

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

*Customer Services*  
*Executive Director: Douglas Hendry*



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29 October 2010

## **NOTICE OF MEETING**

A meeting of the **PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE** will be held in the **HOWIE PAVILLION, ROSNEATH** on **FRIDAY, 5 NOVEMBER 2010** at **1:00 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. MR AND MRS MACGREGOR: APPLICATION FOR DEMOLITION OF OUTBUILDINGS AND ERECTION OF 5 DWELLINGS IN COURTYARD FORMATION: LAND AT LITTLE RAHANE FARM, RAHANE, HELENSBURGH (REF: 10/00536/PP)**  
Report by Head of Planning and Regulatory Services (Pages 1 - 18)

**DISCRETIONARY HEARING PROCEDURE NOTE** (Pages 19 – 24)

## **PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE**

Councillor Rory Colville  
Councillor Vivien Dance  
Councillor Daniel Kelly  
Councillor Neil Mackay  
Councillor Bruce Marshall  
Councillor Roderick McCuish  
Councillor James McQueen

Councillor Robin Currie  
Councillor Mary-Jean Devon  
Councillor David Kinniburgh  
Councillor Donald MacMillan  
Councillor Alister McAlister  
Councillor Alex McNaughton  
Councillor Al Reay

Contact: Melissa Stewart

Tel. No. 01546 604331



**Argyll and Bute Council  
Development & Regulatory 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:** 10/00536/PP

**Planning Hierarchy:** Local Application

**Applicant:** Mr and Mrs MacGregor

**Proposal:** Demolition of outbuildings and erection of 5 No. new dwellinghouses in courtyard formation

**Site Address:** Land at Little Rahane Farm, Rahane, Helensburgh

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#### **DECISION ROUTE**

**(i) Local Government (Scotland) Act 1973**

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#### **(A) THE APPLICATION**

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

- Erection of five dwellinghouses.
- Formation of hardstanding
- Installation of sewerage treatment plant
- Alterations and improvement to existing access and access road from B833

**(ii) Other specified operations**

- Connection to existing public water main
  - Demolition of outbuildings
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#### **(B) RECOMMENDATION:**

It is recommended that permission be refused for reasons given overleaf subject to:

- a) A discretionary local hearing being held under current arrangements pertaining to the holding of hearings, in view of the number of representations received; or
- b) In the event of revised criteria based arrangements being adopted pertaining to the holding of hearings (report appears elsewhere on the agenda) and that Members propose to accept the recommendation to refuse permission, that no discretionary local hearing be held, on the basis that those persons making representation are objectors to the application.

**(C) HISTORY:**

02/01690/WGS - Afforestation of hill land to west of Little Rahane Farm – No objections  
23.10.2002

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**(D) CONSULTATIONS:**

SNH Helensburgh	08.07.2010	No objections
Roads Helensburgh And Lomond – Public	19.05.2010	No objections subject to conditions
Public Protection	19.08.2010	Recommend refusal of the application on the grounds of 'bad neighbour in reverse' due to the the inability to mitigate noise emanating from an adjacent smallholding and
Scottish Water	31.05.2010	No objections
Core Paths	08.06.2010	No objections
Flood Risk Engineer	20.07.2010	No objections subject to conditions.
Rosneath & Clynder Community Council	06.06.2010	Object to siting the dwellings next to a registered smallholding as this is contrary to Local Plan Policy, in particular LP BAD 2

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**(E) PUBLICITY:** Regulation 20 Advert Local Application (expired 14.05.2010)

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**(F) REPRESENTATIONS:**

**(i) Summary of issues raised**

29 persons have made representation (four of the representations received are either by, or on behalf of, the occupiers of Little Rahane Farm):

Shirley and Steven Dalziel, Little Rahane Farm, Rahane (letters dated 10/05/10, 05/06/2010, 06/07/2010, 14/08/2010, 24/08/210)

Michael Hyde, The Mews, 11B West Abercromby Street, Helensburgh (on behalf of Mr & Mrs Dalziel) (letter dated 20/06/2010)

Mr and Mrs S H Dalziel, Per Raeburn Hope Solicitors, 77 Sinclair Street, Helensburgh (letter dated 28/04/2010)

Sandy Taylor on Behalf of Mr & Mrs Dalziel (letter dated 30/08/2010)

Robert F Mill, Annfield, 20 West Montrose Street, Helensburgh (letter dated 25/04/2010)

Mr and Mrs P Walker, Carmyle Cottage, Glenfalloch (email dated 27/05/2010)

Denise Jarvis, 36 Burns Avenue, Larbert (email dated 28/05/2010)

