

STATEMENT OF CASE

FOR

**ARGYLL AND BUTE COUNCIL
LOCAL REVIEW BODY**

20/0002/LRB

**REFUSAL OF PLANNING PERMISSION IN PRINCIPLE 19/02314/PPP
SITE FOR THE ERECTION OF A DWELLINGHOUSE**

**PLOT 1, LAND EAST OF CALA NA SITHE,
KILMORE, BY OBAN**

11/02/20

STATEMENT OF CASE

The Planning Authority is Argyll and Bute Council ('the Council'). The appellant is Petard Investments ('the appellant').

Planning permission in principle 19/02314/PPP for a site for the erection of a dwellinghouse on an area of land east of Cala Na Sithe, Kilmore, by Oban ("the appeal site") was refused by the Planning Service under delegated powers on 09/01/20.

The planning application has been appealed and is subject of referral to a Local Review Body.

DESCRIPTION OF SITE

The LRB refers to the site as Plot 1 with an associated LRB for Plot 2 (20/0003/LRB) also currently subject of Review.

The site is a prominent area of undulating rough grazing elevated above the neighbouring property 'Cala na Sithe' which forms the western boundary of the site and is clearly visible from the A816 public road to the north. Along the southern boundary of the site is a well-established mature forest plantation against which the proposed plot will be viewed with the land sloping down to the north towards the A816 public road. To the east is associated Plot 2 mentioned above beyond which the land continues in a similar undulating manner.

The site does not represent an appropriate opportunity for infill, rounding-off, redevelopment or change of use of building development within the Countryside Zone (CZ) as required by Policy DM 1 above and there has been no claim of any 'exceptional case' for the development based upon any locational or operational site requirement and accordingly planning permission in principle was refused. .

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 Act, regard is to be had to the development plan, and all other material planning considerations and the determination shall be made in accordance with the plan unless material considerations indicate otherwise. This is the test for this application.

STATEMENT OF CASE

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

- *Whether weight should be given to the forthcoming Local Development Plan 2 (LDP 2) and whether a hearing should be held to understand the relevance of LDP 2.*

The Report of Handling (Appendix 1) sets out the Council's full assessment of the application in terms of Development Plan policy and other material considerations.

REQUIREMENT FOR ADDITIONAL INFORMATION AND A HEARING

It is not considered that any additional information is required in light of the appellant's submission. The issues raised were assessed in the Report of Handling which is contained in Appendix 1. As such it is considered that Members have all the information they need to determine the case. Given the above and that the proposal is small-scale, has no complex or challenging issues, and has not been the subject of any significant public representation, it is not considered that a Hearing is required.

COMMENT ON APPELLANT'S SUBMISSION

The appellant contends that weight should be attributed to the recent approval of LDP 2 and that Councillors hold a hearing to better understand the relevance of the new policy regime within LDP 2.

As the visual and landscape impact of the proposed dwellings is the critical issue, the appellant requests that Councillors undertake a site visit.

Planning Authority Comment:

The application was determined under the terms of the Local Plan in force at the time, namely the adopted 'Argyll and Bute Local Development Plan' (LDP) 2015. This was the only correct and competent course of action open to officers at that time and it is that decision, and that decision only, which is the subject of the current Review.

The application was submitted, assessed and determined at a very early stage in the approval and eventual adoption process of the emerging Local Development Plan; prior to the closure of the formal Public Consultation undertaken for LDP 2 and, therefore, LDP 2 could not have been afforded any significant material weight in the determination of the application. Neither can LDP 2 be afforded any significant weight now, at the time of this Review (February 2020). The appellant asserts that, in his opinion, 'it is highly doubtful [that] anyone will have objected to the thrust of this policy' (proposed policy 02). With respect, officers cannot accept this statement at face value and neither should Members. The fact remains that the LDP 2 consultation process has generated a substantial number of representations and these are still being collated and appropriately assessed. This process is likely to take several weeks and, until such time, there can be no material weighting given to any of the policies within the proposed LDP 2.

The Council's Development Policy Service (DPS) has advised that significant weight can only be applied to elements of LDP 2 which have not been objected to and this is something which is an unknown during both the consultation and post consultation evaluation process. Accordingly the DPS advise that policies within LDP 2 can be given no material weighting at this time and also that the policies within LDP 2

cannot be applied retrospectively to an application which has already been determined.

