

**STATEMENT OF CASE**

**FOR**

**ARGYLL AND BUTE COUNCIL  
LOCAL REVIEW BODY**

**GRANT OF PLANNING PERMISSION FOR  
ERECTION OF DWELLING HOUSE AND DOMESTIC  
SHED AT LAND NORTH WEST OF BENMEANACH,  
ISLE OF COLL**

**PLANNING PERMISSION REFERENCE NUMBER  
11/00732/PP**

**10<sup>th</sup> January 2012**

## **STATEMENT OF CASE**

The Planning Authority is Argyll and Bute Council ('the Council'). The appellant is Mr Ian Rae ('the appellant').

Planning Permission Reference Number 11/00732/PP for erection of dwelling house and domestic shed at Land North West of Benmeanach, Isle of Coll, Argyll ("the appeal site") was granted subject to conditions on 27/10/11.

Condition number 5 is subject of referral to a Local Review Body.

5. Notwithstanding the provisions of Classes 1, 3, 5 and 7 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended), no development shall take place within the curtilage of the dwellinghouse hereby approved without planning permission first being granted on an application made to the Planning Authority.

Reason: In the interests of visual amenity and to protect the open character of the site.

### **DESCRIPTION OF SITE**

The site is located to the north of the B8071 to the north west part of the island in the area known as Clabhach. The landscape can be described as rocky mosaic and filled with hollows and dotted with houses along the road edge. The site occupies the lower northern section of a hollowed grazing field. Rocky knolls exist to the west of the site. There are two traditional houses to the east complete with traditional character features including low stone walls providing demarcation of the garden areas.

### **SITE HISTORY**

No history relevant to this site, but an application on land immediately to the west of this site referred to in the report of handling as the subject of a revocation, was approved in August 2010 under reference 10/01335/PP.

### **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, and 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**

The determining issues in relation to the case are as follows:

*Whether or not the above mentioned planning condition has been reasonably applied and can be so defended or whether its variation would render the proposed development contrary to the Development Plan.*

The Report of Handling (Appendix 1) 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 the Local Review Body will 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 received no third party representations, it is not considered that a Hearing is required.

### **COMMENT ON APPELLANT'S SUBMISSION**

#### **Condition 5**

The appellant has stated that he is aggrieved by condition 5 and has set out 6 reasons for its removal. In addition to the report of handling in appendix 1 the local planning authority will comment on each reason as set out below.

#### Reason: 1

This is a working croft and the low stone walling recommended is not appropriate to control livestock or enclose poultry, we will require stock fencing / netting as is used in the surrounding area of Clabhach.

Comment: The condition only applies to the site area (red line boundary) as per plan reference F169/002 revision 2 which does not extend to the larger croft area. This reason relates to the limit on Permitted Development Class 7 only. Most of the curtilage is more than 20m away from the road, so what is limited by the condition is the right to erect walls, fencing or other means of enclosure up to 2m in height above ground level of any design or material. It is intended that permission be sought for such fencing or walling to ensure that the open character of the area is not jeopardised by unsympathetic fencing or walling which could otherwise be installed. The condition makes no specific requirement for the use of low stone walls, but merely seeks control over what details are proposed. Low stone walls with or without a wire top, or a stockproof rylock and post fence would be suitable to the area and would match in with neighbouring properties. Netting for poultry areas within the garden may also be acceptable. The planning condition does not apply to the croft area beyond the residential curtilage.

#### Reason: 2

The recommendation of the report to 'remove certain permitted development rights' has turned into a condition that imposes a blanket ban on permitted development.

Comment: The condition removes classes 1, 3, 5 and 7 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (GPDO) covering:

- Class 1 - The enlargement, improvement or other alteration of a dwellinghouse.
- Class 3 - The provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse, or the maintenance, improvement or other alteration of such a building or enclosure.