Gwynneth Rees, New East Frew, Thornhill, Stirling (letter dated 26/05/2010)  
Kate Donne, Maple Cottage, Sauchie, Alloa, Clackmannanshire (email dated 31/05/2010)  
C Cornish, 4 Old Shandon Church, Shandon, Helensburgh (letter dated 05/06/2010)  
Reid and Robertson, Ballagan, Stirling Road, Balloch (email dated 12/06/2010)  
Mr and Mrs D A MacIntyre, Tarnar, 25 Portnalong, Isle of Skye (email dated 26/04/2010)  
George and Lorna Douglas, 8 Craigendoran Avenue, Helensburgh (letter dated 28/04/2010)  
Valerie Cairns, The Bungalow, Rahane, Helensburgh (letter dated 03/05/2010)  
Alistair McIntyre, Craggan, Garelochhead, Helensburgh (letter dated 10/05/2010)  
Seona Nairn, Fasgadh (Upper Flat), 4 Hall Road, Rhu, Helensburgh (letter dated 12/05/2010)  
Gordon and Christine Bain, 177a Old Inverkip Road, Greenock (email dated 20/05/2010)  
Gordon Jack, 31 Leman Drive, Houston (letter dated 21/05/2010)  
Margaret McKernan, Flat 3/3, 250 Old Rutherglen Road, Glasgow (letter dated 20/05/2010)  
Judith Strange, 22 Kenilworth Road, Bridge Of Allan, Stirling (email dated 21/05/2010)  
Emma Cuckow, Lochview, Church Road, Rhu (email dated 23/05/2010)  
Joan Spy, Sunnyside Hall Road, Rhu, Helensburgh (letter dated 20/05/2010)  
Ailsa Boyle, 5 Lawers Drive, Bearsden (email dated 25/05/2010)  
Lorraine Smart, 16 Levenbank Gardens, Jamestown, Alexandria (email dated 26/05/2010)

**(ii) Summary of issues raised**

No neighbour notification was received.

*Comment: Initially an error was made and the Council did not notify the appropriate neighbours. As soon as this was realised, the correct notification was carried out.*

The layout and configuration of the plans are predicated on erroneous information and are misleading.

*Comment: It was clear after the site visit that the existing houses on site were not plotted correctly on the submitted plans. The agents were advised of this and asked to amend the location plans, which they did.*

The development of five houses in a rural farm setting represents over intensification of the site:

*Comment: See my assessment*

We (Mr & Mrs Dalziel) begin work early in the morning and the animals and machinery can be very noisy:

*Comment: See my assessment.*

Policy LP BAD 2 seeks not to prejudice the operational integrity of existing land use. The proposed residential use would be contrary to this policy.

*Comment: See my assessment.*

The house on plot 2 would be directly overlooking our (Little Rahane Farm) conservatory, bedroom and bathroom.

*Comment: The distance between the gable windows of the proposed dwelling at plot one and the closest gable end of the neighbouring property is approximately 28 metres which exceeds the minimum separation distance between habitable rooms of 18 metres as set out in Appendix A of the Local Plan.*

The layout of the proposed development squeezes our access (Little Rahane Farm) between a large house and an embankment with another house. The area is used for a turning area by delivery vehicles of various sizes. The proposed turning area on the plans is unsuitable.

*Comment: The Area Roads Engineer has no objections to the proposal. There is a turning area identified within the plans submitted and this would be able to accommodate commercial vehicles.*

There are more compatible locations for residential development within the land owned by the applicant.

*Comment: The application site is within a Rural Opportunity Area where small scale development may be acceptable. The application deals only with whether the site proposed is acceptable and the availability of other development opportunities cannot be taken into account. All planning applications submitted are assessed on their merits against Development Plan policies and other material considerations.*

The land at the proposed site, a registered agricultural holding, is currently being successfully used by a sheep farmer and the buildings to be demolished are being used for this. This demonstrates that agriculture remains a viable land use for the site. The proposed houses are not a site for site replacement of the outbuildings.

*Comment: Like for like replacements are not required. This application looks at what is proposed and whether or not it is acceptable at the location.*

The outbuildings are also used by swallows, house martins and bats.

*Comment: Scottish Natural Heritage was consulted and a bat survey completed which show no signs of bat roosts. If the application is approved a condition can be placed on the consent to ensure that no wild birds nests are present before development commences.*

We currently have right of access to the hillside for planted woodland. This access would be blocked by the proposed development.

*Comment: The access officer was consulted and he has no objections. Issues relating to rights of access would be a civil matter.*

The proposed development of five houses is contrary to planning guidance. The houses are too large and the development would dwarf our small farmhouse (Little Rahane).

*Comment: See my assessment.*

The increased level of lighting would be considerably intrusive and contrary to the current land use.

*Comment: The site is within a Rural Opportunity Area where small-scale developments are acceptable, and as such lighting associated with a domestic development would be acceptable.*

Approval will set a precedent for further incompatible development on this site.

*Comment: Each application is assessed on its own merits against Development Plan policies and other material considerations. The site is a Rural Opportunity Area where small-scale developments may be acceptable provided they are fitted in sensitively in the context of the existing settlement pattern.*

The present infrastructure is not suitable for such a large development. There is already a reduction in water pressure when being used elsewhere.

*Comment: Scottish Water has no objections to the proposal. As detailed in Scottish Water's letter, if they become aware of issues of low pressure when connecting, the developer will be required to fund works to mitigate the effects on existing customers.*

The proposed single treatment plant would be situated directly above one of our fields which we use for livestock and growing vegetables. A lot of water flows of the hillside and we are concerned that a soakaway at this location would not be acceptable.

*Comment: The Council's Flood Alleviation Manager has no objections to the proposal.*

Concerned regarding access/egress to the main road as a result of the intensification of traffic of such a large development.

*Comment: The Area Roads Manager has no objections to the proposal. The proposals include junction improvements with enhanced sightlines.*

The proposed upgrade of the track with compacted hardcore seems inappropriate for the expected increase in vehicle use.

*Comment: The Area Roads Manager has no objections to the proposal. The proposed improvements are in accordance with the Local Plan and the Road Development Guide.*

Planners were provided with erroneous information in the form of incorrect plans (given that that the official application was wrong, it is fair to assume that all pre-application drawings were also incorrect). Mr Howard Young made no site visit during the pre-application process, so he had to rely only on the drawings provided. The erroneous information was made clear to him when he visited the site (6th May) after the application was submitted.

