

STATEMENT OF CASE

FOR

**ARGYLL AND BUTE COUNCIL
LOCAL REVIEW BODY**

12/0015/LRB

**REFUSAL OF PLANNING PERMISSION FOR
REMOVAL OF CONDITION 5 OF PLANNING
PERMISSION 01/94/0409 RESTRICTING
OCCUPANCY**

**HARBOUR MASTER, MELFORT, KILMELFORD,
BY OBAN**

**PLANNING PERMISSION REFERENCE NUMBER
12/01624/PP**

12 DECEMBER 2012

STATEMENT OF CASE

The Planning Authority is Argyll and Bute Council ('the Council'). The appellant is Melfort Pier Holidays ('the appellant').

Planning Permission Reference Number 12/01624/PP for removal of condition 5 of planning permission 01/94/0409 restricting occupancy of a dwellinghouse at Harbour Master, Melfort, Kilmelford, by Oban ('the appeal site') was refused under delegated powers on 21 September 2012.

The planning decision has been challenged and is subject of review by the Local Review Body.

DESCRIPTION OF SITE

The property is a detached unit situated within a long established holiday development at Melfort Pier, Kilmelford, by Oban.

The holiday development is centred around the pier and harbour at Loch Melfort where the development is a well contained complex set within the existing landscape.

SITE HISTORY

11/01495/PREAPP

Change of use of self catering units to dwellinghouses – 02/09/12 negative response advising proposal would not be supported.

01/94/0409

Erection of workshop and staff accommodation – Granted: 11/08/94

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 building is considered appropriate for use as a permanent dwellinghouse, taking account of its proximity to and interrelationship with the established holiday development within which it is located, and whether the use of the property as a separate dwellinghouse would be compatible with the prevailing settlement pattern within this rural area which is allocated Sensitive Countryside.

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 not considered that any additional information is required in light of the appellant's submission. 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 small-scale, has no complex or challenging issues and has not been the subject of any public representation, it is not considered that a Hearing is required.

COMMENT ON APPELLANTS' SUBMISSION

The appellant contends that the reason for refusal is not correct as four properties have no occupancy restriction and can be occupied on a permanent basis.

This is noted, however these four properties are in the minority. The remaining twelve units within the Melfort Pier and Holiday complex are restricted to holiday occupation or staff accommodation by means of a planning condition. Furthermore, the planning permission which the appellant has referred to in his submission relates to a boatshed, boathouse and two dwellinghouses which would have been fully assessed at the time of granting permission on its suitability for permanent residential use. To allow the property to become a separate residential unit with no control on occupancy would establish a precedent for the change in use of all holiday units at the site, which would drastically alter the character of the development, undermine the economic justification for the creation of the holiday development in the first place, undermine the local tourist economy, and create a form of residential development which is not appropriate in this rural area, which is allocated as Sensitive Countryside.

The appellant contends that there is no issue with lack of amenity to be afforded to the residential unit. *This is addressed below.*

The appellant contends that there are sixteen dwellinghouses situated at Melfort Pier and Harbour and the removal of one unit would not weaken the existing tourist economy of the area. *This contention is noted but is not supported by any evidence, nor does the statement address the precedent that would be established if the review were to be successful. The statement does nothing to address the lack of compatibility with the prevailing low density settlement pattern.*

The appellant contends that due to a decline in staff numbers, there is not the same requirement for a building for staff accommodation and also that there are other buildings where staff can be accommodated if required. *This is noted. A change from staff accommodation to a holiday unit would be appropriate, but the change to a permanent separate house is not considered appropriate.*

Whilst the appellant's comments are noted, it is still considered that the proposed building is not suitable for use as a permanent residential dwellinghouse taking

account of the context of the site. Existing housing within the area is predominantly characterised by low density dwellinghouses with good spacing and high amenity values. The use of the property as a permanent residential dwellinghouse would not take account of, or relate to, the existing settlement character evident in the surrounding area and would result in the introduction of an inappropriate density and pattern of development which is unfamiliar to the area by virtue of lack of spacing between properties. Allowing the unit to be used as a permanent house would be at variance with the character of the surrounding low density settlement, and would introduce a small residential property amidst a denser holiday use development, where there is the potential for a conflict between uses and a precedent for further change of use developments to be proposed in a similar fashion in the adjacent units, which would further undermine and challenge the established settlement pattern as well as weaken the tourism economy.

