

Argyll and Bute Council
Comhairle Earra Ghaidheal agus Bhoid

Customer Services
Executive Director: Douglas Hendry



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17 February 2011

NOTICE OF MEETING

A meeting of the **PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE** will be held in the **PILLAR HALL, VICTORIA HALLS, HELENSBURGH** on **FRIDAY, 25 FEBRUARY 2011** at **2:00 PM**, or at the conclusion of the 10.00am hearing, whichever is the later, 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 H HOOD: SITE FOR ERECTION OF A DWELLINGHOUSE: LAND WEST OF 15 LOCH DRIVE, HELENSBURGH (REF: 10/01578/PPP)**
Reports by Head of Planning and Regulatory Services (Pages 1 - 16)

DISCRETIONARY HEARING PROCEDURE NOTE (Pages 17 – 22)

PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE

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

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

Contact: Melissa Stewart

Tel. No. 01546 604331

**Argyll and Bute Council
Development and Infrastructure 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

Reference No: 10/01578/PP
Planning Hierarchy: Local Application
Applicant: Mr H Hood
Proposal: Erection of dwellinghouse
Site Address: Land West of 15 Loch Drive, Helensburgh

SUPPLEMENTARY REPORT 1

1.0 SUMMARY

The purpose of this supplementary report is to advise Members of a late representation.

Correspondence has been received from Iain Martin, 17 Loch Drive, Helensburgh (e-mail dated 10 February 2011):

1. After reading the recommendation from the planning department I am really concerned to see that the measurement stated from gable to gable is wrong. The plans submitted show a rectangular shaped site (if the access is excluded) measuring 14 metres by 32 metres approximately. The distance from the gable of number 17 to the gable at number 15 is 18.5 metres. The width of the application site and the remainder of the curtilage at number 15 is 23 metres. The plans submitted show a two storey property whilst the daylight assessment shows single and one and a half storey. These are however for indicative purposes only. The gable to gable is only 17 metres as I and others have stated in objections.

Comment: In terms of the plans submitted, the site plan at 1:500 scale shows the gable to gable distance to be 18.5 metres. On the 1:200 elevation plan the distance is 18.3 metres. Following the late representation the gable to gable distance was measured on site. This distance was approximately 17.3 metres. Consequently, the applicant's agent has been contacted and accurate amended plans requested. Despite this 1 to 1.2 metre discrepancy, it is still considered that an appropriately designed dwellinghouse can be accommodated on this site without a detrimental impact on the amenity of adjoining properties or the surrounding area. As such it doesn't affect the recommendation that planning permission be approved as per the original report.

2.0 RECOMMENDATION

It is recommended that the contents of this report are noted but that it doesn't affect the recommendation that planning permission be approved as per the original planning report.

Angus J Gilmour
Head of Planning & Regulatory Services
14 February 2011

Author: Howard Young 01436 658888
Contact Point: Richard Kerr 01546 604845

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

Reference No: 10/01578/PPP

Planning Hierarchy: Local

Applicant: Mr H. Hood

Proposal: Erection of Dwellinghouse

Site Address: Land West Of 15 Loch Drive, Helensburgh

DECISION ROUTE

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

(A) THE APPLICATION

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

- Site for the erection of a dwellinghouse

(ii) **Other specified operations**

- Connection to public water supply and sewer
-

(B) RECOMMENDATION:

Having due regard to the development plan and all other material planning considerations, it is recommended that planning permission in principle be granted subject to:

- 1) a discretionary local hearing being held in recognition of the number of representations received;
 - 2) the conditions and reasons appended to this report.
-

(C) HISTORY:

00/01575/DET – Erection of conservatory (Approved 13/11/2000)

(D) CONSULTATIONS:

Area Roads Manager

Response dated 25th October 2010 – No objection subject to conditions.

Scottish Water

Response dated 22nd October 2010 – No objection.

Helensburgh Community Council

Response received 3rd November 2010 – Object to the proposal as it would not integrate with its setting and amount to overdevelopment, leaving the dwellinghouses on either side very enclosed and at odds with the rhythm and ratio of building to garden plot. Proposal is contrary to Policy LP ENV 19.

