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Argyll and Bute Council
Comhairle Earra Ghaidheal agus Bhoid

Corporate Services
Director: Nigel Stewart



22 Hill Street, Dunoon, Argyll, PA23 7AP
Tel: 01369 707130 Fax: 01369 705948

23 July 2009

NOTICE OF MEETING

A meeting of the **BUTE AND COWAL AREA COMMITTEE** will be held in the **QUEEN'S HALL, DUNOON** on **THURSDAY, 30 JULY 2009** at **11:00 AM**, which you are requested to attend.

Nigel Stewart
Director of Corporate Services

BUSINESS

1. **APOLOGIES**
2. **DECLARATIONS OF INTEREST**
3. **OUTLINE PLANNING APPLICATION 08/02011/OUT, MR J STIRLING, LAND SOUTH EAST OF ALDERSYDE, TOWARD** (Pages 1 - 16)
 - (a) PAN 41 Hearing Procedure Note (Pages 17 - 20)

BUTE & COWAL AREA COMMITTEE

Councillor Robert Macintyre
Councillor Alister McAlister
Councillor James McQueen
Councillor Ron Simon
Councillor Dick Walsh

Councillor Bruce Marshall (Chair)
Councillor Alex McNaughton
Councillor Len Scoullar (Vice-Chair)
Councillor Isobel Strong

Contact: Shirley MacLeod, Area Corporate Services Manager

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**DEVELOPMENT SERVICES
PLANNING APPLICATION REPORT
Bute and Cowal Area Committee**

**Ward Number - 7 Dunoon
Date of Validity - 13th November 2008
Hearing Date - 30 July 2009**

Reference Number: 08/02011/OUT
Applicants Name: Mr J Stirling
Application Type: Outline
Application Description: Erection of three dwellinghouses and formation of vehicular accesses
Location: Land south east of Aldersyde, Toward, Argyll.

SUPPLEMENTARY REPORT

(A) FURTHER INFORMATION

Since preparation of my report to the meeting of the Area Committee on 23 June 2009, the Argyll and Bute Local Plan has made further progress and is now published as the Argyll and Bute Local Plan Proposals for Adoption (June 2009). Although the assessment of this application is unchanged, the recommended reasons for refusal have been revised accordingly.

A further representation has been received from Dr Alison Turner, Westgate, Toward PA23 7UA (letter dated 9 July 2009) making the following points:

- A revised development at lower density with a different access might be considered in order to preserve habitat for bats and squirrels

(B) RECOMMENDATION

It is recommended that planning permission be **Refused** for the reasons set out overleaf.

**Angus J Gilmour
Head of Planning
22 July 2009**

Author: Brian Close
Reviewing Officer: David Eaglesham

**Date: 22 July 2009
Date: 22 July 2009**

REASONS FOR REFUSAL RELATIVE TO APPLICATION 08/02011/OUT

1. The proposal to site three dwellinghouses within woodland (covered by Tree Preservation Order 5/92), would remove a key landscape feature that is considered to contribute to the character of the Toward Point settlement in respect of screening, shelter and habitat. Accordingly, such residential development with its particular siting and layout would be contrary to the principles of sustainable development and of protecting and enhancing the quality of the environment and established settlement pattern. Development of the site would result in a continuous line of dwellings located on the northern side of the road that would significantly alter the wooded nature of the site with detrimental impact from not only the immediate surrounding area but from wider viewpoints. The proposal is therefore contrary to: Policies STRAT SI 1 'Sustainable Development', STRAT DC 1 'Development Within The Settlements' and STRAT HO 1 'Housing– 'Development Control Policy' of the Argyll and Bute Structure Plan 2002; Policies HO 8 'Infill, Rounding-Off and Redevelopment' and BE 9 'Layout and Design of Urban Development' of the Cowal Local Plan 1993; and Policies LP ENV 19 'Development Setting, Layout and Design' and LP HOU 1 'General Housing Development' of the Argyll and Bute Local Plan Proposals for Adoption (June 2009), all of which presume against the nature of the development proposed.
2. The proposal, by virtue of incorporating large areas of tree felling within the woodland (to accommodate three detached dwellinghouses and their associated servicing and access provision), within the existing Tree Preservation Order area (TPO 5/92), which effectively provides screening, shelter and habitat within the settlement, would have an adverse visual and landscape impact by virtue of removing a key landscape feature and local habitat resource. Accordingly, the proposal is contrary to the provisions of: NPPG14 Natural Heritage; Structure Plan policies STRAT SI 1 Sustainable Development, STRAT FW2 – Development Impact on Woodland, STRAT DC7 – Nature Conservation and Development Control; and STRAT DC8 – Landscape and Development Control; Cowal Local Plan 1993 policies RUR 1, RUR 2, RUR 4 and BE 8; Argyll and Bute Local Plan Proposals for Adoption (June 2009) policies LP ENV 1 Development Impact on the General Environment, ENV 6 Development Impact on Habitats and Species, ENV 7 Development Impact on Trees/Woodland, and LP ENV 8 Development Impact on Local Nature Conservation Sites; and Tree Preservation Order (TPO 5/09), all of which seek to resist such developments.
3. The application and supporting information lacks adequate information on the potential impact on bats, European Annex IV protected species that are known to be present within the woodland. Such information is required in order to fully ascertain and assess the potential impact on bats and to ascertain what mitigation would be required and what would be possible in order to ensure no adverse impact on this protected species.
Additionally, the application and supporting information lacks adequate information on the potential impact on red squirrels, a protected species under Schedules 5 and 6 of the Wildlife and Countryside Act 1981. Such information is required in order to fully ascertain and assess the potential impact on red squirrels and to ascertain what mitigation would be required and what would be possible in order to ensure no adverse impact on this protected species.
Consequently, it is not possible to fully ascertain if the existing woodland has the capacity to allow for the felling of any or all the trees required to accommodate this proposal and if limited felling were to be acceptable what mitigation would be required in order to ensure that there would be no adverse impact on these protected species.
As such the proposal is contrary to the provisions of the European Habitat and Species Directive in terms of bats and the provisions of the Wildlife and Countryside Act 1981 in terms of red squirrel both of which seek to protect, maintain and enhance these species habitats.

