



**Argyll and Bute Council**  
**Comhairle Earra-Ghàidheal Agus Bhòid**

*Customer Services*  
*Executive Director: Douglas Hendry*

*Kilmory, Lochgilphead, PA31 8RT*  
*Tel: 01546 602127 Fax: 01546 604435*  
*DX 599700 LOCHGILPHEAD*

6 November 2017

**NOTICE OF MEETING**

A meeting of the **ARGYLL AND BUTE LOCAL REVIEW BODY** will be held in the **COMMITTEE ROOM 1, KILMORY, LOCHGILPHEAD** on **MONDAY, 13 NOVEMBER 2017** at **9:45 AM**, which you are requested to attend.

Douglas Hendry  
Executive Director of Customer Services

**BUSINESS**

- 1. APOLOGIES FOR ABSENCE**
- 2. DECLARATIONS OF INTEREST**
- 3. CONSIDER NOTICE OF REVIEW REQUEST: LAND WEST OF BUNN-NA-SCHAIRDH, BUNNAHABHAIN, ISLE OF ISLAY (REF: 17/0006/LRB)**
  - (a) Notice of Review and Supporting Documents (Pages 3 - 42)
  - (b) Comments from Interested Parties (Pages 43 - 62)
  - (c) Comments from Applicant (Pages 63 - 72)

**ARGYLL AND BUTE LOCAL REVIEW BODY**

Councillor Rory Colville (Chair)  
Councillor Roderick McCuish

Councillor Donald MacMillan

Contact: Fiona McCallum Tel: 01546 604392

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Ref:  
AB1

**ARGYLL AND BUTE COUNCIL**  
[WWW.ARGYLL-BUTE.GOV.UK/\\*\\*](http://WWW.ARGYLL-BUTE.GOV.UK/**)

**OFFICIAL USE**11/9/17 -  
F McCallum

Date Received

**NOTICE OF REVIEW**

Notice of Request for Review under Section 43(a)8  
of the Town and Country Planning (Scotland) Act 1997 and the Town and  
Country Planning (Schemes of Delegation and Local Review Procedure)  
(Scotland) Regulations 2013

**Important** – Please read the notes on how to complete this form and use Block Capitals. Further information is available on the Council's Website. You should, if you wish, seek advice from a Professional Advisor on how to complete this form.

<p>(1) APPLICANT FOR REVIEW</p> <p>Name <input style="width: 100%;" type="text" value="H &amp; S Cobb"/></p> <p>Address <input style="width: 100%;" type="text" value="Lighthouse Cottage"/></p> <p style="margin-left: 20px;"><input style="width: 100%;" type="text" value="Rubh'a'mhail"/></p> <p style="margin-left: 20px;"><input style="width: 100%;" type="text" value="Port Askaig, Islay"/></p> <p>Postcode <input style="width: 100%;" type="text" value="PA46 7RB"/></p> <p>Tel. No. <input style="width: 100%;" type="text" value="01496 840269"/></p> <p>Email <input style="width: 100%;" type="text" value="hcsc@tesco.net"/></p>	<p>(2) AGENT (if any)</p> <p>Name <input style="width: 100%;" type="text"/></p> <p>Address <input style="width: 100%;" type="text"/></p> <p style="margin-left: 20px;"><input style="width: 100%;" type="text"/></p> <p style="margin-left: 20px;"><input style="width: 100%;" type="text"/></p> <p>Postcode <input style="width: 100%;" type="text"/></p> <p>Tel. No. <input style="width: 100%;" type="text"/></p> <p>Email <input style="width: 100%;" type="text"/></p>
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(3) Do you wish correspondence to be sent to you  or your agent

(4) (a) Reference Number of Planning Application

(b) Date of Submission

(c) Date of Decision Notice (if applicable)

(5) Address of Appeal Property

(6) Description of Proposal

Application for erection of dwelling house with attached garage and installation of septic tank on land at Bunnahabhain, Isle of Islay: appeal against Condition 2 of the planning permission requiring alterations to the junction of a private access.

(7)

Please set out the detailed reasons for requesting the review:-

Condition 2 of the planning consent requires alteration of the access from the single track road leading to Bunnahabhain distillery and the private track, owned by the Islay Estates Company, that leads to the access of the proposed dwelling.

The planning policy guidance appears to indicate that the works specified by the Council's Roads department would not be within the Council's remit (because of the legal categorisation of the access track). Furthermore, and notwithstanding whether or not the works can be mandated by the Council, the works specified would be disproportionate and unnecessary. It is unreasonable for the Council to impose a disproportionate or unnecessary condition.

There are therefore three reasons for asking for a review of this condition:

- (i) The nature and status of the access track appear to place it outside the Council's powers to require alterations
- (ii) Notwithstanding that the Council appears not to have the power to impose the condition, the recommendation from the Roads Engineer implies that the access is adequate for a development of one property. Furthermore, the junction already exhibits the Council's required characteristics for traffic and safety and, further, the Council has not noted any shortcomings or safety issues with the existing junction
- (iii) The Condition places a disproportionate burden and responsibility on the applicant whose development neither fronts the public road, nor gives rise to any perceived problems and whose property will not make any material difference to the usage of the access

These three reasons for requesting the review are considered in detail in the document exhibited as Reference 1 in the Schedule of Documents (Detailed reasons for requesting a Review). We would request that the review body consider each of them separately because any one of the reasons on its own would be sufficient to justify setting Condition 2 aside.



If insufficient space please continue on a separate page. Is this is attached? (Please tick to confirm)

(8) If the Local Review Body determines that it requires further information on "specified matters" please indicate which of the following procedure you would prefer to provide such information :-

- (a) Dealt with by written submission
- (b) Dealt with by Local Hearing
- (c) Dealt with by written submission and site inspection
- (d) Dealt with by local hearing and site inspection

*NB It is a matter solely for the Local Review Body to determine if further information is required and, if so, how it should be obtained.*

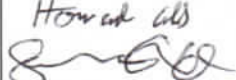
(9) Please list in the schedule all documentation submitted as part of the application for review ensuring that each document corresponds to the numbering in the sections below:-

Schedule of documents submitted with Notice of Review (**Note: 3 paper copies of each of the documents referred to in the schedule below must be attached**):

No.	Detail
1	Detailed reasons for requesting review
2	Planning permission dated 16 June 2017
3	Application report and report of handling dated 14 June 2017
4	Supplementary Guidance Transport to Local plan - SG LDP TRAN 4
5	Supplementary Guidance Transport to Local Plan - SG LDP TRAN 5
6	Plan for servitude
7	Observations from Roads and Amenity Services dated 25 October 2016
8	Photographs of vehicles that have used the track
9	Photographs showing vision splays and absence of water running onto road
10	

If insufficient space please continue on a separate page. Is this is attached?  (Please tick to confirm)

Submitted by  
(Please Sign)

Howard Gibb  


Dated

10 September 2017

**Important Notes for Guidance**

1. All matters which the applicant intends to raise in the review must be set out in or accompany this Notice of Review
2. All documents, materials and evidence which the applicant intends to rely on in the Review must accompany the Notice of Review UNLESS further information is required under Regulation 15 or by authority of the Hearing Session Rules.
3. Guidance on the procedures can be found on the Council's website – [www.argyll-bute.gov.uk/](http://www.argyll-bute.gov.uk/)
4. If in doubt how to proceed please contact 01546 604392/604269 or email [localreviewprocess@argyll-bute.gov.uk](mailto:localreviewprocess@argyll-bute.gov.uk)
5. Once completed this form can be either emailed to [localreviewprocess@argyll-bute.gov.uk](mailto:localreviewprocess@argyll-bute.gov.uk) or returned by post to **Committee Services (Local Review Board), Kilmory, Lochgilphead, Argyll, PA31 8RT** <mailto:planningreview@argyll-bute.gov.uk>
6. You will receive an acknowledgement of this form, usually by electronic mail (if applicable), within 14 days of the receipt of your form and supporting documentation.

If you have any queries relating to the completion of this form please contact Committee Services on 01546 604392/604269 or email [localreviewprocess@argyll-bute.gov.uk](mailto:localreviewprocess@argyll-bute.gov.uk)

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**For official use only**

Date form issued

Issued by (please sign)

## Please set out the detailed reasons for requesting the review

Condition 2 of the planning consent requires alteration of the access from the single track road leading to Bunnahabhain distillery and the private track, owned by the Islay Estates Company, that leads to the access of the proposed dwelling.

The planning policy guidance appears to indicate that the works specified by the Council's Roads department would not be within the Council's remit (because of the legal categorisation of the access track). Furthermore, and notwithstanding whether or not the works can be mandated by the Council, the works specified would be disproportionate and unnecessary. It is unreasonable for the Council to impose a disproportionate or unnecessary condition.

There are therefore three reasons for asking for a review of this condition:

- (i) The nature and status of the access track appear to place it outside the Council's powers to require alterations
- (ii) Notwithstanding that the Council appears not to have the power to impose the condition, the recommendation from the Roads Engineer implies that the access is adequate for a development of one property. Furthermore, the junction already exhibits the Council's required characteristics for traffic and safety and, further, the Council has not noted any shortcomings or safety issues with the existing junction
- (iii) The Condition places a disproportionate burden and responsibility on the applicant whose development neither fronts the public road, nor gives rise to any perceived problems and whose property will not make any material difference to the usage of the access

These three reasons for requesting the review are considered in detail in the document exhibited as Reference 1 in the Schedule of Documents (Detailed reasons for requesting a Review). We would request that the review body consider each of them separately because any one of the reasons on its own would be sufficient to justify setting Condition 2 aside.

## Reasons for review

### *Limits to the Council's Powers*

As the Council states in the Handling Report with the planning decision (Section P, subsection Access/Servicing, of reference 3), 'The development will be served by an existing **private access** from the public road, with an extension provided to serve the new dwelling.'

The term 'private access' is crucial to the scope - and the limits - of the Council's powers because the Council's own policy guidance explicitly states that the Council has **no powers to require** a private access to be **made up**, or maintained.

The private access referred to is an estate track used by the owners of the track for the purposes of deer stalking, counting and culling. This involves a vehicle towing a trailer with an all-terrain vehicle for use on the hill, specifically an ArgoCat or quad bike. Scottish Hydro engineers also use the track to maintain the electricity supply, often bringing a trailer with a digger or a quad bike.

There is **no right of public** access on the estate track. A few metres before the entrance from the private access onto our plot there are gateposts on which, until recently, hung a gate that had on various occasions in the past 20 years been

padlocked. Anyone wanting pedestrian access beyond the gate had to climb over a stile. On purchasing the building plot and so that we would be able to access our new house, we were granted a servitude, giving us the right to use the private track as far as the access to our new property. The servitude would not have been needed if there had been a public right of access. We include the site plan accompanying the servitude (reference 6 in the Schedule of Documents).

The Council's policy guidance on its powers and limits is set out in the Local Plan Supplementary Guidance. The following is what that guidance says about public and private roads, and about private accesses.

Guidance notes for the Local Plan about roads and access

Note 3 of Section 1A Notes on page 136 of Argyll and Bute Local Development Plan – Supplementary Guidance Transport (including core paths) defines private access: 'private accesses are controlled (maintained) by the owner(s) and there is no public right of passage. These do not require a Road Construction Consent as there is no right of public access. The Roads Authority **cannot make a notice to require a private access to be made up or maintained.**'

Note 2 defines private roads, where 'the public have a right of passage' (which is not the case with private accesses). Although 'responsibility for the maintenance of a private road rests with the owner(s)' the Roads Authority does have certain powers to demand maintenance to a reasonable standard.

In the case of public and private roads, but not private accesses, page 139 of the Supplementary Guidance Transport, SG LDP Tran 5 (Reference 5), states that 'Where development proposals will significantly increase vehicular or pedestrian traffic on substandard private or public approach **roads**, then developments will be required to contribute proportionately to improvements to an agreed section of the public or private road network.' But there is no mention of such improvements being required where there is **only private access**, as defined in a preceding paragraph, rather than a private **road**.

The above quotes would suggest that the Council's Roads Authority has no power to impose conditions on a track of this nature because it is a private access, not a private road. The fact that the Council may, apparently, on other occasions have imposed such a condition and is not challenged does not alter our claim that the guidance implies that it has no such power.

The condition is thus unjustified because it appears to be outwith the remit of the Council.

### ***The Condition appears to be unnecessary***

The condition is unnecessary, from three points of view.

