

3 January 2019

Argyll and Bute Council
Local Review Body
Kilmory
Lochgilphead
PA31 8RT

Ref MHP: 2018_0004

Dear Councillor

NOTICE OF REVIEW 18/0009/LRB (18/01382/PP) ERECTION OF 2 DWELLING HOUSES AT LAND EAST OF CAMIS ESKAN FARMHOUSE, HELENSBURGH

Further to your request for further written submissions in respect of the above review I have pleasure in submitting our responses (in blue) to the Planning Officer's comments.

1 - Details of the previous planning permission for conversion of the barn and the building warrant from 2007 and whether the planning permission has expired.

Comment: Details are attached. The original planning permission has expired. A second application in 2015 was refused under reference 15/01652/PP. This application was never appealed.

Response: The 'second application' (reference 15/01652/PP) is of no relevance to the current review. That application proposed the erection of two detached 1½ storey dwellings on the site. The review application proposes the re-building of the barn that previously stood on the site, using the stone from the former barn (which was retained), and the 'conversion' of this to form exactly the same two dwellings as were previously approved by the Council.

2 - Planning status of the foundations as depicted on page 12 of the agenda pack; together with clarification of what, if any, that status has on the planning history of the site.

Comment: Due to the history of permissions on the site and the need to ensure that any material considerations were evaluated in the determination of the proposal officers previously have sought, through discussions with Building Standards, to try and clarify why following planning permission for a conversion of an traditional, stone built outbuilding being granted under 06/00085/COU, a building warrant was

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submitted to demolish the traditional barn and replace it with two new build houses under 07/00444/ERECDW.

Although a building warrant was approved no notification of commencement of works or site inspections were carried out and no information to suggest the barn was structurally incapable of conversion and required demolition has been found.

Officers could not identify any reason as to why the original barn was demolished in its entirety and new foundations constructed contrary to the terms of planning permission 06/00085/COU. There is no information contained in the planning or building standards history which provides mitigation or justification for proceeding with both demolition and unauthorised development contrary to the terms of the planning permission to convert the existing agricultural building into two dwellings.

Given the above the foundations had no relevance in 2015 and have no relevance to this appeal.

Response: The reason why the barn was demolished is that this was what the Council had approved. There were no foundations to the existing barn and it therefore needed to be demolished in order for it to be reinstated. Whilst it is acknowledged that this did not have the necessary planning permission, it was the subject of a building warrant approval. The developer therefore assumed that as a building warrant for the demolition and re-building had been approved, the works could go ahead in accordance with the approved details.

Although the foundations were constructed without planning permission, it is understood these operations were undertaken more than four years ago. They would therefore now be lawful, and immune from any form of enforcement action. Given this, the presence of the foundations is considered relevant to the current review. Whether or not the review is allowed, the foundations will remain.

3 - Their view on the Scottish Planning Policy advice as detailed on page 28, section 4.7 of this agenda pack.

Comment: The paragraph states the following:

"Finally, SPP advises that LPAs should always consider the re-use or re-development of brownfield land before new development takes place on greenfield sites, and that the generally accepted definition of 'previously developed, or 'brownfield' land is that this is land which is or was occupied by a permanent structure, including the curtilage of the developed land and any associated fixed surface infrastructure."

Comment: Scottish Planning Policy (SPP) is a non-statutory document. 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.

It is assumed that this statement is to convince Members that brownfield sites as such have a greater status than greenfield sites and therefore should be approved. Whether a site is brownfield or greenfield there is no automatic right of approval. All planning applications require to be assessed in terms of Section 25 of the 1997 Planning Act against Development Plan Policy and other material considerations. As previously stated, the site is within the greenbelt which is the strictest of the Council's countryside policies and opportunities are limited. The proposal in 2006 met the terms of greenbelt policy i.e. conversion of a traditional building. That was not implemented, and the barn demolished. The erection of two houses fails when assessed against development plan policy and other material considerations.

