

**LOCAL REVIEW BODY REFERENCE 17/0009/LRB**

**PLANNING APPLICATION 16/02183/PP**

**SITE FOR THE ERECTION OF DWELLINGHOUSE**

**LAND NORTH WEST OF OAKFIELD, LOCHGILPHEAD**

**COMMENTS ON BEHALF OF THE LOCAL PLANNING AUTHORITY**

## BACKGROUND

This proposal relates to a 240 hectare estate on the outskirts of Lochgilphead. Although there is some occupied residential accommodation on the estate, it no longer benefits from a principal dwelling, and the appellant's wish is construct a new dwelling commensurate with the scale of the estate, in order to provide for estate management and the stated intention to restore a walled garden.

The estate lies outwith the LDP defined 'settlement' boundary for Lochgilphead and falls within the surrounding 'countryside' development management zone. Policy LDP DM1 and SG LDP HOU 1 encourage 'small scale' sustainable development on appropriate infill, rounding-off and redevelopment sites in the 'countryside zone'. The site for which permission in principal was applied for did not constitute either in-fill or rounding-off development.

Although the appellant advised that it was proposed to relinquish the use of an existing residential property, 'Auchindarroch Cottage', some 450 metres south of the application site, this would not normally amount to 'redevelopment' as per the LDP glossary definition of such, as redevelopment would be expected to be implemented on the same site as that occupied by the existing building and be of a scale and form comparable with that of the existing building. In this case development was proposed to be in an alternative location elsewhere on the estate and on a larger scale.

In exceptional circumstances it is possible justify development under Policy LDP DM1 and SG LDP HOU 1 where a locational/operational need has been advanced which is sufficient to warrant an exception being made to the LDP Settlement and Spatial Strategy, provided that it accords with the outcome of an Area Capacity Assessment (ACE). However, the conclusion in this case was that the appellant's estate management intentions did not amount to a clear locational need, given that an additional house was not essential to the implementation of the estate management works proposed.

In the course of pre-application discussions it had been accepted that existing estate buildings did not occupy locations which lent themselves to the provision of a focal estate house, and officers undertook to work with the appellant at that stage to explore options which might be capable of being delivered in a manner which could satisfy LDP policy considerations. This led to the approach whereby 'Auchindarroch Cottage' would be relinquished in a bid to support development in an alternative location elsewhere on the estate. 'Auchindarroch Cottage' is an unoccupied and dilapidated building, but it has been accepted that the lawful use of the property for residential purposes has not been abandoned, and therefore it would be open to the appellant to refurbish and the property for re-occupation as a dwelling, without planning permission being required.

A further consideration was that access to the estate is constrained by a sub-standard route from the A83(T) which leaves the trunk road at an acute angle close to the A816/A83 Corran roundabout west of Lochgilphead. This route then accesses the estate via a single track swing bridge over the Canal which is shared with towpath users. This access constraint pointed to the likelihood of the need to surrender a residential use as a *quid pro quo* for the establishment of an additional dwelling, so that traffic levels generated by the estate would remain substantially unaltered. The Trunk Roads Authority did not object to the application subject to the proviso that the original cottage is demolished or alternatively, any approval is subject to a planning condition requiring a Traffic Regulation Order is promoted to restrict left turning traffic from the Trunk Road under Traffic Legislation. Additionally, the Council's Roads Engineers acknowledged the shortcomings of the existing means of access from the trunk road and did not object, but only on the basis that this was to be a replacement dwelling, in

which case no intensification of vehicular use would arise. The retention of the existing cottage in addition to a further dwelling would therefore have prompted objection by them on the grounds of an inadequate means of access to serve further residential development.

In the event, officers concluded that the proposal could be considered a legitimate exception to LDP policy having regard to the combination of the fact that an existing dwelling would be relinquished, on the basis of the benefits of the wider landscape enhancement which would be associated with the development of a principal estate house, and that no intensification of vehicular access would be involved. Having regard to these considerations, and with the influence of the outcome of a satisfactory ACE assessment, the proposal for revised siting and a significantly larger replacement was supported by officers, with permission in principal being granted subject to conditions.

### **COMMENTS ON THE APPELLANTS GROUNDS OF APPEAL**

An appeal has been lodged against the imposition of condition 3 and condition 5 with the request that they be removed.

The appeal is founded on the extent to which these two requirements fulfil, in the circumstances of the case, the Six Tests for the imposition of planning conditions, as set out in Scottish Government Circular 4/1998, and which are further endorsed by subsequently issued government policy. The Planning Authority accepts the applicability of these tests, which require that a condition should be necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other aspects. This long-standing approach has been routinely adopted by both Government Reporters on appeal and by the Courts in situations where planning decisions have been subject to judicial review.

