

STATEMENT OF CASE

FOR

**ARGYLL AND BUTE COUNCIL
LOCAL REVIEW BODY**

**REFUSAL OF OUTLINE PLANNING
PERMISSION FOR ERECTION OF
DWELLINGHOUSE AT ARDORAN WOODLAND,
LERAGS, BY OBAN, ARGYLL**

**OUTLINE PLANNING APPLICATION
REFERENCE NUMBER 08/01119/OUT**

26th November 2009

STATEMENT OF CASE

The planning authority is Argyll and Bute Council ('the Council'). The appellants are Mr and Mrs T Evans ('the appellants').

The outline planning application, reference number 08/01119/OUT, for the erection of a dwellinghouse at Ardoran Woodland, Lerags, by Oban, Argyll ("the appeal site") was refused under delegated powers on 27 October 2009. The planning application has been appealed and is subject of referral to a Local Review Body.

DESCRIPTION OF SITE

The application site is within woodland on the northern shore of Loch Feochan. Access to the site would be by way of existing forest tracks from the road to Ardoran Marina to the north of the site. The woodland comprises extensive areas of commercial conifers on the higher ground and extensive and visually important deciduous woodland on the lower slopes above the shore line.

SITE HISTORY

None relevant

STATUTORY BASIS ON WHICH THE APPEAL SHOULD BE DECIDED

Section 25 of the Town & Country Planning (Scotland) Act 1997 provides that where, in making any determination under the planning Acts, regard is to be had to the development plan, 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 proposal complies with the Argyll and Bute Local Plan's settlement strategy. In terms of the settlement strategy, the site lies in sensitive countryside where there is a general presumption against open countryside development. Consequently, the Council only presumes in favour of development associated with infill, rounding off and/or redevelopment. If a special case need justification is claimed, an Area Capacity Evaluation (ACE) is required.

The Report of Handling (Appendix 2) sets out the Council's assessment of the application in terms of Development Plan policy and other material considerations.

DEFINITION OF LOCATIONAL NEED

In terms of locational need the Argyll and Bute Local Plan defines it as:

'Locational need – a necessity for a proposed development to be located at or in close vicinity of the development site; 'necessity' in this context means more than 'convenience' and should directly relate to supporting the operations of a business and associated land or water use or else supporting the provision of vital infrastructure or else supporting a bad neighbour development at a location where land use conflict will not occur.'

The Forestry Commission were consulted on the application and indicated only a 'benefit' for on-site occupation. They did not agree with the locational/operational need requirement. In an e-mail dated 23 November 2009 they reiterate this view (Appendix 1).

The site is only 4.8Km (3 miles) from Oban, which is not an unreasonable commuting distance from where supervision and an onsite presence could be made available at short notice. The appellants in their submission have failed to demonstrate that there is no potential to use existing accommodation in the area.

Locational and operational need has been used to justify new dwellinghouses in the countryside, particularly for new farmhouses and farm workers' houses. However, no locational or operational need for forestry operations has been used to justify a new dwellinghouse in Argyll and Bute.

A 'locational need' for the proposed dwellinghouse to be located within Sensitive Countryside has not been established and therefore does not have an exceptional case justification to support the proposal in terms of Structure and Local Plan criteria.

REQUIREMENT FOR ADDITIONAL INFORMATION AND A HEARING

It is considered that no new information has been raised in the appellants' submission. The issues raised were covered in the Report of Handling which is contained in Appendix 2. As such it is considered that Members have all the information they need to determine the case. Given the above and that the proposal is small-scale, has no complex or challenging issues and has not been the subject of representations, then it is considered that a Hearing is not required.

COMMENT ON APPELLANTS' SUBMISSION

See Appendix 2.

CONCLUSION

Section 25 of the Town and Country Planning Act 1997 requires that all decisions be made in accordance with the development plan unless material considerations indicate otherwise. The application site is located within 'Sensitive Countryside' in the Adopted Argyll and Bute Structure 2002. This zone establishes a presumption against open countryside development. Consequently, the Council only presumes in favour of development associated with infill, rounding off and/or redevelopment. If a special case need justification is claimed, an Area Capacity Evaluation (ACE) is required. The proposed development is not considered infill, rounding off and/or redevelopment, does not comply with the Argyll and Bute Local Plan's settlement strategy, and is not considered to be a 'special case' as no specific locational requirement has been demonstrated. Therefore the development is contrary to the provisions of Policy STRAT DC5 of the Approved Argyll and Bute Structure Plan 2002 and Policy LP ENV1 of the Adopted Argyll and Bute Local Plan 2009. Taking account of the above, it is respectfully requested that the appeal be dismissed.

