

Argyll and Bute Council
Comhairle Earra-Ghàidheal Agus Bhòid

Customer Services
Executive Director: Douglas Hendry



Kilmory, Lochgilphead, PA31 8RT
Tel: 01546 602127 Fax: 01546 604435
DX 599700 LOCHGILPHEAD

27 March 2017

RECONVENED MEETING OF LOCAL REVIEW BODY

MONDAY 3 APRIL 2017

AT 10.30 AM IN COMMITTEE ROOM 1, KILMORY, LOCHGILPHEAD

I refer to the above and enclose herewith further written submissions requested by the Local Review Body at their meeting on 22 February 2017 along with further comments from Interested Parties and the Applicant.

Douglas Hendry
Executive Director of Customer Services

BUSINESS

3. **CONSIDER NOTICE OF REVIEW REQUEST: PROPOSED ERECTION OF NEW COTTAGE, CROFT 3, CASTLETON, LOCHGILPHEAD, ARGYLL (REF: 16/0002/LRB)**
 - (d) Further Information received from Transport Scotland (Pages 1 - 6)
 - (e) Comments from Interested Parties (Pages 7 - 14)
 - (f) Comments from Applicant (Pages 15 - 18)

ARGYLL AND BUTE LOCAL REVIEW BODY

Councillor Rory Colville Councillor Roderick McCuish
Councillor Alex McNaughton (Chair)

Contact: Fiona McCallum Tel: 01546 604392

This page is intentionally left blank

Your Ref: 16/0002/LRB
Our Ref: NW/211/2013A
9 March 2017

Committee Services, Customer Services
Argyll and Bute Council
Kilmory
Lochgilphead
Argyll

**LOCAL REVIEW BODY
TOWN & COUNTRY PLANNING (Schemes of Delegation and Local Review
Procedure) (SCOTLAND) REGULATION 2013.**

CROFT 3, CASTLETON, LOCHGILPHEAD ARGYLL

REQUEST FOR FURTHER INFORMATION BY WRITTEN SUBMISSIONS

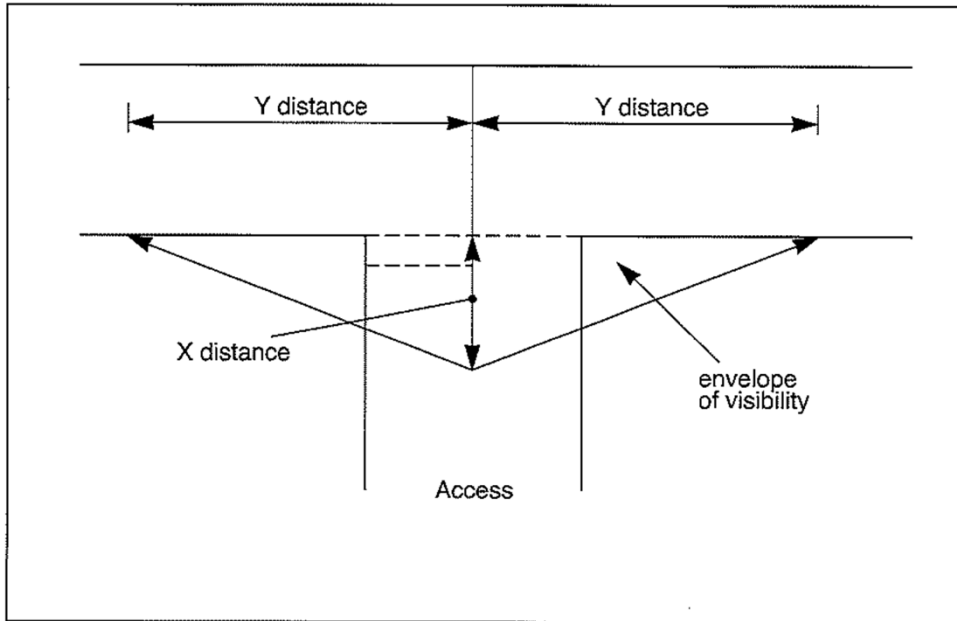
I refer to your minute dated 24 February 2017 regarding the above development and the Local Review Board (LRB) request for additional information as detailed on Form AB7 section 8

'Written information on the suitability or otherwise of the visibility splays at both the eastern and western junctions which would connect the application site to the A83 trunk road.'