(E) PUBLICITY:

Regulation 20 Advert Local Application Expiry Date: 12.11.2010

(F) REPRESENTATIONS:

Eleven e-mails and ten letters of representation (some of which are duplicates) were received during the determination process of this planning application. The representations have been received from;

David W. Bennett, Kingseat, 20 Loch Drive, Helensburgh, G84 8PY (e-mail dated 19/10/10)

Rona Thorne (no address supplied) (e-mail dated 20/10/10)

Glen Roy (no address supplied) (e-mail dated 21/10/10)

Ian Martin, 17 Loch Drive, Helensburgh, G84 8PY (e-mails dated 18/10/10 and 21/10/10 and letter dated 21/10/10)

A Livingstone, 26 Loch Drive, Helensburgh, G84 8PY (letter dated 20/10/10)

D Sammon, 10 Kidston Drive, Helensburgh (letter and e-mail dated 26/10/10)

Tom Haverson, 21 Loch Drive, Helensburgh, G84 8PY (letter undated and e-mail dated 25/10/10)

George S. Wootton, 16 Loch Drive, Helensburgh, G84 8PY (letter dated 21/10/10)

Dr. A Cameron, 24 Loch Drive, Helensburgh, G84 8PY (e-mail dated 27/10/10)

Bruce R. Mill, 16 Dennistoun Crescent, Helensburgh, G84 7JE (letter dated 29/10/10)

F. J. Meehan, 9 Kidston Drive, Helensburgh, G84 8OA (letter dated 2/11/10)

James and Patricia Crawford, 18 Loch Drive, Helensburgh, G84 8PY (e-mails dated 16/1/10 and 19/11/10 and letter dated 3/11/10)

Keith and Jean Crawford, Ardlamont, 3 Loch Drive, Helensburgh, G84 8PY (letter dated 9/11/10)

John Watters (no address supplied) (e-mail dated 5/11/10)

Ian and Margaret Martin, 17 Loch Drive, Helensburgh, G84 8PY (letter dated 18/11/10)

The concerns raised are summarised as follows:

The existing houses in Loch Drive have been built with a reasonable space between them which is part of the character and charm of the street. The proposal would be completely out of character with the rest of the street resulting in a significant loss of amenity to adjoining properties and the surrounding area. The proposal is therefore contrary to policy LP HOU1 and Policy LP ENV 19 of the adopted Local Plan.

Comment: See my assessment (at Section P below).

If approval was given this would set a precedent for similar garden areas in the street.

Comment: Each application is judged on its merits against development plan policy and other material considerations.

Although this is a reasonable sized garden, it is not wide enough to be developed with a detached property without seriously reducing the amount of natural light/sunlight in the living areas of adjoining properties. Privacy is also a concern, especially with the proposed access/parking in view of living areas. Any daylight assessment should include the impact on both number 17 and number 15.

Comment: See my assessment (at Section P below).

With regard to the daylight assessment both a one and a half storey and single storey building are shown. The one and a half storey looks like a two storey building on the east side with a half storey on the west side. This has been contrived to comply with the 25 degree rule and is not a one and a half storey building. The single storey building has been set some 4 metres from the boundary of number 15 to comply with the 25 degree rule. If either design was set 3 metres from the boundary it would fail the 25 degree test.

Comment: The indicative layout submitted shows the proposed new house 4 metres from the boundary of number 15. This is an application for planning permission in principle and the final siting will be specified in later applications if Members are minded to agree the proposal. A condition has been attached requiring a single or one and a half storey house with eaves levels below either of the adjoining properties. It is considered therefore that on the basis of the daylight information submitted and the safeguard of the condition and the further application(s) then the scheme is acceptable. See also my assessment (at Section P below).

Having three very large, tall properties close together, two with parking bays, little if any verges and an alleyway access to small rear gardens will do nothing to enhance the neighbourhood but merely detract and present the impression of an overbearing virtual Terrace Row. The original plans catered for larger and taller properties by allocating larger and wider plots. This foresight should not be thrown away for the sake of quick profit but retained as intended for the benefit of the neighbourhood.

Comment: See my assessment (at Section P below).

We consider that the applicant acknowledges that there is insufficient space. The cannibalising of the existing number 15, the dwelling design, lack of garage, seriously practical car access/turning space, absence of any side windows, etc, even down to placing four refuse bins per house as the back garden is limited all supports the view of over crowdedness.

Comment: See my assessment (at Section P below).

There is a well known problem with drainage and sewerage in the street and any further increase in load on sewerage might adversely affect the whole street.

Comment: Scottish Water has no objections.

The absence of garage accommodation in the existing property and the proposed new build could result in an increase in street parking which is detrimental to the appearance and amenity of the area. Moreover, the application may show standard parking slots but given the access and driveway these are impossible.

Comment: The Area Roads Manager has no objections and it is not considered that any additional on-street parking will have a material impact on the character and amenity of the area.

