

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING  
COMMITTEE held in the KILMORE VILLAGE HALL, KILMORE, BY OBAN, ARGYLL  
on MONDAY, 24 JUNE 2013**

**Present:** Councillor Sandy Taylor (Chair)

Councillor Gordon Blair	Councillor Alistair MacDougall
Councillor Rory Colville	Councillor Robert G MacIntyre
Councillor Robin Currie	Councillor Donald MacMillan
Councillor Mary-Jean Devon	Councillor Alex McNaughton
Councillor Fred Hall	Councillor James McQueen
Councillor David Kinniburgh	Councillor Richard Trail

**Attending:** Charles Reppke, Head of Governance and Law  
Richard Kerr, Major Applications Team Leader  
Adrian Jackson-Stark, Planning Officer – Development Policy  
Fiona Scott, Planning Officer  
Paul Nicol, Applicant's Agent  
Jane Darby, Objector

**1. APOLOGIES FOR ABSENCE**

Apologies for absence were intimated from Councillor George Freeman.

**2. DECLARATIONS OF INTEREST**

None declared.

**3. GLENFEOCHAN ESTATE: ERECTION OF 2 DWELLINGHOUSES,  
FORMATION OF VEHICULAR ACCESS AND INSTALLATION OF  
PRIVATE WASTEWATER TREATMENT SYSTEMS: LAND EAST OF  
BALNAGOWAN, KILMORE, BY OBAN (REF: 13/00064/PP)**

The Chair welcomed everyone to the meeting. Charles Reppke, the Head of Governance and Law outlined the procedure that would be followed and invited everyone who wished to speak at the Hearing to identify themselves. Thereafter introductions were made and the Chair invited Planning to present the application to the Committee.

On a point of order Councillor Fred Hall sought clarification on whether or not this Hearing should go ahead. He advised that this proposed development was on land being recommended for re-designation as an area of 'countryside' instead of within a 'settlement' area in the emerging Local Plan. He asked how the Committee could give approval for land to be built on that was being recommended for re-designation.

Charles Reppke advised that there was documented legal advice on the process of consultation on the Local Plan. He advised that the re-zoning of this land was not a material consideration in this case as the re-zoning had been objected to and that it would be for the Reporter at a Public

Inquiry to determine whether or not this land should be re-designated or not and that this Public Inquiry was too far in the future to be regarded as a material consideration. He advised that Members were required to determine this application on the basis of the existing Local Plan and that the time for determining that it would be premature to consider the application had not been reached. He advised that his advice to the Committee was that this Hearing should proceed on the basis of the existing Local Plan and other material considerations.

Councillor Colville sought clarification on where it would leave objectors to the designation in the current Local Plan if this application was granted. Charles Reppke advised that this process would still go ahead and that Members were not at a point yet which would prevent them from dealing with this case today. He advised that it could still be 10 or 12 months away before determination of the emerging Local Plan was concluded and that it would not be appropriate to wait a year to determine this application. He advised that there was case law set out advising when it would be appropriate for applications not to be considered until the conclusion of the Local Development Plan process.

Councillor Hall referred to planning permission being valid for 3 years and that the Applicant could wait until just before expiry of the planning permission to develop the land. He asked if in the meantime that land was re-zoned would that mean the Applicant would be in breach of the new Local Plan. Charles Reppke advised that this would not be the case as the Applicant would have their consent to develop the land. For the avoidance of doubt he advised that Members were dealing with the current adopted Local Plan and the zoning that applied within it.

At this point Councillor Robert G MacIntyre joined the meeting and Charles Reppke confirmed that he would be able to take part in the meeting as the Hearing process had still to commence.

The Chair then invited Planning to present their case.

## **PLANNING**

Richard Kerr presented the case on behalf of the Head of Planning and Regulatory Services. He advised that this was a local detailed application for the erection of two detached dwellings and ancillary development on land adjacent to a property known as Balnagowan, Kilmore. It was an irregular shaped piece of open pasture bisected by a small watercourse which lay to the south of an existing cluster of dwellings, which at present comprised six buildings on the north side of the road, and three buildings on the opposite side of the road adjoining the application site. He advised that the land adjoined open agricultural pasture to the south. He advised that the cluster was informal in its layout except for more recently constructed buildings on the right which comprised a linear row of three addressing the public road. He referred to a plan showing the location of the cluster relative to the remainder of Kilmore, the flatter land which was available for agricultural use and the surrounding more elevated wooded land. He also referred to the proposed layout of the development and advised that the plots would be bisected by a small watercourse and by a

