

STATEMENT OF CASE

FOR

**ARGYLL AND BUTE COUNCIL
LOCAL REVIEW BODY**

(21/0001/LRB)

**(Request to Reconsider Refusal of Planning
Permission for a Dwellinghouse)**

(LAND NE OF KILDONALD COTTAGE, CAMPBELTOWN)

(12.04.2021)

STATEMENT OF CASE

The Planning Authority is Argyll and Bute Council (“the Council”). The appellant is Felicity Kelly (“the appellant”) who has employed (insert agent as appropriate) to act upon his behalf (“the agent”).

The proposal was for “Erection of dwellinghouse with integral garage, installation of septic tank and formation of access” reference 20/01653/PP

The planning decision has been challenged and is subject of review by the Local Review Body.

DESCRIPTION OF SITE

The proposal is for a single house on a 0.17ha rectangular site to the east of the B842 some 3km north of Peninver. The site boundary is some 45m north of Kildonald Cottage and there are a scattering of farm buildings and houses identified as Ballochgair but not formalised as a settlement in the Local Development Plan (LDP)

SITE HISTORY

06/01245/DET Erection of dwelling house 07.03.2007, Withdrawn.

STATUTORY BASIS ON WHICH THE APPEAL SHOULD BE DECIDED

Section 25 of the Town & 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 determination shall be made in accordance with the development plan unless material considerations indicate otherwise. This is the test for this planning application.

STATEMENT OF CASE

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

- The site is within the countryside area of the LDP where development should be on appropriate sites,
- this site has no evidence of previous use as housing from information on historical maps, remote sensing and the site visit walk through,
- for this site to be appropriate it must be infill or rounding off as defined in the LDP.

The Report of Handling (please refer to Appendix 1) sets out Planning and Regulatory Services assessment of the planning application in terms of policy within the current adopted Argyll and Bute Development Plan and all other material planning considerations.

REQUIREMENT FOR ADDITIONAL INFORMATION AND A HEARING

The proposal constitutes a Local Development in accordance with the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009, has no complex or challenging issues and has not been the subject of objection from local residents, it is not considered that a Hearing is required.

COMMENT ON APPELLANTS’ SUBMISSION

The appellants' statement can be summarised under the following key issues:

1. The site proposed is close to immediate family's houses and is in the applicant's ownership,
2. the design is suitable for an infirm occupant who may require care with elements of the design offering carer accommodations,
3. the site is close to other houses and commercial buildings and is to reflect the design of the building to the south of Kildonald Cottage, built around 2007,
4. the Scottish Government's PAN 72 Housing in the Countryside document states that new housing should be sustainable and the stabilisation of populations in the countryside is one way of achieving this,
5. there is an offer to coppice the land north of the site to integrate the development in the landscape and to act as rounding off and define the end of development to the north,
6. the coppice would have a positive effect on the carbon footprint of the surrounding area,
7. the proposal may be deemed to be windfall development as termed in the LDP Written Statement 2.12,
8. the applicant is willing to accept an agreement under Section 75 of Planning Act regarding this proposal acting as precedent for any further proposals,
9. the positioning north of the nearest house is to allow adequate sightlines and visibility to the main road.

Commentary

1. It is noted that the applicant wishes to use her ground to build a house close to other family dwellings and a design allowing flexibility for caring duties is supported. However, the applicant currently lives nearby and this argument does not qualify as an 'exceptional case' under the terms of policy LDP DM 1.
2. The design would make this one of the larger houses in an Area of Panoramic Quality (APQ) and discussion with the planning team regarding the design would be expected as regarding its appropriateness for the local area. However, regardless of the design the proposal does not meet the initial policy test of LDP DM 1 with respect to the countryside development management zone.
- 3&4. Policy requires development to be on an appropriate site which requires to be sustainable. Maintaining population is accepted as one way of defining stabilisation but that should be to help keep services viable, retaining people in affordable homes and creating new businesses in rural areas. It is not felt that this proposal fulfils this wider aim of PAN 75.
- 5&6. The offer to plant trees is welcome as part of a landscape plan addressing the proposal area. However, a woodland may not easily be controlled as a permanent land use feature within the landscape. If the intention is to use plantings as the substantial ground feature to comply with the definition of rounding off, then there requires to be a proposal detailing how this feature would be protected from clearing in the future, as for example, is the case with ancient woodland. It is possible that a planning condition could control the future status of the woodland but this would need to be accompanied by an active management plan that would ensure its health and vitality in perpetuity. It would be unusual for such an approach to be used to meet the terms of planning policy.
7. If the intention is to class the site as windfall it still requires to be consistent with the policies of the LDP.

8. The use of a Section 75 agreement to regulate the use of the land to the north such that it is not developed with buildings for any use would require to be discussed with the council's legal team. It would be expected that these discussions are concluded in advance of any planning application. Such an approach could be used in conjunction with the offer of woodland planting and future land management. However, this was not in front of officers at the time of making a determination.
9. The council's Roads and Amenity department had no objection to the proposal with conditions attached regarding visibility, construction, a service bay and parking and turning

The points offered in support of a positive review of this refused proposal do not adequately address the terms of policy LDP DM1 where a suitable site would be between a substantial building and a substantial ground feature on the other. The proposals to create and maintain a new ground feature should not be a condition of a housing application but should be lawfully addressed in advance of any application. The building to the south is not substantial and indeed may be deemed subordinate in size to the proposed house and garage. This too does not meet the requirements of rounding off development.

