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Argyll and Bute Council **Comhairle Earra-Ghàidheal Agus Bhòid**

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8 December 2022

SUPPLEMENTARY PACK 2

**PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE - ON A HYBRID BASIS
IN THE COUNCIL CHAMBER, KILMORY, LOCHGILPHEAD AND BY MICROSOFT TEAMS on
FRIDAY, 9 DECEMBER 2022 at 10:30 AM**

I enclose herewith a supplementary report for **item 3** on the Agenda for the above meeting.

Douglas Hendry
Executive Director

SUPPLEMENTARY REPORT

- 3. MR RICHARD STEIN: ERECTION OF DETACHED GARDEN ROOM ANCILLARY
TO DWELLINGHOUSE: EILEAN DA MHEINN, HARBOUR ISLAND, CRINAN,
LOCHGILPHEAD (REF: 22/01248/PP) (Pages 3 - 10)**

Report by Head of Development and Economic Growth

Planning, Protective Services and Licensing Committee

Councillor John Armour	Councillor Jan Brown
Councillor Audrey Forrest	Councillor Kieron Green (Chair)
Councillor Amanda Hampsey (Vice-Chair)	
Councillor Daniel Hampsey	Councillor Graham Hardie
Councillor Fiona Howard	Councillor Willie Hume
Councillor Mark Irvine	Councillor Andrew Kain
Councillor Paul Donald Kennedy	Councillor Liz McCabe
Councillor Luna Martin	Councillor Peter Wallace

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**Argyll and Bute Council
Development and Economic Growth**

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: 22/01248/PP
Planning Hierarchy: Local Development
Applicant: Mr Richard Stein
Proposal: Erection of detached garden room ancillary to dwellinghouse
Site Address: Eilean Da Mheinn, Harbour Island, Crinan, Lochgilphead, Argyll and Bute, PA31 8SW

SUPPLEMENTARY REPORT NO. 2

1.0 INTRODUCTION

The attention of Members is drawn to the main Report of Handling dated 5th October 2022, and Supplementary Report No. 1 dated 18th October 2022 for consideration in respect of the above application.

This report seeks to update Members on matters arising subsequent to the PPSL meeting on 19th October 2022, and Members decision to continue the application for a pre-determination hearing. These include:

- Receipt of late consultation comments from West of Scotland Archaeology Service;
- Further supporting information from the applicant;
- One late representation raising objection to the application.

2.0 ARCHAEOLOGY: DETAIL AND FURTHER POLICY ASSESSMENT

A late consultation comment has been received from the Council's retained archaeological advisors, the West of Scotland Archaeology Service (WoSAS) on 11th November 2022. WoSAS have identified that the application lies within an area of archaeological sensitivity and potential which is centred on Dunadd and Kilmartin and based upon relatively high density of recorded sites and finds from the surrounding landscape. It is noted that the proposal will affect the unrecorded remains of a possible structure of unknown date and function and may reveal buried archaeological remains.

Note: Full details of the consultee response can be view on the Council's website at www.argyll-bute.gov.uk

It is highlighted that the provisions of policy LDP 3 and SG LDP ENV 20 set out the relevant provisions for the consideration of archaeological interests and the protection of archaeological remains where development is proposed.

In this instance there is no information to indicate that the site is itself of archaeological significance other than its location within a wider area of interest/sensitivity. On this basis it is

noted that WoSAS have not raised objection to the proposal but have recommended that, in the event that planning permission were to be granted, it would be appropriate to impose a condition requiring ground breaking works to be subject to an archaeological watching brief.

Officers would advise that an additional planning condition is required to address this matter and ensure compliance with policies LDP 3 and SG LDP ENV 20; an augmented list of conditions is accordingly appended to this report.

