

STATEMENT OF CASE

FOR

**ARGYLL AND BUTE COUNCIL
LOCAL REVIEW BODY**

**REFUSAL OF PLANNING PERMISSION IN
PRINCIPLE FOR A SITE FOR THE ERECTION OF
A DWELLINGHOUSE AT LAND SW OF NORTH
BEACHMORE FARM, MUASDALE**

LOCAL REVIEW BODY REF. 12/0005/LRB

**PLANNING PERMISSION APPLICATION
REFERENCE NUMBER 10/02058/PPP**

27TH APRIL 2012

STATEMENT OF CASE

The planning authority is Argyll and Bute Council ('the Council'). The appellant is Ms Catherine Pendreigh. ('the appellant').

The planning application, reference number 10/02058/PPP, for a site for the erection of a dwellinghouse ("the appeal site") was refused under delegated powers on the 29th February 2012. The planning application has been appealed and is subject of referral to a Local Review Body.

DESCRIPTION OF SITE LOCATION

The application site relates to approximately 1.09 acres. The application site occupies an elevated location on a raised beach approximately 140m east of the A83 public highway and located approximately 350m to the south west of a grouping of four dwellings at the former North Beachmore Farm/Restaurant. The site is generally triangular in shape and located at the western end of a large pasture field. The land to the north/west falls away sharply; to the east the land rises gently up to and beyond the former Beachmore Farm/Restaurant.

SITE HISTORY

Outline planning permission (ref. 05/00887/OUT) was previously granted on 9th June 2005 for a site for a single dwellinghouse at this location. This permission was granted under the provisions of the Argyll and Bute Structure Plan 2002 and the Kintyre Local Plan (1st Review and Alteration) 1988 with the proposal being considered consistent with the provisions of STRAT 4 of the Kintyre Local Plan which established a general presumption in favour of single residential developments on appropriate sites within the Kintyre countryside outwith identified constraints. This permission expired unimplemented in June 2008.

Having regard to the wider locality it is noted that detailed planning permission (09/00874/PP) was been granted retrospectively on 13th October 2009 for the erection of a small agricultural building on land opposite the appeal site, this development relates to designated croft land which lies to the west and is in different ownership to the appeal site.

It is also noted that in 2005 outline planning permission was granted at the same time for sites for the erection of three additional dwellings at North Beachmore Farm/Restaurant which were all in the same ownership as the appeal site at the time of application. Subsequently, it is understood, that ownership of North Beachmore has become fragmented and further detailed permissions have been granted and implemented in relation to the development of two of these house sites and the change of use of the former restaurant to create one additional dwelling unit.

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 or not the proposal is consistent with the Council's 'Settlement Strategy' as set out in the Development Plan, in this instance policies STRAT DC 5, and LP HOU 1.

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. The consultation comments submitted by statutory and other consultees (Appendix 2) are attached for the purpose of clarity.

POLICY BACKGROUND

The appeal relates to a 'small scale' residential development on an 'open countryside' site within the 'Sensitive Countryside' – the following policy considerations are relevant to the determination of this matter:

Structure Plan Policy DC 5 – Development in Sensitive Countryside

- A) *Within Sensitive Countryside encouragement shall only be given to small scale infill, rounding-off, re-development and change of use building development or to single dwellinghouses on bareland crofts or single additional dwellinghouses on individual crofts subject to consistency with STRAT DC 1 C).*
- B) *In special cases, development in the open countryside and medium and large scale development may be supported if this accords with an area capacity evaluation which demonstrates that the specific development proposed will integrate sympathetically with the landscape and settlement pattern and that the development will entail or result in at least one of the following outcomes:*
 1. *a small scale housing development which accords with the area capacity evaluation, OR*

2. *a positive development opportunity yielding significant countryside management or environmental enhancement benefit, or building retention benefit or local community benefit or economic benefit;*