*Comment: The Area Team Leader visited the site before the application was submitted. The accuracy of the plans has been rectified.*

Despite the agent/architect having information from a previous planning enquiry for Mr Duncan McIntyre, they still planned to use his land, without his knowledge, as part of the access improvements for this application. Also, information provided by the agent to the Validation Team stated that the land surrounding the red boundary of the development was only vacant fields. Our presence was completely ignored. How much investigation work is done by planners during the pre-application process?

*Comment: As in other pre-application discussions, an assessment was made against Section 25 of the Planning Act. Applicants/agents are advised that any interim assessment is an officer opinion and does not take into account that issues may be raised by third parties or other consultees if and when a formal application is received.*

With regard to the Noise Impact Survey, we are concerned that this will be done at a time when we are on holiday and therefore any results will be inaccurate. Our busiest time (and therefore noisiest) is in the winter months, when the animals are housed in the barns at nights. In summer, we still have to operate machinery early in the morning and late in the evening, but not to the same extent, as it can depend on weather or individual animal situations arising.

*Comment: See my assessment.*

We are concerned about the suggestion made in the conclusion of the agent's letter and that this threat will be given undue weight in the decision process. The applicants' two years of time on the project and the expense they may have gone to is dwarfed by our seven years of work (since July 2003) and the greater expense we have put into Little Rahane for our future lives. Ours is an ongoing, lifetime project to maintain and improve this valuable agricultural resource, which is being threatened by this proposed residential development.

*Comment: If the application is refused the applicants have a right of appeal.*

I (Mr MacIntyre) own the land to the south of the access road and achieving the roads requirements would encroach on my land.

*Comment: This is a civil matter.*

We are concerned that the pre-application discussions between the applicant and the planners did not include information on our registered smallholding, i.e. planners were not made aware of our presence and our smallholdings operational practices which would result in complaints from residents about the noise and smells created:

*Comment: As in other pre-application discussions an assessment was made against Section 25 of the Planning Act. Applicants/agents are advised that the interim assessment is an officer opinion and does not take into account that issues may be raised by third parties or other consultees when a formal application is received.*

As a regular visitor of Little Rahane Farm I feel that the proposal would spoil the tranquillity afforded.

*Comment: The land is designated as a rural opportunity area and as such it has been accepted that development on this site may be acceptable.*

The animals' lives would be severely disrupted and as most of them are rescue animals, I feel this would be detrimental to their wellbeing and contentment.

*Comment: This is not a material planning consideration.*

Any potential neighbours would complain about the noise and smell living in such close proximity to this smallholding.



*Comment: This application site is within a rural setting where agricultural noise and smells are to be expected. See also my assessment.*

Argyll & Bute policies encourage biodiversity, farming and agriculture in general; planning should not contradict this by allowing purely residential properties to encroach on such a valuable resource in this area.

*Comment: This area is designated as a Rural Opportunity Area where small scale residential developments may be acceptable.*

The design of the dwellings is poorly executed and their scale is fundamentally at odds with the scale of the surrounding built form.

*Comment: See my assessment.*

I am concerned that since the Assessment was commissioned by the applicants' agent, it is possible that results will be interpreted to suit their application. Surely, this Assessment should have been commissioned independently by the local authority and charged to the applicant.

*Comment: It is the applicant's responsibility to provide the information required in order to assess the application. Environmental Health has been consulted with a copy of the report for their comments.*

There are a number of concerns about how these measurements are interpreted to suit potential inappropriate development, and about where the measurement point was located. I believe only one measurement point was used, whereas PAN 56 recommends more.

*Comment: Environmental Health consider there to be adequate information to be able to assess the noise issue.*

The photograph in the brief report shows that the measurement device was either near or in the storage container next to the barn, or in the barn. It is difficult to see due to poor image reproduction online. Our main working area is over 20m from that point. The nearest proposed house is only 5m from our work area next to the old caravan.

*Comment: The measurement device was located at the boundary between Little Rahane Farm and the development site.*

The conclusion reached by the report writer is that the site falls into NEC B for night and day, but the level recorded for day time is stated as LAeq 64dB which falls into Category C according to PAN56 – not Category B as stated. This important point should surely be acknowledged.

*Comment: The site falls between Category B and Category C since the day time levels just fall into Category C while the night time levels are within Category B.*

The levels taken do not fully accord with PAN 56 and are worded in the applicants favour.

*Comment: Environmental Health has looked at the report independently and considers that there is a noise nuisance.*

The applicants Noise Consultants seem to lack impartiality and feel they are representing the applicant's case. Their further analysis of noise levels shows this.

*Comment: Environmental Health has looked at the report independently and the further comments from the noise consultants and still consider that there is a noise nuisance.*

It is seen that the measured background noise and incident noise regularly exceeds +10dB in the later evening and early morning indicating the potential for reasonable complaint in the periods from 1300 – 2200 hours and 0600 and 1000 hours. Based on the information to hand, were the application approved then both you and the Council would expect to receive reasonably made complaints of noise nuisance.