- (i) First, the works are unnecessary even in the view of the Roads Department that has requested them.
- (ii) Second, the works are unnecessary because the existing junction already exhibits the characteristics that the works are themselves intended to achieve (vision splay, water diversion from road, size, strength to take vehicles, etc).
- (iii) Third, the works are unnecessary because any additional usage will be light, near insignificant when compared to the already light usage.

The Council is apparently satisfied with the existing junction and its ability to be used safely by all those who do so and accepts that the junction causes no road damage or danger from flowing water or any other cause because it has neither sought to improve it itself nor asked the owners to do so.



Supporting detail to show why the works are unnecessary is provided in the following paragraphs.

1. View of Roads Authority

The recommendation of 25 October 2016 by James Ross of the Council's Roads and Amenity Services department to refuse permission (Document 7 in the accompanying Schedule of Documents) states that, 'The application site is fairly large and the applicant may be considering developing another site. The applicant should be made aware that should this be the case the access would have to be constructed to standard detail drawing ref: SD 08/004 Rev a, access width of 5.50 metres.'

The assertion that, 'The applicant should be made aware that should this [the development of another site] be the case the access would have to be constructed to standard detail drawing ref: SD 08/004...' implies that since development of another site is **not** the case and only one dwelling is to be constructed then the access does not have to meet this standard. It is equivalent to stating that since such development is not the case it is not necessary to impose the condition. In other words, the condition is derived from a hypothetical assumption by the Roads Authority that we might be considering development of another site. Firstly, we do not have another site, nor do we have any intention of seeking to obtain one, even if there were the possibility of such a site being offered. Secondly, despite the site being large, there is a **legal restriction** on development of the site - the Title to this plot **prohibits more than a single residential dwelling house**, the parking of a caravan, and the conduct of a trade, business or other employment on the site.

The possibility of more housing on the site is not a valid concern at this application, which is for one house only. Even if the legal constraints on the site could be altered, the time for the Council to consider the impact of a multi-dwelling development would be when or if such an application were to be made. This application should be determined on its own merits and based on the facts as they stand at present - not on the merits of an entirely imaginary and legally barred application that hasn't been made and probably never will be made.

2. Adequacy of existing junction standard

The reason given (in the Planning Permission, document 2 in the schedule) for condition 2 is, 'In the interests of road safety, to ensure the development is served by an adequate and safe standard of vehicular access'.

The junction between the public road and the private access already meets the Council's objectives, namely visibility splays, access gradient, surface water drainage, sufficient width to allow passing (plus there are already four other passing places within a few tens of metres), and a very wide mouth for turning. SD 08/004 mentions a width of 10m but the existing opening is already wider than this - the junction measures 10.3m (grass to grass and the actual hard surface is somewhat wider still), measured at a point 2.8m back from the immediate carriageway edge. All these characteristics are **adequately** exhibited by the **existing** junction. The standard to which the existing junction has been developed is **no less a standard** in terms of adequacy and meeting the needs of users. Therefore it already ensures 'that the development is served by an adequate and safe standard of vehicular access'. It is adequate and not **sub**-standard, although constructed to standard **different from** the standard the Council wishes to impose.

Throughout the past twenty years or more the Roads Authority has made no attempt to change the junction, or to demand that its owners change the junction, which implies that it is and has been satisfied with the junction as it is and has no concerns about any traffic or safety issue. Indeed, the Council has required alterations to the junction only when a planning application is lodged - for a single dwelling whose access is onto a track owned and used by others. In 2006, when the previous owner of the plot applied for planning consent, the Roads Authority demanded that the same or similar works be carried out at the junction. As a result, the previous owner extended the hard surface along the edge of the lane and increased the vision splays by cutting back the gorse bushes. These alterations can be seen in the photographs referred to in the Schedule of Documents (reference 9). In the interests of road safety and the safety of ourselves and others, we are happy to continue to maintain those vision splays, and would be willing to accept a condition that we do so. When the previous owner did not proceed to build his house he renewed the planning permission with outline consent in 2013.

In the Notes to Applicant (1) included in the Planning Permission, Note 5 states that, ‘The access shall be constructed and drained to ensure that no surface water is discharged onto the public road.’

The access is already constructed so that no water is discharged onto the road, and so this requirement is unnecessary. The photographs in reference 9 were taken on Saturday 26 August 2017 after a week with some quite heavy rain, including, unusually for Islay, a thunderstorm. Water was flowing across the building site, and further along the public road round the bend towards the distillery more water was cascading down the hill (Images 20 and 21), but the track towards the public road, and the road itself at the junction of the private access, was completely dry. Apart from the fact that surface of the track is permeable, permitting water to soak through rather than run off onto the road, a smooth mark along the edge of the track shows where excess surface water has flowed down the side of the track and into the ditch via a small channel. This can be seen on Images 17, 18, and 19. There is a culvert under the road to conduct the water from the ditch away from the road and down the hill. At the junction, the track is below the level of the road surface. The existing access is, therefore, already ‘sculpted’ to direct any surface water away from the road. In more than 20 years here we have never seen water flowing onto the road from the track. The hill down to the distillery, however, frequently suffers from flowing water and at the top of the hill the edge of the road has crumbled away (shown in Image 22), although this could be more to do with lorries from the distillery than with the effects of water.

We would invite the reviewers to visit the site to see for themselves how dry, how firm, how wide, how visible, and how safe the existing access is.

3. Additional usage will be light

The overall level of usage is and will remain light. Any additional usage as a result of the planning permission will still be light compared with usage by the Estate and third parties. The Council seems to have ignored any requirement to take into account the level of usage. Some days, especially in winter, the track might not be used at all, as has been the case in the past and as is the case now. On other days, particularly in summer, there could be five or six vehicles using it on any one day. In any event, the usage will not substantially differ from the usage now and over the last twenty years or more.

When there were children living in Bunnahabhain there was a school bus twice a day during term time. It would use the track junction to turn, without difficulty, and without causing the Council any concern about the quality of the junction. (There has been no school bus for the past few years and, apart from the distillery manager’s proposed new property, the houses are no longer occupied.)

Either the existing access is adequate and safe for the existing usage or it is not. If it is adequate for the existing usage, our house is not going to make any difference so it is unnecessary for anybody to have to do anything more. Had the Council had any evidence that the junction was inadequate or unsafe it would have done something about it long ago. That it did not do anything shows that the Council recognises that this is an open and airy access and the one house isn’t going to make any material difference.

The condition is hence inappropriate and unjustified because it is unnecessary, a fact that even the Area Roads Engineer who requested its inclusion admitted in his recommendation of 25 October 2016 that we ‘should be made aware of’ the need to alter the access should we wish to develop another site (as detailed in subsection 1 above -View of the Roads Authority). Instead of being ‘made aware of the possibility’, the possibility has been imposed as a condition even though it is based on a hypothetical situation. This is an outcome that is unjustified and unfair.

***The Condition is Disproportionate***

To impose the condition would be disproportionate in that the burden would be borne by applicants who merely wish to build a house for their retirement, while the majority of traffic, both in terms of numbers of vehicles and in weight and size of

vehicles, is and always has been for other purposes that have nothing to do with the application.

As mentioned in our representations about the Council's remit, the second paragraph of the supplementary guidance SG LDP TRAN 5 (reference 5) specifies that even in the case of developments on public or private roads, which this is not, only 'where development proposals will **significantly** increase vehicular or pedestrian traffic on substandard private or public approach roads' will they '...be required to **contribute proportionately** to improvements...'. The guidance does not suggest that the development should pay the entire cost of any improvements deemed necessary, but the Council is expecting us to do exactly this under the terms of Condition 2 on this private access.

Furthermore, in paragraph 1.1 of the same reference 5, Explanation of Policy Objectives, the guidance states that, 'The improvements to the public or private road should be practical and **proportionate** to the nature and scale of development proposed; account should be taken of **existing traffic usage** of the road and its overall **condition**'. Notwithstanding that the track is neither a public nor a private road but only a private access, we have seen no evidence that the Council has taken account of the existing usage, nor has it asked for a proportionate contribution but requires us to pay the full cost of the alteration. This has been quoted to be in the region of £5000 + VAT, so £6000 in reality.

The development is a single house, off a track that is only lightly used. The plot has no direct frontage to the public road.

There is a grass triangle above the junction of the public road and the private track, where, notwithstanding that there is no public right of passage, we and some local and visiting hill walkers and local dog walkers park their vehicles. Examples are shown in the photographs (reference 8), Images 1-6. In order to park on the triangle, vehicles have to use the junction with the private access. We have even seen cars that have been driven even further up the track and have parked within the old sheep fank in our building plot (Images 7 to 9). Occasionally a minibus bringing a group of geology students, or people on an organised walking holiday, has been parked, and on 30 August 2017 there was a large camper van. (We did not take a photograph as the occupants were there, apparently having their tea, so photographing their vehicle would have seemed rude and intrusive). On another occasion a German tourist parked her camper van overnight by the entrance to our plot. The Estate tolerates this usage at present but there is no guarantee that they will always do so. As mentioned in our comments on the limits to the Council's powers, there have been times when the gate that used to hang just beyond the access to our plot was closed and padlocked. A second gate, a short distance further up the track, is still there but is usually left open at present.

It is disproportionate to burden the applicants with this condition when their application is not the cause of either the existing or future use of the track.

We understand that at the end of January this year in a conversation with our architect, Tom Robinson, Mr Ross of the Roads department compared our situation with that of the new distillery being constructed at Ardnahoe, halfway along the road to Bunnahabhain. We are informed that he stated that the distillery was to pay for alterations to, and additional passing spaces on, the single track road. This accords with the Council's guidance for public and private roads referred to at the beginning

of this section. But there is no comparison between a commercial venture that will generate a significant volume of extra traffic on a public road and a single house accessed by a private access that will not generate any significant increase in traffic. Furthermore, the distillery, being a commercial venture, will over time be able to recoup the cost of the alterations, whereas a retired couple will not.

In addition, the concept of planning gain cannot be applied to this application because it had already been applied in 2006 when the previous owner first obtained detailed planning permission to convert the site from poor agricultural land to a plot that could be developed to build a house. At that time, as indicated in the third paragraph of Necessity section 2, Adequacy of existing junction standard, on page 3 above, and as shown in the photographs, the vision splays and an additional passing place were created. For the current application, planning gain does not apply and is therefore inappropriate. Simply changing the design of the house from that submitted by the previous owner confers no additional value or benefit on the applicant, hence there is no value gain arising from which any 'planning gain' can or should be extracted.

In a different context - that of public roads in 'more rural areas of Argyll and Bute' with a predominant system of single track roads and passing spaces - 'it is considered appropriate to introduce a variable standard for adoption' to 'apply to roads serving developments of 6-10 dwellings.' [SG LDP TRAN 4 page 137 Development and Public Roads] (reference 4). This, the Council suggests, would help to '...reduce initial development costs' and benefit the environment. It would allow 'a more rural design solution'. This concession as applied even to public roads would seem inconsistent with the Council's desire to impose such a harsh condition on a planning permission for a single dwelling - not '6-10 dwellings' as in the definition above - off an existing private access.

### ***Conclusion***

In conclusion the works required under Condition 2 are not only disproportionate and unnecessary but seem not to fall within the Council's remit.

In terms of proportionality, the condition is contrary to the tone and spirit of the guidance. Even on public and private roads, the guidance calls only for a proportionate contribution and attempts to save costs for developments, especially those in rural areas with single track roads and for developments of fewer than 6-10 dwellings.

Condition 2 is disproportionate and unfair to the applicants, whose presence or absence will not materially affect the overall level of usage of the private access. It is unreasonable to expect applicants, whose usage is and will remain light compared to that of third parties, to pay for alterations that the Council did not, before the application, consider necessary.

The Roads Engineer imposed Condition 2 even though he states merely that we should be made aware that works to the standard SD 08 004 Rev a would be needed were we to further develop the site. This is tantamount to stating that in this application, for just a single dwelling, no such alteration of the existing junction is required.

The alterations are also unnecessary because the access already fulfils the Council's requirements for road safety in terms of vision splays, surface water, strength of surface etc.

Irrespective of the issues relating to necessity and proportionality, the guidance suggests that the Council does not have the authority to impose this condition because it has no mandate to require a private access to be made up or maintained.

We therefore ask the Review Body to consider each of our reasons, which we have described in detail above, and set aside this condition.

## References

These references are listed in the same order as they appear in the formal Schedule of Documents submitted as part of the Request for Review and shown on the request form.

