

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

*Customer Services*  
*Executive Director: Douglas Hendry*



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3 March 2011

## **NOTICE OF MEETING**

A meeting of the **PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE** will be held in the **KILMELFORD VILLAGE HALL, KILMELFORD** on **FRIDAY, 11 MARCH 2011** at **10:30 AM**, 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 COLIN GLADSTONE: APPLICATION FOR ERECTION OF 2 DWELLINGHOUSES AND INSTALLATION OF 2 SEPTIC TANKS: LAND NORTH OF EAST KAMES, KILMELFORD (REF: 10/02048/PPP)**  
Reports by Head of Planning and Regulatory Services (Pages 1 - 20)

**DISCRETIONARY HEARING PROCEDURE NOTE** (Pages 21 – 26)

## **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

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Argyll and Bute Council  
Development Services

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

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**Reference No:** 10/02048/PP

**Planning Hierarchy:** Local Development

**Applicant:** Mr Colin Gladstone

**Proposal:** Erection of 2 dwelling houses and installation of 2 septic tanks

**Site Address:** Land North East of East Kames, Kilmelford

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### **SUPPLEMENTARY REPORT NO. 1**

#### **(A) Background**

This application was presented to the Planning, Protective Services and Licensing Committee meeting on 16 February 2011.

Since presenting the proposal to Committee, two further representations from the following individuals have been received.

Cllr Elaine Robertson, Dungrianach, Crannaig-a-Mhinister, Oban, PA34 4LU  
Mrs Dalton, Maolochy, Kilmelford, Argyll

The above representations raise no new issues but reiterates the issues raised in the previous submissions which are detailed and commented on in the main report.

It has also been brought to the Planning Department's attention that comments attributed to the council's archaeological advisors were wrong and that, after discussion with West of Scotland Archaeology Service (WoSAS), a further condition addressing any potential archaeological issues should be attached to any issued consent. This condition has been included in those outlined below.

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#### **(B) RECOMMENDATION:**

Having due regard to the Development Plan and all other material considerations, it is recommended that planning permission be granted subject to:

- 1) a discretionary local hearing in view of the number of representations received in the context of a small community, and
  - 2) the conditions and reasons appended to this report.
-

**Author of Report:** David Love

**Date:** 28/02/11

**Reviewing Officer:** Stephen Fair

**Date:** 28/02/11

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

**CONDITIONS AND REASONS RELATIVE TO 10/02048/PPP**

1. That the development to which this permission relates must be begun within three years from the date of this permission.

*Reason: In accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997.*

2. Prior to the commencement of works at the site, details shall be submitted for the approval of the Planning Authority in respect of the undermentioned matters:
  - a. The siting, design and external appearance of the proposed development;
  - b. The boundary treatment of the site of the proposed development, which shall include indigenous tree and shrub planting utilising native species;
  - c. Details of the access arrangements;
  - d. Details of the proposed surface water drainage arrangements;

which shall be consistent with the provisions set out within the submitted Design Statement dated December 2010.

*Reason: To comply with Section 59 of the Town and Country Planning (Scotland) Act 1997 and ensure the proposed dwellings are consistent with the character of the surrounding natural and built environment.*

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

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

4. The development shall be implemented in accordance with the details specified on the application form dated 2<sup>nd</sup> December 2010 and the approved drawing reference numbers:
  - Plan 1 of 8 (Location Plan at scale of 1:10000)
  - Plan 2 of 8 (Site Plan at scale of 1:500)
  - Plan 3 of 8 (Site Plan at scale of 1:1000)
  - Plan 4 of 8 (Site Plan at scale of 1:2000)
  - Plan 5 of 8 (New Turning Head at scale of 1:100)
  - Plan 6 of 8 (Proposed Junction to A816 at scale of 1:100)
  - Plan 7 of 8 (Location Plan at scale of 1:5000)
  - Plan 8 of 8 (Site Plan – Habitat at scale of 1:1000)

unless the prior written approval of the planning authority is obtained for other materials/finishes/for an amendment to the approved details under Section 64 of the Town and Country Planning (Scotland) Act 1997 (as amended).

