

**Argyll and Bute Council**  
Comhairle Earra Ghaidheal agus Bhoid

*Customer Services*  
*Executive Director: Douglas Hendry*



*Kilmory, Lochgilphead, PA31 8RT*  
*Tel: 01546 602127 Fax: 01546 604444*  
*DX 599700 LOCHGILPHEAD*  
*e.mail –douglas.hendry@argyll-bute.gov.uk*

11 August 2010

## **NOTICE OF MEETING**

A meeting of the **ARGYLL AND BUTE LOCAL REVIEW BODY** will be held in the **COUNCIL CHAMBER, KILMORY, LOCHGILPHEAD** on **WEDNESDAY, 18 AUGUST 2010** at **2:00 PM**, which you are requested to attend.

Douglas Hendry  
Executive Director - Customer Services

## **BUSINESS**

- 1. APOLOGIES FOR ABSENCE**
- 2. DECLARATIONS OF INTEREST (IF ANY)**
- 3. CONSIDER NOTICE OF REVIEW REQUEST: LAND SOUTH ACHNADRINE, TAYINLOAN (REF: 10/00009/LRB)**
  - (a) Notice of Review and Supporting Documents (Pages 1 - 36)
  - (b) Responses from Interested Parties (Pages 37 - 76)
  - (c) Applicant Response to Comments from Interested Parties (Pages 77 - 80)

## **ARGYLL AND BUTE LOCAL REVIEW BODY**

Councillor Roderick McCuish  
Councillor Alex MacNaughton

Councillor Donald MacMillan

Contact: Melissa Stewart

Tel. No. 01546 604331

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Ref:  
AB1

**ARGYLL AND BUTE COUNCIL**  
WWW.ARGYLL-BUTE.GOV.UK/\*\*

<b>OFFICIAL USE</b>
23/6/10
Date Received

**NOTICE OF REVIEW**

Notice of Request for Review under Section 43(a)8  
of the Town and Country Planning (Scotland) Act 1997 and the Town and  
Country Planning (Schemes of Delegation and Local Review Procedures  
(Scotland) Regulations 2008

**Important** – Please read the notes on how to complete this form and use  
Block Capitals. Further information is available on the Council's Website.  
You should, if you wish, seek advice from a Professional Advisor on how to  
complete this form.

A

<b>(1) APPLICANT FOR REVIEW</b>	
Name	James Blair and Mrs Veronica Blair
Address	Achnadriane
Postcode	Tayinloan
Tel. No.	
Email	PA29 6XG
	jblairmacfyne@aol.co m

<b>(2) AGENT (if any)</b>	
Name	John Campbell
Address	Oracle Chambers
Postcode	Catcune Steading
Tel. No.	Gorebridge, Midlothian
Email	EH23 4RN
	01875 825364
	jcampbellqc@oraclech ambers.com

(3) Do you wish correspondence to be sent to you  or your agent

(4) (a) Reference Number of Planning Application

(b) Date of Submission

28 January 2008

(c) Date of Decision Notice (if applicable)

23 March 2010

(5) Address of Appeal Property

Land south of Achnadriane, Tayinloan,  
Argyll PA29 6XG

(6) Description of Proposal

Proposed erection of two small scale  
residential dwellinghouses

(7)

See Paper Apart No 1

Paper Apart No 1

Please set out the detailed reasons for requesting the review:-

The Town and Country Planning (Scotland) Act 1997 provides by s. 25 that determinations made under the Planning Acts must be made in accordance with the development plan, unless material considerations indicate otherwise.

The development plan in the present case consists of the Argyll and Bute Structure Plan 2002, and the Argyll and Bute Local Plan 2009. The relevant policies from those plans are set out in the Planning Officer's report dated 10 March 2010, and his letter dated 8 March 2010. There is no need (nor room) to rehearse them here.

Starting with a presumption *in favour*, the site is within a Rural Opportunity Area which favours small scale development, subject of course to access and servicing and other provisions of the DP. [See STRAT1 and LP HOU 1].

The question then comes to be whether the site(s) are appropriate. The presumption *in favour* is met with a presumption against in Very Sensitive Countryside [VSC] and Countryside Around Settlements [CAS] and (perhaps) in Sensitive Countryside [SC].

The sites are (just) in an Area of Panoramic Quality [APQ] and thus Policy LP ENV 10 is engaged. The essence of an APQ is that it provides wide panoramic views. That policy (ENV 10) neither presumes against, nor does it presume in favour of small scale residential development, but says that it will be resisted only where there is a *significant adverse impact on the character of the landscape*. Where that occurs, the policy requires a compensating social or economic benefit and conformity with Appendix A.

Appendix A sets out well understood siting and design principles for housing generally, and for housing in the countryside. The ability to comply with it is not in issue in this case.

**The key test, it is therefore submitted, is that of *significant adverse impact on the APQ*.**

The Planning Officer has declared himself satisfied that the development sites would be "well screened" from the view of the public highway. It is thought that perhaps means "views *from* the public highway" since the remainder of the sentence talks about views *from* the shore line. In other words, views *in* are more important than views *out*. Those words do not demonstrate any impact on the APQ.

The difficulty which has arisen is that the entire assessment is predicated not upon policy, but upon the North and South Kintyre Landscape Capacity Study's [NSKLCS] demarcation between 'red' and 'orange' designations.

There is no reference at all to the NSKLCS in the policy that has been used to justify refusal of permission, namely LP HOU 1.

Policy LP/DCZ 4 is engaged since it deals with Rural Opportunity Areas. But it sets only general indicative parameters, and is not criteria-based. Applications in an APQ are to be considered premature until a Landscape Capacity Study has been approved, and until then (so development is not ruled out entirely), development proposals are to be treated as if they were in 'Sensitive Countryside'. That descriptive phrase is one of the DCZs, and on page 54, it clearly articulates a presumption *in favour* of small scale development in close proximity to existing buildings. This development proposal qualifies for that description. It also articulates the case for an operational need, which does *not* apply in this case.

The Roads Department's objection has been withdrawn, and is subject to a junction improvement, which can itself be the subject of a *Grampian* condition. There are no other internal objections from Council departments.

The Applicants for Review are accordingly aggrieved, and seek review of the decision dated 23 March 2010 because

- 1 they received early assurances from officers as to the compatibility of their proposals with the ten planning framework. They accept, however, that such informal advice cannot bind the Council unless given in writing. Nevertheless, they raise expectations, and were accompanied by reasoning which protected all known and established local interests (such as neighbor-impacts, traffic, and junction design).
- 2 Policy LP HOU 1 is the determinative Housing Policy. The essential predicate for permission for small scale residential development is the occurrence of a **significant adverse effect** on the APQ. Neither the Planning Officer's letter of 8 March, nor the Report to members dated 3 and 10 March 2010 conduct any analysis of the effect on the APQ, other than by making one comment on the visibility of, or from the seashore. In any event, those observations are only partially correct, and take no account of the potential for screening and planting.
- 3 Absent *any* assessment of the effect of the development on the APQ, or of its significance, the decision is fundamentally flawed, since the policy test has not been addressed
- 4 The decision is instead predicated on the NSKLCS, which is not, repeat not, a policy document. Its use is not required by LP HOU 1, nor is it listed in the list of confirming policies on page 54. What is expected by LP DCZ/4 is *consistency* with the NSKLCS. It is submitted that the sites are consistent with the NSKLCS in that the sites are close the orange area where development potential is identified, and that in any event the red area is not a prescriptive exclusion -- all that it does is to delineate areas where development is "generally unacceptable". Given

the acknowledgement that screening can be achieved to and/or from the established interests of the shore line and the highway, it is submitted that two small houses could easily be accommodated at this location. In any event the NSKLCS is described only as "technical guidance" which is a recognition of its non-prescriptive character.

- 5 Simply for reasons of scale, the Proposal Map which is part of the Local Plan is unclear as to the precise delineation at this location between 'red' and 'orange' areas. Any doubt should be resolved in favour of the applicant, provided that he can satisfy the siting and design requirements in Appendix A.
- 6 Finally, the refusal of this application denies an opportunity (though small) for local economic growth. The health and viability of rural Argyll depends, at the least, on the population remaining static, and then growing. Growth is not only an aspiration for settled communities. The maintenance of schools and rural services depends on the ability of an area to attract more people with earning and economic potential into an area. The Local Plan encourages rural growth, and should be read as permissive of additional rural housing where any constraints, reasonably expressed, can be overcome.

John Campbell  
Oracle Chambers  
Gorebridge  
Midlothian  
22 June 2010  
[jcampbellqc@oraclechambers.com](mailto:jcampbellqc@oraclechambers.com)

(8) If the Local Review Body determines that it requires further information on "specified matters" please indicate which of the following procedure you would prefer to provide such information :-

- (a) Dealt with by written submission
- (b) Dealt with by Local Hearing
- (c) Dealt with by written submission and site inspection
- (d) Dealt with by local hearing and site inspection

*NB It is a matter solely for the Local Review Body to determine if further information is required and, if so, how it should be obtained.*

(9) Please list in the schedule all documentation submitted as part of the application for review ensuring that each document corresponds to the numbering in the sections below:-

**Schedule of documents submitted with Notice of Review (Note 3 paper copies of each of the documents referred to in the schedule below must be attached):**

No.	Detail
1	Application dated 25 January 2008
2	First report to Committee dated <del>20 March 2010</del> 3 Sept 2008
3	Second report to Committee dated 3 and 10 March 2010
4	Refusal Notice dated 23 March 2010
5	Two (2) drawings
6	Planning Officer's letter of 8 March 2010
7	
8	
9	
10	

If insufficient space please continue on a separate page. Is this attached?  (Please tick to confirm)



Submitted by  
(Please Sign)



Dated

22 June 2010

**Important Notes for Guidance**

1. All matters which the applicant intends to raise in the review must be set out in or accompany this Notice of Review
2. All documents, materials and evidence which the applicant intends to rely on in the Review must accompany the Notice of Review UNLESS further information is required under Regulation 15 or by authority of the Hearing Session Rules.
3. Guidance on the procedures can be found on the Council's website – [www.argyll-bute.gov.uk/](http://www.argyll-bute.gov.uk/)
4. If in doubt how to proceed please contact 01546 604331 or email [localreviewprocess@argyll-bute.gov.uk](mailto:localreviewprocess@argyll-bute.gov.uk)
5. Once completed this form can be either emailed to [localreviewprocess@argyll-bute.gov.uk](mailto:localreviewprocess@argyll-bute.gov.uk) or returned by post to *Committee Services (Local Review Board), Kilmory, Lochgilphead, Argyll, PA31 8RT*
6. You will receive an acknowledgement of this form, usually by electronic mail (if applicable), within 14 days of the receipt of your form and supporting documentation.

If you have any queries relating to the completion of this form please contact Committee Services on 01546 604331 or email [localreviewprocess@argyll-bute.gov.uk](mailto:localreviewprocess@argyll-bute.gov.uk)

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**For official use only**

Date form issued

Issued by (please sign)



PLEASE SEND YOUR COMPLETED APPLICATION FORM TO THE AREA OFFICE CLOSEST TO THE LOCATION OF YOUR PROJECT.

For Official Use Only:	
Reference No.	
Date of Receipt	
Fee Paid	Date of Receipt
Valid Date	

**MAINSTREAM PLANNING APPLICATION FORM**

The undemoted applicant hereby makes application for express planning consent for the development described on this form and on the accompanying plans.

This form should not be used for applications for Mineral Consent, Listed Building Consent, Conservation Area Consent, Advertisement Consent, Certificates of Lawfulness or Prior Notification as separate application forms are available for these.

Note: There is a simpler 'Householder' application form for domestic extensions, garages, LPG Tanks etc.

Important: Please check whether you also require a building warrant, or permission under any other enactment in addition to planning permission.

1(a) Applicant (IN BLOCK CAPITALS) Full Name <u>MR + MRS JAMES BLAIR</u> Address <u>ACHNADRIAN FARM,</u> <u>TAINLORAN,</u> <u>ARGYLL</u> Post Code ..... Tel. No. ....	1(b) Agent (see note 1) Full Name <u>GILLIAN WRIGHT</u> Address <u>LOCHSIDE,</u> <u>LOW ASKOMIL,</u> <u>CAMPBELTOWN</u> Post Code <u>PA28 6EP</u> Tel. No. <u>01586 553786</u>
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2. Description of Proposed Development (see note 2)  
2 HOUSE + GARDEN SITES

3. Site Address (see note 3) A LAND SOUTH OF ACHNADRIAN FARMHOUSE

4. Application Type (tick one box only)(see note 4)

(a) Outline Permission <input checked="" type="checkbox"/>	(d) Application to Waive/Vary Conditions <input type="checkbox"/>
(b) Approval of Reserved Matters <input type="checkbox"/>	(e) Change of Use of Land / Buildings <input type="checkbox"/>
Ref. No. of Outline Permission .....	(f) Application for Temporary Consent <input type="checkbox"/>
(c) Detailed Permission <input type="checkbox"/>	(g) Renewal of a previous Temporary Consent <input type="checkbox"/>
	Date of expiry of Original Consent .....

5. Use of Building(s)/Site (see note 5)  
 Existing FARMLAND Proposed DWELLING HOUSE

6. Site / Floor Area of Development (Complete as appropriate)(see note 5)

(a) Proposed site area of the development 0.27 ha / ..... acres

(b) Proposed external floor space of building(s) 1st Floor ..... sq.m / 2nd Floor .....sq.m / 3rd Floor .....sq.m

7. Demolition (see note 7)  
 Will any buildings or Structures be demolished in connection with the proposed development? YES  NO   
 If YES, the building/structures should be clearly identified on the submitted plans.

8. Operational Need or Special Circumstances (tick appropriate boxes)(see note 8)

(a) Is any claim of agricultural / forestry operational need being made ? YES  NO   
 If YES, Form D/Agric should be submitted.

(b) Is any other claim of operational need or special circumstances being made ? YES  NO   
 If YES, please give details in a covering letter or statement.

9. Registered Croft (tick appropriate box)(see note 9)  
 Does the Application Site form part of a Registered Croft YES  NO

10. Licensed Premises (tick appropriate boxes)(see note 10)
- (a) Are the existing premises used for the sale or consumption of alcohol under a licence granted in terms of the Licensing (Scotland) Act 1976 ? YES  NO
- If YES, specify type of licence presently held.....
- (b) Is it intended that the existing and/or proposed premises be used for the sale or consumption of alcohol under a licence granted in terms of the Licensing (Scot.) Act 1972 ? YES  NO
- If YES, specify type of licence to be applied for.....

<p>11. Access Arrangements (see note 11)</p> <p>No Change <input type="checkbox"/> New vehicular access <input checked="" type="checkbox"/></p> <p>Existing vehicular access to be used <input type="checkbox"/></p> <p>Existing vehicular access to be altered/improved <input checked="" type="checkbox"/></p> <p>Separate pedestrian access proposed <input type="checkbox"/></p>	<p>12. Parking Arrangements (see note 12)</p> <p>No Change <input type="checkbox"/></p> <p>Number of existing on-site parking places <u>0</u></p> <p>Number of additional on-site parking places <u>4-6</u></p> <p>Only off-site parking available <input type="checkbox"/></p>
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13. Drainage Arrangements (tick one box only)(see note 13)

Not Applicable

Connection to existing private sewer/septic tank

Two or more septic tanks proposed

Please specify type of outfall for septic tank(s) SOAKAWAY

Connection to existing public sewer

Single septic tank proposed EACH HOUSE

Other type of private system (specify on plans)

14. Water Supply Arrangements (tick one box only)(see note 14)

Not Applicable  Connection to existing public main  Proposed connection to public main

Existing private supply to be used  Proposed private supply

Please identify proposed private water supply source, pipes and any storage arrangements on the SITE PLAN

15. Building Materials (Complete as appropriate)(see note 15) N/A - TO BE AGREED AT DETAILED STAGE.

Outside Walls: Material ..... Colour .....

Roof Covering: Material ..... Colour .....

Windows: Material ..... Movement..... Colour.....

16. Are any trees / shrubs to be cleared from the site ? (see note 16)

Not Applicable  YES  NO  If YES show details of felling / landscaping / replanting on Site Plan.

17. Are proposed buildings within 8m of overhead powerline ? (see note 17)

Not Applicable  YES  NO  If YES, has the Electricity Board been consulted ? YES  NO

18. This question should be completed for all COMMERCIAL & INDUSTRIAL Applications (see note 18)

(a) Not applicable

(b) Nature of proposed uses, operations and processes.....

(c) The arrangement for the disposal of waste materials.....

(d) Provision for loading and unloading vehicles.....

(e) Estimates of vehicle type and movements per day Existing ..... Proposed .....

(f) Gross floor space Existing ..... sq.m Proposed ..... sq.m

(g) Number of employees Existing ..... Additional.....

19. Estimates of : (see note 19)

(a) Development Costs £ 5,000

(b) Start Date A.S.A.P.R. (Detailed) (c) Completion Date A.S.T.A.P.

THIS SECTION MUST BE COMPLETED IN EVERY CASE (see note 20)

Certificates Under Article 9 Of The Town & Country Planning  
(General Development Procedure)(Scotland) Order 1992

I HEREBY CERTIFY THAT : (Tick Certificates 1, 2 or 3 as appropriate OR Certificate 4.)

<p>Certificate 1 - Where neighbouring land is in domestic use</p> <p>The requisite notices, together with a plan showing the location of the proposed development, has been given to all those who require to be notified in accordance with Article 9 (1), (2)(b) and 5(a)(ii) of the above Order.</p>	<input checked="" type="checkbox"/>
<p>Certificate 2 - Where neighbouring land/property is in non-domestic use</p> <p>The requisite notices, together with a plan showing the location of the proposed development has been given to all those who require to be notified in accordance with Article 9 (1), 2(a) and 5(a)(i)(aa) of the above Order.</p>	<input checked="" type="checkbox"/>
<p>Certificate 3 - Vacant Land</p> <p>It is not possible to carry out notification in accordance with Article 9(1) to (3), 9(5)(c) of the above Order since there are no persons situated on the neighbouring land to which notification could be sent as referred to in Article 9(4)</p>	<input type="checkbox"/>

OR

<p>Certificate 4 - No notification is required</p> <p>No notification is required in accordance with Article 9(1) to (3) of the above Order since there are no parties holding a notifiable interest in neighbouring land/property.</p>	<input type="checkbox"/>
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Those Notified in terms of Article 9 are: (Please attach a separate sheet if there is insufficient space below)

Owner, Occupier or Lessee (see (a) below)	Address	Date Notified
OWNER/OCCUPIER	TIGNADROCHIT, TAYINLOAN	26/1/08
" "	BE IN VIEW, TAYINLOAN	" " "
MR. S. STEEL	LENAIG, BY TAYINLOAN	" " "
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**IMPORTANT :**

An accompanying plan titled "NEIGHBOUR NOTIFICATION PLAN" must accompany each application to the Council which clearly identifies all those parties who have a notifiable interest in neighbouring land, except in the case where no notification is required. (see note 24(D)).

