

**STATEMENT OF CASE**

**FOR**

**ARGYLL AND BUTE COUNCIL  
LOCAL REVIEW BODY**

**REFUSAL OF PLANNING PERMISSION IN  
PRINCIPLE FOR A SITE FOR THE ERECTION OF  
TWO DWELLINGHOUSES**

**LOCAL REVIEW BODY REF. 10/0009/LRB**

**PLANNING PERMISSION APPLICATION  
REFERENCE NUMBER 08/00231/OUT**

**5<sup>TH</sup> JULY 2010**

## **STATEMENT OF CASE**

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

The planning application, reference number 08/00231/OUT, for a site for the erection of two dwellinghouses at Land South of Achnadriane Farm, Tayinloan ("the appeal site") was refused under delegated powers on the 23<sup>rd</sup> March 2010. The planning application has been appealed and is subject of referral to a Local Review Body.

### **DESCRIPTION OF SITE**

The application site relates to approximately 0.35ha (including access road) located to the east of the A83 public highway at Achnadriane, some 5km north of Tayinloan. The plots occupy elevated locations 100m to the east and 35m north respectively of the existing residential properties Benview and Tighnadrochit; Achnadriane Farm is located approximately 110m to the north of the proposed development.

### **SITE HISTORY**

An initial application ref. 07/00132/OUT which sought outline planning permission for two dwellinghouse at a lower lying location immediately to the rear (east) of Benview was withdrawn by the applicant in the face of substantial representation to the proposals by third parties raising objection on the basis that such a proposal would have a significant adverse impact upon the level of privacy and amenity afforded to Benview and its garden area. The subject application (08/00231/OUT) sought to address these concerns by locating the proposed development further away from the boundary with Benview.

It is also noted that outline planning permission is presently being sought for a site for the erection of a dwellinghouse within the garden ground of Benview (07/00267/OUT); this application remain undetermined in light of an unresolved roads matter.

### **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 or not the proposal is consistent with the Council's 'Settlement Strategy' as set out in the Development Plan, in this instance policies STRAT DC 4, LP HOU 1 and P/DCZ 4.
- Whether or not the proposal has an adverse impact on the character of the Area of Panoramic Quality within which the application site lies; the provisions of policies STRAT DC 8 and LP ENV 10 would seek to resist

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. The consultation comments submitted by statutory and other consultees (Appendix 2) and third party representation (Appendix 3) are attached for the purpose of clarity.

## **POLICY BACKGROUND**

The appeal relates to a 'small scale' housing development located on an open countryside location within a 'Rural Opportunity Area' which is positioned within an Area of Panoramic Quality – the following policy considerations are relevant to the determination of this matter:

### Structure Plan Policy STRAT DC 4 – Development in Rural Opportunity Areas

- A) *Within Rural Opportunity Areas encouragement shall be given to small scale developments on suitable sites which, in terms of siting and design, will visually integrate with the landscape and settlement pattern; this may include small scale development and change of use of building development.*
- B) *n/a*
- C) *n/a*
- D) *n/a*
- E) *Developments are also subject to consistency with other policies of the Structure Plan and in the Local Plan.*

### Structure Plan Policy DC 8 – Landscape and Development Control

- A) *Development which, by reason of location, siting, scale, form, design or cumulative impact, damages or undermines the key environmental features of a visually contained or wider landscape or coastscape shall be treated as 'non-sustainable' and in contrary to this policy. Outwith the National Park particularly important and vulnerable landscapes in Argyll and Bute are those associated with:*

1. *National Scenic Areas;*
2. *Historic landscapes and their settings with close links with archaeology and built heritage and/or historic gardens and designed landscapes;*
3. *Landward and coastal areas with semi-wilderness or isolated or panoramic quality.*

*Local Plan Policy LP ENV 10 – Development Impact on Areas of Panoramic Quality*

*Development in, or adjacent to, an Area of Panoramic Quality will be resisted where its scale, location or design will have a significant adverse impact upon the character of the landscape unless it is demonstrated that:*

- (A) Any significant adverse effects on the quality for which the area has been designated are clearly outweighed by social and economic benefits of National or regional importance;*
- (B) Where acceptable, development must also conform to Appendix A of the Local Plan.*

*In all cases the highest standards, in terms of location, siting, landscaping, boundary treatment and materials, and detailing will be required within the Area of Panoramic Quality.*

The text which accompanies policy LP ENV 10 sets out the following justification in relation to development within Areas of Panoramic Quality:

*The aim of this policy is to provide panoramically important landscapes in Argyll and Bute, with adequate protection against damaging development.*

*The Council has identified Areas of Panoramic Quality and these are shown on the main Proposals Maps. These areas are important not only for their physical landforms and for the flora and fauna, which they support, but also for the environmental assets that they represent. These qualities could easily be destroyed or damaged by even a relatively small, insensitive development. They therefore must be protected.*

*Local Plan Policy LP HOU 1 – General Housing Development*

- (A) There is a general presumption in favour of housing in development other than those categories, scales and locations of development listed in (B) below. Housing development, for which there is a presumption in favour, will be supported unless there is an unacceptable environmental, servicing or access impact.*

*(B) n/a*

*(C) n/a*

*(D) Housing developments are also subject to consistency with other policies of both the Structure and Local Plan and in particular policy P/DCZ 4 – Rural Opportunity Areas.*

The text which accompanies policy LP HOU 1 sets out the following justification in respect of Housing in the Rural Opportunity Areas.