realigned electricity line. During the course of the processing of the application, he advised that a minor amendment was made to the design of plot 2 which deleted the two first floor windows from Elevation A and included two additional roof lights in Elevation B as a consequence, and so these were the plans for which permission was sought, rather than those originally submitted. He referred to the location of the site in the context of the adopted Argyll and Bute Local Plan and advised that it lay within the pink coloured 'settlement' boundary for Kilmore, which was fragmented into various patches to reflect the dispersed but clustered nature of the settlement as a whole. He advised that land captured within settlement boundaries was subject to the operation of Policy STRAT DC 1 which established a presumption in favour of small scale development within Minor Settlements, such as Kilmore, on appropriate infill, rounding-off and redevelopment sites, subject to it being compatible with a rural settlement location and to it meeting other relevant development plan policy requirements. He advised that small scale was defined in the plan as being development not exceeding five dwelling units. Policy LP HOU 1 also supported housing development within settlement boundaries provided that it did not give rise to unacceptable environmental servicing or access impacts. He advised that Policy LP ENV 19 required development to be of a scale and laid out in such a manner as to secure integration with existing development. Appendix A to the plan provided advice on design and materials which was complimented by that within the Council's published Sustainable Design Guide. In this case, he advised that the scale of the buildings relative to the land available and relative to existing properties was appropriate. The positioning and orientation of the buildings was such as to reinforce the character of the established grouping of buildings. The design and materials satisfied the Council's published advice. The relationship with adjacent buildings was such that required separation distances, privacy and amenity were safeguarded. He advised that the principle of the development of the site for housing purposes was therefore consistent with its location in the local plan identified 'settlement' boundary and the form and character of the development was also compliant with development plan policy. He advised that the development would entail the relocation of an existing septic tank and the provision of new septic tanks to serve the proposed dwellings. A shared vehicular access with on-site parking and turning for each property was also proposed. He advised that these arrangements would satisfy Policies LP SERV 1, TRAN 4 and TRAN 6. He advised that there were no objections to the development from consultees including the Kilmore Community Council. However, he advised that a comment had been made by the Community Council that they would wish to see consideration given to the preservation of the traditional nature of the small townships which constituted Kilmore and to that end they were of the view that the group of buildings at Kilmore Farm had already reached 'an ideal level'. He advised that there had been 24 objections received to the proposal from third parties, of which half appeared to emanate from Kilmore from a total of six properties. The various grounds of objection were summarised in the report. He referred to supplementary planning report no. 2 and advised that this covered the issue raised by Members at the last committee meeting about the status of the forthcoming development plan in relation to this application. In view of representations made in response to the recent public consultation exercise in respect of

the impending Local Development Plan it had been agreed by the Area Committee, and subsequently the full Council, that that part of the settlement boundary within which the application site lay should be reclassified as part of the 'countryside' zone in the Local Development Plan. Members had questioned whether it would be appropriate to grant permission or whether it would be premature to do so in the light of the Council's stated intention to re-classify the land. He advised that possible re-designation would be a matter for the Reporter appointed to preside over the local plan inquiry, as given the objection received to its deletion as 'settlement' boundary from the current Applicant, the appropriate status of the land in the forthcoming Local Development Plan context was a matter of dispute. In this context, he advised that the adopted plan must prevail and that the forthcoming Local Development Plan could not be given any significant weight as a material consideration at this stage, as there was no certainty as to what the outcome of the inquiry process would be. Although prematurity can be a ground for refusal where it was anticipated that there could be a prospect of a change in policy position, he advised that this would only be legitimate where the matter was about to be imminently resolved one way or another, which was not the case in this instance. He advised that the Scottish planning system was founded on having a regularly reviewed development plan to provide a context for the making of individual planning decisions. He advised that Scottish Planning Policy emphasised the value of having a plan led system providing a practical framework within which planning decisions could be made with a degree of certainty and efficiency. He advised that Section 25 of the Planning Act required that applications be determined in accordance with the development plan unless material considerations indicated otherwise. Where a proposal was in accordance with the development plan the principle of the development should be taken as established and the process of assessment should not be used to visit that. Although there has been a move from the community to influence the Council to re-designate the land to remove the prospect of future development, he advised that that case had still to play itself out as part of the inquiry process and the adoption of the Local Development Plan. For the time being, he confirmed that the current status of the land as 'settlement' area remained unaffected, and it was open to any prospective developer to apply for permission for development in advance of the point at which the designation may be changed. He advised that the suitability of the site for the particular development proposed must be considered in the light of its current status and not what it may or may not prove to be at some point henceforward. Despite recent events, he advised that at the time of the adoption of the current plan some capacity for limited expansion of the existing cluster of development was identified by the Council and provided for by the definition of a 'settlement' boundary including hitherto undeveloped land on the margins of the cluster. He advised that that plan remained in force and anyone with interest in that land had a reasonable expectation of the prospect of planning approval for small scale development as provided for by Policy STRAT DC 1, provided that there was no servicing, access or other constraints which may otherwise restrict development potential. In this case the numbers, scale, layout, design, material, access and servicing of the dwellings proposed were consistent with the development plan policies which were relevant to the

consideration of this case. The development plan therefore supported both the principle and the detail of the development. He advised that third parties were exercising their legitimate right to seek to influence the status of the land at the expiry of the current plan when it was due to become superseded by the new Local Development Plan. That move however could not intervene in the determination of an application made during the life of the adopted plan and it was equally legitimate for the Applicant to seek to secure permission in conformity with the adopted plan, in advance of that review being completed. Accordingly, he advised that he had no option other than to commend the application to Members as being fully compliant with the provisions of the development plan remaining in force for the time being. The on going bid to seek to influence the current status of the land by way of the forthcoming Local Development Plan could not amount to a legitimate material consideration of sufficient weight to justify the setting aside of the presumption in favour of the development plan, which was clearly established by statute. He advised that the application was therefore recommended for approval subject to the conditions set out in supplementary planning report No.2.

