

STATEMENT OF CASE

FOR

**ARGYLL AND BUTE COUNCIL
LOCAL REVIEW BODY**

**GRANT OF PLANNING PERMISSION SUBJECT TO CONDITIONS FOR
ERECTION OF DWELLINGHOUSE TO REPLACE CHALET TYPE HOUSE,
7 GLEN HOUSES, DERVAIG, ISLE OF MULL**

PLANNING PERMISSION REFERENCE NUMBER 10/01468/PP

30 DECEMBER 2010

STATEMENT OF CASE

The Planning Authority is Argyll and Bute Council ('the Council'). The appellant is Ms E Nailene & Mr A Morrison ('the appellants'), with Norscot Joinery Ltd acting as the appellant's agent.

Planning Permission Reference Number 10/01468/PP for the erection of a dwellinghouse to replace an existing chalet type house, 7 Glen Houses, Dervaig, Isle of Mull ("the appeal site") was granted subject to conditions under delegated powers on 28 October 2010.

Planning condition 5, relating to an access upgrade and visibility clearance, is the subject of referral to a Local Review Body.

DESCRIPTION OF SITE

The site is currently occupied by a chalet style house which forms part of a group of A-frame rendered chalets/houses which are situated in a linear row in an elevated position at the southern end of the settlement of Dervaig. These buildings are surrounded by deciduous trees which assist in absorbing each unit into the surrounding landscape.

The site sits on an elevated position at the top end of an existing access track which runs from the nearby C46 Dervaig – Aros Bridge public road. This road serves existing dwellinghouses to the north and to the south west.

SITE HISTORY

10/01030/PP – Erection of dwellinghouse to replace existing chalet type house withdrawn 27.08.10 (Site edged red incorrect)

00/01665/CLAWU – certificate of lawfulness issued 11.12.2000 confirming that the holiday chalet had an established use as a house.

Adjacent land – 05/00284/OUT and 08/00047/DET permissions granted for replacement of chalets with a total of 14 houses.

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 planning condition in question, requiring that the existing vehicular access at the junction of the public road has been formed in accordance with the Council's Road Engineers Drawing Number SD 08/004a with visibility splays of 53.0m x 2.4m in each direction formed from the centre line of the proposed access, has been reasonably applied and can be so defended; or whether the removal of the relevant condition would render the proposed house contrary to the adopted Development Plan.

The Report of Handling (Appendix 1) sets out the Council's assessment of the replacement house 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 appellant's submission that merits a hearing being held. Relevant issues were assessed in the Report of Handling which is contained in Appendix 1. Any differences between matters then and now can be fully set out in the written submissions. 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 substantial public representation, it is not considered that a Hearing is required.

COMMENT ON APPELLANT'S SUBMISSION

- The appellant has requested a review of Condition 5. They assert that the existing structure at the site is safely accessible and that a modest standard structure will replace it. The existing house has access to the private road by a private access track which has existed for over 100 years. They confirm that the track is outwith their ownership and the works can not be undertaken.

Comment: As history at the site, it should be noted, a Certificate of Lawful – Existing Use was granted by the Council on the 11th of December 2000 in order to regularise the use of the 2 bedroom chalet type building. At this time it was deemed that the building (originally built as a holiday chalet) had been used as a residential property, within the bounds of Class 9 of The Town and Country Planning (Use Classes) (Scotland) Order 1997, for a continued period of more than 4 years. The original intended use of the site was for holiday residence and not for full time residential residential occupation. Planning permission was not sought for the use of the holiday chalet to a dwellinghouse at the time and the Planning Authority was not able to consider imposing conditions at that time. Certificates of Lawful – Existing Use cannot be granted subject to conditions. It is considered that this change of use

to a full time residential dwellinghouse would have included an intensification of vehicular activity at the site.

In terms of the planning permission, which is the subject of this review, it is proposed that a larger footprint 3 bedroom dwellinghouse replaces the existing 2 bedroom house at the site. On completion, the recently approved dwellinghouse will also benefit from permitted development rights granted by Schedule 1 of The Town and Country (General Permitted Development) (Scotland) Order 1992 and so there is potential at the site for further additional development without requiring express planning permission. Such development could place further demands on use of the existing access at the site. It is considered that the recently approved dwellinghouse involves an intensification of use at the site.

Policy LP TRAN 4 of the Development Plan specifies that in instances where a site is served by an existing access regime and this is considered to be of such a poor standard as to be unsuitable for additional vehicular traffic then the Planning Authority may consider the proposal unacceptable, unless the applicant can secure ownership or demonstrate that an appropriate agreement has been concluded with the existing owner to allow for commensurate improvements to be made. It is considered that the recently granted permission would be contrary to this Policy if Condition 5 were to be removed.

