

**Update on Planning appeal reference: PPA-130-2081 - Land east of Lochside,
Portincaple, Argyll and Bute**

1. INTRODUCTION

This report advised on the recent decision by the Planning and Environmental; Appeals Division in relation to Planning appeal reference: PPA-130-2081, whereby the appeal was dismissed and the decision to refuse, from the PPSL, upheld. There is a right of appeal to the Court of Session only in regard to a point of law and an appeal must be made within six weeks of the date of the appeal decision.

2. RECOMMENDATION

Members are asked to note the contents of the report.

3. DETAILS OF APPEAL DECISION

Decision by Trevor A Croft, a Reporter appointed by the Scottish Ministers:
Planning appeal reference: PPA-130-2081;
Site address: Land east of Lochside, Portincaple, Argyll and Bute, G84 0EU;
Appeal by Mr Pelham Olive against the decision by Argyll and Bute Council;
Application for planning permission 20/00094/PP dated 20 January 2020 refused by notice dated 29 January 2021;
The development proposed: Erection of 12 dwellinghouses, alterations to vehicular access and installation of private drainage system;
Date of site visit by Reporter: 8 July 2021;
Date of appeal decision: 20 July 2021

The appeal was dismissed and the decision to refuse, from the PPSL, upheld and a copy of the decision is appended at Appendix 1 hereof.

The reporter concluded that the proposed development did not accord overall with the relevant provisions of the development plan and that there were no material considerations which would still justify granting planning permission. The reporter considered all the other matters raised, but there were none which would lead him to alter his conclusions.

There is a right of appeal to the Court of Session only in regard to a point of law and an appeal must be made within six weeks of the date of the appeal decision.

4. IMPLICATIONS

- 4.1 Policy – None at present – decision consistent with current view on LDP
- 4.2 Financial – None at present
- 4.3 Legal - None at present – decision consistent with current view on LDP

- 4.4 HR – None at present
- 4.5 Fairer Scotland Duty:
 - 4.5.1 Equalities - protected characteristics – None at present
 - 4.5.2 Socio-economic Duty – None at present
 - 4.5.3 Islands - None
- 4.6. Risk – There is a risk the Appellant may wish to appeal to the Court of Session on a point of law and that will be monitored
- 4.7 Customer Service - None

Douglas Hendry - Executive Director with Responsibility for Legal and Regulatory Support

Councillor David Kinniburgh – Policy lead for Planning and Regulatory Services

Councillor Mary Jean Devon – Policy lead for Support Services

David Logan – Head of Legal and Regulatory Support

**For Further Information contact - David Logan – Head of Legal and Regulatory Support
– 01546 604322**

Appendix 1

Appendix 1 – Appeal Decision Notice

Decision by Trevor A Croft, a Reporter appointed by the Scottish Ministers

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Decision

I dismiss the appeal.

Preliminary matter

Under regulation 7(4)(b) of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017: Request for a Screening Direction, a member of the public made such a request on 8 February 2020 that Scottish Ministers issue a screening direction to determine whether an Environmental Impact Assessment was required in connection with the proposed development.

The Ministers noted that the council had prepared an earlier opinion at the request of the developer for a previous more extensive proposal on the same site, which included additional housing and a hotel. The council issued a further opinion in March 2020 regarding the current proposals which concluded that an Environmental Impact Assessment was not required. This view was accepted by the Ministers who therefore declined to issue a screening direction.