Response: To say that Scottish Planning Policy (SPP) is a 'non-statutory document' is to significantly down play its importance. SPP contains the Scottish Government's policy advice to all Local Planning Authorities and is a very relevant material consideration in the context of all planning decisions. SPP makes it clear that LPAs should always consider the re-use or re-development of brownfield land before new development takes place on greenfield sites. Similarly, Planning Advice Note 73 states:

"Development Plan policies should encourage rehabilitation of brownfield sites in rural areas and in appropriate locations allow for their re-development. Brownfield sites are broadly defined as sites that have previously been developed. In rural areas this usually means sites that are occupied by redundant or unused buildings or where the land has been significantly degraded by a former activity".

4 - Clarification of whether a brownfield development is considered differently if the site is situated in greenbelt and if redevelopment opportunities are limited to only those specified in the greenbelt policy.

Comment: Whether a site is brownfield or greenfield there is no automatic right of approval. All planning applications require to be assessed in terms of Section 25 of the 1997 Planning Act against Development Plan Policy and other material considerations. As previously stated, the site is within the greenbelt which is the strictest of the Council's countryside policies and opportunities are limited to those specified. The proposal for the erection of two houses fails when assessed against development plan policy and other material considerations.

Response: The Council's Planning Officer now appears to have conceded that the review site is to be considered to be 'brownfield'. Previously, in the Planning Officer's

Report of Handing, it was stated that “the site is not recognised as a brownfield site, it is identified in the adopted development plan as Greenbelt”. This statement demonstrated a fundamental misunderstanding of planning policy; a site can clearly be both ‘brownfield’ and within a designated Greenbelt. A brownfield site is one that has previously been developed, and in rural areas this usually means sites that are occupied (or were occupied) by redundant or unused buildings.

The appellant is also not saying that because the site is ‘brownfield’ there is an “automatic right of approval”. What is being said is that Scottish Government policy prioritises the development of brownfield sites over greenfield ones, in order to make beneficial use of degraded land in the public interest.

5 - Clarification on whether the latest population figures are projecting a falling population in Helensburgh and Lomond.

Comment: The population of Helensburgh and Lomond is declining. However, this has absolutely no relevance to the appeal. The appeal is to approve two houses in the greenbelt without any justification. The Housing Need and Demand Assessment Report was used to identify the housing need and inform the Housing Land Supply Targets which were used in the Argyll and Bute Local Development Plan. The Housing Need and Demand Assessment was approved as robust and credible by the Scottish Governments Centre for Housing Market Analysis. The document also formed one of the core documents which was considered by the Reporters when they were looking at the adequacy of the housing allocations in the Local Development Plan, where they confirmed that there was no need to identify additional sites for housing allocations.

Response: No comment.

6 - Their view on the Scottish Planning Policy advice as detailed on page 27, section 4.5 of the agenda pack and its relevance to the proposed development and clarification that the Faslane development is an area where economic investment is planned in the near future and its relevance to the proposed development.

Comment: The paragraph states the following:

“The SPP also 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. House building makes an important contribution to the economy. Planning can help to address the challenges facing the housing sector by providing a positive and flexible approach to development. In particular, provision for new homes should be made in areas where economic investment is planned or there is a need for regeneration or to support population retention in rural and island areas.”

Investment is on-going at Faslane and will include new submarines and personnel. This has absolutely no relevance to the proposed development. The appeal is to approve two houses in the greenbelt without any justification. New housing will be directed to allocated sites and other locations within settlements. As stated above the site is within the greenbelt which is the strictest of the Council's countryside policies and opportunities are limited to those specified in the policy. The proposal for the erection of two houses fails when assessed against development plan policy and there are no material considerations that would justify departing from policy.

Response: Whilst a "justification" (i.e. agricultural need or similar) for the two new dwellings has not been put forward this does not mean that planning permission must be refused. If the members of the Local Review Body consider that there are material considerations that are sufficient to outweigh the provisions of policy, planning permission can be granted as a 'minor departure' from the policy. The ability to approve the review application as a 'minor departure' is contained in **Policy SG LDP DEP 1** of the Local Development Plan, which states that whilst the Council will seek to minimise the occurrence of departures to the Local Development Plan, planning permission will be able to be approved as a departure when material planning considerations so justify. Scottish Planning Policy, Planning Advice Note 73, and the planning history of the site are all relevant material considerations, to be afforded significant weight in this instance.