- 1 Detailed reasons for requesting a review of Condition 2
- 2 Planning permission dated 16 June 2017
- 3 Application report and report of handling dated 14 June 2017
- 4 Supplementary Guidance Transport to Local plan - SG LDP TRAN 4
- 5 Supplementary Guidance Transport to Local Plan - SG LDP TRAN 5
- 6 Plan for servitude
- 7 Observations from Roads and Amenity Services dated 25 October 2016
- 8 Photographs of vehicles that have used the track
- 9 Photographs showing vision splays and absence of water running onto road

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED)  
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE)  
(SCOTLAND) REGULATIONS 2013**

**PLANNING PERMISSION**

**REFERENCE NUMBER: 16/02185/PP**

**Mr And Mrs Howard Cobb  
Thomas Robinson Architects  
The Red House  
Croftamie  
Glasgow  
United Kingdom  
G63 0EU**

I refer to your application dated 5th August 2016 for planning permission in respect of the following development:

**Erection of a dwellinghouse with attached garage and installation of septic tank.**

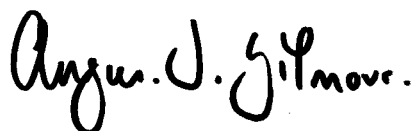
**AT:**

**Land West Of Bunn-Na-Schairbh Bunnahabhain Isle Of Islay Argyll And Bute**

Argyll and Bute Council in exercise of their powers under the above mentioned Act and Regulations hereby grant planning permission for the above development in accordance with the particulars given in the application form and docketed plans subject however to the conditions and reasons detailed on the following page(s).

It should be understood that this permission does not carry with it any necessary consent or approval for the proposed development under other statutory enactments and is not a Building Warrant.

Dated: 16 June 2017



Angus J. Gilmour  
Head of Planning and Regulatory Services



**REFERENCE NUMBER: 16/02185/PP**

**Erection of a dwellinghouse with attached garage and installation of septic tank.**

**AT:**

**Land West Of Bunn-Na-Schairbh Bunnahabhain Isle Of Islay Argyll And Bute**

The planning application as detailed above is subject to the following conditions:

1. The development shall be implemented in accordance with the details specified on the application form dated 4th August 2016 and the approved drawings numbered 1 to 11 and stamped approved by Argyll and Bute Council 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.

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

2. Notwithstanding the provisions of Condition 1, no development shall be commenced until the junction between the private access serving the development and the public road has been formed in accordance with the Council's Roads Standard Detail Drawing SD 08/004 Rev a. and visibility splays of 2.40 metres to point X by 75 metres to point Y (south)/40 metres to point Y (north) from the centre line of the proposed access. The access shall be surfaced with a bound material in accordance with the stated Standard Detail Drawing. Prior to work starting on site the access hereby approved shall be formed to at least base course standard and the visibility splays shall be cleared of all obstructions such that nothing shall disrupt visibility from a point 1.05 metres above the access at point X to a point 0.6 metres above the public road carriageway at point Y. The final wearing surface on the access shall be completed prior to the dwelling first being occupied and the visibility splays shall be maintained clear of all obstructions thereafter.

Reason: In the interests of road safety, to ensure the development is served by an adequate and safe standard of vehicular access.

3. Notwithstanding the provisions of Condition 1, no development shall be commenced until details of a refuse collection point to be provided adjacent to the public road have been submitted to and approved in writing by the Planning Authority. The collection point shall be provided prior to the first occupation of the dwellinghouse and maintained thereafter.

Reason: In order to facilitate the collection of waste.

4. The parking and turning area shall be laid out and surfaced in accordance with the details shown on the approved plans prior to the dwelling first being occupied and shall thereafter be maintained clear of obstruction for the parking and manoeuvring of vehicles.

Reason: In the interest of road safety, to ensure the development is served by an adequate volume of parking spaces within the application site.

5. Notwithstanding the effect of Condition 1, no development shall be commenced until full written details of the external wall finishes to be used in the development have been submitted to and approved in writing by the Planning Authority. The development shall thereafter be completed using the approved materials or such alternatives as may be agreed in writing with the Planning Authority.

Reason: In order to integrate the development into its surroundings and prevent

inappropriate finishes which will appear incongruous, in the interests of clarity.

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

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



**NOTES TO APPLICANT (1) RELATIVE TO APPLICATION NUMBER 16/02185/PP**

1. **The length of the permission:** This planning permission will last only for **three** years from the date of this decision notice, unless the development has been started within that period [See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).]
2. In order to comply with Section 27A(1) of the Town and Country Planning (Scotland) Act 1997, prior to works commencing on site it is the responsibility of the developer to complete and submit the attached 'Notice of Initiation of Development' to the Planning Authority specifying the date on which the development will start.
3. In order to comply with Section 27B(1) of the Town and Country Planning (Scotland) Act 1997 it is the responsibility of the developer to submit the attached 'Notice of Completion' to the Planning Authority specifying the date upon which the development was completed.
4. A Road Opening Permit under the Roads (Scotland) Act 1984 must be obtained from the Council's Roads Engineers prior to the formation/alteration of a junction with the public road.
5. The access shall be constructed and drained to ensure that no surface water is discharged onto the public road.
6. If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under Section 43A of the Town and Country Planning (Scotland) Act 1997 (as amended) within three months from the date of this notice. A Notice of Review request must be submitted on an official form which can be obtained by contacting The Local Review Body, Committee Services, Argyll and Bute Council, Kilmory, Lochgilphead, PA31 8RT or by email to [localreviewprocess@argyll-bute.gov.uk](mailto:localreviewprocess@argyll-bute.gov.uk)
7. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state, and it cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the landowner's interest in the land, in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997 (as amended).

**APPENDIX TO DECISION APPROVAL NOTICE**

Appendix relative to application **16/02185/PP**

- A) Has the application required an obligation under Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended): **No**
- B) Has the application been the subject of any amendment in terms of Section 32A of the Town and Country Planning (Scotland) Act 1997 (as amended) to the initial submitted plans during its processing. **No**
- C) The reason why planning permission has been approved:

The proposal is wholly consistent with the relevant provisions of the Development Plan and there are no material considerations which warrant departure from these provisions.

Argyll and Bute Council  
Development & Infrastructure Services

**Delegated Planning Application Report and Report of Handling as required by Schedule 2 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 relative to applications for Planning Permission or Planning Permission in Principle**

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**Reference No:** 16/02185/PP  
**Planning Hierarchy:** Local  
**Applicant:** Mr and Mrs Howard Cobb  
**Proposal:** Erection of a dwellinghouse with attached garage and installation of septic tank.  
**Site Address:** Land West of Bunn-Na-Schairbh, Bunnahabhain, Isle of Islay

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**DECISION ROUTE**

Sect 43 (A) of the Town and Country Planning (Scotland) Act 1997

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**(A) THE APPLICATION**

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

- Erection of dwellinghouse with attached garage and log store
- Formation of vehicular access to private road
- Installation of septic tank
- Connection to existing private water supply

**(ii) Other specified operations**

- N/A
- 

**(B) RECOMMENDATION:**

Recommend that planning permission be granted subject to the conditions and reasons attached.

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**(C) CONSULTATIONS:**

Health and Safety Executive – responded: 11.10.2016 – No comment

Council's Area Roads team – responded: 27.10.2016 – Recommended refusal, but with suggested conditions – *the recommendation for refusal was on the basis that the public road junction, for which the Area Roads Engineer required upgrades, was not included within the application site. Written consent from the landowner has now been provided confirming that the requisite works can be carried out; a 'pre-commencement' condition will be attached to this permission ensuring the work is carried out prior to any other development commencing*

Council's Environmental Health team – responded: 02.11.2016 – No objection subject to conditions

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**(D) HISTORY:**

13/01120/PPP – Site for the erection of dwellinghouse and ancillary building – permitted: 09.08.2013

06/01006/DET – Erection of a dwellinghouse and ancillary outbuilding – permitted: 30.11.2006

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**(E) PUBLICITY:**

Regulation 20 advert – expired: 03.11.2016

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**(F) REPRESENTATIONS:** None

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**(G) SUPPORTING INFORMATION**

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

- |       |   |     |
|-------|---|-----|
| (i)   | <b>Environmental Statement:</b>   | No  |
| (ii)  | <b>An appropriate assessment under the Conservation (Natural Habitats) Regulations 1994:</b>  | No  |
| (iii) | <b>A design or design/access statement:</b>   | Yes |
| (iv)  | <b>A report on the impact of the proposed development eg. Retail impact, transport impact, noise impact, flood risk, drainage impact etc:</b> | No  |
- 

**(H) PLANNING OBLIGATIONS**

**Is a Section 75 agreement required:** No

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

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

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

**'Argyll and Bute Local Development Plan' Adopted March 2015**

LDP STRAT 1 – Sustainable Development

LDP DM 1 – Development within the Development Management Zones

LDP 3 – Supporting the Protection Conservation and Enhancement of our Environment

LDP 9 – Development Setting, Layout and Design

LDP 10 – Maximising our Resources and Reducing our Consumption

LDP 11 – Improving our Connectivity and Infrastructure

**'Supplementary Guidance to the Argyll and Bute Local Plan 2015' (Adopted March 2016)**

**Landscape and Design**

SG LDP ENV 14 – Landscape

**General Housing Development**

SG LDP HOU 1 – General Housing Development Including Affordable Housing Provision

**Sustainable Siting and Design**

SG LDP Sustainable – Sustainable Siting and Design Principles

**Resources and Consumption**

SG LDP SERV 1 – Private Sewage Treatment Plants & Wastewater Systems

SG LDP SERV 2 – Incorporation of Natural Features / SuDS

SG LDP SERV 6 – Private Water Supplies and Water Conservation

**Transport (Including Core Paths)**

SG LDP TRAN 4 – New & Existing, Public Roads & Private Access Regimes

SG LDP TRAN 5 – Off-site Highway Improvements

SG LDP TRAN 6 – Vehicle Parking Provision

- (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 3/2013.**

- Scottish Planning Policy
- Planning history
- Consultation responses

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

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

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

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

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**(O) Requirement for a hearing (PAN41 or other): No**

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

This application relates to a plot of land at Bunnahabhain, Isle of Islay. Planning permission is sought for the erection of a single dwellinghouse with associated development.

Principle of development

The site lies within the 'settlement zone' of Bunnahabhain, with respect to the LDPs settlement strategy. The relevant policies of the Development Plan, LDP DM 1 and SG LDP HOU 1, offer broad encouragement to 'small-scale' residential development on appropriate sites within such areas.

There is a history of planning permissions for a single house on the site and it is considered that it offers an appropriate opportunity for the erection of a single dwelling. The principle of the proposal is therefore consistent with the relevant provisions of the Development Plan.

Siting/design

The application site is located a short distance down a private track from the public road which leads down to Bunnahabhain Distillery. It occupies an area of flat but prominent unmanaged grassland which is elevated with respect to the coast and overlooks Bunnahabhain Bay. The footprint of the proposed dwellinghouse will be contained within the concrete remains of an old sheep fank which will be retained.

The proposed dwellinghouse itself will be a substantial building; a one and a half storey main body will be supplemented with smaller, single storey timber clad wings to the side and rear. The result is a building which will be relatively grand but retaining traditional vernacular features, most notably:

- Narrow gables and steeply pitched, symmetrical roof;
- Windows with a strong vertical emphasis;
- Chimneys and skews;
- Dormer windows with pitched roofs

Similarly, the proposed external finishes will be sympathetic to traditional architecture with a mixture of timber cladding, stone/render cladding, slate roofs and timber windows/doors. The site is one which can accommodate a building of this scale which will command a significant presence above the bay and the form and finishes of the building are consistent with the design principles set out in policy SG LDP Sustainable of the Development Plan; there is established planning history for a dwelling of significant scale. A proposed site plan included with the application includes spot levels and a finished floor level for the building which shows it to be grounded within the site and not excessively elevated.

The proposed site plan includes a plan for surface/boundary treatments which are simple and will have limited visual impact and intrusion into the landscape. Boundaries will be demarcated by post and wire fencing and the majority of the site will be retained as grass with a small amount of gravel and a patio area.

The proposed dwelling is sufficiently far removed from neighbouring dwellings that there will be no adverse privacy/amenity relationships.

Overall, the siting and design of the proposed dwelling are considered to be acceptable and consistent with the relevant provisions of the Development Plan.

