

Town and Country Planning (Scotland) Act 1997 as amended
Notice of Review Under Section 43A(8) of the 1997 Act
Erection of dwellinghouse, installation of septic tank and formation of vehicular access
Application Number: 13/01582/PP
Local Review Reference : 16/0002/LRB

Appellant Response to Council Response
The Appellant would respond to the representations as follows :-

1 Council Response

1.1 Planning Policy

The planning officer's Statement of Case relies heavily on LDP Policy DM1, in particular the parts of the policy that reference infill and/or rounding-off.

The LDP Proposals Map shows the site as being within the Countryside Zone where Policy DM1 applies. Whilst the planning officer's Statement of Case suggests that Policy DM1 establishes that the Countryside is an 'area which is otherwise one of restraint in terms of construction of new dwellings' the policy actually establishes that 'Encouragement shall be given to' a range of specified 'forms of development'. The emphasis in this policy is positive, and is in line with the presumption in favour of sustainable development that is established in national planning policy. With that in mind, it is clear that rather than acting as a restraint, Policy DM1 is in fact positive and supports development within the Countryside Zone, but with some limited exceptions.

Policy DM1 encourages development in the Countryside Zone where it constitutes 'appropriate infill, rounding-off and redevelopment'. The Council's Statement of Case quotes the LDP definitions of both infill and rounding-off, and these are accepted as quoted. However, the Appellant does not accept the planning officer's interpretation of these definitions with regards to this proposal.

With regards to infill, the proposal is self-evidently for the development of a single dwellinghouse on a site that sits in close proximity to two other existing dwellinghouses, which are positioned a short distance to the west of the site, as well as a surfaced road and a stone built boathouse which are in close proximity to the eastern side. Whilst the specific distances between features can be argued over, the fact is that this small stretch of coast is characterised by the afore-mentioned built features, incidentally all of which sit behind a small offshore island that restricts views from Loch Fyne, with the proposed house to be positioned in very close proximity to the road and the boathouse, and a short distance from the two existing houses. The introduction of an additional house here will in no way fundamentally alter or adversely impact on the established character of the area. On the contrary, the style, scale, design and materials proposed are all such that the new house will complement the existing and consolidate what is already a small cluster of sensitively designed and located buildings on this limited part of the coast. The proposal does constitute functional infill and, as accepted by the planning officer's Statement of Case, the policy does not establish any specific distance to support the assertion that a gap of '168 metres' or thereby cannot be infill.

Rounding-off is accepted as being perhaps a less relevant consideration to this proposal than infill, but nevertheless the policy does 'encourage' development in the Countryside Zone where it is between substantial buildings and a substantial ground or natural feature. As referenced, the site is between existing houses, and a road and a boathouse. Given that the policy applies to a countryside location it is assumed that houses and a boathouse of relatively similar size to a small house would be considered to be 'substantial buildings' in this context. With that in mind,

the insertion of one further building within the established group can be considered to be an effective rounding-off.

Taking these considerations together, it is clear that the proposal does satisfy the tests of both 'infill' and 'rounding-off' and, as such, the proposal is 'encouraged' by Policy DM1.

However, and notwithstanding this, as referenced in our Statement of Appeal and elsewhere, the site has previously accommodated built development. As such, the proposal to erect a new house here can also be considered to accord with the part of Policy DM1 which supports redevelopment, as that is what is proposed regardless of the fact that no building currently occupies the site.

The part of Policy DM1 that references infill, rounding-off and redevelopment also goes on to establish that in exceptional cases development in the open countryside may be supported on sites deemed appropriate by way of an ACE (Area Capacity Evaluation). Whilst we have established and substantiated our view that the proposal does constitute infill, rounding-off and redevelopment, the ACE clause also allows for permission to be granted. We are not aware of the Council having carried out an ACE relative to this proposal, or of them affording the Appellant the opportunity, but the fact remains, as set out above, that the site is located on a stretch of coast which is already characterised by two houses, a road and a boathouse, all in close proximity to each other and the site. It is therefore self-evident that the 'area' has the 'capacity' to absorb an additional house between these existing features without any adverse impact on the character of the area and landscape. This part of Policy DM1 therefore also supports the proposal.

The planning officer's Statement of Case places significant weight on LDP Policy DM1. However, the Appellant has demonstrated that the proposal satisfies the various elements of Policy DM1 and this supports the grant of planning permission.

1.2 Access

1.2.1 The Council's objection on access relates to the Council's concern that the Appellant does not have access rights to improve deficiencies at the eastern junction with the A83. The Local Review Body should note that two planning applications have been granted on the condition that adequate visibility splays be provided at the eastern junction; and it is the Appellant's understanding that these works have been carried out.

1.2.2 No concerns have been raised that the eastern junction cannot absorb the traffic produced by one further development. Any concern that the Appellant does not have adequate rights to use any part of the road leading to the development is not a material consideration in planning terms which should be used by the Local Review Board to refuse permission for a development which is acceptable in planning terms.

1.3 Site History

1.3.1 The Council makes reference to the Site History in their response to the Appellant's statement of appeal. The Council's interpretation of the site history is incorrect. The Council submits in their response that "there are no remains of a building which would warrant the site being construed as a redevelopment opportunity." For the avoidance of doubt, the Appellant is not submitting that the dwellinghouse is a redevelopment in planning terms. However, the Site History clearly indicates that there is a pattern of development along the shore; and the cottage being developed on the Site completes the existing pattern of development. This is emphasised by the Appellant's production of

APP09, which is an excerpt from an 1899 OS Map. The hatching circled in red is at the same location as the Site and the National Library have confirmed that the hatching indicates that a dwellinghouse was on that site. It is noteworthy that the Council have not provided an alternative explanation for the marking on the 1899 OS map.

1.4 Unauthorised Works

- 1.4.1 The Council's response makes further reference to alleged unauthorised works carried out at the shore of Castleton Estate, which the Council alleges comprised including the extraction of rock, the levelling of ground to form a potentially developable platform, the formation of a means of vehicular access to the site and the installation of rock armour along the shoreline. The Appellant's position is that no unauthorised works have been carried out; any enforcement action threatened by the Council is not the subject of this appeal, no such action having been taken.