

Response to Representations (Local Review reference 21/0003/LRB)

The numerous representations of support are noted and reinforce the significant body of public support expressed previously. In response to the Council's Statement of Case, comments set out below are offered on behalf of K G McColl and Company Limited.

As the proper starting point for the decision now before the LRB, the applicants have always fully acknowledged how the adopted LDP Policy LDP DM 1 sets out a blanket presumption against development where it would extend an existing settlement into the Countryside Zone, as in the case of the current proposal. The presumption is clear and unqualified and in giving proper consideration to the adopted LDP, the other provisions of the adopted Policy LDP DM 1 cannot be imported as an alternative test for the proposal. Thus, there is no scope to consider an 'exceptions case' in terms of the adopted LDP in this instance. The proposal is clearly contrary to the adopted LDP and was publicly advertised as such. Any decision as to the acceptability of the current proposal must be determined from that starting point. The weight to be attached to the material economic considerations and the emerging LDP2 are matters for the discretion of the LRB. They are not subject to any fixed formula but rather should be determined by the LRB as decision maker with regard to the circumstances of this case.

In terms of economic considerations, early approval for the development of land owned by K.G. McColl and Company Limited would directly assist their corporate operation at a time of continuing unprecedented difficulty. This would have direct public benefit as the company is both a local employer and part of the tourism infrastructure and economy in Argyll. These public benefits can be properly taken into account as material considerations in determining a planning application. Approval of the application would help to safeguard both of these public benefits.

As established through case law and reflected in Scottish Government Guidance (in particular Annex A of Circular 3/2013 as quoted in the RoH) the scope of material considerations in the consideration of planning applications is wide and can only be determined in the circumstances of each case. They can include the provisions of a proposed local development plan. Even in advance of publication, policy proposals contained in a proposed LDP (thus reflecting the settled view of the Council) can be material to a decision on a planning application per the decision of the Court of Session, Outer House in *The Trustees of the late Mrs Hilda Jane (or Johanna) Caroline Pilkington v The Scottish Ministers* (2013). In the current instance, the relevant policy proposals have reached the stage of publication. In addition, representations subsequently made to the relevant proposed Policies 02 and 71 have been duly considered by the Council. In accordance with the decision of 24 June 2021, the relevant Policies as contained in the draft LDP2 remain the settled view of the Council. If adopted, the proposed LDP2 policy framework would effect removal of the current Policy LDP DM 1 blanket presumption against development where it would extend an existing settlement into the Countryside Zone. None of the representations to LDP2 have made any suggestion that it should be retained. Rather the arguments put by those responding to the relevant provisions of LDP2 question the extent of Landscape and Visual Impact Assessment that should be required. It is therefore argued that significant weight should be attached to proposed LDP2 provisions and their focus upon landscape and visual issues for determining the acceptability of proposals. In this instance it is argued that landscape interests could be adequately safeguarded through a suitably conditioned grant of planning permission in principle for the modest development proposed. Such a view would be entirely consistent with the Council's previous assessment of the site in preparing the current LDP and the previous Local Plan.

The Description of Site, as set out in the Council's Statement of Case, does not acknowledge the contrast between the dense scrub occupying the application site and the much more open land to the east.

The comment in the Council's Statement of Case that the proposed development must be viewed as premature in the context of proposed LDP2 is disputed given the small scale of the current proposal and the unique circumstances of the proposal. The circumstances of the current case are unique and would not create a precedent for Countryside Zone proposals elsewhere in Argyll.