Appendix 1

From: Mainprize, Nick [nick.mainprize@forestry.gsi.gov.uk]
Sent: 23 November 2009 16:13
To: Young, Howard
Subject: RE: 08/01119/OUT: OUTLINE PLANNING APPLICATION AT ARDORAN WOODLAND, LEDRAGS, ARGYLL

Howard

I refer you to our telephone conversation of earlier today with regard to the above planning application.

I can confirm that the Forestry Commission's view on this case remains as per Helen Watt's (FC Woodland Officer) of 10 October 2008. It would be beneficial with regards to some of the woodland associated operations to have individuals associated with this work to be resident on site. However it is by no means essential and it is in fact the norm for forestry operations to be carried out by contractors who live remote to woodland sites.

Regards

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Appendix2

Argyll and Bute Council Development Services

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 2008 relative to applications for Planning Permission or Planning Permission in Principle

Reference No: 08/01119/OUT

Planning Hierarchy: Local Development

Applicant: Mr and Mrs T Evans

Proposal: Erection of dwellinghouse

Site Address: Ardoran Woodland, Lerags, by Oban, Argyll.

DECISION ROUTE (delete as appropriate)

Sect 43 (A) of the Town and Country Planning (Scotland) Act 1997

(A) THE APPLICATION

(i) Development Requiring Express Planning Permission

- Erection of dwelling house
- Formation of septic tank

(ii) Other specified operations

- Upgrading of existing forestry track
-

(B) RECOMMENDATION:

Refuse for the reasons detailed below.

(C) HISTORY:

None relevant

(D) CONSULTATIONS:

Area Roads Manager

Report dated 01/07/08 - No objection subject to improvement to junction of private access with public road

Public Protection Unit

Memo dated 08/07/08 - No objection subject to demonstration of wholesome and adequate water supply and the control of external lighting.

Forestry Commission

Letter dated 10/10/08 - confirmed man power requirements and indicated only a 'benefit' for onsite occupation they did not agree with the locational operational need requirement.

(E) PUBLICITY:

The proposal has been advertised in terms of Potential departure to policy HO25 of Lorn Local Plan, closing date 24/07/08.

(F) REPRESENTATIONS:

None.

(G) SUPPORTING INFORMATION

Has the application been the subject of:

- | | |
|---|-----------|
| (i) Environmental Statement: | No |
| (ii) An appropriate assessment under the Conservation | 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 agreement required: | No |
|--|-----------|
-

(I) **Has a Direction been issued by Scottish Ministers in terms of** **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 Structure Plan 2002

STRAT DC5 – Supports, small scale infill, rounding off, redevelopment proposals and/or change of use of buildings in Sensitive Countryside, and that in special cases, development in the open countryside may be supported if small scale, has positive local benefits and has a locational need (and subject to an ACE) .

Argyll and Bute Local Plan 2009

LP ENV 1 – Requires that all development should protect, restore or where possible enhance the established character and local distinctiveness of the local landscape in terms of location and scale.

(ii) **List of all other material planning considerations taken into account in the assessment of the application, having due regard to Annex A of Circular 4/2009.**

The Planning etc. (Scotland) Act, 2006

National Planning Framework, 2004 & Monitoring Report 2006

SPP1 The Planning System (Nov 2002)

Argyll and Bute Council, Supplementary Planning Guidance: Area Capacity Evaluation approved, February 2009

(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 (PAN41 or other):** **No**

(P) **Assessment and summary of determining issues and material considerations**

This application is in outline (in principle) for the erection of a dwelling house/log cabin within woodland on the northern shore of Loch Feochan. Access to the site would be by way of existing forest tracks from the road to Ardoran Marina to the north of the site. The proposal is to serve the requirements of the land owner who proposes to work and manage 115ha of mixed woodland which surrounds the site. The woodland comprises extensive areas of commercial conifers on the higher ground and extensive and visually important deciduous woodland on the lower slopes above the shore line.

The application site is located within an area of 'Sensitive Countryside' where Structure Plan Policy STRAT DC5(A) states that, within Areas of 'Sensitive Countryside' encouragement shall be given to small scale infill, rounding off, redevelopment proposals and/or change of use of buildings.

