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KENNOVARA
BENDERLOCH
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PLANNING APPEAL IS SUBMITTED ON BEHALF OF

Dr AND MRS NORMAN MACDONALD

APPLICATION NO. 18/01157/PP

REMOVAL OF CONDITION 2 RELATIVE TO PLANNING PERMISSION REFERENCE 11/00875/PP
(REDEVELOPMENT OF 2 EXISTING BARNS, 1 STABLE BUILDING AND A STATIC CARAVAN TO
ERECT A DWELLINGHOUSE AND FORM A NEW PRIVATE VEHICULAR ACCESS) IN RELATION TO
EXISTING BARNS AND STABLE BUILDING BEING REMOVED FROM SITE

14TH OF MAY 2018

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1.0 INTRODUCTION

This report provides the Grounds of Appeal against the decision of Argyll and Bute Council to refuse the permission to remove condition 2 relative to planning permission reference 11/00875/PP (Redevelopment of 2 existing barns, 1 stable building and a static caravan to erect a dwelling house and form a new vehicular access).

2.0 DESCRIPTION

This appeal relates to the refusal to grant planning permission for the removal of a planning condition. The title of the application is Removal of condition 2 relative to planning permission reference 11/00875/PP (Redevelopment of 2 existing barns, 1 stable building and a static caravan to erect a dwelling house and form a new private vehicular access) in relation to existing barns and stable building being removed from site.

The condition relates to the removal of 2 barns, one stable and one static caravan in order to facilitate a redevelopment application, for the erection of a dwelling house. Prior to the construction of the new build house, 1 barn and a static caravan were removed from the site, as per the planning permission. However, 1 small barn and one stables remain and were not removed, for reasons explained below.

3.0 BACKGROUND

A planning application to remove condition 2 of application 11/00875/PP was lodged on the 14th of May 2018. This application was refused under delegated powers on the 6th of September 2018. The application of the 14th of May had a determination date of the 4th of August. I received the refusal on the 6th of September 1 month after the determination date should have been.

At **no point** did I have any dialogue with anyone from ABC to say there was any problem with the application. I refer to email correspondence with Jamie Torrance (enforcement officer) prior to the application being made, which clearly demonstrates support for the application and therefore the condition being removed (appendix 1).

4.0 REASON FOR REFUSAL

1. *The proposal fails to meet policies LDP STRAT 1 and LDP DM1 of the Local Development plan*

*The erection of a new dwelling house clearly constitutes a new building, by which **redevelopment can only be supported in circumstances involving significant demolitions**. Without the removal of the subjected buildings the development proposal cannot be considered a redevelopment opportunity.*

In considering the development against the other provisions within the LDP the development proposal in order to meet LDP DM1 would require to be considered infill rounding off, and or an exception case in order to find policy support. The proposal is not infill, rounding off and no exception case argument has been advanced in support of this application. Accordingly, the proposal fails to accord with the policy LDP STRAT 1 which sets out sustainable development aims of the council: nor policy LDP DM1 without being advanced as a re-development opportunity.

4.1 APPELLANT'S RESPONSE.

The sole basis of Argyll and Bute Council's Argument is that significant demolitions have not taken place. This has precipitated a decision to view this application as a standard application for planning permission and therefore not a redevelopment application.

Firstly, Argyll and Bute Council have been incorrect in their reporting of the description of demolitions and they have overstated the amount of buildings that remain.

In their report of handling it states condition 2 of this permission required the application to remove from the site the existing barns, 1 stable building and a static caravan. After receiving a complaint, and subsequently carrying out an investigation it has been confirmed that the two existing barns and stable building remain on site, which constitutes a breach of planning control.

This is **not true** and the council's reporting and investigation is wrong. Please see photographs. The photographs clearly show the remaining **one barn and stables**. Therefore, illustrating that their refusal is based on incorrect facts regarding the number of buildings that remain onsite. Please see figure 1.

Figure 1 - had to be attached as a separate file.

The mute point here, that dictates the whole basis of the Council's refusal is that ABC states that significant demolitions must occur in order for this to be viewed as a redevelopment opportunity. I have removed over 50% of the building mass of the 4 buildings that previously occupied the application site and I strongly argue that this is

significant demolitions, and therefore complies with the definition of a redevelopment case.

