

**STATEMENT OF CASE**

**FOR**

**ARGYLL AND BUTE COUNCIL  
LOCAL REVIEW BODY**

**14/0001/LRB**

**REFUSAL OF PLANNING PERMISSION IN  
PRINCIPLE FOR THE ERECTION OF A DWELLING  
HOUSE RELATIVE TO PLANNING APPLICATION  
REFERENCE 13/02637/PPP**

**LAND SOUTH OF A828, PORTNACROISH, APPIN**

**17/02/2014**

## **STATEMENT OF CASE**

The Planning Authority is Argyll and Bute Council (“the Council”). The appellant is Miss Sumie MacAlpine-Downie (“the appellant”) who has employed an agent Mr Paul Houghton of Houghton Planning to act upon their behalf (“the agent”).

Planning application 13/02637/PPP which proposed the erection of a dwelling house in principle on land south of the A828, Portnacroish (“the appeal site”) was refused under delegated powers on the 20<sup>th</sup> January 2014.

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

### **DESCRIPTION OF SITE**

The site is located at Portnacroish, Appin opposite the Holy Cross Episcopal Church which is a category B listed building. The adjacent memorial is category C listed. The site measures some 0.94ha with a frontage some 110m long bounding the A828(T). The land is currently agricultural and is bounded to the east by a house ‘Tigh Na Crois’, south by agricultural land and a long distance multi-use path whilst there is a private road and housing further to the west.

### **SITE HISTORY**

None

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

Section 25 of the Town & Country Planning (Scotland) Act 1997 provides that where, in making any determination under the planning Acts, regard is to be had to the development plan and determination shall be made in accordance with the development plan unless material considerations indicate otherwise. This is the test for this planning application.

### **STATEMENT OF CASE**

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

- Whether the material planning considerations asserted by the appellant are sufficient to outweigh the fact that the planning application is contrary to the current adopted Argyll and Bute Development Plan; or whether in fact the Argyll and Bute Development Plan remains the primary determining factor.

The Report of Handling (please refer to Appendix 1) sets out Planning and Regulatory Services assessment of the planning application in terms of policy within the current adopted Argyll and Bute Development Plan and all other material planning considerations.

### **REQUIREMENT FOR ADDITIONAL INFORMATION AND A HEARING**

Additional information has been submitted by the appellant which was not available to the planning authority during the determination of planning application 13/02367/PPP (Please see section “Comment on Appellant’s Submission” below for further information).

The proposal constitutes a Local Development in accordance with the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009, has no complex or challenging issues and has only been the subject of 1 objection from local residents, it is not considered that a Hearing is required.

### **COMMENT ON APPELLANTS' SUBMISSION**

The appellant's statement contains a number of matters that the planning authority cannot control and that are not material considerations in the determination of this appeal. For example, the statement that the applicant has no intention of applying for further housing on the site is not relevant to the application under review. Nevertheless, the house would introduce housing onto a piece of undeveloped Countryside Around Settlement where the principle of development is not supported. This would set an unwelcome precedent for further development in CAS which is an area identified as unsuitable for development as per the settlement maps of the adopted Local Plan. The question of precedent is a material planning consideration.

The appellant also states that this is only piece of land they own locally and there are no other opportunities for them to build a house. They also have family in the area. The planning system directs development to the most appropriate locations preserving the natural environment for the benefit of the wider community. Land ownership considerations are not of sufficient weight to override the development plan policies.

The appeal statement also comments that the appellant would be prepared to provide a parking area for the users of the nearby church. This proposal does not form part of the planning application under review, nor is it relevant to the application under consideration.

The additional site plan provided by the appellant has not been available to the planning authority until now. However, it does not alter the concerns as set in the Report of Handling and does not change the fact that the proposal lies within the CAS development control zone where proposals will only be supported where they are infill, rounding off, redevelopment, change of use or a 'special case' justifying a departure to the development plan. The proposal is not infill, rounding off or redevelopment. The applicant has not suitably demonstrated a 'special case' to justify a suitable departure as acknowledged by the appellant in their statement. The proposal is contrary to policy and insufficient justification has been submitted to merit a departure from policy.