*Comment: This point is noted.*

### **Applicants' Supporting points in relation to noise impact:**

1. The Environmental Health (EH) officer confirmed by e mail on 17.9.10. *"I have no issues with the noise consultants methodology and his comments re BS4142, what I was trying to point out was that there is noise from the smallholding which would constitute a Nuisance regardless of the methodology used to measure it"*.
  2. During the planning application process we were asked to carry out a Noise Impact Assessment (NIA) over a 24 hour period to measure possible vehicle and animal noise from the adjoining small holding. There was no request for the NIA to be manned.
  3. An unmanned NIA was carried out over a 24 hour period and the NIA report was issued. The report does record some high noise levels which are considered to be from running water, vehicle movement and a barking dog close to the monitoring equipment. All of these are normal noises and there is no evidence to support or confirm that they came from the adjoining small holding.
  4. The EH officer appears to be stating that any noise from the small holding constitutes a nuisance. Surely this cannot be the case or no development around small holdings or farms would be allowed and they would also be considered bad neighbours, which they are not.
  5. We have now consulted with and taken advice from the noise consultant that carried out the NIA, a separate noise consultant and a planning consultant regarding this issue and all are of the opinion that nuisance cannot be assessed on the basis of the NIA report and that a meeting between the EH officer and noise consultant would be required to discuss the issues and agree any further tests that may be required. However despite repeated requests for such a meeting with the EH officer, these have been declined and he has confirmed that he does not see any reason for such a meeting.
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**(G) SUPPORTING INFORMATION**

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

- (i) **Environmental Statement:** N
- (ii) **An appropriate assessment under the Conservation (Natural Habitats) Regulations 1994:** Y
- (iii) **A design or design/access statement:** N
- (iv) **A report on the impact of the proposed development eg. Retail impact, transport impact, noise impact, flood risk, drainage impact etc:** Y

**Summary of main issues raised by each assessment/report**

A Daytime Survey and Bat Activity Survey were carried out

*Conclusion*

- No bats were observed to be roosting in any of the buildings
- Four species of bat were recorded flying and feeding around the site

*Recommendation*

- Persons working on the site should be aware of the possibility that single bats may be found during demolition/construction
- It is suggested that specific sites for bat roosting may be designed into the new buildings on site.

Noise Impact Assessment

Initial assessment (dated July 2010)

The measurements were carried out at the boundary nearest the existing farm house.

PAN 56 states noise levels should include an assessment of daytime and night time levels.

The levels measured were LAeq 64dB (Day) and LAeq 55dB (Night)

- This falls within PAN 56 Cat B for Night and Day
  - Higher levels will be allowed if the permission contains the conditions ensuring acceptable noise levels.

The planning application will need to include a scheme to protect the building. It should be possible to design the building using normal building materials and procedures.

Analysis of Noise Impact Assessment (dated August 2010)

It is surprising that the Council has responded to the Noise Impact Assessment by advising they will be recommending refusal. Analysis of the report will now be provided that was not in the original report.

The microphone was unmanned. During its set up and removal people were present which caused dogs to bark and accounted for a high level of noise. There was a continuous noise from running water. The day and night LAeq

levels are increased by some occasional higher hourly levels over LAeq 60dB. These occur during the first and last hours of measurement when there were vehicle movements and dogs barking. The only other high hours were 07.00, 08.00 and 13.00. It is assumed that this is due to vehicle movement.

The graph provided shows the noise levels is affected by short term maxima and not constant noise. High levels exist for less than 6 minutes in the hour. There is no indication from these figures that suggest any continuous noise from the farm.

Based on the measurements, there is no indication that the noise from farm activities will cause unacceptable noise levels. The proposed mitigation measures will reduce the exterior noise to acceptable interior noise levels.

Initial assessment (dated July 2010) with added observations (received 24/09/2010)

Observations – The mike was located close to the road for safety and security at a point nearest to the existing property. There was a noise of running water. The only animals seen were pet dogs. There was a distant noise of boats on the loch from a previous visit and the intermittent rail and traffic noise.

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**(H) PLANNING OBLIGATIONS**

(i) **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

'Argyll and Bute Local Plan' 2009

LP ENV 1 – Impact on the General Environment

LP ENV 6 – Impact on Habitats and Species

LP ENV 19 – Development Setting, Layout and Design

LP BAD 2 – Bad Neighbour Development in Reverse

LP HOU 1 – General Housing Development

LP SERV 1 – Private Sewage Treatment Plants and Wastewater Systems

LP TRAN 1 – Public Access and Rights of Way

LP TRAN 4 – New and Existing Public Roads and Private Access Regimes

LP TRAN 6 – Vehicle Parking Provision

Appendix A – Sustainable Siting and Design Principles

Appendix C – Access and Parking Standards

- (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 Sustainable Design Guidance (2006)

PAN56 Planning and Noise

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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):** Under current arrangements, a discretionary hearing is recommended in view of the number of representations which have been received. In the event of revised criteria based arrangements being adopted pertaining to the holding of hearings (report appears elsewhere on the agenda) and that Members propose to accept the recommendation to refuse permission, that no discretionary local hearing be held, on the basis that those persons making representation are objectors to the application, and the applicant retains a right of appeal.

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

Planning permission is sought for the erection of five dwellinghouses on land adjacent to Little Rahane Farm, Rahane. The development would also require the installation of a single sewerage treatment system.

The site lies within a Rural Opportunity Area (ROA) as defined by the adopted 'Argyll and Bute Local Plan'.

Structure Plan Policy STRAT DC4 supports appropriate small scale development on sites within ROA's. However, such developments are required to visually integrate with the landscape and settlement pattern and must also accord with other Local Plan policies.