- The appellant states that the appellant does not own the access track, but only has a right of access over the track.

Comment: The appellant certified in the planning application (ref 10/01468/PP) that they owned all of the land encompassed within the application site. The application site, as defined by the red application site boundary, includes the access track. If the case should be that the appellant does not own the access track then he/she would be guilty of an offence.

- The appellant has pointed out that the access cannot have clear site lines due to features outwith the appellant's control.

Comment: At the time of planning the applicant certified that the access to the junction with the public road was in their ownership. The Area Roads Manager advised that adequate sightlines of 53 x 2.4 metres are indeed achievable at this access. It is considered that on the basis of information available at the time, the Planning Service acted reasonably in attaching planning condition 5.

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.

As history at the site, it should be noted, that the existing building at the site has previously undergone an unauthorised change of use to become a full-time residential dwellinghouse. This unauthorised change of use resulted in an intensification at the site which the Council was unable to control at the time. The

grant of a Certificate of Lawful – Existing Use meant that enforcement action was time barred and the Planning Authority was not able to impose any conditions on to this Certificate.

A further intensification has now been granted planning permission at the site in the form of a replacement dwelling-house with an additional bedroom and scope for additional intensification through permitted development rights applicable on completion.

The Councils Roads Manager has deemed that the existing access to the site is unsuitable for additional vehicular traffic and requested the imposition of a condition requiring the provision of visibility splays and a standard bellmouth access on land that the appellant declared was within their ownership at the time of their planning application. The imposition of such a condition was considered reasonable and necessary in the interests of road safety and in accordance with the Development Plan.

Taking account of the above, it is respectfully requested that the application for review be dismissed. In the event that the appellant does not own the track, it is not recommended that the Planning Authority pursue this matter, but rather that the appellant seeks the consent of the landowner to undertake the works on the land. The wording of the condition is suspensive, so there is no risk of works progressing in advance of the works being undertaken. If works commenced without compliance, this would be a breach of planning control, which could be pursued by the Planning Authority by means of a Breach of Condition Notice and/or Enforcement and Stop Notices.

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: 10/01468/PP

Planning Hierarchy: Local Development

Applicant: Ms E Nalen And Mr A Morrison

Proposal: Erection of dwellinghouse to replace existing chalet type house

Site Address: 7 Glen Houses, Dervaig, Isle of Mull

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**
- **Demolition of existing chalet**

(ii) **Other specified operations**

- **Connection to public water main**
 - **Connection to public drainage network**
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(B) RECOMMENDATION:

Having due regard to the development plan and all other material considerations, it is recommended that planning permission be granted subject to the conditions and reasons appended to this report.

(C) HISTORY:

10/01030/PP – Erection of dwellinghouse to replace existing chalet type house withdrawn 27.08.10 (Site edged red incorrect)

00/01665/CLAWU – certificate of lawfulness issued 11/12/2000 confirming that holiday chalet had established use as a house.

Adjacent land – 05/00284/OUT and 08/00047/DET permissions granted for replacement of chalets with a total of 14 houses.

(D) CONSULTATIONS:

Legal and Protective Services – No objections, 10.09.10

Scottish Water – No objections, However Scottish Water are unable to reserve capacity at their water and wastewater treatment works in advance of formal agreement with them. Scottish Water have commented that there are no public sewers in the vicinity however the proposed development will connect to an existing connection, 14.09.10

Area Roads – No objections subject to conditions regarding access at junction or public road to be upgraded, provision of adequate visibility splays and provision of parking and turning, 24.09.10

(E) PUBLICITY:

The proposal was advertised under (Regulation 20 – Advert Local Application). The publication date was 16.09.10 and the closing date was 07.10.10

(F) REPRESENTATIONS: None received

G) SUPPORTING INFORMATION

Has the application been the subject of:

- (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

- (i) **Is a Section 75 agreement required:** Not required
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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.**

The Argyll and Bute Structure Plan 2002

STRAT DC 1 - Development within the settlements

The Argyll and Bute Local Plan 2009

LP ENV 1 – Development Impact on the General Environment

LP ENV 19 – Development Setting, Layout and Design

LP HOU 1 – General Housing Development

LP TRAN 4 – New and Existing, Public Roads and Private Access Regimes

LP TRAN 6 – Vehicle Parking Provisions

LP ENV 7 - Development Impact on Trees/Woodland

- (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

(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 (PAN 41 or other): Not required

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

This a proposal for the erection of a dwellinghouse to replace an existing house at No 7 Glen Houses, Dervaig, Isle of Mull.