A request was also made for a direction in respect of the position of the application in terms of the hierarchy of developments. The Ministers were content that the proposed development constitutes a local development in respect of the hierarchy, accounting for its size and scale. I have no reason to differ from these judgments.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise.
2. In this case the development plan comprises the Argyll and Bute Local Development Plan 2015, including the associated supplementary guidance. Policies DM1 (Development within the Development Management Zones) and LDP3 (Supporting the Protection, Conservation and Enhancement of our Environment), together with supplementary guidance policies SG LDP HOU 1 – General Housing Development Including Affordable Housing Provision, and SG LDP ENV 13 (Development Impact on Areas of Panoramic Quality) are quoted in the reasons for refusal.
3. In brief, policy DM1 encourages sustainable forms of development within villages and minor settlements up to small scale on appropriate sites. Small is defined in policy HOU 1 as not exceeding five dwelling units. Policy LDP 3 seeks to protect, conserve and enhance the built, human and natural environment. Policy ENV 13 resists development in, or affecting, areas of panoramic quality where scale, location or design will have a significant adverse impact on the character of the landscape.
4. Having regard to the provisions of the development plan, the submissions before me and my site inspection, the main issues in this appeal are the scale of the proposed development and its impact on the landscape and character of the settlement and surrounding area.
5. Portincaple is a settlement of 58 houses spread out along the east shore of Loch Long about two kilometres north of Garelochhead. The site covers about 1.5 hectares within the northern part of the settlement. Portincaple as a whole slopes relatively steeply from the A814 which passes above and to the east of the settlement. The existing houses, mainly on generous plots, are within a well wooded setting.
6. The site lies within a generally wooded area and sits below houses on either side of the access road, which is relatively narrow and runs south to north at this point. At the northern end of the houses the road turns sharply to the left, where it becomes private, and drops steeply down towards the loch, serving a number of houses along the shore. The access to the site would be taken from this road, which would be realigned from the sharp bend in order to achieve gradients and widths suitable for public adoption. The access road within the site would run from north to south and the proposed houses would site on its western side. To the west of these are two existing houses that sit on the loch shore. At the southern end of the site an arm extends to the loch shore but no development is shown here on the location plan.
7. The site varies in level from approximately 30 metres above ordnance datum to sea level at the shoreline. The proposed houses would be located around the 18 metre to 22 metre above ordnance datum range. Due to the sloping nature of the site, the houses would be split level. The proposed development would comprise six terraced dwellings, four semi-detached and two detached houses.
8. Portincaple is classed in the local development plan as a village/small settlement in terms of policy DM1, where small scale development is encouraged on appropriate sites.

The associated supplementary guidance policy HOU 1 defines small scale as up to five dwelling units. As the proposed development is for 12 units it does not therefore accord with the policy, as set out in reason 1a of the reasons for refusal.

9. Under policy HOU 1 development of medium scale and above in minor settlements is presumed against. These larger scales of development would only be supported by a deliberate attempt to counter population decline in the area, help deliver affordable housing or meet a particular local housing need. The council's reason for refusal 1b states that the relatively insignificant contribution via a commuted sum to affordable housing would provide no benefit to Portincaple and does not merit consideration of an exceptional case status to justify departure from the policy.

10. The policy also states that developments of eight or more houses will generally be expected to contribute a proportion of 25% of units as affordable housing. In exceptional cases a commuted sum can be considered. Whichever way this would be done the housing equivalent would only be three units and I agree with the council that this would be relatively insignificant.

11. In terms of the housing requirements as a whole parties accept that the council's Housing Need and Demand Assessment and Strategic Housing Investment Plan identify a housing need in the Helensburgh and Lomond Housing Market Area, within which Portincaple lies. It is also accepted that it is identified as a high priority area given the consequential impact of an increased Ministry of Defence presence at the Clyde Naval Base just south of Garelochhead. Nor would twelve houses make a significant contribution to a housing priority area in a settlement with minimal provision of services.

12. The appellant has also stated that housing could be of benefit to staff at the naval base and there have been some discussions and correspondence about this. No evidence has been provided however to suggest any guarantee that this could happen. The Ministry of Defence did write direct to DPEA in response to the appeal but no mention was made about housing need. Within the overall context of the proposal I do not consider three units to provide a contribution to meeting the local housing need to be of such significance as to justify an exception to the policy.

13. The appellant also quotes the council's report of handling as saying there would be nothing to prevent the applicant from applying for this proposal in groups of five houses, and that experience has shown this to have happened in other locations. I cannot attach any credibility to this argument as justification for granting planning permission. Any application must be dealt with on its merits, but if multiple permissions are granted on a restrictive site they would effectively nullify the policy.