- Class 5 - The erection or provision within the curtilage of a dwellinghouse of a container for the storage of oil.
- Class 7 - The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

This is not a “blanket ban” on permitted development. This only applies to the consented house curtilage and only removes certain rights. The Council’s Landscape Capacity Study states that buildings should be sited appropriately to avoid impacting on views from the road to the coast. The classes of permitted development that have been removed are those that involve development types that could otherwise most impact on views from the main road out to the coast. Rather than ban those works altogether, the condition imposes a requirement to obtain planning permission (with the payment of no application fee), to ensure that such works are undertaken sensitively to the environment within which they are situated.

The applicant’s reference to the working of the croft is misleading as the condition does not affect the croft beyond the residential curtilage. The applicant will still have access to part 6 of the GPDO specifically Class 18 covering “*the carrying out on agricultural land comprised in an agricultural unit of:*

- (a) works for the erection, extension or alteration of a building;*
- (b) the formation, alteration or maintenance of private ways; or*
- (c) any excavation or engineering operations.”*

House extensions, domestic outbuildings, oil tanks and high fencing or walling can adversely impact on key views and open character in a rural area. It should be noted that the applicant has received planning permission for a domestic shed as part of the approval already.

Reason: 3

The site, unlike most of Coll, has no special or sensitive designations and is classed a rural opportunity area in the Local Plan.

Comment: Whilst the site is not covered by any statutory designations, it is important on any site to ensure high quality development, to protect existing character, and retain the unique sense of place offered. In this instance, low stone walling or post and rylock fencing is often used by properties to demark boundaries and therefore assists in creating a unique sense of place which is important to preserve as per local plan policies ENV1 and ENV19 and the Coll Sustainable Design Guide. The rural character of the area is also underpinned by sensitive residential development, which can be undone by unsympathetic additions at a later date. Notably, many natural heritage designations have no impact on permitted development rights, and the matter is regularly considered separately from statutory designations.

In this instance it is considered that without restriction to permitted development rights, the proposal would have the potential for adverse visual impacts on key views from the road to the coast and to the open character of the rural site. Therefore, in order to ensure that the proposal remains consistent with the provisions of the development plan, certain permitted development rights have had to be restricted.

Reason: 4

The development is a croft cottage on a 4 acre working croft and I believe that the application represents a traditional croft cottage look fully supported by the Isle of Coll Design Guide. A considerable effort was expended by me in pre application to ensure the siting of the cottage was the least intrusive visually. This is supported by the planning report of handling, (P) para 3 states 'It is considered that the site is offset from the main coastal views' and 'The applicant has submitted a site and Design Consideration Statement which successfully demonstrates that a dwellinghouse at the proposal site will not intrude unacceptably on key views from the road to the coast.'

Comment: Agreed, but this relates to the design of the house. The application does not specify a boundary treatment. Page 7 figure 4 of the appellants submitted Design Statement illustrates the house as a photomontage in the landscape. Despite being partially set back from the main views the house is still visible from the road, more so heading west than east where the photo is taken, and therefore every care should be taken to ensure a suitable design is achieved, not just with the house, but with those character features that assist in creating a unique place within the island.

Reason: 5

The imposition of this condition is excessive control on a small working croft; planning applications for any minor alterations would manufacture a time consuming and expensive process for both me (despite no application fee being able to be charged) and the council. This does not appear to support the general efficiency drive in the public sector that is particularly topical at the moment.

Comment: The removal of limited permitted development rights will not impact on the workings of the croft beyond the residential curtilage. Only classes 1, 3, 5 and 7 of the GPDO that have been restricted within the residential curtilage alone. The appellant will only have to apply for house extensions, further domestic outbuildings in addition to the shed granted as part of the permission, oil storage tanks, and any new boundary treatment around or within the curtilage. It is not clear how this impacts on the workings of the rest of the croft.

Reason: 6

The 'study' mentioned in the report, that is used as the only evidence to support the imposition of a condition, has not been adopted by the council despite being published in 2006 and its recommendations have generally been ignored or contradicted by the 2009 Local Plan, the Isle of Coll design guide and recent planning decisions.