The proposal is therefore contrary to: Argyll and Bute Structure Plan policies STRAT SI 1 Sustainable Development, STRAT FW2 – Development Impact on Woodland and STRAT DC7 – Nature Conservation and Development Control; Cowal Local Plan 1993 policies POL RUR 1, POL RUR 2, POL RUR 4 and POL BE 8; and Argyll and Bute Local Plan Proposals for Adoption (June 2009) policies LP ENV 2 Development Impact on Biodiversity, ENV 6 Development Impact on Habitats and Species, ENV 7 Development Impact on Trees/Woodland, ENV 8 Development Impact on Local Nature Conservation Sites, all of which seek to protect the ecological importance of such woodland from potential adverse impacts.
4. The applicant has failed to provide accurate information in respect of surface water drainage proposals (SuDS) for the application site. The lack of precise drainage arrangements incorporating a SuDS scheme to alleviate potential flooding of the site and adjacent properties and their land is contrary to: Scottish Planning Policy SPP7 – 'Planning and Flooding' and PAN 69 'Planning and Building Standards Advice on Flooding'; Policies STRAT SI 1 'Sustainable Development' and STRAT DC10 'Flooding and Land Erosion' of the Argyll and Bute Structure Plan 2002; and policies LP SERV 2 – 'Sustainable Drainage Systems (SuDS)', LP SERV 3 'Drainage Impact Assessment' and LP SERV 8 'Flooding and Land Erosion' of the Argyll and Bute Local Plan Proposals for Adoption (June 2009), all of which presume against the nature of the development proposed.

Reference Number: 08/02011/OUT
Applicants Name: Mr J Stirling
Application Type: Outline
Application Description: Erection of three dwellinghouses and formation of vehicular accesses
Location: Land south east of Aldersyde, Toward, Argyll.

(A) THE APPLICATION

(i) Development Requiring Express Planning Permission

- Erection of three detached dwellinghouses (indicative footprints only);
- Formation of vehicular accesses;
- Felling of 58 trees within TPO 5/92
- Landscaping and tree planting (indicative only).

(ii) Other specified operations.

- Connection to public water supply and communal private septic tank;
-

(B) RECOMMENDATION

It is recommended that planning permission be **Refused** for the reasons set out overleaf.

(C) SUMMARY OF DETERMINING ISSUES AND MATERIAL CONSIDERATIONS

(i) Development Plan Context:

In the adopted Cowal Local Plan, the application site is located within the inset map of Toward and specifically covered by policies RUR 1 'Landscape Quality' and RUR 2 'Nature Conservation', that apply to the broadleaf woodland and nature habitats that are contained within the area of protected woodland under Tree Preservation Order 5/92. The development of three dwellinghouses within this woodland area is contrary to the adopted Cowal Local Plan in respect of development that would have significant impact on the existing woodland that is a key component of the surrounding settlement character in addition to providing valuable habitat resources.

In the Argyll and Bute Local Plan Post Inquiry Modifications (November 2008), the application site is located within the minor settlement of Toward. The proposal is considered contrary to policies ENV 2 'Development Impact on Biodiversity', ENV 6 'Development Impact on Habitats and Species', ENV 7 'Development Impact on Trees/Woodland', ENV 8 'Development Impact on Local Nature Conservation Sites', ENV 19 'Development Setting, Layout & Design' and HOU 1 'General Housing Development' since the erection of three dwellinghouses within the woodland would result in an unacceptable environmental impact and alter the character of the settlement.

Issues raised in the nine letters of objection include decimation of the protected woodland (covered by a Tree Preservation Order) for residential development that contravenes the adopted Cowal Local Plan and emerging Argyll and Bute Local Plan. Such a residential development would result in the loss of an essential habitat for animals, amphibians, numerous wild birds and a wide range of flora.

The Local Biodiversity Officer comments that insufficient survey information has been submitted in respect of Bats (European Protected Species) and Red Squirrel (priority species in the Local Biodiversity Action Plan) where both species have been recorded in the woodland.

The department concurs with the views of the objectors and the Local Biodiversity Officer and have adopted a 'precautionary approach' in terms of survey information to carry out a proper assessment in terms of impact to habitats and species. It is also considered that the removal of almost half of the protected woodland would result in unacceptable environmental impact with a detrimental effect on the character of the Toward Point settlement.

(ii) Representations:

Nine letters of objection have been received.

(iii) Consideration of the Need for Discretionary or PAN 41 Hearing:

Whilst nine letters of objection have been received, as the application is recommended for refusal, it is not considered necessary to hold a hearing.

(iv) Reasoned Justification for a Departure from the Provisions of the Development Plan.

Not applicable.

(v) Is the Proposal a Schedule 1 or 2 EIA development:

No

(vi) Does the Council have an interest in the site:

No.

(vii) Need and Reason for Notification to Scottish Ministers.

No, the application is recommended for refusal.

(viii) Has a sustainability Checklist Been Submitted:

No

**Angus J Gilmour
Head of Planning
9 June 2009**

Author: Brian Close
Reviewing Officer: David Eaglesham

Date: 27th May 2009
Date: 27th May 2009

NOTE: Committee Members, the applicant, agent and any other interested party should note that the consultation responses and letters of representation referred to in Appendix A, have been summarised and that the full consultation response or letter of representations are available on request. It should also be noted that the associated drawings, application forms, consultations, other correspondence and all letters of representations are available for viewing on the Council web site at www.argyll-bute.gov.uk

REASONS FOR REFUSAL RELATIVE TO APPLICATION 08/02011/OUT

1. The proposal to site three dwellinghouses within woodland (covered by Tree Preservation Order 5/92), would remove a key landscape feature that is considered to contribute to the character of the Toward Point settlement in respect of screening, shelter and habitat. Accordingly, such residential development with its particular siting and layout would be contrary to the principles of sustainable development and of protecting and enhancing the quality of the environment and established settlement pattern. Development of the site would result in a continuous line of dwellings located on the northern side of the road that would significantly alter the wooded nature of the site with detrimental impact from not only the immediate surrounding area but from wider viewpoints. The proposal is therefore contrary to: Policies STRAT SI 1 'Sustainable Development', STRAT DC 1 'Development Within The Settlements' and STRAT HO 1 'Housing– 'Development Control Policy' of the Argyll and Bute Structure Plan 2002; Policies HO 8 'Infill, Rounding-Off and Redevelopment' and BE 9 'Layout and Design of Urban Development' of the Cowal Local Plan 1993; and Policies LP ENV 19 'Development Setting, Layout and Design' and LP HOU 1 'General Housing Development' of the Argyll and Bute Local Plan Post Inquiry Modifications (November 2008), all of which presume against the nature of the development proposed.