The required visibility splays for the accesses located within a speed limit, 60 mph, and subject to the level of use are defined as

The visibility splays are the triangles of ground bounded on 2 sides by the first 4.5 metres of the centreline of the access road (the set back dimension) and the nearside trunk road carriageway measured 215 metres (the y dimension) in both directions from the intersection of the access with the trunk road. In a vertical plane, nothing shall obscure visibility measured from a driver's eye height of between 1.05 metres and 2.00 metres positioned at the set back dimension to an object height of between 0.26 metres and 1.05 metres anywhere along the y dimension.

The above definition of how the visibility splay should be measured and the required set back dimensions 'x' and 'y' are taken from the Design Manual for Roads and Bridges, Volume 6, Section 2, Chapter 2, Part 7 TD 41/95 'Geometric Standards for Direct Access', Paragraph 2.15 to 2.26.



Definition of "X" and "Y" Distances

The visibility splay envelope is the area of ground contained within the triangle of ground formed by the measurements above and illustrated in the above diagram.

Considering each of the accesses serving Castleton, **Access 1 Westerly access**, (Lochgilphead side) **Access 2, Easterly access** and adopting the method of measuring the visibility defined above the visibility splays measurements will be considered in two categories **Actual** and **Achievable**.

Actual visibility is based on the visibility splay within the control of the Roads Authority, Transport Scotland. The visibility splay envelope is wholly contained with the Trunk Road boundary. The Trunk Road boundary includes the carriageway and verge and the extents are normally defined by a post and wire fence or wall

Achievable visibility is the visibility that can be achieved however the visibility splay will cross land outwith the Trunk Road boundary, third party land. In order to maintain the ground contained within the visibility splay envelope but outwith the Trunk Road boundary in perpetuity will require either a legal undertaking between the applicant and the land owner or the applicant to purchase the land.

Access 1 - Westerly access

Actual Visibility	120 m to left	188 m to right
Achievable Visibility	215 m to left	190 m to right

Access 2 - Easterly access

Actual Visibility	134 m to left	9.0 m to right
Achievable Visibility	215 m to left	215 m to right

Whilst the achievable visibility meets current design standards and notwithstanding the applicants requirement to control the land within the visibility splay envelope there may also be physical works required. The scope of these works could extend to general ground clearance and in more extreme cases earthworks. The Maps in Appendix A illustrates the extent of the land outwith the Trunk Road boundary which would require the applicant to gain control over, shaded red.