Notwithstanding the above, it would not be appropriate or legally competent to have the application reassessed under the provisions of LDP 2 at Local Review. It is of critical importance that all planning applications are properly assessed in accordance with the provisions of the approved and adopted local development plan in force at that time. Whilst it is acknowledged that the applicant/developer could submit a further application at an appropriate time in the future when LDP 2 becomes a material consideration, the fact remains that the applicant/developer chose to submit their current application (subject of this Review) substantially before the material emergence of LDP 2. In that fundamental regard, the proposed development must be considered premature to any future planning policy.

The Planning Authority robustly maintains that the planning application the subject of this Review was assessed properly and in correct accordance with the provisions of the adopted Local Development Plan and all other material planning considerations. Any suggestion to the contrary is wholly refuted.

Given the current position with LDP 2, the Local Review Panel are advised that holding a hearing to debate the merits of LDP 2 would not be relevant or appropriate; nor would it add anything to the LRB process as no weight was given to LDP 2 in the consideration of the planning application by the Planning Authority and no weight can be given to LDP 2 by Members in consideration of this Review.

Should Members decide to undertake a site visit, this would be on the basis of assessing the application in terms of the adopted LDP and not the forthcoming LDP 2.

It is concluded that:

- Officers could only have determined this application under the provisions of the adopted (current) LDP and to any other material planning considerations. The application was submitted, assessed and determined before the closure of the LDP2 public consultation and it could not, therefore, have been afforded significant material weight.*
- It would not be correct to seek to have this application reassessed under the provisions of LDP 2 at Review (though the developer could submit a further application(s) at an appropriate time).*
- The LRB panel are respectfully advised that they should not apply any new emerging planning policy retrospectively.*

CONCLUSION

Section 25 of the Town and Country Planning Act 1997 requires that all decisions be made in accordance with the development plan unless material considerations indicate otherwise.

Taking all of the above into consideration, as set out above, it remains the view of the Planning Service, as set out in the Report of Handling appended to this statement, that the proposed site does not represent an appropriate opportunity for development with a dwellinghouse and would result in an unacceptable environmental impact by virtue of introducing a form of inappropriate development into the CZ detrimental to the character and appearance of the wider landscape.

Taking account of the above, it is respectfully requested that the application for review be dismissed.

APPENDIX 1

Argyll and Bute Council
Development and Infrastructure

Delegated or Committee Planning Application Report and Report of handling as required by Schedule 2 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 relative to applications for Planning Permission or Planning Permission in Principle

Reference No: 19/02314/PPP

Planning Hierarchy: Local Development

Applicant: Petard Investments

Proposal: Site for Erection of Dwellinghouse and Garage

Site Address: Plot 1, Land East of Cala Na Sithe, Kilmore

DECISION ROUTE

Section 43 (A) of the Town and Country Planning (Scotland) Act 1997 (as amended)

(A) THE APPLICATION

(i) Development Requiring Express Planning Permission

- Site for erection of dwellinghouse (planning permission in principle)
- Formation of vehicular access (planning permission in principle)
- Installation of private drainage system (planning permission in principle)

(ii) Other specified operations

- Connection to public water main
-

(B) RECOMMENDATION:

Having due regard to the Development Plan and all other material considerations, it is recommended that planning permission in principle be **REFUSED** for the reasons appended to this report.

(C) HISTORY:

18/02238/PPP

Site for erection of dwellinghouse – Refused: 18/12/18

(D) CONSULTATIONS:

Area Roads Authority
No objection subject to conditions 13/11/19.

Scottish Water
Letter dated 17/11/19 advising no objection to the proposed development

The above represents a summary of the issues raised. Full details of the consultation responses are available on the Council's Public Access System by clicking on the following link <http://www.argyll-bute.gov.uk/content/planning/publicaccess>.

(E) PUBLICITY:

The proposal has been advertised in terms of Regulation 20 and Neighbour Notification procedures, overall closing date 19/12/19.

(F) REPRESENTATIONS:

One representation has been received regarding the proposed development.