OR

3. *a development with a locational need to be on or in the near vicinity of the proposed site.*
- C) *Developments which do not accord with this policy are those outwith categories A) and B) above and those with incongruous siting, scale and design characteristics or resulting in unacceptable forms of ribbon development or settlement coalescence.*
- D) *Developments are also subject to consistency with other policies of the Structure Plan and in the Local Plan.*

Local Plan Policy LP HOU 1 – General Housing Development

- (A) *There is a general presumption in favour of housing development other than those categories, scales and locations of development listed in (B) below. Housing development for which there is a presumption in favour will be supported unless there is an unacceptable environmental, servicing or access impact.*
- (B) *There is a general presumption against housing development when it involves:*
- 1.-3. – n/a
- In the countryside development control zones:*
4. *Small-scale housing development in the Greenbelt, Very Sensitive Countryside and in open/undeveloped areas within Countryside Around Settlements and Sensitive Countryside.*
 5. n/a
- (C) *Housing development, for which there is a general presumption against will not be supported unless an exceptional case is successfully demonstrated in accordance with those exceptions listed for each development control zone in the justification for this policy.*
- (D) *Housing developments are also subject to consistency with other policies of both Structure and Local Plan ...*

Justification text for Policy LP HOU 1

The sensitive countryside zone may be viewed as intermediate between rural opportunity areas and very sensitive countryside. This zone does not have the general capacity to successfully absorb any scale of new housing development when it is in the open countryside. Consequently, the presumption in favour is restricted to small-scale housing development in close proximity to existing buildings in infill, rounding-off, change of use of building and redevelopment sites.

Notwithstanding the initial presumption against, in exceptional cases, where an operational need has been established and an applicant demonstrates that there is a specific locational need to be on, or in the near vicinity of the proposed site, small-scale housing may therefore be considered within this zone. This is provided that there is sufficient capacity to successfully integrate the proposed housing within the landscape. The planning authority will conduct an Area Capacity Evaluation (ACE) in order to assess the direct and cumulative impact of any such development. The ACE process is further explained in supplementary planning guidance.

REQUIREMENT FOR ADDITIONAL INFORMATION AND A HEARING

The issues raised were covered in the Report of Handling which is contained in Appendix 1. 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 'local' development, 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 part (7) of the appellant's submission the following comments are noted for the record in respect of the specific issues raised:

1. The north eastern corner of the plot does indeed fall within 'Rural Opportunity Area'; unfortunately this portion of the site is insufficient to accommodate the proposed development. The appellant is also correct in identifying that the use of this more elevated portion of the site (within ROA) would also increase the visual impact of any building from the A83/A-Chleit.
2. Outline planning permission was previously granted under the provisions of STRAT 4 of the Kintyre Local Plan which set out a general presumption in favour of single house developments in the Kintyre countryside with the exception of identified areas.

Subsequent to the grant of planning permission the provisions of the Kintyre Local Plan have been superseded by uncontested elements of the finalised draft Argyll and Bute Local Plan during its lengthy and consultation and amendment process culminating in the adoption of the Argyll and Bute Local Plan in 2009. The application site currently lies

within an area designated as 'Sensitive Countryside' wherein the provisions of the Argyll and Bute Local Plan 2009 do not support development. The principle tenet of the Scottish Planning System is set out in S25 of the 1997 Act in that the principle consideration for the planning authority in the determination of applications is the considerations of the development plan and to other material considerations. Whilst officers have every sympathy for the situation of the appellant in this matter they have not afforded significant material weighting to the expired outline planning permission relating to this site solely for the reason that this permission had expired at the time of application being submitted in 2010 and as such was no longer capable of being pursued to implementation; in such circumstances it is necessary to undertake a fresh assessment of the acceptability of the development having regard to the current development plan and not the policies which were in force at the time of the previous permission being granted.