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

5. No development shall commence until on site until a scheme incorporating the following access details have been submitted to and has been agreed in writing by the local planning authority in consultation with the Council's roads engineers.

- Access at junction to public road to be constructed with 4.5m radii and a 5.5m width for first 10m;
- No walls, hedges, fences etc to be permitted within 2m from the channel line of the public road.
- Visibility splays measuring 160.0m x 2.4m to be cleared in advance of development and maintained clear of all obstruction in excess of 1.0m in height;.
- Carriageway width to be 3.5m to beyond access to dwellings
- 2m wide footway to be provided at radius of access road;
- Turning head to diagram 5.24 of the Council's Guidelines for Developments at the access to the dwellings;
- 2m wide verge required on both sides of the access road.

The duly approved scheme shall be implemented in full prior to the occupation of either dwelling

*Reason: In the interests of road safety to ensure the proposed development is served by a safe means of vehicular access.*

6. Proposals subject to application for matters specified in condition and implementation of the development shall have regard to and be carried out in full compliance with the mitigation measures outlined within the submitted 'Ecological Assessment of Kames Farm Proposed Development' dated November 2009 by Quadrat Scotland.

*Reason: In the interests of ecological and habitat preservation.*

7. No development shall commence within the site as outlined in red on the approved plan until the developer has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation which has been submitted by the applicant, agreed by the West of Scotland Archaeology Service, and approved by the Planning Authority. Thereafter the developer shall ensure that the programme of archaeological works is fully implemented and that all recording and recovery of archaeological resources within the development site is undertaken to the satisfaction of the Planning Authority in agreement with the West of Scotland Archaeology Service

*Reason: In the interests of preserving potential archaeological remains and the historic environment.*

**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:** 10/02048/PPP

**Planning Hierarchy:** Local Development

**Applicant:** Mr Colin Gladstone

**Proposal:** Erection of 2 dwelling houses and installation of 2 septic tanks

**Site Address:** Land North East of East Kames, Kilmelford

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**DECISION ROUTE**

**Local Government Scotland Act 1973**

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**(A) THE APPLICATION**

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

- Erection of 2 dwelling houses
  - Installation of 2 septic tanks
  - Alterations to the junction at the public road
  - Installation of access track serving each plot
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**(B) RECOMMENDATION:**

It is recommended that the application be granted subject to:

- 1) A discretionary local hearing being held in view of the number of representations received in the context of a small community, and
  - 2) the conditions and reasons detailed below.
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**(C) HISTORY:**

08/01835/OUT – Erection of 6 houses and septic tanks  
Application withdrawn prior to determination

09/01074/OUT – Erection of 6 houses and sewage treatment works

Application withdrawn due to conflict with LP BAD2 (Bad Neighbour in Reverse) policy. The proposal was considered to be in conflict with the operations of the neighbouring fish farm operations at a nearby pier and the hatchery building on the other side of the main road.

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## (D) CONSULTATIONS:

Area Roads Manager (report dated 21 December 2010) – raises no objections subject to several conditions to ensure a suitable access and road safety provisions. A summary of the requirements is detailed below.

- Access at junction to public road to be constructed with 4.5m radii, 5.5m width for first 10m
- No walls, hedges, fences etc will be permitted within 2m from the channel line of the public road. Visibility splays measuring 160m x 2.4m to be cleared and maintained.
- Carriageway width to be 3.5m to beyond access to dwellings
- 2m wide footway at radius of access road
- Turning head to diagram 5.24 of the Council's Guidelines for Developments at access to dwellings.
- 2m wide verge on both sides of the access road.
- A system of surface water drainage is required to prevent water from passing onto the public road.
- Parking for vehicles commensurate with the size of the dwelling to be provided.

Local Biodiversity Officer (letter dated 21 December 2010) - no objections and confirms that the Ecological Assessment Report has been carried out appropriately. Two conditions have been suggested relating to the use of mainly native species in the landscaping of the site and a site management plan relating to the construction phase of the development to ensure that the mitigation measures identified within the ecological assessment are adhered to during construction.

Public Protection Unit (memo dated 29 December 2010) - raise no objections but have asked for two conditions relating to external lighting and water supply.

