

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: 11/00027/PP

Planning Hierarchy: Local

Applicant: Munro Bridging Finance (In Liquidation)

Proposal: Variation of Condition 1 of Planning Permission 05/01800/DET to extend validity of permission from 5 years to 6 years

Site Address: Land North of Ascog Mansions, Ascog, Isle of Bute

DECISION ROUTE

(i) Local Government (Scotland) Act 1973

(A) THE APPLICATION

(i) Development Requiring Express Planning Permission

Variation of Condition 1 of Planning Permission 05/01800/DET (erection of ten dwellinghouses) to extend permission from 5 years to 6 years

(ii) Other specified operations

Not applicable

(B) RECOMMENDATION:

Having due regard to the Development Plan and all other material considerations, it is recommended that planning permission be granted, as a 'minor departure' to the provisions of the Development Plan, subject to the conditions, reasons and informative notes given within this report.

(C) HISTORY:

Outline Planning Permission (ref: 112/79) was sought in February 1979 for the erection of 2 dwellings within the south eastern (roadside) corner of the current application site. After a site inspection, the application was refused on the grounds that it would adversely affect the character of the Conservation Area and could set a precedent for

further development that would erode the existing mature private open spaces between buildings.

An application for Detailed Planning Permission (ref: 01/01535/DET) for the erection of 10 dwellings on the subject site was withdrawn in January 2002.

An application for Detailed Planning Permission (ref: 02/01543/DET) for the erection of 12 dwellings on the subject site was withdrawn July 2004.

An application for Detailed Planning Permission (ref: 05/00863/DET) for the erection of 10 dwellings on the site was withdrawn in September 2005.

Detailed Planning Permission (ref: 05/01800/DET) was granted on 13th January 2006 for the erection of ten dwellinghouses and the installation of a discharge pipe to the sea on the subject site.

(D) CONSULTATIONS:

Area Roads Manager (comments received 24th February 2011)

Seeking visibility splays of 42 metres by 2.4 metres. A Road Construction Consent and Road Bond will be required.

E) PUBLICITY:

Article 9 neighbour notification procedure (closing date 8th February 2011) and Conservation Area Advert (closing date 18th February 2011).

(F) REPRESENTATIONS:

Representations have been received from a total of seventeen people as follows:

R H Carley, Clyde House, Ascog, Isle of Bute (letter dated 25th January 2011)

Jack Torrens, Unit 3, Ascog Mansion, Ascog, Isle of Bute (emails dated 31st January 2011 and 23rd February 2011)

Robert S Hall, The Old Manse, Ascog, Isle of Bute (letter dated 2nd February 2011 and e-mail dated 24th February 2011)

Ronald Falconer, Hawkstone Lodge, Ascog, Isle of Bute (e-mail dated 13th February 2011)

James Hendry, Invergyle Cottage, Ascog, Isle of Bute (e-mails dated 14th February 2011 and 12th April 2011)

Norman and Gail Foster, Seal Lodge, Ascog, Isle of Bute (e-mails dated 16th February 2011 and 3rd April 2011)

Douglas Lindsay, 3 Tarfside, Ascog, Isle of Bute (e-mail dated 23rd February 2011)

Norman Elliott, 1 Tarfside, Ascog, Isle of Bute (e-mail dated 24th February 2011)

Sue Dennis, The Pumphouse, Ascog, Isle of Bute (e-mail dated 24th February 2011)

Tony Harrison, 1 Eastlands Park, Rothesay, Isle of Bute (e-mail dated 24th February 2011)

Beryl Harrison, 1 Eastlands Park, Rothesay, Isle of Bute (e-mail dated 24th February 2011)

John Dennis, The Pumphouse, Ascog, Isle of Bute (e-mail dated 24th February 2011)

E McVey, Ascog Farm, Ascog, Isle of Bute (e-mail dated 24th February 2011)

Philip Kirkham, Crofton Cottage, Ascog, Isle of Bute (e-mail dated 25th February 2011)

Colin Slinn, Capital Developments (GB) Ltd, 145-147 St John Street, London (e-mails dated 25th February, 28th February, 20th March and 28th March 2011)