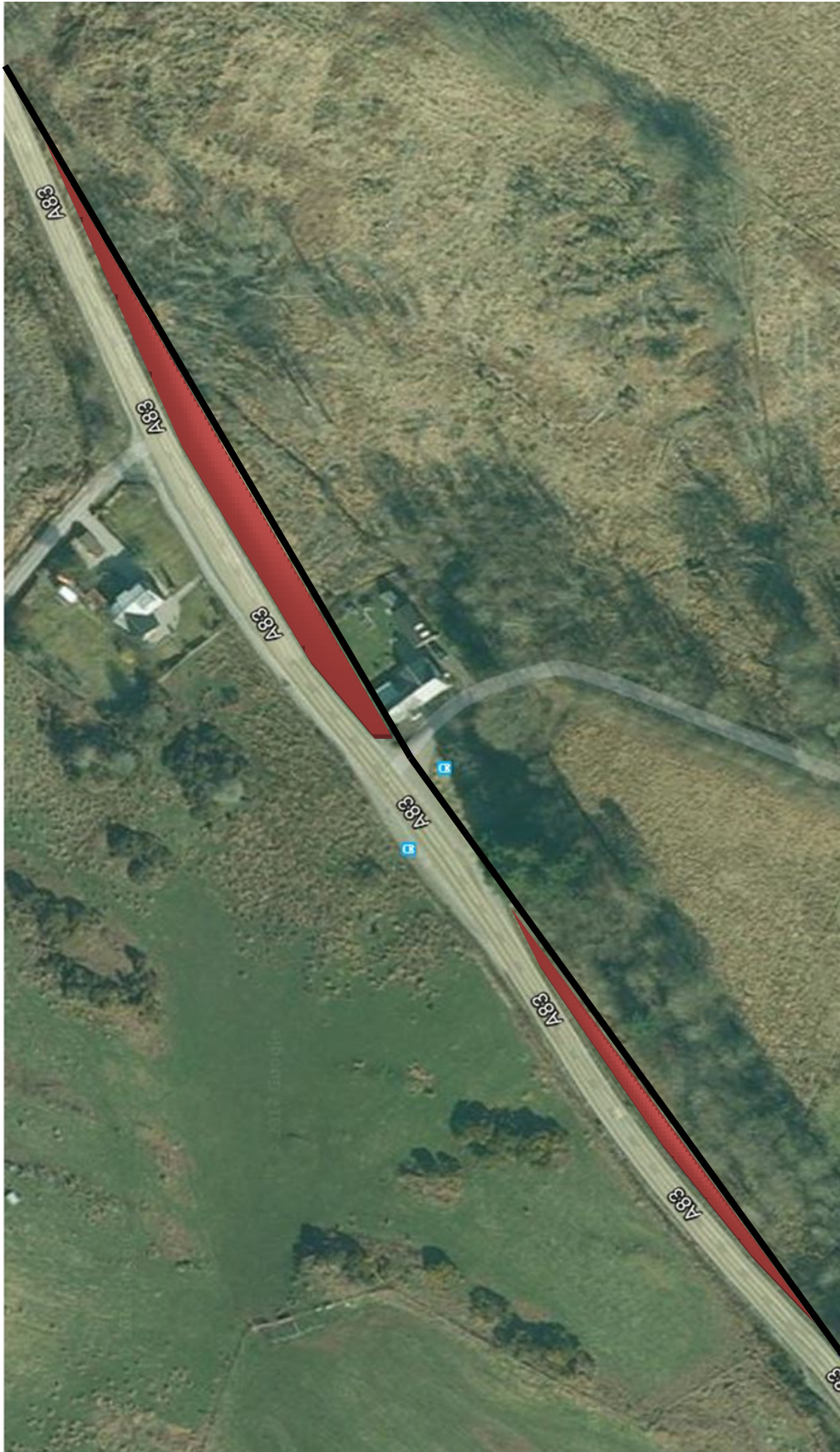
Conclusion

When considering this planning application Transport Scotland originally responded recommending conditional acceptance as it was apparent that the visibility splays were achievable, response dated 22 August 2013. The condition required the applicant to provide evidence to the satisfaction of Argyll and Bute Council that they could provide and maintain the required visibility splays in perpetuity. However Transport Scotland were advised the applicant could not gain control of the land within the visibility splay envelope that was outwith the Trunk Road boundary accordingly Transport Scotland revised the original recommendation to refusal, response dated 27 August 2013.

Andrew Donaldson
Transport Scotland
Development Management
8th Floor, North Wing
Buchanan House
Glasgow
G4 0HF
Tel 0141 272 7388
E-mail andy.donaldson@transport.gov.scot

APPENDIX A

Eastern Junction



Western Junction



Committee Services,
Argyll & Bute Council,
Kilmory,
Lochgilphead,
Argyll PA31 8RT

March 6th, 2017

Application: 13/01582/PP

Comments from Steve Whant and Suzanne Myers, owners of Castleton House

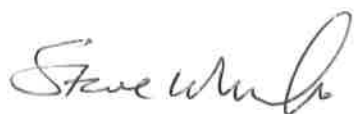
This correspondence relates to Review Reference Number 16/0002/LRB.

Form AB5 requires written submissions concerning "the suitability or otherwise of the visibility splays at both the eastern and western junctions which would connect the application site to the A83 trunk road".

The so called 'Eastern junction' of the A83 does not connect to the proposed site via Castleton House. Castleton House has a private driveway used exclusively for private access. No permissions have been granted for use of this private driveway to third parties.

Consequently, all discussion of this 'Eastern junction' and any proposed route in front of Castleton House is irrelevant to planning application 13/01582/PP.

Yours sincerely



Steve Whant & Suzanne Myers

This page is intentionally left blank

REVIEW REQUEST 16/0002/LRB

ERECTION OF NEW COTTAGE, CROFT 3, CASTLETON, LOCHGILPHEAD

COMMENTS ON MATTERS ARISING ON BEHALF OF PLANNING AND REGULATORY SERVICES

Officers have had sight of the submission dated 9th March 2017 provided by Andrew Donaldson on behalf of Transport Scotland which further details the position of the Trunk Roads Authority in its capacity as a statutory consultee in this case, given that access to the site is required to be taken from the A83(T).