CONCLUSION

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

The reasons for refusal of planning application 20/01653/PP:

The proposal is not consistent with the relevant provisions of the Local Development Plan regarding siting within the Countryside Zone and an Area of Panoramic Quality contrary to policies LDP DM1, LDP STRAT 1 and LDP 3. The application does not meet the criteria set out in policy LDP DM 1 for housing in the countryside as the site is not infill or rounding off. There are no material considerations which warrant departure from these provisions.

There are no material considerations identified of sufficient weight that justify the proposal as a departure from the provisions of the development plan.

It is respectfully requested that the review be dismissed and the refusal be upheld.

Appendix 1 Report of Handling

Argyll and Bute Council
Development & Infrastructure Services

Delegated 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: 20/01653/PP
Planning Hierarchy: Local
Applicant: Felicity Kelly
Proposal: Erection of dwellinghouse with integral garage, installation of septic tank and formation of access.
Site Address: Land North East Of Kildonald Cottage Campbeltown

DECISION ROUTE

Sect 43 (A) of the Town and Country Planning (Scotland) Act 1997

(A) THE APPLICATION

(i) Development Requiring Express Planning Permission

- Erection of dwelling house and garage
- Installation of septic tank
- Formation of vehicle access

Other specified operations

- Connection to existing services
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(B) RECOMMENDATION:

Refuse as the proposal does not conform to the Local Development Plan regarding Policy LDP DM1 regarding development within the Countryside Development Management Zone.

(C) CONSULTATIONS:

Area Roads replied 12.10.2020 no objection subject to conditions.
Scottish Water did not reply.

(D) HISTORY:

- (E) **PUBLICITY:**
Regulation 20 advert Campbeltown Courier/Argyll Advertiser expired 30.10.2020
Neighbour notification – none.
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- (F) **REPRESENTATIONS:** None
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(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: | No |
| (iv) A report on the impact of the proposed development eg. Retail impact, transport impact, noise impact, flood risk, drainage impact etc: | Yes –
Generic supporting comments |
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(H) **PLANNING OBLIGATIONS**

Is a Section 75 agreement required: No

- (I) **Has a Direction been issued by Scottish Ministers in terms of Regulation 30, 31 or 32:** No
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- (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' Adopted March 2015

LDP STRAT 1 – Sustainable Development
LDP DM1 – Development Within the Development Management Zones
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 to the Argyll and Bute Local Plan 2015' (Adopted March 2016)

General Housing Development

SG LDP HOU 1 - General Housing Development Including Affordable Housing

Provision

Landscape and Design

SG LDP ENV 13 - Development Impact on Areas of Panoramic Quality (APQs)

Sustainable Siting and Design

SG LDP Sustainable – Sustainable Siting and Design Principles

Resources and Consumption

SG LDP SERV 1 - Private Sewage Treatment Plants and Wastewater (i.e. drainage) Systems

SG LDP SERV 6 - Private Water Supplies and Waste Conservation

Transport (including core paths)

SG LDP TRAN 4 – New and Existing, Public Roads and Private Access Regimes

SG LDP TRAN 6 – Vehicle Parking Provision

(ii) 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.

- Scottish Planning Policy
- Consultations
- Planning history
- ABC LDP 2 Proposed Nov 2020

(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

The proposal is for a single house on a 0.17ha rectangular site to the east of the B842 some 3km north of Peninver. The site boundary is some 45m north of Kildonald Cottage with no existing buildings north of the site for round 750m. The site is within the Countryside Zone as defined in the Local Development Plan (LDP)(adopted 2015).

Policies LDP DM1 and LDP STRAT 1 encourage small scale proposals on appropriate sites which make efficient use of vacant land. For a site to be appropriate within the countryside it must be infill, rounding off, a redevelopment site or changes of use of existing buildings. The site visit showed no evidence of previous occupation of the land with built remains. Examination of historical OS maps from the early 20th century showed no buildings on the site.

The definitions of infill and rounding off within the LDP Glossary are:

- Infill – new development positioned largely between other substantial buildings and this new development being of a scale subordinate to the combined scale of the buildings adjacent to the development site.
- Rounding off – new development positioned largely between substantial building(s) on one side and a substantial ground or natural feature on the other side and arranged such that the local pattern of development terminates at that point.

The proposal is a rectangular 1 ¾ storey, three bedroom house with internal garage giving a total ground floor area or around 150sqm. The two single storey cottages to the south although with footprints slightly under 150sqm are not deemed to be substantial buildings and the proposal's scale would therefore not make it the subordinate building. Additionally the positioning does not conform to the specifics of the definition of infill. The proposal would therefore require to be defined as rounding off. The absence of any ground or natural feature to the north of the site which would physically terminate future development fails to conform to the definition of rounding off.

Policies LDP STRAT 1 and LDP 3 require development to respect the landscape character in an Area of Panoramic Quality (APQ), which due to the scale of the proposal is not deemed to be the case.

The proposal is therefore contrary to policies LDP DM1, LDP STRAT 1 and LDP 3 and is not deemed to an appropriate site for this house as it is not consistent with the terms and policies of the Local Development Plan.

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

(R) Reasons why Planning Permission or Planning Permission in Principle Should be Refused:

The proposal is not consistent with the relevant provisions of the Local Development Plan regarding siting within the Countryside Zone and an Area of Panoramic Quality contrary to policies LDP DM1, LDP STRAT 1 and LDP 3. The application does not meet the criteria set out in policy LDP DM 1 for housing in the countryside as the site is not infill or rounding off. There are no material considerations which warrant departure from these provisions.

(S) Reasoned justification for a departure to the provisions of the Development Plan: None

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

Author of Report: Derek Wilson **Date:** 19.01.2021

Reviewing Officer:  **Date:** 20th Jan 2021

Fergus Murray

Head of Development and Economic Growth

