

Reference Number: 09/00136/COU  
Applicants Name: Mrs June Buchanan-Hartley & Mr David Buchanan Hartley  
Application Type: Change of use  
Application Description: Change of use of chalet to dwellinghouse, erection of shed, pathway and fence (retrospective).  
Location: No. 5 Arden Craig Chalets, Arden Craig Road, Rothesay, Isle of Bute.

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## (A) THE APPLICATION

### (i) Development Requiring Express Planning Permission

- Change of use of chalet to dwellinghouse
- Retention of timber shed
- Retention of timber pathway
- Erection of 1.8 metre high deer fence

### (ii) Other specified operations

- Connection to public water main
  - Connection to public sewer
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## (B) RECOMMENDATION

Having due regard to development plan policy and other material considerations, it is recommended that planning permission **be granted** subject to the conditions and reasons along with the informatives detailed overleaf.

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## (C) SUMMARY OF DETERMINING ISSUES AND MATERIAL CONSIDERATIONS

### (i) Development Plan Context:

In the adopted Bute Local Plan the site is located within a 'Countryside Safeguarding Zone'. Policy POL HO 3 does not permit any form of small scale development within this zoning. Therefore the change of use of this chalet to a permanent dwellinghouse would need to be justified as a departure to this policy.

The emerging Argyll & Bute Local Plan identifies this site within the boundaries of Rothesay settlement zone. This plan identifies Rothesay as a 'Main Town'. Policy LP HOU 1 'General Housing Development' promotes a presumption in favour of housing development in the settlement zone providing it is of an appropriate scale. This small scale proposal is consistent, in principle, with policy LP HOU 1.

**(ii) Representations:**

One letter of representation has been received.

**(iii) Consideration of the Need for Non-Statutory or PAN 41 Hearing:**

Given that the proposal is only a '*minor departure*' from the Development Plan and only one representation has been received, it is not considered that it would be necessary to convene a hearing under Planning Advice Note 41 '*Development Plan Departures*'.

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

In taking into account all of the material considerations; it is considered that a case can be made for granting planning permission as a '*minor departure*' to the Development Plan. The proposal does not represent 'large scale or unsympathetic' development and it would not have an adverse impact upon the Rothesay Conservation Area. It should be seen in the context of an aged Bute Local Plan that no longer accurately reflects the understood aspirations of the Council. The application site is fully contained within the settlement boundary defined in the Argyll & Bute Local Plan Post Inquiry Modifications (November 2008) and the proposal is consistent with this emerging local plan.

**(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.

**(viii) Has a sustainability Checklist Been Submitted:**

No.

**Angus J Gilmour**  
**Head of Planning**  
31 March 2009

**Author:** John Irving, Tel: 01369708621  
**Reviewing Officer:** David Eaglesham, Tel: 01369708608

**Date:** 24<sup>th</sup> March 2009  
**Date:** 31 March 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](http://www.argyll-bute.gov.uk)**

## CONDITIONS AND REASONS RELATIVE TO APPLICATION: 09/00136/COU

1. Notwithstanding the provisions of Article 3 and Classes 1 (alterations, extensions, conservatories, etc.), 2 (roof alterations) and 3 (development within curtilage) of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 or as amended, no other development shall take place within the curtilage of the dwellinghouse hereby permitted without the prior written consent of the Planning Authority.

**Reason:** *In order to safeguard the external design and amenity of the dwellinghouses and in respect of limited curtilages from development normally carried out without Planning Permission, normally being permitted under Article 3 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992.*

2. Notwithstanding the provisions of Article 3 and Classes 1 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 or as amended, no windows or other openings shall be installed at the dwellinghouse without the prior written consent of the Planning Authority.

**Reason:** *In order to prevent the inclusion of windows and other openings this could undermine the privacy and amenity of neighbouring properties.*

3. Notwithstanding the detail of the approved drawings titled 'Site Plan' and 'Shed, Wood Store & Deer Fence Details', received 4<sup>th</sup> February 2009, the proposed 1.8 metre high deer fence shall not be erected.