2. The proposal, by virtue of incorporating large areas of tree felling within the woodland (to accommodate three detached dwellinghouses and their associated servicing and access provision), within the existing Tree Preservation Order area (TPO 5/92), which effectively provides screening, shelter and habitat within the settlement, would have an adverse visual and landscape impact by virtue of removing a key landscape feature and local habitat resource. Accordingly, the proposal is contrary to the provisions of: NPPG14 Natural Heritage; Structure Plan policies STRAT SI 1 Sustainable Development, STRAT FW2 – Development Impact on Woodland, STRAT DC7 – Nature Conservation and Development Control; and STRAT DC8 – Landscape and Development Control; Cowal Local Plan 1993 policies RUR 1, RUR 2, RUR 4 and BE 8; Argyll and Bute Local Plan Post Inquiry Modifications (November 2008) policies LP ENV 1 Development Impact on the General Environment, ENV 6 Development Impact on Habitats and Species, ENV 7 Development Impact on Trees/Woodland, and LP ENV 8 Development Impact on Local Nature Conservation Sites; and Tree Preservation Order (TPO 5/09), all of which seek to resist such developments.

3. The application and supporting information lacks adequate information on the potential impact on bats, European Annex IV protected species that are known to be present within the woodland. Such information is required in order to fully ascertain and assess the potential impact on bats and to ascertain what mitigation would be required and what would be possible in order to ensure no adverse impact on this protected species.
 Additionally, the application and supporting information lacks adequate information on the potential impact on red squirrels, a protected species under Schedules 5 and 6 of the Wildlife and Countryside Act 1981. Such information is required in order to fully ascertain and assess the potential impact on red squirrels and to ascertain what mitigation would be required and what would be possible in order to ensure no adverse impact on this protected species.
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 As such the proposal is contrary to the provisions of the European Habitat and Species Directive in terms of bats and the provisions of the Wildlife and Countryside Act 1981 in terms of red squirrel both of which seek to protect, maintain and enhance these species habitats.

 The proposal is therefore contrary to: Argyll and Bute Structure Plan policies STRAT SI 1 Sustainable Development, STRAT FW2 – Development Impact on Woodland and STRAT DC7 – Nature Conservation and Development Control; Cowal Local Plan 1993 policies POL RUR 1, POL RUR 2, POL RUR 4 and POL BE 8; and Argyll and Bute Local Plan Post Inquiry Modifications (November 2008) policies LP ENV 2 Development Impact on Biodiversity, ENV 6 Development Impact on Habitats and Species, ENV 7 Development Impact on Trees/Woodland, ENV 8 Development Impact on Local Nature Conservation Sites, all of which seek to protect the ecological importance of such woodland from potential adverse impacts.

4. The applicant has failed to provide accurate information in respect of surface water drainage proposals (SuDS) for the application site. The lack of precise drainage arrangements incorporating a SuDS scheme to alleviate potential flooding of the site and adjacent properties and their land is contrary to: Scottish Planning Policy SPP7 – '*Planning and Flooding*' and PAN 69 '*Planning and Building Standards Advice on Flooding*'; Policies STRAT SI 1 '*Sustainable Development*' and STRAT DC10 '*Flooding and Land Erosion*' of the Argyll and Bute Structure Plan 2002; and policies LP SERV 2 – '*Sustainable Drainage Systems (SuDS)*', LP SERV 3 '*Drainage Impact Assessment*' and LP SERV 8 '*Flooding and Land Erosion*' of the Argyll and Bute Local Plan Post Inquiry Modifications (November 2008), all of which presume against the nature of the development proposed.

APPENDIX A – RELATIVE TO APPLICATION NUMBER: 08/02011/OUT

MATERIAL CONSIDERATIONS AND ADVICE

(i) POLICY OVERVIEW AND MATERIAL ADVICE

(a) Argyll and Bute Structure Plan 2002: The following policies are applicable:

STRAT SI 1 '*Sustainable Development*' includes policies to conserve the built environment and avoid significant adverse impacts on built heritage resources; respect the landscape character of an area and the setting and character of settlements and conserve the natural and built environment and avoid significant adverse impacts on biodiversity, natural and built heritage resources.

STRAT DC 1 '*Development Within The Settlements*' encourages development on appropriate infill, rounding-off and redevelopment sites. Developments which do not accord with this policy are those which result in settlement cramming or inappropriate rounding-off on the edge of settlements.

STRAT DC 7 – *Nature Conservation and Development Control*

C) Development which impacts on Local Wildlife sites or other nature conservation interests, including sites, habitats or species at risk as identified in the Local Biodiversity action Plan, shall be assessed carefully to determine its acceptability balanced along with national – or local – social or economic considerations.

D) Enhancement to nature conservation interests will also be encouraged in association with development and land use proposals.

STRAT HO 1 – '*Housing – Development Control Policy*' encourages appropriate forms and scales of housing infill, rounding-off and redevelopment where it is consistent with STRAT DC1 -10.

STRAT FW 2 – *Development Impact on Woodland*

Development shall not damage nor undermine the key environmental features of important woodland areas including the following categories:

- a) Woodland areas and trees which have been mapped for safeguarding in Argyll and Bute Local Plans or are protected by Tree Preservation Orders;
- d) Other broadleaf woodland over 1 hectare in extent.

(b) Cowal Local Plan 1993 (adopted 1995)

The site is situated within *Toward* and within the Central and East Cowal Local Scenic Area specifically covered by policies RUR1 and RUR2.

POL RUR 1: '*Landscape Quality*', under Areas of Local Landscape Significance specifically '*broadleaf woodland in the Toward area*', states that the Council will resist prominent or sporadic development which would have an adverse landscape impact. All development in these areas will require to be justified and assessed in respect of environmental impact; locational/operational need; economic benefit and infrastructure and servicing implications.

POL RUR 2: '*Nature Conservation*' resists developments and land use changes, which would erode or have an adverse effect on features of wildlife and scientific value, in particular VI) local features of wildlife value and in particular small native broadleaf woodlands and 'scrub, and mixed woodland including amenity planting.

POL RUR 4: '*Forests, Woodlands and Trees*' encourages the planting and positive management of forests and woodlands with regard to II) the protection of the landscape, III) nature and heritage conservation; V) the appropriate development or protection of tourism and recreational opportunities; VI) accepted sources of advice on good practice in particular the Forest Authority's guidelines on 'Forestry Landscape Design', 'Wildlife Conservation in Woodlands', and 'Management of Broadleaved Woodlands'.

Policy POL BE 8 encourages the retention and enhancement of existing tree groups and belts of trees within or directly adjacent to built up areas. The Council will normally require that developments and land use changes within its powers of control do not lead to the destruction of trees, woodlands and hedges and in appropriate cases may place tree preservation orders in the interests of conservation.