3.0 FURTHER SUPPORTING INFORMATION

Members are advised that the applicant has submitted further correspondence dated 30th November 2022 expressing willingness to enter into either a Unilateral Agreement or Planning Obligation under S75 of the Act if this was necessary in the event that Members of PPSL shared concerns expressed by third party objectors that the proposed development may be a foothold to further development unrelated to the main dwellinghouse. It is intimated that any such title burden would provide an undertaking to retain the proposed development in a single ownership and for exclusive use as ancillary to the main dwellinghouse, in perpetuity

Officers would advise that the proposed list of planning conditions already include condition 2 which provides clarification and instruction that the proposed building shall not be used for purposes independent of the main dwellinghouse and as such the requirement for express planning permission to extend, significantly alter or materially change the use of the building should theoretically provide sufficient security in this respect. It is however observed that the imposition of a title burden would be a valid means of further underpinning this objective if, following their deliberations, members had any substantive concern about the prospect of the land being sub-divided as the imposition of a title burden would provide the additional comfort of precluding any possibility of the development being legally separated from the ownership of the main dwelling in the future without the planning authorities consent.

The applicant has also noted the comments provided by WoSAS and confirmed their acceptance to an archaeological watching brief condition being imposed on any permission.

4.0 REPRESENTATIONS

Late representations have been received from six additional parties raising objection to the proposal in addition to further representations from two parties who had previously raised objection as follows:

- Alexi Murdoch (email dated 02.12.22) (addendum to earlier representation)
- Iain MacDonald, Oran Na Mara, Knockrome, Isle of Jura (06.12.22)
- Yvonne MacDonald, Oran Na Mara, Knockrome, Isle of Jura (06.12.22)
- Michael Gordon, Duncraig, Iona (email dated 06.12.22)
- Kate Gordon, Duncraig, Iona (email dated 06.12.22)
- John MacFarlane, Crinan (email dated 07.12.22) (addendum to earlier representation)
- Alec Bowman-Clarke, Rothesay (email dated 07.12.22)
- Josienne Clarke, Rothesay (email dated 07.12.22)

The total number of individuals making representations to this application now stand at 131 in total including 59 third party expressions of support, and 71 expressions raising objection.

Note: Full details of all representations can be view on the Council's website at www.argyll-bute.gov.uk

The issues raised are summarised as follows:

- **It is suggested that officers have incorrectly identified that application site as being located within a ‘settlement area’ in their report of handling.**

Officer Comment: It would appear that this comment relates to officer commentary in Section R of the main report of handling; on review it is confirmed that this is a typographical error and should read as ‘settlement strategy’ and not ‘settlement area’. It is noted that the remainder of the commentary in the report clearly identifies the application site as being located within ‘Very Sensitive Countryside’ when referencing the assessment to LDP settlement strategy.

- **To what extent the proposed new building may or may not be visible is immaterial when considering the Development Management Zone in which it is proposed--which categorically does not allow for it.**

Officer Comment: It is agreed, the visibility of the development is not a factor that is directly relevant with regard to the assessment of a proposal in relation to policy LDP DM 1.

- **This Policy is a key tool for managing and protecting sensitive and quality landscape across the whole of Argyll and Bute.**

Officer Comment: Whilst the disposition of the settlement zones is to a large extent influenced by the sensitivity of landscape and other constraints it is noted that the impact of new development upon the landscape is a matter that is directly considered under the separate policy provision of Policy LDP 3 and related Supplementary Guidance, in this instance SG LDP ENV 12 which relates to development within or affecting a National Scenic Area.

- **This landscape is one of Argyll and Bute’s most valuable resources and its protection is of the highest priority—as laid out in National Policy as well.**

Officer Comment: The location of the proposed development within the Knapdale National Scenic Area is identified and subject to detailed assessment in the main report of handling. The impact of the proposal upon the NSA designation is assessed in relation to Policy LDP 3 and SG LDP ENV 12.

- **Any attempt to undermine this Policy—which would also set a harmful precedent across the whole Council Area--should be resisted.**

Officer Comment: Officers would contend that their interpretation and application of both policies LDP DM 1 and LDP ENV 3 in relation to the circumstances of the current application are consistent with the manner in which the LDP is intended to operate. Every planning application is required to be considered on its own merits and with due regard to the Development Plan and any other material considerations and in this respect it is unclear on what basis objectors consider that a harmful precedent would be set through approval of the current application.

