

**STATEMENT OF CASE  
FOR  
LOCAL REVIEW BODY**

**REFUSAL OF PLANNING PERMISSION FOR  
ERECTION OF TWO DWELLINGHOUSES AT LAND  
EAST OF CAMIS ESKAN FARMHOUSE,  
HELENSBURGH**

**PLANNING APPLICATION**

**REFERENCE NUMBER: 18/01382/PP**

**31 OCTOBER 2018**

## **INTRODUCTION**

The Planning Authority is Argyll & Bute Council ('the Council'). The appellants are Rainheath Limited ('the appellants').

The detailed planning application, reference number 18/01382/PP, for the erection of two dwellinghouses at Land East of Camis Eskan Farmhouse, Helensburgh ('the appeal site') was refused under delegated powers on 16 August 2018. The planning application has been appealed and is subject of referral to the Local Review Body.

## **DESCRIPTION OF SITE**

The application site is located in a remote hillside location within the general environs of a historic farm complex which has been subject to permitted conversion to residential use. The proposal is to erect two new 2 storey dwellinghouses on the site of a former barn that has since been demolished. The appeal site is located within the greenbelt.

## **SITE HISTORY**

01/02061/COU Conversion of farm buildings to form 4 dwellings – Approved 6.6.02

05/00742/PP – Demolition of shed and erection of 2 Dwellings – Withdrawn 10.3.2006

06/00085/COU - Conversion of barn into 2 dwelling houses – Approved 30.1.07

07/00444/ERECDW – Building warrant approval for demolition of barn and erection of two dwellinghouses. Building Standards have no information on a start date or any inspection notes in respect of the previous barn or the current partial foundations constructed on the site. No notification of commencement of development.

15/01652/PP - Erection of 2 dwellinghouses - Refused 31.08.2015

18/01382/PP - Erection of 2 dwellinghouses - Refused 16.08.2018

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Application 18/01382/PP was refused on the grounds set out in the report of handling which states, inter alia that:

The development was in the greenbelt where there was no locational justification for 2 houses.

The introduction of an inappropriate and unjustified form of new development into the greenbelt will be visually intrusive, visually discordant, result in sporadic development in the countryside and will therefore have a detrimental impact upon the character and appearance of the area. As such the proposal is contrary Policy LDP DM1 (G) of the adopted Argyll and Bute Local Development Plan 2015.

## **STATUTORY BASIS ON WHICH THE APPEAL SHOULD BE DECIDED**

Section 25 of the Town and Country Planning (Scotland) Act 1997 provides that where, in making any determination under the Planning Acts, regard is to be had to the Development Plan and the determination shall be made in accordance with the plan unless material considerations indicate otherwise. This is the test for this application.

Argyll & Bute Council considers the determining issues in relation to the case are as follows:

- Whether the proposal accords with Development Plan policy and whether there are any material considerations to outweigh these adopted policies.

In particular;

- Whether the proposed erection of two dwellinghouses in the greenbelt is justified.
- If there is no justification then the introduction of an inappropriate and unjustified form of new development into the greenbelt will be visually intrusive, visually discordant, result in sporadic development in the countryside and will have a detrimental impact upon the character and appearance of the area.

## **COMMENTS ON APPELLANT'S SUBMISSION**

Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that where, in making any determination under the planning Acts, regard is to be had to the development plan, and the determination shall be made in accordance with the plan unless material considerations indicate otherwise.

Application 18/01382/PP was assessed on this basis as is the appeal.

The Council's assessment of this proposal is set out in the original Report of Handling. In terms of additional items in the appellants' Grounds for Review either not covered in this document or requiring further comment these are set out below. The appellants' comments are listed first, thereafter the Council's response is set out in bold.

The proposed development is essentially the rebuilding of the barn and the formation of the two dwellings and garages as per the previously approved building warrant. (Paragraph 3.1).

