

STATEMENT OF CASE

FOR

**ARGYLL AND BUTE COUNCIL
LOCAL REVIEW BODY**

22/0003/LRB

**REFUSAL OF PLANNING PERMISSION 21/00018/PP
FOR THE ERECTION OF A STEEL BUILDING FOR THE
STORAGE OF AIRFIELD MAINTENANCE EQUIPMENT
AND AIRCRAFT AND FORMATION OF
HARDSTANDING**

GLENFORSA AIRFIELD, GLENFORSA, ISLE OF MULL

27.04.2022

STATEMENT OF CASE

The Planning Authority is Argyll and Bute Council ('the Council'). The appellant is Mr Brendan Walsh ("the appellant").

Planning permission 21/00018/PP for the erection of a steel building for the storage of airfield maintenance equipment and aircraft and formation of hardstanding area at Glenforsa Airfield, Glenforsa, Isle of Mull ("the appeal site") was refused by the Planning Service under delegated powers on 30.03.2022.

The planning application has been appealed and is subject of referral to a Local Review Body.

DESCRIPTION OF SITE

The site is located within the 'Countryside Zone' (CZ) where Policy LDP DM 1 normally only gives encouragement to small scale developments on an appropriate infill, rounding off, redevelopment and change of use of building basis.

Within the Countryside Zone all development proposals which are not small scale infill, rounding off, or redevelopment might be supported if it is deemed that an appropriate 'exceptional case' has been made and where the proposed development can be shown to have no materially harmful landscape impact in accordance with an Area Capacity Evaluation (ACE). The 'exceptional case' required to justify carrying out of an ACE is in all circumstances, either; the demonstration of a locational and/or operational need tied to a precise location which is agreed with and acceptable to the planning authority, or; demonstration of an overriding economic or community benefit which outweighs other policies of the Local Development Plan and is agreed with and acceptable to the planning authority.

The site for the development does not represent infill, rounding-off or redevelopment and no claim of any 'exceptional case' was made during the life of the planning application despite repeated requests for such information should the appellant be relying upon this to support his development proposals.

STATUTORY BASIS ON WHICH THE APPEAL SHOULD BE DECIDED

Section 25 of the Town and Country Planning (Scotland) Act 1997 provides that where, in making any determination under the Planning Act, regard is to be had to the development plan, and all other material planning considerations and the determination shall be made in accordance with the plan unless material considerations indicate otherwise. This is the test for this application.

STATEMENT OF CASE

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

- *Whether the appellant has demonstrated an 'exceptional case' based on an overriding locational or operational need sufficient to warrant the approval of the development in compliance with Policy DM 1 of the adopted Argyll and Bute Local Development Plan 2015.*

The Report of Handling (Appendix 1) sets out the Council's full assessment of the application in terms of Development Plan policy and other material considerations.

REQUIREMENT FOR ADDITIONAL INFORMATION AND A HEARING

The planning application the subject of this Review was properly assessed based on the information submitted. The Appellant is now seeking to support the development through a detailed submission that was not available to officers at the time of their determination. The submitted information is entirely new and raises substantive material issues not previously available. This will require, effectively, a completely fresh assessment including any necessary consultations. This Notice of Review was received on the 27th April 2022 with a statement of case required to be submitted by planning officers by the 11th May. It is not possible for officers to carry out a competent assessment of this new submission within that timeframe.

It is respectfully suggested that the correct mechanism for this new information to be properly and competently assessed would be through the submission of a new formal application for planning permission.

COMMENT ON APPELLANT'S SUBMISSION

- The appellant's agent contends that an 'exceptional case' exists and justifies planning permission being granted. The Appellant accepts that he should have submitted this at the time the planning application was being considered.
- The appellant's agent contends that due to the case officer changing three times over the course of the year that the application took to process, and 'crossed wires' in what was required, he did not provide the justification that he knew to exist based upon the community and economic importance of the Airfield, and why the hangar building is required to support its ongoing functioning and success.

Planning Authority Comment: *The Planning Authority strenuously contests this interpretation of the events.*

Nearly four years prior to the submission of the planning application the subject of this Review, the Appellant submitted a request for pre-application advice for the same development on the same site. He was advised by officers in writing on the 6th July 2017 of the constraints and opportunities applicable to the development; that no appropriate infill, rounding-off or redevelopment opportunities exist and that any formal planning application should, therefore, be accompanied by a detailed statement outlining any 'exceptional case'.