*Note: It is considered unreasonable to attach a condition restricting permitted development rights for external lighting associated with houses unless there are very particular reasons for requiring it. No such circumstances have been identified in this case. There are other dwellings in the locality with no such restrictions. With regard to water supply, the applicant previously submitted a Hydrological Assessment detailing water supply in connection with planning application for 6 houses on the site and that was considered by Public Protection at the time. Whilst this provides comfort that the supply will be adequate to serve the two additional dwellings proposed, additional detail is required, hence the requirement for a water supply condition.*

Kilninver and Kilmelford Community Council (Letter dated 14<sup>th</sup> January 2011) - object on the basis that the applicant has not addressed the issues set out within the PDA schedule sufficiently. Concerns are expressed over the suitability of the water supply to service two additional dwellings, the impact on the proposal from the fish farm operations ('bad neighbour in reverse' scenario), and visual impact. The community council are also concerned that this proposal might be the start of a number of proposals to try and develop the PDA site further.



*Comment: Views expressed about the principle of the development must be considered in the light of the fact that the land forms part of a PDA identified in the local plan for housing development, subject to constraints being addressed. The proposal is not intended to be the precursor of further development but rather represents a scaling down of original proposals addressing water supply, 'bad neighbour in reverse' and visual and nature conservation considerations in the process. The level of information is adequate to establish the scale and location of acceptable development in the context of a planning application in principle.*

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**(E) PUBLICITY:**

The proposal has been advertised in terms of Regulation 20, closing date 13 January 2011

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**(F) REPRESENTATIONS:**

Lorna Hill, Kames Lodge, Kilmelford, Oban  
James Dinsmore, Tulloch Breag, Kames, Kilmelford, PA34 4XA  
Robert Hill, Kames Lodge, Kilmelford, Oban  
Alan Loughrey, Creag Na Linne, Kames Bay, Kilmelford PA34 4XA  
Gillian Dinsmore, Tulloch Breag, Kames, Kilmelford, PA34 4XA  
Ewen Kennedy, Kinloch, Degnish Road, Kilmelford, PA34 4XD  
Fergus G R Gillanders, Craigaol, Kilmelford, Oban PA34 4XA  
Caroline Gillanders, Craigaol, Kilmelford, Oban PA34 4XA  
Beryl P Brown, 20 Stoneylawn, Marnhull, Dorset DT10 1HW  
A.T.H. Wells, 4 Home Farm Mews, Bingley Road, Menston, Ilkley LS29 6BF  
Mrs Shain Wells, 4 Home Farm Mews, Bingley Road, Menston, Ilkley LS29 6BF  
Rosemary Wells, Ardbeithe, Kames, Kilmelford PA34 4XA

**(i) Summary of issues raised**

- Adequacy of water supply and implications for existing users

*Comment: The applicant has previously submitted an assessment of the water supply in the area and the Council's Environmental Health department has agreed the supply would be suitable to serve this development without impacting adversely on the existing supply serving other residents in the area. Additional detail is required, hence the requirement for a water supply condition.*

- The proposed positioning of the house plots is over an existing water supply pipe.

*Comment: The positioning of the houses on the plots is, at this stage, indicative only and is subject to change as the application is for planning permission in principle. Supply pipes are potentially capable of re-routing if necessary. In any event, this is a civil matter and not a material planning consideration.*

- Impact on habit

*Comment: The applicant has commissioned a habitat survey on the entire PDA site and has identified areas of low, medium and high sensitivity. These two plots are outwith areas of medium and high sensitivity. The Council's Biodiversity Officer has agreed the findings of the survey.*

- Impact on visual quality of the area

*Comment: The proposals are in principle only therefore there are no details on the final design of the houses. However, it should be stated that the plots are located between East Kames and the houses on the other side of the access track. The proposal sits between 250m and 400m (east and north) from the coastline and will be suitably screened through planting and natural landform so as not to adversely impact on the visual quality of the wider area.*