4.2 APPELLANTS RESPONSE 2.

I have sought legal opinion from Mr Carruthers of Morton Fraser (Letter enclosed appendix 2). In summary, had there been a compelling planning reason for the removal of the outbuildings that would surely have justified enforcement action being taken before now. The fact that no such action has been taken strongly suggests that there is not a compelling planning case for the removal of the buildings. I emphatically concur with this opinion as the building has been complete and lived in for over 7 years. The head planner for Oban and Lorn inspected the property at time of completion as he wanted to see it completed due to its high design value and was enthusiastic and excited about what had been built. At no point during that meeting was it mentioned to remove the existing barn and stables, clearly indicating that there was NO issue with the existing buildings that remained. This whole application for the removal of the condition has only come to light due to vitriolic neighbours who raised a complaint to cause me harm. Mr Carruthers continues, In conclusion therefore, the critical question in my opinion is whether or not there is a sound reason now for the removal of the remaining outbuildings. If there is not, a decision to refuse the s42 application would in my view be unsound.

4.3 APPELLANTS RESPONSE 3.

Irrespective of the argument above I refer back to my original reason for appealing the condition:-

In the Council's report of handling for the original planning application number 11/00845/PP it states.

2. Prior to the initial occupation of the dwelling house hereby approved, both of the existing barns and the stable building shall be removed from site to the satisfaction of the Planning Authority.

Reason: To underpin the justification of redevelopment for the dwelling house hereby approved.

The report of handling stated the following:-

When referring to the Argyll and Bute Local Plan 2009, redevelopment is defined as:

"...a development of new buildings involving significant demolitions"; or the extension of a building involving more than a doubling of the cubic volume of the building but not exceeding three times the cubic volume (less than a doubling being treated as a building extension and more than a trebling as new build)".

enhancement benefit. Therefore, the proposal satisfies Policies 'STRAT SI 1', 'STRAT DC 5', 'STRAT DC 8' and 'STRAT HO 1' of the Argyll and Bute Structure Plan 2002.

*In relation to the above, **the proposal constitutes an acceptable form of small scale redevelopment** (small scale corresponding to development not exceeding 5 dwelling units). The cubic volume of the existing buildings, including the yard, amounts to approximately 450m³. The footprint of the proposed dwelling house will measure approximately 100m² and has a cubic volume of 500m³. Therefore, it is considered that the proposal is technically described as building extension under the definition, but nonetheless **satisfies the intentions of the Local Plan support for redevelopment as the cubic volume of the proposed dwelling house is below 1125m²***

In the report of handling it is stated that the volume of the 4 buildings and yard was taken as 450m³. I have retained two buildings. These two buildings were left as they are essentially used for livestock on our small holding, and they also act as an aesthetic barrier to the other property named Altnavullin on our property. They have also been painted to reflect the aesthetic of the main house, with grey walls and red tin roofs, as per the enclosed photos above.

The cubic volume of the remaining two building is 160m³

If we take the remaining 160m³ off the reported 450m³. Then we are left with 290m³. The new built house is 500m³. Therefore, in conclusion we are still less than the 3 times the allowed cubic area for redevelopment. I am therefore still complying with this policy at both levels.

Whether viewed as a redevelopment (as we have undertaken significant demolitions), or an extension due to the cubic volumes. The appellant complies with both these policies.

4.4 ROADS RESPONSE

There is a recommended refusal from roads to remove this condition on the grounds that the retention of the stables and barn represent further intensification on the site. *The retention of the buildings will create an additional redevelopment opportunity of this site.*

This response is completely nonsense, there is no intensification on the site by leaving a stables and barn, which have been in use for over 30 years. Also, the roads response is negligent, firstly the stable and barn are too small in size to represent a future redevelopment, and in addition to this if there ever was a redevelopment opportunity this could be controlled by development control and roads, at the time of that application. Therefore, it is completely incorrect to say that it is intensification of use along with a redevelopment opportunity.