*The rural opportunity areas have been mapped specifically with a view to identifying areas within which there is a general capacity to successfully absorb small scale housing development. This includes open countryside locations where appropriate forms of small-scale housing development will be in tune with landscape character and development pattern. Development proposals located within the open countryside within Rural Opportunity Areas positioned within National Scenic Areas and Areas of Panoramic Quality will be considered premature until a Landscape Capacity Study covering the relevant Rural Opportunity Area has been completed and approved by the Council. Thereafter, development proposals will be expected to be consistent with the findings contained within the Landscape Capacity Study. Consequently, there is a presumption in favour of small-scale housing development within this zone, subject to on-going capacity evaluation.*

#### P/DCZ 4 – Rural Opportunity Areas – Areas and Boundaries

*It is proposed that the Rural Opportunity Areas be identified in Proposal Maps A in the proposal map folders; these correspond to areas with a general capacity to successfully absorb small-scale development.*

*Development proposals located in the open countryside, within Rural Opportunity Areas positioned within National Scenic Areas or Areas of Panoramic Quality will be considered premature until a Landscape Capacity Study covering the relevant Rural Opportunity Area has been completed and approved by the Council. In such instances proposals should be considered as if located within Sensitive Countryside.*

*Development proposals will be expected to be consistent with the findings contained within completed Landscape Capacity Studies.*

*NB. This Policy impacts upon the following policies in LP TOUR 1; LP HOU 1; LP RET 4; LP BUS 2.*

The Rural Opportunity Area within which the appeal site is located has been the subject of Landscape Capacity Assessment undertaken by qualified Landscape Architects and is contained within ROA SK 1 (pages 24 – 29) of the 'North and South Kintyre Landscape Capacity Study' which was approved by the Mid Argyll, Kintyre and the Islands Area Committee on 3<sup>rd</sup> February 2010. This document also sets out the methodology employed in assessing landscape capacity.

The appeal site is located within an area identified in red in the Landscape Capacity Study which relates to 'Areas not recommended for development' wherein the recommendations include:

- *Avoid building on open land which has long views to it and where there is no existing woodland or topography to achieve a sense of place or shelter. In particular development on higher open pastures to the east should be avoided where new buildings are likely to be highly visible and where localised planting would be inappropriate.*

## **REQUIREMENT FOR ADDITIONAL INFORMATION AND A HEARING**

The issues raised were covered in the Report of Handling which is contained in Appendix 1, including a summary of third party representations. 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 part (7) of the appellant's submission the following comments are noted for the record in respect of the specific issues raised:

1. The context of discussions between the appellant and planning officers is documented in the report of handling. Informal advice is provided on the basis of the relevant policy provisions and information available at that time; in the event that there is a material change to circumstances of the proposal, including an amended policy context, then the Council cannot be bound by informal advice issued previous to the change in circumstances occurring – this would apply regardless of whether such advice was provided verbally or in writing.
2. The appellant sets out that the principle issue in this case is whether or not the proposal will have a significant adverse effect upon the Area of Panoramic Quality. However, the appellant's case surmises that there has been no assessment of the effect of the development upon on the basis that the report of handling does not include an extensive assessment of the visual impact of the development – whilst the officers' report does not specifically dedicate a paragraph to the visual impact of the proposal it is noted that the narrative of the report contains a number of references to the assessment of the characteristics and relationship of the application site to its surrounds – visibility of the development from the public highway is limited with views obscured by roadside vegetation; however, the site is by no means hidden from view and in this respect it is noted within the report that the appeal site is readily open to view from the west (coast/beach) from where such (panoramic/long) views would place the development within the elevated context of open fields. It is also noted within the

report of handling that the open nature of the appeal site could not be mitigated for and readily assimilated within the context of adjoining woodland even with additional landscape planting. The appellant however fails to acknowledge that the appropriate assessment in respect of policies STRAT DC 8 and LP ENV 10 is not solely based upon the visual impact of the proposal but also has regard to the potential impact of the development upon the key features of the landscape and the sensitivity of the landscape to change – in this respect it is noted that the Landscape Capacity Study fulfils this requirement having identified the key characteristics of the landscape and provided recommendations upon its capacity for additional development. The Landscape Capacity Study has been undertaken by appropriately qualified landscape architects on behalf of the Council; their methodology is set out as a prelude to the Landscape Capacity Study.

3. See 2. Above.
4. Conformity with the NSKLCS is required through policy LP HOU 1 which states in section (D) “Housing Developments are also subject to consistency with other policies of both the Structure and Local Plan and in particular policy P/DCZ 4 – Rural Opportunity Areas.” Policy P/DCZ 4 states that “Development proposals will be expected to be consistent with the findings contained within completed Landscape Capacity Studies.” This proposal does not conform with the NSKLCS as the sites are located with a red area – ‘area not recommended for development’. The associated text for area SK1 of the NSKLCS (covering this site) states the following :-

- Avoid building on open land which has long views to it and where there is no existing woodland or topography to achieve a sense of place or shelter. In particular development on the higher open pastures to the east should be avoided where new buildings are likely to be highly visible and where localized planting would be in appropriate.

This proposal is on open land in the eastern side of the APQ and east of the road; there are long views onto the site, particularly from the sea (although not from the A 83); there is no woodland or vegetation on the site that would help to assimilate the development into the wider landscape; the site consists of a convex slope of open grassland which provides no sense of shelter and is one of the higher pasture areas. Given this, it is considered that the proposal is in no way consistent with the NSKLCS as the characteristics of this site are exactly those which the NSCLCS seeks to protect from development.

5. The map is entirely clear in terms of distinction between ‘red’ and ‘orange’ areas. There is no doubt that the appeal site is located in a ‘red’ area.

6. Economic growth can be delivered through development in the countryside. In this instance encouragement has been given to relocating the development into 'orange' areas defined by the NSKLCS.