The Appellant then engaged a local planning agent to further this enquiry and that agent was advised in writing on the 22nd August 2017 that officers had met with the Appellant to discuss the development, that they had discussed potential more suitable and more easily supportable alternative sites within his land ownership and again reiterating that any formal planning application for the development on the site the subject of this subsequent Review must be supported by an appropriate exceptional case.

No follow-up planning application was made at that time.

The Appellant then contacted the same planning case officer again in September 2020 seeking to revisit the previous pre-application enquiry and was informed in writing for the third time that any such development would need to be supported by an appropriate exceptional case.

The planning application the subject of this Review was submitted on the 7th January 2021 (and validated on the 24th February 2021). This planning application was not accompanied by any claim of any 'exceptional case' required to justify the development within the Countryside Zone.

Officers sought to secure any missing 'exceptional case' information and whilst some preliminary detail was eventually submitted, it did not meet the necessary threshold tests.

Officers then sought again to require this information; this time formally through the use of Regulation 24 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008. This formal written request for information was issued on the 19th January 2022 with a requirement that any claim of exceptional case that the Appellant may rely upon to offer justification for his proposed development be submitted no later than the 2nd February 2022 unless any extended time period is agreed. The Appellant was advised at this time that his planning application would be determined on the basis of the information submitted unless additional supporting information/evidence was submitted within the agreed (or any agreed extended) timeframe.

It was subsequently agreed to extend the compliance period until the 2nd March 2022.

The 2nd March came and went with no subsequent communication from the Appellant and the planning application was refused on the 29th March 2022, some 13 months after the application was first validated.

It is true that the original planning case officer who handled the various strands of the pre-application advice between July 2017 and September 2020 left the employment of the Council in October 2020.

It is also true that the case officer originally assigned the formal planning application in February 2021 left the employment of the Council before its eventual determination in March 2022.

However, the case files clearly show a consistency and clarity of advice over the best part of four and a half years, during which time every conceivable opportunity has been afforded the Appellant.

CONCLUSION

It is not considered possible or appropriate to carry out a new assessment of the proposed development based on entirely new evidence under the scope and remit of this Review.

It is respectfully submitted that the Review Body should either set aside the new 'exceptional case' justification contained within the Appellant's submission and determine this Review based upon the information submitted with the planning application or else to seek that the Review be withdrawn in favour of the submission of a new planning application to enable officers to properly assess the new information submitted.

APPENDIX 1

Report of Handling Relative to 22/00018/PP

Argyll and Bute Council
Development and Economic Growth

Delegated or Committee 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: 21/00018/PP

Planning Hierarchy: Local Development

Applicant: Mr Brendan Walsh

Proposal: Erection of a steel building for the storage of airfield maintenance equipment and aircraft and formation of hardstanding area

Site Address: Glenforsa Airfield, Glenforsa, Isle of Mull

DECISION ROUTE

Section 43 (A) of the Town and Country Planning (Scotland) Act 1997 (as amended)

(A) THE APPLICATION

(i) Development Requiring Express Planning Permission

- Erection of a steel building
- Formation of an area of hardstanding

(ii) Other specified operations

- None
-

(B) RECOMMENDATION:

Having due regard to the Development Plan and all other material considerations, it is recommended that planning permission in principle be REFUSED for the reasons appended to this report.

(C) HISTORY:

17/01497/PREAPP - Construction of aircraft hangar/ground equipment shed

Prior to the submission of this planning application pre application advice was sought from the department. The pre application response advised that the site did not present any opportunities for infill, rounding-off, redevelopment or change of use of existing buildings and therefore the principle of development could not be supported at the site without an acceptable claim of an 'exceptional case' based on an operational or locational need. It was further advised that there is a Rural Opportunity Area (ROA) lying immediately to the west of the proposed site and it was suggested that this area may be a more suitable location. The ROA allows for up to small scale development on appropriate site. At that time it was advised what may constitute an exceptional case and that onus would be on the applicant to make those arguments through the submission of a planning application.

(D) CONSULTATIONS:

Roads Authority

Report dated 11.03.2021 advising no objections to the proposal.

Flood Risk Management (JBA)

Memo dated 11.03.2021 advising no objections but recommendations that the applicant may want to ensure the finished floor level of the storage building is above the peak fluvial flood level plus climate change which is calculated to be 9.35AOD and as a further precaution given the proximity to multiple possible sources of flooding, the applicant may wish to ensure maintenance machinery with electrical components are stored off the floor.