## **APPLICANT**

Paul Nicol from Bell Ingram advised that he was representing the Applicant. He advised that on the basis of the 2009 adopted Local Plan the Applicant decided to apply for the erection of 2 dwelling houses on the development site and that it was his opinion that looking at the layout this would achieve a rounding off of the 'settlement' area. He advised that no objections to this proposal had come forward from Roads, Scottish Water, Environmental Health or Archaeologists and that SNH had not commented as the site was not part of a SSI or SSC. He also advised that the Community Council had not objected though had made comments as detailed in the report of handling. Mr Nicol advised that the Applicant had first submitted a planning application in 2012 and after initial comments from objectors this application was withdrawn and a new one re-submitted in 2013 in order to try and address some of the issues raised. He advised that the Applicant had tried to design houses that would fit in with the countryside on a scale that would fit with the site. He referred to concerns expressed by residents about the first floor windows for the plot 2 dwelling and that amended Plans had been submitted which removed these windows which previously overlooked neighbouring properties. He advised that this application complied with the Local Plan, that statutory consultees had not objected and that the Applicant had tried, where possible, to create dwellings that would fit well with the countryside. In terms of objections received he advised that there were 24 with 6 of these being from local addresses and of these 6, 3 being from houses new to the settlement. He advised that the Applicant had complied with everything required and asked that the application be approved.

As there were no Statutory Consultees or Supporters present the Chair invited the Objectors to present their case.

## **OBJECTORS**

Mrs Jane Darby advised that she had been nominated to speak on behalf of all the Objectors and advised that apologies for absence had been received from Mrs Frances Darby, Mrs Fiona Haward, Mr Derek Cowan, Mr Mark Jones, Mr Alex Darby, Mr John Beaton, Mr Joseph Darby, Mr John Mittelstein, Ms Caroline Booth, Mr Tom Turnbull and Mrs Alison Carre and Mr Tristan Carre. She advised that the Objectors believed there were strong grounds for rejecting this planning application. She referred to the land in the emerging Local Plan being ratified by the Council at a meeting in December 2012 as 'countryside' where the assumption was houses would not be given planning permission and felt that this should be a material consideration. She advised that the Objectors felt the current plan was ageing and would have been discussed in 2008 before being put in place in 2009. She advised that the needs of Lorn and the local community have since evolved and should be taken into consideration. She advised that the emerging Argyll and Bute Local Development Plan should possibly outweigh the ageing adopted plan and that the advice in the report of handling stating that "the emerging Local Development is currently out to consultation and can not be a material consideration before 29 April 2013" was wrong. She advised that this was prime agricultural land with no scrub land and as such was a valuable resource to the area. She advised that the topography of the area did not lend itself to rounding off or infill of the community as the burn and difference in land height provided a natural boundary to the community. She advised that an access road to plot 2 would have to be built across the land, parallel to Musdale Road with a bridge across the burn with a further access to plot 2 which would change the nature of the current clachan. She referred to the land being described as 'flat area of open pastureland' and advised that it was, in fact, two distinct parcels of land, one being sloping, open pasture land leading towards the burn. She advised that the second plot would be accessed across this pasture and would have to cross the burn which had a water course of at least 2 or 3 metres at that point and then rose to a plateau near Balnagowan. She quoted Scottish Government Rural Development Plan, Planning Policy 15 which stated that "...prime agricultural land should not be eroded in a piecemeal way...." and advised that they thought that was what was happening in this case. She advised that the land was used quite intensively for agriculture and was used as grazing for cattle and/or sheep constantly. She advised that the land was also used to herd animal movement between and across the burn and that there was no other existing link currently between the fields. She advised that this development would not enhance the use of the land. She advised that at one time the land was arable and that this type of land was rare and that once built on this usage for the area would also be lost forever to the area. She advised that their objections were supported by the Argyll and Bute Local Plan which stated at paragraph 2.16 "avoiding the use of better quality agricultural land, where appropriate, and encouraging the re-use of brown field land and existing buildings; involving local communities in the process of decision making; protecting, conserving and enhancing the natural and built environment given particular priority to those resources that are finite". She advised that their land was finite and could not be replaced once used. She advised that the land was good quality agricultural land and possibly arable. It was not brown field land and had no existing structure. She advised that when the Council