## **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 'rural opportunity area' positioned within an Area of Panoramic Quality wherein the provisions of policy P/DCZ 4 requires consideration to be had to the provisions of the North and South Kintyre Landscape Capacity Study. The proposed residential development of elevated sites within the open countryside is contrary to the recommendations of the North and South Kintyre Landscape Capacity Study and as such will be to the detriment of the landscape character of the Area of Panoramic Quality within which the appeal site lies.

In view of the above, the proposed development is considered contrary to the provisions of Policies STRAT DC 4 and STRAT DC 8 of the Argyll and Bute Structure Plan 2002 and Policies LP ENV 10, LP HOU 1 and P/DCZ 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**

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**Reference No:** 08/00231/OUT  
**Planning** Local  
**Hierarchy:**  
**Applicant:** Mr & Mrs James Blair  
**Proposal:** Site for the erection of two dwellinghouses  
**Site Address:** Land South of Achnadriane Farm, by Tayinloan

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### DECISION ROUTE

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

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#### (A) THE APPLICATION

- (i) **Development Requiring Express Planning Permission**
- The erection of two detached dwellinghouses
  - The alteration of an existing vehicular access onto a classified road
  - The installation of a single septic tank for both dwellings
- (ii) **Other specified operations**
- Connection to a proposed private water supply
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#### (B) RECOMMENDATION:

That permission be Refused subject to the reasons contained in this report.

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#### (C) CONSULTATIONS:

Area Roads Mid Argyll Kintyre And Islay	26.02.2010	No objection subject to conditions.
Archaeologist	13.02.2008	No objection.
Environmental Services Mid Argyll	13.02.2008	No objection subject to condition.

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#### (D) HISTORY:

07/00132/OUT – Site for the erection of two dwellinghouses, Land at Achnadriane Farm by Tayinloan – Withdrawn 17.07.08 following instruction to do so in letter dated 28.01.08

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**(E) PUBLICITY:**

None required.

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**(F) REPRESENTATIONS:**

**(i) Representations received from:**

Iain & Kathryn Logan, Benview by Tayinloan

**(ii) Summary of issues raised:**

- Requests various conditions to be attached to any planning permission;
  - No trees on the east bank of the farm track should be cut down;
  - No development should take place until such time as the applicant has provided competent details that the proposed private water supply is acceptable;
  - That works be carried out by the applicant to protect existing buried drainage pipes and service cables;
  - That the roofs of the new dwellings be covered in slate;
  - That no works should take place until a legally binding contract with the relevant land owners is in place to allow for the required access improvements and their continued maintenance;
  - The dwellinghouses should be single storey.
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**(G) SUPPORTING INFORMATION**

**Has the application been the subject of:**

- |  |  |
|--|--|
| <b>(i) Environmental Statement:</b>  | No   |
| <b>(ii) An appropriate assessment under the Conservation (Natural Habitats) Regulations 1994:</b>  | No   |
| <b>(iii) A design or design/access statement:</b>  | No   |
| <b>(iv) A report on the impact of the proposed development eg. Retail impact, transport impact, noise impact, flood risk, drainage impact etc:</b> | Yes – A supporting statement has been submitted by the applicant. This is summarised in Section P below. |
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**(H) PLANNING OBLIGATIONS**

**Is a Section 75 agreement required:** No

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

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**(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 4 – Development in Rural Opportunity Areas  
STRAT DC 8 – Landscape and Development Control  
STRAT DC 9 – Historic Environment and Development Control

'Argyll and Bute Local Plan' 2009

LP ENV 1 – Impact on the General Environment  
LP ENV 10 – Impact on Areas of Panoramic Quality (APQs)  
LP ENV 17 – Impact on Sites of Archaeological Importance

LP HOU 1 – General Housing Development  
P/DCZ 4 – Rural Opportunity Areas – Areas And Boundaries

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.**

- Argyll & Bute Landscape Capacity Study – North and South Kintyre. Approved and Adopted 3<sup>rd</sup> February 2010.
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**(K) Is the proposal a Schedule 2 Development not requiring an Environmental Impact Assessment:** No

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**(L) Has the application been the subject of statutory pre-application consultation (PAC):** No

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**(M) Has a sustainability check list been submitted:** No

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**(N) Does the Council have an interest in the site:** No

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**(O) Requirement for a hearing (PAN41 or other):** No

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

This outline application is for the erection of two detached single storey dwellinghouses on two separate plots, sharing the same access, on land south of Achnadriane Farm, east of the A83 some 5 km north east of Tayinloan.

The application site consists of a total land area of approximately 0.35 hectares to include the existing access off the A83 plus part of the existing Achnadriane Farm access road plus both plots and the new proposed access road serving both. Each plot measures approximately 1,300 square metres (0.3 acres). Both of the proposed plots occupy relatively level platforms within a landform which is rising from west to east. Although both of the proposed plots are elevated with respect to the public road, they would be viewed, for the most part, against a backdrop of steeply rising land.

The proposed development would require improvements to the existing access onto the A83 public road including upgraded visibility splays and revised bellmouth geometry. Each house plot would also require parking and turning facilities within its curtilage. The area roads engineer has commented that the required access improvements and parking provision can be provided within the application site boundary and has no objections to the proposal subject to suspensive conditions. There is, therefore, no conflict with Local Plan policies LP TRAN 4 and LP TRAN 6.

It is proposed to serve the two new dwellings by connection to a new private water supply. The Council's head of environmental services has commented that this is acceptable subject to a planning condition requiring the applicant to commission and obtain approval of a hydrologist's report demonstrating that the proposed supply is sufficient in terms of quantity and quality to serve the proposed development.

Although the application site is within a wider area recognised as important for the potential for archaeology, the West of Scotland Archaeology Service has commented that they have no objections to this specific proposal. The development is therefore considered appropriate in terms of policies STRAT DC 9 and LP ENV 17.