POL HO 8 encourages infill, rounding off and redevelopment related to the existing built form. Those considered to have an adverse visual or environmental impact will normally be resisted.

(c) Argyll and Bute Local Plan Post Inquiry Modifications (November 2008)

The application site is located within the minor settlement of Toward, where the following policies are applicable.

Policy LP ENV2 *Development Impact on Biodiversity*

When considering development proposals the Council will seek to contribute to the delivery of the objectives and targets set by the Local Biodiversity Action Plan (LBAP).

Proposals that incorporate existing site interests within the design wherever possible will be encouraged. Where there is evidence to suggest that a habitat or species of local importance exists on a proposed development site, the Council will require the applicant, to submit a specialist survey of the site's natural environment. Applications with significant adverse impacts will be refused unless the developer proves to the satisfaction of the Planning Authority that : (A) there is no suitable alternative site for the development; and, (B) satisfactory steps are taken to avoid, mitigate or compensate for damage.

Policy LP ENV6 *Development Impact on Habitats and Species*

In considering development proposals, the Council will give full consideration to the legislation, policies and conservation objectives that may apply to the following:

Habitats and Species listed under Annex I, II & IV of the Habitats Directive;

Species listed under Annex I of the Birds Directive;

Species listed on Schedules 1, 5 and 8 of the Wildlife and Countryside Act 1981; (and as amended by the Nature Conservation (Scotland) Act 2004);

Habitats & Species listed in the UK Biodiversity Action Plan; and, Habitats and Species which are widely regarded as locally important as identified in the LBAP.

Policy LP ENV7 *Development Impact on Trees/Woodland*

The Council will resist development likely to have an adverse impact on trees and will ensure, through the development control process, that adequate provision is made for the preservation of and when considered appropriate the planting of new woodland/trees, including compensatory planting and management agreements.

Policy LP ENV8 *Development Impact on Local Nature Conservation Sites*

Development that would have a significant adverse effect on other nature conservation interests, including sites, habitats or species at risk as identified in the Local Biodiversity Action Plan will be resisted unless the developer proves its public benefits at a local level clearly outweigh the nature conservation value and there is no suitable or alternative site for the development.

Policy LP ENV 19 '*Development Setting, Layout & Design*' states that development shall be sited and positioned so as to pay regard to the context within which is located. Development layout shall effectively integrate with the countryside settlement of the development. Developments with poor quality or inappropriate layouts will be resisted.

Policy LP HOU1 – '*General Housing Development*' states a general presumption of favour of housing within the settlements except where there is an unacceptable environmental, servicing or access impact.

Policy LP SERV1 – '*Private Sewage Treatment Plants and Wastewater*' – where the proposal is not likely to result in or add to existing environmental, amenity or health problems.

Policy LP SERV2 – '*Sustainable Drainage Systems (SuDS)*' – SuDS provide benefits in terms of flood avoidance, water quality, habitat creation and amenity. Proposals for SuDS measures will be required in relation to all development prior to determination.

Policy LP TRAN 4 '*New and Existing, Public Roads and Private Access Regimes*' sets out requirements for development in respect of private access regimes.

(d) National Guidance

- Scottish Planning Policy SPP3 – '*Planning for Housing*'; *New development should respect and where appropriate enhance existing vegetation and other natural features. Mature trees should be retained wherever possible and replanting should be undertaken where development involves their loss. Development's can enhance a site's wildlife value through retention, creation or management of natural features and wildlife habitats. (para 17).....the existing fabric of settlements is the product of generations of investment in physical infrastructure. Planning authorities should therefore promote the re-use of previously developed land in preference to Greenfield land, provided that a satisfactory residential environment can be created (para 29).*

- Planning Advice Note 44 – ‘Fitting New Housing Development into the Landscape’ – *recognises the impact modern development have on the edge of traditional settlements and includes a design manual for advice on good siting and layout that emphasises the positioning of buildings within the landscape and the importance of shelterbelts.*
- Planning Advice Note 67 – ‘Housing Quality’; “Natural features should be conserved and emphasised...New housing should take account of the wider context and be integrated into its wider neighbourhood.
- Planning Advice Note 68 – ‘Design Statements’; “*The submission of a design statement allows officials to see the extent of analysis, as well as the quality of thought, time and effort which has been dedicated to developing the scheme...Design is a material consideration in determining planning applications. Councils may refuse an application, and defend their decision at appeal, solely on design grounds.*
- Planning Advice Note 72 – ‘Housing in the Countryside: “*it is crucial that the proposed location and siting of new housing considers the impact on the landscape, in terms of both immediate and wider surroundings.*’
- ‘A Policy Statement for Scotland - Designing Places’; *Good design creates places that work..... good design is a key to achieving social, economic and environmental goals of public policy.....sometimes the costs of a poorly designed development falls on people other than those who commissioned, designed or built it..*
- NPPG14: Natural Heritage “*The presence of a protected species or habitat is a material consideration in the assessment of development proposals. Planning authorities should take particular care to avoid harm to species or habitats protected under the 1981 Act or European Directives, or identified as priorities in the UK Biodiversity Action Plan*”.(para 20)...*Trees and woodlands are of great importance, both as wildlife habitats and in terms of their contribution to landscape character and quality, and shelterbelts are important features in the landscape (para 50)...*”*Planning authorities should seek to protect trees, groups of trees and areas of woodland where they have natural heritage value or contribute to the character or amenity of a particular locality(para 51)....*”*While much can be done to mitigate the environmental effects of development through the use of conditions or agreements, there may be instances where the scientific evidence is inconclusive but the potential damage could be significant. In view of the importance of safeguarding biodiversity, the Government is committed to the application of the precautionary principle where there are good scientific grounds for judging that a development could cause significant irreversible damage to our natural heritage*".(para 80)

This advice is substantially incorporated in the Council's adopted and emerging Development Plan policies.

(ii) SITE HISTORY

An outline application (ref. 07/02276/OUT) for the erection of three dwellinghouses was withdrawn on 18th April 2008 due to a lack of information on wildlife and habitat surveys, tree survey and surface water drainage details.