Comment: Although the Island of Coll Landscape Capacity for New Housing Final Report May 2006 was never formally adopted it is still prudent to consider the landscape character references and types and also the recommendations in terms of design to ensure appropriate development happens in the right places. It should be noted that within the adopted Isle of Coll Sustainable Design Guidance specifically states that "*garden spaces are often delineated by drystone walls*". Although the landscape study is specifically referenced within the report this stance is backed up by the Design Guide which has been adopted.

The planning condition does not oblige the use of stone walls, but limits the right to utilise any material on fencing, walling or other means of enclosure of up to 2m in height above ground levels, which could otherwise occur. Controlling such means of enclosure remains necessary.

**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.

Taking account of the above, it is considered that the condition should remain as originally granted, as detailed above in section titled 'Comment on Appellant's Submission'. The conditions are consistent with the terms of the current Development Plan and are commonplace for developments with the same set of circumstances that exist in this instance.

It appears that the applicants primary grievance is the limitation to fencing applied by the condition.

In the event that the Local Review Body deems that the condition is too onerous, it is recommended that an alternative way to word the condition would be to limit fencing or walling above a certain height of 1200mm above ground level for instance, which would allow stockproofing and limit the level of impact that could otherwise occur by higher fencing.

SF

.....

Stephen Fair

Area Team Leader – Oban, Lorn & the Isles

10<sup>th</sup> January 2012

# APPENDIX 1

Argyll and Bute Council  
Development Services

Delegated or Committee Planning Application Report and Report of Handling as required by Schedule 2 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 relative to applications for Planning Permission or Planning Permission in Principle

---

Reference No: 11/00732/PP

Planning Hierarchy: Local Development

Applicant: Mr Ian Rae

Site Address: Land North West of Benmeanach, Isle of Coll

---

## DECISION ROUTE

(i) Sect 43 (A) of the Town and Country Planning (Scotland) Act 1997

---

### (A) THE APPLICATION

#### (i) Development Requiring Express Planning Permission

- Erection of a dwellinghouse
  - Erection of a domestic shed
  - Provision of private water supply
  - Installation of septic tank and boidisk system
  - Provision of new vehicular access
- 

### (B) RECOMMENDATION:

Having due regard to the development plan and all other material considerations, it is recommended that planning permission be granted **subject to the revocation of Planning Permission in Principle ref 10/01335/PPP** and subject to the conditions and reasons appended to this report.

---

### (C) HISTORY:

No history within the current application site

10/01335/PP – Site for the erection of a dwellinghouse, Land immediately to the west of the current application site, 13.08.10

---

### (D) CONSULTATIONS:

Core Paths – No response at time of report

Area Roads Engineer – No objections subject to conditions with regards to the provision of SD08/004a, adequate visibility splays and parking, 10.06.11

Environmental Health – No objections subject to conditions regarding the provision of an adequate water supply, 14.06.10

---

**(E) PUBLICITY:**

The proposal was advertised under (Regulation 20 – Advert Local Application). The publication date was 16<sup>th</sup> of June 2011 and the closing date was 7<sup>th</sup> of July 2011.

---

**(F) REPRESENTATIONS:** None received

---

**(G) SUPPORTING INFORMATION**

**Has the application been the subject of:**

- (i) **Environmental Statement:** No
  - (ii) **An appropriate assessment under the Conservation (Natural Habitats) Regulations 1994:** No
  - (iii) **A design or design/access statement:** Yes, a site and design consideration statement has been submitted
  - (iv) **A report on the impact of the proposed development e.g. retail impact, transport impact, noise impact, flood risk, drainage impact etc:** No
- 

**(H) PLANNING OBLIGATIONS**

- (i) **Is a Section 75 agreement required:**  
No
- 

- (I) **Has a Direction been issued by Scottish Ministers in terms of Regulation 30, 31 or 32:** No
- 

**(J) Section 25 of the Act; Development Plan and any other material considerations over and above those listed above which have been taken into account in the assessment of the application**

- (i) **List of all Development Plan Policy considerations taken into account in assessment of the application.**