were asked to support the objection at a full community council meeting a vote was taken to reiterate the point of view that the “clachan around Kilmore farm has reached an ideal level”. She advised that the current buildings north of Musdale Road followed the topography of the land and were limited by the hill meeting the road. On the south side of Musdale Road the houses were part of the complex of farm buildings which had been reused to form accommodation. She advised that Balnagowan was the last newer build on the site and that its boundary paralleled the burn which was seen as a boundary and outfall for its septic tank. She advised that the proposal for these houses did not enhance or address the community needs. She advised that houses of this size were available around Oban and in fact, to her knowledge, some new builds have been for sale for over 5 years. She advised that the houses in Kilmore did not meet the affordable housing agenda and referred to extracts from Policy LP HOU 1 – General Housing Development. She advised that the Objectors felt that this would not be an enhancement to the community, which was a key feature of the Local Plan. She advised that it would have a detrimental effect on the amenity of the existing community and that the siting of the houses and the design was insensitive to existing housing notwithstanding the change made to the windows for plot 2. She advised that there would be an access road constructed running for 45+ metres, parallel to Musdale Road before crossing the burn and turning sharply uphill to the parking area for plot 2. She advised that this would increase the intensity of roads and buildings in the small community. She advised that the development would be on the periphery of the settlement which had a natural feature of the burn and raised land level as a cut off line on that land. She advised that all the objections were put forward when asking for re-zoning of the land as countryside and that the full Council agreed with the arguments and passed the plan in December 2012. She advised that Objectors believed that the emerging Local Development Plan should be a material consideration in the form it is now whilst waiting decisions from the Reporter. She also advised that the power line on the plans would be moved and that the Planners did not appear to have made reference as to when this should be moved and questioned whether it should have been included as a condition that this be completed before work started on the site. She advised that Feochan Glen had been part of a biodiversity study in the past and that Marina Curran-Colthart had been contacted during the consultation process and that she had said that a study of the area may be appropriate. She queried whether or not the Biodiversity Officer had been contacted for a firm opinion on this. She also referred to the relocation of the septic tank.

## **MEMBERS' QUESTIONS**

Councillor Hall referred to earlier legal advice that re-zoning of land within the emerging Local Plan was not a material consideration and asked was that not a question of opinion and that other legal opinion on this could be different. Mr Reppke advised that the timeline for Local Plan hearings had been set down by law and that there could be a Court of Session legal challenge if they went against this legal advice given that the Council had previously received specialist legal advice on this point in relation to a matter in Helensburgh. He advised that this legal advice, which was also detailed in the Planner's supplementary report, was the proper advice.

Councillor Hall sought confirmation on whether or not the emerging Local Plan was a material consideration and also asked if the emerging Local Plan outweighed the ageing adopted Local Plan. He advised that he noted the new Local Plan had been submitted to the Scottish Government on 29 April 2013 and asked if a decision had been reached on the new Local Plan. Richard Kerr advised that he did not regard the emerging Local Plan to be a material consideration and that was why no reference was made to it in the report of handling. Reference was only made to the current Development Plan policies and therefore the emerging Local Plan ought not to be given any weight. He advised that the whole Local Plan process had still to be gone through and that the outcome of this process was not yet known. He advised that it will be for the Reporter to decide whether or not this land remained within a 'settlement' zone or not. He advised that the current Local Plan which came into force in 2009 was up to date and that we were still well within the life of the current Local Plan which required to be updated and replaced every 5 years. He advised that last time round prior to the adoption of the current plan Members were dealing with Plans from the 1980s and 1990's which were seriously outdated so some consideration was given to the emerging local plan as the adopted plans were so old. He advised that it was not the case for this current Local Plan which was still up to date.

Adrian Jackson-Stark advised that the proposed new Local Plan was sent to the Scottish Government for consultation. He advised that it would not be the Scottish Government that would decide on the outcome of the Local Plan, it would be the Reporter at the Public Inquiry stage.

Councillor Currie asked if this land was croft land and advised that if it were the chances of it being de-crofted would be zero. If this land was not croft land he asked which policies were in place which dealt with the impact of development on agricultural land. He also referred to the application being submitted in 2013 and asked if the application had been fast tracked as it seemed quite quick to have reached the stage of determination. Councillor Currie also referred to comment that determination of the new Local Plan was not imminent as it would not reach that stage until the end of the year and asked was the end of the year not imminent. Richard Kerr advised that the land had not been declared as croft land and that it had been regarded as agricultural land in the control of the estate. He advised that there was no policy in the Plan to protect agricultural land. He advised that a number of years ago the Government changed its stance toward the protection of good quality agricultural land. He confirmed that there was no central Government or Local Plan protection for agricultural land as such. Mr Kerr advised that the Applicant submitted their application on 14 January 2013 and that it had reached the May PPSL Committee for consideration and that to take 6 months to reach this point in the process was not a quick turnaround. In respect of immanency of the outcome of the new Local Plan, he advised that it was not known what the end date would be and that it was not known when or how long the Public Inquiry would take nor who the Reporter would be nor how long they might take to produce their conclusions. He advised that the new Local Plan was not likely to be adopted until the end of 2014 and that it would be unreasonable for



someone to have to wait 2 years for a decision on their application when it had been submitted in accordance with the current Local Plan and there was a legitimate expectation of a decision. The outcome of the Local Plan would only be imminent in Mr Kerr's view if the Public Inquiry had already been held and the outcome of that was awaited.

