

ARGYLL AND BUTE COUNCIL LOCAL REVIEW BODY REF. 13/0001/LRB

GARDEN GROUND OF HAZELBANK UPPER FLAT, 118A SHORE ROAD, INNELLAN

RESPONSE TO THE COUNCIL'S STATEMENT OF CASE DATED 1 FEBRUARY 2013

The Council considers the determining issues in relation to the current review to be:

- a) Whether the siting, scale and design of the proposed dwellinghouse is acceptable as a mainstream dwelling in close proximity to Hazelbank and Window Rock?
- b) Whether the amenity of the existing flats within Hazelbank and Window Rock would be adversely affected by the proposed dwellinghouse?
- c) Whether the surrounding Special Built Environment Area would be adversely affected by the proposal?

Having regard to these issues, the Council's comments on the reasons for requesting the review have been set out under the following headings.

Unacceptable Infill Development.

Council's Comments: While the agent has submitted photographic evidence to suggest that the garage/store was historically used for 'residential' purposes, this may have been as ancillary to the upper flat. There are however no records to support any independent 'residential' use of the garage/store. The garage / store has not been used for 'residential' purposes for many years and is currently used as an ancillary building associated with Hazelbank upper flat. The timber garage/store is currently in a very poor condition.

The department offered advice and guidance to the applicant's previous agent where the issue of siting a mainstream dwellinghouse for a family member raised a number of serious concerns. The department had suggested that if was not possible to erect a mainstream dwellinghouse with independent amenities, then a modest ancillary building should be explored which may help to reduce potential tensions regarding adverse impacts on the private and communal facilities of the existing flats within Hazelbank. A letter to the previous agent for application ref.11/01117/PP dated 22 August 2011 [Production No. 2] explains clearly the difficulties the department had in accepting a mainstream dwellinghouse in this location and that, "*a smaller detached annexe building may be more appropriate in the circumstances*". However, the applicant did not explore or favour the ancillary annexe option and chose to make further applications for an independent dwellinghouse as a separate planning unit.

Appellant's Comments: The existing garage/store building was previously occupied as a permanent dwelling, independent of Hazelbank itself; it was then known as 'Hazelbank Bungalow'. Attached to this submission is a Statement of Account, from 1957, relating to a Demolition Order served by the then County Clerk. This confirms (in the final paragraphs) that a bath and hot water system were installed in the dwelling, in order to address the County Clerk's concerns regarding the standard of the residential accommodation. The building was last occupied on a permanent basis in 1960. The tenants were a Mr and Mrs Temple and the forwarding address was West Point, Innellan. Following this, it was used as a holiday let until the late 1960s. The submitted photographs, dated c1978 and c1992, also clearly show that the building previously had the appearance of a dwelling.



Photograph taken c1992

With respect to the Council's advice and guidance, whilst the letter dated 22 August 2011 stated that the Planning Officer's preference would be for a "smaller detached annex building", it nevertheless was also concluded that "it may be possible to fit a very modest dwellinghouse in its (*the garage/store*) footprint with no significant visual impact beyond the existing structure" and suggested that "a fresh scheme (*be*) submitted that proposes a more modest dwellinghouse orientated east-west." In terms of general design advice it was stated that "any dwelling should have its main elevation facing east towards the Firth of Forth and be set back from the existing dwellinghouse, Hazelbank.

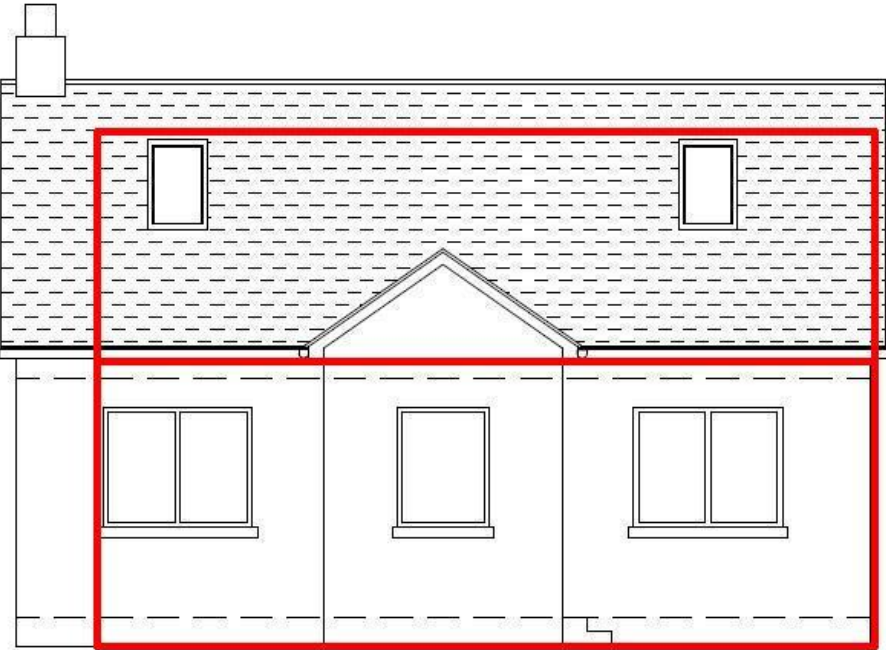
The applicant followed this advice and guidance precisely, and submitted a