14. Taking all these points together I find no grounds for granting an exception to the five unit policy as set out in DM1 and HOU 1.

15. The third reason for refusal, 1c, concerns Portincaple's location within an area of panoramic quality and the scale and character of the proposed development. The reason also refers to the Historic Scotland design guide for historic villages and the appellant has pointed out that this is not relevant to the proposal. The council's response to the appeal acknowledges this as an erroneous reference.

16. Nature Scot reviewed its landscape assessments in 2019 and identifies the appeal site as within the Open Ridges Landscape Character Type, previously included in the Argyll and the Firth of Clyde (Environmental Resources Management) 1996. The conclusions are largely consistent between the two documents. It notes that settlement is largely confined to loch edges with houses stepped up the slope on terraces. There is a richly varied local landscape and the strip of land by the loch side is particularly prominent in views from the opposite side. Reflections increase the visual effect of built development.

17. The proposed development would sit immediately below existing houses along the access road as referred to above. These are of a variety of different designs but all are detached set in generous plots. The council's Built Heritage Conservation Officer, quoted in the report of handling, considers that because there are a variety of house styles in Portincaple the proposal, which respects the settlement pattern and wider landscape whilst offering a contemporary response, is appropriate from a design point of view.

18. Whilst such an approach can be successful in the right circumstances I consider the contrast in density between the existing and proposed houses would be too great and the numbers of new houses excessive. This reflects the excess of numbers proposed over the five permitted in policy terms as dealt with above. As the council points out in its appeal response the massing, roof design and prominent glazed frontages would be in notable contrast to the existing houses, with a more suburban feel. I accept this view and consider there would be an adverse landscape impact that did not reflect the setting within the area of panoramic quality. Overall the proposal would not be in accordance with policy LPD3 and ENV 13.

19. Looking at all the points considered above I find the proposed development would be contrary to the terms of the development plan.

20. Turning to other material considerations the appellant refers to Scottish Planning Policy and the National Planning Framework as supporting new housing development. Whilst this is correct, Scottish Planning Policy also refers to locating the right development in the right place, requiring spatial strategies within development plans to promote a sustainable pattern of development appropriate to the area. As set out above the appeal proposal does not accord with the development plan in this respect.

21. The Local Development Plan 2 is at an early stage of its development and has not yet been approved by the council to go forward for public examination and objections have been raised to its content. I am unable therefore to attach any weight to its proposals.

22. The appellant comments that there would be significant landscape benefits from replanting of woodland and clearing of rhododendron. Part of the site is covered by ancient woodland of semi-natural origin. The supporting tree survey identifies 188 trees on the site but the proposal is likely to result in the loss of more than a quarter of these. Although the tree planting may include more trees than are felled the ancient woodland is likely to contain a much richer habitat than that more recently planted and it would take many years for the impact of felling to be mitigated.

23. The council's report of handling acknowledges receipt of 1,115 representations objecting to the development, six general comments and two in support. Of the objections the majority were pro-forma letters from addresses across the United Kingdom and a

number of overseas countries. In addition representations were received direct by DPEA from 23 individuals and organisations, including members of the Scottish and United Kingdom Parliaments. Many issues were raised, the majority of which have been dealt with under my comments above. Others raised points of detail in objecting to the proposed development but none of them affect my decision.

24. The appellant refers to nine items of planning gain that would result from the development. These include: lost history rediscovered; rhododendron eradication; lost water connection restored; road improvements; woodland creation biodiversity restoration; open space and water access; district heating system; provision of exemplar sustainable houses; and land for bus turning and core path access. Much of these could be achieved by houses within the local development plan policy and I do not attach sufficient weight to these to affect my decision.

25. I number of issues were raised about the way in which the original application had been dealt with by the council and the appellant. None of these are relevant to my determination of the appeal.

26. I therefore conclude, for the reasons set out above, that the proposed development does not accord overall with the relevant provisions of the development plan and that there are no material considerations which would still justify granting planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

Trevor A Croft

Reporter