Louise Johnson, Millburn, Ascog, Isle of Bute (e-mail dated 10th March 2011)

The points raised can be summarised as follows:

- i. Town and Country Planning (Scotland) Act 1997 clearly states (Section 58) that the consent is for five years from the date of grant or deemed to grant. There is no provision in the Act that if an application is made to extend the life of the permission before it expires, it does not expire on the due date and is still a valid consent after that date. The effect of this is that, on the 13th January 2011, the permission ceased to exist. The Committee cannot consider an application pursuant to a permission that has expired and does not exist as a matter of fact and law. They have no authority or power to extend the time for the validity of the application beyond 13th January 2011 if they are asked to consider it after that date. If they acted to extend the life of the permission which has already expired such a decision would be amenable to judicial review as being an *ultra vires* act by the Committee.

Comment: This issue will be addressed in Appendix A below.

- ii. Proposal represents a threat to road safety on the basis of the location of the access and the frequency of vehicles travelling the road.

Comment: This issue will be addressed in Appendix A below.

- iii. Certain properties have not been notified as neighbours.

Comment: As far as can be ascertained, all of those properties with a notifiable interest under Regulation 18 of the Town and Country (Development Management Procedure) (Scotland) Regulations 2008 were properly served with the requisite notification.

- iv. The proposal is contrary to many Local Plan policies – LP ENV 1; LP ENV 2; LP ENV 7; LP ENV 11; LP ENV 12; LP ENV 19; LP SERV 1; LP SERV 2; LP SERV 3; LP SERV 8; and LP TRAN 4.

Comment: An assessment of the proposal against the relevant Development Plan policies is carried out in Appendix A below.

- v. Concern that the proposal would have an effect on wildlife within the site and in its environs.

Comment: The developers will be reminded by way of a note of their responsibilities in respect of protected species.

- vi. It is put forward that the interests of the community would not be best served by extending the permission. If permission is refused, either the owners will have to make a fresh application for a scheme which more accurately matches the market and the needs of the community, or they will have to sell to a developer and the developer will have to make a fresh application.

Comment: The Council is duty bound to determine the application as submitted.

- vii. The proposed development is inappropriate and out of scale with surrounding existing properties.

Comment: This issue will be addressed in Appendix A below.

- viii. The legal position is that the applicant is not in liquidation and is still in administration. The application should, therefore, be in the name of the joint administrators at KPMG in Edinburgh or in the name of the company with their consent. The name and title of the applicant being incorrect means that the statement of truth signed by the applicant is wrong and, therefore, the application is invalid.

Comment: The application form states that the applicant is "Munro Bridging Finance in Liquidation c/o KPMG 20 Castle Terrace, Edinburgh". The agent is Alan McCaw of DM Hall. It is considered that the application form contains correct information in respect of the applicant and that the application can be competently determined by the Council on that basis.

(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) **Supporting Information**

DM Hall (letter dated 14th March 2011) has advised of the following:

The reason the existing consent needed to be extended is that KPMG have agreed to sell the site to a house builder, subject to the existing consent being extended. It is KPMG's understanding that the builder intends to build out the site as soon as the consent has been granted. It is hoped that the Council would agree that, in this difficult economic climate, this is very encouraging news and hopefully it will deliver some much needed economic activity within the area.

- (v) **A report on the impact of the proposed development eg. 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: No

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

(J) Section 25 of the Act; Development Plan and any other material considerations over and above those listed above which have been taken into account in the assessment of the application

(i) List of all Development Plan Policy considerations taken into account in assessment of the application.

Argyll and Bute Structure Plan 2002

STRAT DC 1 – Development within the Settlements

STRAT DC 9 – Historic Environment and Development Control

Argyll & Bute Local Plan 2009

LP ENV 10 seeks to resist development within Areas of Panoramic Quality where its scale, location or design will have a significant adverse effect on the character of the landscape.

LP ENV 14 presumes against development that does not preserve or enhance the character or appearance of an existing Conservation Area.

