

STATEMENT OF CASE

FOR

**ARGYLL AND BUTE COUNCIL
LOCAL REVIEW BODY**

14/0003/LRB

**REFUSAL OF PLANNING PERMISSION FOR THE
ERECTION OF CROFT HOUSE, FORMATION OF
VEHICULAR ACCESS AND INSTALLATION OF
SEPTIC TANK (AMENDMENT TO PLANNING
PERMISSION 12/00487/PP) RELATIVE TO PLANNING
APPLICATION REFERENCE 13/02202/PPP**

PLOT 2A, KILMALUAIG, ISLE OF TIREE

07/04/2014

STATEMENT OF CASE

The Planning Authority is Argyll and Bute Council (“the Council”). The appellant is Mr Iain MacKinnon (“the appellant”) who has employed an agent Mr Allan MacAskill to act upon his behalf (“the agent”).

Planning application 13/02202/PP, which proposed an amendment to planning permission 12/00487/PP to rotate the approved house by 90 degrees to sit perpendicular to the public road alongside the site at 2A, Kilmaluaig, Isle of Tiree (“the appeal site”), was refused under delegated powers on the 24th December 2013.

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

DESCRIPTION OF SITE

The site is located in the southern half of the dispersed settlement of Kilmaluaig and forms part of croft 2A. The settlement is generally single tier and linear following a general north-south alignment consistent with the public road. The site itself is currently grassed and appears to be worked as part of a landholding.

SITE HISTORY

12/00487/PP - Erection of croft house, formation of vehicular access and installation of septic tank – Approved 10/04/2013

13/01882/NMA – Request for non-material amendment to planning permission 12/00487/PP: Erection of croft house, formation of vehicular access and installation of septic tank: (Re-orientate the house by 90 degrees) – Refused 12/09/2013

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

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 appellants' statement is based on three key issues:

- If the house were rotated through 90 degrees then there would be more room for working the croft,
- The house would not be so exposed to the prevailing westerly wind, and
- There would be a better aspect for the dwelling house and more windows would face south.

Comment: The design of the house has not been debated by either the planning authority or the appellant. Notably, the design was the subject of extensive negotiation during the course of the initial planning application. During those discussions, the orientation of the house was highlighted as a fundamental issue.

The property is within the only historic environment conservation area on Tiree. Policy LP ENV 14 (Development in Conservation Areas and Special Built Environment Areas) of the adopted Local Plan states that:

"There is a presumption against development that does not preserve or enhance the character or appearance of an existing or proposed conservation area or its setting, or a Special Built Environment Area."

Historic Scotland's Managing Change in the Historic Environment Guidance Notes: Setting states:

'2.2 Monuments, buildings, gardens and settlements were not constructed in isolation. They were often deliberately positioned with reference to the surrounding topography, resources, landscape and other monuments or buildings. These relationships will often have changed through the life of a historic asset or place.'

In this instance one of the key characteristics of the conservation area is the parallel positioning of housing in relationship to the road. All houses are generally aligned in such a manner, and this contributes significantly to the character of the conservation area. During negotiations on the initial application, the planning authority accepted a slightly lower quality of design in order to assist the applicant and accepted a position further set back in the croft to meet the applicant's requirements. Unfortunately, rotating the building through 90 degrees would visually jar with the alignment of housing in the conservation area and would be detrimental to the character of the area. As with most of Tiree, the conservation area is very open and building alignment is readily visible across the conservation area.

In direct response to the appellant's three claimed reasons to seek to change in orientation, the Planning Service responds as follows:

- It is not clear how rotating the house would provide more room for working the croft as the building footprint stays the same and access past the building exists irrespective of the orientation. There has been no croft development plan submitted or details as to how the current position adversely impacts on the working of the croft.
- In terms of exposure to the prevailing wind. Adjacent properties within the conservation area have the same orientation as approved at this site already. Historic development on Tiree was largely designed and sited to mitigate the impacts of strong and persistent wind and therefore it is not accepted that the orientation perpendicular to the road is a more logical solution than the established pattern of developments in the conservation area. If the effect of wind is a significant issue for the appellant then an alternative would be to propose a design that is more consistent with the traditional houses on the island, which have been proven to be robust in the face of the elements.
- Improving the aspect for the house and providing additional south facing windows is not considered to be sufficient justification to introduce a house at right angles to the prevailing orientation that already exists within the conservation area, and which forms an important aspect of the character of the conservation area. The layout of the house can be adapted to meet both of these aims without rotating the entire house within the site. It is not considered that adding a house in a rotation that will jar with the prevailing pattern and historic layout of development is justified by the appellants wish to achieve a better outlook to the north or enhanced solar gain from the south-east whereas the current approval allows such gains from the south-west elevation.