To the east of the application site, four dwellinghouses have been erected and now occupied. This land belonged to the applicant where a communal septic tank has been installed that apparently has capacity for additional dwellings. Detailed permissions for the four dwellinghouses already constructed are:

- ref. 03/00507/DET, granted on 2nd September 2003 for a dwellinghouse on ‘Plot 1’ adjacent to Machair Cottages and the installation of a 9000 litre (communal) septic tank and outfall;
- ref. 04/01088/DET), granted on 23rd August 2004 for a dwellinghouse on ‘Plot 2’;
- ref. 05/02322/DET, granted on 4th January 2006 for a dwellinghouse on ‘Plot 3’;
- ref. 06/01805/DET, granted on 29th September 2006 for a dwellinghouse on ‘Plot 4’.

(iii) CONSULTATIONS

Scottish Water (response dated 2nd December 2008): No objections in principle. Advisory comments regarding connection to public water system and potential works to the local network.

Scottish Environment Protection Agency (response dated 2nd December 2008): Confirm that consent has already been granted for foul drainage discharge at this location. It is noted that no surface water drainage details have been submitted. Advisory notes regarding size and operation of septic tank, pollution prevention and waste management.

Area Roads Manager (response dated 26th January 2009): No objections subject to conditions regarding provision of sightlines, safeguarding a 2 metre verge to provide a footway, car parking and turning. Advisory note regarding surface water drainage and Road Opening Permit.

Argyll and Bute Local Biodiversity Partnership (response dated 8th December 2008): Both Bat and Red Squirrel have not been sufficiently surveyed. Both species have been recorded within this woodland.

Scottish Natural Heritage (response dated 24th November 2008): No comments to make.

(iv) PUBLICITY AND REPRESENTATIONS

The proposal was advertised as a *Potential Departure* from policies RUR1, RUR2, HO5, HO6, HO8, BE8, BE9 and PU2 of the Cowal Local Plan 1993 (expiry date 19th December 2008), and Article 9 Advertisement (expiry date 12th December 2008), nine letters of representation have been received from :

- Mrs. Jennifer Lamont, *Tigh-an-Rudha*, Toward Point (letters dated 16th November and 15th December 2008);
- Mrs E A Carey, *The Trees*, Kilhaws, Toward (letter dated 5th December 2008); Mr Colin Thomson, *Primrose Cottage*, Toward (letter dated 9th December 2008);
- Nancy Morris, *Aldersyde*, Toward (e-mail dated 1st December 2008);
- Marjorie and Graham Cameron, *Eriskay*, Toward Point (letter dated 10th December 2008); Owner/Occupier, *Westgate*, Toward (letter dated 10th December 2008);
- Mr and Mrs Paul Morris, *Aldersyde*, Toward (letter dated 12th December 2008);
- Lesley Mills, *Mingulay*, Toward Point (letter dated 5th January 2009).

The concerns raised in the letters of objection are summarised below:

- *Decimation of the protected Woodland (covered by a Tree Preservation Order) for residential development contravenes the Local Plan.*
- *The woodland is an essential habitat for wildlife and is well used by red squirrels, bats, deer, rooks, newts numerous wild birds and includes a range of flora.*
- *There are already two areas within this vicinity with planning permission for housing development and new houses not yet sold in 'The Meadows'. There would appear to be no adequate reason to destroy the character of 'The Triangle' with yet more development.*
- *Toward is littered with partially developed areas. Once lost, an area of natural beauty can never be restored.*
- *The unoccupied building at Toward Point is owned by the applicant and access could be created to the rear of this for 3 dwellings without necessity of interfering with the ecological systems within this wooded area.*

(v) Applicant's Supporting Information

The applicant has submitted supporting information that includes a Design Statement (13th November 2008), a Woodland Wildlife and Habitat Survey (April 2008), an Arboricultural Report (19th November 2005), a copy of Consent to Discharge from SEPA (16th February 2005) and letter from Ecological Land Use Consultancy (1st May 2007).

The Design Statement suggests that, *'there is a demand for housing in the Toward area where development of gap sites is preferable to ribbon development outwith the core of the village..... Following an Arboricultural Report by Liam Mackenzie in 2005, it was concluded that many of the trees within the woodland were in poor condition and will have to be removed for reasons of safety. The report concludes that it should be possible to retain peripheral tree cover which could be supplemented by post-development planting. This application has followed this advice by leaving substantial bands of large trees on the west, east and north boundaries. The areas of woodland outwith the application together with trees retained within the application site will be managed by the respective plot owners.*

The sewerage system has been designed to accommodate eight houses and will be vested in Scottish Water when all housing development up to Aldersyde is completed.

APPENDIX B – RELATIVE TO APPLICATION NUMBER: 08/02011/OUT

PLANNING LAND USE AND POLICY ASSESSMENT

A. Settlement Strategy

In the adopted Cowal Local Plan, the proposal is located within the inset map of Toward. The area around Toward Point is characterised by generally single tier linear settlement with clusters of dwellings around the Toward Point promontory. The majority of dwellings within this minor settlement are detached, set back from Toward Point Road and broken up by areas of woodland that retain a rural and open feel to the area.

The application site lies within the Central and East Cowal Local Scenic Area covered specifically by Policy RUR1 'Landscape Quality' and RUR2 'Nature Conservation' in addition to Policy HO8 'Infill, Rounding Off and Redevelopment', and Policy BE9 'Layout and Design of Urban Development'. The application site covers the majority of an area of woodland protected by Tree Preservation Order 5/92.

In the Argyll and Bute Local Plan, the application site is located within the minor settlement of Toward. Outwith formally allocated sites, policies contained in the Structure Plan and Argyll and Bute Local Plan allow for appropriate infill, rounding-off and redevelopment within settlement zones. Such proposals should not overwhelm the townscape character of the settlement. Given the siting of the three dwellinghouses within an area of protected woodland and the surrounding settlement character, it is considered that the proposal would represent unacceptable development that would remove the majority of the woodland to the detriment of the character of the surrounding minor settlement.

Given that the proposal would result in the desecration of important amenity woodland within the settlement that would result in an adverse environmental impact, the proposal cannot be regarded as appropriate infill, rounding-off or redevelopment and would be contrary to policy POL HO8 and POL BE9 of the adopted Cowal Local Plan and to policies STRAT DC1 and HO1 of the Argyll and Bute Structure Plan and Policy LP HOU 1 of the Argyll and Bute Local Plan Post Inquiry Modifications (November 2008).

B. Location, Nature and Design of Proposed Development

(i) Development Setting

The surrounding settlement character of this particular part of Toward Point is typified by detached traditional villas and modern dwellings along each side of Toward Point Road but broken up by areas of open spaces and wooded areas.