### Access/servicing

The development will be served by an existing private access from the public road, with an extension provided to serve the new dwelling. Upgrades to the public road junction will be executed to facilitate the new development and, whilst this area not contained within the application site, written confirmation from the owners of the land has been provided confirming their consent to this work being carried out. Parking and turning will be provided on site. The Area Roads Engineer is satisfied with the proposal subject to conditions requiring these elements to be carried out to an appropriate standard.

Foul drainage will be provided on site via a septic tank and soakaway; the area is not served by a public sewer. Potable water will be achieved through connection to an existing private system and will be subject to a condition requiring demonstration of adequate wholesomeness and sufficiency.

All elements of the access and servicing arrangements are considered to be acceptable and consistent with the relevant provisions of the Development Plan.

### Summary

The proposal is wholly consistent with the relevant provisions of the Development Plan and there are no material considerations which warrant departure from these provisions.

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

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**(R) Reasons why Planning Permission or Planning Permission in Principle Should be Granted:**

The proposal is wholly consistent with the relevant provisions of the Development Plan and there are no material considerations which warrant departure from these provisions.

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

N/A

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

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**Author of Report:** Rory MacDonald      **Date:** 14.06.2017

**Reviewing Officer:** Richard Kerr       **Date:** 16.05.2017

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



**CONDITIONS AND REASONS RELATIVE TO APPLICATION REF. NO. 16/02185/PP**

1. The development shall be implemented in accordance with the details specified on the application form dated 4<sup>th</sup> August 2016 and the approved drawings numbered 1 to 11 and stamped approved by Argyll and Bute Council 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.

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

2. Notwithstanding the provisions of Condition 1, no development shall be commenced until the junction between the private access serving the development and the public road has been formed in accordance with the Council's Roads Standard Detail Drawing SD 08/004 Rev a. and visibility splays of 2.40 metres to point X by 75 metres to point Y (south)/40 metres to point Y (north) from the centre line of the proposed access. The access shall be surfaced with a bound material in accordance with the stated Standard Detail Drawing. Prior to work starting on site the access hereby approved shall be formed to at least base course standard and the visibility splays shall be cleared of all obstructions such that nothing shall disrupt visibility from a point 1.05 metres above the access at point X to a point 0.6 metres above the public road carriageway at point Y. The final wearing surface on the access shall be completed prior to the dwelling first being occupied and the visibility splays shall be maintained clear of all obstructions thereafter.

Reason: In the interests of road safety, to ensure the development is served by an adequate and safe standard of vehicular access.

3. Notwithstanding the provisions of Condition 1, no development shall be commenced until details of a refuse collection point to be provided adjacent to the public road have been submitted to and approved in writing by the Planning Authority. The collection point shall be provided prior to the first occupation of the dwellinghouse and maintained thereafter.

Reason: In order to facilitate the collection of waste.

4. The parking and turning area shall be laid out and surfaced in accordance with the details shown on the approved plans prior to the dwelling first being occupied and shall thereafter be maintained clear of obstruction for the parking and manoeuvring of vehicles.

Reason: In the interest of road safety, to ensure the development is served by an adequate volume of parking spaces within the application site.

5. Notwithstanding the effect of Condition 1, no development shall be commenced until full written details of the external wall finishes to be used in the development have been submitted to and approved in writing by the Planning Authority. The development shall thereafter be completed using the approved materials or such alternatives as may be agreed in writing with the Planning Authority.

Reason: In order to integrate the development into its surroundings and prevent inappropriate finishes which will appear incongruous, in the interests of clarity.

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

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

**NOTE TO APPLICANT**

- **The length of the permission:** This planning permission will last only for **three** years from the date of this decision notice, unless the development has been started within that period [See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).]
- In order to comply with Section 27A(1) of the Town and Country Planning (Scotland) Act 1997, prior to works commencing on site it is the responsibility of the developer to complete and submit the attached 'Notice of Initiation of Development' to the Planning Authority specifying the date on which the development will start.
- In order to comply with Section 27B(1) of the Town and Country Planning (Scotland) Act 1997 it is the responsibility of the developer to submit the attached 'Notice of Completion' to the Planning Authority specifying the date upon which the development was completed.
- A Road Opening Permit under the Roads (Scotland) Act 1984 must be obtained from the Council's Roads Engineers prior to the formation/alteration of a junction with the public road.
- The access shall be constructed and drained to ensure that no surface water is discharged onto the public road.

**APPENDIX TO DECISION APPROVAL NOTICE**

Appendix relative to application **16/02185/PP**

- (A) Has the application required an obligation under Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended): **No**
- (B) Has the application been the subject of any amendment in terms of Section 32A of the Town and Country Planning (Scotland) Act 1997 (as amended) to the initial submitted plans during its processing. **No**
- (C) The reason why planning permission has been approved:

The proposal is wholly consistent with the relevant provisions of the Development Plan and there are no material considerations which warrant departure from these provisions.

### SG LDP TRAN 4 – New and Existing, Public Roads and Private Access Regimes

This policy provides additional detail to policy LDP 11 Improving our Connectivity and Infrastructure of the Adopted Argyll and Bute Local Development Plan. Street design for new developments must consider place before movement and take into account the principles regarding development setting, layout and design set out in policy LDP 9 of the Local Development Plan.

Acceptance of development utilising new and existing public roads, private roads and private access regimes is subject to road safety and street design issues being addressed and the following:-

(A) Developments shall be served by a public road<sup>1</sup> (over which the public have right of access and maintainable at public expense;

Except in the following circumstances:-

(1) a new private access<sup>3</sup> may be considered appropriate if:

- (i) The new private access forms an individual private driveway serving a single user development, which does not, in the view of the planning authority, generate unacceptable levels of pedestrian or vehicular traffic in terms of the access regime provided; or
- (ii) The private access serves a housing development not exceeding 5 dwelling houses; or
- (iii) The private access serves no more than 20 units in a housing court development;

OR

(2) further development that utilises an existing private access or private road<sup>2</sup> will only be accepted if:-

- (i) the access is capable of commensurate improvements considered by the Roads Authority to be appropriate to the scale and nature of the proposed new development and that takes into account the current access issues (informed by an assessment of usage); AND the applicant can;
- (ii) Secure ownership of the private road or access to allow for commensurate improvements to be made to the satisfaction of the Planning Authority; OR,
- (iii) Demonstrate that an appropriate agreement has been concluded with the existing owner to allow for commensurate improvements to be made to the satisfaction of the Planning Authority.

(B) The construction standards to be applied are as follows:-

#### 1. Public Roads:

- (i) shall be constructed to a standard as specified in the Council's Roads Development Guide<sup>4</sup>. This takes account of Designing Streets to create a strong sense of place related to the development's location i.e. in a settlement, in a rural or remote rural situation, or in a Conservation Area. All roads submitted for adoption as a public road should form a continuous system with the existing public roads.

(ii) in areas with a predominant system of single track roads with passing places, housing

## Argyll and Bute Local Development Plan – Supplementary Guidance Transport (including core paths)

development of between 6 and 10 dwelling units may be accepted served by the *Variable Standard of Adoption* introduced in the Council's Road Development Guide, in recognition of differing needs within more rural areas.

- (iii) which connect to or impact significantly on a Trunk Road<sup>5</sup> will require consultation with Transport Scotland.

### 1.Private Access

(i) shall be constructed to incorporate minimum standards to function safely and effectively as set out in the Council's Road Development Guide, in particular in relation to adequate visibility splays, access gradients, geometry, passing places, boundary definition, turning capacities, integrated provision for waste management and recycling.

(ii) It must be demonstrated to the Planning Authority that consideration has been given by the applicant in the design process to the potential need to make future improvements to the access up to and including an adoptable standard.

(iii) which connect to or impact significantly on a Trunk Road will require consultation with Transport Scotland.

### Notes

<sup>1</sup>Public Road - roads on the Local Roads Authority's list of public roads. This includes any new road (including any associated footway or verge) constructed in accordance with a Road Construction Consent, with public access and maintainable by the Local Roads Authority. All roads submitted for adoption as a public road should form a continuous system with the existing public roads.

<sup>2</sup>Private Roads – The public have the right of passage over a private road. Responsibility for the maintenance of a private road rests with the owner(s). However, the Roads Authority may, by notice to the frontagers, of an existing private road, require them to make the road up to, and maintain it at, such reasonable standard as may be specified in the notice. The Roads (Scotland) Act 1984 requires Road Construction Consent for new private roads, which means they now require to be built to an adoptable standard.

<sup>3</sup>Private access - private accesses are controlled (maintained) by the owner(s) and there is no public right of passage. These do not require a Road Construction Consent as there is no right of public access. The Roads Authority cannot make a notice to require a private access to be made up or maintained.

<sup>4</sup>The Council's Roads Development Guide is being reviewed in light of the emergence of the SCOTS National Roads Development Guide (NRDG). Local variations to the NRDG are currently being prepared, which will include a variable standard for adoption for developments of 6-10 dwelling units (inclusive) in areas with a predominant system of single track roads with passing places, where the Roads Authority consider the variable standard is appropriate. Both the NRDG and the emerging Argyll and Bute Local Roads Development Guide seek to support the Scottish Government policy [Designing Streets](#).

<sup>5</sup>Trunk Road – a strategic road which is managed and maintained by Transport Scotland, on behalf of the Scottish Ministers.

### Explanation of policy objectives

This policy aims to provide additional detail to policy LDP 11 Improving our Connectivity and Infrastructure of the Argyll and Bute Adopted Local Development Plan. It provides a planned approach to street design to deliver an improved quality of place-making for new developments. SG

## Argyll and Bute Local Development Plan – Supplementary Guidance Transport (including core paths)

LDP TRAN 4 refers to standards appropriate for Road Construction Consent. These can be found in the Council's Roads Development Guide.

The primary objective is the safety of all road users including pedestrian, cycle and motorised vehicles, achieved within a well-designed street environment.

### Development and Public Roads

The Local Roads Authority holds a list of **public roads** that require to be constructed to a set standard, are maintained by the Roads Authority and have a public right of access. These are also known as Adopted Roads. The Local Roads Authority may be requested to adopt, i.e. add to its list of public roads, any new road (including any associated footway or verge) constructed in accordance with a Road Construction Consent. All roads submitted for adoption as a public road should form a continuous system with the existing public roads. The aim is to have roads developed to an appropriate standard that are publically accessible and have a maintenance regime regulated by the Roads Authority. Therefore, within most developments it is appropriate for road construction standards to be applied and the roads to be adopted.

That said, in some limited circumstances, particularly in the more rural areas of Argyll and Bute, it is considered appropriate to introduce a *variable standard for adoption* to reflect the scale, nature and differing design requirements of development in these circumstances. This would apply to roads serving developments of 6-10 dwelling units (inclusive) in areas with a predominant system of single track roads with passing places, where the Roads Authority consider the variable standard is appropriate. This approach may also bring benefits to applicants, by helping to reduce initial development costs and to the environment, by allowing a more rural design solution. This could include removal of the requirement for pavements, lighting and a variation in the construction specification.

### Development and Private Access/Private Roads

It may also be appropriate to limit public access and/or vary construction standards by allowing the construction of a private access in the circumstances set out in the policy SG LDP TRAN 4, sections A1 and A2.

When assessing the circumstances when it may be appropriate to accept a development being served by a private access or an existing private road consideration needs to be given to the integration of place-making and technical matters to produce a safe, well designed street environment. A number of principles guide these considerations including:

- a) Private accesses should not result in significant barriers to and discontinuity of public access across settlements or between settlements, countryside and coast.
- b) Private accesses and private roads should be fit for purpose and become less appropriate in urban areas and in circumstances when serving development that generates substantial levels of pedestrian and /or vehicular traffic, particularly by visiting members of the public.
- c) Private accesses and private roads are more appropriate for smaller scale developments in rural areas.
- d) Private accesses and private roads should facilitate effective and safe access by emergency service vehicles (3.7m width from wall to wall) and where appropriate, by public service vehicles and include a turning area.
- e) Private accesses and private roads where they join the public road network should provide for an adequate visibility splay to be maintained in perpetuity and be constructed in such a manner to not cause undue safety issues.
- f) Private accesses provision should be designed in such a manner to allow for continuous improvement in the interests of sustainable development.

Argyll and Bute Local Development Plan – Supplementary Guidance  
Transport (including core paths)

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In applying the above principles to the variety of locations and circumstances found in Argyll and Bute, distinction should be made between housing, commercial and other non-housing development.

