

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

*Customer Services*  
*Executive Director: Douglas Hendry*



*Kilmory, Lochgilphead, PA31 8RT*  
*Tel: 01546 602127 Fax: 01546 604435*  
*DX 599700 LOCHGILPHEAD*  
*e.mail –douglas.hendry@argyll-bute.gov.uk*

13 October 2011

## **NOTICE OF MEETING**

A meeting of the **PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE** will be held in the **STRACHUR MEMORIAL HALL (NEW HALL), STRACHUR** on **FRIDAY, 21 OCTOBER 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. ARDKINGLAS ESTATE: ERECTION OF MIXED DEVELOPMENT COMPRISING 16 DWELLING HOUSES, 7 COMMERCIAL UNITS, CHILDCARE CENTRE, INSTALLATION OF SEWAGE TREATMENT SYSTEMS AND ACCESS IMPROVEMENTS: LAND ADJACENT TO ARDKINGLAS SAWMILL, CLACHAN, CAIRNDOW (REF: 09/00385/OUT)**  
Reports by Head of Planning and Regulatory Services (Pages 1 - 30)

**PROCEDURE NOTE** (Pages 31 – 36)

## **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: Fiona McCallum

Tel. No. 01546 604406

This page is intentionally left blank

**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:** 09/00385/OUT

**Planning Hierarchy:** Local application

**Applicant:** Ardkinglas Estate

**Proposal:** Erection of mixed development comprising 16 dwellinghouses, 7 commercial units, childcare centre and installation of sewage systems and access improvements.

**Site Address:** Land adjacent to Ardkinglas Sawmill, Clachan, Cairndow, Argyll

---

## SUPPLEMENTARY REPORT 2

### 1.0 SUMMARY

The purpose of this supplementary report is to confirm the receipt of updated consultation responses and further representations.

### 2.0 CONSULTATIONS

A letter from **Transport Scotland** (dated 6<sup>th</sup> October 2011) clarifies the wording of conditions recommended in their revised consultation response dated 25<sup>th</sup> August 2011 (not 25<sup>th</sup> August 2009 as originally reported). Transport Scotland considers that an explanation of their suggested conditions would avoid the need a representative being present at the Hearing.

The first two conditions relate to visibility from the junction and forward visibility on the trunk road on the approach to the junction. To ensure that these visibility splays can be obtained then maintained in perpetuity, it will be necessary for the applicant to demonstrate that these can be achieved without any interference from obstructions and also gain assurance that nothing would be built or allowed to grow in the future which may impede the required visibility. Transport Scotland considers the only means of ensuring this is via a suspensive condition as detailed in the response dated 25<sup>th</sup> August 2011.

The third condition relates to the layout of the junction to ensure that it complies with the appropriate standards within the Design Manual for Roads and Bridges. Transport Scotland considers that the current layout does not comply with these standards as defined by Layout 3 of TA 41/95 (Vehicular Access to All-Purpose Trunk Roads) and therefore this condition is required to bring the junction up to the necessary standard.

The additional traffic which would be generated if all the development in the masterplan was implemented would be in excess of the level of traffic required for a right turn lane.. As a result, a condition was recommended to highlight that a right turn lane would be required.

**Comment:** The visibility splays and the improvements to the junction of the access road onto the A83(T) required by Transport Scotland are on land either controlled by the applicant or by Transport Scotland. Therefore suspensive planning conditions could be used to achieve required sightlines.

In terms of the requirement for the right hand turning lane, this would only be applicable if the greater masterplan scheme was to be developed and not for the development proposed within the scope of the current planning application.

### 3.0 FURTHER REPRESENTATION

Six further letters of support have been received from:

Alexander Pettit, formerly of Ballure, Cairndow (letter received 23<sup>rd</sup> September 2011);  
Mrs Frances Bremner, 11 Kilmorich, Cairndow (email dated 26<sup>th</sup> September 2011);  
Mr Bruce Davidson, Loch Fyne Oysters Ltd, Clachan Cairndow (email dated 29<sup>th</sup> September 2011);  
Mr Neil Colburn, The Tree Shop Clachan Cairndow (email dated 4<sup>th</sup> October 2011);  
Mr Neil Colburn 4 Hydro Houses Cairndow (email dated 4<sup>th</sup> October 2011);  
Mrs. Alison Hutchins, 12 Kilmorich, Cairndow (email dated 5<sup>th</sup> October 2011).

The points raised in the letters of support are summarised below:

- *Proposed development is desperately needed in our village. There has been no new housing for about 18years since Kilmorich was built and that was very successful. We have a thriving community with many businesses but not enough housing meaning many people have to travel many miles from far away as Glasgow to work in Cairndow. A purpose built child care facility would be fantastic. For the past few years they have had to do with the village hall which has been fine but a purpose built building would be much better for all. Also, some people are setting up their own new businesses and a few units here would be fantastic to keep employment local. There is a growing community of elderly and young people in the village whose accommodation may not be suitable for them after a time, the choice of different housing would be greatly sought after.*
- *The Tree Shop supports this development and believes the proposed development will not have an adverse impact on the landscape at the head of Loch Fyne due to existing trees and shrubs providing adequate screening from the A83. The Tree Shop would welcome additional small businesses in the area. The Planning Department's emphasis on a formal masterplan for the whole of PDA 9/13 as a policy stipulation prior to the development of this small part of the PDA is unnecessary and impracticable. The density and scale of development proposed in the Outline Application is appropriate for the context and consistent with the aim of providing affordable residential and commercial accommodation.*
- *Loch Fyne Oysters support the application. Staff accommodation near their site is an ongoing problem for our staff and feels that the proposal is appropriate to the existing environment and infrastructure. Keen to support more affordable residential accommodation and recognise the need for small commercial units in the area. We do not feel that there will be any adverse visual impact from the development for visitors to our site. Continued support for the childcare facility and if it moves to the new site may strengthen ties between us and be of added benefit to our staff. The planned footpath would also be an added benefit.*
- *Support for the proposed development where the extra housing is needed due to the continuing expansion of the local businesses.*
- *Letter from Alexander Pettit explains why the lack of suitable residential accommodation and office space resulted in his family leaving the Cairndow area. Finds it frustrating that so many homes in the area are holiday or second homes and that the daily lives of Cairndow residents and workers can be impacted upon by non or partial residents. Cairndow and villages like it must move with the times in an attempt to retain, improve and encourage economic growth.*
- *Without housing, childcare and the ability to create business opportunities could turn Cairndow into a retirement village.*

## Page 3

A further objection has been received from Ken Pound (email dated 12<sup>th</sup> October 2011) making the following points:

- *Within the proposed site plan, the red line boundary embraces the access road but the road is owned by Scottish and Southern Electricity - not the developer - CDA 02A dated 30 March 2009 & CDA 02B revised 26 April 2010 refers - and therefore this application is invalid. I further note that the footpath between the proposed development and Loch Fyne Oysters should be within the red line boundary. Whether this is an oversight by planners or the developer matters not, the red line must incorporate the footpath and I trust this will be corrected as this would automatically render this application invalid.*
- *I note from recent correspondence that letters of support appear totally obsessed by "housing need" in Cairndow yet the supporters choose appropriately to ignore the fact that the developer has already secured approval under application 09/00463/DET (Pheasant Field) for 15 houses delivering the "housing need". The houses are currently being built. This development was approved sighting special circumstances, the first being the Government grant secured under RHfR which contributed GBP 650,000 of tax payers money to the development and secondly that it delivered 100% affordability. In accordance with the Argyll and Bute's Housing Need and Demand Assessment (HNDA) report this development well exceeds the 12 houses deemed needed in Cairndow. There are no such special circumstances or material considerations in relation to the above development at Clachan and the Council's statistics are quite clear.*
- *It is of significant note that the developer, Councillors Marshall, Simon, Messrs Murray, Lodge, Convery and Close from the Planning Department and importantly Alan Brandie, who was responsible for publishing the findings of HNDA report, all attended the Local Plan Workshop for Bute and Cowal held on the 24th May 2010 at Dunoon as Consultees and following these consultations determined where and to what extent housing was needed throughout A&B. The conclusion of those consultations was that Cairndow need 12.*
- *The above application has from the outset failed to deliver even the minimum 25% affordability requirement and it is only now, following the planners supplementary statement to the PPSL, that this failure has been acknowledged but clearly there is no agreement in place with the developer on how the 25% affordable housing can be delivered. ... Notwithstanding the many quoted reasons for refusal by the Head of Planning and without a clear agreement with A&B in place, this is a fundamental flaw in the planning process and the committee must recommend refusal.*
- *The developer has clearly stated this application is the first stage of what is intended to be the new village of Clachan - letter to Fergus Murray dated 30 March 2010 refers (attached), with further staged development covering an area of 30 hectares in total. This application for 16 houses, 7 industrial units and childcare centre cannot possibly be considered by the PPSL in isolation - which has been confirmed by the Scottish Government - as the A&B Local Plan must be looked at and considered as a whole .... which means that the Masterplan is a fundamental requirement of PDA 9/13 and that the mini-brief relating to this PDA has to be complied with. As confirmed by the developer, this application is Phase 1 of a proposed new village - it should therefore have proper consultation with the community, consultees and neighbours, and comply with the Local Plan, Structure Plan and Policies which have been put in place to protect the public and to which Councillors have been elected to uphold.*
- *Regarding the childcare centre, the developer has maintained throughout that this is for "indicative purposes only", with no certainty or commitment whatsoever of it ever being retained or completed. Interest has been shown by Cairndow Community Childcare which is run by a family member of the developer, but this is only one of a number of alternative locations being considered for re-location. Any proposal to build the childcare would have to be funded by private investors or funded by A&B.*
- *I am in support of planners decision to refuse this application. There is not a "housing need" in Cairndow as this is more than satisfied by the Pheasant Field development currently under construction. I therefore object to this application and if the PPSL have read the Local Plan, Structure Plan and policies of Argyll and Bute and do not uphold the refusal by Head of Planning, I would expect and request that this application be called in by Ministers to avoid making a mockery of A&B planning policy, Planning Department and Council.*
- *Lastly, I would reiterate Ross McLaughlin's letter of 18 February 2011 to the developer requesting that "a revised application is submitted with a new larger red line boundary to ensure strategic planting is included along with a reduction in density. Finally, greater detail is afforded to the Masterplan to allow a meaningful consultation with stakeholders, consultees and community. Due to the elongated timescales in processing this application there shall be no fee payable on this revised application but it is likely to be treated as a 'major application' under 26A of the Town & Country Planning (Scotland) Act 1997 if the application site exceeds 2 hectares" which it clearly does.*