Councillor Colville referred to the Planning Hearing held in Ardfern the previous week when the Applicant had been requested to submit new Plans for consultation. He referred to the amended Plans submitted in respect of this application and asked if they had gone out for consultation. Richard Kerr advised that the amended Plans referred to at the Ardfern Hearing were sufficiently materially different as to change the recommendation from refusal to a possible approval. In this case he advised that the Plans submitted were recommended for approval in their original form and that those alterations to them were minor. He advised that they were deemed to be non-material amendments which in the normal course of events householders could make under permitted development rights. He advised that Planning had accepted the amended plans and were recommending by way of condition removal of the permitted development rights which would otherwise apply to this dwelling.

Councillor Colville sought clarification on the protection of agricultural land and the protection of access to agricultural land. Richard Kerr advised that there was no statutory protection for agricultural land and that there were no policies in place that specifically precluded development of agricultural land though there was advice on the matter within Appendix A which was guidance to go along with the Development Plan. He advised that a decision was taken in 2009 that there was scope to add a piece of land which was agricultural in order to expand Kilmore and that the decision was taken to include the agricultural land in the 'settlement' boundary at that time. It was confirmed that the Appendix A advice on agricultural land related to the various 'countryside' zones in the plan but not to land which had been designated as 'settlement' area.

Councillor Colville sought clarification on the Reporter's findings in 2009 on Rural Opportunity Areas. Adrian Jackson-Stark advised that the Reporter had determined that Rural Opportunity Areas should be removed from National Scenic Areas and Areas of Panoramic Quality on the basis of landscape. He advised that this application site was not within a Rural Opportunity Area and that it was within a 'settlement' zone.

Councillor Colville sought and received clarification that the whole application site including access roads lay within the 'settlement' boundary.

Councillor Kinniburgh asked if someone wished to make a change to land use in the Local Plan would Planning expect this representation to be made during consultation on the Main Issues report. Adrian Jackson-Stark advised yes or even before that. He advised that consultation was undertaken before publication of the Main Issues report and that this consultation was repeated following publication of the Main Issues report.

Councillor Kinniburgh referred to the application being submitted in January 2013 and asked how long before this the Applicant had considered development of this land. Paul Nicol advised that an application had first been submitted around July 2012 and that this had been withdrawn in order to try and address access issues raised.

Councillor Kinniburgh asked if the consideration of the development of the land had been based on local knowledge of the surrounding area. Paul Nicol advised that consideration of development of the land had been looked at since it had been designated as being within the 'settlement' zone within the Local Plan in 2009.

Councillor Kinniburgh asked why the objectors had not commented on the designation of the land during consultation on the Main Issues report. Jane Darby advised that it had been very difficult to establish when it would be appropriate to make representations on the Local Plan. She advised that it was not until late in the process that they had been able to make contact with Planning in order to find a way forward to submitting their comments and apologised for not finding a way to do this at an earlier time.

Councillor Kinniburgh asked if knowledge of the application had prompted objection to the Local Plan. Jane Darby advised that they had first looked at this back in 2011 which had prompted a decision to ask for a re-classification of the land.

Councillor Kinniburgh referred to relocation of the septic tank and the power lines and asked why there were no conditions recommended in respect of either the tank or power lines. Richard Kerr advised that a condition was not required in respect of relocation of the septic tank as this would need a separate planning permission in its own right so it was not necessary to condition it. In terms of power lines he advised that Planning did not condition these as do not approve electricity supplies and associated overhead lines and that any diversion of a line was a matter to be negotiated between the Applicant and the electricity company. He confirmed that there was a condition in respect of the new septic tanks serving the new dwellings but not for the relocation of the existing septic tank.

Councillor Devon asked if there was a requirement for a biodiversity study to be carried out in respect of this application. Richard Kerr advised that there was not a requirement for such a study in respect of the site as the land had been in use for grazing and did not benefit from any nature conservation interests.

Councillor Devon referred to the site visit where cattle were observed grazing on the application site which was in her opinion prime agricultural land. She referred to the contents of policy LP ENV 1 which sought to maintain or enhance the natural, human and built environment and asked would it not be justifiable to do this for this particular piece of land. Richard Kerr advised that policy LP ENV 1 underpinned what planning does in terms of the assessment of environmental considerations. He advised that in this case we were dealing with a piece of land specified in

the Local Plan as being within a 'settlement' area where there was a presumption that something would happen which was the reason why it had been extended out beyond the limits of the existing cluster. He advised that LP ENV 1 looked for development which respects the existing cluster and does not impact on the surrounding area in terms of scale, materials, design etc. He advised that there was not a requirement to enhance the environment as one might expect in association with a much larger development, but the need here was to secure a form of development which was in character with the remainder of the cluster and sympathetic to its surroundings.

Councillor Devon referred to comment that there were no policies in respect of agricultural land and asked could agricultural land not come under Natural Heritage interests as far as the plan was concerned. Richard Kerr advised that would not be the case as 'agricultural' implied some working of the land in terms of stocking with animals or crop production rather than any inherent nature conservation qualities of the land which were there regardless of whether it was capable of being worked for agricultural purposes or not.

Councillor Trail sought and received clarification that the application site was in the ownership of the Applicant which included neighbouring land and that the cattle grazing in the field belonged to the Applicant.

Councillor Blair asked if the design of the access road could be changed to address concerns of the objectors. Paul Nicol advised that Roads Officers were happy with the access road but if it could be amended to make it less harsh then the Applicants could do that.