LP ENV 19 *'Development Layout, Setting & Design'* requires developers to execute a high standard of setting, layout and design where new developments are proposed.

LP HOU 1 presumes in favour of housing developments of appropriate scale unless there is an unacceptable environmental, servicing or access impact.

LP HOU 2 states that all new housing developments with a total capacity of 8 dwellings or more should contribute 25% of the total number of units as affordable housing.

LP TRAN 4 states that, in the case of new public roads, the new road shall be constructed to a standard as specified in the Council's Road Development Guide. Such a standard will be reflective of the development's location i.e. in a settlement, in a rural or remote rural situation, or in a Conservation Area.

(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.

Appeal decision (ref: PPA-180-2007) dated 15th September 2010 to carry out development of 18 dwellinghouses in Dundee without compliance with Condition 1 of Permission 08/00124/FUL.

(K) Is the proposal a Schedule 2 Development not requiring an Environmental Impact Assessment: No

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

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

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

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

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

Planning Permission (ref: 05/01800/DET) was granted on 13th January 2006 for the erection of 10 dwellinghouses and the installation of a discharge pipe to the sea on land to the north of Ascog Mansions, Ascog, Isle of Bute. The present application, which seeks to vary condition 1 of the permission to extend the period by which development is to commence from 5 years to 6 years, was registered on 12th January 2011, one day before the permission was due to expire. Having regard to recent case history in similar cases, it is considered competent to proceed with the determination of the application.

There have been some changes in circumstance since 2006 and one of these (the standard of sightlines) is considered to be relatively insignificant. However, Policy LP HOU 2 was introduced in the 'Argyll and Bute Local Plan' 2009 and this sets out the requirements for affordable housing contribution. In essence, sites of eight or more dwellinghouses should have an affordable housing contribution of 25%.

Notwithstanding the effect of LP HOU 2, there are other factors that should be taken into account. These factors are as follows:

- The development relates to the erection of ten substantial dwellinghouses. It is not considered that the type and form of development which is proposed would be conducive the provision of affordable housing on the site;
- There is recent evidence to suggest that there is an overprovision in affordable housing on the Isle of Bute;
- The pursuit of affordable housing at this site, either through on-site provision or through a Section 75 agreement relating to the provision of a commuted sum could present an obstacle to facilitating development. In the context of the current economic climate and recent government advice, it is considered that encouragement should be given to supporting development wherever that is both possible and reasonable.

On the basis of the foregoing, the application is being recommended for approval as a 'minor departure' to the affordability requirements of the 'Argyll and Bute Local Plan' 2009.

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

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

The proposal accords with policy STRAT DC 1 and STRAT DC 9 of the Argyll and Bute Structure Plan 2002 and policies LP ENV 10, LP ENV 14, LP ENV 19, LP HOU 1 and LP TRAN 4 of the Argyll and Bute Local Plan (2009) and can be justified as a minor departure from Policy LP HOU 2 of the Local Plan 2009. The proposal raises no other material consideration which would justify refusal of permission.

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

Policy LP HOU 2 was introduced in the Argyll and Bute Local Plan 2009 and sets out the requirements for affordable housing contribution. In essence, sites of eight or more dwellinghouses should have an affordable housing contribution of 25%.

Notwithstanding the terms of LP HOU 2, there are other factors that should be taken into account. These factors are as follows:

- The development relates to the erection of ten substantial dwellinghouses. It is not considered that the type and form of development which is proposed would be conducive to providing affordable housing;
- There is recent evidence to suggest that there is an overprovision in affordable housing on the Isle of Bute;
- The pursuit of affordable housing at this site, either through the physical erection of dwellinghouses or through a Section 75 agreement relating to the provision of a commuted sum, might be considered as an obstacle to facilitating development particularly in the context of a site being sold on by the receiver. In the context of the current economic climate and recent government advice on not overburdening the house-building sector with unnecessarily onerous obligations, it is considered that encouragement should be given to enabling development wherever that is both possible and reasonable.

On the basis of the foregoing, the application can be justified as a minor departure to the Argyll and Bute Local Plan 2009.