The original reasons for restricting occupancy of the building remain applicable. The holiday development complex which this staff accommodation unit was designed to serve still exists and as such, the retention of the unit for its intended purpose is to be encouraged. If the staff accommodation is no longer required for that purpose, then the unit could readily be changed to a holiday unit compatible with the wider development within which it is located, but such a change is not what is being sought by this review.

Due to the restricted nature of the landholding afforded to the proposed development, it is considered that an insufficient area of private useable amenity space would be afforded to the residential unit, compared to the high amenity values and large plots that are predominant in the area all of which is contrary to the terms of the aforementioned policies.

The appellant's statement does not conclusively address the lack of compatibility with the existing settlement pattern to allow the property to be considered for permanent residential use. A full detailed assessment of the proposal is contained within the Report of Handling at Appendix 1.

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 planning condition in question was imposed because the building was not considered appropriate for use as a permanent house, taking account of its proximity to and interrelationship with the established holiday development in which it is located. Those reasons to restrict occupancy remain relevant and policy still generally presumes against new housing in this area of Sensitive Countryside.

Whilst Policy STRAT DC 5 does generally support change of use development, this is qualified by the need to ensure that developments occur on appropriate sites and integrate with the settlement pattern. The use of the property as a permanent residential dwellinghouse would not take account of, or relate to, the existing settlement pattern or character evident in the surrounding area and would result in the introduction of an inappropriate density and pattern of development which is unfamiliar to the area by virtue of lack of spacing between properties, small plot size, and interrelationship with an established holiday business; which, if approved, would lead to a precedent for similarly high density proposals on nearby sites, and also for further change of use applications. Such proposals could weaken the tourist economy of the local area through the loss of holiday units, and undermine the established high amenity character of the established low density residential development in this rural context.

Furthermore, due to the restricted nature of the landholding afforded to the proposed development, an insufficient area of private useable amenity space would be afforded to the residential unit, compared to the larger house plots that exist in the surrounding area, contrary to the terms of the aforementioned policies.

The proposal is considered contrary to the provisions of Development Plan policies STRAT DC 5, LP ENV 1, LP ENV 19 and LP HOU 1, which collectively seek to resist housing development which will have an unacceptable environmental, servicing or access impact; developments that give insufficient regard to the context of their individual site settings and show inappropriate densities.

Taking account of the above, it is respectfully requested that the review be dismissed and the original refusal be upheld.

APPENDIX 1

Argyll and Bute Council
Development and Infrastructure

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: 12/01624/PP

Planning Hierarchy: Local Development

Applicant: Melfort Pier Holidays Ltd

Proposal: Removal of Condition 5 of Planning Permission 01/94/0409 Restricting Occupancy

Site Address: Harbour Master, Melfort Pier and Harbour, Kilmelford

DECISION ROUTE

Section 43 (A) of the Town and Country Planning (Scotland) Act 1997 (as amended)

(A) THE APPLICATION

(i) Development Requiring Express Planning Permission

- Removal of condition 5 of planning permission 01/94/0409 restricting occupancy
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(B) RECOMMENDATION:

Having due regard to the Development Plan and all other material considerations, it is recommended that planning permission be refused subject to the conditions and reasons appended to this report.

(C) HISTORY:

11/01495/PREAPP

Change of use of self catering units to dwellinghouses – 02/09/12 negative response advising proposal would not be supported.

01/94/0409

Erection of workshop and staff accommodation – Granted: 11/08/94

(D) CONSULTATIONS:

N/A

(E) PUBLICITY:

The proposal has been advertised in terms of Regulation 20 procedures, closing date 30/08/12.

