

It is our view that justification has been provided to support the approval of planning permission in this instance, based on the nature and context of the site, and the proposed works promoted to mitigate any impact on the wider Tree Preservation Order and National Scenic Area designation. In addition, the proposed development will not result in the extension to the settlement boundary of Colintrave, as supported by the Reporter's decision in the Argyll & Bute Local Development Plan Examination Report.

Therefore, we believe that this development accords with adopted local planning policy, as stated above, and that there is sufficient evidence to support the proposal and allow planning permission to be granted.

However, even if the LRB have doubts as to whether the appeal site can be properly characterised as infill; that is not the end of the matter. Our client is concerned that the impression may have been given to the LRB that, if the proposed development is considered to be contrary to the development plan, it must be refused. This is incorrect. For the avoidance of doubt, the correct approach is summarised in Annex A of Circular 3/2013, following the reasoning of the House of Lords in *City of Edinburgh District Council v Secretary of State for Scotland* 1997 SCLR 1112:-

*"The House of Lord's judgement also set out the following approach to deciding an application:*

- *Identify any provision of the development plan which are relevant to the decision;*
- *Interpret there carefully, looking at the aims and objectives of the plan as well as detailed wording of policies,*
- *Consider whether or not the proposal accords with the development plan,*
- *Identify and consider relevant material considerations for and against the proposal; and*
- *Assess whether these considerations warrant a departure from the development plan."*

It is a matter for the discretion of the LRB to decide what weight to attach to the development plan and what weight they should attach to other material considerations. The courts have made it repeatedly clear that a planning authority has considerable latitude in exercising their discretion. Provided that the terms of the development plan have been properly interpreted, and they follow the approach set out in Annex A of Circular 3/2013, the courts will only interfere if the decision is one which can be said to be irrational. It is not the place of officers to tell members of the LRB how they must determine an application before them. It is a matter entirely for the discretion of the LRB.

In the circumstances of this application, if the LRB considered that the development would technically involve an expansion of Colintrave, any further expansion of the settlement would be prevented by the existing dwellings to the south which are within the countryside designation. The LDP examination reporter rejected any expansion of the settlement boundary. There is no prospect of setting a precedent for a substantial incursion into the countryside as a result of granting the application. Therefore, even if the LRB consider that the development did not fully comply with policy DM1, the lack of any resulting harm to the settlement would merit a departure from that policy.

We are aware that the prospect of a legal challenge in relation to this case has been raised in the advice provided to Councillors at previous meetings of the Local Review Body, and that this ultimately resulted in the progression of the proposed extension to the settlement boundary in the now adopted Local Development Plan. We wish to take this opportunity to state that a potential legal challenge against any decision is not in itself a reason for refusal. We believe that the Local Review Body has been clear and concise in its consideration of the application and the information provided from all parties, with sufficient opportunities over the years since the review commenced for all interested parties to be involved in the process and make their views known.

In any event, provided the LRB proceed in terms of the approach set out in Annex A of Circular 3/2013, they are perfectly entitled to conclude either that (first) the development accords with the development plan; or (second) even if the development does not entirely accord with the development plan, material considerations warrant a departure from the development plan. Provided they proceed in this way, we cannot see how any third party would have a legitimate ground of challenge.

We wish to stress at this point that determination of this application should be based on the relevant information provided during the planning process, and not the potential recourse of any decision that is made.

We trust that this submission will be given due consideration as the review of this application continues to progress towards determination.

Yours faithfully



**Elaine Anderson**  
**Senior Planner**  
**For and on behalf of GVA Grimley Limited**

Argyll and Bute Council  
Comhairle Earra Gháidheal agus Bhóid



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Our Ref: 10/02077/PP

Local Review Body  
[Localreviewprocess@argyll-bute.gov.uk](mailto:Localreviewprocess@argyll-bute.gov.uk)

Dear Sir / Madam

**LOCAL REVIEW BODY REF 12/0007/LRB  
LAND NORTH WEST OF ARDARE, COLINTRAIVE**

Please find attached the LDP Inquiry Reporters views on the suggested extension to the settlement at Colintraive, that confirms that the countryside designation is correct and that the settlement boundary should not be extended to include the land which is the subject of the planning application for the erection of a dwellinghouse. I would have nothing further to add to the narrative provided by the Reporter.

