

Local Review Reference : 16/0002/LRB (Re-Convened LRB)

**Erection of dwellinghouse, installation of septic tank and formation of vehicular access
Application Number: 13/01582/PP**

Appellant Response to Council, Transport Scotland and Objector Response

1 Comments on "Matters Arising on behalf of Planning and Regulatory" Services

1.1 Access

1.1.1 The survey carried out by Transport Scotland in March 2017 is supportive of the Appellant's application as it confirmed that the required standard of visibility is achievable at the Eastern Junction, subject to the visibility splay (which crosses third party land) being improved and maintained.

1.1.2 The Appellant had previously not had confirmation that third party land rights were required to improve the visibility splays at the Eastern Junction; but the Appellant intends to negotiate rights with the Landowners to make the required improvements to the visibility at the Eastern Junction. Notwithstanding this, any concern that the Appellant currently does not have adequate rights to improve the visibility splay at the Eastern Junction is not a material consideration in planning terms which should be used by the LRB to refuse permission for a development which is acceptable in planning terms.

1.1.3 In addition, the Appellant invites the LRB to consider a previous planning application which was granted subject to a condition that the visibility at the Eastern Junction be improved and maintained. The Appellant refers to 06/02657/DET which contains a condition that the Eastern Junction be improved; and to correspondence which is included as part of that Application. In that application, a letter from the Applicant's agents states that the Applicants own "the ground either side of the access apart from the adjacent house plot to the north". The existence of full land rights to improve the junction was not therefore a material consideration which justified refusal of the development. The Appellant submits that this approach should be followed as regards the current Appeal.

1.1.4 The response by Planning and Regulatory Services also makes reference to the Appellant's right to use the full extent of the Eastern Access Route. The suggestion in the Planning and Regulatory Services Response that access is to be taken through a locked gate at Castleton House is incorrect. In addition, the link route between the Eastern and the Western Access Route (referred to in the Planning and Regulatory Services Response) has not recently been physically stopped up by a mound of stone; as the Appellant understands that this stone has been placed there temporarily as part of improvements to the road. Notwithstanding this the Appellant reiterates that 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 LRB to refuse permission for a development which is otherwise acceptable in planning terms.

- 1.1.5 The Appellant notes the concern of Planning and Regulatory Services that the Western Access Route may be used by residents, visitors or delivery drivers. Whilst the Appellant maintains that a lack of adequate rights to improve the junctions or roads leading to the development is not a reason which should be used to refuse permission; the Appellant considers that the concern that the Western Access Route could be used to access the development can be addressed by a condition stating that access to the development is to be taken via the Eastern Access Route.

1.2 Planning Policy

- 1.2.1 The Planning and Regulatory Services Response maintains its position that the development is not an encouraged type of development in terms of LDP DM1; SG LDP TRAN 4 and 5; and introduces a further policy against which the development should be assessed (SG LDP HOU 1).

The Appellant's position in relation to the four policies is as follows :-

1.2.2 LDP DM1

- 1.2.2.1 This encourages development in the Countryside Zone where it constitutes appropriate infill, rounding-off and redevelopment. The Appellant does not accept the interpretation of these definitions included within the Planning and Regulatory Services Response.

- 1.2.2.2 Regarding the first encouraged type of development (infill), the proposal is for development of a single dwellinghouse which sits in close proximity to two other existing dwellinghouses; as well as a surfaced road and a boathouse. The definition of "infill" as included in the Planning and Regulatory Services Response refers to infill arising where "there is an opportunity to infill a gap between buildings where the presence of those buildings would mitigate the effect of the development to a point where it would be less than if the development occupied an open and otherwise undeveloped location." Notwithstanding the fact that the dwellinghouse in this case is not to be located in an otherwise undeveloped location; and thus there is no requirement to mitigate the effect on an undeveloped area; the proposed house is to be situated close to the road and the boathouse, and a short distance from the two existing houses. The introduction of a new house therefore represents functional infill; and the policy does not establish any specific distance to support the assertion that a gap of 168 metres cannot be infill.

- 1.2.2.3 The development is also supported by the second type of encouraged development (rounding off). The

Appellant accepts that rounding-off is less of a relevant consideration than infill, but this consideration is still supportive of the development. The Planning and Regulatory Services Response states that rounding off should involve " new development positioned between substantial buildings one on side and a substantial ground or natural feature on the other side". The development is to be situated between two houses on the west ; and a road and boathouse to the east. The Appellant submits that two houses satisfy the "substantial buildings" criteria, and the road referred to latterly constitutes a ground feature which "rounds off" the development on the eastern side. Taking these matters into consideration, the proposal can clearly be considered rounding-off.

1.2.2.4 The Appellant maintains that the proposal satisfies the part of policy DM1 which supports redevelopment as the site has previously accommodated built development.

1.2.3 **SG LDP HOU 1**

1.2.3.1 The Planning and Regulatory Services Response contains a summary of SG LDP HOU 1, which policy establishes a presumption against "small-scale" housing development in "open/undeveloped areas on non croft land in the countryside zone."

1.2.3.2 Whilst this has not previously been referred to in the Planning Authority's Reasons for Refusal, the Appellant submits that properly construed, this policy is also supportive of the development.

1.2.3.3 The Appellant submits that the land surrounding the proposed development site cannot be considered "open" or "undeveloped" given that there are two houses, a boathouse and a road within close proximity. There is therefore not a presumption against development in this location.

1.2.3.4 In addition, the policy states that the "presumption in favour of new housing development is restricted to change of use of existing buildings or small-scale development in close proximity to existing buildings on infill, rounding-off and redevelopment sites." As set out above, the development meets both the criteria of "infill" and "rounding off", and is in close proximity to existing buildings; and therefore meets the narrow circumstances in which there is a presumption in favour of development in terms of SG LDP HOU 1.

1.2.4 **SG LDP TRAN 4 and 5**

1.2.4.1 These policies relate to the whether the proposed means of access to the development are fit for use.

The Appellant maintains their previous position that it would be unreasonable to conclude that the roads leading to the development could not accommodate traffic from one additional development; and that any concern that the Appellant does not currently have land rights to improve the Eastern access route is not a material consideration in planning terms.

2 Appellant Comments on Transport Scotland Further Information

- 2.1 The Transport Scotland response highlights that the requisite visibility splays are achievable at the Eastern Junction. Any concern that the Appellant does not have adequate rights to improve the junction is not a material consideration in planning terms.

3 Appellant Comments on Steve Whant & Suzannne Myers Response

- 3.1 The Appellant is not proposing to take access via the private driveway at Castleton House, nor take access through land owned by the Objectors.
- 3.2 In any event, ownership and land rights are not a material consideration which should be used by the LRB to refuse an application for a development which is acceptable in planning terms.