The application site lies within land which has been designated as Settlement by The Argyll and Bute Local Plan 2009 wherein STRAT DC 1 of The Argyll and Bute Local Plan 2002 gives encouragement within the small towns and villages to development on appropriate redevelopment sites. An existing chalet type house at the site represents a suitable opportunity for redevelopment as defined by the Local Plan and so the proposed development accords with the provisions of STRAT DC 1 of The Argyll and Bute Structure Plan 2002.

The existing house to be demolished at the site forms part of a group of A-frame rendered chalets/houses which are situated in a linear row in an elevated position. These buildings are surrounded by deciduous trees which

assist in absorbing each unit with the surrounding landscape. The existing buildings have little architectural merit, and consent has been granted to replace adjacent units with a 14 house development.

The current application proposes to erect a single storey dwellinghouse with a T-shape floor plan. The design is relatively simple and low rise. The exterior walls are proposed to be finished in green smooth K – REND render and the roof will be clad in Marley Modern smooth grey concrete interlocking tiles. The shade of the proposed render is unknown and some green colours would be unacceptable, so a condition will be attached to the grant of permission in order to ensure that a sample of the colour of the wall render is submitted for the written approval of the Planning Authority prior to the commencement of works at the site. Overall it is considered that the proposed dwellinghouse will have an appropriate layout and density and will be of a suitable scale, form and design at this location. The proposed dwellinghouse will therefore accord with the provisions of LP ENV 19 of the adopted Local Plan.

A group of deciduous trees occupy the north western side of the site and assist in facilitating development at this elevated location. It is considered that this group of trees should be protected as far as is reasonably practicable and so a condition will be attached ensuring that these trees are afforded protection in accordance with the provisions of Policy LP ENV 7 of the adopted Local Plan.

It is proposed to connect to an existing public water main and to reconnect to the existing public sewer. Scottish Water have raised no objections to the proposed development but have commented that a connection is not guaranteed. They have commented that there are no public sewers in the vicinity of the proposed development which is not the case. The existing house is presently connected to the public sewer and so the proposed dwellinghouse will merely reconnect.

Area Roads have raised no objections to the proposed development. Area Roads have recommended that planning permission be granted subject to conditions with regards to the provision of SD 08/004a at the junction of the public road, visibility and parking at the site in the interests of road safety and in accordance with Policy LP TRAN 4 and LP TRAN 6 of the Local Plan.

It is concluded that the development proposed is consistent with adopted Local Plan policy and will have no adverse impact in terms of layout, design, servicing and infrastructure. The proposed development accords with Policy LP ENV 1 of the adopted Local Plan which sets out a general basis for consideration of all applications for planning permission.

(Q) Is the proposal consistent with the Development Plan: Yes

(R) Reasons why planning permission or a Planning Permission in Principle should be granted

1. An existing house at the site (established under ref 00/01665/CLAWU) represents a suitable opportunity for redevelopment as defined by the Local Plan and so the proposed development accords with the provisions of STRAT DC 1 of The Argyll and Bute Structure Plan 2002.
 2. The proposed dwellinghouse will have an appropriate layout and density and will be of a suitable scale, form and design at this location. The proposed dwellinghouse accords with the provisions of LP ENV 19 of the adopted Local Plan.
 3. A group of deciduous trees occupy the north western side of the site and assist in facilitating development at this elevated location. It is considered that this group of trees should be protected as far as is reasonably practicable and so a condition is attached ensuring that these trees are afforded protection in accordance with the provisions of Policy LP ENV 7 of the adopted Local Plan.
 4. Area Roads have raised no objections to the proposed development, but recommend planning conditions with regards to the provision of SD 08/004a at the junction of the public road, visibility and parking at the site in the interests of road safety and in accordance with Policy LP TRAN 4 and LP TRAN 6 of the Local Plan.
 5. The development proposed is consistent with adopted Local Plan policy and will have no adverse impact in terms of layout, design, servicing and infrastructure. The proposed development therefore accords with Policy LP ENV 1 of the adopted Local Plan which sets out a general basis for consideration of all applications for planning permission.
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(S) Reasoned justification for a departure to the provisions of the Development Plan

No Departure

(T) Need for notification to Scottish Ministers or Historic Scotland: Not required

Author of Report: Lesley Cuthbertson

Date: 11.10.10

Reviewing Officer: Stephen Fair

Date: 13/10/10

SF

**Angus Gilmour
Head of Planning**

CONDITIONS AND REASONS RELATIVE TO APPLICATION REF. NO. 10/01468/PP

1. That the development to which this permission relates must be begun within three years from the date of this permission.

Reason: In accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997.