- The proposal would result in a 'bad neighbour in reverse' situation

*Comment: The proposal is shielded from the fish farm hatchery building by a busy public road, significant planting and East Kames. Any impact from the pier is negated by natural undulations in the landform, a rocky knoll and planting. The relationship between the dwellings proposed and commercial activity locally will be no worse than that which exists with existing residential properties in the area. Additionally, windows of principal rooms can be kept to areas not facing the pier so as to further protect amenity. The Council's environmental health officers have not raised this as an issue with this application.*

- Responsibility of the upkeep of the access road

*Comment: The first section of the access road from the A816 is to be constructed to adoption standard up to the point where it serves the new dwellings. The remainder will remain privately maintained, as existing.*

- No future development should be permitted within the PDA

*Comment: The local planning authority cannot prevent further applications for development on the remainder of the PDA site. However, considering the constraints on the site is unlikely any further proposed development would be considered favourably. The applicant has reduced his intended development from six to two dwellings in recognition of this.*

- The site is a PDA not a housing allocation

*Comment: The PDA designation within the local plan presumes in favour of development provided that identified constraints are overcome. The applicant has addressed these issues within this submission relative to the limited scale of development now proposed.*

- No demonstrated need for the development

*Comment: The 'need' for development does not require to be demonstrated in this case.*

- Application should be detailed not in principle

*Comment: The local authority has accepted this application in principle as a detailed Design Statement has been submitted stating how houses will appear on the site and the parameters to which they should abide.*

- Waste water drainage

*Comment: The applicant has proposed separate septic tanks and soakaway systems. This aspect of the proposal will be thoroughly assessed during any application for Building Warrant.*

- Remainder of PDA site should be transferred to the ownership of current residents to ensure no further development occurs.

*Comment: This is not reasonable and in any event is outwith the Planning Authority's remit.*

- Archaeological remains

*Comment: The Council's archaeological advisers have advised that it is possible that remains are located on coastal areas. However as the site is between 250m and 400m from the coast and they do not consider that there is evidence to suggest that the site has any archaeological importance.*

- The application fee should not have been waived

*Comment: The application fee was waived due to the significant processing time taken by the local planning authority on a previous application (which had attracted a larger fee than required here as it was based on a development of six dwellings). If the issue of 'bad neighbour in reverse' had been identified earlier in the processing of the previous application, the applicant would have been able to have withdrawn the application and re-submitted without the requirement for a further planning application fee, as per the concession in planning fee regulations. In the circumstances, it was considered that the applicant had been prejudiced by the stance taken late in the day on the original application, hence the decision to waive the fee for the resubmission of a lesser scaled proposal.*

- Size of the plots is insufficient.

*Comment: The plot sizes are of a significant size and will easily be able to accommodate a dwelling houses of suitable scale and design without impacting adversely on the character of the area.*

- Junction of the access track with the public road is dangerous.

*Comment: The Council's roads engineers have indicated that the access will be safe with commensurate improvements as detailed above.*

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**(G) SUPPORTING INFORMATION**

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

- |       |  |     |
|-------|--|-----|
| (i)   | <b>Environmental Statement:</b>  | No  |
| (ii)  | <b>An appropriate assessment under the Conservation (Natural Habitats) Regulations 1994:</b> | No  |
| (iii) | <b>A design or design/access statement:</b>  | Yes |

A design statement has been submitted confirming how the proposed houses should be designed and their appearance in light of their setting, giving details on landscaping, details of proposed foul and surface water drainage, water supply and habitat (references two further reports) and details on road access improvements as discussed with the Council's roads engineers

- |      |  |     |
|------|--|-----|
| (iv) | <b>A report on the impact of the proposed development e.g. retail impact, transport impact, noise impact, flood risk, drainage impact etc:</b> | Yes |
|------|--|-----|

Ecological Assessment  
Hydrological Assessment for Water Supply

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

Ecological Assessment

Provides an ecological survey of the site and also the entire area designated as a Potential Development Area (PDA) within which the site is located. The report outlines which areas of the larger PDA site are classed as low, medium and high sensitive areas. These two plots are outwith areas of medium and high sensitivity. The report also demonstrates why these areas are so graded. The report also details species found on the site and potential disturbances due to the construction works, along with a range of habitats and there importance to the local area in terms of international, national and local importance. The report confirms the presence of otters within the PDA and, as these are European protected species, outlines suitable mitigation measures as appropriate.

