

Planning and Environmental Appeals Division
Appeal Decision Notice

T: 0300 244 6668
E: dpea@gov.scot



Scottish Government
Riaghaltas na h-Alba
gov.scot

Decision by Gordon S Reid, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-130-2077
- Site address: land south east of Elderslie, Oban, PA34 4SA
- Appeal by G MacEachen against the decision by Argyll and Bute Council
- Application for planning permission in principle 19/02562/PPP dated 9 December 2019 refused by notice dated 24 August 2020
- The development proposed: site for the erection of two dwellinghouses
- Application drawings: Location Plan (PR003a-L01b), Site Plan (PR003a-L02b) and Proposed Footpath (PR003a-L03)
- Date of site visit by Reporter: 7 May 2021

Date of appeal decision: 05 August 2021

Decision

I allow the appeal and grant planning permission in principle subject to the nine conditions listed at the end of the decision notice.

Attention is drawn to the two advisory notes at the end of the notice.

The appellant has made a claim for expenses. I have issued a separate decision on this claim.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Having regard to the provisions of the development plan the main issues in this appeal are the principle of development, access arrangements, design/layout and effect on the natural and built environment.
2. As there is a listed building adjacent to the appeal site section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 applies and states that in considering whether to grant planning permission for development which affects a listed building or its setting, special regard should be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
3. Parties make reference to the adopted Argyll and Bute Local Development Plan (2015) and related supplementary guidance. My attention has also been brought to the guidance in Transport Scotland's Design Manual for Roads and Bridges (DMRB), the



council's non-statutory Sustainable Design Guidance (2006) and Small Housing Developments (2008) and, the appellant's Road Assessment document.

4. The appeal site is located to the south-west of the A816 (Soroba Road) and is accessed from a private road which serves Soroba House Hotel and Mews, Elderslie B&B and several residential properties. The private road to the appeal site also forms part of the core path network and is a link pedestrian/cycle path to the local primary school campus. The appeal site is a sloping area of overgrown ground with some shrubs and a single mature tree. A layout drawing is submitted for illustrative purposes demonstrating that the appeal site could accommodate two houses. A further illustrative drawing sets out the location of the proposed footway adjacent to the existing bridge/culvert.

Principle of development

5. Local development plan policy LDP DM 1 (Development within the Development Management Zones) sets out the acceptable scale of new development within seven defined development management zones. I note that the appeal site is located within the Oban management zone where encouragement is given to various scales of development on appropriate sites subject to compliance with other relevant policies and related supplementary guidance.

6. In terms of proposals for new housing local development plan policy LDP 8 (Supporting the Strength of Our Communities) recognises the need to ensure that existing communities are strengthened through the delivery of new sustainable development opportunities. In support of this policy, supplementary guidance LDP HOU 1 (General Housing Development including Affordable Housing) sets out a general presumption in favour of housing development of the appropriate scale within the defined management zones unless there is an unacceptable environmental, servicing or access impact. I note that the council, in its report of handling, concluded that, given the location of the appeal site (within the Oban management zone), it had the potential to accommodate two suitably sited and designed houses.

7. As the appeal proposal is small scale (less than 5) and is within the Oban management zone I am satisfied that it would, in principle, gain support from the presumption in favour of new housing development subject to meeting the requirements of LDP HOU 1 in relation to the environment and access. No issues in terms of servicing the appeal site were raised by the council.

Parking and Access

8. The main issue of concern raised by the council relates to whether a satisfactory means of access can be achieved for the appeal proposal. Local development plan policy LDP 11 (Improving Our Connectivity and Infrastructure) seeks to ensure that in supporting development proposals, best use is made of existing infrastructure and an appropriate standard of access is delivered to serve new developments including an appropriate level of car parking. Further detail for the delivery of these requirements is set out in supplementary guidance LDP TRAN 4 (New and Existing, Public Roads and Private access Regimes) and LDP TRAN 6 (Vehicle Parking Provision).

9. I note from the illustrative layout that provision for car parking and turning is to be accommodated within each site. I am satisfied, given the size of each plot that there would be sufficient space available to provide the required level of car parking which can be secured through the imposition of a condition. Therefore, I find that the appeal proposal, subject to a condition, would accord with the provisions of supplementary guidance LDP TRAN 6.

10. The appeal site is to be accessed from the existing private road, which joins Soroba Road (A816) to the north east of the appeal site. Supplementary guidance LDP TRAN 4 advises in Criterion (A) that in the first instance new developments should be served by a public road. However, where it is proposed to utilise an existing private road criterion 2(i) advises that the access should be capable of commensurate improvements considered by the council to be appropriate to the scale and nature of the new development taking into account any current access issues.