The application site runs between Aldersyde to the north-west to the electricity sub-station beside 'Plot 4' to the south east. The application site extends deep within an area of protected woodland and also connects to an existing communal septic tank located on land across the Toward Point Road adjacent to Machair Cottages. The principle of development has already been established on sites to the east where development has been completed for four dwellinghouses. The area of woodland is covered by a Tree Preservation Order (5/92) and extends to the rear of the application site. This area of woodland provides important amenity value in addition to providing a useful shelter belt for surrounding dwellings. The woodland also helps to preserve the rural nature of the settlement where continuous linear development would harm the character of the area.

(ii) Development Layout

The outline proposal involves the erection of three detached dwellinghouses between 'Plot 4' and Aldersyde. The indicative layout shows two dwellings (plots 5 and 6) served by a new shared vehicular access while 'plot 7' would be served by a single new access. The dwellings are set back from Toward Point Road in line with adjacent dwellings. No details have been submitted in respect of design or height of buildings.

While a total of 58 trees are proposed to be felled (41% of the woodland), areas of trees are to be retained along the edges of the application site and around the rear of the dwellings.

It is proposed to connect to the public water supply and connect all foul drainage to the existing communal septic tank serving the four dwellings east of the application site (i.e. plots 1-4).

Assessment

The proposal must be assessed against Policy LP ENV 19 of the Argyll and Bute Local Plan Post where a high standard of appropriate design is expected in accordance with the Council's design principles set out in Appendix A. Development layout and density shall effectively integrate with the urban setting of the development. Developments with poor quality or inappropriate layouts including over-development and over-shadowing of sites will be resisted. This is further explored in Appendix A Sustainable Siting and Design Principles where in terms of 'Design of New Housing in Settlement Zones', compatibility with existing nearby development and ensuring a positive contribution to the townscape of the area will be important factors in the Council's general requirement for a high standard of design should take the following advice into account:

Appendix A - Sustainable Siting and Design Principles – ‘Design of New Housing in Settlements’

4.1 The location of houses within a settlement is the most critical factor. New development must be compatible with, and consolidate, the existing settlement. Unlike isolated and scattered rural development, the relationship with neighbouring properties will be paramount, as issues such as overlooking and loss of privacy may arise. Additionally, 3.1 comments that siting must respect existing landforms where shelter should be maximised.

4.2 As a general principle all new proposals should be designed taking the following into account:

- *Location: new housing must reflect or recreate the traditional building pattern or built form and be sympathetic to the setting, landmarks, historical features or views of the local landscape.*

Whilst the proposed development of three dwellings in linear form would not be wholly contrary to the general settlement pattern, it would involve the removal of a significant number of trees with an area of protected woodland that is a valuable local wildlife habitat and feature of the settlement.

- *Layout: must reflect local character/patterns and be compatible with neighbouring uses. Ideally the house should have a southerly aspect to maximise energy efficiency.*

No details have been submitted at this stage in terms of design or energy efficiency. Indicative details show three detached dwellings set back from Toward Point Road. Whilst the indicative siting appears compatible with surrounding layout i.e. in footprint and orientation, the use of the woodland should be fully recognised as an integral part of the dispersed settlement of Toward Point.

- *Access: should be designed to maximise vehicular and pedestrian safety and not compromise the amenity of neighbouring properties.*

The Area Roads Engineer has expressed no objection on the proposed vehicular accesses but recommend conditions regarding maintaining a 2 metre verge for a future footway, sightlines, access design and gradient, car parking and turning.

- *Open Space/Density: all development should have some private open space (ideally a minimum of 100 sq m); semidetached/detached houses (and any extensions) should only occupy a maximum of 33% of their site.*

The proposed dwellinghouses appear to have sufficient amenity spaces comparable to surrounding dwellings.

- *Services: connection to electricity, telephone and wastewater i.e. drainage schemes will be a factor – particularly if there is a limited capacity.*

SEPA have no objection to connection to the approved communal septic tank. Scottish Water has no objections regarding connection to the public water supply.

- *Design: The scale, shape and proportion of the development should respect or complement the adjacent buildings and the plot density and size. Colour, materials and detailing are crucial elements to pick up from surrounding properties to integrate a development within its context.*

No design details have been submitted at this stage. Only indicative building footprints have been provided.

The proposal would result in three detached dwellinghouses set within established and protected woodland that forms part of the character, shelter and screening of the settlement. The development that does not pay due regard to the existing settlement character with unacceptable adverse environmental impact would be therefore be contrary to Policy BE 9 of the Cowal Local Plan and to Policy LP ENV 19 (including Appendix A and Sustainable Design Guidance) of the Argyll and Bute Local Plan Post Inquiry Modifications (November 2008).

C. Natural Environment

The applicant's ecological agent has conducted a survey that concludes that there are no sufficient sites for bat roosts in this area and that no evidence of Red Squirrels was seen in the woodland.

Scottish Natural Heritage (SNH) has no comments to make on the proposal as the site lies below their normal threshold. However, the Local Biodiversity Officer considers that both Bat and Red Squirrel have not been sufficiently surveyed where both species have been recorded within the woodland.

Whilst the design assessment above may be of a technical nature, the ecological damage to wildlife and habitats as a result of the proposed development cannot be underestimated. The introduction of three dwellinghouses within the majority of the protected area of woodland involving significant tree felling combine to threaten the existing rich ecological interests within the site and its broadleaf woodlands.

Bats are European Protected Species (EPS) and a species listed on Annex IV of EC Directive 92/43/EEC of the 'Habitats Directive' and Schedule 2 of the Habitats Regulations. It is recommended that a detailed bat survey be carried out prior to the determination of the application.

Red Squirrels are afforded protection under schedules 5 and 6 of the Wildlife and Countryside Act 1981, and it is also recommended that a survey be undertaken prior to the determination of the application.

In terms of the European Protected Species the Scottish Government has issued advice relating to EC Directive 92/43/EEC regarding the use of suspensive conditions to enable grant of planning permission in cases where European Protected Species may be affected. This advice clearly advises that any impact on protected species should be fully evaluated before any decision is taken to grant planning permission.

Given the Local Biodiversity Officer's reservations about the thoroughness of the assessment undertaken in relation to Bats and Red Squirrels, any decision by the Council to grant permission would be contrary to the Directive.

On advice from The Local Biodiversity Officer, it is felt that the Council should take a precautionary approach given the unknown quantity or lack of definitive impact on both bats and Red Squirrels. On this basis, the Council has adopted a '*precautionary approach*' in an assessment of this proposal. The application and supporting information does not include sufficient information to fully assess the potential impact that the proposal will have on bat species, (European Annex IV Protected Species) and Red Squirrels (a protected species under Schedules 5 and 6 of the Wildlife and Countryside Act 1981), in addition to the potential adverse impact on the ecology and wildlife of the woodland habitats. It is considered that the proposal will therefore have a significant adverse impact on the ecology and wildlife within the site.