Councillor Blair sought and received clarification that there were no flooding issues on this land.

Richard Kerr confirmed that the reason for the single access point was that this was the best place in terms of visibility splays. He advised that apart from the hard surfaced bellmouth the actual driveway would be gravel surfaced.

Councillor MacIntyre asked if it was agreed to continue this till adoption of the new Local Plan and the new Local Plan did not change the designation of the land could there be a claim against the Council. Richard Kerr advised that the Applicant would have a right of appeal against non-determination and that the Reporter would base his findings on the current Local Plan if the application was refused on the grounds of prematurity. He advised that if the application was refused on grounds of prematurity the Applicant could either appeal the decision or if Local Plan Inquiry Reporter decided not to change the designation of the land it would be open to the Applicant to come back with a new application. Charles Reppke advised that as long as the Council complied with the requirements of the Local Plan process there should be no challenge to that.

Councillor Currie referred to comments that the objectors were late and sought clarification on this as according to the supplementary planning

report the Council approved removal of the site from the 'settlement' area and that this went out for consultation between 4 December 2012 and 29 April 2013 and that the objectors were well within that period. He also sought clarification on when during the Local Plan process changes would carry any weight based on whether or not they were objected to. Richard Kerr advised that in one respect the objectors were late as they did not object in 2007/08 when the existing Local Plan was being put together. In terms of the point when representation was made, he advised that at any point engagement in the process was legitimate. He confirmed that there were two types of proposals or policies going forward into the emergent Plan, ones which are uncontested and to which weight could be accorded on the basis that they would be included in the final version of the plan and would not be considered by the Reporter. He advised that contested ones could not be relied upon as they had still to be determined by the Reporter.

Councillor Colville sought and received confirmation that the amended entrance into the development site was within the 'settlement' zone.

Councillor Colville referred to supplementary planning report no 2 in which it detailed the view by the Development Policy Unit that the site did not have the characteristics to warrant its designation as 'settlement' and sought comment from Planning. Richard Kerr advised that when the 2009 Plan was put together it had been decided that there was scope for additional development here so the 'settlement' boundary was extended specifically to afford opportunities for that. He advised that this was a matter of record and the current Policy position in front of Members now. In respect of the emerging LDP, he advised that residents do not think this site is suitable for development, the Policy Unit see their point of view in this respect and it has been supported by the Oban, Lorn and the Isle Area Committee and the Council that it ought to be removed from the 'settlement' zone and that this will be taken forward during the process of the adoption of the new Local Plan. However, he advised that in 2009 it was agreed that this area be included in the 'settlement' zone and until the Reporter makes a decision on the future designation of this area it is necessary to make decisions in the legacy of the decisions which led up to the adoption of 2009 plan. He advised Members that they could not dismiss the 2009 Plan until it was superseded by the new Plan and that at the moment the adopted Local Plan took primacy.

Councillor Kinniburgh sought and received clarification that he was correct to assume that the Oban, Lorn and the Isles Area Committee and the Council agreed to recommend a change to the designation of this area in the new Local Plan and that as part of the consultation process on this an objection was received and that the final say now lay with the Reporter.

## **SUMMING UP**

### Planning

Richard Kerr advised that as with all planning applications, Section 25 of the Planning Act required that the application should be determined in accordance with the adopted Development Plan, unless other material

considerations indicated otherwise. He advised that the application site lay within the 'settlement' boundary for Kilmore as delineated by the 2009 Local Plan. Policy STRAT DC 1 applied in this context which provided for 'small scale' development in the context of minor settlements such as Kilmore. He advised that small scale development was defined as being up to 5 dwellings on appropriate infill, rounding off and redevelopment sites. The principle of development was therefore in accordance with the Development Plan which remained an up to date Plan having been approved in 2009 and within the expected 5 year life of a local plan. In terms of the scale, design layout, materials, access, parking and infrastructure, he advised that the proposal satisfied other relevant policies of the Plan. Statute and Scottish Planning Policy established a plan led system in order to provide a practical framework within which planning decisions could be made with a degree of certainty. He advised that for that reason there was a presumption that decisions should be made in accordance with the plan, for the duration of the life of that plan. He advised that this application had been complicated by the bid made by residents, and supported by the Area Committee and the Council, to delete the application site from the existing 'settlement' boundary and for it to revert to 'countryside' status. That position was however contested by the Applicants and so could not be relied upon for the time being as the matter will fall to be considered at the end of the Local Development Plan process by the Reporter presiding over that inquiry. He advised that the re-designation was therefore an intention, but a contested intention, so it could not be relied upon in current decision making. He advised that it could not be a material consideration of sufficient weight to overcome the presumption in favour of development established in statute in terms of the primacy of the current Development Plan. He advised that the proposal satisfied Development Plan requirements, was supported by the Local Plan 'settlement' boundary, and ought to be approved subject to the conditions set out in supplementary planning report no.2.