Whilst the content of these letters does not alter the department's recommendation, the views made by the supporters and objector are material considerations in a determination of the proposal.

**4.0 RECOMMENDATION**

It is recommended that Members note the content of this supplementary report and planning permission be refused.

**Author: Brian Close/ David Eaglesham**  
**Contact Point: David Eaglesham 01369 708608**

**Angus J Gilmour**  
**Head of Planning & Regulatory Services**

**13 October 2011**

**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:** 09/00385/OUT

**Planning Hierarchy:** Local application

**Applicant:** Ardkinglas Estate

**Proposal:** Erection of mixed development comprising 16 dwellinghouses, 7 commercial units, childcare centre and installation of sewage systems and access improvements.

**Site Address:** Land adjacent to Ardkinglas Sawmill, Clachan, Cairndow, Argyll

---

## **SUPPLEMENTARY REPORT**

### **1.0 SUMMARY**

The purpose of this supplementary report is to confirm the receipt of updated consultation responses and further representations

### **2.0 CONSULTATIONS**

A revised response from **Transport Scotland** (dated 25 August 2009, received 14 September 2011) taking account of the submitted Masterplan now requires forward visibility splays to be provided and a new (upgraded) junction to be constructed to the Trunk Road. A greater improvement would be required if the development was extended to include the masterplan proposals.

My original report omitted a response from **Public Protection** (dated 14 May 2009). However, a revised response (dated 19 September 2011) raises no objections in principle to the application. However, further information is required regarding the proposed Private Water Supply and the impact of existing ambient noise levels on the proposed development.

### **3.0 FURTHER REPRESENTATION**

A further representation from Elaine Pound, Shore Cottage, Cairndow (e.mail dated 20 September 2011) raises the following points:

- This application is currently unlawful due to the incorrect status reported on the PDA re: housing - which suggests the PDA is flawed - and the red line boundary
- The Report to the Committee omits Transport Scotland's report dated 25 August 2011 which requires access improvement on the A83 and visibility splays, neither of which are included within the red line boundary
- PDA 9/13 'mixed use' never included housing - it was an extension of the original hub, ie the Oyster Bar & Tree Shop, has no modification number and was not amended in the Reporter's Written Report for the Local Plan 2009 to include housing - hence housing density was shown as 'not applicable' ; there was no consultation to include housing for PDA 9/13 - this has to be unlawful.
- A Green Transport Plan has not been provided
- Landscape & Visual Assessment and Sustainability Checklist have not been provided
- An Area Capacity Evaluation (ACE) has not been provided in an area of Sensitive Countryside/Panoramic Quality and an Environmental Statement has not been provided

- The developer's consultant/mediator's letter of 16 June 2011 requested the Council to supply to the PPSL the location of the 'objectors'. If this is to be provided, please also provide to the PPSL the location of the 'supporters' - all of which are either related or connected by either tenancy or employ. The 'objectors' are all independent from the developer - some of which are aware that this PDA was not designated for housing - and the 'objectors' either have adjoining Estates/land and/or businesses - stakeholders within the community - who employ local staff.
- the Report states that the 'affordable housing' mechanism will be under RHOG - RHOG was withdrawn by the Government in the budget of April 2011 - and therefore no longer exists - and RHfR was a pilot scheme by the Government (which provided + £650k for development at Pheasant Field) and does not apply to this application. There are also no special circumstances for this application.

A further supportive representation from John Smart, Stalkers Cottage, Glen Fyne, Cairndow (e.mail dated 20 September 2011) reports that two families have left the area because of the lack of suitable accommodation and advises that the proposed development will make a small but significant contribution to keeping Cairndow as an alive and vibrant community.

One further objecting representation was received (dated 20<sup>th</sup> September 2011) from Jamie Delap as Director of Fyne Ales limited which operate on the other side of the Fyne Valley to the proposed development. He is supportive of small number of commercial units but opposes strongly to new residential dwellings and a whole new village (masterplan) which is proposed. He considers this will seriously undermine the character of the area and also his business' provenance.

### 3.0 RESPONSE

- 3.1 The application was accepted as valid when submitted. The application boundary (red line) prepared by the applicant encompassed an appropriate area within which development was proposed. This area was less than 2 hectares and, in any event, there was no statutory definition of "major development" at the date of submission. Consequently, there is no lawful impediment to the Council determining the application.
- 3.2 The revised response from Transport Scotland taking account of the submitted Masterplan was only received after my original report had been prepared. The revised visibility splays now required may affect land outwith the applicant's control so a s.75 agreement may be required if Members were minded to approve the application.
- 3.3 Regardless of its derivation, PDA 9/13 in the adopted Local Plan is for "Mixed Use – Business/Housing/Recreation" as set out in the original report. In the Plan it is common for mixed use PDAs with a housing component not to specify densities.
- 3.4 The request for a Green Transport Plan was only included in an agenda for a meeting with the applicant prior to validation of the applicant.
- 3.5 The absence of a Landscape & Visual Assessment and Sustainability Checklist underline concerns in my report that a masterplan for the PDA needs to be better developed.
- 3.6 Although the site is within an Area of Panoramic Quality and the Sensitive Countryside development control zone, its inclusion within a PDA and AFA render the Area Capacity Evaluation (ACE) technique inappropriate. The application has not been screened as an EIA application so does not require an Environmental Assessment.
- 3.7 The addresses of all contributors, where available, are included in the original report.
- 3.8 Section D of the original report identified that the method for delivering affordable housing had not yet been secured. Despite the demise of schemes suggested in the report, an appropriate level of affordable housing could be secured by either a suspensive condition or section 75 agreement if the application was to be approved. It must be noted that whilst we are accepting of this flexible approach at this stage it is a significant weakness of the proposal especially in this climate where RSLs have significant funding reductions. A minimum of 4 affordable units must be constructed but as yet no clear mechanism for delivery has been afforded.

### 4.0 RECOMMENDATION

It is recommended that Members note the content of this supplementary report and planning permission be refused.

Based on the above representations from Transport Scotland and Public Protection we would also seek to insert the words:- '**Trunk Road Access, Private Water**' into Reason for Refusal 3 (contained on page 54 of PPSL Pack). The full reason for refusal shall now read:-

3. A Masterplan approach for is advocated for the development of PDA's within the Argyll and Bute Local Plan (August 2009) and progression with large scale and sensitive area development in general in National Guidance. The lack of a sufficiently detailed Masterplan in this instance has resulted in an objection from SEPA and inability for the planning department to fully assess this 2ha gateway / phase 1 application in the context of the wider > 30ha development site and relationship with future phases. It is therefore considered to be contrary to paragraphs 11.14 and 11.15 of the written statement of the Argyll and Bute Local Plan (August 2009) and Planning Advice Note 83 – 'Masterplanning'. There is an inability to plan for the future in a coordinated and comprehensive manner with the potential for adverse landscape biodiversity infrastructure **Trunk Road Access, Private Water** and servicing implications in this area of sensitive countryside and panoramic quality.

**Author: David Eaglesham**  
**Contact Point: David Eaglesham 01369 708608**

**Angus J Gilmour**  
**Head of Planning & Regulatory Services**

**20 September 2011**

This page is intentionally left blank

**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:** 09/00385/OUT

**Planning Hierarchy:** Local application

**Applicant:** Ardkinglas Estate

**Proposal:** Erection of mixed development comprising 16 dwellinghouses, 7 commercial units, childcare centre and installation of sewage systems and access improvements.

**Site Address:** Land adjacent to Ardkinglas Sawmill, Clachan, Cairndow, Argyll

---

## DECISION ROUTE

### (i) Local Government Scotland Act 1973

---

#### (A) THE APPLICATION

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

- Erection of 16 dwellinghouses (indicative details only, minimum 25% affordable housing requirement);
- Erection of 7 commercial units (potential business/industrial uses – indicative only Units A-D Use Class 4, Units E-G Use Class 5);
- Erection of childcare centre (indicative details only);
- Associated car parking, turning and servicing;
- Installation of two sewage treatment plants with outfall to River Fyne.

