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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 Colintraive, 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