The Argyll and Bute Structure Plan 2002



STRAT DC 4 – Development in Rural Opportunity Areas

The Argyll and Bute Local Plan 2009

LP ENV 1 – Development Impact on the General Environment

LP ENV 19 – Development Setting, Layout and Design

LP HOU 1 – General Housing Development

LP SERV 4 – Water Supply

LP TRAN 4 – New and Existing, Public Roads and Private Access Regimes

LP TRAN 6 – Vehicle Parking Provisions

- (ii) **List of all other material planning considerations taken into account in the assessment of the application, having due regard to Annex A of Circular 4/2009.**

Argyll & Bute Sustainable Design Guidance (2006)

The Town & Country Planning Act (Scotland) 1997

The Planning etc. (Scotland) Act, 2006

Scottish Planning Policy (SPP), 2010

The Isle of Coll Sustainable Design Guide

The Island of Coll Landscape Capacity for New Housing Final Report (May 2006) – not formally adopted

- 
- (K) **Is the proposal a Schedule 2 Development not requiring an Environmental Impact Assessment:** No

- 
- (L) **Has the application been the subject of statutory pre-application consultation (PAC):** No

- 
- (M) **Has a sustainability check list been submitted:** No

- 
- (N) **Does the Council have an interest in the site:** No

- 
- (O) **Requirement for a hearing (PAN 41 or other):** Not required

- 
- (P) **Assessment and summary of determining issues and material considerations**

This is a proposal for the erection of a dwellinghouse and domestic shed at Land North West of Benmeanach, Isle of Coll. Planning Permission in Principle ref 10/01335/PPP been has previously been granted on land outwith the current application site immediately to the west on the 13<sup>th</sup> of August 2010.

The application site lies within land which has been designated as a Rural Opportunity Area by The Argyll and Bute Local Plan 2009 wherein STRAT DC 4 of The Argyll and Bute Structure Plan 2002 gives encouragement to small scale development on suitable sites which, in terms of siting and design, will visually integrate with the landscape and settlement pattern. Settlement is sparse within this area, with occasional small townships and the occasional farm located in relatively

sheltered locations. The small settlement of Clabhach is situated in close proximity to the application site to the east. The site occupies the lower northern section of a hollow grazing field. Rocky knolls exist to the west of the site. It is considered that a small dwellinghouse could successfully nestle into this hollow site with the rocky knolls providing a backdrop to the west. It is also considered that a dwellinghouse at this location could relate to the existing settlement of Clabhach to the east. However, it is considered that there is an opportunity present within the field for one dwellinghouse only due to the restricted size of the ground at the western side and also it is considered that two dwellinghouses at this location would not visually integrate with the scattered settlement pattern of the locality. A revocation of Planning Permission in Principle ref 10/01335/PPP is therefore required in order for the development proposed to accord with the provisions of STRAT DC 4 of the Structure Plan, and to avoid the potential for two dwellings to be formed in close proximity to one another. A revocation would ensure that the single proposed dwellinghouse will visually integrate with the landscape and settlement pattern.

The site has been identified within The Island of Coll Landscape Capacity for new Housing Study as an area where new development should avoid intrusion on views from the road to the coast. The public road runs from the south and the site lies to the north west of the road. The applicant has submitted a site and Design Consideration Statement which successfully demonstrates that a dwellinghouse at the proposal site will not intrude unacceptably on key views from the road to the coast. It is considered that the site is offset from the main coastal views and that a small dwellinghouse at the site would not contravene this guidance (which has not been formally adopted by the Council and so can only carry limited weight). It is also noted in this Study that gardens associated with new housing should be either left open or should be small and enclosed by low stone walls. A condition will therefore be attached to the grant of permission in order to remove certain permitted development rights in the interests of visual amenity and to protect the open character of the area.