Environmental Health

No response at time of report and no request for an extension of time.

Argyll & Bute Council's Estates Department (ED)

E-mail dated 09.12.2021 advising that the proposal would not be out of keeping with the applicant's activities as an airfield operator, however the proposal would require the formal consent of Argyll and Bute Council as landlord which in turn would be dependent upon the removal from the site of an existing agricultural tenancy covering the area.

ED have further advised that if the issue with the agricultural holding was resolved they would consider granting such a consent but further consultations with other sections such as Airport operatives would be required.

Oban Airport

No response at time of report and no request for an extension of time.

The above represents a summary of the issues raised. Full details of the consultation responses are available on the Council's Public Access System by clicking on the following link <http://www.argyll-bute.gov.uk/content/planning/publicaccess>.

(E) PUBLICITY:

The proposal has been advertised in terms of Regulation 20 and Neighbour Notification procedures, overall closing date 15.04.2021.

(F) REPRESENTATIONS:

Three objections and eight representations of support have been received regarding the proposed development:

Support

Victor Norman, Rainbow Barn, Rendcomb, Cirencester, GL7 7DF, dated 07.04.2021.
James Gibson Fleming, Ardvergnish, Pennyghael, Isle of Mull, Argyll, dated 07.04.2021.
William Hall, Gutchpool Farm, Gillingham, SP8 5QP, dated 08.04.2021.
Chris Webb, Lowton Farm, Oake, Taunton, Somerset, TA4 1BD, dated 11.04.2021.
Martin Gosling, Stones Farm, Wickham St. Paul's, Halstead, Essex, CO9 2PS, dated 12.04.2021.
Robin Sedgwick, Crannich, Aros, Isle of Mull, Argyll, dated 15.04.2021.
Gordon Moir, 2 Callow Hill Way, Littleover, Derby, DE23 3RJ, dated 19.04.2021.
Erik Hadley, Corrachie, Salen, Isle of Mull, Argyll, dated 08.08.2021.

- The availability of a hangar for maintenance repairs and storage will provide a secure and sheltered zone for visiting aircraft and will make the logistics of maintaining the airfield much easier particularly during adverse weather conditions and in the event of emergencies.
- The proposal to improve this facility will enhance tourism prospects of the applicants Hotel.
- The proposal will be screened by the dense stand of trees to the south and a sympathetic colour of cladding would render the structure hard to see from anywhere other than directly in front.

Planning Authority Comment: The planning authority acknowledges the support for the proposed development.

Objections

Hugh MacPhail, Callachy Farm, Salen, Aros, Isle of Mull, Argyll, PA72 6JN, dated 29.03.2021.
Alexander Macaulay, 11 Jarvisfield Road, Salen, Isle of Mull, Argyll, dated 31.03.2021.
Alex Jacobs, Bridges Cottage, A848 North of Aros from Drumfin Lodge to the C46 Dervaig Road Junction, Aros, Isle of Mull, dated 04.04.2021.

Summary of issues raised

- Concerns that the site is being turned into an industrial space and the impact of the proposal which will be visible from Salen will upset the balance of the environment.

Planning Authority Comment: The site is currently adjacent to an airstrip and within agricultural use. The proposed building will be sited approximately 1500 metres from Salen and such a proposal would not be an uncommon addition to this location where the existing airstrip is readily viewed from a wider area. Notwithstanding this, however, the proposed development does not comply with planning policy and all attempts to advise the applicant of the need to submit a detailed 'exceptional case' argument to justify the development have failed.

- Concerns that the proposed hanger and any such associated aircraft would have public safety implications as the site is part of the 'falls' walk which forms part of a well-known circular scenic path utilised by locals, dog walkers and visitors.

Planning Authority Comment: Although the site is utilised by locals, dog walkers and visitors the constraints data has been checked and no Core Paths have been identified within the site. Any public safety implications would be a civil matter and not a matter for the planning department. Therefore, this is not a material consideration in the determination of this planning application.

