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**REVIEW REQUEST 16/0002/LRB****ERECTION OF NEW COTTAGE, CROFT 3, CASTLETON, LOCHGILPHEAD**

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**COMMENTS ON MATTERS ARISING ON BEHALF OF PLANNING AND REGULATORY SERVICES**

Officers have had sight of the submission dated 9<sup>th</sup> March 2017 provided by Andrew Donaldson on behalf of Transport Scotland which further details the position of the Trunk Roads Authority in its capacity as a statutory consultee in this case, given that access to the site is required to be taken from the A83(T).

The submission documents actual and achievable visibility and has regard to the extent to which the applicant is in a position to implement and maintain splays to meet trunk roads standards in order to ensure that what is currently be a sub-standard means of access is capable of being brought up to the required standard to serve the additional development proposed. It concludes that, in the absence of the applicant having control over the land required for improved visibility purposes, intensification of use of the access would not be in the interests of road safety having regard to traffic speed along the trunk road. The position adopted by Transport Scotland is supported by Planning and Regulatory Services.

The appellant indicates that there are two potential means of access to the site, referred to by them in their submission as the 'Western Access Route' and the 'Eastern Access Route' and submits that either means of access could be used in the event that one were to prove unsuitable. Of the two routes, it would appear that the 'Eastern Access Route' falls under the control of third parties who have as part of the appeal process indicated their unwillingness for this route to be used in connection with the proposed development. Indeed, it appears that gates are in use to prevent unauthorised at Castleton House and at the link route between the 'Western Access Route' and the 'Eastern Access Route' (annotated 'connection between the eastern and western access routes' in the appellant's submission). In the latter case, the connection appears to have recently been physically stopped-up by means of the gate being padlocked and the access blocked by a mound of stone.

The position of Planning and Regulatory Services is that the most attractive route from the A83(T) to the site would be likely to be the 'Western Access Route', given that this avoids the environs of Castleton House and provides the shortest route to the nearest settlement of Lochgilphead. This route would only prove suitable to serve additional development were the developer able to improve visibility at the Trunk Road junction to satisfy Transport Scotland's requirements, and to provide passing places along this single track route, to satisfy the Council's Roads Engineers; neither of which appear deliverable using land in the control of, or available to, the appellant. Although given what third parties have had to say there is at best doubt over whether the appellant has rights in order to be able to access the site via the 'Eastern Access Route', even if this were possible, the option would remain for prospective residents, visitors and delivery drivers to choose use either access, given that it is not open to the applicant to close-off one route in favour of the other. Accordingly, an ability to take access via the 'Eastern Access Route' would not overcome the likely intensification of use of the 'Western Access Route' and the shortcomings of that in road safety terms.

Planning and Regulatory Services position remains that there is a sub-standard access regime serving the appeal site, regardless of whether either or both of the accesses were to be used, and that these accesses are not controlled by, or are capable of being improved by, the appellant to a point where road safety can be assured in the event that the appeal were to be

allowed. Planning and Regulatory Services therefore maintains the position adopted in the second and third reasons which was given for the refusal of this application.

In terms of the first reason for refusal, Planning and Regulatory Services maintains its position that the development of the site would not satisfy the settlement strategy adopted by the Argyll and Bute Local Development Plan 2015. The status of the development plan in decision-making is set down by statute. Section 37 of the Town & Country Planning Act 1997 (as amended) requires that the determination of a planning application shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations. Section 25 of the same Act establishes the primacy of the development plan in the determination of planning applications, and requires that determination shall be in accordance with the plan unless material considerations indicate otherwise. The key issue in the determination of this appeal is therefore whether the proposal may be regarded as being consistent with development plan policy, and if not, whether there are other material considerations of such weight as to warrant a development plan departure.

Section J of the Report of Handling leading to the refusal of the appeal proposal cited those Policies contained within the LDP Written Statement and within associated Supplementary Guidance which were relevant to the determination of that application. Notwithstanding the imperative to consider the effect of the development plan policy 'in the round' the most influential policies, given the circumstances of this case, are:

Policy LDP DM1 Development within the Development Management Zones – which establishes the overall settlement policy applicable to all types of development;

SG LDP HOU 1 General Housing Development – which establishes the policy response to housing proposals in particular, having regard to the effect of LDP DM 1;

SG LDP TRAN 4 New & Existing, Public Roads & Private Access Regimes and SG LDP TRAN 5 Off-site Highway Improvements – which establish access requirements in the interests of road safety.

Reason for Refusal 1 of the application correctly cited the settlement strategy expressed in Policy LDP DM1 identifying the proposal as 'small scale' development in the designated 'countryside' zone. It neglected however to state that in terms of 'small scale' housing proposals it is necessary to consider the effect of LDP DM 1 in combination with SG LDP HOU 1, which gives further expression as to how LDP policy 'in the round' is to take effect where residential proposals are being considered. Given that this was not made explicit as it should have been in the stated reason for refusal, it will be helpful for the Review Body to be apprised of the effect of SG LDP HOU 1.

Policy SG LDP HOU 1 dictates the policy response to all types of housing proposal. It operates in conjunction with Policy LDP DM1 which establishes the various development management zones. In considering a housing application it is necessary to have regard to both of these policies as neither will provide an adequate policy response in isolation. Policy DM 1 establishes that the development management zones and determines that the appeal site lies within the 'countryside zone' where encouragement will be given to 'small scale' developments on appropriate sites in specific circumstances cited in the policy. SG LDP HOU 1 gives further expression as to what ought to be regarded as an 'appropriate site', by stating that housing development for which there is a presumption in favour will be supported '*unless there is an unacceptable environmental, servicing or access impact*'. It also defines the scales of housing development for the purposes of LDP DM 1 with 'small scale' being defined as being up to 5 dwelling units.

