

STATEMENT OF CASE
FOR
ARGYLL AND BUTE COUNCIL
LOCAL REVIEW BODY

**REFUSAL OF PLANNING PERMISSION FOR
REMOVAL OF CONDITION NO.3 RELATIVE TO PLANNING
PERMISSION REFERENCE 14/00589/PP (ERECTION OF A 40.5
METRE HIGH (TO BLADE TIP) WIND TURBINE**

**LAND APPROX. 515 METRES NORTHWEST OF AUCHENHOAN
COTTAGE, CAMPBELTOWN**

LOCAL REVIEW BODY REF. 16/0011/LRB

**PLANNING PERMISSION APPLICATION REFERENCE NUMBER
16/02479/PP**

13th December 2016

STATEMENT OF CASE

The Planning Authority is Argyll and Bute Council ('the Council'). The appellant is Mary Turner ('the appellant'). The appellant has no agent.

Planning application, reference number 16/02479/PP, for the removal of Condition 3 relative to planning permission reference 14/00589/PP (Erection of a 40.5 metre high (to blade tip) wind turbine was refused under delegated powers on the 5th December 2016. This planning decision has been appealed and is the subject of referral to a Local Review Body.

SITE LOCATION

This application relates to the access to Auchenhoan Farm, Campbeltown

SITE HISTORY

Planning permission ref. 14/00589/PP was granted for the erection of a 40.5 metre high (to blade tip) wind turbine (amended by planning condition to 35m to blade tip). This application was subsequently appealed to maintain the 40.5m height which was upheld at appeal.

CONDITION NO3. OF PLANNING PERMISSION 14/00589/PP

Notwithstanding the provisions of Condition 1, the proposed access shall be formed in accordance with the Council's Roads Standard Detail Drawing SD08/001 Rev a and visibility splays of 2.4 metres to point X by 75 metres to point Y 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 development first being brought into use and the visibility splays shall be maintained clear of all obstructions thereafter.

Any gates shall be set back a minimum distance of 6.0 metres from the carriageway edge and open inwards.

Reason: In the interests of road safety.

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 proposal for refusal on road safety grounds. Whilst the turbine has been installed and is operational the turbine will require servicing/maintenance and accordingly the access will continue to be used in connection with the turbine, including the prospect of further component delivery should items need replacement and the removal of components when the turbine is eventually decommissioned. 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 Guide⁴. 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 1

Whilst it is appreciated the turbine has been installed and is operational the turbine will require servicing/maintenance and accordingly the access will continue to be used in connection with the turbine, including the prospect of further component delivery should items need replacement and the removal of components when the turbine is eventually decommissioned. The applicant has not advised of any alternative access available to use in respect of the operational phase of the turbine and therefore that which was employed for construction purposes must be considered as the sole access to the wind turbine. 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 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 2

Whilst it is unfortunate that the turbine has been vandalised this is not a planning consideration and therefore I cannot comment further.

Point 3

There does not appear to be any gates (or fences) currently within this access subject to this appeal.

APPENDIS 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

Reference No: 16/02479/PP
Planning Hierarchy: Local
Applicant: Mrs Mary Turner
Proposal: Removal of condition 3 relative to planning permission reference 14/00589/PP
Site Address: Land approx. 515 metres northwest of Auchenhoan Cottage, Campbeltown

DECISION ROUTE

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

(A) THE APPLICATION

- (i) **Development Requiring Express Planning Permission**
- Removal of condition 3 relative to planning permission reference 14/00589/PP
- (ii) **Other specified operations**
- N/A
-

(B) RECOMMENDATION:

Recommend that planning permission be refused for the reasons contained within this report.

(C) CONSULTATIONS:

Area Roads Engineer – recommendation to refuse – report dated 06.10.16

(D) HISTORY:

14/00589/PP – Removal of Condition 3 relative to planning permission reference 14/00589/PP (Erection of a 40.5 metre high (to blade tip) wind turbine (amended by planning condition to 35m to blade tip) – granted 20.06.14 (this was subsequently appealed to maintain the 40.5m height, which was upheld at appeal)

(E) PUBLICITY:

Regulation 20 Advert – Expired 21.10.16

(F) REPRESENTATIONS: None

(G) SUPPORTING INFORMATION

Has the application been the subject of:

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

(H) PLANNING OBLIGATIONS

Is a Section 75 agreement required: No

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

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

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

'Argyll and Bute Local Development Plan' Adopted March 2015

LDP STRAT 1 – Sustainable Development

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 13 – Impact on Areas of Panoramic Quality (APQs)

Sustainable Siting and Design

SG LDP Sustainable – Sustainable Siting and Design Principles

Transport (Including Core Paths)

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

SG LDP TRAN 5 – Off-site Highway Improvements

(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
- Consultation response

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

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

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

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

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

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

Planning permission ref. 14/00589/PP was granted for the erection of 40.5m high (to blade tip) wind turbine at land approx. 515 metres Northwest of Auchenhoan cottage, Campbeltown. A condition (no.3) was attached in respect of the access to the site of the turbine at the request of Roads and Amenity Services.