Mrs Sandra Grieve, Dalmarra, Kilmore, PA34 4QT (22/11/19)

(i) Summary of issues raised

- Where the proposed road is marked on application, it will be going over our private water supply.

Comment: This is not a material consideration in the determination of this planning application but a separate civil issue between affected parties.

The above represents a summary of the issues raised. Full details of the letters of representation are available on the Council's Public Access System by clicking on the following link <http://www.argyll-bute.gov.uk/content/planning/publicaccess>.

(G) SUPPORTING INFORMATION

Has the application been the subject of:

- | | |
|---|-----------|
| (i) Environmental Statement: | No |
| (ii) An appropriate assessment under the Conservation (Natural Habitats) Regulations 1994: | No |
| (iii) A design or design/access statement:
Yes | |
| (iv) A report on the impact of the proposed development
e.g. retail impact, transport impact, noise impact, flood risk,
drainage impact etc: | No |
-

(H) PLANNING OBLIGATIONS

- | | |
|---|-----------|
| (i) Is a Section 75 obligation required: | No |
|---|-----------|

(I) **Has a Direction been issued by Scottish Ministers in terms of Regulation 30, 31 or 32:** **No**

(J) **Section 25 of the Act; Development Plan and any other material considerations over and above those listed above which have been taken into account in the assessment of the application**

(i) **List of all Development Plan Policy considerations taken into account in assessment of the application.**

Argyll and Bute Local Development Plan, 2015

LDP STRAT 1 – Sustainable Development
LDP DM 1 – Development within the Development Management Zones (*Countryside Zone*)
LDP 3 – Supporting the Protection Conservation and Enhancement of our Environment
LDP 8 – Supporting the Strength of our Communities
LDP 9 – Development Setting, Layout and Design
LDP 10 – Maximising our Resources and Reducing our Consumption
LDP 11 – Improving our Connectivity and Infrastructure

Supplementary Guidance

SG 2 – Sustainable Siting and Design Principles
SG LDP ENV 13 – Development Impact on Areas of Panoramic Quality (APQs) (*North West Argyll (Coast) APQ*)
SG LDP ENV 14 – Landscape
SG LDP HOU 1 – General Housing Development including Affordable Housing
SG LDP SERV 1 – Private Sewage Treatment Plans & Wastewater Systems
SG LDP SERV 2 – Incorporation of Natural Features/Sustainable Drainage Systems (SuDS)
SG LDP TRAN 4 – New and Existing, Public Roads and Private Access Regimes
SG LDP TRAN 6 – Vehicle Parking Provision

(i) **List of all other material planning considerations taken into account in the assessment of the application, having due regard to Annex A of Circular 3/2013.**

Argyll and Bute Sustainable Design Guidance, 2006
Scottish Planning Policy (SPP), 2014
Argyll and Bute Proposed Local Development Plan 2 (November 2019)
Consultation Responses
Third Party Representations

(K) **Is the proposal a Schedule 2 Development not requiring an Environmental Impact Assessment:** **No**

(L) **Has the application been the subject of statutory pre-application consultation (PAC):** **No**

(M) Has a sustainability check list been submitted: No

(N) Does the Council have an interest in the site: No

(O) Requirement for a hearing: No

(P) Assessment and summary of determining issues and material considerations

An application for Planning Permission in Principle 18/02238/PP for a dwellinghouse on this site was refused by the Planning Service on 18 December 2018.

The application refers to the site as Plot 1 with an associated application for the resubmission on Plot 2 (19/02315/PPP) also currently with the Planning Service for consideration.

In support of the resubmission, the agent has stated that “... *the policy position in relation to new housing in Countryside Areas is changing with the recent approval of the Local Development Plan 2 Proposed Plan, which is now the settled view of the Council. The Plan has changed the way in which proposals will be considered going forward and, although it still needs to be consulted upon and examined, it does already carry weight as a material consideration*”.

However, whilst the proposed Local Development Plan 2 (PLDP2) has been through Council and is classed as the ‘settled view’ of the Council representing a material consideration, in the main, this will be afforded very little weight until the consultation exercise has been completed. Once the consultation period is concluded those aspects of PLDP2 which have not been objected to will then be given strong weight.

