

UPDATE ON RECENT SCOTTISH GOVERNMENT PLANNING APPEAL DECISION

A) INTRODUCTION

This report summarises the outcome of two recent appeal decisions by the Scottish Government Directorate for Planning and Environmental Appeals (DPEA) relative to the cases set out below.

B) RECOMMENDATION

It is recommended that Members note the Reporters' decision.

Case 1

C) DETAILS OF APPEAL DECISIONS

Planning Authority:	Argyll and Bute Council
Planning application reference:	18/01135/HH
Planning appeal reference:	HHA-130-5
Proposal:	High Hedge
Location:	Cuilvona, 4 Kennedy Drive, Helensburgh G84 9LT
Date of decision:	12 November 2018
Decision:	Appeal dismissed.

1.0 INTRODUCTION

The purpose of this report is to advise Members of the recent decision made by the Planning and Environmental Appeals Division regarding an appeal by Mr Patrick Mundie of The Paddock, Kennedy Drive, Helensburgh against the refusal of a high hedge application at Cuilvona, 4 Kennedy Drive, Helensburgh.

2.0 BACKGROUND

An application was made by Patrick Mundie to seek the reduction in height of a number of trees forming a hedge located on the common boundary between The Paddock and Cuilvona, Kennedy Drive, Helensburgh. Both properties are located within the Hill House Conservation Area. Cuilvona is a Category B Listed Building whilst The Paddock is a more modern building. However, both are set back from the main road and have long front gardens.

The hedgerow subject to this application is a line of Leylandii trees extending the full length of the building plot running north to south. This distance is approx. 88m. The hedge is approximately 5m in height and also contains two mature Birch trees located amongst the Leylandii. The applicant's property is located on the eastern side of the hedge and has upper and lower windows which face the hedge. These windows are located approximately 5m from the hedge, the garden area at this point is semi-public and an access route to the rear garden.

The hedge has been subject to pruning on the applicant's side which has resulted in large sparse areas exposing tree roots and branches.

It was alleged the tree heights exceeded the Act limit of 2m by reaching a height of over 5m resulting in the overshadowing and damp conditions to the western side of the applicant's property. The applicant confirmed the hedge blocks sunlight and creates damp to the building. The applicant stated they contacted the owners of the hedge to address these issue but no suitable outcome was agreed.

Trees forming the hedge did appear as a green wall and were visually prominent within the garden and from the surrounding area. However, the green wall was not solid as large areas had exposed tree roots and branches creating gaps. The Council considered the owner of the hedge should not take any action in this instance as the reduction in height would effectively leave a visually prominent long row of tree stumps. In addition the removal of the two mature Birch trees would be detrimental to the setting of the Listed Building and to the Conservation Area.

The windows of the applicant's property, located 5m away from the hedge, were a sufficient distance away to still allow daylight into the rooms, in addition there are several gaps within the total length of the hedge reducing its massing. The issue of dampness to the applicant's property is a civil matter and not one covered by planning legislation.

The Council considered all relevant factors and recommended the application for a High Hedge notice be refused for the following reason:

1. The trees forming the hedge are visually important to the setting of the Hill House Conservation Area their removal would be detrimental to its setting.
2. The trees forming the hedge do not create a significant loss of daylight to the upper and lower windows of the applicant's property due to their distance and number of gaps.
3. The removal of the two mature Birch trees would be detrimental to the setting of the Listed Building and to the Conservation Area.

3.0 CONCLUSION

The Reporter considered that there is no adverse effect from the high hedge and advised the following;

The hedge subject to this appeal forms the boundary between the appellant's property and the neighbouring property to the west (Cuilvona). It is formed mainly of closely planted evergreen shrubs (described by the authority as *Leylandii* but may be *Thuja* species). Other species including holly, rowan and beech are also present. The hedge exceeds 5 metres in height and is considerably taller at its northern end. I am therefore satisfied that it is a high hedge within the meaning of the High Hedges (Scotland) Act 2013.

The appellant considers that the hedge affects the level of daylight reaching his property, requiring him to switch on lights in the house during daylight hours. He also considers that the hedge is contributing to dampness inside his house and rotting of the first-floor balcony close to the hedge.

The appellant's dwelling lies towards the western side of the plot, and is separated from the trunks of the hedge by a distance of a little under 6 metres. There are some windows on the west elevation, which directly face the hedge. My site inspection took place during the mid-afternoon of a sunny day in September. During this time I observed that the hedge was not casting shade across any of the windows on the western elevation, nor was it acting as a significant barrier to light entering those windows.

The Reporter found that the height of the hedge would contribute to some shading, but that this would be for a limited period towards the end of the day. Given the distance between the windows and the hedge, and the orientation of the property, he concluded that the hedge does not result in a significant reduction in light levels entering the windows on the western side of the property.

During his site inspection he could see no obvious signs of damp on the face of the west side of the property, or on the ground between the property and the hedge, or adjacent to the hedge. Whilst it was accepted that the wooden parts of the balcony may have suffered from rot, the balcony is located in an exposed position, facing the prevailing winds and the sea. The Reporter did not see any evidence that the hedge is responsible for accelerating the rate of wear and tear of the balcony that would be expected in such a location.

It was noted that the lateral growth of the hedge, if unmanaged, would encroach across the boundary between the properties. This lateral encroachment would occur, whatever the height of the hedge. Under common law, the occupant is entitled to cut back growth to the boundary between the properties and there was evidence that this had occurred.

