

**ARGYLL AND BUTE COUNCIL  
DRAFT MINUTE FOR SITE INSPECTION  
AT TAYVALLICH  
held on THURSDAY 7 APRIL 2005**

**Present:** Councillor John Findlay (Chair)

Councillor Rory Colville                      Councillor John McAlpine  
Councillor Donald MacMillan              Councillor Bruce Robertson

**Attending:** Deirdre Forsyth, Area Corporate Services Manager  
Mr Tim Williams, Enforcement Officer

**The Applicant**                      Mr Hugh Semple

**Supporters**                      Mr A Barbour

**Objectors**                      Mrs Carmichael and Mr Donald Carmichael

**1. APOLOGIES**

Apologies for absence were received from

**2. DEVELOPMENT SERVICES**

**ENFORCEMENT REPORT: 05/00045/ENFORTH  
NEW DWELLING ALLEGEDLY BEING BUILT IN INCORRECT POSITION  
RELATIVE TO APPROVED PLANNING PERMISSION DETAILS  
(APPLICATION REF: 04/00840/DET)  
LAND ADJACENT 'CREAGFASGADH', TAYVALLICH**

The Chairman, Councillor Findlay, welcomed all those present and the procedure was explained. Mr Williams went over the background to the application for a non-material amendment and the Members of the Committee then visited the site.

At the site Mr Williams pointed out that the position of the foundations for the house were in the correct position in relation the site itself but had shown the position of Knap Cottage wrongly in the original application. The new house was 2 metres in front of Knap Cottage but when Knap Cottage was correctly plotted the actual position was 2.7 metres in front of Knap Cottage.

He showed that because of the removal of cliff face and overhanging rock there was a small piece of ground to the rear of the foundations of the house, and Mr Barbour explained that a ramped access would be made into the back door so that on the south side of the house that full extent of the back garden would be required.

The Committee asked various questions on site and then went to Knap Cottage where dimensions were pointed out to them by Mrs Carmichael. From Knap Cottage Mr Williams explained that the window had been correctly plotted on the original plan and that although the ridge height of Knap Cottage had not been shown correctly this did not make any difference to the light coming in to the window as the height of the ridge of the roof of the new house had not altered and therefore its relationship to the window had not changed either. The degree of affect of light is 17 degrees which is under the maximum of 25 degrees suggested by the Building Research Guidelines.

Mrs Carmichael said that she had been concerned about the measurements from the beginning and that she had asked for them to be checked on several occasions and that as a result of her comments, the drawings had been amended.

At this point the Committee agreed to return to the village hall to look at the slides and listen to the presentations. At the village hall Tim Williams showed slides which he said indicated that although there had been mistakes in the application in regard to the position of Knap Cottage, this did not make a material difference to the application. He said that the most important matter was the effect on the light into the side window. He pointed out that protection of a view was not a material planning matter.

The applicant Mr Semple then spoke and explained the history of the building of Creagfasgadh and Knap Cottage. He had originally planned to build the house well forward in order to enable Mrs Carmichael's view to be retained around the back of the house. However several objections, including one from the Community Council, had been received, so the position of the house was moved back and the front line of the house had been agreed on site. He accepted that the ordnance surveys data that had been used had shown Knap Cottage in an inaccurate position but the measurements had been checked before building commenced and had been agreed by the planners and the applicant had been advised that these were correct.

At the meeting, when Mr Williams had attended, Mr Semple said that he had offered to move the house back a bit but that he was asked to construct it as per the drawings. He had been asked to put in a non material amendment because of the fact that the position of Knap Cottage was shown inaccurately on the original plan.

Mrs Carmichael, the objector, then spoke and said that she had lived in the area for seventy years and she said that the main point is that the site was shown differently on the map and when the site inspection had taken place in 2004 it was a garden, and it was agreed that the position of the house had to be correct to the nearest inch. She considered that it was up to the developer to make sure that the plans were correct and to disregard that was unfair.

## QUESTIONS BY COUNCILLORS

Councillor Robertson asked about the offer that was made to move the house back. Mr Williams said that offer was made but because he had no involvement in the previous site inspection and so when he saw a condition that required that the exact site was to be pegged out, he advised that it had to be put into the position shown on the plan. Had he known about the background and history he would have taken the matter back for further consideration by the head of service.

Councillor Colville asked if the original planning application had been refused and when this had happened. Mr Semple said that it had been withdrawn. The position of the house then was 3 or 4 metres further forward than it currently is.