Accordingly, as the consultation on PLDP 2 does not expire until 23 January 2020, the current application is considered to be premature and requires to be assessed in terms of the current adopted ‘Argyll and Bute Local Development Plan’ (LDP) 2015 with the assessment reflecting that of the previous application reiterated below.

As a background it should be noted that during the life of the preceding 2009 Local Plan, the site was identified as being within a Rural Opportunity Area (ROA). However, ROAs within Areas of Panoramic Quality (APQ), within which the site falls, were subject to Landscape Capacity Study (LCS) to refine their extent for the purposes of decision making through the 2009 Local Plan (and now the adopted 2015 Local Development Plan). The LCS included the site of the current application within Site LN56 identified as an area not recommended for development, stating that, generally, the rising slopes south of the A816 should not be developed as this would become too visible within the wider landscape and could change the character of the area. The LCS identified two small areas suitable for development, both of which have followed through into the current LDP as ROAs with the areas identified as not suitable for development followed through into the current LDP as Countryside.

In terms of the current adopted ‘Argyll and Bute Local Development Plan’ (LDP) 2015 the application site is situated within the Countryside Zone (CZ) where Policy LDP DM 1 of the LDP is very restrictive only giving support to small scale development on

an appropriate infill, rounding off, redevelopment or change of use of building development, subject to compliance with other relevant policies and supplementary guidance (SG).

Policy LDP 8 supports new sustainable development proposals that seek to strengthen communities where they comply with other relevant policies with SG LDP HOU 1 limiting support to new housing within the CZ to an infill, rounding off and redevelopment basis.

The application site is also situated within the North West Argyll (Coast) Area of Panoramic Quality (APQ) where consideration has to be given to Policy LDP DM 3 and SG LDP ENV 13 which seek to resist development in, or adjacent to, an APQ where its scale, location or design will have a significant adverse impact on the character of the landscape.

Policy LDP 9 and SG 2 seek developers to site and position development so as to pay regard to the context within which it is located taking into account the location or sensitivity of the area with developments of poor quality or inappropriate layouts being resisted.

The application is seeking planning permission in principle (PPP) with no layout, design or infrastructure details having been submitted. The purpose of this application is to establish the principle of development, with the intention that if permission in principle were to be granted, matters of layout and design should be addressed by way of future application(s) for approval of matters specified in conditions.

The site is a prominent area of undulating rough grazing elevated above the neighbouring property 'Cala na Sithe' which forms the western boundary of the site and is clearly visible from the A816 public road to the north. Along the southern boundary of the site is a well-established mature forest plantation against which the proposed plot will be viewed with the land sloping down to the north towards the A816 public road. To the east is associated Plot 2 mentioned above beyond which the land continues in a similar undulating manner.

The site does not represent an appropriate opportunity for infill, rounding-off, redevelopment or change of use of building development within the CZ as required by Policy DM 1 above and there has been no claim of any 'exceptional case' for the development based upon any locational or operational site requirement.

The LCS, with respect to Site LN56 which includes the site of the currently proposed development states that the land is within the Scottish Natural Heritage 'Craggy Upland' landscape character type and that it sits on the southern shore of the head of Loch Feochan with panoramic views across the loch. The LCS categorises this landscape parcel as having medium scenic quality but with a high sensitivity to change and, therefore, a limited capacity to successfully absorb development with a recommendation that the rising slopes south of the A816 should not be developed as this would become too visible within the wider landscape and could change the character of the area.

As explained above, the LCS directly informed the amendments to the Council's settlement strategy planning policy, both in the interpretation of the then extant 2009 Local Plan and, more pertinently to the current planning application, the adopted 2015 Local Development Plan which removed these areas not recommended for development from the former ROA and re-categorized them as falling within the wider

'countryside zone (CZ). As summarised above, there is a policy presumption against new residential development within the CZ unless certain, specific development opportunities exist or else an appropriate claim of an 'exceptional case' has been submitted, examined and accepted subject to an Area Capacity Evaluation (ACE).

In this case, the proposed development is not an infill, redevelopment, rounding off or a change of use of an existing building and there has been no claim of any 'exceptional case' submitted. Even if there had been a claim that the proposed development should be considered an exceptional case, it is the professional and considered opinion of the planning authority that the site would not accord with an ACE given the findings of the LCS.