The general landform is that of rising land from west to east; gradually at first to a height of approximately 50 metres above sea level and then rising steeply into the interior of Kintyre to a height of some 200 metres 1.5 km east of the application site. Some 2.5 km east of the application site the landscape changes to that of extensive upland commercial forest plantation and the land continues to rise until it attains a height of almost 250 metres. The proposed house plots are located between the 30 and 40 metre contours; the southern plot being located at a substantially lower level than the northern plot. The A83 public road is at a height of approximately 5 metres above sea level west of the application site.

The application site is located within a 'rural opportunity area' wherein the provisions of policies STRAT DC 4 and LP HOU 1 set out a general presumption in favour of 'small scale' residential development on appropriate sites and subject to access/servicing provision and compliance with other relevant provisions of the Development Plan. However, the application site also lies within an 'Area of Panoramic Quality' wherein (in order to address concerns raised by the Scottish Government Reporters during the 2008 Local Plan Public Local Inquiry) the provisions of LP HOU 1 require applications to be determined in line with The North and South Kintyre Landscape Capacity Study. The provisions of STRAT DC 8 and LP ENV 10 would seek to resist development located within or adjacent to an Area of Panoramic Quality which, by virtue of scale, location or design would have a significant adverse impact upon the character of the landscape.

Having specific regard to the Landscape Capacity Study, the application site is located within a larger area identified on the study maps as being unsuitable for development. Specifically the study identifies landscape capacity for further development in this locality to be on relatively flat areas of land close to the A83 public highway, in and around existing woodlands and re-development/expansion of existing building clusters. The study also advises that development is to be resisted on open, elevated sites, particularly where there is no existing woodland or topography to achieve a sense of place or shelter.

Having inspected the application site and immediate surrounds, it is the view of the Planning Department that there is a distinct difference in the character of the landscape between the areas identified by the North and South Kintyre Landscape Capacity Study as being potentially suitable for development and those not recommended for development in and around Achmadriane – the areas identified as having capacity for development being low lying, wooded land located between the public highway and the private access road to Achmadriane, where it runs below and parallel to a contour approx 20-25m above ordnance datum which marks the beginning of the open fields. Beyond this point the land rises steeply and consists of open, rough agricultural grazing land where development would require substantial modification of ground levels and where additional planting to mitigate the setting of the development would appear inappropriate. In view of this stark contrast in landscape character, it is the consideration of the Planning Department that the boundaries of land identified as being potentially suitable for development are clearly defined - this significantly reduces the ability of the Planning Department to be flexible in the interpretation of the guidance contained in the Landscape Capacity Study - in this particular instance it is very clear that the proposed development lies in an area of different landscape character to that identified as having capacity for additional development in the study.

In view of the above and in light of the revised policy/guidance position provided by the North and South Kintyre Landscape Capacity Study, it is the consideration of the Planning Department that the residential development of these elevated sites within the open countryside is contrary to the existing development pattern identified in the Landscape Capacity Study and as such detrimental to the landscape character of the Area of Panoramic Quality within which the application site lies. This proposal does not conform to the North and South Kintyre Landscape Capacity Study and so conflicts with policy P/DCZ 4 of the Local Plan which states that "Development proposals will be

expected to be consistent with the findings contained within completed Landscape Capacity Studies.”

In light of the above, the proposal is consequently contrary to the provisions of policies STRAT DC 4, STRAT DC 8, LP HOU 1, P/DCZ 4 and LP ENV 10.

Initially this proposal had also been the subject of objection by the Area Roads Manager who has recommended that permission be refused unless visibility and junction improvements can be secured in the interests of road safety. The Area Roads Manager has subsequently provided an undated comment which advises that since his previous consultation response the Council’s visibility standards have been reduced. Consequently, the road safety objections which have previously prevented determination of this application have now been removed subject to the imposition of suspensive planning conditions requiring the upgrade of the junction of the private road serving the development and the A83 public highway. These improvements include for an enlarged bellmouth and provision of a service lay-by; the land necessary for these improvements is included within the application site and may therefore be addressed by suspensive planning condition preventing the commencement of development until such time as the improvements are provided.

The applicant has submitted a statement in support of his application in response to the findings of the North and South Kintyre Landscape Capacity Study. This statement is reproduced and assessed below:

*“We ask in reference to the above that the following facts please be considered.*

- 1. 2006 (Summer). Mrs. Blair approached the planning department and asked for an informal visit to Achanadriane to determine if house sites were possible and if so where.*

*Mr. Tim Williams visited and advised, recommending the lower slope of the hill would be okay for two traditional style 1 1/2-storey houses. At this point the house at Tighnadrochit was not even built.*

*At no point did he mention the sites not been suitable due to settlement patterns.”*

Comment: Planning Officers have indeed previously discussed this proposal with Mr Blair - at that time it was indicated that the Planning Department was supportive of the proposals. This advice was the informal, professional opinion of planning officers based upon the provisions of the relevant policies at that time which included the now superseded Kintyre Local Plan 1984 and the emerging draft Argyll and Bute Local Plan.

*“2. We submitted our planning application on 22/01/07, Ref: 07/00132/OUT. Our nearest neighbours, Mr. and Mrs Logan of Benview not only objected they created an email link which allowed anyone anywhere in the world to object by a press of a button.”*

Comment: Any representations received by the Planning Department are a material consideration to the determination of a planning application. The method by which such comments are received and whether or not an objector orchestrates a campaign to increase the amount of representation to a

proposal is outwith the control of the Planning Department. In any event, it should be noted that, primarily, it is the issues raised in the objections rather than the overall number received which the Planning Department must consider and address in the determination, giving material weight to the issues raised as appropriate.