Importantly, for the purposes of housing development proposals, SG LDP HOU 1 also establishes those circumstances where the Development Plan presumes against development. In the rural development management zones this establishes a presumption against 'large or medium scale' housing development, but also 'small scale' development in '*open/undeveloped areas and non-croft land*' in the 'countryside' zone (other than where a house is intended to serve a bareland croft, or where there is an accepted locational/operational need).

The step by step Development Plan response to appeal proposal, having regard to the combined effect of Policy LDP DM 1 in association with SG LDP HOU 1, is therefore as follows:

- 1) The appeal site is located in the LDP defined 'countryside' zone having regard to the various development management zones defined in LDP DM 1.
- 2) As a single dwelling it constitutes a 'small scale' development proposal in the context of the scales of housing development set out in SG LDP HOU 1.
- 3) Within the 'countryside' zone LDP DM1 lends particular support to all types of proposals which constitute infill development, rounding-off, redevelopment or change of use of existing buildings. The common thread running through these is that development opportunities in the countryside may be afforded by the presence of existing built development; by enabling rebuilding or alternative use, or by association between a proposal and existing buildings. The glossary to the LDP provides definitions of these terms to assist in their application.
- 4) As a corollary to this SG LDP HOU 1 goes on to establish circumstances where there will be a presumption against housing development in the 'countryside' zone including 'small scale' development '*in open/undeveloped areas and non-croft land*', other than where there is a demonstrable exceptional case underpinned by a locational/operational need.
- 5) In this case the proposal does not benefit from any of the encouraged types of development cited in LDP DM 1, in so far as:
  - It does not constitute 'infill development' in terms of the LDP glossary definition: i.e. it is not '*new development positioned between other substantial buildings and this new development being of a scale subordinate to the combined scale of the buildings adjacent to the development site*'. This circumstance arises where there is an opportunity to infill a gap between buildings where the presence of those buildings would mitigate the effect of development to a point where it would be less than if the development occupied an open and otherwise undeveloped location.
  - It does not constitute rounding-off as defined: i.e. it is not '*new development positioned largely between substantial building(s) on one side and a substantial ground or natural feature on the other side and arranged so that the local pattern of development terminates at this point*'. This provides the opportunity for an existing building and a significant physical feature (such as a river) to contain a proposed development site, but no such circumstance pertains in this case.

- It does not constitute 'redevelopment' as defined to include '*substantial demolitions*'. It is not therefore sufficient to assert that a site may have been occupied by a building at some point in the past. The building must exist to afford a redevelopment opportunity.
  - It does not constitute a 'change of use' as there is no existing building on the site.
- 6) Having established that the proposal is not afforded particular encouragement by LDP DM 1 it is necessary to go on to consider whether the particular policy response for housing established by SG LDP HOU 1 lends weight to the proposal. This establishes a particular policy presumption against 'small scale' housing development in '*open/undeveloped areas on non croft land in the countryside zone*', other than where a locational need has been demonstrated successfully (for agricultural or croft land management purposes for example). Whilst LDP DM 1 therefore provides encouragement for 'countryside zone' development related in some way to existing buildings, on the other hand SG LDP HOU 1 presumes against development of open/undeveloped land.
- 7) In assessing the combined effect of LDP DM 1 and SG LDP HOU 1 it is necessary to consider whether the appeal proposal might properly be regarded as 'infill' development (for which there is encouragement via LDP DM 1) or alternatively, whether it amounts to an 'open/undeveloped area' (within which SG LDP HOU 1 establishes a presumption against). None of the other cited circumstances cited in LDP DM 1 could credibly apply in this case. In terms of what could constitute a legitimate 'infill' development opportunity Planning and Regulatory Services relies upon its conclusions reached in the Report of Handing on the application. The separation between the Castleton House boathouse on one side of the site and the cottage on the other is of the order of 168 metres and consequently the intervening land cannot be reasonably regarded as a legitimate 'infill' opportunity. It should more properly be regarded as an 'open/undeveloped area' between these widely separated structures, in which case the presumption against development established by Policy SG LDP HOU 1 applies.
- 8) At the conclusion of this assessment is necessary to consider whether there is any exceptional case supporting this development in terms of land management or any other locational/operational need, or indeed any other circumstance which might indicate that the provisions of the Development Plan ought not to prevail in this case. In the absence of any case having been made for this development founded around a need for a dwelling to serve a purpose related to this particular location, it has to be concluded that there are no exceptional circumstances weighing in favour of the appeal proposal.
- 9) Finally, notwithstanding the interpretation and effect of LDP DM 1 and SG LDP HOU 1 in terms of the settlement strategy and which might be properly regarded as 'infill' development, SG LDP HOU 1 makes it clear that '*housing development are also subject to consistency with all other policies and associated SG of the Local Development Plan*'. In this case the shortcomings of the access regime serving the site and the inability of the appellant to deliver improvements commensurate with the scale of development would point to the need to dismiss the appeal, regardless of settlement strategy and housing policy considerations.

In conclusion the position of Planning and Regulatory Services remains that the appeal proposal does not satisfy the settlement strategy and the associated housing policy of the Local Development Plan as given expression by combined effect of LDP DM 1 and SG LDP HOU 1, nor does the access regime satisfy the requirements of the Council's Roads Engineers or Transport Scotland leading a failure to comply with SG LDP TRAN 4 and SG LDP TRAN 5.

Richard Kerr  
Principal Planning Officer

15<sup>th</sup> March 2017