

Public Document Pack

Argyll and Bute Council
Comhairle Earra-Ghàidheal Agus Bhòid

Executive Director: Douglas Hendry



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

10 September 2020

SUPPLEMENTARY PACK

ARGYLL AND BUTE LOCAL REVIEW BODY - SKYPE on MONDAY, 14 SEPTEMBER 2020 at 9:00 AM

Please find enclosed herewith a copy of the Agenda Pack and subsequent Minute from the First Calling held on 18 March 2020, for ease of reference.

Douglas Hendry
Executive Director

ADDITIONAL ITEM(S) OR ITEM(S) TO FOLLOW

- 5. AGENDA PACK AND MINUTE FROM FIRST CALLING (Pages 3 - 278)**

Argyll and Bute Local Review Body

Councillor David Kinniburgh (Chair) Councillor Sandy Taylor
Councillor Richard Trail

Contact: Lynsey Innis, Senior Committee Assistant; Tel: 01546 604338

This page is intentionally left blank



Argyll and Bute Council
Comhairle Earra-Ghàidheal Agus Bhòid

Executive Director: Douglas Hendry

Kilmory, Lochgilphead, PA31 8RT
Tel: 01546 602127 Fax: 01546 604435
DX 599700 LOCHGILPHEAD
11 March 2020

NOTICE OF MEETING

A meeting of the **ARGYLL AND BUTE LOCAL REVIEW BODY** will be held in the **COUNCIL CHAMBERS, KILMORY, LOCHGILPHEAD** on **WEDNESDAY, 18 MARCH 2020** at **10:00 AM**, which you are requested to attend.

Douglas Hendry
Executive Director

BUSINESS

- 1. APOLOGIES FOR ABSENCE**
- 2. DECLARATIONS OF INTEREST (IF ANY)**
- 3. CONSIDER NOTICE OF REVIEW REQUEST: PLOT 1, LAND EAST OF CALA NA SITHE, OBAN (20/0002/LRB)**
 - (a) Notice of Review and Supporting Documentation (Pages 3 - 72)
 - (b) Comments from Interested Parties (Pages 73 - 88)
 - (c) Comments from Applicant (Pages 89 - 138)
- 4. CONSIDER NOTICE OF REVIEW REQUEST: PLOT 2, LAND EAST OF CALA NA SITHE, OBAN (20/0003/LRB)**
 - (a) Notice of Review and Supporting Documentation (Pages 139 - 206)
 - (b) Comments from Interested Parties (Pages 207 - 222)
 - (c) Comments from Applicant (Pages 223 - 272)

ARGYLL AND BUTE LOCAL REVIEW BODY

Councillor David Kinniburgh (Chair) Councillor Sandy Taylor
Councillor Richard Trail

Contact: Lynsey Innis, Senior Committee Assistant Tel:- 01546 604338



Central Validation Team at Argyll and Bute Council 1A Manse Brae Lochgilphead PA31 8RD Tel: 01546 605518 Email: planning.hq@argyll-bute.gov.uk

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100194905-003

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

Applicant or Agent Details

Are you an applicant or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

Applicant Agent

Agent Details

Please enter Agent details

Company/Organisation:

Ref. Number: You must enter a Building Name or Number, or both: *

First Name: * Building Name:

Last Name: * Building Number:

Telephone Number: * Address 1 (Street): *

Extension Number: Address 2:

Mobile Number: Town/City: *

Fax Number: Country: *

Postcode: *

Email Address: *

Is the applicant an individual or an organisation/corporate entity? *

Individual Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title:	<input type="text"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text"/>	Building Name:	<input type="text" value="c/o DM Hall"/>
First Name: *	<input type="text"/>	Building Number:	<input type="text"/>
Last Name: *	<input type="text"/>	Address 1 (Street): *	<input type="text" value="The Mill"/>
Company/Organisation	<input type="text" value="Petard Investments"/>	Address 2:	<input type="text" value="Station Road"/>
Telephone Number: *	<input type="text"/>	Town/City: *	<input type="text" value="Bridge Of Allan"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="Scotland"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="FK9 4JS"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text" value="duncan.clow@dmhbl.co.uk"/>		

Site Address Details

Planning Authority:

Full postal address of the site (including postcode where available):

Address 1:

Address 2:

Address 3:

Address 4:

Address 5:

Town/City/Settlement:

Post Code:

Please identify/describe the location of the site or sites

Northing	<input type="text" value="723881"/>	Easting	<input type="text" value="186920"/>
----------	-------------------------------------	---------	-------------------------------------

Description of Proposal

Please provide a description of your proposal to which your review relates. The description should be the same as given in the application form, or as amended with the agreement of the planning authority: *
(Max 500 characters)

site for erection of dwelling house and garage

Type of Application

What type of application did you submit to the planning authority? *

- Application for planning permission (including householder application but excluding application to work minerals).
- Application for planning permission in principle.
- Further application.
- Application for approval of matters specified in conditions.

What does your review relate to? *

- Refusal Notice.
- Grant of permission with Conditions imposed.
- No decision reached within the prescribed period (two months after validation date or any agreed extension) – deemed refusal.

Statement of reasons for seeking review

You must state in full, why you are seeking a review of the planning authority's decision (or failure to make a decision). Your statement must set out all matters you consider require to be taken into account in determining your review. If necessary this can be provided as a separate document in the 'Supporting Documents' section: * (Max 500 characters)

Note: you are unlikely to have a further opportunity to add to your statement of appeal at a later date, so it is essential that you produce all of the information you want the decision-maker to take into account.

You should not however raise any new matter which was not before the planning authority at the time it decided your application (or at the time expiry of the period of determination), unless you can demonstrate that the new matter could not have been raised before that time or that it not being raised before that time is a consequence of exceptional circumstances.

see local review statement

Have you raised any matters which were not before the appointed officer at the time the Determination on your application was made? *

Yes No

If yes, you should explain in the box below, why you are raising the new matter, why it was not raised with the appointed officer before your application was determined and why you consider it should be considered in your review: * (Max 500 characters)

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review. You can attach these documents electronically later in the process: * (Max 500 characters)

planning application as submitted and local review statement.

Application Details

Please provide details of the application and decision.

What is the application reference number? *

19/02314/PPP

What date was the application submitted to the planning authority? *

05/11/2019

What date was the decision issued by the planning authority? *

09/01/2020

Review Procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Can this review continue to a conclusion, in your opinion, based on a review of the relevant information provided by yourself and other parties only, without any further procedures? For example, written submission, hearing session, site inspection. *

Yes No

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may select more than one option if you wish the review to be a combination of procedures.

Please select a further procedure *

By means of inspection of the land to which the review relates

Please explain in detail in your own words why this further procedure is required and the matters set out in your statement of appeal it will deal with? (Max 500 characters)

as the visual and landscape impact of the proposed dwellings is the critical issue. councillors are requested to undertake a site visit.

In the event that the Local Review Body appointed to consider your application decides to inspect the site, in your opinion:

Can the site be clearly seen from a road or public land? *

Yes No

Is it possible for the site to be accessed safely and without barriers to entry? *

Yes No

If there are reasons why you think the local Review Body would be unable to undertake an unaccompanied site inspection, please explain here. (Max 500 characters)

the land is private and fenced

Checklist – Application for Notice of Review

Please complete the following checklist to make sure you have provided all the necessary information in support of your appeal. Failure to submit all this information may result in your appeal being deemed invalid.

Have you provided the name and address of the applicant?. *

Yes No

Have you provided the date and reference number of the application which is the subject of this review? *

Yes No

If you are the agent, acting on behalf of the applicant, have you provided details of your name and address and indicated whether any notice or correspondence required in connection with the review should be sent to you or the applicant? *

Yes No N/A

Have you provided a statement setting out your reasons for requiring a review and by what procedure (or combination of procedures) you wish the review to be conducted? *

Yes No

Note: You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. You may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

Please attach a copy of all documents, material and evidence which you intend to rely on (e.g. plans and Drawings) which are now the subject of this review *

Yes No

Note: Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice (if any) from the earlier consent.

Declare – Notice of Review

I/We the applicant/agent certify that this is an application for review on the grounds stated.

Declaration Name: Mr Duncan Clow

Declaration Date: 27/01/2020

This page is intentionally left blank

31 October 2019

Argyll and Bute Council
 Planning, Housing & Regulatory Services
 Central Valuation Team
 1a Manse Brae
 Lochgilphead
 Argyll
 PA31 8RD

Our Ref.: PH

Dear Sirs

Land East of Cal Na Sithe, Kilmore, Argyll

DM Hall has been instructed by Petard Investments to re-submit two Applications for Planning Permission in Principle on land east of Cal Na Sithe, Kilmore, Argyll. The previous Application documents are being re-submitted with these fresh Applications.

The Applications are being re-submitted within 12 months of the refusal of the previous Applications, which were determined on 18 December 2018. They are, therefore, being submitted as exempt from further planning fees, although it is accepted that they may be subject to advertisement fees.

The previous Applications were refused for one reason, that the sites were in a designated 'Countryside Zone' within the adopted Argyll and Bute Local Development Plan and the development of the sites was seen as not conforming to Policy LDP DM1. It was also determined that the proposals would be harmful to the Area of Panoramic Landscape Quality (APQ) notwithstanding the submission of a Landscape and Visual Appraisal by a Chartered Landscape Architect that concluded otherwise.

Taking each of these in turn, then the policy position in relation to new housing in Countryside Areas is changing with the recent approval of the Local Development Plan 2 Proposed Plan, which is now the settled view of the Council. This Plan has changed the way in which proposals will be considered going forward and, although it still needs to be consulted upon and examined, it does already carry weight as a material consideration.

The new Policy 02A, which applies to Countryside Areas, is now permissive, it would appear on first reading, of dwellings being supported on potentially any site in such areas provided the proposal is supported by a '*Landscape and Visual Impact Assessment*' that demonstrates that '*the proposal can be successfully integrated into its landscape setting.*'



DM Hall LLP, a Limited Liability Partnership registered in Scotland with Registration number S0301144
 Registered office, 17 Corstorphine Road, Edinburgh, EH12 6DD.

A full list of members can be obtained from the Head Office, 17 Corstorphine Road, Edinburgh, EH12 6DD. Tel: 0131 477 6000. Fax: 0131 477 6016.

Aberdeen, Ayr, Bridge of Allan, Cumbernauld, Cupar, Dumfries, Dundee, Dunfermline, Edinburgh, Elgin, Falkirk, Galashiels, Glasgow (North and South), Hamilton, Inverness, Inverurie, Irvine, Kirkcaldy, Livingston, Musselburgh, Oban, Paisley, Perth, Peterhead, Stirling.

The Mill
 Bridge of Allan,
 Stirling FK9 4JS
 DX556210 Bridge of Allan
 T: 01786 833800
 F: 01786 834382
 www.dmhbl.co.uk

Regulated by RICS

The first part of that altered policy is met by the fact that a Landscape and Visual Appraisal has already been prepared for these sites and the second by the fact that this document concludes that the proposed dwellings can successfully integrate with the landscape setting and will not have any detrimental visual impacts.

Turning to the second issue, the potential impact on the APQ, it is appreciated that the case officer previously concluded differently to the Chartered Landscape Architect. However, given the changed policy environment, it is hoped that this can be reflected upon and re-considered. If additional information would help with this reflection, then this can be prepared, but only if these Applications are likely to be considered favourably.

I trust that you have everything necessary to validate these Applications, but please contact me if you require anything further to assist with this.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Paul Houghton', with a long, sweeping horizontal stroke extending to the right.

Paul Houghton
Director and Head of Planning for DM Hall

Municipal Buildings Albany Street Oban PA34 4AW

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED)
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE)
(SCOTLAND) REGULATIONS 2013

REFUSAL OF PLANNING PERMISSION IN PRINCIPLE

REFERENCE NUMBER: 19/02314/PPP


Petard Investments
DM Hall
The Mill
Station Road
Bridge of Allan
United Kingdom
FK9 4JS

I refer to your application dated 5th November 2019 for planning permission in principle under the above mentioned Act and Regulations in respect of the following development:

**Site for the erection of dwellinghouse and garage at Plot 1 Land East Of Cala Na Sithe
Kilmore Argyll And Bute**

Argyll and Bute Council in exercise of their powers under the above mentioned Act and Regulations hereby refuse planning permission in principle for the above development for the **reason(s) contained in the attached appendix.**

Dated: 9 January 2020



Fergus Murray



Head of Development and Economic Growth

REASONS FOR REFUSAL RELATIVE TO APPLICATION REFERENCE 19/02314/PPP

1. The site the subject of this application lies within a wider area designated as 'Countryside Zone' within the adopted Local Development Plan and is a prominent area of undulating rough grazing elevated above the neighbouring property 'Cala na Sithe' which forms the western boundary of the site and is clearly visible from the A816 public road to the north. The site does not represent an appropriate opportunity for infill, rounding-off, redevelopment or change of use of building development within the Countryside Zone as required by Policy LDP DM 1 of the adopted Local Development Plan and there has been no claim of any 'exceptional case' for the development based upon any locational or operational site requirement.

The application site is also situated within the North West Argyll (Coast) Area of Panoramic Quality (APQ) where consideration has to be given to Policy LDP DM 3 and SG LDP ENV 13 of the adopted Local Development Plan, which seek to resist development in, or adjacent to, an APQ where its scale, location or design will have a significant adverse impact on the character of the landscape.

The proposed development is therefore contrary to the established and adopted sustainable development aims of the Council as expressed within key planning policy LDP STRAT 1 and to the established and adopted settlement strategy as espoused within key planning policy LDP DM 1. It is not considered that the proposed development would constitute an appropriate departure to these key planning policies.

In addition to the above, and notwithstanding the Applicant's submitted landscape assessment study, it is considered that the proposed development would introduce an inappropriate and additional built development into an area of sensitive landscape quality, recognised by its inclusion within a wider Area of Panoramic Landscape Quality (APQ), and will have an unacceptable and materially harmful impact upon the character and quality of the APQ and the wider landscape, contrary to the established settlement pattern.

The proposal is therefore considered to be contrary to the provisions of Policies STRAT 1, LDP DM 1, LDP 3, LDP 8, LDP 9 and Supplementary Guidance SG 2, SG LDP HOU 1, SG LDP ENV 13 and SG LDP ENV 14 of the adopted 'Argyll and Bute Local Development Plan' 2015.

NOTES TO APPLICANT (1) RELATIVE TO APPLICATION NUMBER 19/02314/PPP

1. If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under Section 43A of the Town and Country Planning (Scotland) Act 1997 (as amended) within three months from the date of this notice. A Notice of Review request must be submitted on an official form which can be obtained by contacting The Local Review Body, Committee Services, Argyll and Bute Council, Kilmory, Lochgilphead, PA31 8RT or by email to localreviewprocess@argyll-bute.gov.uk
2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state, and it cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the landowner's interest in the land, in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997 (as amended).

APPENDIX TO DECISION REFUSAL NOTICE

Appendix relative to application **19/02314/PP**

(A) Has the application required an obligation under Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended).

No

(B) 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

(C) The reason why planning permission in principle has been refused.

See reason for refusal set out above.





Design Statement

Site east of Cala Na Sithe, Kilmore, Oban, Argyll And Bute, PA34 4QT

Introduction

This Design Statement has been prepared based upon guidance to be found in Argyll and Bute's Design Statements – Guidance Note, the Argyll and Bute Local Plan (ABLP) and Planning Advice Note 68: Design Statements.

The Site

The Application Site is located above the southern side of Loch Feochan. It is located towards the eastern end of the loch, and forms part of a plateau of semi-improved grassland, located on an elevated terrace above two separate clusters of dwellings. The nearest properties are Cala Na Sithe to the west and Dalmarra to the north west of that.

The Application Site will take access from the existing track that serves Cala Na Sithe and Dalmarra, which will be extended to the north of Cala Na Sithe to serve the two plots.

The Application Site is reasonably level and dwellings could be built here without too much change to the natural topography.

The site is not subject to any biodiversity (SiteLink) or cultural heritage (PastMap) designations. It is not within the SEPA indicative flood plain.

Layout and Design

The exact details for the Application Site have yet to be decided upon, but the intention is to build traditionally designed dwellings, which will suit the local vernacular and be to the latest sustainable standards.

The final designs will respect the guidance in Argyll and Bute Council's Sustainable Design Guidance (1 September 2006).

The properties will be one and a half storey, but can be single storey only, if preferred.



The intention is to source all materials locally and from sustainable sources. These will suit the local vernacular.

Energy Efficiency

The proposed dwellings will be designed to be as energy efficient as possible.

The applicant is also considering other renewable energy solutions to reduce overall heat and electricity consumption.

Landscaping

Once construction of the properties have been completed, the aim will be to plant gardens and boundaries such that the properties are appropriately screened from neighbouring properties and blend with their surroundings.

Landscape and Visual Appraisal

proposed 2 no. dwelling development,
balinoe, near oban



CONTENTS PAGE

1	Introduction	page 1
2	Site Location and Local Context	page 2
3	Landscape Designations	page 4
4	Potential for a Small-Scale Development	page 7
5	Landscape Impacts	page 8
6	Visual Impacts	page 11
7	Conclusion	page 13

Appendices

Appendix 1 Methodology

Appendix 2 Figures 1 - 3

LANDSCAPE AND VISUAL APPRAISAL

1 Introduction

- 1.1 This report describes the existing environment and provides an appraisal of the potential landscape and visual impacts which are expected as a result of the construction of 2 no. proposed single dwelling houses and associated infrastructure, located near Balinoe, on the A816 arterial route from Oban. (Refer to Figure 1).
- 1.2 This Landscape and Visual Appraisal considers the resulting impacts from the proposed development upon the aesthetic character of the landscape character, on the physical structure and landscape resources and, visual amenity of those experiencing views from the local and wider landscape setting.
- 1.3 VLM Landscape Design Ltd have been commissioned by the Client, Petard Developments. Victoria Mack, a chartered landscape architect with nearly 20 years professional experience, was responsible for the undertaking the appraisal and the production of this report.
- 1.4 This appraisal has been undertaken in line with guidance contained in **Guidelines for Landscape and Visual Impact Assessment** published by the **Institute of Environmental Management and Assessment** in association with **The Landscape Institute (3rd Edition)**. VLM has established methodology for carrying out Landscape and Visual Appraisals for small-scale developments of this nature. The methodology along with variations specific to this appraisal is described in Appendix 1. This methodology underpins this appraisal and should be read in conjunction with this report. Figures associated with the written appraisal form Appendix 2.
- 1.5 In preparing this Landscape and Visual Appraisal, key sources of information and data including planning policy and other written, graphic and digital data relating to the proposals and broader study area has been gathered from the following sources and have been reviewed and taken account of, including:
 - Argyll & Bute Local Development Plan (LDP, adopted March 2015);
 - Argyll & Bute LDP Supplementary Guidance (January 2016);
 - Scottish Planning Policy, 2014 (SPP);
 - Argyll and Firth of Clyde Landscape Character Assessment (ERM, 1996);

- Argyll and Bute Sustainable Design Guidance 1 (2006);
- Lorn and the Inner Isles Landscape Capacity Study (L&TIILCS), (Gillespies, 2010);
- Inventory of Gardens and Designed Landscapes in Scotland;
- Pastmap mapping database;
- Ordnance Survey maps;
- Digital sources of mapping and aerial photography; and,
- Site visit including a site walk-over and photographic survey, carried out in September 2018.

1.6 The key objectives of the appraisal are to:

- identify landscape features and resources that may be affected by the development;
- identify key viewpoints and viewers likely to be affected by the development;
- identify the levels of effects on the landscape and visual amenity;
- identify measures to mitigate these impacts; and,
- establish capacity and the general principles of development.

1.7 The approach taken in this appraisal reflects the needs to identify and understand the following:

- The character of the landscape and its ability to accommodate change;
- The visual relationship between the proposed site and its setting during construction and following completion; and,
- Inherent opportunities and constraints across the site area.

1.8 Landscape and visual impacts may potentially result from the following:

- visibility of items associated with the development during the construction phase and following completion;
- loss of existing landscape features or the introduction of new features; and,
- the presence of permanent structures on completion of the development.

2 Site Location and Local Context

2.1 Figure 1 shows the location of the Application Site above the southern side of Loch Feochan, in the Lorn district of main land Argyll and approximately 6km south of Oban. The wider study area lies inland from the western coastline of Argyll and comprises a series of lochs, valleys and glens, surrounded by occasionally steeply rising craggy landform with distinctive ridges. A

strongly rolling landscape juxtaposed with craggy intrusions, knolly landforms and areas of rough pasture is frequently punctuated by broad terraces elevated above the shorelines. The lush glens, valleys and loch shorelines are generally well-treed in character and often merge with extensive coniferous plantations and woodlands which stretch across rising slopes. The wild qualities of the craggy slopes and ridges form a backdrop to the lower, more settled loch shores and glen and valley floors where dispersed clusters of dwellings and small settlements are nestled into well-wooded gentle slopes and terraces.

- 2.2 The context to the site demonstrates these broader characteristics and qualities. Loch Feochan is a sea loch stretching approximately 6km from Barnacarry Bay on the east to near the settlement of Dunach which overlooks the Firth of Lorne. The A816, a main arterial route through western Argyll, traverses south from Oban and runs very close to the southern shoreline of Loch Feochan before heading inland as it nears the mouth of the loch and enters the Firth of Lorn. Frequent areas of broadleaved woodland and scrub planting line both sides of the road corridor and merge with mature tree cover and coniferous plantations which extend down the mountain slopes and form a highly scenic backdrop to the loch. The loch receives two rivers; the River Euchar empties into the western part of the loch at Kilniver further west of the Application Site whilst the River Nell enters the loch at its head in the east, near to the junction of the A816 and the minor road to Barran and Kilmore.
- 2.3 The shoreline and lower slopes surrounding the loch are well-settled with a number of small clusters of built form dispersed along the A816 corridor and nestled into the lower terraces and backdropped by mature woodland. The head of the loch and the southern shoreline are relatively well-developed with relatively high number of clusters comprising between 2 and 5 dwellings. 2 distinct clusters are located within the local context to the west and north-east of the Proposed Site and another small, loose cluster including Balinoe Cottage and Balinoe Farmhouse is located further along east along the A816 corridor, close to the head of the loch. Further west, 3 dwellings and the Knipach Hotel form a cluster and add to the dispersed rural pattern along the southern shoreline. In contrast the northern side to the loch is less inhabited with a small cluster of 3 dwellings located on the lower well-wooded slopes of Carn Breagach and a linear row of dwellings located along Ardentallen Bay to the north-west of the site.
- 2.4 The proposed site is located towards the eastern end of the loch, and forms part of a plateau of semi-improved grassland, located on an elevated terrace above two separate clusters of dwellings. A well-established coniferous plantation provides the immediate backdrop to the

south and rises further up the slopes of An Creachan. Extensive mature tree cover which provides the backdrop to a cluster located adjacent to the road corridor and extends up the slopes and wraps around the site's northern boundary. A handful of self-generating trees are dispersed across the area of pasture however most tree cover is located along the boundaries to the extended landholding. Pasture extends beyond the western boundary to the site which is demarcated by a post and wire fence whilst to the east the area of semi-improved grassland merges with the grounds to a cluster comprising 2 dwellings and a farm track which provides access to the coniferous plantation and a small yard associated with the commercial workings of the plantation.

3 Landscape Designations

- 3.1 The high visibility of the rugged mountainous area on both sides of Loch Feochan and the extensive amount of tree cover across the craggy landform make a strong contribution to the richly scenic composition of this part of the western mainland of Argyll. With the presence of the Firth of Lorn and distant views to the outline of the Isle of Mull to the west of this area, the site and wider setting is designated as an Area of Panoramic Quality (APQ).
- 3.2 **Policy SG LDP ENV 10** – 'Development Impact on Areas of Panoramic Quality' states that *"development in, or adjacent to, an Area of Panoramic Quality will be resisted where its scale, location or design will have a significant adverse impact on the character of the landscape."* In a similar vein criteria (G) for development within Policy LP 'CST – 2 Coastal Development on the Undeveloped Coast' requires that the *"scale of the proposed development respects the landscape character and amenity of the surrounding area"*. Policy LP ENV 19 'Development Setting, Layout and Design', states that *"the design of developments and structures shall be compatible with the surroundings. Particular attention shall be made to massing, form and design details within sensitive locations such as National Scenic Areas, Areas of Panoramic QualitySensitive Countryside, Conservation Areas..... Within such locations, the quality of design will require to be higher than in other less sensitive locations."*
- 3.3 The backdrop to the extended landholding comprises a rugged mountain skyline created by the summits of An Creachan and Cnoc Tarsuinn. The steep craggy slopes are covered by a blanket of coniferous plantations which extend down towards the shoreline of Loch Feochan. Occasionally, the hilly and knolly landform on the lower slopes give way to broad terraces. The site is located on one of these terraces and essentially forms a plateau of land marginally

elevated above two small clusters of built form and the shoreline. Dense areas of mature garden features and deciduous woodlands surrounding these clusters merge with the coniferous plantations on the lower slopes. Within this context, it is considered that small-scale sensitively designed built forms nestled into the existing fabric of the landscape and encompassed by a mature woodland setting will have a negligible impact on the expansive scale and wildland qualities of the wider panoramic context of lochs, glens, mountains and sea.

- 3.4 The proposed site benefits from a tight visual envelope and whilst it is acknowledged that there are a few listed buildings and a Scheduled Monument located opposite the site above the northern shoreline, and dispersed across the wider study area, through a combination of the strongly rolling craggy landform and extensive mature vegetation structure, the settings to these built heritage features will barely be affected.

Landscape Capacity

- 3.5 Rural opportunity Areas (ROAs) are identified in the LDP as areas having capacity for development. Whilst an area of land located immediately to the west of the site is located as a Rural Opportunity Area, the site itself is not allocated. The identification of ROAs within National Scenic Areas (NSAs) and Areas of Panoramic Quality (APQ), where the study area is located, have been guided by the Lorn and Inner Isles Landscape Capacity Study. This study forms one in a series of documents produced by Gillespies in 2009 and 2010 and covers the entire Argyll and Bute administrative area. As identified in the Capacity Study for the Lorn region, the Proposed Site and immediate context to the west and east forms site 'LN56 Balinoe', and the assessment is located on page 98 of the document. This site forms one of 81 sites identified within the Study Area for the Lorn and Inner Isles. (Refer to the Site Reference Map on page 6 of the Lorn and Inner Isles Landscape Capacity Study)
- 3.6 In accordance with the methodology of the study, the assessment of each site has been graphically illustrated followed by a brief written appraisal. The figure on Page 98 of the capacity study identifies "*Areas with potential to accommodate development, subject to criteria, without damaging the landscape character of the area*" (coloured orange); "*Areas where development is generally unacceptable and would have an adverse impact upon the landscape character of the area*" (coloured red); and, "*Key viewpoints*" (coloured blue). The Proposed Site is assessed to be located in an area where development is generally

unacceptable.

3.7 On page 98, the findings of the landscape capacity for LN56 are detailed as follows:

“Areas with potential to absorb development (Orange Areas)

- *There is scope to develop at Balinoe as this could be accommodated by the existing landscape structure of trees.*
- *There is a pocket of enclosed flat land alongside the A816 which could accommodate development.”*

“Areas not recommended for development (Red Areas)

- *Generally, the rising slopes south of the A816 should not be developed as this would become too visible within the wider landscape and could change the character of the area. Development along the roadside in most places would also require extensive earthworks as it is very steeply sloping.”*

3.8 It is considered the reason for areas not recommended for development within site LN56 are broad. Whilst it is acknowledged that the capacity study covered a significantly large area of land and therefore the findings have been prepared on a broad-brush assessment of the site and its context. The topography across site LN56 is highly complex and whilst parts of LN56 are visible within the wider landscape, the Proposed Site is not due to a combination of the surrounding knolly landform, mature garden features and extensive mature tree cover including the coniferous plantation which continues to rise up the slopes of An Creachan providing a soft backdrop. In addition, due to the relatively flat nature of the plateau of land where the site is located and the use of the existing drive to partly provide access, extensive earthworks will not be required to facilitate the development.

3.9 The following appraisal will demonstrate illustrate that the proposed 2no. dwelling development compares favourably when assessed against specific criteria relating to landscape policy, and guidance contained within environmental, conservation and design policies within the Balinoe area. The forthcoming appraisal will also illustrate that due to the specific qualities and characteristics inherent across the site and immediate context, that the site does indeed have landscape capacity for development and should be designated as an *“area with potential to absorb development”*, where the proposals would be seen to be in keeping with the character of the wider settlement pattern and the siting, scale and detailing to reflect the vernacular and traditional style of built form within the area. This is advocated within the Argyll and Bute Sustainable Design Guidance 1 (dated 2006) and detailed in the Argyll and Firth of Clyde Landscape Character Assessment published by SNH (Generic Guidelines for Built Development pages 48 and 49).

4 Potential for a Small-Scale Development

- 4.1 In order to appraise impacts on the landscape resource, landscape character and visual amenity, this section describes the indicative proposals and provides a broad description of the key components that will comprise the proposed development.
- 4.2 It is proposed to implement 2 no. single storey dwellings which will be orientated on a broad north-south axis to take advantage of the views out across Loch Feochan. The south-western corner of the wider land holding comprises a relatively complex, steep and hilly landform and as such it is proposed to step the new dwellings away from this area within a relatively flat plateau of grassland where ground modelling and earthworks will be kept to a minimum. The built forms will be set within moderate size garden grounds which will be enhanced by 'native' species planting along the eastern and western boundaries. The southern boundary to both curtilages will be planted with a native woodland edge mix to provide a more human interface with the dense coniferous plantation which rises up the slopes beyond the site and provides a soft backdrop. These features will form the primary framework for the new garden grounds with the potential for a more ornamental tree and shrub mix to form a secondary layer of planting which will add colour and texture. Over time this enhanced framework will create a more secluded environment for the residents of the new dwellings.
- 4.3 An access drive will extend from the existing access serving Dalmara and Cala-na-Sithe and run in close proximity to the northern boundary to Cala-na-Sithe. The drive will extend to the frontages of both dwellings and it is proposed to finish the surface using crushed aggregate and soil, in keeping with the finished surface of the existing access, and kerbs laid flush with adjacent grass areas to create a less urban character. Lengths of hedgerow and 'native' specimen trees along the access will also assist with the assimilation into the landscape and extend further east to form the northern boundary to both curtilages.
- 4.4 The scale, form, massing and detailing of the new dwellings will reflect the vernacular style of architecture within the wider loch area and a limited palette of high quality hard landscape materials will complement the rural setting. This sensitive approach to use characteristic and sympathetic building materials, the introduction of 'native' species to enhance the primary framework, and use of the existing landform to aid in reducing inter-visibility of the new dwellings from the highly scenic setting will ensure that this proposed development will

successfully integrate into the landscape.

5 Landscape Impacts

Impacts on Landscape Resource

- 5.1 As a result of the implementation of 2 single storey dwellings and associated garden curtilages and access drive on the Proposed Site, there will be a limited loss of semi-improved grassland. It is acknowledged that the site would have some ecological value however, it is encompassed by extensive areas of tree cover including plantations, broadleaved woodlands and swathes of grassland in addition to more ornamental grounds to the clusters of dwellings spread out along the south-side of the loch which support a vast number of habitat species and have high natural heritage importance. The loss of this extremely small portion of grassland will have a very minor impact on the physical structure of the landscape where an abundance of improved and semi-improved grassland frames the immediate context to the east and west and the wider context.
- 5.2 Existing mature tree cover lies outwith the site boundary and as such no tree cover will be lost through development. Rather, the boundaries to the site will be enhanced with a site-wide planting strategy which will form the framework to the new garden curtilages. In the longer term these will form new features around the site creating a new positive element and more secluded character to this parcel of land whilst potentially allowing new habitat corridors to be created.
- 5.3 Whilst there will be a period of adjustment and change, the proposals will have a very low impact on the landscape resource and in the longer term, the new garden grounds will be seen to not only complement and augment the existing features in the area but the quality of this landscape resource will be maintained and ultimately benefit the wider setting in the long term.
- 5.4 The sensitivity to change is assessed to be *Low* due to the limited value of the grassland. It is judged that the Magnitude of effect is *Negligible* following the construction phase and in the medium to long term. The effect is **Minor** and **Neutral** during and following the construction phase. The nature of effect on the landscape resource in the medium to long term is assessed to be **Beneficial**.

Impacts on Landscape Character

- 5.5 Following development, there will be a limited impact to the local landscape character of the Proposed Site changing from an area of grassland to a high quality development comprising 2 no. dwellings with associated driveways and set within an enhanced woodland setting.
- 5.6 In terms of landscape character, the Proposed Site falls within the Craggy Uplands Landscape Character Type (LCT), as highlighted within the Firth of Clyde Landscape Character Assessment. The Argyll and Bute Landscape Wind Energy Capacity Study Report provides an update of the landscape character contained in the Firth of Clyde Landscape Assessment which was written over two decades ago. This updated assessment highlights that the Craggy Upland LCT extends over large areas of Argyll and Bute including stretches of coastline, inland lochs and glens and upland plateaux. Due to the variety of character and scale of this landscape, the Capacity study divides this LCT into more appropriate sub-types. Whilst the landscape across the study area bears characteristics of the wider Craggy Uplands, due to its location stretching from the coastline and surrounding a sea loch, the landscape across the study area is classified as falling within the Craggy Coast and Islands landscape character sub-type.
- 5.7 As such, the proposed site and wider context surrounding Loch Feochan possess many key attributes and features of this sub-type. Although more inland than the majority of the Craggy Coast and Islands and therefore possessing a less distinct seascape context, the site and context comprise a small scale, diverse topography which is well-settled and frequented. The coastal edge to Loch Feochan is rocky and indented and the knolly landform rising from the shoreline adds to the small scale. This is further accentuated by the small enclosed pastures, settlement, and vegetation cover. Across the sub-type and within the context to the site, there is a rich pattern of vegetation including extensive broadleaved woodlands, mixed policy woodlands and parkland, as well as pockets of wetland and scrub, across the head of Loch Feochan and partly along the southern shoreline. Extensive areas of coniferous plantation provide a backdrop to the landscape surrounding Loch Feochan and rise steeply to form craggy ridgelines which provide a backdrop of higher ground to views from the sea.
- 5.8 All of these characteristics are common to the Craggy Coast and Islands landscape character sub-type and whilst the area retains a relative sense of wild qualities, Loch Feochan is well-settled, with scattered clusters of dwellings and small villages in sheltered areas on the lower

- slopes of the craggy landscape is a key feature. This is illustrated in **Figure 1 Landscape and Planning Policy Context** where the small settlements of Kilmore, Kilbride, Ardentallen and Kilninver are nestled into the lower slopes of the coastal pastoral hills surrounding the loch. Dispersed clusters of between 2-5 dwellings are located on the flat terraces and lower slopes near to the shoreline, often enclosed by woodland cover and the surrounding knolly and rising craggy landform. Most clusters of built form are established near the head of Loch Feochan and along the southern side of the loch, dispersed at relatively regular intervals along the A816 corridor. The northern side of the loch is less inhabited with a small loose cluster nestled into the wooded slopes of Carn Breagach and a linear row of dwellings orientated out onto Ardentallen Bay towards Ardentallen Point in the western part of the loch.
- 5.9 These positive features have been drawn into the careful site selection and planning of the proposed development where the new dwellings would be effectively absorbed by an enhanced landscape framework set back into the southern fringes of the site and framed by the knolly landform and mature wooded features to the north and coniferous woodland backdrop to the south. This approach, where the new dwellings would form a loose cluster above the established built forms near to the A816 corridor and would be effectively nestled into the wooded rising slopes, will ensure that the proposals are seen to be consistent with the prevailing settlement pattern across this part of the craggy coast landscape.
- 5.10 Overall, it is considered that the proposals will be consistent with the characteristics of the wider settlement pattern along the shores of Loch Feochan and the small-scale, single storey built forms will be effectively integrated into the surrounding diverse landscape and utilising the irregular landform and rocky outcrops to shelter and screen the proposed development. With a low key approach to the design of the hard and soft landscape proposals which will include new planting and a more human scale to the edge of the coniferous plantation and with a traditional vernacular architectural style to the built forms, it is assessed that over time, the proposals will have a positive effect.
- 5.11 The sensitivity to change is assessed to be *Medium-High* taking into account the value of the landscape and its susceptibility to change. It is judged that the magnitude of effect is **Low** and the impact on landscape character is **Moderate-Minor to Moderate** and **Neutral** during and following the construction phase. In the medium to long term, and once the planting strategy has established, the impact on landscape character is assessed to be **Minor** and **Beneficial**.

6 Visual Impacts

- 6.1 In assessing the visual impact of the proposed development on the landscape, full consideration has been given to all viewpoints, their location and distance from the site, the quality of each view and the impact that the small-scale development will have on its setting. The visual assessment is based upon a desk top study and a site visit with a selection of photographic viewpoints illustrated in Figures 2 and 3. The locations of these viewpoints are presented on the inset on each figure.
- 6.2 The coniferous plantations and broadleaved woodlands which extend down the craggy slopes and merge with mature garden features and road-side planting along both sides of Loch Feochan combine with the irregular and occasionally steep knolly landform to create an extremely tight visual envelope. This is illustrated in Viewpoint 1 as the A816 approaches the head of Loch Feochan and where intervening areas of vegetation combine with the prevailing landform to restrict more distant views from the east. From a more open part of the A816 corridor, views are available across the head of the loch towards the proposed site, however, due to the irregular and knolly landform combined with mature garden features and woodland cover, the site is not visible. Similarly, from the west, a combination of distance, landform and tree cover restrict views, (Viewpoint 6).
- 6.3 Visibility towards the site is further restricted by the subtle twists and turns of the A816 corridor which follows the mostly rocky loch-edge and where views are available they are generally directed along or across the loch or towards built form located adjacent to the road corridor (illustrated in Viewpoint 5). As illustrated in Viewpoint 5, for a short section of the east bound A816 in the vicinity of the Knipach Hotel grounds, transient views towards the open northern fringes of the wider landholding are available. This has been considered within the site-planning exercise and to mitigate these visual impacts it is proposed to set back the location of the new dwellings into the southern part of the site and against the foil of the wooded southern boundary.
- 6.4 Viewpoint 3 illustrates how even from close proximity, the site is extremely discreet where the irregular landform and knolly outcrops combine with mature wooded features to screen views. Whilst the very tops of the coniferous plantation defining the southern boundary are visible above this intervening mature vegetation, by introducing single storey built forms, the existing skyline will be protected and the new dwellings will effectively be hidden from this view.

- 6.5 Similarly, from the local view at the entrance to the access drive to Dalmara and Cala-na-Sithe on the A816, views towards the site are wholly contained by road-side planting, mature woodland features across the extended grounds to the dwellings combined with the locally complex landform, (Viewpoint 4).
- 6.6 With the careful siting of the new dwellings towards the rear of the site and implementation of the proposed planting strategy, views will be further filtered and the setting will become more enclosed.
- 6.7 The representative viewpoints (Figures 2 and 3) have demonstrated that visibility towards the Proposed Site is extremely limited. Potentially, glimpsed middle distant views may be available towards the new dwellings from the head of the loch, the northern side and indeed from the loch itself. Filtered views towards parts of the dwellings may also be available from the curtilages of nearby dwellings, including Dalmara and Cala-na-Sithe. However, once planting proposals for the new garden areas are implemented and begin to establish, any potential views towards the site will become further filtered. In the medium to long term, as the gardens mature, the sense of structure within the area will be enhanced and extended into the site creating a more managed character to this discreet area of improved grassland.
- 6.8 To summarise, views towards the proposed site are mostly restricted or contained through a combination of the complex, irregular topography, knolly outcrops and extensive mature vegetation cover. Where glimpsed views towards the new built forms may be available, potentially travelling west bound along the A816 and from the cluster of dwellings on the wooded slopes of Carn Breagach above the northern shores of the loch, as well as from water-based receptors on the loch itself, it is considered that these will be in keeping with the prevailing settlement pattern where filtered and glimpses views towards built forms nestled into the lower slopes with higher slopes and surrounding tree cover providing a soft backdrop are wholly characteristic of the area. With the retention of the existing tree structure and its enhancement through the implementation of a site-wide planting strategy, it is considered that the visual amenity of this part of the landscape surrounding Loch Feochan will be improved and become further secluded.
- 6.9 The sensitivity of visual receptors is *High*. It is judged that the magnitude of effect is **Negligible**. Impacts on visual amenity are assessed to be **Negligible** and the nature of

change **Neutral** during and following construction. In the medium to long term, once the planting strategy begins to establish, the impact is assessed to remain **Negligible** and the nature of change **Slight Beneficial**.

7 Conclusion

- 7.1 The Proposed Site offers scope for a fully integrated small-scale residential development comprising two new dwellings and associated garden grounds and access drive to assimilate into the landscape without any adverse impacts upon the landscape and visual amenity of the area.
- 7.2 The proposed site and its context is well defined by rising landform and prolific vegetation with a coniferous plantation providing a soft backdrop and mature garden and woodland features combining with the knolly landform to the north of the site effectively screening all but a handful of views. As part of the site-wide planting strategy, it is proposed to strengthen the existing tree cover on the perimeter of the site with 'native' planting where species will be limited to the existing species found within the immediate context. This will aid in enhancing the secluded character of the site and in the medium to long term, as this component of the proposals establishes and matures, it will contribute to the area's nature conservation value and the quality of the local landscape resource.
- 7.3 Careful consideration has been given to the siting, massing, scale and form of the new dwellings to ensure that any potential visual impacts are minimised. This has included the height, architectural style and detailing of the built forms as well as a sensitive choice to materials and the hard and soft landscape palette. In addition, it is proposed to set the new dwellings back against the soft woodland foil along the southern boundary and away from the more visually sensitive northern fringes of the wider land in ownership. This considered approach to the site planning will ensure that the new dwellings will effectively nestle into the existing landscape with minimal mitigation required and where visible in glimpsed, transient views, the new dwellings would be seen to be wholly consistent with the dispersed settlement pattern across the wider loch area.
- 7.4 This proposals have high regard to the preservation of the assets of this area inland from the western coastline of Argyll and by sensitive planning of the site, which itself has been carefully selected, it is considered that the proposals will be seen to visually integrate into the woodland

setting and be sensitive to the locality in terms of design, scale and the use of local materials and detailing. This will ensure that the proposals are not intrusive within this settled coastal loch landscape.

- 7.5 This Landscape and Visual Appraisal has demonstrated that the Proposed Site comprises a visually discreet part of the extended landholding, which forms part of the site LN56 highlighted in the Lorn and Inner Isles Landscape Capacity Study, and does have the landscape capacity to absorb a small-scale development without adverse impacts upon landscape and visual effects. As such the Proposed Site should be classed as a Rural Opportunity Area and be developed in line with Policy LDP DM 1.
- 7.6 Ultimately this sensitively planned development will be seen to be wholly consistent with the established rural settlement pattern and will not have a detrimental impact on the integrity and quality of the APQ designation. Therefore, in landscape and visual terms, the proposals are assessed to be wholly in line with current best practice guidance and environmental policies contained within the Argyll and Bute adopted Local Plan, including acceptable in terms of Policy SG LDP ENV 13.

APPENDIX 1 METHODOLOGY

- 1.1 This appraisal has been undertaken in line with current guidance contained in the 'Guidelines for Landscape Visual Impact Assessment, 3rd Edition' (GLVIA 3), published by the Institute of Environmental Management and Assessment in association with the Landscape Institute; and, based on principles described in Landscape Character Assessment: Guidance for England and Scotland (2002), published by the Countryside Agency and Scottish Natural Heritage).
- 1.2 The methodology comprised an initial desk top study of Ordnance Survey (OS) maps and planning documents, a site survey in June 2018 to 'ground-truth' desk top findings, followed by an analysis of the data and assessment of potential landscape and visual impacts. Existing mapping, policy documents and other written, graphic and digital data relating to the study area was reviewed.
- 1.3 The aim of this appraisal is to identify and evaluate potential effects arising from a proposed development upon the application site and surrounding environment. The level of effect is assessed through a combination of two considerations – the sensitivity of the landscape character and visual amenity (views) of identified receptors; and the magnitude of effect upon the receptors that will result from the proposed development.
- 1.4 There is no requirement for a formal Environmental Assessment to support this Application. In line with current guidance contained in GLVIA 3 for non EIA Landscape and Visual Appraisals such as this, the terms 'significant' and 'not significant' have not been used. However, it is important to set out the grading of the scale of the potential impacts and based on the detailed information available regarding the nature of the proposed development, the scale, duration and permanence of the change and the size of the resource/area affected. The following criteria (adapted from GLVIA 3) is used.

Landscape Sensitivity and Magnitude of Effect

- 1.5 Sensitivity of the landscape depends both on its intrinsic quality and explicit value and, on its susceptibility to the type of change proposed. The criteria for landscape sensitivity to change are summarised as follows:

- **High:** An area of highly valued landscape with strong structure and positive character, which is considered vulnerable to small degrees of change;
- **Moderate:** An area with a well-defined landscape character with positive qualities which may however, have suffered some degradation or erosion. Sensitivity will be diminished and change more likely to be accommodated; and,
- **Low:** An area of generally poor landscape character with few positive and valued features. Change will be a positive contribution to the landscape.

1.6 The criteria for magnitude of effect on the landscape are summarised below.

Table 1: Criteria for Landscape Magnitude of Effect

Level	Definition of Magnitude
High	Total loss of, or major alteration to, key elements, features or characteristics of the baseline landscape and/or introduction of elements considered to be totally uncharacteristic when set within the attributes of the receiving landscape. Post development character and composition of the baseline landscape resource will be fundamentally changed.
Medium	Partial loss of, or alteration to, one or more key elements, features or characteristics of the baseline landscape and/or introduction of elements that may be prominent but may not necessarily be considered to be substantially uncharacteristic when set within the attributes of the receiving landscape. Post development character and composition of the baseline landscape resource will be partially, but noticeably changed.
Low	Minor loss of, or alteration to, one or more key elements, features or characteristics of the baseline landscape and/or introduction of elements that may not be characteristic when set within the attributes of the receiving landscape. Post development character and composition of the baseline landscape resource will be noticeably changed but the underlying character of the baseline landscape will be similar to the pre-development character.
Negligible	Very minor loss of, or alteration to, key elements, features or characteristics of the baseline landscape. Change to the landscape character will barely, if at all, be distinguishable.

Visual Receptor Sensitivity and Magnitude of Effect

1.7 As with impacts on the character of the landscape, the impact on visual amenity is a function of the magnitude of effect and the sensitivity to change. Sensitivity refers to viewer sensitivity and depends upon the following:

- The length of viewing time e.g. a local resident with prolonged viewing opportunities will be more sensitive than a passer-by;
- Context of the view e.g. a viewer with an existing view of industrial structures will be less sensitive than a viewer with rural views; and,
- Distance of the viewpoint/receptor from the development and duration of effect.

1.8 The criteria for Visual Receptor sensitivity are summarised below:

- **High:** users of outdoor recreational facilities including strategic recreational footpaths, cycle routes or rights of way, whose attention may be focused on the landscape; important landscape features with physical, cultural/historic attributes; views from principal settlements; visitors to beauty spots and picnic areas.
- **Medium:** Other footpaths, people travelling through or past the landscape on roads, train lines or other transport routes; views from passenger ferries and cruisers, views from minor settlements.
- **Low:** People engaged in outdoor sports or recreation whose attention may be focused on their work/activity rather than an appreciation of the wider landscape.
- **Negligible:** Views from heavy industrialised areas or where direct views of the development are severely restricted and/or distant.

1.9 The criteria for magnitude of visual effect are summarised in the table below:

Table 2: Criteria for Visual Magnitude of Effect

Level	Definition of Magnitude
High	Highly noticeable change, affecting most key characteristics and dominating the experience of the landscape. The introduction of incongruous development. A high proportion of the view is affected; change is dominant.
Medium	Noticeable, partial change to a proportion of the landscape affecting some key characteristics and the experience of the landscape. The introduction of some uncharacteristic elements. Some of the view is affected; change is conspicuous.
Low	Minor change affecting some characteristics and the experience of the landscape to an extent. The introduction of elements which are not uncharacteristic. Little of the view is affected but the change is apparent.
Negligible	Little perceptible change. No discernible effect upon the view; change is inconspicuous.

Level of Effect

1.10 The level of effect of any identified landscape or visual receptor has been assessed as Major, Moderate, Minor or Negligible. These categories have been determined by consideration of viewpoint/visual receptor or landscape sensitivity and predicted magnitude of effect.

Table 3: Correlation of Sensitivity and Magnitude of Effect

	Landscape and Visual Sensitivity			
Magnitude of Effect	High	Medium	Low	Negligible
High	Major	Major moderate	Moderate	Moderate-minor
Medium	Major-moderate	Moderate	Moderate-minor	Minor
Low	Moderate	Moderate-minor	Minor	Minor-None
Negligible	Moderate-minor	Minor	Minor-none	None

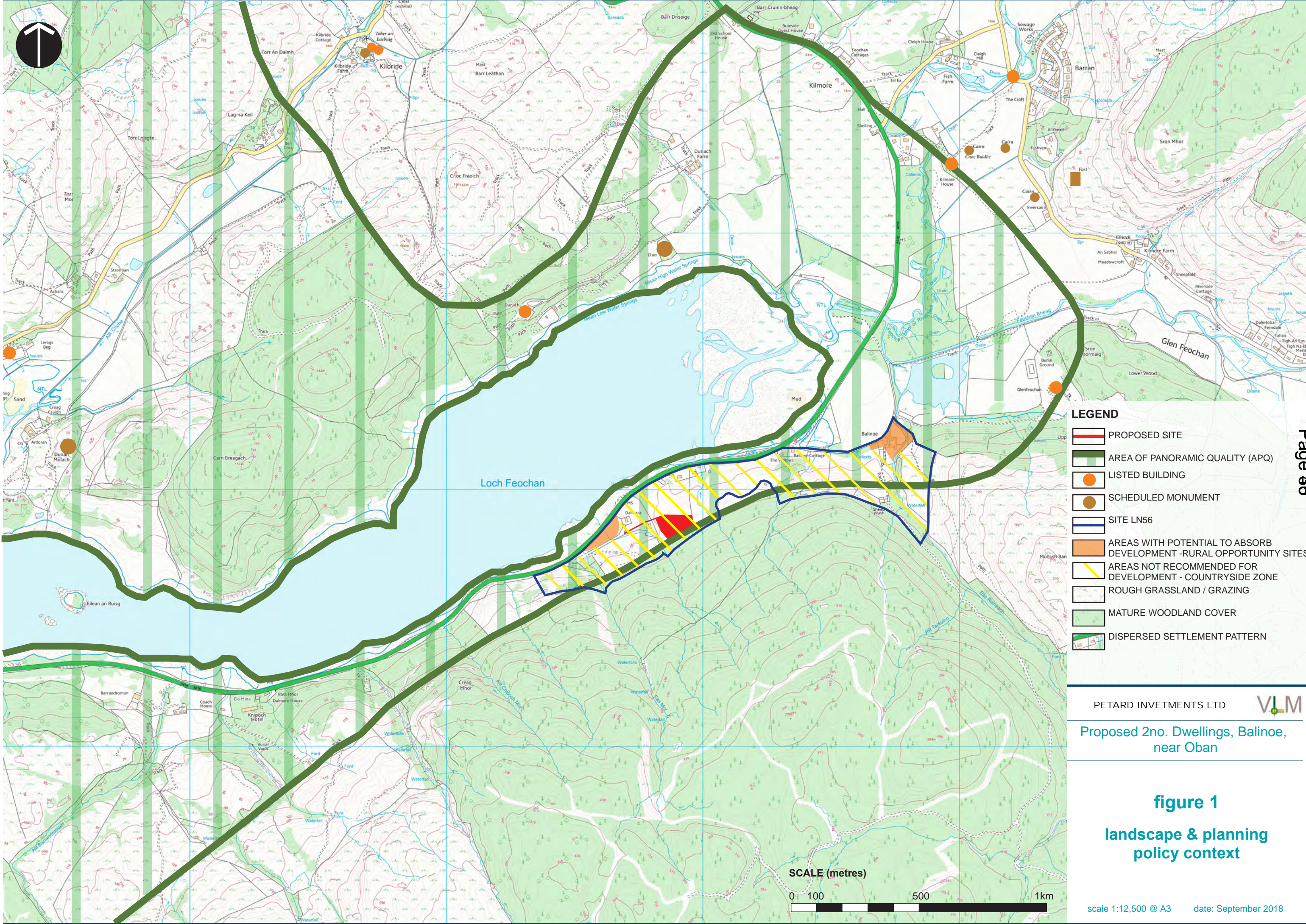
- 1.11 This matrix is not used as a prescriptive tool and the methodology and analysis of potential effects at any particular location must take account of professional judgement. Occasionally, analysis may not reflect the effects predicted by the grid; the table is used as a guide only.
- 1.12 The following tables provide a definition of the level of landscape and visual effects.

Table 4: Definition of Landscape and Visual Effects

Level	Definition of Magnitude
Major	The proposed development would entirely change the character of the landscape and the appearance of the view for a long time or permanently.
Moderate	The proposed development would introduce a noticeable difference to the landscape and within the view.
Minor	The proposed development would introduce a perceptible change to the receiving landscape characteristics and views.
None	The proposed development would introduce no discernible effect and may be difficult to differentiate from the surrounding landscape characteristics and from its surroundings within the view.

