

STATEMENT OF CASE

FOR

**ARGYLL AND BUTE COUNCIL
LOCAL REVIEW BODY**

**REFUSAL OF PLANNING PERMISSION FOR
ERECTION OF DWELLINGHOUSE AND OFFICE
AT LAND NORTH OF SWALLOWTALE,
ACHNAGOUL, INVERARAY**

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

11TH DECEMBER 2009

STATEMENT OF CASE

The planning authority is Argyll and Bute Council ('the Council'). The appellants are Mr and Mrs MacArthur ('the appellants').

The detailed planning application, reference number 09/00745/DET, for the erection of a dwellinghouse and office at Land North of Swallowtale, Achnagoul, Inveraray ("the appeal site") was refused under delegated powers on the 8th September 2009. The planning application has been appealed and is subject of referral to a Local Review Body.

DESCRIPTION OF SITE

The application site is located to the north of a small settlement of 5 dwellinghouses in a rural setting to the north of the A83 Trunk Road at Achnagoul, Inveraray. Access to the site is via a private access from the A83 Trunk Road.

SITE HISTORY

None in respect of the application site.

It is however noted that unrelated applications for planning permission have previously been considered in relation to the improvement of the junction with the A83 trunk road. Principally these proposals sought to improve the geometry of the junction of the private access and the A83 to facilitate the management of an existing commercial forest. The initial proposal (ref. 06/01969/DET) was refused on the advice of Transport Scotland; an amended proposal (ref. 07/00226/DET) was approved subject to conditions relating to the geometry, construction standard and gradient of the proposed improved access. These improvements have subsequently been implemented.

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 existing access arrangements serving the proposed development are suitable to accommodate the intensification in its use which would occur as a result of the development.
- Whether the proposed office development conflicts with adjoining land uses and the established amenity of the locale. In terms of the settlement strategy, the site lies within the 'settlement area' of Achnagoul wherein there is a general presumption in favour of business and industry development unless (c) the development would erode the residential character of the area, or adversely affect local residents, through and in traffic levels, noises, fumes or hours of operation, and that; (e) technical standards in terms of parking, traffic circulation, vehicular access and servicing are met in full.
- Whether the proposed location, siting, design and finishes of the proposed development have sufficient regard to the context of their setting.

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

DEFINITION OF OFFICE USE

Having regard to the provisions of the Town and Country (Use Classes)(Scotland) Order 1997 the use of a building as an office can fall within either Use Class 2 – Financial, Professional & Other Services or Class 4 – Business.

Use Class 2 office premises are generally associated with town centre/high street functions (i.e. banks, building societies, betting offices, surgeries, solicitors) where services are principally provided to visiting members of the public.

Use Class 4 office premises would generally be defined as office premises which are not normally open to members of the public (i.e. call centres, research and development, back office functions, business park development).

The provisions of the Adopted 'Argyll and Bute Local Plan' 2009 differentiates between these differing office uses with proposals for Use Class 2 development being assessed under the provisions of policies LP RET 1 – LP RET 4 which relate primarily to 'retail' development (defined as Use Classes 1, 2 and 3 in the local plan). Use Class 4 development is addressed under the provisions of policies LP BUS 1 & 2 which relate to 'business and industry development' (defined as Use Classes 4, 5 and 6 in the local plan).

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 1, including a summary of the representations submitted from five households at Achnagoul. 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 significant body of conflicting representation, then it is considered that a Hearing is not required.

COMMENT ON APPELLANTS' SUBMISSION

Having regard to the detailed reasons for requesting the review set out in part (7) of the appellants' submission the following points are noted:

1. That the reason set out by the appellant under point (1.) is both ambiguous and lacks clarity in relation to the application as submitted by the appellant. On the part of the Planning Department it is assumed that the appellant is referring to a previous grant of planning permission (ref. 07/00226/DET) which specifically relates to the improvement of the junction of the private access and the A83 trunk road to facilitate the management of an existing commercial forest. In light of this query being raised, the Planning Department has sought clarification from Transport Scotland as to whether the previous grant of planning permission and the subsequent upgrade in the junction with the A83 was taken into consideration in their consultation response dated 4th August 2009. Transport Scotland have provided the Planning Department with verbal confirmation that their consultation comments recommending that planning permission be refused were issued following due consideration of the previous grant of planning permission and the subsequent improvement of the junction to facilitate timber operations – it is understood that Transport Scotland will provide detailed written confirmation in respect of this matter in their submission to the Local Review Board.
2. It is anticipated that Transport Scotland will provide a detailed comment on point (2.)
3. For the purpose of clarity, it is advised that the land required for necessary improvements to the junction with the A83 trunk road, improvement of forward visibility on to vehicles travelling west on the A83 trunk road and, upgrade of the existing private access to an adoptable standard are located both outwith the application site boundary and the land within the control of the applicant and as such could not be achieved by the imposition of conditions to a grant of planning permission. Whilst it might be possible to resolve these issues with a Planning Agreement involving affected third party land owners under the provisions of Section 75 of the Town and Country Planning (Scotland) Act 1997 in view of the other issues of concern in respect of the design, scale and nature of the proposed development the Planning Department has not sought in this instance to establish

