

From: John Campbell QC [jcampbellqc@oraclechambers.com]
Sent: 19 July 2010 06:19
To: Stewart, Melissa
Subject: Re: 10/0009/LRB

Dear Ms Stewart

Local review No 10/0009/LRB
James and Veronica Blair
Achanadriane, Tayinloan, Argyll

I refer to previous correspondence in connection with this application for Review. In relation to this matter, thank you very much for your assistance so far. I had hoped that it would be possible to process this matter without engaging further professional assistance, culminating in a short Hearing.

It seems now, in light of the assertions by Mr Iain and Mrs Kathryn Logan, and from the Planning Officer's formal response, that it would be very desirable to have a landscape architect look at the Review papers with a view to preparing a short submission for the review Board. In essence, the Landscape Study, with its coloured zones, is being treated as prescriptive by the Planning Department. That is their job, and I make no criticism of it. But the rules themselves are not exclusive, as you can see from the terms of the Review - they allow for discretion, and the sites chosen are carefully chosen so as to minimise visibility both of and from the houses.

It will take a week or two to get a report from a landscape architect which I can place before the Review Board. While I would not want to hold up progress, may I request that you continue the matter for 28 days while I get my report, which of course I will forward on to you as soon as it is available.

To economise on communications, I will use the opportunity of this letter to comment briefly on the submissions of the Planning Authority, and of Mr Iain Logan.

The Planning Authority

It is acknowledged (and agreed by the appellant) that the review should be decided in accordance with s. 25 of the Town and Country Planning (S) Act 1997, as amended.

Policies STRAT DC 4 and LP HOU 1 support this application. Under LP ENV 10 and the policies from which it is derived, the test of acceptability is one of *significant adverse impact*. That too is acknowledged. By reference to the red areas in the Landscape Capacity Study (LCS) the test is as follows •

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.

The sites now proposed are not on open land; they are sheltered; they are not on higher open pastures; they are not 'highly visible'; and if required, localised planting *would* be appropriate.

The appellant acknowledges the terms of the Planning Officer's report of Handling, but that was written without proper representations being made, and a Hearing is therefore now requested. The appellant could present his case in 15 minutes.

For the avoidance of doubt, there is no reliance now on advice previously given by Council officers that this application would be acceptable. The appellant understands that the policy, and therefore the advice, has changed. The previous advice was given, but is no longer acknowledged by the Council. So be it.

The Planning Officer's assessment states that it is 'surmised' that there has been no assessment of the effect of the development. That is NOT the case. The Report of Handling (ROH) speaks for itself. This appeal is brought on the basis that the decision under Review has at no time identified the *significant adverse impact* which is required by the policy. Even now, with the Planning Officer's observations to hand, all that his text says is that visibility of the sites is limited but not hidden from view (I agree).

There is no requirement that sites be 'hidden from view'. The pattern is of a dispersed settlement along the coast. What is required *by policy* is that any *significant* adverse impact be identified. **Yet there is no assessment of significance.** Until the policy is properly applied, its requirements have not been fulfilled, and with respect, the appellant continues to be aggrieved at the blanket application of a LCS which does not cater properly for the circumstances of these sites and does not do what it is supposed to do, which is to look carefully at their individual circumstances.

This passage (from the Planning Officer's report

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.

is refuted. This is absolutely not an assessment of significance. How, in one short question, do the proposals impact upon the APQ significantly? We are not told. A view from the sea (if it exists) is not the same as saying that there is a *significant* adverse impact on an Area of Panoramic Quality.

Iain Logan and Mrs Kathryn Logan

The appellant respects the points of view of Mr and Mrs Logan. Change is anathema to them, and their garden is an excellent creation, and well maintained. However, if development is permitted by policy, and that policy is to be seen to have content and meaning, then the planning system cannot be used to protect what are purely private interests. The proposed development is capable of being constructed without infringing on the public interest and without infringing on the private circumstances and interest of Mr and Mrs Logan. Any temporary inconvenience from construction will only be temporary, but is a consequence of any planning permission being granted.

The Review Board is respectfully asked to consider, but to reject Mr and Mrs Logan's submissions.

In all these circumstances, the review Board is once again asked to grant the appeal. Since I have requested time for a landscape architect's report, I would ask if you can continue the matter for 28 days for that purpose, before returning to the question of whether or not there should be a Hearing.

Yours sincerely

John Campbell



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