The applicant's counter argument to this, as advanced through the submission of their own landscape evaluation study (produced by a chartered landscape architect within VLM Landscape Design) is that the LCS adopted a 'broad brush' approach to landscape quality assessment and that it didn't adequately take into account the complex topography across compartment LN56. The applicant's submitted landscape assessment concludes that whilst parts of LN56 are visible within the wider landscape, the site of the proposed development is not due to a combination of the surrounding knolly landform, mature garden features and extensive mature tree cover.

The applicant's submitted landscape assessment therefore concludes that whilst the development will result in an inevitable transitory period of adjustment and change to the established landscape, the actual sensitivity to change of this part of LN56 is assessed to be 'medium to high' but that the magnitude of the effect of the proposed development is 'low' and the impact upon the wider landscape character is 'moderate-minor to moderate' and, once the proposed planting strategy (to landscape the development) has been established, it is claimed that the long term impact upon the landscape character will be 'minor' and 'beneficial'. It concludes that, *"The Proposed Site offers scope for a fully integrated small-scale residential development comprising two new dwellings and associated garden grounds and access drive to assimilate into the landscape without any adverse impacts upon the landscape and visual amenity of the area. - Ultimately this sensitively planned development will be seen to be wholly consistent with the established rural settlement pattern and will not have a detrimental impact on the integrity and quality of the APQ designation. Therefore, in landscape and visual terms, the proposals are assessed to be wholly in line with current best practice guidance and environmental policies contained within the Argyll and Bute adopted Local Plan, including acceptable in terms of Policy SG LDP ENV 13."*

(The above represents a summary of the applicant's submitted landscape assessment study. The full document is available on the Council's Public Access System by clicking on the following link <http://www.argyll-bute.gov.uk/content/planning/publicaccess>.)

The planning authority have carefully considered the applicant's submitted landscape appraisal but do not agree with its findings. It is considered that development of the site with a dwellinghouse would represent an inappropriate form of development within the CZ designation resulting in an unacceptable environmental impact introducing a form of inappropriate development into the CZ and wider APQ which would be detrimental to the character and appearance of the wider landscape contrary to the policy and guidance set out above. Furthermore, the proposal would be contrary to the independent landscape advice contained within the LCS study referred to above which clearly states that the rising slopes south of the A816 should

not be developed as this would become too visible within the wider landscape and could change the character of the area.

In addition to the above, however, it is important to note that the impact of the proposed development upon the landscape is not the sole determining factor in the consideration of this application.

Regardless of any interpretation of the impact of the proposed development upon the landscape, the development does not meet the fundamental key planning policy test for the Council's established and adopted settlement strategy for the planned growth of Argyll and Bute as set out within policy LDP DM 1. Neither, therefore, does the proposed development accord with the sustainable development aims of the Council as established within adopted key planning policy LDP STRAT 1. These two policies, plus the remainder of the Local Development Plan, including its adopted development management zones were the subject of considerable public scrutiny and examination in public through the public local inquiry which was held prior to adoption. The result of this was that the site the subject of the proposed development remained within the CZ, thus forming the settled will of the Council with regard to planning policy and settlement strategy. The proposed development does not accord with that policy and the Planning Authority can find no appropriate or desirable reason to set aside key planning policies LDP DM 1 or LDP STRAT 1 as a 'minor departure' to the LDP in this case.

It is further noted that should the developer wish to press his/her argument with respect to this site, the correct way to do that would be to make this case through the public consultation phase of the emerging replacement LDP. Any decision to approve this development now, contrary to key adopted planning policy, is considered to be premature to the consideration of the forthcoming LDP.

With regard to infrastructure to serve the proposed development, the application proposes to utilise the existing private access spurring from the A816 public road currently serving 'Dalmara' and 'Cala na Sithe'. At the time of report the Roads Authority had not responded but in their response to the previous application advised that the existing access is adequate and raised no objection subject to conditions regarding the provision of an appropriate parking and turning area within the site and a refuse collection point at the junction with the public road. Connection to the public water supply is proposed with drainage via installation of a private system. Whilst, with appropriate safeguarding conditions, this aspect of the proposal could be considered consistent with Policy LDP 11 and SG LDP TRAN 4 and SG LDP TRAN 6 which seek to ensure developments are served by a safe means of vehicular access and have an appropriate parking provision within the site and SG LDP SERV 1 which gives support to private drainage proposals where connection to the public system is not feasible, this is not relevant as the principle of development on the site is not considered consistent with policy as detailed above.