APPENDIX 2

FIGURES



LEGEND

- PROPOSED SITE
- AREA OF PANORAMIC QUALITY (APQ)
- LISTED BUILDING
- SCHEDULED MONUMENT
- SITE LN56
- AREAS WITH POTENTIAL TO ABSORB DEVELOPMENT - RURAL OPPORTUNITY SITES
- AREAS NOT RECOMMENDED FOR DEVELOPMENT - COUNTRYSIDE ZONE
- ROUGH GRASSLAND / GRAZING
- MATURE WOODLAND COVER
- DISPERSED SETTLEMENT PATTERN

PETARD INVESTMENTS LTD

Proposed 2no. Dwellings, Balinoe, near Oban

figure 1

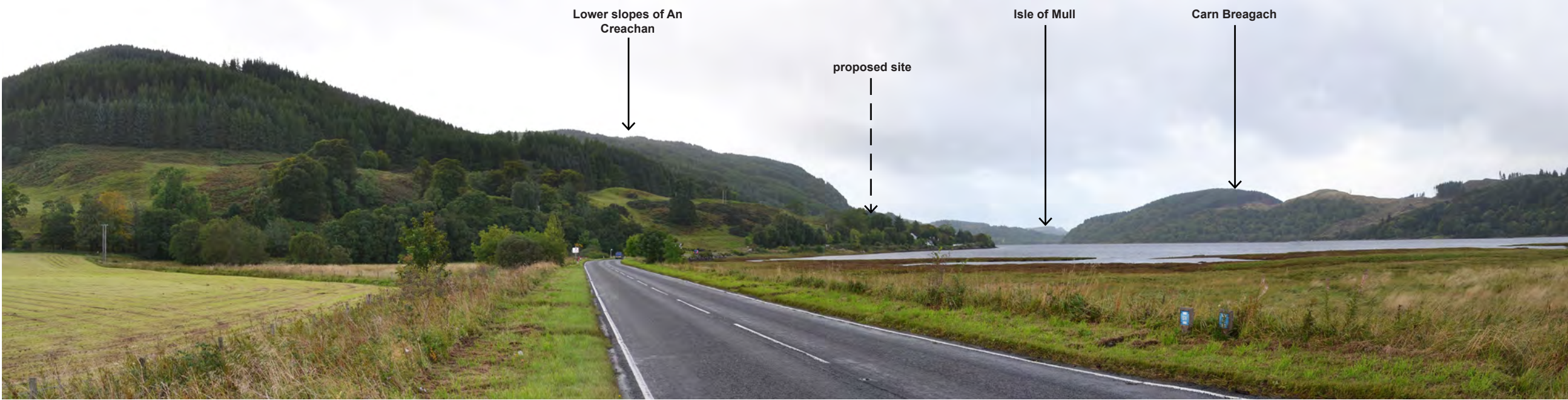
landscape & planning policy context



scale 1:12,500 @ A3 date: September 2018



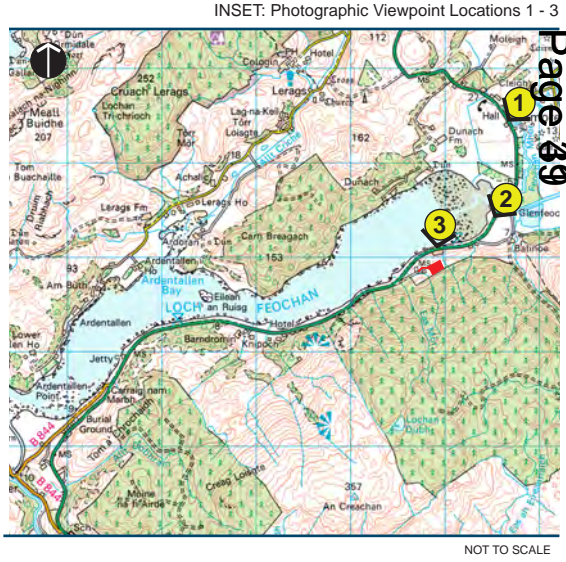
VIEWPOINT 1: View looking south-west across the head of Loch Feochan from the A816 corridor near to a small cluster of dwellings and Braeside Guest House. The forested mountain summits of Cnoc Tarsuinn and An Creachan form a rugged backdrop to the southern side of Loch Feochan. Due to a large amount of intervening vegetation the lower terraced slopes where the site is located adjacent to the shoreline of the loch are not visible.




VIEWPOINT 2: View looking south-west towards the Proposed Site from the A816 corridor as it runs around the head of Loch Feochan. The well-forested enclosing hills and mountain summits channel views along the loch with distant views towards the outline of the Isle of Mull. A large coniferous plantation extends down the lower slopes of An Creachan and merges with road-side planting and extensive mature garden features within the grounds of the cluster of dwellings located in close proximity to the site.



VIEWPOINT 3: Local view looking south-south-west across the well-vegetated and mature garden grounds to 3 no. large single dwellings which are stepped back from the A816 corridor. The very tops of the coniferous plantation which defines the southern boundary to the site are just about visible beyond the mature vegetation in the foreground. A combination of mature tree features and the hillocky local landform restrict views towards the site itself.



PETARD INVESTMENTS LTD 

Proposed 2 No. Dwellings,
Balinoe, near Oban

figure 2
photographic viewpoints 1 - 3

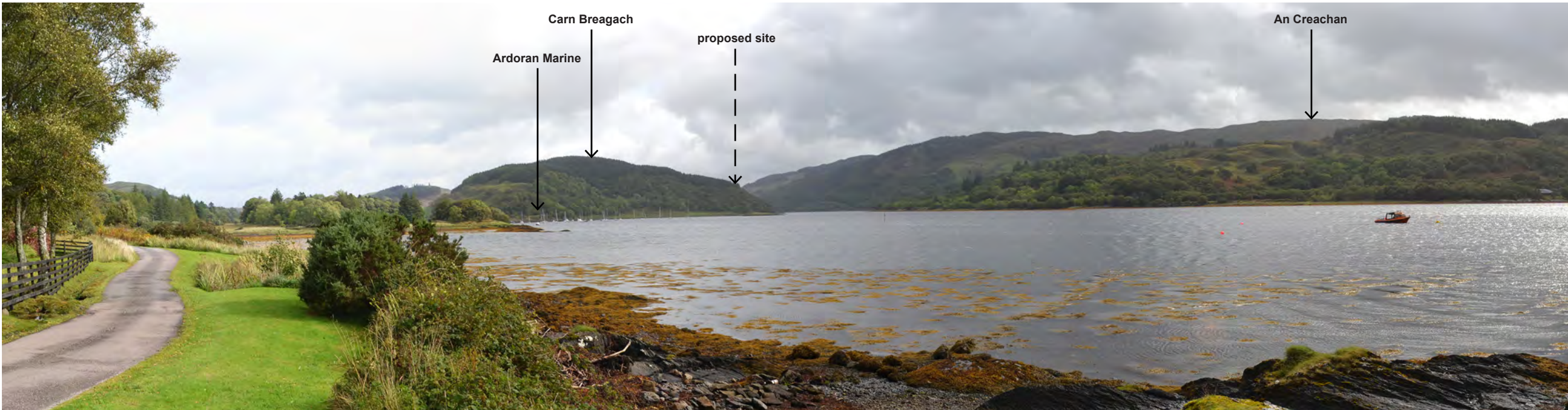
date: September 2018



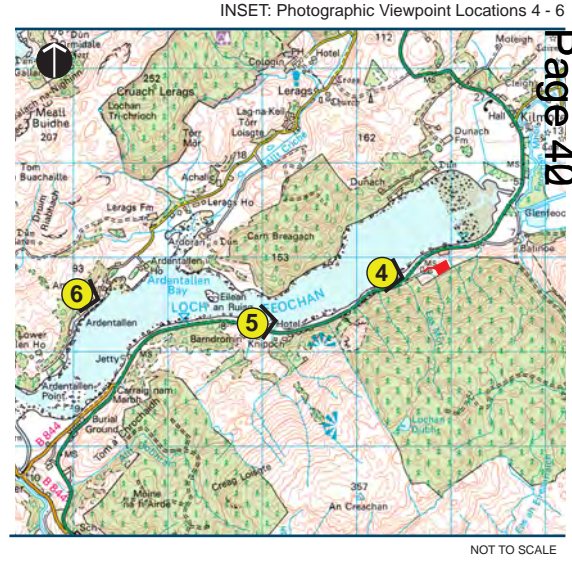
VIEWPOINT 4: View looking east towards the Proposed Site from the access drive to the two single dwellings, Dalmara and Cala-na Sithe. The high, craggy hill of Sron Mheadhan which provides a backdrop to Kilmore and the lower reaches of Glen Feochan is visible along the road corridor in the distance. Due to a combination of road-side planting, mature garden features within the grounds to the two dwellings and woodland cover, the site is not visible.



VIEWPOINT 5: View looking east towards the Proposed Site from the A816 corridor, opposite the entrance into the grounds of the Knipach Hotel. Formerly a large dwelling, the hotel sits back from the road corridor within a cluster of three other dwellings. Coniferous plantation extends down the lower slopes of An Creachan and merges with road-side planting and extensive mature garden features within the grounds of Knipach Hotel to screen the site which is stepped back from the visible northern fringes.



VIEWPOINT 6: View looking east across Loch Feochan towards the site from the minor road serving dwellings at Ardantallen Bay on the northern shoreline. The loch curves round the wooded slopes of Carn Breagach and wholly restricts views towards the site and the eastern end of the loch. Views may be possible from further south-west along this road however due to distance any built form will be barely if at all perceptible.



INSET: Photographic Viewpoint Locations 4 - 6

PETARD INVESTMENTS LTD 

Proposed 2 No. Dwelling Houses,
Balinoe, near Oban

figure 3
photographic
viewpoints 4 - 6

date: September 2018



Central Validation Team at Argyll and Bute Council 1A Manse Brae Lochgilphead PA31 8RD Tel: 01546 605518 Email: planning.hq@argyll-bute.gov.uk

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100194905-002

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

Type of Application

What is this application for? Please select one of the following: *

- Application for planning permission (including changes of use and surface mineral working).
- Application for planning permission in principle.
- Further application, (including renewal of planning permission, modification, variation or removal of a planning condition etc)
- Application for Approval of Matters specified in conditions.

Description of Proposal

Please describe the proposal including any change of use: * (Max 500 characters)

Erection of single dwelling house and garage

Is this a temporary permission? * Yes No

If a change of use is to be included in the proposal has it already taken place?
(Answer 'No' if there is no change of use.) * Yes No

Has the work already been started and/or completed? *

No Yes – Started Yes - Completed

Applicant or Agent Details

Are you an applicant or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application) Applicant Agent

Agent Details

Please enter Agent details

Company/Organisation:	<input type="text" value="DM Hall"/>		
Ref. Number:	<input type="text"/>	You must enter a Building Name or Number, or both: *	
First Name: *	<input type="text" value="Duncan"/>	Building Name:	<input type="text" value="The Mill"/>
Last Name: *	<input type="text" value="Clow"/>	Building Number:	<input type="text"/>
Telephone Number: *	<input type="text" value="01786833800"/>	Address 1 (Street): *	<input type="text" value="Station Road"/>
Extension Number:	<input type="text"/>	Address 2:	<input type="text"/>
Mobile Number:	<input type="text"/>	Town/City: *	<input type="text" value="Bridge of Allan"/>
Fax Number:	<input type="text"/>	Country: *	<input type="text" value="United Kingdom"/>
		Postcode: *	<input type="text" value="FK9 4JS"/>
Email Address: *	<input type="text" value="duncan.clow@dmhbl.co.uk"/>		

Is the applicant an individual or an organisation/corporate entity? *

Individual Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title:	<input type="text"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text"/>	Building Name:	<input type="text" value="The Mill"/>
First Name: *	<input type="text"/>	Building Number:	<input type="text"/>
Last Name: *	<input type="text"/>	Address 1 (Street): *	<input type="text" value="Station Road"/>
Company/Organisation	<input type="text" value="Petard Investments"/>	Address 2:	<input type="text"/>
Telephone Number: *	<input type="text"/>	Town/City: *	<input type="text" value="Bridge of Allan"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="United Kingdom"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="FK9 4JS"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text" value="duncan.clow@dmhbl.co.uk"/>		

Site Address Details

Planning Authority:

Argyll and Bute Council

Full postal address of the site (including postcode where available):

Address 1:

Address 2:

Address 3:

Address 4:

Address 5:

Town/City/Settlement:

Post Code:

Please identify/describe the location of the site or sites

Balnoe

Northing

723862

Easting

186897

Pre-Application Discussion

Have you discussed your proposal with the planning authority? *

Yes No

Site Area

Please state the site area:

4000.00

Please state the measurement type used:

Hectares (ha) Square Metres (sq.m)

Existing Use

Please describe the current or most recent use: * (Max 500 characters)

Agricultural land

Access and Parking

Are you proposing a new altered vehicle access to or from a public road? *

Yes No

If Yes please describe and show on your drawings the position of any existing. Altered or new access points, highlighting the changes you propose to make. You should also show existing footpaths and note if there will be any impact on these.

Are you proposing any change to public paths, public rights of way or affecting any public right of access? * Yes No

If Yes please show on your drawings the position of any affected areas highlighting the changes you propose to make, including arrangements for continuing or alternative public access.

Water Supply and Drainage Arrangements

Will your proposal require new or altered water supply or drainage arrangements? * Yes No

Are you proposing to connect to the public drainage network (eg. to an existing sewer)? *

- Yes – connecting to public drainage network
- No – proposing to make private drainage arrangements
- Not Applicable – only arrangements for water supply required

As you have indicated that you are proposing to make private drainage arrangements, please provide further details.

What private arrangements are you proposing? *

- New/Altered septic tank.
- Treatment/Additional treatment (relates to package sewage treatment plants, or passive sewage treatment such as a reed bed).
- Other private drainage arrangement (such as chemical toilets or composting toilets).

Please explain your private drainage arrangements briefly here and show more details on your plans and supporting information: *

Do your proposals make provision for sustainable drainage of surface water?? * Yes No
(e.g. SUDS arrangements) *

Note:-

Please include details of SUDS arrangements on your plans

Selecting 'No' to the above question means that you could be in breach of Environmental legislation.

Are you proposing to connect to the public water supply network? *

- Yes
- No, using a private water supply
- No connection required

If No, using a private water supply, please show on plans the supply and all works needed to provide it (on or off site).

Assessment of Flood Risk

Is the site within an area of known risk of flooding? * Yes No Don't Know

If the site is within an area of known risk of flooding you may need to submit a Flood Risk Assessment before your application can be determined. You may wish to contact your Planning Authority or SEPA for advice on what information may be required.

Do you think your proposal may increase the flood risk elsewhere? * Yes No Don't Know

Trees

Are there any trees on or adjacent to the application site? *

Yes No

If Yes, please mark on your drawings any trees, known protected trees and their canopy spread close to the proposal site and indicate if any are to be cut back or felled.

All Types of Non Housing Development – Proposed New Floorspace

Does your proposal alter or create non-residential floorspace? *

Yes No

Schedule 3 Development

Does the proposal involve a form of development listed in Schedule 3 of the Town and Country Planning (Development Management Procedure (Scotland) Regulations 2013) *

Yes No Don't Know

If yes, your proposal will additionally have to be advertised in a newspaper circulating in the area of the development. Your planning authority will do this on your behalf but will charge you a fee. Please check the planning authority's website for advice on the additional fee and add this to your planning fee.

If you are unsure whether your proposal involves a form of development listed in Schedule 3, please check the Help Text and Guidance notes before contacting your planning authority.

Planning Service Employee/Elected Member Interest

Is the applicant, or the applicant's spouse/partner, either a member of staff within the planning service or an elected member of the planning authority? *

Yes No

Certificates and Notices

CERTIFICATE AND NOTICE UNDER REGULATION 15 – TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATION 2013

One Certificate must be completed and submitted along with the application form. This is most usually Certificate A, Form 1, Certificate B, Certificate C or Certificate E.

Are you/the applicant the sole owner of ALL the land? *

Yes No

Is any of the land part of an agricultural holding? *

Yes No

Do you have any agricultural tenants? *

Yes No

Certificate Required

The following Land Ownership Certificate is required to complete this section of the proposal:

Certificate E

Land Ownership Certificate

Certificate and Notice under Regulation 15 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Certificate E

I hereby certify that –

(1) – No person other than myself/the applicant was the owner of any part of the land to which the application relates at the beginning of the period 21 days ending with the date of the application.

(2) - The land to which the application relates constitutes or forms part of an agricultural holding and there are no agricultural tenants

Or

(1) – No person other than myself/the applicant was the owner of any part of the land to which the application relates at the beginning of the period 21 days ending with the date of the application.

(2) - The land to which the application relates constitutes or forms part of an agricultural holding and there are agricultural tenants.

Name:

Address:

Date of Service of Notice: *

(4) – I have/The applicant has taken reasonable steps, as listed below, to ascertain the names and addresses of the other owners or agricultural tenants and *have/has been unable to do so –

Signed: Duncan Clow

On behalf of: Petard Investments

Date: 04/11/2019

Please tick here to certify this Certificate. *

Checklist – Application for Planning Permission

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Please take a few moments to complete the following checklist in order to ensure that you have provided all the necessary information in support of your application. Failure to submit sufficient information with your application may result in your application being deemed invalid. The planning authority will not start processing your application until it is valid.

a) If this is a further application where there is a variation of conditions attached to a previous consent, have you provided a statement to that effect? *

Yes No Not applicable to this application

b) If this is an application for planning permission or planning permission in principle where there is a crown interest in the land, have you provided a statement to that effect? *

Yes No Not applicable to this application

c) If this is an application for planning permission, planning permission in principle or a further application and the application is for development belonging to the categories of national or major development (other than one under Section 42 of the planning Act), have you provided a Pre-Application Consultation Report? *

Yes No Not applicable to this application

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

d) If this is an application for planning permission and the application relates to development belonging to the categories of national or major developments and you do not benefit from exemption under Regulation 13 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, have you provided a Design and Access Statement? *

Yes No Not applicable to this application

e) If this is an application for planning permission and relates to development belonging to the category of local developments (subject to regulation 13. (2) and (3) of the Development Management Procedure (Scotland) Regulations 2013) have you provided a Design Statement? *

Yes No Not applicable to this application

f) If your application relates to installation of an antenna to be employed in an electronic communication network, have you provided an ICNIRP Declaration? *

Yes No Not applicable to this application

g) If this is an application for planning permission, planning permission in principle, an application for approval of matters specified in conditions or an application for mineral development, have you provided any other plans or drawings as necessary:

- Site Layout Plan or Block plan.
- Elevations.
- Floor plans.
- Cross sections.
- Roof plan.
- Master Plan/Framework Plan.
- Landscape plan.
- Photographs and/or photomontages.
- Other.

If Other, please specify: * (Max 500 characters)

Provide copies of the following documents if applicable:

- | | | |
|----------------------------------------------------------------------------------------|-----------------------------------------|-----------------------------------------|
| A copy of an Environmental Statement. * | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> N/A |
| A Design Statement or Design and Access Statement. * | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> N/A |
| A Flood Risk Assessment. * | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> N/A |
| A Drainage Impact Assessment (including proposals for Sustainable Drainage Systems). * | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> N/A |
| Drainage/SUDS layout. * | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> N/A |
| A Transport Assessment or Travel Plan | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> N/A |
| Contaminated Land Assessment. * | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> N/A |
| Habitat Survey. * | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> N/A |
| A Processing Agreement. * | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> N/A |

Other Statements (please specify). (Max 500 characters)

Landscape and visual appraisal.

Declare – For Application to Planning Authority

I, the applicant/agent certify that this is an application to the planning authority as described in this form. The accompanying Plans/drawings and additional information are provided as a part of this application.

Declaration Name: Mr Duncan Clow

Declaration Date: 04/11/2019

Hutton, Amanda

From: centralvalidationteam
Sent: 11 November 2019 09:17
To: Hutton, Amanda
Subject: FW: Invalid Letter for application 19/02314/PPP
Attachments: A1823 Balinoe Site Plan RevA Single Dwelling 1.pdf

From: Duncan Clow MA (Hons) MSc MRICS [mailto:Duncan.Clow@dmhall.co.uk]
Sent: 08 November 2019 17:12
To: centralvalidationteam <centralvalidationteam@argyll-bute.gov.uk>
Subject: RE: Invalid Letter for application 19/02314/PPP

Good afternoon,

Please find attached a new site plan.

Kind regards,

Duncan



Duncan Clow MA (Hons) MSc MRICS
Surveyor

T: 01786833800 **M:** 07584 626525
E: Duncan.Clow@dmhall.co.uk
Bridge of Allan office
The Mill, Bridge of Allan
Stirling Bridge of Allan FK9 4JS

www.dmhall.co.uk

Read why our Home Reports stand out



DM Hall is pleased to be raising money for Chest Heart & Stroke Scotland and SAMH.

[Take a look at our Privacy Notice](#)

DM Hall LLP is a Limited Liability Partnership registered in Scotland with Registration number SO301144 Registered office: 17 Corstorphine Road, Edinburgh, EH12 6DD. A full list of members can be obtained from the Head Office, 17 Corstorphine Road, Edinburgh, EH12 6DD : Tel: 0131 477 6000. This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the system manager. This footnote also confirms that this email message has been swept for the presence of computer viruses.

-----Original Message-----

From: centralvalidationteam@argyll-bute.gov.uk [mailto:centralvalidationteam@argyll-bute.gov.uk]
Sent: 05 November 2019 16:43
To: Duncan Clow MA (Hons) MSc MRICS
Subject: Invalid Letter for application 19/02314/PPP

Dear Sir/Madam

We write to advise you that your recent planning application with Argyll and Bute Council is currently invalid.

Please attend to the points raised in the attached letter at the earliest opportunity.

Regards

Central Validation Team
Development and Economic Growth

Argyll and Bute Council

Argyll and Bute Council's e-mail system (also used by LiveArgyll) classifies the sensitivity of emails according to the Government Security Classifications.

Privileged/Confidential Information may be contained in this message. If you are not the addressee indicated in this message (or responsible for delivery of the message to such person), you may not disclose, copy or deliver this message to anyone and any action taken or omitted to be taken in reliance on it, is prohibited and may be unlawful.

In such case, you should destroy this message and kindly notify the sender by reply email. Opinions, conclusions and other information in this message that do not relate to the official business of Argyll and Bute Council or LiveArgyll shall be understood as neither given nor endorsed by them.

All communications sent to or from Argyll and Bute Council or LiveArgyll may be subject to recording and/or monitoring in accordance with relevant legislation..

This email has been scanned for viruses, vandals and malicious content.

Argyll and Bute Council classify the sensitivity of emails according to the Government Security Classifications. The adopted classifications are:

NOT PROTECTIVELY MARKED

Non public sector business i.e. does not require protection.

OFFICIAL

Routine public sector business, operations and services.

OFFICIAL-SENSITIVE

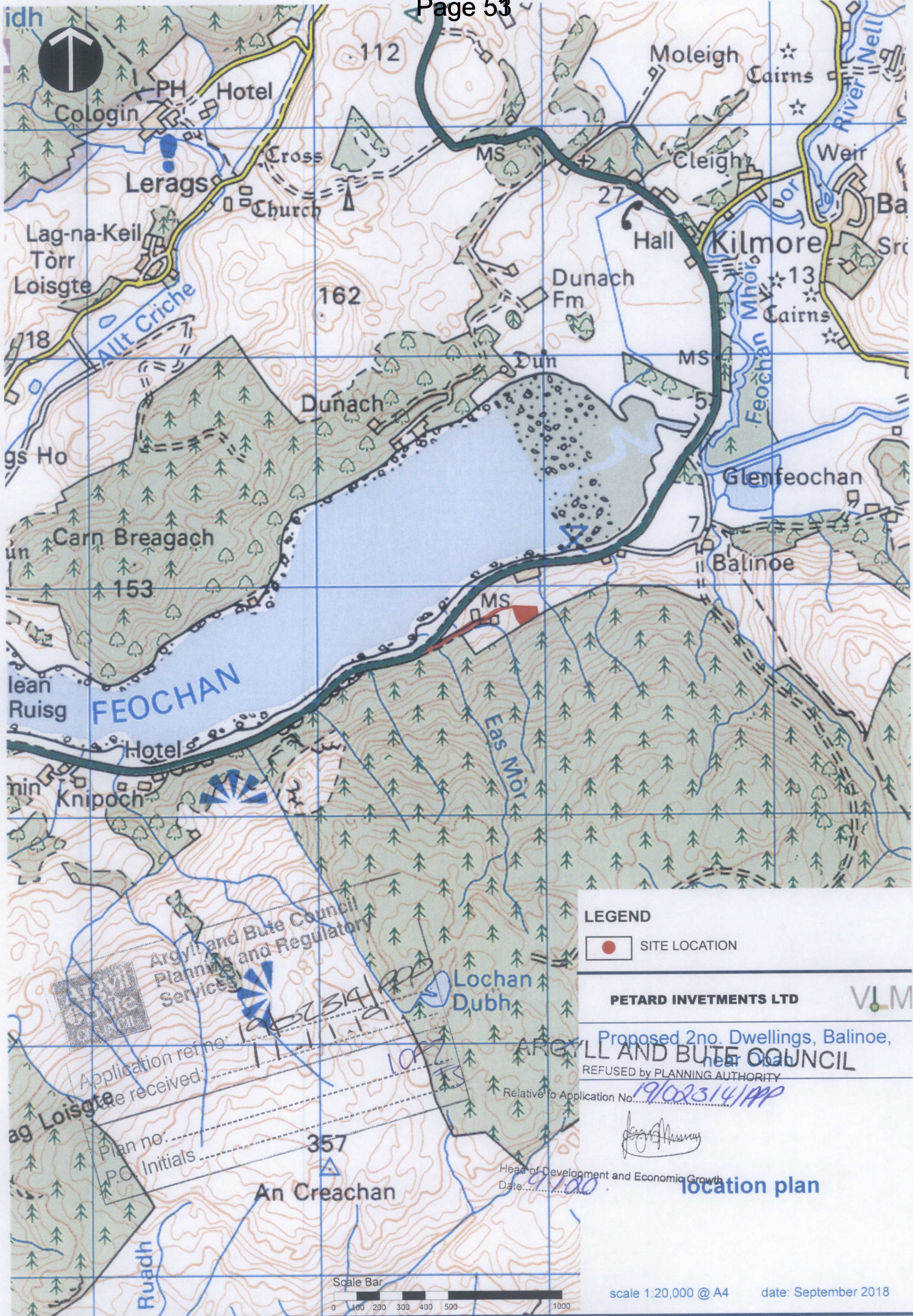
Particularly sensitive information that can be shared on a need to know basis, where inappropriate access or release could have damaging consequences. Disclosure in response to FOISA should be verified with the data owner prior to release.

OFFICIAL-SENSITIVE PERSONAL

Particularly sensitive information that can be shared on a need to know basis relating to an identifiable individual, where inappropriate access or release could have damaging consequences. For example, where relating to investigations, vulnerable individuals, or the personal / medical records of people.

OFFICIAL-SENSITIVE COMMERCIAL

Commercial or market-sensitive information, including that subject to statutory or regulatory obligations, that may be



LEGEND

 SITE LOCATION

PETARD INVESTMENTS LTD



Argyll and Bute Council
REFUSED by PLANNING AUTHORITY

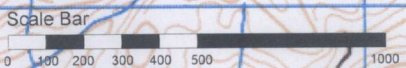
Application ref no: 19/02314/APP
Date received: 11/11/19

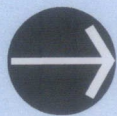
Relative to Application No: 19/02314/APP

Plan no: 357
P.O. Initials

Head of Development and Economic Growth
Date: 29/09/20

location plan





Loch Feochan



Application ref no: 1902314/PP
 Date received: 11/11/19
 Plan no: 2082
 P.O. Initialed: [Signature]

Argyll and Bute Council
 Planning and Regulatory Services

LEGEND
 RED LINE BOUNDARY

PETARD INVESTMENTS LTD

ARGYLL AND BUTE Council
 Proposed Single Dwelling, Balinoe, near Oban
 REFUSED BY PLANNING AUTHORITY
 Relative to Application No: 19102314/PP
 Date: 11/11/19
 Head of Development and Economic Growth
 [Signature]
site plan



LEGEND

● SITE LOCATION

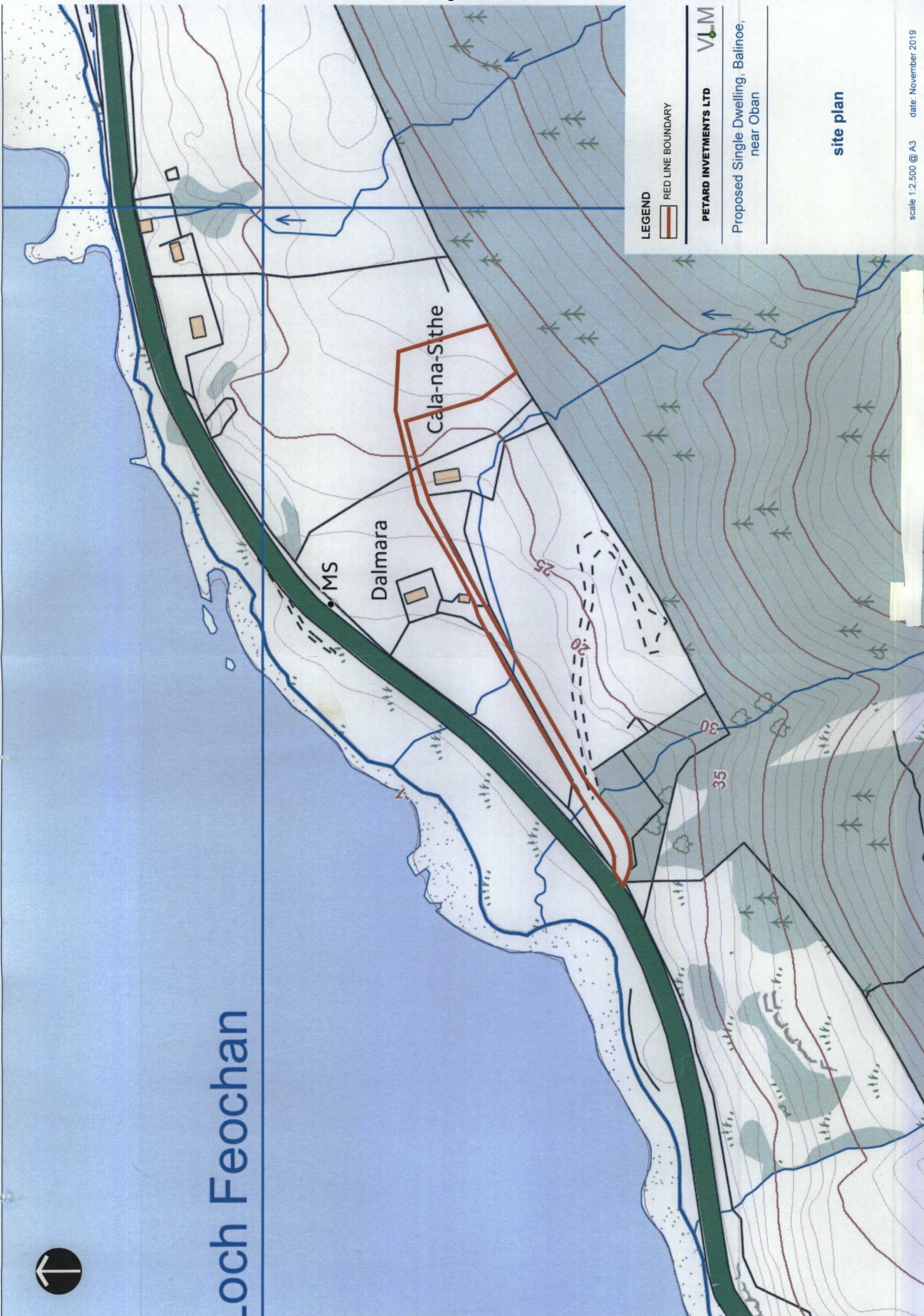
PETARD INVESTMENTS LTD




Proposed 2no. Dwellings, Balinoe, near Oban


location plan

loch Feochan



LEGEND

 RED LINE BOUNDARY

PETARD INVESTMENTS LTD 

Proposed Single Dwelling, Balinoe,
near Oban

site plan

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 2013 relative to applications for Planning Permission or Planning Permission in Principle

Reference No: 19/02314/PPP

Planning Hierarchy: Local Development

Applicant: Petard Investments

Proposal: Site for Erection of Dwellinghouse and Garage

Site Address: Plot 1, Land East of Cala Na Sithe, Kilmore

DECISION ROUTE

Section 43 (A) of the Town and Country Planning (Scotland) Act 1997 (as amended)

(A) THE APPLICATION

(i) Development Requiring Express Planning Permission

- Site for erection of dwellinghouse (planning permission in principle)
- Formation of vehicular access (planning permission in principle)
- Installation of private drainage system (planning permission in principle)

(ii) Other specified operations

- Connection to public water main
-

(B) RECOMMENDATION:

Having due regard to the Development Plan and all other material considerations, it is recommended that planning permission in principle be **REFUSED** for the reasons appended to this report.

(C) HISTORY:

18/02238/PPP

Site for erection of dwellinghouse – Refused: 18/12/18

(D) CONSULTATIONS:

Area Roads Authority

No objection subject to conditions 13/11/19.

Scottish Water

Letter dated 17/11/19 advising no objection to the proposed development

The above represents a summary of the issues raised. Full details of the consultation responses are available on the Council's Public Access System by clicking on the following link <http://www.argyll-bute.gov.uk/content/planning/publicaccess>.

(E) PUBLICITY:

The proposal has been advertised in terms of Regulation 20 and Neighbour Notification procedures, overall closing date 19/12/19.

(F) REPRESENTATIONS:

One representation has been received regarding the proposed development.

Mrs Sandra Grieve, Dalmarra, Kilmore, PA34 4QT (22/11/19)

(i) Summary of issues raised

- Where the proposed road is marked on application, it will be going over our private water supply.

Comment: This is not a material consideration in the determination of this planning application but a separate civil issue between affected parties.

The above represents a summary of the issues raised. Full details of the letters of representation are available on the Council's Public Access System by clicking on the following link <http://www.argyll-bute.gov.uk/content/planning/publicaccess>.

(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:	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

(H) PLANNING OBLIGATIONS

(i) Is a Section 75 obligation required:	No
-------------------------------------------------	-----------

(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 Local Development Plan, 2015

- LDP STRAT 1 – Sustainable Development
- LDP DM 1 – Development within the Development Management Zones (*Countryside Zone*)
- LDP 3 – Supporting the Protection Conservation and Enhancement of our Environment
- LDP 8 – Supporting the Strength of our Communities
- LDP 9 – Development Setting, Layout and Design
- LDP 10 – Maximising our Resources and Reducing our Consumption
- LDP 11 – Improving our Connectivity and Infrastructure

Supplementary Guidance

- SG 2 – Sustainable Siting and Design Principles
- SG LDP ENV 13 – Development Impact on Areas of Panoramic Quality (APQs) (*North West Argyll (Coast) APQ*)
- SG LDP ENV 14 – Landscape
- SG LDP HOU 1 – General Housing Development including Affordable Housing
- SG LDP SERV 1 – Private Sewage Treatment Plans & Wastewater Systems
- SG LDP SERV 2 – Incorporation of Natural Features/Sustainable Drainage Systems (SuDS)
- SG LDP TRAN 4 – New and Existing, Public Roads and Private Access Regimes
- SG LDP TRAN 6 – Vehicle Parking Provision

(i) List of all other material planning considerations taken into account in the assessment of the application, having due regard to Annex A of Circular 3/2013.

- Argyll and Bute Sustainable Design Guidance, 2006
- Scottish Planning Policy (SPP), 2014
- Argyll and Bute Proposed Local Development Plan 2 (November 2019)
- Consultation Responses
- Third Party Representations

(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: No

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

An application for Planning Permission in Principle 18/02238/PP for a dwellinghouse on this site was refused by the Planning Service on 18 December 2018.

The application refers to the site as Plot 1 with an associated application for the resubmission on Plot 2 (19/02315/PPP) also currently with the Planning Service for consideration.

In support of the resubmission, the agent has stated that “... *the policy position in relation to new housing in Countryside Areas is changing with the recent approval of the Local Development Plan 2 Proposed Plan, which is now the settled view of the Council. The Plan has changed the way in which proposals will be considered going forward and, although it still needs to be consulted upon and examined, it does already carry weight as a material consideration*”.

However, whilst the proposed Local Development Plan 2 (PLDP2) has been through Council and is classed as the ‘settled view’ of the Council representing a material consideration, in the main, this will be afforded very little weight until the consultation exercise has been completed. Once the consultation period is concluded those aspects of PLDP2 which have not been objected to will then be given strong weight.

Accordingly, as the consultation on PLDP 2 does not expire until 23 January 2020, the current application is considered to be premature and requires to be assessed in terms of the current adopted ‘Argyll and Bute Local Development Plan’ (LDP) 2015 with the assessment reflecting that of the previous application reiterated below.

As a background it should be noted that during the life of the preceding 2009 Local Plan, the site was identified as being within a Rural Opportunity Area (ROA). However, ROAs within Areas of Panoramic Quality (APQ), within which the site falls, were subject to Landscape Capacity Study (LCS) to refine their extent for the purposes of decision making through the 2009 Local Plan (and now the adopted 2015 Local Development Plan). The LCS included the site of the current application within Site LN56 identified as an area not recommended for development, stating that, generally, the rising slopes south of the A816 should not be developed as this would become too visible within the wider landscape and could change the character of the area. The LCS identified two small areas suitable for development, both of which have followed through into the current LDP as ROAs with the areas identified as not suitable for development followed through into the current LDP as Countryside.

In terms of the current adopted ‘Argyll and Bute Local Development Plan’ (LDP) 2015 the application site is situated within the Countryside Zone (CZ) where Policy LDP DM 1 of the LDP is very restrictive only giving support to small scale development on an appropriate infill, rounding off, redevelopment or change of use of building development, subject to compliance with other relevant policies and supplementary guidance (SG).

Policy LDP 8 supports new sustainable development proposals that seek to strengthen communities where they comply with other relevant policies with SG LDP HOU 1 limiting support to new housing within the CZ to an infill, rounding off and redevelopment basis.

The application site is also situated within the North West Argyll (Coast) Area of Panoramic Quality (APQ) where consideration has to be given to Policy LDP DM 3 and SG LDP ENV

13 which seek to resist development in, or adjacent to, an APQ where its scale, location or design will have a significant adverse impact on the character of the landscape.

Policy LDP 9 and SG 2 seek developers to site and position development so as to pay regard to the context within which it is located taking into account the location or sensitivity of the area with developments of poor quality or inappropriate layouts being resisted.

The application is seeking planning permission in principle (PPP) with no layout, design or infrastructure details having been submitted. The purpose of this application is to establish the principle of development, with the intention that if permission in principle were to be granted, matters of layout and design should be addressed by way of future application(s) for approval of matters specified in conditions.

The site is a prominent area of undulating rough grazing elevated above the neighbouring property 'Cala na Sithe' which forms the western boundary of the site and is clearly visible from the A816 public road to the north. Along the southern boundary of the site is a well-established mature forest plantation against which the proposed plot will be viewed with the land sloping down to the north towards the A816 public road. To the east is associated Plot 2 mentioned above beyond which the land continues in a similar undulating manner.

The site does not represent an appropriate opportunity for infill, rounding-off, redevelopment or change of use of building development within the CZ as required by Policy DM 1 above and there has been no claim of any 'exceptional case' for the development based upon any locational or operational site requirement.

The LCS, with respect to Site LN56 which includes the site of the currently proposed development states that the land is within the Scottish Natural Heritage 'Craggy Upland' landscape character type and that it sits on the southern shore of the head of Loch Feochan with panoramic views across the loch. The LCS categorises this landscape parcel as having medium scenic quality but with a high sensitivity to change and, therefore, a limited capacity to successfully absorb development with a recommendation that the rising slopes south of the A816 should not be developed as this would become too visible within the wider landscape and could change the character of the area.

As explained above, the LCS directly informed the amendments to the Council's settlement strategy planning policy, both in the interpretation of the then extant 2009 Local Plan and, more pertinently to the current planning application, the adopted 2015 Local Development Plan which removed these areas not recommended for development from the former ROA and re-categorized them as falling within the wider 'countryside zone (CZ)'. As summarised above, there is a policy presumption against new residential development within the CZ unless certain, specific development opportunities exist or else an appropriate claim of an 'exceptional case' has been submitted, examined and accepted subject to an Area Capacity Evaluation (ACE).

In this case, the proposed development is not an infill, redevelopment, rounding off or a change of use of an existing building and there has been no claim of any 'exceptional case' submitted. Even if there had been a claim that the proposed development should be considered an exceptional case, it is the professional and considered opinion of the planning authority that the site would not accord with an ACE given the findings of the LCS.

The applicant's counter argument to this, as advanced through the submission of their own landscape evaluation study (produced by a chartered landscape architect within VLM Landscape Design) is that the LCS adopted a 'broad brush' approach to landscape quality assessment and that it didn't adequately take into account the complex topography across compartment LN56. The applicant's submitted landscape assessment concludes that whilst parts of LN56 are visible within the wider landscape, the site of the proposed

development is not due to a combination of the surrounding knolly landform, mature garden features and extensive mature tree cover.

The applicant's submitted landscape assessment therefore concludes that whilst the development will result in an inevitable transitory period of adjustment and change to the established landscape, the actual sensitivity to change of this part of LN56 is assessed to be 'medium to high' but that the magnitude of the effect of the proposed development is 'low' and the impact upon the wider landscape character is 'moderate-minor to moderate' and, once the proposed planting strategy (to landscape the development) has been established, it is claimed that the long term impact upon the landscape character will be 'minor' and 'beneficial'. It concludes that, *"The Proposed Site offers scope for a fully integrated small-scale residential development comprising two new dwellings and associated garden grounds and access drive to assimilate into the landscape without any adverse impacts upon the landscape and visual amenity of the area. - Ultimately this sensitively planned development will be seen to be wholly consistent with the established rural settlement pattern and will not have a detrimental impact on the integrity and quality of the APQ designation. Therefore, in landscape and visual terms, the proposals are assessed to be wholly in line with current best practice guidance and environmental policies contained within the Argyll and Bute adopted Local Plan, including acceptable in terms of Policy SG LDP ENV 13."*

(The above represents a summary of the applicant's submitted landscape assessment study. The full document is available on the Council's Public Access System by clicking on the following link <http://www.argyll-bute.gov.uk/content/planning/publicaccess>.)

The planning authority have carefully considered the applicant's submitted landscape appraisal but do not agree with its findings. It is considered that development of the site with a dwellinghouse would represent an inappropriate form of development within the CZ designation resulting in an unacceptable environmental impact introducing a form of inappropriate development into the CZ and wider APQ which would be detrimental to the character and appearance of the wider landscape contrary to the policy and guidance set out above. Furthermore, the proposal would be contrary to the independent landscape advice contained within the LCS study referred to above which clearly states that the rising slopes south of the A816 should not be developed as this would become too visible within the wider landscape and could change the character of the area.

In addition to the above, however, it is important to note that the impact of the proposed development upon the landscape is not the sole determining factor in the consideration of this application.

Regardless of any interpretation of the impact of the proposed development upon the landscape, the development does not meet the fundamental key planning policy test for the Council's established and adopted settlement strategy for the planned growth of Argyll and Bute as set out within policy LDP DM 1. Neither, therefore, does the proposed development accord with the sustainable development aims of the Council as established within adopted key planning policy LDP STRAT 1. These two policies, plus the remainder of the Local Development Plan, including its adopted development management zones were the subject of considerable public scrutiny and examination in public through the public local inquiry which was held prior to adoption. The result of this was that the site the subject of the proposed development remained within the CZ, thus forming the settled will of the Council with regard to planning policy and settlement strategy. The proposed development does not accord with that policy and the Planning Authority can find no appropriate or desirable reason to set aside key planning policies LDP DM 1 or LDP STRAT 1 as a 'minor departure' to the LDP in this case.

It is further noted that should the developer wish to press his/her argument with respect to this site, the correct way to do that would be to make this case through the public

consultation phase of the emerging replacement LDP. Any decision to approve this development now, contrary to key adopted planning policy, is considered to be premature to the consideration of the forthcoming LDP.

With regard to infrastructure to serve the proposed development, the application proposes to utilise the existing private access spurring from the A816 public road currently serving 'Dalmara' and 'Cala na Sithe'. At the time of report the Roads Authority had not responded but in their response to the previous application advised that the existing access is adequate and raised no objection subject to conditions regarding the provision of an appropriate parking and turning area within the site and a refuse collection point at the junction with the public road. Connection to the public water supply is proposed with drainage via installation of a private system. Whilst, with appropriate safeguarding conditions, this aspect of the proposal could be considered consistent with Policy LDP 11 and SG LDP TRAN 4 and SG LDP TRAN 6 which seek to ensure developments are served by a safe means of vehicular access and have an appropriate parking provision within the site and SG LDP SERV 1 which gives support to private drainage proposals where connection to the public system is not feasible, this is not relevant as the principle of development on the site is not considered consistent with policy as detailed above.

The proposed development will have no materially adverse impact upon the historic environment including (but not necessarily limited to) the historic/architectural/cultural value and/or setting or other specified qualities of any listed building, any scheduled ancient monument, any garden and designed landscape, any conservation area or any special built environment area. Neither will the proposed development result in any material harm to the natural environment including (but not necessarily limited to) the special environmental/habitat/geological or other specified qualities of any site of special scientific interest, any special protection area, any 'Ramsar' site, any national or local nature reserve, any designated area of wild land, any marine consultation area, any area of semi-natural ancient woodland, any carbon and peatland area or any tree preservation order.

Taking all of the above into consideration, it is considered that the development of the site with a dwellinghouse would result in an unacceptable landscape impact contrary to the provisions of Policies LDP STRAT 1, LDP DM 1, LDP 3, LDP 8, LDP 9 and Supplementary Guidance SG 2, SG LDP ENV 13, SG LDP ENV 14 and SG LDP HOU 1 of the adopted 'Argyll and Bute Local Development Plan' 2015 and it is recommended that the application be refused for the reasons appended to this report.

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

(R) Reasons why planning permission in principle should be refused

See reasons for refusal set out 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 Environment Scotland:
No**

Reviewing Officer: Tim Williams **Date:** 08/01/20

Fergus Murray
Head of Development and Economic Growth

REASONS FOR REFUSAL RELATIVE TO APPLICATION REFERENCE 19/02314/PPP

1. The site the subject of this application lies within a wider area designated as 'Countryside Zone' within the adopted Local Development Plan and is a prominent area of undulating rough grazing elevated above the neighbouring property 'Cala na Sithe' which forms the western boundary of the site and is clearly visible from the A816 public road to the north. The site does not represent an appropriate opportunity for infill, rounding-off, redevelopment or change of use of building development within the Countryside Zone as required by Policy LDP DM 1 of the adopted Local Development Plan and there has been no claim of any 'exceptional case' for the development based upon any locational or operational site requirement.

The application site is also situated within the North West Argyll (Coast) Area of Panoramic Quality (APQ) where consideration has to be given to Policy LDP DM 3 and SG LDP ENV 13 of the adopted Local Development Plan, which seek to resist development in, or adjacent to, an APQ where its scale, location or design will have a significant adverse impact on the character of the landscape.

The proposed development is therefore contrary to the established and adopted sustainable development aims of the Council as expressed within key planning policy LDP STRAT 1 and to the established and adopted settlement strategy as espoused within key planning policy LDP DM 1. It is not considered that the proposed development would constitute an appropriate departure to these key planning policies.

In addition to the above, and notwithstanding the Applicant's submitted landscape assessment study, it is considered that the proposed development would introduce an inappropriate and additional built development into an area of sensitive landscape quality, recognised by its inclusion within a wider Area of Panoramic Landscape Quality (APQ), and will have an unacceptable and materially harmful impact upon the character and quality of the APQ and the wider landscape, contrary to the established settlement pattern.

The proposal is therefore considered to be contrary to the provisions of Policies STRAT 1, LDP DM 1, LDP 3, LDP 8, LDP 9 and Supplementary Guidance SG 2, SG LDP HOU 1, SG LDP ENV 13 and SG LDP ENV 14 of the adopted 'Argyll and Bute Local Development Plan' 2015.

APPENDIX TO DECISION REFUSAL NOTICE

Appendix relative to application **19/02314/PP**

- (A)** Has the application required an obligation under Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended).

No

- (B)** 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

- (C)** The reason why planning permission in principle has been refused.

See reason for refusal set out above.

CHECK SHEET FOR PREPARING AND ISSUING DECISION

Application Number	19/02314/PPP
Decision Date	08/01/20
Issue Latest Date	09/01/20
Decision	Grant with Conditions & Reasons

Date signed by ATL

Don't Issue Decision	Tick if relevant	Action (tick)	Date sent
Notification to Scottish Ministers			
Notification to Historic Scotland			
Section 75 Agreement			
Revocation			

<i>Issue Decision</i>	✓	<i>Tick</i>	Standard Conditions/Notes to include					
<i>Tick</i>	<i>Dev/Decision Type</i>	Time Scale*	Initiation	Completion	Display Notice			
			Only use if PP/AMSC & Granted					
	Local – Sch.3 – Delegated							
✓	Local – Delegated		Refusal					

*standard time condition not required if application retrospective.

Include with Decision Notice	
Customer Satisfaction Survey	✓

Notify of Decision	
Objectors/Contributors	✓
Ongoing Monitoring – priorities:	

Total residential units FP3 (uniform)			
Houses	1	Sheltered	
Flats		Affordable	

This page is intentionally left blank

This Local Review Statement has been prepared to support two local reviews being submitted in relation to the following two applications, which were refused by Argyll & Bute Council on 9th January 2020.

- 19/02314/PPP | Site for the erection of dwellinghouse and garage - Plot 1 Land east of Cala Na Sithe, Kilmore.
- 19/02315/PPP | Site for the erection of dwellinghouse and garage - Plot 2 Land east of Cala Na Sithe, Kilmore.

The applicant requests the following.

- 1. As the local reviews turn on the weight to be attributed to the recent approval of the Local Development Plan 2 Proposed Plan (PLDP2), councillors are requested to hold a hearing to better understand the relevance of the new policy regime.**
- 2. As the visual and landscape impact of the proposed dwellings is the critical issue, councillors are requested to undertake a site visit.**

The starting point for these reviews is the weight that should be given to the PLDP2 and Policy 02 in particular. The case officer accepts that PLDP2 is a material consideration, and the ‘settled view’ of the Council, and so, in accordance with Section 25 of the Town and Country Planning (Scotland) Act, these applications can be granted planning permission, if councillors attribute sufficient weight to this Plan, and other material considerations, such that a minor departure from the development plan is warranted.

The case officer’s position on this is that PLDP2 *“will be afforded very little weight until the consultation exercise has been completed”*. This has now concluded and so councillors should be able to understand the extent of comment, if any, on this policy by the time they consider these cases. If they are not provided that information by the case officer, then they can presumably request it from Matt Mulderrig, Development Policy Manager.

The case officer then goes on to say that *“once the consultation period is concluded those aspects of PLDP2 which have not been objected to will then be given strong weight”*. It is highly doubtful anyone will have objected to the thrust of this Policy, given its general permissiveness. It was made abundantly clear at the Main Issues Report (MIR) stage that the Council was going to adopt a *“more flexible approach to development in our non-environmentally protected countryside”* such as here (MIR page 17). Of the responses received to the MIR on this new approach, the vast majority supported it, and the report on the MIR that went with the Proposed Plan to committee on the 26th of September concluded on this as follows:

“The LDP seeks to promote a more flexible approach to small scale development in the countryside by adopting a ‘presumption in favour’ of such development provided it demonstrates high quality, low carbon design, is sensitively located using the principles of Landscape and Visual Impact Assessment, and does not adversely impact on any nature or heritage assets.”

The key words here being a ‘presumption in favour’, which should thus be the starting point for considering these reviews. They should be granted planning permission unless for some reason they cause unacceptable landscape harm.

Policy 02 in full will be provided by the case officer, but the relevant part for these local reviews is as follows.

“Outwith the Settlement Areas shown on the proposals map, development will only be acceptable where it can be demonstrated that it accords with:

An allocation of this plan; or parts A, B or C as set out below, together with all other relevant policies of the LDP2”

The sites are within a Countryside Area, which is accepted by the case officer, and so the relevant part of the Policy is as follows.

“A – Countryside Areas

Within the Countryside Areas there is a presumption in favour of sustainable development where this is of an appropriate scale, design, siting and use for its countryside location, as detailed in the relevant subject policies. All developments will require a Landscape and Visual Impact Assessment demonstrating to the satisfaction of the Planning Authority, that the proposal can be successfully integrated into its land scape setting unless they are:

- *Infill; or*
- *Rounding off; or*
- *Redevelopment opportunities of clusters; or*
- *Previously developed sites. Development adjacent to, but outwith settlement boundaries which are delineated in the Proposals Maps will not constitute infill, rounding off or redevelopment.”*

The Policy is slightly oddly worded, but basically states that a dwelling can be supported anywhere in Countryside Areas, the permissive policy as explained above, provided it is supported by a *“Landscape and Visual Impact Assessment demonstrating to the satisfaction of the Planning Authority, that the proposal can be successfully integrated into its landscape setting”*. You don't need to provide a Landscape and Visual Assessment where you are one of the bulleted exceptions, i.e. infill etc. However, these sites are not one of those exceptions and so have been submitted with a Landscape and Visual Appraisal produced by Victoria Mack of VLM Landscape Design, a chartered landscape architect with nearly 20 years professional experience.

The councillors will note what the case officer says about the former status of the sites as a Rural Opportunity Area (ROA). ROA status was something that the landowner (the current applicant) supported, and was surprised to lose on the back of a Landscape Capacity Study produced quickly, with little fanfare, and in relation to which no comments from landowners were requested. The company that did these studies though highly respected had little time to consider each site, maybe an hour or so, whereas Victoria took an entire day just to do her site visit and to ensure that she was fully conversant with the landscape and potential views. It has also been clear for several years that the landscape studies include a number of inconsistencies and errors and have not stood the test of time. It is suspected that part of the reason for the change of policy approach, and moving towards application specific Landscape and Visual Appraisals, as required by Policy 02, is to finally lay the landscape studies to rest.

As councillors will note from reading the VLM Landscape Design Landscape and Visual Appraisal in full, development here will not be that visible and will not alter the landscape character of the area. The sites are certainly not prominent, as suggested by the case officer, and that comment suggests that the case officer has not done the fieldwork done by Victoria Mack who has considered this issue in depth and concludes as follows.

“7.1 The Proposed Site offers scope for a fully integrated small-scale residential development comprising two new dwellings and associated garden grounds and access drive to assimilate into the landscape without any adverse impacts upon the landscape and visual amenity of the area.

7.2 The proposed site and its context is well defined by rising landform and prolific vegetation with a coniferous plantation providing a soft backdrop and mature garden and woodland features combining with the knolly landform to the north of the site effectively screening all but a handful of views. As part of the site-wide planting strategy, it is proposed to strengthen the existing tree cover on the perimeter of the site with ‘native’ planting where species will be limited to the existing species found within the immediate context. This will aid in enhancing the secluded character of the site and in the medium to long term, as this component of the proposals establishes and matures, it will contribute to the area’s nature conservation value and the quality of the local landscape resource.

7.3 Careful consideration has been given to the siting, massing, scale and form of the new dwellings to ensure that any potential visual impacts are minimised. This has included the height, architectural style and detailing of the built forms as well as a sensitive choice to materials and the hard and soft landscape palette. In addition, it is proposed to set the new dwellings back against the soft woodland foil along the southern boundary and away from the more visually sensitive northern fringes of the wider land in ownership. This considered approach to the site planning will ensure that the new dwellings will effectively nestle into the existing landscape with minimal mitigation required and where visible in glimpsed, transient views, the new dwellings would be seen to be wholly consistent with the dispersed settlement pattern across the wider loch area.

7.4 This proposals have high regard to the preservation of the assets of this area inland from the western coastline of Argyll and by sensitive planning of the site, which itself has been carefully selected, it is considered that the proposals will be seen to visually integrate into the woodland setting and be sensitive to the locality in terms of design, scale and the use of local materials and detailing. This will ensure that the proposals are not intrusive within this settled coastal loch landscape.

7.5 This Landscape and Visual Appraisal has demonstrated that the Proposed Site comprises a visually discreet part of the extended landholding, which forms part of the site LN56 highlighted in the Lorn and Inner Isles Landscape Capacity Study, and does have the landscape capacity to absorb a small-scale development without adverse impacts upon landscape and visual effects. As such the Proposed Site should be classed as a Rural Opportunity Area and be developed in line with Policy LDP DM 1.