### Applicant

Paul Nicol advised that the application submitted was on the basis of the adopted Local Plan and that the Applicant had tried to take account of local objections and that it was acknowledged that they would not be able to satisfy everyone. He advised that there were now 4 houses built in the area which were not part of the original settlement. He advised that in trying to please everyone the Applicant has tried to design houses in such a way as to minimise impact. He also referred to the amended Plans submitted which removed first floor windows overlooking a neighbouring property.

### Objector

Jane Darby reiterated that some weight should be given to the fact that the Council has supported the re-zoning of this area and advised that she did not feel Planning were giving it sufficient weight. She referred to the footpath advising that it would be out of character with the surrounding area. She advised that this development would make the area denser and change how the community felt about the area. She advised that the access path would be intrusive and that the character of the community

would change this rural setting of Kilmore. She advised that the community were trying to protect this better quality land. She referred to there being no statutory protection for farm land and that this agricultural land would be missed from Argyll and Bute if the development went forward and would be lost forever.

The Chair asked everyone to confirm if they had received a fair hearing and they all confirmed this to be the case.

## **DEBATE**

Councillor Hall referred to Mr Kerr advising that the status of the land was being contested and that it was unreasonable for the Applicant to wait up to 2 years for this to be resolved. Councillor Hall advised that it was his opinion that the status of the Local Plan was in limbo and that the application should be rejected as he did not think that Members could make a decision based on something that may change.

Councillor Trail advised that he took a contrary view to that of Councillor Hall. He advised that he was in no doubt that consideration of this application should be taken in light of the current Plan and that he had no other option than to accept the recommendation of Planning Officers.

Councillor Colville advised that he thought the proposed new Local Plan could be a material consideration as both the Oban, Lorn and the Isle Area Committee and the Council have proposed changes to the current Local Plan. He advised that he was minded to recommend a continuation of this application until the Reporter had made a decision but would wait to hear what his other colleagues thought.

Councillor Currie referred to supplementary report no 2 which stated that 'the possible re-designation cannot be considered as a material consideration of sufficient weight to set aside the existing 'settlement' zone designation in the current adopted Local Plan". He advised that he read this to mean that this was a material consideration but that it did not have sufficient weight. He advised that it would make a mockery of the whole system when the Area Committee and the Council agreed to the re-designation following representation from the community and which was also supported by Planning Policy Officers, if this was not given sufficient weight. He advised that the new Local Plan was imminent and not a few years down the line. He advised that the re-designation of the site in question had only received one objection and that he did not think this would go to a hearing and that it would be disposed of at an early stage. He advised that he thought a considerable amount of weight should be given to this and that he supported the view that this application was premature and that consideration of it should be deferred.

Councillor McNaughton advised that Members had heard strong legal advice that the new Local Plan was far enough away and it was the current Plan Members were considering. He noted that it was possibly 18 months away before a decision on the new Local Plan would be made. He advised that he was in no doubt that he had to take the advice of Officers and that he supported the recommendation to approve the

application.

Councillor Kinniburgh advised that he was of the same view as Councillors Trail and McNaughton. He advised that the application should be considered on the basis of the current Local Plan and that he supported the recommendation to approve the application.

Councillor Blair advised that he had listened to all the arguments. He advised that this was the kind of development that should be encouraged and that he would not like to see 2 families being prevented from staying in this community. He advised that on this basis he supported the recommendation to approve the planning application.

Councillor MacMillan advised that he supported the Planners and that he had made his decision based on the 2009 Local Plan.

Councillor McQueen and Councillor MacIntyre both confirmed that they supported the Planners.

Councillor Taylor advised that he had noted that some Members had expressed reservations and that many were looking to support the recommendation to approve the application and asked if any Members had a Motion to recommend otherwise.

### **Motion**

To agree that his application was premature and that consideration of this should be deferred.

Moved by Councillor Robin Currie, seconded by Councillor Fred Hall

Richard Kerr advised that it was less appropriate to continue consideration of this application than it was to refuse it on the grounds of prematurity. He advised that the Applicant was entitled to a decision. He advised that it was not appropriate to continue it for an unknown period of time. He advised that if the application was continued the Applicant could appeal on the grounds of non-determination and that a Reporter would then assess the case on the basis of the current adopted Local Plan.

Councillor Currie advised that having consulted with Councillor Hall as seconder of his Motion they both agreed to this being withdrawn.

### **Motion**

To agree to refuse the planning application on the ground of prematurity.

Moved by Councillor Fred Hall, seconded by Councillor Robin Currie

Charles Reppke referred to case law in respect of when an application could be considered premature. He advised that Members risked being open to challenge if this decision was taken however, on balance, he advised that this Motion was competent.

Councillor Colville sought clarification on whether or not an Amendment could be put forward recommending continuation of this application until the Reporter's decision on the new Local Plan was known.

Charles Reppke advised that to continue consideration of an application for an unspecified time was not appropriate. He advised that the Applicant could Appeal on the grounds of non-determination as referred to earlier by Mr Kerr.

### **Amendment**

To approve planning permission subject to the conditions and reasons detailed in supplementary planning report no. 2.

Moved by Councillor Trail, seconded by Councillor Taylor.

The Amendment was carried by 10 votes to 3 and the Committee resolved accordingly.