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

Author of Report: Steven Gove

Date: 3/6/2011

Reviewing Officer: David Eaglesham

Date: 3/6/2011

**Angus Gilmour
Head of Planning**

CONDITIONS AND REASONS RELATIVE TO APPLICATION REF. NO: 11/00027/PP

1. That the development to which this permission relates must be begun by 30th June 2012.

Reason: To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997 and having regard to the extension of time requested.

2. The development shall be constructed in accordance with the approved plans – *Block Plan Drawing Number 04.18.01, House Type A Drawing Number 04.18.02, House Type B Drawing Number 04.18.03, House Type C Drawing Number 04.18.04 and House Type D Drawing Number 04.18.05* unless the prior written consent of the Planning Authority is obtained for variation.

Reason: In the interests of visual amenity and in accordance with the development applied for.

3. The landscaping scheme shown on the plan titled '*Landscape Proposals*' (Drawing Number 229.3) shall be implemented no later than the first planting and seeding season following the commencement of the development (or such other timescale agreed with the Planning Authority prior to the commencement of the development) and, thereafter, shall be maintained to the satisfaction of the Planning Authority for a period of ten years. No trees shall be felled or lopped within the landscaping scheme without the prior written consent of the Planning Authority and any losses of plant species through disease, weather exposure, neglect or damage shall be replaced with equivalent species within one growing season.

Reason: In the interests of visual amenity in order to successfully integrate the proposal into its surrounding townscape setting and having due regard to Policy POL BE 16 of the Bute Local Plan 1990.

4. The root system of the trees within the site shall be suitably protected in accordance with BS 5837 '*Retention of Trees and Appropriate Distances for Construction*' (1991) prior to the commencement of the development and during the course of the development. Prior to works commencing on site, fences shall be erected below the canopy edge of the trees to prevent encroachment by machinery and vehicles and these fences shall be maintained during building works on site.

Reason: In the interests of visual amenity in order to ensure that reasonable and appropriate measures are taken to secure the viability of the trees within the site.

5. A substantial sample panel, being not less than 2.0 square metres, showing the proposed external wall finishes shall be made available on the site for the inspection and written approval of the Planning Authority. The panel shall be made available prior to the application of any render to the external walls being implemented. The dwellings shall be constructed using the approved finishes unless the prior written consent of the Planning Authority is obtained for variation.

Reason: In the interests of visual amenity in order to ensure that the proposal integrates successfully into its surrounding townscape setting and having due regard to Central Government guidance and Local Plan policies.

6. The roof coverings shall be of natural slate, the details of which (including a sample) shall be submitted to and approved in writing by the Planning Authority prior to the commencement of the development. The roofs shall be finished in the approved covering unless the prior written consent of the Planning Authority is obtained for variation.

Reason: In the interests of visual amenity in order to ensure that the proposal integrates successfully into its surrounding townscape setting and having due regard to Central Government guidance and Local Plan policies.

7. The windows shall be constructed of white-painted timber unless the prior written consent of the Planning Authority is obtained for variation.

Reason: In the interests of visual amenity in order to ensure that the proposal integrates successfully into its surrounding townscape setting and having due regard to Central Government guidance and Local Plan policies.

8. Prior to the commencement of the development, full details of the repair and rendering of those parts of the existing wall, to the walled garden, that are to be retained shall be submitted to and approved in writing by the Planning Authority. The works to the retained walls shall be undertaken in accordance with the approved details unless the prior written consent of the Planning Authority is obtained for variation.

Reason: In the interests of visual amenity in order to ensure that the proposal integrates successfully into its surrounding townscape setting and having due regard to Central Government guidance and Local Plan policies.

9. Notwithstanding the details shown on the plan titled 'Landscape Proposals' (Drawing Number 229.3) and prior to the commencement of the development, details of the position, height and appearance of all boundary treatments shall be submitted to and approved in writing by the Planning Authority. In particular, such details shall show the erection of stone walls along the eastern boundary of House No.4 and the western boundary of House No.2. All boundary treatments shall be constructed in accordance with the approved details unless the prior written consent of the Planning Authority is obtained for variation.