Hydrological Assessment for Water Supply

This report outlines the hydrology of the area and the potential impact on the existing water supply to the current houses located adjacent the site. The report demonstrates that the site has sufficient water to service the proposal without adverse impact on the supply serving the existing properties. The report states that there is a maximum daily consumption capacity of 3,750litres in the water supply and based on UK average water use figures 150litres per day then there is sufficient water supply to service these two additional units. The report also describes the method for water filtration for the proposal, although water quality is controlled under separate legislation.

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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 1 – Development within the Settlements  
 STRAT DC 4 – Development in Rural Opportunity Areas  
 STRAT DC 7 – Nature Conservation and Development Control  
 STRAT DC 8 – Landscape and Development Control

Argyll and Bute Local Plan 2009

LP ENV 1 – Impact on the General Environment  
 LP ENV 2 – Impact on Biodiversity  
 LP ENV 6 – Impact on Habitats and Species  
  
 LP ENV 19 – Development Setting, Layout and Design  
  
 LP CST 1 – Coastal Development on the Developed Coast  
  
 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 SERV 4 – Water Supply  
  
 LP TRAN 4 – New and Existing Public Roads and Private Access Regimes  
  
 LP P/PDA1 – The Proposed Potential Development Areas  
  
 Appendix A – Sustainable Siting and Design Principles  
 Appendix E – Allocations, Potential Development Area Schedules and Areas for Action Schedules

**(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)

The Town & Country Planning Act (Scotland) 1997

The Planning etc. (Scotland) Act, 2006

SPP, Scottish Planning Policy, 2010

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<b>(K)</b>	<b>Is the proposal a Schedule 2 Development not requiring an Environmental Impact Assessment:</b>	No
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<b>(L)</b>	<b>Has the application been the subject of statutory pre-application consultation (PAC):</b>	No
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<b>(M)</b>	<b>Has a sustainability check list been submitted:</b>	No
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<b>(N)</b>	<b>Does the Council have an interest in the site:</b>	No
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**(O) Requirement for a hearing:** Twelve individuals and the community council have objected to the application which is a significant number of representations in the context of the small community at Kames. Accordingly, it is considered that a discretionary local hearing would be appropriate in this case.

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

The proposal lies within a Potential Development Area (PDA) site within the settlement zone of Kames (P/PDA 5/156). With this in mind, the principle of development is accepted by the development plan subject to overcoming issues outlined in the PDA description. The issues to address in respect of this PDA are: water supply, waste water drainage and the need for a master-planned approach.

A preceding application for six dwellings was withdrawn in favour of this reduced proposal due to identified conflict with nature conservation considerations and between proposed dwellings within the remainder of the PDA and the fish farm operations at a nearby pier and the hatchery building on the other side of the main road. Those 'bad neighbour in reverse' considerations do not pertain in respect of the surviving two plots which are the subject of this application due to the local landform, as there are significant land undulations, a knoll and planting to the east between the site and the pier.

An ecological assessment has been submitted which confirms that this reduced scale of development avoids the more ecologically important areas of the PDA. The applicant has also submitted details of the proposed water supply and also a detailed Design Statement. Public Protection are satisfied that sufficient water is available to serve this limited development of two dwellings, although addition detail is still to be required by condition. Waste water drainage details have been submitted sufficient for planning purposes and will be further assessed at the Building Warrant stage.

The proposal is within a settlement boundary and a PDA and the principle of development is therefore established. The proposal is acceptable in layout terms as it forms a natural infill between the East Kames and the southernmost houses on the west side of the access track. Access issues have been addressed and verified by Area Roads. Sufficient detail is available to allow the determination of this application for two dwellings on the basis of an application for planning permission in principle. In the event that these two dwellings are approved, it is considered that the development capacity of PDA will have been reached.

