

STATEMENT OF CASE

FOR

**ARGYLL AND BUTE COUNCIL
LOCAL REVIEW BODY**

**REFUSAL OF PLANNING PERMISSION FOR
ERECTION OF CONSERVATORY AT ARLDALE, 6
WESTERN ROAD, TOBERMORY, ISLE OF MULL**

**PLANNING PERMISSION REFERENCE NUMBER
10/00225/PP**

29 OCTOBER 2010

STATEMENT OF CASE

The Planning Authority is Argyll and Bute Council ('the Council'). The appellant is Peter Dugdale ('the appellant').

Retrospective Planning Permission Reference Number 10/00225/PP for erection of a conservatory to the rear elevation of Ardale, 6 Western Road, Tobermory, Isle of Mull ('the appeal site') was refused under delegated powers on 4 August 2010.

The planning application has been appealed and is subject of referral to a Local Review Body.

DESCRIPTION OF SITE

The property is situated within a cul de sac development of eight similarly designed detached dwellinghouses on Western Road, Tobermory, Isle of Mull.

The property already has a conservatory on this elevation accessed off from a self-contained 'granny flat'. The conservatory subject of this application is to be built over an existing patio area which is set at a higher level than the existing conservatory. The conservatory will project above the eaves of the dwellinghouse and will have direct views into the rear garden of the neighbouring property of 'Trewince'. Furthermore, given the elevated position of the conservatory, it will be prominent when viewed from outwith the site and its immediate vicinity.

SITE HISTORY

None relevant

STATUTORY BASIS ON WHICH THE APPEAL SHOULD BE DECIDED

Section 25 of the Town & Country Planning (Scotland) Act 1997 provides that where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise. This is the test for this application.

STATEMENT OF CASE

Argyll and Bute Council considers the determining issues in relation to the case are as follows:-

- Whether or not the conservatory is likely to give cause to a significant loss of amenity to existing residential development.

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.

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. 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 any public representation, it is not considered that a Hearing is required.

COMMENT ON APPELLANTS' SUBMISSION

The appellant contends that the conservatory should have been considered under Permitted Development rights in terms of Class 1 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 as the floor area is 12 square metres and this taken with the floor area of the existing conservatory 9 square metres gives a total of 21 square metres which falls below the permitted 24 square metres or 30% of the floor area of the existing floor area of the dwellinghouse.

However, the conservatory has two floors which gives a floor area of 24 square metres, and this taken with the existing conservatory of 9 square metres gives an overall total of 33 square metres.

Class 1 of the above mentioned Order allows a dwellinghouse to be extended by up to 24 square metres or 20% of the floor area of the dwellinghouse, whichever is the greater and in any case by no more than 30 square metres.

As the floor area of the extension results in the total area of extensions to the dwellinghouse exceeding 30 square metres, planning permission is required.

The proposal was refused as contrary to Policies LP ENV 1, LP ENV 19 and LP HOU 5 and to the design principles set out in Appendix A of the adopted Argyll and Bute Local Plan as the proposed conservatory would have a materially adverse impact upon the privacy of the occupiers of adjoining property to the detriment of residential amenity.

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 proposal involves the erection of a conservatory elevated above the existing adjacent conservatory, which by virtue of its projection from the rear of the existing building, its elevation and its all round glazing, introduces a habitable space, which in view of its height, position and construction, will exert a commanding influence over land to the rear of the dwelling in particular, the garden ground of 'Trewince' to the rear. In view of the elevated vantage point which this conservatory would provide, it would not be possible or appropriate to secure the interests of residential amenity by means of fencing, other boundary treatment or obscure glazing and therefore it would not be an option to permit the development subject to conditions seeking to

address the otherwise inappropriate relationship between properties. The proposed conservatory would have a materially adverse impact upon the privacy of the occupiers of adjoining property to the detriment of residential amenity.

Therefore the proposal is contrary to the provisions of Policies LP ENV 1, LP ENV 19 and LP HOU 5 and to the design principles set out in Appendix A of the adopted Argyll and Bute Local Plan.

Taking account of the above, it is respectfully requested that the application for review be dismissed.

APPENDIX 1

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: 10/00225/PP

Planning Hierarchy: Local Development

Applicant: Mr Pete Dugdale

Proposal: Erection of Conservatory (Retrospective)

Site Address: Arldale, 6 Western Road, Tobermory, Isle of Mull

DECISION ROUTE

Section 43 (A) of the Town and Country Planning (Scotland) Act 1997 (as amended)

(A) THE APPLICATION

(i) Development Requiring Express Planning Permission

- Erection of conservatory (retrospective)
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(B) RECOMMENDATION:

It is recommended that Planning Permission be refused for the reasons appended to this report.

(C) HISTORY:

05/00074/COU

Change of use of garage to dwellinghouse – awaiting Section 75 Agreement

(D) CONSULTATIONS:

N/A

(E) PUBLICITY:

The proposal has been advertised in terms of Regulation 20 procedures, closing date 18/03/10.

(F) REPRESENTATIONS:

No representations have been received regarding the proposed development.

(G) SUPPORTING INFORMATION

Has the application been the subject of:

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| (i) | Environmental Statement: | No |
| (ii) | An appropriate assessment under the Conservation (Natural Habitats) Regulations 1994: | No |
| (iii) | A design or design/access statement: | No |
| (iv) | A report on the impact of the proposed development e.g. retail impact, transport impact, noise impact, flood risk, drainage impact etc: | No |
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(H) PLANNING OBLIGATIONS

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| (i) | 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 1 – Development within the Settlements

Argyll and Bute Local Plan 2009

LP ENV 1 – Impact on the General Environment

LP ENV 19 – Development Setting, Layout and Design

LP HOU 5 – House Extensions

Appendix A – Sustainable Siting and Design Principles

(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 Sustainable Design Guidance (2006)

The Town & Country Planning Act (Scotland) 1997

The Planning etc. (Scotland) Act, 2006

Scottish Planning Policy (SPP), 2010

(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

The application site is situated within the settlement boundary of Tobermory as defined in the adopted Argyll and Bute Local Plan and within which Policies LP ENV 1, LP ENV 19, LP HOU 5 and Appendix A are applicable in the consideration of the proposal.