**Commensurate Improvements**

In situations where development aims to utilise an existing private access or private roads regime an informed assessment requires to be made. This needs to examine the access issues related to the proposed additional development and the current situation on the private access or private road, including any capacity for improvement. The assessment requires to be an integral part of the design stage. These factors will be used to determine the level of commensurate improvement required. Designing in future improvement capacity will promote a planned approach to street design, delivering an improved quality of place-making for new developments in the more rural areas rather than an incremental approach with its inherent issues.

The commensurate improvements that are required will be determined by the Roads Authority on a sliding scale related to the individual circumstances but taking a range of factors into account including :- existing access conditions, scale and nature of the proposed development and scale and nature of existing development. The Council Roads Development Guides will be applied.

The above factors have been taken into account in **SG LDP TRAN 4**.

**This SG conforms to:**

- SPP
- PAN 75 (Transport and Planning).
- LDP Key Objectives F, G and H.
- LDP 11 Improving our Connectivity and Infrastructure
- LDP 9 Development Setting, Layout and Design

**Background information**

- Designing Streets <http://www.gov.scot/Resource/Doc/307126/0096540.pdf>



## Argyll and Bute Local Development Plan – Supplementary Guidance Transport (including core paths)

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### SG LDP TRAN 5 - Off-site Highway Improvements

This policy provides additional detail to policy LDP 11 – Improving our Connectivity and Infrastructure of the Adopted Argyll and Bute Local Development Plan.

Where development proposals will significantly increase vehicular or pedestrian traffic on substandard private or public approach roads, then developments will be required to contribute proportionately to improvements to an agreed section of the public or private road network.

#### 1.1 Explanation of Policy Objectives


1.1.1 It can be appropriate in some circumstances to require a development to contribute to improvements to the public road approaching a development site. These circumstances include:

- When in the judgement of the Planning and Roads Authority that the development because of its projected traffic generation, is likely to result in unacceptable road safety conditions, and this will consequently place an unreasonable burden on the Roads Authority to improve a significantly substandard road.
- The improvements to the public or private road should be practical and proportionate to the nature and scale of development proposed; account should be taken of existing traffic usage of the road and its overall condition; the principle of continuous improvement should be applied whereby the road condition will have been improved after the development has taken place, notwithstanding the increased traffic.
- Where public or private road improvements are considered necessary for a development to proceed, and these involve private land a Section 75 Planning Agreement may be appropriate before planning consent is issued.

1.1.2 **This SG conforms to:**

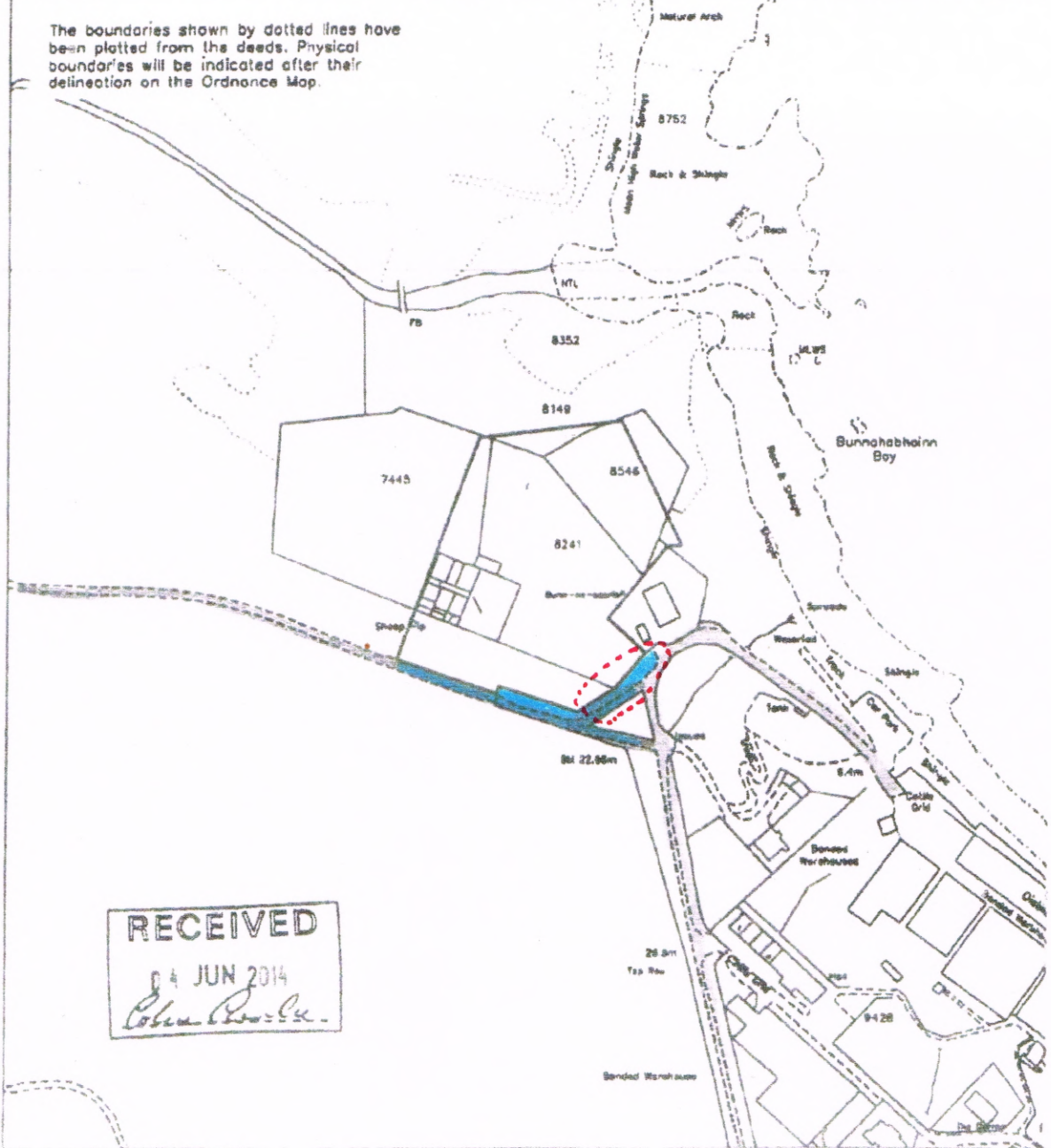
- [SPP](#)
- LDP Key Objectives F, G and H

*Kerry*

 LAND REGISTER OF SCOTLAND	Officer's ID / Date 4841 11/11/2004	TITLE NUMBER <b>ARG8815</b>
	ORDNANCE SURVEY NATIONAL GRID REFERENCE NR4173 NR4273 NR47SW	Scale 1/2500

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RECEIVED  
 04 JUN 2014  
*Cobbe*

Development and Infrastructure - Roads and Amenity Services

**OBSERVATIONS ON PLANNING APPLICATION**

Grid Reference 141791 673413 Dated

Applicant Mr and Mrs Howard Cobb  
 Proposed Development Erection of a dwellinghouse  
 Location Land West Of Bunn-Na-Schairbh, Bunnahabhain  
 Type of consent Detailed Permission  
 Drawing Refs.

Application No. **16 02185 PP**

Contact James Ross  
 Tel. 01546-604655  
 Received 05/10/2016  
 Return By Date 26/10/2016  
 Call By Date  
 District Islay

**Recommendation****Refuse****Comments**

- 1. Previous application refs 06/01006/DET & 13/01120/PPP.**
- 2. The land required for the visibility splay to the north may be outwith the applicants control. Scrub will require clearing on the inside of the corner. The application site is fairly large and the applicant may be considering developing another site. The applicant should be made aware that should this be the case the access would have to be constructed to standard detail drawing ref: SD 08/004 Rev a, access width of 5.50 metres.**

**Conditions/Reasons for refusal/deferment****REASON FOR REFUSAL**

- 1. The junction with the public road is outwith the site edged red.**

**CONDITIONS**

- 1. Connection to the public road, 75 m to the south and 40 m to the north x 2.40 x 1.05 metres.**
- 2. Connection to the public road to be constructed to standard detail drawing ref: SD 08/004 Rev a.**
- 3. Turning and parking for 2 vehicles for dwellings with up to three bedrooms and 3 vehicles for dwellings with four or more bedrooms.**
- 4. Refuse collection point to be provided adjacent to the public road.**
- 5. Fences, hedges or walls to be kept back a minimum distance of 2.00 metres from edge of public road.**

**SEE COMMENTS ABOVE****Notes for Intimation to Applicant**

(i) Construction Consent(S21)*	<b>Not Required</b>
(ii) Road Bond (S17)*	<b>Not Required</b>
(iii) Road Opening Permit (S56)*	<b>Required</b>
(iv) No surface water discharge*	<b>Required</b>

\*Relevant Section of the Roads(Scotland) Act 1984

Signed: J. Ross

Date 25/10/2016

ID 4848

Actual Return Date 25/10/2016

Replied

***Photographs of vehicles that have used the track***

This is a selection of photographs showing other vehicles parked on grass triangle having turned in at the existing junction and used the private access

***Image 1 Two (of four) cars parked***



***Image 2 the (other) two of the four cars***



***Image 3 Two parked vehicles***



***Image 4 Land-Rover***



***Image 5 perhaps a dog-walker***



***Image 6 Single parked car***



And vehicles that have used the junction, driven further up the track, and parked within the old sheep fank on our building plot - vehicles such as these will continue to use the track (but park on the triangle instead of in the sheep fank) after the house is built here:

***Image 7 A walker's vehicle***



***Image 8 Another walker's vehicle***



***Image 9 Possibly a local vehicle***



***Photographs showing vision splays and absence of water running onto road***

1. To the south:

***Image 10 Existing vision to the full length of the visible road***



2. To the north:

***Image 11 Vision to the far edge of the bend***



Photographs showing water on the site and on the road above the distillery, but none running from the access track onto the public road

***Image 12 The building plot was very wet***



***Image 13 Water flowing across the site***



**Image 14**



**Image 15**



The track to the lane on the same afternoon:

**Image 16** While the access track is dry



**Image 17** The junction is dry



**Image 18** Water had flowed at the side



**Image 19** and into the ditch





The Land-Rover photograph was not taken on the same day, but happens to show the channel into the ditch before the track junction.

Images 11, 17, 18, and 19 also show the absorbent effect of a permeable surface, so although not wet, the track looks darker because it has absorbed moisture. If the track had a bound surface - tarmac or concrete - as required in the Council's standard water would have had to flow onwards, creating additional problems (more shaping, or more drains, or instead cascading round the bend and down the hill):

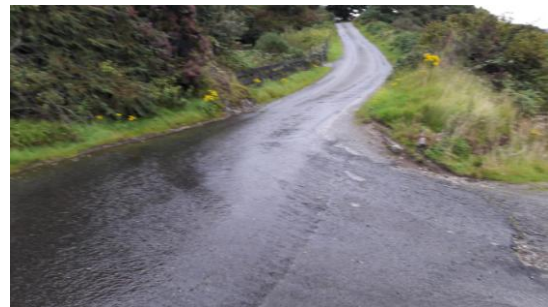
Unsurprisingly, water from some other source was doing exactly that:

The road down to Bunnahabhain distillery that afternoon:

***Image 20 Water flowing a long way down***



***Image 21 And across the road***



The state of the road on the blind bend at the top of the hill down to the distillery:

*Image 22*



STATEMENT OF CASE  
FOR  
ARGYLL AND BUTE COUNCIL  
LOCAL REVIEW BODY

**APPEAL AGAINST CONDITION NO.2 OF THE PLANNING  
PERMISSION REQUIRING ALTERATIONS TO THE JUNCTION OF A  
PRIVATE ACCESS**

**LAND WEST OF BUNN-NA-SCHAIRBH, BUNNAHABHAIN, ISLE OF  
ISLAY**

**LOCAL REVIEW BODY REF. 17/00006/LRB**

**PLANNING PERMISSION APPLICATION REFERENCE NUMBER  
16/02185/PP**

**2<sup>ND</sup> OCTOBER 2017**

## **STATEMENT OF CASE**

The Planning Authority is Argyll and Bute Council ('the Council'). The appellant is H & S Cobb ('the appellant'). The appellant has no agent.

Planning application, reference number 16/02185/PP, appeal against Condition 2 relative to planning permission reference 16/02185/PP (Erection of dwellinghouse with attached garage and installation of septic tank). This condition has been appealed as the appellant does not consider it necessary and accordingly is the subject of referral to a Local Review Body.

### **SITE LOCATION**

This application relates to the access at Land West of Bunn-Na- Schairbh, Bunnahabhain, Isle of Islay.

