

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: 14/00861/PP
Planning Hierarchy: Local
Applicant: Mrs Margaret Muir
Proposal: Installation of ground mounted photovoltaic array (retrospective)
Site Address: The Anchorage, Minard, Inveraray PA32 8YB

DECISION ROUTE

Local Government Scotland Act 1973

(A) THE APPLICATION

- (i) Development Requiring Express Planning Permission**
- Installation of ground mounted photovoltaic array (retrospective)
- (ii) Other specified operations**
- Boundary planting scheme
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(B) RECOMMENDATION:

It is recommended the application be refused for the reasons contained within this report.

(C) CONSULTATIONS:

Transport Scotland – no objection subject to condition – report dated 30.04.14

(D) HISTORY:

None

(E) PUBLICITY:

None required

(F) REPRESENTATIONS:

- (i) Representations received from:**

9 letters of objection have been received from:

Mr James Thompson, Carnus, Minard (email received 23.04.14)
Charles & Jill Walker, Oakbank, Minard (letter received 24.04.14)
Mr Brian Barker, 5 Lower Achagoyle, Minard (email received 29.04.14)
Leonard McNeill, Tigh Beg, Minard (letter received 02.05.14)
Mr James McKinlay, A Choille Bheag, Minard (email received 02.05.14)
Mrs Carolyn Hill, Viewfield Cottage, Minard (email received 07.05.14)
Mrs Fiona MacNicol, Turnalt Farm, Barbreck, Lohcgilphead (letter received 08.05.14)
Mrs Jane Allison-Norman, Malin, Mansefield Road, Minard (email received 12.05.14)
Mr Duncan Allison-Norman, Malin, Mansefield Road, Minard (email received 12.05.14)

(ii) Summary of issues raised:

- They will have an impact on the value of adjacent properties.

Comment: Impact upon the property valuation is not a material planning consideration.

- A hazard and distraction to road users being sited so close to the A83 Trunk Road.

Comment: The Trunk Roads Authority, Transport Scotland have raised no objections to the proposal providing that the panels are orientated so that no reflected glare will affect the trunk road to prevent distracting or dazzling drivers on the trunk road. This requirement from Transport Scotland would be difficult to impose and more importantly to monitor and enforce if required. This comment raises concerns that the panels could raise road safety concerns if not orientated correctly.

- The photovoltaic arrays are inappropriate to the area.
- The length and height of the panels are out of proportion to any other utilitarian structure within the village
- The ground mounted photovoltaic arrays are detrimental visually and out of character with the houses along the front of Minard.
- They are out of scale and character with the neighbouring front road buildings.
- They are out of keeping with the traditional bungalows and houses within Minard

Comment: Officers detailed assessment of the impact of the photovoltaic array upon the settlement and the character and appearance of the area is set out in Appendix A.

- The proposed 1.8m hedge will restrict the view of drivers coming from the driveway and neighbouring driveway which is sited on a bend.

- If this proposal was granted consent concern is raised that precedent would be set.

Comment: It is considered that the granting of this retrospective planning application may set a precedent which might erode the effectiveness of the provisions of policy LP REN 3 – this aspect is addressed in detail in Appendix A.

- The neighbouring property raises concerns that the hedge would not mask the details from their property and that they would be looking down on them

Comment: Impact upon the view from private property is not a material planning consideration.

- Neighbouring properties have restrictions within their deeds on how high they can grow plants along the front of their premises in terms of safety. How tall will the proposed hedge be to block out the view of the photovoltaic array.
- The 1.8m hedge will create an unsightly barrier which will detract from the visual amenity and character of the buildings along the front.

Comment: the planting of a hedge does not require planning permission and accordingly the applicant is entitled to plant the hedging. The issue of restrictions through title deeds is a civil matter and legal advice should be sought.

- Concerns is raised that the owner has already planted the hedge giving a presumption that permission will be granted.

Comment: This is not the case, the applicant has no planning restrictions to prevent a hedge being planted.

- The application clashes with the area as a Regional Scenic Area

Comment: Consideration of the relevant Development Plan policies are set out in Appendix A.

- The bright aluminium and black panel construction should not be erected in any front gardens in the scenic village of Minard

Comment: Officers detailed assessment of the impact of the photovoltaic array upon the settlement and the character and appearance of the area is set out in Appendix A.