**Reason:** *In order to prevent an uncharacteristic form of development that would have an unacceptable visual impact at this location.*

## APPENDIX A – RELATIVE TO APPLICATION NUMBER: 09/00136/COU

### MATERIAL CONSIDERATIONS AND ADVICE

#### (i) POLICY OVERVIEW AND MATERIAL ADVICE

##### **Argyll & Bute Structure Plan 2002**

STRAT DC 1 '*Development in the Settlement*' developments which don't accord with this policy are those developments which are essentially incompatible within close configuration of land uses found in settlements.

##### **Bute Local Plan 1990**

Policy POL BE 6 '*Rothesay Conservation Area*' seeks to prevent any deterioration in the character and setting of this designated area through inappropriate new developments.

Policy POL HO 3 '*Countryside Safeguarding Zone*' stresses the need for settlement consolidation, developments will not generally be permitted, and development in this zone is restricted to infill or rounding-off.

Policy POL RUR 1 '*Landscape Quality*' seeks to maintain and enhance the landscape quality of Bute.

##### **Argyll and Bute Local Plan Post-Inquiry Modifications (2008)**

Policy LP ENV 1 – '*Development Impact on the General Environment*' seeks to ensure all applications for planning permission are assessed on their impact on both the natural, human and built environment.

Policy LP ENV 14 – '*Development in Conservation Areas and Special Built Environment Areas*' seeks to resist development that does not preserve or enhance the character of the designated area.

Policy LP ENV 19 – '*Development Setting, Layout & Design*' sets out the requirements in respect of development setting, layout and design.

Policy LP HOU 1 – '*General Housing Development*' there is a presumption in favour of housing development within the defined settlement zone providing it is of an appropriate scale.

Policy LP TRAN 4 – '*New & Existing, Public Roads & Private Access Regimes*' sets out the requirements for development in respect of new and existing public roads and private access regimes.

Policy LP SERV 1 '*Private Sewerage Treatment Plants & Wastewater Systems*' connection to public sewer will be a prerequisite of planning consents for all developments within the settlement unless demonstrated that it is not feasible for a technical or economic reason.

Policy LP SERV 4 '*Water Supply*' supports private water supplies where a public water supply is not, or could not be made available.

**Note (i):**           **The applicable elements of the above Policies have not been objected too or have no unresolved material planning issues and are therefore material planning considerations.**

**Note (ii):**       **The Full Policies are available to view on the Council's Web Site at [www.argyll-bute.gov.uk](http://www.argyll-bute.gov.uk).**

(ii) **SITE HISTORY**

Planning permission 06/01795/DET granted on 17<sup>th</sup> October 2006 to alter and extend existing chalet, erection of conservatory and decking. This planning permission included a specific informative to advise the applicant of the condition (7 of planning permission 778/76) attached to the original planning permission concerning holiday usage of the chalet.

Planning enforcement investigation 08/00172/ENFBOC commenced on 16<sup>th</sup> May 2008 regarding breach of condition 7 of planning permission 778/76 at Chalet No. 5. See associated report elsewhere on this agenda.

Non-material amendment application 09/00132/NMA submitted on 3<sup>rd</sup> February 2009 to alter and extend existing chalet, erect conservatory and decking (amendment to planning permission 06/01795/DET incorporating two additional windows on west elevation and variation to design of timber cladding on north elevation) (retrospective). See associated report elsewhere on this agenda.

(iii) **CONSULTATIONS**

**Area Roads Manager** (response dated 24<sup>th</sup> March 2009):

*'This development is accessed from Arden Craig Lane via a private access. There are 2 no. parking spaces within this site and a means of turning which will allow all vehicles to enter and leave the development in a forward manner. There will be no additional traffic movements due to this change. The access onto the adopted road is acceptable. A means of turning to be provided for vehicles to exit the estate in a forward manner, the current layout will permit this.'*

**Scottish Water:** No response.

(iv) **PUBLICITY AND REPRESENTATIONS**

Under Article 9 neighbour notification procedure, potential departure advertisement, published 13<sup>th</sup> March 2009, expired 3<sup>rd</sup> April 2009 and Section 65 advertisement published 27<sup>th</sup> February 2009, expired 20<sup>th</sup> March 2009, one representation has been received from Mr Colin Slinn (e-mail dated 22<sup>nd</sup> March 2009), colinlslinn@manx.net.