Condition no.3 states:

Notwithstanding the provisions of Condition 1, the proposed access shall be formed in accordance with the Council's Roads Standard Detail Drawing SD08/001 Rev a and visibility splays of 2.4 metres to point X by 75 metres to point Y 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 development first being brought into use and the visibility splays shall be maintained clear of all obstructions thereafter.

Any gates shall be set back a minimum distance of 6.0 metres from the carriageway edge and open inwards.

Reason: In the interests of road safety.

The wind turbine has been constructed and is operational; however condition no.3 of planning permission ref. 14/00589/PP has not been complied with. Condition no.3, as above, refers to drawing no. SD 08/001 Rev which relates to a "Forest Access Road" with a 90 degree radius connecting the public road to the private access and the first 10m back from the public road to be surfaced with bitumen macadam or concrete. Whilst the radius formed is considered acceptable, the access has not been surfaced in a bound material. In addition, the required sightlines of 75m x 2.40m x 1.05m have not been formed. Roads and Amenity Services raised the issue of non-compliance and consequently an enforcement investigation (ref. 16/00192/ENBOC2) commenced.

Following the enforcement investigation the applicant has submitted this application to seek the removal of condition no.3 from planning permission ref. 14/00589/PP which if granted would remove the requirement for the access to be completed as per the requirements of the Council's Roads Standard Detail Drawing SD08/001 Rev a. The Roads Department have recommended this application for refusal due to ongoing road safety concerns in respect of the access in its current form due to inadequate sightlines and the absence of a bound surface at the junction with the carriageway.

Whilst it is appreciated the turbine has been installed and is operational the turbine will require servicing/maintenance and accordingly the access will continue to be used in connection with the turbine, including the prospect of further component delivery should items need replacement and the removal of components when the turbine is eventually decommissioned. The applicant has not advised of any alternative access available to use in respect of the operational phase of the turbine and therefore that which was employed for construction purposes must be considered as the sole access to the wind turbine. 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.

During the course of consideration of this submission Officers have undertaken further discussion with Roads to ascertain whether a lesser standard of surfaced access layout to that required for construction purposes could satisfactorily meet road safety requirements for the operational lifetime of the turbine. It has however been confirmed by Roads Officers that a lesser standard will not be supported, primarily because the access will require to be used for future maintenance of the turbine and as such could be required to facilitate access for larger vehicles/crane should component replacement be necessary and eventually the access will also require to facilitate vehicle movements required in connection with the removal of the turbine at the end of its operational life. The applicants proposal to delete condition 3 would not satisfactorily provide for this position.

Local Development Plan Policy LDP 11 – Improving our Connectivity and Infrastructure states:

“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”

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.

The access from the public road to the turbine will require to be used for continued access to the turbine for repairs, servicing and general maintenance during the lifetime of the turbine and eventually when the turbine requires to be removed. This will all require to be carried out via this access serving the site. The access as formed does not meet Roads and Amenity Services requirements and by virtue of being sub-standard removal of the condition as sought would result in a permission contrary to Local Development Plan policies LDP 11 and Supplementary Guidance LDP TRAN 4.

(Q) Is the proposal consistent with the Development Plan: No – does not comply with the Argyll and Bute Local Development Plan (Adopted March 2015) policies LDP 11 and supplementary Guidance LDP TRAN 4.


(R) Reasons why Planning Permission Should be Refused:

See Reason for Refusal attached

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

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

Author of Report: Kim MacKay **Date:** 05.12.16

Reviewing Officer: Richard Kerr  **Date:** 05.12.16

Angus Gilmour
Head of Planning & Regulatory Services

REASON FOR REFUSAL RELATIVE TO APPLICATION REF. NO. 16/02479/PP

1. Removal of the requirements of condition 3 of planning permission 14/00589/PP would result in a development being served by a means of access which fails to meet standards required by the Council's Roads Engineers and which would therefore fail to satisfy the requirements of 'Argyll and Bute Council Local Development Plan approved Supplementary Guidance SG LDP TRAN 4. This establishes that 'further development that utilises an existing private access or private road will only be accepted if 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 that construction standards relating to junction with the public road shall be constructed to a standard as specified in the Council's Roads Development Guide. Although the access was not constructed to the standard required by the condition for the purposes of the construction period which has now ended, it nonetheless remains the sole means of access to the turbine during the operational period for routine maintenance and component replacement, and beyond that for decommissioning. Therefore an appropriate standard of access is still required despite turbine installation having been completed. The absence of an access with adequate visibility presents risks to other road uses in terms of vehicles exiting the site, and the absence of sealed surfacing at the junction presents the prospect of damage to the carriageway edge and debris being carried out onto the road, all of which are detrimental to the interests of road safety.