#### Condition 3 – Requirement for the demolition of Auchindarroch Cottage

This planning permission has been justified on the basis of a case founded around 'redevelopment', in the absence in this case of any other route capable of satisfying development plan policy in respect of a defined 'countryside' location. The LDP is clear that to amount to redevelopment there must be 'substantial demolitions'. In other words, buildings should be removed to afford opportunities for, and to make way for, replacement buildings.

The condition imposed reads as follows:

No development shall commence until the existing dwellinghouse identified on approved drawing no. 464-1 P 01 Rev.B as Auchindarroch Cottage has been completely demolished; all resultant demolition materials removed from the estate grounds; all fences, walls, gates or other means of demarcating the residential curtilage have been removed; and the site re-instated to a natural condition to be approved in writing by the Planning Authority.

Reason: To ensure the removal of the existing residential unit to be redeveloped in order to comply with adopted Local Development Plan Settlement and Spatial Strategy, Transportation policy and highway safety at the substandard access junction with the A83 trunk road.

As the stated reason indicates, this has cognisance of the need to align the consent with the principal of 'redevelopment' (albeit in the circumstance of this case, exceptionally on an alternative site and to a larger scale) and the need to avoid additional traffic generation requiring the use of an already sub-standard means of access. Redevelopment is defined in the LDP as being - 'development of new buildings involving substantial demolitions'.

Officers would normally expect a new building to be constructed upon all or part of the footprint of an existing building, so in the normal course of events it would be an inevitability that an existing structure would need to be demolished in order to be able to construct a replacement in the same or a similar location.

In this case, exceptionally, officers were persuaded that the location of Auchindarroch Cottage did not lend itself to the siting of a focal estate house, and accordingly an alternative location was identified which would result in the new building being constructed other than on the footprint of the existing dwelling. Notwithstanding that, removal of that building would nonetheless be required in order to achieve the 'substantial demolitions' occasioning favourable consideration of a replacement dwelling. In the absence of demolition prompting a redevelopment opportunity, this route to an LDP compliant decision would not present itself. In the absence of any other opportunity to achieve LDP compliance, the only alternative would then have been to refuse planning permission in principle.

The appellant has indicated that she was unaware that a requirement to demolish Auchindarroch Cottage would be imposed on any decision. This is surprising given that it was made clear that a redevelopment justification would be required in order to achieve LDP compliance. Common usage of the term 'redevelopment', regardless of the precision of the LDP definition, would make it evident that demolition would need to be advanced in order to prompt an opportunity for a replacement building.

A statement submitted by the agents as part of the planning application supports the proposal, in part, on the basis that *"the new house by the walled garden should take on the traffic generation allowance for Auchindarroch Cottage currently used for the Transport Assessment calculations...and that any future development of the cottage should instead be treated as a new-build."*

There was no clarification of how this was to be achieved practically. As such, Officers opened communications with the appellant's agent as part of the assessment of the application in order to discuss an appropriate and robust planning mechanism for achieving this. At that time, Officers expressed the preferred procedure by which a notification to demolish the cottage was invited, which would be determined concurrently with the application. Any planning permission for the new house could then be subject to a suspensive planning condition to the effect that Auchindarroch Cottage be demolished and the site cleared prior to commencement of development (of the new house). This advice also indicated the Planning Authority's willingness to give careful consideration any alternative solutions from the agent/applicant which could be capable of achieving compliance with LDP policy.

The agent's response did not put forward an alternative solution, as invited, nor did it specifically object to the Council's preferred approach i.e. demolition. The response simply advised that a trade-off between demolishing Auchindarroch Cottage and building a new house had been previously discussed prior to submission of the application, with no indication of the outcome of those discussions. Given this correspondence, it is clear that the appellant's agent has been made aware of the strong likelihood of a planning condition addressing the requirement for the demolition of Auchindarroch Cottage at an early stage in the planning application process. There is no explanation as to why the applicant would be unaware of this requirement at the point when planning permission was granted.

It is the concession which officers have made to entertain redevelopment on land elsewhere, rather than at the location of the existing building (which would in that case have inevitably prompted demolition), which has afforded the appellant an opportunity to now seek to retain

the dwelling advanced as a justification for redevelopment. This opportunity would not arise in the normal course of events. The position is clear that in the absence of demolition, no LDP compliant redevelopment opportunity presents itself, either on the original site or in any location elsewhere.

The appellant indicates that in the event of the requirement to demolish being upheld, there ought not to be an obligation to dispose of the demolition material off-site, as there would be opportunity for it to be processed as recycled as material for use elsewhere on the estate. That being the case, it would be appropriate for the Review Body to vary the wording of condition to make provision for such an eventuality; the primary reason for this requirement having been that material arising from demolition ought not to be left on the demolition site. A suggested form of wording for this purpose is appended.

#### Condition 5 – Archaeological Watching Brief

This proposal prompted consultation with the West of Scotland Archaeological Service (WoSAS) who provided the Planning Authority with advice as to measures which in their opinion ought to be secured by means of planning condition. As the appellant correctly points out, in this case these relate to the means of access to the proposed dwelling, rather than the site of the dwelling itself. The Planning Authority accepts the advice which was received from WoSAS and does not require any measures beyond those identified by them.