**Comment: The Council does not accept that the proposed development is essentially the rebuilding of the barn and the formation of the two dwellings and garages as per the previously approved building warrant. From a Planning perspective the proposal is for the erection of two dwellinghouses and constitutes new build. The barn was demolished and therefore cannot be converted. The statement also implies that the barn will be rebuilt then converted to dwellinghouses. This is illogical and is not supported by planning policy.**

**If the building you are converting has already been demolished or has not been used for a long period (and is considered to be 'abandoned'), its use will have ceased and a planning application for a new building will be necessary. It is unlikely under such circumstances that planning permission would be granted when assessed against greenbelt policy. Indeed the appellants' statement says that the site is derelict and works stopped after the foundations were cast. No explanation is given why works stopped, why the Planning department was not contacted and why it wasn't until 2015 that a planning application was eventually submitted.**

**There is an ongoing misconception with many people that a Building Warrant and Planning Permission are one and the same. This is not the case and it is important to differentiate between the two.**

**Planning Permission** – The regulations that you need to adhere to in order to be granted planning permission control the way towns and the countryside are developed. It scrutinises; the use of the land or the building; the appearance of the building or landscape; access to highways; and the extent to which the development will affect the local environment.

**Building Warrant** – This is granted only if your development meets building regulations. These outline the standards to which the design and construction of your project must adhere and include things like; the design and standard of your electrical installations; the energy efficiency and carbon levels associated with your project; fire safety and many other areas that generally ensure your construction will be safe for you, the public and the environment.

**It cannot be emphasised too strongly that, whatever the project, advice from both Building Standards and Planning should be sought to avoid costly and unnecessary work at a later date.**

**Building Standards and Planning operate under different legislation and have a different, separate and distinct consenting regime. Building Warrant was to demolish the barn and build two new houses. The planning permission was for change of use. You cannot change the use of a building that's gone.**

Under Paragraph 4.1, 1. The appellants state that part of the grounds for review include:

Would the application proposal comply with the requirements of **Policy LDP DM1 (G)** of the Local Development Plan, which relates to development in the Greenbelt and, if not, would material considerations indicate that planning permission could be granted as a 'minor departure' to the provisions of this policy?

**Policy LDP DM1**, which under (G) states that within the Greenbelt encouragement will only be given to very limited and specific categories of countryside based development. These comprise:

- (i) Agricultural-related development.
- (ii) Farm diversification – tourism and rural business related development (excluding dwelling houses)
- (iii) Outdoor sport and recreational development.
- (iv) Development required to manage and sustain the natural heritage and access resources of the Greenbelt.
- (v) Demolition and replacement of buildings and alterations or extensions of such buildings, including dwelling-houses, subject to no change of use occurring.
- (vi) Change of use of buildings to residential institutional use.

A development outwith categories G(i) to (vi) may however accord with this policy when it is successfully demonstrated that the proposal will:

- 1) Retain a significant building at risk; or
- 2) Directly support the provision of essential infrastructure; or
- 3) Involve building development directly supporting recreational use of land.

The appellants further state that:

It is accepted that the proposal does not comply with any of the exceptions set out in categories G(i) to (vi) of Local Development Plan **Policy LDP DM1**. Neither does the proposal retain a significant building at risk; directly support the provision of essential infrastructure; or involve building development directly supporting recreational use of land.

The SPP introduces a presumption in favour of development that contributes to sustainable development. The SPP notes that NPF3 aims to facilitate new housing development, particularly in areas within our cities network where there is continuing pressure for growth, and through innovative approaches to rural housing provision.

The SPP further states that in remote rural areas, where new development can often help to sustain fragile communities, plans and decision-making should, where appropriate, allow the construction of single houses outwith settlements provided they are well sited and designed to fit with local landscape character, taking account of landscape protection and other plan policies. Planning Advice Note 73 is also quoted with it and the SPP referring to redeveloping brownfield sites.