Reason: In the interests of visual amenity in order to successfully integrate the proposal into its surrounding townscape setting.

10. Prior to the commencement of the development, the location and design of the sewage treatment plant, the odour control measures to be undertaken and a scheme for the maintenance in perpetuity of the approved communal sewage system shall be submitted to and approved in writing by the Planning Authority in consultation with SEPA, the Building Control Section and the Public Protection Service.

Reason: To ensure the ongoing maintenance of the method of sewerage treatment in the interests of residential amenity and public health of existing and future occupiers of the area and to prevent the unnecessary proliferation of septic tanks.

11. The discharge pipe leading from the sewage treatment plant shall be constructed to a point below Mean Low Water Spring and shall be buried underground for its full length, the details of which shall be submitted to and approved in writing by the Planning Authority prior to the commencement of the development. The pipe shall be constructed in accordance with the approved details unless the prior written consent of the Planning Authority is obtained for variation.

Reason: In order to safeguard the visual amenity of the area.

12. Prior to the construction of the road system and parking areas, full details (including a sample) of the surfacing to be used within the internal road system and parking areas shall be submitted to and approved in writing by the Planning Authority.

Reason: In the interests of visual amenity in order to ensure that the proposal integrates successfully into its surrounding townscape setting and no such details having been submitted.

13. The access serving the entire development shall be a 'road' over which the public has a right of access in terms of the Roads (Scotland) Act 1984 and shall be constructed in consultation with the Area Roads Manager to the satisfaction of the Planning Authority.

Reason: In order to ensure that provision is made for a service "road" commensurate with the scale of development and having regard to the proposed access road as a residential access road.

14. Prior to the commencement of the development, sightlines of 42 metres in both directions measured 2.5 metres back from the edge of the public road at the centre point of the access shall be kept clear of all obstructions in excess of 1.0 metres above the level of the carriageway and shall thereafter be maintained as such in perpetuity, to the satisfaction of the Planning Authority in consultation with the Area Roads Manager.

Reason: In the interests of road safety.

15. Prior to the formation of the vehicular access onto the A844 road, details of the decorative steel gates, which shall not be capable of being closed, and the stone gateposts shall be submitted to and approved in writing by the Planning Authority. The gates and posts shall be erected in accordance with the approved details prior to the occupation of the first dwelling or such other timescale as may be agreed with the Planning Authority.

Reason: In the interests of visual amenity in order to ensure that the proposal integrates successfully into its surrounding townscape setting and no such details having been submitted.

16. No development shall commence until a detailed scheme for the phased construction of the development hereby approved has been submitted to and approved in writing by the Planning Authority. Such phasing shall show the construction of the development fronting onto the A844 public road in the initial phase(s) or as otherwise agreed in writing with the Planning Authority.

Reason: To ensure that the development hereby approved is implemented in full in an integrated manner having due regard to the A844 public road and the visual prominence of the site within the Rothesay Conservation Area.

17. Prior to the commencement of the development, a method statement that satisfactorily addresses the issue of the potential impact of the construction works upon bats that forage within the application site shall be submitted to and approved in writing by the Planning Authority. The construction works shall be undertaken in accordance with the approved method statement unless the prior written consent of the Planning Authority is obtained for variation.

Reason: In the interests of nature conservation.

18. Prior to the commencement of development within the walled garden area, the existing sundial shall be carefully removed from its present location and stored in a safe manner at a location to be agreed in writing with the Planning Authority. The sundial shall then be erected in a new position, the details of which shall be first agreed in writing with the

Planning Authority. Prior to the occupation of the first dwelling, the sundial shall be located in the agreed position and, thereafter, maintained as such in perpetuity unless the prior written consent of the Planning Authority is obtained for variation.

Reason: In the interests of visual amenity in order to ensure that this attractive feature is retained within the development site.

NOTES 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.

Legal/Ownership Issues

Correspondence has been received from the Director of Capital Developments (GB) Ltd and the Caledonian Contracting Partnership Ltd to the effect that his company owns part of the land under which the discharge pipe is proposed to be constructed.