whether the applicant would be able to secure the consent of affected third party land owners to implement the necessary highway improvement works. It is further advised that the provisions of LP TRAN 4 set out the Council's policy in respect of the intensification of use of existing private access arrangements to serve additional development; in particular, development is to be resisted where an existing private access regime is considered to be of such poor standard as to be unsuitable for vehicular traffic and is not capable of commensurate improvements unless the private access is brought up to a full adoptable road.

4. It is advised that the proposed level of commercial activity is set out in the Report of Handling (Appendix 1). Having regard to the officer's Report of Handling it is noted that the proposal recommends refusal under the provisions of policy LP BUS 1 which relates to Use Classes 4, 5 and 6 (see definition above); however, within the main assessment of the officer's report the proposed office is referred to as Use Class 2 in error. For the purpose of clarification, it is confirmed that in light of the proposed rural location and the description provided by the applicant as an office which will be used "for the day to day running of their engineering business" the Planning Department would consider the proposed development to fall within the provisions of Use Class 4 and as such has been correctly assessed against the provisions of LP BUS 1 which would seek to resist development which would erode the residential character of an area through an increase in traffic levels and introduction of commercial activity which would be a source of nuisance and disturbance to residents.
5. It is noted that advice provided to an applicant prior to the submission of an application is provided on the basis of the information available at that time and is not binding; in the event of a formal application for planning permission being submitted this must be considered in the light of the comments of consultees and any third party representations and consequently the determination of the Planning Authority may differ from informal views previously expressed by planning officers.

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 'settlement area' which pertains to an existing group of five dwellinghouses at Achnagoul, by Inveraray as defined by the Adopted 'Argyll and Bute Structure Plan' 2002 and the Adopted 'Argyll and Bute Local Plan' 2009. Within this zone policies STRAT DC 1, LP BUS 1 and LP HOU 1 set out a general presumption in favour of 'small' scale business and industry development and 'small' scale residential development provided that such development is appropriately sited, is of a scale and

design which fits within the context of the locale, is compatible with the character and amenity of its surrounds and, does not give rise to adverse access or servicing implications.

In this particular instance Transport Scotland has advised that the existing junction with the A83 gives cause for concern in two respects:

- i) that the proposal will result in an increase in the number of vehicles entering and leaving the traffic stream at a point where visibility is restricted thus causing interference with the safety and free flow of traffic on the trunk road, and;
- ii) that the proposal would result in an intensification of waiting and right turning manoeuvres from the trunk road at a location where forward visibility for approaching westbound traffic on the trunk road is substandard thus creating interference with the safety and free flow of traffic on the trunk road.

The Council's Area Roads Manager has advised that the private access serving the development already serves five dwellings and is considered to be unsuitable for further development due to the condition of the surface and insufficient passing places.

The provisions of policy LP TRAN 4 of the 'Argyll and Bute Local Plan' 2009 set out that the Council will seek to resist development where an existing private access regime is considered to be of such poor standard as to be unsuitable for vehicular traffic and is not capable of commensurate improvements unless the private access is brought up to a full adoptable road.

The land necessary for the upgrade of the existing junction with the A83, improvement of forward visibility to westbound traffic on the A83 and, the improvement of the private access to adoptable standard is located both outwith the application site boundary and land within the control of the applicant and consequently the requisite offsite highway improvements cannot be secured within the confines of the application as submitted and the proposed development is consequently, in view of the above, considered likely to have a significant adverse impact upon highway safety.

The proposal seeks to introduce a commercial development within a relatively secluded, rural and essentially residential context of a small settlement which at present contains 5 dwellinghouses. The nature and scale of the proposed development is considered likely to give rise to a significant increase in traffic levels and the potential to give rise to a source of nuisance which would be to the detriment of the existing residential amenity of the area and as such is viewed as contrary to the provisions of LP BUS 1.

Having regard to combined scale of the proposed residential and office development, the loss of mature trees which contribute to the setting of Achnagoul, together with some elements of the design and materials of the buildings which are uncharacteristic of their surroundings such as the

projecting glazed/timber front wing of the dwelling and the metal profiled roof of the office building, it is considered that the proposed development does not have sufficient regard in its siting and design to the context within which it would sit and as such is viewed as contrary to the provisions of policy LP ENV 19.