We would want reassurance that the available width of half of the plot is not over-represented on the plans. The sketches appear misleading giving the impression of

more space/size than actually exists. The drawings should show that overall width from the gable at number 17 to the gable at number 15 is 19 metres but on site is only 17 metres and when the side spaces are taken into account this only leaves very little given the other restrictions. The proposed plot is shown as 422m² where in reality it measures 393m².

Comment: The plans submitted show a rectangular shaped site (if the access is excluded) measuring 14 metres by 32 metres approximately. The distance from the gable of number 17 to the gable at number 15 is 18.5 metres. The width of the application site and the remainder of the curtilage at number 15 is 23 metres. The plans submitted show a two storey property whilst the daylight assessment shows single and one and a half storey. These are however for indicative purposes only. See also my assessment (at Section P below).

We consider that there has been a material change of use to the land and house at 15 Loch Drive which is apparently unauthorised. The integral garage has already been demolished as has the front boundary wall. The front flower garden has been grubbed up and replaced with a red stoned surface. It appears to be an unauthorised change of use to remove the car parking space from the garage to the front garden. Burdens on our property require that the front parapet wall be maintained and that grass, flowers and shrubs be grown in the space between the house and wall. No property in this area has parking in front of its principal ground floor windows, presumably as a result of this covenant. We suggest that enforcement action would be preferable to a retrospective application.

Comment: The site is not within a conservation area and the property at number 15 is not listed. Consequently, the works indicated do not require planning permission. The requirements of any covenant are a civil matter.

As a previous owner of this property we looked at the option of selling the house but keeping the land with a view to building another property. Advice from planning was that permission would not be granted as there was not enough space. We were also worried that that if we sold the house, a developer might knock down the garage and build a house in the garden. We were assured this would not happen and that any planning application to do so in the future would be rejected.

We understand that planning officers gave a previous undertaking to the previous long-standing owner that consent would not be given for such development due to insufficient land availability.

Comment: Pre-application advice has the caveat that it is an officer's opinion. In the event of a formal application being submitted, the Council must take into account views of consultees and representations as appropriate. Any report to Committee must reflect this and may therefore differ from an initial assessment. Each application is judged on its merits against development plan policy and other material considerations.

15 Loch Drive was purchased recently on what could be considered a speculative and opportunistic basis. Therefore, would question the intention of the purchaser with regard to actually taking up residence. There are more than ample properties available of this size within Helensburgh at present and indeed, when the old Academy site is developed, there will be a large increase in the housing stock within Helensburgh.

Comment: The issue of the motives of the applicant is not a material consideration. An application has been submitted for development within the settlement boundary and requires to be assessed against development plan policies and other material considerations.

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

(G) SUPPORTING INFORMATION

Has the application been the subject of:

- (i) **Environmental Statement:** No
- (ii) **An appropriate assessment under the Conservation (Natural Habitats) Regulations 1994:** No
- (iii) **A design or design/access statement:** No
- (iv) **A report on the impact of the proposed development e.g. retail impact, transport impact, noise impact, flood risk, drainage impact etc:** No

(H) PLANNING OBLIGATIONS

- (i) **Is a Section 75 agreement required:** No

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

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

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

Argyll and Bute Structure Plan 2002

Policy 'STRAT DC 1 – Development in Settlements

Argyll and Bute Local Plan 2009

Policy 'LP ENV 1 – Development Impact on the General Environment'

Policy 'LP ENV 19 – Development Setting, Layout and Design'

Policy 'LP HOU 1 – General Housing Development'

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

Policy '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**

Scottish Planning Policy (Feb 2010)

The Town & Country Planning Act (Scotland) 1997

The Planning etc. (Scotland) Act, 2006

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

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

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

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

(O) Requirement for a hearing (PAN 41 or other):

In view of the number of representations received raising objection to the proposal it is considered that a discretionary local hearing is necessary in this instance.

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

Planning Permission in Principle is sought for the erection of a dwellinghouse within the garden ground of 15 Loch Drive, Helensburgh, a two storey semi-detached property. The application site sits within a larger development block running along Loch Drive to the north, Cairndhu Avenue on the east, Castle Avenue on the west and Kidston Drive to the south. This block comprises mainly detached dwellinghouses on rectangular shaped plots.

The Council's 'Sustainable Design Guidance' gives advice on how to approach sustainable urban infill. It offers three possible solutions. The first is contemporary landmark which is sensitive design of a high architectural quality which is essentially of a different architectural style to the buildings surrounding it. The second option is a design which more obviously is based on the architecture of the buildings adjacent. Finally, there is traditional design.

