

## **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>	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  The junction is firm, sculpted, and absent of potholes  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.



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

<b>Access</b>	<b>Examples</b>
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:**

<b>Aspect</b>	<b>Lorgba</b>	<b>Bunnahabhain</b>
<b>Public road class</b>	Class A road, two lane	Unclassified, single track
<b>Traffic speeds</b>	Quite fast	Slow
<b>Public road traffic level</b>	High (inter-settlement route), constant	Very low, dead end, grass growing in centre
<b>Access surface</b>	Broken, potholes	Firm, smooth
<b>Access width</b>	Single lane, no passing space	Wide, space for vehicles to pass side by side
<b>Access use</b>	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.