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: | No |
| (iv) | A report on the impact of the proposed development eg. Retail impact, transport impact, noise impact, flood risk, drainage impact etc: | No |

(H) PLANNING OBLIGATIONS

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 8 – Landscape and Development Control
STRAT RE 2 – Other forms of (Non-Wind Energy) Renewable Energy Related Development

'Argyll and Bute Local Plan' 2009

LP ENV 1 – Impact on the General Environment
LP ENV 10 – Impact on Areas of Panoramic Quality (APQs)
LP ENV 19 – Development Setting, Layout and Design

LP ENF 1 – Enforcement Action

LP REN 3 – Other (Non-Wind) Forms of Renewable Energy Related Development

Appendix A – Sustainable Siting and Design Principles

- (ii) List of all other material planning considerations taken into account in the assessment of the application, having due regard to Annex A of**

Circular 4/2009.

- Argyll and Bute proposed Local Development Plan (Feb 2013)

(K) Is the proposal a Schedule 2 Development not requiring an Environmental Impact Assessment: No

(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: N

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

This application for retrospective planning permission has been submitted as the result of an enforcement investigation (ref. 14/00022/ENFHS) following a number of complaints in respect of the installation of ground mounted photovoltaic array erected within the front garden ground of The Anchorage, Minard, Inveraray.

The development is comprised of two parallel rows of 8 PV units each supported on a framework which is approximately 8m in length, 1.375m in width and 1.0m high. Each PV units contains a 6 x 10 grid of individual photovoltaic panels. The two rows are approximately 1.2m apart and occupy an area of approx. 36sqm of the 169 sqm garden lawn.

The proposal includes provision for the planting of a 1.8m high hedge along the boundary of the front garden and 1.2m along the side boundaries to mitigate for the visual effect of the development when viewed from surrounding property and the A83 trunk Road; however it is considered that the hedge will not provide an effective visual screen from these locations.

The development is considered to have a significant adverse impact upon the character and appearance of the built environment, local amenity and also as consequence, upon a key element of a valued wider landscape setting; furthermore, the development is considered to be a potential hazard to users of the A83(T) by means of distraction or dazzle.

The current application for retrospective planning permission has been subject to objection from 9 parties.

The development is not considered to satisfy the requirements of policies STRAT RE 2, STRAT DC 8, LP ENV 1, LP ENV 10, LP ENV 19 or LP REN 3 of the Development Plan.

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

(R) Reasons why Planning Permission should be refused:

The development, by virtue of its location, massing and general appearance, is considered to have a significant adverse effect upon the character of the existing built environment, the amenity of the locale, detracts from a key component of a valued wider landscape setting and is a hazard to the safety of traffic on the A83(T) and is therefore considered to be contrary to the relevant provisions of policies STRAT RE 2 and STRAT DC 8 of the Argyll and Bute Structure Plan 2002, and policies LP ENV 1, LP ENV 10, LP ENV 19 and LP REN 3 of the adopted Argyll and Bute Local Plan 2009.

(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: Kim MacKay **Date:** 28th May 2014

Reviewing Officer: Peter Bain **Date:** 30th May 2014

Angus Gilmour
Head of Planning

REASONS FOR REFUSAL RELATIVE TO APPLICATION REF. NO. 14/00861/PP

1. The development, by virtue of its location, massing, prominence and general appearance, is considered to have a significant adverse effect upon the character of the existing built environment, the amenity of the locale, detracts from a key component of a valued wider landscape setting and is a hazard to the safety of traffic on the A83(T) and is therefore considered to be contrary to the relevant provisions of policies STRAT RE 2 and STRAT DC 8 of the Argyll and Bute Structure Plan 2002, and policies LP ENV 1, LP ENV 10, LP ENV 19 and LP REN 3 of the adopted Argyll and Bute Local Plan 2009.

APPENDIX A – RELATIVE TO APPLICATION NUMBER: 14/00861/PP

PLANNING LAND USE AND POLICY ASSESSMENT

A. Settlement Strategy

The application site is located within the 'settlement area' of Minard wherein the provisions of STRAT DC 1 is supportive in principle of up to and including 'medium' scale development. The proposed development relates to the installation of PV panels to serve a domestic property and, whilst there is no formal definition of such development types in the Development Plan, this is accepted to be 'small scale in nature'.

The proposal relates to a non-wind form of renewable energy development and requires to be assessed having due regard to the provisions of policies STRAT RE 2 and LP REN 3.