### **SITE HISTORY**

Most recent planning permission related to this appeal, planning permission ref. 16/02185/PP which was granted on 16.06.17 for erection of dwellinghouse with attached garage and installation of septic tank).

Previous permission ref. 06/01006/DET was granted on 30.11.06 for Erection of a dwellinghouse and ancillary outbuilding.

Planning Permission in Principle ref. 13/01120/PPP was granted on 09.08.13 for site for the erection of dwellinghouse and ancillary building.

### **CONDITION NO2. OF PLANNING PERMISSION 16/02185/PP**

Notwithstanding the provisions of Condition 1, no development shall be commenced until the junction between the private access serving the development and the public road has been formed in accordance with the Council's Roads Standard Detail Drawing SD 08/004 Rev a. and visibility splays of 2.40 metres to point X by 75 metres to point Y (south)/40 metres to point Y (north) from the centre line of the proposed access. The access shall be surfaced with a bound material in accordance with the stated Standard Detail Drawing. Prior to work starting on site the access hereby approved shall be formed to at least base course standard and the visibility splays shall be cleared of all obstructions such that nothing shall disrupt visibility from a point 1.05 metres above the access at point X to a point 0.6 metres above the public road carriageway at point Y. The final wearing surface on the access shall be completed prior to the dwelling first being occupied and the visibility splays shall be maintained clear of all obstructions thereafter.

Reason: In the interests of road safety, to ensure the development is served by an adequate and safe standard of vehicular access.

## **STATUTORY BASIS ON WHICH THE APPEAL SHOULD BE DECIDED**

Section 25 of the Town & Country Planning (Scotland) Act 1997 provides that, in making any determination under the Planning Acts, regard is to be had to Road Safety.

The Roads department have recommended the condition on road safety grounds for road users such as deliveries, bin lorries and visitors etc. The retention of a substantial unsurfaced access is likely to give rise to damage to the carriageway edge of the public road along the width of the junction and could lead to debris being carried out onto the road, both of which would be detrimental to the safety of road users.

In addition the key policies within the Development Plan which relate to the use of an existing access for further development are LDP 11 and SG LDP TRAN 4, which state the following:

*“Argyll and Bute Council will support all development proposals that seek to maintain and improve our internal and external connectivity and make best use of our existing infrastructure by ensuring that:*

*An appropriate standard of access is delivered to serve new developments, including off-site highway improvements where appropriate” (Policy LDP 11 - Improving our Connectivity and Infrastructure)*

*Approved Supplementary Guidance LDP TRAN 4 further states that*

*“Further development that utilises an existing private access or private road will only be accepted if:*

*(i) the access is capable of commensurate improvements considered by the Roads Authority to be appropriate to the scale and nature of the proposed new development and that takes into account the current access issues (informed by an assessment of usage).*

*In addition it states:*

*The construction standards to be applied are as follows:-*

*Public Roads: (i) shall be constructed to a standard as specified in the Council’s Roads Development Guide.*

*Commensurate Improvements*

*In situations where development aims to utilise an existing private access or private roads regime an informed assessment requires to be made. This needs to examine the access issues related to the proposed additional development and the current*

*situation on the private access or private road, including any capacity for improvement. The assessment requires to be an integral part of the design stage. These factors will be used to determine the level of commensurate improvement required. (Policy SG LDP TRAN 4 New & Existing, Public Roads & Private Access Regimes)*

These policies clearly state that the access serving development must be acceptable by the Council's Roads Authority with improvements where necessary. The access must meet with standards specified within the Council's Roads Development Guide.

The proposal was therefore deemed to be contrary with the relevant provisions of the Development Plan and advice from the Roads Department and as such was recommended for refusal.

### **DETERMINING ISSUES**

Argyll and Bute Council considers the determining issues in relation to the case are as follows:-

- Whether the proposal could be accepted without raising a road safety issue whereby following advice from the Roads Department it was concluded that to remove this condition from the permission would raise a road safety issue and is highly likely to set a precedent.

### **RELEVANT POLICY**

The Report of Handling (appendix 1) sets out the Council's assessment of the application in terms of Development Plan policy and other material considerations, so it is not intended to reiterate that here. The text of relevant policies are below with relevant sections highlighted in bold, given their particular relevance to the issues presented by this appeal.

*"Policy LDP 11 – Improving our Connectivity and Infrastructure*

*Argyll and Bute Council will support all development proposals that seek to maintain and improve our internal and external connectivity and make best use of our existing infrastructure by ensuring that:*

- *rights of way and public access are safeguarded;*
- *public access within the development is delivered, as appropriate, ensuring that any special mobility and safety requirements are addressed;*
- *consideration is given to the promotion of access to adjoining areas, in particular to the foreshore, core path network and green network;*
- *integration of the development with existing and potential public transport is taken fully into account;*

- *the proposed development is accessible by a range of modes of transport, including walking, cycling, public transport and car;*
- *an appropriate standard of access is delivered to serve new developments, including off-site highway improvements where appropriate;*
- *maximum and minimum car parking standards are applied;*
- *the location and design of new infrastructure is appropriate;*
- *standards for drainage, sewage, waste water and water supply are applied;*
- *new telecommunication proposals are encouraged where they comply with the criteria established in SG LDP TEL 1;*

SG LDP TRAN 4 – New & Existing, Public Roads & Private Access Regimes

**(2) further development that utilises an existing private access or private road will only be accepted if:-**

**(i) the access is capable of commensurate improvements considered by the Roads Authority to be appropriate to the scale and nature of the proposed new development and that takes into account the current access issues (informed by an assessment of usage); AND the applicant can;**

**(ii) Secure ownership of the private road or access to allow for commensurate improvements to be made to the satisfaction of the Planning Authority; OR,**

**(iii) Demonstrate that an appropriate agreement has been concluded with the existing owner to allow for commensurate improvements to be made to the satisfaction of the Planning Authority.**

**(B) The construction standards to be applied are as follows:-**

**1. Public Roads:**

*shall be constructed to a standard as specified in the Council's Roads Development Guide<sup>4</sup>. This takes account of Designing Streets to create a strong sense of place related to the development's location i.e. in a settlement, in a rural or remote rural situation, or in a Conservation Area. All roads submitted for adoption as a public road should form a continuous system with the existing public roads.*

**1.Private Access**

**(i) shall be constructed to incorporate minimum standards to function safely and effectively as set out in the Council's Road Development Guide, in particular in relation to adequate visibility splays, access gradients, geometry, passing places, boundary definition, turning capacities, integrated provision for waste management and recycling.**

**(ii) It must be demonstrated to the Planning Authority that consideration has been given by the applicant in the design process to the potential need to make future improvements to the access up to and including an adoptable standard.**

**(iii) which connect to or impact significantly on a Trunk Road will require consultation with Transport Scotland.**

SG LDP TRAN 5 – Off-site Highway Improvements

*This policy provides additional detail to policy LDP 11 – Improving our Connectivity and Infrastructure of the Adopted Argyll and Bute Local Development Plan.*

*Where development proposals will significantly increase vehicular or pedestrian traffic on substandard private or public approach roads, then developments will be required to contribute proportionately to improvements to an agreed section of the public or private road network.*

**REQUIREMENT FOR ADDITIONAL INFORMATION AND A HEARING**

The issues in this case are straightforward and are covered in the Report of Handling which is contained in Appendix 1. As such it is considered that Members have all the information necessary to determine the case. Given the above and that the proposal is 'local' development, has no complex or challenging issues and has not been subject of significant body of conflicting representation, then it is considered that a Hearing is not required.

**COMMENT ON APPELLANTS' SUBMISSION**

Point i

For the purpose of clarification it is advised that the note referred to on p136 of the LDP Supplementary Guidance is provided in relation to the Council's powers as Roads Authority having regard to the provisions of the Roads (Scotland) Act.

Notwithstanding the above it is noted that the planning permission was granted by the Council in its role as Planning Authority. In this respect the effect of proposed new development upon road safety is a material planning consideration and is identified as such by S25 of the Act and by the relevant provisions of policies LDP 11, SG LDP TRAN 4 and SG LDP TRAN 5 which seek to ensure that new development is served by an appropriate standard of access to serve the needs of the development.

Roads & Amenity Services have advised that the proposed development will give rise to increased usage of the junction between the private access and the public road. It has been expressed that the existing junction with the public road is unsatisfactory and the increased usage of the unbound junction will in time give rise to damage to the edge of the public road along the width of the junction which could lead to debris being carried onto the road, both of these circumstances would be detrimental to road safety.

In addition to the above should the removal of this condition be permitted it is likely to set precedent for further developments of the same nature which will result in further road safety concerns.



Point ii

Roads & Amenity Services have provided the following clarification which would confirm that the applicant has misunderstood the comments provided in the Roads Consultation.

*“Roads & Amenity Services do not regard the existing access as being satisfactory. The applicant appears to have failed to understand the planning conditions. The planning condition clearly states that the access has to be constructed as per standard detail drawing reference SD 08/004 Rev a. Standard detail drawing reference SD 08/004 Rev a is for a single dwelling with an access connecting to a single track road. The standard detail drawing shows an access width of 4.50 metres. Roads & Amenity Services added a comment to the planning response to make the applicant aware that should they wish to construct another dwelling, the access width would need to be increased to 5.50 metres. It would be more cost effective to construct the access to 5.50 metres at the time of construction rather than later. The applicant has stated that they do not wish to construct another access so the access width will be the same as that stated on the standard detail drawing. 4.50 metres.”*

Having regard to the above it is confirmed that the specified junction improvement is based solely upon the expectation of increased vehicle movements relating to the proposed single dwellinghouse and as such is deemed to be necessary in relation to the current application.

Point iii

Further comment requested from Roads & Amenity Services disagrees with the applicant as there is a material difference between existing and proposed circumstances. The access will now serve a dwelling, a service bay will be required for refuse collection and other deliveries, the application will also result in an intensification of use in relation to traffic generated by the occupants of the dwelling and any visitors to that property.

The requirement for a junction improvement is considered to be commensurate with the scale of development proposed and would be consistent with the Council's approach elsewhere.

Previous applications required these conditions. Planning ref 06/01006/DET and 13/01120/PP. The original applicant did not object to these conditions and the current applicant will have purchased the land with these conditions.

## APPENDIX 1 – REPORT OF HANDLING

Argyll and Bute Council  
Development & Infrastructure Services

Delegated Planning Application Report and Report of Handling as required by Schedule 2 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 relative to applications for Planning Permission or Planning Permission in Principle

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**Reference No:** 16/02185/PP  
**Planning Hierarchy:** Local  
**Applicant:** Mr and Mrs Howard Cobb  
**Proposal:** Erection of a dwellinghouse with attached garage and installation of septic tank.  
**Site Address:** Land West of Bunn-Na-Schairbh, Bunnahabhain, Isle of Islay

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### DECISION ROUTE

Sect 43 (A) of the Town and Country Planning (Scotland) Act 1997

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#### (A) THE APPLICATION

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

- Erection of dwellinghouse with attached garage and log store
- Formation of vehicular access to private road
- Installation of septic tank
- Connection to existing private water supply

(ii) **Other specified operations**

- N/A
- 

#### (B) RECOMMENDATION:

Recommend that planning permission be granted subject to the conditions and reasons attached.