##### (ii) Other specified operations

- Tree planting and landscaping (within and outwith application site);
  - Boundary treatments;
  - Improvements to existing private access road;
  - Proposed footpath to Loch Fyne Oyster Bar alongside A83(T).
- 

#### (B) RECOMMENDATION:

It is recommended that

- i) planning permission be **refused** for the reasons set out overleaf
  - ii) a discretionary local hearing being held prior to the determination of the application in view of the number of representations received in the context of a small community.
-

(C) **HISTORY:**

No planning history for the application site.

There have been permissions for adjacent commercial uses including Bonnar Sand and Gravel Co Ltd at Clachan Quarry and 'Here We Are' Wood Shed.

---

(D) **CONSULTATIONS:**

**Scottish Natural Heritage** (response dated 2<sup>nd</sup> April, 22<sup>nd</sup> July 2009, 12<sup>th</sup> August 2009, and 9<sup>th</sup> September 2009): No objections in principle but recommend conditions in respect of natural heritage interests affected i.e. European Protected Species - otters and bats, Red Squirrels, breeding birds and planting and screening. Otters and bats are likely to be recorded within and adjacent to the development footprint. Recommend that a repeat survey for otters be carried out prior to any works commencing on site. Additionally, the plantation woodland to be felled should be surveyed for red squirrel dreys.

**Scottish and Southern Energy** (responses dated 23<sup>rd</sup> March, 29<sup>th</sup> June 2009 and 18<sup>th</sup> October 2010): Now withdraw previous holding objection based on safety issues associated with adjacent power station and tail race. Whilst SSE broadly welcomes the proposal, the applicant has intimated that he will erect a chain link fence along the western boundary of the tail race. An agreement requires to be reached with the developer or via planning conditions. SSE confirms that their concerns have now been resolved with the estate.

Most recent letter received suggests that the operation of the hydro scheme will have to be taken into account when decisions on effluent dilution are being considered. (Applicant confirms that reduced flows have been taken into account during the CAR authorisation from SEPA).

**Scottish Environment Protection Agency** (response dated 20<sup>th</sup> April 2009, 18<sup>th</sup> January 2011, 26<sup>th</sup> July 2011 and 8<sup>th</sup> September 2011): No objections in terms of foul drainage and surface water drainage as long as conditions and advisory notes which are recommended are attached to consent. They relate to SUDS and foul drainage.

SEPA confirm that the applicant has been issued with a CAR licence to discharge treated sewage effluent to the River Fyne however from their records it appears it is not in the same location as specified on the submitted planning application drawings. Whilst they consider a variation may be acceptable in principle they still require that a formal CAR application is made for the revised positioning.

SEPA's most recent letter dated 8<sup>th</sup> September objects to the Masterplan submitted for PDA 9/13. SEPA recommend the applicant submit the details of the waste water drainage and surface water drainage proposals for the overall masterplan area, to establish if they are acceptable for the whole development taking into account any cumulative impact and to resolve our objection to the waste water drainage proposals. They note this is imperative to avoid unnecessary delay and/or further objection from SEPA during future phases.

**Argyll District Salmon Fishery Board** (responses dated 28<sup>th</sup> July 2009, 4<sup>th</sup> June 2010, 9<sup>th</sup> December 2010) Object to the sewerage arrangements until reassurances can be given from then Council and SEPA that the treatments are foolproof and beyond risk.

**Area Roads Manager** (response dated 11<sup>th</sup> November 2009): No objections subject to conditions and advisory notes. Conditions recommended regarding visibility splays, access design, car parking, and designation of housing courts. Roads confirm that the developer will be responsible for the provision of street name plates and raising the Traffic Regulation Order. Roads also confirm that the proposed development will be subject to Roads Construction Consent, Road Bond and Road Opening Permit.

**West of Scotland Archaeology Service** (response dated 6<sup>th</sup> April 2009): No known archaeological issues raised.

**Operational Services (Flood Team)** (response dated 9<sup>th</sup> April 2009): Proposals for surface water discharge and associated SUDS are acceptable in principle. Other calculations, construction details and confirmation of wayleave still required.

**Sustainable Travel Co-ordinator/ Core Paths Team** (email dated 28<sup>th</sup> April 2009): Suggest that a direct link be created with an off-road footpath between the site and Loch Fyne Oysters.

**Transport Scotland** (response dated 30<sup>th</sup> April 2009): No objections subject to a condition regarding visibility splays.

**Scottish Water** (response dated 29<sup>th</sup> May 2009): No objections in principle but unable to reserve capacity at water and wastewater treatment works in advance of a formal agreement being reached. There are no public sewers or public water mains in the vicinity of the development site.

---

**(E) PUBLICITY:**

The proposal was been advertised as a *Potential Departure* to policies POL RUR1, HO8 and HO10 of the 'Cowal Local Plan' 1993 (in force at the time of submission but now superseded), advertisement published 10<sup>th</sup> April 2009 (expiry date 1<sup>st</sup> May 2009); under Section 34 Bad Neighbour and Article 9 Vacant Land advertisement published 10<sup>th</sup> April 2009 (expiry date 24<sup>th</sup> April 2009).

---

**(F) REPRESENTATIONS:**

Letters/emails of representation have been received from the following:

**Objectors**

Elaine Pound, Shore Cottage, Cairndow (facsimile message dated 16<sup>th</sup> April 2009, letter dated 6<sup>th</sup> January 2010, e.mail dated 21<sup>st</sup> December 2010, e mail dated 4<sup>th</sup> April 2011, e mail dated 5<sup>th</sup> April, e mail dated 18<sup>th</sup> May 2011);

J M Turnbull, Glen Kinglas Hydro Ltd, Strone Estate, Cairndow (letter dated 8<sup>th</sup> April 2009);

Alexander Miles, Rubha Beag, Cairndow (e.mail dated 23<sup>rd</sup> April 2009);

Tuggy Delap, Fyneales, Cairndow (email dated 3<sup>rd</sup> August 2009, e mail dated 5<sup>th</sup> September 2011);

Marya Egerton-Warburton, Ard-na-Slaite, St. Catherines (letter dated 23<sup>rd</sup> December 2010);

Peter Egerton-Warburton, Mulberry House, Bentworth, Alton, Hants (letter dated 17<sup>th</sup> December 2010);

Anastasia Delap, Achadunan Farm, Cairndow (letter dated 7<sup>th</sup> December 2010, letter dated 22<sup>nd</sup> July 2011);

Mr. and Mrs. R. J. Hammond, (e.mail dated 8<sup>th</sup> December 2010).

**Supporters**

Frances, Alistair & Kirsty Bremner, 11 Kilmorich, Cairndow (letter dated 7<sup>th</sup> April 2009);

Sarah Sumsion, Bachie Bhan, Cairndow (e.mail dated 22<sup>nd</sup> April 2009);

Janet and Nigel Callander, Mid Lodge Rear, Cairndow (letter received 27<sup>th</sup> April 2009);

Christine MacCallum, Clachan Farm (letter dated 28<sup>th</sup> April 2009);

Alice and Walter Beattie, Garage Cottage, Cairndow (letter dated 19<sup>th</sup> May 2009);

Alexander Pettit, Ballure, Cairndow (e.mail dated 8<sup>th</sup> June 2009);

Cairndow Community Childcare, Cairndow Hall, Cairndow (e.mail dated 23<sup>rd</sup> April 2009);

Stewart MacCallum, Cairndow (e-mail dated 24<sup>th</sup> February 2010);

John Smart, Stalkers Cottage, Glen Fyne, Cairndow (e.mail dated 15<sup>th</sup> December 2010);  
Jon Pope, (e.mail dated 16<sup>th</sup> January 2011)  
Ms Kathryn Dunn, Cairndow Community Childcare, Cairndow Village Hall, Cairndow (e-mail dated 13<sup>th</sup> September 2011).

Cllr Ron Simon, (e mail dated 29<sup>th</sup> August 2011)

### (i) Summary of issues raised

The concerns and issues raised in the letters of objection can be summarised as follows -:

- *Whilst Clachan is a better option for any future housing rather than Cairndow village, the current proposals are not sensitive to the prominent location at the head of the loch and require greater emphasis on design and layout;*
- *Misinformation in Supporting Document regarding Community Council meetings;*
- *Prominent location requires enhanced design;*
- *Loss of tranquillity through urbanisation;*
- *Application should be detailed instead of outline;*
- *Loss of plantation woodland likely to leave site exposed and more prominent.*
- *Proposals contravene Cowal Local Plan policies RUR1, HO8 and HO10.*
- *Otters and Bats present and detailed survey required before permission is granted.*
- *Sea Trout and Salmon enter the River Fyne to spawn. No waterway should be blocked and the appropriate fisheries authority consulted.*
- *Any demand for new housing in the Cairndow area should be within the existing village.*
- *There are a number of agricultural and commercial buildings adjoining the existing woodland and therefore the site lends itself more to commercial units rather than housing.*
- *Fast stretch of A83 Trunk Road very dangerous for pedestrians. Development should not go ahead unless a pedestrian access is provided from Cairndow village;*
- *Agree that there is a housing demand but this should be restricted to Cairndow;*
- *Site exceeds 2 hectares and as such requires Environmental Impact Assessment;*
- *Proposal not sufficiently backed by an acceptable Masterplan;*
- *Masterplan not had sufficient community consultation;*
- *Status of Potential Development Areas and hierarchy of policies;*
- *Application 'out of control' and existing proposal 'exploded out of all proportion';*
- *Loch Fyne Oyster complex cannot meet day to day shopping needs;*
- *Affordable provision for this area already satisfied in respect of development at the Pheasant Field;*
- *Status of industrial/commercial units as 'bad neighbour Class 5 developments;*
- *Status of Suds in terms of proposed land uses;*
- *Impact on the River Fyne*
- *CAR Licence does not conform to submitted plans;*