It is proposed to erect a small single storey dwellinghouse with a traditional croft vernacular. The main dwellinghouse will have a rectangular floor plan with a small porch to be erected onto the main front elevation and a small projection to be erected onto the rear. The main house will have a traditional pitched roof with gable ends and the porch will be centrally placed and will also have a traditional pitched roof. The extension at the rear will be single storey and will have a monopitched roof. The roof is to be clad in dark grey slate substitute which is considered unsuitable at this location. A condition will be applied to the grant of permission in order to ensure that the roof is clad in natural slate in the interests of visual amenity. A natural slate roof would help the house to integrate with the rocky knolls to the west and the traditional style and finish of slated buildings in the area. The exterior walls of the house will be finished in white render. The walls of the extension at the rear facing the road will be finished in natural stone. A small domestic shed will be sited in the western side of the site in a location which is not prominent. The proposed finishing material of this shed is unknown so a condition is necessary to control this. Overall it is considered that the proposed dwellinghouse will have an appropriate layout and density and will be of a suitable scale, form and design at this location. The proposed dwellinghouse will therefore accord with the provisions of LP ENV 19 of the adopted Local Plan and the guidance contained within the adopted Isle of Coll Sustainable Design Guide.

A septic tank and biodisk system will be installed within the site to serve the proposed dwellinghouse. This raises no issues. The applicant has indicated that a private water supply will serve the proposed dwellinghouse. Legal and Protective Services have raised no objections to the proposed development subject to a condition being

attached to the grant of permission in order to ensure that an adequate water supply is provided in accordance with Policy LP SERV 4 of the Local Plan.

The Area Roads Engineer has raised no objections to the proposed development. Area Roads have recommended that planning permission be granted subject to conditions with regards to the provision of SD 08/004a at the junction of the public road, the provision of adequate visibility splays and parking at the site in the interests of road safety and in accordance with Policy LP TRAN 4 and LP TRAN 6 of the Local Plan.

In light of the above we can conclude that the development proposed is consistent with adopted Local Plan policy (subject to a revocation of Planning Permission in Principle ref 10/01335/PP) and will have no adverse impact in terms of layout, design, servicing and infrastructure. The proposed development therefore accords with Policy LP ENV 1 of the adopted Local Plan which sets out a general basis for consideration of all applications for planning permission.

---

**(Q) Is the proposal consistent with the Development Plan: Yes**

---

**(R) Reasons why planning permission or a Planning Permission in Principle should be granted**

The proposed development is considered acceptable at this location without causing any unacceptable impact on the wider area (subject to a revocation of Planning Permission in Principle ref 10/01335/PP) and there are no infrastructural constraints which would preclude the proposed development at the site.

The proposal accords with Policy STRAT DC 4 of the adopted Argyll and Bute Structure Plan 2002, Policies LP ENV 1, ENV 19, HOU 1, SERV 4, TRAN 4, TRAN 6 and Appendix 1 of the adopted Argyll and Bute Local Plan 2009. There are no other material considerations, including issues raised by third parties, which are considered to have decisive weight that would warrant anything other than the application being determined positively in accordance with the provisions of the development plan.

---

**(S) Reasoned justification for a departure to the provisions of the Development Plan**

No Departure

---

**(T) Need for notification to Scottish Ministers or Historic Scotland: Not required**

---

**Author of Report: Lesley Cuthbertson**

**Date: 20/07/11**

**Reviewing Officer: Stephen Fair**

SF

**Date: 21/07/11**

**Angus Gilmour  
Head of Planning**

## CONDITIONS AND REASONS RELATIVE TO APPLICATION REF. NO.11/00732/PP

1. That notwithstanding the plans hereby approved, the roof of the dwellinghouse shall be finished in blue grey natural slate to the satisfaction of the Planning Authority.

*Reason: In the interest of visual amenity and in order to integrate the proposed dwellinghouse with its surroundings.*

2. Prior to the commencement of works at the site, details of the external finished materials of the shed hereby approved shall be submitted for the written approval of the Planning Authority. The development shall be completed and maintained in perpetuity in strict accordance with such details as are approved.