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

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

The applicant has sufficiently addressed the issues outlined in the PDA schedule, within the local plan. The proposal has been developed so as to avoid areas of visual and habitat sensitivity. The issue of 'bad neighbour in reverse' has been addressed and will continue to be addressed at the detailed stage of the planning process. The proposal conforms to the relevant development plan policies and there are no other material considerations, including issues raised by third parties, which warrant anything other than the application being determined in accordance with the provisions of the development plan.

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

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**Author of Report:** David Love **Date:** 27.01.11

**Reviewing Officer:** Stephen Fair **Date:** 27.01.11

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

**CONDITIONS AND REASONS RELATIVE TO APPLICATION REFERENCE 10/02048/PPP**

1. That the development to which this permission relates must be begun within three years from the date of this permission.

*Reason: In accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997.*

2. Prior to the commencement of works at the site, details shall be submitted for the approval of the Planning Authority in respect of the undermentioned matters:
  - a. The siting, design and external appearance of the proposed development;
  - b. The boundary treatment of the site of the proposed development, including proposed tree planting utilising native species;
  - c. Details of the access arrangements;
  - d. Details of the proposed surface water drainage arrangements;

which shall be consistent with the provisions set out within the submitted Design Statement dated December 2010.

*Reason: To comply with Section 59 of the Town and Country Planning (Scotland) Act 1997 and ensure the proposed dwellings are consistent with the character of the surrounding natural and built environment.*

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

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

4. The development shall be implemented in accordance with the details specified on the application form dated 2<sup>nd</sup> December 2010 and the approved drawing reference numbers:
  - Plan 1 of 8 (Location Plan at scale of 1:10000)
  - Plan 2 of 8 (Site Plan at scale of 1:500)
  - Plan 3 of 8 (Site Plan at scale of 1:1000)
  - Plan 4 of 8 (Site Plan at scale of 1:2000)
  - Plan 5 of 8 (New Turning Head at scale of 1:100)
  - Plan 6 of 8 (Proposed Junction to A816 at scale of 1:100)
  - Plan 7 of 8 (Location Plan at scale of 1:5000)
  - Plan 8 of 8 (Site Plan – Habitat at scale of 1:1000)



unless the prior written approval of the planning authority is obtained for other materials/finishes/for an amendment to the approved details under Section 64 of the Town and Country Planning (Scotland) Act 1997 (as amended).

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

5. No development shall commence until on site until a scheme incorporating the following access details have been submitted to and has been agreed in writing by the local planning authority in consultation with the Council's roads engineers.

- Access at junction to public road to be constructed with 4.5m radii and a 5.5m width for first 10m;
- No walls, hedges, fences etc to be permitted within 2m from the channel line of the public road.
- Visibility splays measuring 160.0m x 2.4m to be cleared in advance of development and maintained clear of all obstruction in excess of 1.0m in height;.
- Carriageway width to be 3.5m to beyond access to dwellings
- 2m wide footway to be provided at radius of access road;
- Turning head to diagram 5.24 of the Council's Guidelines for Developments at the access to the dwellings;
- 2m wide verge required on both sides of the access road.

The duly approved scheme shall be implemented in full prior to the occupation of either dwelling

*Reason: In the interests of road safety to ensure the proposed development is served by a safe means of vehicular access.*

6. Proposals subject to application for matters specified in condition and implementation of the development shall have regard to and be carried out in full compliance with the mitigation measures outlined within the submitted '*Ecological Assessment of Kames Farm Proposed Development*' dated November 2009 by Quadrat Scotland.

*Reason: In the interests of ecological and habitat preservation.*

**APPENDIX A – RELATIVE TO APPLICATION NUMBER: 10/02048/PPP**

**PLANNING LAND USE AND POLICY ASSESSMENT**

**A. Settlement Strategy**

This application relates to land within the Local Plan 'settlement' boundary for Kames subject to the operation of Structure Plan policy STRAT DC 1 and Local Plan policy LP HOU 1. It also forms part of PDA 5/156 which is identified as being suitable for low density housing development. An original proposal for the development of the whole of the PDA for residential purposes (six plots) was withdrawn in the face of conflict with established commercial activities in the local vicinity and due to localised habitat considerations. The applicant has now applied for an alternative reduced proposal for two dwellings in a bid to overcome the shortcomings of the original proposal. The issues identified in respect of this PDA are water supply, waste water drainage and a master-planned approach, all of which have been adequately addressed in the light of what has turned out to be a limited proposal for just two dwellings. .