The concerns and issues raised in the letters of support can be summarised as follows -:

- *Plans to provide affordable homes and small business units appear viable compared to other local developments and would have less of an impact on the existing village of Cairndow;*
- *This type of housing is much needed to allow people to live in rural areas;*
- *Small workshops would give opportunities for new businesses to develop and enhance the mix of people wishing to live in the area;*
- *Great need for affordable housing in the Cairndow area and such a development will fill that need;*
- *Availability of affordable office space;*
- *Proposals have been ongoing for over two years;*
- *Indicative masterplan is fit for purpose;*
- *Majority of objectors do not work in area*

- *Cairndow Community Childcare is hoping to move to purpose built premises. The site fits many of the criteria required for a successful building.*

*Comments: Observations on the above issues are contained in the Assessment section below*

---

**(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:** Yes

Protected Species Survey by Quadrat May 2009

*Surveys carried out identified that there are protected species present i.e. otter, red squirrel and bats and that there may be impacts to these species as a result of current proposals. Mitigation measures include moving the proposed sewage outfall away from an existing otter holt and creating a cordon around another holt. Bats have also been sited in the plantation woodland and it is recommended that felling be kept to a minimum and any felling to be carried on outside the breeding season.*

- (iii) **A design or design/access statement:** Yes

Supporting Statement by Ardkinglas Estate 10 March 2009

*Supporting statement includes background information, site details, residential and commercial needs, site appraisal, projections of occupancy and leases, PDA9/13 masterplan and other sites, programme, design solution, detailed design, services, operational statement and summary.*

Revised Supporting Statement by Ardkinglas Estate 19 October 2010

*Applicant confirms that the mechanism to provide affordable housing will be selected at the detailed stages where the present options are either private rented housing under an extension of the RHfR scheme, or self-build under RHOG. Also confirmed that the footpath linking the site with Clachan Farm complex will be built at the time of the new housing being developed.*

*Comments regarding potential house types, heights, materials and orientation of houses to maximise solar gain. No details regarding Childcare Centre and commercial units at this stage.*

- (iv) **A report on the impact of the proposed development e.g. Retail impact, transport impact, noise impact, flood risk, drainage impact etc:** Yes

Drainage Impact Assessment JIG Ltd. February 2009

*Drainage Impact Assessment outlines best methods for treatment of surface water. Source control methods (i.e. porous paviers) could result in 'urban' solutions for a semi-rural environment. This has resulted in a surface water collection system for Area 1 (residential and daycare facility) leading to a filter trench designed for adoption by the roads authority.*

*No impermeable surfaces are proposed for Area 2 (light industrial/commercial) at this stage and all roads and other surfaces would be free draining. Any future proposals to provide impermeable hard standings will be expected to provide further levels of treatment and also subject to SEPA licence in respect of the Water Environment (Controlled Activities)(Scotland) Regulations 2005.*

*During discussions, it was agreed that attenuation was not required of the system owing to its tidal discharge point.*

*Two waste-water treatment plants are proposed with calculations based on maximum occupancy. For effluent standards to be applicable, the discharge location needs to be*

*to the River Fyne as opposed to tidal waters. The outfall requires to be secured at a location ensuring discharge into the flow of the watercourse even during low-flow conditions.*

*Separate CAR authorisation will be required from SEPA for the housing and light industrial components, and potentially engineering works associated with the outfall.*

---

**(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:

STRAT SI 1 - Sustainable Development;  
STRAT DC5 - Development in Sensitive Countryside;  
STRAT DC7 – Nature Conservation and Development Control;  
STRAT DC8 – Landscape and Development Control;  
STRAT DC10 – Flooding and Land Erosion;  
STRAT FW2 – Development Impact on Woodland;  
STRAT HO1 – Housing – Development Control Policy;  
PROP TRANS1 - Development Control, Transport and Access;

'Argyll and Bute Local Plan' (August 2009)

The application site is located within PDA9/13 and AFA 9/4 within Sensitive Countryside where the following policies are applicable:

LP ENV1 Development Impact on the General Environment;  
LP ENV6 Development Impact on Habitats and Species;  
LP ENV7 Development Impact on Trees/Woodland;  
LP ENV8 Development Impact on Local Nature Conservation Sites;  
LP ENV10 Development Impact on Areas of Panoramic Quality;  
LP ENV12 Water Quality and Environment;  
LP ENV19 Development Setting, Layout and Design (including Design Guidance);  
LP BUS 2 Business and Industry Proposals in the Countryside Development Control Zones;  
LP BAD1 Bad Neighbour Development;  
LP HOU1 General Housing Development;  
LP HOU2 Provision of Housing to meet Local Needs including Affordable Housing Provision;  
LP SERV1 Private Sewage Treatment Plants and Wastewater Systems;  
LP SERV2 Incorporation of Natural Features/Sustainable Drainage Systems (SuDS);  
LP SERV3 Drainage Impact Assessment (DIA);  
LP SERV4 Water Supply;  
LP SERV8 Flooding and Land Erosion;  
LP TRAN1 Public Access and Rights of Way;  
LP TRAN2 Development and Public Transport Accessibility;  
LP TRAN3 Special Needs Access Provision;  
LP TRAN4 New and Existing, Public Roads and Private Access Regimes;

LP TRAN5 Off site Highway Improvements;  
LP TRAN6 Vehicle Parking Provision;  
Technical Note PDA 9/13 – Cairndow / Inverfyne Mini Brief

**Note :The Full Policies are available to view on the Council’s Web Site at [www.argyll-bute.gov.uk](http://www.argyll-bute.gov.uk)**

**(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.**

The following advice and guidance from Central Government includes:

- |    |   |
|----|---|
| a) | Scottish Planning Policy (February 2010)';  |
| b) | Planning Advice Note 44 – ‘Fitting New Housing<br>Development into the Landscape; |
| c) | Planning Advice Note 67 – ‘Housing Quality’;                                      |
| d) | Planning Advice Note 68 – ‘Design Statements’;                                    |
| e) | Planning Advice Note 72 – ‘Housing in the<br>Countryside’;                        |
| f) | Planning Advice Note 74 – ‘Affordable Housing’;                                   |
| g) | Planning Advice Note 83 – ‘Master Plans’  |

---

**(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 (PAN41 or other): Yes**

15 letters/emails of objection have been received from 9 individuals and 12 letters/emails of support from 16 parties. Whilst the overall numbers of representations are relatively low the split between those ‘in favour’ and those who ‘oppose’ are evenly balanced. Furthermore, given the number of representations received in the context of the relatively small size of Clachan / Carindow it is considered there would be merit in convening a pre-determination hearing (PAN 41) at a local community venue.

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

In the ‘Argyll and Bute Local Plan’, the application site is located within sensitive countryside, but forms part of Potential Development Area PDA 9/13 ‘Cairndow-Inverfyne’ where a mixed use - business/housing/recreation use is supported, and Area For Action AFA 9/4 ‘Inverfyne’ where strategic, business and environmental improvements are encouraged.

Whilst concern is noted with the specific density, structural planting and layout of the proposed mixed development, the general principle of clearfelling the conifer plantation and creating a mix of housing, childcare centre and commercial units on the site is broadly acceptable.

The submitted masterplan drawings have been considered 'for indicative purposes only' as the applicant does not wish them to be subject to consultation or to form part of this application for review. Whilst the masterplan illustrates long term aspirations for PDA 9/13 and AFA 9/4, these currently have no planning status and do not form sufficient basis for the planning authority or statutory consultees to comment upon them, nor do they meet the aspirations of the Council's Local Plan, which seeks a masterplan approach to be adopted when bringing forward PDA sites. This 'future proofing' and strategic approach is even more important in scenarios such as this, where a long term phased development is sought (current application relates to a 2ha gateway point / phase 1 development of > 30ha PDA in sensitive area). Whilst some aspects of these long term proposals and masterplan may be encouraged or supportable by the department, the current level of detail afforded is insufficient to allow full consideration and to be able to express a view whether this application (i.e. phase 1) would sit comfortably as a foundation for future comprehensive development of the PDA.

Acceptability of the current proposal will be fully dependent on the successful integration of the development in its landscape context through structured tree planting and retention of key landscape features. This is shown on the updated Masterplan drawing by the retention of three grazing fields (Clachan Field nos. 1, 2 and 3) to act as an appropriate landscape buffer between the application site and the Loch Fyne Oysters complex. It is proposed to retain deciduous trees along the southern boundary of the application site and along the field boundary running westwards from the site. This will be augmented by proposed tree planting within the application site itself and outwith the site along a thick belt on the northern side of Clachan Field no.3. Further off-site, tree retention and planting around the walker's car park and approach to the site is proposed with a large area of replanting proposed on the eastern side of the Sawmill Field. Off-site tree and shrub planting is also proposed adjacent to the A83(T) running from the application site to Loch Fyne Oysters complex. The indicative tree/shrub planting and retention of landscape features is considered to be insufficient to screen the site and integrate it within its surroundings in its current form. Tree belts / shelter belts are considered too narrow to provide adequate context, screening or backdropping for their exposed location. Notwithstanding this, it is considered that an appropriate scheme of tree planting and landscaping could be provided in terms of species, density and location as part of a wider detailed masterplan if one were to be progressed (see para above). A detailed planting schedule along with a Section 75 legal agreement to secure the offsite planting proposed would be required in the event the application were to be approved.