The only existing development within this ROA is that of Little Rahane Farm, therefore it is considered that development should be located next to these existing buildings as this would reinforce the settlement pattern of the area. It is also considered that the layout of the proposed dwellings in a steading style development and the proposed design are acceptable and accord with Policy LP ENV 19 and Appendix A of the adopted Local Plan.

However Little Rahane Farm is a registered smallholding and as such has associated noise. A Noise Impact Assessment was carried out by the applicant which the findings of which have been considered by the Council's Environmental Health Manager. The noise is such that Environmental Health has advised that they consider the noise from the farm to be a nuisance and therefore consider that Little Rahane Farm constitutes a 'Bad Neighbour'. Policy LP BAD 2 presumes against new incompatible development in or adjacent to areas with developments classed as 'Bad Neighbour'. The development is therefore contrary to this Policy.

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

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**(R) Reasons why planning permission or a Planning Permission in Principle should be granted**

N/A

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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:** Stephanie Glen

**Date:** 24/08/2010

**Reviewing Officer:** Howard Young

**Date:** 30/09/2010

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

**GROUNDS OF REFUSAL RELATIVE TO APPLICATION 10/00536/PP**

The proposed development is located directly adjacent to the existing smallholding, Little Rahane Farm. A Noise Impact Assessment has been submitted in support of the proposal and it is considered that the difference, subjectively, between the background levels and the average levels at the application site is such that if residential development were to be permitted as proposed, the noise from Little Rahane Farm would constitute a Public Health Nuisance. In order to mitigate the levels recorded, it would require potential design and build measures such as triple glazing and increased insulation and may require the windows to remain shut when levels were highest. Even if these design measures were the minimum necessary as required by PAN 56, there would also still be the issue of external noise levels within the curtilage of the proposed properties and consequences for residential amenity. Consequently, it is considered that five dwellinghouses located immediately adjacent to such an existing use would result in disturbance to prospective occupiers generated by noise, which would result in the new dwellinghouses having a poor standard of amenity and introduce new incompatible development and associated land uses into, or adjacent to, an area already containing development constituting a 'Bad Neighbour'. Accordingly, the development would be contrary to Policy LP BAD 2 '*Bad Neighbour in Reverse*' of the 'Argyll and Bute Local Plan' and PAN 56 "*Planning and Noise*", which state that only in exceptional circumstances should satisfactory noise levels only be attainable by windows being shut and other means of ventilation provided. In addition to resisting development which seeks to ensure that sound levels within dwellings are compatible with residential use, it is also necessary to have regard to the effects of noise upon the environment generally and the degree to which a reasonable degree of peaceful enjoyment can be achieved within gardens and adjacent amenity areas. In all development control zones there is a general presumption against proposals that will introduce new incompatible development and associated land uses into, or adjacent to, areas already containing developments classed as 'Bad Neighbour' developments. The development would not secure a reasonable standard of residential amenity for prospective occupiers having regard to the presence of a 'Bad Neighbour' use adjacent to the site, contrary to Policy LP BAD 2 of the 'Argyll and Bute Local Plan' (2009).

**NOTE TO APPLICANT**

For the purpose of clarity it is advised that this decision notice relates to the details specified on the application form dated 22 March 2010 and the refused drawing reference numbers 1/1, PB-747-01C, PB-747-02A, PB-747-01C, PB-747-03B, PB-747-04A, PB-747-05A and PB-747-06A

**APPENDIX A – RELATIVE TO APPLICATION NUMBER: 10/00536/PP**

**PLANNING LAND USE AND POLICY ASSESSMENT**

**A Settlement Strategy**

Planning permission is sought for the erection of five dwellinghouses adjacent to Little Rahane Farm, Rahane. The site lies within a Rural Opportunity Area (ROA) as defined by the adopted 'Argyll and Bute Local Plan'.

Structure Plan Policy STRAT DC 4 gives encouragement to small scale developments (up to five houses) on suitable sites within these areas where it can be shown that they visually integrate with the landscape and settlement pattern in terms of siting, scale and design. This may include housing in the open countryside as well as existing building-focussed development. There is a further requirement to satisfy other policies contained in the local plan.

**B. Location, Nature and Design of Proposed Development**

The Rahane Rural Opportunity Area is rectangular in shape and runs along the western side of the B833 for approximately 850 metres and continues up the hill for approximately 280 metres. This area is sloping open countryside. The only buildings within this ROA are those at Little Rahane Farm and a scatter of agricultural buildings in the adjacent field.

The application site is located towards the upper boundary of this ROA, adjacent to Little Rahane Farm, a registered smallholding. There are a number of existing farm buildings on site which are to be demolished to make way for the development. The application was subject to pre-application discussions and it was considered that any development within this ROA should be sited next to the existing buildings on the hillside.

The layout of the proposed dwellings are designed as a steading type development with four of the dwellings being formed around a main courtyard area, with one larger house to the front of these. This is intended to represent a traditional farmhouse and steading pattern which is representative of this countryside area.

The dwellings will be traditional in appearance with pitched roofs, gable ends and windows with a vertical emphasis. They will be finished with a natural slate roof, roughcast and stone walls and timber framed windows, all which are considered appropriate at this location.

Plot 2 and Plot 5 will sit to the north and south of the courtyard facing each other. They will each be 2 storeys, with four bedrooms. Plots 3 and 4 are located to the west of the courtyard and will form two semi detached 3 bedroom dwellings. Because of the sloping nature of the site, the dwelling will be split level, with two storeys to the front and single storey to the rear elevation. Plot 1 will be the main 'farmhouse' building. This is a larger more prominent building set to the east of the courtyard to the front of the site. It will be 2 ½ storeys high with 7 bedrooms.