proposal for a more modest dwellinghouse, with its main elevation facing east, and with a reduction in ridge height (approximately 1.5 metres lower than that proposed in the previously refused application (reference 11/01117/PP) which was for a 3 bedroomed, 2-storey property).

To illustrate this point, the existing garage/store measures approximately 7.4 metres by 6.1 metres. The main footprint of the proposed new dwelling, containing the living area, kitchen, bathroom and one bedroom, would measure just 8.6 metres by 7.2 metres (i.e. only just over 1.0 metre larger in each direction than the existing building). Whilst a second bedroom, and an en-suite bathroom, would be accommodated within a subordinate rear 'wing', giving an overall 'T' shaped plan, this would not be seen from the public highway, and would therefore have no discernible impact on the overall character and appearance of the Special Built Environment Area.

Contrary to the Council's assertion, the footprint of the proposed new dwelling is actually slightly smaller than Hazelbank itself.

The illustration below shows a comparison between the size of the proposed new dwelling, and the size of the existing garage/store.



Outline of Existing Garage/Store

By any reasonable assessment the proposed new building is a “modest dwellinghouse”, the erection of which would also have a beneficial impact on the character and appearance of the area when contrasted with the current situation.

Certificate of Lawful Use.

Council's Comments: A Certificate of Proposed Lawful Use ref. 12/02374/CLWP for the siting of a caravan associated with the upper flat within Hazelbank was approved on 25 January 2013. The department did not dispute the proposal or case law presented by the agent, provided that any caravan remained wholly incidental and ancillary to the upper flat within Hazelbank as one single planning unit. Such a hypothetical use would technically be lawful with no development deemed to have taken place.

The approval of the Certificate of Proposed Lawful Use was submitted by the agent to demonstrate the scale of a twin-unit caravan against that of the proposed dwellinghouse. Members will appreciate that any caravan sited would require to remain wholly ancillary to the upper flat as a single planning unit whilst the proposed dwellinghouse would be a separate and independent dwellinghouse seeking its own amenities within a plot curtilage already containing two flatted properties with existing private and communal rights. This would appear to be the crux of this particular case. The department has no objections in principle to the existing garage/store being renovated for ancillary residential purposes or an ancillary caravan being sited to replace the existing garage/store and two caravans currently sited, but cannot approve a further separate planning unit within the site where there are existing tensions and legal issues. Whilst the department cannot get involved in legal matters, the ownership demarcation shown on drawing ref. 2012_0025/02 RevA [Production No.4] does not (according to the owners of the lower flat in their letter dated 30 August 2012) reflect the current legal position [Production No.5].

Appellant's Comments: The recent approval of the Certificate of Lawfulness is a significant material consideration in the determination of the current review. This confirms that a residential caravan can be sited on the land without the need for an application for planning permission, provided it's occupation remains ancillary to that of the main dwelling (i.e. the Upper Flat).

Section 29 (1) of the Caravan Sites and Control of Development Act 1960 (“The 1960 Act”) defines a caravan as “... any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted. This definition was modified by Section 13(1) of the Caravan Sites Act 1968 (“The 1968 Act”), which deals with

twin-unit caravans. Section 13 (1) permits with the definition of a caravan “a structure designed or adapted for human habitation which:

- a) Is composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices; and
- b) Is, when assembled, physically capable of being moved by road from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer), shall not be treated as not being (or not having been) a caravan within the meaning of Part 1 of the Caravan Sites and Control of Development Act 1960 by reason only that it cannot lawfully be moved on a highway when assembled.”

Section 13(2) of the 1968 Act further prescribes the following maximum dimensions for twin-unit caravans:

- a) length (exclusive of any drawbar); 60 feet (18.288 metres);
- b) width: 20 feet (6.096 metres);
- c) overall height of living accommodation (measured internally from the floor at the lowest level to the ceiling at the highest level): 10 feet (3.048 metres).