7.6 Ultimately this sensitively planned development will be seen to be wholly consistent with the established rural settlement pattern and will not have a detrimental impact on the integrity and quality of the APQ designation. Therefore, in landscape and visual terms, the proposals are assessed

to be wholly in line with current best practice guidance and environmental policies contained within the Argyll and Bute adopted Local Plan, including acceptable in terms of Policy SG LDP ENV 13.”

As we have said above, we hope that councillors will visit the site to assess the impact for themselves and, if they want, they can hold a hearing and ask Vicky Mack to attend and question her on her conclusions. She has the right qualification, experience and the knowledge, and we would respectfully suggest that councillors give considerably more weight to her conclusions as a qualified landscape architect who is an expert witness in the field of landscape and visual impact over the views of a planner (the case officer) who isn't.

For the above reasons, it is hoped that councillors will support these applications and grant planning permission as a minor departure from the development plan on the basis that other material considerations (PLDP2 and the views of a chartered landscape architect) warrant doing so.

Proposal Details

Proposal Name	100194905
Proposal Description	Single dwelling and garage
Address	
Local Authority	Argyll and Bute Council
Application Online Reference	100194905-003

Application Status

Form	complete
Main Details	complete
Checklist	complete
Declaration	complete
Supporting Documentation	complete
Email Notification	complete

Attachment Details

Notice of Review	System	A4
Covering Letter	Attached	A4
Decision Notice	Attached	A4
Design Access Statement	Attached	A4
Landscape and visual appraisal	Attached	A4
Planning Application Form - Public	Attached	A4
Plans - Approved/Refused	Attached	A4
Plans - Location Plan	Attached	A4
Report of handling	Attached	A4
Local Review Statement	Attached	A4
Notice_of_Review-2.pdf	Attached	A0
Application_Summary.pdf	Attached	A0
Notice of Review-003.xml	Attached	A0

This page is intentionally left blank

STATEMENT OF CASE

FOR

**ARGYLL AND BUTE COUNCIL
LOCAL REVIEW BODY**

20/0002/LRB

**REFUSAL OF PLANNING PERMISSION IN PRINCIPLE 19/02314/PPP
SITE FOR THE ERECTION OF A DWELLINGHOUSE**

**PLOT 1, LAND EAST OF CALA NA SITHE,
KILMORE, BY OBAN**

11/02/20

STATEMENT OF CASE

The Planning Authority is Argyll and Bute Council ('the Council'). The appellant is Petard Investments ('the appellant').

Planning permission in principle 19/02314/PPP for a site for the erection of a dwellinghouse on an area of land east of Cala Na Sithe, Kilmore, by Oban ("the appeal site") was refused by the Planning Service under delegated powers on 09/01/20.

The planning application has been appealed and is subject of referral to a Local Review Body.

DESCRIPTION OF SITE

The LRB refers to the site as Plot 1 with an associated LRB for Plot 2 (20/0003/LRB) also currently subject of Review.

The site is a prominent area of undulating rough grazing elevated above the neighbouring property 'Cala na Sithe' which forms the western boundary of the site and is clearly visible from the A816 public road to the north. Along the southern boundary of the site is a well-established mature forest plantation against which the proposed plot will be viewed with the land sloping down to the north towards the A816 public road. To the east is associated Plot 2 mentioned above beyond which the land continues in a similar undulating manner.

The site does not represent an appropriate opportunity for infill, rounding-off, redevelopment or change of use of building development within the Countryside Zone (CZ) as required by Policy DM 1 above and there has been no claim of any 'exceptional case' for the development based upon any locational or operational site requirement and accordingly planning permission in principle was refused. .

STATUTORY BASIS ON WHICH THE APPEAL SHOULD BE DECIDED

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

STATEMENT OF CASE

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

- *Whether weight should be given to the forthcoming Local Development Plan 2 (LDP 2) and whether a hearing should be held to understand the relevance of LDP 2.*

The Report of Handling (Appendix 1) sets out the Council's full assessment of the application in terms of Development Plan policy and other material considerations.

REQUIREMENT FOR ADDITIONAL INFORMATION AND A HEARING

It is not considered that any additional information is required in light of the appellant's submission. The issues raised were assessed in the Report of Handling which is contained in Appendix 1. As such it is considered that Members have all the information they need to determine the case. Given the above and that the proposal is small-scale, has no complex or challenging issues, and has not been the subject of any significant public representation, it is not considered that a Hearing is required.

COMMENT ON APPELLANT'S SUBMISSION

The appellant contends that weight should be attributed to the recent approval of LDP 2 and that Councillors hold a hearing to better understand the relevance of the new policy regime within LDP 2.

As the visual and landscape impact of the proposed dwellings is the critical issue, the appellant requests that Councillors undertake a site visit.

Planning Authority Comment:

The application was determined under the terms of the Local Plan in force at the time, namely the adopted 'Argyll and Bute Local Development Plan' (LDP) 2015. This was the only correct and competent course of action open to officers at that time and it is that decision, and that decision only, which is the subject of the current Review.

The application was submitted, assessed and determined at a very early stage in the approval and eventual adoption process of the emerging Local Development Plan; prior to the closure of the formal Public Consultation undertaken for LDP 2 and, therefore, LDP 2 could not have been afforded any significant material weight in the determination of the application. Neither can LDP 2 be afforded any significant weight now, at the time of this Review (February 2020). The appellant asserts that, in his opinion, 'it is highly doubtful [that] anyone will have objected to the thrust of this policy' (proposed policy 02). With respect, officers cannot accept this statement at face value and neither should Members. The fact remains that the LDP 2 consultation process has generated a substantial number of representations and these are still being collated and appropriately assessed. This process is likely to take several weeks and, until such time, there can be no material weighting given to any of the policies within the proposed LDP 2.

The Council's Development Policy Service (DPS) has advised that significant weight can only be applied to elements of LDP 2 which have not been objected to and this is something which is an unknown during both the consultation and post consultation evaluation process. Accordingly the DPS advise that policies within LDP 2 can be given no material weighting at this time and also that the policies within LDP 2

cannot be applied retrospectively to an application which has already been determined.

Notwithstanding the above, it would not be appropriate or legally competent to have the application reassessed under the provisions of LDP 2 at Local Review. It is of critical importance that all planning applications are properly assessed in accordance with the provisions of the approved and adopted local development plan in force at that time. Whilst it is acknowledged that the applicant/developer could submit a further application at an appropriate time in the future when LDP 2 becomes a material consideration, the fact remains that the applicant/developer chose to submit their current application (subject of this Review) substantially before the material emergence of LDP 2. In that fundamental regard, the proposed development must be considered premature to any future planning policy.

The Planning Authority robustly maintains that the planning application the subject of this Review was assessed properly and in correct accordance with the provisions of the adopted Local Development Plan and all other material planning considerations. Any suggestion to the contrary is wholly refuted.

Given the current position with LDP 2, the Local Review Panel are advised that holding a hearing to debate the merits of LDP 2 would not be relevant or appropriate; nor would it add anything to the LRB process as no weight was given to LDP 2 in the consideration of the planning application by the Planning Authority and no weight can be given to LDP 2 by Members in consideration of this Review.

Should Members decide to undertake a site visit, this would be on the basis of assessing the application in terms of the adopted LDP and not the forthcoming LDP 2.

It is concluded that:

- Officers could only have determined this application under the provisions of the adopted (current) LDP and to any other material planning considerations. The application was submitted, assessed and determined before the closure of the LDP2 public consultation and it could not, therefore, have been afforded significant material weight.*
- It would not be correct to seek to have this application reassessed under the provisions of LDP 2 at Review (though the developer could submit a further application(s) at an appropriate time).*
- The LRB panel are respectfully advised that they should not apply any new emerging planning policy retrospectively.*

CONCLUSION

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

Taking all of the above into consideration, as set out above, it remains the view of the Planning Service, as set out in the Report of Handling appended to this statement, that the proposed site does not represent an appropriate opportunity for development with a dwellinghouse and would result in an unacceptable environmental impact by virtue of introducing a form of inappropriate development into the CZ detrimental to the character and appearance of the wider landscape.

Taking account of the above, it is respectfully requested that the application for review be dismissed.

APPENDIX 1

Argyll and Bute Council
Development and Infrastructure

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 2013 relative to applications for Planning Permission or Planning Permission in Principle

Reference No: 19/02314/PPP

Planning Hierarchy: Local Development

Applicant: Petard Investments

Proposal: Site for Erection of Dwellinghouse and Garage

Site Address: Plot 1, Land East of Cala Na Sithe, Kilmore

DECISION ROUTE

Section 43 (A) of the Town and Country Planning (Scotland) Act 1997 (as amended)

(A) THE APPLICATION

(i) Development Requiring Express Planning Permission

- Site for erection of dwellinghouse (planning permission in principle)
- Formation of vehicular access (planning permission in principle)
- Installation of private drainage system (planning permission in principle)

(ii) Other specified operations

- Connection to public water main
-

(B) RECOMMENDATION:

Having due regard to the Development Plan and all other material considerations, it is recommended that planning permission in principle be **REFUSED** for the reasons appended to this report.

(C) HISTORY:

18/02238/PPP

Site for erection of dwellinghouse – Refused: 18/12/18

(D) CONSULTATIONS:

Area Roads Authority

No objection subject to conditions 13/11/19.

Scottish Water

Letter dated 17/11/19 advising no objection to the proposed development

The above represents a summary of the issues raised. Full details of the consultation responses are available on the Council's Public Access System by clicking on the following link <http://www.argyll-bute.gov.uk/content/planning/publicaccess>.

(E) PUBLICITY:

The proposal has been advertised in terms of Regulation 20 and Neighbour Notification procedures, overall closing date 19/12/19.

(F) REPRESENTATIONS:

One representation has been received regarding the proposed development.

Mrs Sandra Grieve, Dalmarra, Kilmore, PA34 4QT (22/11/19)

(i) Summary of issues raised

- Where the proposed road is marked on application, it will be going over our private water supply.

Comment: This is not a material consideration in the determination of this planning application but a separate civil issue between affected parties.

The above represents a summary of the issues raised. Full details of the letters of representation are available on the Council's Public Access System by clicking on the following link <http://www.argyll-bute.gov.uk/content/planning/publicaccess>.

(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:
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 |
-

(H) PLANNING OBLIGATIONS

- | | |
|-------------------------------------------------|-----------|
| (i) Is a Section 75 obligation required: | No |
|-------------------------------------------------|-----------|

(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 Local Development Plan, 2015

LDP STRAT 1 – Sustainable Development
 LDP DM 1 – Development within the Development Management Zones (*Countryside Zone*)
 LDP 3 – Supporting the Protection Conservation and Enhancement of our Environment
 LDP 8 – Supporting the Strength of our Communities
 LDP 9 – Development Setting, Layout and Design
 LDP 10 – Maximising our Resources and Reducing our Consumption
 LDP 11 – Improving our Connectivity and Infrastructure

Supplementary Guidance

SG 2 – Sustainable Siting and Design Principles
 SG LDP ENV 13 – Development Impact on Areas of Panoramic Quality (APQs) (*North West Argyll (Coast) APQ*)
 SG LDP ENV 14 – Landscape
 SG LDP HOU 1 – General Housing Development including Affordable Housing
 SG LDP SERV 1 – Private Sewage Treatment Plans & Wastewater Systems
 SG LDP SERV 2 – Incorporation of Natural Features/Sustainable Drainage Systems (SuDS)
 SG LDP TRAN 4 – New and Existing, Public Roads and Private Access Regimes
 SG LDP TRAN 6 – Vehicle Parking Provision

(i) **List of all other material planning considerations taken into account in the assessment of the application, having due regard to Annex A of Circular 3/2013.**

Argyll and Bute Sustainable Design Guidance, 2006
 Scottish Planning Policy (SPP), 2014
 Argyll and Bute Proposed Local Development Plan 2 (November 2019)
 Consultation Responses
 Third Party Representations

(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: No

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

An application for Planning Permission in Principle 18/02238/PP for a dwellinghouse on this site was refused by the Planning Service on 18 December 2018.

The application refers to the site as Plot 1 with an associated application for the resubmission on Plot 2 (19/02315/PPP) also currently with the Planning Service for consideration.

In support of the resubmission, the agent has stated that “... *the policy position in relation to new housing in Countryside Areas is changing with the recent approval of the Local Development Plan 2 Proposed Plan, which is now the settled view of the Council. The Plan has changed the way in which proposals will be considered going forward and, although it still needs to be consulted upon and examined, it does already carry weight as a material consideration*”.

However, whilst the proposed Local Development Plan 2 (PLDP2) has been through Council and is classed as the ‘settled view’ of the Council representing a material consideration, in the main, this will be afforded very little weight until the consultation exercise has been completed. Once the consultation period is concluded those aspects of PLDP2 which have not been objected to will then be given strong weight.

Accordingly, as the consultation on PLDP 2 does not expire until 23 January 2020, the current application is considered to be premature and requires to be assessed in terms of the current adopted ‘Argyll and Bute Local Development Plan’ (LDP) 2015 with the assessment reflecting that of the previous application reiterated below.

As a background it should be noted that during the life of the preceding 2009 Local Plan, the site was identified as being within a Rural Opportunity Area (ROA). However, ROAs within Areas of Panoramic Quality (APQ), within which the site falls, were subject to Landscape Capacity Study (LCS) to refine their extent for the purposes of decision making through the 2009 Local Plan (and now the adopted 2015 Local Development Plan). The LCS included the site of the current application within Site LN56 identified as an area not recommended for development, stating that, generally, the rising slopes south of the A816 should not be developed as this would become too visible within the wider landscape and could change the character of the area. The LCS identified two small areas suitable for development, both of which have followed through into the current LDP as ROAs with the areas identified as not suitable for development followed through into the current LDP as Countryside.

In terms of the current adopted ‘Argyll and Bute Local Development Plan’ (LDP) 2015 the application site is situated within the Countryside Zone (CZ) where Policy LDP DM 1 of the LDP is very restrictive only giving support to small scale development on

an appropriate infill, rounding off, redevelopment or change of use of building development, subject to compliance with other relevant policies and supplementary guidance (SG).

Policy LDP 8 supports new sustainable development proposals that seek to strengthen communities where they comply with other relevant policies with SG LDP HOU 1 limiting support to new housing within the CZ to an infill, rounding off and redevelopment basis.

The application site is also situated within the North West Argyll (Coast) Area of Panoramic Quality (APQ) where consideration has to be given to Policy LDP DM 3 and SG LDP ENV 13 which seek to resist development in, or adjacent to, an APQ where its scale, location or design will have a significant adverse impact on the character of the landscape.

Policy LDP 9 and SG 2 seek developers to site and position development so as to pay regard to the context within which it is located taking into account the location or sensitivity of the area with developments of poor quality or inappropriate layouts being resisted.

The application is seeking planning permission in principle (PPP) with no layout, design or infrastructure details having been submitted. The purpose of this application is to establish the principle of development, with the intention that if permission in principle were to be granted, matters of layout and design should be addressed by way of future application(s) for approval of matters specified in conditions.

The site is a prominent area of undulating rough grazing elevated above the neighbouring property 'Cala na Sithe' which forms the western boundary of the site and is clearly visible from the A816 public road to the north. Along the southern boundary of the site is a well-established mature forest plantation against which the proposed plot will be viewed with the land sloping down to the north towards the A816 public road. To the east is associated Plot 2 mentioned above beyond which the land continues in a similar undulating manner.

The site does not represent an appropriate opportunity for infill, rounding-off, redevelopment or change of use of building development within the CZ as required by Policy DM 1 above and there has been no claim of any 'exceptional case' for the development based upon any locational or operational site requirement.

The LCS, with respect to Site LN56 which includes the site of the currently proposed development states that the land is within the Scottish Natural Heritage 'Craggy Upland' landscape character type and that it sits on the southern shore of the head of Loch Feochan with panoramic views across the loch. The LCS categorises this landscape parcel as having medium scenic quality but with a high sensitivity to change and, therefore, a limited capacity to successfully absorb development with a recommendation that the rising slopes south of the A816 should not be developed as this would become too visible within the wider landscape and could change the character of the area.

As explained above, the LCS directly informed the amendments to the Council's settlement strategy planning policy, both in the interpretation of the then extant 2009 Local Plan and, more pertinently to the current planning application, the adopted 2015 Local Development Plan which removed these areas not recommended for development from the former ROA and re-categorized them as falling within the wider

'countryside zone (CZ). As summarised above, there is a policy presumption against new residential development within the CZ unless certain, specific development opportunities exist or else an appropriate claim of an 'exceptional case' has been submitted, examined and accepted subject to an Area Capacity Evaluation (ACE).

In this case, the proposed development is not an infill, redevelopment, rounding off or a change of use of an existing building and there has been no claim of any 'exceptional case' submitted. Even if there had been a claim that the proposed development should be considered an exceptional case, it is the professional and considered opinion of the planning authority that the site would not accord with an ACE given the findings of the LCS.

The applicant's counter argument to this, as advanced through the submission of their own landscape evaluation study (produced by a chartered landscape architect within VLM Landscape Design) is that the LCS adopted a 'broad brush' approach to landscape quality assessment and that it didn't adequately take into account the complex topography across compartment LN56. The applicant's submitted landscape assessment concludes that whilst parts of LN56 are visible within the wider landscape, the site of the proposed development is not due to a combination of the surrounding knolly landform, mature garden features and extensive mature tree cover.

The applicant's submitted landscape assessment therefore concludes that whilst the development will result in an inevitable transitory period of adjustment and change to the established landscape, the actual sensitivity to change of this part of LN56 is assessed to be 'medium to high' but that the magnitude of the effect of the proposed development is 'low' and the impact upon the wider landscape character is 'moderate-minor to moderate' and, once the proposed planting strategy (to landscape the development) has been established, it is claimed that the long term impact upon the landscape character will be 'minor' and 'beneficial'. It concludes that, *"The Proposed Site offers scope for a fully integrated small-scale residential development comprising two new dwellings and associated garden grounds and access drive to assimilate into the landscape without any adverse impacts upon the landscape and visual amenity of the area. - Ultimately this sensitively planned development will be seen to be wholly consistent with the established rural settlement pattern and will not have a detrimental impact on the integrity and quality of the APQ designation. Therefore, in landscape and visual terms, the proposals are assessed to be wholly in line with current best practice guidance and environmental policies contained within the Argyll and Bute adopted Local Plan, including acceptable in terms of Policy SG LDP ENV 13."*

(The above represents a summary of the applicant's submitted landscape assessment study. The full document is available on the Council's Public Access System by clicking on the following link <http://www.argyll-bute.gov.uk/content/planning/publicaccess>.)

The planning authority have carefully considered the applicant's submitted landscape appraisal but do not agree with its findings. It is considered that development of the site with a dwellinghouse would represent an inappropriate form of development within the CZ designation resulting in an unacceptable environmental impact introducing a form of inappropriate development into the CZ and wider APQ which would be detrimental to the character and appearance of the wider landscape contrary to the policy and guidance set out above. Furthermore, the proposal would be contrary to the independent landscape advice contained within the LCS study referred to above which clearly states that the rising slopes south of the A816 should

not be developed as this would become too visible within the wider landscape and could change the character of the area.

In addition to the above, however, it is important to note that the impact of the proposed development upon the landscape is not the sole determining factor in the consideration of this application.

Regardless of any interpretation of the impact of the proposed development upon the landscape, the development does not meet the fundamental key planning policy test for the Council's established and adopted settlement strategy for the planned growth of Argyll and Bute as set out within policy LDP DM 1. Neither, therefore, does the proposed development accord with the sustainable development aims of the Council as established within adopted key planning policy LDP STRAT 1. These two policies, plus the remainder of the Local Development Plan, including its adopted development management zones were the subject of considerable public scrutiny and examination in public through the public local inquiry which was held prior to adoption. The result of this was that the site the subject of the proposed development remained within the CZ, thus forming the settled will of the Council with regard to planning policy and settlement strategy. The proposed development does not accord with that policy and the Planning Authority can find no appropriate or desirable reason to set aside key planning policies LDP DM 1 or LDP STRAT 1 as a 'minor departure' to the LDP in this case.

It is further noted that should the developer wish to press his/her argument with respect to this site, the correct way to do that would be to make this case through the public consultation phase of the emerging replacement LDP. Any decision to approve this development now, contrary to key adopted planning policy, is considered to be premature to the consideration of the forthcoming LDP.

With regard to infrastructure to serve the proposed development, the application proposes to utilise the existing private access spurring from the A816 public road currently serving 'Dalmara' and 'Cala na Sithe'. At the time of report the Roads Authority had not responded but in their response to the previous application advised that the existing access is adequate and raised no objection subject to conditions regarding the provision of an appropriate parking and turning area within the site and a refuse collection point at the junction with the public road. Connection to the public water supply is proposed with drainage via installation of a private system. Whilst, with appropriate safeguarding conditions, this aspect of the proposal could be considered consistent with Policy LDP 11 and SG LDP TRAN 4 and SG LDP TRAN 6 which seek to ensure developments are served by a safe means of vehicular access and have an appropriate parking provision within the site and SG LDP SERV 1 which gives support to private drainage proposals where connection to the public system is not feasible, this is not relevant as the principle of development on the site is not considered consistent with policy as detailed above.

The proposed development will have no materially adverse impact upon the historic environment including (but not necessarily limited to) the historic/architectural/cultural value and/or setting or other specified qualities of any listed building, any scheduled ancient monument, any garden and designed landscape, any conservation area or any special built environment area. Neither will the proposed development result in any material harm to the natural environment including (but not necessarily limited to) the special environmental/habitat/geological or other specified qualities of any site of special scientific interest, any special protection area, any 'Ramsar' site, any national or local nature reserve, any designated area of wild land, any marine consultation

area, any area of semi-natural ancient woodland, any carbon and peatland area or any tree preservation order.

Taking all of the above into consideration, it is considered that the development of the site with a dwellinghouse would result in an unacceptable landscape impact contrary to the provisions of Policies LDP STRAT 1, LDP DM 1, LDP 3, LDP 8, LDP 9 and Supplementary Guidance SG 2, SG LDP ENV 13, SG LDP ENV 14 and SG LDP HOU 1 of the adopted 'Argyll and Bute Local Development Plan' 2015 and it is recommended that the application be refused for the reasons appended to this report.

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

(R) Reasons why planning permission in principle should be refused

See reasons for refusal set out 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 Environment Scotland: No

Author of Report: Fiona Scott Date: 23/12/19

Reviewing Officer: Tim Williams Date: 08/01/20

**Fergus Murray
Head of Development and Economic Growth**

REASONS FOR REFUSAL RELATIVE TO APPLICATION REFERENCE 19/02314/PPP

1. The site the subject of this application lies within a wider area designated as 'Countryside Zone' within the adopted Local Development Plan and is a prominent area of undulating rough grazing elevated above the neighbouring property 'Cala na Sithe' which forms the western boundary of the site and is clearly visible from the A816 public road to the north. The site does not represent an appropriate opportunity for infill, rounding-off, redevelopment or change of use of building development within the Countryside Zone as required by Policy LDP DM 1 of the adopted Local Development Plan and there has been no claim of any 'exceptional case' for the development based upon any locational or operational site requirement.

The application site is also situated within the North West Argyll (Coast) Area of Panoramic Quality (APQ) where consideration has to be given to Policy LDP DM 3 and SG LDP ENV 13 of the adopted Local Development Plan, which seek to resist development in, or adjacent to, an APQ where its scale, location or design will have a significant adverse impact on the character of the landscape.

The proposed development is therefore contrary to the established and adopted sustainable development aims of the Council as expressed within key planning policy LDP STRAT 1 and to the established and adopted settlement strategy as espoused within key planning policy LDP DM 1. It is not considered that the proposed development would constitute an appropriate departure to these key planning policies.

In addition to the above, and notwithstanding the Applicant's submitted landscape assessment study, it is considered that the proposed development would introduce an inappropriate and additional built development into an area of sensitive landscape quality, recognised by its inclusion within a wider Area of Panoramic Landscape Quality (APQ), and will have an unacceptable and materially harmful impact upon the character and quality of the APQ and the wider landscape, contrary to the established settlement pattern.

The proposal is therefore considered to be contrary to the provisions of Policies STRAT 1, LDP DM 1, LDP 3, LDP 8, LDP 9 and Supplementary Guidance SG 2, SG LDP HOU 1, SG LDP ENV 13 and SG LDP ENV 14 of the adopted 'Argyll and Bute Local Development Plan' 2015.

APPENDIX TO DECISION REFUSAL NOTICE

Appendix relative to application **19/02314/PP**

- (A)** Has the application required an obligation under Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended).

No

- (B)** 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

- (C)** The reason why planning permission in principle has been refused.

See reason for refusal set out above.

This page is intentionally left blank

Dear Ms Innis,

The Applicant wishes to respond to the case officer's statement as follows.

1. When local reviews were introduced Scottish Ministers stated that they should be considered in the same way as planning appeals and should adopt the *de novo* approach. *De novo* is a Latin expression used in English to mean 'from the beginning', 'anew'. This was confirmed as the correct approach in the case of *Sally Carroll v Scottish Borders Council* (copy attached). This means that the decision maker must take into account all material considerations and that can include information/documents that emerge after the original delegated or committee decision. This happens all the time at appeal and the situation should be no different here. It is therefore entirely legally competent for the councillors to consider the Proposed LDP and decide what weight to give it.
2. It is also entirely proper for councillors to ask their officers what comments have been received on the Proposed LDP, and I am sure that officers already know in general terms how many comments have been received on the policy at issue here. It would be entirely wrong for councillors to determine this local review in the way advocated by the case officer simply because a bit of time will be required to sift through relevant responses; if indeed there are any.
3. The Applicant could have waited to submit applications that is true, but wanted to take advantage of the free go that was available and that period ran out before the consultation on the Proposed LDP closed.
4. A hearing would be entirely appropriate and would allow time for the case officer to ascertain and exhibit any responses on the relevant policy in the Proposed LDP. It would also allow me to explain why the *de novo* approach is relevant, and why weight can be attributed to the Proposed LDP, which is the current 'settled view' of the Council and thus carries significant weight in the determination of these applications in my opinion.

Regards

Paul Houghton BSc(Hons), LLB(Hons), MA, MRTPI
Director and Head of Land Development and Planning



M: 07786 260212 and 07780 117708
E: Paul.Houghton@dmhall.co.uk

This page is intentionally left blank

**SALLY CARROLL AGAINST SCOTTISH BORDERS COUNCIL AND ANOTHER
AGAINST A DECISION OF A LOCAL REVIEW BODY OF SCOTTISH BORDERS
COUNCIL DATED 21 MARCH 2013**

EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

[2015] CSIH 73

XA52/13

Lord Menzies
Lady Smith
Lady Clark of Calton

OPINION OF THE COURT
delivered by LORD MENZIES

in the cause

SALLY CARROLL

Appellant and reclaimer;

against

SCOTTISH BORDERS COUNCIL

Respondents:

and

THE FIRM OF SR FINDLAY

Interested party

against a decision of a Local Review Body of Scottish Borders Council dated
21 March 2013

Appellant and reclaimer: Poole QC, Irving; Kennedys

Respondents: Burnet; bto

Interested party; Martin QC, Van der Westhuizen; CMS Cameron McKenna LLP

Lord Advocate; Wilson QC; Scottish Government Legal Directorate

7 October 2015

Introduction

[1] The interested party wishes to erect two wind turbines together with ancillary equipment on land south west of Neuk Farm, Cockburnspath. The turbines will be

110 metres high to blade tip. The site is in coastal farmland proximate to a coastal margin which is considered to be highly sensitive. It is within two kilometres of the Berwickshire Coast Special Landscape Area, four kilometres of the Lammermuir Hills Special Landscape Area, one kilometre of the Dunglass historic garden, two kilometres of the Southern Upland Way, and is close to the two conservation areas of Oldhamstocks and Cockburnspath and the Berwickshire Coastal Path.

[2] Planning permission for the erection of wind turbines on this site was refused on 15 September 2010, and was refused again by a Local Review Body (“LRB”) of the respondents on 7 March 2011 on the basis that the proposal was contrary to the Development Plan. The interested party resubmitted the application for planning permission, and on 2 October 2012 the respondents’ planning officer refused the application, again on the basis that it was contrary to the Development Plan. The interested party sought review of this decision, and on 21 March 2013 an LRB of the respondents concluded that the development was consistent with the Development Plan and granted planning permission for the development, subject to conditions.

[3] The appellant resides in Cockburnspath and objected to the grant of planning permission. She is aggrieved by the decision of the LRB dated 21 March 2013. She appealed to the Court of Session on the basis that the decision was not within the power of the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”) and that the relevant requirements of that Act have not been complied with. On 12 July 2013 the court granted the appellant’s motion to remit the appeal to the Outer House to be heard by the Lord Ordinary in the first instance. On the same day the court made a Protective Expenses Order in favour of the appellant and suspended *ad interim* the grant of planning permission. Having heard the appeal, on 17 January 2014 the Lord Ordinary held that the decision of the LRB dated 21 March 2013 was within the powers of the 1997 Act, and refused the appeal. It is against that decision that the claimant claims to this court.

[4] We were told that this is the first case in which a decision of an LRB has been challenged in this court. Accordingly it may be helpful to set out the salient provisions of the statutory regime which was introduced by the Planning etc (Scotland) Act 2006 (“the 2006 Act”), together with the relevant regulations and EU directive.

The relevant legislative provisions

The Town and Country Planning (Scotland) Act 1997 (as amended)

“43A Local developments: schemes of delegation

(1) A planning authority are –

(a) as soon as practicable after the coming into force of section 17 c the Planning etc (Scotland) Act 2006 ... to prepare a scheme (to be known as a 'scheme of delegation') by which any application for planning permission for a development within the category of local developments or any application for consent, agreement or approval required by a condition imposed on a grant of planning permission for a development within that category is to be determined by a person appointed by them for the purposes of this section instead of by them, and

(b) to keep under review the scheme so prepared.

...

(8) Where a person so appointed –

(a) refuses an application for planning permission or for consent, agreement or approval,

(b) grants it subject to conditions, or

(c) has not determined it within such period as may be prescribed by regulations or a development order [or within such extended period as may at any time be agreed upon in writing between the applicant and the person so appointed],

the applicant may require the planning authority to review the case.

...

(10) Regulations or a development order may make provision as to the form and procedures of any review conducted by virtue of subsection (8).

(11) Without prejudice to the generality of subsection (10), the regulations or order may –

- (a) make different provision for different cases or classes of case,
- (b) make different provision for different stages of a case,
- (c) make provision in relation to oral or written submissions and to documents in support of such submissions,
- (d) make provision in relation to time limits (including a time limit for requiring the review), and
- (e) require the planning authority to give to the person who has required the review such notice as may be prescribed by the regulations or the order as to the manner in which that review has been dealt with

(12) Any notice given by virtue of paragraph (e) of subsection (11) –

- (a) is to include a statement of –
 - (i) the terms in which the planning authority have decided the case reviewed, and
 - (ii) the reasons on which the authority based that decision, and
- (b) may include such other information as may be prescribed by the regulations or the order.

(13) The provision which may be made by virtue of subsections (10) and (11) includes provision as to –

- (a) the making of oral submissions, or as to any failure to make such submissions or to lodge documents in support of such submissions, or

- (b) the lodging of, or as to any failure to lodge, written submission or documents in support of such submissions,

and, subject to section 43B, as to what matters may be raised in the course of the review.

(14) The provision which may be made by virtue of subsections (10) and (11) includes provision that the manner in which the review, or any stage of the review is to be conducted (as for example whether oral submissions are to be made or written submissions lodged) is to be at the discretion of the planning authority.

(15) The planning authority may uphold, reverse or vary a determination reviewed by them by virtue of subsection (8)

43B Matters which may be raised in a review under section 43A(8)

(1) In a review under section 43A(8), a party to the proceedings is not to raise any matter which was not before the appointed person at the time the determination reviewed was made unless that party can demonstrate –

- (a) that the matter could not have been raised before that time, or
- (b) that its not being raised before that time was a consequence of exceptional circumstances

(2) Nothing in subsection (1) affects any requirement or entitlement to have regard to –

- (a) the provisions of the development plan, or
- (b) any other material consideration.

239. – Proceedings for questioning the validity of other orders, decisions and directions.

(1) If a person –

(a) is aggrieved by any order to which this section applies and wishes to question the validity of that order on the grounds –

(i) that the order is not within the powers of this Act, or

(ii) that any of the relevant requirements have not been complied with in relation to that order. ...

he may make an application to the Court of Session under this section.”

The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008

“Interpretation

2. In these Regulations –

...

‘review documents’ means notice of the decision in respect of the application to which the review relates, the Report on Handling and any documents referred to in that Report, the notice of review given in accordance with regulation 9, all documents accompanying the notice of review in accordance with regulation 9(4) and any representations or comments made under regulation 10(4) or (6) in relation to the review;

...

Determination without further procedure

12. Where the local review body consider that the review documents provide sufficient information to enable them to determine the review, they may determine the review without further procedure.

Decision as to procedure to be followed

13.–(1) Where the local review body do not determine the review without further procedure, the local review body may determine the manner in which the review to be conducted and are to do so in accordance with this regulation.

(2) The local review body may determine at any stage of the review that further representations should be made or further information should be provided to enable them to determine the review.

(3) Where the local review body so determine, the review or a stage of the review to be conducted by one of or by a combination of the procedures mentioned in paragraph (4).

(4) The procedures are –

- (a) by means of written submissions;
- (b) by the holding of one or more hearing sessions; and
- (c) by means of an inspection of the land to which the review relates.

...

Decision Notice

21.–(1) The local review body must –

- (a) give notice ('a decision notice') of their decision to the applicant; and
- (b) notify every person who has made (and not subsequently withdrawn) representations in respect of the review that a decision on the review has been made and where a copy of the decision notice is available for inspection.

(2) A decision notice must, in addition to the matters required by section 43A(12) of the Act –

- (a) in the case of an application for planning permission –
 - (i) include the reference number of the application;
 - (ii) include a description of the location of the proposed development, including where applicable, a postal address;
 - (iii) include a description of the proposed development (including identification of the plans and drawings showing the proposed development) for which planning permission has been granted, or as the case may be, refused;
 - (iv) include a description of any variation made to the application in accordance with section 32A of the Act;
 - (v) specify any conditions to which the decision is subject;
 - (vi) include a statement as to the effect of section 58(2) or 59(4) of the Act, as the case may be, or where the planning authority have made a direction under section 58(2) or 59(5) of the Act, give details of that direction;
 - (vii) if any obligation is to be entered into under section 75 of the Act in connection with the application state where the terms such obligation or a summary of such terms may be inspected; and
 - (viii) include details of the provisions of the development plan and any other material considerations to which the local review body had regard in determining the application;

...”

Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment

“Whereas:

...

(16) Effective public participation in the taking of decisions enables the public to express, and the decision-maker to take account of, opinions and concerns which may be relevant to those decisions, thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues and support for the decisions taken.

(17) Participation, including participation by associations, organisations and groups, in particular non-governmental organisations promoting environmental protection, should accordingly be fostered, including, *inter alia*, by promoting environmental education of the public.

(18) The European Community signed the UN/ECE Convention on Access to Justice in Environmental Matters (the Aarhus Convention) on 25 June 1998 and ratified it on 17 February 2005.

(19) Among the objectives of the Aarhus Convention is the desire to guarantee rights of the public participation in decision-making in environmental matters in order to contribute to the protection of the right to live in an environment which is adequate for personal health and well-being.

(20) Article 6 of the Aarhus Convention provides for public participation in decisions on the specific activities listed in Annex I thereto and on activities not so listed which may have a significant effect on the environment.

(21) Article 9(2) and (4) of the Aarhus Convention provides for access to judicial or other procedures for challenging the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of Article 6 of that Convention.

...

Article 1

1. This Directive shall apply to the assessment of the environmental effects of those public and private projects which are likely to have significant effects on the environment.

...

Article 11

1. Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned:

(a) having a sufficient interest, or alternatively;

(b) maintaining the impairment of a right, where administrative procedural law of a Member State requires this as a precondition;

have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive.

2. Member States shall determine at what stage the decisions, acts or omissions may be challenged.

3. What constitutes a sufficient interest and impairment of a right shall be determined by the Member States, consistently with the objective of giving the

public concerned wide access to justice. To that end, the interest of any non-governmental organisation meeting the requirements referred to in Article 1(2) shall be deemed sufficient for the purpose of point (a) of paragraph 1 of this Article. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of point (b) of paragraph 1 of this Article.

4. The provisions of this Article shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.

Any such procedure shall be fair, equitable, timely and not prohibitively expensive.”

Submissions for the parties

[5] All parties helpfully submitted very full and detailed notes of argument for this court. These form part of the court process, and, while we have of course given full consideration to each of them, we do not consider that any purpose would be served by seeking to repeat them here. The following is intended to be merely a summary of the salient points in the submissions for each party, both written and presented at the bar.

Submissions for the appellant and claimer

[6] Senior counsel for the claimer began by pointing out that the statutory scheme provided by sections 43A and 43B of the 1997 Act (as amended), and the 2008 Regulations, for challenge to the decision of an appointed person is by way of review by an LRB. Unlike the previous procedure in which a challenge to a planning decision by a planning authority would usually be determined by a professional report with planning expertise, the new regime provides for the challenge to be determined by elected members of the local authority, who may have no planning expertise or experience. An appeal from the decision of an LRB lies to this court in terms of section 239 of the 1997 Act. Neither the term “review” nor the term “appeal” are defined in the legislation and section 239 does not specify the scope of such an appeal. It is therefore a matter for the court to interpret these terms against the statutory background, the background of EU law and parties’ convention rights. She drew our attention to

regulation 21 of the 2008 Regulations, which describes what the LRB's decision notice must contain, and in particular to paragraph (2)(viii) thereof.

[7] It is common ground between the parties to these proceedings that, because of the height of the turbines in the proposed development, the development was subject to the Public Participation Directive (Directive 2011/92/EU) ("the PPD"). She drew our attention to paragraphs (16) to (21) of the recital to that directive, and to paragraph 1 of article 11. Three important points arose from article 11:

- (i) The structure which is required is a review of a decision. It must therefore be available after the decision of the appointed person.
- (ii) What is required is review by an independent and impartial body. A LRB is neither independent nor impartial.
- (iii) The court is independent and impartial, but it does not carry out a full substantive and procedural review. In these circumstances, in order to comply with the requirements of article 11, the LRB must carry out a full substantive and procedural review.

[8] In this regard senior counsel drew our attention to the decision of the court of appeal in *R (Garner) v Elmbridge Borough Council* [2012] PTSR 250, particularly at paragraphs 32 and 39; articles 47, 51.1, 52.3 and 52.7 of the Charter of Fundamental Rights of the European Union, and *R (Alconbury Ltd) v Environment Secretary* [2003] 2AC 295, at paragraphs 24, 29, 33/35 and 152. In order to comply with these, it is important that safeguards are maintained at the stage of the LRB review, and when this court on appeal considers the LRB's decision it must bear these safeguards in mind. These safeguards include a full opportunity to present any relevant evidence, an opportunity for submissions, fair procedure, and a decision which contains findings in fact, a summary of the evidence on which these findings in fact are based, details of the LRB's assessment of the findings in fact and the planning issues involved, and the reasons for the decision.

[9] In the present case, there were no verbatim records of the LRB's proceeding on 18 February 2013, but the agenda for the meeting indicated what documentation was before the LRB, and there was a summary of the LRB's discussion taken by the clerk attending the meeting. Under reference to *County Properties Ltd v The Scottish Ministers* 2002 SC 79 (paragraphs [18] and [19]) senior counsel emphasised that there must be safeguards in the decision making process that is eventually considered by the court, and these safeguards must be met. An example of a procedure which meets the necessary safeguards was a decision by a reporter appointed by the Scottish Ministers in a differer

application for the erection of two wind turbines dated 17 July 2014 (PPA-170-2090), which demonstrates that the safeguards can easily be met and that they do not amount to an overly exacting standard. Senior counsel observed that the court's appellate jurisdiction can in principle be wide enough for the system to be compatible with the requirements of article 11, but only if an intense degree of scrutiny is exercised by the court hearing the appeal. This intense scrutiny must require the LRB to meet the safeguards already identified. The court must look very carefully at the LRB's findings of fact. Although not binding on this court, the findings and recommendations of the Aarhus Convention Compliance Committee with regard to communication ACCC/C/2008/33 concerning compliance by the United Kingdom were of persuasive authority. Senior counsel drew our attention in particular to paragraphs 3 and 125 of the document. The views of the Aarhus Convention Compliance Committee were considered by the Court of Appeal in England in *R (Evans) v Secretary of State for Communities and Local Government* [2013] EWCA Civ 114 at paragraph 37. This makes the point that there can be varying intensities of review in Judicial Review proceedings – a point which is also made by the UK Supreme Court in *Kennedy v Charity Commission* [2014] 2WLR 808 at paragraphs 51 - 54. The court requires to apply an intense level of review and to subject the decision of the LRB to a more rigorous examination. The Lord Ordinary did not do this in the present case and, in the circumstances, he erred in failing to do so.

[10] Senior counsel referred to 10 circumstances which she submitted pointed to the need for an intense level of scrutiny by the court:

- (i) The LRB was not independent and impartial. Both it and the appointed person are part of the same council. Both the respondent and the Lord Advocate concede that the LRB is not independent and impartial for article 6 purposes.
- (ii) The LRB is composed of local politicians, not adjudicators or judicial office holders.
- (iii) There is no requirement of planning expertise for election as a councillor (in contrast to reporters who are expert planning officials).
- (iv) The LRB was overturning a fully reasoned decision of a planning officer who had planning expertise.
- (v) The LRB's decision affected fundamental rights, including homes of nearby residents, the interested party's possessions and rights to fairness. Proportionality of energy yield, landscape impact, and the effect of the local community were an issue.

- (vi) The scale of the development – two very large turbines.
- (vii) The time period of the development – a minimum of 25 years.
- (viii) The sensitive nature of the site.
- (ix) The planning history of the site. There had been three previous refusals of this type of development in that location, and the LRB's decision was contrary to these.
- (x) The policy memorandum for the 2006 Act indicated that three important aims of the LRB system were transparency, openness and accountability. This required a robust level of review.

In light of all these circumstances, the LRB must conduct a full, substantive review to the standards discussed in *County Properties v Scottish Ministers*. Moreover, this court must apply a high intensity of review, and consider whether the Lord Ordinary adopted the correct approach. The LRB did not conduct a *de novo* review. It set out its entire reasoning in the first four paragraphs of page 3 of its decision letter. The LRB ignored some relevant policies and did not look at all matters as if raised at first instance. The proceedings did not have the necessary *quasi*-judicial character – approval was given after a 3:2 vote of local politicians, after brief consideration in the course of a busy meeting which had a lot of other business to consider. There was no site visit, and the LRB heard from nobody except the council's planning adviser and legal adviser. As discussed further below, a full opportunity was not provided to all parties to present relevant evidence and submissions. There were no findings in fact, no summary of evidence and no assessment of findings in fact. The necessary foundations or "building blocks" for the decision were not present. Senior counsel compared the decision letter of the LRB with that of the planning officer's decision letter dated 3 October 2012 in the present case, and with several decision letters by reporters appointed by the Scottish Ministers in other wind turbine applications, and observed that a more detailed and rigorous approach was taken in those decision letters than that taken by the LRB in the present case. The Lord Ordinary's conclusion that the LRB's decision was lawful arose from his view (at paragraphs [44] – [46] of his opinion) that the LRB was conducting a more limited review than the exercise carried out by a reporter. The Lord Ordinary erred in his interpretation of the statute in this respect, and did not have regard to EU law.

[11] Senior counsel submitted that the statutory regime governing LRBs is capable of being interpreted compatibly with the convention and with EU law, provided that such an interpretation allows for a *de novo* review by the LRB and compliance with the requirements already discussed. The problem in this case arises from the

Lord Ordinary's error in interpretation, not in the legislation itself. However, if this submission is wrong, and the legislation cannot be interpreted so as to be compatible with EU and convention rights obligations, sections 43A and 43B, 47(1A), 237(A) of the 1997 Act, and the 2008 Regulations, the 2013 Regulations of the same name and certain other more recent regulation would all be outwith legislative competence by reason of section 29(1) and (2)(d) of the Scotland Act 1998, and this raises a devolution issue in terms of schedule 6 part 1 to that Act. If the interpretation which she urged on the court was correct, no such devolution issue arises.

[12] Next, senior counsel turned to look at the several grounds of appeal against the LRB's decision, which are set out more fully at pages 20-38 of her note of arguments (at paragraphs 33-61). These were as follows:

(1) The council failed to take into account a material consideration, namely its own technical guidance note ("TGN") which indicated that there was no scope for medium or large turbines in this location. The Lord Ordinary erred in law in failing to find that the TGN was a material consideration, and further in assessing whether it would have made a difference to the decision. In terms of section 24 of the 1997 Act, supplementary planning guidance becomes part of the Development Plan. When the TGN became supplementary planning guidance, it was therefore part of the Development Plan. It was a material consideration before it became supplementary planning guidance. At the time that the LRB was reaching its decision, the TGN was being used by planners as an aid, it was being used by the council, and was publicly available on its website. It became part of the Development Plan in December 2013. Senior counsel referred to Regulation 21 (2) of the 2008 Regulations, to Scottish Planning Series Circular 4 2009: *Development Management Procedures*, and to *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759 per Lord Hoffmann at 780. The TGN addressed a particular problem associated with the sensitivity of particular sites to particular heights of turbines. This was an issue which had not been covered in any previous documents; it was not addressed in the Report on Handling nor was it otherwise before the LRB. This was a matter which had been taken into account by reporters in other applications; the fact that the TGN addressed issues of the height of turbine blades in areas of varying sensitivities was material, was not dealt with anywhere else and ought to have been taken into account by the LRB. The Lord Ordinary fell into error in three respects in paragraph [47] of his opinion – (i) in accepting that the TGN was not a policy document at that time, (ii) in accepting

that although it had been used by planning officers and had been found to be useful, that was as part of a trial process, and (iii) that the LRB took account of the various matters contained in the TGN, and in failing to appreciate that the TGN goes further than any other documentation available at the time. In all these circumstances, the decision of the LRB was *ultra vires* for not having had regard to material consideration.

(2) Cumulative impacts.

The LRB made no findings on cumulative impacts and accordingly did not apply Policy I20 of the Scottish Borders Structure Plan, which was part of the Development Plan. The LRB were required to have regard to this (sections 25 and 37(2) of the 1997 Act). Policy I20 provided that proposals for wind energy developments will be assessed against six specified criteria. The last of these was “any unacceptable cumulative impacts”. The LRB required to assess the issue of cumulative impacts and explain their reasoning on this matter (*Moray Council v Scottish Ministers* 2006 SC 691 at paragraph [36]), but they did neither. They did not make any reference to, or findings about, cumulative impacts, which are a different consideration from “visual and landscape impacts”. The first of the criteria listed in Policy I20 relates to impact on the landscape character of the area; the last of the listed criteria is “any unacceptable cumulative impacts”. The respondents’ own supplementary planning guidance on wind energy dated May 2011 emphasises (at paragraph 7.15) that the assessment of cumulative impacts is particularly relevant to small scale wind energy developments, and that cumulative impact is a different criterion from visual and landscape impact. Senior counsel referred to examples of decisions by reporters appointed by the Scottish Ministers in which cumulative impact has been assessed separately from impact on landscape character. In the present case, the LRB decision notes (but does not adopt) the appointed person’s findings and does not contradict his assessment of landscape and visual impact, but makes no conclusion about cumulative impact. This is despite the recommendation in the appointed person’s report that the proposed development was contrary to *inter alia* Policy I20 and that the potential cumulative landscape and visual impact of the development with other approved schemes and those pending decision would give rise to a poorly planned, piecemeal form of wind energy development which would prejudice the integrity of nearby landscapes. In light of this, the LRB

required to explain why it reached a different view, and did not consider that Policy I20 was breached. There is a lack of assessment and a lack of reasons. The Lord Ordinary erred in law in his treatment of this issue at paragraph [48] of his opinion. Although Policy I20 is referred to in the LRB decision letter, it is not the subject of any reasoned assessment. The Lord Ordinary also erred in stating in that paragraph that

“since the LRB agreed with the ultimate findings of the appointed person in relation to adverse impact, it was, in my view, unnecessary for the LRB, in that regard, to make separate findings of its own”.

The appointed person rejected the application for permission because of his findings on adverse impact; the LRB did not agree with him in this respect, but did not explain why.

(3) Residential amenity and the presumption of a two kilometre separation distance from residential settlements.

Policy H2 of the Local Plan provides that development that is judged to have an adverse impact on the amenity of existing or proposed residential areas will not be permitted. Scottish Planning Policy 2010 recommends (at paragraph 190) a separation distance of up to two kilometres between areas of search and the edge cities, towns and villages. The respondents' supplementary planning guidance on wind energy dated May 2011 provides (at point 10 on page 37) that there would be an initial presumption against any turbine within this distance from any residential area unless an applicant can confirm factors such as scale, location and intervening landform can allow support. The claimant lives about one kilometre from this site and there are about 300 houses within two kilometres of it. Despite this, there is no discussion of residential amenity nor of the two kilometre presumption in the LRB decision letter. Although Policy H2 is mentioned, there are no findings as to the numbers of properties within two kilometres of the site nor why the presumption is overcome – despite the fact that the appointed person records that one turbine would be approximately 1200 metres from the fringe of Cockburnspath village and the second turbine would be 1050 metres from that fringe, and that he concludes that the height and scale of the development render it disproportionate to the scale and nature of the local landscape and the local topography is not capable of successfully containing the development from a high number of visual receptors.

The Lord Ordinary erred in his consideration of this issue in paragraph [49] of his opinion. Although he stated that the appointed person dealt fully with the issue, there is no mention in the Report on Handling of the presumption against such development within two kilometres from any residence, despite this being included in the supplementary planning guidance and accordingly forming part of the Development Plan. The Lord Ordinary was also in error in the last sentence of paragraph [49] in stating that it is not incumbent on a decision maker to refer in its reasons to every material consideration – Regulation 21(2)(a)(viii) requires the LRB to include details of the provisions of the Development Plan and any other material considerations to which it had regard in determining the application. This is a more stringent requirement than that which applies to other decision makers. The reason for this is to make the LRB procedure more open and accountable and to make allowance for the fact that the professional reporter has been removed from the system. The LRB failed to address residential amenity or policy H2 at all.

(4) Economic benefit.

Policy D4 of the Local Plan deals with renewable energy development. The final sentence of that policy states that

“if there are judged to be significant adverse impacts that cannot be mitigated the development will only be approved if the Council is satisfied that the contribution to wider economic and environmental benefits outweighs the potential damage to the environment or to tourism and recreation.”

This requires the decision maker to make findings as to what significant adverse impacts arise from the proposal, what the overall economic benefits are, and to proceed to carry out a balancing exercise (and to go on to balance and apply this policy with other relevant policies). The LRB failed to interpret and apply this policy in several respects. Its findings on economic benefit are in a total of six sentences, which contain two material errors of fact – (a) they stated that the turbines would assist the business in reducing its energy requirements, which it would not, and (b) they stated that “members were also aware that the quarry had permission for a major expansion of its extraction operations”, but there has been no approved application for Kinegar Quarry which is the quarry situated on Neuk Farm. Moreover, the LRB made inadequate findings on adverse impact, and inadequate findings on economic benefit. The LRB did not specify which businesses they were satisfied that the proposed turbines would help to sustain, nor the size of

the business, nor the number of people it employed, nor what were its expansion plans. There were no findings as to the use of energy by that business, nor as to how that use related to what would be generated (it being noteworthy that the environmental statement indicated that no new jobs would be created and only 6% of the energy generated would be used by the business in the first instance). Moreover, the LRB did not attempt to assess any adverse economic effects arising from the proposal, including reduced house prices in the residential areas close to the development. By failing to make adequate findings on adverse impacts and economic benefit, by taking into account incorrect facts, and by failing to take into account economic disbenefits, the LRB was unable to carry out a proper balancing exercise as required by Policy D4. Without the necessary findings in fact, the court cannot properly carry out its function; it cannot know what was on each side of the equation in order to decide if the inferences drawn by the LRB are acceptable.

The Lord Ordinary erred in relation to this ground of appeal in his treatment of it at paragraph [50] of his opinion. An informed reader would not be able to understand the reasoning of the LRB on economic benefits because of the inadequacies of findings in that regard. The Report on Handling made no finding as to economic benefits or disbenefits. An informed reader should not be required to research more widely, otherwise the system is not EU and convention compliant. The Lord Ordinary also erred in his findings in respect of the absence of a site visit (on which see further below).

(5) Proportionality.

This was raised by the claimant in her original letter of objection, and so was before the LRB, but the LRB did not consider this matter at all. The environmental statement submitted in support of the proposed development indicated that only 6% of the energy to be generated by the development was required for Kinegar Quarry's current energy usage; why were turbines as high as 110 metres necessary or proportionate in this site, when the TGN had identified many other possible sites for wind energy development? Senior Counsel submitted that whether a measure is proportionate

“depends on an exacting analysis of the factual case advanced in defence of the measure, in order to determine (i) whether its objective is sufficiently important to justify the limitation of a fundamental right; (ii) whether it is rationally connected to the objective; (iii) whether a less inclusive measure

could have been used; (iv) whether, having regard to these matters and to the severity of the consequences, a fair balance has been struck between the right of the individual and the interest of the community “ – *Bank Mellat v HM Treasury* [2014] AC 700 at paragraphs 20 and 74.

In the present case, how can such an intrusive development be justified if only 6% of the energy generated will be used in the quarry? Why could smaller, less intrusive turbines not be used, which would have less impact on residential amenity? It is impossible to ascertain from the LRB’s decision letter how it reached its conclusion on proportionality. Senior counsel referred to Reed and Murdoch, *Human Rights Law in Scotland, (Third Edition)* at paragraph 6.51, to the effect that the European Court of Human Rights expects domestic decision-makers to show that they have addressed the test of proportionality in assessing whether the relationship between the action taken and the aim of the intervention is acceptable. Whilst it may not be necessary for the LRB to carry out a separate proportionality exercise (*Lough and ors v First Secretary of State* [2004] EWCA Civ 905) it still had to show that it had properly addressed the issue of proportionality. It failed to do so and accordingly the Lord Ordinary erred in his consideration of this issue at paragraph [51] of his opinion.

(6) Natural justice.