**Comment: The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. Scottish Planning Policy states that proposals that accord with up-to-date plans should be considered acceptable in principle and consideration should focus on the detailed matters arising. For proposals that do not accord with up-to-date development plans, the primacy of the plan is maintained. As such we would agree that the proposal is contrary to greenbelt policy including the exceptions listed. To uphold an appeal, which is clearly contrary to policy, goes against the fundamental principles of Scottish Planning Policy.**

**The Planning system can appear complex but greenbelts are probably the one policy provision clearly understood, accepted and liked by the general public. The government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.**

**Green Belt serves five purposes:**

- to check the unrestricted sprawl of large built-up areas**
- to prevent neighbouring towns merging into one another**
- to assist in safeguarding the countryside from encroachment**
- to preserve the setting and special character of historic towns**
- to assist in urban regeneration, by encouraging the recycling of derelict and other urban land**

**Greenbelt policy is the most restrictive of the Council's countryside policies. There has to be a justification for encroaching into these areas and as the appellants have already admitted there is no policy justification for this proposal.**

**The site is not Brownfield and the definition in SPP discusses this in the context of pressure for development in cities with an aim to secure population retention: this is not the same scenario. The SPP also discusses fragile communities which rural areas can be, however this is in association with compliance with other development plan policies. In this case it goes against guidance as it is contrary to our Development Plan Policy DM1.**

**PAN 73 - Also discusses brownfield sites but in the context of redundant or unused buildings, this is not the same as there is no building as it was demolished in 2008. The appellants regard the site as derelict presumably to justify a new build. The site is not derelict and is not undermining amenity. The site has been neglected but this should not be a justification for two new dwellings.**

Reference is made by the appellants to the previous history of the site as a justification for departing from development plan policy. They also state that SPP indicates that in remote rural areas new development can help to sustain fragile communities.

**Building Standards granted a warrant for demolition in 2008, this should have been accompanied by a planning application for rebuild which would have been assessed against the relevant provisions of the development plan and other material considerations. The applicant failed to provide this information to the council, therefore the planning use was lost through negligence. The 2007 approval (ref 06/00085/COU) was granted 29/1/07 and it is shown to be similar to the recent refusal. However, the 2007 approval was based on retaining a building at risk and accorded with greenbelt policy. This building was demolished in 2008, it ceased to be a material consideration and is therefore not taken into account.**

**The appeal site cannot possibly be regarded either as being in a remote rural area or a fragile community. As such any material considerations are at best very weak and do not outweigh the clear lack of policy support which is accepted by the appellants.**

## Conclusion

The appeal site is a sensitive site. It is within the greenbelt which gives the highest degree of protection in terms of both the Council's and Scottish Government's countryside policies. In terms of greenbelt new housing development needs a locational or occupational need. The appellants accept the proposal is contrary to greenbelt policy and have hung their justification for 2 houses on one part of SPP. Scottish Planning Policy needs to be read and assessed in totality. It is a non-statutory document but is a material consideration. It identifies the primacy of the development plan stating that planning should be plan-led. It further states that the aim is to achieve the right development in the right place; it is not to allow development at any cost. Whilst the SPP and the presumption in favour of sustainable development will be material considerations it makes clear that for proposals that do not accord with up-to-date development plans the primacy of the plan is maintained. The SPP emphasises the importance of greenbelt particularly in directing development to more appropriate sites. The Local Development Plan is up to date and was supported by Members as the basis for helping to determine applications.

Building Standards granted a warrant for demolition in 2008, this should have been accompanied by a planning application for rebuild. The applicant failed to provide this information to the council, therefore the planning use was lost and the site has become derelict through neglect. The site is neither remote nor fragile and the proposal is not supported by robust policies in the Local Development Plan or Government guidance.

The Council has now considered 4 applications for this site: three planning applications and a building warrant. **Building Standards and Planning operate under different legislation and have a different, separate and distinct consenting regime. Building Warrant was to demolish the barn and erect two new dwellinghouses. The planning permission was for change of use in line with policy. You cannot change the use of a building that's gone nor justify new development on the basis of a different consent regime. Work under the Building Warrant commenced then stopped. It took seven years to submit a planning application to try and rectify what happened.** Assessed against development plan policy there is no justification for an incursion into the greenbelt. The key consideration is the robust greenbelt policy in the Local Development Plan. The appellants' reliance on one small part of SPP is a minor material consideration which they themselves contradict by stating that there is no policy support for the proposal.

On the basis of development plan policy and other material considerations there is no justification for two houses at this location. As such it is respectfully requested that the appeal is dismissed.