I refer the roads engineer to policy SP LDP TRANS 4, which was amended in the LDP supplementary guidelines to include that small scale development of up to 10 houses would be supported in rural areas. There are 3 house off this access track in addition to the remaining barn and stables.

SP LDP TRANS 4 was a policy which was implement to positively encourage development in fragile rural areas such as this, and for officers to flagrantly ignore council policy is remiss, and take existing buildings away seems perverse.

In addition to this I also refer to application for road improvements 17/00983/PP. This application will improve visibility splays and road safety from this junction and therefore additionally supports this application.

5. 0 OTHER POLICY AND MATERIAL CONSIDERATIONS

This section sets out the ground for this appeal submission by first considering the Local Development Plan and other relevant material considerations.

5.1 POLICY CONSISTENCY.

The desired aim of this policy within Argyll and Bute's local plan is to achieve high quality, well designed developments. LDP 9 seeks to improve development setting, layout and design. There is acknowledgement within the council's report that this development complies with this policy.

There is also acknowledgement within the report that this complies with LDP 11, namely improving connectivity and infrastructure. The proposed arrangements complies with LDP ENV12 and LDP SERV 1. Connection to the public water main has already been completed.

If this situation is to be looked at from a common sense approach. These sheds have been up for in excess of 30 years. The new build house and the two sheds have functioned without event for the almost 7 years since the new house has been constructed. If considered as one entity the new build house and the sheds have the same design language and function as one design solution, and to take them away would destroy this visual aesthetic and remove physical barrier that acts a solution of privacy, between the two houses. It is perverse.

5.2 PERMITTED DEVELOPMENT RIGHTS

I refer to the Scottish Governments planning circular 1/2012. Guidance on House holders permitted development rights. In this circular it advises the following:-

Class 3A.—

(1) The provision within the curtilage of a dwelling house of a building for any purpose incidental to the enjoyment of that dwelling house or the alteration, maintenance or improvement of such a building.

(2) Development is not permitted by this class if—

(a) it consists of a dwelling;

(b) any part of the development would be forward of a wall forming part of the principal elevation or side elevation

where that elevation fronts a road;

(c) the height of the eaves would exceed 3 metres;

(d) any part of the development would exceed 4 metres in height;

- (e) any part of the development within 1 metre of the boundary of the curtilage of the dwelling house would exceed 2.5 metres in height;
- (f) as a result of the development the area of ground covered by development within the front or rear curtilage of the dwelling house (excluding the original dwelling house and any hard surface or deck) would exceed 50% of the area of the front or rear curtilage respectively (excluding the ground area of the original dwelling house and any hard surface or deck); or
- (g) in the case of land in a conservation area or within the curtilage of a listed building, the resulting building would have a footprint exceeding 4 square metres.

These buildings comply with all of the above. To gain perspective on this. The existing shed and stable have a footprint of 80m² (which is 2% of the curtilage, as determined by the site edged red in the planning application), the eaves of both remaining buildings are no more than 3 metres, their ridges are no more than 4 metres. To be absolutely clear according to ABC permitted development rights if these two small buildings were removed they could be replaced by a building/sheds with a footprint of 2000m².

To remove these small buildings which could potentially be replaced by a building of 2000m² in size, seems sheer lunacy.

5.3 SETTLEMENT PATTERN.

The area which the application site occupies is the small village of Benderloch and surrounding areas. This is a farming, crofting and forestry community. This area has a wide and varied settlement pattern. There are several private roads that service at least 3 houses and include agricultural sheds. Please find photograph showing number and table which represents numbers of houses and agricultural sheds off private roads.

Please find enclosed photograph which illustrates this in figure 2 - also separate file

I therefore conclude that this application site, with the sheds are totally consistent with the existing settlement pattern of crofts.

5.4 EXCEPTIONAL CASE

I feel aggrieved at the comment in the report that additional supporting information was not received. Additional information was never requested and therefore I didn't deem necessary after discussions with the case officer, so it came as a complete shock when this was approved. Of course, if I had any form of dialogue with the officer dealing with this application then clearly I would have provided supporting information.