It is considered that the proposed design of the dwellings is acceptable. The proportions are traditional and the scale and positioning of the dwellings successfully replicate the farmhouse and steading style developments that are prevalent within this area. It is, therefore, considered that the current scheme would accord with Policy STRAT DC 4 of the Structure Plan and policies LP HOU1, LP ENV 1 and LP ENV 19 of the adopted Local Plan.



**C. Natural Environment**

The proposed development would require the removal of seven structures including an old barn. It was noted through a letter of representation that bats, swallows and house martins use these structures. Because of this, the applicants were required to undertake a bat survey. This survey was carried out and no evidence of bat roosts was found. This survey was forwarded to Scottish Natural Heritage who concurred with the findings of the report. They also suggested that, if the application is minded for approval, a condition be attached to ensure that breeding bird species such as swallows and house martins are no longer nesting before demolition works begin.

**D. Built Environment**

The proposed development will be sited directly adjacent to an existing registered smallholding, Little Rahane Farm. This is a working smallholding where the owners keep a wide range of animals including horses, pigs, goats, sheep, chickens and dogs. This smallholding has an associated dwellinghouse and animal barn. The main bulk of the objections relating to this application stem from the fact that the development is sited so close to this smallholding. The owners feel that their smallholding generates considerable noise at unsociable hours and as such should be classified as a 'Bad Neighbour' and therefore Policy LP BAD 2 (Bad Neighbour in Reverse) should apply.

A Noise Impact Assessment was carried out by the applicant. Environmental Health were consulted with the findings of this report and it was considered that the difference, subjectively, between the background levels and the average levels is such that if the proposed residential development was present, the noise levels from Little Rahane Farm would constitute a Public Health Nuisance. In order to mitigate the levels recorded it would require design and build measures such as triple glazing and increased insulation and may require the windows to remain shut when levels were highest. However, even if these design measures were the minimum necessary as required by PAN 56, there would also still be the issue of external levels within the curtilage of the proposed properties. Environmental Health considers that Little Rahane Farm should be considered as a 'Bad Neighbour' and therefore they recommend refusal of the application.

**E. Road Network, Parking and Associated Transport Matters.**

The Area Roads Manager has no objection to the proposal. He is satisfied that the visibility splays as shown on the plans are adequate for the speed of traffic in that area. He has advised that a condition should be placed on the consent for the details of surface water drainage to ensure that it does not cascade onto the public road.

**F. Infrastructure**

The development would connect to the public water supply. In terms of foul drainage a new sewage treatment plant with a soakaway would be installed. This is consistent with Policy LP SERV 1 as the development would be located in a rural area and there are no public sewers in the vicinity which could serve the development.

**G. Residential Amenity.**

It is considered that development on this site, in principle, would be acceptable in terms of development plan policy and that the farm steading type arrangement would be an appropriate rural solution sympathetic to the landscape and development character of

the area. The design, scale and materials would also accord with the policies of the development plan and the Council's Sustainable Design Guide. However, the proposed development is located directly adjacent to the existing smallholding, Little Rahane Farm. The operators of the smallholding contend that the activities associated with their lawful use of the site would be such as to prejudice the residential amenity of the dwellings proposed. The Council's Environmental Health officers have concluded that the Noise Impact Assessment carried out indicates that five dwellinghouses located immediately adjacent to such an existing use would result in a poor standard of amenity, resulting in disturbance generated by noise. Government advice and Development Plan policy presumes against locating noise sensitive uses in situations where they would be adversely influenced by legitimate activities carried out on adjacent sites. Accordingly, the development is considered contrary to PAN 56 "*Planning and Noise*", and Policy LP BAD 2 '*Bad Neighbour in Reverse*' of the 'Argyll and Bute Local Plan'. As such it is recommended for refusal.