- Concerns that the author of the objection is the Agricultural Tenant on the Airfield and has been farming the area under an Agricultural Holdings (Scotland) Act 1991 tenancy since November 1977 which provides the security of tenure and full rights as per the terms of the lease where the landlord cannot sub-let land under the objectors tenancy to a third party. Argyll and Bute estates department recently referred to Mr Walsh as a tenant and I have correspondence which mentions "both airfield tenants". As the legal position does not permit the airfield to be sub-let, therefore it is not possible for Argyll and Bute to grant Mr Walsh a tenancy.

Planning Authority Comment: The applicant has correctly submitted the Land Ownership Certificate to Argyll and Bute Council as landowner. The tenancy of the land is a civil matter between Argyll and Bute Council's Estates Department and the tenant. Therefore, this is not a material consideration in the determination of this planning application.

- Concerns that the author of the objection has not been informed of the terms of the current airfield tenancy/maintenance arrangement between Mr Walsh and Argyll and Bute Council. Concerns have been raised with the Argyll and Bute Council estates department with regard to the dilapidated state of the fences. The objector has no detail on whether Mr Walsh's tenancy/maintenance arrangement with Argyll and Bute stretches to the upkeep and replacement of the fences.

Planning Authority Comment: The terms of the current airfield tenancy/maintenance arrangement between Mr Walsh and Argyll and Bute Council is a civil matter between both parties. Therefore, this is not a material consideration in the determination of this planning application.

- Concerns that the site is unsuitable for a shed as it is a prime grazing and silage making area of the field and would greatly compromise the agricultural output.

Planning Authority Comment: The proposed development does not seek to remove areas of protected agricultural land and this would be a private matter between the parties concerned.

- Concerns that the site is the furthest point from a power supply.

Planning Authority Comment: This is not a material consideration in the determination of this planning application.

The above represents a summary of the issues raised. Full details of the letters of representation are available on the Council's Public Access System by clicking on the following link <http://www.argyll-bute.gov.uk/content/planning/publicaccess>.

(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 e.g. retail impact, transport impact, noise impact, flood risk, drainage impact etc:	No

(H) PLANNING OBLIGATIONS

(i) Is a Section 75 obligation required: No

(I) Has a Direction been issued by Scottish Ministers in terms of Regulation 30, 31 or 32: No

(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, 2015

LDP STRAT 1 – Sustainable Development

LDP DM 1 – Development within the Development Management Zones
(*Countryside Zone*)

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

SG 2 – Sustainable Siting and Design Principles

SG LDP ENV 14 – Landscape

SG LDP SERV 2 – Incorporation of Natural Features/Sustainable Drainage Systems (SuDS)

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

SG LDP TRAN 6 – Vehicle Parking Provision

SG LDP TRAN 7 – Airport Safeguarding

(i) 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.

Argyll and Bute Sustainable Design Guidance, 2006

Scottish Planning Policy (SPP), 2014

Consultation Responses

Third Party Representations

Argyll and Bute proposed Local Development Plan 2 (November 2019)

The unchallenged policies and proposals within pLDP2 may be afforded significant material weighting in the determination of planning applications at this time as the settled and unopposed view of the Council. Elements of the pLDP2 which have been identified as being subject to unresolved objections still require to be subject of Examination by a Scottish Government appointed Reporter and cannot be afforded significant material weighting at this time.

The provisions of pLDP2 that may be afforded significant weighting in the determination of this application are listed below:

- Policy 35 – Design of New and Existing, Public Roads and Private Access Regimes
- Policy 36 – New Private Accesses
- Policy 37 – Development Utilising an Existing Private Access or Existing Private Road
- Policy 39 – Construction Standards for Private Access
- Policy 43 – Safeguarding of Aerodromes

(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

Planning permission sought for the erection of a steel building for the storage of airfield maintenance equipment and aircraft and the formation of a hardstanding area at Glenforsa Airfield, Glenforsa on the Isle of Mull.

In terms of the adopted 'Argyll and Bute Local Development Plan' 2015 the application site is located within the 'Countryside Zone' (CZ) where Policy LDP DM 1 normally only gives encouragement to small scale developments on an appropriate infill, rounding off, redevelopment and change of use of building basis.

Within the Countryside Zone all development proposals which are not small scale infill, rounding off, or redevelopment might be supported if it is deemed that an appropriate 'exceptional case' has been made and where the proposed development can be shown to have no materially harmful landscape impact in accordance with an Area Capacity Evaluation (ACE). The 'exceptional case' required to justify carrying out of an ACE is in all circumstances, either; the demonstration of a locational and/or operational need tied to a precise location which is agreed with and acceptable to the planning authority, or; demonstration of an overriding economic or community benefit which outweighs other policies of the Local Development Plan and is agreed with and acceptable to the planning authority.