This fell into two parts – (a) no fair hearing or reasonable opportunity for the appellant to make representations, and (b) no site visit. On these matters the court must determine for itself whether a fair procedure was followed – its function is not merely to review the reasonableness of the decision maker’s judgement of what fairness required – *In Re Reilly* [2013] 3 WLR 1020 per Lord Reed JSC at paragraph 65 *et seq.* Senior counsel did not suggest that there had to be an oral hearing before the LRB, but there must be a proper opportunity for parties to make their case before the LRB. In support of this senior counsel referred to *R (Khatun) London Borough of Newham* [2005] QB 37 at [30] per Laws LJ:

“a right to be heard can be inserted or implied into the statutory scheme not by virtue of the statute’s words, but by force of our public law standards of fairness”,

and *Pairc Crofters v Scottish Ministers* 2013 SLT 308 per Lord President Gill:

“The specific duties that the Act lays upon (the decision maker) in their consideration of an application are in a sense minimum requirements. They have other more general duties under administrative law. At common law, any public body that makes a decision affecting an individual must follow the procedure prescribed by statute and must observe such additional procedural safeguards as are necessary to attain fairness.”

Senior counsel referred to paragraph [19] of *County Properties Limited v The Scottish Ministers*, and submitted that the whole thrust of the PPD was to enable the public to present a case. The letter from the clerk to the claimer dated 8 January 2013 did not give the claimer a reasonable right to be heard before the LRB. It stated *inter alia* as follows:

“The meeting will be held in public and any person can attend and listen to the review. However, there is no right to be heard at this meeting. The Local Review will be considered on the basis of the information and documentation submitted with the Notice of Review. There is no opportunity to raise matters or submit further documents unless the review body requests further written evidence, or information is requested as part of a hearing session, or where by virtue of section 43B of the Act it can be proven that the matter could not be legitimately raised before that time or that it is a consequence of exceptional circumstances.”

This letter was liable to confuse a lay person; the natural inference was that the claimer could not make any further representations. She had no reasonable opportunity to comment on the review documentation, including the new evidence about noise referred to in the decision letter, nor to raise matters such as the TGN.

It was also a breach of natural justice for the LRB not to carry out a site visit particularly because the issue of visual and cumulative landscape impact was so important in this decision. A site visit is valuable in giving a factual underpinning to findings – *Moray Council v Scottish Ministers* 2006 SC 691 at paragraph 36. A previous application for two wind turbines on this site had been considered by an LRB and refused on 7 March 2011. On that occasion the LRB held an unaccompanied site visit and following their return from this they determined to refuse permission. It was clear that the site visit was central to their assessment. It is normal for reporters to hold a site visit. The LRB on this occasion gave no reasc

for deciding not to hold a site visit. The Lord Ordinary erred in law in his treatment of these breaches of natural justice at paragraph [52] of his opinion.

(7) Reasons

Senior Counsel submitted that there was an absence of proper and adequate reasons from the LRB on all of the foregoing grounds. It was not acceptable to have to glean matters from other documents (unless the LRB adopted particular findings as being equivalent to making their own findings in fact). The LRB was under a statutory duty to give reasons – section 43A(12)(a) of the 1997 Act and Regulation 21(2)(a)(viii) of the 2008 Regulations. Because this is a decision *de novo* the decision notice should contain findings on visual impact, economic benefits, and reasons for conclusions. The appointed person in his Report on Handling concluded that several Development Plan policies were breached; there is no explanation given by the LRB as to why they concluded that these policies were not breached. The LRB failed to comply with the requirements of the legislation; accordingly, their decision is not within the powers of the 1997 Act, and it should be quashed in terms of section 239. The standard of reasons in this decision letter is so inadequate as to raise a real and substantial doubt as to what the reasons for it were and what were the material considerations which were taken into account in reaching it – *Di Ciacca v The Scottish Ministers* 2003 SLT 1031 at paragraph [16].

For all these reasons senior counsel for the claimer submitted that the multiple errors and failures by the LRB were not trivial, and that the LRB's decision should be quashed.

-

Submissions for the respondents

[13] In moving for refusal of the reclaiming motion counsel for the respondents began by reminding us that the court is concerned only with the legality of the LRBs' decision, not with the planning merits; matters of planning judgment are "within the exclusive province" of the decision maker – *Tesco Stores Limited v Secretary of State for the Environment* [1995] 1 WLR 759 per Lord Hoffmann at 780.

[14] Counsel submitted that the criticisms levelled at the LRBs' decision by the claimer amount to a challenge to the reasons given; there was no need for this court to examine the issue of compatibility with EU or ECHR law. Moreover, the argument that section 43A(12) imposed a particularly stringent obligation on the LRB to give reasons proceeded on the basis of a misapprehension as to the notice to which that sub-section

applied. The term “review documents” was defined in Regulation 2 of the 2008 Regulations; these are the documents which the LRB must consider, and which must be made publicly available. There was no requirement for the LRB to state all its reasons – the Lord Ordinary, as an informed reader, was entitled to go beyond the decision itself to ascertain from the documents referred to the details of the LRB’s reasoning. It was clear from the paragraph on page 1 of the LRB’s decision letter headed “Preliminary Matters” what documentation was considered by the LRB. This complied with the requirements of the 2008 Regulations, and no further documents or procedure were required; it was a matter for the LRB to decide how much information they needed to enable them to assess and decide upon this application, this being a question of planning judgement – *Simson v Aberdeenshire Council* 2007 SC 366 at paragraph [23]. The LRB were entitled to reach the view that there was adequate economic justification for the development in the review documents – particularly in the February 2012 Environmental Statement at paragraphs 3.1.1 – 3.1.18, and in the Notice of Review dated December 2012, at paragraphs 3.7.1 – 3.7.6.

[15] In responding to the claimer’s specific criticisms of the LRB’s decision, counsel addressed first the TGN. He submitted that the Lord Ordinary was correct in holding that the TGN did not count as policy at the time of the LRB’s decision, and further that it was not in itself a material consideration. It did not amount to supplementary guidance in terms of section 22 of the 1997 Act. This was made abundantly clear by planning Circular 1 of 2009, particularly at Policies 93 and 99. It was only adopted as council policy in December 2013. At the time of the LRB’s decision it was internal guidance, and was only being worked up towards being a material consideration. It was, however, available to the public and the claimer could – had she sought to rely on it as relevant new material - have placed it before the LRB but did not so. It was not placed before the LRB and was not considered by them.

[16] Moreover, the Lord Ordinary was correct to consider whether, even if the TGN was a material consideration, what difference it would have made to the LRB’s decision if it had been before them. The information in the TGN was available elsewhere (the Borders Landscape Assessment compiled by ASH Consulting Group in 1998 at page 137). The TGN only comprised illustrative guidance and did not amount to a prohibition of development on this site. Counsel referred us to the observations of Glidewell LJ in *Bolton Metropolitan Borough Council v Secretary of State for the Environment* [1991] 61 P & CR 343 at 352, and the decision of this court in *Bova v The Highland Council*

2013 SC 510. The Lord Ordinary was correct to consider this, and moreover his conclusion on this was sound.

[17] With regard to cumulative impact, the LRB stated that they had taken into account Structure Plan Policy I20, and also Scottish Planning Policy (paragraphs 182-195), in which cumulative impact was expressly dealt with. It was clear from this, and from the reference to the Report on Handling, that the LRB were aware of the difference between landscape and visual impact on the one hand and cumulative impact on the other. That these were separate issues was made clear in the report by the appointed person at page 9. The LRB accepted the appointed person's findings and conclusions of adverse impact, but in their judgment the economic benefits in terms of Local Plan Policy D4 outweighed these.

[18] With regard to residential amenity and the "presumption" for a separation distance of up to two kilometres between areas of search and the edge of cities, towns and villages, this is not mentioned anywhere in Policy H2 of the Local Plan. It is a recommendation in paragraph 190 of Scottish Planning Policy 2010, but this is in relation to guidance in identifying areas of search. It was expressly stated not to impose a blanket restriction on development, and was giving guidance to the drafters of the Development Plan. The Local Plan in this case was adopted after the Scottish Planning Policy and, understandably, did not repeat this guidance. The respondents' supplementary planning guidance on wind energy published in May 2011 was the non-statutory type of supplementary guidance, and did not form part of the Development Plan. It is clear from the site description in the Report on Handling that information as to the distance between the turbines and the village was before the appointed person and before the LRB.

[19] Turning to economic benefit and the LRB's assessment under Local Plan Policy D4, neither of the complaints made by the claimer as to errors of fact stand up to scrutiny. The criticism that the turbines would not in fact assist the business in reducing its energy requirements was a matter of semantics – it was clear what the LRB meant by this. With regard to the assertion that the quarry did not have permission for major expansion of its extraction operations, this was a misunderstanding on the part of the claimer. Counsel referred us to the reference in the Report on Handling to the planning history, which stated that there were three items relevant to the current application. One of these was 09/00125/MIN, which was an application for extraction of sand and gravel and formation of an access track at the nearby Fulfordlees Quarry. This was owned by the same quarry business, and it had been approved and development

had commenced. It was therefore wrong to suggest that the LRB had made an error of fact.

[20] Turning to the issue of proportionality, counsel began by referring us to Scottish Planning Series Circular 4/2009, and to paragraph 6 of this which states:

“The planning system operates in the long term public interest. It does not exist to protect the interests of one person or business against the activities of another. In distinguishing between public and private interests, the basic question is whether the proposal would unacceptably affect the amenity and existing use of land and buildings which ought to be protected in the public interest, not whether owners or occupiers of neighbouring or other existing properties would experience financial or other loss from a particular development.”

Counsel also relied on the decision of the Court of Appeal in *Lough v First Secretary of State* [2004] 1 WLR 2557, and particularly the observations of Pill LJ at paragraphs 45/46 and 49-51. Possible diminution in the value of the claimer’s home – which she said, at the protective expenses hearing, was not her property but that of her husband - or in the value of the properties of other residents, is not relevant in this context.

[21] With regard to the claimer’s complaints about breach of natural justice, it was important to bear in mind that she was not the applicant in these proceedings, but an objector. In terms of the statute, if the planning officer had granted permission for this development, she would have had no right to go to the LRB; her only remedy would have been to seek judicial review in this court. She did have a right to be heard, but this right was fulfilled by the proceedings before the planning officer, and the letter from the clerk to the LRB to her dated 8 January 2013, which complied with section 43B of the 1997 Act and paragraph 12 of the 2008 Regulations. There was no great factual dispute between the parties; it was reasonable for the LRB not to ask for further written representations and not to hold a hearing. A site visit is not required in every case (*Simson v Aberdeenshire Council*) and this was accepted on behalf of the claimer. Moreover, it was the developer, not the claimer, who requested the LRB to go on a site visit. The LRB relied on photographic slides, and on their own knowledge of the area as local councillors (in which respect they differ from reporters, who are not generally familiar with the locality and so are more likely to require a site visit). In any event, the LRB agreed with and adopted the findings of the planning officer on visual matters, so a site visit would have made no difference to their decision.

[22] Turning to the claimer's attack on the LRB's reasons, and the approach of the Lord Ordinary to the adequacy of these, the same considerations apply to this case as apply to any other planning appeal. Senior counsel for the claimer suggested that when the Lord Ordinary referred in his opinion to review rather than appeal, he was taking a more limited view of the requirement for reasons, but it is clear from his opinion that he referred to the usual authorities in relation to adequacy of reasons. As this was the first scrutiny of the court of a decision of an LRB, the Lord Ordinary was simply using the term to describe that body.

[23] The claimer's argument is really a challenge to the adequacy of reasons. The Lord Ordinary looked at the LRB's decision, but he considered that he was able to go behind that decision to the facts which were before the LRB. He did not apply any lesser standard. He accepted the submission by the respondents and the interested party that the LRB had undertaken the decision making process *de novo*, but he was entitled to look to the Report on Handling and the other review documents to find the LRB's findings in fact. It is clear that the LRB examined the facts and came to a different view from that taken by the planning officer; they did not state much by way of findings in fact because there was no disagreement with the planning officer and no dispute on the evidence. They simply reached a different view on the balancing exercise which they required to carry out.

[24] Senior counsel for the claimer had submitted that the Lord Ordinary and this court should apply a high degree of scrutiny. Counsel accepted that there must be sufficient scrutiny, but the intensity of review does depend on the individual context – *Kennedy v Charity Commission* at paragraphs 53/54. In the present case there was no requirement for a higher degree of scrutiny than in any other judicial review of planning appeals of this nature. As already discussed, matters of planning judgement are not for the court to examine, but matters of procedure are. The Lord Ordinary applied the necessary intensity of scrutiny, which was not different from the level of scrutiny of procedures in other planning appeals.

[25] With regard to the potential devolution issue, senior counsel for the claimer maintained that the LRB procedures and system can be interpreted as being compatible if the LRB takes a *de novo* approach and examines issues with a sufficient degree of scrutiny; the first instance decision and the review would be compatible if the safeguards referred to in paragraph [19] of *County Properties Ltd v The Scottish Ministers* were present. It was accepted on behalf of the claimer that the procedures would be compatible if the Report on Handling and the LRB decision notice complied with these

safeguards. Counsel submitted that the issue does not arise, because matters can be dealt with by the normal principles of judicial review. In any event, as the claimer was not the applicant in the relevant proceedings but an objector, she had no right to seek a review by the LRB. If the LRB had refused to review, the applicant might perhaps be able to argue a case of a lack of impartial and independent review. That is however not the situation here. This court does not need to undertake an academic exercise of looking at the whole system and assessing its compatibility with EU or ECHR law. The devolution issue does not arise.

[26] What the claimer's position amounts to is that the LRB decision notice was inadequate for not specifying which part of the planning officer's report it disagreed with. That is a challenge to the adequacy of its reasons. It does not require a high intensity of scrutiny to consider this issue.

Submissions for the interested party

[27] Senior counsel for the interested party adopted the submissions for the respondents. His primary submission was that this case was concerned with a challenge to the adequacy of reasons – nothing more and nothing less. That arises in the traditional judicial review context. In that context, only two questions arise –

(1) Within the arrangements for the functioning of LRBs, is one entitled to have regard to both the reasoning of the LRB and the reasoning in the Report on Handling?

The Lord Ordinary answered this question in the affirmative, and senior counsel submitted that he was correct to do so.

(2) Were the reasons given by the planning authority adequate to render the decision to grant planning permission for this development lawful?

Properly understood, senior counsel submitted that the reasons given were adequate, and the reclaiming motion must fail.

[28] Senior counsel considered the correct approach to the function of an LRB. Under the traditional system, applications for planning permission were considered by a planning officer, who prepared a report with recommendations for the planning committee. The committee would then decide whether to grant permission or not. The decision of the committee was that of the planning authority. If planning permission was granted, the only remedy for an aggrieved objector was judicial review – a statutory appeal was only available to the applicant. This system was the same in other parts of the United Kingdom, and it had never been suggested that there should be a greater intensity of review; the normal grounds for seeking judicial review applied. Since the

creation of LRBs, there remains this two-stage process, but with an additional opportunity to the applicant. Because this is a local development, the planning officer is empowered to determine the application, and that becomes the decision of the planning authority. If the planning officer refuses permission, the applicant (and only the applicant) is entitled to seek a review before the LRB, which makes the decision. There is therefore the same two-stage process; if the LRB grants planning permission, there is no mechanism for review on the merits. In another case, the issue may arise about the removal of the applicant's ability to appeal to the Secretary of State/ Scottish Ministers, but this issue does not arise in the present case.

[29] An application for a major development is still made in exactly the same way as before. It has never been suggested that this gives rise to a requirement for an enhanced level of scrutiny. If the argument for the claimer is correct, this would have the perverse result that there would be a higher level of scrutiny for local developments than for major developments. An objector has always had a right to seek judicial review, and it has never been suggested that this requires some enhanced level of scrutiny. Such a suggestion is not justified in relation to decisions of LRBs.

[30] The Lord Ordinary, in determining the reasons challenges raised by the claimer, required to consider the statutory context in which an LRB operates. He did this at paragraphs [44] to [46] of his opinion. He was correct to observe that there is no provision in section 43A of the 1997 Act to the effect that the LRB must not take into account the reasons given in the Report on Handling by the appointed person, or that these reasons cannot form part of the reasons on which an LRB bases its decision. The Lord Ordinary was also correct to find that, having regard to the statutory context by which the previous decision and the matters taken into account are easily accessible, it is unnecessary for an LRB to restate aspects of the decision of the appointed person which it accepts. An informed reader looking at the decision letter of the LRB would have regard to the conclusions and other material within the Report on Handling, and the documents referred to in the Report on Handling, as well as to the LRB decision itself.

[31] The purported devolution issue does not arise. The characterisation of the functions of an LRB was not material to the approach taken by the Lord Ordinary to the statutory context in which an LRB operates, nor to his acceptance that the reasons for a decision by an LRB can be found in the reviewed documents. This court can determine the reclaiming motion on the normal basis of an "adequacy of reasons" appeal. In any event, there has been no breach of convention rights or

EU Law in the LRB's determination. It did in fact determine the application for planning permission *de novo*. For a devolution issue to arise, the person raising it must be a victim. An objector to an application for planning permission is not a victim, as an objector did not have a right to appeal to a reporter against the grant of planning permission. That has been the position since the introduction of the modern planning system in the Town and Country Planning (Scotland) Act 1947, and in the equivalent regime in England and Wales. The claimer's argument (which was not raised before the Lord Ordinary) is to claim that the very existence of this system results in a breach of her convention rights. The claimer is not a victim; it might be argued that the situation was different for an aggrieved applicant. There is no scope for a devolution issue to arise in this case.

[32] Turning to the claimer's argument based on the PPD and the requirement that an intense degree of scrutiny is required, senior counsel observed that the decision of the LRB in this case was based on balancing visual/landscape and other adverse impacts on the one hand with economic benefit on the other. This is a familiar exercise for those charged with making such decisions. It is not an exercise for the courts. The decision of the LRB is subject to appeal to the Court of Session under section 239 of the 1997 Act. Scrutiny by the courts on the familiar grounds under that section, or in terms of judicial review procedure, is sufficient to satisfy the requirements of the PPD – *R (Evans) v The Secretary of State for Communities and Local Government* at paragraphs 32 – 43. No issue under the PPD arises in this case. Senior Counsel also observed that neither *Alconbury* nor *County Properties* were in point. The comments made by the Inner House in paragraph 19 of *County Properties* required to be read in the context of that case, which was presented by a disappointed applicant (not an objector) who challenged the independence and impartiality of a system which permitted ministers to make decisions on the basis of a reporter's report. Proportionality is achieved in our planning system if the decision maker properly takes account of the public interest and the rights of the individual. Neither EU nor Convention law adds to this – the question remains, have the decision makers done what they ought to have done?

[33] In turning to the specific grounds of appeal argued for the claimer, senior counsel reminded the court (under reference to *Wordie Property Co Ltd v Secretary of State for Scotland* 1984 SLT 345 at 348) that the decision maker must only give proper and adequate reasons for the decision which deal with the substantial questions in issue in an intelligible way: reasons are not required for every issue, however minor.

Moreover, the LRB decision letter must not be read as a contractual or conveyancing document, and it must be read through the eyes of an informed reader, aware of all the background facts and with access to all the relevant documents. It is necessary to look at the decision as a whole. By reason of section 25(1) of the 1997 Act, Development Plan policies have a rôle in the decision making process over and above other material considerations.

[34] This case is principally concerned with the Development Plan and the application of its policies. Structure Plan Policy E16 was not prohibitory but was subject to a caveat in relation to the Plan's other policies; the planning authority should therefore take account of the positive aspects of a development proposal. Policy I19 supports the development of renewable energy sources that can be developed in an environmentally acceptable manner; it too is not prohibitive. Policy I20 neither supports nor prohibits wind energy developments, but provides criteria for assessment. Local Plan H2 with regard to protection of residential amenity is however a prohibitory policy, as development that is judged to have an adverse impact on the amenity of existing or proposed residential areas will not be permitted. Senior counsel accepted that the current development has been judged to have an adverse impact on residential amenity by the planning officer. Local Plan Policy D4 was supportive of renewable energy development, if there are no unacceptable adverse impacts on the specified categories, or that any adverse impacts can be satisfactorily mitigated. The last sentence of the policy deals with the situation where it is judged that there are significant adverse impacts that cannot be mitigated. In such a situation the development will only be approved if the council is satisfied that the contribution to the wider economic and environmental benefits outweighs the potential damage to the environment or to tourism and recreation.

[35] This then is a case about the Development Plan, not about material considerations. The policy provides for a balance to be struck. This is a matter for planning judgement.

[36] It was clear from the paragraph at the foot of page 2 of the LRB's decision letter that the LRB were making their decision *de novo*. They considered all the review documentation listed at the foot of page 1 of the decision letter, and commented on the Report on Handling. They focussed on those areas in respect of which they reached a different conclusion from the appointed person. They were therefore reading into the decision letter what was said on the Report on Handling, and where they accepted a conclusion in the Report on Handling, they took this into

account (as they were entitled to) but did not need to refer to it. Although they considered the matter *de novo*, they did not require to give reasons in respect of aspects in which they agreed with the appointed person's conclusions. The balancing exercise under Local Plan Policy D4 was critical to their decision. Any reasonable informed reader would understand that the LRB accepted the planning officer's view that there would be significant landscape and visual impact; this makes sense, as this is one of the factors that triggers the balancing exercise in terms of Policy D4. The LRB then set out why they disagreed with the appointed person in the striking of the balance. They were entitled to reach a different conclusion on this balancing exercise from that which the appointed person reached. They did this in the fourth paragraph of page 3 of their decision letter, and they gave an adequate explanation for doing so. This does not leave the informed reader in any substantial doubt as to why they decided the matter in the way they did. They stated what they took into account, and they reached a different conclusion on the balancing exercise required by Policy D4 from the conclusion reached by the planning officer. That was all that was required.

[37] Turning to the individual criticisms raised by the claimer, senior counsel considered first the TGN. He submitted that it was not a material consideration. What the court had to assess was what the impact and significance of this material might have been. The planning officer in his Report on Handling took into account the sensitivity of this area, and found that the proposal would have a significant landscape and visual impact. The LRB agreed with this. The TGN adds nothing to this; the result reached by the planning officer and the LRB is exactly the result which would have been reached if the TGN had indeed been a material consideration. The planning officer found in the Report on Handling the fact "that the turbines would still become the single most dominant component of the Coastal Farmland (Cockburnspath) landscape character area". Moreover, the Borders Landscape Assessment carried out by Ash Consulting Group in 1998 dealt with this (at pages 39 and 137/8) and assessed internal intervisibility, external intervisibility and visual sensitivity in this area as high. Both the 1998 assessment and the Report on Handling were taken into account by the LRB. The material consideration was not the TGN document, but the significance of high sensitivity for a development of this nature in this area. This was clearly flagged up in both the Ash report and the Report on Handling.

[38] Senior counsel adopted the submissions on behalf of the respondents in respect of many of the other criticisms levelled at the LRB decision letter by the reclaimer. It was clear from both the Report on Handling and the LRB's decision letter that they considered cumulative impact and found that it was a significant adverse factor. Similarly with regard to residential amenity, the Report on Handling found a significant adverse impact. The LRB took this into account, and expressly took account of paragraphs 182 – 195 of Scottish Planning Policy. They agreed with the appointed person. Senior counsel adopted the submissions for the respondents with regard to proportionality; the LRB were entitled to reach the conclusion which they did, the UK planning system struck the balance correctly, and we are not involved in the present case in convention rights.

[39] With regard to natural justice, it was within the discretion of the LRB not to hold a hearing. They stated that they had sufficient information before them to enable them to reach a conclusion. There is no requirement for a hearing in every case – reporters too have a wide discretion as to the procedure which they wish to adopt. There was nothing in the point about a site visit. Again, the decision as to whether to hold a site visit was properly within the LRB's decision. In any event, they found that there was a high level of adverse visual and other impacts and agreed with the appointed person's conclusions in the Report on Handling; it cannot therefore be argued that the reclaimer suffered prejudice as a result of the LRB's decision not to hold a site visit. With regard to reasons, as already submitted, this reclaiming motion was entirely about adequacy of reasons, on which senior counsel had no additional submissions to make.

[40] The information about the economic benefits of the proposal was all to be found in the materials referred to in the LRB decision letter and the Report on Handling. There is no suggestion that the LRB made any error of fact. Senior counsel adopted the submissions with regard to economic benefit made on behalf of the respondents. All the information can be found in the environmental statement (in volume 1 at paragraphs 3.1.8 – 3.1.18 and in volume 3 at paragraphs 3.7.1 – 3.8.1 and 5.3.42. See also paragraphs 13.7.1 – 13.7.6, and paragraph 2.5.27 of volume 2). The LRB was also entitled to take account of the Notice of Review submitted to it by the interested party, and in particular the information contained at paragraphs 3.7.1 to 5.1.19. There was therefore a factual basis for everything contained in the fourth paragraph on page 3 of the LRB's decision letter.

[41] In answer to a question from the court as to how many jobs would be created by this development, senior counsel said that there was no information about this, but nobody had raised this as an issue at any stage. There was no contradictor. If there had been, the LRB would have had to give reasons for preferring one body of evidence to another. However, the LRB stated what the evidence was before them, and what they relied on. Without any contradiction on the matter, they were entitled to do so.

[42] Senior counsel submitted that when it came to the critical matter of the balancing exercise in terms of Policy D4, the Lord Ordinary dealt with this correctly at paragraph [50] of his opinion. There was no error of law, and the reclaiming motion should be refused.

Submissions for the Lord Advocate

[43] Senior counsel explained that the Lord Advocate's interest in this matter was confined solely to the possible devolution issue. She began by asking what was the devolution issue before the court. The Lord Advocate accepted that the stating of a devolution issue in the grounds of appeal in proceedings such as these is equivalent to raising the matter in the principal writ, under reference to Rule of Court 25A.4.

[44] A question had arisen as to whether the devolution issue was specified in sufficient detail in the grounds of appeal. After a hearing on 24 June 2014, a joint minute (number 33 of process) was agreed between the claimer and the Lord Advocate as to the scope of the potential devolution issue. Read short, the claimer's position was that it is not part of the claimer's case that the system for the review of delegated decisions in relation to local development by LRBs is inevitably incompatible with convention rights or EU law, but rather that it is incompatible if the governing legislation is interpreted and given effect to in the way the Lord Ordinary did. The claimer's position before this court remained that the legislation was capable of being read as compatible with convention rights and EU law; on no view does the claimer's position amount to a challenge to the compatibility of LRB procedure with EU law and convention rights. The claimer does not seek a declarator of incompatibility; it was argued on her behalf that it was not necessary to do so, because under reference to section 29(1) of the Scotland Act 1998, if the statutory provisions are incompatible with any of the convention rights or with EU law they are simply not law. However, senior counsel submitted that this was wrong – the onus rests on a party asserting incompatibility to set out the

basis for such assertion and to seek a declarator to that effect, and the issue of compatibility should not be considered as an abstract or theoretical exercise but should be related to the factual matrix of the case under consideration – *BJ v Proudfoot* 2011 SC 201, particularly at paragraphs [30] and [35] – [37]. The claimer is not seeking a declarator but is raising a hypothetical issue, which the court should not entertain – see the remarks of Lord Justice Clerk Thomson in *McNaughton v McNaughton's Trustees* 1953 SC 387.

[45] Even if the court had some sympathy with the suggestion that the procedures may be incompatible, it should not grant declarator in the absence of any proper application and full argument. As discussed in *BJ v Proudfoot*, it is for the claimer to seek declarator in her written application to this court, and to persuade the court on the facts of the case that it should be granted. There has been no attempt to do so.

[46] Moreover, the claimer does not have victim status. If she were to be regarded as a victim, this would give third party objectors a right of appeal which they have never previously had. Victim status does not arise in this case, and the court does not need to consider this.

[47] Senior counsel drew our attention to the letter from the Scottish Government's chief planner to Heads of Planning dated 29 July 2011 which concluded that "the consideration of an application by an LRB is in effect consideration of an application by the planning authority and should be treated accordingly. The Scottish Government therefore considers that, based on the above argument, the "de novo" approach should be adopted in determining cases brought before LRBs. This approach is also consistent with the approach to appeals adopted by DPEA. Consistency of handling of cases regardless of whether they are determined by LRB or DPEA would, in our view, promote confidence in the planning process".

[48] It had been submitted on behalf of the claimer that in order to amount to a *de novo* review and to meet the standard identified in *County Properties*, with an intense level of scrutiny, the LRB had to revisit every policy consideration and every material consideration, and that it could not take into account the Report on Handling. This would significantly increase the burden of giving reasons. The common law rules are well established by cases such as *Moray Council v Scottish Ministers* and *Uprichard v Scottish Ministers* [2013] UKSC 21 at 44 and 48. As Lord Reed observed in *Uprichard*, the approach to the requirement to give reasons in a

decision must be proportionate. The argument advanced on behalf of the claimer does not allow a proportionate approach. It is a matter for the decision maker to consider what level of scrutiny is justified in a particular case – *Kennedy v Charity Commission; Alconbury*. The present application relates to a local development; it is towards the bottom of the hierarchy of developments. Part of the reason behind the changes to procedures was to increase efficiency and to ensure that such developments were considered at an appropriate level of decision making.

[49] The court should conclude that the Lord Ordinary did not decide that the LRB does not have to carry out a *de novo* approach, but rather that he was commenting on a two stage approach. Even if the Lord Ordinary did mistakenly believe that a *de novo* assessment was not required of the LRB, this court can properly interpret and apply the provisions of the 1997 Act and the 2008 regulations. The LRB is required to determine an application *de novo* under the review process; the respondents maintain that they did adopt a *de novo* approach in relation to this application and it is a matter for this court to determine whether that was the case.

Reply for the claimer

[50] Senior counsel for the claimer submitted that it was probably not necessary for the court to decide whether the claimer had victim status or not, as she relied on the PPD and the EU charter, so victim status is not necessary. However, the claimer obviously did have victim status; as an objector she has a right to have the process determined fairly and she is directly affected by the decision because her civil right to residential amenity is affected. If a person is aggrieved and is directly affected, that person has victim status – *Axa General Insurance Company Ltd v Lord Advocate* [2012] 1 AC 868, per Lord Hope at paragraph [63] and Lord Reed at paragraph [111], *Walton v Scottish Ministers* 2013 SC UK 67 per Lord Reed at paragraphs [86] and [96], and Reed and Murdoch, *Human Rights Law in Scotland* (3rd edition) at paragraphs 2.64 – 2.68. It was clear from the claimer's affidavit that she is directly affected. It was not necessary for the claimer in these proceedings to conclude for declarator of incompatibility; it was sufficient for senior counsel to move for declarator in the course of her submissions.

[51] Turning to what was required by a "*de novo*" approach, and what this meant for the LRB, senior counsel observed that the procedure required to comply with article 11 of the PPD. It was clear from the terms of the letter from the Chief Planner

to Heads of Planning, dated 29 July 2011, that the Scottish Government expected consistency of handling of cases regardless of whether they were determined by an LRB or by a reporter of DPEA. The review documents to which the LRB must have regard in terms of the 2008 Regulations are substantially the same as the appeal documents to which a reporter must have regard in terms of the Town and Country Planning (Appeals) (Scotland) Regulations 2008, and the scheme of paragraphs 11 and 12 of the 2008 Regulations applicable to LRB's are substantially the same as the provisions of the regulations of the same year applicable to reporters. The observations of the court in *County Properties* apply with equal force to proceedings before an LRB and the decision letter prepared by the LRB. Senior counsel accepted that an LRB can expressly adopt a specific finding of fact in the Report on Handling, but she did not accept that the LRB decision letter in the present case had this effect. Moreover, the reader cannot be forced to dig around amongst the material to find a justification for the LRB's reasoning or decision. Although the findings and recommendations of the Aarhus Convention Compliance Committee were not binding on this court, they were of persuasive authority; the court should take account of the concerns expressed by the Committee as to the ability of members of the public to challenge the substantive legality of decisions (see paragraph 125 of the Committee's report).

[52] With regard to the intensity of review required in the present case, senior counsel accepted that this was an area in which some planning judgment was required, but the issue had to be assessed against the PPD and the observations of the Supreme Court in *Kennedy v Charity Commission*. For the reasons already articulated, a high intensity of review was required in this case.

[53] Finally, senior counsel submitted that this was not just a "reasons" challenge; she relied on all the factors listed in paragraph 8 of her note of argument. In particular, the LRB gave no reasons for deciding that the balancing exercise carried out in terms of Policy D4 resulted in the economic benefits outweighing all the adverse impacts. Senior counsel renewed her motion that the reclaiming motion should be granted.

Decision

[54] We begin by reminding the informed reader that the planning merits of this proposal, and issues of planning judgment, are not matters for this court. It is not for us to determine whether or not it is appropriate in planning terms to erect the wind

turbines referred to in this planning application nor is the balancing exercise between adverse impacts and possible economic benefits one for this court. These are matters for the planning authority. In terms of section 239 of the 1997 Act, we are concerned only with whether the local authority's decision is within the powers of the 1997 Act or whether any of the relevant requirements have not been complied with. We are concerned with legal validity and procedural regularity, not planning judgment.

[55] We do not propose to attempt to give general guidance as to the scope or function of LRBs in every situation; such an exercise, even if possible, would be inappropriate, particularly as we consider that the provisions of sections 43A and 43B of the 1997 Act (as amended) and the 2008 Regulations are tolerably clear and free from ambiguity. The following points are however relevant to the present case:

(1) The system of schemes of delegation for local developments, and the review of decisions of an appointed person, which was introduced by the 2006 Act, was intended to increase efficiency and ensure that developments were considered at the appropriate level of decision making. We agree with the submissions for the interested party and the Lord Advocate that it would be curious if parliament had intended that a more rigorous and onerous procedure and scrutiny was required for local developments than for major developments.

(2) The effect of section 43B of the 1997 Act, together with the 2008 Regulations, is that a party to proceedings under the new scheme is expected to lodge all the materials on which that party wishes to rely at an early stage of the procedure, before the appointed person makes his determination (except where the matter could not have been raised before that time, or because of exceptional circumstances). To put it colloquially, the procedure is intended to be "front loaded". An LRB will normally be expected to conduct a review on the basis of the material before the appointed person, and (subject to the above exceptions) a party will not be able to introduce and rely on material not before the appointed person.

(3) Only an applicant may require an LRB to review a case where the appointed person has refused an application, granted it subject to conditions, or failed to determine it timeously – section 43A(8) of the 1997 Act and regulation 9 of the 2008 Regulations. An objector to the

application has no such right. This reflects the position regarding the lack of right of objectors to appeal to reporters under the system which pre-dated the 2006 Act, and the present system for major developments.

(4) An LRB must have regard to the review documents (as defined in regulation 2 of the 2008 Regulations). Of course, in terms of section 25 of the 1997 Act, its determination must be made in accordance with the Development Plan unless other material considerations indicate otherwise. However, where the LRB considers that the review documents provide sufficient information to enable them to determine the review, they may determine the review without further procedure – regulation 12 of the 2008 Regulations. That is a matter of planning judgment, for the LRB.

(5) If the LRB decide that further procedure is required, it is for the LRB to decide how the review is to be conducted (by written submissions, one or more hearing sessions, and/or a site visit), and whether it requires further information – regulation 13 of the 2008 Regulations. Again, a decision of this nature involves planning judgment and is for the LRB itself.

(6) In carrying out its review function, the LRB must approach the matter “*de novo*”. All parties were agreed on this point, and it was explained in the letter dated 29 June 2011 from the Scottish Government’s Chief Planner to Heads of Planning. What is meant by a “*de novo*” approach? Clearly, an LRB cannot simply “rubber stamp” the decision of the appointed person. What is required is that the LRB should apply its collective mind afresh to the materials which were before the appointed person, together with any further materials or information properly before it. It is not merely considering whether the appointed person’s decision was reasonable in *Wednesbury* terms, but rather it is looking at the materials afresh. In this context, as discussed above, the materials must include the review documents. These include the Report on Handling, and any documents referred to in it. Not only is the LRB entitled to have regard to the Report on Handling and the documents referred to in it, it is obliged to do so.

(7) The LRB must give a notice of their decision to the applicant, containing the information contained in section 43A(12)(a) of the

1997 Act and regulation 21 of the 2008 Regulations. It must also give reasons. The well-known rules regarding the adequacy of reasons in similar decision letters apply to an LRB decision letter. The LRB must give proper and adequate reasons for its decision which deal with the substantial questions in issue in an intelligible way – *Wordie Property Co Ltd v Secretary of State for Scotland* per Lord President Emslie at 348. It must set out the process of reasoning by which it reaches its decision, but that does not require an elaborate philosophical exercise, nor does it require a consideration of every issue raised by the parties – the LRB is entitled to confine itself to the determining issues, and so long as its reasons are intelligible and accurate, it is entitled to express them concisely – *Moray Council v Scottish Ministers*, per Lord Justice Clerk Gill at [30]. It is important to maintain a sense of proportion when considering the duty to give reasons, and not to impose on decision-makers a burden which is unreasonable having regard to the purpose intended to be served – *Uprichard v Scottish Ministers* per Lord Reed JSC at [48]. The reasons are provided for the informed reader, who is aware of the procedural and evidential background and the issues. In a case where the LRB agrees with the findings and reasoning of the appointed person, generally it will not be necessary to set out or repeat at length those findings and reasons – it will be sufficient if it is apparent to the informed reader from the decision letter as a whole that the LRB agrees with and adopts them. The decision letter should not be subjected to microscopic analytical scrutiny as if it were a conveyancing document or a taxing statute; it will be sufficient if the informed reader is left in no real doubt as to why the LRB reached its decision on the determining issues.

[56] There is nothing in the Lord Ordinary's treatment of these matters (particularly at paragraphs [44]-[46] of his opinion) which suggests to us that he has fallen into error of law. When he referred to "review" rather than "appeal", we consider that he was simply reflecting the language of the 1997 Act and the 2008 Regulations. If he was suggesting that a lower level of scrutiny or consideration, or a lesser requirement for reasons, was appropriate for an LRB than would be appropriate for a reporter, we would disagree with him; however, we agree with senior counsel for the interested party that, properly understood, that is

not what the Lord Ordinary was suggesting. The Lord Ordinary was correct in observing that it was necessary to consider the statutory context in which an LRB operates, and that the LRB was entitled to take account of the reasoning in the Report on Handling, that this reasoning may be included in the decision of the LRB by way of reference, that it may thereby form part of the reasons on which the LRB bases its decision, and that it is unnecessary for an LRB to restate aspects of the decision of the appointed person which it accepts.

[57] In the circumstances of the present case, we are persuaded that the LRB did indeed take a *de novo* approach to the material before it. It made its determination having had regard to the review documentation, as it was obliged to do. It identified what it considered to be the determining issues in the review, it listed the relevant policies in the Development Plan, and it listed the other material considerations which it took into account. It expressly stated that its consideration of the matter was *de novo*. We are satisfied that the LRB did carry out what senior counsel for the claimer described as a “full substantive and procedural review” and that its decision complied with the requirements of the 1997 Act and the 2008 Regulations. Taken together with the proceedings before the Lord Ordinary and in the reclaiming motion before this court, we are also satisfied that the procedures as a whole comply with the requirements of the PPD, and in particular Article 11 thereof.

[58] Turning to the claimer’s position about a possible devolution issue, we are not persuaded that there is any devolution issue properly before us. None of the parties has suggested that the provisions of the 1997 Act or the 2008 Regulations are incompatible with convention or EU Law. Senior counsel for the claimer expressly stated that the statutory regime governing LRBs is capable of being interpreted compatibly with the convention and with EU law, and that the problem in this case arises from the Lord Ordinary’s error in interpretation, not in the legislation itself. The claimer’s position is clearly stated in the last sentence of paragraph 2 of the joint minute between the claimer and the Lord Advocate (number 33 of process). This court will not normally address an issue which is not live in the contentious litigation before it – as Lord Justice Clerk Thomson famously observed in *Macnaughton v Macnaughton’s Trustees* 1954 SC 387:

“Our courts have consistently acted on the view that it is their function in the ordinary run of contentious litigation to decide only live, practical questions, and that they have no concern with hypothetical, premature or academic questions, nor do they exist to advise litigants as to the policy which

they should adopt in the ordering of their affairs. The courts are neither a debating club nor an advisory bureau... each case as it arises must be considered on its merits, and the court must make up its mind as to the reality and the immediacy of the issue which the case seeks to raise... Unless the court is satisfied that this is made out, it should sustain the plea of incompetence, as it is only with live and practical issues that the court is concerned.”

[59] Moreover, there is nothing in the application to this court in terms of section 239 of the 1997 Act, nor in the grounds of appeal in the reclaiming motion, which suggests that the claimer seeks a declarator of incompatibility or any equivalent thereto. Senior counsel submitted that this was not necessary, and that it was sufficient for her to move for declarator in the course of her submissions. We disagree. The means by which a declarator that the Scottish Parliament had acted outwith its legislative competence was an issue discussed by this court in *BJ v Proudfoot*. In that case the appellant sought to argue that a quite different Act of the Scottish Parliament was outwith its legislative competence as it did not comply with the ECHR. It was submitted on behalf of the Lord Advocate that the appropriate remedy where an Act of the Scottish Parliament failed in some way to comply with the ECHR was a declarator that certain provisions of that Act were outside the legislative competence of the Scottish Parliament and accordingly were “not law”. The court appears to have accepted that submission – as Lady Paton put it (at paragraph [30]):

“It is in my view for the appellant to demonstrate to this court that, in the circumstances of her case, the application of the relevant legislation resulted in a breach or breaches of the ECHR. The appellant has not done so.”

[60] Lord Hardie observed (at paragraph [35]) that the relevant factors necessarily include the factual situation, the statutory framework within which any particular statutory provision appears and, above all, the remedy sought on behalf of the minuter. He went on to state (at paragraph [37]):

“Moreover, the issue of compatibility with the ECHR should not be considered as an abstract or theoretical exercise but should be related to the factual matrix of the case under consideration.”

[61] In the present case, it is the claimer’s position that the legislation is not incompatible. The remedies which she seeks do not include any declarator to that effect. We agree with counsel for the Lord Advocate that in these circumstances there is no devolution issue properly before us, and we should not entertain it.

[62] By way of brief observation, even if we had been prepared to entertain the claimer's submission that the legislation was incompatible with convention and EU law, we did not find it persuasive as we consider that the LRB was required to adopt a *de novo* approach, and we are satisfied that it did so. The Lord Ordinary gave a detailed and fully reasoned consideration in his opinion, which we consider amounted to a sufficiently intense scrutiny. Whilst of course the concerns of the Aarhus Convention Compliance Committee are entitled to respect, the convention is not part of domestic law as such (except where incorporated through European directives) – *Walton v Scottish Ministers* 2013 SC [UKSC] 67 at [100], and the Committee does not appear to recognise that *Wednesbury* reviews within the United Kingdom may have different intensities of scrutiny appropriate to the particular circumstances of the case – *R(Evans) v The Secretary for Communities and Local Government*, particularly at paragraphs 37 and 38. We are not persuaded that, in the particular circumstances of the present case, the PPD adds anything to the well-known requirements of our domestic law. Looked at as a whole, and taking account of the proceedings before the appointed person, the LRB, the Lord Ordinary and this court, we consider that the requirements of the PPD, and particularly of Article 11 of that directive, have been satisfied.

[63] It does not appear to us that victim status is an issue which is relevant in this case. If it were relevant, we would have some hesitation in accepting that the claimer has victim status, standing the nature of her interest in the matter and her status as an objector which gives her no right to require a review of the decision of the appointed person. However, although the matter was touched on in submissions, standing our views as to the relevance of the point in this case we do not propose to elaborate on the matter. It is sufficient for us to conclude that there is no merit in the claimer's position on a potential devolution issue.

[64] We now turn to the various specific arguments advanced on behalf of the claimer as to what are said to be errors by the LRB and the Lord Ordinary.

(i) Failure to take account of the TGN as a material consideration

[65] At paragraph [47] of his opinion the Lord Ordinary held that the TGN had not achieved the status of supplementary planning guidance at the date of LPG's decision. He was correct in this view – it was only adopted as council policy in December 2013. Having regard to Planning Circular 1 of 2009, we do not consider

that the TGN amounted to supplementary guidance in terms of section 22 of the 1997 Act. It was not of itself a material consideration.

[66] In any event, we agree with counsel for the respondents and the interested party that the material consideration was not the TGN document, but the significance of high sensitivity for a development of this nature in this area. This was a matter which was considered elsewhere, particularly in the Borders Landscape Assessment compiled by ASH Consulting Group in 1998, which was specified in the LRB's decision letter as one of the material considerations which it took into account. Furthermore the Lord Ordinary was correct to consider whether, if the TGN had been taken into account, a different outcome would have resulted – *Bova v The Highland Council; Bolton Metropolitan Borough Council v Secretary of State for the Environment* - and we agree with his conclusion that it would not. The substance of the material was already before the LRB. Moreover, the LRB agreed with the conclusion of the appointed person with regard to landscape and visual impact in an area of high sensitivity. We do not consider that their views on this matter would have been different if they had had the TGN before them.

(ii) Cumulative impacts

[67] This issue was dealt with by the Lord Ordinary at paragraph [48] of his opinion. We are in complete agreement with his views, and can find no error in his approach. The LRB took into consideration Policy I20 and paragraphs 182 – 195 of Scottish Planning Policy, as well as the Report on Handling, which included an assessment of cumulative impact in some detail. The LRB agreed with the appointed person in relation to adverse impact; the Lord Ordinary expressed the view that it was unnecessary for the LRB to make separate findings of its own in that regard, and we agree.

(iii) Residential amenity and the presumption of a two kilometre separation distance from residential settlements

[68] Again we are in complete agreement with the Lord Ordinary's treatment of this issue at paragraph [49] of his opinion. The "presumption" for a separation distance of up to two kilometres is not mentioned in policy H2. It is a recommendation in paragraph 190 of Scottish Planning Policy 2010, but the purpose of this recommendation was to give guidance to the drafters of the Development Plan. The respondent's supplementary planning guidance on wind energy dated

May 2011 was the non-statutory type of supplementary guidance, and did not form part of the Development Plan. In any event, as mentioned above, the LRB accepted the views of the appointed person as to the likely adverse impacts of the development, including the impact on the residents of the village of Cockburnspath. That being so, we do not consider that it was incumbent on the LRB to repeat the appointed person's findings or reasons.

(iv) Economic benefit

[69] Senior counsel for the claimer's first point in this regard was that the LRB's findings on economic benefit are contained in a total of six sentences. That may be so, but it does not follow from the fact that a decision maker states its reasons concisely that it has not given consideration to the point in issue, or that its reasons are inadequate. We deal further with adequacy of reasons below. However, the crucial test is whether the informed reader is left in real and substantial doubt as to what the reasons for the decision were and what were the material considerations which were taken into account in reaching it. Provided that this test is satisfied, we do not consider that it matters that the reasons are stated comparatively shortly.

[70] The next point which senior counsel for the claimer made was that the fourth paragraph of page 3 of the decision letter contained two errors of fact –

- (a) that the turbines would assist the business in reducing its energy requirements and
- (b) that the quarry had permission for a major expansion of its extraction operations.

There is no substance in either of these points. We agree with counsel for the respondents' description of the first of these as a matter of semantics – it was clear what the LRB meant by this. With regard to the second, we are satisfied that there was no error of fact – the LRB were referring to the development at Fulfordlees Quarry, which was owned by the same quarry business, which had been approved and at which development had commenced. We are not persuaded that the LRB reached its decision under error of fact.

[71] Senior counsel for the claimer went on to submit that an informed reader would not be able to understand the reasoning of the LRB on economic benefits because of the inadequacies of findings in that regard. We disagree. It is clear from the third and fourth paragraphs on page 3 of the decision letter that the LRB applied its mind to the balancing exercise required under Policy D4. On one side of the

scales, it is clear that they were persuaded that there would be adverse visual and landscape impact and that this may be significant. They noted that Policy D4 did not provide a complete prohibition on such developments, and that a development may be approved if the decision maker is satisfied that the contribution to wider economic and environmental benefits outweighs the potential damage to the environment. They considered this wider economic benefit in the fourth paragraph on page 3 of the decision letter; they noted that the turbines would bring price stability and security of supply to a large consumer of energy and would assist in reducing its carbon footprint. They were satisfied that the proposed turbines would help to sustain a business which - in their assessment as local councillors - is an important local employer, and help it to realise its expansion plans. Members concluded that the impact of the development was outweighed by the economic benefit that would accrue. This is essentially a decision about what weight is to be given to different considerations and the members are ultimately accountable to the electorate for their decision making.

[72] In light of the contents of these two paragraphs of the decision letter we do not consider that it can be said that the informed reader is left in any real or substantial doubt as to what the reasons for the decision were. It is clear that the LRB carried out the required balancing exercise and concluded that the economic benefit outweighed the adverse impact of the development. There is sufficient in the review documentation and the other material considerations listed by the LRB to provide a justification for this conclusion. We are unable to detect any error of law in the approach of the Lord Ordinary at paragraph [50] of his opinion.

[73] The suggestion that the LRB ought to have taken into account reduced house prices in the residential areas close to the proposed development is in our view misconceived. In this regard we agree with the observations of Pill LJ in *Lough v First Secretary of State* (at paragraph 51).

(v) Proportionality

[74] The essence of senior counsel for the claimer's position on this issue was that only 6% of the energy to be generated by the development was required for Kinegar Quarry's current energy usage, and it was impossible to ascertain from the LRB's decision letter how it reached its conclusion on proportionality. However, Policy D4 is not only concerned with local economic and environmental benefits – it expressly refers to wider economic and environmental benefits. The fact that the

quarry business itself may only utilise 6% of the output seems to us to be far from conclusive on this issue. There was evidence before the LRB of wider economic and environmental benefits. The LRB referred to the development bringing price stability and security of supply to a large consumer of energy and that this would assist in reducing its carbon footprint. The members of the LRB clearly applied their collective mind to the necessary balancing exercise, and clearly stated the result of that balancing exercise together with reasons for that result. We find ourselves in agreement with the observations of Pill LJ in *Lough v First Secretary of State*, particularly at paragraphs 45/46 and 49/50. As Dyson LJ (as he then was) stated in *Samaroo* [2001] UK HRR 1150, it is important to emphasise that the striking of a fair balance lies at the heart of proportionality. It does not follow that if the word “proportionality” does not appear in a decision letter, this renders the decision unsatisfactory or liable to be quashed. It is clear from the decision letter in the present case that the LRB carried out the balancing exercise required by Policy D4. They stated the result of that exercise, and their reasons for reaching that result. There was material before them to enable them to reach that result. This was a matter for the planning judgment of the LRB, and this court will not interfere because the claimer does not agree with that judgment.

(vi) *Natural justice*

[75] The Lord Ordinary dealt with this issue at paragraph [52] of his opinion. We are in complete agreement with his reasoning and conclusions on this issue. The first respect in which it was argued that there was a breach of natural justice was that the letter from the clerk to the LRB to the claimer dated 8 January 2013 did not give the claimer a reasonable right to be heard before the LRB. However, that letter refers the reader to section 43B of the 1997 Act and accurately reflects the terms of that section. The claimer was advised in that letter that if she wished to make any further representations in respect of the review she should write direct to the Head of Legal Democratic Services of the respondents within 14 days from the receipt of the letter. It was for the LRB to decide whether any further procedure was required, and if so, what form that procedure should take. In this regard, the powers of the LRB are analogous to those of a reporter. This was not a case in which, for example, the LRB heard evidence from the applicant but refused to hear evidence from objectors such as the claimer. We do not consider that there was any breach of natural justice in this regard.

[76] With regard to the decision not to hold a site visit, it is worthy of note that it was the applicants who asked for a site visit, not any of the objectors. A site visit is not required in every case – *Simson v Aberdeenshire Council*. The members of the LRB may be taken to know the site, being local counsellors; in this respect they differ from reporters. In any event, as counsel for the respondents pointed out, the LRB agreed with and adopted the findings of the appointed person on visual matters, so a site visit would have made no difference to their decision.

[77] We are not persuaded that there is any force in the claimer's submissions on natural justice in this case.

(vii) *Reasons*

[78] We have touched on this issue already. The LRB is under the same duty to give adequate reasons for its decision as are other decision makers in different contexts. It was submitted to us that because this is a decision *de novo*, the decision notice should contain findings on visual impact and reasoning on all issues. We are unable to agree with this proposition. Where the LRB agrees with the reasoning of the appointed person and accepts his findings in fact, no purpose is served by requiring the LRB to repeat those findings and reasoning nor to recite them at length. It will be sufficient if the LRB makes it clear that they accept and adopt the findings and reasoning on a particular issue. In the present case the LRB stated that they "did not fundamentally contradict the appointed officer's assertion that there would be adverse visual and landscape impact and that this may be significant". In the circumstances of this case, where the appointed person has set out at length his findings and reasoning with regard to adverse impacts and the LRB has accepted these, there is no need for the LRB to rehearse or repeat these at length.

[79] The crux of this case was the balancing exercise carried out by the LRB in terms of Policy D4. The LRB required to balance the admittedly adverse impacts of the development against the potential economic and environmental benefits. The informed reader of the decision would be aware of the contents of all of the materials to which the LRB had regard. He would be aware of the procedural and evidential background. We cannot agree with senior counsel for the claimer that the informed reader would be left with a real and substantial doubt as to what the reasons for the decision were. It is tolerably clear that, having carried out the balancing exercise required by Policy D4, the LRB found that the balance favoured the granting of permission. Indeed, they state in terms:

“members concluded that the impact of the development was outweighed by the economic benefit that would accrue.”

[80] We agree with the Lord Ordinary’s treatment of this issue at paragraph [53] of his opinion.

[81] For all these reasons, we are not persuaded that the Lord Ordinary has fallen into any error of law. Whilst the LRB’s decision letter is not a model of clarity or an example of the best practice which might be achieved under the proceedings introduced by the 2006 Act - such practice could, for instance, aim at providing express assurance of consistency of handling regardless of whether a case is determined by an LRB or the DPEA and, here, could have included the provision of more detailed reasons why the LRB reached a different conclusion from the previous LRB and appointed persons - it says enough in its own terms and by its reference to other material to satisfy us that its decision is within the powers of the 1997 Act and that it complied with the relevant statutory requirements. We shall accordingly refuse this reclaiming motion.



Central Validation Team at Argyll and Bute Council 1A Manse Brae Lochgilphead PA31 8RD Tel: 01546 605518 Email: planning.hq@argyll-bute.gov.uk

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100194907-003

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

Applicant or Agent Details

Are you an applicant or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

Applicant Agent

Agent Details

Please enter Agent details

Company/Organisation:

Ref. Number: You must enter a Building Name or Number, or both: *

First Name: * Building Name:

Last Name: * Building Number:

Telephone Number: * Address 1 (Street): *

Extension Number: Address 2:

Mobile Number: Town/City: *

Fax Number: Country: *

Postcode: *

Email Address: *

Is the applicant an individual or an organisation/corporate entity? *

Individual Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title:	<input type="text"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text"/>	Building Name:	<input type="text" value="c/o DM Hall"/>
First Name: *	<input type="text"/>	Building Number:	<input type="text"/>
Last Name: *	<input type="text"/>	Address 1 (Street): *	<input type="text" value="The Mill"/>
Company/Organisation	<input type="text" value="Petard Investments"/>	Address 2:	<input type="text" value="Station Road"/>
Telephone Number: *	<input type="text"/>	Town/City: *	<input type="text" value="Bridge Of Allan"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="Scotland"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="FK9 4JS"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text" value="duncan.clow@dmhbl.co.uk"/>		

Site Address Details

Planning Authority:

Full postal address of the site (including postcode where available):

Address 1:

Address 2:

Address 3:

Address 4:

Address 5:

Town/City/Settlement:

Post Code:

Please identify/describe the location of the site or sites

Northing	<input type="text" value="723862"/>	Easting	<input type="text" value="186897"/>
----------	-------------------------------------	---------	-------------------------------------

Description of Proposal

Please provide a description of your proposal to which your review relates. The description should be the same as given in the application form, or as amended with the agreement of the planning authority: *
(Max 500 characters)

Site for the erection of dwellinghouse and garage

Type of Application

What type of application did you submit to the planning authority? *

- Application for planning permission (including householder application but excluding application to work minerals).
- Application for planning permission in principle.
- Further application.
- Application for approval of matters specified in conditions.

