

LOCAL REVIEW BODY REFERENCE 22/0001/LRB

PLANNING APPLICATION 21/01603/PP

VARIATION OF CONDITION 7 RELATIVE TO PLANNING PERMISSION REFERENCE 20/00267/PP TO REDUCE THE CONDITIONED VISIBILITY SPLAY FROM 2.4 X 42 X 1.05M TO 2.4 X 17 X 1.05M

COMMENTS ON BEHALF OF THE LOCAL PLANNING AUTHORITY

BACKGROUND:

Planning permission was granted for the erection of a dwelling house; 20/00267/PP. Under this planning permission, condition 7 was attached requiring a visibility splay in both directions of 2.4 x 42 x 1.05 at the access of the site onto Artaman Road, Rhu. The site is located within the Rhu Conservation Area at; Land South Of High Oaks, Artaman Road, Rhu, Helensburgh, Argyll and Bute.

The applicant latterly indicated difficulties in achieving this visibility splay. As such, a site visit was carried out with the applicant, applicant's architect, planning officer and roads officer and a reduced visibility splay of 2.4 x 25 x 1.05m was accepted as a minimum requirement. In accordance with Roads Guidance for Developers October 2008 item 3.2: A minor departure was also agreed for the retention of the existing telegraph pole & two trees within the visibility splay. Furthermore, In accordance with Roads Guidance for Developers October 2008 item 4.1: The access should usually be located a minimum of 25 metres away from the nearest adjacent junction. A relaxation has been permitted with the proposed access being closer than 25m from the existing access to Ingleby Green.

Planning Permission was then sought under; 21/01603/PP for the variation of Condition 7 relative to planning permission reference 20/00267/PP to reduce the conditioned visibility splay from 2.4 x 42 x 1.05m to 2.4 x 17 x 1.05m. This application was refused for the following reasons; *'In the interests of road safety this application should be refused as the reduction in the visibility splay from 2.4 x 42 x 1.05m to 2.4 x 17 x 1.05m would result in an unacceptable level of risk to the public. This is due to the proposed access being in close proximity to the bend in Artarman Road and therefore, a minimum visibility splay of 2.4 x 25 x 1.05m is required. The access is therefore detrimental to the interests of road safety and is contrary to the provisions of Policy LP TRAN 4 of the 'Argyll and Bute Local Plan', as a satisfactory means of vehicular access cannot be achieved at this point.'*

COMMENTS ON THE APPELLANTS GROUNDS OF APPEAL:

An appeal has been lodged against the refusal of planning permission for the reasons set out in the Decision Notice dated 12 November 2021. The appellants stated grounds of appeal are detailed and commented on below;

The appellants note that the original granted Planning Permission placed an onerous condition (No. 7) in relation to the sightlines for vehicle access to the new property which cannot be achieved due to the sightlines falling on land out-with the ownership of the applicant. They also comment that this condition is '*ultra vires*' and contrary to the terms of Planning Circular 4/1998 (The Use of Conditions in Planning Permissions) as the stipulated visibility splay extends over land that is out-with the application site and the applicants ownership.

In response to this we would note that condition No. 7 which relates to the required visibility splays is a standard condition for road safety. For the avoidance of doubt condition No. 7 is worded as follows;

7. Notwithstanding the effect of Condition 1; In accordance with 'Roads Guidance For Developers' a sightline visibility splay of 2.4 x 42 x 1.05 metres at the new driveway access with Artarman Road shall be provided. Prior to work starting on site this visibility splay shall be cleared of all obstructions over one metre in height above the level of the adjoining carriageway and thereafter shall be maintained clear of all obstructions over one metre in height to the satisfaction of the Planning Authority.

Reason: In the interest of road safety and in accordance with the Councils 'Roads Guidance for Developers'.

Condition 7 is an example of a Grampian condition. Grampian conditions are named after the decision in Grampian Regional Council v City of Aberdeen. They are conditions subject to which planning permission is granted (possibly relating to land not within the planning applicant's ownership), which are negatively worded and restrict implementation of the planning permission, in whole or in part, until some event has occurred. For example, in Menston Action Group v City of Bradford Metropolitan District Council, the local planning authority (LPA) granted planning permission for a housing development subject to a condition stating that 'development shall not begin until a surface water drainage scheme for water passing through the site, based on sustainable drainage principles has been submitted

to and approved in writing by the local planning authority', Grampian conditions allow LPAs to approve planning applications but prevent implementation of the development until it is acceptable in planning terms.

