

**STATEMENT OF CASE  
FOR  
ARGYLL AND BUTE COUNCIL  
LOCAL REVIEW BODY**

**REFUSAL OF PLANNING PERMISSION FOR ERECTION OF DWELLINGHOUSE, UPGRADING OF SEPTIC TANK, PROVISION OF NEW WATER SUPPLY, LANDSCAPING AND CAR PARKING PROVISION.**

**BALLOCHYLE FARM, SANDBANK, DUNOON, ARGYLL.**

**LOCAL REVIEW BODY REF. 13/0014/LRB**

**PLANNING PERMISSION APPLICATION  
REFERENCE NUMBER 13/00665/PP**

**4 October 2013**

## **STATEMENT OF CASE**

The planning authority is Argyll and Bute Council ('the Council'). The appellant is Mrs Isobel Stirling.

An application for Planning Permission (ref. 13/00665/PP) for the erection of a dwellinghouse, upgrading of septic tank, provision of new water supply, landscaping and car parking provision on garden ground of the former Ballochyle Farm ('the appeal site') was refused under delegated powers on 24 June 2013. The planning application has been appealed and is the subject of referral to the Local Review Body.

### **DESCRIPTION OF SITE**

The applicant owns both cottages 1 and 2 Ballochyle Farm within a courtyard conversion development comprising four dwellinghouses. The farm conversion comprises a central courtyard flanked by two-storey dwellings with single storey attached former stable extensions.

For the avoidance of clarity, it should be noted that the submitted drawings are misleading in terms of the addresses of the dwellings within Ballochyle Farm conversion. The submitted drawings indicate that 'cottages' 2 and 4 are situated on the northern wing with 'cottages' 1 and 3 on the southern wing. The actual arrangement is unit 2 in the north-eastern corner, unit 1 in the north-western corner, unit 3 in the south-eastern corner and unit 4 in the south-western corner. The text below relates to the actual arrangement than the details shown on the submitted drawings [Production No. 2].

The appeal site includes units 1 and 2 within the northern wing of the Ballochyle Farm development and associated garden ground that extends 31 metres northwards to the southern boundary of the adjacent dwellinghouse at 1 Ballochyle Estate. The appeal site also extends to the east to link up with the access track which serves cottage 1. An existing Bio-disc septic treatment plant is situated within the central portion of the garden area together with two LPG tanks that are sited along the northern boundary of the appeal site. The appeal site also includes an off-street car parking area serving unit 2 [Production No. 2].

The former main vehicular access over the bridge past Dalinlongart Farm has now been formally closed due to storm/flood damage when the buttresses of the bridge were washed away. The principal access to the application site is now provided by the existing estate road running north where it connects with the Glen Massan road near Inverreck Nursing Home. This road has recently been resurfaced and improved for vehicular traffic.

The application site is bounded to the west by an avenue of twelve mature cedar trees [Production No.6].

### **SITE HISTORY**

The historical farmstead of Ballochyle Farm was split into two residential units (i.e. Cottage 2 on the north wing and Cottage 3 on the south wing). Planning permission (ref. 05/02354/COU) was granted on 6 February 2006 for the conversion of a storage building attached to Cottage 3 into a separate dwellinghouse (cottage 4).

Planning permission (ref. 06/00307/COU) was granted on 4 July 2006 to convert the dwellinghouse (cottage 2) on the northern wing of Ballochyle Farm into two separate dwellinghouses.

## **STATUTORY BASIS ON WHICH THE APPEAL SHOULD BE DECIDED**

Section 25 of the Town and 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**

Argyll and Bute Council considers the determining issues in relation to the case are as follows:-

- Whether the siting, scale and design of the proposed dwellinghouse is considered to be acceptable infill development in the garden ground which separates Ballochyle Farm from the adjacent dwellinghouse at 1 Ballochyle Estate ?
- Whether the amenity of the adjacent dwellinghouses at nos. 1 and 2 Ballochyle Farm and no. 1 Ballochyle Estate would be adversely affected by the proposed dwellinghouse?
- Whether the removal of garden space would result in a serious loss of amenity for the adjacent dwellinghouses at 1 and 2 Ballochyle Farm?
- Whether the proposed development would adversely affect the immediate settlement character within the Rural Opportunity Area?
- Whether the proposed development would have a detrimental impact on the avenue of Western Red Cedars?