(F) REPRESENTATIONS:

No representations have been received regarding the proposed development.

(G) SUPPORTING INFORMATION

Has the application been the subject of:

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| (i) | Environmental Statement: | No |
| (ii) | An appropriate assessment under the Conservation (Natural Habitats) Regulations 1994: | No |
| (iii) | A design or design/access statement: | No |
| (iv) | A report on the impact of the proposed development e.g. retail impact, transport impact, noise impact, flood risk, drainage impact etc: | No |
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(H) PLANNING OBLIGATIONS

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| (i) | Is a Section 75 agreement required: | No |
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| (I) | Has a Direction been issued by Scottish Ministers in terms of Regulation 30, 31 or 32: | No |
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(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

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

Appendix A – Sustainable Siting and Design Principles

Appendix C – Access and Parking Standards

(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

SPP, Scottish Planning Policy, 2010

(K)	Is the proposal a Schedule 2 Development not requiring an Environmental Impact Assessment:	No
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(L)	Has the application been the subject of statutory pre-application consultation (PAC):	No
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(M)	Has a sustainability check list been submitted:	No
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(N)	Does the Council have an interest in the site:	No
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(O)	Requirement for a hearing:	No
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(P) Assessment and summary of determining issues and material considerations

Planning permission reference 01/94/0409 was granted on 11 August 1994 for erection of workshop and staff accommodation at Melfort Pier and Harbour, Kilmelford.

Condition 5 of the permission restricted the occupation of the dwellinghouse to staff accommodation due to the operational justification which underpinned the development as it was proposed in a location where a new house would not normally have been supported by the Local Plan in force at that time.

This application seeks to remove the condition to allow for permanent residential use of the property. It has been alleged that the staff accommodation unit has been in holiday occupation for around 17 years, similarly to the adjacent holiday units that have been approved alongside. The use of the application site is currently defined by the 1994 planning consent as staff accommodation, and the alleged holiday use could perhaps be proved through a certificate of lawful development application, if

one were submitted. Even if such an application was made and was successful, this would still not allow permanent residential occupation.

Negative pre-application advice has been given for the change of use of the unit to a permanent house for the reasons detailed below.

Whilst change of use developments are generally supported by current policy, even in Sensitive Countryside, this is qualified by the requirement to avoid inappropriate densities and achieve development which is consistent with the established settlement pattern of the area. The standards and pattern for permanent housing is different from that expected for other non-permanent types of accommodation, such as holiday units or staff accommodation units, which by their nature are for short term or dependant use only.

Policy LP HOU 1 gives a general presumption in favour of housing development in the countryside development zones where there is no unacceptable environmental, servicing or access impact with Policy LP ENV 1 requires applications to be assessed for their impact on the natural, human and built environment.

Policy LP ENV 19 requires that development is sited and positioned so as to pay regard to the context within which it is located and that development layout and density shall integrate with the setting of surrounding development. Developments with poor quality or inappropriate layouts, including over-development, shall be resisted.

Appendix A of the Local Plan further advises on the standards that will be applied to new housing in the countryside. Section 3.1 relates to housing within the countryside development zones and states that new houses must respect local identity and the environment and must respect development patterns and the amenity of other dwellinghouses.

Existing permanent residential development within the area is characterised by low density dwellinghouses with good spacing and high amenity values. The use of the property as a permanent residential dwellinghouse would not take account of, or relate to, the existing settlement character evident in the surrounding area and would result in the introduction of an inappropriate density and pattern of development which is unfamiliar to the area by virtue of lack of spacing between properties. Allowing the unit to be used as a permanent house would be at variance with the character of the surrounding low density settlement, and would introduce a small residential property amidst a denser holiday use development, where there is the potential for a conflict between uses and a precedent for further change of use developments to be proposed in a similar fashion in the adjacent units, which would further undermine and challenge the established settlement pattern.