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

The site is located to the south of Kilmelford along the A816 towards Lochgilphead. The site itself is accessed off a single track private road which is bounded by mature vegetation to either side and provides access to 6 existing houses facing west along the shore. The site is overgrown with scrub and sits between the property known as East Kames and opposite the first two of the six existing houses along the single track road. Houses in this area are generally single storey, sited comfortably in large plots within trees.

The proposal includes two large plots commensurate in size with other properties in the area. Although the application is for planning permission in principle, the Design Statement provides information on how the houses should appear in terms of massing and detailing. The Design Statement sets out to encourage single storey properties with accommodation in attic space and suggests that typical one and a half storey properties with dormers should be discouraged. Finishing materials should be natural timber and/or stone or a recessive coloured render. With this in mind, the properties should be similar in appearance to those already in the area and the local planning authority will attach conditions ensuring that the properties are appropriate in terms of design to the immediate built and natural environment.

It should be noted that a narrow strip of land has been left between the south side of plot 1 and East Kames. This strip is to allow access to the remainder of the PDA site for maintenance. It is not considered wide enough nor suitable for vehicular access. Additionally, it will provide a buffer between plot 1 and East Kames. The west of the plots has also been kept clear of the main access track in order to provide a buffer and ensure development is kept away from sensitive habitat areas. This will allow natural plant growth and will result in the proposals being set within existing vegetation which is more in-keeping with the existing properties.

Given the recent history of the site, the identification of conflicts with nature conservation interests and local commercial activities and the fact that the remainder of the PDA does not share the same habitat and topographical advantages as these two plots, it is unlikely that there would proved to be any residual development capacity within the remainder of the PDA.

**C. Natural Environment**

The applicant has submitted a habitat survey of the site which has been verified by the Council's Biodiversity Officer. The survey identifies areas of low, medium and high sensitivity within the entire PDA site. The application avoids areas of medium and high sensitivity. The Habitat Survey states that there is no evidence of otters within the development site.

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

The applicant intends to carry out improvements to the junction of the private road and the A816. The Council's roads engineers have verified that improvements are necessary and achievable and have responded to the application with conditions to be attached to any consent ensuring the works are carried out. To comply with Local Plan policy LP TRAN 4 the initial section of the private road serving the application properties will require to be constructed to adoption standard.

**E. Infrastructure**

The applicant intends to provide a private water supply as detailed in the hydrological report submitted to Public Protection in respect of the original proposal for six dwellings. The report provides sufficient comfort that two properties can be served without prejudicing existing users, although additional detail is being required by condition. Waste and surface water drainage is to be provided on-site with waste water being dealt with on site via a septic tank and soakaway system.

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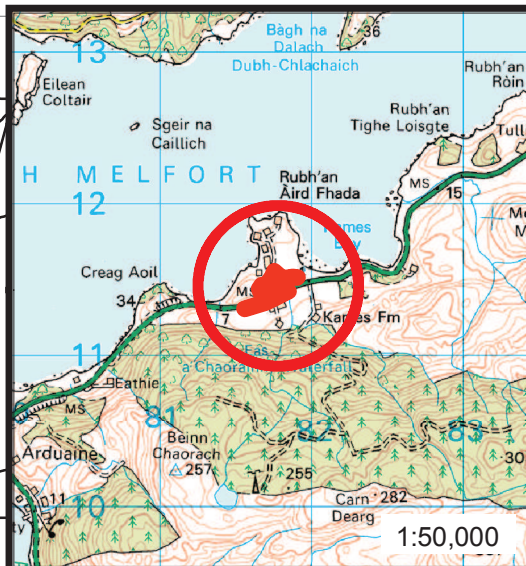
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**Application Site**

**Boulders & Shingle**

**Kames**

**Eas a' Chaorainn  
(Waterfall)**

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**Location Plan relative to  
Application Ref: 10/02048/PPP**



Date: 27.01.2011

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 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.