These provisions set out general support in principle for non-wind renewable energy related development and sets out that proposals will be assessed with regard to their impact on:

i) the key features of the landscape;

It is considered that the development has a localised adverse impact upon the key landscape features within the West Loch Fyne Area of Panoramic Quality – a detailed assessment in this respect is set out within D below.

ii) nature conservation interests;

The development is located within a residential curtilage and does not give rise to adverse impacts upon nature conservation interests.

iii) public safety and residential amenity;

The development is considered to have an adverse effect locally upon visual amenity and road safety – these matters are addressed respectively within C and E below.

iv) access considerations; and

The development does not give rise to any concern in respect of its access arrangements.

v) the distributive capacity of the electricity network.

The development is designed to provide electricity to a domestic premises and as such does not require further assessment in respect of grid capacity.

The provisions of policy LP REN 3 also sets out that proposals should satisfactorily address all other material considerations.

It is noted that the uncontested provisions of the Argyll and Bute proposed Local Development Plan (Feb 2013) are also a material consideration at this time – in this respect it is confirmed that the aims of draft policies LDP DM 1, LDP 6 or SG LDP

REN 3 do not significantly differ from the provisions of the current Development Plan in this respect although the provisions of SG LDP REN 3 sets out that the Council will not support development which would have an unacceptable adverse impact directly, indirectly or cumulatively upon:

i) areas and interests of nature conservation (including local biodiversity, ecology and the water environment);

The development is located within a residential curtilage and does not give rise to adverse impacts upon nature conservation interests.

ii) highly valued landscapes (including Gardens and Designed Landscapes);

It is considered that the development has a localised adverse impact upon the key landscape features within the West Loch Fyne Area of Panoramic Quality – a detailed assessment in this respect is set out within D below.

iii) sites of archaeological interest and their settings;

The development does not affect a site of archaeological interest or the setting of such a site.

iv) settlement character including conservation areas;

The development is considered to have a local adverse impact upon the character of the existing built environment – this matter is subject to detailed assessment in C below.

v) visual, residential and general amenity;

The development is considered to have an adverse effect locally upon visual amenity and road safety – these matters are addressed respectively within C and E below.

vi) telecommunications, transmitting or receiving equipment.

The development is of a scale which would not be expected to have an adverse effect on telecommunications infrastructure.

Having regard to the above, the development is considered to be contrary to the relevant provisions of STRAT RE 2 of the Argyll and Bute Structure Plan 2002 and policy LP REN 3 of the adopted Argyll and Bute Local Plan 2009. Furthermore, the development is also considered to be contrary to the relevant provisions of draft policies LDP 6 and SG LDP REN 3 contained within the emergent Argyll and Bute proposed Local Development Plan (Feb 2013).

B. Location, Nature and Design of Proposed Development

The application seeks retrospective planning permission for the installation of a photovoltaic array which has been erected within the front garden of the dwellinghouse known as The Anchorage, Minard. The subject property is located to the west of and adjoins the A83(T) and is set within a grouping of some 17 detached and semi-detached dwellings which follow a common building line, set back from the A83(T). The PV array has been erected within the front garden ground of The Anchorage, between the A83(T) and the principle (front) elevation of the dwelling.

The development is comprised of two parallel rows of 8 PV units each supported on a framework which is approximately 8m in length, 1.375m in width and 1.0m high. Each PV unit contains a 6 x 10 grid of individual photovoltaic panels. The two rows are approximately 1.2m apart and occupy an area of approx. 36sqm of the 169 sqm garden lawn. The details contained within the application seek to provide for the planting of an evergreen hedgerow some 300mm wide which will be allowed to grow to a height of 1800mm above the adjacent pavement level along the eastern boundary of the property and some 1200mm high along the northern and southern boundaries.

The hedge planting has been implemented earlier this year and in practice comprises of 200 Privet Hedge Plants planted along the eastern and southern boundaries of the property in two staggered rows of 6 per row per metre currently ranging in height from 60-90cm with an estimated potential to grow to 2.4 to 2.7m in three years. Whilst it is acknowledged that in time the hedge will partially obscure the view of the PV array from the A83(T) it is noted that it will take a number of years before this has any meaningful effect leaving the development open to view in the intervening period. It is also noted that third party representations advise that properties in this locality are subject to a title burden restricting the height of boundary treatment – whilst such provisions are a matter of civil law and such is not a material planning consideration, it is noted that the existence of such a heritable burden upon the property would jeopardise the applicant's ability to provide a hedge of the dimensions proposed. Officers have not sought to confirm the existence of any such title burden in light of their recommendation to refuse planning permission, it is however suggested that clarification of this matter would be desirable in the event that members were minded to consider granting planning permission.