(a) In the case of NON-DOMESTIC LAND/PROPERTY insert the actual name of the owner, occupier or lessee if available from the valuation role or alternatively, if unavailable insert "The Owner", "The Occupier" and "Lessee" for each notifiable address (see note 21(B)).

In the case of DOMESTIC PROPERTY insert only "The Owner" and "The Occupier" for each notifiable address. Do not insert the individuals name.

THIS SECTION MUST BE COMPLETED IN EVERY CASE (see note 21)

Ownership Certificates Under Article 8 Of The Town & Country Planning  
(General Development Procedure)(Scotland) Order 1992

I HEREBY CERTIFY THAT 21 DAYS BEFORE THE DATE OF THE APPLICATION: (Tick one box only)

Certificate 1 The applicant OWNS all of the land involved in the application site (see (a) Below).	<input type="checkbox"/>
Certificate 2 The applicant DOES NOT OWN all the land involved in the application site, but has given a copy of the requisite NOTICE NO.1 to the owner(s) (see (a) below) of any part of the application site, who are listed below.	<input checked="" type="checkbox"/>
Certificate 3 The applicant OWNS all of the land involved in the application site (see (a) below). However, part or all of the Site constitutes or forms part of an AGRICULTURAL HOLDING (see (b) below) and the applicant has sent a copy of the requisite NOTICE NO.1 to the AGRICULTURAL TENANT(S) who are listed below.	<input type="checkbox"/>
Certificate 4 The applicant DOES NOT OWN all the land involved in the application site, but has given a copy of the requisite NOTICE NO.1 to the owner(s) (see (a) below) of any part of the application site, who are listed below. Part or all of the site ALSO constitutes or forms part of an AGRICULTURAL HOLDING (see (b) below) and the applicant has sent a copy of the requisite NOTICE NO.1 to the AGRICULTURAL TENANT(S) who are listed below.	<input type="checkbox"/>

Those Notified in terms of Article 8 of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 are:

Name of Owner	Address	Date Notified
	TIGHNADROCHIT, TAYINLOAN	26/1/08
MRS MRS I. LOGAN BEINVIEW		" " "
MRS S. STEEL	LENALIG, BY TAYINLOAN	

**DECLARATION**

I hereby certify that I, the applicant/applicant's agent, have given correct and complete information and given the requisite notices to all parties who have a notifiable interest in terms of Article 8 and Article 9 of the Town & Country Planning (General Development Procedure)(Scotland) Order 1992.

SIGNED *William Wright* DATE 25/1/08

**PERSONAL INFORMATION**

Please note that any information included in the application form, including your name, address and phone number is public information in terms of the Freedom of Information Act and will be copied and made available to any member of the public on request and will be published on the Council's Website.

If you do not wish the information within Section 1(a) to be made available you should use a professional agent for your application. Please note, all other information in the application and any other supporting information will be made available to any member of the public, on request, and published on the Council's Website.

DEVELOPMENT SERVICES  
PLANNING APPLICATION REPORT  
MID ARGYLL, KINTYRE AND THE ISLANDS

Ward Number - 2 Kintyre & The Islands  
Date of Validity - 28<sup>th</sup> January 2008  
Committee Date - 3<sup>rd</sup> September 2008

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Reference Number: 08/00231/OUT  
Applicants Name: Mr. & Mrs. James Blair  
Application Type: Outline  
Application Description: Site for the erection of two dwellinghouses  
Location: Land South of Achnadriane Farm by Tayinloan

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## **(A) THE APPLICATION**

### **(i) Development Requiring Express Planning Permission**

- The erection of two dwellinghouses with associated garden ground, with specific siting and design reserved for future consideration;
- The improvement of an existing access onto the public road;
- The provision of a single septic tank for each dwellinghouse.

### **(ii) Other specified operations.**

- The connection of each dwellinghouse to a proposed private water supply.
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## **(B) RECOMMENDATION**

That Members be appraised of the situation regarding the current status of this application following the recent report of the Scottish Government Reporter's Unit in regard to the Public Local Inquiry with respect of the 'Argyll and Bute Local Plan' (Modified Finalised Draft) and that it be agreed to continue the consideration of this application until such time that the matters raised by the Reporter's recommendations have been considered by the Council.

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## **(C) SUMMARY OF DETERMINING ISSUES AND MATERIAL CONSIDERATIONS**

### **(i) Development Plan Context – with Particular Regard to the Findings of the Scottish Government Reporter's Unit Report into the Recent Local Plan Inquiry:**

The application site is located within a proposed 'Rural Opportunity Area' within the emerging 'Argyll and Bute Local Plan' (Modified Finalised Draft), June 2006 in which Policy HOU 1 would normally offer a general presumption in favour of small scale housing development which accords with the prevailing landscape character and settlement pattern. This emerging policy accords with the provisions of the adopted 'Argyll and Bute Structure Plan' November 2002, specifically in regard to Structure Plan Policy STRAT DC 4, which seeks to give encouragement to small scale developments on suitable sites which, in terms of siting and design will visually integrate with the landscape and settlement pattern; this may include small scale housing development within the open countryside.

The adopted 'Kintyre Local Plan' (1<sup>st</sup> Review and Alteration) 1988 gives a presumption in favour of single or small scale residential development in the

countryside (Policy STRAT 4) subject to examination in terms of infrastructure and servicing implications, together with careful consideration of the design, setting and scale of development within designated scenic areas (Policy STRAT 4A). Proposals for development within such designated scenic areas will further be required to be justified against a set of criteria – environmental impact; locational /operational need; economic benefit; and infrastructure and servicing implications (Policies RUR 1 and RUR 2).

The site the subject of this application falls within an area of open countryside and within a proposed 'rural opportunity area' but is also within a designated 'Area of Panoramic Quality' (formerly an 'Area of Regional Scenic Coast').

The Local Plan Reporter has recently recommended (amongst other things) that all of the proposed rural opportunity areas which fall within either National Scenic Areas, or (as in this case) Areas of Panoramic Quality be deleted, and that the land in question be reclassified as areas of 'sensitive countryside'; in which there is an initial presumption against development unless restricted to appropriate small scale residential development in close proximity to existing buildings in infill, rounding-off, change of use of building and redevelopment sites.

The Council's response to this recommendation by the Reporter is, as yet, unknown. There is therefore uncertainty over the eventual status of the affected areas of land and it remains possible that the general presumption in favour of development within these proposed rural opportunity areas as afforded by the draft plan, may be removed and replaced by an initial presumption against development.

In view of this uncertainty it is wholly inappropriate and would be prejudicial to the local plan process to determine existing or future planning applications within the affected land designations until such time that these fundamental policy issues have been resolved.

**(ii) Representations:**

One representation has been received – from Iain and Kathryn Logan, the owner / occupiers of a neighbouring dwellinghouse 'Benview' by Tayinloan. This letter raises issues with the proposal and requests that a series of conditions should apply to any planning permission for the proposed development. The particulars of this representation do not fall to be examined at this time, but will be a material consideration as such time as the matter is reported for determination.

**(iii) Consultations:**

- Area Roads Manager (03.03.08) – Recommends refusal of application because there is insufficient visibility from the existing access to the south and that the land required to improve this visibility is outwith the Applicant's control. Also the existing connection to the public road requires improving and the land required for these improvements is outwith the Applicant's control.

*Comment: It is not appropriate to consider the highway merits of the application at present in the absence of a confirmed policy position in respect of the local plan settlement strategy.*

- West of Scotland Archaeology (13.02.08) – No objection.

- Area Environmental Services Manager (13.02.08) – No objection subject to condition requiring a hydrologist's report to demonstrate the suitability of the proposed private water supply.

**(iv) Site History:**

07/00132/OUT – Site for the erection of two dwellinghouses, Land South of Achnadriane – application withdrawn.

**(v) Consideration of the Need for Non-Statutory or PAN 41 Hearing:**

Not applicable.

**(vi) Reasoned Justification for a Departure to the Provisions of the Development Plan.**

Not applicable

**(vii) Is the Proposal a Schedule 1 or 2 EIA development:**

No.

**(viii) Does the Council have an interest in the site:**

No.

**(ix) Need and Reason for Notification to Scottish Ministers.**

Not applicable.

**(x) Has a sustainability Checklist Been Submitted:**

Not appropriate for this scale of development.

*Angus J. Gilmour*

Angus J Gilmour  
Head of Planning  
15<sup>th</sup> August 2008

Author: Tim Williams (01546 604084) Date: 13<sup>th</sup> August 2008  
Reviewing Officer: Richard Kerr (01546 604080) Date: 14<sup>th</sup> August 2008



Argyll and Bute Council  
Development Services

Delegated or Committee Planning Application Report and Report of handling as required by Schedule 2 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 relative to applications for Planning Permission or Planning Permission in Principle

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Reference No: 08/00231/OUT  
 Planning Hierarchy: Local  
 Applicant: Mr & Mrs James Blair  
 Proposal: Site for the erection of two dwellinghouses  
 Site Address: Land South of Achnadriane Farm, by Tayinloan

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**DECISION ROUTE**

Sect 43 (A) of the Town and Country Planning (Scotland) Act 1997

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**(A) THE APPLICATION**

- (i) **Development Requiring Express Planning Permission**
- The erection of two detached dwellinghouses
  - The alteration of an existing vehicular access onto a classified road
  - The installation of a single septic tank for both dwellings
- (ii) **Other specified operations**
- Connection to a proposed private water supply
- 

**(B) RECOMMENDATION:**

That permission be Refused subject to the reasons contained in this report.

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**(C) CONSULTATIONS:**

Area Roads Mid Argyll Kintyre And Islay	26.02.2010	No objection subject to conditions.
Archaeologist	13.02.2008	No objection.
Environmental Services Mid Argyll	13.02.2008	No objection subject to condition.

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**(D) HISTORY:**

07/00132/OUT – Site for the erection of two dwellinghouses, Land at Achnadriane Farm by Tayinloan – Withdrawn 17.07.08 following instruction to do so in letter dated

28.01.08

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**(E) PUBLICITY:**

None required.

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**(F) REPRESENTATIONS:**

**(i) Representations received from:**

Iain & Kathryn Logan, Benview by Tayinloan

**(ii) Summary of issues raised:**

- Requests various conditions to be attached to any planning permission;
  - No trees on the east bank of the farm track should be cut down;
  - No development should take place until such time as the applicant has provided competent details that the proposed private water supply is acceptable;
  - That works be carried out by the applicant to protect existing buried drainage pipes and service cables;
  - That the roofs of the new dwellings be covered in slate;
  - That no works should take place until a legally binding contract with the relevant land owners is in place to allow for the required access improvements and their continued maintenance;
  - The dwellinghouses should be single storey.
- 

**(G) SUPPORTING INFORMATION**

Has the application been the subject of:

- |   |   |
|---|---|
| <p><b>(i) Environmental Statement:</b></p>  | <p>No</p>   |
| <p><b>(ii) An appropriate assessment under the Conservation (Natural Habitats) Regulations 1994:</b></p>  | <p>No</p>   |
| <p><b>(iii) A design or design/access statement:</b></p>  | <p>No</p>   |
| <p><b>(iv) A report on the impact of the proposed development eg. Retail impact, transport impact, noise impact, flood risk, drainage impact etc:</b></p> | <p>Yes - A supporting statement has been submitted by the applicant. This is summarised in Section P below.</p> |
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**(H) PLANNING OBLIGATIONS**

Is a Section 75 agreement required: No

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(I) **Has a Direction been issued by Scottish Ministers in terms of Regulation 30, 31 or 32:** No

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(J) **Section 25 of the Act; Development Plan and any other material considerations over and above those listed above which have been taken into account in the assessment of the application**

(i) **List of all Development Plan Policy considerations taken into account in assessment of the application.**

'Argyll and Bute Structure Plan' 2002

STRAT DC 4 – Development in Rural Opportunity Areas  
STRAT DC 8 – Landscape and Development Control  
STRAT DC 9 – Historic Environment and Development Control

'Argyll and Bute Local Plan' 2009

LP ENV 1 – Impact on the General Environment  
LP ENV 10 – Impact on Areas of Panoramic Quality (APQs)  
LP ENV 17 – Impact on Sites of Archaeological Importance

LP HOU 1 – General Housing Development  
P/DCZ 4 – Rural Opportunity Areas – Areas And Boundaries

LP TRAN 4 – New and Existing Public Roads and Private Access Regimes  
LP TRAN 6 – Vehicle Parking Provision

(ii) **List of all other material planning considerations taken into account in the assessment of the application, having due regard to Annex A of Circular 4/2009.**

- Argyll & Bute Landscape Capacity Study – North and South Kintyre. Approved and Adopted 3<sup>rd</sup> February 2010.

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

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(L) **Has the application been the subject of statutory pre-application consultation (PAC):** No

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

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

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(O) **Requirement for a hearing (PAN41 or other):** No

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

This outline application is for the erection of two detached single storey dwellinghouses on two separate plots, sharing the same access, on land south of Achnadriane Farm, east of the A83 some 5 km north east of Tayinloan.

The application site consists of a total land area of approximately 0.35 hectares to include the existing access off the A83 plus part of the existing Achnadriane Farm access road plus both plots and the new proposed access road serving both. Each plot measures approximately 1,300 square metres (0.3 acres). Both of the proposed plots occupy relatively level platforms within a landform which is rising from west to east. Although both of the proposed plots are elevated with respect to the public road, they would be viewed, for the most part, against a backdrop of steeply rising land.

The proposed development would require improvements to the existing access onto the A83 public road including upgraded visibility splays and revised bellmouth geometry. Each house plot would also require parking and turning facilities within its curtilage. The area roads engineer has commented that the required access improvements and parking provision can be provided within the application site boundary and has no objections to the proposal subject to suspensive conditions. There is, therefore, no conflict with Local Plan policies LP TRAN 4 and LP TRAN 6.

It is proposed to serve the two new dwellings by connection to a new private water supply. The Council's head of environmental services has commented that this is acceptable subject to a planning condition requiring the applicant to commission and obtain approval of a hydrologist's report demonstrating that the proposed supply is sufficient in terms of quantity and quality to serve the proposed development.

Although the application site is within a wider area recognised as important for the potential for archaeology, the West of Scotland Archaeology Service has commented that they have no objections to this specific proposal. The development is therefore considered appropriate in terms of policies STRAT DC 9 and LP ENV 17.

The general landform is that of rising land from west to east; gradually at first to a height of approximately 50 metres above sea level and then rising steeply into the interior of Kintyre to a height of some 200 metres 1.5 km east of the application site. Some 2.5 km east of the application site the landscape changes to that of extensive upland commercial forest plantation and the land continues to rise until it attains a height of almost 250 metres. The proposed house plots are located between the 30 and 40 metre contours; the southern plot being located at a substantially lower level than the northern plot. The A83 public road is at a height of approximately 5 metres above sea level west of the application site.

The application site is located within a 'rural opportunity area' wherein the provisions of policies STRAT DC 4 and LP HOU 1 set out a general presumption in favour of 'small scale' residential development on appropriate sites and subject to access/servicing provision and compliance with other relevant provisions of the Development Plan. However, the application site also lies within an 'Area of Panoramic Quality' wherein (in order to address concerns raised by the Scottish Government Reporters during the 2008 Local Plan Public Local Inquiry) the provisions of LP HOU 1 require applications to be determined in line with The North and South Kintyre Landscape Capacity Study. The provisions of STRAT DC 8 and LP ENV 10 would seek to resist development located within or adjacent to an Area of

Panoramic Quality which, by virtue of scale, location or design would have a significant adverse impact upon the character of the landscape.

Having specific regard to the Landscape Capacity Study, the application site is located within a larger area identified on the study maps as being unsuitable for development. Specifically the study identifies landscape capacity for further development in this locality to be on relatively flat areas of land close to the A83 public highway, in and around existing woodlands and re-development/expansion of existing building clusters. The study also advises that development is to be resisted on open, elevated sites, particularly where there is no existing woodland or topography to achieve a sense of place or shelter.

Having inspected the application site and immediate surrounds, it is the view of the Planning Department that there is a distinct difference in the character of the landscape between the areas identified by the North and South Kintyre Landscape Capacity Study as being potentially suitable for development and those not recommended for development in and around Achnadriane – the areas identified as having capacity for development being low lying, wooded land located between the public highway and the private access road to Achnadriane, where it runs below and parallel to a contour approx 20-25m above ordnance datum which marks the beginning of the open fields. Beyond this point the land rises steeply and consists of open, rough agricultural grazing land where development would require substantial modification of ground levels and where additional planting to mitigate the setting of the development would appear inappropriate. In view of this stark contrast in landscape character, it is the consideration of the Planning Department that the boundaries of land identified as being potentially suitable for development are clearly defined - this significantly reduces the ability of the Planning Department to be flexible in the interpretation of the guidance contained in the Landscape Capacity Study - in this particular instance it is very clear that the proposed development lies in an area of different landscape character to that identified as having capacity for additional development in the study.

In view of the above and in light of the revised policy/guidance position provided by the North and South Kintyre Landscape Capacity Study, it is the consideration of the Planning Department that the residential development of these elevated sites within the open countryside is contrary to the existing development pattern identified in the Landscape Capacity Study and as such detrimental to the landscape character of the Area of Panoramic Quality within which the application site lies. This proposal does not conform to the North and South Kintyre Landscape Capacity Study and so conflicts with policy P/DCZ 4 of the Local Plan which states that "Development proposals will be expected to be consistent with the findings contained within completed Landscape Capacity Studies."