The appellant has sought to argue the site as an infill opportunity. 'Infill' development is defined in the Local Plan glossary as:

*“new development positioned largely between other substantial buildings and this new development being of a scale subordinate to the combined scale of the buildings adjacent to the development site”*

The definition in the Local Plan clearly provides for a single gap site in a developed area. It is not intended to provide for new plots to be placed on all gaps between existing developments, nor to extend existing rows beyond an existing end. The

application sites lies adjacent to a row of existing houses but the gap between them and the next adjacent house on the other side is too wide for this proposal to constitute an infill development. The indicative house plot submitted would leave a significant gap between the new development and the next adjacent house to the west. The proposal is not infill development under the Local Plan definition.

The appellant draws comparisons to a nearby approval (reference 12/01181/PP). However this site is within the 'settlement' boundary where the basic policy principles are different from CAS. The current appeal site has been deliberately left clear of development and lies beyond the settlement zoning set by the Reporter at public local inquiry prior to adoption of the Local Plan. The settlement boundary preserves the essentially rural dispersed pattern of Portnacroish. This undeveloped area also serves to protect the setting of the listed church and yard, both of which would be compromised by development on the site.

## **CONCLUSION**

Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that all decisions be made in accordance with the development plan unless material considerations indicate otherwise.

The reasons for refusal of planning application 13/02637/PPP:

*"The proposal lies within the Countryside Around Settlement development control zone and is subject to Structure Plan policy STRAT DC 2. This policy has a general presumption against development unless it can be demonstrated the proposal will result in an infill, redevelopment, rounding off of developments already within the Countryside Around Settlement zone, or change of use of an existing building. Alternatively, support may be found where the application in special circumstances on the basis of operational or locational need. In this instance the proposal aims to develop a single dwelling house in an area designated as CAS but does not qualify as infill, redevelopment, rounding off or change of use. The applicant has not demonstrated an operational or locational need. The proposal is not consistent with the provisions of policy STRAT DC 2.*

*The site was subject to the Local Plan enquiry in 2007 for inclusion into the settlement boundary and it was determined by the Reporter that the area should remain outwith the settlement area given the dispersed development pattern and setting of historic buildings. In this regard the proposal is not consistent with the provisions of policy STRAT DC 2 and LP HOU 1. The rural character of Appin and Portnacroish is partly based on the staggered pattern of development along both sides of the A828(T), interspersed with open undeveloped fields. The proposal would erode the current defined settlement boundary by encroaching into one such field to the detriment of the existing character of the settlement.*

*The proposal would adversely impact on the setting of the category B listed church and the category C listed monument across the main road to the north. The open outlook from these structures is an important element of their setting by virtue of views to and from the listed buildings across Loch Laich. Development of the site would adversely impact on that setting by interfering or reducing those open views to and from the church and memorial within the churchyard. Development of a single house would set a precedent of development within the site boundary which stretches across the entire outlook from the church. Even should the site boundary be significantly reduced to a single house plot then this would have the potential to set a precedent for further ribbon style development along the A828 further*

*impacting on the setting of the church and monument. The proposal is not consistent with the provisions of the SHEP 2012 and Local Plan policy LP ENV 13(a). “*

The proposal is contrary to the adopted development plan and there are no material considerations identified of sufficient weight that justify the proposal as a departure from the provisions of the development plan.

It is respectfully requested that the review be dismissed and the original refusal be upheld.

# Appendix 1

Argyll and Bute Council  
Argyll and Bute Council  
Planning and Regulatory 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

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**Reference No:** 13/02637/PPP

**Planning Hierarchy:** Local Development

**Applicant:** Miss Sumie MacAlpine Downie

**Proposal:** Site for the erection of dwelling house

**Site Address:** Land West of Tigh Na Crois, Portnacroish, Appin

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## DECISION ROUTE

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

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### (A) THE APPLICATION

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

- Site for the erection of dwelling house
- Installation of private drainage system
- Amended access

(ii) **Other specified operations**

- Connection to public water supply
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### (B) RECOMMENDATION:

It is recommended that the application is refused for the reason set out below.