In response to the appellants request for a site visit, and acknowledging that the appropriateness of this is an item the Local Review Body must determine, the Planning Service provides an aerial image of the conservation area at appendix 2 of this statement. The image provides an understanding of the site context.

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 13/02202/PP:

“The application is within the only Conservation Area on Tiree and as such is subject to the provisions of Local Plan Policy LP ENV 14. The orientation of houses within the Conservation Area is a key feature in the character of the Conservation Area, which is readily visible and perceived as part of the historic nature of the site. The proposed rotation of the house by 90 degree such that a blank gable faces the adjacent road would place the proposed house at an orientation that conflicted with the predominant orientation of houses within the Conservation Area. Whilst there are a small number of properties beyond the Conservation Area whose ridge lines run perpendicular these are outwith the designated Conservation Area and do not carry sufficient weight to justify the proposal in this instance. The proposal does not enhance or maintain the character of the Conservation Area within which it is

located, and as such, it is contrary to Policy LP ENV 14. The proposal is also contrary to Policy LP ENV 19 because the proposal does not respect the character of the area within which it is located.

It is considered essential to the success of the project that the approved house rotation granted under planning permission 12/00487/PP is retained. The reasons presented in support of the current application are not considered to be of sufficient weight to overcome the fact that the amended rotation proposed would conflict with the pattern of surrounding development to the detriment of the character of the Conservation Area within which it is located.”

The proposal to rotate the house and site is perpendicular to the adjacent road, and perpendicular to the adjacent housing within the conservation area, is contrary to the adopted development plan policies. 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 refusal be upheld.

Appendix 1

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

Reference No: 13/02202/PP

Planning Hierarchy: Local Development

Applicant: Mr Iain MacKinnon

Proposal: Erection of croft house, formation of vehicular access and installation of septic tank (amendment to planning permission 12/00487/PP)

Site Address: Plot 2A, Kilmaluag, Isle of Tiree

DECISION ROUTE

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

(A) THE APPLICATION

(i) Development Requiring Express Planning Permission

- Erection of dwelling house (amendment to orientation of permission 12/00487/PP)
- Installation of new vehicular access from the public road
- Installation of private waste water system

(ii) Other specified operations

- Connection to public water main
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(B) RECOMMENDATION:

It is recommended that the application is refused for the reasons detailed below.

(C) HISTORY:

12/00487/PP – Erection of dwelling house – Approved (10/04/13)
13/01882/NMA – Request for non-material amendment to 12/00487/PP to re-orientate the house – Rejected (12/09/13)

(D) CONSULTATIONS:

Area Roads Manager

Report dated 17/10/13

No objection subject to the following conditions:

- Access at the junction of the public road to be constructed as per Operational Services drawing SD08/004a
- Visibility splays of 54m x 2.4m to be cleared and maintained.
- A system of surface water drainage is required to prevent water from passing onto the public road
- Parking and turning for two vehicles to be provided

Scottish Water

Letter dated 1924/10/13

No objection.

Public Protection Unit

Memo dated 14/10/13

No objection.

NATS

Email dated 11/10/13

No objection.

Highlands and Islands Airports Limited

Email dated 09/10/13

No objection.

(E) PUBLICITY:

The proposal has been advertised in terms of regulation 20, closing date 07/11/13 and a site notice was erected due to the sites conservation area status with a closing date of 07/11/13.

(F) REPRESENTATIONS:

None

(G) SUPPORTING INFORMATION

Has the application been the subject of:

- | | |
|---|------------|
| (i) Environmental Statement: | No |
| (ii) An appropriate assessment under the Conservation (Natural Habitats) Regulations 1994: | No |
| (iii) A design or design/access statement:
Titled as 'Supporting Statement'. | Yes |

- (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

- (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**
-

(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 1 – Development within the Settlements
STRAT DC 9 – Historic Environment and Development Control
STRAT SI 1 – Sustainable Development

Argyll and Bute Local Plan 2009

LP ENV 1 – Impact on the General Environment
LP ENV 14 – Conservation Areas and Special Built Environment Areas
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.**

SPP, Scottish Planning Policy, 2010
Scottish Historic Environment Policy (SHEP), Historic Scotland, 2011
Isle of Tiree Sustainable Design Guide (2006)

- (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**

(M) Has a sustainability check list been submitted: No

(N) Does the Council have an interest in the site: No

(O) Requirement for a hearing: No

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

The application is for the re-orientation of the dwelling house previously approved under 12/00487/PP. Design and siting of the approved house was the subject of extensive discussion during the course of application 12/00487/PP, given the position of the site within a Conservation Area.