11. The appeal proposal would result in the increased use of an existing private road which also performs the function as a primary school link path/cycle path and, is part of the core path network. Therefore, the council in line with criterion 2(i) requested that a safety audit, risk assessment and traffic management plan be submitted to assess the potential impact (including during the construction phase) of the appeal proposal and to identify any necessary mitigation measures. The appellant submitted a Road Assessment Report covering each of the areas specified by the council. I note that the council in its report of handling advises that it found the appellant's assessment and mitigation measures to be acceptable. I would agree with this conclusion and find that subject to the implementation of the mitigation measures there would be no adverse impact on pedestrian or vehicle safety.

12. Notwithstanding the acceptance of the appellant's road assessment the council, in line with criterion (A) of LDP TRAN 4, requires that a short section of the private road at the existing bridge/culvert (which serves all of the existing properties) be brought up to an adoptable standard. The appellant advises that this matter was raised by the council prior to the submission of the appeal proposal for planning permission in principle and resulted in the inclusion of the proposed footway and the site boundary being amended to include this part of the private road. In addition, the council also requires a turning head to be provided in the area to the south of the bridge/culvert. I note that despite including the requirements recommended by the council the appellant questions the need for the road to be adopted. However, no objection has been raised by the appellant to the provision of a turning head subject to agreeing its exact location.

13. I note that supplementary guidance LDP TRAN 4 advises that new private roads should only be used for up to five dwellings. However, as highlighted by the appellant it is evident that the current number of properties served by the private road already significantly exceeds this level (17 properties). No evidence has been provided by the council to explain why the existing private road has not been brought up to an adoptable standard in the course of determining past developments in the area. Notwithstanding this, I am satisfied that given the number of properties that this section of the road now serves, and that it is also a primary school link/cycle path it is not unreasonable for the council to seek to bring this section of the road up to an adoptable standard. I find that this would be in accordance with criteria (A) of LDP TRAN 4.



14. In order to bring the private road up to a standard suitable for adoption the council contends that a structural survey of the bridge/culvert in accordance with the requirements of DMRB is required. I note that the appellant disputes the need for a structural survey and contends that the bridge/culvert is to an appropriate standard to accommodate the likely traffic generated by the appeal proposal. Although I note that the council carried out a visual inspection of the bridge/culvert I have no substantive technical evidence before me to demonstrate that the bridge could accommodate the likely additional vehicle movements. Accordingly, I am satisfied that the council's requirement for a structural survey is in accordance with the recognised national guidance (DMRB) for the adoption of a road that includes a bridge/culvert and that it is required in support of the appeal proposal to allow the adoption of the private road.

15. The council contends that as the structural integrity of the bridge/culvert is fundamental in demonstrating that a satisfactory access can be achieved and to the standard that allows it to be considered for adoption the use of a suspensive condition is not appropriate. The appellant argues that as this is technical information which is similar to other matters associated with the appeal proposal that require the submission of further details, it is appropriate to address this through the imposition of a suspensive condition.

16. Whilst I agree with the council's position regarding the requirement to bring the road up to an adoptable standard I am not convinced that the use of a suspensive condition is inappropriate in this particular case. The council has already accepted that there would be no pedestrian or vehicular issues with the access as a result of the proposed development. In addition, the appellant on the advice of the council, amended the site boundary to include this section of the road within the appeal site and the area for the provision of a new footway, and I note that the appellant has control of the land (through an ownership interest) at this section of road and the adjacent land immediately to the east. Therefore, any potential improvement identified by the survey could be implemented within the appeal site or on land in control of the appellant. Finally, as this appeal proposal is for planning permission in principle there are other detailed and technical matters that would be required to be covered by suspensive conditions.

17. Therefore, given the bridge/culvert is within the appeal site I am satisfied that the use of a suspensive condition requiring the carrying out of a structural survey is appropriate in this instance. Furthermore, if further physical works outwith the appeal site are required the appellant has control over adjacent land that would allow these to be undertaken.

18. Therefore, I find that subject to the imposition of appropriately worded conditions the appeal proposal would accord with the requirements of supplementary guidance LDP policy TRAN 4, policy LDP 11 and supplementary guidance LDP HOU 1.

Design/layout

19. From the illustrative layout provided by the appellant I am satisfied that the appeal site could accommodate two houses. I note that the council also came to this conclusion in its report of handling. However, to ensure that the appeal proposal would accord with the provisions of policy LDP 9 (Development Setting, Layout and Design) and SG2 (Sustainable Siting and Design Principles) the details of design and layout would require to be subject to future applications for the approval of matters specified in conditions. As I am minded to uphold this appeal I have attached conditions covering these matters.