The maximum size of caravan that could be sited on the land (excluding any decking) is therefore 18.288 m x 6.096 m. This is larger than the proposed new dwelling (or even Hazelbank itself).



Illustration of type of caravan that could be sited without the need for planning permission.

The ownership demarcation shown on drawing ref. 2012_0025/02 RevA [Council Production No.4] does correctly reflect the current legal position. The appellant strongly refutes the claims of the owner of the Lower Flat [Council Production No.5] although, as has been correctly stated by the Council, these “legal issues” are, in the context of the current review, not a material consideration.

Inadequate Parking/Amenity Space

Council's Comments: For clarification, the existing situation consists of two flatted properties within the building Hazelbank and their individual private amenity spaces in addition to communal shared amenity spaces. As indicated above, the ownership demarcation shown on drawing ref. 2012_0025/04 RevA [Council Production No.4] does not (according to the owners of the lower flat in their letter dated 30 August 2012) reflect the current legal position regarding the communal driveway and access width. The current informal car parking arrangements for the occupants of the upper flat are considered to be un-neighbourly as stated in the representation dated 30 August 2012. The creation of an additional separate planning unit would only exacerbate the existing situation in addition to raising legal matters concerning titles. [Council Production No.5].

Appellant's Comments: Again, under this heading, the Council appears to be giving inappropriate weight to the unsubstantiated claims regarding the ownership of land made by the owner of the Lower Flat. Furthermore, the assertions made in Council Production No.5, by the owner of the Lower Flat, are considered by the appellant to be both unfounded and significantly exaggerated. To seek to attach weight to these claims is unacceptable; any disagreements regarding title or to rights of access etc. are simply not relevant to the current review, and should not be taken into consideration in reaching a decision as to whether the proposed development complies with the relevant policies of the Development Plan. Nevertheless, it should be noted that the review application proposes the formation of a new, dedicated, parking area for both the Upper Flat and the new dwelling, capable of accommodating 3 vehicles. This in itself would address many of the perceived problems raised by the owner of the Lower Villa.

Inadequate Access Arrangements

Council's Comment: Whilst no comment was received from Roads for a previous scheme (ref. 11/02004/PP) this application was refused for other reasons which have been consistent throughout the process. The issue of sub-standard sightlines and lack of footway was not the sole reason for refusal. Roads response is attached for information. [Production No.6]

The agent indicates that it may be possible to form an alternative access by closing off both accesses and creating a new point of access '*at a central position on the site's frontage*' and this could perhaps be addressed via a suspensive condition. This raises a number of issues as a new access would appear to be outwith the red line boundary of the appeal site and may also appear to be on land outwith the control of the applicant. For this reason, a suspensive condition could not be used in this particular case as this would be materially different than the current proposal. Closing of both accesses would also require the written agreement of the owners of the lower flat as the driveway is communal between both lower and upper flats. The creation of a new access would therefore require to be the subject of a fresh application that would be judged entirely on its individual merits.

Appellant's Comments: It is perhaps this reason for refusal of the review application that is of greatest concern to the appellant. It was naturally assumed that because the Roads Officer made no comment (adverse or otherwise) in respect of the previous application (reference 11/01117/PP), that there were no issues regarding highway safety that would prevent the grant of planning permission for the development proposed, should the Council's concerns regarding scale and design be able to be satisfactorily resolved.

Whereas issues regarding whether the proposal represents unacceptable infill development, or will impact on amenity, are subjective, and are therefore capable of being challenged or addressed, whether or not an access has adequate visibility is an objective assessment having regard to the Council's guidelines. Had this issue been raised by the Council in connection with the consideration of the previous application, if a satisfactory solution to the Roads Officer's concerns could not have been found, it might have been the case that the review application would not have been submitted. To introduce this new reason for refusal now is therefore considered to be unreasonable.

Notwithstanding this, in reaching a decision on the current review (as has been confirmed by the Council) the appellant could either site a substantial caravan on the land, or refurbish the existing garage/store, to provide ancillary residential accommodation, without the need for the submission of an application for planning permission. Undertaking either of these options would potentially result in exactly the same amount of additional traffic entering and leaving the site, using the existing points of access/egress, as would the review proposal. On this basis it is considered that the Council's concerns regarding the adequacy of the access to the site no longer dictate that planning permission must be refused.