Although this is an application in principle indicative plans have been submitted. These show a 2 storey dwellinghouse with a rectangular shaped footprint of approximately 130 square metres and matching the existing building line. The key issues are whether the sub-division of this plot and the erection of a dwellinghouse will be visually intrusive in the streetscape and the impact of a new house on the amenity of adjoining properties.

The development block in which the application site is situated has a certain homogeneity with detached properties set in rectangular shaped plots approximately 37

metres deep by 23 metres wide. However, on Loch Drive this pattern is disrupted by two pairs of semi-detached dwellinghouses in the middle of the streetscape part of which comprises the application site. To the east after the two sets of semi-detached properties the regular pattern of detached properties resumes.

The original curtilage of number 15 measures approximately 851 square metres. The proposed sub-division will leave the new property with a curtilage of approximately 450 square metres and the existing property approximately 401 square metres. While this is smaller than the general pattern in the area, it is considered acceptable particularly as this central section of Loch Drive deviates from the general development pattern. Consequently, it is considered that a new dwellinghouse of appropriate design could be accommodated without having a detrimental visual impact on the streetscape.

The other key issue is the impact of the proposed new dwellinghouse on adjoining properties particularly in terms of daylight, dominance and privacy. A daylight assessment was requested and submitted. Using the British Research Establishment (BRE) Guide to Good Practice the daylighting component was assessed via the 25 degree method which defines the separation distance at which good interior daylighting can be achieved. In essence *“If any part of a new building or extension measured in a vertical section, perpendicular to a main window wall of an existing building from the centre of the lowest window, subtends an angle of more than 25 degrees to the horizontal, then the diffuse daylighting of the existing building may be adversely affected”*. In this case, neither a single storey nor one and a half storey building subtends the angle of 25 degrees with regard to the gable windows on number 17 Loch Drive. In terms of the existing property at number 15, a sunpath diagram was submitted. Any impact is likely to be on the existing conservatory but is within acceptable limits.

With regard to dominance the indicative drawing shows the footprint of the proposed dwellinghouse to be approximately 1 metre from the boundary and 4 metres from the gable of number 15 and 3 metres from the boundary and 5 metres from the gable of number 17 respectively. Given this proximity, a one and a half or two storey dwellinghouse could be overbearing and dominate both existing properties to the detriment of their amenity. Consequently, as this is a subdivision of an existing house and the potential impact a one and a half or two storey property could have it is considered that any dwellinghouse approved should be limited by condition to single storey. Similarly, as part of the same condition, it is considered appropriate to specify a minimum separation distance from the proposed new house to the existing properties.

As only indicative drawings have been submitted the impact on adjoining properties in terms of window to window distances cannot be fully assessed. However, it is considered that an appropriately designed single storey dwellinghouse can be accommodated on this site without a detrimental impact on the amenity of adjoining properties or the surrounding area. As such it is considered that it accords with policy and is recommended for approval.

Road Network, Parking and Associated Transport Matters.

The Area Roads Manager has no objections to the proposed access and parking arrangements.

Infrastructure

Scottish Water has no objections to the proposal.

(Q) Is the proposal consistent with the Development Plan: Yes

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

The original curtilage of number 15 measures approximately 851 square metres. The proposed sub-division will leave the new property with a curtilage of approximately 450 square metres and the existing property approximately 401 square metres. While this is smaller than the general pattern in the area it is considered acceptable particularly as this central section of Loch Drive deviates from the general development pattern. It is also considered that an appropriately designed single storey dwellinghouse can be accommodated on this site without a detrimental impact on the amenity of adjoining properties or the surrounding area. It is considered therefore that there are no material considerations, including views expressed by third parties that would warrant the refusal of planning permission in principle for this particular proposal.

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

N/A – the proposal is in accordance with the Local Development Plan.

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

Author of Report: Howard Young

Date: 28th January 2011

Reviewing Officer: Richard Kerr

Date: 28th January 2011

**Angus Gilmour
Head of Planning**

CONDITIONS AND REASONS RELATIVE TO APPLICATION 10/01578/PPP

1. That the permission is granted in terms of Section 59 of the undernoted Act and Regulation 10 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 on the basis of an application (or applications) for planning permission in principle that further approval of Argyll and Bute Council or of Scottish Minister on appeal shall be required, such application must be made before whichever is the later of the following:-
 - a) the expiration of a period of 3 years from the date of this permission.
 - b) the expiration of a period of 6 months from the date on which an earlier application for the requisite approval was refused.
 - c) the expiration of a period of 6 months from the date on which an appeal against such refusal is dismissed.