### **DECISION**

Agreed to grant planning permission subject to the following conditions and reasons:-

1. No development shall commence on site, or is hereby authorised, until the vehicular access at the junction with the public road has been constructed in accordance with the Council's Roads Engineer Drawing Number SD 08/004a with visibility splays of 53m x 2.4m in each direction formed from the centre line of the proposed access, and measures to prevent surface water run-off onto the public road. Prior to work starting on site these visibility splays shall be cleared of all obstructions above the level of the adjoining carriageway and thereafter maintained to the satisfaction of the Planning Authority.

The vehicular access granted consent shall be constructed to at least base course level prior to any work starting on the erection of the dwellinghouses which it is intended to serve and the final wearing surface of the road shall be applied prior to the first occupation of the dwellinghouses.

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

2. No development shall commence on site, or is hereby authorised, until an additional passing place has been completed alongside the UC25 Musdale public road between the A816 and the site entrance in accordance with the Council's Roads Engineer Drawing Number SD 08/003a in a location that must first be submitted in plan form to and agreed in writing by the Planning Authority in consultation with the Roads Authority.

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



*commensurate improvements to the existing access regime in accordance with Local Plan Policy LP TRAN 4 part D.*

3. The proposed on-site vehicular parking areas shall provide parking for three vehicles within each plot and shall be formed in accordance with the approved plans and brought into use on each plot prior to the first occupation of the dwellinghouse on each respective plot hereby approved.

*Reason: To enable vehicles to park clear of the access road in the interests of road safety by maintaining unimpeded vehicular access over that road.*

4. No development shall commence on site, or is hereby authorised, until full details of the proposed means of private foul drainage to serve the development, including evidence of SEPA's consent to the proposed discharge to a watercourse, has been submitted to and approved in writing by the Planning Authority. The duly approved scheme shall be implemented in full concurrently with the development that it is intended to serve and shall be operational prior to the first occupation of the dwellinghouses

*Reason: To ensure that an adequate means of foul drainage is available to serve the development*

5. No development shall commence on site, or is hereby authorised, until full details of the proposed means of crossing the burn within the site to enable access into plot 2 has been submitted in plan form to and agreed in writing by the Planning Authority in consultation with SEPA. The development shall thereafter be completed in strict accordance with such details as are approved.

*Reason: In the absence of any details having been submitted and to ensure that the burn is not adversely affected by the method of implementing the development hereby approved.*

6. No development shall commence on site, or is hereby authorised, until a scheme of boundary treatment, surface treatment and landscaping has been submitted to and approved in writing by the Planning Authority. The scheme shall comprise a planting plan and schedule which shall include details of:

- i) Existing and proposed ground levels in relation to an identified fixed datum;
- ii) Existing landscaping features and vegetation to be retained;
- iii) Location design and materials of proposed walls, fences and gates;
- iv) Proposed soft and hard landscaping works including the location, species and size of every tree/shrub to be planted;
- v) A programme for the timing, method of implementation, completion and subsequent on-going maintenance.

All of the hard and soft landscaping works shall be carried out in accordance with the approved scheme unless otherwise approved in

writing by the Planning Authority.

Any trees/shrubs which within a period of five years from the completion of the approved landscaping scheme fail to become established, die, become seriously diseased, or are removed or damaged shall be replaced in the following planting season with equivalent numbers, sizes and species as those originally required to be planted unless otherwise approved in writing by the Planning Authority.

*Reason: To assist with the integration of the proposal with its surroundings in the interest of amenity.*

7. No development shall commence on site, or is hereby authorised, until full details of the proposed material, texture and colour for all external materials have been submitted to and agreed in writing by the Planning Authority. The development shall thereafter be completed in strict accordance with such details as are approved.

*Reason: In the absence of any details having been submitted and to ensure that the development integrates with its setting.*

8. The development shall be implemented in accordance with the details specified on the application form dated 11/01/13 and the approved drawing reference numbers:

Plan 1 of 7 (Drawing Number L(Ex)K001 Rev A)  
Plan 2 of 7 (Drawing Number L(Ex)K001)  
Plan 3 of 7 (Drawing Number L(PL)K105 Rev B)  
Plan 4 of 7 (Drawing Number L(PL)K101)  
Plan 5 of 7 (Drawing Number L(PL)K104)  
Plan 6 of 7 (Drawing Number L(PL)K102)  
Plan 7 of 7 (Drawing Number L(PL)K103)

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

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

9. Notwithstanding the provisions of Class 1A (single storey extensions) or Class 2B (alterations) of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 as amended by the Town and Country Planning (General Permitted Development) (Scotland) Amended Order 2011, or as may be further amended, no extensions or alterations including the provision of additional window or door openings of any kind are permitted to the northern elevation of the house hereby approved on plot 2 (titled Elevation A on the approved plans), without the prior written consent of the Planning Authority.

*Reason: To prevent future overlooking of the neighbouring house and garden to the north, which may otherwise occur.*

(Reference: Report by Head of Planning and Regulatory Services dated 24 April 2013, supplementary planning report no.1 dated 15 May 2013 and supplementary planning report no.2 dated 14 June 2013, submitted)