What does your review relate to? *

- Refusal Notice.
- Grant of permission with Conditions imposed.
- No decision reached within the prescribed period (two months after validation date or any agreed extension) – deemed refusal.

Statement of reasons for seeking review

You must state in full, why you are seeking a review of the planning authority's decision (or failure to make a decision). Your statement must set out all matters you consider require to be taken into account in determining your review. If necessary this can be provided as a separate document in the 'Supporting Documents' section: * (Max 500 characters)

Note: you are unlikely to have a further opportunity to add to your statement of appeal at a later date, so it is essential that you produce all of the information you want the decision-maker to take into account.

You should not however raise any new matter which was not before the planning authority at the time it decided your application (or at the time expiry of the period of determination), unless you can demonstrate that the new matter could not have been raised before that time or that it not being raised before that time is a consequence of exceptional circumstances.

see local review statement

Have you raised any matters which were not before the appointed officer at the time the Determination on your application was made? *

Yes No

If yes, you should explain in the box below, why you are raising the new matter, why it was not raised with the appointed officer before your application was determined and why you consider it should be considered in your review: * (Max 500 characters)

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review. You can attach these documents electronically later in the process: * (Max 500 characters)

planning application as submitted and local review statement

Application Details

Please provide details of the application and decision.

What is the application reference number? *

19/02315/PPP

What date was the application submitted to the planning authority? *

11/11/2019

What date was the decision issued by the planning authority? *

02/01/2020

Review Procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Can this review continue to a conclusion, in your opinion, based on a review of the relevant information provided by yourself and other parties only, without any further procedures? For example, written submission, hearing session, site inspection. *

Yes No

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may select more than one option if you wish the review to be a combination of procedures.

Please select a further procedure *

Holding one or more hearing sessions on specific matters

Please explain in detail in your own words why this further procedure is required and the matters set out in your statement of appeal it will deal with? (Max 500 characters)

As the local reviews turn on the weight to be attributed to the recent approval of the Local Development Plan 2 Proposed Plan (PLDP2), councillors are requested to hold a hearing to better understand the relevance of the new policy regime.

Please select a further procedure *

By means of inspection of the land to which the review relates

Please explain in detail in your own words why this further procedure is required and the matters set out in your statement of appeal it will deal with? (Max 500 characters)

As the visual and landscape impact of the proposed dwellings is the critical issue, councillors are requested to undertake a site visit.

In the event that the Local Review Body appointed to consider your application decides to inspect the site, in your opinion:

Can the site be clearly seen from a road or public land? *

Yes No

Is it possible for the site to be accessed safely and without barriers to entry? *

Yes No

If there are reasons why you think the local Review Body would be unable to undertake an unaccompanied site inspection, please explain here. (Max 500 characters)

The land is private and fenced.

Checklist – Application for Notice of Review

Please complete the following checklist to make sure you have provided all the necessary information in support of your appeal. Failure to submit all this information may result in your appeal being deemed invalid.

- Have you provided the name and address of the applicant?. * Yes No
- Have you provided the date and reference number of the application which is the subject of this review? * Yes No
- If you are the agent, acting on behalf of the applicant, have you provided details of your name and address and indicated whether any notice or correspondence required in connection with the review should be sent to you or the applicant? * Yes No N/A
- Have you provided a statement setting out your reasons for requiring a review and by what procedure (or combination of procedures) you wish the review to be conducted? * Yes No

Note: You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. You may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

Please attach a copy of all documents, material and evidence which you intend to rely on (e.g. plans and Drawings) which are now the subject of this review * Yes No

Note: Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice (if any) from the earlier consent.

Declare – Notice of Review

I/We the applicant/agent certify that this is an application for review on the grounds stated.

Declaration Name: Mr Duncan Clow

Declaration Date: 23/01/2020

This page is intentionally left blank

31 October 2019

Argyll and Bute Council
 Planning, Housing & Regulatory Services
 Central Valuation Team
 1a Manse Brae
 Lochgilphead
 Argyll
 PA31 8RD

Our Ref.: PH

Dear Sirs

Land East of Cal Na Sithe, Kilmore, Argyll

DM Hall has been instructed by Petard Investments to re-submit two Applications for Planning Permission in Principle on land east of Cal Na Sithe, Kilmore, Argyll. The previous Application documents are being re-submitted with these fresh Applications.

The Applications are being re-submitted within 12 months of the refusal of the previous Applications, which were determined on 18 December 2018. They are, therefore, being submitted as exempt from further planning fees, although it is accepted that they may be subject to advertisement fees.

The previous Applications were refused for one reason, that the sites were in a designated 'Countryside Zone' within the adopted Argyll and Bute Local Development Plan and the development of the sites was seen as not conforming to Policy LDP DM1. It was also determined that the proposals would be harmful to the Area of Panoramic Landscape Quality (APQ) notwithstanding the submission of a Landscape and Visual Appraisal by a Chartered Landscape Architect that concluded otherwise.

Taking each of these in turn, then the policy position in relation to new housing in Countryside Areas is changing with the recent approval of the Local Development Plan 2 Proposed Plan, which is now the settled view of the Council. This Plan has changed the way in which proposals will be considered going forward and, although it still needs to be consulted upon and examined, it does already carry weight as a material consideration.

The new Policy 02A, which applies to Countryside Areas, is now permissive, it would appear on first reading, of dwellings being supported on potentially any site in such areas provided the proposal is supported by a '*Landscape and Visual Impact Assessment*' that demonstrates that '*the proposal can be successfully integrated into its landscape setting.*'



DM Hall LLP, a Limited Liability Partnership registered in Scotland with Registration number S0301144
 Registered office, 17 Corstorphine Road, Edinburgh, EH12 6DD.

A full list of members can be obtained from the Head Office, 17 Corstorphine Road, Edinburgh, EH12 6DD. Tel: 0131 477 6000. Fax: 0131 477 6016.

Aberdeen, Ayr, Bridge of Allan, Cumbernauld, Cupar, Dumfries, Dundee, Dunfermline, Edinburgh, Elgin, Falkirk, Galashiels, Glasgow (North and South), Hamilton, Inverness, Inverurie, Irvine, Kirkcaldy, Livingston, Musselburgh, Oban, Paisley, Perth, Peterhead, Stirling.

The Mill
 Bridge of Allan,
 Stirling FK9 4JS
 DX556210 Bridge of Allan
 T: 01786 833800
 F: 01786 834382
 www.dmhbl.co.uk

Regulated by RICS

The first part of that altered policy is met by the fact that a Landscape and Visual Appraisal has already been prepared for these sites and the second by the fact that this document concludes that the proposed dwellings can successfully integrate with the landscape setting and will not have any detrimental visual impacts.

Turning to the second issue, the potential impact on the APQ, it is appreciated that the case officer previously concluded differently to the Chartered Landscape Architect. However, given the changed policy environment, it is hoped that this can be reflected upon and re-considered. If additional information would help with this reflection, then this can be prepared, but only if these Applications are likely to be considered favourably.

I trust that you have everything necessary to validate these Applications, but please contact me if you require anything further to assist with this.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Paul Houghton', with a long, sweeping horizontal line extending to the right.

Paul Houghton
Director and Head of Planning for DM Hall

Argyll and Bute Council
Comhairle Earra Gháidheal agus Bhóid

Development and Infrastructure Services
Acting Executive Director: Kirsty Flanagan



Municipal Buildings Albany Street Oban PA34 4AW

Planning Officer e-mail address: planning.olandi@argyll-bute.gov.uk

Mrs Sandra Grieves
Dalmarra
Kilmore
Oban
Argyll And Bute
PA34 4QT

Our Ref: 19/02315/PPP
Date: 9 January 2020

Dear Sir/ Madam

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED)
Site for the erection of dwellinghouse and garage
Plot 2 Land East Of Cala Na Sithe Kilmore Argyll And Bute

Further to your letter in respect of the above application, I am writing to inform you that after careful consideration of your comments and other responses received from interested parties and consultees, it has been resolved to **refuse planning permission** for this particular application, in accordance with the Council's Scheme of Delegation.

I trust this information will be of assistance and would thank you for the interest you have shown in the proposed development. If you wish to view the decision notice or the report of handling this can be viewed on the Council's website at <http://publicaccess.argyll-bute.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=Q0GICYCHKLZ00>

Note:

Information relating to all planning decisions made by Argyll and Bute Council is updated periodically on the Planning Decision page of the Council website www.argyll-bute.gov.uk/planning-decisions

Alternatively you can sign up for alerts about planning applications and decisions that you are interested in – details are provided on the above website page.

Yours faithfully

A handwritten signature in black ink that reads 'T. Williams'.

Tim Williams
Area Team Leader, Municipal Buildings Albany Street Oban PA34 4AW



This page is intentionally left blank

Design Statement

Site east of Cala Na Sithe, Kilmore, Oban, Argyll And Bute, PA34 4QT

Introduction

This Design Statement has been prepared based upon guidance to be found in Argyll and Bute's Design Statements – Guidance Note, the Argyll and Bute Local Plan (ABLP) and Planning Advice Note 68: Design Statements.

The Site

The Application Site is located above the southern side of Loch Feochan. It is located towards the eastern end of the loch, and forms part of a plateau of semi-improved grassland, located on an elevated terrace above two separate clusters of dwellings. The nearest properties are Cala Na Sithe to the west and Dalmara to the north west of that.

The Application Site will take access from the existing track that serves Cala Na Sithe and Dalmara, which will be extended to the north of Cala Na Sithe to serve the two plots.

The Application Site is reasonably level and dwellings could be built here without too much change to the natural topography.

The site is not subject to any biodiversity (SiteLink) or cultural heritage (PastMap) designations. It is not within the SEPA indicative flood plain.

Layout and Design

The exact details for the Application Site have yet to be decided upon, but the intention is to build traditionally designed dwellings, which will suit the local vernacular and be to the latest sustainable standards.

The final designs will respect the guidance in Argyll and Bute Council's Sustainable Design Guidance (1 September 2006).

The properties will be one and a half storey, but can be single storey only, if preferred.



The intention is to source all materials locally and from sustainable sources. These will suit the local vernacular.

Energy Efficiency

The proposed dwellings will be designed to be as energy efficient as possible.

The applicant is also considering other renewable energy solutions to reduce overall heat and electricity consumption.

Landscaping

Once construction of the properties have been completed, the aim will be to plant gardens and boundaries such that the properties are appropriately screened from neighbouring properties and blend with their surroundings.

Landscape and Visual Appraisal

proposed 2 no. dwelling development,
balinoe, near oban



CONTENTS PAGE

1	Introduction	page 1
2	Site Location and Local Context	page 2
3	Landscape Designations	page 4
4	Potential for a Small-Scale Development	page 7
5	Landscape Impacts	page 8
6	Visual Impacts	page 11
7	Conclusion	page 13

Appendices

Appendix 1 Methodology

Appendix 2 Figures 1 - 3

LANDSCAPE AND VISUAL APPRAISAL

1 Introduction

- 1.1 This report describes the existing environment and provides an appraisal of the potential landscape and visual impacts which are expected as a result of the construction of 2 no. proposed single dwelling houses and associated infrastructure, located near Balinoe, on the A816 arterial route from Oban. (Refer to Figure 1).
- 1.2 This Landscape and Visual Appraisal considers the resulting impacts from the proposed development upon the aesthetic character of the landscape character, on the physical structure and landscape resources and, visual amenity of those experiencing views from the local and wider landscape setting.
- 1.3 VLM Landscape Design Ltd have been commissioned by the Client, Petard Developments. Victoria Mack, a chartered landscape architect with nearly 20 years professional experience, was responsible for the undertaking the appraisal and the production of this report.
- 1.4 This appraisal has been undertaken in line with guidance contained in **Guidelines for Landscape and Visual Impact Assessment** published by the **Institute of Environmental Management and Assessment** in association with **The Landscape Institute (3rd Edition)**. VLM has established methodology for carrying out Landscape and Visual Appraisals for small-scale developments of this nature. The methodology along with variations specific to this appraisal is described in Appendix 1. This methodology underpins this appraisal and should be read in conjunction with this report. Figures associated with the written appraisal form Appendix 2.
- 1.5 In preparing this Landscape and Visual Appraisal, key sources of information and data including planning policy and other written, graphic and digital data relating to the proposals and broader study area has been gathered from the following sources and have been reviewed and taken account of, including:
- Argyll & Bute Local Development Plan (LDP, adopted March 2015);
 - Argyll & Bute LDP Supplementary Guidance (January 2016);
 - Scottish Planning Policy, 2014 (SPP);
 - Argyll and Firth of Clyde Landscape Character Assessment (ERM, 1996);

- Argyll and Bute Sustainable Design Guidance 1 (2006);
- Lorn and the Inner Isles Landscape Capacity Study (L&TIILCS), (Gillespies, 2010);
- Inventory of Gardens and Designed Landscapes in Scotland;
- Pastmap mapping database;
- Ordnance Survey maps;
- Digital sources of mapping and aerial photography; and,
- Site visit including a site walk-over and photographic survey, carried out in September 2018.

1.6 The key objectives of the appraisal are to:

- identify landscape features and resources that may be affected by the development;
- identify key viewpoints and viewers likely to be affected by the development;
- identify the levels of effects on the landscape and visual amenity;
- identify measures to mitigate these impacts; and,
- establish capacity and the general principles of development.

1.7 The approach taken in this appraisal reflects the needs to identify and understand the following:

- The character of the landscape and its ability to accommodate change;
- The visual relationship between the proposed site and its setting during construction and following completion; and,
- Inherent opportunities and constraints across the site area.

1.8 Landscape and visual impacts may potentially result from the following:

- visibility of items associated with the development during the construction phase and following completion;
- loss of existing landscape features or the introduction of new features; and,
- the presence of permanent structures on completion of the development.

2 Site Location and Local Context

2.1 Figure 1 shows the location of the Application Site above the southern side of Loch Feochan, in the Lorn district of main land Argyll and approximately 6km south of Oban. The wider study area lies inland from the western coastline of Argyll and comprises a series of lochs, valleys and glens, surrounded by occasionally steeply rising craggy landform with distinctive ridges. A

strongly rolling landscape juxtaposed with craggy intrusions, knolly landforms and areas of rough pasture is frequently punctuated by broad terraces elevated above the shorelines. The lush glens, valleys and loch shorelines are generally well-treed in character and often merge with extensive coniferous plantations and woodlands which stretch across rising slopes. The wild qualities of the craggy slopes and ridges form a backdrop to the lower, more settled loch shores and glen and valley floors where dispersed clusters of dwellings and small settlements are nestled into well-wooded gentle slopes and terraces.

- 2.2 The context to the site demonstrates these broader characteristics and qualities. Loch Feochan is a sea loch stretching approximately 6km from Barnacarry Bay on the east to near the settlement of Dunach which overlooks the Firth of Lorne. The A816, a main arterial route through western Argyll, traverses south from Oban and runs very close to the southern shoreline of Loch Feochan before heading inland as it nears the mouth of the loch and enters the Firth of Lorn. Frequent areas of broadleaved woodland and scrub planting line both sides of the road corridor and merge with mature tree cover and coniferous plantations which extend down the mountain slopes and form a highly scenic backdrop to the loch. The loch receives two rivers; the River Euchar empties into the western part of the loch at Kilniver further west of the Application Site whilst the River Nell enters the loch at its head in the east, near to the junction of the A816 and the minor road to Barran and Kilmore.
- 2.3 The shoreline and lower slopes surrounding the loch are well-settled with a number of small clusters of built form dispersed along the A816 corridor and nestled into the lower terraces and backdropped by mature woodland. The head of the loch and the southern shoreline are relatively well-developed with relatively high number of clusters comprising between 2 and 5 dwellings. 2 distinct clusters are located within the local context to the west and north-east of the Proposed Site and another small, loose cluster including Balinoe Cottage and Balinoe Farmhouse is located further along east along the A816 corridor, close to the head of the loch. Further west, 3 dwellings and the Knipach Hotel form a cluster and add to the dispersed rural pattern along the southern shoreline. In contrast the northern side to the loch is less inhabited with a small cluster of 3 dwellings located on the lower well-wooded slopes of Carn Breagach and a linear row of dwellings located along Ardentallen Bay to the north-west of the site.
- 2.4 The proposed site is located towards the eastern end of the loch, and forms part of a plateau of semi-improved grassland, located on an elevated terrace above two separate clusters of dwellings. A well-established coniferous plantation provides the immediate backdrop to the

south and rises further up the slopes of An Creachan. Extensive mature tree cover which provides the backdrop to a cluster located adjacent to the road corridor and extends up the slopes and wraps around the site's northern boundary. A handful of self-generating trees are dispersed across the area of pasture however most tree cover is located along the boundaries to the extended landholding. Pasture extends beyond the western boundary to the site which is demarcated by a post and wire fence whilst to the east the area of semi-improved grassland merges with the grounds to a cluster comprising 2 dwellings and a farm track which provides access to the coniferous plantation and a small yard associated with the commercial workings of the plantation.

3 Landscape Designations

- 3.1 The high visibility of the rugged mountainous area on both sides of Loch Feochan and the extensive amount of tree cover across the craggy landform make a strong contribution to the richly scenic composition of this part of the western mainland of Argyll. With the presence of the Firth of Lorn and distant views to the outline of the Isle of Mull to the west of this area, the site and wider setting is designated as an Area of Panoramic Quality (APQ).
- 3.2 **Policy SG LDP ENV 10** – 'Development Impact on Areas of Panoramic Quality' states that *"development in, or adjacent to, an Area of Panoramic Quality will be resisted where its scale, location or design will have a significant adverse impact on the character of the landscape."* In a similar vein criteria (G) for development within Policy LP 'CST – 2 Coastal Development on the Undeveloped Coast' requires that the *"scale of the proposed development respects the landscape character and amenity of the surrounding area"*. Policy LP ENV 19 'Development Setting, Layout and Design', states that *"the design of developments and structures shall be compatible with the surroundings. Particular attention shall be made to massing, form and design details within sensitive locations such as National Scenic Areas, Areas of Panoramic QualitySensitive Countryside, Conservation Areas..... Within such locations, the quality of design will require to be higher than in other less sensitive locations."*
- 3.3 The backdrop to the extended landholding comprises a rugged mountain skyline created by the summits of An Creachan and Cnoc Tarsuinn. The steep craggy slopes are covered by a blanket of coniferous plantations which extend down towards the shoreline of Loch Feochan. Occasionally, the hilly and knolly landform on the lower slopes give way to broad terraces. The site is located on one of these terraces and essentially forms a plateau of land marginally

elevated above two small clusters of built form and the shoreline. Dense areas of mature garden features and deciduous woodlands surrounding these clusters merge with the coniferous plantations on the lower slopes. Within this context, it is considered that small-scale sensitively designed built forms nestled into the existing fabric of the landscape and encompassed by a mature woodland setting will have a negligible impact on the expansive scale and wildland qualities of the wider panoramic context of lochs, glens, mountains and sea.

- 3.4 The proposed site benefits from a tight visual envelope and whilst it is acknowledged that there are a few listed buildings and a Scheduled Monument located opposite the site above the northern shoreline, and dispersed across the wider study area, through a combination of the strongly rolling craggy landform and extensive mature vegetation structure, the settings to these built heritage features will barely be affected.

Landscape Capacity

- 3.5 Rural opportunity Areas (ROAs) are identified in the LDP as areas having capacity for development. Whilst an area of land located immediately to the west of the site is located as a Rural Opportunity Area, the site itself is not allocated. The identification of ROAs within National Scenic Areas (NSAs) and Areas of Panoramic Quality (APQ), where the study area is located, have been guided by the Lorn and Inner Isles Landscape Capacity Study. This study forms one in a series of documents produced by Gillespies in 2009 and 2010 and covers the entire Argyll and Bute administrative area. As identified in the Capacity Study for the Lorn region, the Proposed Site and immediate context to the west and east forms site 'LN56 Balinoe', and the assessment is located on page 98 of the document. This site forms one of 81 sites identified within the Study Area for the Lorn and Inner Isles. (Refer to the Site Reference Map on page 6 of the Lorn and Inner Isles Landscape Capacity Study)
- 3.6 In accordance with the methodology of the study, the assessment of each site has been graphically illustrated followed by a brief written appraisal. The figure on Page 98 of the capacity study identifies "*Areas with potential to accommodate development, subject to criteria, without damaging the landscape character of the area*" (coloured orange); "*Areas where development is generally unacceptable and would have an adverse impact upon the landscape character of the area*" (coloured red); and, "*Key viewpoints*" (coloured blue). The Proposed Site is assessed to be located in an area where development is generally

unacceptable.

3.7 On page 98, the findings of the landscape capacity for LN56 are detailed as follows:

“Areas with potential to absorb development (Orange Areas)

- *There is scope to develop at Balinoe as this could be accommodated by the existing landscape structure of trees.*
- *There is a pocket of enclosed flat land alongside the A816 which could accommodate development.”*

“Areas not recommended for development (Red Areas)

- *Generally, the rising slopes south of the A816 should not be developed as this would become too visible within the wider landscape and could change the character of the area. Development along the roadside in most places would also require extensive earthworks as it is very steeply sloping.”*

3.8 It is considered the reason for areas not recommended for development within site LN56 are broad. Whilst it is acknowledged that the capacity study covered a significantly large area of land and therefore the findings have been prepared on a broad-brush assessment of the site and its context. The topography across site LN56 is highly complex and whilst parts of LN56 are visible within the wider landscape, the Proposed Site is not due to a combination of the surrounding knolly landform, mature garden features and extensive mature tree cover including the coniferous plantation which continues to rise up the slopes of An Creachan providing a soft backdrop. In addition, due to the relatively flat nature of the plateau of land where the site is located and the use of the existing drive to partly provide access, extensive earthworks will not be required to facilitate the development.

3.9 The following appraisal will demonstrate illustrate that the proposed 2no. dwelling development compares favourably when assessed against specific criteria relating to landscape policy, and guidance contained within environmental, conservation and design policies within the Balinoe area. The forthcoming appraisal will also illustrate that due to the specific qualities and characteristics inherent across the site and immediate context, that the site does indeed have landscape capacity for development and should be designated as an *“area with potential to absorb development”*, where the proposals would be seen to be in keeping with the character of the wider settlement pattern and the siting, scale and detailing to reflect the vernacular and traditional style of built form within the area. This is advocated within the Argyll and Bute Sustainable Design Guidance 1 (dated 2006) and detailed in the Argyll and Firth of Clyde Landscape Character Assessment published by SNH (Generic Guidelines for Built Development pages 48 and 49).

4 Potential for a Small-Scale Development

- 4.1 In order to appraise impacts on the landscape resource, landscape character and visual amenity, this section describes the indicative proposals and provides a broad description of the key components that will comprise the proposed development.
- 4.2 It is proposed to implement 2 no. single storey dwellings which will be orientated on a broad north-south axis to take advantage of the views out across Loch Feochan. The south-western corner of the wider land holding comprises a relatively complex, steep and hilly landform and as such it is proposed to step the new dwellings away from this area within a relatively flat plateau of grassland where ground modelling and earthworks will be kept to a minimum. The built forms will be set within moderate size garden grounds which will be enhanced by 'native' species planting along the eastern and western boundaries. The southern boundary to both curtilages will be planted with a native woodland edge mix to provide a more human interface with the dense coniferous plantation which rises up the slopes beyond the site and provides a soft backdrop. These features will form the primary framework for the new garden grounds with the potential for a more ornamental tree and shrub mix to form a secondary layer of planting which will add colour and texture. Over time this enhanced framework will create a more secluded environment for the residents of the new dwellings.
- 4.3 An access drive will extend from the existing access serving Dalmara and Cala-na-Sithe and run in close proximity to the northern boundary to Cala-na-Sithe. The drive will extend to the frontages of both dwellings and it is proposed to finish the surface using crushed aggregate and soil, in keeping with the finished surface of the existing access, and kerbs laid flush with adjacent grass areas to create a less urban character. Lengths of hedgerow and 'native' specimen trees along the access will also assist with the assimilation into the landscape and extend further east to form the northern boundary to both curtilages.
- 4.4 The scale, form, massing and detailing of the new dwellings will reflect the vernacular style of architecture within the wider loch area and a limited palette of high quality hard landscape materials will complement the rural setting. This sensitive approach to use characteristic and sympathetic building materials, the introduction of 'native' species to enhance the primary framework, and use of the existing landform to aid in reducing inter-visibility of the new dwellings from the highly scenic setting will ensure that this proposed development will

successfully integrate into the landscape.

5 Landscape Impacts

Impacts on Landscape Resource

- 5.1 As a result of the implementation of 2 single storey dwellings and associated garden curtilages and access drive on the Proposed Site, there will be a limited loss of semi-improved grassland. It is acknowledged that the site would have some ecological value however, it is encompassed by extensive areas of tree cover including plantations, broadleaved woodlands and swathes of grassland in addition to more ornamental grounds to the clusters of dwellings spread out along the south-side of the loch which support a vast number of habitat species and have high natural heritage importance. The loss of this extremely small portion of grassland will have a very minor impact on the physical structure of the landscape where an abundance of improved and semi-improved grassland frames the immediate context to the east and west and the wider context.
- 5.2 Existing mature tree cover lies outwith the site boundary and as such no tree cover will be lost through development. Rather, the boundaries to the site will be enhanced with a site-wide planting strategy which will form the framework to the new garden curtilages. In the longer term these will form new features around the site creating a new positive element and more secluded character to this parcel of land whilst potentially allowing new habitat corridors to be created.
- 5.3 Whilst there will be a period of adjustment and change, the proposals will have a very low impact on the landscape resource and in the longer term, the new garden grounds will be seen to not only complement and augment the existing features in the area but the quality of this landscape resource will be maintained and ultimately benefit the wider setting in the long term.
- 5.4 The sensitivity to change is assessed to be *Low* due to the limited value of the grassland. It is judged that the Magnitude of effect is *Negligible* following the construction phase and in the medium to long term. The effect is **Minor** and **Neutral** during and following the construction phase. The nature of effect on the landscape resource in the medium to long term is assessed to be **Beneficial**.

Impacts on Landscape Character

- 5.5 Following development, there will be a limited impact to the local landscape character of the Proposed Site changing from an area of grassland to a high quality development comprising 2 no. dwellings with associated driveways and set within an enhanced woodland setting.
- 5.6 In terms of landscape character, the Proposed Site falls within the Craggy Uplands Landscape Character Type (LCT), as highlighted within the Firth of Clyde Landscape Character Assessment. The Argyll and Bute Landscape Wind Energy Capacity Study Report provides an update of the landscape character contained in the Firth of Clyde Landscape Assessment which was written over two decades ago. This updated assessment highlights that the Craggy Upland LCT extends over large areas of Argyll and Bute including stretches of coastline, inland lochs and glens and upland plateaux. Due to the variety of character and scale of this landscape, the Capacity study divides this LCT into more appropriate sub-types. Whilst the landscape across the study area bears characteristics of the wider Craggy Uplands, due to its location stretching from the coastline and surrounding a sea loch, the landscape across the study area is classified as falling within the Craggy Coast and Islands landscape character sub-type.
- 5.7 As such, the proposed site and wider context surrounding Loch Feochan possess many key attributes and features of this sub-type. Although more inland than the majority of the Craggy Coast and Islands and therefore possessing a less distinct seascape context, the site and context comprise a small scale, diverse topography which is well-settled and frequented. The coastal edge to Loch Feochan is rocky and indented and the knolly landform rising from the shoreline adds to the small scale. This is further accentuated by the small enclosed pastures, settlement, and vegetation cover. Across the sub-type and within the context to the site, there is a rich pattern of vegetation including extensive broadleaved woodlands, mixed policy woodlands and parkland, as well as pockets of wetland and scrub, across the head of Loch Feochan and partly along the southern shoreline. Extensive areas of coniferous plantation provide a backdrop to the landscape surrounding Loch Feochan and rise steeply to form craggy ridgelines which provide a backdrop of higher ground to views from the sea.
- 5.8 All of these characteristics are common to the Craggy Coast and Islands landscape character sub-type and whilst the area retains a relative sense of wild qualities, Loch Feochan is well-settled, with scattered clusters of dwellings and small villages in sheltered areas on the lower

- slopes of the craggy landscape is a key feature. This is illustrated in **Figure 1 Landscape and Planning Policy Context** where the small settlements of Kilmore, Kilbride, Ardentallen and Kilninver are nestled into the lower slopes of the coastal pastoral hills surrounding the loch. Dispersed clusters of between 2-5 dwellings are located on the flat terraces and lower slopes near to the shoreline, often enclosed by woodland cover and the surrounding knolly and rising craggy landform. Most clusters of built form are established near the head of Loch Feochan and along the southern side of the loch, dispersed at relatively regular intervals along the A816 corridor. The northern side of the loch is less inhabited with a small loose cluster nestled into the wooded slopes of Carn Breagach and a linear row of dwellings orientated out onto Ardentallen Bay towards Ardentallen Point in the western part of the loch.
- 5.9 These positive features have been drawn into the careful site selection and planning of the proposed development where the new dwellings would be effectively absorbed by an enhanced landscape framework set back into the southern fringes of the site and framed by the knolly landform and mature wooded features to the north and coniferous woodland backdrop to the south. This approach, where the new dwellings would form a loose cluster above the established built forms near to the A816 corridor and would be effectively nestled into the wooded rising slopes, will ensure that the proposals are seen to be consistent with the prevailing settlement pattern across this part of the craggy coast landscape.
- 5.10 Overall, it is considered that the proposals will be consistent with the characteristics of the wider settlement pattern along the shores of Loch Feochan and the small-scale, single storey built forms will be effectively integrated into the surrounding diverse landscape and utilising the irregular landform and rocky outcrops to shelter and screen the proposed development. With a low key approach to the design of the hard and soft landscape proposals which will include new planting and a more human scale to the edge of the coniferous plantation and with a traditional vernacular architectural style to the built forms, it is assessed that over time, the proposals will have a positive effect.
- 5.11 The sensitivity to change is assessed to be *Medium-High* taking into account the value of the landscape and its susceptibility to change. It is judged that the magnitude of effect is **Low** and the impact on landscape character is **Moderate-Minor to Moderate** and **Neutral** during and following the construction phase. In the medium to long term, and once the planting strategy has established, the impact on landscape character is assessed to be **Minor** and **Beneficial**.

6 Visual Impacts

- 6.1 In assessing the visual impact of the proposed development on the landscape, full consideration has been given to all viewpoints, their location and distance from the site, the quality of each view and the impact that the small-scale development will have on its setting. The visual assessment is based upon a desk top study and a site visit with a selection of photographic viewpoints illustrated in Figures 2 and 3. The locations of these viewpoints are presented on the inset on each figure.
- 6.2 The coniferous plantations and broadleaved woodlands which extend down the craggy slopes and merge with mature garden features and road-side planting along both sides of Loch Feochan combine with the irregular and occasionally steep knolly landform to create an extremely tight visual envelope. This is illustrated in Viewpoint 1 as the A816 approaches the head of Loch Feochan and where intervening areas of vegetation combine with the prevailing landform to restrict more distant views from the east. From a more open part of the A816 corridor, views are available across the head of the loch towards the proposed site, however, due to the irregular and knolly landform combined with mature garden features and woodland cover, the site is not visible. Similarly, from the west, a combination of distance, landform and tree cover restrict views, (Viewpoint 6).
- 6.3 Visibility towards the site is further restricted by the subtle twists and turns of the A816 corridor which follows the mostly rocky loch-edge and where views are available they are generally directed along or across the loch or towards built form located adjacent to the road corridor (illustrated in Viewpoint 5). As illustrated in Viewpoint 5, for a short section of the east bound A816 in the vicinity of the Knipach Hotel grounds, transient views towards the open northern fringes of the wider landholding are available. This has been considered within the site-planning exercise and to mitigate these visual impacts it is proposed to set back the location of the new dwellings into the southern part of the site and against the foil of the wooded southern boundary.
- 6.4 Viewpoint 3 illustrates how even from close proximity, the site is extremely discreet where the irregular landform and knolly outcrops combine with mature wooded features to screen views. Whilst the very tops of the coniferous plantation defining the southern boundary are visible above this intervening mature vegetation, by introducing single storey built forms, the existing skyline will be protected and the new dwellings will effectively be hidden from this view.

-
- 6.5 Similarly, from the local view at the entrance to the access drive to Dalmara and Cala-na-Sithe on the A816, views towards the site are wholly contained by road-side planting, mature woodland features across the extended grounds to the dwellings combined with the locally complex landform, (Viewpoint 4).
- 6.6 With the careful siting of the new dwellings towards the rear of the site and implementation of the proposed planting strategy, views will be further filtered and the setting will become more enclosed.
- 6.7 The representative viewpoints (Figures 2 and 3) have demonstrated that visibility towards the Proposed Site is extremely limited. Potentially, glimpsed middle distant views may be available towards the new dwellings from the head of the loch, the northern side and indeed from the loch itself. Filtered views towards parts of the dwellings may also be available from the curtilages of nearby dwellings, including Dalmara and Cala-na-Sithe. However, once planting proposals for the new garden areas are implemented and begin to establish, any potential views towards the site will become further filtered. In the medium to long term, as the gardens mature, the sense of structure within the area will be enhanced and extended into the site creating a more managed character to this discreet area of improved grassland.
- 6.8 To summarise, views towards the proposed site are mostly restricted or contained through a combination of the complex, irregular topography, knolly outcrops and extensive mature vegetation cover. Where glimpsed views towards the new built forms may be available, potentially travelling west bound along the A816 and from the cluster of dwellings on the wooded slopes of Carn Breagach above the northern shores of the loch, as well as from water-based receptors on the loch itself, it is considered that these will be in keeping with the prevailing settlement pattern where filtered and glimpses views towards built forms nestled into the lower slopes with higher slopes and surrounding tree cover providing a soft backdrop are wholly characteristic of the area. With the retention of the existing tree structure and its enhancement through the implementation of a site-wide planting strategy, it is considered that the visual amenity of this part of the landscape surrounding Loch Feochan will be improved and become further secluded.
- 6.9 The sensitivity of visual receptors is *High*. It is judged that the magnitude of effect is **Negligible**. Impacts on visual amenity are assessed to be **Negligible** and the nature of

change **Neutral** during and following construction. In the medium to long term, once the planting strategy begins to establish, the impact is assessed to remain **Negligible** and the nature of change **Slight Beneficial**.

7 Conclusion

- 7.1 The Proposed Site offers scope for a fully integrated small-scale residential development comprising two new dwellings and associated garden grounds and access drive to assimilate into the landscape without any adverse impacts upon the landscape and visual amenity of the area.
- 7.2 The proposed site and its context is well defined by rising landform and prolific vegetation with a coniferous plantation providing a soft backdrop and mature garden and woodland features combining with the knolly landform to the north of the site effectively screening all but a handful of views. As part of the site-wide planting strategy, it is proposed to strengthen the existing tree cover on the perimeter of the site with 'native' planting where species will be limited to the existing species found within the immediate context. This will aid in enhancing the secluded character of the site and in the medium to long term, as this component of the proposals establishes and matures, it will contribute to the area's nature conservation value and the quality of the local landscape resource.
- 7.3 Careful consideration has been given to the siting, massing, scale and form of the new dwellings to ensure that any potential visual impacts are minimised. This has included the height, architectural style and detailing of the built forms as well as a sensitive choice to materials and the hard and soft landscape palette. In addition, it is proposed to set the new dwellings back against the soft woodland foil along the southern boundary and away from the more visually sensitive northern fringes of the wider land in ownership. This considered approach to the site planning will ensure that the new dwellings will effectively nestle into the existing landscape with minimal mitigation required and where visible in glimpsed, transient views, the new dwellings would be seen to be wholly consistent with the dispersed settlement pattern across the wider loch area.
- 7.4 This proposals have high regard to the preservation of the assets of this area inland from the western coastline of Argyll and by sensitive planning of the site, which itself has been carefully selected, it is considered that the proposals will be seen to visually integrate into the woodland

setting and be sensitive to the locality in terms of design, scale and the use of local materials and detailing. This will ensure that the proposals are not intrusive within this settled coastal loch landscape.

- 7.5 This Landscape and Visual Appraisal has demonstrated that the Proposed Site comprises a visually discreet part of the extended landholding, which forms part of the site LN56 highlighted in the Lorn and Inner Isles Landscape Capacity Study, and does have the landscape capacity to absorb a small-scale development without adverse impacts upon landscape and visual effects. As such the Proposed Site should be classed as a Rural Opportunity Area and be developed in line with Policy LDP DM 1.
- 7.6 Ultimately this sensitively planned development will be seen to be wholly consistent with the established rural settlement pattern and will not have a detrimental impact on the integrity and quality of the APQ designation. Therefore, in landscape and visual terms, the proposals are assessed to be wholly in line with current best practice guidance and environmental policies contained within the Argyll and Bute adopted Local Plan, including acceptable in terms of Policy SG LDP ENV 13.

APPENDIX 1 METHODOLOGY

- 1.1 This appraisal has been undertaken in line with current guidance contained in the 'Guidelines for Landscape Visual Impact Assessment, 3rd Edition' (GLVIA 3), published by the Institute of Environmental Management and Assessment in association with the Landscape Institute; and, based on principles described in Landscape Character Assessment: Guidance for England and Scotland (2002), published by the Countryside Agency and Scottish Natural Heritage).
- 1.2 The methodology comprised an initial desk top study of Ordnance Survey (OS) maps and planning documents, a site survey in June 2018 to 'ground-truth' desk top findings, followed by an analysis of the data and assessment of potential landscape and visual impacts. Existing mapping, policy documents and other written, graphic and digital data relating to the study area was reviewed.
- 1.3 The aim of this appraisal is to identify and evaluate potential effects arising from a proposed development upon the application site and surrounding environment. The level of effect is assessed through a combination of two considerations – the sensitivity of the landscape character and visual amenity (views) of identified receptors; and the magnitude of effect upon the receptors that will result from the proposed development.
- 1.4 There is no requirement for a formal Environmental Assessment to support this Application. In line with current guidance contained in GLVIA 3 for non EIA Landscape and Visual Appraisals such as this, the terms 'significant' and 'not significant' have not been used. However, it is important to set out the grading of the scale of the potential impacts and based on the detailed information available regarding the nature of the proposed development, the scale, duration and permanence of the change and the size of the resource/area affected. The following criteria (adapted from GLVIA 3) is used.

Landscape Sensitivity and Magnitude of Effect

- 1.5 Sensitivity of the landscape depends both on its intrinsic quality and explicit value and, on its susceptibility to the type of change proposed. The criteria for landscape sensitivity to change are summarised as follows:

- **High:** An area of highly valued landscape with strong structure and positive character, which is considered vulnerable to small degrees of change;
- **Moderate:** An area with a well-defined landscape character with positive qualities which may however, have suffered some degradation or erosion. Sensitivity will be diminished and change more likely to be accommodated; and,
- **Low:** An area of generally poor landscape character with few positive and valued features. Change will be a positive contribution to the landscape.

1.6 The criteria for magnitude of effect on the landscape are summarised below.

Table 1: Criteria for Landscape Magnitude of Effect

Level	Definition of Magnitude
High	Total loss of, or major alteration to, key elements, features or characteristics of the baseline landscape and/or introduction of elements considered to be totally uncharacteristic when set within the attributes of the receiving landscape. Post development character and composition of the baseline landscape resource will be fundamentally changed.
Medium	Partial loss of, or alteration to, one or more key elements, features or characteristics of the baseline landscape and/or introduction of elements that may be prominent but may not necessarily be considered to be substantially uncharacteristic when set within the attributes of the receiving landscape. Post development character and composition of the baseline landscape resource will be partially, but noticeably changed.
Low	Minor loss of, or alteration to, one or more key elements, features or characteristics of the baseline landscape and/or introduction of elements that may not be characteristic when set within the attributes of the receiving landscape. Post development character and composition of the baseline landscape resource will be noticeably changed but the underlying character of the baseline landscape will be similar to the pre-development character.
Negligible	Very minor loss of, or alteration to, key elements, features or characteristics of the baseline landscape. Change to the landscape character will barely, if at all, be distinguishable.

Visual Receptor Sensitivity and Magnitude of Effect

1.7 As with impacts on the character of the landscape, the impact on visual amenity is a function of the magnitude of effect and the sensitivity to change. Sensitivity refers to viewer sensitivity and depends upon the following:

- The length of viewing time e.g. a local resident with prolonged viewing opportunities will be more sensitive than a passer-by;
- Context of the view e.g. a viewer with an existing view of industrial structures will be less sensitive than a viewer with rural views; and,
- Distance of the viewpoint/receptor from the development and duration of effect.

1.8 The criteria for Visual Receptor sensitivity are summarised below:

- **High:** users of outdoor recreational facilities including strategic recreational footpaths, cycle routes or rights of way, whose attention may be focused on the landscape; important landscape features with physical, cultural/historic attributes; views from principal settlements; visitors to beauty spots and picnic areas.
- **Medium:** Other footpaths, people travelling through or past the landscape on roads, train lines or other transport routes; views from passenger ferries and cruisers, views from minor settlements.
- **Low:** People engaged in outdoor sports or recreation whose attention may be focused on their work/activity rather than an appreciation of the wider landscape.
- **Negligible:** Views from heavy industrialised areas or where direct views of the development are severely restricted and/or distant.

1.9 The criteria for magnitude of visual effect are summarised in the table below:

Table 2: Criteria for Visual Magnitude of Effect

Level	Definition of Magnitude
High	Highly noticeable change, affecting most key characteristics and dominating the experience of the landscape. The introduction of incongruous development. A high proportion of the view is affected; change is dominant.
Medium	Noticeable, partial change to a proportion of the landscape affecting some key characteristics and the experience of the landscape. The introduction of some uncharacteristic elements. Some of the view is affected; change is conspicuous.
Low	Minor change affecting some characteristics and the experience of the landscape to an extent. The introduction of elements which are not uncharacteristic. Little of the view is affected but the change is apparent.
Negligible	Little perceptible change. No discernible effect upon the view; change is inconspicuous.

Level of Effect

1.10 The level of effect of any identified landscape or visual receptor has been assessed as Major, Moderate, Minor or Negligible. These categories have been determined by consideration of viewpoint/visual receptor or landscape sensitivity and predicted magnitude of effect.

Table 3: Correlation of Sensitivity and Magnitude of Effect

	Landscape and Visual Sensitivity			
Magnitude of Effect	High	Medium	Low	Negligible
High	Major	Major moderate	Moderate	Moderate-minor
Medium	Major-moderate	Moderate	Moderate-minor	Minor
Low	Moderate	Moderate-minor	Minor	Minor-None
Negligible	Moderate-minor	Minor	Minor-none	None

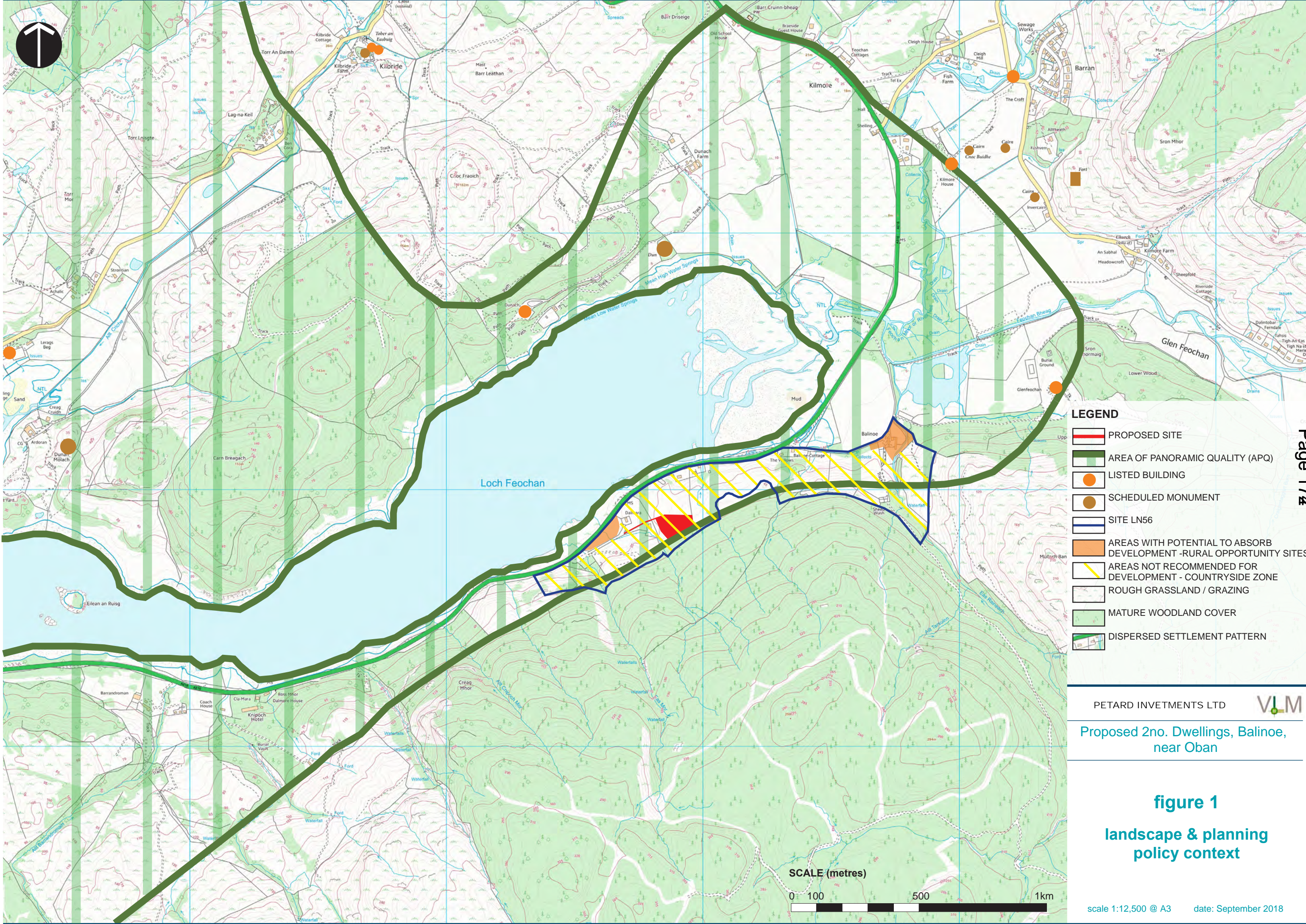
- 1.11 This matrix is not used as a prescriptive tool and the methodology and analysis of potential effects at any particular location must take account of professional judgement. Occasionally, analysis may not reflect the effects predicted by the grid; the table is used as a guide only.
- 1.12 The following tables provide a definition of the level of landscape and visual effects.

Table 4: Definition of Landscape and Visual Effects

Level	Definition of Magnitude
Major	The proposed development would entirely change the character of the landscape and the appearance of the view for a long time or permanently.
Moderate	The proposed development would introduce a noticeable difference to the landscape and within the view.
Minor	The proposed development would introduce a perceptible change to the receiving landscape characteristics and views.
None	The proposed development would introduce no discernible effect and may be difficult to differentiate from the surrounding landscape characteristics and from its surroundings within the view.

APPENDIX 2

FIGURES



LEGEND

- PROPOSED SITE
- AREA OF PANORAMIC QUALITY (APQ)
- LISTED BUILDING
- SCHEDULED MONUMENT
- SITE LN56
- AREAS WITH POTENTIAL TO ABSORB DEVELOPMENT - RURAL OPPORTUNITY SITES
- AREAS NOT RECOMMENDED FOR DEVELOPMENT - COUNTRYSIDE ZONE
- ROUGH GRASSLAND / GRAZING
- MATURE WOODLAND COVER
- DISPERSED SETTLEMENT PATTERN

PETARD INVESTMENTS LTD



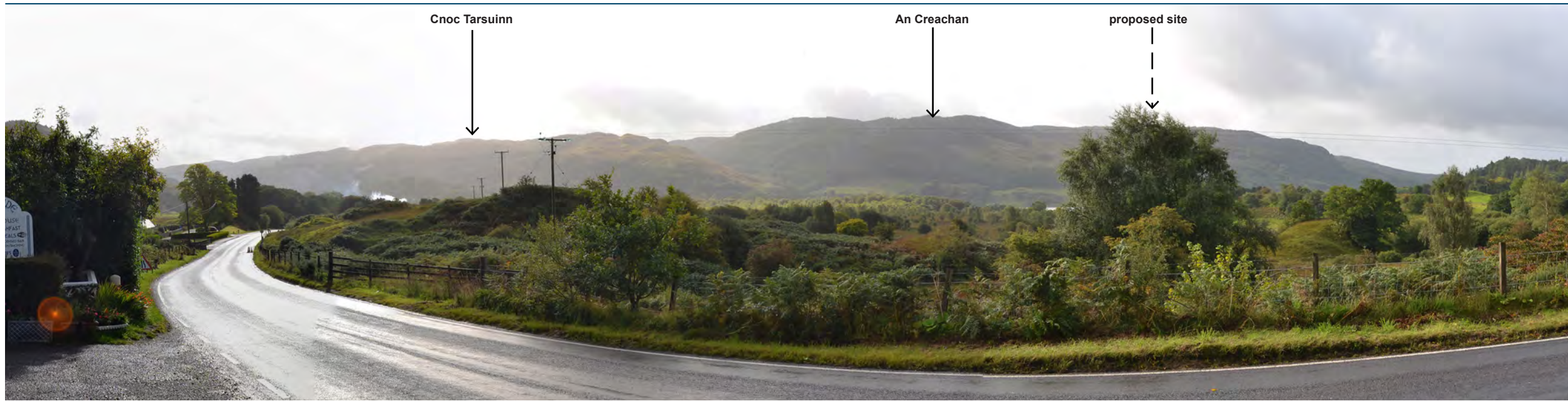
Proposed 2no. Dwellings, Balinoe, near Oban

figure 1

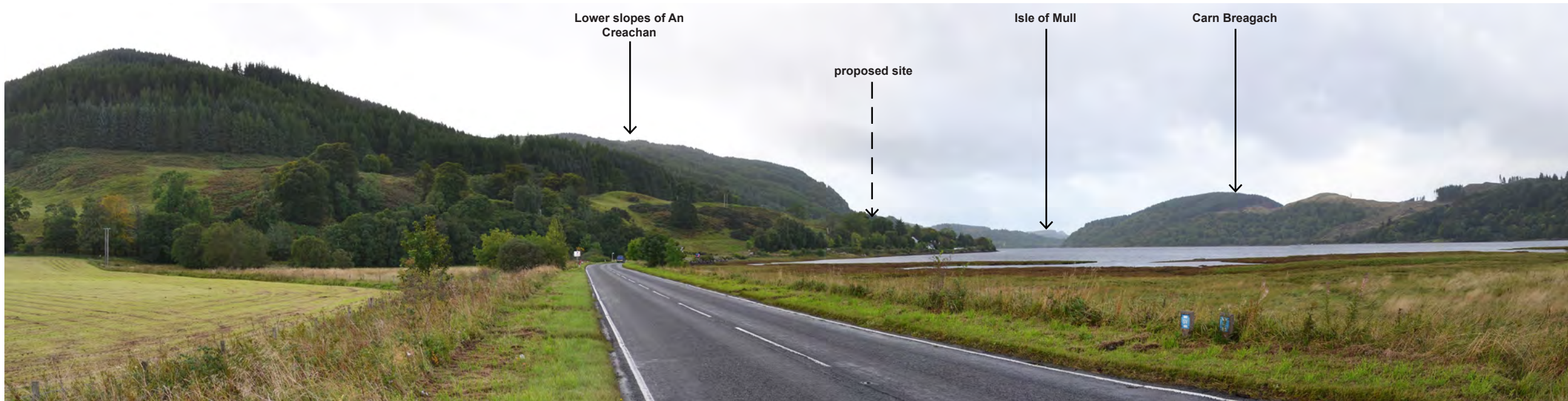
landscape & planning policy context



scale 1:12,500 @ A3 date: September 2018



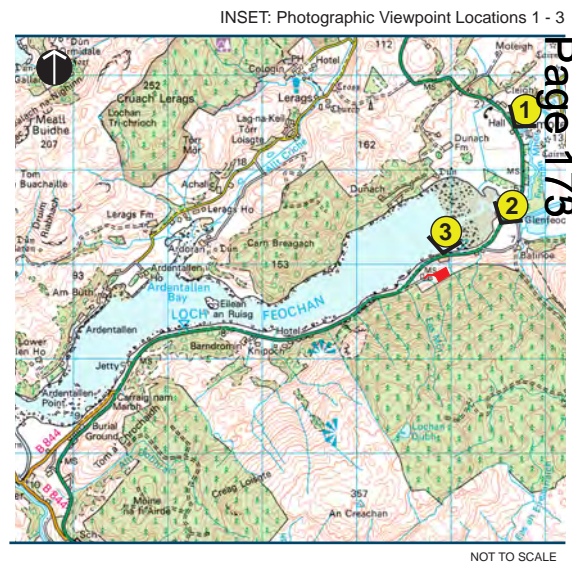
VIEWPOINT 1: View looking south-west across the head of Loch Feochan from the A816 corridor near to a small cluster of dwellings and Braeside Guest House. The forested mountain summits of Cnoc Tarsuinn and An Creachan form a rugged backdrop to the southern side of Loch Feochan. Due to a large amount of intervening vegetation the lower terraced slopes where the site is located adjacent to the shoreline of the loch are not visible.



VIEWPOINT 2: View looking south-west towards the Proposed Site from the A816 corridor as it runs around the head of Loch Feochan. The well-forested enclosing hills and mountain summits channel views along the loch with distant views towards the outline of the Isle of Mull. A large coniferous plantation extends down the lower slopes of An Creachan and merges with road-side planting and extensive mature garden features within the grounds of the cluster of dwellings located in close proximity to the site.



VIEWPOINT 3: Local view looking south-south-west across the well-vegetated and mature garden grounds to 3 no. large single dwellings which are stepped back from the A816 corridor. The very tops of the coniferous plantation which defines the southern boundary to the site are just about visible beyond the mature vegetation in the foreground. A combination of mature tree features and the hillocky local landform restrict views towards the site itself.