3. The appellant is correct in her statement that the Council's Planning Officers have previously considered the site as suitable for development. It is noted that whilst the physical circumstances of the site and immediate surrounds have not been subject to any significant change in the intervening period that the policy provisions which relate to the site have been amended significantly from the positive presumption set out in the Kintyre Local Plan (1st review) 1988 to the presumption against set out in the adopted Argyll and Bute Local Plan 2009. Having reassessed this matter in light of the current policy position Officers are no longer able to support the proposal as being consistent with the provisions of the development plan, these provisions presuming against the development of 'open countryside' site in the 'sensitive countryside' except where an overriding locational/operational justification is demonstrated and where an 'Area Capacity Evaluation' (ACE) demonstrates that there is sufficient capacity to successfully accommodate the development. For the purpose of clarity it is noted that an ACE has not been undertaken in respect of this proposal as no such locational/operational justification for the development has been presented.
4. The appellant's assessment in relation to the likely visibility of a development on the appeal site in comparison to other locations within the locality from key viewpoints are considered, in general, to be accurate and representative of the assessments previously undertaken by officers in relation to this matter.

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.

The proposal is for a 'small scale' housing development on an 'open countryside' location within 'sensitive countryside' wherein the provisions of STRAT DC 5 of the Argyll and Bute Structure Plan 2002 and LP HOU 1 of the adopted Argyll and Bute Local Plan 2009 set out a presumption against development except in specific circumstances relating to the management of land and subject of Area Capacity Evaluation. In this instance the appellant has not presented an overriding claim of locational/operational justification in support of the proposal.

Whilst Officers have every sympathy for the appellant's circumstances in relation to the significant change in development plan policy relating to this proposal it is advised that whilst development of this location may have been viewed as compatible with the provisions of the now superseded Kintyre Local Plan (1st review) 1988 that these previous considerations ceased to be material to the determination of any subsequent application upon expiry of the permission. The resultant requirement is that any further applications requires to be considered solely in regard to the requirements of the updated development plan, in this instance the provisions of policies STRAT DC 5 of the Argyll and Bute Structure Plan 2002 and LP HOU 1 of the adopted Argyll and Bute Local Plan 2009.

Taking account of the above, it is respectfully requested that the appeal be dismissed.

Appendix 1 – Report of Handling

Argyll and Bute Council
Development & Infrastructure 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: 10/02058/PPP

Planning Hierarchy: Local

Applicant: Ms Catherine Pendreigh

Proposal: Erection of dwellinghouse and installation of septic tank

Site Address: Plot 1 Land South West Of North Beachmore Farm, Muasdale, Argyll And Bute

DECISION ROUTE (delete as appropriate)

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

(A) THE APPLICATION

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

- Erection of dwellinghouse and installation of septic tank

(ii) **Other specified operations**

(B) RECOMMENDATION:

That permission be Refused for the reasons contained in this report.

(C) HISTORY:

Outline planning permission (05/00887/OUT) for the erection of a dwellinghouse, North Beachmore Farm, Muasdale (Plot 1) was granted on 9 June 2005. This plot was slightly smaller than the current application site.

Site for the erection of three dwellinghouses, west of North Beachmore Farm Muasdale (Plots 2,3 and 4) granted on 9 June 2005 (05/00888/OUT). Plots 2 and 3 have since been developed. Outline permission for plot 4 was renewed on 29 July 2008 (08/00979/OUT) and planning permission in principle granted on 3 June 2011 (11/00542/PPP)

(D) CONSULTATIONS:

Environmental Health -	05.01.2011	No objection subject to condition.
Area Roads Mid Argyll	17.01.2011	No objection subject to conditions.
Kintyre And Islay		

(E) PUBLICITY:

Regulation 20 Advert Local Application (EXPIRY DATE: 28.01.2011)

(F) REPRESENTATIONS: None

(G) SUPPORTING INFORMATION

Has the application been the subject of:

- (i) Environmental Statement: N**
 - (ii) An appropriate assessment under the Conservation (Natural Habitats) Regulations 1994: N**
 - (iii) A design or design/access statement: N**
 - (iv) A report on the impact of the proposed development eg. Retail impact, transport impact, noise impact, flood risk, drainage impact etc: N**
-