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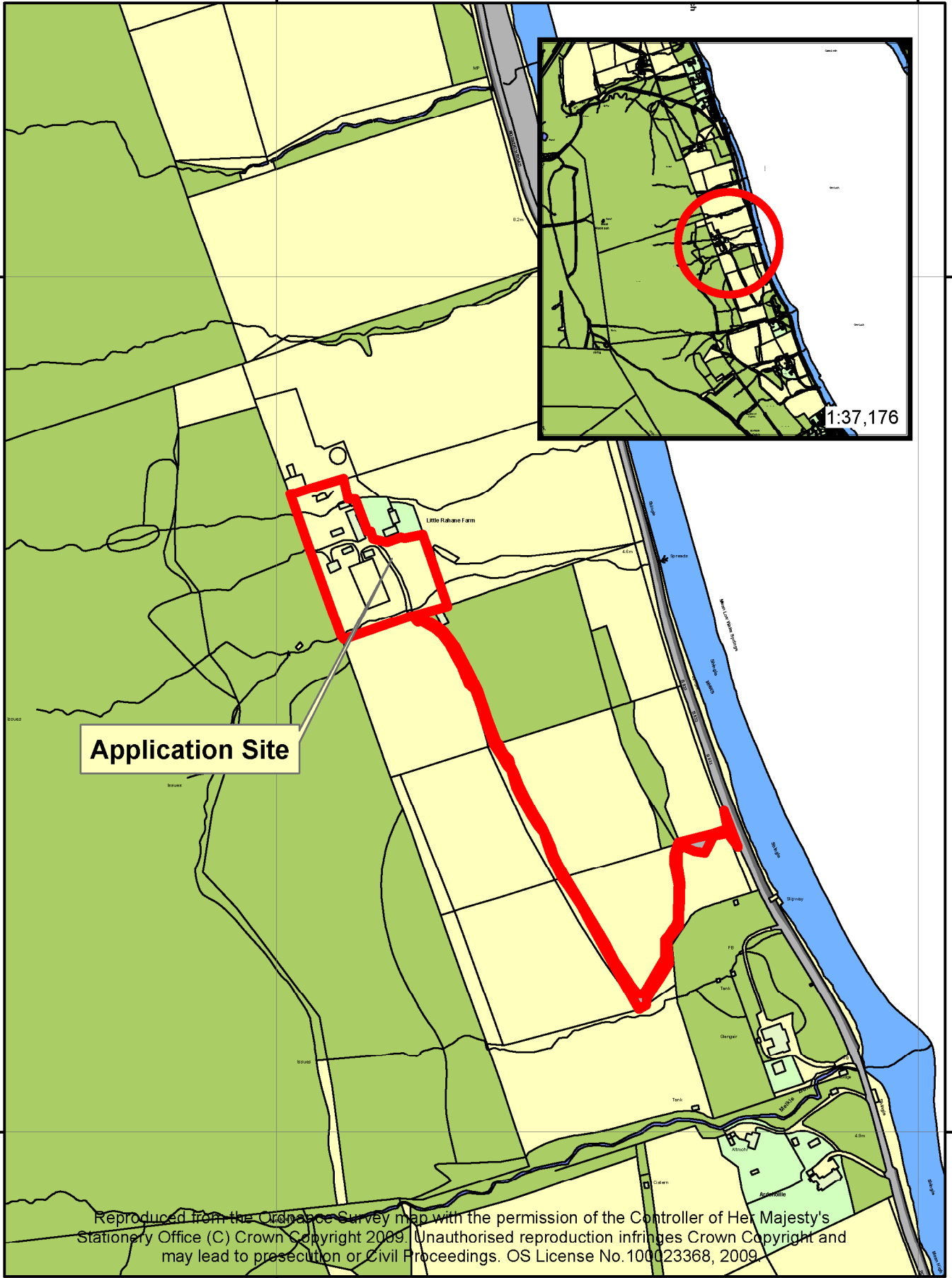
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**Application Site**

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**Location Plan relative to  
Application Ref: 10/00536/PP**

Date: 23.08.10

Scale: 1:5,000



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**ARGYLL AND BUTE COUNCIL**

**PROCEDURE NOTE FOR USE AT**

- |  |                          |
|--|--------------------------|
| <b>(1) Statutory Pre Determination Hearing</b> | <input type="checkbox"/> |
| <b>(2) Pan 41 Hearing</b>                      | <input type="checkbox"/> |
| <b>(3) Council Interest Application</b>        | <input type="checkbox"/> |
| <b>(4) Discretionary Hearing</b>               | <b>X</b>                 |

**HELD BY THE PLANNING, PROTECTIVE SERVICES & LICENSING COMMITTEE**

1. The Director of Corporate Services will notify the applicant, all representees and objectors of the Council's decision to hold a Hearing and to indicate the date on which the hearing will take place. The hearing will proceed on that day, unless the Council otherwise decides, whether or not some or all of the parties are represented or not. Statutory consultees (including Community Councils) will be invited to attend the meeting to provide an oral presentation on their written submissions to the Committee, if they so wish.
2. The Director of Corporate Services will give a minimum of 7 days notice of the date, time and venue for the proposed Hearing to all parties.
3. The hearing will proceed in the following order and as follows.
4. The Chair will introduce the Members of the Panel, ascertain the parties present who wish to speak and outline the procedure which will be followed.
5. The Director of Development Services' representative will present their report and recommendations to the Committee on how the matter should be disposed of.
6. The applicant will be given an opportunity to present their case for approval of the proposal and may include in their submission any relevant points made by representees supporting the application or in relation to points contained in the written representations of objectors .
7. The consultees, supporters and objectors in that order (see notes 1 and 2), will be given the opportunity to state their case to the Council.
8. All parties to the proceedings will be given a period of time to state their case (see note 3). In exceptional circumstances and on good case shown the Panel may extend the time for a presentation by any of the parties at their sole discretion.

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9. Members of the Panel only will have the opportunity to put questions to the Director of Development Services' representative, the applicant, the consultees, the supporters and the objectors in that order.
10. At the conclusion of the question session the Director of Development Services' representative, the applicant, any consultees present, the supporters and the objectors in that order will each be given an opportunity to comment on any particular information given by any other party after they had made their original submission and sum up their case. .
11. The Chair will ascertain from the parties present that they have had a reasonable opportunity to state their case.
12. The Panel will then debate the merits of the application and will reach a decision on it. No new information can be introduced at this stage.
13. The Chair or the Committee Services Officer on his/her behalf will announce the decision.
14. A summary of the proceedings will be recorded by the Committee Services Officer.
15. If at any stage it appears to the Chair that any of the parties is speaking for an excessive length of time he will be entitled to invite them to conclude their presentation forthwith.