The owner of the property has investigated siting the array within other areas of the garden, and on the roof of the property; however the array is too large to be sited within either the side or rear garden, or upon the hipped roof of the dwellinghouse which is of insufficient area to accommodate the full extent of the PV array.

C. Built Environment

Minard is a village which is presently characterised by a frontage of detached (or semi-detached) modest sized dwellinghouses visible across open and undeveloped lawns, and limited curtilage containment to the front facing the A83 trunk road. The installation of this photovoltaic array introduces built development within garden area between the dwelling and the A83(T) which is uncharacteristic of its surrounds. The PV array is of sufficient scale to be highly prominent and, in this particular location, is considered to be an unsightly development resulting in a detrimental visual impact on the character of this settlement which is highly visible from both sea and road.

Whilst the applicant has proposed to mitigate against the perceived adverse visual impact of the PV array with the provision of a substantial boundary hedge it is the consideration of Officers that a significant period of time will require to elapse before a landscape screen would have any meaningful effect, and in any event concern is also expressed that provision of a hedge to the proportions proposed (1.8m high along the roadside) would in itself be out of keeping with the existing townscape character. It is further advised that the proposed hedge would not prevent the development being readily visible from the front facing windows/curtilage of adjacent residential property from where the effect upon the townscape setting and visual

amenity of the locale would also be apparent. The neighbouring properties boundaries consist of small stone built walls and garden fences, however no planning restriction is in place to prevent the applicant planting along her boundary although it is considered that provision of a hedge of the dimensions proposed would be unlikely (given that it would remove the outlook from the subject property) outwith the context of the current application.

Local Plan policy LP ENV 19 – ‘Development Setting, Layout and Design’ states that development shall be sited and positioned so as to pay regard to the context within which it is located. Developments with inappropriate layouts or densities including over-development shall be resisted. LP ENV 19 also insists that the design of developments shall be compatible with the surroundings. Particular attention should be given to massing, form and design details within sensitive locations such as Areas of Panoramic Quality.

Having regard to the above the proposal is contrary to the provisions of policy LP ENV 19 of the adopted Argyll and Bute Local Plan 2009.

D. Landscape Character

The application site is located with the West Loch Fyne Area of Panoramic Quality (APQ) wherein the provisions of policies STRAT DC 8 and LP ENV 10 would seek to resist development which has a significant impact on the character of the landscape. Furthermore it is stipulated that all development within an APQ must be of the highest standards in terms of location, siting, landscaping, boundary treatment and detailing.

Given its small scale, the visual impact of the photovoltaic array is confined to the immediate environs of the Minard settlement area such as is visible from the A83(T). It is however considered that the development is sufficiently out of keeping with the existing townscape setting that it would have potential to set a precedent for the introduction of further built development in the front garden areas of adjacent property and as such, in having a significant effect upon the townscape of Minard, the development is also considered to have a significant adverse effect upon a key landscape component of the wider APQ and as such is considered to be contrary to the relevant provisions of STRAT DC 8 of the Argyll and Bute Structure Plan 2002, and LP ENV 10 of the adopted Argyll and Bute Local Plan 2009.

E. Road Network, Parking and Associated Transport Matters.

The PV array is located within 4m of the carriageway of the A83(T) and site substantially forward of the existing building line, the development is consequently highly visible to traffic travelling north on the A83(T). Concern has been raised that the uncharacteristic appearance within their localised setting and inherent reflective qualities of the PV panels themselves is a distraction/glare to drivers on the northbound carriageway of the A83(T).

Transport Scotland have affirmed such concerns within their consultation comments; whilst they have not objected to the proposal they have advised that if planning permission were to be granted then this would require to include a planning condition stipulating that the panels be orientated in a manner which ensures that no reflected glare will affect the trunk road to avoid distraction or dazzle to drivers. Officers would however raise concern in relation to the competency of such a condition, firstly its terms are not sufficiently specific, and secondly compliance with the terms of the condition may necessitate the orientation of the panels away from direct sunlight to a

degree where they no longer function effectively and thereby negate any benefit of the development to the applicant.

Having regard to the above, the development is considered to represent a hazard to road safety on the A83(T) as a potential distraction and source of glare and as such is considered to be contrary to the relevant provisions of policy LP ENV 1 of the adopted Argyll and Bute Local Plan 2009.