In light of the above, the proposal is consequently contrary to the provisions of policies STRAT DC 4, STRAT DC 8, LP HOU 1, P/DCZ 4 and LP ENV 10.

Initially this proposal had also been the subject of objection by the Area Roads Manager who has recommended that permission be refused unless visibility and junction improvements can be secured in the interests of road safety. The Area Roads Manager has subsequently provided an undated comment which advises that since his previous consultation response the Council's visibility standards have been reduced. Consequently, the road safety objections which have previously prevented determination of this application have now been removed subject to the imposition of suspensive planning conditions requiring the upgrade of the junction of the private road serving the development and the A83 public highway. These improvements

include for an enlarged bellmouth and provision of a service lay-by; the land necessary for these improvements is included within the application site and may therefore be addressed by suspensive planning condition preventing the commencement of development until such time as the improvements are provided.

The applicant has submitted a statement in support of his application in response to the findings of the North and South Kintyre Landscape Capacity Study. This statement is reproduced and assessed below:

*"We ask in reference to the above that the following facts please be considered.*

*1. 2006 (Summer). Mrs. Blair approached the planning department and asked for an informal visit to Achanadriane to determine if house sites were possible and if so where.*

*Mr. Tim Williams visited and advised, recommending the lower slope of the hill would be okay for two traditional style 1 1/2-storey houses. At this point the house at Tighnadrochit was not even built.*

*At no point did he mention the sites not been suitable due to settlement patterns."*

Comment: Planning Officers have indeed previously discussed this proposal with Mr Blair - at that time it was indicated that the Planning Department was supportive of the proposals. This advice was the informal, professional opinion of planning officers based upon the provisions of the relevant policies at that time which included the now superseded Kintyre Local Plan 1984 and the emerging draft Argyll and Bute Local Plan.

*"2. We submitted our planning application on 22/01/07, Ref: 07/00132/OUT. Our nearest neighbours, Mr. and Mrs Logan of Benview not only objected they created an email link which allowed anyone anywhere in the world to object by a press of a button."*

Comment: Any representations received by the Planning Department are a material consideration to the determination of a planning application. The method by which such comments are received and whether or not an objector orchestrates a campaign to increase the amount of representation to a proposal is outwith the control of the Planning Department. In any event, it should be noted that, primarily, it is the issues raised in the objections rather than the overall number received which the Planning Department must consider and address in the determination, giving material weight to the issues raised as appropriate.

*"3. 2007 (Summer) – Mr. Tim Williams and Mr. Richard Kerr met with us at the Chalmers St office, and explained they were obliged to respond to all the objectors and as that would take up an enormous amount of time and the sites had already taken up a disproportionate amount of time due to Mr. & Mrs Logan, they suggested we move the sites.*

*Mr. Tim Williams informed us he would go back to the neighbours saying we would move them if they didn't object. To accommodate the planners we agreed and discussed at some length where would be the most appropriate part of the field to move them to.*

*At no point did either Mr. Tim Williams or Mr. Richard Kerr indicate that sites in the field were unacceptable and at no point did they mention settlement patterns.*

*This decision cost us dearly when a prospective buyer for Achanadriane withdrew their offer, as they were not happy with the sites being moved."*

Comment: The original application attracted some 40+ representations and as such the determination of the application would be undertaken by the MAKI Area Committee and in all likelihood, given the volume of objection, a discretionary public hearing – in the event that the application was successful it would also have been necessary, at that time, to complete a S75 planning agreement to secure visibility and junction improvements. It is my understanding at this time that the applicant expressed his concern at the time which had already been taken to process the application and was apprised of his options which essentially consisted of i) determine the original application (as above); ii) withdraw the original application and apply for an amended site which hopefully would not attract objection and could be determined under delegated powers with a S75 agreement.

The decision to withdraw the application and resubmit an amended proposal was entirely at the discretion of the applicant and was not undertaken to address any specific concern raised by the Planning Department in respect of the details of the original application. It is however agreed that the submission of an amended application was anticipated to provide an easier determination process for all parties concerned. Again, the advice offered by planning officers at this time was based upon the relevant policies and guidance available to them.

*"4. We re-submitted our plans on 28/01/08, Ref: 08/00231/OUT - It then became apparent the road access was a problem at the time but this has since been resolved due to a change in visibility display requirements."*

Comment: As of 29.02.08 it had become apparent that the applicant was unable to obtain a S75 agreement to secure visibility and junction improvements necessary to address the Area Roads Manager's initial objection to the proposal. Subsequently, the Council's visibility standards have been reduced and the existing visibility available at the junction is acceptable; however, the Area Roads Manager is still advising that junction improvements are necessary to accommodate additional vehicular movements at this location in the interests of road safety – whilst these improvements involve land in the ownership of third parties it has been confirmed that the improved junction and lay-by could be accommodated within the application site boundary edged red (with the relevant land owners notified of their interest in the application site) and may therefore be addressed by way of a suspensive planning condition. It is noted however that a grant of planning permission would not override other matters of civil law; in the event that the applicant is unable to implement the required improvements because of land ownership issues then the provisions of the condition would prevent any development commencing on site.

*"5. August 2008 - We received a letter from Mr. Richard Kerr informing us that our planning application had not only been put on hold until the completion of the Landscape Capacity Study, but the criteria had changed for sites falling within an 'ROA' which lie within a designated Area of Panoramic Quality, which ours did.*

*So we patiently waited - a further 1 1/2 years or so.*

*At no point during this period did anyone from the planning department indicate to us that the sites were not acceptable and did not fit in with settlement patterns."*

Comment: The recommendations of the Local Plan Inquiry Reporters included for the deletion of all ROAs which were located within Areas of Panoramic Quality (as is the case in this instance) and National Scenic Areas – this in effect would have resulted in this site and all other such ROAs being amended to 'sensitive countryside' wherein there is a presumption against all development in the open countryside. In view of the uncertainty as to the status of ROAs, the Planning Department took the view that the determination of applications in the affected ROAs would be premature to the development plan process until such time as the Council had provided its response to the Reporters recommendations. The Council duly provided its response to the Reporters recommendations in Nov. 2008 by classifying all ROA within APQ/NSA designations as 'sensitive countryside' until such time as a Landscape Capacity Study had been prepared – the policy provisions of P/DCZ4 and LP HOU 4 in the Local Plan were also amended to require new development to be consistent with the Landscape Capacity Study. The North and South Kintyre Landscape Capacity Study was approved by Members on 3<sup>rd</sup> February 2010 and it is only subsequent to this point that the Planning Department has been in a position to consider determination of the affected applications. Whilst I can appreciate the applicant's disappointment at a delay in excess of 18 months it must be noted that the events which have unfolded in the Local Plan preparation process meant that it was not possible for the case officers processing this application either to predict or avoid the consequences of these events.

*"6. 23<sup>rd</sup> February 2010 – Mr. Peter Bain and Mr. Adrian Jackson-Stark meet with Mr. Blair at Achanadriane. After looking at the sites they feel they do not fit in with settlement patterns.*

*This is despite the lower site being situated next to a house at Tighnadrochit with Benview situated below, and Achanadriane located to the north/east."*

Comment: For the purpose of clarity it is noted that the application site is located at a substantially higher level than that of Tighnadrochit which sits in a sheltered bowl and is encompassed by a woodland setting.

*"This is despite the Landscape survey allowing for possible development next to Benview and in the field to the left of Benview which though it has a native woodland it also has a clearly visible open field behind it. Both these areas are directly beside the main road."*

Comment: The lower site is indeed provided a modest backdrop of gorse and scrub woodland which is of substantially lower quality and visual impact within the wider landscape setting than the more mature woodland at lower levels adjacent to the public highway and adjacent to the watercourse to the south. It is however the consideration of the Planning Department even with additional landscape planting this plot could not be readily assimilated into the landscape character of the adjoining area identified as having capacity for further development.

*"The sites in our field are not visible from anywhere on the main road due to the native woodland (which is not yet fully mature) below us and to the left of our track."*

Comment: This is correct. Views of the application site from the A83 public highway



would be well screened by roadside vegetation; it is however noted that development at this location would be visible within the context of an open field when viewed from the coast to the west. It is also noted that the recommendations contained within the Landscape Capacity Study are not solely based upon the visual impact of development but also have regard to the potential impact of development upon the key features of the landscape and, the sensitivity of the landscape to change. In this respect the study expresses a requirement to restrict new development at Achnadriane to lower lying land where development can be accommodated within a woodland setting. The study recommends against development upon the elevated, open slopes. The landscape character of the application site and the entirety of the applicant's landholding falls within the latter category. The transition in landscape character is clearly defined by the private road serving Achnadriane and a small incursion east along the river course at a similar level – The application site lies beyond this point and it is the view of the Planning Department that it is not possible to consider the proposal as being consistent with the guidance contained in the Landscape Capacity Study. The proposal is therefore contrary to the provisions of policies P/DCZ 4, LP HOU 4, STRAT DC 8 and LP ENV 10.

*"Both our sites are situated in what was an ROA when we submitted our plans. The higher site is situated in line with Achanadriane and as far to the side of the field as possible without going into what was originally a sensitive area."*

Comment: This is correct having regard to the approximate set back distance from the public highway. However, the upper site is located at significantly higher level in the landscape than Achnadriane. The upper site is an open site on a convex slope, exposed to its immediate surrounds on all sides and is not nestled within the wider landscape setting in the same sheltered manner that the grouping of buildings at Achnadriane are accommodated.

The outcome of the Local Plan Inquiry Reporters recommendation was to question the disposition of ROAs within scenic designations – i.e. to raise the question whether it was actually appropriate to promote development within these areas without first having assessed the capacity of the landscape in detail to acceptably accommodate such change. Previously when officers have provided advice they have done so on the basis that a presumption in favour of small scale residential development exists within the ROA and that the boundary between the ROA and sensitive countryside was based upon an informed assessment of landscape capacity. The Local Plan Public Inquiry Reporter queried the methodology which had been employed by the Council in the designation of ROAs in the Local Plan, at which point it was disclosed that the designation of the ROA boundaries was not informed by a detailed assessment of landscape capacity to accommodate new development and to which the Reporter raised serious concern as to whether it was acceptable to promote new development within scenic designations without first having carried out a detailed landscape capacity assessment. In effect the Landscape Capacity Study identifies more limited areas of capacity for new development within the ROAs which were originally intended by the Council to be a larger area of search.

*"In conclusion we feel we have tried to work with the planning department seeking and following their advice from the very beginning but it is impossible to keep up when the goal posts keep changing. Our sites complied with the original criteria and if they had not I can only assume the planners would have advised us otherwise at the time."*

*As we understand it the Landscape study it is not a stand-alone document and its recommendations are as yet not laid in stone but open for feedback. This*

would allow the planning department scope for considering the merits of individual representations.

*Taking into consideration the length of time this process has taken, the fact the sites are not visible but screened from the road, the fact that the lower site is next to an existing house and the fact that a traditional one storey stone clad house on the higher site could be easily absorbed into the landscape, particularly as to the east is a stone dyke, to the south gorse bushes and a burn - landscape traditionally chosen for the siting of croft houses.*

*If we are to keep rural areas alive and our rural schools open then rural housing is desperately needed to attract families to the area. Our own situation is having brought our own family up here we wish to continue to live and work in the area. When our financial difficulties forced us to sell Achanadriane along with three acres of land, we were led to believe we would be able to build and live in a new home in our field where we intended to create a small holding. The alternative is we will be forced to move away. Is Kintyre to see another round of 'clearances' as locals are forced to move away due to the lack of affordable housing making room for only the wealthy and the retired?"*

Comment: Mr. Blair is correct. Effectively the goal posts have moved whilst the application has been processed. The change in circumstances has entirely been outwith the control of planning officers who have been required to amend their assessment of the acceptability of the proposal in line with the evolving policy position of the Argyll and Bute Local Plan and associated technical guidance. Mr. Blair is also correct in stating that landscape capacity is only part of the planning assessment which requires to be undertaken. - However, in this respect regard is had to the provisions of the Government's Scottish Planning Policy (SPP) which sets out that planning decisions must be made in accordance with the Development Plan unless material considerations indicate otherwise. Material considerations should be related to the development and the use of the land. Whilst there is a degree of sympathy for Mr. Blair's position, it is the view of the Planning Department that (i) his personal financial circumstances, (ii) the fact that he has been the subject of a lengthy delay in the processing of his application and, (iii) earlier provision of informal advice from officers which now conflicts with the current policy/guidance position of the Council are not related either to the nature of the impact of the proposed development or the use of the land and, as such, are not sufficient justification to set aside the provisions of an approved and adopted Development Plan - it should also be noted that prior to finalising its decision, the Planning Department has taken the time to revisit the site to reassess the development in light of the Local Capacity Study and establish whether or not the boundaries of the Landscape Capacity Study were ambiguous or flexible in any way which would have allowed consideration of development within the 'red' area, and have also ascertained the extent of Mr. Blair's landholding to identify if alternative development opportunities existed.

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

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**(R) Reasons why Planning Permission or Planning Permission in Principle Should be Refused:**

It is the consideration of the Planning Department that the residential development of these elevated sites within the open countryside is contrary to the recommendations of the North and South Kintyre Landscape Capacity Study and as such would be

detrimental to the landscape character of the Area of Panoramic Quality within which the application site lies. This proposal does not conform to the North and South Kintyre Landscape Capacity Study and so conflicts with policy P/DCZ 4 of the Local Plan which states that "Development proposals will be expected to be consistent with the findings contained within completed Landscape Capacity Studies."

In light of the above, the proposal is consequently considered contrary to the provisions of Development Plan policies STRAT DC 4, STRAT DC 8, LP HOU 1, P/DCZ 4 and LP ENV 10.

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

N/A

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

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**Author of Report:** Tim Williams

**Date:** 3<sup>rd</sup> March 2010

**Reviewing Officer:**

**Date:** 10<sup>th</sup> March 2010



**Angus Gilmour  
Head of Planning**

**REFUSAL REASONS RELATIVE TO APPLICATION REF. NO. 08/00231/OUT**

1. It is the consideration of the Planning Department that the residential development of these elevated sites within the open countryside is contrary to the recommendations of the North and South Kintyre Landscape Capacity Study and as such would be detrimental to the landscape character of the Area of Panoramic Quality within which the application site lies. This proposal does not conform to the North and South Kintyre Landscape Capacity Study and so conflicts with policy P/DCZ 4 of the Local Plan which states that "Development proposals will be expected to be consistent with the findings contained within completed Landscape Capacity Studies."

In light of the above, the proposal is consequently considered contrary to the provisions of policies STRAT DC 4, STRAT DC 8, LP HOU 1, P/DCZ 4 and LP ENV 10.

**APPENDIX TO DECISION APPROVAL NOTICE**

Appendix relative to application 08/00231/OUT

- (A) Has the application required an obligation under Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended): **No**

**If Yes: The terms of the Section 75 obligation may be viewed on the Council's website at [www.argyll-bute.gov.uk](http://www.argyll-bute.gov.uk) by recalling the application reference number on the Council's Public Access Module and then by "Clicking" Section 75 Obligation under the attached correspondence or by viewing the Public Planning register located at Planning Services, Dalriada House, Lochgilphead, Argyll, PA31 8ST.**

- (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 has been refused:

**It is the consideration of the Planning Department that the residential development of these elevated sites within the open countryside is contrary to the recommendations of the North and South Kintyre Landscape Capacity Study and as such would be detrimental to the landscape character of the Area of Panoramic Quality within which the application site lies. This proposal does not conform to the North and South Kintyre Landscape Capacity Study and so conflicts with policy P/DCZ 4 of the Local Plan which states that "Development proposals will be expected to be consistent with the findings contained within completed Landscape Capacity Studies."**

**In light of the above, the proposal is consequently considered contrary to the provisions of policies STRAT DC 4, STRAT DC 8, LP HOU 1, P/DCZ 4 and LP ENV 10.**

**NOTES TO APPLICANT (1) RELATIVE TO APPLICATION NUMBER 08/00231/OUT**

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. The notice of review should be addressed to the Director of Corporate Services, Argyll and Bute Council, Kilmory, Lochgilphead, PA31 8RT.
  
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).