The applicant has previously requested the rotation of the house through 90° be considered as a Non Material Amendment (NMA) (reference - 13/01882/NMA) however this request was rejected because the change is material. The applicant was further advised that a subsequent planning application for the changed orientation would not be supported as it would conflict with the pattern of development in the Conservation Area.

The applicant wishes to re-orientate the approved house by 90 degrees so that the gable faces the road. The applicant has stated the following reasons for the request:

- Reduce the exposure to prevailing winds/weather to only one gable with no openings
- The dwelling will encroach less into the working croft area
- The rotation will provide a view towards Loch Bhasapol from three of the four rooms (living room and two bedrooms)
- The dwelling will have a better aspect with windows/openings facing south increasing solar gain.

The proposal lies within the only Conservation Area on Tìree at Kilmaluag. It is essential therefore to evaluate how this proposal will impact on the character of the Conservation Area.

During the processing of the original planning application the planning service maintained that the orientation must be parallel to the road to fit with the pattern of existing buildings within this part of the Conservation Area. Outwith the Conservation Area there are two houses of similar character that are orientated as per the applicants' current wishes for his house, however these are outwith the Conservation Area and in those cases, the main ridge line runs parallel to the access road servicing those houses. The existence of those houses outwith the Conservation Area is not sufficient to justify the proposed orientation now put forward by the applicant.

Those other supporting statements the applicant presents are not accepted by the planning authority as valid reasons for approving the application with a rotation that would conflict with the pattern of development and visually jar with the understanding and perception of the Conservation Area, which by its nature is open and readily

visible across its extent being on open land with little vegetation. The orientation of housing is a key facet of the Conservation Area, alongside spacing, scale and design and finish. The vast majority of buildings are orientated so as to face the main road. Careful design can still achieve suitable shelter from the wind, to address the issue of prevailing wind. In any case, the prevailing wind is from the south-west, and in this case, that will hit a building corner regardless of whether the house is rotated or not.

It is not accepted that the orientation of the property as approved will adversely impact on the workings of the croft. There are no details to suggest the business plan of the croft will be impacted by the current approval, nor does the rotated house occupy any less land than the previously approved house under 12/00487/PP.

Irrespective of rotation, the house will still benefit from elements of solar gain, but this will be minor whichever rotation is proposed given that windows proposed are modestly sized. It is not considered that the minor gains argued for solar gain are sufficient to outweigh the requirement to ensure that the development fits its historic setting within a Conservation Area.

A wish to orientate the house towards a better view is not a material consideration in the determination of this planning application.

The change in orientation currently applied for is not considered appropriate because it would result in the proposal being inconsistent with the requirements of policy LP ENV 14 and Historic Scotland's SHEP, in that it would fail to integrate with the pattern of existing development within the Conservation Area. The Conservation Area is readily visible across and throughout its area and the spacing and orientation of houses are key elements of the character of the Conservation Area. The application fails to respect the character of the area within which it is located rendering it contrary to Policy LP ENV 19.

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

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

Detailed below.

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

N/A

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

Author of Report: David Love

Date: 27/11/13

Reviewing Officer: Stephen Fair

Date: 24/12/13

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

GROUNDINGS OF REFUSAL RELATIVE TO APPLICATION REFERENCE 13/02202/PP

1. The application is within the only Conservation Area on Tiree and as such is subject to the provisions of Local Plan Policy LP ENV 14. The orientation of houses within the Conservation Area is a key feature in the character of the Conservation Area, which is readily visible and perceived as part of the historic nature of the site. The proposed rotation of the house by 90 degree such that a blank gable faces the adjacent road would place the proposed house at an orientation that conflicted with the predominant orientation of houses within the Conservation Area. Whilst there are a small number of properties beyond the Conservation Area whose ridge lines run perpendicular these are outwith the designated Conservation Area and do not carry sufficient weight to justify the proposal in this instance. The proposal does not enhance or maintain the character of the Conservation Area within which it is located, and as such, it is contrary to Policy LP ENV 14. The proposal is also contrary to Policy LP ENV 19 because the proposal does not respect the character of the area within which it is located.

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Appendix 2 – Aerial photograph of Kilmaluaig Conservation Area

Site shown red. Conservation Area boundary in green.

Existing housing within Conservation Area runs north-north-west to south-south-east, parallel with the road.