PETARD INVESTMENTS LTD

Proposed 2 No. Dwellings,
Balinoe, near Oban

figure 2
photographic
viewpoints 1 - 3

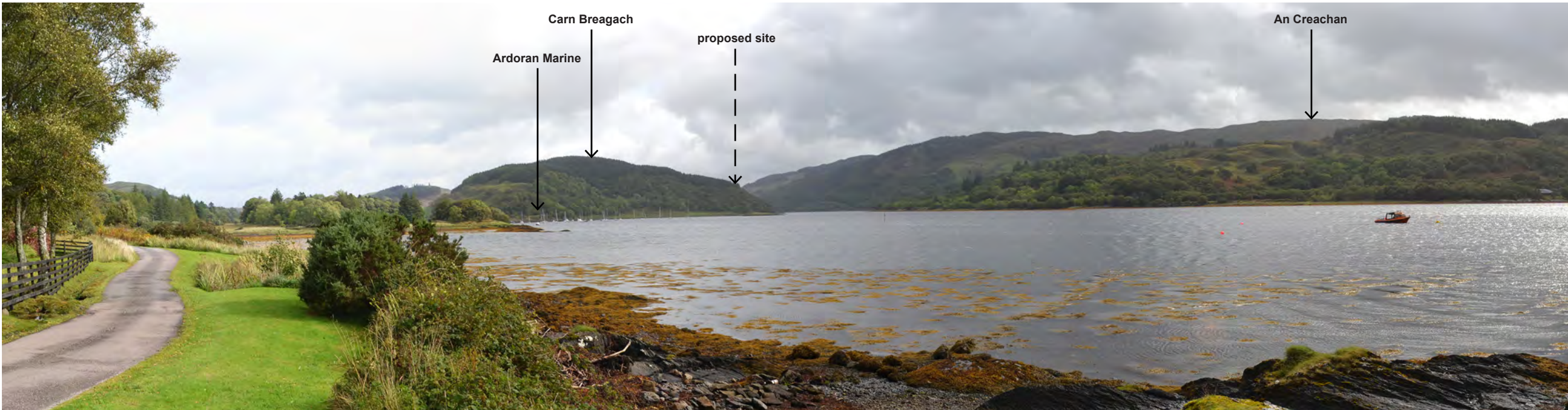
date: September 2018



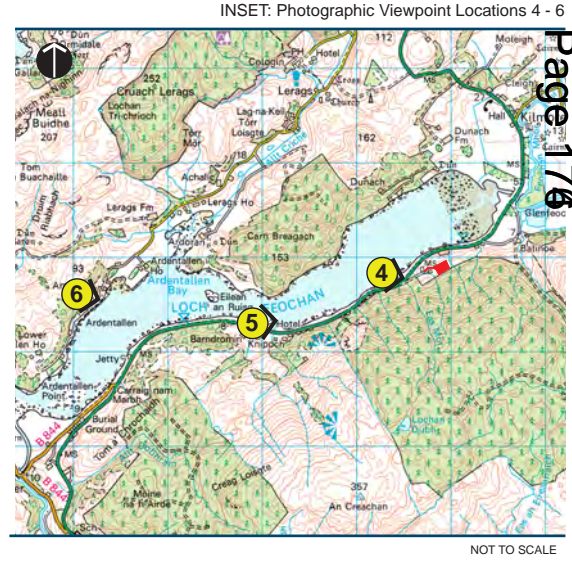
VIEWPOINT 4: View looking east towards the Proposed Site from the access drive to the two single dwellings, Dalmara and Cala-na Sithe. The high, craggy hill of Sron Mheadhan which provides a backdrop to Kilmore and the lower reaches of Glen Feochan is visible along the road corridor in the distance. Due to a combination of road-side planting, mature garden features within the grounds to the two dwellings and woodland cover, the site is not visible.



VIEWPOINT 5: View looking east towards the Proposed Site from the A816 corridor, opposite the entrance into the grounds of the Knipach Hotel. Formerly a large dwelling, the hotel sits back from the road corridor within a cluster of three other dwellings. Coniferous plantation extends down the lower slopes of An Creachan and merges with road-side planting and extensive mature garden features within the grounds of Knipach Hotel to screen the site which is stepped back from the visible northern fringes.



VIEWPOINT 6: View looking east across Loch Feochan towards the site from the minor road serving dwellings at Ardantallen Bay on the northern shoreline. The loch curves round the wooded slopes of Carn Breagach and wholly restricts views towards the site and the eastern end of the loch. Views may be possible from further south-west along this road however due to distance any built form will be barely if at all perceptible.



PETARD INVESTMENTS LTD

Proposed 2 No. Dwelling Houses,
Balinoe, near Oban

figure 3
photographic
viewpoints 4 - 6

date: September 2018



Central Validation Team at Argyll and Bute Council 1A Manse Brae Lochgilphead PA31 8RD Tel: 01546 605518 Email: planning.hq@argyll-bute.gov.uk

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100194907-002

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

Type of Application

What is this application for? Please select one of the following: *

- Application for planning permission (including changes of use and surface mineral working).
- Application for planning permission in principle.
- Further application, (including renewal of planning permission, modification, variation or removal of a planning condition etc)
- Application for Approval of Matters specified in conditions.

Description of Proposal

Please describe the proposal including any change of use: * (Max 500 characters)

Erection of single dwelling house and garage

Is this a temporary permission? * Yes No

If a change of use is to be included in the proposal has it already taken place?
(Answer 'No' if there is no change of use.) * Yes No

Has the work already been started and/or completed? *

No Yes – Started Yes - Completed

Applicant or Agent Details

Are you an applicant or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application) Applicant Agent

Agent Details

Please enter Agent details

Company/Organisation:	DM Hall		
Ref. Number:		You must enter a Building Name or Number, or both: *	
First Name: *	Duncan	Building Name:	The Mill
Last Name: *	Clow	Building Number:	
Telephone Number: *	01786833800	Address 1 (Street): *	Station Road
Extension Number:		Address 2:	
Mobile Number:		Town/City: *	Bridge of Allan
Fax Number:		Country: *	United Kingdom
		Postcode: *	FK9 4JS
Email Address: *	duncan.clow@dmhbl.co.uk		

Is the applicant an individual or an organisation/corporate entity? *

 Individual
 Organisation/Corporate entity
Applicant Details

Please enter Applicant details

Title:		You must enter a Building Name or Number, or both: *	
Other Title:		Building Name:	The Mill
First Name: *		Building Number:	
Last Name: *		Address 1 (Street): *	Station Road
Company/Organisation	Petard Investments c/o DM Hall	Address 2:	
Telephone Number: *		Town/City: *	Bridge of Allan
Extension Number:		Country: *	United Kingdom
Mobile Number:		Postcode: *	FK9 4JS
Fax Number:			
Email Address: *	duncan.clow@dmhbl.co.uk		

Site Address Details

Planning Authority:

Argyll and Bute Council

Full postal address of the site (including postcode where available):

Address 1:

Address 2:

Address 3:

Address 4:

Address 5:

Town/City/Settlement:

Post Code:

Please identify/describe the location of the site or sites

Northing

723881

Easting

186920

Pre-Application Discussion

Have you discussed your proposal with the planning authority? *

Yes No

Site Area

Please state the site area:

4000.00

Please state the measurement type used:

Hectares (ha) Square Metres (sq.m)

Existing Use

Please describe the current or most recent use: * (Max 500 characters)

Agricultural land

Access and Parking

Are you proposing a new altered vehicle access to or from a public road? *

Yes No

If Yes please describe and show on your drawings the position of any existing, altered or new access points, highlighting the changes you propose to make. You should also show existing footpaths and note if there will be any impact on these.

Are you proposing any change to public paths, public rights of way or affecting any public right of access? * Yes No

If Yes please show on your drawings the position of any affected areas highlighting the changes you propose to make, including arrangements for continuing or alternative public access.

Water Supply and Drainage Arrangements

Will your proposal require new or altered water supply or drainage arrangements? * Yes No

Are you proposing to connect to the public drainage network (eg. to an existing sewer)? *

- Yes – connecting to public drainage network
- No – proposing to make private drainage arrangements
- Not Applicable – only arrangements for water supply required

As you have indicated that you are proposing to make private drainage arrangements, please provide further details.

What private arrangements are you proposing? *

- New/Altered septic tank.
- Treatment/Additional treatment (relates to package sewage treatment plants, or passive sewage treatment such as a reed bed).
- Other private drainage arrangement (such as chemical toilets or composting toilets).

Please explain your private drainage arrangements briefly here and show more details on your plans and supporting information: *

Do your proposals make provision for sustainable drainage of surface water?? * Yes No
(e.g. SUDS arrangements) *

Note:-

Please include details of SUDS arrangements on your plans

Selecting 'No' to the above question means that you could be in breach of Environmental legislation.

Are you proposing to connect to the public water supply network? *

- Yes
- No, using a private water supply
- No connection required

If No, using a private water supply, please show on plans the supply and all works needed to provide it (on or off site).

Assessment of Flood Risk

Is the site within an area of known risk of flooding? * Yes No Don't Know

If the site is within an area of known risk of flooding you may need to submit a Flood Risk Assessment before your application can be determined. You may wish to contact your Planning Authority or SEPA for advice on what information may be required.

Do you think your proposal may increase the flood risk elsewhere? * Yes No Don't Know

Trees

Are there any trees on or adjacent to the application site? *

Yes No

If Yes, please mark on your drawings any trees, known protected trees and their canopy spread close to the proposal site and indicate if any are to be cut back or felled.

All Types of Non Housing Development – Proposed New Floorspace

Does your proposal alter or create non-residential floorspace? *

Yes No

Schedule 3 Development

Does the proposal involve a form of development listed in Schedule 3 of the Town and Country Planning (Development Management Procedure (Scotland) Regulations 2013) *

Yes No Don't Know

If yes, your proposal will additionally have to be advertised in a newspaper circulating in the area of the development. Your planning authority will do this on your behalf but will charge you a fee. Please check the planning authority's website for advice on the additional fee and add this to your planning fee.

If you are unsure whether your proposal involves a form of development listed in Schedule 3, please check the Help Text and Guidance notes before contacting your planning authority.

Planning Service Employee/Elected Member Interest

Is the applicant, or the applicant's spouse/partner, either a member of staff within the planning service or an elected member of the planning authority? *

Yes No

Certificates and Notices

CERTIFICATE AND NOTICE UNDER REGULATION 15 – TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATION 2013

One Certificate must be completed and submitted along with the application form. This is most usually Certificate A, Form 1, Certificate B, Certificate C or Certificate E.

Are you/the applicant the sole owner of ALL the land? *

Yes No

Is any of the land part of an agricultural holding? *

Yes No

Do you have any agricultural tenants? *

Yes No

Certificate Required

The following Land Ownership Certificate is required to complete this section of the proposal:

Certificate E

Land Ownership Certificate

Certificate and Notice under Regulation 15 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Certificate E

I hereby certify that –

(1) – No person other than myself/the applicant was the owner of any part of the land to which the application relates at the beginning of the period 21 days ending with the date of the application.

(2) - The land to which the application relates constitutes or forms part of an agricultural holding and there are no agricultural tenants

Or

(1) – No person other than myself/the applicant was the owner of any part of the land to which the application relates at the beginning of the period 21 days ending with the date of the application.

(2) - The land to which the application relates constitutes or forms part of an agricultural holding and there are agricultural tenants.

Name:

Address:

Date of Service of Notice: *

(4) – I have/The applicant has taken reasonable steps, as listed below, to ascertain the names and addresses of the other owners or agricultural tenants and *have/has been unable to do so –

Signed: Duncan Clow

On behalf of: Petard Investments c/o DM Hall

Date: 29/10/2019

Please tick here to certify this Certificate. *

Checklist – Application for Planning Permission

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Please take a few moments to complete the following checklist in order to ensure that you have provided all the necessary information in support of your application. Failure to submit sufficient information with your application may result in your application being deemed invalid. The planning authority will not start processing your application until it is valid.

a) If this is a further application where there is a variation of conditions attached to a previous consent, have you provided a statement to that effect? *

Yes No Not applicable to this application

b) If this is an application for planning permission or planning permission in principle where there is a crown interest in the land, have you provided a statement to that effect? *

Yes No Not applicable to this application

c) If this is an application for planning permission, planning permission in principle or a further application and the application is for development belonging to the categories of national or major development (other than one under Section 42 of the planning Act), have you provided a Pre-Application Consultation Report? *

Yes No Not applicable to this application

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

d) If this is an application for planning permission and the application relates to development belonging to the categories of national or major developments and you do not benefit from exemption under Regulation 13 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, have you provided a Design and Access Statement? *

Yes No Not applicable to this application

e) If this is an application for planning permission and relates to development belonging to the category of local developments (subject to regulation 13. (2) and (3) of the Development Management Procedure (Scotland) Regulations 2013) have you provided a Design Statement? *

Yes No Not applicable to this application

f) If your application relates to installation of an antenna to be employed in an electronic communication network, have you provided an ICNIRP Declaration? *

Yes No Not applicable to this application

g) If this is an application for planning permission, planning permission in principle, an application for approval of matters specified in conditions or an application for mineral development, have you provided any other plans or drawings as necessary:

- Site Layout Plan or Block plan.
- Elevations.
- Floor plans.
- Cross sections.
- Roof plan.
- Master Plan/Framework Plan.
- Landscape plan.
- Photographs and/or photomontages.
- Other.

If Other, please specify: * (Max 500 characters)

Provide copies of the following documents if applicable:

A copy of an Environmental Statement. *

Yes N/A

A Design Statement or Design and Access Statement. *

Yes N/A

A Flood Risk Assessment. *

Yes N/A

A Drainage Impact Assessment (including proposals for Sustainable Drainage Systems). *

Yes N/A

Drainage/SUDS layout. *

Yes N/A

A Transport Assessment or Travel Plan

Yes N/A

Contaminated Land Assessment. *

Yes N/A

Habitat Survey. *

Yes N/A

A Processing Agreement. *

Yes N/A

Other Statements (please specify). (Max 500 characters)

Landscape and visual appraisal.

Declare – For Application to Planning Authority

I, the applicant/agent certify that this is an application to the planning authority as described in this form. The accompanying Plans/drawings and additional information are provided as a part of this application.

Declaration Name: Mr Duncan Clow

Declaration Date: 04/11/2019

Hutton, Amanda

From: centralvalidationteam
Sent: 11 November 2019 09:20
To: Hutton, Amanda
Subject: FW: Invalid Letter for application 19/02315/PPP
Attachments: A1823 Balinoe Site Plan RevA Single Dwelling 2.pdf

From: Duncan Clow MA (Hons) MSc MRICS [mailto:Duncan.Clow@dmhall.co.uk]
Sent: 08 November 2019 17:14
To: centralvalidationteam <centralvalidationteam@argyll-bute.gov.uk>
Subject: RE: Invalid Letter for application 19/02315/PPP

Good afternoon,

Please find attached a new site plan.

Kind regards,

Duncan



Duncan Clow MA (Hons) MSc MRICS
Surveyor

T: 01786833800 **M:** 07584 626525
E: Duncan.Clow@dmhall.co.uk
Bridge of Allan office
The Mill, Bridge of Allan
Stirling Bridge of Allan FK9 4JS

www.dmhall.co.uk



DM Hall is pleased to be raising money for Chest Heart & Stroke Scotland and SAMH.

[Take a look at our Privacy Notice](#)

DM Hall LLP is a Limited Liability Partnership registered in Scotland with Registration number SO301144 Registered office: 17 Corstorphine Road, Edinburgh, EH12 6DD. A full list of members can be obtained from the Head Office, 17 Corstorphine Road, Edinburgh, EH12 6DD : Tel: 0131 477 6000. This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the system manager. This footnote also confirms that this email message has been swept for the presence of computer viruses.

-----Original Message-----

From: centralvalidationteam@argyll-bute.gov.uk [mailto:centralvalidationteam@argyll-bute.gov.uk]
Sent: 05 November 2019 16:57
To: Duncan Clow MA (Hons) MSc MRICS
Subject: Invalid Letter for application 19/02315/PPP

Dear Sir/Madam

We write to advise you that your recent planning application with Argyll and Bute Council is currently invalid.

Please attend to the points raised in the attached letter at the earliest opportunity.

Regards

Central Validation Team
Development and Economic Growth

Argyll and Bute Council

Argyll and Bute Council's e-mail system (also used by LiveArgyll) classifies the sensitivity of emails according to the Government Security Classifications.

Privileged/Confidential Information may be contained in this message. If you are not the addressee indicated in this message (or responsible for delivery of the message to such person), you may not disclose, copy or deliver this message to anyone and any action taken or omitted to be taken in reliance on it, is prohibited and may be unlawful.

In such case, you should destroy this message and kindly notify the sender by reply email. Opinions, conclusions and other information in this message that do not relate to the official business of Argyll and Bute Council or LiveArgyll shall be understood as neither given nor endorsed by them.

All communications sent to or from Argyll and Bute Council or LiveArgyll may be subject to recording and/or monitoring in accordance with relevant legislation..

This email has been scanned for viruses, vandals and malicious content.

Argyll and Bute Council classify the sensitivity of emails according to the Government Security Classifications. The adopted classifications are:

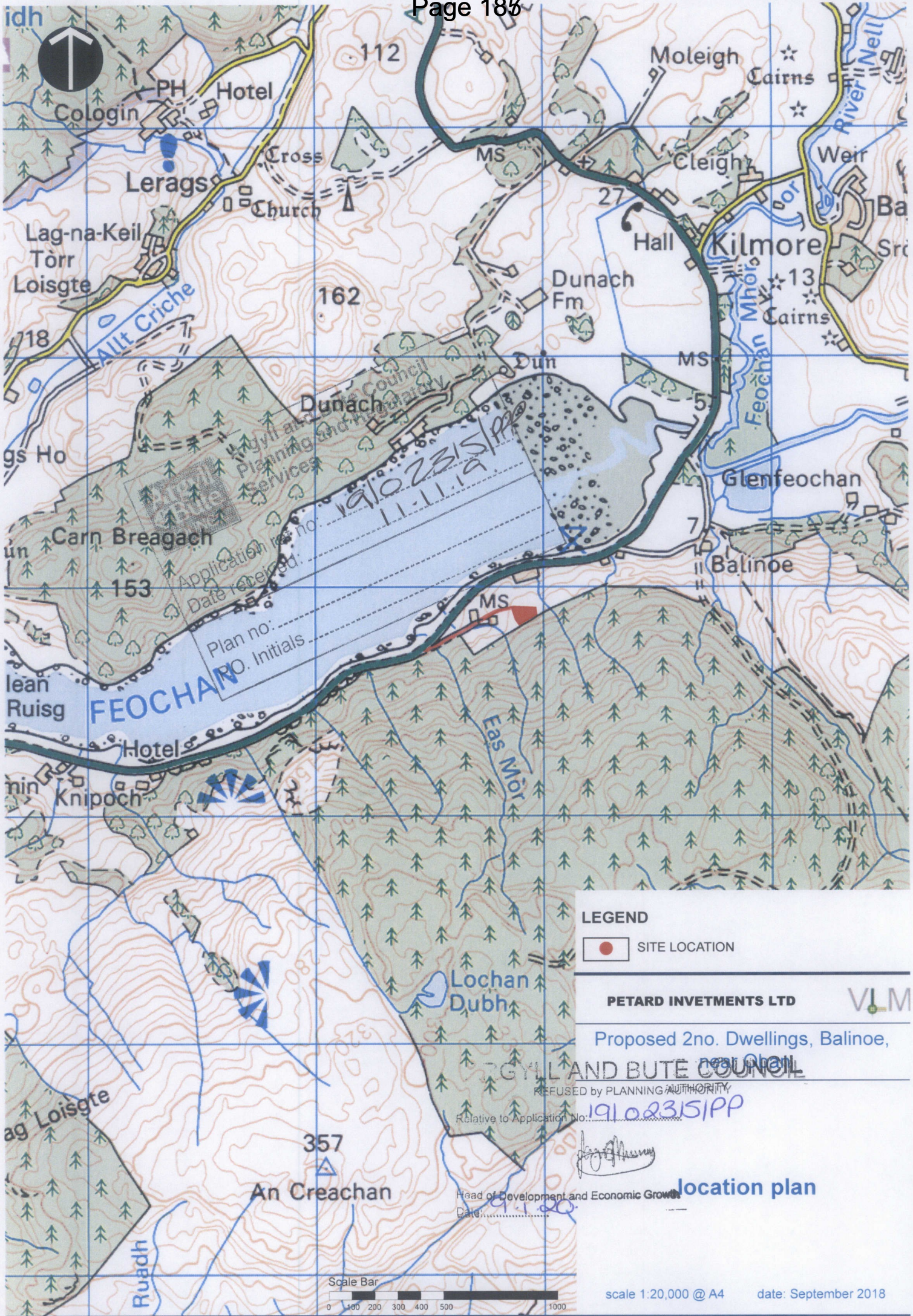
NOT PROTECTIVELY MARKED
Non public sector business i.e. does not require protection.

OFFICIAL
Routine public sector business, operations and services.

OFFICIAL-SENSITIVE
Particularly sensitive information that can be shared on a need to know basis, where inappropriate access or release could have damaging consequences. Disclosure in response to FOISA should be verified with the data owner prior to release.

OFFICIAL-SENSITIVE PERSONAL
Particularly sensitive information that can be shared on a need to know basis relating to an identifiable individual, where inappropriate access or release could have damaging consequences. For example, where relating to investigations, vulnerable individuals, or the personal / medical records of people.

OFFICIAL-SENSITIVE COMMERCIAL
Commercial or market-sensitive information, including that subject to statutory or regulatory obligations, that may be



Gyl and Bute Council
Planning and Regulatory Services
Application ref no: 19/02315/PP
Date received: 11.11.19
Plan no:
RO. Initials

LEGEND

 SITE LOCATION

PETARD INVESTMENTS LTD



Proposed 2no. Dwellings, Balinoe, near Glenfeochan

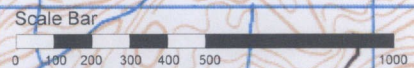
GYL AND BUTE COUNCIL

REFUSED by PLANNING AUTHORITY

Relative to Application No: 19/02315/PP

Head of Development and Economic Growth
Date: 19.11.20

location plan





Loch Feochan



Argyll and Bute Council
Planning and Regulatory Services

Application ref no: 19023151PP
Date received: 11/11/19

Plan no.:
PO Initials:

LEGEND

RED LINE BOUNDARY

PETARD INVESTMENTS LTD

Proposed Single Dwelling, Balinoe,
ARGYLL AND BUTE COUNCIL


REFUSED by PLANNING AUTHORITY
Relative to Application No: 19023151PP

Head of Development and Economic Growth
Date: 9/1/20
site plan

scale 1:2,500 @ A3 date: November 2019



LEGEND

 SITE LOCATION

PETARD INVESTMENTS LTD



Proposed 2no. Dwellings, Balinoe, near Oban

location plan



loch Feochan

Cala-na-Sithe

Dalmara

MS

LEGEND
 RED LINE BOUNDARY



PETARD INVESTMENTS LTD

Proposed Single Dwelling, Balinoe,
near Oban

site plan

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 2013 relative to applications for Planning Permission or Planning Permission in Principle

Reference No: 19/02315/PPP

Planning Hierarchy: Local Development

Applicant: Petard Investments

Proposal: Site for Erection of Dwellinghouse and Garage

Site Address: Plot 2, Land East of Cala Na Sithe, Kilmore

DECISION ROUTE

Section 43 (A) of the Town and Country Planning (Scotland) Act 1997 (as amended)

(A) THE APPLICATION

(i) Development Requiring Express Planning Permission

- Site for erection of dwellinghouse (planning permission in principle)
- Formation of vehicular access (planning permission in principle)
- Installation of private drainage system (planning permission in principle)

(ii) Other specified operations

- Connection to public water main
-

(B) RECOMMENDATION:

Having due regard to the Development Plan and all other material considerations, it is recommended that planning permission in principle be **REFUSED** for the reasons appended to this report.

(C) HISTORY:

18/02239/PPP

Site for erection of dwellinghouse – Refused: 18/12/18

(D) CONSULTATIONS:

Area Roads Authority

No objection subject to conditions 13/11/19.

Scottish Water

Letter dated 17/11/19 advising no objection to the proposed development

West of Scotland Archaeology Service (WOSAS)

Letter dated 22/11/19 advising that the site falls within an archaeological consultation trigger which in this instance has been defined in relation to the ruinous remains of previous settlement that have been recorded in the immediate vicinity. Accordingly WOSAS advise that should the Planning Authority be minded to grant permission, a condition should be imposed requiring the implementation of a programme of archaeological works to be undertaken in advance of works starting on site.

The above represents a summary of the issues raised. Full details of the consultation responses are available on the Council's Public Access System by clicking on the following link <http://www.argyll-bute.gov.uk/content/planning/publicaccess>.

(E) PUBLICITY:

The proposal has been advertised in terms of Regulation 20 and Neighbour Notification procedures, overall closing date 19/12/19.

(F) REPRESENTATIONS:

One representation has been received regarding the proposed development.

Mrs Sandra Grieve, Dalmarra, Kilmore, PA34 4QT (22/11/19)

(i) Summary of issues raised

- Where the proposed road is marked on application, it will be going over our private water supply.

Comment: This is not a material consideration in the determination of this planning application but a separate civil issue between affected parties.

The above represents a summary of the issues raised. Full details of the letters of representation are available on the Council's Public Access System by clicking on the following link <http://www.argyll-bute.gov.uk/content/planning/publicaccess>.

(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: | 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 |

(H) PLANNING OBLIGATIONS

(i)	Is a Section 75 obligation required:	No
<hr/>		
(I)	Has a Direction been issued by Scottish Ministers in terms of Regulation 30, 31 or 32:	No
<hr/>		
(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.	
	<p><u>Argyll and Bute Local Development Plan, 2015</u></p> <p>LDP STRAT 1 – Sustainable Development LDP DM 1 – Development within the Development Management Zones (<i>Countryside Zone</i>) LDP 3 – Supporting the Protection Conservation and Enhancement of our Environment LDP 8 – Supporting the Strength of our Communities LDP 9 – Development Setting, Layout and Design LDP 10 – Maximising our Resources and Reducing our Consumption LDP 11 – Improving our Connectivity and Infrastructure</p> <p><u>Supplementary Guidance</u></p> <p>SG 2 – Sustainable Siting and Design Principles SG LDP ENV 13 – Development Impact on Areas of Panoramic Quality (APQs) (<i>North West Argyll (Coast) APQ</i>) SG LDP ENV 14 – Landscape SG LDP ENV 20 – Development Impact on Sites of Archaeological Importance SG LDP HOU 1 – General Housing Development including Affordable Housing SG LDP SERV 1 – Private Sewage Treatment Plans & Wastewater Systems SG LDP SERV 2 – Incorporation of Natural Features/Sustainable Drainage Systems (SuDS) SG LDP TRAN 4 – New and Existing, Public Roads and Private Access Regimes SG LDP TRAN 6 – Vehicle Parking Provision</p>	
(i)	List of all other material planning considerations taken into account in the assessment of the application, having due regard to Annex A of Circular 3/2013.	
	<p>Argyll and Bute Sustainable Design Guidance, 2006 Scottish Planning Policy (SPP), 2014 Argyll and Bute Proposed Local Development Plan 2 (November 2019) Consultation Responses Third Party Representations</p>	
<hr/>		
(K)	Is the proposal a Schedule 2 Development not requiring an Environmental Impact Assessment:	No
<hr/>		
(L)	Has the application been the subject of statutory pre-application	No

consultation (PAC):

(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

An application for Planning Permission in Principle 18/02239/PP for a dwellinghouse on this site was refused by the Planning Service on 18 December 2018.

The application refers to the site as Plot 2 with an associated application for the resubmission on Plot 1 (19/02314/PPP) also currently with the Planning Service for consideration.

In support of the resubmission, the agent has stated that “... *the policy position in relation to new housing in Countryside Areas is changing with the recent approval of the Local Development Plan 2 Proposed Plan, which is now the settled view of the Council. The Plan has changed the way in which proposals will be considered going forward and, although it still needs to be consulted upon and examined, it does already carry weight as a material consideration*”.

However, whilst the proposed Local Development Plan 2 (PLDP2) has been through Council and is classed as the ‘settled view’ of the Council representing a material consideration, in the main, this will be afforded very little weight until the consultation exercise has been completed. Once the consultation period is concluded those aspects of PLDP2 which have not been objected to will then be given strong weight.

Accordingly, as the consultation on PLDP 2 does not expire until 23 January 2020, the current application is considered to be premature and requires to be assessed in terms of the current adopted ‘Argyll and Bute Local Development Plan’ (LDP) 2015 with the assessment reflecting that of the previous application reiterated below.

As a background it should be noted that during the life of the preceding 2009 Local Plan, the site was identified as being within a Rural Opportunity Area (ROA). However, ROAs within Areas of Panoramic Quality (APQ), within which the site falls, were subject to Landscape Capacity Study (LCS) to refine their extent for the purposes of decision making through the 2009 Local Plan (and now the adopted 2015 Local Development Plan). The LCS included the site of the current application within Site LN56 identified as an area not recommended for development, stating that, generally, the rising slopes south of the A816 should not be developed as this would become too visible within the wider landscape and could change the character of the area. The LCS identified two small areas suitable for development, both of which have followed through into the current LDP as ROAs with the areas identified as not suitable for development followed through into the current LDP as Countryside.

In terms of the current adopted ‘Argyll and Bute Local Development Plan’ (LDP) 2015 the application site is situated within the Countryside Zone (CZ) where Policy LDP DM 1 of the LDP is very restrictive only giving support to small scale development on an

appropriate infill, rounding off, redevelopment or change of use of building development, subject to compliance with other relevant policies and supplementary guidance (SG).

Policy LDP 8 supports new sustainable development proposals that seek to strengthen communities where they comply with other relevant policies with SG LDP HOU 1 limiting support to new housing within the CZ to an infill, rounding off and redevelopment basis.

The application site is also situated within the North West Argyll (Coast) Area of Panoramic Quality (APQ) where consideration has to be given to Policy LDP DM 3 and SG LDP ENV 13 which seek to resist development in, or adjacent to, an APQ where its scale, location or design will have a significant adverse impact on the character of the landscape.

Policy LDP 9 and SG 2 seek developers to site and position development so as to pay regard to the context within which it is located taking into account the location or sensitivity of the area with developments of poor quality or inappropriate layouts being resisted.

The application is seeking planning permission in principle (PPP) with no layout, design or infrastructure details having been submitted. The purpose of this application is to establish the principle of development, with the intention that if permission in principle were to be granted, matters of layout and design should be addressed by way of future application(s) for approval of matters specified in conditions.

The site is a prominent area of undulating rough grazing elevated above the neighbouring property 'Cala na Sithe' and is clearly visible from the A816 public road to the north. Plot 1 referred to above forms the western boundary of the site with the land to the east continuing in a similar undulating manner with a stone wall delineating the boundary of the plot. Along the southern boundary of the site is a well-established mature forest plantation against which the proposed plot will be viewed with the land sloping down to the north towards the A816 public road.

The site does not represent an appropriate opportunity for infill, rounding-off, redevelopment or change of use of building development within the CZ as required by Policy DM 1 above and there has been no claim of any 'exceptional case' for the development based upon any locational or operational site requirement.

The LCS, with respect to Site LN56 which includes the site of the currently proposed development states that the land is within the Scottish Natural Heritage 'Craggy Upland' landscape character type and that it sits on the southern shore of the head of Loch Feochan with panoramic views across the loch. The LCS categorises this landscape parcel as having medium scenic quality but with a high sensitivity to change and, therefore, a limited capacity to successfully absorb development with a recommendation that the rising slopes south of the A816 should not be developed as this would become too visible within the wider landscape and could change the character of the area.

As explained above, the LCS directly informed the amendments to the Council's settlement strategy planning policy, both in the interpretation of the then extant 2009 Local Plan and, more pertinently to the current planning application, the adopted 2015 Local Development Plan which removed these areas not recommended for development from the former ROA and re-categorized them as falling within the wider 'countryside zone (CZ)'. As summarised above, there is a policy presumption against new residential development within the CZ unless certain, specific development opportunities exist or else an appropriate claim of an 'exceptional case' has been submitted, examined and accepted subject to an Area Capacity Evaluation (ACE).

In this case, the proposed development is not an infill, redevelopment, rounding off or a change of use of an existing building and there has been no claim of any 'exceptional case' submitted. Even if there had been a claim that the proposed development should be

considered an exceptional case, it is the professional and considered opinion of the planning authority that the site would not accord with an ACE given the findings of the LCS.

The applicant's counter argument to this, as advanced through the submission of their own landscape evaluation study (produced by a chartered landscape architect within VLM Landscape Design) is that the LCS adopted a 'broad brush' approach to landscape quality assessment and that it didn't adequately take into account the complex topography across compartment LN56. The applicant's submitted landscape assessment concludes that whilst parts of LN56 are visible within the wider landscape, the site of the proposed development is not due to a combination of the surrounding knolly landform, mature garden features and extensive mature tree cover.

The applicant's submitted landscape assessment therefore concludes that whilst the development will result in an inevitable transitory period of adjustment and change to the established landscape, the actual sensitivity to change of this part of LN56 is assessed to be 'medium to high' but that the magnitude of the effect of the proposed development is 'low' and the impact upon the wider landscape character is 'moderate-minor to moderate' and, once the proposed planting strategy (to landscape the development) has been established, it is claimed that the long term impact upon the landscape character will be 'minor' and 'beneficial'. It concludes that, *"The Proposed Site offers scope for a fully integrated small-scale residential development comprising two new dwellings and associated garden grounds and access drive to assimilate into the landscape without any adverse impacts upon the landscape and visual amenity of the area. - Ultimately this sensitively planned development will be seen to be wholly consistent with the established rural settlement pattern and will not have a detrimental impact on the integrity and quality of the APQ designation. Therefore, in landscape and visual terms, the proposals are assessed to be wholly in line with current best practice guidance and environmental policies contained within the Argyll and Bute adopted Local Plan, including acceptable in terms of Policy SG LDP ENV 13."*

(The above represents a summary of the applicant's submitted landscape assessment study. The full document is available on the Council's Public Access System by clicking on the following link <http://www.argyll-bute.gov.uk/content/planning/publicaccess>.)

The planning authority have carefully considered the applicant's submitted landscape appraisal but do not agree with its findings. It is considered that development of the site with a dwellinghouse would represent an inappropriate form of development within the CZ designation resulting in an unacceptable environmental impact introducing a form of inappropriate development into the CZ and wider APQ which would be detrimental to the character and appearance of the wider landscape contrary to the policy and guidance set out above. Furthermore, the proposal would be contrary to the independent landscape advice contained within the LCS study referred to above which clearly states that the rising slopes south of the A816 should not be developed as this would become too visible within the wider landscape and could change the character of the area.

In addition to the above, however, it is important to note that the impact of the proposed development upon the landscape is not the sole determining factor in the consideration of this application.

Regardless of any interpretation of the impact of the proposed development upon the landscape, the development does not meet the fundamental key planning policy test for the Council's established and adopted settlement strategy for the planned growth of Argyll and Bute as set out within policy LDP DM 1. Neither, therefore, does the proposed development accord with the sustainable development aims of the Council as established within adopted key planning policy LDP STRAT 1. These two policies, plus the remainder of the Local Development Plan, including its adopted development management zones

were the subject of considerable public scrutiny and examination in public through the public local inquiry which was held prior to adoption. The result of this was that the site the subject of the proposed development remained within the CZ, thus forming the settled will of the Council with regard to planning policy and settlement strategy. The proposed development does not accord with that policy and the Planning Authority can find no appropriate or desirable reason to set aside key planning policies LDP DM 1 or LDP STRAT 1 as a 'minor departure' to the LDP in this case.

It is further noted that should the developer wish to press his/her argument with respect to this site, the correct way to do that would be to make this case through the public consultation phase of the emerging replacement LDP. Any decision to approve this development now, contrary to key adopted planning policy, is considered to be premature to the consideration of the forthcoming LDP.

With regard to infrastructure to serve the proposed development, the application proposes to utilise the existing private access spurring from the A816 public road currently serving 'Dalmara' and 'Cala na Sithe'. At the time of report the Roads Authority had not responded but in their response to the previous application advised that the existing access is adequate and raised no objection subject to conditions regarding the provision of an appropriate parking and turning area within the site and a refuse collection point at the junction with the public road. Connection to the public water supply is proposed with drainage via installation of a private system. Whilst, with appropriate safeguarding conditions, this aspect of the proposal could be considered consistent with Policy LDP 11 and SG LDP TRAN 4 and SG LDP TRAN 6 which seek to ensure developments are served by a safe means of vehicular access and have an appropriate parking provision within the site and SG LDP SERV 1 which gives support to private drainage proposals where connection to the public system is not feasible, this is not relevant as the principle of development on the site is not considered consistent with policy as detailed above.

The proposed development will have no materially adverse impact upon the historic environment including (but not necessarily limited to) the historic/architectural/cultural value and/or setting or other specified qualities of any listed building, any scheduled ancient monument, any garden and designed landscape, any conservation area or any special built environment area. Neither will the proposed development result in any material harm to the natural environment including (but not necessarily limited to) the special environmental/habitat/geological or other specified qualities of any site of special scientific interest, any special protection area, any 'Ramsar' site, any national or local nature reserve, any designated area of wild land, any marine consultation area, any area of semi-natural ancient woodland, any carbon and peatland area or any tree preservation order.

Taking all of the above into consideration, it is considered that the development of the site with a dwellinghouse would result in an unacceptable landscape impact contrary to the provisions of Policies LDP STRAT 1, LDP DM 1, LDP 3, LDP 8, LDP 9 and Supplementary Guidance SG 2, SG LDP ENV 13, SG LDP ENV 14 and SG LDP HOU 1 of the adopted 'Argyll and Bute Local Development Plan' 2015 and it is recommended that the application be refused for the reasons appended to this report.

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

(R) Reasons why planning permission in principle should be refused

See reasons for refusal set out 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 Environment Scotland:
No**

Author of Report: Fiona Scott Date: 23/12/19

Reviewing Officer: Tim Williams Date: 08/01/19

**Fergus Murray
Head of Development and Economic Growth**

REASONS FOR REFUSAL RELATIVE TO APPLICATION REFERENCE 19/02315/PPP

1. The site the subject of this application lies within a wider area designated as 'Countryside Zone' within the adopted Local Development Plan and is a prominent area of undulating rough grazing elevated above the neighbouring property 'Cala na Sithe' which forms the western boundary of the site and is clearly visible from the A816 public road to the north. The site does not represent an appropriate opportunity for infill, rounding-off, redevelopment or change of use of building development within the Countryside Zone as required by Policy LDP DM 1 of the adopted Local Development Plan and there has been no claim of any 'exceptional case' for the development based upon any locational or operational site requirement.

The application site is also situated within the North West Argyll (Coast) Area of Panoramic Quality (APQ) where consideration has to be given to Policy LDP DM 3 and SG LDP ENV 13 of the adopted Local Development Plan, which seek to resist development in, or adjacent to, an APQ where its scale, location or design will have a significant adverse impact on the character of the landscape.

The proposed development is therefore contrary to the established and adopted sustainable development aims of the Council as expressed within key planning policy LDP STRAT 1 and to the established and adopted settlement strategy as espoused within key planning policy LDP DM 1. It is not considered that the proposed development would constitute an appropriate departure to these key planning policies.

In addition to the above, and notwithstanding the Applicant's submitted landscape assessment study, it is considered that the proposed development would introduce an inappropriate and additional built development into an area of sensitive landscape quality, recognised by its inclusion within a wider Area of Panoramic Landscape Quality (APQ), and will have an unacceptable and materially harmful impact upon the character and quality of the APQ and the wider landscape, contrary to the established settlement pattern.

The proposal is therefore considered to be contrary to the provisions of Policies STRAT 1, LDP DM 1, LDP 3, LDP 8, LDP 9 and Supplementary Guidance SG 2, SG LDP HOU 1, SG LDP ENV 13 and SG LDP ENV 14 of the adopted 'Argyll and Bute Local Development Plan' 2015.

APPENDIX TO DECISION REFUSAL NOTICE

Appendix relative to application **19/02315/PPP**

- (A)** Has the application required an obligation under Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended).

No

- (B)** 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

- (C)** The reason why planning permission in principle has been refused.

See reason for refusal set out above.

CHECK SHEET FOR PREPARING AND ISSUING DECISION

Application Number	19/02315/PPP
Decision Date	
Issue Latest Date	09/01/20
Decision	Grant with Conditions & Reasons

Date signed by ATL

Don't Issue Decision	Tick if relevant	Action (tick)	Date sent
Notification to Scottish Ministers			
Notification to Historic Scotland			
Section 75 Agreement			
Revocation			

<i>Issue Decision</i>		✓	Tick	Standard Conditions/Notes to include				
Tick	Dev/Decision Type	Time Scale*	Initiation	Completion	Display Notice			
			Only use if PP/AMSC & Granted					
	Local – Sch.3 – Delegated							
✓	Local – Delegated		Refusal					

*standard time condition not required if application retrospective.

Include with Decision Notice	
Customer Satisfaction Survey	✓

Notify of Decision	
Objectors/Contributors	✓
Ongoing Monitoring – priorities:	

Total residential units FP3 (uniform)			
Houses	1	Sheltered	
Flats		Affordable	

This page is intentionally left blank

This Local Review Statement has been prepared to support two local reviews being submitted in relation to the following two applications, which were refused by Argyll & Bute Council on 9th January 2020.

- 19/02314/PPP | Site for the erection of dwellinghouse and garage - Plot 1 Land east of Cala Na Sithe, Kilmore.
- 19/02315/PPP | Site for the erection of dwellinghouse and garage - Plot 2 Land east of Cala Na Sithe, Kilmore.

The applicant requests the following.

- 1. As the local reviews turn on the weight to be attributed to the recent approval of the Local Development Plan 2 Proposed Plan (PLDP2), councillors are requested to hold a hearing to better understand the relevance of the new policy regime.**
- 2. As the visual and landscape impact of the proposed dwellings is the critical issue, councillors are requested to undertake a site visit.**

The starting point for these reviews is the weight that should be given to the PLDP2 and Policy 02 in particular. The case officer accepts that PLDP2 is a material consideration, and the ‘settled view’ of the Council, and so, in accordance with Section 25 of the Town and Country Planning (Scotland) Act, these applications can be granted planning permission, if councillors attribute sufficient weight to this Plan, and other material considerations, such that a minor departure from the development plan is warranted.

The case officer’s position on this is that PLDP2 *“will be afforded very little weight until the consultation exercise has been completed”*. This has now concluded and so councillors should be able to understand the extent of comment, if any, on this policy by the time they consider these cases. If they are not provided that information by the case officer, then they can presumably request it from Matt Mulderrig, Development Policy Manager.

The case officer then goes on to say that *“once the consultation period is concluded those aspects of PLDP2 which have not been objected to will then be given strong weight”*. It is highly doubtful anyone will have objected to the thrust of this Policy, given its general permissiveness. It was made abundantly clear at the Main Issues Report (MIR) stage that the Council was going to adopt a *“more flexible approach to development in our non-environmentally protected countryside”* such as here (MIR page 17). Of the responses received to the MIR on this new approach, the vast majority supported it, and the report on the MIR that went with the Proposed Plan to committee on the 26th of September concluded on this as follows:

“The LDP seeks to promote a more flexible approach to small scale development in the countryside by adopting a ‘presumption in favour’ of such development provided it demonstrates high quality, low carbon design, is sensitively located using the principles of Landscape and Visual Impact Assessment, and does not adversely impact on any nature or heritage assets.”

The key words here being a ‘presumption in favour’, which should thus be the starting point for considering these reviews. They should be granted planning permission unless for some reason they cause unacceptable landscape harm.

Policy 02 in full will be provided by the case officer, but the relevant part for these local reviews is as follows.

“Outwith the Settlement Areas shown on the proposals map, development will only be acceptable where it can be demonstrated that it accords with:

An allocation of this plan; or parts A, B or C as set out below, together with all other relevant policies of the LDP2”

The sites are within a Countryside Area, which is accepted by the case officer, and so the relevant part of the Policy is as follows.

“A – Countryside Areas

Within the Countryside Areas there is a presumption in favour of sustainable development where this is of an appropriate scale, design, siting and use for its countryside location, as detailed in the relevant subject policies. All developments will require a Landscape and Visual Impact Assessment demonstrating to the satisfaction of the Planning Authority, that the proposal can be successfully integrated into its land scape setting unless they are:

- *Infill; or*
- *Rounding off; or*
- *Redevelopment opportunities of clusters; or*
- *Previously developed sites. Development adjacent to, but outwith settlement boundaries which are delineated in the Proposals Maps will not constitute infill, rounding off or redevelopment.”*

The Policy is slightly oddly worded, but basically states that a dwelling can be supported anywhere in Countryside Areas, the permissive policy as explained above, provided it is supported by a *“Landscape and Visual Impact Assessment demonstrating to the satisfaction of the Planning Authority, that the proposal can be successfully integrated into its landscape setting”*. You don't need to provide a Landscape and Visual Assessment where you are one of the bulleted exceptions, i.e. infill etc. However, these sites are not one of those exceptions and so have been submitted with a Landscape and Visual Appraisal produced by Victoria Mack of VLM Landscape Design, a chartered landscape architect with nearly 20 years professional experience.

The councillors will note what the case officer says about the former status of the sites as a Rural Opportunity Area (ROA). ROA status was something that the landowner (the current applicant) supported, and was surprised to lose on the back of a Landscape Capacity Study produced quickly, with little fanfare, and in relation to which no comments from landowners were requested. The company that did these studies though highly respected had little time to consider each site, maybe an hour or so, whereas Victoria took an entire day just to do her site visit and to ensure that she was fully conversant with the landscape and potential views. It has also been clear for several years that the landscape studies include a number of inconsistencies and errors and have not stood the test of time. It is suspected that part of the reason for the change of policy approach, and moving towards application specific Landscape and Visual Appraisals, as required by Policy 02, is to finally lay the landscape studies to rest.

As councillors will note from reading the VLM Landscape Design Landscape and Visual Appraisal in full, development here will not be that visible and will not alter the landscape character of the area. The sites are certainly not prominent, as suggested by the case officer, and that comment suggests that the case officer has not done the fieldwork done by Victoria Mack who has considered this issue in depth and concludes as follows.

“7.1 The Proposed Site offers scope for a fully integrated small-scale residential development comprising two new dwellings and associated garden grounds and access drive to assimilate into the landscape without any adverse impacts upon the landscape and visual amenity of the area.

7.2 The proposed site and its context is well defined by rising landform and prolific vegetation with a coniferous plantation providing a soft backdrop and mature garden and woodland features combining with the knolly landform to the north of the site effectively screening all but a handful of views. As part of the site-wide planting strategy, it is proposed to strengthen the existing tree cover on the perimeter of the site with ‘native’ planting where species will be limited to the existing species found within the immediate context. This will aid in enhancing the secluded character of the site and in the medium to long term, as this component of the proposals establishes and matures, it will contribute to the area’s nature conservation value and the quality of the local landscape resource.

7.3 Careful consideration has been given to the siting, massing, scale and form of the new dwellings to ensure that any potential visual impacts are minimised. This has included the height, architectural style and detailing of the built forms as well as a sensitive choice to materials and the hard and soft landscape palette. In addition, it is proposed to set the new dwellings back against the soft woodland foil along the southern boundary and away from the more visually sensitive northern fringes of the wider land in ownership. This considered approach to the site planning will ensure that the new dwellings will effectively nestle into the existing landscape with minimal mitigation required and where visible in glimpsed, transient views, the new dwellings would be seen to be wholly consistent with the dispersed settlement pattern across the wider loch area.

7.4 This proposals have high regard to the preservation of the assets of this area inland from the western coastline of Argyll and by sensitive planning of the site, which itself has been carefully selected, it is considered that the proposals will be seen to visually integrate into the woodland setting and be sensitive to the locality in terms of design, scale and the use of local materials and detailing. This will ensure that the proposals are not intrusive within this settled coastal loch landscape.

7.5 This Landscape and Visual Appraisal has demonstrated that the Proposed Site comprises a visually discreet part of the extended landholding, which forms part of the site LN56 highlighted in the Lorn and Inner Isles Landscape Capacity Study, and does have the landscape capacity to absorb a small-scale development without adverse impacts upon landscape and visual effects. As such the Proposed Site should be classed as a Rural Opportunity Area and be developed in line with Policy LDP DM 1.

7.6 Ultimately this sensitively planned development will be seen to be wholly consistent with the established rural settlement pattern and will not have a detrimental impact on the integrity and quality of the APQ designation. Therefore, in landscape and visual terms, the proposals are assessed

to be wholly in line with current best practice guidance and environmental policies contained within the Argyll and Bute adopted Local Plan, including acceptable in terms of Policy SG LDP ENV 13.”

As we have said above, we hope that councillors will visit the site to assess the impact for themselves and, if they want, they can hold a hearing and ask Vicky Mack to attend and question her on her conclusions. She has the right qualification, experience and the knowledge, and we would respectfully suggest that councillors give considerably more weight to her conclusions as a qualified landscape architect who is an expert witness in the field of landscape and visual impact over the views of a planner (the case officer) who isn't.

For the above reasons, it is hoped that councillors will support these applications and grant planning permission as a minor departure from the development plan on the basis that other material considerations (PLDP2 and the views of a chartered landscape architect) warrant doing so.

Proposal Details

Proposal Name	100194907
Proposal Description	Single dwelling and garage
Address	
Local Authority	Argyll and Bute Council
Application Online Reference	100194907-003

Application Status

Form	complete
Main Details	complete
Checklist	complete
Declaration	complete
Supporting Documentation	complete
Email Notification	complete

Attachment Details

Notice of Review	System	A4
Covering Letter	Attached	A4
Decision Notice	Attached	A4
Design Access Statement	Attached	A4
Landscape and visual appraisal	Attached	A4
Planning Application Form	Attached	A4
Plans - Approved/Refused	Attached	A4
Plans - Location Plan	Attached	A4
Report of handling	Attached	A4
Local Review Statement	Attached	A4
Notice_of_Review-2.pdf	Attached	A0
Application_Summary.pdf	Attached	A0
Notice of Review-003.xml	Attached	A0

This page is intentionally left blank

STATEMENT OF CASE

FOR

**ARGYLL AND BUTE COUNCIL
LOCAL REVIEW BODY**

20/0003/LRB

**REFUSAL OF PLANNING PERMISSION IN PRINCIPLE 19/02315/PPP
SITE FOR THE ERECTION OF A DWELLINGHOUSE**

**PLOT 2, LAND EAST OF CALA NA SITHE,
KILMORE, BY OBAN**

11/02/20

STATEMENT OF CASE

The Planning Authority is Argyll and Bute Council ('the Council'). The appellant is Petard Investments ('the appellant').

Planning permission in principle 19/02315/PPP for a site for the erection of a dwellinghouse on an area of land east of Cala Na Sithe, Kilmore, by Oban ("the appeal site") was refused by the Planning Service under delegated powers on 09/01/20.

The planning application has been appealed and is subject of referral to a Local Review Body.

DESCRIPTION OF SITE

The LRB refers to the site as Plot 2 with an associated LRB for Plot 1 (20/0002/LRB) also currently subject of Review.

The site is a prominent area of undulating rough grazing elevated above the neighbouring property 'Cala na Sithe' which forms the western boundary of the site and is clearly visible from the A816 public road to the north. Along the southern boundary of the site is a well-established mature forest plantation against which the proposed plot will be viewed with the land sloping down to the north towards the A816 public road. To the east is associated Plot 2 mentioned above beyond which the land continues in a similar undulating manner.

The site does not represent an appropriate opportunity for infill, rounding-off, redevelopment or change of use of building development within the Countryside Zone (CZ) as required by Policy DM 1 above and there has been no claim of any 'exceptional case' for the development based upon any locational or operational site requirement and accordingly planning permission in principle was refused. .

STATUTORY BASIS ON WHICH THE APPEAL SHOULD BE DECIDED

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

STATEMENT OF CASE

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

- *Whether weight should be given to the forthcoming Local Development Plan 2 (LDP 2) and whether a hearing should be held to understand the relevance of LDP 2.*

The Report of Handling (Appendix 1) sets out the Council's full assessment of the application in terms of Development Plan policy and other material considerations.

REQUIREMENT FOR ADDITIONAL INFORMATION AND A HEARING

It is not considered that any additional information is required in light of the appellant's submission. The issues raised were assessed in the Report of Handling which is contained in Appendix 1. As such it is considered that Members have all the information they need to determine the case. Given the above and that the proposal is small-scale, has no complex or challenging issues, and has not been the subject of any significant public representation, it is not considered that a Hearing is required.

COMMENT ON APPELLANT'S SUBMISSION

The appellant contends that weight should be attributed to the recent approval of LDP 2 and that Councillors hold a hearing to better understand the relevance of the new policy regime within LDP 2.

As the visual and landscape impact of the proposed dwellings is the critical issue, the appellant requests that Councillors undertake a site visit.

Planning Authority Comment:

The application was determined under the terms of the Local Plan in force at the time, namely the adopted 'Argyll and Bute Local Development Plan' (LDP) 2015. This was the only correct and competent course of action open to officers at that time and it is that decision, and that decision only, which is the subject of the current Review.

The application was submitted, assessed and determined at a very early stage in the approval and eventual adoption process of the emerging Local Development Plan; prior to the closure of the formal Public Consultation undertaken for LDP 2 and, therefore, LDP 2 could not have been afforded any significant material weight in the determination of the application. Neither can LDP 2 be afforded any significant weight now, at the time of this Review (February 2020). The appellant asserts that, in his opinion, 'it is highly doubtful [that] anyone will have objected to the thrust of this policy' (proposed policy 02). With respect, officers cannot accept this statement at face value and neither should Members. The fact remains that the LDP 2 consultation process has generated a substantial number of representations and these are still being collated and appropriately assessed. This process is likely to take several weeks and, until such time, there can be no material weighting given to any of the policies within the proposed LDP 2.

The Council's Development Policy Service (DPS) has advised that significant weight can only be applied to elements of LDP 2 which have not been objected to and this is something which is an unknown during both the consultation and post consultation evaluation process. Accordingly the DPS advise that policies within LDP 2 can be given no material weighting at this time and also that the policies within LDP 2

cannot be applied retrospectively to an application which has already been determined.

Notwithstanding the above, it would not be appropriate or legally competent to have the application reassessed under the provisions of LDP 2 at Local Review. It is of critical importance that all planning applications are properly assessed in accordance with the provisions of the approved and adopted local development plan in force at that time. Whilst it is acknowledged that the applicant/developer could submit a further application at an appropriate time in the future when LDP 2 becomes a material consideration, the fact remains that the applicant/developer chose to submit their current application (subject of this Review) substantially before the material emergence of LDP 2. In that fundamental regard, the proposed development must be considered premature to any future planning policy.

The Planning Authority robustly maintains that the planning application the subject of this Review was assessed properly and in correct accordance with the provisions of the adopted Local Development Plan and all other material planning considerations. Any suggestion to the contrary is wholly refuted.