The submission documents actual and achievable visibility and has regard to the extent to which the applicant is in a position to implement and maintain splays to meet trunk roads standards in order to ensure that what is currently be a sub-standard means of access is capable of being brought up to the required standard to serve the additional development proposed. It concludes that, in the absence of the applicant having control over the land required for improved visibility purposes, intensification of use of the access would not be in the interests of road safety having regard to traffic speed along the trunk road. The position adopted by Transport Scotland is supported by Planning and Regulatory Services.

The appellant indicates that there are two potential means of access to the site, referred to by them in their submission as the 'Western Access Route' and the 'Eastern Access Route' and submits that either means of access could be used in the event that one were to prove unsuitable. Of the two routes, it would appear that the 'Eastern Access Route' falls under the control of third parties who have as part of the appeal process indicated their unwillingness for this route to be used in connection with the proposed development. Indeed, it appears that gates are in use to prevent unauthorised at Castleton House and at the link route between the 'Western Access Route' and the 'Eastern Access Route' (annotated 'connection between the eastern and western access routes' in the appellant's submission). In the latter case, the connection appears to have recently been physically stopped-up by means of the gate being padlocked and the access blocked by a mound of stone.

The position of Planning and Regulatory Services is that the most attractive route from the A83(T) to the site would be likely to be the 'Western Access Route', given that this avoids the environs of Castleton House and provides the shortest route to the nearest settlement of Lochgilphead. This route would only prove suitable to serve additional development were the developer able to improve visibility at the Trunk Road junction to satisfy Transport Scotland's requirements, and to provide passing places along this single track route, to satisfy the Council's Roads Engineers; neither of which appear deliverable using land in the control of, or available to, the appellant. Although given what third parties have had to say there is at best doubt over whether the appellant has rights in order to be able to access the site via the 'Eastern Access Route', even if this were possible, the option would remain for prospective residents, visitors and delivery drivers to choose use either access, given that it is not open to the applicant to close-off one route in favour of the other. Accordingly, an ability to take access via the 'Eastern Access Route' would not overcome the likely intensification of use of the 'Western Access Route' and the shortcomings of that in road safety terms.

Planning and Regulatory Services position remains that there is a sub-standard access regime serving the appeal site, regardless of whether either or both of the accesses were to be used, and that these accesses are not controlled by, or are capable of being improved by, the appellant to a point where road safety can be assured in the event that the appeal were to be

allowed. Planning and Regulatory Services therefore maintains the position adopted in the second and third reasons which was given for the refusal of this application.

In terms of the first reason for refusal, Planning and Regulatory Services maintains its position that the development of the site would not satisfy the settlement strategy adopted by the Argyll and Bute Local Development Plan 2015. The status of the development plan in decision-making is set down by statute. Section 37 of the Town & Country Planning Act 1997 (as amended) requires that the determination of a planning application shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations. Section 25 of the same Act establishes the primacy of the development plan in the determination of planning applications, and requires that determination shall be in accordance with the plan unless material considerations indicate otherwise. The key issue in the determination of this appeal is therefore whether the proposal may be regarded as being consistent with development plan policy, and if not, whether there are other material considerations of such weight as to warrant a development plan departure.

Section J of the Report of Handling leading to the refusal of the appeal proposal cited those Policies contained within the LDP Written Statement and within associated Supplementary Guidance which were relevant to the determination of that application. Notwithstanding the imperative to consider the effect of the development plan policy 'in the round' the most influential policies, given the circumstances of this case, are:

Policy LDP DM1 Development within the Development Management Zones – which establishes the overall settlement policy applicable to all types of development;

SG LDP HOU 1 General Housing Development – which establishes the policy response to housing proposals in particular, having regard to the effect of LDP DM 1;

SG LDP TRAN 4 New & Existing, Public Roads & Private Access Regimes and SG LDP TRAN 5 Off-site Highway Improvements – which establish access requirements in the interests of road safety.

Reason for Refusal 1 of the application correctly cited the settlement strategy expressed in Policy LDP DM1 identifying the proposal as 'small scale' development in the designated 'countryside' zone. It neglected however to state that in terms of 'small scale' housing proposals it is necessary to consider the effect of LDP DM 1 in combination with SG LDP HOU 1, which gives further expression as to how LDP policy 'in the round' is to take effect where residential proposals are being considered. Given that this was not made explicit as it should have been in the stated reason for refusal, it will be helpful for the Review Body to be apprised of the effect of SG LDP HOU 1.