And in the case of b and c above only one such application can be made after the expiration of the period of 3 years from the original planning permission in principle.

Reason: In accordance with Section 59 (1) of the Town and Country Planning (Scotland) Act 1997

2. The development shall be implemented in accordance with the approved drawings 167(L) 010A, Location and Site Plan unless the prior written approval of the Planning Authority is obtained for an amendment to the approved details under Section 64 of the Town and Country Planning (Scotland) Act 1997.

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

3. Notwithstanding Condition 2 above, no consent is hereby granted for the indicative street elevation shown on drawing 167(L) 010A. Prior to the commencement of development on site, details shall be submitted to the Planning Authority which shall identify the siting, design and external appearance of the proposed development. The proposed dwellinghouse shall be single storey with a footprint of 130 square metres and with a minimum separation distance from the boundary of the adjoining property at number 17 Loch Drive of 4 metres and a minimum separation distance from the boundary of the adjoining property at number 15 Loch Drive of 1 metre.

Reason: In the interests of visual amenity and in order to integrate the proposed dwellinghouse with its surroundings.

4. Prior to the commencement of development on the site, details shall be submitted to the Planning Authority which shall include a turning area within the plot and a number of car parking spaces associated with the dwellinghouse that would be commensurate with the size of dwellinghouse proposed. Those levels being: two spaces for a dwelling up to and including three bedrooms; three spaces for a four-bedroomed dwelling; four spaces for a five-bedroomed dwelling; and so on.

Reason: In the interests of road safety in order to enable vehicles to park clear of the public road and to allow unimpeded vehicular access over the public road.

5. Development shall not begin until details of a scheme of hard and soft landscaping works have been submitted to and approved in writing by the Planning Authority. Details of the scheme shall include:

- i) existing and finished ground levels in relation to an identified fixed datum
- ii) existing landscaping features and vegetation to be retained
- iii) location and design, including materials, of walls, fences and gates
- iv) soft and hard landscaping works, including the location, type and size of each individual tree and/or shrub
- v) programme for completion and subsequent on-going maintenance.

All the hard and soft landscaping works shall be carried out in accordance with the scheme approved in writing by the Planning Authority. All planting, seeding or turfing as may be comprised in the approved details shall be carried out in the first planting and seeding seasons following the commencement of the development unless otherwise agreed in writing with the Planning Authority.

Any trees or plants which within a period of ten years from the completion of the development die, for whatever reason are removed or damaged shall be replaced in the next planting season with others of the same size and species, unless otherwise agreed in writing with the Planning Authority.

Reason: In the interests of visual amenity, for the avoidance of doubt and to ensure the implementation of a satisfactory scheme of landscaping.

NOTES TO APPLICANT

1. In order to comply with Section 27A(1) of the Town & Country Planning (Scotland) Act 1997, prior to works commencing on site it is the responsibility of the developer to complete and submit the attached 'Notice of Initiation of Development' to the Planning Authority specifying the date on which the development will start.
2. In order to comply with Section 27B(1) of the Town & Country Planning (Scotland) Act 1997 it is the responsibility of the developer to submit the attached 'Notice of Completion' to the Planning Authority specifying the date upon which the development was complete.
3. A footway crossover permit is required to form the driveway entrance.