Natural and Built Environment

20. The appeal site is located approximately 25 metres to the south west of Soroba House Hotel which is a category C listed building. In addition, there is an area of ancient woodland further to the south-east. Local development plan policy LDP 3 (Supporting the Protection, Conservation and Enhancement of our Environment) seeks to ensure that new developments do not adversely impact on the natural, human and built form. I noted at my site inspection that the appeal site is located to the south-west of the principle elevation of Soroba House Hotel and given the topography of the area sits at a much lower level with mature landscaping along the adjoining boundary. Furthermore, I noted that new residential development (Soroba Mews) has been developed immediately to the east of the hotel. Given the location of the appeal site relative to Soroba House I am satisfied that subject to appropriate siting, design, finishing materials and landscaping the appeal proposal would not adversely affect the setting of the listed building. In addition, I note that Historic Environment Scotland and the council raised no concerns in relation to the impact on the setting of the listed building.

21. In terms of the effect on existing woodland I established at my site inspection that there was only one mature tree within the appeal site which is located at the south-west boundary. Given its position this tree could be accommodated within the site without adversely affecting the layout of the appeal proposal. I am satisfied that no other mature trees or woodland would be adversely affected by the appeal proposal. However, I agree with the council that given there are mature trees in the surrounding area a condition be attached requiring a detailed landscaping plan including boundary treatments to ensure that the appeal proposal is appropriately accommodated within the wider landscape setting.

22. Accordingly, subject to conditions I find that the appeal proposal accords with the provisions of policy LDP 3, supplementary guidance LDP ENV 16(a) (Development Impact on Listed Buildings), Section 59 of the Planning (Listed Building and Conservation Area) (Scotland) Act 1997, supplementary guidance LDP ENV 6 (Development Impact on Trees/Woodland), supplementary guidance LDP ENV 14 (Landscape) and supplementary guidance LDP HOU 1.

23. Overall, I am satisfied that subject to conditions the principle of residential development for two houses at the appeal site would accord with the relevant policies of the local development plan and the related supplementary guidance.

Other matters

24. Apart from the matters raised by the council's roads service no objections were raised by any of the consultees subject to the imposition of conditions relating to flood risk, drainage and finished floor levels. The council has provided me with conditions to address each of these matters. I note that the appellant raises concerns that the proposed conditions in relation to design are overly restrictive and contends that these would be more appropriately addressed at the detailed design stage. In light of these concerns I have made some minor amendments to the council's proposed conditions to allow for the further consideration of these matters by parties. The revised conditions are attached at the end of the decision notice.



25. The appeal proposal attracted 18 letters of representation raising concerns regarding the impact of the proposed development in terms of over development of the area, traffic and pedestrian safety, parking, drainage, flooding and the condition and structural integrity of the existing bridge. I have taken full account of these concerns in my considerations as set out above. Reference was also made in the representations to previous applications at the appeal site, but I note that these applications were withdrawn prior to determination by the council and, therefore, I find that they are not relevant to the current appeal case.

26. The appellant makes reference to other planning applications approved by the council within the council area that have included the use of private roads. Whilst I note these matters I am unaware of the circumstances of these particular planning applications and in any case I must determine the appeal case before me on its own merits.

Conclusion

27. I therefore conclude, for the reasons set out above, that the appeal proposal, subject to conditions, accords overall with the relevant provisions of the development plan and that there are no material considerations which would justify refusing to grant planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

Gordon S Reid

Reporter

Conditions

1. Plans and particulars of the matters specified in conditions 3, 4, 5, 6, 7, 8 and 9 below shall be submitted by way of application(s) for Approval of Matters Specified in Conditions in accordance with the timescales and other limitations in Section 59 of the Town and Country Planning (Scotland) Act 1997 as amended. Thereafter, the development shall be completed wholly in accordance with the approved details.

Reason: In accordance with Section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended).

2. The development shall be implemented in accordance with the details specified on the application form for planning permission in principle reference 19/02562/PPP dated 15/05/19 and the approved drawing reference numbers as follows: Location Plan PR003a-L01b, Site Plan PR003a-L02b and Proposed Footpath PR003a-L03.

Reason: To accord with Regulation 28 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008.

3. Pursuant to Condition 1. – No development shall commence until details of the required improvements to the service road and connection with the existing public road have been submitted to and approved by the planning authority. Such details shall incorporate:

i) A vehicular access layout providing a road from the junction with the U128, Soroba Hill Road, extending for 33 metres or thereabouts (including bridge/culvert) in a southerly

direction, to the Soroba House Hotel/Soroba Lodge junction on the private track, over which the public has a right of access in terms of the Roads (Scotland) Act 1984.

ii) The junction with the existing public road improved to provide visibility splays of 2.4 metres to point X by 42 metres to point Y formed from the centre line of the junction.

iii) A turning head for the public service vehicle to be located to the south of the bridge, opposite the Soroba House Hotel/Soroba Lodge junction.