The additional development aspirations shown on the Masterplan layout require to be taken through the ongoing Local Plan process in terms of proposed land uses and intensification of earlier concepts. Approval or refusal of this application would not therefore imply that any of the areas shown on revised masterplan layout CDA 06 have any formal status.

Original design ideas for dwellinghouses raised concern but the applicant has confirmed that these are only for indicative purposes at this stage. Other design options have been explored with examples of modern sustainable house types submitted for indicative purposes. Should permission be granted, the applicant will require to address those design concerns raised thus far.

Of greater concern is the density and layout of the proposals. The presence of the PDA and AFA do not supersede or take precedence over other policies in the plan and it is therefore essential to achieve a balance of scale and density that respects this highly prominent area identified as 'Sensitive Countryside' and also as having Panoramic Quality. Both Local Plan Policies on sensitive countryside and areas of panoramic quality require the highest standards of design, siting, landscaping, boundary treatment and materials in new developments. Consequently, it is considered at present that the proposed development of housing, workshops and childcare facility is too dense and inappropriate for this rural location and context. Furthermore, the wider potential residential, tourism and commercial areas shaded on the masterplan exceed expectation for the rural context and would not be supported. There is also likely to be 'bad neighbour' land use tensions arising from the close proximity of industrial uses and residential properties with only small / narrow tree belts for mitigation.

There is also a potential for 'bad neighbour in reverse' situation from the new dwellings being developed adjacent to the quarry access road, agricultural shed and weighbridge

In terms of consultation responses, no major objections subject to conditions have been raised for the application site itself, however SEPA have raised objection to the masterplan based on its current lack of detail.

In summary, whilst the components of the mixed-use scheme are considered to be compatible with PDA 9/13, the submitted Masterplan drawings and themes are not sufficiently well-developed in terms of the brief for PDA 9/13 and AFA 9/4 to ensure this application can proceed on the basis of a first phase of a much larger scheme. Given the comments above, it is considered that the proposals in their current form may prejudice the greater wider aspirations of PDA 9/13 and AFA 9/4. This in combination with the concerns noted about density, render the proposal inconsistent with the relevant policies contained in the Argyll and Bute Structure Plan and Argyll and Bute Local Plan, by virtue of inappropriate siting and design, and failure to respect landscape character and the settlement pattern to the detriment of the designated area of sensitive countryside and the area of panoramic quality.

---

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

---

**(R) Reasons why Planning Permission in Principle should be Refused**

1. Having regard to the siting and design of the proposed mixed use development, the concentration and proximity of the proposed buildings to each other and existing commercial / agricultural uses is considered too dense and inconsistent with the character of the surrounding rural settlement pattern. This would detract from the designated area of sensitive countryside and the area of panoramic quality within which the development would be located. Additionally, the lack significant structural planting on-site will result in a development that would be out of context, incongruous and exposed in its rural surroundings. Such a development would therefore be contrary to Scottish Planning Policy (February 2010); to Policies STRAT SI 1, STRAT DC 1, STRAT HO 1 of the 'Argyll and Bute Structure Plan' 2002; and to Policies LP ENV 1, LP ENV 10 and LP ENV 19 (including Appendix A Sustainable Siting and Design Principles and Sustainable Design Guidance 1-4); and, LP HOU 1 of the 'Argyll and Bute Local Plan' (August 2009), all of which presume against the nature of the development proposed.
2. Having regard to the density of the proposed development in terms of the inclusion of 16 homes and 7 commercial units within a 2ha site and also the positioning of existing commercial activities and quarry access road adjacent to the site, it is considered that the development would give rise to 'bad neighbour' and 'bad neighbour in reverse' tensions between incompatible uses. Additionally, the lack significant structural planting on-site would result in a development that may expose the proposed new residential units to noise, dust and vibration from both on-site and external commercial activities. Such a development would therefore be contrary to Policies LP BAD 1 and BAD 2 of the 'Argyll and Bute Local Plan' (August 2009), both of which presume against the nature of the development proposed.
3. A Masterplan approach is advocated in devising proposals for the development of all PDA's identified by the 'Argyll and Bute Local Plan' (August 2009), in order to ensure that development is planned for on a comprehensive basis and that phased development, where required, is able to proceed in the knowledge that it will not conflict with, or compromise, the future development of the remainder of a PDA. The lack of a sufficiently detailed Masterplan in this instance has resulted in an objection from SEPA and has prevented the planning department from being able to assess fully this 2ha gateway / phase 1 application in the overall context of the wider > 30ha development site designated as a PDA, and has not enabled a proper assessment of its acceptability in terms of its relationship with future phases. The proposals are therefore considered to be contrary to

paragraphs 11.14 and 11.15 of the Written Statement of the 'Argyll and Bute Local Plan' (August 2009) and to government advice given in Planning Advice Note 83 – 'Masterplanning'. The inability to plan for the future in a co-ordinated and comprehensive manner gives rise to potentially adverse landscape, biodiversity, infrastructure and servicing implications in this the designated area of sensitive countryside and area of panoramic quality.

---

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

n/a

---

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

---

**Author of Report: Ross McLaughlin**

**Date: 13<sup>th</sup> September 2011**

**Reviewing Officer: Richard Kerr**

**Date: 14<sup>th</sup> September 2011**

**Angus Gilmour  
Head of Planning and Regulatory Services**

1.

**REASONS FOR REFUSAL RELATIVE TO APPLICATION 09/00385/OUT**

1. Having regard to the siting and design of the proposed mixed use development, the concentration and proximity of the proposed buildings to each other and existing commercial/agricultural uses is considered too dense and inconsistent with the character of the surrounding rural settlement pattern. This would detract from the designated area of sensitive countryside and the area of panoramic quality within which the development would be located. Additionally, the lack significant structural planting on-site will result in a development that would be out of context, incongruous and exposed in its rural surroundings. Such a development would therefore be contrary to Scottish Planning Policy (February 2010); to Policies STRAT SI 1, STRAT DC 1, STRAT HO 1 of the 'Argyll and Bute Structure Plan' 2002; and to Policies LP ENV 1, LP ENV 10 and LP ENV 19 (including Appendix A Sustainable Siting and Design Principles and Sustainable Design Guidance 1-4); and, LP HOU 1 of the 'Argyll and Bute Local Plan' (August 2009), all of which presume against the nature of the development proposed.
2. Having regard to the density of the proposed development in terms of the inclusion of 16 homes and 7 commercial units within a 2ha site and also the positioning of existing commercial activities and quarry access road adjacent to the site, it is considered that the development would give rise to 'bad neighbour' and 'bad neighbour in reverse' tensions between incompatible uses. Additionally, the lack significant structural planting on-site would result in a development that may expose the proposed new residential units to noise, dust and vibration from both on-site and external commercial activities. Such a development would therefore be contrary to Policies LP BAD 1 and BAD 2 of the 'Argyll and Bute Local Plan' (August 2009), both of which presume against the nature of the development proposed.
3. A Masterplan approach is advocated in devising proposals for the development of all PDA's identified by the 'Argyll and Bute Local Plan' (August 2009), in order to ensure that development is planned for on a comprehensive basis and that phased development, where required, is able to proceed in the knowledge that it will not conflict with, or compromise, the future development of the remainder of a PDA. The lack of a sufficiently detailed Masterplan in this instance has resulted in an objection from SEPA and has prevented the planning department from being able to assess fully this 2ha gateway / phase 1 application in the overall context of the wider > 30ha development site designated as a PDA, and has not enabled a proper assessment of its acceptability in terms of its relationship with future phases. The proposals are therefore considered to be contrary to paragraphs 11.14 and 11.15 of the Written Statement of the 'Argyll and Bute Local Plan' (August 2009) and to government advice given in Planning Advice Note 83 – 'Masterplanning'. The inability to plan for the future in a co-ordinated and comprehensive manner gives rise to potentially adverse landscape, biodiversity, infrastructure and servicing implications in this the designated area of sensitive countryside and area of panoramic quality.

**Note to Applicant**

For the purpose of clarity it is advised that this decision notice relates to the following refused drawings:

1:2500 Location Plan as existing CDA 02 RevB received 28th April 2010;  
1:1000 Site Layout Plan as proposed CDA 04 RevB received 20th October 2010;  
1:2500 PDA 9/13 masterplan (provisional draft) CDA 06 received 20th October 2010  
+Supporting Design Statement Section 9.0 dated 19th October 2010 and 'Notes accompanying drawing no. CDA 06' received 20th October 2010.

**APPENDIX A – RELATIVE TO APPLICATION NUMBER: 09/00385/OUT**

**PLANNING LAND USE AND POLICY ASSESSMENT**

**A. Settlement Strategy**

This application is for a mixed-use development comprising 16 dwellinghouses, 7 commercial units and a childcare community building within a conifer plantation site between Bonnar's weighbridge office and existing farm shed at the head of Loch Fyne, west of the private road leading to Clachan Power Station.