Yours faithfully

Sandra Davies  
Acting Area Team Leader – Bute and Cowal  
Development Management

CC

Ross McLaughlin

Elaine Anderson, James Barr Ltd, 226 West George Street, Glasgow G2 2LN

Area Roads Manager – Bute and Cowal

David Garner, Core Paths

Scottish Water, Customer Connections, 419 Balmore Road, Glasgow G22 6NU

G Greg Morris, Milton Wood, Colintraive PA22 3AS

Ian & Ruth, Warnock, Ardare, Colintraive, Argyll







<b>Development plan reference:</b>	S003 - Colintraive (Ardare)	<b>Reporter:</b> Lance Guilford
<b>Body or person(s) submitting a representation raising the issue (including reference number):</b>		
Nicholas Staunton (01736) Steven Catchpole (01806) Kenneth Garner (01871) John Crawford (01970) Ian Warnock (01787)		
<b>Provision of the development plan to which the issue relates:</b>	Extension to Settlement Boundary - Colintraive	
<b>Planning authority's summary of the representation(s):</b>		
<p>S003 - Nicholas Staunton (01736) - The contributor supports the extension of the settlement boundary and does not consider that it will lead to development pressure beyond the proposed extended settlement boundary.</p> <p>S003 - Steven Catchpole (01806) - The objector contends that the land in question was not previously designated as settlement zone and there has been no reasons given for the change to settlement, furthermore that the land is covered by a tree preservation order and this should not be undermined to allow development of the land.</p> <p>S003 - Kenneth Garner (01871); S003 - Ian Warnock (01787) - The objectors state that it appears that the extension to the settlement zone has been undertaken to allow the approval of a planning application and that permitting development at this location would set an undesirable precedent that could threaten other similar areas in Colintraive.</p> <p>The objectors contend that the site was subject to a planning application for a dwellinghouse that the planners recommended be refused then the Local Review Board considered that the area had capacity for development. The objectors contend that the proposed Local development Plan should not amend the settlement zone to allow the development to proceed.</p> <p>The objectors contend that there has been no notification to the wider community of the proposed change in the settlement zone designation.</p> <p>The objectors contend that a Tree Preservation Order covers the site and wider area and that many of the trees within the new settlement zone would have to be removed to facilitate the development of the dwellinghouse that is proposed to be built on the site.</p> <p>The objectors contend that the change in the settlement zoning and the prospect of development of the site is contrary to the provisions of Section 1.1.2, Policy LDP 3 and Policy LDP STRAT 1 of the proposed Local Development Plan.</p>		

ISSO

S003 - John Crawford (01970) - The contributor objects to the proposed extension to the settlement zone between the properties known as Milton Wood and Ardare and contends that if developed would degrade and change the nature of the intermittent linear coastal development pattern.

**Modifications sought by those submitting representations:**

The objectors stated the following:

S003 - Nicholas Staunton (01736) - None.

S003 - Steven Catchpole (01806) - Do not extend the settlement zone, allow development of the site or the removal of trees.

S003 - Kenneth Garner (01871); S003 - Ian Warnock (01787) - Do not extend the settlement zone into this wooded area and do not permit development of the site or the removal of trees.

S003 - John Crawford (01970) - None stated.

**Summary of responses (including reasons) by planning authority:**

Site location (Production ref: PD111)

The representations on the proposed LDP relate to a change to the settlement boundary at Colintrave that was occasioned by the submission of a planning application for the erection of a single dwellinghouse, formation of a vehicular access and installation of a septic tank. (Production ref: PD040)

The area of land that is the subject of these representations is currently zoned as Countryside Around Settlement in the adopted Argyll and Bute Local Plan (Core doc ref: CD017). The land is also covered by a Tree Preservation Order (Production refs: PD042 and PD043).

The application was considered by planning officers and recommended for refusal (Production ref: PD041).

The applicants' agent subsequently requested that the application and planning officers' recommendation of refusal be considered by the council's Local Review Board (LRB) comprising a small panel of three councillors. The agents submitted an additional planning statement in support of the review undertaken by the LRB. (Production ref: PD044).

The LRB agreed to defer further consideration of the appeal against the refusal of planning permission pending the outcome of;

The inclusion of the application site as part of the settlement of Colintrave by extending the current settlement boundary and;

The outcome of the examination of the proposed LDP by the Scottish Government should

objections be lodged by members of the public in respect of the proposed extension to the settlement boundary.

It should be noted that the extension to the existing settlement boundary in the proposed LDP was instructed by the LRB (Production ref: PD045), and not as a consequence of a review of the settlement boundary by planning officers.

In view of the instruction by the LRB that the existing settlement boundary be extended in the proposed LDP, and the recommendation by planning officers that the planning application be refused. Reporters are now invited to make a determination on the proposed extension to the settlement boundary as set out in the proposed LDP having regard to the submitted planning application, the planning officers' recommendation on this application, the additional case made to the LRB by the agent acting on behalf of the applicants and the representations on the extension to the settlement boundary lodged by members of the public in response to the consultation on the proposed LDP.