Given the current position with LDP 2, the Local Review Panel are advised that holding a hearing to debate the merits of LDP 2 would not be relevant or appropriate; nor would it add anything to the LRB process as no weight was given to LDP 2 in the consideration of the planning application by the Planning Authority and no weight can be given to LDP 2 by Members in consideration of this Review.

Should Members decide to undertake a site visit, this would be on the basis of assessing the application in terms of the adopted LDP and not the forthcoming LDP 2.

It is concluded that:

- Officers could only have determined this application under the provisions of the adopted (current) LDP and to any other material planning considerations. The application was submitted, assessed and determined before the closure of the LDP2 public consultation and it could not, therefore, have been afforded significant material weight.*
- It would not be correct to seek to have this application reassessed under the provisions of LDP 2 at Review (though the developer could submit a further application(s) at an appropriate time).*
- The LRB panel are respectfully advised that they should not apply any new emerging planning policy retrospectively.*

CONCLUSION

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

Taking all of the above into consideration, as set out above, it remains the view of the Planning Service, as set out in the Report of Handling appended to this statement, that the proposed site does not represent an appropriate opportunity for development with a dwellinghouse and would result in an unacceptable environmental impact by virtue of introducing a form of inappropriate development into the CZ detrimental to the character and appearance of the wider landscape.

Taking account of the above, it is respectfully requested that the application for review be dismissed.

APPENDIX 1

Argyll and Bute Council
Development and Infrastructure

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 2013 relative to applications for Planning Permission or Planning Permission in Principle

Reference No: 19/02315/PPP

Planning Hierarchy: Local Development

Applicant: Petard Investments

Proposal: Site for Erection of Dwellinghouse and Garage

Site Address: Plot 2, Land East of Cala Na Sithe, Kilmore

DECISION ROUTE

Section 43 (A) of the Town and Country Planning (Scotland) Act 1997 (as amended)

(A) THE APPLICATION

(i) Development Requiring Express Planning Permission

- Site for erection of dwellinghouse (planning permission in principle)
- Formation of vehicular access (planning permission in principle)
- Installation of private drainage system (planning permission in principle)

(ii) Other specified operations

- Connection to public water main
-

(B) RECOMMENDATION:

Having due regard to the Development Plan and all other material considerations, it is recommended that planning permission in principle be **REFUSED** for the reasons appended to this report.

(C) HISTORY:

18/02239/PPP

Site for erection of dwellinghouse – Refused: 18/12/18

(D) CONSULTATIONS:

Area Roads Authority

No objection subject to conditions 13/11/19.

Scottish Water

Letter dated 17/11/19 advising no objection to the proposed development

West of Scotland Archaeology Service (WOSAS)

Letter dated 22/11/19 advising that the site falls within an archaeological consultation trigger which in this instance has been defined in relation to the ruinous remains of previous settlement that have been recorded in the immediate vicinity. Accordingly WOSAS advise that should the Planning Authority be minded to grant permission, a condition should be imposed requiring the implementation of a programme of archaeological works to be undertaken in advance of works starting on site.

The above represents a summary of the issues raised. Full details of the consultation responses are available on the Council's Public Access System by clicking on the following link <http://www.argyll-bute.gov.uk/content/planning/publicaccess>.

(E) PUBLICITY:

The proposal has been advertised in terms of Regulation 20 and Neighbour Notification procedures, overall closing date 19/12/19.

(F) REPRESENTATIONS:

One representation has been received regarding the proposed development.

Mrs Sandra Grieve, Dalmarra, Kilmore, PA34 4QT (22/11/19)

(i) Summary of issues raised

- Where the proposed road is marked on application, it will be going over our private water supply.

Comment: This is not a material consideration in the determination of this planning application but a separate civil issue between affected parties.

The above represents a summary of the issues raised. Full details of the letters of representation are available on the Council's Public Access System by clicking on the following link <http://www.argyll-bute.gov.uk/content/planning/publicaccess>.

(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:**
Yes
- (iv) **A report on the impact of the proposed development** **No**
e.g. retail impact, transport impact, noise impact, flood risk,
drainage impact etc:

(H) PLANNING OBLIGATIONS

- (i) **Is a Section 75 obligation required:** **No**

- (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 Local Development Plan, 2015

LDP STRAT 1 – Sustainable Development
 LDP DM 1 – Development within the Development Management Zones
(Countryside Zone)
 LDP 3 – Supporting the Protection Conservation and Enhancement of our Environment
 LDP 8 – Supporting the Strength of our Communities
 LDP 9 – Development Setting, Layout and Design
 LDP 10 – Maximising our Resources and Reducing our Consumption
 LDP 11 – Improving our Connectivity and Infrastructure

Supplementary Guidance

SG 2 – Sustainable Siting and Design Principles
 SG LDP ENV 13 – Development Impact on Areas of Panoramic Quality (APQs)
(North West Argyll (Coast) APQ)
 SG LDP ENV 14 – Landscape
 SG LDP ENV 20 – Development Impact on Sites of Archaeological Importance
 SG LDP HOU 1 – General Housing Development including Affordable Housing
 SG LDP SERV 1 – Private Sewage Treatment Plans & Wastewater Systems
 SG LDP SERV 2 – Incorporation of Natural Features/Sustainable Drainage Systems (SuDS)
 SG LDP TRAN 4 – New and Existing, Public Roads and Private Access Regimes
 SG LDP TRAN 6 – Vehicle Parking Provision

- (i) **List of all other material planning considerations taken into account in the assessment of the application, having due regard to Annex A of Circular 3/2013.**

Argyll and Bute Sustainable Design Guidance, 2006
 Scottish Planning Policy (SPP), 2014

Argyll and Bute Proposed Local Development Plan 2 (November 2019)
 Consultation Responses
 Third Party Representations

(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: No

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

An application for Planning Permission in Principle 18/02239/PP for a dwellinghouse on this site was refused by the Planning Service on 18 December 2018.

The application refers to the site as Plot 2 with an associated application for the resubmission on Plot 1 (19/02314/PPP) also currently with the Planning Service for consideration.

In support of the resubmission, the agent has stated that “... *the policy position in relation to new housing in Countryside Areas is changing with the recent approval of the Local Development Plan 2 Proposed Plan, which is now the settled view of the Council. The Plan has changed the way in which proposals will be considered going forward and, although it still needs to be consulted upon and examined, it does already carry weight as a material consideration*”.

However, whilst the proposed Local Development Plan 2 (PLDP2) has been through Council and is classed as the ‘settled view’ of the Council representing a material consideration, in the main, this will be afforded very little weight until the consultation exercise has been completed. Once the consultation period is concluded those aspects of PLDP2 which have not been objected to will then be given strong weight.

Accordingly, as the consultation on PLDP 2 does not expire until 23 January 2020, the current application is considered to be premature and requires to be assessed in terms of the current adopted ‘Argyll and Bute Local Development Plan’ (LDP) 2015 with the assessment reflecting that of the previous application reiterated below.

As a background it should be noted that during the life of the preceding 2009 Local Plan, the site was identified as being within a Rural Opportunity Area (ROA). However, ROAs within Areas of Panoramic Quality (APQ), within which the site falls, were subject to Landscape Capacity Study (LCS) to refine their extent for the purposes of decision making through the 2009 Local Plan (and now the adopted 2015 Local Development Plan). The LCS included the site of the current application

within Site LN56 identified as an area not recommended for development, stating that, generally, the rising slopes south of the A816 should not be developed as this would become too visible within the wider landscape and could change the character of the area. The LCS identified two small areas suitable for development, both of which have followed through into the current LDP as ROAs with the areas identified as not suitable for development followed through into the current LDP as Countryside.

In terms of the current adopted 'Argyll and Bute Local Development Plan' (LDP) 2015 the application site is situated within the Countryside Zone (CZ) where Policy LDP DM 1 of the LDP is very restrictive only giving support to small scale development on an appropriate infill, rounding off, redevelopment or change of use of building development, subject to compliance with other relevant policies and supplementary guidance (SG).

Policy LDP 8 supports new sustainable development proposals that seek to strengthen communities where they comply with other relevant policies with SG LDP HOU 1 limiting support to new housing within the CZ to an infill, rounding off and redevelopment basis.

The application site is also situated within the North West Argyll (Coast) Area of Panoramic Quality (APQ) where consideration has to be given to Policy LDP DM 3 and SG LDP ENV 13 which seek to resist development in, or adjacent to, an APQ where its scale, location or design will have a significant adverse impact on the character of the landscape.

Policy LDP 9 and SG 2 seek developers to site and position development so as to pay regard to the context within which it is located taking into account the location or sensitivity of the area with developments of poor quality or inappropriate layouts being resisted.

The application is seeking planning permission in principle (PPP) with no layout, design or infrastructure details having been submitted. The purpose of this application is to establish the principle of development, with the intention that if permission in principle were to be granted, matters of layout and design should be addressed by way of future application(s) for approval of matters specified in conditions.

The site is a prominent area of undulating rough grazing elevated above the neighbouring property 'Cala na Sithe' and is clearly visible from the A816 public road to the north. Plot 1 referred to above forms the western boundary of the site with the land to the east continuing in a similar undulating manner with a stone wall delineating the boundary of the plot. Along the southern boundary of the site is a well-established mature forest plantation against which the proposed plot will be viewed with the land sloping down to the north towards the A816 public road.

The site does not represent an appropriate opportunity for infill, rounding-off, redevelopment or change of use of building development within the CZ as required by Policy DM 1 above and there has been no claim of any 'exceptional case' for the development based upon any locational or operational site requirement.

The LCS, with respect to Site LN56 which includes the site of the currently proposed development states that the land is within the Scottish Natural Heritage 'Craggy Upland' landscape character type and that it sits on the southern shore of the head of Loch Feochan with panoramic views across the loch. The LCS categorises this

landscape parcel as having medium scenic quality but with a high sensitivity to change and, therefore, a limited capacity to successfully absorb development with a recommendation that the rising slopes south of the A816 should not be developed as this would become too visible within the wider landscape and could change the character of the area.

As explained above, the LCS directly informed the amendments to the Council's settlement strategy planning policy, both in the interpretation of the then extant 2009 Local Plan and, more pertinently to the current planning application, the adopted 2015 Local Development Plan which removed these areas not recommended for development from the former ROA and re-categorized them as falling within the wider 'countryside zone (CZ). As summarised above, there is a policy presumption against new residential development within the CZ unless certain, specific development opportunities exist or else an appropriate claim of an 'exceptional case' has been submitted, examined and accepted subject to an Area Capacity Evaluation (ACE).

In this case, the proposed development is not an infill, redevelopment, rounding off or a change of use of an existing building and there has been no claim of any 'exceptional case' submitted. Even if there had been a claim that the proposed development should be considered an exceptional case, it is the professional and considered opinion of the planning authority that the site would not accord with an ACE given the findings of the LCS.

The applicant's counter argument to this, as advanced through the submission of their own landscape evaluation study (produced by a chartered landscape architect within VLM Landscape Design) is that the LCS adopted a 'broad brush' approach to landscape quality assessment and that it didn't adequately take into account the complex topography across compartment LN56. The applicant's submitted landscape assessment concludes that whilst parts of LN56 are visible within the wider landscape, the site of the proposed development is not due to a combination of the surrounding knolly landform, mature garden features and extensive mature tree cover.

The applicant's submitted landscape assessment therefore concludes that whilst the development will result in an inevitable transitory period of adjustment and change to the established landscape, the actual sensitivity to change of this part of LN56 is assessed to be 'medium to high' but that the magnitude of the effect of the proposed development is 'low' and the impact upon the wider landscape character is 'moderate-minor to moderate' and, once the proposed planting strategy (to landscape the development) has been established, it is claimed that the long term impact upon the landscape character will be 'minor' and 'beneficial'. It concludes that, *"The Proposed Site offers scope for a fully integrated small-scale residential development comprising two new dwellings and associated garden grounds and access drive to assimilate into the landscape without any adverse impacts upon the landscape and visual amenity of the area. - Ultimately this sensitively planned development will be seen to be wholly consistent with the established rural settlement pattern and will not have a detrimental impact on the integrity and quality of the APQ designation. Therefore, in landscape and visual terms, the proposals are assessed to be wholly in line with current best practice guidance and environmental policies contained within the Argyll and Bute adopted Local Plan, including acceptable in terms of Policy SG LDP ENV 13."*

(The above represents a summary of the applicant's submitted landscape assessment study. The full document is available on the Council's Public Access

System by clicking on the following link <http://www.argyll-bute.gov.uk/content/planning/publicaccess>.)

The planning authority have carefully considered the applicant's submitted landscape appraisal but do not agree with its findings. It is considered that development of the site with a dwellinghouse would represent an inappropriate form of development within the CZ designation resulting in an unacceptable environmental impact introducing a form of inappropriate development into the CZ and wider APQ which would be detrimental to the character and appearance of the wider landscape contrary to the policy and guidance set out above. Furthermore, the proposal would be contrary to the independent landscape advice contained within the LCS study referred to above which clearly states that the rising slopes south of the A816 should not be developed as this would become too visible within the wider landscape and could change the character of the area.

In addition to the above, however, it is important to note that the impact of the proposed development upon the landscape is not the sole determining factor in the consideration of this application.

Regardless of any interpretation of the impact of the proposed development upon the landscape, the development does not meet the fundamental key planning policy test for the Council's established and adopted settlement strategy for the planned growth of Argyll and Bute as set out within policy LDP DM 1. Neither, therefore, does the proposed development accord with the sustainable development aims of the Council as established within adopted key planning policy LDP STRAT 1. These two policies, plus the remainder of the Local Development Plan, including its adopted development management zones were the subject of considerable public scrutiny and examination in public through the public local inquiry which was held prior to adoption. The result of this was that the site the subject of the proposed development remained within the CZ, thus forming the settled will of the Council with regard to planning policy and settlement strategy. The proposed development does not accord with that policy and the Planning Authority can find no appropriate or desirable reason to set aside key planning policies LDP DM 1 or LDP STRAT 1 as a 'minor departure' to the LDP in this case.

It is further noted that should the developer wish to press his/her argument with respect to this site, the correct way to do that would be to make this case through the public consultation phase of the emerging replacement LDP. Any decision to approve this development now, contrary to key adopted planning policy, is considered to be premature to the consideration of the forthcoming LDP.

With regard to infrastructure to serve the proposed development, the application proposes to utilise the existing private access spurring from the A816 public road currently serving 'Dalmara' and 'Cala na Sithe'. At the time of report the Roads Authority had not responded but in their response to the previous application advised that the existing access is adequate and raised no objection subject to conditions regarding the provision of an appropriate parking and turning area within the site and a refuse collection point at the junction with the public road. Connection to the public water supply is proposed with drainage via installation of a private system. Whilst, with appropriate safeguarding conditions, this aspect of the proposal could be considered consistent with Policy LDP 11 and SG LDP TRAN 4 and SG LDP TRAN 6 which seek to ensure developments are served by a safe means of vehicular access and have an appropriate parking provision within the site and SG LDP SERV 1 which gives support to private drainage proposals where connection to the public system is

not feasible, this is not relevant as the principle of development on the site is not considered consistent with policy as detailed above.

The proposed development will have no materially adverse impact upon the historic environment including (but not necessarily limited to) the historic/architectural/cultural value and/or setting or other specified qualities of any listed building, any scheduled ancient monument, any garden and designed landscape, any conservation area or any special built environment area. Neither will the proposed development result in any material harm to the natural environment including (but not necessarily limited to) the special environmental/habitat/geological or other specified qualities of any site of special scientific interest, any special protection area, any 'Ramsar' site, any national or local nature reserve, any designated area of wild land, any marine consultation area, any area of semi-natural ancient woodland, any carbon and peatland area or any tree preservation order.

Taking all of the above into consideration, it is considered that the development of the site with a dwellinghouse would result in an unacceptable landscape impact contrary to the provisions of Policies LDP STRAT 1, LDP DM 1, LDP 3, LDP 8, LDP 9 and Supplementary Guidance SG 2, SG LDP ENV 13, SG LDP ENV 14 and SG LDP HOU 1 of the adopted 'Argyll and Bute Local Development Plan' 2015 and it is recommended that the application be refused for the reasons appended to this report.

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

(R) Reasons why planning permission in principle should be refused

See reasons for refusal set out 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 Environment Scotland: No

Author of Report: Fiona Scott Date: 23/12/19

Reviewing Officer: Tim Williams Date: 08/01/19

**Fergus Murray
Head of Development and Economic Growth**

REASONS FOR REFUSAL RELATIVE TO APPLICATION REFERENCE 19/02315/PPP

1. The site the subject of this application lies within a wider area designated as 'Countryside Zone' within the adopted Local Development Plan and is a prominent area of undulating rough grazing elevated above the neighbouring property 'Cala na Sithe' which forms the western boundary of the site and is clearly visible from the A816 public road to the north. The site does not represent an appropriate opportunity for infill, rounding-off, redevelopment or change of use of building development within the Countryside Zone as required by Policy LDP DM 1 of the adopted Local Development Plan and there has been no claim of any 'exceptional case' for the development based upon any locational or operational site requirement.

The application site is also situated within the North West Argyll (Coast) Area of Panoramic Quality (APQ) where consideration has to be given to Policy LDP DM 3 and SG LDP ENV 13 of the adopted Local Development Plan, which seek to resist development in, or adjacent to, an APQ where its scale, location or design will have a significant adverse impact on the character of the landscape.

The proposed development is therefore contrary to the established and adopted sustainable development aims of the Council as expressed within key planning policy LDP STRAT 1 and to the established and adopted settlement strategy as espoused within key planning policy LDP DM 1. It is not considered that the proposed development would constitute an appropriate departure to these key planning policies.

In addition to the above, and notwithstanding the Applicant's submitted landscape assessment study, it is considered that the proposed development would introduce an inappropriate and additional built development into an area of sensitive landscape quality, recognised by its inclusion within a wider Area of Panoramic Landscape Quality (APQ), and will have an unacceptable and materially harmful impact upon the character and quality of the APQ and the wider landscape, contrary to the established settlement pattern.

The proposal is therefore considered to be contrary to the provisions of Policies STRAT 1, LDP DM 1, LDP 3, LDP 8, LDP 9 and Supplementary Guidance SG 2, SG LDP HOU 1, SG LDP ENV 13 and SG LDP ENV 14 of the adopted 'Argyll and Bute Local Development Plan' 2015.

APPENDIX TO DECISION REFUSAL NOTICE

Appendix relative to application **19/02315/PPP**

- (A)** Has the application required an obligation under Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended).

No

- (B)** 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

- (C)** The reason why planning permission in principle has been refused.

See reason for refusal set out above.

This page is intentionally left blank

Dear Ms Innis,

The Applicant wishes to respond to the case officer's statement as follows.

1. When local reviews were introduced Scottish Ministers stated that they should be considered in the same way as planning appeals and should adopt the *de novo* approach. *De novo* is a Latin expression used in English to mean 'from the beginning', 'anew'. This was confirmed as the correct approach in the case of *Sally Carroll v Scottish Borders Council* (copy attached). This means that the decision maker must take into account all material considerations and that can include information/documents that emerge after the original delegated or committee decision. This happens all the time at appeal and the situation should be no different here. It is therefore entirely legally competent for the councillors to consider the Proposed LDP and decide what weight to give it.
2. It is also entirely proper for councillors to ask their officers what comments have been received on the Proposed LDP, and I am sure that officers already know in general terms how many comments have been received on the policy at issue here. It would be entirely wrong for councillors to determine this local review in the way advocated by the case officer simply because a bit of time will be required to sift through relevant responses; if indeed there are any.
3. The Applicant could have waited to submit applications that is true, but wanted to take advantage of the free go that was available and that period ran out before the consultation on the Proposed LDP closed.
4. A hearing would be entirely appropriate and would allow time for the case officer to ascertain and exhibit any responses on the relevant policy in the Proposed LDP. It would also allow me to explain why the *de novo* approach is relevant, and why weight can be attributed to the Proposed LDP, which is the current 'settled view' of the Council and thus carries significant weight in the determination of these applications in my opinion.

Regards

Paul Houghton BSc(Hons), LLB(Hons), MA, MRTPI
Director and Head of Land Development and Planning



M: 07786 260212 and 07780 117708
E: Paul.Houghton@dmhall.co.uk

This page is intentionally left blank

**SALLY CARROLL AGAINST SCOTTISH BORDERS COUNCIL AND ANOTHER
AGAINST A DECISION OF A LOCAL REVIEW BODY OF SCOTTISH BORDERS
COUNCIL DATED 21 MARCH 2013**

EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

[2015] CSIH 73

XA52/13

Lord Menzies
Lady Smith
Lady Clark of Calton

OPINION OF THE COURT
delivered by LORD MENZIES

in the cause

SALLY CARROLL

Appellant and reclaimer;

against

SCOTTISH BORDERS COUNCIL

Respondents:

and

THE FIRM OF SR FINDLAY

Interested party

against a decision of a Local Review Body of Scottish Borders Council dated
21 March 2013

Appellant and reclaimer: Poole QC, Irving; Kennedys

Respondents: Burnet; bto

Interested party; Martin QC, Van der Westhuizen; CMS Cameron McKenna LLP

Lord Advocate; Wilson QC; Scottish Government Legal Directorate

7 October 2015

Introduction

[1] The interested party wishes to erect two wind turbines together with ancillary equipment on land south west of Neuk Farm, Cockburnspath. The turbines will be

110 metres high to blade tip. The site is in coastal farmland proximate to a coastal margin which is considered to be highly sensitive. It is within two kilometres of the Berwickshire Coast Special Landscape Area, four kilometres of the Lammermuir Hills Special Landscape Area, one kilometre of the Dunglass historic garden, two kilometres of the Southern Upland Way, and is close to the two conservation areas of Oldhamstocks and Cockburnspath and the Berwickshire Coastal Path.

[2] Planning permission for the erection of wind turbines on this site was refused on 15 September 2010, and was refused again by a Local Review Body (“LRB”) of the respondents on 7 March 2011 on the basis that the proposal was contrary to the Development Plan. The interested party resubmitted the application for planning permission, and on 2 October 2012 the respondents’ planning officer refused the application, again on the basis that it was contrary to the Development Plan. The interested party sought review of this decision, and on 21 March 2013 an LRB of the respondents concluded that the development was consistent with the Development Plan and granted planning permission for the development, subject to conditions.

[3] The appellant resides in Cockburnspath and objected to the grant of planning permission. She is aggrieved by the decision of the LRB dated 21 March 2013. She appealed to the Court of Session on the basis that the decision was not within the power of the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”) and that the relevant requirements of that Act have not been complied with. On 12 July 2013 the court granted the appellant’s motion to remit the appeal to the Outer House to be heard by the Lord Ordinary in the first instance. On the same day the court made a Protective Expenses Order in favour of the appellant and suspended *ad interim* the grant of planning permission. Having heard the appeal, on 17 January 2014 the Lord Ordinary held that the decision of the LRB dated 21 March 2013 was within the powers of the 1997 Act, and refused the appeal. It is against that decision that the claimant claims to this court.

[4] We were told that this is the first case in which a decision of an LRB has been challenged in this court. Accordingly it may be helpful to set out the salient provisions of the statutory regime which was introduced by the Planning etc (Scotland) Act 2006 (“the 2006 Act”), together with the relevant regulations and EU directive.

The relevant legislative provisions

The Town and Country Planning (Scotland) Act 1997 (as amended)

“43A Local developments: schemes of delegation

(1) A planning authority are –

(a) as soon as practicable after the coming into force of section 17 of the Planning etc (Scotland) Act 2006 ... to prepare a scheme (to be known as a 'scheme of delegation') by which any application for planning permission for a development within the category of local developments or any application for consent, agreement or approval required by a condition imposed on a grant of planning permission for a development within that category is to be determined by a person appointed by them for the purposes of this section instead of by them, and

(b) to keep under review the scheme so prepared.

...

(8) Where a person so appointed –

(a) refuses an application for planning permission or for consent, agreement or approval,

(b) grants it subject to conditions, or

(c) has not determined it within such period as may be prescribed by regulations or a development order [or within such extended period as may at any time be agreed upon in writing between the applicant and the person so appointed],

the applicant may require the planning authority to review the case.

...

(10) Regulations or a development order may make provision as to the form and procedures of any review conducted by virtue of subsection (8).

- (11) Without prejudice to the generality of subsection (10), the regulations or order may –
- (a) make different provision for different cases or classes of case,
 - (b) make different provision for different stages of a case,
 - (c) make provision in relation to oral or written submissions and to documents in support of such submissions,
 - (d) make provision in relation to time limits (including a time limit for requiring the review), and
 - (e) require the planning authority to give to the person who has required the review such notice as may be prescribed by the regulations or the order as to the manner in which that review has been dealt with
- (12) Any notice given by virtue of paragraph (e) of subsection (11) –
- (a) is to include a statement of –
 - (i) the terms in which the planning authority have decided the case reviewed, and
 - (ii) the reasons on which the authority based that decision, and
 - (b) may include such other information as may be prescribed by the regulations or the order.
- (13) The provision which may be made by virtue of subsections (10) and (11) includes provision as to –
- (a) the making of oral submissions, or as to any failure to make such submissions or to lodge documents in support of such submissions, or

- (b) the lodging of, or as to any failure to lodge, written submission or documents in support of such submissions,

and, subject to section 43B, as to what matters may be raised in the course of the review.

(14) The provision which may be made by virtue of subsections (10) and (11) includes provision that the manner in which the review, or any stage of the review is to be conducted (as for example whether oral submissions are to be made or written submissions lodged) is to be at the discretion of the planning authority.

(15) The planning authority may uphold, reverse or vary a determination reviewed by them by virtue of subsection (8)

43B Matters which may be raised in a review under section 43A(8)

(1) In a review under section 43A(8), a party to the proceedings is not to raise any matter which was not before the appointed person at the time the determination reviewed was made unless that party can demonstrate –

- (a) that the matter could not have been raised before that time, or
- (b) that its not being raised before that time was a consequence of exceptional circumstances

(2) Nothing in subsection (1) affects any requirement or entitlement to have regard to –

- (a) the provisions of the development plan, or
- (b) any other material consideration.

239. – Proceedings for questioning the validity of other orders, decisions and directions.

(1) If any person –

(a) is aggrieved by any order to which this section applies and wishes to question the validity of that order on the grounds –

(i) that the order is not within the powers of this Act, or

(ii) that any of the relevant requirements have not been complied with in relation to that order. ...

he may make an application to the Court of Session under this section.”

The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008

“Interpretation

2. In these Regulations –

...

‘review documents’ means notice of the decision in respect of the application to which the review relates, the Report on Handling and any documents referred to in that Report, the notice of review given in accordance with regulation 9, all documents accompanying the notice of review in accordance with regulation 9(4) and any representations or comments made under regulation 10(4) or (6) in relation to the review;

...

Determination without further procedure

12. Where the local review body consider that the review documents provide sufficient information to enable them to determine the review, they may determine the review without further procedure.

Decision as to procedure to be followed

13.–(1) Where the local review body do not determine the review without further procedure, the local review body may determine the manner in which the review to be conducted and are to do so in accordance with this regulation.

(2) The local review body may determine at any stage of the review that further representations should be made or further information should be provided to enable them to determine the review.

(3) Where the local review body so determine, the review or a stage of the review to be conducted by one of or by a combination of the procedures mentioned in paragraph (4).

(4) The procedures are –

- (a) by means of written submissions;
- (b) by the holding of one or more hearing sessions; and
- (c) by means of an inspection of the land to which the review relates.

...

Decision Notice

21.–(1) The local review body must –

- (a) give notice ('a decision notice') of their decision to the applicant; and
- (b) notify every person who has made (and not subsequently withdrawn) representations in respect of the review that a decision on the review has been made and where a copy of the decision notice is available for inspection.

(2) A decision notice must, in addition to the matters required by section 43A(12) of the Act –

- (a) in the case of an application for planning permission –
 - (i) include the reference number of the application;
 - (ii) include a description of the location of the proposed development, including where applicable, a postal address;
 - (iii) include a description of the proposed development (including identification of the plans and drawings showing the proposed development) for which planning permission has been granted, or as the case may be, refused;
 - (iv) include a description of any variation made to the application in accordance with section 32A of the Act;
 - (v) specify any conditions to which the decision is subject;
 - (vi) include a statement as to the effect of section 58(2) or 59(4) of the Act, as the case may be, or where the planning authority have made a direction under section 58(2) or 59(5) of the Act, give details of that direction;
 - (vii) if any obligation is to be entered into under section 75 of the Act in connection with the application state where the terms such obligation or a summary of such terms may be inspected; and
 - (viii) include details of the provisions of the development plan and any other material considerations to which the local review body had regard in determining the application;

...”

Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment

“Whereas:

...

(16) Effective public participation in the taking of decisions enables the public to express, and the decision-maker to take account of, opinions and concerns which may be relevant to those decisions, thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues and support for the decisions taken.

(17) Participation, including participation by associations, organisations and groups, in particular non-governmental organisations promoting environmental protection, should accordingly be fostered, including, *inter alia*, by promoting environmental education of the public.

(18) The European Community signed the UN/ECE Convention on Access to Justice in Environmental Matters (the Aarhus Convention) on 25 June 1998 and ratified it on 17 February 2005.

(19) Among the objectives of the Aarhus Convention is the desire to guarantee rights of the public participation in decision-making in environmental matters in order to contribute to the protection of the right to live in an environment which is adequate for personal health and well-being.

(20) Article 6 of the Aarhus Convention provides for public participation in decisions on the specific activities listed in Annex I thereto and on activities not so listed which may have a significant effect on the environment.

(21) Article 9(2) and (4) of the Aarhus Convention provides for access to judicial or other procedures for challenging the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of Article 6 of that Convention.

...

Article 1

1. This Directive shall apply to the assessment of the environmental effects of those public and private projects which are likely to have significant effects on the environment.

...

Article 11

1. Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned:

(a) having a sufficient interest, or alternatively;

(b) maintaining the impairment of a right, where administrative procedural law of a Member State requires this as a precondition;

have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive.

2. Member States shall determine at what stage the decisions, acts or omissions may be challenged.

3. What constitutes a sufficient interest and impairment of a right shall be determined by the Member States, consistently with the objective of giving the

public concerned wide access to justice. To that end, the interest of any non-governmental organisation meeting the requirements referred to in Article 1(2) shall be deemed sufficient for the purpose of point (a) of paragraph 1 of this Article. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of point (b) of paragraph 1 of this Article.

4. The provisions of this Article shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.

Any such procedure shall be fair, equitable, timely and not prohibitively expensive.”

Submissions for the parties

[5] All parties helpfully submitted very full and detailed notes of argument for this court. These form part of the court process, and, while we have of course given full consideration to each of them, we do not consider that any purpose would be served by seeking to repeat them here. The following is intended to be merely a summary of the salient points in the submissions for each party, both written and presented at the bar.

Submissions for the appellant and claimer

[6] Senior counsel for the claimer began by pointing out that the statutory scheme provided by sections 43A and 43B of the 1997 Act (as amended), and the 2008 Regulations, for challenge to the decision of an appointed person is by way of review by an LRB. Unlike the previous procedure in which a challenge to a planning decision by a planning authority would usually be determined by a professional report with planning expertise, the new regime provides for the challenge to be determined by elected members of the local authority, who may have no planning expertise or experience. An appeal from the decision of an LRB lies to this court in terms of section 239 of the 1997 Act. Neither the term “review” nor the term “appeal” are defined in the legislation and section 239 does not specify the scope of such an appeal. It is therefore a matter for the court to interpret these terms against the statutory background, the background of EU law and parties’ convention rights. She drew our attention to

regulation 21 of the 2008 Regulations, which describes what the LRB's decision notice must contain, and in particular to paragraph (2)(viii) thereof.

[7] It is common ground between the parties to these proceedings that, because of the height of the turbines in the proposed development, the development was subject to the Public Participation Directive (Directive 2011/92/EU) ("the PPD"). She drew our attention to paragraphs (16) to (21) of the recital to that directive, and to paragraph 1 of article 11. Three important points arose from article 11:

- (i) The structure which is required is a review of a decision. It must therefore be available after the decision of the appointed person.
- (ii) What is required is review by an independent and impartial body. A LRB is neither independent nor impartial.
- (iii) The court is independent and impartial, but it does not carry out a full substantive and procedural review. In these circumstances, in order to comply with the requirements of article 11, the LRB must carry out a full substantive and procedural review.

[8] In this regard senior counsel drew our attention to the decision of the court of appeal in *R (Garner) v Elmbridge Borough Council* [2012] PTSR 250, particularly at paragraphs 32 and 39; articles 47, 51.1, 52.3 and 52.7 of the Charter of Fundamental Rights of the European Union, and *R (Alconbury Ltd) v Environment Secretary* [2003] 2AC 295, at paragraphs 24, 29, 33/35 and 152. In order to comply with these, it is important that safeguards are maintained at the stage of the LRB review, and when this court on appeal considers the LRB's decision it must bear these safeguards in mind. These safeguards include a full opportunity to present any relevant evidence, an opportunity for submissions, fair procedure, and a decision which contains findings in fact, a summary of the evidence on which these findings in fact are based, details of the LRB's assessment of the findings in fact and the planning issues involved, and the reasons for the decision.

[9] In the present case, there were no verbatim records of the LRB's proceeding on 18 February 2013, but the agenda for the meeting indicated what documentation was before the LRB, and there was a summary of the LRB's discussion taken by the clerk attending the meeting. Under reference to *County Properties Ltd v The Scottish Ministers* 2002 SC 79 (paragraphs [18] and [19]) senior counsel emphasised that there must be safeguards in the decision making process that is eventually considered by the court, and these safeguards must be met. An example of a procedure which meets the necessary safeguards was a decision by a reporter appointed by the Scottish Ministers in a differer

application for the erection of two wind turbines dated 17 July 2014 (PPA-170-2090), which demonstrates that the safeguards can easily be met and that they do not amount to an overly exacting standard. Senior counsel observed that the court's appellate jurisdiction can in principle be wide enough for the system to be compatible with the requirements of article 11, but only if an intense degree of scrutiny is exercised by the court hearing the appeal. This intense scrutiny must require the LRB to meet the safeguards already identified. The court must look very carefully at the LRB's findings of fact. Although not binding on this court, the findings and recommendations of The Aarhus Convention Compliance Committee with regard to communication ACCC/C/2008/33 concerning compliance by the United Kingdom were of persuasive authority. Senior counsel drew our attention in particular to paragraphs 3 and 125 of the document. The views of the Aarhus Convention Compliance Committee were considered by the Court of Appeal in England in *R (Evans) v Secretary of State for Communities and Local Government* [2013] EWCA Civ 114 at paragraph 37. This makes the point that there can be varying intensities of review in Judicial Review proceedings – a point which is also made by the UK Supreme Court in *Kennedy v Charity Commission* [2014] 2WLR 808 at paragraphs 51 - 54. The court requires to apply an intense level of review and to subject the decision of the LRB to a more rigorous examination. The Lord Ordinary did not do this in the present case and, in the circumstances, he erred in failing to do so.

[10] Senior counsel referred to 10 circumstances which she submitted pointed to the need for an intense level of scrutiny by the court:

- (i) The LRB was not independent and impartial. Both it and the appointed person are part of the same council. Both the respondent and the Lord Advocate concede that the LRB is not independent and impartial for article 6 purposes.
- (ii) The LRB is composed of local politicians, not adjudicators or judicial office holders.
- (iii) There is no requirement of planning expertise for election as a councillor (in contrast to reporters who are expert planning officials).
- (iv) The LRB was overturning a fully reasoned decision of a planning officer who had planning expertise.
- (v) The LRB's decision affected fundamental rights, including homes of nearby residents, the interested party's possessions and rights to fairness. Proportionality of energy yield, landscape impact, and the effect of the local community were an issue.

- (vi) The scale of the development – two very large turbines.
- (vii) The time period of the development – a minimum of 25 years.
- (viii) The sensitive nature of the site.
- (ix) The planning history of the site. There had been three previous refusals of this type of development in that location, and the LRB's decision was contrary to these.
- (x) The policy memorandum for the 2006 Act indicated that three important aims of the LRB system were transparency, openness and accountability. This required a robust level of review.

In light of all these circumstances, the LRB must conduct a full, substantive review to the standards discussed in *County Properties v Scottish Ministers*. Moreover, this court must apply a high intensity of review, and consider whether the Lord Ordinary adopted the correct approach. The LRB did not conduct a *de novo* review. It set out its entire reasoning in the first four paragraphs of page 3 of its decision letter. The LRB ignored some relevant policies and did not look at all matters as if raised at first instance. The proceedings did not have the necessary *quasi-judicial* character – approval was given after a 3:2 vote of local politicians, after brief consideration in the course of a busy meeting which had a lot of other business to consider. There was no site visit, and the LRB heard from nobody except the council's planning adviser and legal adviser. As discussed further below, a full opportunity was not provided to all parties to present relevant evidence and submissions. There were no findings in fact, no summary of evidence and no assessment of findings in fact. The necessary foundations or "building blocks" for the decision were not present. Senior counsel compared the decision letter of the LRB with that of the planning officer's decision letter dated 3 October 2012 in the present case, and with several decision letters by reporters appointed by the Scottish Ministers in other wind turbine applications, and observed that a more detailed and rigorous approach was taken in those decision letters than that taken by the LRB in the present case. The Lord Ordinary's conclusion that the LRB's decision was lawful arose from his view (at paragraphs [44] – [46] of his opinion) that the LRB was conducting a more limited review than the exercise carried out by a reporter. The Lord Ordinary erred in his interpretation of the statute in this respect, and did not have regard to EU law.

[11] Senior counsel submitted that the statutory regime governing LRBs is capable of being interpreted compatibly with the convention and with EU law, provided that such an interpretation allows for a *de novo* review by the LRB and compliance with the requirements already discussed. The problem in this case arises from the

Lord Ordinary's error in interpretation, not in the legislation itself. However, if this submission is wrong, and the legislation cannot be interpreted so as to be compatible with EU and convention rights obligations, sections 43A and 43B, 47(1A), 237(A) of the 1997 Act, and the 2008 Regulations, the 2013 Regulations of the same name and certain other more recent regulation would all be outwith legislative competence by reason of section 29(1) and (2)(d) of the Scotland Act 1998, and this raises a devolution issue in terms of schedule 6 part 1 to that Act. If the interpretation which she urged on the court was correct, no such devolution issue arises.

[12] Next, senior counsel turned to look at the several grounds of appeal against the LRB's decision, which are set out more fully at pages 20-38 of her note of arguments (at paragraphs 33-61). These were as follows:

(1) The council failed to take into account a material consideration, namely its own technical guidance note ("TGN") which indicated that there was no scope for medium or large turbines in this location. The Lord Ordinary erred in law in failing to find that the TGN was a material consideration, and further in assessing whether it would have made a difference to the decision. In terms of section 24 of the 1997 Act, supplementary planning guidance becomes part of the Development Plan. When the TGN became supplementary planning guidance, it was therefore part of the Development Plan. It was a material consideration before it became supplementary planning guidance. At the time that the LRB was reaching its decision, the TGN was being used by planners as an aid, it was being used by the council, and was publicly available on its website. It became part of the Development Plan in December 2013. Senior counsel referred to Regulation 21 (2) of the 2008 Regulations, to Scottish Planning Series Circular 4 2009: *Development Management Procedures*, and to *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759 per Lord Hoffmann at 780. The TGN addressed a particular problem associated with the sensitivity of particular sites to particular heights of turbines. This was an issue which had not been covered in any previous documents; it was not addressed in the Report on Handling nor was it otherwise before the LRB. This was a matter which had been taken into account by reporters in other applications; the fact that the TGN addressed issues of the height of turbine blades in areas of varying sensitivities was material, was not dealt with anywhere else and ought to have been taken into account by the LRB. The Lord Ordinary fell into error in three respects in paragraph [47] of his opinion – (i) in accepting that the TGN was not a policy document at that time, (ii) in accepting

that although it had been used by planning officers and had been found to be useful, that was as part of a trial process, and (iii) that the LRB took account of the various matters contained in the TGN, and in failing to appreciate that the TGN goes further than any other documentation available at the time. In all these circumstances, the decision of the LRB was *ultra vires* for not having had regard to material consideration.

(2) Cumulative impacts.

The LRB made no findings on cumulative impacts and accordingly did not apply Policy I20 of the Scottish Borders Structure Plan, which was part of the Development Plan. The LRB were required to have regard to this (sections 25 and 37(2) of the 1997 Act). Policy I20 provided that proposals for wind energy developments will be assessed against six specified criteria. The last of these was “any unacceptable cumulative impacts”. The LRB required to assess the issue of cumulative impacts and explain their reasoning on this matter (*Moray Council v Scottish Ministers* 2006 SC 691 at paragraph [36]), but they did neither. They did not make any reference to, or findings about, cumulative impacts, which are a different consideration from “visual and landscape impacts”. The first of the criteria listed in Policy I20 relates to impact on the landscape character of the area; the last of the listed criteria is “any unacceptable cumulative impacts”. The respondents’ own supplementary planning guidance on wind energy dated May 2011 emphasises (at paragraph 7.15) that the assessment of cumulative impacts is particularly relevant to small scale wind energy developments, and that cumulative impact is a different criterion from visual and landscape impact. Senior counsel referred to examples of decisions by reporters appointed by the Scottish Ministers in which cumulative impact has been assessed separately from impact on landscape character. In the present case, the LRB decision notes (but does not adopt) the appointed person’s findings and does not contradict his assessment of landscape and visual impact, but makes no conclusion about cumulative impact. This is despite the recommendation in the appointed person’s report that the proposed development was contrary to *inter alia* Policy I20 and that the potential cumulative landscape and visual impact of the development with other approved schemes and those pending decision would give rise to a poorly planned, piecemeal form of wind energy development which would prejudice the integrity of nearby landscapes. In light of this, the LRB

required to explain why it reached a different view, and did not consider that Policy I20 was breached. There is a lack of assessment and a lack of reasons. The Lord Ordinary erred in law in his treatment of this issue at paragraph [48] of his opinion. Although Policy I20 is referred to in the LRB decision letter, it is not the subject of any reasoned assessment. The Lord Ordinary also erred in stating in that paragraph that

“since the LRB agreed with the ultimate findings of the appointed person in relation to adverse impact, it was, in my view, unnecessary for the LRB, in that regard, to make separate findings of its own”.

The appointed person rejected the application for permission because of his findings on adverse impact; the LRB did not agree with him in this respect, but did not explain why.

(3) Residential amenity and the presumption of a two kilometre separation distance from residential settlements.

Policy H2 of the Local Plan provides that development that is judged to have an adverse impact on the amenity of existing or proposed residential areas will not be permitted. Scottish Planning Policy 2010 recommends (at paragraph 190) a separation distance of up to two kilometres between areas of search and the edge cities, towns and villages. The respondents' supplementary planning guidance on wind energy dated May 2011 provides (at point 10 on page 37) that there would be an initial presumption against any turbine within this distance from any residential area unless an applicant can confirm factors such as scale, location and intervening landform can allow support. The claimant lives about one kilometre from this site and there are about 300 houses within two kilometres of it. Despite this, there is no discussion of residential amenity nor of the two kilometre presumption in the LRB decision letter. Although Policy H2 is mentioned, there are no findings as to the numbers of properties within two kilometres of the site nor why the presumption is overcome – despite the fact that the appointed person records that one turbine would be approximately 1200 metres from the fringe of Cockburnspath village and the second turbine would be 1050 metres from that fringe, and that he concludes that the height and scale of the development render it disproportionate to the scale and nature of the local landscape and the local topography is not capable of successfully containing the development from a high number of visual receptors.

The Lord Ordinary erred in his consideration of this issue in paragraph [49] of his opinion. Although he stated that the appointed person dealt fully with the issue, there is no mention in the Report on Handling of the presumption against such development within two kilometres from any residence, despite this being included in the supplementary planning guidance and accordingly forming part of the Development Plan. The Lord Ordinary was also in error in the last sentence of paragraph [49] in stating that it is not incumbent on a decision maker to refer in its reasons to every material consideration – Regulation 21(2)(a)(viii) requires the LRB to include details of the provisions of the Development Plan and any other material considerations to which it had regard in determining the application. This is a more stringent requirement than that which applies to other decision makers. The reason for this is to make the LRB procedure more open and accountable and to make allowance for the fact that the professional reporter has been removed from the system. The LRB failed to address residential amenity or policy H2 at all.

(4) Economic benefit.

Policy D4 of the Local Plan deals with renewable energy development. The final sentence of that policy states that

“if there are judged to be significant adverse impacts that cannot be mitigated the development will only be approved if the Council is satisfied that the contribution to wider economic and environmental benefits outweighs the potential damage to the environment or to tourism and recreation.”

This requires the decision maker to make findings as to what significant adverse impacts arise from the proposal, what the overall economic benefits are, and to proceed to carry out a balancing exercise (and to go on to balance and apply this policy with other relevant policies). The LRB failed to interpret and apply this policy in several respects. Its findings on economic benefit are in a total of six sentences, which contain two material errors of fact – (a) they stated that the turbines would assist the business in reducing its energy requirements, which it would not, and (b) they stated that “members were also aware that the quarry had permission for a major expansion of its extraction operations”, but there has been no approved application for Kinegar Quarry which is the quarry situated on Neuk Farm. Moreover, the LRB made inadequate findings on adverse impact, and inadequate findings on economic benefit. The LRB did not specify which businesses they were satisfied that the proposed turbines would help to sustain, nor the size of

the business, nor the number of people it employed, nor what were its expansion plans. There were no findings as to the use of energy by that business, nor as to how that use related to what would be generated (it being noteworthy that the environmental statement indicated that no new jobs would be created and only 6% of the energy generated would be used by the business in the first instance). Moreover, the LRB did not attempt to assess any adverse economic effects arising from the proposal, including reduced house prices in the residential areas close to the development. By failing to make adequate findings on adverse impacts and economic benefit, by taking into account incorrect facts, and by failing to take into account economic disbenefits, the LRB was unable to carry out a proper balancing exercise as required by Policy D4. Without the necessary findings in fact, the court cannot properly carry out its function; it cannot know what was on each side of the equation in order to decide if the inferences drawn by the LRB are acceptable.

The Lord Ordinary erred in relation to this ground of appeal in his treatment of it at paragraph [50] of his opinion. An informed reader would not be able to understand the reasoning of the LRB on economic benefits because of the inadequacies of findings in that regard. The Report on Handling made no finding as to economic benefits or disbenefits. An informed reader should not be required to research more widely, otherwise the system is not EU and convention compliant. The Lord Ordinary also erred in his findings in respect of the absence of a site visit (on which see further below).

(5) Proportionality.

This was raised by the claimant in her original letter of objection, and so was before the LRB, but the LRB did not consider this matter at all. The environmental statement submitted in support of the proposed development indicated that only 6% of the energy to be generated by the development was required for Kinegar Quarry's current energy usage; why were turbines as high as 110 metres necessary or proportionate in this site, when the TGN had identified many other possible sites for wind energy development? Senior Counsel submitted that whether a measure is proportionate

“depends on an exacting analysis of the factual case advanced in defence of the measure, in order to determine (i) whether its objective is sufficiently important to justify the limitation of a fundamental right; (ii) whether it is rationally connected to the objective; (iii) whether a less inclusive measure

could have been used; (iv) whether, having regard to these matters and to the severity of the consequences, a fair balance has been struck between the right of the individual and the interest of the community “ – *Bank Mellat v HM Treasury* [2014] AC 700 at paragraphs 20 and 74.

In the present case, how can such an intrusive development be justified if only 6% of the energy generated will be used in the quarry? Why could smaller, less intrusive turbines not be used, which would have less impact on residential amenity? It is impossible to ascertain from the LRB’s decision letter how it reached its conclusion on proportionality. Senior counsel referred to Reed and Murdoch, *Human Rights Law in Scotland, (Third Edition)* at paragraph 6.51, to the effect that the European Court of Human Rights expects domestic decision-makers to show that they have addressed the test of proportionality in assessing whether the relationship between the action taken and the aim of the intervention is acceptable. Whilst it may not be necessary for the LRB to carry out a separate proportionality exercise (*Lough and others v First Secretary of State* [2004] EWCA Civ 905) it still had to show that it had properly addressed the issue of proportionality. It failed to do so and accordingly the Lord Ordinary erred in his consideration of this issue at paragraph [51] of his opinion.

(6) Natural justice.

This fell into two parts – (a) no fair hearing or reasonable opportunity for the appellant to make representations, and (b) no site visit. On these matters the court must determine for itself whether a fair procedure was followed – its function is not merely to review the reasonableness of the decision maker’s judgement of what fairness required – *In Re Reilly* [2013] 3 WLR 1020 per Lord Reed JSC at paragraph 65 *et seq.* Senior counsel did not suggest that there had to be an oral hearing before the LRB, but there must be a proper opportunity for parties to make their case before the LRB. In support of this senior counsel referred to *R (Khatun) London Borough of Newham* [2005] QB 37 at [30] per Laws LJ:

“a right to be heard can be inserted or implied into the statutory scheme not by virtue of the statute’s words, but by force of our public law standards of fairness”,

and *Pairston Crofters v Scottish Ministers* 2013 SLT 308 per Lord President Gill:

“The specific duties that the Act lays upon (the decision maker) in their consideration of an application are in a sense minimum requirements. They have other more general duties under administrative law. At common law, any public body that makes a decision affecting an individual must follow the procedure prescribed by statute and must observe such additional procedural safeguards as are necessary to attain fairness.”

Senior counsel referred to paragraph [19] of *County Properties Limited v The Scottish Ministers*, and submitted that the whole thrust of the PPD was to enable the public to present a case. The letter from the clerk to the claimer dated 8 January 2013 did not give the claimer a reasonable right to be heard before the LRB. It stated *inter alia* as follows:

“The meeting will be held in public and any person can attend and listen to the review. However, there is no right to be heard at this meeting. The Local Review will be considered on the basis of the information and documentation submitted with the Notice of Review. There is no opportunity to raise matters or submit further documents unless the review body requests further written evidence, or information is requested as part of a hearing session, or where by virtue of section 43B of the Act it can be proven that the matter could not be legitimately raised before that time or that it is a consequence of exceptional circumstances.”

This letter was liable to confuse a lay person; the natural inference was that the claimer could not make any further representations. She had no reasonable opportunity to comment on the review documentation, including the new evidence about noise referred to in the decision letter, nor to raise matters such as the TGN.

It was also a breach of natural justice for the LRB not to carry out a site visit particularly because the issue of visual and cumulative landscape impact was so important in this decision. A site visit is valuable in giving a factual underpinning to findings – *Moray Council v Scottish Ministers* 2006 SC 691 at paragraph 36. A previous application for two wind turbines on this site had been considered by an LRB and refused on 7 March 2011. On that occasion the LRB held an unaccompanied site visit and following their return from this they determined to refuse permission. It was clear that the site visit was central to their assessment. It is normal for reporters to hold a site visit. The LRB on this occasion gave no reason

for deciding not to hold a site visit. The Lord Ordinary erred in law in his treatment of these breaches of natural justice at paragraph [52] of his opinion.

(7) Reasons

Senior Counsel submitted that there was an absence of proper and adequate reasons from the LRB on all of the foregoing grounds. It was not acceptable to have to glean matters from other documents (unless the LRB adopted particular findings as being equivalent to making their own findings in fact). The LRB was under a statutory duty to give reasons – section 43A(12)(a) of the 1997 Act and Regulation 21(2)(a)(viii) of the 2008 Regulations. Because this is a decision *de novo* the decision notice should contain findings on visual impact, economic benefits, and reasons for conclusions. The appointed person in his Report on Handling concluded that several Development Plan policies were breached; there is no explanation given by the LRB as to why they concluded that these policies were not breached. The LRB failed to comply with the requirements of the legislation; accordingly, their decision is not within the powers of the 1997 Act, and it should be quashed in terms of section 239. The standard of reasons in this decision letter is so inadequate as to raise a real and substantial doubt as to what the reasons for it were and what were the material considerations which were taken into account in reaching it – *Di Ciacca v The Scottish Ministers* 2003 SLT 1031 at paragraph [16].

For all these reasons senior counsel for the claimer submitted that the multiple errors and failures by the LRB were not trivial, and that the LRB's decision should be quashed.

-

Submissions for the respondents

[13] In moving for refusal of the reclaiming motion counsel for the respondents began by reminding us that the court is concerned only with the legality of the LRBs' decision, not with the planning merits; matters of planning judgment are "within the exclusive province" of the decision maker – *Tesco Stores Limited v Secretary of State for the Environment* [1995] 1 WLR 759 per Lord Hoffmann at 780.

[14] Counsel submitted that the criticisms levelled at the LRBs' decision by the claimer amount to a challenge to the reasons given; there was no need for this court to examine the issue of compatibility with EU or ECHR law. Moreover, the argument that section 43A(12) imposed a particularly stringent obligation on the LRB to give reasons proceeded on the basis of a misapprehension as to the notice to which that sub-section

applied. The term “review documents” was defined in Regulation 2 of the 2008 Regulations; these are the documents which the LRB must consider, and which must be made publicly available. There was no requirement for the LRB to state all its reasons – the Lord Ordinary, as an informed reader, was entitled to go beyond the decision itself to ascertain from the documents referred to the details of the LRB’s reasoning. It was clear from the paragraph on page 1 of the LRB’s decision letter headed “Preliminary Matters” what documentation was considered by the LRB. This complied with the requirements of the 2008 Regulations, and no further documents or procedure were required; it was a matter for the LRB to decide how much information they needed to enable them to assess and decide upon this application, this being a question of planning judgement – *Simson v Aberdeenshire Council* 2007 SC 366 at paragraph [23]. The LRB were entitled to reach the view that there was adequate economic justification for the development in the review documents – particularly in the February 2012 Environmental Statement at paragraphs 3.1.1 – 3.1.18, and in the Notice of Review dated December 2012, at paragraphs 3.7.1 – 3.7.6.

[15] In responding to the claimer’s specific criticisms of the LRB’s decision, counsel addressed first the TGN. He submitted that the Lord Ordinary was correct in holding that the TGN did not count as policy at the time of the LRB’s decision, and further that it was not in itself a material consideration. It did not amount to supplementary guidance in terms of section 22 of the 1997 Act. This was made abundantly clear by planning Circular 1 of 2009, particularly at Policies 93 and 99. It was only adopted as council policy in December 2013. At the time of the LRB’s decision it was internal guidance, and was only being worked up towards being a material consideration. It was, however, available to the public and the claimer could – had she sought to rely on it as relevant new material - have placed it before the LRB but did not so. It was not placed before the LRB and was not considered by them.