On the basis of the above, the proposal is considered contrary to Policy POL RUR 2 of the Cowal Local Plan 1993 and to Policies LP ENV2, LP ENV6, LP ENV8 of the Argyll and Bute Local Plan Post Inquiry Modifications (November 2008).

D. Impact on Woodland

The applicant has submitted a Tree Survey which concludes that '*while there are no trees present of any particular merit, they still have a value as a collective entity. It is also recognised that the presence of the woodland has inherent benefits including amenity, screening, shelter and habitat. Development of the site would result in the removal of the main portion of the wood but this would result in improved woodland management for a more sustainable tree cover to be introduced*'.

It is proposed to fell a total of 58 trees (41% of the woodland) to accommodate the proposed development in addition to introducing positive management measures in respect of transferring management to individual plots. Whilst the northern part of the woodland would remain within the applicant's control, the remaining woodland would be divided between the three proposed plots.

The Tree Survey and application do not include any detailed survey information on flora and fauna within the woodland site. While improved management of the woodland is encouraged, this could be carried out at present by the applicant with no need to fell such a large area of trees. The lack of species and habitat survey information and the fact that the site is covered by a Tree Preservation Order (TPO) means that the proposal would be contrary to a number of policies contained in the adopted and emerging local plans.

On the basis of the above, the proposal is considered contrary to the provisions of Policy POL RUR1, RUR2, RUR4, BE8 of the Cowal Local Plan 1993 and to Policies ENV2, ENV6, ENV7, ENV8 of the Argyll and Bute Local Plan Post Inquiry Modifications (November 2008).

E. Road Network, Parking and Associated Transport Matters

The Area Roads Engineer has expressed no objection to the proposed vehicular accesses subject to conditions regarding sightlines, car parking and turning and safeguarding a 2 metre verge for a future footway.

On the basis of the above, the proposal is considered consistent with Policies LP TRAN 4 and TRAN 6 of the Argyll and Bute Local Plan Post Inquiry Modifications (November 2008) in respect of access and car parking provision.

F. Infrastructure

It is proposed to connect to the public water system and connect to an existing septic tank serving dwellinghouses constructed and occupied at plots 1 to 4. Both SEPA and Scottish Water have no objections. No information has been submitted in respect of a surface water drainage system (SuDS).

On the basis of the above, the proposal is considered consistent with Policy POL PU 1 of the Cowal Local Plan 1993 and Policy SERV 1 of the Argyll and Bute Local Plan Post Inquiry Modifications (November 2008) but contrary to SERV 2 due to lack of details on SuDS.

CONCLUSION

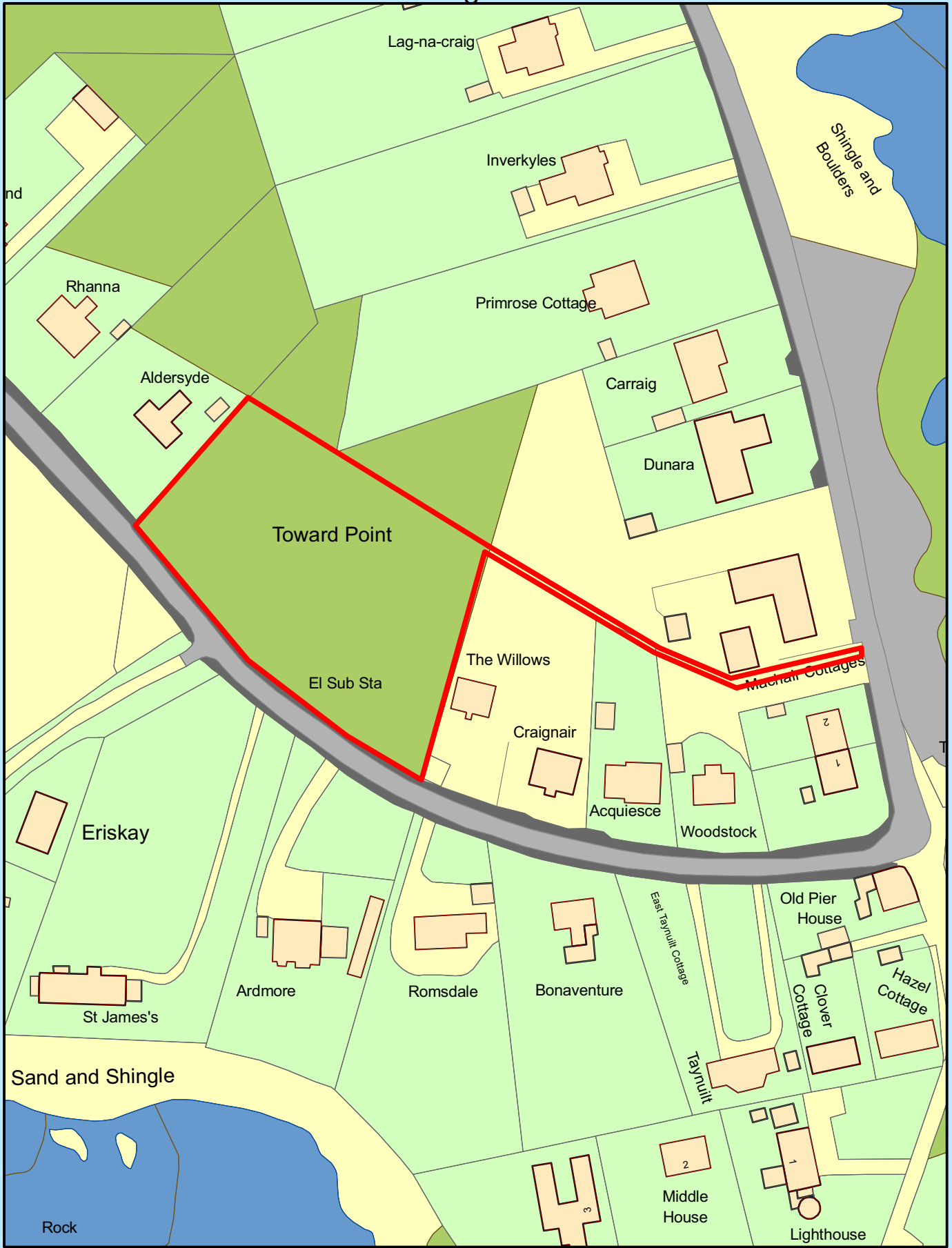
Development of this wooded site for three detached dwellinghouses would result in an unacceptable environmental impact on an area of amenity woodland covered by Tree Preservation Order 5/92. This area of protected amenity woodland forms an integral part of the settlement character and provides valuable screening, shelter and habitat. The protected woodland forms part of a series of linear habitats of pocket woodlands that form an integral part of the character of the Toward Point and Toward settlements.