Policy SG LDP HOU 1 dictates the policy response to all types of housing proposal. It operates in conjunction with Policy LDP DM1 which establishes the various development management zones. In considering a housing application it is necessary to have regard to both of these policies as neither will provide an adequate policy response in isolation. Policy DM 1 establishes that the development management zones and determines that the appeal site lies within the 'countryside zone' where encouragement will be given to 'small scale' developments on appropriate sites in specific circumstances cited in the policy. SG LDP HOU 1 gives further expression as to what ought to be regarded as an 'appropriate site', by stating that housing development for which there is a presumption in favour will be supported '*unless there is an unacceptable environmental, servicing or access impact*'. It also defines the scales of housing development for the purposes of LDP DM 1 with 'small scale' being defined as being up to 5 dwelling units.

Importantly, for the purposes of housing development proposals, SG LDP HOU 1 also establishes those circumstances where the Development Plan presumes against development. In the rural development management zones this establishes a presumption against 'large or medium scale' housing development, but also 'small scale' development in '*open/undeveloped areas and non-croft land*' in the 'countryside' zone (other than where a house is intended to serve a bareland croft, or where there is an accepted locational/operational need).

The step by step Development Plan response to appeal proposal, having regard to the combined effect of Policy LDP DM 1 in association with SG LDP HOU 1, is therefore as follows:

- 1) The appeal site is located in the LDP defined 'countryside' zone having regard to the various development management zones defined in LDP DM 1.
- 2) As a single dwelling it constitutes a 'small scale' development proposal in the context of the scales of housing development set out in SG LDP HOU 1.
- 3) Within the 'countryside' zone LDP DM1 lends particular support to all types of proposals which constitute infill development, rounding-off, redevelopment or change of use of existing buildings. The common thread running through these is that development opportunities in the countryside may be afforded by the presence of existing built development; by enabling rebuilding or alternative use, or by association between a proposal and existing buildings. The glossary to the LDP provides definitions of these terms to assist in their application.
- 4) As a corollary to this SG LDP HOU 1 goes on to establish circumstances where there will be a presumption against housing development in the 'countryside' zone including 'small scale' development '*in open/undeveloped areas and non-croft land*', other than where there is a demonstrable exceptional case underpinned by a locational/operational need.
- 5) In this case the proposal does not benefit from any of the encouraged types of development cited in LDP DM 1, in so far as:
 - It does not constitute 'infill development' in terms of the LDP glossary definition: i.e. it is not '*new development positioned 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*'. This circumstance arises where there is an opportunity to infill a gap between buildings where the presence of those buildings would mitigate the effect of development to a point where it would be less than if the development occupied an open and otherwise undeveloped location.
 - It does not constitute rounding-off as defined: i.e. it is not '*new development positioned largely between substantial building(s) on one side and a substantial ground or natural feature on the other side and arranged so that the local pattern of development terminates at this point*'. This provides the opportunity for an existing building and a significant physical feature (such as a river) to contain a proposed development site, but no such circumstance pertains in this case.