Therefore the proposed development is contrary to the provisions of Policy STRAT DC 1 of the Adopted 'Argyll and Bute Structure Plan' 2002 and policies LP ENV 1, LP ENV 19, LP BUS 1, LP HOU 1 and LP TRAN 4 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 – Report of Handling

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: 09/00745/DET

Planning Hierarchy: Local Application

Applicant: Mr. And Mrs MacArthur

Proposal: Erection of dwelling house and office

Site Address: Land north of Swallowtale, Achnagoul, near Inveraray

DECISION ROUTE

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

(A) THE APPLICATION

(i) Development Requiring Express Planning Permission

- Erection of dwellinghouse
- Erection of office
- Formation of new access
- Installation of septic tank and puraflo modules

(ii) Other specified operations

- Connection to public water main
-

(B) RECOMMENDATION:

It is recommended that this development be refused for the reasons attached.

(C) HISTORY

None applicable

(D) CONSULTATIONS:

- Transport Scotland: recommend refusal in view of highway safety issues where the private road meets trunk road (sub-standard visibility)..
- Area Roads Engineer: recommends refusal because as the private access already serves 5 dwellings this development would now require the private road to be brought up to adoptable standard, suitably surfaced and with appropriate passing places.
- SEPA: no objections, subject to condition/advice note seeking first a preference for total soakaway otherwise if unattainable the submitted puraflo system with an outfall to the burn which would be capable of meeting CAR license standard.
- Scottish Water: no objections to this planning application in terms of water supply although in the event of an approval an advice note required expressing no guarantee of water supply connection and likelihood of Development Impact Assessment application needing to be separately submitted to and assessed by Scottish Water. Conditions to be imposed in any consent.
- Environmental Health Officer: no objections subject to condition about drainage.

(E) PUBLICITY:

Advertised under Article 9 (Vacant Land) on 17.07.09; publicity period expired.

(F) REPRESENTATIONS:

Six letters/e-mails of objecting representation received from the following persons all residing in the small settlement of Achnagoul:

C and G McCrae, Achnagoul Cottage No. 1 (Swallowtale)
Jeffrey Jay, Achnagoul Cottage
Ann MacLaughlan, Achnagoul
J A Aitken, Achnagoul House
Michael J Holder, Tigh Cuileann, Achnagoul (two letters/email).

The details of their representations are held in the public file; the principle concerns may be summarised as follows:

- Dangerous traffic implication at the junction with the A83(T).
- Objection to office, as it would create a major environmental impact, nuisance and result in loss of amenity, particularly because:

- it will change the overall nature and character of the small residential Settlement;
 - its large size and internal configuration indicates it will generate substantial traffic from, staff, clients and visitors;
 - the single un-metalled, un-adopted approach road would not support the extra traffic;
 - likely commercial signage would be detrimental to the appearance of the settlement;
 - business use is likely to compromise the present limited broadband capacity supplied by copper not fibre optic cable, a critical issue for present householder business use;
 - A concern that the applicant's plant hire and contacting business might, - although not applied for here (other than an office activity) – gravitate to the site.
- Objections to development in general as it would result in loss of amenity through:
 - Removal of trees and hedges along trackside boundary of site, linked to location of development, affecting privacy of Achnagoul Cottage No. 1;
 - Loss of trees will affect the landscape and visual impact of this development, particularly during the lengthy time required for the establishment and growth of new specimens. Tree preservation needed;
 - Scale of development is too large and out of character;
 - Noise pollution of traffic to Achnagoul Cottage No. 1;
 - Proximity of drainage system, with outfall to burn above Achnagoul Cottage No. 1;
 - Aluminium roof to office inappropriate;
 - Concerns about implications to present low public mains water pressure;
 - Affect on property values.

Comments: It will be apparent from the reasons for refusal that most of these concerns are relevant planning considerations which the Council supports. Issues of valuation, broadband efficiency and mains water pressure are however not relevant planning matters. Finally the fear that if this development were allowed a Class 5 or Class 6 use might arise is irrelevant, as that is not what has been applied for and the Council would be able to enforce as necessary in those circumstances.

(G) SUPPORTING INFORMATION

Has the application been the subject of:

- (i) **Environmental Statement:** No
- (ii) n/a
- (iii) **An appropriate assessment under the Conservation (Natural Habitats) Regulations 1994:** No
- (iv) **A design or design/access statement:** No

- (v) **A report on the impact of the proposed development eg. Retail impact, transport impact, noise impact, flood risk, drainage impact etc:** No
-

(H) PLANNING OBLIGATIONS

- (i) **Is a Section 75 agreement required:** No
-

- (l) **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 Structure Plan 2002 :

STRAT DC 1 development within the settlement

Argyll and Bute Local Plan 2009 :

LP ENV 1 ... development impact on the general environment

LP ENV 7 ... development impact on trees/woodland

LP ENV 19 ... development setting, layout and design

LP BUS 1 ... business and industry proposals in existing settlements

LP HOU 1 ... general housing development

LP SERV 1 ... private sewage treatment plants and wastewater systems

LP SERV 2 ... incorporation of natural features / sustainable drainage systems

LP TRAN 4 ... new and existing, public roads and private access regimes

LP TRAN 6 ... vehicle parking provision

- (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.**

None applicable

- (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 proposal is of serious concern for a number of reasons. Whilst the development is sought within a zoned "settlement" area, it is for a proportionally large amount of development within this existing small settlement of only 5 dwellings and a few other buildings such as the redundant byre which would be demolished in connection with this proposal.