The points raised are summarised below:

1. When they purchased the property the applicants were made aware by the selling agents as to the 10 month usage of the property. However at the same time they were also informed that this condition had never been enforced and that on a number of occasions lettings had taken place at the request of the council during the 2 months that the property should have remained unused. This was, I am told, to rehouse on a temporary basis persons who had a housing problem.

**Comment:** See assessment below.

2. There are two vehicle turning areas shown on the plans. The first at the end of the drive before it ascends to chalet 5 and the second is just past chalet 7 to the rear of chalet 5. This "turning" space is currently used as the parking bay for

chalets 6 and 7 which are owned by this company. When they are not used by chalets 6 and 7 it would be possible to turn a vehicle in that spot. It is not a designated turning bay and chalet 5 has no legal rights to use it as such. Because of the demand for holiday lettings we are now using our chalets for that purpose and have a dedicated web site - [www.ardencraigchalets.co.uk](http://www.ardencraigchalets.co.uk) for that purpose. What we clearly want to avoid is any friction between our guests in chalets 6 and 7 that could be caused by the use of this area of our land as a turning space with the owners of chalet 5. The legal position is that chalet 5 have no legal right to use this area for turning a car on a permanent basis, but if it is not being used by our guests for chalets 6 and 7 we have no objection to them doing so.

**Comment:** See assessment below.

3. We do object to the erection of a massive deer proof fence as proposed. The beauty of the site is that it is open and the deer can roam freely around. Chalet 5 does not believe in cultivating their garden rather they leave it growing wild. In those circumstances I see no reason why they wish to turn this part of the development into what would look like a zoo or a concentration camp! What we do not want to see is a bald wire fence which would visually impair the whole ambiance of the development. A possible solution is that the applicants could have a hedge and on the inside of the hedge could have a wire fence that would not been seen.

**Comment:** See assessment below.

## APPENDIX B – RELATIVE TO APPLICATION NUMBER: 09/00136/COU

### PLANNING LAND USE AND POLICY ASSESSMENT

#### A. Settlement Strategy

The chalet is located within Rothesay Conservation Area.

Under the provisions of the adopted local plan the site is located within a '*Countryside Safeguarding Zone*' Policy POL HO 3 does not permit any form of small scale development within this zoning. Therefore the change of use of this chalet to a permanent dwellinghouse would need to be justified as a departure from this policy.

**The proposal is therefore contrary to policy POL HO 3 of the adopted local plan.**

The emerging local plan identifies this site within the boundaries of Rothesay settlement zone. This plan identifies Rothesay as a 'Main Town'. Policy LP HOU 1 '*General Housing Development*' promotes a presumption in favour of housing development in the settlement zone providing it is of an appropriate scale. In principle 'Main Towns' can accommodate up to large scale developments (i.e. those exceeding 30 units). This small scale proposal is consistent, in principle, with policy LP HOU 1.

It is therefore considered that the principle of residential development at this site can be justified as a departure from the adopted local plan given the age of the current local plan and the identification of the site as within the 'settlement boundary' of Rothesay in the emerging Argyll & Bute Local Plan Post Inquiry Modifications 2008.

**The proposal is therefore considered to be consistent with policy LP HOU 1 of the emerging local plan.**

#### B. Location, Nature and Design of Proposed Development

Ardencraig Estates boasts seven holiday chalet buildings; these properties are small, single storey, timber clad structures. They are accessed by a private single track road. Five chalets are positioned in a single tier, while the remaining two are located on higher ground to the southwest. Chalet No.5 is located at the southern end of the single tier of chalets. The property has been extended and altered and is now larger than the other chalets at Ardencraig Estate.