- It does not constitute 'redevelopment' as defined to include '*substantial demolitions*'. It is not therefore sufficient to assert that a site may have been occupied by a building at some point in the past. The building must exist to afford a redevelopment opportunity.
 - It does not constitute a 'change of use' as there is no existing building on the site.
- 6) Having established that the proposal is not afforded particular encouragement by LDP DM 1 it is necessary to go on to consider whether the particular policy response for housing established by SG LDP HOU 1 lends weight to the proposal. This establishes a particular policy presumption against 'small scale' housing development in '*open/undeveloped areas on non croft land in the countryside zone*', other than where a locational need has been demonstrated successfully (for agricultural or croft land management purposes for example). Whilst LDP DM 1 therefore provides encouragement for 'countryside zone' development related in some way to existing buildings, on the other hand SG LDP HOU 1 presumes against development of open/undeveloped land.
- 7) In assessing the combined effect of LDP DM 1 and SG LDP HOU 1 it is necessary to consider whether the appeal proposal might properly be regarded as 'infill' development (for which there is encouragement via LDP DM 1) or alternatively, whether it amounts to an 'open/undeveloped area' (within which SG LDP HOU 1 establishes a presumption against). None of the other cited circumstances cited in LDP DM 1 could credibly apply in this case. In terms of what could constitute a legitimate 'infill' development opportunity Planning and Regulatory Services relies upon its conclusions reached in the Report of Handing on the application. The separation between the Castleton House boathouse on one side of the site and the cottage on the other is of the order of 168 metres and consequently the intervening land cannot be reasonably regarded as a legitimate 'infill' opportunity. It should more properly be regarded as an 'open/undeveloped area' between these widely separated structures, in which case the presumption against development established by Policy SG LDP HOU 1 applies.
- 8) At the conclusion of this assessment is necessary to consider whether there is any exceptional case supporting this development in terms of land management or any other locational/operational need, or indeed any other circumstance which might indicate that the provisions of the Development Plan ought not to prevail in this case. In the absence of any case having been made for this development founded around a need for a dwelling to serve a purpose related to this particular location, it has to be concluded that there are no exceptional circumstances weighing in favour of the appeal proposal.
- 9) Finally, notwithstanding the interpretation and effect of LDP DM 1 and SG LDP HOU 1 in terms of the settlement strategy and which might be properly regarded as 'infill' development, SG LDP HOU 1 makes it clear that '*housing development are also subject to consistency with all other policies and associated SG of the Local Development Plan*'. In this case the shortcomings of the access regime serving the site and the inability of the appellant to deliver improvements commensurate with the scale of development would point to the need to dismiss the appeal, regardless of settlement strategy and housing policy considerations.

In conclusion the position of Planning and Regulatory Services remains that the appeal proposal does not satisfy the settlement strategy and the associated housing policy of the Local Development Plan as given expression by combined effect of LDP DM 1 and SG LDP HOU 1, nor does the access regime satisfy the requirements of the Council's Roads Engineers or Transport Scotland leading a failure to comply with SG LDP TRAN 4 and SG LDP TRAN 5.

Richard Kerr
Principal Planning Officer

15th March 2017

This page is intentionally left blank

Local Review Reference : 16/0002/LRB (Re-Convened LRB)

Erection of dwellinghouse, installation of septic tank and formation of vehicular access
Application Number: 13/01582/PP

Appellant Response to Council, Transport Scotland and Objector Response

1 **Comments on "Matters Arising on behalf of Planning and Regulatory" Services**

1.1 **Access**

1.1.1 The survey carried out by Transport Scotland in March 2017 is supportive of the Appellant's application as it confirmed that the required standard of visibility is achievable at the Eastern Junction, subject to the visibility splay (which crosses third party land) being improved and maintained.

1.1.2 The Appellant had previously not had confirmation that third party land rights were required to improve the visibility splays at the Eastern Junction; but the Appellant intends to negotiate rights with the Landowners to make the required improvements to the visibility at the Eastern Junction. Notwithstanding this, any concern that the Appellant currently does not have adequate rights to improve the visibility splay at the Eastern Junction is not a material consideration in planning terms which should be used by the LRB to refuse permission for a development which is acceptable in planning terms.

1.1.3 In addition, the Appellant invites the LRB to consider a previous planning application which was granted subject to a condition that the visibility at the Eastern Junction be improved and maintained. The Appellant refers to 06/02657/DET which contains a condition that the Eastern Junction be improved; and to correspondence which is included as part of that Application. In that application, a letter from the Applicant's agents states that the Applicants own "the ground either side of the access apart from the adjacent house plot to the north". The existence of full land rights to improve the junction was not therefore a material consideration which justified refusal of the development. The Appellant submits that this approach should be followed as regards the current Appeal.

1.1.4 The response by Planning and Regulatory Services also makes reference to the Appellant's right to use the full extent of the Eastern Access Route. The suggestion in the Planning and Regulatory Services Response that access is to be taken through a locked gate at Castleton House is incorrect. In addition, the link route between the Eastern and the Western Access Route (referred to in the Planning and Regulatory Services Response) has not recently been physically stopped up by a mound of stone; as the Appellant understands that this stone has been placed there temporarily as part of improvements to the road. Notwithstanding this the Appellant reiterates that any concern that the Appellant does not have adequate rights to use any part of the road leading to the development is not a material consideration in planning terms which should be used by the LRB to refuse permission for a development which is otherwise acceptable in planning terms.

- 1.1.5 The Appellant notes the concern of Planning and Regulatory Services that the Western Access Route may be used by residents, visitors or delivery drivers. Whilst the Appellant maintains that a lack of adequate rights to improve the junctions or roads leading to the development is not a reason which should be used to refuse permission; the Appellant considers that the concern that the Western Access Route could be used to access the development can be addressed by a condition stating that access to the development is to be taken via the Eastern Access Route.