**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED)**  
**TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE)**  
**(SCOTLAND) REGULATIONS 2008**

**REFUSAL OF PLANNING PERMISSION IN PRINCIPLE**

**REFERENCE NUMBER: 08/00231/OUT**

**Mr And Mrs James Blair  
Gillian Wright  
Lochside  
Low Askomil  
Campbeltown  
PA28 6EP**

I refer to your application dated 28th January 2008 for planning permission in principle under the above mentioned Act and Regulations in respect of the following development:

**Site for the erection of two dwellinghouses at Land South Of Achnadriane Farm Tayinloan  
Argyll And Bute PA29 6XG**

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: 23 March 2010

Angus J. Gilmour  
Head of Planning

[www.argyll-bute.gov.uk](http://www.argyll-bute.gov.uk)

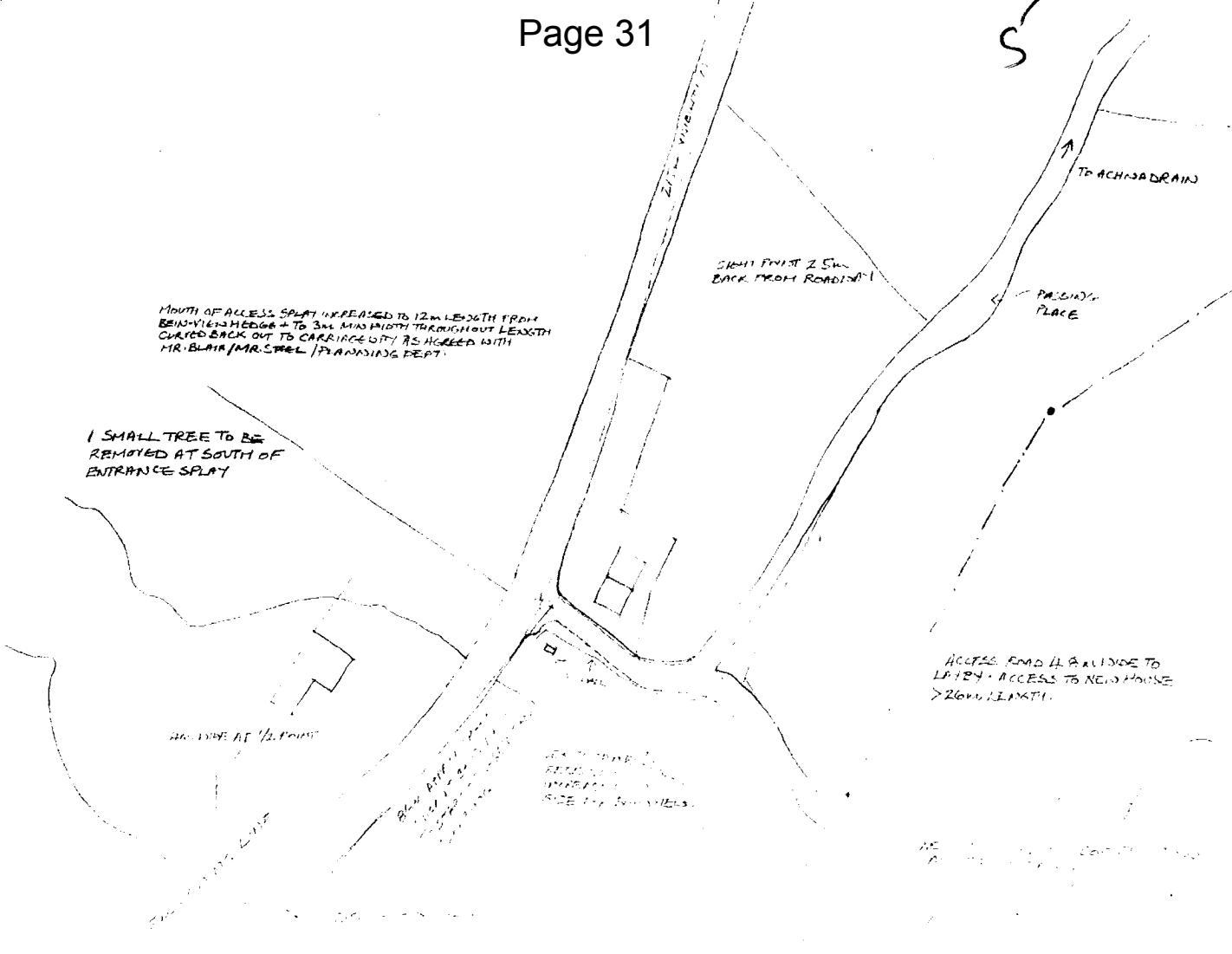


**NOTES TO APPLICANT (1) RELATIVE TO APPLICATION NUMBER 08/00231/OUT**

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. The notice of review should be addressed to the Director of Corporate Services, Argyll and Bute Council, Kilmory, Lochgilphead, PA31 8RT.
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).



S



**ARGYLL AND BUTE COUNCIL**  
 Refused by **PLANNING AUTHORITY**

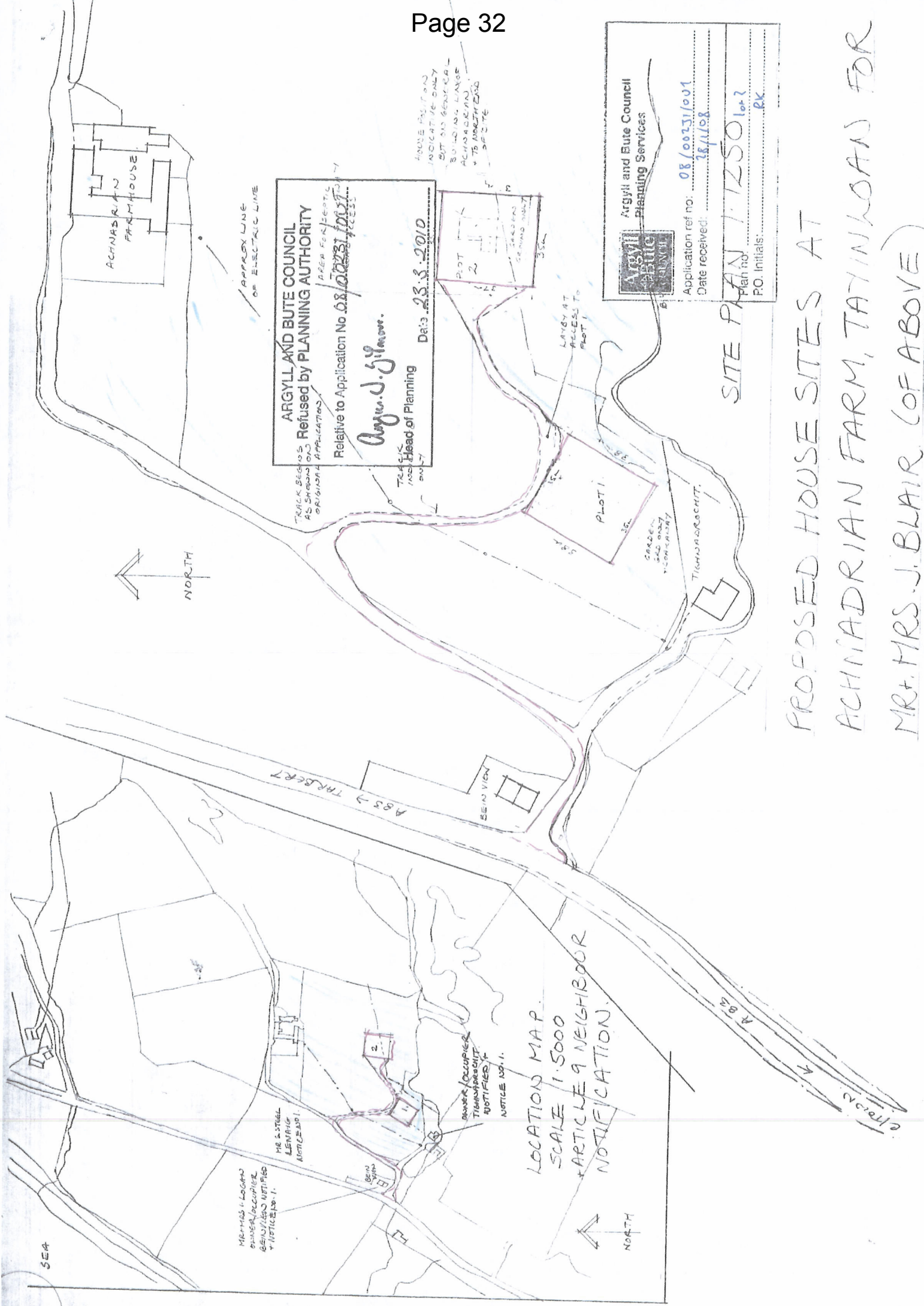
Relative to Application No 08/00231/001

*Angus J. Gilman*  
 Head of Planning

Date 23.3.2010

	Argyll and Bute Council Planning Services	
	Application ref no:	<u>08/00231/001</u>
Date received:	<u>28/1/09</u>	
Plan no:	<u>2 of 2</u>	
P.O. Initials:	<u>AK</u>	

PROPOSED GROUND CLEARANCE AREA  
 FOR VISIBILITY SPLAYS AT ENTRANCE TO  
 HOUSE SITES AT ACHINADRAIN,  
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ARGYLL AND BUTE COUNCIL  
 Refused by PLANNING AUTHORITY  
 Relative to Application No. 08/00731/001  
 Date: 23.3.2010  
 Argyle J. Gilmore,  
 Head of Planning

HOUSE PLANT AND  
 INDICATIVE ONLY  
 BUT DO NOT BE USED FOR  
 BUILDING LINES  
 ARCHITECTURAL  
 TO BE DETERMINED

Argyll and Bute Council  
 Planning Services

Application ref no: 08/00731/001  
 Date received: 28/11/08

Plan no: 1/250 107  
 P.O. Initials: RK

SITE PLAN 1/250 107

LOCATION MAP  
 SCALE 1:5000  
 ARTICLE 9 NEIGHBORHOOD  
 NOTIFICATION

PROPOSED HOUSE SITES AT  
 ACHNADRIAN FARM, TAYINHOAN FOR  
 MR. MRS. J. BLAIR (OF ABOVE)

Argyll and Bute Council  
Comhairle Earra Ghàidheal agus Bhòid



## Development Services

Director: George Harper

Mr and Mrs James Blair  
Achnadrian Farm  
Taylinloan  
Tarbert  
Argyll  
PA29 6XG

### Development Services

Mid Argyll, Kintyre & the Islands Area Office,  
67 Chalmers St, Ardrishaig, Argyll PA30 8DX  
Tel: 01546 604082 Fax: 01546 604081  
E-mail: Peter.Bain@argyll-bute.gov.uk  
Website: www.argyll-bute.gov.uk

Ask For: Peter Bain  
Our Ref: 08/00231/OUT  
Your Ref:  
Date: 8<sup>th</sup> March 2010

Dear Mr and Mrs Blair,

### **TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 OUTLINE PLANNING APPLICATION REF. 08/00231/OUT – SITE FOR THE ERECTION OF TWO DWELLINGHOUSES – LAND SOUTH OF ACHNADRIAN FARM, TAYINLOAN**

I refer to the above-mentioned application for outline planning permission and to your site meeting of 23<sup>rd</sup> February 2010 with Peter Bain and Adrian Jackson-Stark of this Department and to your subsequent e-mail of 2<sup>nd</sup> March 2010; I am now able to confirm the Planning Department's view in respect of this application.

The application site is located within a 'rural opportunity area' wherein the provisions of policies STRAT DC 4 and LP HOU 1 set out a general presumption in favour of 'small scale' residential development on appropriate sites and, subject to access/servicing provision and, compliance with other relevant provisions of the Development Plan. However, the application site also lies within an 'Area of Panoramic Quality' wherein (in order to address concerns raised by the Reporters during the Local Plan Public Local Inquiry) the provisions of LP HOU 1 require applications to be determined in line with The North and South Kintyre Landscape Capacity Study. The provisions of STRAT DC 8 and LP ENV 10 would seek to resist development located within or adjacent to an Area of Panoramic Quality which, by virtue of scale, location or design would have a significant adverse impact upon the character of the landscape.

Having specific regard to the Landscape Capacity Study, the application site is located within a larger area identified in red on the study maps as being unsuitable for development. Specifically the study identifies landscape capacity for further development in this locality to be on relatively flat areas of land close to the A83 public highway, in and around existing woodlands and, re-development/expansion of existing building clusters. The study also advises that development is to be resisted on open, elevated sites, particularly where there is no existing woodland or unsuitable topography to achieve a sense of place or shelter.

Having inspected the site, the Planning Department is content that the Landscape Capacity Study satisfactorily reflects the landscape character and development pattern of the immediate surrounds and sets out a clear and definitive boundary between areas of landscape character considered to have capacity for further development and areas of landscape character where development is not recommended. The area identified as having capacity for development largely



below the 25m contour demarcated by the access track to Achnadrian and consists of low-lying, relatively level/gently sloping areas containing or bounded by mature woodland; above the 25m contour the land consists of open, elevated grazing with a convex slope. The application site contains two plots: one on a small shelf of relatively level land close to the 30m contour which is bounded to the rear (east) by gorse and very thin scrub woodland, the site lies approx. 5-6m above the level of an existing dwellinghouse to the south and, the second a site at a higher level (approx 35/37m aod) which sits on the crown of a convex slope and is exposed on all sides in its immediate context with the land rising again further to the rear (east); both sites would require an access which dissects the open field. The lower plot has more merit than the upper plot although both are certainly less preferable than the original application which was for both dwellings located at the western edge of the field on the 25m contour – development on all of the plots identified would be well screened from the view of the public highway by roadside vegetation but would be visible from the shoreside/sea views. It is however noted that having regard to the Landscape Character Study all of the potential plots lie within the same character of open, elevated landscape wherein development is not recommended; it is the consideration of the Planning Department that it is not possible to satisfactorily distinguish between the landscape character of one plot and another and neither of the plots have any realistic potential to incorporate appropriate landscape mitigation measures which would successfully assimilate both the development and access route with the character of the nearby 'orange' designation where capacity for development is identified.

**In view of the above and in light of the revised policy/guidance position provided by the North and South Kintyre Landscape Capacity Study, it is the consideration of the Planning Department that the residential development of these elevated sites within the open countryside is contrary to the existing development pattern and as such detrimental to the landscape character of the Area of Panoramic Quality within which the application site lies. This proposal does not conform to the North and South Kintyre Landscape Capacity Study and so conflicts with policy P/DCZ 4 of the Local Plan which states that "Development proposals will be expected to be consistent with the findings contained within completed Landscape Capacity Studies."**

**In light of the above, the proposal is consequently contrary to the provisions of STRAT DC 4, STRAT DC 8, LP HOU 1, P/DCZ 4 and LP ENV 10.**

Initially this proposal had also been the subject of objection by the Area Roads Manager who has recommended that permission be refused unless visibility and junction improvements can be secured in the interests of road safety. The Area Roads Manager has subsequently provided a revised comment which advises that since his previous consultation response the Council's visibility standards have been reduced. Consequently, the road safety objections which have previously prevented determination of this application have now been removed – in the event that the Planning Department were able to support the proposal then any grant of planning permission would have been subject to the imposition of suspensive planning conditions requiring the upgrade of the junction of the private road serving the development and the A83 public highway. These improvements would include for an enlarged bellmouth and provision of a service lay-by; the land necessary for these improvements is included within the application site and could therefore be addressed by suspensive planning condition preventing the commencement of development until such time as the access improvements are provided - in the event that third party land ownership interests prevent the improvements being secured then this would also prevent the implementation of the planning permission.

Having regard to your e-mail of 2<sup>nd</sup> March 2010, I can confirm that the chronology of events set out in your e-mail is essentially a correct recollection of events; I have attached a timeline, as far as I can establish, of the key dates and events in the processing of this application. The issues raised in your e-mail of 2<sup>nd</sup> March 2010 have been logged as a statement in support of the proposal and as such will be addressed in detail and recorded on the application file within the Planning Department's report of handling for the determination of this application.

For the purpose of clarity it is worth noting that advice offered informally (in respect of the acceptability of siting development at this location) by the Planning Department at earlier stages in the processing of this application was the informal, professional opinion of officers having regard to the provisions of Council policies and guidance at that time. In this particular instance the advice initially provided was based upon draft policies contained in the emerging Argyll and Bute Local Plan and was provided at a time when it was generally the understanding of Officers that the disposition of the boundaries of 'Rural Opportunity Areas' and adjoining 'Sensitive Countryside' were the result of an initial, assessment of general landscape capacity to absorb new development – and it is on this basis that Officers have previously given informal recommendations relating to all of the proposed plot locations at Achnadrian. However, in July 2008, the Local Plan Public Inquiry Reporter raised concern at the methodology which had been employed in the designation of 'Rural Opportunity Area' boundaries and subsequently, as part of the Local Plan preparation process the policies which apply to 'Rural Opportunity Areas' have been amended and additional technical guidance in the form of the Landscape Capacity Study which supplements the Local Plan has been produced by the Council. Whilst these amended policy provisions and new technical guidance conflict with advice previously provided by Planning Officers it is confirmed that they represent the most recent expression of Council policy, are material to the determination of the current application and as such cannot be set aside and consequently must supersede any previous informal advice provided by Officers.

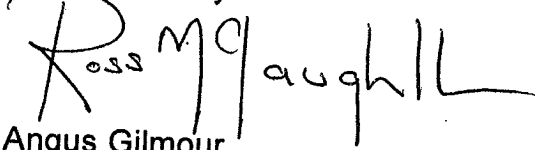
Having regard to other opportunities for development at Achnadrian, it is noted that the entirety of your land ownership is located within the 'red' area in the landscape study wherein it is recommended that development be resisted. It is however noted that Achnadrian contains a number of derelict outbuildings which have potential to be re-developed for residential use; the grouping of buildings could potentially be extended into the land immediately to the rear (east) as a rounding-off development. The potential to re-use and expand the existing grouping of buildings is however constrained by the access requirements for the site; the Area Roads Manager has indicated an acceptance of three additional dwellings (these specifically being the current applications for two dwellings at Achnadrian and one at Benview) taking access from the A83 via the existing private road provided that junction improvements are provided; the Area Roads Manager also notes that any additional development to that currently proposed would require the upgrade of the existing private road to an adoptable standard.

In view of the above, I can advise that the Planning Department is now in a position to determine this application as a 'local' scale of development under powers delegated to officers; it is the intention of the MAKI office to prepare a report and issue a certificate of refusal later this week. Where planning permission is refused, the applicant has the right within three months of determination to request that the decision is subject to a review. Such a request would be submitted to the Council's Head of Democratic Services and Governance who would arrange for a Local Review Board comprised of three Elected Members to be convened in order to consider the circumstances of the planning decision – further information in respect of this process will accompany the decision notice issued by the Planning Department.

Whilst I appreciate that the above is not the response that you were hoping for I

trust that it provides a satisfactory explanation of the current policy circumstances against which the application for planning permission must be determined and the reasons for this to be in conflict with the previous advice offered by Officers; however, should you wish to discuss this matter further then please do not hesitate to contact either myself or Peter Bain, the MAKI Area Team Leader.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Ross McLaughlin', written over the typed name 'Angus Gilmour'.

Angus Gilmour  
Head of Planning Services

P.P.

c.c.

Cllr. John McAlpine, 10 Market Place, Tarbert, PA29 6AB

Gillian Wright, Lochside, Low Askomil, Campbeltown, Argyll, PA28 6EP (Agent)

**STATEMENT OF CASE**

**FOR**

**ARGYLL AND BUTE COUNCIL  
LOCAL REVIEW BODY**

**REFUSAL OF PLANNING PERMISSION IN  
PRINCIPLE FOR A SITE FOR THE ERECTION OF  
TWO DWELLINGHOUSES**

**LOCAL REVIEW BODY REF. 10/0009/LRB**

**PLANNING PERMISSION APPLICATION  
REFERENCE NUMBER 08/00231/OUT**

**5<sup>TH</sup> JULY 2010**

## **STATEMENT OF CASE**

The planning authority is Argyll and Bute Council ('the Council'). The appellants are Mr and Mrs James Blair. ('the appellants').

