

**STATEMENT OF CASE**

**FOR**

**ARGYLL AND BUTE COUNCIL  
LOCAL REVIEW BODY**

**REFUSAL OF PLANNING PERMISSION FOR  
ERECTION OF DWELLINGHOUSE AT ANDREWS  
GARAGE, TIGHNABRUAICH, ARGYLL, PA21  
2DS**

**PLANNING APPLICATION REFERENCE  
NUMBER 22/00221/PP**

**LOCAL REVIEW BOARD REFERENCE  
NUMBER 24/0003/LRB**

**11<sup>th</sup> March 2024**

## **STATEMENT OF CASE**

The planning authority is Argyll and Bute Council ('the Council'). The appellants are Mr and Mrs S Raeburn ('the appellants').

The planning application, reference number 22/00221/PP, for the erection of a dwellinghouse at Andrews Garage, Tighnabruaich ("the appeal site") was refused under delegated powers on the 2<sup>nd</sup> February 2024. The planning application has been appealed and is subject of referral to a Local Review Body.

### **DESCRIPTION OF SITE**

The application site is located within the settlement of Tighnabruaich within a mixed use commercial/residential area. The site was previously used as a commercial garage operation within a curved tin roof shed that has since been demolished.

### **SITE HISTORY**

The planning history of the site and locality is detailed in Section D of the Report of Handling.

### **STATUTORY BASIS ON WHICH THE APPEAL SHOULD BE DECIDED**

Section 25 of the Town & Country Planning (Scotland) Act 1997 provides that where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise. This is the test for this application.

### **STATEMENT OF CASE**

Argyll and Bute Council considers the determining issues in relation to the case are as follows:-

- **Whether the proposed location, siting, design, scale and finishes of the proposed development have sufficient regard to the context of their setting.**
- **Whether the siting and design of the proposal would provide for a sufficient standard of residential amenity to the occupants of the proposed dwellinghouse.**
- **Whether the access and parking arrangements proposed are suitable to accommodate the proposed development.**

- **Whether the applicant has satisfactorily demonstrated that any ground contamination that may have arisen from the previous use of the site can be made safe and suitable for the proposed new use.**

The Report of Handling (attached) sets out the Council's assessment of the application in terms of Development Plan policy and other material considerations.

## **REQUIREMENT FOR ADDITIONAL INFORMATION AND A HEARING**

It is considered that no new information has been raised in the appellants' submission. The issues raised were covered in the Report of Handling which is contained in Appendix 1, including a summary of the representations submitted from 10 objectors and 2 parties who made neutral comments. As such it is considered that Members have all the information they need to determine the case. Given the above and that the proposal is small-scale, has no complex or challenging issues and has not been the subject of significant body of conflicting representation, then it is considered that a Hearing is not required.

## **COMMENT ON APPELLANTS' SUBMISSION**

Having regard to the detailed reasons for requesting the review set out in part (7) of the appellants' submission the following points are noted:

- 1. The appellant has set out an alternative case to the matters considered by officers in setting out Reason for Refusal no. 1 which considers the whether the design, scale and finishes of the proposed development suitably relate to its surrounds.***

It is noted that officer's assessment of this aspect of the proposal is set out within Section P of the main report of handling and is primarily addressed under the sub-section headed 'Design and Layout'. This sub-section highlights the relevant policy considerations and includes commentary on the relevance of other developments referenced by the appellant as these matters were also highlighted as supporting information to the planning application.

- 2. The appellant has set out their own view that the proposed dwelling would be afforded with suitable level of privacy and amenity, contrary to the matters considered by officers in setting out Reason for Refusal no. 2.***

It is noted that officer's assessment of this aspect of the proposal is set out within Section P of the main report of handling and is primarily addressed under the sub-sections headed 'Residential Amenity of the Proposal' and 'Residential Amenity of Neighbours'.

- 3. The appellant has set out their view that the existing access arrangements associated with the site are capable of accommodating a more intensive traffic generating activity than the proposal.***

It is noted that officer's assessment of this aspect of the proposal is set out within Section P of the main report of handling and is primarily addressed under the sub-section headed 'Access and Parking'. Within this sub-section it is noted that the position expressed by the Council's Roads officers would merit further consideration although it was noted that the proposed parking layout was established to be substandard. Further pursuance of further information to resolve these outstanding matters, including confirmation of the achievability of proposed sightlines and average traffic speeds at this location was not undertaken in light of other fundamental issues with the proposal.

- 4. The appellant has set out the view that any concerns in relation to previous land contamination have been resolved through the submission of a report by their consultant, John Whittle, in January 2023. Concern is raised that the Council's Contaminated Land Officer, Anthony Carson, has failed to engage with their consultant to resolve outstanding issues of disagreement/clarification on this matter.***

It is noted that officer's assessment of this aspect of the proposal is set out within Section P of the main report of handling and is primarily addressed under the sub-section headed 'Contaminated Land'. It is confirmed that the previous use of the land has been taken to be a commercial garage which is consistent with the use identified in the appellants contaminated land report contrary to the assertion in the LRB submission that the building was used as a store. The identified deficiencies in the appellant's submission of supporting information is further detailed within Section C of the main report of handling as this matter was addressed in detail by the Council's contaminated Land Officer. Further pursuance of information to confirm the suitability of the site for residential development and/or the requirement for mitigation in relation to any historic land contamination was not undertaken in light of other fundamental issues with the proposal.