This chalet is currently being used as a permanent residence in breach of its lawful use as a holiday let. It is believed that the owners have been permanently residing in the chalet in excess of two years. In order to determine the appropriateness of such a use this application also needs to be assessed in terms of its design and amenity impact.

This application does not include any physical changes to the chalet. The previous extension works undertaken to the building has provided additional floor space which has enhanced the modest layout of the chalet and provided meaningful living space.

There are three neighbouring chalets. The chalet to the north is located some 7.5 metres from the gable end of chalet no. 5. However, there are no windows located on this gable end which would present any adverse privacy or overlooking concerns.

Two chalets are located to the west of chalet no. 5, upon raised ground. The nearest chalet is located some 15 metres from the rear elevation of this property. This distance falls below the minimum standard of 18 metres window to windows distance,

as detailed in Appendix A of the emerging local plan. It is considered that the difference in ground levels, coupled with the existing vegetation between these properties will ensure that established levels of amenity afforded to this neighbouring chalet are not be unduly reduced.

The retention of the timber shed and pathway are considered to be acceptable. Although, in granting planning permission it is considered necessary to remove permitted development rights to prevent any further development works being undertaken within the curtilage of this property, without first seeking approval from the Planning Authority.

The proposed erection of 1.8 metre high deer fence is considered to unacceptable. Arden Craig Chalets is characterised by chalets located within open ground. The proposed fence would enclose Chalet No. 5 and introduce an alien form of development that would have an uncharacteristic and unsympathetic visual impact at this location. As such it is proposed to attach a condition to the grant of permission which prevents the erection of this boundary treatment.

**The proposal is therefore considered to be consistent with policy POL BE 15 of the adopted local plan and policy LP ENV 19 and Appendix A of the emerging local plan.**

#### **C. Built Environment**

The site is located with the boundaries of Rothesay Conservation Area. Both the adopted and emerging local plans boast specific policies which seek to prevent any deterioration to the character and appearance of conservation area through unsympathetic development. This application does not propose any physical changes to the chalet building but the retention of very minor development works in the surrounding grounds, with the unauthorised erection of a timber shed and pathway. These developments are considered to have a very limited impact on the surrounding wider environment.

**The proposal is therefore consistent with policy POL BE 6 of the adopted local plan and policy LP ENV 14 of the emerging local plan.**

#### **D. Road Network, Parking and Associated Transport Matters**

Arden Craig Estate is accessed from the adopted Arden Craig Road. The road which serves the estate and this chalet is a private single track access. This access serves Arden Craig Apartments which consists of two dwellings and four holiday apartments along with the six holiday chalets and this subject property. Policy TRAN 4 of the emerging local plan requires developments which result in more than 5 dwellings being served by a private road to be constructed to an adoptable standard. The approval of this application would result in only three residential units being served by this private access road which falls below this threshold.

The single track access boasts a parking area for up to two cars per chalet and these spaces serve as passing places. The location of the existing car parking area for this property, identified on the submitted plan, are located outwith the defined application site, outwith the applicant's ownership. However, the applicant's agent has confirmed that they have a sole right of servitude to use this area. The turning areas detailed on the submitted plan do not belong to the applicant and they have no legal right to use these areas. However, the existing car parking area does act as a turning area for vehicles belonging to Chalet No. 5.



The Area Roads Manager has raised no objection to this proposal.

**The proposal is therefore considered to be consistent with policy LP TRAN 4 of the emerging local plan.**

**E. Infrastructure**

The chalet is connected to both the public water main and sewerage system. No change is sought to this existing arrangement and Scottish Water has raised no objection to this proposal.

**The proposal is therefore considered to be consistent with policies LP SERV 1 and 4 of the emerging local plan.**

**CONCLUSION**

The change of use of this holiday chalet to a permanent dwellinghouse is considered acceptable, in principle, subject to conditions which safeguard levels of privacy and amenity and which prevent associated development that could have an unacceptable visual impact.