The Report of Handling dated 21 June 2013 [Production No. 1] sets out the Council's assessment of the application in terms of Development Plan policy and other material considerations. Other productions referred to below are listed in the Appendix. A variety of photographs are included within the Appendix [Production Nos. 4-6] to illustrate the site surroundings and help explain the issues related to in the text below.

## **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, and then it is considered that a Hearing is not required.

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

Having regard to the detailed reasons for requesting the review set out in part (7) of the appellants' submission the following summary points are noted in response to the appellant's comments based on individual reasons for refusal below:

1.0 *“The proposed dwelling is placed within a comparatively high density cluster of five separate dwellinghouses, four of which are attached. The proposed dwelling has been placed to ensure there is no loss of privacy or amenity to any neighbouring property. This has been clearly demonstrated by strictly adhering to nationwide guidelines on separation distances (18m window to window separation and 9 metre window to boundary distance). The proposed dwelling, and the two neighbouring dwellings will all have more amenity space than both other neighbouring properties and also more than national guidelines would suggest is necessary for dwellings of this size. The planning officer’s view on these matters is purely subjective, not backed up with any analytical data and he has a history of putting forward this view at this location.*

*On an immediately adjacent site where planning was sought for a single dwelling and refused on broadly similar grounds citing settlement character, the Local Review Body agreed with the applicant that the clustered grouping of housing and the Rural Opportunity status in the Local Plan did indeed contradict the planning officer’s view and the application was permitted. We would forward the same arguments in this case and look forward to making these representations to members on a site visit.”*

1.1 The agent considers that the *“proposed dwelling is placed within a comparatively high density cluster of five separate dwellinghouses, four of which are attached”*. Within the defined Rural Opportunity Area (ROA) [Production Nos. 3 and 6], the ‘cluster’ to which the agent refers is a comparatively small and random group of dwellinghouses (and agricultural buildings) with large curtilages to offset their setting and scale appropriate to this low density rural area. It should also be pointed out that the functional floodplain of The Little Eachaig River (from SEPA’s indicative flood map) as shown on Production No. 3 has rendered large parts of this ROA undevelopable and as a consequence, any development opportunities are restricted to higher ground. Whilst recent development proposals from the applicant’s agent have been concentrated in and around the ‘cluster’, any development must be consistent with policy LP HOU 1 ‘General Housing Development’ of the adopted Argyll and Bute Local Plan. Policy HOU 1 of the Argyll and Bute Local Plan states a presumption in favour of housing within ROAs where there is a general capacity to successfully absorb small scale housing development that would be in tune with the landscape character and settlement pattern. The department considers that the proposed development is not in tune with the landscape character and settlement pattern for the following reasons.

1.2 The proposed dwellinghouse would remove garden ground belonging to the dwellinghouses within the north wing of the Ballochyle Farm courtyard development which would reduce appropriate separation distances between these significant existing buildings and a detached villa to the north. The space between these existing buildings would not allow for suitable infill development given proximity to the southern boundary of the dwellinghouse at 1 Ballochyle Estate. The erection of a dwellinghouse within the space between these buildings would result in a cramming effect which is contrary to the open and rural nature of the immediate area. The proposed dwellinghouse with a length of 24 metres is almost as long as the adjacent two-storey farmhouse building and attached extension combined. The proposed development is therefore considered to be unacceptable infill development which would also be contrary to the immediate settlement pattern and would not complement the layout and setting of existing dwellings. The proposed development is therefore inconsistent with policies contained in the adopted

Argyll and Bute Local Plan and Argyll and Bute Structure Plan. These policies are unchanged in the Argyll and Bute Council Proposed Local Development Plan.