Prior to the commencement of the development, the applicants should satisfy themselves that they have sufficient control over all of the land within the application site to enable the development to be constructed in accordance with the approved plans and in compliance with Condition 10 above.

Surface Water

The Area Roads Manager has advised that a system of surface water drainage is required to prevent water running off the road in accordance with Section 99 of the Roads (Scotland) Act 1984, which states that:

"(i) The owner and occupier of any land, whether or not that land is such as constitutes a structure over or across a road, shall prevent any flow of water, or of filth, dirt or offensive matter from, or any percolation of water through, the land onto the road."

A drainage system including positive surface water drainage measures should be agreed with the Area Roads Manager. The applicant is advised to contact the Area Roads Manager (Mr. Paul Farrell tel. 01369 708600) directly in this regard.

Road Opening Permit

The Area Roads Manager has advised that the proposed works will require a Road Bond (Section 17), Construction Consent (Section 21) and a Road Opening Permit (Section 56). The applicant is advised to contact the Area Roads Manager (Mr. Paul Farrell, tel. 01369 708600) directly upon this matter.

Water/Sewerage

The applicant is advised by Scottish Water, that:

- The applicant must make separate application to Scottish Water, Planning & Development Services team for permission to connect to the public water network at the appropriate time. It is important to note that the granting of planning permission does not guarantee a connection to Scottish Water's assets.
- Scottish Water's network is not affected by this proposal at this time; however, a supply from the public water network is dependent on the spare capacity at the time of the application for a water connection.
- Planning & Development Services no longer deal with requests for location of services. Should the developer require this information, they should contact Property Searches Department, Bullion Road, Dundee DD2 5BB.
- There are no known sewers in the vicinity of the proposed development. It is advisable that any septic tank should be sited in such a manner as to allow easy access for emptying by tanker.

For all of the advisory points given above, the applicant/developer is advised to contact Scottish Water directly (Developer Services, tel.0845 601 8855, or at www.scottishwater.co.uk).

Permitted Development

The applicant is advised that the site is within the Rothesay Conservation Area within which an Article 4 Direction has removed the '*permitted development*' rights associated with alterations/extensions to dwellings and the erection of outbuildings within the curtilages of dwellings. In this regard, all future occupiers of the dwellings should be made aware that an approach should be made to Planning Services (tel: 01369 708607 or 708606) prior to any such works being undertaken.

Septic tanks

If planning permission has been issued to you including a specific location and type for a septic tank and/or outfall and if, for any reason, it is necessary to change the location of the tank or outfall an additional permission will be necessary and further advice should be sought from your local planning office.

In addition, before a **Building Warrant** will be granted and as part of the ground assessment you will require to have trial holes dug to specified dimensions to determine the position of the water table and soil type and conditions and submit the results of a professionally carried out percolation test using the method described in BS 6297:1983 or other acceptable method to determine the area of ground required for the "infiltration system".

Connection to a Future Public Sewerage System

SEPA has stated that the development should be connected into the public sewerage system when the facility to do so becomes available. The developer should make contact with Scottish Water to ascertain the likelihood of such a facility becoming available.

Protected species

The developers are reminded of their responsibilities under the Conservation (Natural Habitats etc. Regulations) 1994 whereby it is an offence to damage or destroy the breeding or resting place of any European Protected Species. Although there has not been evidence of the presence of any such species at the time of permission being granted, it remains the developer's responsibility to check for the presence of any protected species prior to development and to see any necessary licence in respect of disturbance to that species as a consequence of development. Advice in respect of the conservation status of species and the necessity of any mitigation measures may be sought from Scottish Natural Heritage.

ANNEX A – RELATIVE TO APPLICATION NUMBER 11/00027/PP

PLANNING LAND USE AND POLICY ASSESSMENT

A. Settlement Strategy

The site is located within the settlement zone of Rothesay, where policies seek to focus development within. On this basis, the proposal is considered to accord with STRAT DC 1 of the Structure Plan.