Councillor Colville asked Mr Williams to show where the house would have been had it been 2 metres from Knap cottage as correctly shown. Mr Williams was unable to demonstrate this on the slide. Mr Williams went on to say that a view cannot be protected and is not a planning consideration. The only potential impact was the daylight and this was unaltered. The new house was always going to be in front of Knap Cottage and below the ridge of Knap Cottage. The only thing that was incorrect was that Knap Cottage was plotted in the wrong position on the original application.

Councillor Findlay asked Mrs Carmichael what the objection was in planning terms. Mrs Carmichael in response asked why was someone chosen to measure this who knew nothing about the history, because she thought that anyone sent to the site should have known it had been contentious. She said that she would suffer a loss of amenity because another house was built adjacent.

Councillor McAlpine said it was accepted that the view was not a material planning consideration and noted that light was the only issue. He asked if it was possible that as the house goes up there will be more problems. Mr Williams said that there was no indication that anything else was wrong apart from the incorrect plotting of Knap Cottage.

Councillor McAlpine asked who was responsible for the measurements being wrong. Since the applicant would have moved the house back a metre, Planning should have admitted if they were at fault. Mr Williams said it didn't really matter but that in his view it was the developers responsibility to make sure that the drawings were correct.

Councillor McAlpine asked Mr Williams about the day when he went to check the measurements. Mr Williams said that he was only asked to ensure that the positioning of the building was correct in relation to the internal site boundary.

Councillor McAlpine reminded members that Mr MacKay at the site inspection in 2004, had said that it was a very tight site and the house had to be shoehorned in. He noted that there was 4.5 metres behind the house at the north side and 2 metres at the south side. The 2 metres is required for the disabled access to the back door so there is a bit of ground shown at the back and this was not explained at the site inspection. Mr Williams said that since he hadn't been there he was unable to comment on that.

Councillor McAlpine said that the objectors and the applicant were in an unfortunate position, since there had been an error, but the decision still had to be made.

Councillor Colville asked Mr Williams if he was aware that Knap Cottage was not properly shown on the drawings when he visited the site, and he advised he was unaware of that.

## **SUMMING UP**

Mr Williams said that from a professional planning point of view he accepted that Mrs Carmichael was aggrieved and that she had noted that there was a mistake and also he was grateful that the developers had ceased work immediately when this had been pointed out. He said that what had to be looked at was the current situation and would planning permission have been granted had the houses been shown in correct relationship to each other. He considered that it would have been granted because the differences are non material.

The distance from the cliff face requires to be maintained. He did not think that the house could be moved back and the recommendation would have been the same, since the only important matter was the possible loss of light to the secondary window and there is in fact no difference now from the original application. It is difficult to tell whether there will be a loss of view and there may not be, but even if there was a worse view, this cannot be protected.

Mr Semple said who has made the mistake? The ordnance survey wouldn't admit it but at that scale ordnance survey maps are not that precise. If there was an error by the planners it would be an insurance matter. The planner's measurements were used by the developers and it was as a result of this that the misunderstanding took place.

Mrs Carmichael said the new house disadvantages her and referred to a letter received from L & A MacKay, the builders, in which the builders said the conditions were not clear.

Mr Williams said at this point that the planners cannot impose conditions outwith the site and they could not have put conditions on to the site belonging to Mrs Carmichael. Having alerted the developers to the measurements the planners thought that they were correct. Sizes have to be adhered to and if not, checked against the existing house. When he checked it, they appeared not to have moved. Mr Semple said that the conditions referred to in the letter from L & A MacKay related to pre-inspection.

Councillor Colville said that he accepted that there was no argument about daylight; he asked if there was any reference in the planning consent to Knap Cottage being 2 metres back from the front of the new property. Mr Williams said that there was no such condition in the approval, although the relationship is shown on the drawing. He was asked again does the consent say that it should be no more than 2 metres from Knap Cottage, and advised that that was not the position. Planning permission does not say anywhere that the new house shall be no more than 2 metres in front of Knap Cottage.

Councillor Colville asked Mr Semple if he was still offering to move the site back. Mr Semple said that he had come to the conclusion that it could be advantageous to all 3 parties if it was suggested that there was some scope to do this. He had not been able to be there himself and had asked the builders to make the offer. The foundations have now been put in so there was the question of who would pay for a change of position.

At this point Councillor Findlay moved that non material application be approved and Councillor MacMillan seconded the motion.

As an amendment Councillor McAlpine moved that the non material application be refused because the measurements have been confused and the application would not have been granted had they been correct originally.

Councillor Robertson seconded the amendment.

Councillor Colville thought this was a sledgehammer to crack a nut and he suggested that the solution would be, and still would be to move the new building back 0.7 of a metre

## **DECISION**

There voted for the motion 3 and for the amendment 2.

To approve the non material planning application for new dwelling on land adjacent to Creagfasgadh, Tayvallich.