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### (C) HISTORY:

None

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### (D) CONSULTATIONS:

Area Roads Manager

Report dated 28/11/13

Trunk Roads to advise on access arrangements.

Parking and turning commensurate with the size of the dwelling house should be provided.

Scottish Water

Letter dated 25/11/13

No objection but advised that there are no public water or sewerage mains in the area.

Transport Scotland

Report dated 4/12/13

No objection subject to conditions.

WoSAS

Letter dated 27/11/13

No objection but requested a planning condition be attached for a watching brief.

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**(E) PUBLICITY:**

The proposal has been advertised in terms of Regulation 20, closing date 26/12/13.

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**(F) REPRESENTATIONS:**

There have been 7 representations with 6 in support and 1 objecting. These are summarised below.

**Objection**

Dr James Haslam, Tigh Na Crois, Portnacroish, Appin (23/12/13)

**(i) Summary of issues raised in objection:**

- The land was subject of a Local Plan enquiry in 2007. The outcome was that the land should not form part of the settlement boundary.  
*Comment: The current Local Plan designates the land as Countryside Around Settlement with a general presumption against development subject to specific criteria.*
- The development of this land would impact on the panoramic views from the Holy Cross Episcopal Church, Portnacroish. The church and adjacent memorial are both listed. The uninterrupted views across Loch Laich, and back toward to the church, are integral to the setting of the church.  
*Comment: The setting of the listed building is considered as part of the assessment below.*
- Given the size of the site area the grant of planning permission would set a precedent for further housing along this site.
- *Comment: Given the application does not present a 'special' case in the terms of STRAT DC 3 there is no reason to support a departure to the development plan and support for the application in its current format could, potentially, result in further submissions for more housing within the site boundary. An approval in this instance would establish the*

*principle of residential development within the site boundary, and in the absence of suitable justification represents an unacceptable departure from Local Plan policy.*

### **Support**

Captain Paul Zvegintzov, Appin Home Farm, Appin, Oban (6/12/13, 09/12/13)

Mr Nicholas Zvegintzov, Appin Home Farm, Appin, Oban (09/12/13)

Mrs Ethel Johnston, Lettershuna Lodge, Appin (24/12/13)

Mr Jamie Craig, 1 Dallens Cottage, Appin (24/12/13)

Mr David Craig, Lettershuna House, Appin (24/12/13) comments submitted individually and representing the congregation.

Mr DK Carmichael, Laich House, Appin (26/12/13)

#### **(i) Summary of issues raised in support:**

- The applicant is originally from the area and family members would love to have a closer relationship.  
*Comment: this is not a material consideration.*
- The proposed building will be an appropriate addition to Portnacroish.  
*Comment: the site is distinguished apart from existing development at Portnacroish in the Local Plan.*
- There is a need for more housing in the area.  
*Comment: this is noted and is the reason why areas have been allocated at Appin for growth during the lifetime of the plan.*
- The site should be considered as part of the village.  
*Comment: the Local Plan identifies the site as separate from the existing settlement zone, entirely within Countryside Around Settlement.*
- The proposal will not cause any residential amenity impacts.  
*Comment: this is accepted.*
- The proposal will not adversely affect the church.  
*Comment: the setting of the B listed church and C listed memorial lie across the road from the open land comprising the application site. This openness undoubtedly adds to the setting of the listed buildings in terms of open views to and from the historic landmarks. This would be affected by the siting of a house as proposed.*
- The proposal will support the construction industry.  
*Comment: this is noted, but it does not outweigh the requirement to adhere to the Local Plan policies in this instance.*

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#### **(G) SUPPORTING INFORMATION**

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

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



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**(H) PLANNING OBLIGATIONS**

**(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 2 – Development within the Countryside Around Settlements  
STRAT DC 8 – Landscape and Development Control  
STRAT DC 9 – Historic Environment and Development Control