Within the existing settlement the present buildings are either single or one and a half storey, one of which has a mansard roof design. There is notable tree growth amongst the settlement which assists the groups integration within the overall landscape.

The proposal seeks the development of a substantial one and three quarter storey 4 bedroomed dwelling with a variety of en-suites, the building measuring some 19 m x 7m with wings to front and back increasing the overall width to 12.5m. Compared with the other dwellings in the locality the mass of this building would be significant. Whilst there are many features in the design of this slated and harled dwelling which almost presents a traditional design, the proposal is marred by the large incongruous forward projecting timber wing with cathedral style glazing.

Linked in with this proposal is the large detached class 2 office building, incorporating reception, shower and kitchen facilities within which it is noted 6 persons will be employed (it being mentioned that 2 of those would be occupants of the dwelling). This building is single storey, measuring some 14.5m x 5.5m with rear wing to the back of 5.6m in length. It would be harled in wet dash (with larch clad extension to rear) and roof with sinusoidal roof profile as yet unknown. The office building would sit on a raised platform within a forward position of the site in the vicinity of the byre which would be demolished.

A significant number of mature trees within this well treed site would be felled to accommodate the buildings, private driveway and sizeable parking/turning area.

In addition to the extent and form of the development which in view of its nature and scale would have adverse implications for the existing character of the settlement, not only physically but through the introduction of a commercial use, there are also serious concerns about safety issues in relation to the traffic generation. The junction with the trunk road has serious visibility issues, in addition to the A83 at this junction not being designed for stopping and turning movements, without them interfering with the free flow of traffic. Additionally, the private road is sub-standard in width and length without required passing places. Had the junction with the trunk road been safe, the proposal could still not be supported on access grounds without the access road being upgraded to adoptable standard, which is not part of this application.

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

(R) Reasons why planning permission or a Planning Permission in Principle should not be granted

See stated reasons for refusal

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

n/a

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

Author of Report: Derek Hay Date: 27.08.09

Reviewing Officer: Richard Kerr Date: 27.08.09

**Angus Gilmour
Head of Planning**

APPENDIX TO DECISION REFUSAL NOTICE

Appendix relative to application: 09/00745/DET

- (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) For the purpose of clarity, the list of drawings refused is as follows: 0255/400, 0255/300, 0255/303, 0255/304, 0255/301, 0255/302, 0255/305 and 0255/306.
-

- (C) The reasons why planning permission has been refused.

1. The proposed development would result in increasing the number of vehicles entering and leaving the traffic stream on the A83 (T) at a point where visibility is restricted, thus creating interference with the safety and free flow of the traffic on the trunk road.
2. The proposed development would result in an intensification of waiting and right turning manoeuvres from the A83 (T) trunk road at a location where forward visibility for approaching westbound traffic on the trunk road is substandard thus creating interference with the safety and free flow of the traffic on the trunk road.
3. The development conflicts with policy LP TRAN 4 of the adopted Argyll and Bute Local Plan 2009 in so much as the lengthy sub standard private access which already serves 5 dwellings would need to be brought up to adoptable standard to serve the development proposed; being suitably surfaced and provided with appropriate passing places, and over which the applicant has no control, given that land required for such improvement lies beyond the application site and outside the ownership of the applicant.
4. The proposal conflicts with policy LP BUS 1 of the adopted Argyll and Bute Local Plan as the office element of the proposal would erode the residential character of the area and adversely affect local residents and the amenity of the area though an increase in traffic levels and the introduction of commercial activity, which would be a source of nuisance and disturbance to residents contrary to the interests of the residential amenity of the area..
5. Having regard to the combined scale of the built development associated with the provision of the residential and office accommodation proposed along with the associated parking area, their location and the consequential loss of some mature trees which contribute to the setting of the settlement, together with elements of the design and materials of the buildings which are uncharacteristic of its surroundings, such as the

projecting glazed/timber extension to the dwelling and the metal profiled roof of the office building, it is considered that the proposal in its siting and design fails to accord with LP ENV 19 and Appendix A of the adopted Argyll and Bute Local Plan 2009.