The planning application, reference number 08/00231/OUT, for a site for the erection of two dwellinghouses at Land South of Achnadriane Farm, Tayinloan ("the appeal site") was refused under delegated powers on the 23<sup>rd</sup> March 2010. The planning application has been appealed and is subject of referral to a Local Review Body.

### **DESCRIPTION OF SITE**

The application site relates to approximately 0.35ha (including access road) located to the east of the A83 public highway at Achnadriane, some 5km north of Tayinloan. The plots occupy elevated locations 100m to the east and 35m north respectively of the existing residential properties Benview and Tighnadrochit; Achnadriane Farm is located approximately 110m to the north of the proposed development.

### **SITE HISTORY**

An initial application ref. 07/00132/OUT which sought outline planning permission for two dwellinghouse at a lower lying location immediately to the rear (east) of Benview was withdrawn by the applicant in the face of substantial representation to the proposals by third parties raising objection on the basis that such a proposal would have a significant adverse impact upon the level of privacy and amenity afforded to Benview and its garden area. The subject application (08/00231/OUT) sought to address these concerns by locating the proposed development further away from the boundary with Benview.

It is also noted that outline planning permission is presently being sought for a site for the erection of a dwellinghouse within the garden ground of Benview (07/00267/OUT); this application remain undetermined in light of an unresolved roads matter.

### **STATUTORY BASIS ON WHICH THE APPEAL SHOULD BE DECIDED**

Section 25 of the Town & Country Planning (Scotland) Act 1997 provides that where, in making any determination under the planning Acts, regard is to be had to the development plan, 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 or not the proposal is consistent with the Council's 'Settlement Strategy' as set out in the Development Plan, in this instance policies STRAT DC 4, LP HOU 1 and P/DCZ 4.
- Whether or not the proposal has an adverse impact on the character of the Area of Panoramic Quality within which the application site lies; the provisions of policies STRAT DC 8 and LP ENV 10 would seek to resist

The Report of Handling (Appendix 1) sets out the Council's assessment of the application in terms of Development Plan policy and other material considerations. The consultation comments submitted by statutory and other consultees (Appendix 2) and third party representation (Appendix 3) are attached for the purpose of clarity.

## **POLICY BACKGROUND**

The appeal relates to a 'small scale' housing development located on an open countryside location within a 'Rural Opportunity Area' which is positioned within an Area of Panoramic Quality – the following policy considerations are relevant to the determination of this matter:

### Structure Plan Policy STRAT DC 4 – Development in Rural Opportunity Areas

- A) *Within Rural Opportunity Areas encouragement shall be given to small scale developments on suitable sites which, in terms of siting and design, will visually integrate with the landscape and settlement pattern; this may include small scale development and change of use of building development.*
- B) *n/a*
- C) *n/a*
- D) *n/a*
- E) *Developments are also subject to consistency with other policies of the Structure Plan and in the Local Plan.*

### Structure Plan Policy DC 8 – Landscape and Development Control

- A) *Development which, by reason of location, siting, scale, form, design or cumulative impact, damages or undermines the key environmental features of a visually contained or wider landscape or coastscape shall be treated as 'non-sustainable' and in contrary to this policy. Outwith the National Park particularly important and vulnerable landscapes in Argyll and Bute are those associated with:*

1. *National Scenic Areas;*
2. *Historic landscapes and their settings with close links with archaeology and built heritage and/or historic gardens and designed landscapes;*
3. *Landward and coastal areas with semi-wilderness or isolated or panoramic quality.*

*Local Plan Policy LP ENV 10 – Development Impact on Areas of Panoramic Quality*

*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 upon the character of the landscape unless it is demonstrated that:*

- (A) Any significant adverse effects on the quality for which the area has been designated are clearly outweighed by social and economic benefits of National or regional importance;*
- (B) Where acceptable, development must also conform to Appendix A of the Local Plan.*

*In all cases the highest standards, in terms of location, siting, landscaping, boundary treatment and materials, and detailing will be required within the Area of Panoramic Quality.*

The text which accompanies policy LP ENV 10 sets out the following justification in relation to development within Areas of Panoramic Quality:

*The aim of this policy is to provide panoramically important landscapes in Argyll and Bute, with adequate protection against damaging development.*

*The Council has identified Areas of Panoramic Quality and these are shown on the main Proposals Maps. These areas are important not only for their physical landforms and for the flora and fauna, which they support, but also for the environmental assets that they represent. These qualities could easily be destroyed or damaged by even a relatively small, insensitive development. They therefore must be protected.*

*Local Plan Policy LP HOU 1 – General Housing Development*

- (A) There is a general presumption in favour of housing in development other than those categories, scales and locations of development listed in (B) below. Housing development, for which there is a presumption in favour, will be supported unless there is an unacceptable environmental, servicing or access impact.*

*(B) n/a*

*(C) n/a*

*(D) Housing developments are also subject to consistency with other policies of both the Structure and Local Plan and in particular policy P/DCZ 4 – Rural Opportunity Areas.*

The text which accompanies policy LP HOU 1 sets out the following justification in respect of Housing in the Rural Opportunity Areas.

*The rural opportunity areas have been mapped specifically with a view to identifying areas within which there is a general capacity to successfully absorb small scale housing development. This includes open countryside locations where appropriate forms of small-scale housing development will be in tune with landscape character and development pattern. Development proposals located within the open countryside within Rural Opportunity Areas positioned within National Scenic Areas and Areas of Panoramic Quality will be considered premature until a Landscape Capacity Study covering the relevant Rural Opportunity Area has been completed and approved by the Council. Thereafter, development proposals will be expected to be consistent with the findings contained within the Landscape Capacity Study. Consequently, there is a presumption in favour of small-scale housing development within this zone, subject to on-going capacity evaluation.*

#### P/DCZ 4 – Rural Opportunity Areas – Areas and Boundaries

*It is proposed that the Rural Opportunity Areas be identified in Proposal Maps A in the proposal map folders; these correspond to areas with a general capacity to successfully absorb small-scale development.*

*Development proposals located in the open countryside, within Rural Opportunity Areas positioned within National Scenic Areas or Areas of Panoramic Quality will be considered premature until a Landscape Capacity Study covering the relevant Rural Opportunity Area has been completed and approved by the Council. In such instances proposals should be considered as if located within Sensitive Countryside.*

*Development proposals will be expected to be consistent with the findings contained within completed Landscape Capacity Studies.*

*NB. This Policy impacts upon the following policies in LP TOUR 1; LP HOU 1; LP RET 4; LP BUS 2.*

The Rural Opportunity Area within which the appeal site is located has been the subject of Landscape Capacity Assessment undertaken by qualified Landscape Architects and is contained within ROA SK 1 (pages 24 – 29) of the 'North and South Kintyre Landscape Capacity Study' which was approved by the Mid Argyll, Kintyre and the Islands Area Committee on 3<sup>rd</sup> February 2010. This document also sets out the methodology employed in assessing landscape capacity.

The appeal site is located within an area identified in red in the Landscape Capacity Study which relates to 'Areas not recommended for development' wherein the recommendations include:

- *Avoid building on open land which has long views to it and where there is no existing woodland or topography to achieve a sense of place or shelter. In particular development on higher open pastures to the east should be avoided where new buildings are likely to be highly visible and where localised planting would be inappropriate.*

## **REQUIREMENT FOR ADDITIONAL INFORMATION AND A HEARING**

The issues raised were covered in the Report of Handling which is contained in Appendix 1, including a summary of third party representations. 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 significant body of conflicting representation, then it is considered that a Hearing is not required.

## **COMMENT ON APPELLANTS' SUBMISSION**

Having regard to part (7) of the appellant's submission the following comments are noted for the record in respect of the specific issues raised:

1. The context of discussions between the appellant and planning officers is documented in the report of handling. Informal advice is provided on the basis of the relevant policy provisions and information available at that time; in the event that there is a material change to circumstances of the proposal, including an amended policy context, then the Council cannot be bound by informal advice issued previous to the change in circumstances occurring – this would apply regardless of whether such advice was provided verbally or in writing.
2. The appellant sets out that the principle issue in this case is whether or not the proposal will have a significant adverse effect upon the Area of Panoramic Quality. However, the appellant's case surmises that there has been no assessment of the effect of the development upon on the basis that the report of handling does not include an extensive assessment of the visual impact of the development – whilst the officers' report does not specifically dedicate a paragraph to the visual impact of the proposal it is noted that the narrative of the report contains a number of references to the assessment of the characteristics and relationship of the application site to its surrounds – visibility of the development from the public highway is limited with views obscured by roadside vegetation; however, the site is by no means hidden from view and in this respect it is noted within the report that the appeal site is readily open to view from the west (coast/beach) from where such (panoramic/long) views would place the development within the elevated context of open fields. It is also noted within the

report of handling that the open nature of the appeal site could not be mitigated for and readily assimilated within the context of adjoining woodland even with additional landscape planting. The appellant however fails to acknowledge that the appropriate assessment in respect of policies STRAT DC 8 and LP ENV 10 is not solely based upon the visual impact of the proposal but also has regard to the potential impact of the development upon the key features of the landscape and the sensitivity of the landscape to change – in this respect it is noted that the Landscape Capacity Study fulfils this requirement having identified the key characteristics of the landscape and provided recommendations upon its capacity for additional development. The Landscape Capacity Study has been undertaken by appropriately qualified landscape architects on behalf of the Council; their methodology is set out as a prelude to the Landscape Capacity Study.

3. See 2. Above.
4. Conformity with the NSKLCS is required through policy LP HOU 1 which states in section (D) “Housing Developments are also subject to consistency with other policies of both the Structure and Local Plan and in particular policy P/DCZ 4 – Rural Opportunity Areas.” Policy P/DCZ 4 states that “Development proposals will be expected to be consistent with the findings contained within completed Landscape Capacity Studies.” This proposal does not conform with the NSKLCS as the sites are located with a red area – ‘area not recommended for development’. The associated text for area SK1 of the NSKLCS (covering this site) states the following :-

- Avoid building on open land which has long views to it and where there is no existing woodland or topography to achieve a sense of place or shelter. In particular development on the higher open pastures to the east should be avoided where new buildings are likely to be highly visible and where localized planting would be in appropriate.

This proposal is on open land in the eastern side of the APQ and east of the road; there are long views onto the site, particularly from the sea (although not from the A 83); there is no woodland or vegetation on the site that would help to assimilate the development into the wider landscape; the site consists of a convex slope of open grassland which provides no sense of shelter and is one of the higher pasture areas. Given this, it is considered that the proposal is in no way consistent with the NSKLCS as the characteristics of this site are exactly those which the NSCLCS seeks to protect from development.

5. The map is entirely clear in terms of distinction between ‘red’ and ‘orange’ areas. There is no doubt that the appeal site is located in a ‘red’ area.

6. Economic growth can be delivered through development in the countryside. In this instance encouragement has been given to relocating the development into 'orange' areas defined by the NSKLCS.

## **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.

The application site is located within 'rural opportunity area' positioned within an Area of Panoramic Quality wherein the provisions of policy P/DCZ 4 requires consideration to be had to the provisions of the North and South Kintyre Landscape Capacity Study. The proposed residential development of elevated sites within the open countryside is contrary to the recommendations of the North and South Kintyre Landscape Capacity Study and as such will be to the detriment of the landscape character of the Area of Panoramic Quality within which the appeal site lies.

In view of the above, the proposed development is considered contrary to the provisions of Policies STRAT DC 4 and STRAT DC 8 of the Argyll and Bute Structure Plan 2002 and Policies LP ENV 10, LP HOU 1 and P/DCZ 4 of the Adopted 'Argyll and Bute Local Plan' 2009. Taking account of the above, it is respectfully requested that the appeal be dismissed.

**Appendix 1 – Report of Handling**

**Argyll and Bute Council  
Development Services**

**Delegated or Committee Planning Application Report and Report of handling as required by Schedule 2 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 relative to applications for Planning Permission or Planning Permission in Principle**

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**Reference No:** 08/00231/OUT  
**Planning** Local  
**Hierarchy:**  
**Applicant:** Mr & Mrs James Blair  
**Proposal:** Site for the erection of two dwellinghouses  
**Site Address:** Land South of Achnadriane Farm, by Tayinloan

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**DECISION ROUTE**

Sect 43 (A) of the Town and Country Planning (Scotland) Act 1997

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**(A) THE APPLICATION**

- (i) **Development Requiring Express Planning Permission**
- The erection of two detached dwellinghouses
  - The alteration of an existing vehicular access onto a classified road
  - The installation of a single septic tank for both dwellings
- (ii) **Other specified operations**
- Connection to a proposed private water supply
- 

**(B) RECOMMENDATION:**

That permission be Refused subject to the reasons contained in this report.

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**(C) CONSULTATIONS:**

Area Roads Mid Argyll Kintyre And Islay	26.02.2010	No objection subject to conditions.
Archaeologist	13.02.2008	No objection.
Environmental Services Mid Argyll	13.02.2008	No objection subject to condition.

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**(D) HISTORY:**

07/00132/OUT – Site for the erection of two dwellinghouses, Land at Achnadriane Farm by Tayinloan – Withdrawn 17.07.08 following instruction to do so in letter dated 28.01.08

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**(E) PUBLICITY:**

None required.

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**(F) REPRESENTATIONS:**

**(i) Representations received from:**

Iain & Kathryn Logan, Benview by Tayinloan

**(ii) Summary of issues raised:**

- Requests various conditions to be attached to any planning permission;
  - No trees on the east bank of the farm track should be cut down;
  - No development should take place until such time as the applicant has provided competent details that the proposed private water supply is acceptable;
  - That works be carried out by the applicant to protect existing buried drainage pipes and service cables;
  - That the roofs of the new dwellings be covered in slate;
  - That no works should take place until a legally binding contract with the relevant land owners is in place to allow for the required access improvements and their continued maintenance;
  - The dwellinghouses should be single storey.
- 

**(G) SUPPORTING INFORMATION**

**Has the application been the subject of:**

- |  |  |
|--|--|
| <b>(i) Environmental Statement:</b>  | No   |
| <b>(ii) An appropriate assessment under the Conservation (Natural Habitats) Regulations 1994:</b>  | No   |
| <b>(iii) A design or design/access statement:</b>  | No   |
| <b>(iv) A report on the impact of the proposed development eg. Retail impact, transport impact, noise impact, flood risk, drainage impact etc:</b> | Yes – A supporting statement has been submitted by the applicant. This is summarised in Section P below. |
-



**(H) PLANNING OBLIGATIONS**

**Is a Section 75 agreement required:** No

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**(I) Has a Direction been issued by Scottish Ministers in terms of Regulation 30, 31 or 32:** No

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**(J) Section 25 of the Act; Development Plan and any other material considerations over and above those listed above which have been taken into account in the assessment of the application**

**(i) List of all Development Plan Policy considerations taken into account in assessment of the application.**

'Argyll and Bute Structure Plan' 2002

STRAT DC 4 – Development in Rural Opportunity Areas  
STRAT DC 8 – Landscape and Development Control  
STRAT DC 9 – Historic Environment and Development Control

'Argyll and Bute Local Plan' 2009

LP ENV 1 – Impact on the General Environment  
LP ENV 10 – Impact on Areas of Panoramic Quality (APQs)  
LP ENV 17 – Impact on Sites of Archaeological Importance

LP HOU 1 – General Housing Development  
P/DCZ 4 – Rural Opportunity Areas – Areas And Boundaries

LP TRAN 4 – New and Existing Public Roads and Private Access Regimes  
LP TRAN 6 – Vehicle Parking Provision

**(ii) List of all other material planning considerations taken into account in the assessment of the application, having due regard to Annex A of Circular 4/2009.**

- Argyll & Bute Landscape Capacity Study – North and South Kintyre. Approved and Adopted 3<sup>rd</sup> February 2010.
- 

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

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**(L) Has the application been the subject of statutory pre-application consultation (PAC):** No

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

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

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**(O) Requirement for a hearing (PAN41 or other):** No

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

This outline application is for the erection of two detached single storey dwellinghouses on two separate plots, sharing the same access, on land south of Achnadriane Farm, east of the A83 some 5 km north east of Tayinloan.

The application site consists of a total land area of approximately 0.35 hectares to include the existing access off the A83 plus part of the existing Achnadriane Farm access road plus both plots and the new proposed access road serving both. Each plot measures approximately 1,300 square metres (0.3 acres). Both of the proposed plots occupy relatively level platforms within a landform which is rising from west to east. Although both of the proposed plots are elevated with respect to the public road, they would be viewed, for the most part, against a backdrop of steeply rising land.

The proposed development would require improvements to the existing access onto the A83 public road including upgraded visibility splays and revised bellmouth geometry. Each house plot would also require parking and turning facilities within its curtilage. The area roads engineer has commented that the required access improvements and parking provision can be provided within the application site boundary and has no objections to the proposal subject to suspensive conditions. There is, therefore, no conflict with Local Plan policies LP TRAN 4 and LP TRAN 6.

It is proposed to serve the two new dwellings by connection to a new private water supply. The Council's head of environmental services has commented that this is acceptable subject to a planning condition requiring the applicant to commission and obtain approval of a hydrologist's report demonstrating that the proposed supply is sufficient in terms of quantity and quality to serve the proposed development.

Although the application site is within a wider area recognised as important for the potential for archaeology, the West of Scotland Archaeology Service has commented that they have no objections to this specific proposal. The development is therefore considered appropriate in terms of policies STRAT DC 9 and LP ENV 17.

The general landform is that of rising land from west to east; gradually at first to a height of approximately 50 metres above sea level and then rising steeply into the interior of Kintyre to a height of some 200 metres 1.5 km east of the application site. Some 2.5 km east of the application site the landscape changes to that of extensive upland commercial forest plantation and the land continues to rise until it attains a height of almost 250 metres. The proposed house plots are located between the 30 and 40 metre contours; the southern plot being located at a substantially lower level than the northern plot. The A83 public road is at a height of approximately 5 metres above sea level west of the application site.