In the 'Argyll and Bute Local Plan', Cairndow is identified as a minor settlement, with dispersed residential development located around the head of Loch Fyne. Clachan is primarily a commercial/tourist area that has developed over the past few years with the success of Loch Fyne Oysters and more recently The Tree Shop and "Here We Are". Further dispersed residential, commercial and agricultural uses are located inland at Inverfyne and Achadunan at the entrance to Glen Fyne.

In the 'Argyll and Bute Local Plan', the application site is located within the southern part of Potential Development Area PDA 9/13 'Cairndow-Inverfyne' where a mixed use - business/housing/recreation use is supported, and Area For Action AFA 9/4 'Inverfyne' where strategic, business and environmental improvements are encouraged.

The mini development brief for PDA 9/13 outlines a variety of potential development options that include estate development to consolidate existing business activity at the Oyster Bar/Tree Shop, recreational facilities within the re-instated gravel workings, provision of small workshop units and environmental improvements for the farm/sawmill buildings where structural landscaping and planting will be required. At the time of the 'Argyll and Bute Modified Finalised Draft Local Plan' (June 2006), an adjacent PDA 9/14 was deleted due to flooding issues on part of that site, but the residential component absorbed by PDA 9/13.

In terms of STRAT DC5 of the 'Argyll and Bute Structure Plan', 'medium scale' development (defined as between 6 and 30 units) in open countryside zones would generally be discouraged, unless particular opportunities reveal themselves through the development process, where a special case is appropriate and consistent with other policies of the Structure Plan and in the Local Plan. In this case, whilst special circumstances have been established in principle through the presence of PDA 9/13 in the Local Plan, the density of development as proposed is considered to be out of character within the local settlement pattern. It is considered that a high density form of development comprising 16 dwellinghouses, 7 commercial units and a childcare community building within a 2ha site (of a < 30ha PDA) would be incongruous in terms of the local development pattern, and starkly out of place at the exposed head of Loch Fyne. Whilst mitigation to a degree can be obtained through structural planting, the current proposals are nevertheless considered too concentrated and dense for this rural location within sensitive countryside and would be at odds with the existing rural settlement pattern.

Moreover, the site is also located within an 'Area of Panoramic Quality' where an even greater design, locational and scale criteria must be adhered to. Policy LP ENV 10 states that '*in all cases the highest standards of location, siting, landscaping, boundary treatment and materials..... will be required*'. This further emphasises our concerns about the density and cohesion of differing uses in this sensitive landscape.

**The development is identified as Potential Development Area 9/13 which offers support for mixed use development however the density and intensification of use is contrary to STRAT DC1, DC5 and HO1 of the Argyll and Bute Structure Plan and Policy LP HOU 1 and LP ENV 10 of the Argyll and Bute Local Plan.**

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

The proposal involves the clear-felling of plantation woodland and erecting a mixed development that includes 16 dwellinghouses, 7 commercial units and a childcare centre. The application site measures 1.90 hectares and is therefore not a 'major' application in the planning hierarchy, nor does it warrant Environmental Impact Assessment.

Indicative layouts display that the residential development would be situated in the southern portion of the site and could take the form of two courtyard clusters both accessed from a new vehicular access off the existing private road. The dwellinghouses include a mix of detached (2 units), semi-detached (8 units) and terraces (6 units). The dwellings tend to be orientated with their main elevations facing south to maximise daylight and aspect. Plots 1-6 are arranged around a car parking courtyard with plots 7-16 arranged around a larger car parking courtyard.

The focal point of the development would be the proposed Cairndow Community Childcare building that would be located immediately south of the existing quarry office and weighbridge. No details have been submitted at this stage, but the indicative layout shows a turning area off the private road with car parking and dropping-off area.

Seven commercial/industrial units are proposed in the northern portion of the site and contained within five industrial buildings. Two larger units (Unit A and Unit B/C/D) are located close to the housing development and accessed via a new separate vehicular access south of the existing workshop and sawmill building. These units are proposed for light industrial uses (Use Class 4) due to proximity to proposed housing. A further three industrial units (units E, F and G) are proposed in the northern portion of the site that would also share this access. These units are proposed for small/medium general industrial uses (Use Class 5).

In terms of LP BUS 2 'Business and Industry Proposals in the Countryside Development Control Zones', commercial and industrial development is supported by PDA 9/13 where Appendix A 'Sustainable Siting and Design Principles' outlines design criteria for Isolated Industrial and Commercial Development that includes, scale, visual impact from key viewpoints, setting, integration within the landscape, screening, design, colour and materials.

The proposal must be assessed against the provisions of Policy LP ENV 19 - Development Setting, Layout and Design of the Argyll and Bute Local Plan where a high standard of appropriate design is expected in accordance with the Council's design principles. Moreover, the site is also located within an Area of Panoramic Quality and must therefore be assessed against Policy LP ENV 10 – Development Impact on Areas of Panoramic Quality also. This policy resists development where there is a significant adverse effect on the character of a landscape and stipulates in all cases that the highest standards in terms of location, siting, landscaping, boundary treatment and materials must be adhered to.

This is further explored in Appendix A 'Sustainable Siting and Design Principles' where in terms of 'Design of New Housing in Countryside Development Zones', the design and construction of new dwellings within this landscape must respect local identity and the environment and should be designed taking the following advice into account:

- *Location – houses must be carefully located within the landscape to complement their surroundings and should make the minimum possible physical impact;*

The proposed development requires the clear felling of the conifer plantation woodland. This will result in the retention of a limited number of mature deciduous trees along the southern and western perimeter of the site, in a thin and exposed linear belt. The removal of the plantation woodland will remove a solid unnatural mass from the general landscape and open up views into Glen Fyne. It will also, however, expose the site to the south and in particular from the A83 (T), and to a lesser degree from the private road up Glen Fyne. By default, it would also leave the deciduous tree belt to the south west somewhat unprotected.

The current indicative scheme (this is a planning application in principle) lacks design flair and displays suburban qualities in terms of the courtyard parking areas, orientation of buildings, design of buildings and relationship to other proposed and existing uses. There is also a major concern that the interrelationship between commercial and residential uses could result in a 'bad neighbour' situation, with amenity conflicts between uses which could prove incompatible at close quarters. .

The submitted details are, however, considered *'for indicative purposes only'* at this stage and would need major modifications in respect of the overall concept and rationale for future development if the application for permission in principle were to be approved in its current form. Natural features and sympathetic structured tree planting need to be used to better effect to integrate the proposed development within its rural surroundings which are identified as 'sensitive countryside' in the current Local Plan.

The location of the industrial/light industrial buildings in the northern portion of the site adjacent to existing similar uses is generally acceptable in principle, but would also require refinement in terms of siting, design, materials and screening.

- *Siting – must respect existing landforms and development patterns and the amenity of other dwellings;*

The proposal would (with the clearing of the conifer plantation), introduce new forms of development into an open countryside location. Careful positioning, design and screening would help to integrate such a proposal into the landscape. The submitted drawings do not however demonstrate sufficiently that such a mixed development could be achieved at the suggested density and with the proposed level of on-site planting. Furthermore, the relationship with this phase 1 development and latter phases remains unknown, due to lack of details in the form of a detailed masterplan. To this extent, the current mix of development at the density proposed cannot be supported, as siting would be incompatible with adjacent uses and settlement pattern.

Notwithstanding this, the principle of establishing a residential neighbourhood with commercial activities in the northern portion beyond a buffer zone is generally acceptable in terms of the aspirations for PDA 9/13. However, to re-emphasise, trying to achieve this in the current 2ha site could only be achieved by way of an incongruous form of development which would unacceptably compromise its rural surroundings.

- *Principles of Design – High standards of design are expected where scale form, proportions, materials, detailing, colour must all work together to enhance the existing built form and landscape;*
- *Materials and Detailing – materials and detailing should be compatible with the traditions of the area and be sympathetic to the landscape;*
- *Outbuildings – should relate to the main building in form and design and be carefully positioned on the site, relating to the house;*

The submitted drawings indicate simple forms of residential development that would require to be improved in terms of vernacular or contemporary designs forming a cohesive theme for the development. The drawings indicate a simplistic scheme that merely establishes servicing and infrastructure requirements. The submitted drawings indicate buildings with unbalanced fenestration, awkward roof detailing and monotonous elevations that would look out of context in their rural surroundings. However, as the submissions merely provide indicative options of how the site could generally be developed, this would need to be further explored in terms of establishing key viewpoints around the site, in order to establish landmark features to devise a suitable form of development that could successfully integrated into this rural landscape.

- *Landscaping and Boundaries – where privacy and amenity is important, built form should be screened from viewpoints using appropriate native planting. Hard-landscaping should be kept to a minimum. Boundaries will either integrate a site or alienate it;*

It is proposed to retain deciduous trees along the southern boundary of the site and along the field boundary running westwards from the site. This will be strengthened by tree planting within the site itself and outwith the site along a thick belt on the northern side of Clachan Field no. 3. Further tree retention and planting around the walker's car park and approach to the site is proposed, with a large area of replanting proposed on the eastern side of the Sawmill Field to provide effective screening for properties in Achadunan. Tree planting is also shown along a new proposed footpath connecting the site to the Loch Fyne Oysters complex. Whilst no precise details have been submitted in respect of proposed boundary treatments and planting, it is considered that conditions and a Section 75 legal agreement could control landscaping and screening of these sites within their rural context in the event of permission being granted. However, in its current form, the onsite tree belts are insufficient to adequately screen or backdrop the proposed new buildings and are insufficient to integrate the development proposed within this rural location.