The condition imposed reads as follows:

Pursuant to Condition 1 - no development or ground breaking works shall commence until a method statement for an archaeological watching brief has been submitted to and approved by the Planning Authority in consultation with the West of Scotland Archaeology Service.

The method statement shall be prepared by a suitably qualified person and shall provide for the recording, recovery and reporting of items of interest or finds within the application site.

Thereafter the development shall be implemented in accordance with the duly approved details with the suitably qualified person being afforded access at all reasonable times during ground disturbance works.

Reason: In order to protect archaeological resources.

This is a standard Watching Brief Condition routinely imposed by the Planning Authority when the requirement for such a brief has been identified by WoSAS. It is not prescriptive as to the measures to be employed, but requires a method statement to be agreed up front as a means of scoping the extent of works required in the particular circumstances. The WoSAS consultation response provides an applicant with an advanced indication as to the extent of their likely requirements.

The appellant has indicated that it would not be her intention to carry out improvements to the access requiring ground breaking works, as it would only be intended to resurface the access within its existing corridor. That was not evident at the time of the application given that it was a planning permission in principle, and that details of access works were not required to be specified as part of such an application. Accordingly, the extent of access improvements will only become specified as part of a subsequent Application for Approval of Matters Specified in Condition. However, as it would not be competent to introduce a Watching Brief Condition at that stage, as the only opportunity is to impose such a requirement at the Permission in Principle stage.

If it transpires that the appellant's current position is correct, and that no works likely to prejudice the interests WoSAS have sought to see protected will be proposed as part of this project, then it would be reasonable to avoid any requirement for what might prove to be an unnecessary Watching Brief Condition. With that in mind it would be appropriate for the Review Body to revise condition 5 to provide that it may be invoked, if required, once full details of the project are known; or alternatively, to allow development to proceed in the absence of such a requirement if it is clear, once full details are known, that access works do not entail realignment or widening, in which case the requirement for archaeological measures would be superfluous. A suggested form of wording for this purpose is appended.

#### Other Matters

The appellant indicates her dissatisfaction that a Woodland Management Plan and Garden Management Plan were required by the Planning Authority. This does not form part of the appeal as it does not relate to either Condition 3 or 5. For information, estate management, including woodland management; restoration of historic landscape features (walled garden and Oriental gardens) formed part of the justification for the re-introduction of a focal Estate house, and these plans were therefore a material consideration in concluding that an exception ought to be made for the 'redevelopment' to approved in respect of an alternative location and for a substantially larger house.

#### **CONCLUSION**

The Planning Authority's position is that condition 3 ought not to be removed as per the appellant's request, as demolition of this unoccupied and dilapidated structure is fundamental to the redevelopment case which led to the acceptance of the proposal in terms of LDP policy. It is however, accepted that condition 3 could be varied to avoid the obligation for all demolition material to be removed for disposal outwith the estate.

The Planning Authority's position is that condition 5 ought not to be removed as per the appellant's request, as there are no approved details at this stage to provide assurance that interests of concern raised in consultation by WoSAS will not require to be safeguarded. It is however, accepted that condition 5 could be varied to provide dispensation from the requirement to undertake a Watching Brief, in the event that access details submitted for the purpose of Approval of Matters Subject to Condition render that requirement superfluous.

Richard Kerr

Principal Planning Officer

26<sup>th</sup> October 2017

### **SUGGESTED CONDITIONS IN THE EVENT OF THE APPEAL BEING ALLOWED**

3. No development shall commence until the existing dwellinghouse identified on approved drawing no. 464-1 P 01 Rev.B as Auchindarroch Cottage has been completely demolished; all resultant demolition materials have been recycled for use within the estate, and/or have been removed from the site for disposal outwith the estate; all fences, walls, gates or other means of demarcating the residential curtilage have been removed; and the site re-instated to a natural condition to be approved in writing by the Planning Authority.

Reason: To ensure the removal of the existing residential unit to be redeveloped in order to comply with adopted Local Development Plan Settlement and Spatial Strategy, Transportation policy and highway safety at the substandard access junction with the A83 trunk road.

5. Pursuant to Condition 1 – in the event that details submitted to satisfy Condition 4 indicate any works outwith the extent of the current driveway, including realignment or widening, no development or ground breaking works shall commence until a method statement for an archaeological watching brief has been submitted to and approved by the Planning Authority in consultation with the West of Scotland Archaeology Service.

The method statement shall be prepared by a suitably qualified person and shall provide for the recording, recovery and reporting of items of interest or finds within the application site.

Thereafter the development shall be implemented in accordance with the duly approved details with the suitably qualified person being afforded access at all reasonable times during ground disturbance works.

Reason: In order to protect archaeological resources