Agent's Conclusion

Council's Comments: As mentioned in point 1. above, the submitted streetscape drawing shown on drawing ref. 2012_0025/02 RevA does not provide an accurate image of a separate dwellinghouse which would be twice the footprint of the existing garage/store and larger than the footprint of Hazelbank. In visual terms the proposed dwellinghouse would not sit comfortably with the adjacent dwellings but compete with and dominate the existing flatted properties in respect of expected amenities as a separate dwelling and planning unit. Photographs have been submitted by the agent indicating the scale of the garage/store when used historically for 'residential' purposes but the new dwellinghouse would be much larger than the ancillary structure it seeks to replace. The agent has correctly quoted Scottish Planning Policy but has omitted the remainder of the relevant paragraph which states, "*Proposals for infill sites should respect the scale, form and density of the surroundings and enhance the character and amenity of the community. The individual and cumulative effects of infill development should be sustainable in relation to social, economic, transport and other relevant physical infrastructure and should not lead to over-development*". (Scottish Planning Policy 2010, para. 82).

Appellant's Comments: With respect to the additional quote from Scottish Planning Policy, it is believed that the application proposal does respect the scale, form and density of its surroundings; it is only marginally larger when viewed from the public highway than the building to be demolished. It will also represent a significant improvement in the character and appearance of the area because it will replace what is currently an unattractive, slightly dilapidated building, with a well built, modest, new house. It will also result in the removal of an existing static caravan (which has been confirmed by the Council to be lawful) from the site. The proposed development can also be undertaken without affecting the amenities of the occupiers of either of the flats within Hazelbank, or the adjoining property, Window Rock.

It is therefore considered that the Council have:

- Failed to take into account that the existing garage/store was previously occupied as an independent dwelling;
- Exaggerated the size of the proposed new dwelling, and have thus overestimated any impact that it is likely have on the appearance of the area or the amenities of neighbours; and
- Afforded too much weight to the unsubstantiated objections received from the owner of the Lower Flat, the majority of which are either unproven or raise legal, as opposed to relevant planning, issues.

Furthermore, whilst not before the Council at the time that the decision to refuse planning permission was reached, the issuing of the Certificate of Lawful Use is now a significant material consideration that the Local Review Body have a duty to take into account. The siting of an ancillary residential caravan would have a significant visual impact and this, or the conversion of the existing garage/store to ancillary residential use, would potentially generate the same volume of additional traffic as would the proposed new dwelling.

In conclusion it is considered that the proposal complies with the relevant policies of the Development Plan, and that there are insufficient reasons to uphold the Officer's decision to refuse planning permission.

However, and without prejudice to this conclusion, the appellant has suggested that, if the Local Review Body consider it necessary in order to grant planning permission, the imposition of a condition of the following form would be acceptable to him:

“Annexed Accommodation: The building hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the Upper Flat, Hazelbank, 118A Shore Road, Innellan, and at no time shall it be occupied as a separate dwelling.”

The reasons for the appellant making this suggestion are as follows:

- In the short term, it would provide the opportunity for him to reside closer to his parents, who currently occupy the Upper Flat at Hazelbank, and allow him to offer support to them as and when required;
- In the longer term, should his parents begin to experience difficulties accessing the Upper Flat (for example if climbing stairs were to become problematic), he would be able to move into the flat, whilst his parents moved into the new annex (which would be at one level and fully DDA compliant); and
- It also would resolve the concerns that the Planning Officer and the owner of the Lower Flat have regarding the creation of a separate residential 'planning unit' within the garden grounds of the Upper Flat (see under the heading "inadequate parking/amenity space"); the erection of an annex (as opposed to a separate 'mainstream' dwelling) was clearly supported by the Planning Officer in his letter dated 22 August 2011. By virtue of the suggested condition the land shown red and the land shown blue on the Council's Production No.4 [Drawing No. 2012_0025/02A] would in perpetuity be retained as a 'single planning unit'.

In effect, the imposition of such a condition would ensure that the occupation of the new building could be no different to that of the ancillary residential

caravan (that could be sited under the terms of the Certificate of Lawful Use), or the garage/store if it were to be renovated and converted (which it has been confirmed by the Council would have no objections to).

REQUIREMENT FOR ADDITIONAL INFORMATION AND HEARING

It is considered that no new information has been raised in the appellants' submission which would result in the Planning Department coming to a different determination of this proposal. The issues raised are either addressed in this statement or were covered fully in the Report of Handling which is contained in the Appendix. As such, it is considered that Members have all the information they need to determine the case. Given the above and that the proposal is small-scale, has no complex or challenging issues and has not been the subject of significant body of conflicting representation, then it is considered that a Hearing is not required.

Appellant's Comments: It is accepted that a Hearing is not required however, in order that Members of the Local Review Body can fully understand the context of the application proposal, it is considered that a Site Inspection is required. This would, it is hoped, persuade Members that the proposal will not be harmful but, with respect to the character and appearance of the area, will have a number of significant benefits.