1.2 Planning Policy

- 1.2.1 The Planning and Regulatory Services Response maintains its position that the development is not an encouraged type of development in terms of LDP DM1; SG LDP TRAN 4 and 5; and introduces a further policy against which the development should be assessed (SG LDP HOU 1).

The Appellant's position in relation to the four policies is as follows :-

1.2.2 LDP DM1

- 1.2.2.1 This encourages development in the Countryside Zone where it constitutes appropriate infill, rounding-off and redevelopment. The Appellant does not accept the interpretation of these definitions included within the Planning and Regulatory Services Response.

- 1.2.2.2 Regarding the first encouraged type of development (infill), the proposal is for development of a single dwellinghouse which sits in close proximity to two other existing dwellinghouses; as well as a surfaced road and a boathouse. The definition of "infill" as included in the Planning and Regulatory Services Response refers to infill arising where "there is an opportunity to infill a gap between buildings where the presence of those buildings would mitigate the effect of the development to a point where it would be less than if the development occupied an open and otherwise undeveloped location." Notwithstanding the fact that the dwellinghouse in this case is not to be located in an otherwise undeveloped location; and thus there is no requirement to mitigate the effect on an undeveloped area; the proposed house is to be situated close to the road and the boathouse, and a short distance from the two existing houses. The introduction of a new house therefore represents functional infill; and the policy does not establish any specific distance to support the assertion that a gap of 168 metres cannot be infill.

- 1.2.2.3 The development is also supported by the second type of encouraged development (rounding off). The

Appellant accepts that rounding-off is less of a relevant consideration than infill, but this consideration is still supportive of the development. The Planning and Regulatory Services Response states that rounding off should involve " new development positioned between substantial buildings one on side and a substantial ground or natural feature on the other side". The development is to be situated between two houses on the west ; and a road and boathouse to the east. The Appellant submits that two houses satisfy the "substantial buildings" criteria, and the road referred to latterly constitutes a ground feature which "rounds off" the development on the eastern side. Taking these matters into consideration, the proposal can clearly be considered rounding-off.

1.2.2.4 The Appellant maintains that the proposal satisfies the part of policy DM1 which supports redevelopment as the site has previously accommodated built development.

1.2.3 **SG LDP HOU 1**

1.2.3.1 The Planning and Regulatory Services Response contains a summary of SG LDP HOU 1, which policy establishes a presumption against "small-scale" housing development in "open/undeveloped areas on non croft land in the countryside zone."

1.2.3.2 Whilst this has not previously been referred to in the Planning Authority's Reasons for Refusal, the Appellant submits that properly construed, this policy is also supportive of the development.

1.2.3.3 The Appellant submits that the land surrounding the proposed development site cannot be considered "open" or "undeveloped" given that there are two houses, a boathouse and a road within close proximity. There is therefore not a presumption against development in this location.

1.2.3.4 In addition, the policy states that the "presumption in favour of new housing development is restricted to change of use of existing buildings or small-scale development in close proximity to existing buildings on infill, rounding-off and redevelopment sites." As set out above, the development meets both the criteria of "infill" and "rounding off", and is in close proximity to existing buildings; and therefore meets the narrow circumstances in which there is a presumption in favour of development in terms of SG LDP HOU 1.

1.2.4 **SG LDP TRAN 4 and 5**

1.2.4.1 These policies relate to the whether the proposed means of access to the development are fit for use.

The Appellant maintains their previous position that it would be unreasonable to conclude that the roads leading to the development could not accommodate traffic from one additional development; and that any concern that the Appellant does not currently have land rights to improve the Eastern access route is not a material consideration in planning terms.

2 Appellant Comments on Transport Scotland Further Information

2.1 The Transport Scotland response highlights that the requisite visibility splays are achievable at the Eastern Junction. Any concern that the Appellant does not have adequate rights to improve the junction is not a material consideration in planning terms.

3 Appellant Comments on Steve Whant & Suzannne Myers Response

3.1 The Appellant is not proposing to take access via the private driveway at Castleton House, nor take access through land owned by the Objectors.

3.2 In any event, ownership and land rights are not a material consideration which should be used by the LRB to refuse an application for a development which is acceptable in planning terms.