2. The development shall be implemented in accordance with the details specified on the Application form dated 25th August 2010 and the approved drawing reference numbers:

- Plan 1 of 4(Location and site plan, Drawing no N10/07/01)
- Plan 2 of 4(Elevations, Drawing no N10/03/05)
- Plan 3 of 4(General Floor Plan, Drawing no N10/07/02)
- Plan 4 of 4(Existing Chalet, Drawing no N10/03/06)

unless the prior written approval of the Local Planning Authority is obtained for other materials/finishes/for an amendment to the approved details under Section 64 of the Town and Country Planning (Scotland) Act 1997.

Reason: For the purpose of clarity, to ensure that the development is implemented in accordance with the approved details.

3. Prior to the commencement of works at the site, full details of the colour of the proposed exterior wall render, including a sample, shall be submitted to and approved in writing by the planning authority. Thereafter, the development shall be completed and maintained in perpetuity in accordance with such details as are approved.

Reason: To ensure that the materials are appropriate to the character of the area and sympathetic to established finishing materials in the area.

4. That notwithstanding the details shown on the approved plans, the existing trees as shown on the Site Plan(Drawing no N10/07/01) shall not be lopped, topped, felled or otherwise damaged without the prior written consent of the Planning Authority.

Reason: To ensure the retention of the existing trees and shrubs, as far as is reasonably practicable, so that they may contribute to the environmental quality of the development in accordance with LP ENV 7 of The Argyll and Bute Local Plan 2009.

5. No development shall commence on site until the existing vehicular access at the junction of the public road has been formed in accordance with the Council's Road Engineers Drawing Number SD 08/004a with visibility splays of 53.0m x 2.4m in each direction formed from the centre line of the proposed access. Prior to work starting on site these visibility splays shall be cleared of all obstructions above the level of the adjoining carriageway and thereafter maintained to the satisfaction of the Planning Authority.
The vehicular access granted consent shall be constructed to at least base course level prior to any work starting on the erection of the dwellinghouse which it is intended to serve and the final wearing surface of the road shall be applied prior to the first occupation of the dwellinghouse.

Reason: In the interests of road safety to ensure the proposed development is served by a safe means of vehicular access and in accordance with LP TRAN 4 of The Argyll and Bute Local Plan 2009.

6. Prior to work starting on site full details of a turning area and parking provision for 2 cars within the curtilage of the dwellinghouse drawn up in consultation with the Council's Area Roads and Amenity Services Manager shall be submitted to and approved in writing by the Planning Authority. The parking and turning area shall be provided prior to the occupation of the dwellinghouse and thereafter maintained in perpetuity.

Reasons: In the interests of road safety and in accordance with LP TRAN 6 of The Argyll and Bute Local Plan 2009.

NOTE TO APPLICANT

- In order to comply with Section 27A(1) of the Town and Country Planning (Scotland) Act 1997, prior to works commencing on site it is the responsibility of the developer to complete and submit the attached 'Notice of Initiation of Development' to the Planning Authority specifying the date on which the development will start.
- In order to comply with Section 27B(1) of the Town and Country Planning (Scotland) Act 1997 it is the responsibility of the developer to submit the attached 'Notice of Completion' to the Planning Authority specifying the date upon which the development was completed.
- Operational Services (Roads and Amenity Services) have advised that a Roads Opening Permit will be required. Please find enclosed a Roads Opening Permit application form for your convenience.
- Please find enclosed a copy of the consultee response received from Scottish Water. Contact details for Scottish Water can be found on this response.

APPENDIX TO DECISION APPROVAL NOTICE 10/01468/PP

Appendix relative to application 10/01468/DET

- (A)** Has the application required an obligation under Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended).

No

- (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 reasons why Planning Permission has been approved.

1. An existing house at the site (established under ref 00/01665/CLAWU) represents a suitable opportunity for redevelopment as defined by the Local Plan and so the proposed development accords with the provisions of STRAT DC 1 of The Argyll and Bute Structure Plan 2002.

2. The proposed dwellinghouse will have an appropriate layout and density and will be of a suitable scale, form and design at this location. The proposed dwellinghouse accords with the provisions of LP ENV 19 of the adopted Local Plan.

3. A group of deciduous trees occupy the north western side of the site and assist in facilitating development at this elevated location. It is considered that this group of trees should be protected as far as is reasonably practicable and so a condition is attached ensuring that these trees are afforded protection in accordance with the provisions of Policy LP ENV 7 of the adopted Local Plan.

4. Area Roads have raised no objections to the proposed development, but recommend planning conditions with regards to the provision of SD 08/004a at the junction of the public road, visibility and parking at the site in the interests of road safety and in accordance with Policy LP TRAN 4 and LP TRAN 6 of the Local Plan.

5. The development proposed is consistent with adopted Local Plan policy and will have no adverse impact in terms of layout, design, servicing and infrastructure. The proposed development therefore accords with Policy LP ENV 1 of the adopted Local Plan which sets out a general basis for consideration of all applications for planning permission.