Condition No. 7 as noted above has been framed so as to require that the development authorised by the permission should not commence until the visibility splay is cleared of all obstructions over one metre in height above the level of the adjoining carriageway and thereafter shall be maintained clear of all obstructions over one metre in height to the satisfaction of the Planning Authority. We would further note that this condition is clear, concise, relevant, necessary and is for a planning purpose and therefore we don't not consider this condition to be '*ultra vires*', onerous or contrary to the for mentioned Planning Circular 4/1998.

The appellant has noted that the additional information which was provided in the submitted supporting statement under application; 21/01603/PP which includes a traffic survey, a detailed Roads consultant's report and reference to current roads advice etc. appears to have not been taken into account when determining the variation application.

We can confirm that this information was reviewed by the local roads area manager prior to their consultation response and our subsequent determination. We would note that the traffic survey which involved a 7 day speed survey by Transurveys Ltd at the proposed access location between 4th and 11th May 2021 was discussed with the roads officer who noted that the timeframe; 4th and 11th May 2021 was when COVID19 restrictions were in place and therefore may not be representative of the norm traffic in this location. The survey also identified that the 85%ile speed of the route is 13.4mph northbound and 15.4 southbound. This was discussed with the roads officer who further noted that the Argyll & Bute road speed limit policy framework 2017 recognises the mean speed and that speed limits under 20mph are also not recognised. The applicant and their roads consult (ECS) refer to 'designing streets' on several occasions however this particular guidance is not relevant to this developments environment as is specifically based around new-build extra urban environments.

The appellant refers to a letter of support from the local ward councillor – Mrc George Freeman. This was address within the report of handling for 21/01603/PP as follows;

'Mrc George Freeman expresses support for the application and requests it is supported as a minor departure from the LDP. Reasons being;

- a) *No objections from statutory consultees*
- b) *No objections from the public or neighbouring properties*
- c) *No objections from the community council*
- d) *As far as they can tell the proposal is in line with the policies of the current LDP*
- e) *Comment that the level of traffic on Artarman Rd is minimal as only 7 houses are served by the road*
- f) *Comment that the traffic existing the development would not be traveling further up Artarman Road thus reducing any risk*
- g) *Comment that they have conducted a personal traffic survey and on two separate occasions over the period of one hour no traffic was noted on Artarman Road*

Comment; The Area Roads Manager who is a statutory consultee has in fact objected to the proposals on the grounds of road safety – please see assessment for further information and reasoning on this'

The appellant also draws attention to previous approvals; 20/01190/PP & 19/02604/PP. We would note that each application is dealt with on its own merits and having regard to the individual circumstances of each case. In this instance the roads area manager did take into account the specific circumstances of the case and allowed a degree of flexibility as follows;

Accepting a reduced visibility splay of 2.4 x 25 x 1.05m as a minimum requirement. Also, in accordance with Roads Guidance for Developers October 2008 item 3.2: A minor departure was also agreed for the retention of the existing telegraph pole & two trees within the visibility splay and furthermore, In accordance with Roads Guidance for Developers October 2008 item 4.1: The access should usually be located a minimum of 25 metres away from the nearest adjacent junction - A relaxation was permitted with the proposed access being closer than 25m from the existing access to Ingleby Green.

Lastly the appellant has noted that the provision of a passing place by the widening of the road across the site frontage would improve the road safety. I would note that this is supported and would be beneficial however, without suitable visibility splays the access would be unsafe.

CONCLUSION:

The development proposed could only be supported by the Planning Authority on the basis of visibility splays being provided to ensure that the site access can be used without

compromising road safety. The provision of the required splays entails the need for controls to extend over third party land and consequently the necessary off-site measures cannot be secured by way of planning conditions. Therefore a legal agreement is required to ensure the clearance and maintenance of the full extent of the required visibility splays in perpetuity. In the absence of a Section 75 Legal Agreement to secure the clearance and maintenance of visibility splays on third party land there would remain a road safety issue at this location arising from deficient visibility for drivers using the site access onto Artarman Road.

In the interests of road safety the refusal should be upheld as the reduction in the visibility splay from the agreed 2.4 x 25 x 1.05m to 2.4 x 17 x 1.05m would result in an unacceptable level of risk to the public. This is due to the proposed access being in close proximity to the bend in Artarman Road and therefore, a minimum visibility splay of 2.4 x 25 x 1.05m is required. The access is therefore detrimental to the interests of road safety and is contrary to the provisions of Policy LP TRAN 4 of the 'Argyll and Bute Local Plan', as a satisfactory means of vehicular access cannot be achieved at this point.

Emma Jane
Planning Officer
16.02.2022