In the case of the current application, the site for the development does not represent infill, rounding-off or redevelopment.

In this case, no sufficient claim of an exceptional case has been presented by the applicant. Upon request for additional supporting information the applicant has provided justification on landscape terms only. The details submitted are not considered sufficiently

substantive so as to underpin the special circumstances of the proposal without which the development would be considered contrary to the provisions of the LDP.

Further correspondence was undertaken with the applicant who was formally notified in accordance with Regulation 24 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 that the planning authority cannot positively consider the planning application in the absence of the required details. These details requested were to be submitted within three weeks unless an alternative extended timescale for submission was agreed in writing with the case officer. Additional time was requested and a further three weeks extension was given; giving the applicant six weeks to submit the necessary requested details.

No such requested information has been forthcoming. Without an exceptional case to demonstrate a locational and / or operational need tied to a precise location, there is nothing to underpin the exceptional case argument and the Planning Authority is unable to trigger the ACE process. In this regard the proposal is considered to be contrary to the provisions of SG LDP DM 1 above and no further assessment of the site has been undertaken by the Planning Authority.

Taking all of the above into consideration, the application has not been accompanied by sufficient information to underpin the exceptional case argument to justify the development of the site within the Countryside Zone rendering it contrary to the provisions of Policy LDP DM 1.

In light of the above, it is recommended that the application be refused for the reasons appended to this report. It is recognised that it is open to the applicant to reapply should he so wish and to present a more comprehensive argument that may enable officers to look more favourably upon these proposals.

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

(R) Reasons why planning permission should be refused

See reasons for refusal below.

(S) Reasoned justification for a departure to the provisions of the Development Plan

N/A

(T) Need for notification to Scottish Ministers or Historic Environment Scotland:

No

Author of Report: Judith Stephen Date: 17.03.2022

Reviewing Officer: Tim Williams Date: 29.03.2022

**Fergus Murray
Head of Development and Economic Growth**

REASONS FOR REFUSAL RELATIVE TO APPLICATION REFERENCE 21/00018/PP

1. In terms of the adopted 'Argyll and Bute Local Development Plan' 2015 the application site is located within the 'Countryside Zone' (CZ) where Policy LDP DM 1 normally only gives encouragement to small scale developments on an appropriate infill, rounding off, redevelopment and change of use of building basis.

Within the Countryside Zone all development proposals which are not small scale infill, rounding off, or redevelopment might be supported if it is deemed that an appropriate 'exceptional case' has been made and where the proposed development can be shown to have no materially harmful landscape impact in accordance with an Area Capacity Evaluation (ACE). The 'exceptional case' required to justify carrying out of an ACE is in all circumstances, either; the demonstration of a locational and/or operational need tied to a precise location which is agreed with and acceptable to the planning authority, or; demonstration of an overriding economic or community benefit which outweighs other policies of the Local Development Plan and is agreed with and acceptable to the planning authority.

In the case of the current application, the site for the development does not represent infill, rounding-off or redevelopment.

In this case, no sufficient claim of an exceptional case has been presented by the applicant. Upon request for additional supporting information the applicant has provided justification on landscape terms only. The details submitted are not considered sufficiently substantive so as to underpin the special circumstances of the proposal without which the development would be considered contrary to the provisions of the LDP.

As the current application is not accompanied by the requisite supportive evidence to underpin the claim of an exceptional case, the proposal is considered to be contrary to the provisions of SG LDP DM 1 of the adopted 'Argyll and Bute Local Development Plan' 2015.

APPENDIX TO DECISION REFUSAL NOTICE

Appendix relative to application **21/00018/PP**

- (A) Has the application required an obligation under Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended).

No

- (B) Has the application been the subject of any “non-material” amendment in terms of Section 32A of the Town and Country Planning (Scotland) Act 1997 (as amended) to the initial submitted plans during its processing.

No

- (C) Is the proposal consistent with the Development Plan:

No

- (D) Reasons for refusal of planning application.

The proposal is considered to be contrary to policy LDP DM 1 of the Argyll and Bute Local Development Plan 2015, and there are no other material considerations of sufficient significance to indicate that it would be appropriate to grant planning permission in this instance as a departure to the Development Plan having regard to s25 of the Act.