#### NOTE

- (1) Objectors who intend to be present and speak at a hearing are encouraged to appoint one or a small number of spokespersons to present their views to concentrate on the matters of main concern to them and to avoid repetition. To assist this process the Council will provide a full list of the names and addresses of all objectors.
- (2) Supporters who intend to be present and speak at a hearing are encouraged to appoint one or a small number of spokespersons to present their views to concentrate on the matters of main concern to them and to avoid repetition. To assist this process the Council will provide a full list of the names and addresses of all supporters.
- (3) Councillors (other than those on the Panel) who have made written representations and who wish to speak at the hearing will do so under category (1) or (2) above according to their representations but will be heard by the Panel individually.
- (4) Recognising the level of representation the following time periods have been allocated to the parties involved in the Hearing.

The Director of Development Services' representative – not more than half an hour

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The Applicant - not more than half an hour.  
The Consultees - not more than half an hour.  
The Supporters - not more than half an hour.  
The Objectors - not more than half an hour.

- (4) The purpose of the meeting is to ensure that all relevant information is before the Panel and this is best achieved when people with similar views co-operate in making their submissions.
- (5) Everyone properly qualified as a representee recorded on the application report who wishes to be given an opportunity to speak will be given such opportunity.
- (6) The Council has developed guidance for Councillors on the need to compose a competent motion if they consider that they do not support the recommendation from the Director of Development Services which is attached hereto.

I:data/typing/planning/procedure note

## COMPETENT MOTIONS

- Why is there a need for a competent motion?
  - Need to avoid challenge by “third party” to local authority decision which may result in award of expenses and/or decision being overturned.
  - Challenges may arise from: judicial review, planning appeal, ombudsman (maladministration) referral. All appeal/review processes have rights to award expenses against unreasonable/unlawful behaviour.
- Member/Officer protocol for agreeing competent motion:
  - The process that should be followed should Members be minded to go against an officer’s recommendation is set out below.
- The key elements involved in formulating a competent motion:
  - It is preferable to have discussed the component parts of a competent motion with the relevant Member in advance of the Committee (role of professional officers). This does not mean that a Member has prejudged the matter but rather will reflect discussions on whether opinions contrary to that of professional officers have a sound basis as material planning considerations.
  - A motion should relate to material considerations only.
  - A motion must address the issue as to whether proposals are considered consistent with Adopted Policy or justified as a departure to the Development Plan. Departure must be determined as being major or minor.
  - If a motion for approval is on the basis of being consistent with policy reasoned justification for considering why it is consistent with policy contrary to the Head of Planning’s recommendation must be clearly stated and minuted.
  - If a motion for approval is on the basis of a departure reasoned justification for that departure must be clearly stated and minuted. Consideration should be given to holding a PAN 41 Hearing (determined by policy grounds for objection, how up to date development plan policies are, volume and strength of representation/contention)
  - A motion should also address planning conditions and the need for a Section 75 Agreement.
  - Advice from the Scottish Government on what are material planning considerations is attached herewith. However, interested parties should always seek their own advice on matters relating to legal or planning considerations as the Council cannot be held liable for any error or omission in the said guidance.



## DEFINING A MATERIAL CONSIDERATION

1. Legislation requires decisions on planning applications to be made in accordance with the development plan (and, in the case of national developments, any statement in the National Planning Framework made under section 3A(5) of the 1997 Act) unless material considerations indicate otherwise. The House of Lord's judgement on *City of Edinburgh Council v the Secretary of State for Scotland* (1998) provided the following interpretation. If a proposal accords with the development plan and there are no material considerations indicating that it should be refused, permission should be granted. If the proposal does not accord with the development plan, it should be refused unless there are material considerations indicating that it should be granted.
2. The House of Lord's judgement also set out the following approach to deciding an application:
  - Identify any provisions of the development plan which are relevant to the decision,
  - Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies,
  - Consider whether or not the proposal accords with the development plan.
  - Identify and consider relevant material considerations for and against the proposal, and
  - Assess whether these considerations warrant a departure from the development plan.
3. There are two main tests in deciding whether a consideration is material and relevant:
  - It should serve or be related to the purpose of planning. It should therefore relate to the development and use of land, and
  - It should fairly and reasonably relate to the particular application.
4. It is for the decision maker to decide if a consideration is material and to assess both the weight to be attached to each material consideration and whether individually or together they are sufficient to outweigh the development plan. Where development plan policies are not directly relevant to the development proposal, material considerations will be of particular importance.
5. The range of considerations which might be considered material in planning terms is very wide and can only be determined in the context of each case. Examples of possible material considerations include:
  - Scottish Government policy, and UK Government policy on reserved matters
  - The National Planning Framework
  - Scottish planning policy, advice and circulars
  - European policy
  - A proposed strategic development plan, a proposed local development plan, or proposed supplementary guidance

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- Guidance adopted by a Strategic Development Plan Authority or a planning authority that is not supplementary guidance adopted under section 22(1) of the 1997 Act
  - A National Park Plan
  - The National Waste Management Plan
  - Community plans
  - The Environmental impact of the proposal
  - The design of the proposed development and its relationship to its surroundings
  - Access, provision of infrastructure and planning history of the site
  - Views of statutory and other consultees
  - Legitimate public concern or support expressed on relevant planning matters
6. The planning system operates in the long term public interest. It does not exist to protect the interests of one person or business against the activities of another. In distinguishing between public and private interest, the basic question is whether the proposal would unacceptably affect the amenity and existing use of land and buildings which ought to be protected in the public interest, not whether owners or occupiers of neighbouring or other existing properties would experience financial or other loss from a particular development.