- 1.3 The agent's interpretation of Rural Opportunity Areas (ROAs) appears to be contrary to the department's view, which is expressed through the adopted Argyll and Bute Structure Plan, the adopted Argyll and Bute Local Plan and the emerging Argyll and Bute Local Development Plan in addition to National Policy Guidance. ROAs have been mapped to guide development to areas where there is a general capacity to successfully absorb small scale housing development that would be in tune with the landscape character and settlement pattern. This involves a considered assessment of the entire ROA and the particular pattern of existing buildings, the spaces in-between and other matters such as flooding and topography. It does not however mean that an ROA designation provides a 'green light' for development of a type and scale that would increase existing patterns and low densities that would result in almost suburban style layouts and densities within existing small groups of buildings, unless considered as acceptable redevelopment of existing buildings or appropriate infill development that would be in tune with landscape character and settlement pattern.
- 1.4 The agent places great emphasis on being able to achieve 18-metre window to window separation distance between the proposed dwellinghouse and adjacent dwellings. Whilst the '18-metre rule' is generally accepted as national minimum standard design guidance, this separation distance originated from suburban layouts where dwellings were sited in very close proximity to each other. The '18-metre rule' not only safeguarded privacy levels but also helped to achieve minimum rear garden sizes base on medium to high density suburban layouts. Whilst the agent has achieved an 18-metre separation between the proposed dwellinghouse and dwellings 1 and 2 Ballochyle Farm and the resultant design based on this separation criteria, this does not mean that the presence of a dwellinghouse in the garden ground between the adjacent dwellings would not result in other design matters such as immediate settlement character, visual dominance and presence, poor siting, overlooking of garden areas and loss of amenity by virtue of its inappropriate scale and siting [Production No. 4]. It is considered that "*strictly adhering to nationwide guidelines on separation distances*" would not in itself, make the proposed development acceptable on the basis of the other concerns expressed in the Report of Handling and this Appeal Statement.
- 1.5 The agent refers to a recent permission on land south of Ballochyle Farm (ref. 09/01308/PP) for a dwellinghouse that was approved by the LRB on 4 October 2010. Notwithstanding the LRB decision, and the special circumstances made by the applicant originally, this development has not been implemented and there are outstanding conditions that have not been formally discharged. Whilst the nature of this proposal is completely different to the current appeal in terms of siting and flooding issues, the status of the proposal is at present unknown due to legal issues.
- 2.0 *The other stated reasons for refusal are merely a case of the planning officer adding minor reasoning to give weight to a very tenuous and subjective refusal. SuDS drainage systems are extremely straightforward to propose in semi rural sites such as this and as such one is shown in an enclosed drawing. The topography, landform and flora of this location are not characteristic of an area at risk from run-off flooding. If this was an omission from the original application a simple email would have furnished the planning officer with this information.*

2.1 The agent has made a number of applications to the Council and should understand the level of detail required for Planning Permission. Despite ticking the box in the application form confirming that the proposal made provision for sustainable drainage of surface water, the agent submitted no details whatsoever regarding surface water drainage and accordingly, this constituted a further reason for refusal. If the surface water drainage scheme is as “*straightforward*” as the agent suggests, then such information should have been submitted by the agent at the appropriate time. The application site is located very close to the functional floodplain of The Little Eachaig River which has a recent history of flooding events. As a consequence, the lack of surface water drainage details was considered to be contrary to Policy LP SERV 3 ‘*Drainage Impact Assessment*’ and LP SERV 8 ‘*Flooding and Land Erosion*’ of the Argyll and Bute Local Plan and therefore a further reason for refusal.

3.0 *The avenue of western red cedars is certainly a distinct feature in this landscape but they are not protected by any Tree Preservation Orders or any other such protection. We would strongly dispute there is a need to alter any of the existing trees to facilitate this development. The agent responded to an objector who raised the subject of damage to the trees via the planning officer. Suffice to say that the local authority has not seen the need to highlight the potential damage to these avenues before when determining similar applications.*

3.1 Previous proposals had no major impact on the avenue of 14 Western Red Cedars. The current scheme proposes a car parking area for three cars, pedestrian access and the siting of an LPG tank within trees on the eastern side of the access track. These trees have shallow root systems near the surface and it is considered that the proposed development will have a significant adverse impact on at least two of these specimens. The submitted drawings do not accurately depict the existing position of the trees or the potential impact as illustrated in attached photographs [Production Nos. 5 and 6]. A detailed survey drawing would illustrate clearly that these trees would be significantly affected by the proposed development and not as the submitted misleading information would suggest.

3.2 On the basis that the avenue of 14 Western Red Cedar trees lining the northern approach to Ballochyle Farm are considered as being worthy of protection, the Council is serving a provisional Tree Preservation Order (TPO 04/13, advertisement publication date 4 October 2013) in order to safeguard the contribution the trees make to the landscape and character of the area.