Prior to work starting on site, the junction with the existing public road shall be fully formed and surfaced and the visibility splays shall be cleared of all obstructions such that nothing shall disrupt visibility from a point 1.05 metres above the junction at point X to a point 0.6 metres above the public road carriageway at point Y. The visibility splays shall be maintained clear of all obstructions thereafter.

All access roads and footways granted consent shall be constructed to at least base course level prior to any work starting on the erection of the buildings which they are intended to serve and the final wearing surface of the roads and footways shall be applied concurrently with the construction of the final building.

Reason: In the interests of road safety and to ensure the timely provision of a service road commensurate to the scale of the overall development and having regard to the status of the proposed access as a residential service road.

4. Pursuant to Condition 1 – no development shall commence until plans and particulars of the parking/turning arrangements to serve the development have been submitted to and approved by the planning authority. Such details shall incorporate:

i) The provision of parking and turning in accordance with the requirements of Policy SG LDP TRAN 6 of the adopted ‘Argyll and Bute Local Development Plan’ 2015. The approved parking and turning layout shall be implemented in full prior to the development first being occupied and shall thereafter be maintained clear of obstruction for the parking and manoeuvring of vehicles.

Reason: In the interests of road safety.

5. Pursuant to Condition 1 – no development shall commence until a detailed structural survey of the existing bridge/culvert has been submitted to and approved in writing by the planning authority in consultation with the Council’s structures team. The required survey shall be prepared by a qualified structural engineer and shall be sufficient to certify that the existing bridge/culvert is able to safely accommodate up to 44 gross metric tonnes multi axle heavy goods vehicles. Or, should such certification not be demonstrated provide a detailed written schedule and specification of the works necessary to improve or replace the existing bridge/culvert in order that it will accommodate vehicles of the type and weight specified in above.

Any improvement/rebuilding/replacement works agreed by virtue of the above requirements must be fully completed to the satisfaction of the planning authority in consultation with the Council’s structures team before any other part of the development commences.

Reason: In the interests of road safety.

6. Pursuant to Condition 1 – no development shall commence until details of the proposed means of private foul drainage to serve the development have been submitted to and approved by the planning authority. The duly approved scheme shall be implemented in full concurrently with the development that it is intended to serve and shall be operational prior to the occupation of the development.

Reason: To ensure that an adequate means of foul drainage is available to serve the development.

7. Notwithstanding the provisions of Condition 2, the development shall incorporate a surface water drainage system which is consistent with the principles of sustainable urban drainage systems (SuDS) compliant with the guidance set out in CIRIA's SuDS Manual C753. The requisite surface water drainage shall be operational prior to the development being brought into use and shall be maintained as such thereafter.

Reason: To ensure the provision of an adequate surface water drainage system and to prevent flooding.

8. Pursuant to Condition 1 – no development shall commence until plans and particulars of the site layout, design and external finishes of the development have been submitted to and approved by the planning authority. These details shall incorporate:

- i) A statement addressing the action checklist for developing design contained within the Argyll and Bute Sustainable Design Guide 2006;
- ii) A local vernacular design;
- iii) External walls finished in natural stone, wet dash render, timber cladding or a mixture of these materials;
- iv) Details of finished ground floor levels relative to an identifiable fixed datum located out with the application site; and
- v) Details of existing and proposed site levels shown in the form of sectional drawings/contour plans/site level survey, or a combination of these.

Reason: To accord with Section 59 of the Town and Country Planning (Scotland) Act 1997 as amended, and in order to integrate the proposed dwellinghouse with its surrounds.

9. Pursuant to Condition 1 – no development shall commence until a scheme of boundary treatment, surface treatment and landscaping has been submitted to and approved by the planning authority. The scheme shall comprise a planting plan and schedule which shall include details of:

- i) Existing and proposed ground levels in relation to an identified fixed datum;
- ii) Existing landscaping features and vegetation to be retained;
- iii) The location, design and materials of proposed walls, fences and gates;
- iv) Proposed soft and hard landscaping works including the location, species and size of every tree/shrub to be planted; and
- v) A programme for the timing, method of implementation, completion and subsequent on-going maintenance.

All of the hard and soft landscaping works shall be carried out in accordance with the approved scheme unless otherwise approved in writing by the planning authority.

Any trees/shrubs which within a period of five years from the completion of the approved landscaping scheme fail to become established, die, become seriously diseased, or are removed or damaged shall be replaced in the following planting season with equivalent numbers, sizes and species as those originally required to be planted unless otherwise approved in writing by the planning authority.

Reason: To assist with the integration of the proposal with its surroundings in the interest of amenity.

Advisory notes

- 1. Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action. (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).)
- 2. Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position. (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended).)