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 have hung their justification for 2 houses on part of the 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 within settlement boundaries.

Planning permission was granted for the conversion of a barn/agricultural building on this site into two dwelling houses on 30.1.07 under permission 06/00085/COU. In the officers report the granting of this permission was justified on the following basis:

"The development will secure the retention of the existing farm outbuilding at Camis Eshan. Traditional farm outbuildings form an integral part of our rural heritage and in circumstances where they have become surplus to need, appropriate projects to retain the structures should be encouraged as the

eventual decay and ultimate loss of these structures will be of overall detriment to that heritage. The proposal involves a sensitive conversion of the outbuilding and will result in the re-use of a traditional building which is considered worthy of retention. The proposed development will not have an adverse impact on the character of the green belt and is supported by other development plan policies. Moreover, the barn forms part of a larger stead complex which has permission to convert to four dwelling houses. As such the proposal can be justified."

This recommendation was then sent to the then Scottish Executive as a notifiable minor departure from the development plan on 13 November 2006 and following no objection to the granting of planning permission for the conversion of the barn, planning permission for the change of use was granted on 30.01.2007.

As the barn/agricultural building which was previously on the site has been demolished in its entirety, and all materials have been removed from the site, this available exception to policy is now not available and the proposed erection of two dwelling houses is contrary to greenbelt policy with no possible exceptions being available.

Although a building warrant was approved no notification of commencement of works or site inspections were carried out and no information to suggest the barn was structurally incapable of conversion and required demolition has been found. Officers can identify no reason as to why the original barn was demolished in its entirety and new foundations constructed contrary to the terms of planning permission 06/00085/COU. There is no information contained in the planning or building standards history which provides mitigation or justification for proceeding with both demolition and unauthorised development contrary to the terms of the planning permission to convert the existing agricultural building into two dwellings.

On the basis of development plan policy and other material considerations there is no justification for two houses at this location and the appeal should be dismissed.

Response: It is not accepted that the review site is a particularly "sensitive" one; it is previously developed (i.e. brownfield) land in close proximity to a group of existing buildings. It is furthermore not accepted that the proposed development would be "visually intrusive, visually discordant, or result in sporadic development in the countryside". Had the previously approved conversion of the former barn been undertaken, in a visual sense, exactly the same building as is now proposed would exist on the site. How can this therefore be "visually intrusive" or "visually discordant"? The result would similarly not be "sporadic development". Sporadic means "occurring at irregular intervals or only in a few places; scattered or isolated"; this is not an isolated site.

Officers have said that Greenbelt has the "highest degree of protection in terms of both the Council's and Scottish Government's countryside policies". This statement

must however be read in the context of the aims of the Greenbelt. These are to:

- Direct development to the most appropriate locations and to support regeneration;
- Protect and enhance the character, landscape setting and identity of settlements; and
- Protect and provide access to open space.

The approval of the review application will not undermine these important aims, rather it will allow the re-use of a brownfield site, in an appropriate location close to Helensburgh, in order to provide two new family homes. At present the appearance of the site detracts from the character and appearance of the area. It contains a partially completed building, that is lawful in planning terms, and is therefore immune from any form of formal enforcement action. To grant planning permission for a development that in almost every respect would be identical to that previously approved in 2007 would, whilst a 'minor departure' from the provisions of the Development Plan, not be either unreasonable or inappropriate.

Finally, it is relevant to note that on page 3 of the decision notice dated 16 August 2018 it states:

"If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state, and it cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the landowner's interest in the land, in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997 (as amended)."

If planning permission for the development now applied for is not able to be approved, then it might be argued that the land would have effectively become "incapable of reasonably beneficial use in its existing state". If so, it would be possible for a Purchase Notice to be served upon the Council, under the provisions of S88 of the 1997 Planning Act.

Yours sincerely

A handwritten signature in black ink that reads "Michael Hyde".

Michael Hyde MRTPI
MH Planning Associates