*“3. 2007 (Summer) – Mr. Tim Williams and Mr. Richard Kerr met with us at the Chalmers St office, and explained they were obliged to respond to all the objectors and as that would take up an enormous amount of time and the sites had already taken up a disproportionate amount of time due to Mr. & Mrs Logan, they suggested we move the sites.*

*Mr. Tim Williams informed us he would go back to the neighbours saying we would move them if they didn't object. To accommodate the planners we agreed and discussed at some length where would be the most appropriate part of the field to move them to.*

*At no point did either Mr. Tim Williams or Mr. Richard Kerr indicate that sites in the field were unacceptable and at no point did they mention settlement patterns.*

*This decision cost us dearly when a prospective buyer for Achanadriane withdrew their offer, as they were not happy with the sites being moved.”*

Comment: The original application attracted some 40+ representations and as such the determination of the application would be undertaken by the MAKI Area Committee and in all likelihood, given the volume of objection, a discretionary public hearing – in the event that the application was successful it would also have been necessary, at that time, to complete a S75 planning agreement to secure visibility and junction improvements. It is my understanding at this time that the applicant expressed his concern at the time which had already been taken to process the application and was apprised of his options which essentially consisted of i) determine the original application (as above); ii) withdraw the original application and apply for an amended site which hopefully would not attract objection and could be determined under delegated powers with a S75 agreement.

The decision to withdraw the application and resubmit an amended proposal was entirely at the discretion of the applicant and was not undertaken to address any specific concern raised by the Planning Department in respect of the details of the original application. It is however agreed that the submission of an amended application was anticipated to provide an easier determination process for all parties concerned. Again, the advice offered by planning officers at this time was based upon the relevant policies and guidance available to them.

*“4. We re-submitted our plans on 28/01/08, Ref: 08/00231/OUT - It then became apparent the road access was a problem at the time but this has since been resolved due to a change in visibility display requirements.”*

Comment: As of 29.02.08 it had become apparent that the applicant was unable to obtain a S75 agreement to secure visibility and junction improvements necessary to address the Area Roads Manager's initial objection to the proposal. Subsequently, the Council's visibility standards have

been reduced and the existing visibility available at the junction is acceptable; however, the Area Roads Manager is still advising that junction improvements are necessary to accommodate additional vehicular movements at this location in the interests of road safety – whilst these improvements involve land in the ownership of third parties it has been confirmed that the improved junction and lay-by could be accommodated within the application site boundary edged red (with the relevant land owners notified of their interest in the application site) and may therefore be addressed by way of a suspensive planning condition. It is noted however that a grant of planning permission would not override other matters of civil law; in the event that the applicant is unable to implement the required improvements because of land ownership issues then the provisions of the condition would prevent any development commencing on site.

*“5. August 2008 - We received a letter from Mr. Richard Kerr informing us that our planning application had not only been put on hold until the completion of the Landscape Capacity Study, but the criteria had changed for sites falling within an ‘ROA’ which lie within a designated Area of Panoramic Quality, which ours did.*

*So we patiently waited - a further 1 1/2 years or so.*

*At no point during this period did anyone from the planning department indicate to us that the sites were not acceptable and did not fit in with settlement patterns.”*

Comment: The recommendations of the Local Plan Inquiry Reporters included for the deletion of all ROAs which were located within Areas of Panoramic Quality (as is the case in this instance) and National Scenic Areas – this in effect would have resulted in this site and all other such ROAs being amended to ‘sensitive countryside’ wherein there is a presumption against all development in the open countryside. In view of the uncertainty as to the status of ROAs, the Planning Department took the view that the determination of applications in the affected ROAs would be premature to the development plan process until such time as the Council had provided its response to the Reporters recommendations. The Council duly provided its response to the Reporters recommendations in Nov. 2008 by classifying all ROA within APQ/NSA designations as ‘sensitive countryside’ until such time as a Landscape Capacity Study had been prepared – the policy provisions of P/DCZ4 and LP HOU 4 in the Local Plan were also amended to require new development to be consistent with the Landscape Capacity Study. The North and South Kintyre Landscape Capacity Study was approved by Members on 3<sup>rd</sup> February 2010 and it is only subsequent to this point that the Planning Department has been in a position to consider determination of the affected applications. Whilst I can appreciate the applicant’s disappointment at a delay in excess of 18 months it must be noted that the events which have unfolded in the Local Plan preparation process meant that it was not possible for the case officers processing this application either to predict or avoid the consequences of these events.

*“6. 23<sup>rd</sup> February 2010 – Mr. Peter Bain and Mr. Adrian Jackson-Stark meet with Mr. Blair at Achanadriane. After looking at the sites they feel they do not fit in with settlement patterns.*

*This is despite the lower site being situated next to a house at*



*Tighnadrochit with Benview situated below, and Achanadriane located to the north/east.”*

Comment: For the purpose of clarity it is noted that the application site is located at a substantially higher level than that of Tighnadrochit which sits in a sheltered bowl and is encompassed by a woodland setting.

*“This is despite the Landscape survey allowing for possible development next to Benview and in the field to the left of Benview which though it has a native woodland it also has a clearly visible open field behind it. Both these areas are directly beside the main road.”*

Comment: The lower site is indeed provided a modest backdrop of gorse and scrub woodland which is of substantially lower quality and visual impact within the wider landscape setting than the more mature woodland at lower levels adjacent to the public highway and adjacent to the watercourse to the south. It is however the consideration of the Planning Department even with additional landscape planting this plot could not be readily assimilated into the landscape character of the adjoining area identified as having capacity for further development.