(H) PLANNING OBLIGATIONS

- (i) Is a Section 75 agreement required: N**
-

(I) Has a Direction been issued by Scottish Ministers in terms of Regulation 30, 31 or 32: N

(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.**

'Argyll and Bute Structure Plan' 2002

STRAT DC 5 – Development in Sensitive Countryside
STRAT DC 8 – Landscape and Development Control

'Argyll and Bute Local Plan' 2009

LP ENV 1 – Impact on the General Environment
LP ENV 19 – Development Setting, Layout and Design
LP HOU 1 – General Housing Development
LP TRAN 4 – New and Existing Public Roads and Private Access Regimes

LP TRAN 6 – Vehicle Parking Provision

Appendix A – Sustainable Siting and Design Principles

- (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.**

Planning history on this and nearby plots.

(K) Is the proposal a Schedule 2 Development not requiring an Environmental Impact Assessment: N

(L) Has the application been the subject of statutory pre-application consultation (PAC): N

(M) Has a sustainability check list been submitted: N

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

(O) Requirement for a hearing (PAN41 or other): N

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

The site lies just to the east of the West Kintyre Scenic area and approx 120m east of the A83 coastal road. The site is generally triangular in shape and located at the western extremity of a large pasture field. The land to the north/west falls away sharply to the raised beach area with the land to the east rising gently up to and beyond the North Beachmore Farm complex. Immediately to the south the land also falls away sharply to a small watercourse.

A slightly smaller plot had previously been granted consent in 2005 at which time the site was within a Rural Opportunity Area in the Draft Argyll and Bute Local Plan; this permission lapsed in 2008 and as such no longer remains a material planning consideration. However, the extent of the ROA was reduced before the Local Plan was adopted in 2009, so the site now lies within Sensitive Countryside, where the presumption in favour of development is restricted to small scale housing development in close proximity to existing buildings in infill, rounding-off, change of use and redevelopment sites.

Access is from the surfaced private way that runs adjacent to the south and north-west boundaries of the plot. This access originally served North Beachmore and North Beachmore Cottage and now also serves the two dwellings recently constructed on plots 2 and 3. The access to the A83 has been improved in accordance with permissions on nearby plots.

Although the proposed development reflects to some extent the scattered, bank-head pattern of development in this area of Kintyre, it is isolated by some 250m from the cluster of development at North Beachmore and cannot be considered as conforming

with the policies regarding Sensitive Countryside in both the approved Structure Plan and adopted Local Plan.

The proposed development is now therefore considered to be contrary to the development plan and in particular to policies STRAT DC 5, STRAT DC 8, STRAT HO 1 of the Argyll and Bute Structure Plan and to policies LP ENV 10, LP ENV 19 and LP HOU 1 of the Argyll and Bute Local Plan.

(Q) Is the proposal consistent with the Development Plan: N

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

1. In the adopted Argyll & Bute Local Plan, the site lies within Sensitive Countryside where the presumption in favour of development is restricted to small scale housing development in close proximity to existing buildings in infill, rounding-off, change of use and redevelopment sites. It is considered that the proposed development would be materially detrimental to the character and appearance of the wider landscape and contrary to the existing prevailing settlement pattern, and therefore contrary to Argyll & Bute Structure Plan policies STRAT DC 5 and STRAT DC 8 and to Argyll & Bute Local Plan policies LP ENV 1, LP ENV 19, LP HOU 1 and the design and siting principles contained within Local Plan Appendix A – 'Sustainable Siting and Design Principles'.

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

N/A

(T) Need for notification to Scottish Ministers or Historic Scotland: N

Author of Report:



Date: 24 February 2012

Reviewing Officer:



Date: 28th February 2012

Angus Gilmour
Head of Planning & Regulatory Services

REASONS FOR REFUSAL RELATIVE TO APPLICATION REF. NO. 10/02058/PPP

1. In the adopted Argyll & Bute Local Plan, the site lies within Sensitive Countryside where the presumption in favour of development is restricted to small scale housing development in close proximity to existing buildings in infill, rounding-off, change of use and redevelopment sites. It is considered that the proposed development would be materially detrimental to the character and appearance of the wider landscape and contrary to the existing prevailing settlement pattern, and therefore contrary to Argyll & Bute Structure Plan policies STRAT DC 5 and STRAT DC 8 and to Argyll & Bute Local Plan policies LP ENV 1, LP ENV 19, LP HOU 1 and the design and siting principles contained within Local Plan Appendix A – 'Sustainable Siting and Design Principles'.