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#### (C) CONSULTATIONS:

Health and Safety Executive – responded: 11.10.2016 – No comment

Council's Area Roads team – responded: 27.10.2016 – Recommended refusal, but with suggested conditions – *the recommendation for refusal was on the basis that the public road junction, for which the Area Roads Engineer required upgrades, was not included within the application site. Written consent from the landowner has now been provided confirming that the requisite works can be carried out; a 'pre-commencement' condition will be attached to this permission ensuring the work is carried out prior to any other development commencing*

Council's Environmental Health team – responded: 02.11.2016 – No objection subject to conditions

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**(D) HISTORY:**

13/01120/PPP – Site for the erection of dwellinghouse and ancillary building – permitted: 09.08.2013

06/01006/DET – Erection of a dwellinghouse and ancillary outbuilding – permitted: 30.11.2006

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**(E) PUBLICITY:**

Regulation 20 advert – expired: 03.11.2016

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**(F) REPRESENTATIONS:** None

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**(G) SUPPORTING INFORMATION**

Has the application been the subject of:

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

**(H) PLANNING OBLIGATIONS**

Is a Section 75 agreement required: No

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

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

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

**'Argyll and Bute Local Development Plan' Adopted March 2015**

LDP STRAT 1 – Sustainable Development

LDP DM 1 – Development within the Development Management Zones

LDP 3 – Supporting the Protection Conservation and Enhancement of our Environment

LDP 9 – Development Setting, Layout and Design

LDP 10 – Maximising our Resources and Reducing our Consumption

LDP 11 – Improving our Connectivity and Infrastructure

**'Supplementary Guidance to the Argyll and Bute Local Plan 2015' (Adopted March 2016)**

**Landscape and Design**

SG LDP ENV 14 – Landscape

**General Housing Development**

SG LDP HOU 1 – General Housing Development Including Affordable Housing Provision

**Sustainable Siting and Design**

SG LDP Sustainable – Sustainable Siting and Design Principles

**Resources and Consumption**

SG LDP SERV 1 – Private Sewage Treatment Plants & Wastewater Systems

SG LDP SERV 2 – Incorporation of Natural Features / SuDS

SG LDP SERV 6 – Private Water Supplies and Water Conservation

**Transport (Including Core Paths)**

SG LDP TRAN 4 – New & Existing, Public Roads & Private Access Regimes

SG LDP TRAN 5 – Off-site Highway Improvements

SG LDP TRAN 6 – Vehicle Parking Provision

- (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 3/2013.**

- Scottish Planning Policy
- Planning history
- Consultation responses

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

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

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

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

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**(O) Requirement for a hearing (PAN41 or other): No**

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

This application relates to a plot of land at Bunnahabhain, Isle of Islay. Planning permission is sought for the erection of a single dwellinghouse with associated development.

Principle of development

The site lies within the 'settlement zone' of Bunnahabhain, with respect to the LDPs settlement strategy. The relevant policies of the Development Plan, LDP DM 1 and SG LDP HOU 1, offer broad encouragement to 'small-scale' residential development on appropriate sites within such areas.

There is a history of planning permissions for a single house on the site and it is considered that it offers an appropriate opportunity for the erection of a single dwelling. The principle of the proposal is therefore consistent with the relevant provisions of the Development Plan.

Siting/design

The application site is located a short distance down a private track from the public road which leads down to Bunnahabhain Distillery. It occupies an area of flat but prominent unmanaged grassland which is elevated with respect to the coast and overlooks Bunnahabhain Bay. The footprint of the proposed dwellinghouse will be contained within the concrete remains of an old sheep fank which will be retained.

The proposed dwellinghouse itself will be a substantial building; a one and a half storey main body will be supplemented with smaller, single storey timber clad wings to the side and rear. The result is a building which will be relatively grand but retaining traditional vernacular features, most notably:

- Narrow gables and steeply pitched, symmetrical roof;
- Windows with a strong vertical emphasis;
- Chimneys and skews;
- Dormer windows with pitched roofs

Similarly, the proposed external finishes will be sympathetic to traditional architecture with a mixture of timber cladding, stone/render cladding, slate roofs and timber windows/doors. The site is one which can accommodate a building of this scale which will command a significant presence above the bay and the form and finishes of the building are consistent with the design principles set out in policy SG LDP Sustainable of the Development Plan; there is established planning history for a dwelling of significant scale. A proposed site plan included with the application includes spot levels and a finished floor level for the building which shows it to be grounded within the site and not excessively elevated.

The proposed site plan includes a plan for surface/boundary treatments which are simple and will have limited visual impact and intrusion into the landscape. Boundaries will be demarcated by post and wire fencing and the majority of the site will be retained as grass with a small amount of gravel and a patio area.

The proposed dwelling is sufficiently far removed from neighbouring dwellings that there will be no adverse privacy/amenity relationships.

Overall, the siting and design of the proposed dwelling are considered to be acceptable and consistent with the relevant provisions of the Development Plan.

### Access/servicing

The development will be served by an existing private access from the public road, with an extension provided to serve the new dwelling. Upgrades to the public road junction will be executed to facilitate the new development and, whilst this area not contained within the application site, written confirmation from the owners of the land has been provided confirming their consent to this work being carried out. Parking and turning will be provided on site. The Area Roads Engineer is satisfied with the proposal subject to conditions requiring these elements to be carried out to an appropriate standard.

Foul drainage will be provided on site via a septic tank and soakaway; the area is not served by a public sewer. Potable water will be achieved through connection to an existing private system and will be subject to a condition requiring demonstration of adequate wholesomeness and sufficiency.

All elements of the access and servicing arrangements are considered to be acceptable and consistent with the relevant provisions of the Development Plan.

### Summary

The proposal is wholly consistent with the relevant provisions of the Development Plan and there are no material considerations which warrant departure from these provisions.

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**CONDITIONS AND REASONS RELATIVE TO APPLICATION REF. NO. 16/02185/PP**

1. The development shall be implemented in accordance with the details specified on the application form dated 4<sup>th</sup> August 2016 and the approved drawings numbered 1 to 11 and stamped approved by Argyll and Bute Council 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.

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

2. Notwithstanding the provisions of Condition 1, no development shall be commenced until the junction between the private access serving the development and the public road has been formed in accordance with the Council's Roads Standard Detail Drawing SD 08/004 Rev a. and visibility splays of 2.40 metres to point X by 75 metres to point Y (south)/40 metres to point Y (north) from the centre line of the proposed access. The access shall be surfaced with a bound material in accordance with the stated Standard Detail Drawing. Prior to work starting on site the access hereby approved shall be formed to at least base course standard and the visibility splays shall be cleared of all obstructions such that nothing shall disrupt visibility from a point 1.05 metres above the access at point X to a point 0.6 metres above the public road carriageway at point Y. The final wearing surface on the access shall be completed prior to the dwelling first being occupied and the visibility splays shall be maintained clear of all obstructions thereafter.

Reason: In the interests of road safety, to ensure the development is served by an adequate and safe standard of vehicular access.

3. Notwithstanding the provisions of Condition 1, no development shall be commenced until details of a refuse collection point to be provided adjacent to the public road have been submitted to and approved in writing by the Planning Authority. The collection point shall be provided prior to the first occupation of the dwellinghouse and maintained thereafter.

Reason: In order to facilitate the collection of waste.

4. The parking and turning area shall be laid out and surfaced in accordance with the details shown on the approved plans prior to the dwelling first being occupied and shall thereafter be maintained clear of obstruction for the parking and manoeuvring of vehicles.

Reason: In the interest of road safety, to ensure the development is served by an adequate volume of parking spaces within the application site.

5. Notwithstanding the effect of Condition 1, no development shall be commenced until full written details of the external wall finishes to be used in the development have been submitted to and approved in writing by the Planning Authority. The development shall thereafter be completed using the approved materials or such alternatives as may be agreed in writing with the Planning Authority.

Reason: In order to integrate the development into its surroundings and prevent inappropriate finishes which will appear incongruous, in the interests of clarity.



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

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

**NOTE TO APPLICANT**

- **The length of the permission:** This planning permission will last only for **three** years from the date of this decision notice, unless the development has been started within that period [See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).]
- In order to comply with Section 27A(1) of the Town and Country Planning (Scotland) Act 1997, prior to works commencing on site it is the responsibility of the developer to complete and submit the attached 'Notice of Initiation of Development' to the Planning Authority specifying the date on which the development will start.
- In order to comply with Section 27B(1) of the Town and Country Planning (Scotland) Act 1997 it is the responsibility of the developer to submit the attached 'Notice of Completion' to the Planning Authority specifying the date upon which the development was completed.
- A Road Opening Permit under the Roads (Scotland) Act 1984 must be obtained from the Council's Roads Engineers prior to the formation/alteration of a junction with the public road.
- The access shall be constructed and drained to ensure that no surface water is discharged onto the public road.

**APPENDIX TO DECISION APPROVAL NOTICE**

Appendix relative to application **16/02185/PP**

(A) Has the application required an obligation under Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended): **No**

(B) Has the application been the subject of any amendment in terms of Section 32A of the Town and Country Planning (Scotland) Act 1997 (as amended) to the initial submitted plans during its processing. **No**

(C) The reason why planning permission has been approved:

The proposal is wholly consistent with the relevant provisions of the Development Plan and there are no material considerations which warrant departure from these provisions.

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## Planning application 16/02185/PP

### Appeal against Condition 2 of the planning consent: Appellants' response to Argyll and Bute Council's Statement of Case

#### *Introduction*

Our submission in support of the appeal was based on three grounds. That:

1. the Council did not have the power to enforce the condition: in its Statement of Case the Council has addressed this issue in detail and we now acknowledge that we had misunderstood the Council's powers as constrained by the policy TRAN 5, and that the Council does appear to have the powers that we had understood TRAN 5 to say it had not
2. notwithstanding, the works specified in the condition are unnecessary: the Council has characterised our appeal "because the appellant does not consider it necessary". Contrary to the impression the Council has formed, we considered the Condition unnecessary in the sense of being inappropriate. In this final response we will show that alterations to the junction are unnecessary because the junction already accords with the quality principles sought in the TRAN policies, and
3. expecting us to undertake the works is unreasonably disproportionate and unfair: the traffic volume when the applicants' house is built will be tiny compared with existing traffic levels. This is important because Councils are expected to act *proportionately*. But the Council has offered no comment on the disproportionate nature of the Condition.

In relation to these issues the Council has offered only *unevidenced* assertions (despite its process recommending that these kinds of decisions be 'informed' by an assessment) and, equally importantly, is *silent* on whether or not enforcing the condition would be disproportionate.

#### ***The Council's powers:***

The Council sets out the statutory basis for its position. If the Council has the statutory powers to impose the condition then we have to accept that.

#### ***The state of the junction, and its conformance to Policy:***

The Council justifies the imposition of the condition on the grounds of road safety. We cannot argue with road safety as it is clearly of primary importance and must be considered. The Council has not, however, explained what aspect of road safety would be compromised if the works were not carried out. The Council asserts (despite our already having submitted evidence to refute this) that our property, when built, 'will give rise to increased usage of the junction...and will in time give rise to damage to the edge of the public road along the width of the junction which would lead to debris being carried onto the road...'

The Council's Roads Development Guide has been cited by the Council and specifies "in particular, [...] adequate visibility splays, access gradients, geometry, passing places, boundary definition, turning capacities, integrated provision for waste management and recycling. The photographs in document 9 of our appeal submission will help the Review Body see that the existing junction has extremely good vision

splays, the access gradient is virtually level (level at the road junction, to all intents and purposes) with a gentle rise behind the junction as the track winds onto the moor, exhibits a generous geometry allowing vehicles with short or long turning radii, or short or long wheelbases, and trailers, to turn off or onto the road safely and securely, with space for two vehicles to pass side by side, a clear boundary starkly defined by grass that contrasts with the junction surface, and plenty of space for vehicles to turn. There is a separate Condition in respect of a bay for waste management (rubbish collection and recycling) but we are not appealing against that Condition.

We ask the Review Body to note that, while the existing junction is of a high standard in traffic flow and facility aspects, the standard sought by the Council is narrower than the existing access (10.3m at a distance 2.8m from the nearside road edge, vs 4.5m at 5.5m from the *far side* of the road) and would reduce some traffic flow and facility capability of the existing junction. It would:

- not allow vehicles to pass side by side-by-side without impeding passing traffic on the public road (the Council's primary concern in a previous case discussed below - thus demonstrably an important safety aspect), or
- tolerate turning by vehicles with restricted turning radii, with trailers, or of long wheelbases. Such vehicles use this junction on a regular basis.

Together with our submission we provided details of other vehicles that use the track at present - and have done for many years - and enclosed photographs in support. We described how, during the years when there were children of school age living at Bunnahabhain (and at Ardnahoe), the (full sized) school bus reversed onto the track twice every day during term time because it was the only sensible place for it to turn round. Only a very small amount of debris has ever appeared on the carriageway compared with debris elsewhere along the same road. Images Resp1 and Resp2 below show sections of the road to Bunnahabhain on either side of Torrabus, with both debris and potholes in evidence.

[photographs overleaf]





Resp1: Road to Bunnahabhain south of Torrabus



Resp2: Road to Bunnahabhain north of Torrabus

And images Resp3 and Resp4 show the condition of two of the existing passing places on the road to Bunnahabhain:



Resp3: an existing passing place on road to Bunnahabhain



Resp4: another passing place on the Bunnahabhain road

While the Council has not addressed these deficiencies, it expects us to undertake major alterations at this relatively little used private access junction - where there is less of a problem than there is elsewhere.