*Reason: In the interest of visual amenity and in order to integrate the proposed dwellinghouse with its surroundings.*

3. No development shall commence on site until the vehicular access at the junction of the public road has been formed in accordance with the Council's Road Engineers Drawing Number SD 08/004a with visibility splays of 42.0m x 2.4m in each direction formed from the centre line of the proposed access. Prior to work starting on site these visibility splays shall be cleared of all obstructions above the level of the adjoining carriageway and thereafter maintained to the satisfaction of the Planning Authority.

The vehicular access granted consent shall be constructed to at least base course level prior to any work starting on the erection of the dwellinghouse which it is intended to serve and the final wearing surface of the road shall be applied prior to the first occupation of the dwellinghouse.

*Reason: In the interests of road safety to ensure the proposed development is served by a safe means of vehicular access and in accordance with LP TRAN 4 of The Argyll and Bute Local Plan 2009.*

4. Prior to the commencement of works on site full details of the turning and parking provision for cars shall be drawn up in consultation with the Area Roads Manager and shall be submitted to and approved in writing by Argyll and Bute Council as planning authority. The parking and turning area shall be provided prior to the occupation of the dwellinghouse.

*Reason: In the interests of road safety and to comply with Policy LP TRAN 6 of the Argyll and Bute Local Plan 2009.*

5. Notwithstanding the provisions of Classes 1, 3, 5 and 7 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended), no development shall take place within the curtilage of the dwellinghouse hereby approved without planning permission first being granted on an application made to the Planning Authority.

*Reason: In the interests of visual amenity and to protect the open character of the site.*

6. The development shall be implemented in accordance with the details specified on the application form dated 10<sup>th</sup> of May 2011 and the approved drawing reference numbers:

- Plan 1 of 4(Location Plan)
- Plan 2 of 4(Site Plan)
- Plan 3 of 4(Elevations and floor plans)
- Plan 4 of 4(Shed Elevations and Floor Plans)

unless the prior written approval of the Local Planning Authority is obtained for other materials/finishes/for an amendment to the approved details under Section 64 of the Town and Country Planning (Scotland) Act 1997.

*Reason: For the purpose of clarity, to ensure that the development is implemented in accordance with the approved details.*

#### **NOTE TO APPLICANT**

- **Length of this planning permission:** This planning permission will last only for three years from the date of this decision notice, unless the development has been started within that period. [See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).]
- Operational Services (Roads and Amenity Services) have advised that a Roads Opening Permit will be required. Please find enclosed a Roads Opening Permit application form for your convenience.
- In order to comply with Section 27A(1) of the Town and Country Planning (Scotland) Act 1997, prior to works commencing on site it is the responsibility of the developer to complete and submit the attached 'Notice of Initiation of Development' to the Planning Authority specifying the date on which the development will start.
- In order to comply with Section 27B(1) of the Town and Country Planning (Scotland) Act 1997 it is the responsibility of the developer to submit the attached 'Notice of Completion' to the Planning Authority specifying the date upon which the development was completed.

## APPENDIX TO DECISION APPROVAL NOTICE

Appendix relative to application 11/00732/PP

---

- (A)** Has the application required an obligation under Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended).

No

---

- (B)** Has the application been the subject of any “non-material” amendment in terms of Section 32A of the Town and Country Planning (Scotland) Act 1997 (as amended) to the initial submitted plans during its processing.

No

---

- (C)** The reasons why Planning Permission has been approved.

The proposed development is considered acceptable at this location without causing any unacceptable impact on the wider area (subject to a revocation of Planning Permission in Principle ref 10/01335/PP) and there are no infrastructural constraints which would preclude the proposed development at the site.

The proposal accords with Policy STRAT DC 4 of the adopted Argyll and Bute Structure Plan 2002, Policies LP ENV 1, ENV 19, HOU 1, SERV 4, TRAN 4, TRAN 6 and Appendix 1 of the adopted Argyll and Bute Local Plan 2009. There are no other material considerations, including issues raised by third parties, which are considered to have decisive weight that would warrant anything other than the application being determined positively in accordance with the provisions of the development plan.