**Reporter's conclusions:**

1. I note that the proposed extension to the settlement zone of Colintraive follows a local review of the refusal of planning permission for a single house on the site. The decision of the local review body has been deferred pending the outcome of this examination process.
2. I have taken into account all of the matters raised within the representations. However I should emphasise that this issue is not concerned with an allocation for development under LDP PROP 2, or a potential development area under LDP PROP 3. I would further emphasise that the purpose of this examination is not to determine whether planning permission should be granted for housing development on the site. That is a matter for the development management process, which in this case is still ongoing. Relevant local development plan policies would apply to all development proposals, including Policies LDP STRAT 1 and LDP 3, the latter being relevant to the designation of the national scenic area.
3. This issue is about how the site fits into the settlement plan in the context of LDP PROP 1. There are only 2 development management zones relevant to the issue, these being the settlement zone (relating to villages and minor settlements), and the countryside zone. I have to consider whether or not the settlement zone should be extended (as proposed by the council) to include the site. The only alternative in the circumstances is to include the site within the countryside zone around the settlement, as within the existing adopted local plan.
4. The physical characteristics of the settlement of Colintraive are quite unusual. The settlement has a dispersed pattern, including small clusters of existing development (mainly housing) along the shoreline south east of the ferry terminal. These clusters are designated in the local development plan as part of the settlement zone of Colintraive. In between these clusters are areas of countryside.
5. In the area of countryside to the south of the site proposed for inclusion within the settlement zone, there is a row of dispersed houses set within woodland which is the subject of a tree preservation order. This woodland (and the tree preservation order) extends over the site, which is effectively a gap within the existing built form, even though

the built form to the north is part of the settlement zone, and the built form to the south is within the countryside zone.

6. I find however that the site is more related to the dispersed pattern of houses to the south, particularly since it contains mature trees which are a significant part of the tree preservation order. The landscape and visual effects of development on the site would probably be more appropriately assessed as part of the countryside zone. Furthermore, I am not aware of any material change in circumstances since the existing local plan (which includes the site as part of the countryside zone) was adopted. I therefore find that there is insufficient evidence to justify the inclusion of the site within the settlement zone.

7. Notwithstanding the above, from my site inspection I find that there is little difference between the built form of the settlement cluster and the northern part of the row of houses to the south. From the North Bute shoreline, the appearance is of a dispersed row of houses, set within woodland, extending south east from the cluster and beyond the site. However, I note that under Policy LDP DM1, in the countryside zone, encouragement will be given to sustainable, small scale infill or rounding off development, but that there is a presumption against development that seeks to extend an existing settlement into the countryside zone.

8. I conclude that in the circumstances it would not be appropriate to extend the settlement zone to include the site. However, I also note that the development of a site lying within the countryside zone is not precluded by the terms of the local development plan. It is for the council to determine whether to grant planning permission for a particular application, having regard to the relevant provisions of the development plan as well as to any other material considerations.

9. Matters raised within the representations relating to the need for housing in the area, the priority given to vacant/derelict land, and whether the site could be used to facilitate a shoreline trail are in the circumstances not relevant to my consideration of this issue.

**Reporter's recommendations:**

Modify the local development plan by:

Deleting the site from the settlement zone, and designating the site as countryside zone on the proposals map for Colintrave.

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**From:** Ian Warnock  
**Sent:** 27 July 2015 20:44  
**To:** MacInnes, Hazel  
**Cc:**  
**Subject:** further objection ref 12/0007/LRB, planning application 10/02077/PP and Local Review

Quote ref 12/0007/LRB, planning application 10/02077/PP  
Land at NW of Ardare Colintrave

Dear Sir/madam,

Response to recent information on the position of Land West of Ardare. Colintrave, regards findings concerning Settlement zone, Local Plan and views of Applicants agent, James Barr (surveyors) relating.

On this matter, we were satisfied at what we consider the right and proper view of the authorities as regards not including this land area in the settlement zone.

The further restated justifications of Barr regarding this, we would consider as again largely incorrect or misplaced, and not considering the practical, prolonged and real visual impact of what was proposed:

- Heavy clearing of a green, heavily wooded and healthy area.
- Erection of a large 2 story dwelling and the inevitable site clearing that would occur

The whimsical suggestion made that replanting of several 'new trees' (likely under 8 feet in height and taking decades to grow to any significance) would be a reasonable resolution to removing many large and health specimens is frankly nonsense – and again aims to ignore the Tree Preservation Order in place. The woods area is also a habitat of red squirrels, many species of birds and locals have seen otters in that area.

The point and case about the nature, character and beauty of the local area and the occasional dwellings interspersed with woodland it contains, has been made and supported, and a major concern we would raise is that should this piece of land, outside the settlement zone, be given approval for housing, the possible next step is for almost any areas of the coastal strip to then be open to similar requests.

This could and would be the 'start of the rot', and over time could well affect the whole area and the amenity of this acknowledged area of scenic beauty and biodiversity.

Regards,

**Ian Warnock**

Ardare  
Colintrave

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