***Council's power to exercise its discretion proportionately***

Contrary to the Council's statements suggesting that junctions **must** be upgraded, not only is there **no such specific** statutory duty on the Council, the Council has a wide **discretion**, and a power to act **proportionately**. There is no duty on the Council to take as a matter of course an extreme position, and indeed public bodies such as the Council are expected to act proportionately. An example elsewhere on Islay, with some similarities to the present case and a similar planning concern - a private access shared with other traffic but in that case fronting a busy A road - is to be found at Lorgba, near Port Charlotte (14/01332/PP - Crofts 15 and 16). Photographs Resp5 and Resp6 show the junction of the track at Lorgba with the main A847, which connects Port Charlotte, Portnahaven and all the communities and dwellings in between, with the administrative centre of Bowmore, the ferry terminals, the airport, and the rest of the island.



Resp5: Junction of access at Lorgba onto main A847



Resp6: Access track at Lorgba from main road

Apart from the poor condition of the track at the junction, it joins a busy main road with traffic in both directions and at speeds such that the Area Roads Manager specified that vision splays of 136 metres in both directions were required. The stone wall that is visible in the photographs but is not owned by the applicants would prevent this being achieved. The Roads Manager's recommendation that the application be refused was overturned on the basis of an application for outline permission in 2005. It was noted that the Roads Manager's recommendation on that occasion too had been for refusal, but following an Elected Members' site visit 'it was decided that it would be appropriate in this case to set these concerns aside'. The planning decision states that although 'the access ... has restricted visibility which does not meet the Council's normal standards in full...[it] satisfactorily serves [four] existing properties including the croft land which is the subject of this application.'

Furthermore, the decision states that the dwelling proposed 'will only result in marginal additional use of this access over and above that already associated with the croft, which would not amount to such intensification of use of the junction to warrant permission being refused on road safety grounds.'

Comparison of the Lorgba application with the present case before the Review Body suggests that there is an even stronger case for setting aside the Roads Manager's concerns about our application:

- (i) The road to Port Charlotte is a main A road with fast traffic in both directions whereas the road to Bunnahabhain is a single track lane to Bunnahabhain distillery.



- (ii) Usage on the road to Bunnahabhain is so light that grass is growing in the middle of the road in various different locations. Image Resp7 shows grass in the road to the south of the private access that leads to the entrance to our building plot.

Resp7

- (iii) The Council accepted in the Lorgba case that one extra dwelling would not result in a significant increase in usage of the access, yet in our case the Council asserts that there will be an ‘intensification of use in relation to traffic generated by the occupants of the dwelling and any visitors to that property’. It is particularly concerned about refuse collection and other deliveries. On such a quiet road the arrival once every three weeks -17 times a year - of a refuse collection vehicle would not seem to represent a significant increase in traffic, not least because the same vehicle **already stops** there (so no additional stop will be made) to collect the refuse from our present bin. The location of the bin on the verge opposite the access junction is shown in images Resp8 and Resp9:

<p>Resp8: location of our existing bin (to right of electricity pole)</p>	<p>Resp9: our existing bin is on the verge to the right of the road</p>

The Council mentions deliveries and visitors. We are not sure how many deliveries the Council imagines we will receive but, apart from the post, we receive no more than about three or four deliveries a year. We see no reason why this number should increase significantly following a move to Bunnahabhain. And we do not expect a constant stream of visitors.



In our submission we enclosed some photographs of vehicles that have used the access for whatever purpose - mainly walkers (whether visitors to the island, or local dog walkers). But as stated in our submission, the access is used most extensively by the Estate, especially when culling deer (from August onwards).

Image Resp10 is a photograph taken on 9 October 2017 showing one of the Estate's vehicles parked to the side of the track beyond our plot, with a trailer that had carried their ArgoCat, which was out on the hill at the time.

Resp10

When SSE Hydro need to make repairs to their power lines they bring a van loaded with equipment and, if a pole is down or damaged, a large trailer carrying a Hitachi tracked excavator.

The Council's Statement of Case does not address the point we made in our request for review that the Council is apparently satisfied with the existing junction's ability to be used safely by all those who use it because it has neither sought to improve the junction itself nor asked the owners to do so. Yet, now that a dwelling is proposed, the Council has identified a safety issue. The Council has not explained why no safety issue has previously been identified, nor has it explained why a safety issue will arise from minor domestic use but no safety issue would seem to arise from all the other uses of the private access junction. We pointed out in our Review request that the existing uses will always be higher than any use arising from the proposed single dwelling. We ask the Review Body to consider whether any safety issue would, in reality, be due to an insignificant traffic increase on the multiple-use

junction arising from a single dwelling. The track has adequately served the existing usage over a long period of time.

In summary of proportionality:

- (a) as in the Lorgba case, usage as a result of a single dwelling sharing an existing access with multiple other traffic will not significantly increase traffic levels
- (b) the access junction is in a much better condition than that at Lorgba
- (c) there is no comparison between the busy A847 at Lorgba and the often deserted single track road to Bunnahabhain distillery, and
- (d) the vision splay at the Bunnahabhain access meets the Council's requirements whereas that at Lorgba does not and probably never will.

The Decision on the Lorgba croft explained that because the traffic from a single house was not significantly more than would arise from the bare land croft [and, therefore, was not significantly more than the existing traffic on that shared private access] it would not amount to such intensification of traffic at the junction to justify refusing planning permission. That was a good example of a **proportionate decision** on a realistic basis.

Our own appeal in respect of the proposed house at Bunnahabhain, on an already much used private access, has obvious similarities with the circumstances at Lorgba: both use private accesses; in both cases there was already significant albeit relatively low frequency traffic using the private access; in both cases the additional traffic from a single private house will not amount to an intensification of traffic at the junction such as to - in our case - require that householders upgrade the junction to protect it and the road from effects of the existing relatively more extensive, and (in practice) much heavier, traffic.

The Council expresses concern about the possible state of the road after the house is built, although there is no evidence that there will be any deterioration in the condition of the road.

#### ***Planning history, and precedents***

The Council expresses concern about setting a precedent, but the Council is aware that the access at Lorgba, cited in the previous paragraphs, already sets a precedent. But each case is different in detail and should be determined on its merits. In any event, it must surely be unusual for an access to a new house to be off an existing private access **that is used more by other and heavier** users than the usage by the owners of the new property. New developments are surely more likely to require a new specific private access for which an approach based on the concept of planning gain might be appropriate.

In a final comment the Council notes that the original applicant did not object to the condition, and that we bought the plot with the condition attached but, while possibly true, neither of these statements renders the condition reasonable or proportionate. To suggest that the original applicant did not object to the condition is, in any event, conjecture. After detailed permission was granted in 2006, the applicant undertook works to widen the track at the junction, improving the hard base and providing a larger bay. He also cut back gorse bushes to the south of the access to increase the vision splay. The 2013 permission to which the Council alludes was outline permission only, obtained in order to continue the permission for development. The

Council cannot say whether or not the applicant would have appealed the condition if he had applied for detailed permission, then or subsequently. Whatever his possible intentions though, people suffer many injustices in this world but not everyone takes action to remedy them. And if we had objected to the condition at the time of tendering it would have been before we owned the plot, then waiting for a decision might have lost us the opportunity to purchase the plot.

**Conclusion**

The Council’s position is that Road Safety issues are at the core of its case. It considers that:

- these issues arise due to the additional traffic from *this* development,
- the appropriate rectification is a full scale replacement of the existing (though functional, wide, and visible) access with a public-road standard access (but narrower than the access that exists at present), and
- this junction rebuilding should be undertaken and funded by the applicant (irrespective of the dominance of other traffic using the junction).

The Council has reached this determination **without an informed assessment**. The Council does not cite any examination of the existing junction, offers no assessment of either the present access against the criteria listed in the TRAN4 policy, or the traffic levels on both the public road and the private access, and does not consider the relative proportions of junction use between the applicant’s proposed 3-bedroomed house and the multiple other and heavier users of the junction.

**Review of the junction in respect of the TRAN 4 policy reveals:**

<b>TRAN 4 Access Criterion</b>	<b>The Existing Access</b>
<b>Visibility splays</b>	High visibility in both directions
<b>Access gradients</b>	Virtually level within area of junction, gentle rise behind junction
<b>Geometry</b>	Almost perpendicular to road, very broad access can accommodate wide turning radii, long wheelbases, trailers
<b>Passing places</b>	Very wide access can accommodate vehicle entry and exit side by side
<b>Boundary definition</b>	Clear boundary definition
<b>Turning capacities</b>	Broad access can also tolerate any mis-aligned reversing from the road
<b>Integrated provision for waste management and recycling</b>	Not part of Condition 2, separate Condition applies so outwith this appeal
<b>Notes</b>	<p>The existing junction is of a very high standard for traffic flow and facility. There is clear visibility, both from the junction, and from the road to show vehicles at the junction</p> <p>The junction is firm, sculpted, and absent of potholes</p> <p>The junction is wide and can accommodate vehicles passing side-by-side, as well as facilitating turning or reversing by vehicles with long wheelbases, or trailers.</p>

**The other non-domestic traffic using this junction includes:**

Access	Examples
Commercial	Commercial estate (Stalking, Conservancy, stock counting, maintenance)
Infrastructure providers	*Local Bunnahabhain water supply, *SSE (powerline to Colonsay and Rhuvaal), *BT (network)
Other statutory bodies	SNH (and survey partners), Armed Forces exercises
Organised visits and expeditions	Geology parties, Archaeological parties, Bird watching groups, Organised walks
Visitors and other Informal users	Off road vehicle explorers, Campers, Dog walkers, Informal walkers
Other relevant information	2 "Access Scotland" routes, access to a wide variety of wildlife, access to a wilderness
Typical vehicle classes	Cars, minibuses, 4wds, camper vans, trucks, trailers with various heavy equipment
<p>* Access for the provider's infrastructure purposes (for example, BT operate a microwave radio station and multiplexer equipment at Rhuvaal, SSE operate an 11,000v overhead line serving Rhuvaal properties and the island of Colonsay (undersea from near Rhuvaal));</p> <p>Occasional additional access to any individual property is not included in this list but considered to be part of general traffic associated with dwellings</p>	

**As an example of a proportionate decision, a comparison between the conditions at Lorgba (Port Charlotte), and the junction at Bunnahabhain is offered:**

Aspect	Lorgba	Bunnahabhain
Public road class	Class A road, two lane	Unclassified, single track
Traffic speeds	Quite fast	Slow
Public road traffic level	High (inter-settlement route), constant	Very low, dead end, grass growing in centre
Access surface	Broken, potholes	Firm, smooth
Access width	Single lane, no passing space	Wide, space for vehicles to pass side by side
Access use	4 dwellings, croft 1 additional dwelling ("insignificant" traffic increase)	Commercial estate, Local water supply, SSE (powerline to Colonsay and Rhuvaal), BT (network), SNH (and survey partners), Armed Forces exercises, Geology parties, Archaeological parties,

Aspect	Lorgba	Bunnahabhain
		Bird watching groups, Off road vehicle explorers, Campers, Organised walks, Dog walkers, Informal walkers  2 "Access Scotland" routes  Cars, minibuses, 4wds, camper vans, trucks, trailers  1 additional dwelling ("insignificant"?)

In closing, we ask the Review Body to:

- (i) Undertake a site visit
- (ii) Observe the visibility offered, the firm structure, the gradients, the wide space for turning and accommodating vehicles entering and exiting the junction and allowing them at the same time to pass each other if necessary
- (iii) Note the low traffic levels on the public road, and (hopefully) observe some of the traffic using the private access

We ask the Review Body to take into account the power the Council has to exercise its discretion proportionately and the requirement that it do so. We ask that, instead of mandating a change to the junction which will bring - at best - a lessening of the junction's capacity to assist traffic flow or provide traffic turning and passing facilities, the Review Body consider the benefits that already flow from what is by any standard a good example of a private access. We hope the Review Body will keep in mind that, despite the disproportionate traffic share in favour of all the other users of the private access, this Condition imposes the full cost of a fully remodelled junction, with less capacity, on the applicants. We would point the Review Body to TRAN 5 policy's principle that public works by applicants are only appropriate if *their* incremental traffic is significant. Asking the applicants in this case to fund and undertake a junction remodelling, of mixed benefits, despite not being responsible for either much of the traffic or most of the weight of that traffic, is not only disproportionate and unreasonable, but also contrary to those principles of TRAN 5.

For all these reasons, we ask the Review Body to set aside Condition 2.