Policy STRAT DC5 (B) states that in special cases, development in the open countryside and medium or large scale development may be supported if this accords with an area capacity evaluation which demonstrates that the specific development proposed will integrate sympathetically with the landscape and settlement pattern and that the development will entail or result in at least one of the following outcomes

- (i) it requires to be small scale, and consistent with an Area Capacity Evaluation.
- (ii) a positive development opportunity yielding significant countryside management or environmental enhancement benefit, or building retention benefit or local community benefit or economic benefit and;
- (iii) a development with a locational need to be on or in the near vicinity of the proposed site.

In respect of an assessment against the policy requirements it is considered that the following applies:-

- (i) Scale – The proposal for 1 dwelling is clearly small scale. Supplementary Planning Guidance: Area Capacity Evaluation approved in February 2009 requires that locational need (iii) below is satisfied before and ACE is required.
- (ii) No positive significant countryside management or environmental enhancement benefits to the local community or wider economic benefits have been demonstrated.
- (iii) In the applicant has submitted a Forest Management Plan' in order to support the 'locational need' criteria. The Forest Management plan has been subject to assessment by the Forestry Commission who conclude:-

“that there would be sufficient work available in the management of this 115ha woodland to support at least 2 people on a full time basis. It would further benefit with regards to many of the operations proposed such as deer control, planting and further maintenance of planted trees if the people were resident on site and could therefore closely supervise and manage the woodland.”

'Locational Need' as defined in the Adopted Local Plan as:-

“...a necessity for a proposed development to be located at or in close vicinity of the development site; 'necessity' in this context means more than 'convenience' and should directly relate to supporting the operations of a business and associated land or water use...”

In this instance it is clear that whilst there may sufficient work to employ up to 2 people in the management of the woodland, no 'necessity' for an onsite presence has been demonstrated. Furthermore the site is only 4.8Km (3 miles) from Oban, which is not an unreasonable commuting distance from where supervision and an onsite presence could be made available at short notice. This proposal therefore fails to be described as a special case as it does not produce an outcome required by STRAT DC5 (B) and the proposal therefore is contrary to adopted Structure Plan policy STRAT DC5.

The proposal also requires to be assessed against POL ENV1 Requires that all development should protect, restore or where possible enhance the established character and local distinctiveness of the local landscape in terms of location and scale subject to the proposal being in accord with Structure Plan policies. Given that the proposal does not accord with Policy STRAT DC5 it cannot accord with Policy ENV1.

It is considered that a 'locational need' for the proposed dwellinghouse to be located within Sensitive Countryside has not been established and therefore does not have justification to support a departure from existing approved Structure and Local Plan policies.

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

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

N/A

(S) Need for notification to Scottish Ministers or Historic Scotland: No

Author of Report: Andrew Swain

Date: 01/10/09

Reviewing Officer: Howard Young

Date: 27/10/09

**Angus Gilmour
Head of Planning**

GROUNDINGS OF REFUSAL RELATIVE TO APPLICATION REF. NO. 08/01119/OUT

1. The application site is located within 'Sensitive Countryside' in the Adopted Argyll and Bute Structure 2002. This allocation establishes a presumption in favour of development provided it is infill, rounding off and/or redevelopment. The proposed development is not considered either of the above, nor is it considered to be a 'special case' as no specific locational requirement can be demonstrated as the proposed development could be located elsewhere in a more suited environment. Therefore the development is contrary to the provisions of the Adopted Argyll and Bute Structure Plan 2002, Policy STRAT DC5.

2. The application site is located within 'Sensitive Countryside' in the Adopted Argyll and Bute Local Plan 2009. This allocation establishes a presumption in favour of development provided it is infill, rounding off and/or redevelopment. The proposed development is not considered either of the above, nor is it considered to be a 'special case' as no specific locational requirement can be demonstrated as the proposed development could be located elsewhere in a more suited environment. Therefore development cannot be justified under the provisions of the Adopted Argyll and Bute Local Plan 2009 Policy ENV1, which requires compliance with Structure Plan 2002, Policy STRAT DC 5.

APPENDIX TO DECISION REFUSAL NOTICE

Appendix relative to application **08/01119/OUT**

- (A) 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

- (B) The reason why planning permission has been refused.

It is considered that a ‘locational need’ for the proposed dwellinghouse to be located within Sensitive Countryside has not been established and therefore does not have justification to support a departure from existing approved Structure and Local Plan policies.