#### 4.0 *Agent’s Conclusions*

*The agent considers that the main reason for the refusal is on purely subjective grounds and we would strongly dispute the planning officer’s conclusions regarding the settlement characteristics of this context.*

*We have enclosed with the application for review an amended site plan to show how the issues of SuDS and tree compaction can be successfully addressed. It should be noted that we believe that these amendments relate to problems that should have been raised by the planning officer during the application process and not merely stated on a refusal sheet without giving the applicant or agent any chance to refute the reasoning or indeed amend the proposals.*

- 4.1 The agent comments that the main reason for refusal is on 'purely subjective grounds'. An assessment of any application is made against the provisions of the Development Plan which in this instance comprises the Argyll and Bute Structure Plan, the Argyll and Bute Local Plan and National Planning Policies, Circulars and Planning Advice Notes. The proposed development has been assessed against the provision of the Development Plan and all relevant policy criteria are included with the Report of Handling. It is interesting to note that the agent has not referred to any planning policies within the Design Report or appeal statement to support his own views.
- 4.2 Should members be minded to recommend approval of the scheme, a suspensive condition regarding provision of an adequate private water supply in terms of both quality and quantity to meet the requirements of the proposed development will be necessary. Since the application was recommended for refusal, limited details on potential proposed water supply either by borehole or from the Little Eachaig River were not pursued as this matter could have potentially been addressed by a suspensive planning condition. It was not however a reason for refusal given the submitted written details contained within the agent's Design Report (March 2013).
- 4.3 Should members be minded to recommend approval of the scheme, a suspensive condition regarding detailed foul drainage arrangements will be necessary? Since the application was recommended for refusal, limited details on proposed foul drainage arrangements were not pursued as this matter could have potentially been addressed by a suspensive planning condition. It was not however a reason for refusal given the submitted written details contained within the agent's Design Report (March 2013).

## **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 attached Report of Handling [Production 1] clearly details why planning permission could not be supported due to the siting, scale and design of the proposed dwellinghouse inserted awkwardly between existing dwellinghouses to the detriment of the immediate settlement character, amenity of the neighbouring dwellinghouses and impact on existing mature trees.

For all of the reasons above, the proposed development was considered to be contrary to the immediate settlement pattern by proposing unacceptable infill development resulting in an unacceptable loss of residential amenity to the donor dwelling and adjacent dwellinghouses which is contrary to adopted Structure Plan and Local Plan policies.

Accordingly, and on the basis of the objections received during the planning process, the department feels that it was correct to recommend refusal under the terms of SPP, PAN 44, PAN 72; Argyll and Bute Structure Plan policies STRAT SI 1, STRAT DC 4, STRAT DC10, STRAT FW 2, STRAT HO 1 of the Argyll and Bute Structure Plan (2002); and to Policies LP ENV 1, LP ENV 7, LP ENV 19 (including Appendix A Sustainable Siting and Design Principles and Sustainable Design Guidance), LP HOU 1, LP SERV 2, LP SERV 3, LP SERV 8, LP TRAN 4, and LP TRAN6 of the Argyll and Bute Local Plan (August 2009).

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

## APPENDIX

- Production No.1** Report of Handling dated 21 June 2013;
- Production No. 2** Existing Block plan with correct addresses;
- Production No. 3** Plan indicating ROA boundary, existing buildings and floodplain zone;
- Production No. 4** Photographs indicating appeal site and adjacent dwellings;
- Production No. 5** Photographs indicating appeal site and impact on trees;
- Production No. 6** Photographs indicating avenue of trees and ROA boundary;
- Production No. 7** Letter of objection from owners of Cottage 4 Ballochyle Farm dated 11 May 2013;
- Production No. 8** Letter of objection from owners of 1 Ballochyle Estate dated 12 May 2013;
- Production No. 9** Letter of objection from owner of Ballochyle dated 29 May 2013;
- Production No. 10** Email of objection from Councillor Marshall Ward 6 Cowal dated 29 May 2013;
- Production No. 11** Pre-application letter (ref. 12/02596/PREAPP) to agent dated 12 December 2012;
- Production No. 12** Refused drawings 13/BLL/IJS PPL / 001, 10/13/BBL 002, 10/13/BBL\_003, 10/13/BBL 004, 10/13/BBL 005, 10/13/BBL 006, 10/13/BBL 007