*“The sites in our field are not visible from anywhere on the main road due to the native woodland (which is not yet fully mature) below us and to the left of our track.”*

Comment: This is correct. Views of the application site from the A83 public highway would be well screened by roadside vegetation; it is however noted that development at this location would be visible within the context of an open field when viewed from the coast to the west. It is also noted that the recommendations contained within the Landscape Capacity Study are not solely based upon the visual impact of development but also have regard to the potential impact of development upon the key features of the landscape and, the sensitivity of the landscape to change. In this respect the study expresses a requirement to restrict new development at Achnadriane to lower lying land where development can be accommodated within a woodland setting. The study recommends against development upon the elevated, open slopes. The landscape character of the application site and the entirety of the applicant's landholding falls within the latter category. The transition in landscape character is clearly defined by the private road serving Achnadriane and a small incursion east along the river course at a similar level – The application site lies beyond this point and it is the view of the Planning Department that it is not possible to consider the proposal as being consistent with the guidance contained in the Landscape Capacity Study. The proposal is therefore contrary to the provisions of policies P/DCZ 4, LP HOU 4, STRAT DC 8 and LP ENV 10.

*“Both our sites are situated in what was an ROA when we submitted our plans. The higher site is situated in line with Achnadriane and as far to the side of the field as possible without going into what was originally a sensitive area.”*

Comment: This is correct having regard to the approximate set back distance from the public highway. However, the upper site is located at significantly higher level in the landscape than Achnadriane. The upper site is an open site on a convex slope, exposed to its immediate surrounds on all sides and is not

nestled within the wider landscape setting in the same sheltered manner that the grouping of buildings at Achnadriane are accommodated.

The outcome of the Local Plan Inquiry Reporters recommendation was to question the disposition of ROAs within scenic designations – i.e. to raise the question whether it was actually appropriate to promote development within these areas without first having assessed the capacity of the landscape in detail to acceptably accommodate such change. Previously when officers have provided advice they have done so on the basis that a presumption in favour of small scale residential development exists within the ROA and that the boundary between the ROA and sensitive countryside was based upon an informed assessment of landscape capacity. The Local Plan Public Inquiry Reporter queried the methodology which had been employed by the Council in the designation of ROAs in the Local Plan, at which point it was disclosed that the designation of the ROA boundaries was not informed by a detailed assessment of landscape capacity to accommodate new development and to which the Reporter raised serious concern as to whether it was acceptable to promote new development within scenic designations without first having carried out a detailed landscape capacity assessment. In effect the Landscape Capacity Study identifies more limited areas of capacity for new development within the ROAs which were originally intended by the Council to be a larger area of search.

*“In conclusion we feel we have tried to work with the planning department seeking and following their advice from the very beginning but it is impossible to keep up when the goal posts keep changing. Our sites complied with the original criteria and if they had not I can only assume the planners would have advised us otherwise at the time.*

*As we understand it the Landscape study it is not a stand-alone document and its recommendations are as yet not laid in stone but open for feedback. This would allow the planning department scope for considering the merits of individual representations.*

*Taking into consideration the length of time this process has taken, the fact the sites are not visible but screened from the road, the fact that the lower site is next to an existing house and the fact that a traditional one storey stone clad house on the higher site could be easily absorbed into the landscape, particularly as to the east is a stone dyke, to the south gorse bushes and a burn - landscape traditionally chosen for the siting of croft houses.*

*If we are to keep rural areas alive and our rural schools open then rural housing is desperately needed to attract families to the area. Our own situation is having brought our own family up here we wish to continue to live and work in the area. When our financial difficulties forced us to sell Achnadriane along with three acres of land, we were led to believe we would be able to build and live in a new home in our field where we intended to create a small holding. The alternative is we will be forced to move away. Is Kintyre to see another round of ‘clearances’ as locals are forced to move away due to the lack of affordable housing making room for only the wealthy and the retired?”*

Comment: Mr. Blair is correct. Effectively the goal posts have moved whilst the application has been processed. The change in circumstances has entirely

been outwith the control of planning officers who have been required to amend their assessment of the acceptability of the proposal in line with the evolving policy position of the Argyll and Bute Local Plan and associated technical guidance. Mr. Blair is also correct in stating that landscape capacity is only part of the planning assessment which requires to be undertaken. – However, in this respect regard is had to the provisions of the Government’s Scottish Planning Policy (SPP) which sets out that planning decisions must be made in accordance with the Development Plan unless material considerations indicate otherwise. Material considerations should be related to the development and the use of the land. Whilst there is a degree of sympathy for Mr. Blair’s position, it is the view of the Planning Department that (i) his personal financial circumstances, (ii) the fact that he has been the subject of a lengthy delay in the processing of his application and, (iii) earlier provision of informal advice from officers which now conflicts with the current policy/guidance position of the Council are not related either to the nature of the impact of the proposed development or the use of the land and, as such, are not sufficient justification to set aside the provisions of an approved and adopted Development Plan – it should also be noted that prior to finalising its decision, the Planning Department has taken the time to revisit the site to reassess the development in light of the Local Capacity Study and establish whether or not the boundaries of the Landscape Capacity Study were ambiguous or flexible in any way which would have allowed consideration of development within the ‘red’ area, and have also ascertained the extent of Mr. Blair’s landholding to identify if alternative development opportunities existed.

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

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**(R) Reasons why Planning Permission or Planning Permission in Principle Should be Refused:**

It is the consideration of the Planning Department that the residential development of these elevated sites within the open countryside is contrary to the recommendations of the North and South Kintyre Landscape Capacity Study and as such would be detrimental to the landscape character of the Area of Panoramic Quality within which the application site lies. This proposal does not conform to the North and South Kintyre Landscape Capacity Study and so conflicts with policy P/DCZ 4 of the Local Plan which states that “Development proposals will be expected to be consistent with the findings contained within completed Landscape Capacity Studies.”

In light of the above, the proposal is consequently considered contrary to the provisions of Development Plan policies STRAT DC 4, STRAT DC 8, LP HOU 1, P/DCZ 4 and LP ENV 10.