[16] Moreover, the Lord Ordinary was correct to consider whether, even if the TGN was a material consideration, what difference it would have made to the LRB’s decision if it had been before them. The information in the TGN was available elsewhere (the Borders Landscape Assessment compiled by ASH Consulting Group in 1998 at page 137). The TGN only comprised illustrative guidance and did not amount to a prohibition of development on this site. Counsel referred us to the observations of Glidewell LJ in *Bolton Metropolitan Borough Council v Secretary of State for the Environment* [1991] 61 P & CR 343 at 352, and the decision of this court in *Bova v The Highland Council*

2013 SC 510. The Lord Ordinary was correct to consider this, and moreover his conclusion on this was sound.

[17] With regard to cumulative impact, the LRB stated that they had taken into account Structure Plan Policy I20, and also Scottish Planning Policy (paragraphs 182-195), in which cumulative impact was expressly dealt with. It was clear from this, and from the reference to the Report on Handling, that the LRB were aware of the difference between landscape and visual impact on the one hand and cumulative impact on the other. That these were separate issues was made clear in the report by the appointed person at page 9. The LRB accepted the appointed person's findings and conclusions of adverse impact, but in their judgment the economic benefits in terms of Local Plan Policy D4 outweighed these.

[18] With regard to residential amenity and the "presumption" for a separation distance of up to two kilometres between areas of search and the edge of cities, towns and villages, this is not mentioned anywhere in Policy H2 of the Local Plan. It is a recommendation in paragraph 190 of Scottish Planning Policy 2010, but this is in relation to guidance in identifying areas of search. It was expressly stated not to impose a blanket restriction on development, and was giving guidance to the drafters of the Development Plan. The Local Plan in this case was adopted after the Scottish Planning Policy and, understandably, did not repeat this guidance. The respondents' supplementary planning guidance on wind energy published in May 2011 was the non-statutory type of supplementary guidance, and did not form part of the Development Plan. It is clear from the site description in the Report on Handling that information as to the distance between the turbines and the village was before the appointed person and before the LRB.

[19] Turning to economic benefit and the LRB's assessment under Local Plan Policy D4, neither of the complaints made by the claimer as to errors of fact stand up to scrutiny. The criticism that the turbines would not in fact assist the business in reducing its energy requirements was a matter of semantics – it was clear what the LRB meant by this. With regard to the assertion that the quarry did not have permission for major expansion of its extraction operations, this was a misunderstanding on the part of the claimer. Counsel referred us to the reference in the Report on Handling to the planning history, which stated that there were three items relevant to the current application. One of these was 09/00125/MIN, which was an application for extraction of sand and gravel and formation of an access track at the nearby Fulfordlees Quarry. This was owned by the same quarry business, and it had been approved and development

had commenced. It was therefore wrong to suggest that the LRB had made an error of fact.

[20] Turning to the issue of proportionality, counsel began by referring us to Scottish Planning Series Circular 4/2009, and to paragraph 6 of this which states:

“The planning system operates in the long term public interest. It does not exist to protect the interests of one person or business against the activities of another. In distinguishing between public and private interests, the basic question is whether the proposal would unacceptably affect the amenity and existing use of land and buildings which ought to be protected in the public interest, not whether owners or occupiers of neighbouring or other existing properties would experience financial or other loss from a particular development.”

Counsel also relied on the decision of the Court of Appeal in *Lough v First Secretary of State* [2004] 1 WLR 2557, and particularly the observations of Pill LJ at paragraphs 45/46 and 49-51. Possible diminution in the value of the claimer’s home – which she said, at the protective expenses hearing, was not her property but that of her husband - or in the value of the properties of other residents, is not relevant in this context.

[21] With regard to the claimer’s complaints about breach of natural justice, it was important to bear in mind that she was not the applicant in these proceedings, but an objector. In terms of the statute, if the planning officer had granted permission for this development, she would have had no right to go to the LRB; her only remedy would have been to seek judicial review in this court. She did have a right to be heard, but this right was fulfilled by the proceedings before the planning officer, and the letter from the clerk to the LRB to her dated 8 January 2013, which complied with section 43B of the 1997 Act and paragraph 12 of the 2008 Regulations. There was no great factual dispute between the parties; it was reasonable for the LRB not to ask for further written representations and not to hold a hearing. A site visit is not required in every case (*Simson v Aberdeenshire Council*) and this was accepted on behalf of the claimer. Moreover, it was the developer, not the claimer, who requested the LRB to go on a site visit. The LRB relied on photographic slides, and on their own knowledge of the area as local councillors (in which respect they differ from reporters, who are not generally familiar with the locality and so are more likely to require a site visit). In any event, the LRB agreed with and adopted the findings of the planning officer on visual matters, so a site visit would have made no difference to their decision.

[22] Turning to the claimer's attack on the LRB's reasons, and the approach of the Lord Ordinary to the adequacy of these, the same considerations apply to this case as apply to any other planning appeal. Senior counsel for the claimer suggested that when the Lord Ordinary referred in his opinion to review rather than appeal, he was taking a more limited view of the requirement for reasons, but it is clear from his opinion that he referred to the usual authorities in relation to adequacy of reasons. As this was the first scrutiny of the court of a decision of an LRB, the Lord Ordinary was simply using the term to describe that body.

[23] The claimer's argument is really a challenge to the adequacy of reasons. The Lord Ordinary looked at the LRB's decision, but he considered that he was able to go behind that decision to the facts which were before the LRB. He did not apply any lesser standard. He accepted the submission by the respondents and the interested party that the LRB had undertaken the decision making process *de novo*, but he was entitled to look to the Report on Handling and the other review documents to find the LRB's findings in fact. It is clear that the LRB examined the facts and came to a different view from that taken by the planning officer; they did not state much by way of findings in fact because there was no disagreement with the planning officer and no dispute on the evidence. They simply reached a different view on the balancing exercise which they required to carry out.

[24] Senior counsel for the claimer had submitted that the Lord Ordinary and this court should apply a high degree of scrutiny. Counsel accepted that there must be sufficient scrutiny, but the intensity of review does depend on the individual context – *Kennedy v Charity Commission* at paragraphs 53/54. In the present case there was no requirement for a higher degree of scrutiny than in any other judicial review of planning appeals of this nature. As already discussed, matters of planning judgement are not for the court to examine, but matters of procedure are. The Lord Ordinary applied the necessary intensity of scrutiny, which was not different from the level of scrutiny of procedures in other planning appeals.

[25] With regard to the potential devolution issue, senior counsel for the claimer maintained that the LRB procedures and system can be interpreted as being compatible if the LRB takes a *de novo* approach and examines issues with a sufficient degree of scrutiny; the first instance decision and the review would be compatible if the safeguards referred to in paragraph [19] of *County Properties Ltd v The Scottish Ministers* were present. It was accepted on behalf of the claimer that the procedures would be compatible if the Report on Handling and the LRB decision notice complied with these

safeguards. Counsel submitted that the issue does not arise, because matters can be dealt with by the normal principles of judicial review. In any event, as the claimer was not the applicant in the relevant proceedings but an objector, she had no right to seek a review by the LRB. If the LRB had refused to review, the applicant might perhaps be able to argue a case of a lack of impartial and independent review. That is however not the situation here. This court does not need to undertake an academic exercise of looking at the whole system and assessing its compatibility with EU or ECHR law. The devolution issue does not arise.

[26] What the claimer's position amounts to is that the LRB decision notice was inadequate for not specifying which part of the planning officer's report it disagreed with. That is a challenge to the adequacy of its reasons. It does not require a high intensity of scrutiny to consider this issue.

Submissions for the interested party

[27] Senior counsel for the interested party adopted the submissions for the respondents. His primary submission was that this case was concerned with a challenge to the adequacy of reasons – nothing more and nothing less. That arises in the traditional judicial review context. In that context, only two questions arise –

(1) Within the arrangements for the functioning of LRBs, is one entitled to have regard to both the reasoning of the LRB and the reasoning in the Report on Handling?

The Lord Ordinary answered this question in the affirmative, and senior counsel submitted that he was correct to do so.

(2) Were the reasons given by the planning authority adequate to render the decision to grant planning permission for this development lawful?

Properly understood, senior counsel submitted that the reasons given were adequate, and the reclaiming motion must fail.

[28] Senior counsel considered the correct approach to the function of an LRB. Under the traditional system, applications for planning permission were considered by a planning officer, who prepared a report with recommendations for the planning committee. The committee would then decide whether to grant permission or not. The decision of the committee was that of the planning authority. If planning permission was granted, the only remedy for an aggrieved objector was judicial review – a statutory appeal was only available to the applicant. This system was the same in other parts of the United Kingdom, and it had never been suggested that there should be a greater intensity of review; the normal grounds for seeking judicial review applied. Since the

creation of LRBs, there remains this two-stage process, but with an additional opportunity to the applicant. Because this is a local development, the planning officer is empowered to determine the application, and that becomes the decision of the planning authority. If the planning officer refuses permission, the applicant (and only the applicant) is entitled to seek a review before the LRB, which makes the decision. There is therefore the same two-stage process; if the LRB grants planning permission, there is no mechanism for review on the merits. In another case, the issue may arise about the removal of the applicant's ability to appeal to the Secretary of State/ Scottish Ministers, but this issue does not arise in the present case.

[29] An application for a major development is still made in exactly the same way as before. It has never been suggested that this gives rise to a requirement for an enhanced level of scrutiny. If the argument for the claimer is correct, this would have the perverse result that there would be a higher level of scrutiny for local developments than for major developments. An objector has always had a right to seek judicial review, and it has never been suggested that this requires some enhanced level of scrutiny. Such a suggestion is not justified in relation to decisions of LRBs.

[30] The Lord Ordinary, in determining the reasons challenges raised by the claimer, required to consider the statutory context in which an LRB operates. He did this at paragraphs [44] to [46] of his opinion. He was correct to observe that there is no provision in section 43A of the 1997 Act to the effect that the LRB must not take into account the reasons given in the Report on Handling by the appointed person, or that these reasons cannot form part of the reasons on which an LRB bases its decision. The Lord Ordinary was also correct to find that, having regard to the statutory context by which the previous decision and the matters taken into account are easily accessible, it is unnecessary for an LRB to restate aspects of the decision of the appointed person which it accepts. An informed reader looking at the decision letter of the LRB would have regard to the conclusions and other material within the Report on Handling, and the documents referred to in the Report on Handling, as well as to the LRB decision itself.

[31] The purported devolution issue does not arise. The characterisation of the functions of an LRB was not material to the approach taken by the Lord Ordinary to the statutory context in which an LRB operates, nor to his acceptance that the reasons for a decision by an LRB can be found in the reviewed documents. This court can determine the reclaiming motion on the normal basis of an "adequacy of reasons" appeal. In any event, there has been no breach of convention rights or

EU Law in the LRB's determination. It did in fact determine the application for planning permission *de novo*. For a devolution issue to arise, the person raising it must be a victim. An objector to an application for planning permission is not a victim, as an objector did not have a right to appeal to a reporter against the grant of planning permission. That has been the position since the introduction of the modern planning system in the Town and Country Planning (Scotland) Act 1947, and in the equivalent regime in England and Wales. The claimer's argument (which was not raised before the Lord Ordinary) is to claim that the very existence of this system results in a breach of her convention rights. The claimer is not a victim; it might be argued that the situation was different for an aggrieved applicant. There is no scope for a devolution issue to arise in this case.

[32] Turning to the claimer's argument based on the PPD and the requirement that an intense degree of scrutiny is required, senior counsel observed that the decision of the LRB in this case was based on balancing visual/landscape and other adverse impacts on the one hand with economic benefit on the other. This is a familiar exercise for those charged with making such decisions. It is not an exercise for the courts. The decision of the LRB is subject to appeal to the Court of Session under section 239 of the 1997 Act. Scrutiny by the courts on the familiar grounds under that section, or in terms of judicial review procedure, is sufficient to satisfy the requirements of the PPD – *R (Evans) v The Secretary of State for Communities and Local Government* at paragraphs 32 – 43. No issue under the PPD arises in this case. Senior Counsel also observed that neither *Alconbury* nor *County Properties* were in point. The comments made by the Inner House in paragraph 19 of *County Properties* required to be read in the context of that case, which was presented by a disappointed applicant (not an objector) who challenged the independence and impartiality of a system which permitted ministers to make decisions on the basis of a reporter's report. Proportionality is achieved in our planning system if the decision maker properly takes account of the public interest and the rights of the individual. Neither EU nor Convention law adds to this – the question remains, have the decision makers done what they ought to have done?

[33] In turning to the specific grounds of appeal argued for the claimer, senior counsel reminded the court (under reference to *Wordie Property Co Ltd v Secretary of State for Scotland* 1984 SLT 345 at 348) that the decision maker must only give proper and adequate reasons for the decision which deal with the substantial questions in issue in an intelligible way: reasons are not required for every issue, however minor.

Moreover, the LRB decision letter must not be read as a contractual or conveyancing document, and it must be read through the eyes of an informed reader, aware of all the background facts and with access to all the relevant documents. It is necessary to look at the decision as a whole. By reason of section 25(1) of the 1997 Act, Development Plan policies have a rôle in the decision making process over and above other material considerations.

[34] This case is principally concerned with the Development Plan and the application of its policies. Structure Plan Policy E16 was not prohibitory but was subject to a caveat in relation to the Plan's other policies; the planning authority should therefore take account of the positive aspects of a development proposal. Policy I19 supports the development of renewable energy sources that can be developed in an environmentally acceptable manner; it too is not prohibitive. Policy I20 neither supports nor prohibits wind energy developments, but provides criteria for assessment. Local Plan H2 with regard to protection of residential amenity is however a prohibitory policy, as development that is judged to have an adverse impact on the amenity of existing or proposed residential areas will not be permitted. Senior counsel accepted that the current development has been judged to have an adverse impact on residential amenity by the planning officer. Local Plan Policy D4 was supportive of renewable energy development, if there are no unacceptable adverse impacts on the specified categories, or that any adverse impacts can be satisfactorily mitigated. The last sentence of the policy deals with the situation where it is judged that there are significant adverse impacts that cannot be mitigated. In such a situation the development will only be approved if the council is satisfied that the contribution to the wider economic and environmental benefits outweighs the potential damage to the environment or to tourism and recreation.

[35] This then is a case about the Development Plan, not about material considerations. The policy provides for a balance to be struck. This is a matter for planning judgement.

[36] It was clear from the paragraph at the foot of page 2 of the LRB's decision letter that the LRB were making their decision *de novo*. They considered all the review documentation listed at the foot of page 1 of the decision letter, and commented on the Report on Handling. They focussed on those areas in respect of which they reached a different conclusion from the appointed person. They were therefore reading into the decision letter what was said on the Report on Handling, and where they accepted a conclusion in the Report on Handling, they took this into

account (as they were entitled to) but did not need to refer to it. Although they considered the matter *de novo*, they did not require to give reasons in respect of aspects in which they agreed with the appointed person's conclusions. The balancing exercise under Local Plan Policy D4 was critical to their decision. Any reasonable informed reader would understand that the LRB accepted the planning officer's view that there would be significant landscape and visual impact; this makes sense, as this is one of the factors that triggers the balancing exercise in terms of Policy D4. The LRB then set out why they disagreed with the appointed person in the striking of the balance. They were entitled to reach a different conclusion on this balancing exercise from that which the appointed person reached. They did this in the fourth paragraph of page 3 of their decision letter, and they gave an adequate explanation for doing so. This does not leave the informed reader in any substantial doubt as to why they decided the matter in the way they did. They stated what they took into account, and they reached a different conclusion on the balancing exercise required by Policy D4 from the conclusion reached by the planning officer. That was all that was required.

[37] Turning to the individual criticisms raised by the claimer, senior counsel considered first the TGN. He submitted that it was not a material consideration. What the court had to assess was what the impact and significance of this material might have been. The planning officer in his Report on Handling took into account the sensitivity of this area, and found that the proposal would have a significant landscape and visual impact. The LRB agreed with this. The TGN adds nothing to this; the result reached by the planning officer and the LRB is exactly the result which would have been reached if the TGN had indeed been a material consideration. The planning officer found in the Report on Handling the fact "that the turbines would still become the single most dominant component of the Coastal Farmland (Cockburnspath) landscape character area". Moreover, the Borders Landscape Assessment carried out by Ash Consulting Group in 1998 dealt with this (at pages 39 and 137/8) and assessed internal intervisibility, external intervisibility and visual sensitivity in this area as high. Both the 1998 assessment and the Report on Handling were taken into account by the LRB. The material consideration was not the TGN document, but the significance of high sensitivity for a development of this nature in this area. This was clearly flagged up in both the Ash report and the Report on Handling.

[38] Senior counsel adopted the submissions on behalf of the respondents in respect of many of the other criticisms levelled at the LRB decision letter by the reclaimer. It was clear from both the Report on Handling and the LRB's decision letter that they considered cumulative impact and found that it was a significant adverse factor. Similarly with regard to residential amenity, the Report on Handling found a significant adverse impact. The LRB took this into account, and expressly took account of paragraphs 182 – 195 of Scottish Planning Policy. They agreed with the appointed person. Senior counsel adopted the submissions for the respondents with regard to proportionality; the LRB were entitled to reach the conclusion which they did, the UK planning system struck the balance correctly, and we are not involved in the present case in convention rights.

[39] With regard to natural justice, it was within the discretion of the LRB not to hold a hearing. They stated that they had sufficient information before them to enable them to reach a conclusion. There is no requirement for a hearing in every case – reporters too have a wide discretion as to the procedure which they wish to adopt. There was nothing in the point about a site visit. Again, the decision as to whether to hold a site visit was properly within the LRB's decision. In any event, they found that there was a high level of adverse visual and other impacts and agreed with the appointed person's conclusions in the Report on Handling; it cannot therefore be argued that the reclaimer suffered prejudice as a result of the LRB's decision not to hold a site visit. With regard to reasons, as already submitted, this reclaiming motion was entirely about adequacy of reasons, on which senior counsel had no additional submissions to make.

[40] The information about the economic benefits of the proposal was all to be found in the materials referred to in the LRB decision letter and the Report on Handling. There is no suggestion that the LRB made any error of fact. Senior counsel adopted the submissions with regard to economic benefit made on behalf of the respondents. All the information can be found in the environmental statement (in volume 1 at paragraphs 3.1.8 – 3.1.18 and in volume 3 at paragraphs 3.7.1 – 3.8.1 and 5.3.42. See also paragraphs 13.7.1 – 13.7.6, and paragraph 2.5.27 of volume 2). The LRB was also entitled to take account of the Notice of Review submitted to it by the interested party, and in particular the information contained at paragraphs 3.7.1 to 5.1.19. There was therefore a factual basis for everything contained in the fourth paragraph on page 3 of the LRB's decision letter.

[41] In answer to a question from the court as to how many jobs would be created by this development, senior counsel said that there was no information about this, but nobody had raised this as an issue at any stage. There was no contradictor. If there had been, the LRB would have had to give reasons for preferring one body of evidence to another. However, the LRB stated what the evidence was before them, and what they relied on. Without any contradiction on the matter, they were entitled to do so.

[42] Senior counsel submitted that when it came to the critical matter of the balancing exercise in terms of Policy D4, the Lord Ordinary dealt with this correctly at paragraph [50] of his opinion. There was no error of law, and the reclaiming motion should be refused.

Submissions for the Lord Advocate

[43] Senior counsel explained that the Lord Advocate's interest in this matter was confined solely to the possible devolution issue. She began by asking what was the devolution issue before the court. The Lord Advocate accepted that the stating of a devolution issue in the grounds of appeal in proceedings such as these is equivalent to raising the matter in the principal writ, under reference to Rule of Court 25A.4.

[44] A question had arisen as to whether the devolution issue was specified in sufficient detail in the grounds of appeal. After a hearing on 24 June 2014, a joint minute (number 33 of process) was agreed between the claimer and the Lord Advocate as to the scope of the potential devolution issue. Read short, the claimer's position was that it is not part of the claimer's case that the system for the review of delegated decisions in relation to local development by LRBs is inevitably incompatible with convention rights or EU law, but rather that it is incompatible if the governing legislation is interpreted and given effect to in the way the Lord Ordinary did. The claimer's position before this court remained that the legislation was capable of being read as compatible with convention rights and EU law; on no view does the claimer's position amount to a challenge to the compatibility of LRB procedure with EU law and convention rights. The claimer does not seek a declarator of incompatibility; it was argued on her behalf that it was not necessary to do so, because under reference to section 29(1) of the Scotland Act 1998, if the statutory provisions are incompatible with any of the convention rights or with EU law they are simply not law. However, senior counsel submitted that this was wrong – the onus rests on a party asserting incompatibility to set out the

basis for such assertion and to seek a declarator to that effect, and the issue of compatibility should not be considered as an abstract or theoretical exercise but should be related to the factual matrix of the case under consideration – *BJ v Proudfoot* 2011 SC 201, particularly at paragraphs [30] and [35] – [37]. The claimer is not seeking a declarator but is raising a hypothetical issue, which the court should not entertain – see the remarks of Lord Justice Clerk Thomson in *McNaughton v McNaughton's Trustees* 1953 SC 387.

[45] Even if the court had some sympathy with the suggestion that the procedures may be incompatible, it should not grant declarator in the absence of any proper application and full argument. As discussed in *BJ v Proudfoot*, it is for the claimer to seek declarator in her written application to this court, and to persuade the court on the facts of the case that it should be granted. There has been no attempt to do so.

[46] Moreover, the claimer does not have victim status. If she were to be regarded as a victim, this would give third party objectors a right of appeal which they have never previously had. Victim status does not arise in this case, and the court does not need to consider this.

[47] Senior counsel drew our attention to the letter from the Scottish Government's chief planner to Heads of Planning dated 29 July 2011 which concluded that "the consideration of an application by an LRB is in effect consideration of an application by the planning authority and should be treated accordingly. The Scottish Government therefore considers that, based on the above argument, the "de novo" approach should be adopted in determining cases brought before LRBs. This approach is also consistent with the approach to appeals adopted by DPEA. Consistency of handling of cases regardless of whether they are determined by LRB or DPEA would, in our view, promote confidence in the planning process".

[48] It had been submitted on behalf of the claimer that in order to amount to a *de novo* review and to meet the standard identified in *County Properties*, with an intense level of scrutiny, the LRB had to revisit every policy consideration and every material consideration, and that it could not take into account the Report on Handling. This would significantly increase the burden of giving reasons. The common law rules are well established by cases such as *Moray Council v Scottish Ministers* and *Uprichard v Scottish Ministers* [2013] UKSC 21 at 44 and 48. As Lord Reed observed in *Uprichard*, the approach to the requirement to give reasons in a

decision must be proportionate. The argument advanced on behalf of the claimer does not allow a proportionate approach. It is a matter for the decision maker to consider what level of scrutiny is justified in a particular case – *Kennedy v Charity Commission; Alconbury*. The present application relates to a local development; it is towards the bottom of the hierarchy of developments. Part of the reason behind the changes to procedures was to increase efficiency and to ensure that such developments were considered at an appropriate level of decision making.

[49] The court should conclude that the Lord Ordinary did not decide that the LRB does not have to carry out a *de novo* approach, but rather that he was commenting on a two stage approach. Even if the Lord Ordinary did mistakenly believe that a *de novo* assessment was not required of the LRB, this court can properly interpret and apply the provisions of the 1997 Act and the 2008 regulations. The LRB is required to determine an application *de novo* under the review process; the respondents maintain that they did adopt a *de novo* approach in relation to this application and it is a matter for this court to determine whether that was the case.

Reply for the claimer

[50] Senior counsel for the claimer submitted that it was probably not necessary for the court to decide whether the claimer had victim status or not, as she relied on the PPD and the EU charter, so victim status is not necessary. However, the claimer obviously did have victim status; as an objector she has a right to have the process determined fairly and she is directly affected by the decision because her civil right to residential amenity is affected. If a person is aggrieved and is directly affected, that person has victim status – *Axa General Insurance Company Ltd v Lord Advocate* [2012] 1 AC 868, per Lord Hope at paragraph [63] and Lord Reed at paragraph [111], *Walton v Scottish Ministers* 2013 SC UK 67 per Lord Reed at paragraphs [86] and [96], and Reed and Murdoch, *Human Rights Law in Scotland* (3rd edition) at paragraphs 2.64 – 2.68. It was clear from the claimer's affidavit that she is directly affected. It was not necessary for the claimer in these proceedings to conclude for declarator of incompatibility; it was sufficient for senior counsel to move for declarator in the course of her submissions.

[51] Turning to what was required by a "*de novo*" approach, and what this meant for the LRB, senior counsel observed that the procedure required to comply with article 11 of the PPD. It was clear from the terms of the letter from the Chief Planner

to Heads of Planning, dated 29 July 2011, that the Scottish Government expected consistency of handling of cases regardless of whether they were determined by an LRB or by a reporter of DPEA. The review documents to which the LRB must have regard in terms of the 2008 Regulations are substantially the same as the appeal documents to which a reporter must have regard in terms of the Town and Country Planning (Appeals) (Scotland) Regulations 2008, and the scheme of paragraphs 11 and 12 of the 2008 Regulations applicable to LRB's are substantially the same as the provisions of the regulations of the same year applicable to reporters. The observations of the court in *County Properties* apply with equal force to proceedings before an LRB and the decision letter prepared by the LRB. Senior counsel accepted that an LRB can expressly adopt a specific finding of fact in the Report on Handling, but she did not accept that the LRB decision letter in the present case had this effect. Moreover, the reader cannot be forced to dig around amongst the material to find a justification for the LRB's reasoning or decision. Although the findings and recommendations of the Aarhus Convention Compliance Committee were not binding on this court, they were of persuasive authority; the court should take account of the concerns expressed by the Committee as to the ability of members of the public to challenge the substantive legality of decisions (see paragraph 125 of the Committee's report).

[52] With regard to the intensity of review required in the present case, senior counsel accepted that this was an area in which some planning judgment was required, but the issue had to be assessed against the PPD and the observations of the Supreme Court in *Kennedy v Charity Commission*. For the reasons already articulated, a high intensity of review was required in this case.

[53] Finally, senior counsel submitted that this was not just a "reasons" challenge; she relied on all the factors listed in paragraph 8 of her note of argument. In particular, the LRB gave no reasons for deciding that the balancing exercise carried out in terms of Policy D4 resulted in the economic benefits outweighing all the adverse impacts. Senior counsel renewed her motion that the reclaiming motion should be granted.

Decision

[54] We begin by reminding the informed reader that the planning merits of this proposal, and issues of planning judgment, are not matters for this court. It is not for us to determine whether or not it is appropriate in planning terms to erect the wind

turbines referred to in this planning application nor is the balancing exercise between adverse impacts and possible economic benefits one for this court. These are matters for the planning authority. In terms of section 239 of the 1997 Act, we are concerned only with whether the local authority's decision is within the powers of the 1997 Act or whether any of the relevant requirements have not been complied with. We are concerned with legal validity and procedural regularity, not planning judgment.

[55] We do not propose to attempt to give general guidance as to the scope or function of LRBs in every situation; such an exercise, even if possible, would be inappropriate, particularly as we consider that the provisions of sections 43A and 43B of the 1997 Act (as amended) and the 2008 Regulations are tolerably clear and free from ambiguity. The following points are however relevant to the present case:

- (1) The system of schemes of delegation for local developments, and the review of decisions of an appointed person, which was introduced by the 2006 Act, was intended to increase efficiency and ensure that developments were considered at the appropriate level of decision making. We agree with the submissions for the interested party and the Lord Advocate that it would be curious if parliament had intended that a more rigorous and onerous procedure and scrutiny was required for local developments than for major developments.
- (2) The effect of section 43B of the 1997 Act, together with the 2008 Regulations, is that a party to proceedings under the new scheme is expected to lodge all the materials on which that party wishes to rely at an early stage of the procedure, before the appointed person makes his determination (except where the matter could not have been raised before that time, or because of exceptional circumstances). To put it colloquially, the procedure is intended to be "front loaded". An LRB will normally be expected to conduct a review on the basis of the material before the appointed person, and (subject to the above exceptions) a party will not be able to introduce and rely on material not before the appointed person.
- (3) Only an applicant may require an LRB to review a case where the appointed person has refused an application, granted it subject to conditions, or failed to determine it timeously – section 43A(8) of the 1997 Act and regulation 9 of the 2008 Regulations. An objector to the

application has no such right. This reflects the position regarding the lack of right of objectors to appeal to reporters under the system which pre-dated the 2006 Act, and the present system for major developments.

(4) An LRB must have regard to the review documents (as defined in regulation 2 of the 2008 Regulations). Of course, in terms of section 25 of the 1997 Act, its determination must be made in accordance with the Development Plan unless other material considerations indicate otherwise. However, where the LRB considers that the review documents provide sufficient information to enable them to determine the review, they may determine the review without further procedure – regulation 12 of the 2008 Regulations. That is a matter of planning judgment, for the LRB.

(5) If the LRB decide that further procedure is required, it is for the LRB to decide how the review is to be conducted (by written submissions, one or more hearing sessions, and/or a site visit), and whether it requires further information – regulation 13 of the 2008 Regulations. Again, a decision of this nature involves planning judgment and is for the LRB itself.

(6) In carrying out its review function, the LRB must approach the matter “*de novo*”. All parties were agreed on this point, and it was explained in the letter dated 29 June 2011 from the Scottish Government’s Chief Planner to Heads of Planning. What is meant by a “*de novo*” approach? Clearly, an LRB cannot simply “rubber stamp” the decision of the appointed person. What is required is that the LRB should apply its collective mind afresh to the materials which were before the appointed person, together with any further materials or information properly before it. It is not merely considering whether the appointed person’s decision was reasonable in *Wednesbury* terms, but rather it is looking at the materials afresh. In this context, as discussed above, the materials must include the review documents. These include the Report on Handling, and any documents referred to in it. Not only is the LRB entitled to have regard to the Report on Handling and the documents referred to in it, it is obliged to do so.

(7) The LRB must give a notice of their decision to the applicant, containing the information contained in section 43A(12)(a) of the

1997 Act and regulation 21 of the 2008 Regulations. It must also give reasons. The well-known rules regarding the adequacy of reasons in similar decision letters apply to an LRB decision letter. The LRB must give proper and adequate reasons for its decision which deal with the substantial questions in issue in an intelligible way – *Wordie Property Co Ltd v Secretary of State for Scotland* per Lord President Emslie at 348. It must set out the process of reasoning by which it reaches its decision, but that does not require an elaborate philosophical exercise, nor does it require a consideration of every issue raised by the parties – the LRB is entitled to confine itself to the determining issues, and so long as its reasons are intelligible and accurate, it is entitled to express them concisely – *Moray Council v Scottish Ministers*, per Lord Justice Clerk Gill at [30]. It is important to maintain a sense of proportion when considering the duty to give reasons, and not to impose on decision-makers a burden which is unreasonable having regard to the purpose intended to be served – *Uprichard v Scottish Ministers* per Lord Reed JSC at [48]. The reasons are provided for the informed reader, who is aware of the procedural and evidential background and the issues. In a case where the LRB agrees with the findings and reasoning of the appointed person, generally it will not be necessary to set out or repeat at length those findings and reasons – it will be sufficient if it is apparent to the informed reader from the decision letter as a whole that the LRB agrees with and adopts them. The decision letter should not be subjected to microscopic analytical scrutiny as if it were a conveyancing document or a taxing statute; it will be sufficient if the informed reader is left in no real doubt as to why the LRB reached its decision on the determining issues.

[56] There is nothing in the Lord Ordinary's treatment of these matters (particularly at paragraphs [44]-[46] of his opinion) which suggests to us that he has fallen into error of law. When he referred to "review" rather than "appeal", we consider that he was simply reflecting the language of the 1997 Act and the 2008 Regulations. If he was suggesting that a lower level of scrutiny or consideration, or a lesser requirement for reasons, was appropriate for an LRB than would be appropriate for a reporter, we would disagree with him; however, we agree with senior counsel for the interested party that, properly understood, that is

not what the Lord Ordinary was suggesting. The Lord Ordinary was correct in observing that it was necessary to consider the statutory context in which an LRB operates, and that the LRB was entitled to take account of the reasoning in the Report on Handling, that this reasoning may be included in the decision of the LRB by way of reference, that it may thereby form part of the reasons on which the LRB bases its decision, and that it is unnecessary for an LRB to restate aspects of the decision of the appointed person which it accepts.

[57] In the circumstances of the present case, we are persuaded that the LRB did indeed take a *de novo* approach to the material before it. It made its determination having had regard to the review documentation, as it was obliged to do. It identified what it considered to be the determining issues in the review, it listed the relevant policies in the Development Plan, and it listed the other material considerations which it took into account. It expressly stated that its consideration of the matter was *de novo*. We are satisfied that the LRB did carry out what senior counsel for the claimer described as a “full substantive and procedural review” and that its decision complied with the requirements of the 1997 Act and the 2008 Regulations. Taken together with the proceedings before the Lord Ordinary and in the reclaiming motion before this court, we are also satisfied that the procedures as a whole comply with the requirements of the PPD, and in particular Article 11 thereof.

[58] Turning to the claimer’s position about a possible devolution issue, we are not persuaded that there is any devolution issue properly before us. None of the parties has suggested that the provisions of the 1997 Act or the 2008 Regulations are incompatible with convention or EU Law. Senior counsel for the claimer expressly stated that the statutory regime governing LRBs is capable of being interpreted compatibly with the convention and with EU law, and that the problem in this case arises from the Lord Ordinary’s error in interpretation, not in the legislation itself. The claimer’s position is clearly stated in the last sentence of paragraph 2 of the joint minute between the claimer and the Lord Advocate (number 33 of process). This court will not normally address an issue which is not live in the contentious litigation before it – as Lord Justice Clerk Thomson famously observed in *Macnaughton v Macnaughton’s Trustees* 1954 SC 387:

“Our courts have consistently acted on the view that it is their function in the ordinary run of contentious litigation to decide only live, practical questions, and that they have no concern with hypothetical, premature or academic questions, nor do they exist to advise litigants as to the policy which

they should adopt in the ordering of their affairs. The courts are neither a debating club nor an advisory bureau... each case as it arises must be considered on its merits, and the court must make up its mind as to the reality and the immediacy of the issue which the case seeks to raise... Unless the court is satisfied that this is made out, it should sustain the plea of incompetence, as it is only with live and practical issues that the court is concerned."

[59] Moreover, there is nothing in the application to this court in terms of section 239 of the 1997 Act, nor in the grounds of appeal in the reclaiming motion, which suggests that the claimer seeks a declarator of incompatibility or any equivalent thereto. Senior counsel submitted that this was not necessary, and that it was sufficient for her to move for declarator in the course of her submissions. We disagree. The means by which a declarator that the Scottish Parliament had acted outwith its legislative competence was an issue discussed by this court in *BJ v Proudfoot*. In that case the appellant sought to argue that a quite different Act of the Scottish Parliament was outwith its legislative competence as it did not comply with the ECHR. It was submitted on behalf of the Lord Advocate that the appropriate remedy where an Act of the Scottish Parliament failed in some way to comply with the ECHR was a declarator that certain provisions of that Act were outside the legislative competence of the Scottish Parliament and accordingly were "not law". The court appears to have accepted that submission – as Lady Paton put it (at paragraph [30]):

"It is in my view for the appellant to demonstrate to this court that, in the circumstances of her case, the application of the relevant legislation resulted in a breach or breaches of the ECHR. The appellant has not done so."

[60] Lord Hardie observed (at paragraph [35]) that the relevant factors necessarily include the factual situation, the statutory framework within which any particular statutory provision appears and, above all, the remedy sought on behalf of the minuter. He went on to state (at paragraph [37]):

"Moreover, the issue of compatibility with the ECHR should not be considered as an abstract or theoretical exercise but should be related to the factual matrix of the case under consideration."

[61] In the present case, it is the claimer's position that the legislation is not incompatible. The remedies which she seeks do not include any declarator to that effect. We agree with counsel for the Lord Advocate that in these circumstances there is no devolution issue properly before us, and we should not entertain it.

[62] By way of brief observation, even if we had been prepared to entertain the claimer's submission that the legislation was incompatible with convention and EU law, we did not find it persuasive as we consider that the LRB was required to adopt a *de novo* approach, and we are satisfied that it did so. The Lord Ordinary gave a detailed and fully reasoned consideration in his opinion, which we consider amounted to a sufficiently intense scrutiny. Whilst of course the concerns of the Aarhus Convention Compliance Committee are entitled to respect, the convention is not part of domestic law as such (except where incorporated through European directives) – *Walton v Scottish Ministers* 2013 SC [UKSC] 67 at [100], and the Committee does not appear to recognise that *Wednesbury* reviews within the United Kingdom may have different intensities of scrutiny appropriate to the particular circumstances of the case – *R(Evans) v The Secretary for Communities and Local Government*, particularly at paragraphs 37 and 38. We are not persuaded that, in the particular circumstances of the present case, the PPD adds anything to the well-known requirements of our domestic law. Looked at as a whole, and taking account of the proceedings before the appointed person, the LRB, the Lord Ordinary and this court, we consider that the requirements of the PPD, and particularly of Article 11 of that directive, have been satisfied.

[63] It does not appear to us that victim status is an issue which is relevant in this case. If it were relevant, we would have some hesitation in accepting that the claimer has victim status, standing the nature of her interest in the matter and her status as an objector which gives her no right to require a review of the decision of the appointed person. However, although the matter was touched on in submissions, standing our views as to the relevance of the point in this case we do not propose to elaborate on the matter. It is sufficient for us to conclude that there is no merit in the claimer's position on a potential devolution issue.

[64] We now turn to the various specific arguments advanced on behalf of the claimer as to what are said to be errors by the LRB and the Lord Ordinary.

(i) Failure to take account of the TGN as a material consideration

[65] At paragraph [47] of his opinion the Lord Ordinary held that the TGN had not achieved the status of supplementary planning guidance at the date of LPG's decision. He was correct in this view – it was only adopted as council policy in December 2013. Having regard to Planning Circular 1 of 2009, we do not consider

that the TGN amounted to supplementary guidance in terms of section 22 of the 1997 Act. It was not of itself a material consideration.

[66] In any event, we agree with counsel for the respondents and the interested party that the material consideration was not the TGN document, but the significance of high sensitivity for a development of this nature in this area. This was a matter which was considered elsewhere, particularly in the Borders Landscape Assessment compiled by ASH Consulting Group in 1998, which was specified in the LRB's decision letter as one of the material considerations which it took into account. Furthermore the Lord Ordinary was correct to consider whether, if the TGN had been taken into account, a different outcome would have resulted – *Bova v The Highland Council; Bolton Metropolitan Borough Council v Secretary of State for the Environment* - and we agree with his conclusion that it would not. The substance of the material was already before the LRB. Moreover, the LRB agreed with the conclusion of the appointed person with regard to landscape and visual impact in an area of high sensitivity. We do not consider that their views on this matter would have been different if they had had the TGN before them.

(ii) Cumulative impacts

[67] This issue was dealt with by the Lord Ordinary at paragraph [48] of his opinion. We are in complete agreement with his views, and can find no error in his approach. The LRB took into consideration Policy I20 and paragraphs 182 – 195 of Scottish Planning Policy, as well as the Report on Handling, which included an assessment of cumulative impact in some detail. The LRB agreed with the appointed person in relation to adverse impact; the Lord Ordinary expressed the view that it was unnecessary for the LRB to make separate findings of its own in that regard, and we agree.

(iii) Residential amenity and the presumption of a two kilometre separation distance from residential settlements

[68] Again we are in complete agreement with the Lord Ordinary's treatment of this issue at paragraph [49] of his opinion. The "presumption" for a separation distance of up to two kilometres is not mentioned in policy H2. It is a recommendation in paragraph 190 of Scottish Planning Policy 2010, but the purpose of this recommendation was to give guidance to the drafters of the Development Plan. The respondent's supplementary planning guidance on wind energy dated

May 2011 was the non-statutory type of supplementary guidance, and did not form part of the Development Plan. In any event, as mentioned above, the LRB accepted the views of the appointed person as to the likely adverse impacts of the development, including the impact on the residents of the village of Cockburnspath. That being so, we do not consider that it was incumbent on the LRB to repeat the appointed person's findings or reasons.

(iv) Economic benefit

[69] Senior counsel for the claimer's first point in this regard was that the LRB's findings on economic benefit are contained in a total of six sentences. That may be so, but it does not follow from the fact that a decision maker states its reasons concisely that it has not given consideration to the point in issue, or that its reasons are inadequate. We deal further with adequacy of reasons below. However, the crucial test is whether the informed reader is left in real and substantial doubt as to what the reasons for the decision were and what were the material considerations which were taken into account in reaching it. Provided that this test is satisfied, we do not consider that it matters that the reasons are stated comparatively shortly.

[70] The next point which senior counsel for the claimer made was that the fourth paragraph of page 3 of the decision letter contained two errors of fact –

- (a) that the turbines would assist the business in reducing its energy requirements and
- (b) that the quarry had permission for a major expansion of its extraction operations.

There is no substance in either of these points. We agree with counsel for the respondents' description of the first of these as a matter of semantics – it was clear what the LRB meant by this. With regard to the second, we are satisfied that there was no error of fact – the LRB were referring to the development at Fulfordlees Quarry, which was owned by the same quarry business, which had been approved and at which development had commenced. We are not persuaded that the LRB reached its decision under error of fact.

[71] Senior counsel for the claimer went on to submit that an informed reader would not be able to understand the reasoning of the LRB on economic benefits because of the inadequacies of findings in that regard. We disagree. It is clear from the third and fourth paragraphs on page 3 of the decision letter that the LRB applied its mind to the balancing exercise required under Policy D4. On one side of the

scales, it is clear that they were persuaded that there would be adverse visual and landscape impact and that this may be significant. They noted that Policy D4 did not provide a complete prohibition on such developments, and that a development may be approved if the decision maker is satisfied that the contribution to wider economic and environmental benefits outweighs the potential damage to the environment. They considered this wider economic benefit in the fourth paragraph on page 3 of the decision letter; they noted that the turbines would bring price stability and security of supply to a large consumer of energy and would assist in reducing its carbon footprint. They were satisfied that the proposed turbines would help to sustain a business which - in their assessment as local councillors - is an important local employer, and help it to realise its expansion plans. Members concluded that the impact of the development was outweighed by the economic benefit that would accrue. This is essentially a decision about what weight is to be given to different considerations and the members are ultimately accountable to the electorate for their decision making.

[72] In light of the contents of these two paragraphs of the decision letter we do not consider that it can be said that the informed reader is left in any real or substantial doubt as to what the reasons for the decision were. It is clear that the LRB carried out the required balancing exercise and concluded that the economic benefit outweighed the adverse impact of the development. There is sufficient in the review documentation and the other material considerations listed by the LRB to provide a justification for this conclusion. We are unable to detect any error of law in the approach of the Lord Ordinary at paragraph [50] of his opinion.

[73] The suggestion that the LRB ought to have taken into account reduced house prices in the residential areas close to the proposed development is in our view misconceived. In this regard we agree with the observations of Pill LJ in *Lough v First Secretary of State* (at paragraph 51).

(v) Proportionality

[74] The essence of senior counsel for the claimer's position on this issue was that only 6% of the energy to be generated by the development was required for Kinegar Quarry's current energy usage, and it was impossible to ascertain from the LRB's decision letter how it reached its conclusion on proportionality. However, Policy D4 is not only concerned with local economic and environmental benefits – it expressly refers to wider economic and environmental benefits. The fact that the

quarry business itself may only utilise 6% of the output seems to us to be far from conclusive on this issue. There was evidence before the LRB of wider economic and environmental benefits. The LRB referred to the development bringing price stability and security of supply to a large consumer of energy and that this would assist in reducing its carbon footprint. The members of the LRB clearly applied their collective mind to the necessary balancing exercise, and clearly stated the result of that balancing exercise together with reasons for that result. We find ourselves in agreement with the observations of Pill LJ in *Lough v First Secretary of State*, particularly at paragraphs 45/46 and 49/50. As Dyson LJ (as he then was) stated in *Samaroo* [2001] UK HRR 1150, it is important to emphasise that the striking of a fair balance lies at the heart of proportionality. It does not follow that if the word “proportionality” does not appear in a decision letter, this renders the decision unsatisfactory or liable to be quashed. It is clear from the decision letter in the present case that the LRB carried out the balancing exercise required by Policy D4. They stated the result of that exercise, and their reasons for reaching that result. There was material before them to enable them to reach that result. This was a matter for the planning judgment of the LRB, and this court will not interfere because the claimer does not agree with that judgment.

(vi) *Natural justice*

[75] The Lord Ordinary dealt with this issue at paragraph [52] of his opinion. We are in complete agreement with his reasoning and conclusions on this issue. The first respect in which it was argued that there was a breach of natural justice was that the letter from the clerk to the LRB to the claimer dated 8 January 2013 did not give the claimer a reasonable right to be heard before the LRB. However, that letter refers the reader to section 43B of the 1997 Act and accurately reflects the terms of that section. The claimer was advised in that letter that if she wished to make any further representations in respect of the review she should write direct to the Head of Legal Democratic Services of the respondents within 14 days from the receipt of the letter. It was for the LRB to decide whether any further procedure was required, and if so, what form that procedure should take. In this regard, the powers of the LRB are analogous to those of a reporter. This was not a case in which, for example, the LRB heard evidence from the applicant but refused to hear evidence from objectors such as the claimer. We do not consider that there was any breach of natural justice in this regard.

[76] With regard to the decision not to hold a site visit, it is worthy of note that it was the applicants who asked for a site visit, not any of the objectors. A site visit is not required in every case – *Simson v Aberdeenshire Council*. The members of the LRB may be taken to know the site, being local counsellors; in this respect they differ from reporters. In any event, as counsel for the respondents pointed out, the LRB agreed with and adopted the findings of the appointed person on visual matters, so a site visit would have made no difference to their decision.

[77] We are not persuaded that there is any force in the claimer's submissions on natural justice in this case.

(vii) Reasons

[78] We have touched on this issue already. The LRB is under the same duty to give adequate reasons for its decision as are other decision makers in different contexts. It was submitted to us that because this is a decision *de novo*, the decision notice should contain findings on visual impact and reasoning on all issues. We are unable to agree with this proposition. Where the LRB agrees with the reasoning of the appointed person and accepts his findings in fact, no purpose is served by requiring the LRB to repeat those findings and reasoning nor to recite them at length. It will be sufficient if the LRB makes it clear that they accept and adopt the findings and reasoning on a particular issue. In the present case the LRB stated that they "did not fundamentally contradict the appointed officer's assertion that there would be adverse visual and landscape impact and that this may be significant". In the circumstances of this case, where the appointed person has set out at length his findings and reasoning with regard to adverse impacts and the LRB has accepted these, there is no need for the LRB to rehearse or repeat these at length.

[79] The crux of this case was the balancing exercise carried out by the LRB in terms of Policy D4. The LRB required to balance the admittedly adverse impacts of the development against the potential economic and environmental benefits. The informed reader of the decision would be aware of the contents of all of the materials to which the LRB had regard. He would be aware of the procedural and evidential background. We cannot agree with senior counsel for the claimer that the informed reader would be left with a real and substantial doubt as to what the reasons for the decision were. It is tolerably clear that, having carried out the balancing exercise required by Policy D4, the LRB found that the balance favoured the granting of permission. Indeed, they state in terms:

“members concluded that the impact of the development was outweighed by the economic benefit that would accrue.”

[80] We agree with the Lord Ordinary’s treatment of this issue at paragraph [53] of his opinion.

[81] For all these reasons, we are not persuaded that the Lord Ordinary has fallen into any error of law. Whilst the LRB’s decision letter is not a model of clarity or an example of the best practice which might be achieved under the proceedings introduced by the 2006 Act - such practice could, for instance, aim at providing express assurance of consistency of handling regardless of whether a case is determined by an LRB or the DPEA and, here, could have included the provision of more detailed reasons why the LRB reached a different conclusion from the previous LRB and appointed persons - it says enough in its own terms and by its reference to other material to satisfy us that its decision is within the powers of the 1997 Act and that it complied with the relevant statutory requirements. We shall accordingly refuse this reclaiming motion.

MINUTES of MEETING of ARGYLL AND BUTE LOCAL REVIEW BODY held in the COUNCIL CHAMBERS, KILMORY, LOCHGILPHEAD on WEDNESDAY, 18 MARCH 2020

Present: Councillor David Kinniburgh (Chair)

Councillor Sandy Taylor

Councillor Richard Trail

Attending: Iain Jackson, Governance and Risk Manager (Advisor)
Lynsey Innis, Senior Committee Assistant (Minutes)

1. APOLOGIES FOR ABSENCE

There were no apologies for absence intimated.

2. DECLARATIONS OF INTEREST (IF ANY)

There were no declarations of interest intimated.

3. CONSIDER NOTICE OF REVIEW REQUEST: PLOT 1, LAND EAST OF CALA NA SITHE, OBAN (20/0002/LRB)

The Chair welcomed everyone to the meeting and introductions were made. He explained that no person present would be entitled to speak other than the Members of the Local Review Body (LRB) and Mr Jackson who would provide procedural advice if required.

He advised that his first task would be to establish if the Members of the Local Review Body (LRB) felt that they had sufficient information before them to come to a decision on the Review.

Councillor Trail said that he felt that the information provided was contradictory. The information from the Planning authority was advising that LDP 2 should not be afforded any significant weight in the determination of the review, however the case law provided by the applicant's agent seemed to suggest that weight could be given to the a forthcoming change to the LDP. He advised that he felt that clarity should be provided on this matter and also that he would benefit from a site visit.

Councillor Taylor agreed with the points made by Councillor Trail and also agreed that he felt a site visit was necessary to set the context of the landscape. He advised that he was concerned that if the Local Review Body determined to uphold the appeal on the basis of the flexibility of LDP 2, there may be a consequential case made for subsequent development beyond that being considered today.

The Chair, Councillor Kinniburgh agreed that clarity would be helpful as he was finding it difficult to relate the case law provided to the issue before the Local Review Body, as it appeared that the Local Review Body considering the case had overturned the decision of the Planning authority but had failed to provide reasons as to why they had applied a different Policy.

Councillor Taylor suggested that further information be sought from the Planning authority, as under the current LDP he did not feel he could approve, however under LDP 2 he felt this could be approved but expressed concern that this wouldn't leave the Council in a good light.

Councillor Kinniburgh advised that it would be interesting to hear from Planners, but that it was a matter for Members to determine how much weight they placed on LDP 2 and advised that he did not feel that the LDP 2 was at a stage in the process that it could bear any relevance to this application.

Councillor Trail referred to page 89 of the pack and the "de novo" approach to considering local reviews and suggested that if LDP 2 was considered the settled view of the Council then it may be appropriate to give it due consideration.

Councillor Kinniburgh stated that his interpretation of the "de novo" approach was that although we had to look at the application from the beginning, we had to do so using the adopted LDP rather than looking at the application against LDP2 which is unadopted, and the issue with the LDP2 in this instance was how much weight the Local Review Body afforded to it which in his opinion was not a great deal, given the stage of LDP2 in the Development Plan Scheme (DPS) process.

Councillor Taylor advised that as there was no further appeal following this process he felt that the issues raised require to be considered, and this included the possible application of LDP 2 and the Planning case law provided in support of the review.

Mr Jackson advised that it would be appropriate for the LRB to request model conditions and reasons from the Planning department when requesting further information at this stage.

Councillor Kinniburgh disputed that the Planning authority would be in a position to provide model conditions and reasons at this stage as the Policy that would permit this had not yet been implemented.

Councillors Trail and Taylor were both supportive of requesting this information and an accompanied site inspection.

Decision

The Argyll and Bute Local Review Body agreed to:

1. request from the Planning authority their comments on the case law that has been submitted by the applicant's agent in support of the application and also their opinion on whether LDP 2 is considered to be the settled view of the Council;
2. hold an accompanied site inspection to view the development site in the context of the surrounding area and to invite interested parties to attend;
3. request from the Planning authority appropriate conditions and reasons to attach to any consent in the event that they were minded to approve this application;
and
4. adjourn the meeting and reconvene at the conclusion of the site inspection.

(Reference: Notice of Review and supporting documents and comments from interested parties and Applicant, submitted)

4. CONSIDER NOTICE OF REVIEW REQUEST: PLOT 2, LAND EAST OF CALA NA SITHE, OBAN (20/0003/LRB)

The Chair welcomed everyone to the meeting and introductions were made. He explained that no person present would be entitled to speak other than the Members of the Local Review Body (LRB) and Mr Jackson who would provide procedural advice if required.

He advised that his first task would be to establish if the Members of the Local Review Body (LRB) felt that they had sufficient information before them to come to a decision on the Review.

Councillor Trail said that he felt that the information provided was contradictory. The information from the Planning authority was advising that LDP 2 should not be afforded any significant weight in the determination of the review, however the case law provided by the applicant's agent seemed to suggest that weight could be given to the a forthcoming change to the LDP. He advised that he felt that clarity should be provided on this matter and also that he would benefit from a site visit.

Councillor Taylor agreed with the points made by Councillor Trail and also agreed that he felt a site visit was necessary to set the context of the landscape. He advised that he was concerned that if the Local Review Body determined to uphold the appeal on the basis of the flexibility of LDP 2, there may be a consequential case made for subsequent development beyond that being considered today.

The Chair, Councillor Kinniburgh agreed that clarity would be helpful as he was finding it difficult to relate the case law provided to the issue before the Local Review Body, as it appeared that the Local Review Body considering the case had overturned the decision of the Planning authority but had failed to provide reasons as to why they had applied a different Policy.

Councillor Taylor suggested that further information be sought from the Planning authority, as under the current LDP he did not feel he could approve, however under LDP 2 he felt this could be approved but expressed concern that this wouldn't leave the Council in a good light.

Councillor Kinniburgh advised that it would be interesting to hear from Planners, but that it was a matter for Members to determine how much weight they placed on LDP 2 and advised that he did not feel that the LDP 2 was at a stage in the process that it could bear any relevance to this application.

Councillor Trail referred to page 223 of the pack and the "de novo" approach to considering local reviews and suggested that if LDP 2 was considered the settled view of the Council then it may be appropriate to give it due consideration.

Councillor Kinniburgh stated that his interpretation of the "de novo" approach was that although we had to look at the application from the beginning, we had to do so using the adopted LDP rather than looking at the application against LDP2 which is

unadopted, and the issue with the LDP2 in this instance was how much weight the Local Review Body afforded to it which in his opinion was not a great deal, given the stage of LDP2 in the Development Plan Scheme (DPS) process.

Councillor Taylor advised that as there was no further appeal following this process he felt that the issues raised require to be considered, and this included the possible application of LDP 2 and the Planning case law provided in support of the review.

Mr Jackson advised that it would be appropriate for the LRB to request model conditions and reasons from the Planning department when requesting further information at this stage.

Councillor Kinniburgh disputed that the Planning authority would be in a position to provide model conditions and reasons at this stage as the Policy that would permit this had not yet been implemented.

Councillors Trail and Taylor were both supportive of requesting this information and an accompanied site inspection.

Decision

The Argyll and Bute Local Review Body agreed to:

1. request from the Planning authority their comments on the case law that has been submitted by the applicant's agent in support of the application and also their opinion on whether LDP 2 is considered to be the settled view of the Council;
2. hold an accompanied site inspection to view the development site in the context of the surrounding area and to invite interested parties to attend;
3. request from the Planning authority appropriate conditions and reasons to attach to any consent in the event that they were minded to approve this application; and
4. adjourn the meeting and reconvene at the conclusion of the site inspection.

(Reference: Notice of Review and supporting documents and comments from interested parties and Applicant, submitted)