The application site is located within a 'rural opportunity area' wherein the provisions of policies STRAT DC 4 and LP HOU 1 set out a general presumption in favour of 'small scale' residential development on appropriate sites and subject to access/servicing provision and compliance with other relevant provisions of the Development Plan. However, the application site also lies within an 'Area of Panoramic Quality' wherein (in order to address concerns raised by the Scottish Government Reporters during the 2008 Local Plan Public Local Inquiry) the provisions of LP HOU 1 require applications to be determined in line with The North and South Kintyre Landscape Capacity Study. The provisions of STRAT DC 8 and LP ENV 10 would seek to resist development located within or adjacent to an Area of Panoramic Quality which, by virtue of scale, location or design would have a significant adverse impact upon the character of the landscape.

Having specific regard to the Landscape Capacity Study, the application site is located within a larger area identified on the study maps as being unsuitable for development. Specifically the study identifies landscape capacity for further development in this locality to be on relatively flat areas of land close to the A83 public highway, in and around existing woodlands and re-development/expansion of existing building clusters. The study also advises that development is to be resisted on open, elevated sites, particularly where there is no existing woodland or topography to achieve a sense of place or shelter.

Having inspected the application site and immediate surrounds, it is the view of the Planning Department that there is a distinct difference in the character of the landscape between the areas identified by the North and South Kintyre Landscape Capacity Study as being potentially suitable for development and those not recommended for development in and around Achmadriane – the areas identified as having capacity for development being low lying, wooded land located between the public highway and the private access road to Achmadriane, where it runs below and parallel to a contour approx 20-25m above ordnance datum which marks the beginning of the open fields. Beyond this point the land rises steeply and consists of open, rough agricultural grazing land where development would require substantial modification of ground levels and where additional planting to mitigate the setting of the development would appear inappropriate. In view of this stark contrast in landscape character, it is the consideration of the Planning Department that the boundaries of land identified as being potentially suitable for development are clearly defined - this significantly reduces the ability of the Planning Department to be flexible in the interpretation of the guidance contained in the Landscape Capacity Study - in this particular instance it is very clear that the proposed development lies in an area of different landscape character to that identified as having capacity for additional development in the study.

In view of the above and in light of the revised policy/guidance position provided by the North and South Kintyre Landscape Capacity Study, it is the consideration of the Planning Department that the residential development of these elevated sites within the open countryside is contrary to the existing development pattern identified in the Landscape Capacity Study and as such detrimental to the landscape character of the Area of Panoramic Quality within which the application site lies. This proposal does not conform to the North and South Kintyre Landscape Capacity Study and so conflicts with policy P/DCZ 4 of the Local Plan which states that "Development proposals will be

expected to be consistent with the findings contained within completed Landscape Capacity Studies.”

In light of the above, the proposal is consequently contrary to the provisions of policies STRAT DC 4, STRAT DC 8, LP HOU 1, P/DCZ 4 and LP ENV 10.

Initially this proposal had also been the subject of objection by the Area Roads Manager who has recommended that permission be refused unless visibility and junction improvements can be secured in the interests of road safety. The Area Roads Manager has subsequently provided an undated comment which advises that since his previous consultation response the Council's visibility standards have been reduced. Consequently, the road safety objections which have previously prevented determination of this application have now been removed subject to the imposition of suspensive planning conditions requiring the upgrade of the junction of the private road serving the development and the A83 public highway. These improvements include for an enlarged bellmouth and provision of a service lay-by; the land necessary for these improvements is included within the application site and may therefore be addressed by suspensive planning condition preventing the commencement of development until such time as the improvements are provided.

The applicant has submitted a statement in support of his application in response to the findings of the North and South Kintyre Landscape Capacity Study. This statement is reproduced and assessed below:

*“We ask in reference to the above that the following facts please be considered.*

- 1. 2006 (Summer). Mrs. Blair approached the planning department and asked for an informal visit to Achanadriane to determine if house sites were possible and if so where.*

*Mr. Tim Williams visited and advised, recommending the lower slope of the hill would be okay for two traditional style 1 1/2-storey houses. At this point the house at Tighnadrochit was not even built.*

*At no point did he mention the sites not been suitable due to settlement patterns.”*

Comment: Planning Officers have indeed previously discussed this proposal with Mr Blair - at that time it was indicated that the Planning Department was supportive of the proposals. This advice was the informal, professional opinion of planning officers based upon the provisions of the relevant policies at that time which included the now superseded Kintyre Local Plan 1984 and the emerging draft Argyll and Bute Local Plan.

*“2. We submitted our planning application on 22/01/07, Ref: 07/00132/OUT. Our nearest neighbours, Mr. and Mrs Logan of Benview not only objected they created an email link which allowed anyone anywhere in the world to object by a press of a button.”*

Comment: Any representations received by the Planning Department are a material consideration to the determination of a planning application. The method by which such comments are received and whether or not an objector orchestrates a campaign to increase the amount of representation to a

proposal is outwith the control of the Planning Department. In any event, it should be noted that, primarily, it is the issues raised in the objections rather than the overall number received which the Planning Department must consider and address in the determination, giving material weight to the issues raised as appropriate.

*“3. 2007 (Summer) – Mr. Tim Williams and Mr. Richard Kerr met with us at the Chalmers St office, and explained they were obliged to respond to all the objectors and as that would take up an enormous amount of time and the sites had already taken up a disproportionate amount of time due to Mr. & Mrs Logan, they suggested we move the sites.*

*Mr. Tim Williams informed us he would go back to the neighbours saying we would move them if they didn't object. To accommodate the planners we agreed and discussed at some length where would be the most appropriate part of the field to move them to.*

*At no point did either Mr. Tim Williams or Mr. Richard Kerr indicate that sites in the field were unacceptable and at no point did they mention settlement patterns.*

*This decision cost us dearly when a prospective buyer for Achanadriane withdrew their offer, as they were not happy with the sites being moved.”*

Comment: The original application attracted some 40+ representations and as such the determination of the application would be undertaken by the MAKI Area Committee and in all likelihood, given the volume of objection, a discretionary public hearing – in the event that the application was successful it would also have been necessary, at that time, to complete a S75 planning agreement to secure visibility and junction improvements. It is my understanding at this time that the applicant expressed his concern at the time which had already been taken to process the application and was apprised of his options which essentially consisted of i) determine the original application (as above); ii) withdraw the original application and apply for an amended site which hopefully would not attract objection and could be determined under delegated powers with a S75 agreement.

The decision to withdraw the application and resubmit an amended proposal was entirely at the discretion of the applicant and was not undertaken to address any specific concern raised by the Planning Department in respect of the details of the original application. It is however agreed that the submission of an amended application was anticipated to provide an easier determination process for all parties concerned. Again, the advice offered by planning officers at this time was based upon the relevant policies and guidance available to them.

*“4. We re-submitted our plans on 28/01/08, Ref: 08/00231/OUT - It then became apparent the road access was a problem at the time but this has since been resolved due to a change in visibility display requirements.”*

Comment: As of 29.02.08 it had become apparent that the applicant was unable to obtain a S75 agreement to secure visibility and junction improvements necessary to address the Area Roads Manager's initial objection to the proposal. Subsequently, the Council's visibility standards have

been reduced and the existing visibility available at the junction is acceptable; however, the Area Roads Manager is still advising that junction improvements are necessary to accommodate additional vehicular movements at this location in the interests of road safety – whilst these improvements involve land in the ownership of third parties it has been confirmed that the improved junction and lay-by could be accommodated within the application site boundary edged red (with the relevant land owners notified of their interest in the application site) and may therefore be addressed by way of a suspensive planning condition. It is noted however that a grant of planning permission would not override other matters of civil law; in the event that the applicant is unable to implement the required improvements because of land ownership issues then the provisions of the condition would prevent any development commencing on site.

*“5. August 2008 - We received a letter from Mr. Richard Kerr informing us that our planning application had not only been put on hold until the completion of the Landscape Capacity Study, but the criteria had changed for sites falling within an ‘ROA’ which lie within a designated Area of Panoramic Quality, which ours did.*

*So we patiently waited - a further 1 1/2 years or so.*

*At no point during this period did anyone from the planning department indicate to us that the sites were not acceptable and did not fit in with settlement patterns.”*

Comment: The recommendations of the Local Plan Inquiry Reporters included for the deletion of all ROAs which were located within Areas of Panoramic Quality (as is the case in this instance) and National Scenic Areas – this in effect would have resulted in this site and all other such ROAs being amended to ‘sensitive countryside’ wherein there is a presumption against all development in the open countryside. In view of the uncertainty as to the status of ROAs, the Planning Department took the view that the determination of applications in the affected ROAs would be premature to the development plan process until such time as the Council had provided its response to the Reporters recommendations. The Council duly provided its response to the Reporters recommendations in Nov. 2008 by classifying all ROA within APQ/NSA designations as ‘sensitive countryside’ until such time as a Landscape Capacity Study had been prepared – the policy provisions of P/DCZ4 and LP HOU 4 in the Local Plan were also amended to require new development to be consistent with the Landscape Capacity Study. The North and South Kintyre Landscape Capacity Study was approved by Members on 3<sup>rd</sup> February 2010 and it is only subsequent to this point that the Planning Department has been in a position to consider determination of the affected applications. Whilst I can appreciate the applicant’s disappointment at a delay in excess of 18 months it must be noted that the events which have unfolded in the Local Plan preparation process meant that it was not possible for the case officers processing this application either to predict or avoid the consequences of these events.

*“6. 23<sup>rd</sup> February 2010 – Mr. Peter Bain and Mr. Adrian Jackson-Stark meet with Mr. Blair at Achanadriane. After looking at the sites they feel they do not fit in with settlement patterns.*

*This is despite the lower site being situated next to a house at*

*Tighnadrochit with Benview situated below, and Achanadriane located to the north/east.”*

Comment: For the purpose of clarity it is noted that the application site is located at a substantially higher level than that of Tighnadrochit which sits in a sheltered bowl and is encompassed by a woodland setting.

*“This is despite the Landscape survey allowing for possible development next to Benview and in the field to the left of Benview which though it has a native woodland it also has a clearly visible open field behind it. Both these areas are directly beside the main road.”*

Comment: The lower site is indeed provided a modest backdrop of gorse and scrub woodland which is of substantially lower quality and visual impact within the wider landscape setting than the more mature woodland at lower levels adjacent to the public highway and adjacent to the watercourse to the south. It is however the consideration of the Planning Department even with additional landscape planting this plot could not be readily assimilated into the landscape character of the adjoining area identified as having capacity for further development.

*“The sites in our field are not visible from anywhere on the main road due to the native woodland (which is not yet fully mature) below us and to the left of our track.”*

Comment: This is correct. Views of the application site from the A83 public highway would be well screened by roadside vegetation; it is however noted that development at this location would be visible within the context of an open field when viewed from the coast to the west. It is also noted that the recommendations contained within the Landscape Capacity Study are not solely based upon the visual impact of development but also have regard to the potential impact of development upon the key features of the landscape and, the sensitivity of the landscape to change. In this respect the study expresses a requirement to restrict new development at Achnadriane to lower lying land where development can be accommodated within a woodland setting. The study recommends against development upon the elevated, open slopes. The landscape character of the application site and the entirety of the applicant's landholding falls within the latter category. The transition in landscape character is clearly defined by the private road serving Achnadriane and a small incursion east along the river course at a similar level – The application site lies beyond this point and it is the view of the Planning Department that it is not possible to consider the proposal as being consistent with the guidance contained in the Landscape Capacity Study. The proposal is therefore contrary to the provisions of policies P/DCZ 4, LP HOU 4, STRAT DC 8 and LP ENV 10.

*“Both our sites are situated in what was an ROA when we submitted our plans. The higher site is situated in line with Achnadriane and as far to the side of the field as possible without going into what was originally a sensitive area.”*

Comment: This is correct having regard to the approximate set back distance from the public highway. However, the upper site is located at significantly higher level in the landscape than Achnadriane. The upper site is an open site on a convex slope, exposed to its immediate surrounds on all sides and is not

nestled within the wider landscape setting in the same sheltered manner that the grouping of buildings at Achnadriane are accommodated.

The outcome of the Local Plan Inquiry Reporters recommendation was to question the disposition of ROAs within scenic designations – i.e. to raise the question whether it was actually appropriate to promote development within these areas without first having assessed the capacity of the landscape in detail to acceptably accommodate such change. Previously when officers have provided advice they have done so on the basis that a presumption in favour of small scale residential development exists within the ROA and that the boundary between the ROA and sensitive countryside was based upon an informed assessment of landscape capacity. The Local Plan Public Inquiry Reporter queried the methodology which had been employed by the Council in the designation of ROAs in the Local Plan, at which point it was disclosed that the designation of the ROA boundaries was not informed by a detailed assessment of landscape capacity to accommodate new development and to which the Reporter raised serious concern as to whether it was acceptable to promote new development within scenic designations without first having carried out a detailed landscape capacity assessment. In effect the Landscape Capacity Study identifies more limited areas of capacity for new development within the ROAs which were originally intended by the Council to be a larger area of search.

*“In conclusion we feel we have tried to work with the planning department seeking and following their advice from the very beginning but it is impossible to keep up when the goal posts keep changing. Our sites complied with the original criteria and if they had not I can only assume the planners would have advised us otherwise at the time.*

*As we understand it the Landscape study it is not a stand-alone document and its recommendations are as yet not laid in stone but open for feedback. This would allow the planning department scope for considering the merits of individual representations.*

*Taking into consideration the length of time this process has taken, the fact the sites are not visible but screened from the road, the fact that the lower site is next to an existing house and the fact that a traditional one storey stone clad house on the higher site could be easily absorbed into the landscape, particularly as to the east is a stone dyke, to the south gorse bushes and a burn - landscape traditionally chosen for the siting of croft houses.*

*If we are to keep rural areas alive and our rural schools open then rural housing is desperately needed to attract families to the area. Our own situation is having brought our own family up here we wish to continue to live and work in the area. When our financial difficulties forced us to sell Achnadriane along with three acres of land, we were led to believe we would be able to build and live in a new home in our field where we intended to create a small holding. The alternative is we will be forced to move away. Is Kintyre to see another round of ‘clearances’ as locals are forced to move away due to the lack of affordable housing making room for only the wealthy and the retired?”*

Comment: Mr. Blair is correct. Effectively the goal posts have moved whilst the application has been processed. The change in circumstances has entirely



been outwith the control of planning officers who have been required to amend their assessment of the acceptability of the proposal in line with the evolving policy position of the Argyll and Bute Local Plan and associated technical guidance. Mr. Blair is also correct in stating that landscape capacity is only part of the planning assessment which requires to be undertaken. – However, in this respect regard is had to the provisions of the Government's Scottish Planning Policy (SPP) which sets out that planning decisions must be made in accordance with the Development Plan unless material considerations indicate otherwise. Material considerations should be related to the development and the use of the land. Whilst there is a degree of sympathy for Mr. Blair's position, it is the view of the Planning Department that (i) his personal financial circumstances, (ii) the fact that he has been the subject of a lengthy delay in the processing of his application and, (iii) earlier provision of informal advice from officers which now conflicts with the current policy/guidance position of the Council are not related either to the nature of the impact of the proposed development or the use of the land and, as such, are not sufficient justification to set aside the provisions of an approved and adopted Development Plan – it should also be noted that prior to finalising its decision, the Planning Department has taken the time to revisit the site to reassess the development in light of the Local Capacity Study and establish whether or not the boundaries of the Landscape Capacity Study were ambiguous or flexible in any way which would have allowed consideration of development within the 'red' area, and have also ascertained the extent of Mr. Blair's landholding to identify if alternative development opportunities existed.

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

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**(R) Reasons why Planning Permission or Planning Permission in Principle Should be Refused:**

It is the consideration of the Planning Department that the residential development of these elevated sites within the open countryside is contrary to the recommendations of the North and South Kintyre Landscape Capacity Study and as such would be detrimental to the landscape character of the Area of Panoramic Quality within which the application site lies. This proposal does not conform to the North and South Kintyre Landscape Capacity Study and so conflicts with policy P/DCZ 4 of the Local Plan which states that "Development proposals will be expected to be consistent with the findings contained within completed Landscape Capacity Studies."

In light of the above, the proposal is consequently considered contrary to the provisions of Development Plan policies STRAT DC 4, STRAT DC 8, LP HOU 1, P/DCZ 4 and LP ENV 10.

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

N/A

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

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**Author of Report:** Tim Williams

**Date:** 3<sup>rd</sup> March 2010

**Reviewing Officer:**

**Date:** 10<sup>th</sup> March 2010

A handwritten signature in black ink, appearing to read 'A. Gilmour', is positioned between the 'Reviewing Officer' label and the name 'Angus Gilmour'.

**Angus Gilmour**  
**Head of Planning**

**REFUSAL REASONS RELATIVE TO APPLICATION REF. NO. 08/00231/OUT**

1. It is the consideration of the Planning Department that the residential development of these elevated sites within the open countryside is contrary to the recommendations of the North and South Kintyre Landscape Capacity Study and as such would be detrimental to the landscape character of the Area of Panoramic Quality within which the application site lies. This proposal does not conform to the North and South Kintyre Landscape Capacity Study and so conflicts with policy P/DCZ 4 of the Local Plan which states that "Development proposals will be expected to be consistent with the findings contained within completed Landscape Capacity Studies."

In light of the above, the proposal is consequently considered contrary to the provisions of policies STRAT DC 4, STRAT DC 8, LP HOU 1, P/DCZ 4 and LP ENV 10.