- **The suggestion that the site is a managed garden, while questionable in itself, is immaterial as there is nowhere in policy that suggests it may supersede the control imposed by the Very Sensitive Countryside Zone.**

Officer Comment: It is noted that this assertion is fundamentally incorrect. The provisions of policy LDP DM 1 (F) set out the limited circumstances under which development that is to be located within the Very Sensitive Countryside may be supported, and as such consideration as to whether the proposal is aligned with Policy LDP DM 1 is fundamental

to establishing whether or not the LDP is supportive in principle of the development subject to compatibility with all other relevant policies

LDP DM 1 (F)(iii) extends support to “development directly supporting agricultural, aquaculture, nature conservation or other established activity.”

The proposed development which is subject of this application is intended to be utilised for purposes that are ancillary to the applicant’s existing dwellinghouse and as such is a development which will directly support an “established activity” which already exists at this location. It is worth clarifying that, in assessing this application, officers have recognised that whilst the island is in a single ownership it would not be accurate to describe the extent of the island as the ‘curtilage’ of the dwellinghouse and as such have sought to satisfy themselves that the location where the development is proposed forms part of the “established activity” which it is intended to support before affording support under the provisions of Policy LDP DM 1 (F)(iii).

“Curtilage” is not defined in the Town and Country Planning (Scotland) Act 1997 however the following definition is provided by the Scottish Government within their published [Guidance on Householder Permitted Development Rights \(updated 2021\)](#) as:

“curtilage ... is accepted to mean land which is used for the comfortable enjoyment of a building and which serves the purpose of that building in some necessary or reasonably useful way. It need not be marked off or enclosed in any way. Normally the curtilage would relate to the property boundary of the dwellinghouse.”

In their assessment of the application officers have observed that the management of land and its immediate character differs across the extent of the island. The existing dwellinghouse is located in a sheltered location at the centre of the island and is adjoined by a readily identifiable area of immediate curtilage comprising planting areas, lawns, seating areas, and domestic outbuildings. The northern and southern extremities of the island by contrast show little or no evidence of use for domestic purposes and comprise of rock outcrops, bracken and tree cover. The contained, centrally located valley within which the application site is located does however evidence longer term use as an extended garden area formed along the alignment of access between the dwellinghouse and the existing boathouse at the south of the island. Whilst it is accepted that the applicant appears to have undertaken recent maintenance and improvements within this area there is also evidence of longer established activity which relates directly to the residential occupation of the dwellinghouse on the island with the presence of framed bedding areas, relatively level grassy open areas, drainage channels, and a number of well-established garden plants/non-native trees, in addition to the existing boathouse and slipway.

- **It is queried why the application site boundary relating to the current application is significantly larger than the smaller ‘curtilage’ area identified by the applicant as the application site boundary in their 2017 submission (17/01819/PP).**

Officer Comment: It is noted that the 2017 application related to development that sought to extend the existing dwellinghouse and identifies a square plot of 30m x 28m around the footprint of the dwellinghouse as the application site area. On review it is considered that the previous application site does not accurately reflect the full extent of land utilised for purposes ancillary to the residential occupation of the dwellinghouse; it is further noted however that given the location of the development on an island within a single ownership the identification of a smaller site area would not have impacted procedurally on any notification requirements associated with that earlier application. The application site as

defined in the current submission is a matter for the applicant however, as noted above, the extended site area has not been accepted without query in officer's assessment of whether the land forms part of an "established activity" at this location.

- **It is queried whether a statement within the supporting information accompanying the previous withdrawn application (21/02308/PP) that the curtilage of the dwelling extended to the whole of the island was supported by officers.**

Officer Comment: It is confirmed that officers do not accept that the curtilage of the dwelling extends to the whole of the island. Detail in this respect is provided above.

- **The 'ruin' is, by the Officers' own Report, immaterial.**

Officer Comment: The presence of the ruined building is noted in officers report however it is correct to state that its presence has not been attributed significant weighting in establishing the acceptability in principle of development at this location in respect of policy LDP DM 1.