The original reasons for restricting occupancy of the building remain applicable, and the designation of the site within Sensitive Countryside, applies a general presumption against new housing development. The holiday development complex which this staff accommodation unit was designed to serve still exists and as such, the retention of the unit for its intended purpose is to be encouraged, and if holiday use can be proven to have taken place for 17 years without challenge, then a certificate of lawful development could be used to allow holiday usage, which would also be compatible with the adjacent holiday units, none of which require the higher amenity and privacy standards that are necessary for housing in this area.

Due to the restricted nature of the landholding afforded to the proposed development, it is considered that an insufficient area of private useable amenity space would be afforded to the residential unit, compared to the high amenity values and large plots that are characteristic of surrounding housing in the area all of which is contrary to the terms of the aforementioned policies.

In light of the above, the removal of the condition to allow permanent occupation of the property is considered contrary to the provisions of Development Plan Policies STRAT DC 5, LP ENV 1, LP ENV 19, LP HOU 1 and Appendix A and it is recommended that the application be refused for the reasons appended to this report.

(Q) Is the proposal consistent with the Development Plan: No

(R) Reasons why planning permission should be refused

The proposal is contrary to Development Plan policy for the reasons for refusal recommended below.

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

N/A – recommendation for refusal.

(T) Need for notification to Scottish Ministers or Historic Scotland: No

Author of Report: Fiona Scott Date: 13/09/12

Reviewing Officer: Stephen Fair Date: 19/09/12



**Angus Gilmour
Head of Planning**

REASONS FOR REFUSAL RELATIVE TO APPLICATION 12/01624/PP

1. In terms of the adopted Argyll and Bute Local Plan, the application site is located within Sensitive Countryside which is subject to the effect of Policy STRAT DC 5 of the approved Argyll and Bute Structure Plan 2002 which establishes a general presumption against new housing developments.

The planning condition in question was imposed because the building was not considered appropriate for use as a permanent house, taking account of its proximity to and interrelationship with the established holiday development in which it is located. Those reasons to restrict occupancy remain relevant and policy still generally presumes against new housing in this area.

Whilst STRAT DC 5 does generally support change of use development, this is qualified by the need to ensure that developments integrate with the settlement pattern. The use of the property as a permanent residential dwellinghouse would not take account of, or relate to, the existing settlement pattern or character evident in the surrounding area and would result in the introduction of an inappropriate density and pattern of development which is unfamiliar to the area by virtue of lack of spacing between properties, small plot size, and interrelationship with an established holiday business; which, if approved, would lead to a precedent for similarly high density proposals on nearby sites, and also for further change of use applications. Such proposals could weaken the tourist economy of the local area through the loss of holiday units, and undermine the established high amenity character of the established low density sparse residential development in this rural context.

Furthermore, due to the restricted nature of the landholding afforded to the proposed development, it is considered unlikely that a sufficient area of private useable amenity space could be afforded to the residential unit, compared to the larger house plots that exist in the surrounding area, contrary to the terms of the aforementioned policies.

The proposal is considered contrary to the provisions of Development Plan policies STRAT DC 5, LP ENV 1, LP ENV 19 and LP HOU 1, which collectively seek to resist housing development which will have an unacceptable environmental, servicing or access impact; developments that give insufficient regard to the context of their individual site settings and show inappropriate densities.

The building would have unacceptably low privacy and amenity standards compared to that which is established within the area, and if approved for permanent residential occupation would lead to an unacceptable and undesirable precedent for lower amenity, higher density housing development in a rural area, as well as weakening the existing tourist economy of the area.

NOTES TO APPLICANT RELATIVE TO APPLICATION NUMBER 12/01624/PP

1. If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under Section 43A of the Town and Country Planning (Scotland) Act 1997 (as amended) within three months from the date of this notice. The notice of review should be addressed to the Director of Customer Services, Argyll and Bute Council, Kilmory, Lochgilphead, PA31 8RT.
2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state, and it cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the landowner's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997 (as amended).

APPENDIX TO DECISION REFUSAL NOTICE

Appendix relative to application **12/01624/PP**

- (A) 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

- (B) The reason why planning permission has been refused.

The proposal is contrary to Development Plan policy for the reasons for refusal recommended above.