- *Parking – car parking areas should not be dominant features which are highly visible from access ways or dominate views from within buildings.*

Indicative car parking and turning arrangements are shown for the residential and industrial components of the scheme. These are likely to change as the scheme develops at the detailed stage. Roads have no objection in principle but recommend standards in respect of car parking and design of housing courts/parking areas.

In terms of design, the overall solution is considered to be at odds with the development plan in terms of locational aspirations, siting and scale. Whilst it is accepted that micro-siting, building design, materials, access and landscaping can be addressed to a degree at an Approval of Matters Specified in Conditions (AMSC) application or by way of a Section 75 agreement, there are fundamental density issues on what is a relatively small 2ha site, especially when viewed in context of the overall >30ha PDA. Other infrastructure shortcomings have not been identified by consultees, however the impacts from the wider masterplan remain unknown due to lack of submitted detail. At this stage, it is therefore considered that, overall, the proposed development is inconsistent with the provisions of Policies LP ENV 10, ENV19 and Appendix A of the Argyll and Bute Local Plan together with the Council's Design Guide.

**Having due regard to the above the proposal is considered to be consistent with Policies STRAT SI 1 and STRAT DC5 of the Argyll and Bute Structure Plan and Policies LP ENV 10, LP ENV 19 and LP HOU1 (including Appendix A and LP BUS2 of the Argyll and Bute Local Plan.**

### C. Natural Environment

Quadrat Scotland has carried out a joint survey of the applicant's development sites at Clachan and The Pheasant Field (ref. 09/00463/DET currently under consideration) and JDC ecology has submitted findings in terms of protected species including otter, bat and red squirrel.

In terms of otter, an existing holt was located close to the proposed sewage outfall. It was recommended that the outfall be relocated away from this holt and this has been done in the revised layout drawing ref. CDA 04 RevB. It is also suggested that further mitigation measures should include suitable screening around this and another holt to avoid disturbance. Whilst no signs of roosts were found, bats were present close to the woodland or within the old sawmill. It is suggested that the abundance of similar habitat should not have a significant impact on foraging activity through the loss of the woodland. There is no mention of red squirrels in the survey that applies to The Pheasant Field only.

Whilst SNH has no objection in principle to the development, it is recommended that repeat surveys be undertaken for otter, bat and red squirrel. On the basis that disturbance impacts to otters are considered significant during and after construction, a licence to disturb otters should be sought for works in addition to conditions recommended in respect of suitable mitigation

measures. Comprehensive advisory advice is provided in respect of SNH guidance with regards European Protected Species.

In landscape and visual terms, SNH recommends that extensive native broadleaf planting within the application site should be designed to integrate the development more sensitively in the landscape and that any boundary features such as drystone dykes, native woodland and isolated trees should be retained where possible.

The applicant has also confirmed that CAR authorisation has been issued for the discharge of treated sewage effluent into the River Fyne and this authorisation took full account of migratory fish and other aquatic flora and fauna. Whilst SEPA currently feel that the CAR Licence is shown in an erroneous position on the submitted plans they have provided that they are likely to approve a variation as long as discharge shall not increase.

**On the basis of general acceptance and the imposition of necessary safeguarding planning conditions, the proposal is considered to be consistent with Policy STRAT SI 1, STRAT DC7, STRAT DC8, STRAT FW2 of the Argyll and Bute Structure Plan, and policies LP ENV 6, ENV7, ENV8 of the Argyll and Bute Local Plan.**

### D. Affordable Housing

Whilst figures are not available for individual communities within each housing market area, research from the Draft Housing Needs and Demand Assessment indicates that for the Cowal Housing Market area (of which Cairndow forms part) there is a total housing requirement over the next ten years for 984 units. The previous housing market study in 2002 estimated a need for up to 12 affordable rented houses in Cairndow, and recommended more detailed research in to meeting shortfalls for owner occupied housing in Cairndow by way of small scale mixed tenure developments.

In the original Supporting Statement, it was stated that Ardinglas Estate has applied for grant funding under the Rural Homes for Rent (RHfR) pilot scheme launched by the Scottish Government that aims to provide affordable private rented housing in rural areas. Within the current proposal, ten dwellinghouses (plots 1, 2, 3 and 10-16) are the subject of the RHfR application. The applicant envisages that plots no. 4-9 would be offered for sale as serviced plots with detailed planning permission. If the RHfR application is unsuccessful, an alternative proposal will be sought. For the purposes of this application, it is proposed that 25% affordability is accepted and, if the RHfR project proceeds, then affordability would be 62%.

The updated Supporting Statement indicates that the mechanism to provide affordable housing will be selected at the detailed stages where the present options are either private rented housing under an extension of the RHfR scheme, or self-build under Rural Homes Ownership Grants (RHOG). At the time of writing, it is not possible to confirm the status of RHfR scheme from the Scottish Government, and therefore a recommended planning condition allows a degree of flexibility in respect of securing a mechanism to deliver a minimum of 25% affordable housing on this site, as prescribed by the Argyll and Bute Local Plan.

**Whilst the final mechanism has not yet been secured, in the event of an approval, a suspensive condition or Section 75 legal agreement could require an acceptable level and variety of affordable housing to be provided on site and implemented in harmony with the mainstream housing proposed. Consequently, the proposal is considered to be consistent with the provisions of Policy LP HOU 2 of the Argyll and Bute Local Plan.**

### E. Archaeological Matters

No known archaeological issues are raised by West of Scotland Archaeology Service (WoSAS).

**Given the above, it is considered that the proposal is consistent with the provisions of Policy LP ENV17 of the Argyll and Bute Local Plan.**

#### **F. Flooding**

The Drainage Impact Assessment states that the River Fyne is influenced by the operations of a major hydro-electric scheme whilst the large ponded area to the north is a remnant of sand and gravel quarrying activities still in operation further north. SEPA's Indicative Flood Map reveals the likelihood of flooding on significantly lower lying ground near the site, but not on the site at any point.

Para. 2.3 of SEPA's latest letter (8<sup>th</sup> September 2011) suggests the addition of a condition relating to units E-G to incorporate SuDS.

**Given the above, it is considered that the proposal is consistent with the provisions of Policy STRAT DC 10 of the Argyll & Bute Structure Plan and Policy LP SERV 8 of the Argyll and Bute Local Plan.**

#### **G. Road Network, Parking and Associated Transport Matters**

Roads have no objections in principle to the proposed scheme subject to conditions regarding visibility splays, access design and gradient, responsibility for housing courts, parking standards and street name plates. It is noted that all roads and footways will be the subject of Roads Construction Consent (S21), Road Bond (S17) and Road Opening Permit (S56). Roads comment that the existing road serving the site and sections of the old A83 will require significant improvements in respect of widening, passing places, visibility splays and drainage.

Transport Scotland recommends a condition regarding visibility splays for the access onto the A83 Trunk Road.

Pedestrian links are proposed that would link the site to Clachan. This would be consistent with the Core Paths Group aspirations for a path network in the area.

**Having due regard to the above the proposal is considered to be consistent with Policies LP TRAN 1, LP TRAN 2, LP TRAN 3, LP TRAN 4 and LP TRAN 6 of the Argyll and Bute Local Plan.**

#### **H. Infrastructure**

SEPA have no objections in principle but offer advisory comments regarding foul drainage, surface water drainage, waste management and regulatory advice.

SEPA find the surface water drainage proposals contained in the Drainage Assessment acceptable but recommend that a condition be included in respect of a phased provision for SuDS schemes.

SEPA confirm that the applicant has been issued with a CAR licence to discharge treated sewage effluent to the River Fyne however from their records it appears it is not in the same location as specified on the submitted planning application drawings. Whilst they consider a variation may be acceptable in principle they still require that a formal CAR application is made for the revised positioning.

In an email dated 12th September the applicant has rebutted SEPA's conclusions stating that a CAR licence for what is proposed has been approved. He goes on to state that two CAR licences, - one for the housing and childcare buildings (CAR/L/1036411 dated 17 July 2009) and one for the Commercial Area (CAR/R/1035832 dated 3 April 2009) were applied for and granted by SEPA. He confirms that it was always proposed that the two systems would share a common outfall.

His latest e-mail correspondence has also been forwarded to SEPA for their comment.

SEPA's most recent letter dated 8<sup>th</sup> September objects to the Masterplan submitted for PDA 9/13. SEPA recommend the applicant submit the details of the waste water drainage and surface water drainage proposals for the overall masterplan area, to establish if they are acceptable for the whole development taking into account any cumulative impact and to resolve our objection to the waste water drainage proposals. They note this is imperative to avoid unnecessary delay and/or further objection from SEPA during future phases.