In reaching a decision, the Reporter was required to consider the value of the hedge to the hedge owners. It was observed that the hedge prevents over-looking of their external amenity areas to the front of their property, from the first-floor balcony of the appellant's property.

The High Hedges (Scotland) Act 2013 also requires the decision-maker to have regard to the effect of the hedge on the amenity of the area and whether it is of cultural or historical significance. Cuilvona is a Category B listed building and that the hedge is located within the Hill House Conservation Area. The planning authority considered that removal of the hedge including two birch trees would be detrimental to the setting of the Hill House Conservation Area.

The Reporter accepted that trees along property boundaries are characteristic of the Hill House Conservation Area. Whilst the hedge is a prominent feature, he do not consider that the evergreen shrubs, which are the main constituent of the hedge, have any particular intrinsic value either within the Hill House Conservation Area or the setting of the Category B listed building. It was considered that the beech trees that are present do contribute to the character of the conservation area.

The 'test' required by the High Hedges (Scotland) Act 2013 is whether the hedge adversely affects the enjoyment of the domestic property which an occupant of that property could reasonably expect to have. For the reasons set out above, the Reporter concluded that the hedge does not adversely affect the reasonable enjoyment of the appellant's property in terms of its effects on light levels or contribution to dampness.

Case 2

Planning Authority:

Argyll and Bute Council

Planning application reference: 18/00301/PPP
Planning appeal reference: PPA-130-2069
Proposal: Erection of 4 self-catering log cabins for holiday use
Location: Land at Taychreggan Hotel, Kilchrenan by Taynuilt
Date of decision: 15th of November 2018
Decision: Appeal dismissed

2.0 INTRODUCTION

The purpose of this report is to advise Members of the recent decision made by the Planning and Environmental Appeals Division regarding an appeal submitted by Taychreggan Hotel, Kilchrenan against the refusal of planning application ref 18/00301/PP for the erection of 4 self-catering log cabins for holiday use.

3.0 BACKGROUND

An application was made by the Taychreggan Hotel for a site for the erection of 4 self-catering log cabins for holiday use on land at the Taychreggan Hotel, Kilchrenan.

This application was presented to Members in conjunction with planning application ref 18/00310/PPP (erection of 13 self-catering holiday accommodation units, Taychreggan Hotel) Both of these applications were the subject of an Area Capacity Evaluation (ACE) as the sites are situated within the designated Countryside Zone and the applicant had clearly demonstrated an exceptional case. It was considered that the applicant had demonstrated a suitable claim of locational need for the proposed development to be sited where it would enhance and complement an established and valued tourism offer at this location.

The ACE concluded that any development opportunities within the ACE Compartment were limited to being contained within the area of rough undulating ground to the north west of the Hotel on natural undulations similar in nature to the sites within the rough grazing lands which have previously been developed. The Hotel grounds could also present opportunities for relatively small scale development on suitable sites which would not result in any tree felling. Planning Application ref 18/00310/PPP was approved on the basis that the site was a suitable site for development in landscape terms and in accordance with the ACE. Planning application ref 18/00301/PPP was refused on the basis that it did not accord with the ACE. This application was refused for the following reason:

1. Whilst the development is small scale in nature and would be constructed using materials which are sympathetic to the locality, its introduction into an undeveloped Ancient Woodland would be materially harmful to its unspoiled character which forms a vital part of the landscape setting of the Taychreggan Hotel. The Ancient Woodland occupies a substantial part of the ACE Compartment and is a highly visible feature within the landscape which has an exceptional aesthetic quality. The LVIA refers to Ancient Woodlands throughout the study area featuring more predominantly across the upper hills providing an important feature against the loch shore and lower hillside, being of medium value and local importance. This landscape is very highly valued for its physical landforms, scenic value and for its environmental assets. It is considered that the application site is wholly inappropriate for any scale or type of development and that the Ancient Woodland surrounding the Taychreggan Hotel should be preserved in order to protect the fundamental character of the landscape and setting of the Hotel.

It is considered that any development opportunities within the ACE Compartment are limited to being contained within the area of rough undulating ground to the north west of the Hotel on natural undulations similar in nature to the sites within the rough grazing lands which have previously been developed. The Hotel grounds could also present opportunities for relatively small scale development on suitable sites which would not result in any tree felling. The proposed development does not accord with an Area Capacity Evaluation (ACE) and is therefore contrary to Policy LDP DM 1 of the Local Development Plan which established the acceptable scales of development in each of the development management zones.

3.0 CONCLUSION

The Reporter concluded that the appellant had not demonstrated that it was essential for the hotel business plan to locate 4 cabins within the ancient woodland. The Reporter agreed with the council that the applicant's supporting studies and conclusions had given insufficient weight to the value of the woodland, especially in the context of the importance given to this type of woodland in Scottish Planning Policy (SPP).

The Reporter concluded that the proposal would be contrary to the following policies of the local development plan:

- STRAT 1 (h) as it would not avoid impacts on biodiversity and natural resources;
- DM 1 E as the proposal would not accord with the results of an Area Capacity Evaluation; and
- LDP 3 A as it would not protect or conserve woodland.

The Reporter concluded that the proposal would not be in accordance with the provision of the local development plan and the appeal was therefore dismissed.

4.0 RECOMMENDATION

That elected Members note the content of these supplementary reports.

5.0 IMPLICATIONS

Policy: None

Financial: None.

Personnel: None

Equal Opportunities: None

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