---

**(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**

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**Author of Report:** Tim Williams

**Date:** 3<sup>rd</sup> March 2010

**Reviewing Officer:**

**Date:** 10<sup>th</sup> March 2010

A handwritten signature in black ink, appearing to read 'A. Gilmour', is positioned between the 'Reviewing Officer' label and the name 'Angus Gilmour'.

**Angus Gilmour**  
**Head of Planning**

## **REFUSAL REASONS RELATIVE TO APPLICATION REF. NO. 08/00231/OUT**

1. It is the consideration of the Planning Department that the residential development of these elevated sites within the open countryside is contrary to the recommendations of the North and South Kintyre Landscape Capacity Study and as such would be detrimental to the landscape character of the Area of Panoramic Quality within which the application site lies. This proposal does not conform to the North and South Kintyre Landscape Capacity Study and so conflicts with policy P/DCZ 4 of the Local Plan which states that "Development proposals will be expected to be consistent with the findings contained within completed Landscape Capacity Studies."

In light of the above, the proposal is consequently considered contrary to the provisions of policies STRAT DC 4, STRAT DC 8, LP HOU 1, P/DCZ 4 and LP ENV 10.

## APPENDIX TO DECISION APPROVAL NOTICE

Appendix relative to application **08/00231/OUT**

- (A) Has the application required an obligation under Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended): **No**

**If Yes: The terms of the Section 75 obligation may be viewed on the Council's website at [www.argyll-bute.gov.uk](http://www.argyll-bute.gov.uk) by recalling the application reference number on the Council's Public Access Module and then by "Clicking" Section 75 Obligation under the attached correspondence or by viewing the Public Planning register located at Planning Services, Dalriada House, Lochgilphead, Argyll, PA31 8ST.**

- (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) The reason why planning permission has been refused:

**It is the consideration of the Planning Department that the residential development of these elevated sites within the open countryside is contrary to the recommendations of the North and South Kintyre Landscape Capacity Study and as such would be detrimental to the landscape character of the Area of Panoramic Quality within which the application site lies. This proposal does not conform to the North and South Kintyre Landscape Capacity Study and so conflicts with policy P/DCZ 4 of the Local Plan which states that "Development proposals will be expected to be consistent with the findings contained within completed Landscape Capacity Studies."**

**In light of the above, the proposal is consequently considered contrary to the provisions of policies STRAT DC 4, STRAT DC 8, LP HOU 1, P/DCZ 4 and LP ENV 10.**

## Appendix 2 – Statutory and other Consultee Comments

### Other Consultees:

- **Argyll and Bute Council – Area Roads 3<sup>rd</sup> March 2010**

Operational Services - Roads and Amenity Services  
**OBSERVATIONS ON PLANNING APPLICATION**

Grid Reference 171874 650663 Dated

Applicant Mr + Mrs James Blair  
Proposed Development Site for the erection of two dwellinghouses  
Location Land South of Achnadrane Farm Tayinloan  
Type of consent Outline Permission  
Drawing Refs.

Application No. **08 00231 OUT**  
Contact James Ross  
Tel. 01546-604655  
Received 07/02/2008  
Return By Date 26/02/2008

Call By Date  
District Kintyre

#### **Recommendation**

**No objection subject to conditions**

#### Comments

#### **REVISED COMMENTS SENT 11/3/10**

- 1. This application has been assessed along with planning application ref 07/00267/OUT. Any further development will require the private access to be brought up to adoptable standard.**
- 2. The applicant can carry out the junction improvements within the site edged red.**
- 3. The visibility standards have been reduced and new standard details produced, since the original application was submitted.**

#### **ORIGINAL COMMENTS**

***This application is being refused for the following reasons.***

- 1. The land required for the visibility splay to the south is outwith the applicants control.**
- 2. The land required for the improvements to the connection to the public road is outwith the applicants control.**

#### Conditions/Reasons for refusal/deferment

#### **REVISED CONDITIONS SENT 11/3/10**

- 1. Connection to the A83 Tarbert - Campbeltown road, 160 x 2.4 x 1.05 metres.**
- 2. Connection to the A83 Tarbert - Campbeltown road, to be constructed as per standard detail drawing ref SD 08/002 Rev a & SD 008/006 Rev a. Minimum access width 5.50 metres.**
- 3. The improvements to the existing access must be fully implemented prior to any construction work taking place..**
- 4. The improvements to the existing access must be inspected and approved in writing by the Roads & Amenity Services, prior to any construction work taking place.**
- 5. Connection to the private road, 25 x 2.00 x 1.05 metres.**
- 6. Connection to the private road, SD 08/002 Rev a. No requirement to surface.**
- 7. Turning and parking for 2 vehicles per dwelling, within each site.**

#### **ORIGINAL REASON FOR REFUSAL**

***This application is being refused for the following reasons.***

1. The land required for the visibility splay to the south is outwith the applicants control.
2. The land required for the improvements to the connection to the public road is outwith the applicants control.

The conditions relating to this application are as follows.

1. Connection to the A83 Tarbert - Campbeltown road, CO1002 - 215 x 2.5 x 1.05 metres.
2. Connection to the A83 Tarbert - Campbeltown road, CO1003 - TM197 & G300.
3. Connection to the A83 Tarbert - Campbeltown road, CO1006.
4. Connection to the private road, CO1002 - 20 x 2.00 x 1.05 metres.
5. Connection to the private road, G187C, no requirement to surface.
6. Connection to the private road, CO1006.