- 5. The appellant has sought to suggest that there are 'malign forces at work' intimating that third parties have influenced the outcome of the planning decision. The appellant also seeks to question the character and motivation of a number of third parties who have participated in the planning process through the submission of representations commenting on the planning application.***

The parties submitting representations, a summary of the issues raised and officer commentary identifying their relevance to the application under consideration are set out within Section F of the report of handling. Any suggestion that officers have been unduly influenced by

parties making third party submissions, or have otherwise failed to conduct themselves in an appropriately professional manner in their handling and assessment of the application are strongly refuted.

## **CONCLUSION**

Section 25 of the Town and Country Planning Act 1997 requires that all decisions be made in accordance with the development plan unless material considerations indicate otherwise.

### Adoption of the Argyll and Bute Local Development Plan 2 (28.02.2024)

It is highlighted that subsequent to planning permission being refused (on 02.02.24) that the Argyll and Bute Local Development 2 has been adopted on 28<sup>th</sup> February 2024. As of that date, the 'Development Plan' for Argyll and Bute (excluding the area covered by the Loch Lomond and the Trossachs National Park Authority) is National Planning Framework 4 and LDP2 which require to be applied holistically with preference afforded to LDP2, as the most recent expression of policy, in the event of any conflict between the two policy documents. For the avoidance of doubt, it is also confirmed that the Argyll and Bute Local Development Plan 2015 and its associated Supplementary Guidance are now superseded and accordingly should not be afforded significant material weight in planning determinations.

It is understood that the determination of these LRB proceedings will accordingly require to be made with regard to the updated 'Development Plan' position. The report of handling includes commentary that identifies the provisions of LDP2 which were relevant to the determination of this application and offer a view on how each of these policy matters relate to the proposal. It is confirmed that the adoption of LDP2 does not give rise to any substantive change to the matters considered within the assessment previously undertaken by officers in respect of this particular application.

### Summary Commentary on Key Material Considerations:

The site is located within the village of Tighnabruaich identified as Settlement Area in the Argyll and Bute Local Development Plan 2 2024 (LDP2) wherein the provisions of Policy 01 serve to give encouragement in principle for development. Within the settlement zone, LDP2 Policy 01 sets out a general presumption in support of development provided that such development is appropriately sited, is of a scale and design which fits within the context of the locale, is compatible with the character and amenity of its surrounds and, does not give rise to adverse access or servicing implications. NPF4 Policy 9 sets out support in principle for the sustainable reuse of brownfield land, including vacant and derelict land and buildings subject to consideration of impact upon biodiversity and potential contaminants from previous uses.

- **Whether the proposed location, siting, design, scale and finishes of the proposed development have sufficient regard to the context of their setting.**

Whilst this location within the settlement area for Tighnabruaich has some potential to accommodate a residential development, officers have reached a view that the scale, massing, design, and finishes of the dwellinghouse proposed do not satisfactorily respect the character and appearance of the surrounding area. In particular it is considered that the colour, height, scale and massing of the proposal would give rise to a development that would have a significant material adverse impact given its height and prominence within the core of the village and its wider landscape setting, and that the development would appear as an overbearing and dominant form of development in its more immediate context.

The proposal is accordingly considered to be contrary to NPF4 Policy 14, and LDP2 Policies 05, 08, 09, 10 and 71.

- **Whether the siting and design of the proposal would provide for a sufficient standard of residential amenity to the occupants of the proposed dwellinghouse.**

Notwithstanding the provision of a roof terrace, it is considered that siting and design of the proposed dwellinghouse and the limited provision of external amenity space will give rise to a poor quality of amenity having regard to the lack of daylight afforded to this area and its proximity to the adjacent public road. In the context of NPF4 and LDP2 the respective provisions of NPF 4 Policy 14 and LDP2 Policy 10 seek to ensure that new development is afforded with an appropriate level of amenity, and respects the amenity of neighbouring land uses.

- **Whether the access and parking arrangements proposed are suitable to accommodate the proposed development.**

NPF4 Policy 13 supports development that provide easy access by sustainable transport modes and also provide charging points for vehicles and cycles and safe, secure cycle parking. The relevant LDP2 Policies are Policy 35 Design of New and Existing, Public Roads and Private Access Regimes and Policy 40 Vehicle Parking Provision.

In this instance the proposed access to the site is located near to a bend. The details submitted in support of the application are insufficient to demonstrate whether or not the required visibility splays of 20m x 2m in both directions can be achieved, particularly given the topography of the site and alignment of the public road. The proposed parking arrangements have been identified to be unsafe on the basis that the parking area is too close to the adjoining public road carriageway.

Whilst there may be some scope to consider the suitability of access arrangements further in light of confirmation of achievable visibility splays, average vehicle speeds, and traffic generation relating to the previous use of the site whilst such matters remain unresolved the proposal must be

considered to be contrary to the relevant provisions of LDP2 Policies 35, 36 and 40.

- **Whether the applicant has satisfactorily demonstrated that any ground contamination that may have arisen from the previous use of the site can be made safe and suitable for the proposed new use.**

NPF4 Policy 9 c) states that where land is known or suspected to be unstable or contaminated, development proposals will demonstrate that the land is, or can be made safe and suitable for the proposed new use. Policy 82 of LDP2 also states the requirement for the applicant to undertake a contaminated land assessment and implement suitable remediation measures before the commencement of any new use.

Whilst the applicant has provided supporting information that is intended to satisfy the above requirements the Council's Contaminated Land Officer has advised that the submitted report is insufficient to address the potential land contamination issues. Whilst there may be reasonable prospect that such outstanding matters could be satisfactorily concluded whilst such matters remain unresolved the proposal must be considered to be contrary to the relevant provisions of NPF 4 Policy 9(c) and LDP 2 Policy 82.

Taking account of the above, it is respectfully requested that the request for a review be dismissed.

**Appended documents:**  
Report of Handling