B. Location, Nature and Design of Proposed Development (Including Impact upon Built Environment)

The proposed development is the same as that approved in 2006 and, in terms of layout, scale, density and design, it was considered to be acceptable at that time. On the basis that there has been no material change in circumstance since January 2006, the development remains acceptable.

On the basis of the foregoing, it is considered that the proposal is in accordance with Policy STRAT DC 9 of the Structure Plan and policies LP ENV 10, LP ENV 14, LP HOU 1 and LP ENV 19 of the Local Plan.

C. Road Safety

There were a number of conditions attached to the original permission in terms of road safety and the only material change in circumstance since 2006 has been a revision in the Council's standard for sightlines in this location. It is recommended that the revised visibility splays are incorporated into Condition 14.

On the basis of the foregoing, and subject to the recommended safeguarding conditions, the proposal is considered to accord with policy LP TRAN 4 of the Local Plan.

D. Affordable Housing

One relatively significant change in circumstance since 2006 is the introduction of LP HOU 2 of the Argyll and Bute Local Plan 2009. This advocates that that all new housing developments with a total capacity of 8 dwellings or more should contribute 25% of the total number of units as affordable housing. This applies in this instance as the total number of units is 10.

A letter has been sent to the agent, D M Hall, seeking their views on the most appropriate method of securing affordable housing within the site. They have responded (letter dated 11th May 2011) by stating the following:

“We would like the application to proceed on the basis that we would again reiterate that the application in front of you at present is only to extend the time period of the application from 5 years to 6 years. In consideration of this matter, we believe that the changes to the local plan policy, which have been adopted since the consent was granted, are not a material consideration when determining this application. We would, therefore, be grateful if you could conclude your application determination on this information.”

As mentioned in the next section, when an application is being considered under Section 42(1) of the Town and Country Planning (Scotland) Act 1997, the Planning Authority should consider only the question of the conditions to which permission should be granted. On this basis, it is

perfectly competent to address the issue of affordable housing and, equally, the most up-to-date policy should be that which the conditions are assessed against.

Notwithstanding the terms of LP HOU 2, there are other factors that should be taken into account. These factors are as follows:

- The development relates to the erection of ten substantial dwellinghouses. It is not considered that the type and form of development which is proposed would be conducive to providing affordable housing;
- There is recent evidence to suggest that there is an overprovision in affordable housing on the Isle of Bute;
- The pursuit of affordable housing at this site, either through the physical erection of dwellinghouses or through a Section 75 agreement relating to the provision of a commuted sum, might be considered as an obstacle to facilitating development particularly in the context of a site being sold on by the receiver. In the context of the current economic climate and recent government advice on not overburdening the house-building sector with unnecessarily onerous obligations, it is considered that encouragement should be given to enabling development wherever that is both possible and reasonable.

In this particular case, and having regard to the mitigating factors detailed above, it is considered reasonable to allow the application as a 'minor departure' to Policy LP HOU 2 of the Local Plan.

E. Procedural Matters

The application which has been submitted was made under Section 42(1) of the Town and Country Planning (Scotland) Act 1997, as amended, which applies to the determination of applications to develop land without compliance with conditions attached to a previous Planning Permission. In these circumstances, Section 42(2) states that the Planning Authority should consider only the question of the conditions subject to which permission should be granted. However, Section 42(4) states that Section 42 shall not apply if the previous permission was granted subject to a condition requiring the development to have begun within a certain time and that time has expired without the development having started. In this particular case, the application was submitted and registered prior to the permission having expired.

In an appeal decision (ref: PPA-180-2007) dated 15th September 2010, a Reporter specifically addressed the question of when an application for the variation of a condition can be submitted. He made the following statement:

"I have given this matter careful consideration but do not agree with the Council. Rather, I prefer the view put forward in the Counsel's opinion obtained by the appellant that it is the making of the application under Section 42(1) that is the material date, and not the date of its determination either by the Planning Authority or on appeal. To accept the Council's position would mean that a Planning Authority would only have to delay the determination of an application under Section 42 until after the original time had expired to effectively remove the applicant's right of appeal."

Having regard to the above very recent appeal decision, it is considered competent to proceed with the determination of the application.