**Having due regard to the above the proposal is considered to be consistent with Policies LP SERV 1: Private Sewage Treatment Plants and Wastewater (i.e. drainage systems); LP SERV 2 Sustainable Drainage Systems; LP SERV 3 Drainage Impact Assessment and LP SERV 4: Water Supply, of the Argyll and Bute Local Plan.**

## I. Master planning

The Scottish Government most commonly refers to Masterplans being, *'a plan that describes and maps an overall development concept, including present and future land use, urban design and landscaping, built form, infrastructure, circulation and service provision. It is based upon an understanding of place and it is intended to provide a structured approach to creating a clear and consistent framework for development'*. (PAN 83)

The Scottish Government endorses the use of masterplanning in general, but considers that it is especially useful for large sites and in areas/sites which are going to undergo substantial change, have multiple uses, or are sensitive in terms of environmental or landscape terms. We certainly consider this PDA location at Inverfyne which is over 30ha in size aligns with all of these scenarios and would benefit from a co-ordinated and comprehensive approach to current and future development.

Masterplanning the site would allow the landowner to articulate future development aspirations / aims of the PDA and receive feedback from the statutory consultees, local authority and the local community in order that this Phase 1 building block (current application) can be set on the most stable of foundations possible. It would also allow infrastructure (such as roads, sewage, water) considerations to be given proper assessment so it can be planned and phased ensuring that this application does not sterilise or inhibit future development potential of the remainder of the PDA. Given the sensitive countryside and landscape qualities of the site, a masterplan approach would also afford a clearer indication of long-term planning which will be essential to integrate all physical development in the PDA with its wider landscape context. Moreover, given the mixed use nature of this PDA, it will be essential to this phase and others that there are no land use tensions arising from incompatible adjacent forms of development.

Overall, we endorse the Scottish Government's promotion of masterplans as a discipline to ensure that well conceived and long term development frameworks are created for sites which are environmentally sensitive, are subject to significant change, and which are intended to host a variety of differing land uses; all of which are the case with this large PDA. This is embedded in our Local Plan and it is specified in the Supplementary Development Briefs that this site should be masterplanned.

This aspect and requirement for a masterplan has always been made clear to the applicant and was acknowledged by their own consultants as long ago as 2005. During submission to the local plan process made by CKD Galbraith (the applicants agent at the time), dated 13th July 2005 in respect of PDA 9/13 it was provided that:-

*Ardkinglas Estate welcomes the proposed PDA at Cairndow – Inverfyne as a broad indication from Argyll & Bute Council that subject to a detailed ACE and the compliance of any proposals with all relevant Structure and Local Plan policies, that the potential for medium scale development, in particular that linked to the existing Loch Fyne Oyster operation could be realised on this site. The Estate are keen to work with Argyll and Bute Council in overcoming the*

*noted access and road safety constraints as well as with the preparation of the proposed comprehensive Master Plan approach.*

Whilst a sketch masterplan has been submitted for 'indicative purposes only' it falls far short of the level of detail the Council, statutory consultees and the community can comment upon or take comfort from that the design, landscaping, quality, mix of uses and overall sense of place for the whole PDA has been comprehensively considered.

It would be the Council's intention to either endorse any suitable masterplan that is submitted alongside Phase 1 application or adopted it as supplementary planning guidance, both of which are recommended in PAN 83. This would also give the applicant a degree of certainty and security in planning for future phases of development. However, at present, the masterplan has only been submitted for indicative purposes only and is not of sufficient detail or quality to satisfy PAN 83 or the provisions of the Argyll and Bute Local Plan.

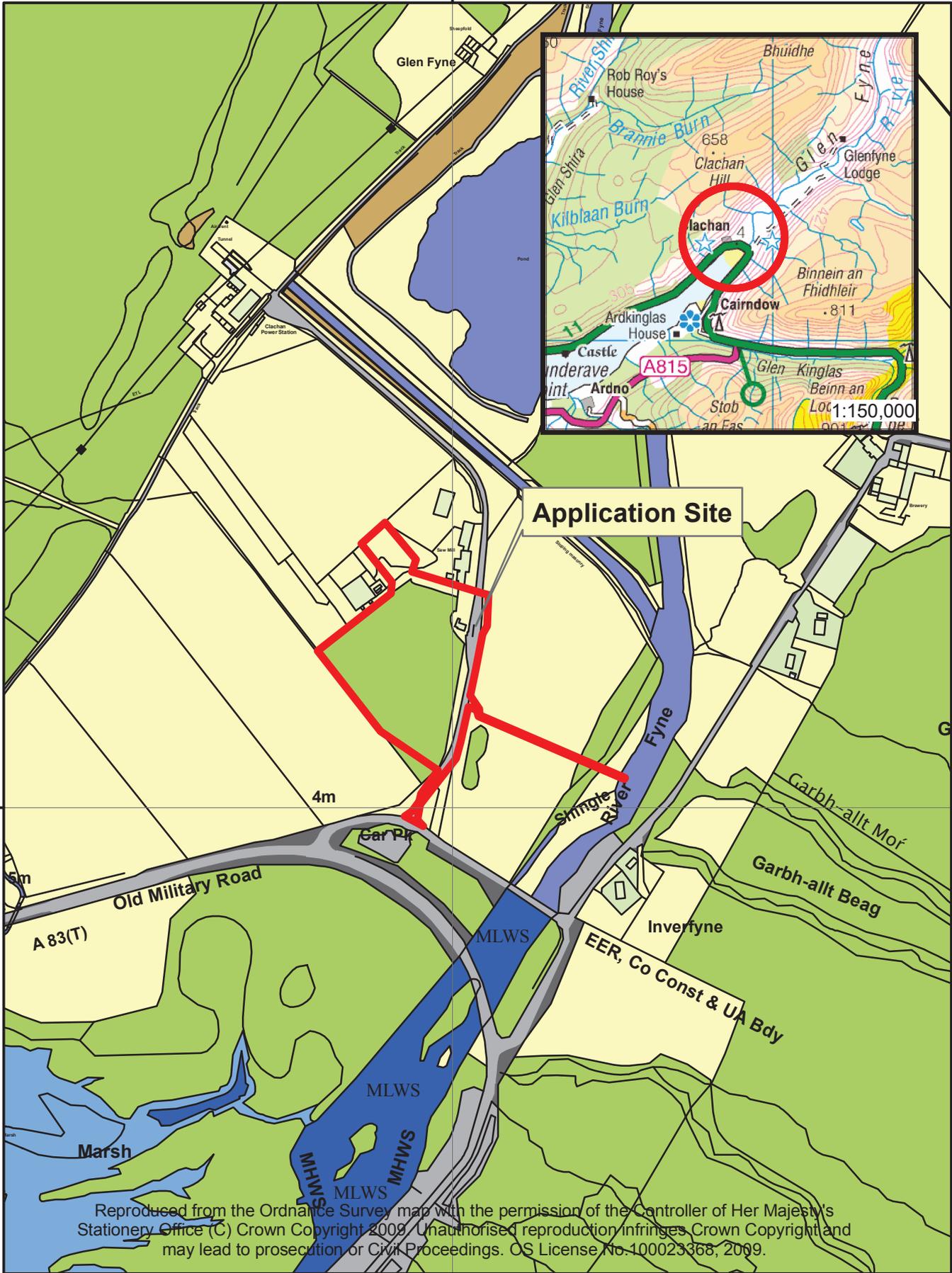
**It is therefore considered to be contrary to paragraphs 11.14 and 11.15 of the written statement of the Argyll and Bute Local Plan (August 2009) and Planning Advice Note 83 – 'Masterplanning'. There is an inability to plan for the future in a coordinated and comprehensive manner with the potential for adverse landscape biodiversity infrastructure and servicing implications in this area of sensitive countryside and panoramic quality**

## **J. Conclusions**

Whilst the components of the mixed-use scheme are considered to be compatible with PDA 9/13, the submitted Masterplan drawings and themes are not sufficiently well-developed to give comfort in terms of the brief for PDA 9/13 and AFA 9/4. The proposal may prejudice the greater development of PDA 9/13 and AFA 9/4 and detailed concern is noted on the intensification and density of the proposal in this sensitive countryside location and giving cognisance of the relatively dispersed settlement pattern in the surrounding area. Furthermore, we note concerns about the proximity of both existing and proposed commercial activities and quarry vehicle traffic movements to the proposed dwellings which may give rise to 'Bad Neighbour' conflicts. At this 'in-principle' stage, the proposal is therefore considered to be contrary to the policies of the Argyll and Bute Structure Plan and Argyll and Bute Local Plan.

It is worth noting that the Scottish Government recently extended an invitation to the applicant and Council to discuss this application in a mediation capacity and in order to seek a mutually agreeable outcome. This invitation was declined by the applicant however the Council still consider the idea of using the Scottish Government Planning Division to be of benefit to both the Council and the applicant in order to unlock this PDA. From the applicant's perspective they will have the benefit of being able to access Scottish Government specialist staff / resources and we as a Planning Authority can use this as a test case to develop "best practice guidance" which can be rolled out in other PDA applications to ensure that this information request i.e. Masterplan is proportionate and delivers "added value" benefits to the applicant, the local community and the Planning Authority.

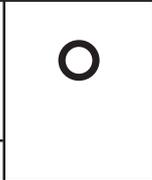
This page is intentionally left blank



Reproduced from the Ordnance Survey map with the permission of the Controller of Her Majesty's Stationery Office (C) Crown Copyright 2009. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or Civil Proceedings. OS License No.100023368, 2009.



**Location Plan relative to  
Application Ref: 09/00385/OUT**



Date: 26.11.10

Scale: 1:5,000

This page is intentionally left blank

**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.