Retrospective planning permission is sought for the erection of a conservatory to the rear elevation of the property which is situated within a cul de sac development of eight similarly designed detached dwellinghouses on Western Road, Tobermory, Isle of Mull.

The property already has a conservatory on this elevation accessed off from a self-contained 'granny flat'. The conservatory subject of this application is to be built over an existing patio area which is set at a higher level than the existing conservatory. The conservatory will project above the eaves of the dwellinghouse and will have direct views into the rear garden of the neighbouring property of 'Trewince'. Furthermore, given the elevated position of the conservatory, it will be prominent when viewed from outwith the site and its immediate vicinity.

Whilst the conservatory is on the rear elevation of the dwellinghouse, it is considered that its elevation is inappropriate in terms of the character and appearance of the existing dwellinghouse. Furthermore it is considered that the proposed conservatory would be materially harmful to the privacy and amenities of the occupiers of the neighbouring dwellinghouse. The proposed conservatory could lead to an unacceptable loss of privacy by virtue of its elevated position which introduces habitable space in a location which is prejudicial to the residential amenity of adjoining property.

The former patio area was in an elevated position, but being open to the elements this would only be reasonably expected to be used on occasional basis. The formation of a permanent habitable room over this patio area in an elevated position results in the occupiers having an elevated and unobstructed view over the private rear garden of the neighbouring dwellinghouse, giving rise to an unacceptable loss of privacy for the occupants.

Whilst the application has not been the subject of any public objection, the Council must be mindful of the need to protect and preserve the residential amenity and privacy of future occupiers of existing dwellinghouses as well as those of their current occupiers.

Local Plan Policy LP ENV 1, Development Impact on the General Environment, states that all development should protect, restore or, where possible, enhance the established character of the landscape in terms of its location, scale, form and design and that the Council will resist development proposals which do not take proper account of layout, design, external appearance, density and privacy of existing and proposed developments.

Similarly, Policy LP ENV 19, Development Setting, Layout and Design, requires developers and their agents to produce and execute a high standard of appropriate design in accordance with the design principles set out in Appendix A of the Local Plan, and that new development shall be sited and positioned to pay regard to the context in which it is located. Developments with poor quality or inappropriate layouts or densities, including over-development and over-shadowing of sites shall be resisted.

Appendix A of the Local Plan referred to above states at Paragraph 8.2 *"Alterations and extensions should be in scale and designed to reflect the character of the original dwellinghouse or building, so that the appearance of the building and the amenity of the surrounding area are not adversely affected. Approval will not be granted where the siting and scale of the extension significantly affects the amenity enjoyed by the occupants of adjoining properties, taking into account sunlight, daylight and privacy"*.

The design principles of Appendix A are encapsulated by Local Plan Policy LP HOU 5, House Extensions, which supports extensions to residential properties, but only in circumstances where they cause no significant detriment to the building, the

neighbours or the immediate vicinity. Appendix A sets out specific design requirements, including that extensions should not dominate the original building by way of size, scale proportion or design; and that extensions should not have a significant adverse impact on the privacy of neighbours.

The elevation and design of the proposed conservatory is considered inappropriate and unacceptable, impinging unnecessarily upon the amenity and privacy of the adjoining property of 'Trewince'.

The proposal is therefore considered to be contrary to Policies LP ENV 1, LP ENV 19, LP HOU 5 and to the design principles set out in Appendix A of the adopted Argyll and Bute Local Plan.

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

(R) Reasons why planning permission should be refused.

The proposal is contrary to Development Plan policy for the reason for refusal recommended below.

(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: Fiona Scott Date: 10/07/10

Reviewing Officer: Richard Kerr  **Date: 13.07/10**

**Angus Gilmour
Head of Planning**

REASONS FOR REFUSAL RELATIVE TO APPLICATION REFERENCE 10/00225/PP

1. The proposal involves the erection of a conservatory significantly elevated from the existing adjacent conservatory, which by virtue of its projection from the rear of the existing building, its elevation and its all round glazing, will introduce an area of habitable space, which in view of its height, position and construction, will exert a commanding influence over land to the rear of the dwelling, including in particular, the garden ground of 'Trewince' to the rear. In view of the elevated vantage point which this conservatory would provide, it would not be possible or appropriate to secure the interests of residential amenity by means of fencing, other boundary treatment or obscure glazing and therefore it would not be an option to permit the development subject to conditions seeking to address the otherwise inappropriate relationship between properties. The proposed conservatory would have a materially adverse impact upon the privacy of the occupiers of adjoining property to the detriment of residential amenity.

The proposal is therefore considered to be contrary to Policies LP ENV 1, LP ENV 19, LP HOU 5 and to the design principles set out in Appendix A of the adopted Argyll and Bute Local Plan.

APPENDIX TO DECISION REFUSAL NOTICE

Appendix relative to application **10/00225/PP**

- (A) Has the application been the subject of any non-material amendment in terms of Section 32A of the Town and Country Planning (Scotland) Act 1997 (as amended) to the initial submitted plans during its processing.

No

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

The proposal is contrary to Development Plan policy for the reason for refusal appended to this decision notice.