**APPENDIX TO DECISION APPROVAL NOTICE**

Appendix relative to application **08/00231/OUT**

- (A) Has the application required an obligation under Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended): **No**

**If Yes: The terms of the Section 75 obligation may be viewed on the Council's website at [www.argyll-bute.gov.uk](http://www.argyll-bute.gov.uk) by recalling the application reference number on the Council's Public Access Module and then by "Clicking" Section 75 Obligation under the attached correspondence or by viewing the Public Planning register located at Planning Services, Dalriada House, Lochgilphead, Argyll, PA31 8ST.**

- (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 has been refused:

**It is the consideration of the Planning Department that the residential development of these elevated sites within the open countryside is contrary to the recommendations of the North and South Kintyre Landscape Capacity Study and as such would be detrimental to the landscape character of the Area of Panoramic Quality within which the application site lies. This proposal does not conform to the North and South Kintyre Landscape Capacity Study and so conflicts with policy P/DCZ 4 of the Local Plan which states that "Development proposals will be expected to be consistent with the findings contained within completed Landscape Capacity Studies."**

**In light of the above, the proposal is consequently considered contrary to the provisions of policies STRAT DC 4, STRAT DC 8, LP HOU 1, P/DCZ 4 and LP ENV 10.**

**Appendix 2 – Statutory and other Consultee Comments**

**Other Consultees:**

- **Argyll and Bute Council – Area Roads 3<sup>rd</sup> March 2010**

Operational Services - Roads and Amenity Services  
**OBSERVATIONS ON PLANNING APPLICATION**

Grid Reference 171874 650663 Dated

Applicant Mr + Mrs James Blair  
 Proposed Development Site for the erection of two dwellinghouses  
 Location Land South of Achnadriane Farm Tayinloan  
 Type of consent Outline Permission  
 Drawing Refs.

Application No. **08 00231 OUT**  
 Contact James Ross  
 Tel. 01546-604655  
 Received 07/02/2008  
 Return By Date 26/02/2008

Call By Date  
 District Kintyre

**Recommendation**  
**No objection subject to conditions**

**Comments**

**REVISED COMMENTS SENT 11/3/10**

- 1. This application has been assessed along with planning application ref 07/00267/OUT. Any further development will require the private access to be brought up to adoptable standard.**
- 2. The applicant can carry out the junction improvements within the site edged red.**
- 3. The visibility standards have been reduced and new standard details produced, since the original application was submitted.**

**ORIGINAL COMMENTS**

**This application is being refused for the following reasons.**

- 1. The land required for the visibility splay to the south is outwith the applicants control.**
- 2. The land required for the improvements to the connection to the public road is outwith the applicants control.**

**Conditions/Reasons for refusal/deferment**

**REVISED CONDITIONS SENT 11/3/10**

- 1. Connection to the A83 Tarbert - Campbeltown road, 160 x 2.4 x 1.05 metres.**
- 2. Connection to the A83 Tarbert - Campbeltown road, to be constructed as per standard detail drawing ref SD 08/002 Rev a & SD 008/006 Rev a. Minimum access width 5.50 metres.**
- 3. The improvements to the existing access must be fully implemented prior to any construction work taking place..**
- 4. The improvements to the existing access must be inspected and approved in writing by the Roads & Amenity Services, prior to any construction work taking place.**
- 5. Connection to the private road, 25 x 2.00 x 1.05 metres.**
- 6. Connection to the private road, SD 08/002 Rev a. No requirement to surface.**
- 7. Turning and parking for 2 vehicles per dwelling, within each site.**

**ORIGINAL REASON FOR REFUSAL**

**This application is being refused for the following reasons.**

1. The land required for the visibility splay to the south is outwith the applicants control.
2. The land required for the improvements to the connection to the public road is outwith the applicants control.

The conditions relating to this application are as follows.

1. Connection to the A83 Tarbert - Campbeltown road, CO1002 - 215 x 2.5 x 1.05 metres.
2. Connection to the A83 Tarbert - Campbeltown road, CO1003 - TM197 & G300.
3. Connection to the A83 Tarbert - Campbeltown road, CO1006.
4. Connection to the private road, CO1002 - 20 x 2.00 x 1.05 metres.
5. Connection to the private road, G187C, no requirement to surface.
6. Connection to the private road, CO1006.

11 March 2010

Copies to : Planning

Maint

File

Page 1 of 2

7. CO1011 - Turning and parking for 2 vehicles per site.

**Notes for Intimation to Applicant**

(i) Construction Consent(S21)\*

**Not Required**

(ii) Road Bond (S17)\*

**Not Required**

(iii) Road Opening Permit (S56)\*

**Required**

(iv) No surface water discharge\*

**Required**

\*Relevant Section of the Roads(Scotland) Act 1984

Signed:

J. Ross

Date

03/03/2008

ID

2320

Actual Return Date

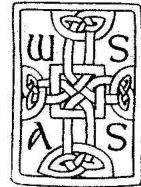
03/03/2008

Replied

• **West of Scotland Archaeology – 13<sup>th</sup> February 2008**

Our ref: 7/3/4 Con 17673

Your Ref: 08/00231/OUT  
WoSASdoc: 08.00185doc.  
Date: 11 February 2008  
Contact: Pat Harvie  
Direct dial: 0141 287 8330



**Development Services  
Argyll and Bute Council  
67 Chalmers Street  
Ardishaig**

20 India Street, Glasgow G2 4PF  
Tel: 0141 287 8332-5  
Fax: 0141 287 9529  
enquiries@wosas.glasgow.gov.uk

**PA30 8DX**

Dear Sir

**Archaeological Consultation on Planning Applications: No Archaeological Issue Raised**

No known archaeological issue is raised by the undernoted planning application(s), sent recently to the West of Scotland Archaeology Service for comment:

**08/00231/ OUT      Site for erection of two dwelling houses - land south of  
Achnadriane Farm, Taynuilt**

Thank you for requesting our comments.

Yours faithfully

A handwritten signature in cursive script, appearing to read "Pat Harvie".

West of Scotland Archaeology Service

- **Argyll and Bute Council – Area Environmental Health Manager – 13<sup>th</sup> February 2008**

Argyll and Bute Council  
Comhairle Earra Ghàidheal agus Bhòid

RECEIVED  
13 FEB 2008



# Memorandum

**Legal & Protective Services**

**Date:** 12/02/2008

**To:** Development Services  
67 Chalmers Street, Ardrishaig

**Attn:** Tim Williams

**Our Ref:** PM/

**From:** Patrick Mackie,  
Area Environmental Health Manager

**Extension:** 4780

**Planning Application No: 08/00231/OUT**

**Site for the erection of two dwellinghouses**

**Land South of Achnadiane Farm, Tayinloan, Tarbert, PA29 6XG**

I refer to your consultation dated 5th February 2008.

This application proposes to utilise a new private water supply.

Should permission be granted, I recommend the inclusion of the following standard planning condition:

**C31001 – Water Details to Specification**

Prior to the development commencing a full appraisal to demonstrate the wholesomeness and sufficiency of the private water supply to serve the development shall be submitted to and approved in writing by the Planning Authority. This assessment shall be carried out by a qualified and competent person(s). Such appraisal shall include a risk assessment having regard to the requirements of Schedule 4 of the Private Water Supplies (Scotland) Regulations 2006 and shall on the basis of such risk assessment specify the means by which a wholesome and sufficient water supply shall be provided and thereafter maintained to the development. Such appraisal shall also demonstrate that the wholesomeness and sufficiency of any other supply in the vicinity of the development, or any other person utilising the same source or supply, shall not be compromised by the proposed development. Furthermore, the development itself shall not be brought into use or occupied until the required supply has been installed in accordance with the agreed specification.

*Reason: In the interests of public health and in order to ensure that an adequate private water supply in terms of both wholesomeness and sufficiency can be provided to meet the requirements of the proposed development and without compromising the interests of other users of the same or nearby private water supplies*

A handwritten signature in black ink, appearing to read 'Patrick Mackie'.

Patrick Mackie

**Area Environmental Health Manager  
Mid-Argyll, Kintyre & The Islands**



- **Appendix 3 – Third Party Representation**

**One letter of representation received from the Iain & Kathryn Logan, Benview, by Tayinloan – by e-mail**

**From:** *E-mail address redacted*  
**Sent:** 16 February 2008 11:06  
**To:** Williams, Tim  
**Cc:** Kerr, Richard  
**Subject:** Achanadriane - ref 08/00231/OUT

Dear Mr Williams

**Achanadriane - ref 08/00231/OUT**

We would request that the following conditions should apply to any planning consent given to the above application:

**1 No trees on the east bank of the farm track should be cut down.**

**Justification:** The trees help screen the proposed developments from the A83, Benview Garden and the foreshore - including the Kintyre Way and stabilise what is a very wet, steep bank.

**2 No development should take place until such time as the applicant has provided written documentation from a competent person demonstrating that the proposed water supply is capable of providing a viable, perennial water supply of adequate volume and quality and that such works will not contaminate or interfere with existing water supplies and water courses.**

**Justification:** To comply with current legislation. It is also believed that ownership of the field, in which the two properties are to be built, does not carry a legal right to use any of the existing domestic water sources or to extract water from the burn. The only available option to getting water to the properties would seem to be by bore holes.

**3 Where the widened track and bellmouth extend it over existing buried drainage pipes, telephone cables and electricity cables, conduit of sufficient strength or other suitable protection should be used to protect them.**

**Justification:** Protection of utilities from traffic.

**4 The roofs of the new houses should be covered in slate.**

**Justification:** To match the traditional roofing material used in surrounding properties.

**5 No development should take place until a legally binding contract, with the relevant land owners, is in place that will allow the applicants to form the necessary visibility splays over the A83, and for their continued maintenance, and the formation of the regulation bellmouth at the junction of the access road with the A83.**

**Justification:** Road safety.

**6 The dwelling houses should be single storey.**

**Justification:** To minimise their visual impact from the A83, Benview Garden and the foreshore - including the Kintyre Way.

Yours sincerely

Iain and Kathryn Logan

Benview  
Tayinloan  
TARBERT  
Argyll  
PA29 6XG

**PLEASE ENSURE  
THAT ANY  
PHOTOCOPIES  
MADE OF THIS  
DOCUMENT ARE  
IN COLOUR**

5 July 2010

Head of Democratic Services and Governance  
Argyll and Bute Council  
Kilmory  
Lochgilphead  
PA31 8RT

Dear Sir

**Reference 08/00231/OUT**  
**Mr & Mrs James Blair**  
**Site for the erection of two dwelling houses**  
**Land south of Achanadriane Farm, by Tayinloan**

Thank you for the opportunity to make a further representation regarding this case review.

For some years we have been disappointed with some of the planning consents for the building of residential property in rural Kintyre. Decisions seemed to lack consistency and some seemed to be inconsistent with Argyll & Bute's own planning guidelines. Development plots received consent which were on agricultural land; on elevated sites; on the skyline; and on the shore side of the A83 causing obstruction to stunning views of the Western Islands. We discovered that the reason for these inappropriate planning decisions was due to planning officers having to reach decisions under a serious anomaly in the Argyll & Bute Development Plan. This anomaly was highlighted by the Reporter to the Local Plan Inquiry in 2008. The absurd anomaly was that some areas of land were both designated Areas Of Panoramic Quality (APQ) and also Rural Opportunity Areas (ROA). We therefore welcomed Argyll & Bute Council's decision to commission Landscape Consultants to carry out a landscape capacity survey of the ROAs within these areas. We feel that for the first time Argyll and Bute now has a clear Development Plan which clearly directs planning official decisions and also helps developers decide on which areas to focus their development applications.

The development on land south of Achanadriane Farmhouse by Tayinloan, falls within a landscape survey red area and the boundaries of the landscape character of that area can be clearly defined and explained. The low lying land, to the seaward side of the development, falls into an orange area and the higher, open hill ground, to the east, clearly defined by the access track and the steep bank behind it, falls into a red area. We believe that it would be a great mistake to ignore the Landscape Capacity Survey, which in this case provides clear direction for the planning officials and their decision to reject this application.

It seems that Mr. and Mrs. Blair have called for this review as they feel that somehow the Planning officials were responsible for the delays in making a decision on their application for outline planning for two houses. As far as we are aware, Mr. and Mrs. Blair could have made a request, **at any time**, for their applications to be determined. We believe that they did not request determination as at no time were they able to meet the sight line / bellmouth and service bay requirements that the Roads Department had placed on these applications. To meet these requirements would have meant that Mr. and Mrs. Blair would have had to receive legal consent from Largie Estate, who still own the farm track, and from the Steel family at Lenaig, who own the land required to be used for the access alterations. We believe that the delays started with Mr. and Mrs. Blair's withdrawing their first application, then their delay in submitting their second application, followed by delays resulting from the Reporter's findings during the Inquiry into the Argyll & Bute Local Plan.

Mr. and Mrs. Blair also submit emotive arguments as to why their application should be approved. The following is an extract from *The Report Of Handling* which shows the response of Planning to the points that Mr. and Mrs. Blair have raised. We have added our comments in blue. By adopting this format we hope that it will make it easier for the review committee to read the three parties responses to each of the issues. However, we would first like to emphasise a few points here:

- Mr. and Mrs. Blair argue that only the wealthy can afford to live in the area and that they are trying to develop in the traditional pattern of crofting / smallholdings.  
I would remind the committee that Mr. and Mrs. Blair, for some twenty years, lived at Achanadriane and appeared to belong to the very category that they refer to. As far as we understand it, their property sales transactions and planning applications to date, instead of allowing Achanadriane farmhouse to be run as a smallholding, has been designed to maximise sales income by splitting the property: Achanadriane farmhouse has been sold with three acres of the field; a further three quarters of an acre has been sold to Tighnadrochit; and an application for two (not one) houses has been made – each site being only 0.3 of an acre. It is our understanding that the sales transactions to date have resulted in a considerable amount of money being realised.
- We note that this submission is addressed to the Head Of Democratic Services. We would like to point out that, as far as we understand it, Mr. and Mrs. Blair blocked the democratic right of the two parties involved in their property transactions by inserting a condition that neither could object to any planning application at Achanadriane made by Mr. and Mrs. Blair.

Our further comments on points raised by Mr. and Mrs. Blair are shown in blue.

**Extract from Report Of Handling:**

The applicant has submitted a statement in support of his application in response to the findings of the North and South Kintyre Landscape Capacity Study. This statement is reproduced and assessed below:

*“We ask in reference to the above that the following facts please be considered.*

- 1. 2006 (Summer). Mrs. Blair approached the planning department and asked for an informal visit to Achanadriane to determine if house sites were possible and if so where.*

*Mr. Tim Williams visited and advised, recommending the lower slope of the hill would be okay for two traditional style 1 1/2-storey houses. At this point the house at Tighnadrochit was not even built.*

*At no point did he mention the sites not been suitable due to settlement patterns.”*

Comment: Planning Officers have indeed previously discussed this proposal with Mr Blair - at that time it was indicated that the Planning Department was supportive of the proposals. This advice was the informal, professional opinion of planning officers based upon the provisions of the relevant policies at that time which included the now superseded Kintyre Local Plan 1984 and the emerging draft Argyll and Bute Local Plan.

*“2. We submitted our planning application on 22/01/’07, Ref: 07/00132/OUT. Our nearest neighbours, Mr. and Mrs Logan of Benview not only objected they created an email link which allowed anyone anywhere in the world to object by a press of a button.”*

Comment: Any representations received by the Planning Department are a material consideration to the determination of a planning application. The method by which such comments are received and whether or not an objector orchestrates a campaign to increase the amount of representation to a proposal is outwith the control of the Planning Department. In any event, it should be noted that, primarily, it is the issues raised in the objections rather than the overall number received which the Planning Department must consider and address in the determination, giving material weight to the issues raised as appropriate.

*We had talked to Mr. and Mrs. Blair, who had been our friends for eighteen years, about the possibility that they might have to sell the farmhouse and build a house for themselves in the field. They had agreed that they would talk to us about the position of the house should they decide to follow this route. They did not consult us regarding the position (or the number) and we were shocked when Mr. Blair visited us to say that they had submitted a planning application for two houses. We were further shocked to discover that the house sites were immediately above us and that they would destroy the rural setting and privacy of our garden, which gives it its special quality.*

*Benview Garden is a two acre garden which we have created over the last twenty years. The garden has been designed so that its boundaries blend seamlessly with the surrounding landscape so much so that it has been described as a ‘secret garden’. It is regarded as a local asset, and the forty*

*plus objections against Mr. and Mrs. Blair's first application represented only the small proportion of the visitors to the garden for whom we had retained contact details. We would recommend that the Review Committee read some of these objections in order to see how strongly those objectors felt about the threat to the setting and ambiance of this much-loved garden, the care and maintenance of which is **our way of life**.*

*It is difficult to summarise the characteristics of the garden, but, in brief, we have created ponds, and planted mostly tender trees and shrubs, many from the Southern Hemisphere, which thrive in our [usually frost-free] Gulf Stream climate, with an emphasis on architectural and foliage plants. The surrounding undeveloped rural landscape is vital to the peaceful atmosphere of the garden which it encloses.*



*BENVIEW 1991*



*BENVIEW 2009*



*We have done a presentation of the garden to the Planning Officers, which is lodged with the Planning Department.*

*“3. 2007 (Summer) – Mr. Tim Williams and Mr. Richard Kerr met with us at the Chalmers St office, and explained they were obliged to respond to all the objectors and as that would take up an enormous amount of time and the sites had already taken up a disproportionate amount of time due to Mr. & Mrs. Logan, they suggested we move the sites.*

*Mr. Tim Williams informed us he would go back to the neighbours saying we would move them if they didn't object. To accommodate the planners we agreed and discussed at some length where would be the most appropriate part of the field to move them to.*

*At no point did either Mr. Tim Williams or Mr. Richard Kerr indicate that sites in the field were unacceptable and at no point did they mention settlement patterns.*

*This decision cost us dearly when a prospective buyer for Achanadriane withdrew their offer, as they were not happy with the sites being moved.”*

Comment: The original application attracted some 40+ representations and as such the determination of the application would be undertaken by the MAKI Area Committee and in all likelihood, given the volume of objection, a discretionary public hearing – in the event that the application was successful it would also have been necessary, at that time, to complete a S75 planning agreement to secure visibility and junction improvements. It is my understanding at this time that the applicant expressed his concern at the time which had already been taken to process the application and was apprised of his options which essentially consisted of i) determine the original application (as above); ii) withdraw the original application and apply for an amended site which hopefully would not attract objection and could be determined under delegated powers with a S75 agreement.

The decision to withdraw the application and resubmit an amended proposal was entirely at the discretion of the applicant and was not undertaken to address any specific concern raised by the Planning Department in respect of the details of the original application. It is however agreed that the submission of an amended application was anticipated to provide an easier determination process for all parties concerned. Again, the advice offered by planning officers at this time was based upon the relevant policies and guidance available to them.