Policies LP ENV 2 and ENV 8 of the Argyll and Bute Local Plan suggest that development may only be allowed if alternative sites cannot be found. In this case the applicant has already developed land to the east of the application site for four detached dwellinghouses, owns a disused MOD building that is capable of residential conversion or redevelopment, and owns a field to the rear of the application site that has a housing allocation for an estimated 25 dwellinghouses. It would therefore appear that this proposal represents unnecessary development with significant environmental damage to the woodland area.

The protected woodland acts as an important local habitat for wildlife and plants. Surveys submitted by the applicant suggest that bats and Red Squirrels do not exist within the woodland. This view is not supported by the Local Biodiversity Officer who has recorded evidence of bats and Red Squirrels in addition to other flora and fauna on the site. In line with National Guidance, a precautionary approach is necessary in this instance as the full impact of the proposed development has not been fully demonstrated.

The siting of three dwellings within the woodland would not only diminish the extent of the woodland but would place the management of the remaining parts of the woodland on the individual house owners. This could have serious consequences for the long-term future of the woodland as part of the landscape character and important local wildlife habitat. The proposal is contrary to the Argyll and Bute Structure Plan, Cowal Local Plan and Argyll and Bute Local Plan Post Inquiry Modifications in addition to National Guidance, all of which presume against the nature of the development proposed and does not justify the grant of planning permission.

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**COMMITTEE LOCATION PLAN
RELEVANT TO PLANNING
APPLICATION 08/02011/OUT**

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Development Services, Argyll and Bute Council,
Kilmory, Lochgilphead, Argyll, PA31 8RT



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PROCEDURE NOTE**PAN 41 HEARING**

1. On any occasion when the Council decides that a PAN 41 discretionary hearing is required.
2. The Committee Clerk will thereafter notify the applicant, all representees and objectors of the Council's decision to hold a discretionary hearing and to indicate the date on which the hearing will take place. The hearing will proceed on that day, unless the Council otherwise decides, whether or not some or all of the parties are represented or not.
3. The Committee Clerk will give a minimum of 7 days notice of the date, time and venue for the proposed Hearing to all parties.
4. At the hearing the Director of Development Services staff will present their recommendations to the Committee on how the matter should be disposed of.
5. The applicants will be given an opportunity to present their case for approval of the proposal and shall include in their submission any relevant points made by representees supporting the application.
6. The consultees, supporters and objectors (see notes 1 and 2), will be given the opportunity to state their case to the Council.
7. All parties to the proceedings i.e. the applicant, the Director of Development Services, the consultees, the supporters and objectors shall be given a period of time to state their case (see note 3). In exceptional circumstances and on good case shown the Committee shall be able to extend the time for a presentation by any of the parties to the hearing at their sole discretion.
8. Statutory consultees (including Community Councils) should be invited to attend the meeting to provide a verbal presentation on their written submissions to the Committee, if they so wish.
9. The Members of the Committee only will then be given the opportunity to put questions to the Director of Development Services' representative, the applicant, the consultees, the supporters and the objectors.

10. At the conclusion of the question session the Director of Development Services' representative, the applicant, any consultees present and each of the supporters and the objectors will be given an opportunity to comment and sum up on any particular information given by any other party after they had made their original submission, with the Director of Development Services' representative first then the applicant, then the consultees, and then each of the supporters, and then each of the objectors as may be, in turn. The Committee will then debate the merits of the case and shall reach a decision on the planning application. No new information can be introduced at this stage.
11. A summary of the proceedings of the Committee in regard to this hearing will be recorded by the Committee Services Officer.
12. If it appears to the Chairman that any of the parties to the hearing is speaking for an excessive length of time he will invite them to conclude their presentation forthwith.

NOTE

- (1) Objectors who intend to be present and speak at a hearing are encouraged to appoint one or a small number of spokespersons to present their views to concentrate on the matters of main concern to them and to avoid repetition. To assist this process the Council will provide a full list of the names and addresses of all objectors.
- (2) Supporters who intend to be present and speak at a hearing are encouraged to appoint one or a small number of spokespersons to present their views to concentrate on the matters of main concern to them and to avoid repetition. To assist this process the Council will provide a full list of the names and addresses of all supporters.
- (3) Recognising the level of representation the following time periods have been allocated to the parties involved in the Hearing.

The Applicant - not more than 15 minutes.
The Consultees - not more than 15 minutes.
The Supporters - not more than 15 minutes.
The Objectors - not more than 15 minutes.
- (4) The purpose of the meeting is to ensure that all relevant information is before the Committee and this is usually best achieved when people with similar views co-operate in making their submissions.
- (5) Everyone properly qualified, as a representee on the application report who wishes to be given an opportunity to speak will be given such opportunity.

PLANNING HEARING

PROCEDURE

1. The Head of Planning's representative (David Eaglesham) will be asked to present his recommendations to the Area Committee.
2. The Applicant/Agent will be asked to present his case to the Area Committee.
3. The statutory Consultees as shown below have been invited to provide a verbal presentation on their written submissions to the Area Committee.

Mr Paul Farrell, Technical Officer, Operational Services, Argyll & Bute Council.

Scottish Environmental Protection Agency – apology

Scottish Natural Heritage – apology

Local Biodiversity Officer - apology

4. The Committee is aware that one spokesperson wishes to speak on behalf of the Objectors to the application. (The order of speaking will be determined at the opening of the Hearing).

The Objectors have a period of not more than fifteen minutes in which to make their presentation to the Committee.

Mrs E Carey

5. Area Committee Members will have the opportunity to ask any questions of the Head of Planning's representative, the Applicant, the Consultees, and Objectors.
6. When there are no further questions the Chair will **ask all parties if they wish to comment and sum up on any particular information given by any other party.**

STARTING WITH

-
- the Applicant
- the Consultees
- the Objectors

7. The Chairman will ask if everyone is satisfied that they have had a fair hearing.
8. The Area Committee will then debate the merits of the case and reach a decision on the planning application.

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