The proposed development will have no materially adverse impact upon the historic environment including (but not necessarily limited to) the historic/architectural/cultural value and/or setting or other specified qualities of any listed building, any scheduled ancient monument, any garden and designed landscape, any conservation area or any special built environment area. Neither will the proposed development result in any material harm to the natural environment including (but not necessarily limited to) the special environmental/habitat/geological or other specified qualities of any site of special scientific interest, any special protection area, any 'Ramsar' site, any national or local nature reserve, any designated area of wild land, any marine consultation

area, any area of semi-natural ancient woodland, any carbon and peatland area or any tree preservation order.

Taking all of the above into consideration, it is considered that the development of the site with a dwellinghouse would result in an unacceptable landscape impact contrary to the provisions of Policies LDP STRAT 1, LDP DM 1, LDP 3, LDP 8, LDP 9 and Supplementary Guidance SG 2, SG LDP ENV 13, SG LDP ENV 14 and SG LDP HOU 1 of the adopted 'Argyll and Bute Local Development Plan' 2015 and it is recommended that the application be refused for the reasons appended to this report.

(Q) Is the proposal consistent with the Development Plan: No

(R) Reasons why planning permission in principle should be refused

See reasons for refusal set out below.

(S) Reasoned justification for a departure to the provisions of the Development Plan

N/A

(T) Need for notification to Scottish Ministers or Historic Environment Scotland: No

Author of Report: Fiona Scott Date: 23/12/19

Reviewing Officer: Tim Williams Date: 08/01/20

**Fergus Murray
Head of Development and Economic Growth**

REASONS FOR REFUSAL RELATIVE TO APPLICATION REFERENCE 19/02314/PPP

1. The site the subject of this application lies within a wider area designated as 'Countryside Zone' within the adopted Local Development Plan and is a prominent area of undulating rough grazing elevated above the neighbouring property 'Cala na Sithe' which forms the western boundary of the site and is clearly visible from the A816 public road to the north. The site does not represent an appropriate opportunity for infill, rounding-off, redevelopment or change of use of building development within the Countryside Zone as required by Policy LDP DM 1 of the adopted Local Development Plan and there has been no claim of any 'exceptional case' for the development based upon any locational or operational site requirement.

The application site is also situated within the North West Argyll (Coast) Area of Panoramic Quality (APQ) where consideration has to be given to Policy LDP DM 3 and SG LDP ENV 13 of the adopted Local Development Plan, which seek to resist development in, or adjacent to, an APQ where its scale, location or design will have a significant adverse impact on the character of the landscape.

The proposed development is therefore contrary to the established and adopted sustainable development aims of the Council as expressed within key planning policy LDP STRAT 1 and to the established and adopted settlement strategy as espoused within key planning policy LDP DM 1. It is not considered that the proposed development would constitute an appropriate departure to these key planning policies.

In addition to the above, and notwithstanding the Applicant's submitted landscape assessment study, it is considered that the proposed development would introduce an inappropriate and additional built development into an area of sensitive landscape quality, recognised by its inclusion within a wider Area of Panoramic Landscape Quality (APQ), and will have an unacceptable and materially harmful impact upon the character and quality of the APQ and the wider landscape, contrary to the established settlement pattern.

The proposal is therefore considered to be contrary to the provisions of Policies STRAT 1, LDP DM 1, LDP 3, LDP 8, LDP 9 and Supplementary Guidance SG 2, SG LDP HOU 1, SG LDP ENV 13 and SG LDP ENV 14 of the adopted 'Argyll and Bute Local Development Plan' 2015.

APPENDIX TO DECISION REFUSAL NOTICE

Appendix relative to application **19/02314/PP**

- (A)** Has the application required an obligation under Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended).

No

- (B)** Has the application been the subject of any “non-material” amendment in terms of Section 32A of the Town and Country Planning (Scotland) Act 1997 (as amended) to the initial submitted plans during its processing.

No

- (C)** The reason why planning permission in principle has been refused.

See reason for refusal set out above.