5.5 ADDITIONAL PLANNING INFORMATION.

This application is also consistent with the following planning advice notes, PAN72 (Housing in the countryside) PAN44 (Fitting new housing development into the landscape). A policy on Architecture for Scotland (Scottish Executive). Designing places (Scottish Government).

6.0 CONCLUSION

I conclude that the whole basis of this refusal is based on the fact that significant demolitions have not occurred. I have confirmed that 50% of the building mass has been removed and therefore confirm that 50% is significant demolitions.

The permission is dated from 2011, the property has been built and occupied since 2011, with no issues raised with enforcement action undertaken prior to this. Emphasizing, that there was no issue with the sheds that have been left, and this case has only been triggered by neighbour's objections. This opinion is reflected by Mr K Carruthers of Semple Fraser.

In addition to this if the sheds were removed extremely large sheds could be built to replace them under permitted development rights, which seems totally oxymoronic. In addition to this the remaining sheds are consistent with the existing Settlement pattern illustrated in the example above.

We conclude that this application complies with Argyll and Bute LDP policies of LDP9, 11, SG LDP TRANS 4, LDP SERV1, LDP ENV2, all confirmed by ABC in the previous correspondence.

We therefore request that common sense and decency prevails and that the refusal decision is over-turned and the appeal upheld.

APPENDIX 1

On Monday, 15 January 2018, 09:44:41 GMT, Torrance, Jamie <Jamie.Torrance@argyll-bute.gov.uk> wrote:

Dear Mr MacDonald

Thank you for your comments below. Whilst I follow your logic! I would advise that this matter can only be dealt with via a new planning application to remove this condition. i.e. irrespective of any views on how the policies of the LDP 2009 should have been assessed, the fact remains, the development is still in breach of the condition attached to the planning permission.

I/the Council will do a full policy assessment of the development at the time of an application being received. However, I would add that your comments below will carry some weight in terms of an assessment of an application and should therefore be provided in a supporting statement.

Regards

Jamie

From: Norman MacDonald [
Sent: 14 January 2018 17:29
To: Torrance, Jamie <Jamie.Torrance@argyll-bute.gov.uk>
Subject: Benderloch 11/00875/PP

Dear Mr Torrance

Ref:- 11/00875/PP.

I refer to your correspondence regarding the above.

Baring in mind this application is now near 7 years old and we have been living in the house 6 years!

The original planning condition states.

2. Prior to the initial occupation of the dwellinghouse hereby approved, both of the existing barns and the stable building shall be removed from site to the satisfaction of the Planning Authority.

Reason: To underpin the justification of redevelopment for the dwelling house hereby approved.

The report of handling stated the following:-

When referring to the Argyll and Bute Local Plan 2009, redevelopment is defined as: "...a development of new buildings involving significant demolitions; or the extension of a building involving more than a doubling of the cubic volume of the building but not exceeding three times the cubic volume (less than a doubling being treated as a building extension and more than a trebling as new build)".

enhancement benefit. Therefore, the proposal satisfies Policies 'STRAT SI 1', 'STRAT DC 5', 'STRAT DC 8' and 'STRAT HO 1' of the Argyll and Bute Structure Plan 2002. In relation to the above, the proposal constitutes an acceptable form of small scale redevelopment (small scale corresponding to development not exceeding 5 dwelling units). The cubic volume of the existing buildings, including the yard, amounts to approximately 450m³. The footprint of the proposed dwellinghouse will measure approximately 100m² and has a cubic volume of 500m³. Therefore, it is considered that the proposal is technically described as building extension under the definition, but nonetheless satisfies the intentions of the Local Plan support for redevelopment as the cubic volume of the proposed dwellinghouse is below 1125m³.

In the report of handling it is stated that the volume of the 4 buildings and yard was taken as 450m³. I have retained two buildings. These two buildings were left as they are essentially used for livestock on our small holding, and they also act as an aesthetic barrier to the other property named Altnavullin on our property. They have also been painted to reflect the aesthetic of the main house, with grey walls and red tin roofs.

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I look forward to your response.

Many thanks

Norman

Appendix 2

Letter from Mr Kenneth Carruthers of Semple Fraser