*Because of the anomaly in the double designation of the development land and the pressure this put on Planning officials to try to find a suitable area for development within ROAs we reluctantly held back with our objection campaign.*

*We note that there was a long delay before the second application was submitted.*

*“4. We re-submitted our plans on 28/01/08, Ref: 08/00231/OUT - It then became apparent the road access was a problem at the time but this has since been resolved due to a change in visibility display requirements.”*

Comment: As of 29.02.08 it had become apparent that the applicant was unable to obtain a S75 agreement to secure visibility and junction improvements necessary to

address the Area Roads Manager's initial objection to the proposal. Subsequently, the Council's visibility standards have been reduced and the existing visibility available at the junction is acceptable; however, the Area Roads Manager is still advising that junction improvements are necessary to accommodate additional vehicular movements at this location in the interests of road safety – whilst these improvements involve land in the ownership of third parties it has been confirmed that the improved junction and lay-by could be accommodated within the application site boundary edged red (with the relevant land owners notified of their interest in the application site) and may therefore be addressed by way of a suspensive planning condition. It is noted however that a grant of planning permission would not override other matters of civil law; in the event that the applicant is unable to implement the required improvements because of land ownership issues then the provisions of the condition would prevent any development commencing on site.

*Third party landowners, as previously mentioned, are Largie Estate and the Steel family. Although Mr. Blair obtained a consent letter from the elderly father, it is our understanding that this was not backed up by formal legal consent as the father's actions resulted in family (all business partnership members) disagreement. We are unaware of Mr. and Mrs. Blair ever having requested or having received consent from Largie Estate.*

*With regard to the woodland on the south side of the private access road to Achanadriane at its junction with the A83, we would point out that the creation of a bellmouth and service bay in this area would require the destruction of the area of woodland which currently screens Benview from the A83. If these trees were felled, Benview would no longer be 'contained visually' by the woodland, to the detriment of both its inhabitants and the landscape, as the rural character of the area would be completely altered. We would draw attention to the Landscape Consultants' recommendation that new development [e.g. the recent extension to Benview] should be "in or around mature native woodlands where new development can be **contained visually by the planting**".*

*"5. August 2008 - We received a letter from Mr. Richard Kerr informing us that our planning application had not only been put on hold until the completion of the Landscape Capacity Study, but the criteria had changed for sites falling within an 'ROA' which lie within a designated Area of Panoramic Quality, which ours did.*

*So we patiently waited - a further 1 1/2 years or so.*

*At no point during this period did anyone from the planning department indicate to us that the sites were not acceptable and did not fit in with settlement patterns."*

Comment: The recommendations of the Local Plan Inquiry Reporters included for the deletion of all ROAs which were located within Areas of Panoramic Quality (as is the case in this instance) and National Scenic Areas – this in effect would have resulted in this site and all other such ROAs being amended to 'sensitive countryside' wherein there is a presumption against all development in the open countryside. In view of the uncertainty as to the status of ROAs, the Planning Department took the view that the



determination of applications in the affected ROAs would be premature to the development plan process until such time as the Council had provided its response to the Reporters recommendations. The Council duly provided its response to the Reporters recommendations in Nov. 2008 by classifying all ROA within APQ/NSA designations as 'sensitive countryside' until such time as a Landscape Capacity Study had been prepared – the policy provisions of P/DCZ4 and LP HOU 4 in the Local Plan were also amended to require new development to be consistent with the Landscape Capacity Study. The North and South Kintyre Landscape Capacity Study was approved by Members on 3<sup>rd</sup> February 2010 and it is only subsequent to this point that the Planning Department has been in a position to consider determination of the affected applications. Whilst I can appreciate the applicant's disappointment at a delay in excess of 18 months it must be noted that the events which have unfolded in the Local Plan preparation process meant that it was not possible for the case officers processing this application either to predict or avoid the consequences of these events.

*This inordinate delay of over eighteen months was not specific to Mr. and Mrs. Blair's application; all applicants who had lodged applications within similar double designated areas were subject to this delay.*

*"6. 23<sup>rd</sup> February 2010 – Mr. Peter Bain and Mr. Adrian Jackson-Stark meet with Mr. Blair at Achanadriane. After looking at the sites they feel they do not fit in with settlement patterns.*

*This is despite the lower site being situated next to a house at Tighnadrochit with Benview situated below, and Achanadriane located to the north/east."*

Comment: For the purpose of clarity it is noted that the application site is located at a substantially higher level than that of Tighnadrochit which sits in a sheltered bowl and is encompassed by a woodland setting.

*It should also be noted that the greatest change to the landscape character of the area is likely to be the substantial scarring of the hill caused by the excavation of the long access track required to connect the proposed two new houses to the existing farm track.*

*"This is despite the Landscape survey allowing for possible development next to Benview and in the field to the left of Benview which though it has a native woodland it also has a clearly visible open field behind it. Both these areas are directly beside the main road."*

*Note: Only the woodland area south of Benview is an 'orange' area; the open field is a 'red' area.*

Comment: The lower site is indeed provided a modest backdrop of gorse and scrub woodland which is of substantially lower quality and visual impact within the wider landscape setting than the more mature woodland at lower levels adjacent to the public highway and adjacent to the watercourse to the south. It is however the consideration of the Planning Department even with additional landscape planting this plot could not be readily assimilated into the landscape character of the adjoining area identified as having capacity for further development.

*“The sites in our field are not visible from anywhere on the main road due to the native woodland (which is not yet fully mature) below us and to the left of our track.”*

Comment: This is correct. Views of the application site from the A83 public highway would be well screened by roadside vegetation; it is however noted that development at this location would be visible within the context of an open field when viewed from the coast to the west. It is also noted that the recommendations contained within the Landscape Capacity Study are not solely based upon the visual impact of development but also have regard to the potential impact of development upon the key features of the landscape and, the sensitivity of the landscape to change. In this respect the study expresses a requirement to restrict new development at Achnadriane to lower lying land where development can be accommodated within a woodland setting. The study recommends against development upon the elevated, open slopes. The landscape character of the application site and the entirety of the applicant’s landholding falls within the latter category. The transition in landscape character is clearly defined by the private road serving Achnadriane and a small incursion east along the river course at a similar level – The application site lies beyond this point and it is the view of the Planning Department that it is not possible to consider the proposal as being consistent with the guidance contained in the Landscape Capacity Study. The proposal is therefore contrary to the provisions of policies P/DCZ 4, LP HOU 4, STRAT DC 8 and LP ENV 10.

*We would like to point out that almost all of the screening trees and vegetation in the area are **deciduous**. Therefore, for approximately six months of the year, the development sites could be seen from, and around, the A83, as well as from several points on the Kintyre Way, which runs along the coast.*

*“Both our sites are situated in what was an ROA when we submitted our plans. The higher site is situated in line with Achnadriane and as far to the side of the field as possible without going into what was originally a sensitive area.”*

Comment: This is correct having regard to the approximate set back distance from the public highway. However, the upper site is located at significantly higher level in the landscape than Achnadriane. The upper site is an open site on a convex slope, exposed to its immediate surrounds on all sides and is not nestled within the wider landscape setting in the same sheltered manner that the grouping of buildings at Achnadriane are accommodated.

The outcome of the Local Plan Inquiry Reporters recommendation was to question the disposition of ROAs within scenic designations – i.e. to raise the question whether it was actually appropriate to promote development within these areas without first having assessed the capacity of the landscape in detail to acceptably accommodate such change. Previously when officers have provided advice they have done so on the basis that a presumption in favour of small scale residential development exists within the ROA and that the boundary between the ROA and sensitive countryside was based upon an informed assessment of landscape capacity. The Local Plan Public Inquiry Reporter queried the methodology which had been employed by the Council in the designation of ROAs in the Local Plan, at which point it was disclosed that the

designation of the ROA boundaries was not informed by a detailed assessment of landscape capacity to accommodate new development and to which the Reporter raised serious concern as to whether it was acceptable to promote new development within scenic designations without first having carried out a detailed landscape capacity assessment. In effect the Landscape Capacity Study identifies more limited areas of capacity for new development within the ROAs which were originally intended by the Council to be a larger area of search.

*“In conclusion we feel we have tried to work with the planning department seeking and following their advice from the very beginning but it is impossible to keep up when the goal posts keep changing. Our sites complied with the original criteria and if they had not I can only assume the planners would have advised us otherwise at the time.*

*As we understand it the Landscape study it is not a stand-alone document and its recommendations are as yet not laid in stone but open for feedback. This would allow the planning department scope for considering the merits of individual representations.*

*Taking into consideration the length of time this process has taken, the fact the sites are not visible but screened from the road, the fact that the lower site is next to an existing house and the fact that a traditional one storey stone clad house on the higher site could be easily absorbed into the landscape, particularly as to the east is a stone dyke, to the south gorse bushes and a burn - landscape traditionally chosen for the siting of croft houses.*

*If we are to keep rural areas alive and our rural schools open then rural housing is desperately needed to attract families to the area. Our own situation is having brought our own family up here we wish to continue to live and work in the area. When our financial difficulties forced us to sell Achanadriane along with three acres of land, we were led to believe we would be able to build and live in a new home in our field where we intended to create a small holding. The alternative is we will be forced to move away. Is Kintyre to see another round of ‘clearances’ as locals are forced to move away due to the lack of affordable housing making room for only the wealthy and the retired?”*

Comment: Mr. Blair is correct. Effectively the goal posts have moved whilst the application has been processed. The change in circumstances has entirely been outwith the control of planning officers who have been required to amend their assessment of the acceptability of the proposal in line with the evolving policy position of the Argyll and Bute Local Plan and associated technical guidance. Mr. Blair is also correct in stating that landscape capacity is only part of the planning assessment which requires to be undertaken. – However, in this respect regard is had to the provisions of the Government’s Scottish Planning Policy (SPP) which sets out that planning decisions must be made in accordance with the Development Plan unless material considerations indicate otherwise. Material considerations should be related to the development and the use of the land. Whilst there is a degree of sympathy for Mr. Blair’s position, it is the view of the Planning Department that (i) his personal financial circumstances, (ii) the fact that he has been the subject of a lengthy delay in the processing of his application and, (iii) earlier provision of

informal advice from officers which now conflicts with the current policy/guidance position of the Council are not related either to the nature of the impact of the proposed development or the use of the land and, as such, are not sufficient justification to set aside the provisions of an approved and adopted Development Plan – it should also be noted that prior to finalising its decision, the Planning Department has taken the time to revisit the site to reassess the development in light of the Local Capacity Study and establish whether or not the boundaries of the Landscape Capacity Study were ambiguous or flexible in any way which would have allowed consideration of development within the ‘red’ area, and have also ascertained the extent of Mr. Blair’s landholding to identify if alternative development opportunities existed.

*It is our understanding that while the liquidation of Mr. Blair’s business may have changed Mr. and Mrs. Blair’s financial situation and perspectives, they have been very successful in their various property transactions at Achanadriane. They are currently renting a property a short distance away at Ballochroy.*

*Their argument that rural property is desperately needed is not in accord with the actual facts. Many houses in the area, both traditional and new build, have remained unsold for years, and building plots, which have received planning consent, have not been built on. There is adequate provision for additional housing in the area as can be seen from the orange areas in the Landscape Study.*

*It is a current demographic trend that fewer young adults choose to live in the countryside and that it tends to be retired or older adults who choose this quieter lifestyle. To counter this trend, like Mr. and Mrs. Blair, we recognize that there is a need for **affordable housing** in Argyll and Bute. We have suggested in previous correspondence with the Planning Department that the most appropriate siting for affordable housing would be in existing towns and villages where*

- schools, shops, post offices, and halls, many under threat of closure, would benefit from an increase in population, and would be within walking distance*
- safe access to local bus services would be available without the risks inherent in using request stops on the A83*
- families would not require 2 cars in order to meet the demands of working parents/raising a family in rural areas, e.g. having to ferry children by car for them to socialise with their schoolfriends.*

*We would also argue that the local economy benefits hugely from the “wealthy” and the “retired” who have moved here. This group has the spending power to support local business people continue their businesses through difficult economic times and has helped stimulate demand for new business ventures and amenities in Kintyre.*

*As for Mr. and Mrs. Blair comparing their situation with the “clearances” - the families who were ‘cleared’ did not leave with the substantial proceeds from the sale of their property. When Mr. and Mrs. Blair lived at Achanadriane, they fought hard against the Largie Wind Farm application (again with the help of a Q.C.), as industrial turbines would have affected the wildlife and landscape character of the area. It is disappointing that they are now seeking to undermine, at its outset, the findings of the Landscape Capacity Study, which they might*

*formerly have welcomed, which provide such clear guidelines for the protection of landscape against inappropriate development.*

Finally, we would ask the Review Committee to uphold Planning's decision to refuse consent for this development. After the many years and costs involved in achieving a robust Development Plan it would be a tragedy if this plan were stood on its head, at this first test case, by the Review Committee finding against Planning's decision to follow the clear guidance laid down in the Local Plan and Landscape Capacity Study.

Yours faithfully

IAIN DM LOGAN and KATHRYN MD LOGAN

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**From:** John Campbell QC [jcampbellqc@oraclechambers.com]  
**Sent:** 19 July 2010 06:19  
**To:** Stewart, Melissa  
**Subject:** Re: 10/0009/LRB

Dear Ms Stewart

Local review No 10/0009/LRB  
James and Veronica Blair  
Achanadriane, Tayinloan, Argyll

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I refer to previous correspondence in connection with this application for Review. In relation to this matter, thank you very much for your assistance so far. I had hoped that it would be possible to process this matter without engaging further professional assistance, culminating in a short Hearing.

It seems now, in light of the assertions by Mr Iain and Mrs Kathryn Logan, and from the Planning Officer's formal response, that it would be very desirable to have a landscape architect look at the Review papers with a view to preparing a short submission for the review Board. In essence, the Landscape Study, with its coloured zones, is being treated as prescriptive by the Planning Department. That is their job, and I make no criticism of it. But the rules themselves are not exclusive, as you can see from the terms of the Review - they allow for discretion, and the sites chosen are carefully chosen so as to minimise visibility both of and from the houses.

It will take a week or two to get a report from a landscape architect which I can place before the Review Board. While I would not want to hold up progress, may I request that you continue the matter for 28 days while I get my report, which of course I will forward on to you as soon as it is available.

To economise on communications, I will use the opportunity of this letter to comment briefly on the submissions of the Planning Authority, and of Mr Iain Logan.

#### The Planning Authority

It is acknowledged (and agreed by the appellant) that the review should be decided in accordance with s. 25 of the Town and Country Planning (S) Act 1997, as amended.

Policies STRAT DC 4 and LP HOU 1 support this application. Under LP ENV 10 and the policies from which it is derived, the test of acceptability is one of *significant adverse impact*. That too is acknowledged. By reference to the red areas in the Landscape Capacity Study (LCS) the test is as follows •

*Avoid building on open land which has long views to it and where there is no existing woodland or topography to achieve a sense of place or shelter. In*

*particular development on higher open pastures to the east should be avoided where new buildings are likely to be highly visible and where localised planting would be inappropriate.*

The sites now proposed are not on open land; they are sheltered; they are not on higher open pastures; they are not 'highly visible'; and if required, localised planting *would* be appropriate.

The appellant acknowledges the terms of the Planning Officer's report of Handling, but that was written without proper representations being made, and a Hearing is therefore now requested. The appellant could present his case in 15 minutes.

For the avoidance of doubt, there is no reliance now on advice previously given by Council officers that this application would be acceptable. The appellant understands that the policy, and therefore the advice, has changed. The previous advice was given, but is no longer acknowledged by the Council. So be it.

The Planning Officer's assessment states that it is 'surmised' that there has been no assessment of the effect of the development. That is NOT the case. The Report of Handling (ROH) speaks for itself. This appeal is brought on the basis that the decision under Review has at no time identified the *significant adverse impact* which is required by the policy. Even now, with the Planning Officer's observations to hand, all that his text says is that visibility of the sites is limited but not hidden from view (I agree).

There is no requirement that sites be 'hidden from view'. The pattern is of a dispersed settlement along the coast. What is required *by policy* is that any *significant* adverse impact be identified. **Yet there is no assessment of significance.** Until the policy is properly applied, its requirements have not been fulfilled, and with respect, the appellant continues to be aggrieved at the blanket application of a LCS which does not cater properly for the circumstances of these sites and does not do what it is supposed to do, which is to look carefully at their individual circumstances.

This passage (from the Planning Officer's report

*This proposal is on open land in the eastern side of the APQ and east of the road; there are long views onto the site, particularly from the sea (although not from the A 83); there is no woodland or vegetation on the site that would help to assimilate the development into the wider landscape; the site consists of a convex slope of open grassland which provides no sense of shelter and is one of the higher pasture areas. Given this, it is considered that the proposal is in no way consistent with the NSKLCS as the characteristics of this site are exactly those which the NSCLCS seeks to protect from development.*



is refuted. This is absolutely not an assessment of significance. How, in one short question, do the proposals impact upon the APQ significantly? We are not told. A view from the sea (if it exists) is not the same as saying that there is a *significant* adverse impact on an Area of Panoramic Quality.

Iain Logan and Mrs Kathryn Logan

The appellant respects the points of view of Mr and Mrs Logan. Change is anathema to them, and their garden is an excellent creation, and well maintained. However, if development is permitted by policy, and that policy is to be seen to have content and meaning, then the planning system cannot be used to protect what are purely private interests. The proposed development is capable of being constructed without infringing on the public interest and without infringing on the private circumstances and interest of Mr and Mrs Logan. Any temporary inconvenience from construction will only be temporary, but is a consequence of any planning permission being granted.

The Review Board is respectfully asked to consider, but to reject Mr and Mrs Logan's submissions.

In all these circumstances, the review Board is once again asked to grant the appeal. Since I have requested time for a landscape architect's report, I would ask if you can continue the matter for 28 days for that purpose, before returning to the question of whether or not there should be a Hearing.

*Yours sincerely*

*John Campbell*



John Campbell QC Oracle Chambers Catcune Steading Gorebridge Midlothian EH23 4RN UK  
T: +44 (0) 1875 825 364 M: +44 (0)7931 776 217 E: [johncampbellqc@oraclechambers.com](mailto:johncampbellqc@oraclechambers.com) Skype: johncampbellqc Videophone  
81.130.28.66

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