APPENDIX TO DECISION APPROVAL NOTICE

Appendix relative to application **10/01578/PPP**

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

No

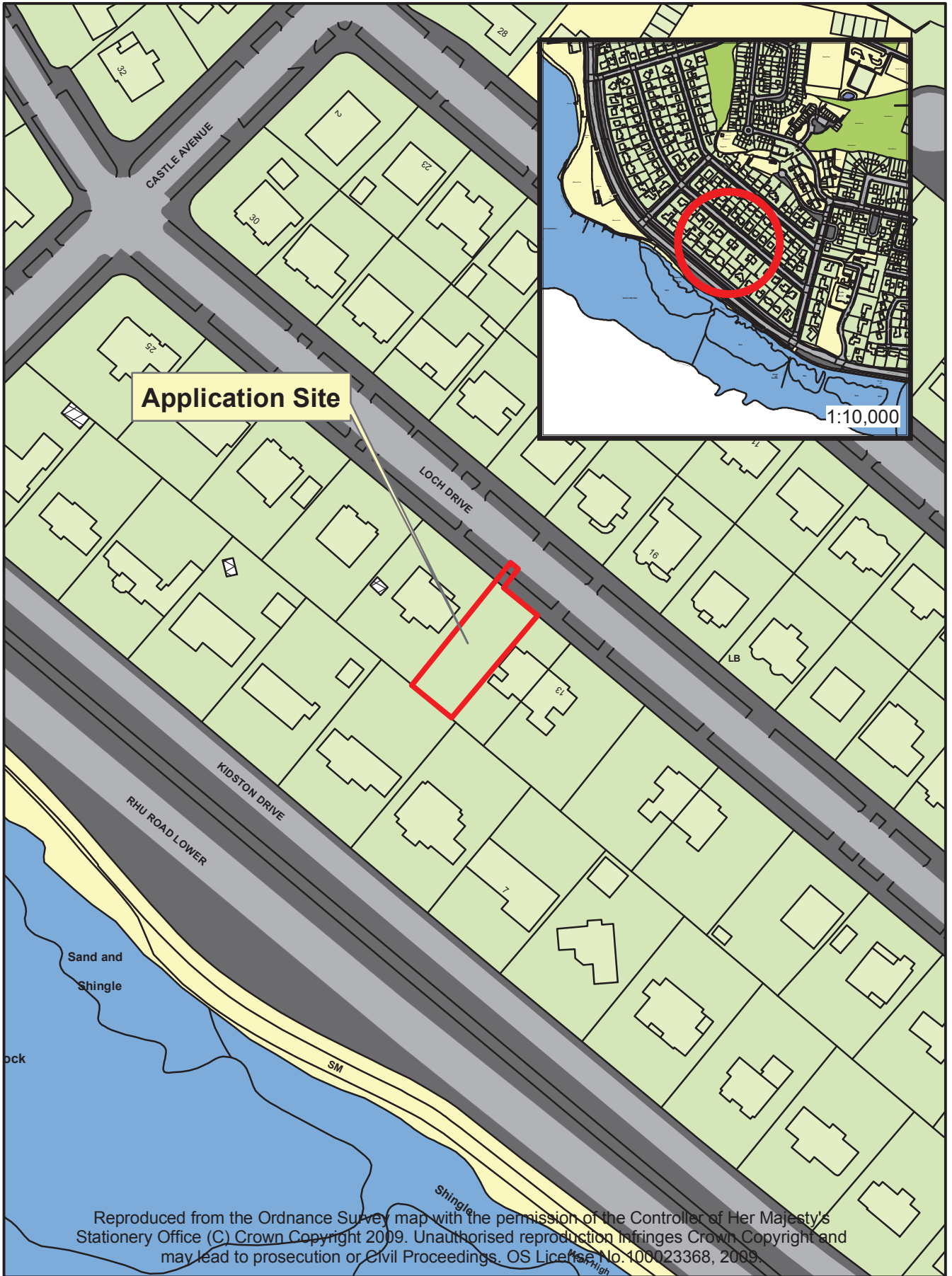
- (B)** Has the application been the subject of any “non-material” amendment in terms of Section 32A of the Town and Country Planning (Scotland) Act 1997 (as amended) to the initial submitted plans during its processing?

No

- (C)** The reasons why planning permission in principle has been approved.

The original curtilage of number 15 measures approximately 851 square metres. The proposed sub-division will leave the new property with a curtilage of approximately 450 square metres and the existing property approximately 401 square metres. While this is smaller than the general pattern in the area it is considered acceptable particularly as this central section of Loch Drive deviates from the general development pattern. It is also considered that an appropriately designed single storey dwellinghouse can be accommodated on this site without a detrimental impact on the amenity of adjoining properties or the surrounding area. It is considered therefore that there are no material considerations that would warrant the refusal of planning permission in principle for this particular proposal.

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Location Plan relative to Application Ref: 10/01578/PPP



Date: 16.02.2011

Scale: 1:1,250

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ARGYLL AND BUTE COUNCIL

PROCEDURE NOTE FOR USE AT

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

HELD BY THE PLANNING, PROTECTIVE SERVICES & LICENSING COMMITTEE

1. The Director of Customer 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 Customer 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 and Infrastructure's 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.

Ref: ABH1/2009

9. Members of the Panel only will have the opportunity to put questions to the Director of Development and Infrastructure's 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 and Infrastructure's 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.

Ref: ABH1/2009

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

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 and Infrastructure 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

Ref: ABH1/2009

- 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.