Appendix 2 – Statutory and other Consultee Comments

Other Consultees:

- **Argyll and Bute Council – Area Roads 17th January 2011**

Operational Services - Roads and Amenity Services
OBSERVATIONS ON PLANNING APPLICATION

Grid Reference 168562 641802 Dated

Applicant Ms Catherine Pendreigh
Proposed Development Erection of dwellinghouse
Location Plot 1 Land South West of North Beachmore Farm, Muasdale
Type of consent Detailed Permission
Drawing Refs.

Application No. **10 02058 PPP**
Contact James Ross
Tel. 01546-604655
Received 11/01/2011
Return By Date 19/01/2011

Call By Date
District Kintyre

Recommendation

No objection subject to conditions

Comments

CONDITIONS AND COMMENTS AS PER PREVIOUS OUTLINE APPLICATION REF 05/00887/OUT

1. Connection of private access to A83. Additional G300 type access detail required for refuse collection vehicle.

Conditions/Reasons for refusal/deferment

- 1. Connection of private access to the A83. Existing visibilities of 175 to the south and 215 to the north x 2.5 x 1.05 to be maintained.**
- 2. Connection of private access to the A83, G300 & TM197.**
- 3. Parking for 2 vehicles within site.**

Notes for Intimation to Applicant

- (i) Construction Consent(S21)*
- (ii) Road Bond (S17)*
- (iii) Road Opening Permit (S56)*

Not Required
Not Required
Required

(iv) No surface water discharge*

*Relevant Section of the Roads(Scotland) Act 1984

Required

Signed:	J. Ross	Date	17/01/2011	ID	3190
		Actual Return Date	17/01/2011	Replied	

17 January 2011

Copies to : Planning

Maint

File

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- **Argyll and Bute Council – Area Environmental Health Manager**
29th December 2010

Argyll and Bute Council
Comhairle Earra Ghàidheal agus Bhòid

Memorandum

Planning and Regulatory Services **Date:** 29/12/2010

To: Development Services 67 Chalmers Street, Ardrishaig

From: Patrick Mackie,
Area Environmental Health Manager **Extension:** 4780

Planning Application No: 10/02058/PPP Erection of dwellinghouse and installation of septic tank Plot 1 Land South West Of North Beachmore Farm Muasdale

I refer to your consultation dated 29/12/2010.

This application proposes to utilise a new private supply of water.

If approval for the above application is to be granted, I recommend that the following standard conditions be attached:

C31001 Water Details to Specification

Prior to the development commencing a full appraisal to demonstrate the wholesomeness and sufficiency of the private water supply to serve the development shall be submitted to and approved in writing by the Planning Authority. This assessment shall be carried out by a qualified and competent person(s). Such appraisal shall include a risk assessment having regard to the requirements of Schedule 4 of the Private Water Supplies (Scotland) Regulations 2006 and shall on the basis of such risk assessment specify the means by which a wholesome and sufficient water supply shall be provided and thereafter maintained to the development. Such appraisal shall also demonstrate that the wholesomeness and sufficiency of any other supply in the vicinity of the development, or any other person utilising the same source or supply, shall not be compromised by the proposed development. Furthermore, the development itself shall not be brought into use or occupied until the required supply has been installed in accordance with the agreed specification.

Reason: In the interests of public health and in order to ensure that an adequate private water supply in terms of both wholesomeness and sufficiency can be provided to meet the requirements of the proposed development and without compromising the interests of other users of the same or nearby private water supplies.

Patrick Mackie
Area Environmental Health Manager
Mid-Argyll, Kintyre & The Islands