- **The decision of officers to recommend approval of the current application for the garden room, the earlier withdrawn application, and a previous application for extension of the dwellinghouse has been queried. It is requested that the planning hearing seeks to review officers recommendations on all of these matters.**

Officer Comment: It is noted in the first instance that the purpose of the current proceedings are to reach a determination on the proposal set out in the current application. The intimation of any impropriety on the part of officers or the applicant in respect of the handling of the current application and previous matters is strenuously refuted. In the event that an aggrieved party sought to raise issue about the conduct or competency of officers, or the manner in which a planning application has been handled then those issues should be raised via the Council's Corporate Complaint Process.

- **The inclusion of reference to a boat slip in the northwest of the island (beside the dwellinghouse) is queried.**

Officer Comment: It is firstly noted that this detail does not form part of the current application, however for the purposes of clarity it is officers understanding that this area was utilised for importation of materials required for the implementation of the 2017 house extension.

- **Concern is raised that during the PPSL meeting on 19th October 2022 a member of the committee expressed his opinion that the application should be approved based on viewing Google Maps prior to any presentation from officers or deliberation of the PPSL Committee on the merits of the application.**

Officer Comment: It is noted that this issue relates to commentary from Cllr Kain which related to members discussion on the requirement for a pre-determination hearing/site visit rather and did not express a view either way in relation to whether permission should be granted or refused as is intimated.

5.0 UPDATED RECOMMENDATION

It is recommended that, subject to a pre-determination hearing being held, that planning permission be granted subject to the augmented list of conditions and reasons appended to this report.

Author of Report: Tiwaah Antwi

Date: 8th December 2022

Reviewing Officer: Peter Bain

Date: 8th December 2022

Fergus Murray
Head of Development and Economic Growth

CONDITIONS AND REASONS RELATIVE TO APPLICATION REF. NO. 22/01248/PP**1. PP - Approved Details & Standard Notes – Non EIA Development**

The development shall be implemented in accordance with the details specified on the application form dated 14/06/2022, supporting information and, the approved drawings listed in the table below unless the prior written approval of the planning authority is obtained for an amendment to the approved details under Section 64 of the Town and Country Planning (Scotland) Act 1997.

Plan Title.	Plan Ref. No.	Version	Date Received
Proximity and Location Plan	AR/287/A/01		25/08/2022
Site Plan with Curtilage (1:1250)	AR/287/A/02		25/08/2022
Site Plan (1:250)	AR/287/A/03		25/08/2022
Proposed Elevations	AR/287/A/05		26/07/2022
Proposed Elevation, Sections and Plans	AR/287/A/04		26/07/2022

Reason: For the purpose of clarity, to ensure that the development is implemented in accordance with the approved details.

2. Notwithstanding the provisions of Class 9 of the Town and Country Planning (Use Classes) (Scotland) Order 1997, the building hereby permitted shall be utilised solely as a structure ancillary to the occupation of the main dwelling and shall not be occupied independently thereof as a separate dwelling unit.

Reason: To define the permission on the basis of the Planning Authority's assessment of the use applied for.

Note to Applicant:

For the avoidance of doubt this permission only provides for the occupation of the ancillary building and the main dwelling by a single household and their non-paying guests. Specifically the occupation of the building independently from that of the main dwelling (e.g. as a separate fulltime residence or a holiday letting unit) shall require the benefit of a separate planning permission.

3. Notwithstanding the provisions of Condition 1, the proposed path improvement to be carried out between the boathouse and the application site for the delivery of materials and construction of the garden room, hereby approved, shall be removed and the ground reinstated within three months following completion of the structure.

Reason: To ensure the development integrates into its surroundings, in the interest of visual amenity.

4. No development or ground breaking works shall commence until a method statement for an archaeological watching brief has been submitted to and approved in writing by the Planning Authority in consultation with the West of Scotland Archaeology Service.

The method statement shall be prepared by a suitably qualified person and shall provide for the recording, recovery and reporting of items of interest or finds within the application site.

The name of the archaeological organisation retained by the developer shall be given to the Planning Authority and to the West of Scotland Archaeology Service in writing not less than 14 days before development commences.

Thereafter the development shall be implemented in accordance with the duly approved details with the suitably qualified person being afforded access at all reasonable times during ground disturbance works.

Reason: In order to protect archaeological resources.