Argyll and Bute Local Plan 2009

LP ENV 1 – Impact on the General Environment  
LP ENV 9 – Impact on National Scenic Areas (NSAs)  
LP ENV 13a – Development Impact on Listed Buildings  
LP ENV 17 – Impact on Sites of Archaeological Importance  
LP ENV 19 – Development Setting, Layout and Design  
LP HOU 1 – General Housing Development  
LP SERV 1 – Private Sewage Treatment Plants and Wastewater Systems  
LP SERV 4 – Water Supply  
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  
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.**

Emerging Argyll and Bute Local Development Plan, 2013  
Argyll & Bute Sustainable Design Guidance (2006)  
SPP, Scottish Planning Policy, 2010  
Scottish Historic Environment Policy (SHEP) 2011

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**(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 No**

**consultation (PAC):**

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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**

The application is for the erection of a dwelling house and installation of a private waste water treatment system. The site is located at Portnacroish, Appin opposite the Holy Cross Episcopal Church which is a category B listed building. The adjacent memorial is a category C listed.

The site measures some 0.94ha with a frontage some 110m long bounding the A828(T). The land is currently agricultural and is bounded to the east by a house 'Tigh Na Crois', south by agricultural land and the multi-use path whilst there is a private road and further housing to the west. The applicant intends to take access from an existing private access point to the west and install a private waste water treatment system.

Within Portnacroish, the Settlement Zone has been held tightly around existing housing groups in places, with some allocated sites to enable additional development for the community. Holding the boundary tightly to existing housing is a deliberate policy choice, reflecting the rural character of the settlement, which is characterised by individual houses and small groups interspersed on both sides of the road, with notable undeveloped spaces which maintain the overall rural character. There is only low demand for additional housing within the minor settlement, which is adequately catered for within the plan.

The application site is allocated Countryside Around Settlement subject to Structure Plan policy STRAT DC 2. This policy has a general presumption against development unless it can be demonstrated the proposal is infill, redevelopment, rounding off or change of use of an existing building. In the context of CAS, the terms infill and rounding off apply to existing developments within the CAS, and not to extend the Settlement Zone across CAS. STRAT DC 2 also confirms support for housing within CAS in special circumstances on the basis of operational or locational need. In this instance the proposal aims to develop a single dwelling house in an area designated as CAS but does not qualify as infill, redevelopment, rounding off or change of use. The applicant has not demonstrated any operational or locational need. To this end the proposal is not consistent with the provisions of policy STRAT DC 2.

The site was subject to the Local Plan enquiry in 2007 for inclusion into the settlement boundary and it was determined by the Reporter that the area should remain outwith the settlement area given the dispersed development pattern and setting of historic buildings. In this regard the proposal is not consistent with the provisions of policy STRAT DC 2 and LP HOU 1.

It remains the view of planning officers now that the proposal adversely impact on the setting of the category B listed church and the category C listed monument across the main road to the north. The outlook from these structures is important given the setting across to and from Loch Laich and this development would adversely impact on that open setting by interfering with those open views to and from the church and yard.

Development of a single house would set a precedent of development within the site boundary which stretches across the entire outlook from the church, all of which is allocated as CAS. Even should the site boundary be significantly reduced to a single house plot then this would have the potential to set a precedent for further ribbon style development along the A828 further impacting on the setting of the church and monument, and further eroding the CAS to its detriment. The proposal is not consistent with the provisions of the SHEP 2011 and Local Plan policy LP ENV 13(a). Extending the Settlement boundary by allowing encroachment into this distinct open and undeveloped field would adversely affect the character of the rural settlement.

There has been 1 objection and 6 letters of support. None of these issues are particularly complex and have been dealt with, where appropriate, above. There have been no objections from consultees. However, it should be noted that whilst the applicant intends to connect to the public water supply, Scottish Water has commented that there is no such supply in the area. Given the recommendation for refusal this has not been followed up.

The application is hereby recommended for refusal on the basis that the proposal is not consistent with the provisions of policies STRAT DC2, LP ENV13(a) and LP HOU 1.