11 March 2010

Copies to : Planning

Maint

File

Page 1 of 2

7. CO1011 - Turning and parking for 2 vehicles per site.

**Notes for Intimation to Applicant**

- |                                  |                     |
|----------------------------------|---------------------|
| (i) Construction Consent(S21)*   | <b>Not Required</b> |
| (ii) Road Bond (S17)*            | <b>Not Required</b> |
| (iii) Road Opening Permit (S56)* | <b>Required</b>     |
| (iv) No surface water discharge* | <b>Required</b>     |

\*Relevant Section of the Roads(Scotland) Act 1984

Signed:	J. Ross	Date	03/03/2008	ID	2320
		Actual Return Date	03/03/2008	Replied	



- **West of Scotland Archaeology – 13<sup>th</sup> February 2008**

Our ref: 7/3/4 Con 17673

Your Ref: 08/00231/OUT  
WoSASdoc: 08.00185doc.  
Date: 11 February 2008  
Contact: Pat Harvie  
Direct dial: 0141 287 8330



**Development Services  
Argyll and Bute Council  
67 Chalmers Street  
Ardishaig**

20 India Street, Glasgow G2 4PF  
Tel: 0141 287 8332-5  
Fax: 0141 287 9529  
enquiries@wosas.glasgow.gov.uk

**PA30 8DX**

Dear Sir

**Archaeological Consultation on Planning Applications: No Archaeological Issue Raised**

No known archaeological issue is raised by the undernoted planning application(s), sent recently to the West of Scotland Archaeology Service for comment:

**08/00231/ OUT      Site for erection of two dwelling houses - land south of  
Achnadriane Farm, Taynuilt**

Thank you for requesting our comments.

Yours faithfully

A handwritten signature in cursive script, appearing to read "Pat Harvie".

West of Scotland Archaeology Service

- Argyll and Bute Council – Area Environmental Health Manager –  
13<sup>th</sup> February 2008

Argyll and Bute Council  
Comhairle Earra Ghàidheal agus Bhòid

RECEIVED  
13 FEB 2008



# Memorandum

<b>Legal &amp; Protective Services</b>	<b>Date:</b> 12/02/2008
<b>To:</b> Development Services 67 Chalmers Street, Ardrishaig	
<b>Attn:</b> Tim Williams	<b>Our Ref:</b> PM/
<b>From:</b> Patrick Mackie, Area Environmental Health Manager	<b>Extension:</b> 4780

**Planning Application No: 08/00231/OUT**  
**Site for the erection of two dwellinghouses**  
**Land South of Achnadiane Farm, Tayinloan, Tarbert, PA29 6XG**

I refer to your consultation dated 5th February 2008.

This application proposes to utilise a new private water supply.

Should permission be granted, I recommend the inclusion of the following standard planning condition:

**C31001 – Water Details to Specification**

Prior to the development commencing a full appraisal to demonstrate the wholesomeness and sufficiency of the private water supply to serve the development shall be submitted to and approved in writing by the Planning Authority. This assessment shall be carried out by a qualified and competent person(s). Such appraisal shall include a risk assessment having regard to the requirements of Schedule 4 of the Private Water Supplies (Scotland) Regulations 2006 and shall on the basis of such risk assessment specify the means by which a wholesome and sufficient water supply shall be provided and thereafter maintained to the development. Such appraisal shall also demonstrate that the wholesomeness and sufficiency of any other supply in the vicinity of the development, or any other person utilising the same source or supply, shall not be compromised by the proposed development. Furthermore, the development itself shall not be brought into use or occupied until the required supply has been installed in accordance with the agreed specification.

*Reason: In the interests of public health and in order to ensure that an adequate private water supply in terms of both wholesomeness and sufficiency can be provided to meet the requirements of the proposed development and without compromising the interests of other users of the same or nearby private water supplies*

Patrick Mackie  
**Area Environmental Health Manager**  
**Mid-Argyll, Kintyre & The Islands**

- **Appendix 3 – Third Party Representation**

**One letter of representation received from the Iain & Kathryn Logan, Benview, by Tayinloan – by e-mail**

**From:** *E-mail address redacted*  
**Sent:** 16 February 2008 11:06  
**To:** Williams, Tim  
**Cc:** Kerr, Richard  
**Subject:** Achanadriane - ref 08/00231/OUT

Dear Mr Williams

**Achanadriane - ref 08/00231/OUT**

We would request that the following conditions should apply to any planning consent given to the above application:

**1 No trees on the east bank of the farm track should be cut down.**

**Justification:** The trees help screen the proposed developments from the A83, Benview Garden and the foreshore - including the Kintyre Way and stabilise what is a very wet, steep bank.

**2 No development should take place until such time as the applicant has provided written documentation from a competent person demonstrating that the proposed water supply is capable of providing a viable, perennial water supply of adequate volume and quality and that such works will not contaminate or interfere with existing water supplies and water courses.**

**Justification:** To comply with current legislation. It is also believed that ownership of the field, in which the two properties are to be built, does not carry a legal right to use any of the existing domestic water sources or to extract water from the burn. The only available option to getting water to the properties would seem to be by bore holes.

**3 Where the widened track and bellmouth extend it over existing buried drainage pipes, telephone cables and electricity cables, conduit of sufficient strength or other suitable protection should be used to protect them.**

**Justification:** Protection of utilities from traffic.

**4 The roofs of the new houses should be covered in slate.**

**Justification:** To match the traditional roofing material used in surrounding properties.

**5 No development should take place until a legally binding contract, with the relevant land owners, is in place that will allow the applicants to form the necessary visibility splays over the A83, and for their continued maintenance, and the formation of the regulation bellmouth at the junction of the access road with the A83.**

**Justification:** Road safety.

**6 The dwelling houses should be single storey.**

**Justification:** To minimise their visual impact from the A83, Benview Garden and the foreshore - including the Kintyre Way.

Yours sincerely

Iain and Kathryn Logan