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

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

The proposal lies within the Countryside Around Settlement development control zone and is subject to Structure Plan policy STRAT DC 2. This policy has a general presumption against development unless it can be demonstrated the proposal will result in an infill, redevelopment, rounding off of developments already within the Countryside Around Settlement zone, or change of use of an existing building. Alternatively, support may be found where the application in special circumstances on the basis of operational or locational need. In this instance the proposal aims to develop a single dwelling house in an area designated as CAS but does not qualify as infill, redevelopment, rounding off or change of use. The applicant has not demonstrated an operational or locational need. The proposal is not consistent with the provisions of policy STRAT DC 2.

The site was subject to the Local Plan enquiry in 2007 for inclusion into the settlement boundary and it was determined by the Reporter that the area should remain outwith the settlement area given the dispersed development pattern and setting of historic buildings. In this regard the proposal is not consistent with the provisions of policy STRAT DC 2 and LP HOU 1. The rural character of Appin and Portnacroish is partly based on the staggered pattern of development along both sides of the A828(T), interspersed with open undeveloped fields. The proposal would

erode the current defined settlement boundary by encroaching into one such field to the detriment of the existing character of the settlement.

The proposal would adversely impact on the setting of the category B listed church and the category C listed monument across the main road to the north. The open outlook from these structures is an important element of their setting by virtue of views to and from the listed buildings across Loch Laich. Development of the site would adversely impact on that setting by interfering or reducing those open views to and from the church and memorial within the churchyard. Development of a single house would set a precedent of development within the site boundary which stretches across the entire outlook from the church. Even should the site boundary be significantly reduced to a single house plot then this would have the potential to set a precedent for further ribbon style development along the A828 further impacting on the setting of the church and monument. The proposal is not consistent with the provisions of the SHEP 2012 and Local Plan policy LP ENV 13(a).

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

N/A

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

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**Author of Report: David Love**

**Date: 20/01/14**

**Reviewing Officer: Stephen Fair**

**Date: 20/01/14**

**Angus Gilmour  
Head of Planning and Regulatory Services**

## **GROUNDINGS OF REFUSAL RELATIVE TO APPLICATION REFERENCE 13/02637/PP**

The proposal lies within the Countryside Around Settlement development control zone and is subject to Structure Plan policy STRAT DC 2. This policy has a general presumption against development unless it can be demonstrated the proposal will result in an infill, redevelopment, rounding off of developments already within the Countryside Around Settlement zone, or change of use of an existing building. Alternatively, support may be found where the application is in special circumstances on the basis of operational or locational need. In this instance the proposal aims to develop a single dwelling house in an area designated as CAS but does not qualify as infill, redevelopment, rounding off or change of use. The applicant has not demonstrated an operational or locational need. The proposal is not consistent with the provisions of policy STRAT DC 2.

The site was subject to the Local Plan enquiry in 2007 for inclusion into the settlement boundary and it was determined by the Reporter that the area should remain outwith the settlement area given the dispersed development pattern and setting of historic buildings. In this regard the proposal is not consistent with the provisions of policy STRAT DC 2 and LP HOU 1. The rural character of Appin and Portnacroish is partly based on the staggered pattern of development along both sides of the A828(T), interspersed with open undeveloped fields. The proposal would erode the current defined settlement boundary by encroaching into one such field to the detriment of the existing character of the settlement.

The proposal would adversely impact on the setting of the category B listed church and the category C listed monument across the main road to the north. The open outlook from these structures is an important element of their setting by virtue of views to and from the listed buildings across Loch Laich. Development of the site would adversely impact on that setting by interfering or reducing those open views to and from the church and memorial within the churchyard. Development of a single house would set a precedent of development within the site boundary which stretches across the entire outlook from the church. Even should the site boundary be significantly reduced to a single house plot then this would have the potential to set a precedent for further ribbon style development along the A828 further impacting on the setting of the church and monument. The proposal is not consistent with the provisions of the SHEP 2012 and Local Plan policy LP ENV 13(a).

## APPENDIX TO DECISION REFUSAL NOTICE

Appendix relative to application **13/02637/PP**

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- (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**

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

Stated above.