

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: 11/00887/PP

Planning Hierarchy: Local Application

Applicant: Osborne Interiors Ltd

Proposal: Erection of 3 dwellinghouses

Site Address: Land between 19 to 37 Cumberland Avenue, Helensburgh

DECISION ROUTE

(i) Local Government (Scotland) Act 1973

(A) THE APPLICATION

(i) Development Requiring Express Planning Permission

- Erection of 3 dwellinghouses
- Formation of 3 new vehicular accesses onto Cumberland Avenue

(ii) Other specified operations

- Connection to existing public main
 - Connection to existing public sewer
-

(B) RECOMMENDATION:

It is recommended that planning permission be refused for the reasons set out overleaf subject to a discretionary local hearing being held in view of the number of representations received. .

(C) HISTORY:

02/01358/OUT – Erection of residential development in outline – refused 3rd September 2002
05/00512/DET – Erection of 3 houses - refused 29th November 2005
06/00361/DET – Erection of 3 houses - refused 22nd December 2008

(D) CONSULTATIONS:

Helensburgh Community Council 24.06.2011 Object as the site is an Open Space Protection Area and the proposal is contrary to Policy LP REC 2 of the adopted Local Plan. Three previous applications for residential development have been refused. The designation of this site has been tested exhaustively at a PLI.

Roads Helensburgh and Lomond 27.06.2011 No objections in principle subject to the provision of 3 car parking spaces for each property

Scottish Water 13.07.2011 No objection

Head of Economic Development & Strategic Transportation (11.08.2011, 15.08.2011, 22.08.2011, 26.08.2011 and 01.09.2011)

Comments below in respect of proposed off-site mitigation:

Kidston Park was part of the original Outline Business Case put forward by Helensburgh for funding from the Council's CHORD Programme. The OBC looked at the cumulative economic impact of the following elements:

Element 1 - Transforming the Town Centre - Traffic Management and Streetscape Improvement

Element 2 - Redeveloping the West Bay Esplanade

Element 3 - Redeveloping Kidston Park

It did not assess each element individually.

The works listed in the OBC for Kidston Park included the following: new cafe and toilets; tourist information; improved play area and upgraded car park. It did not include the refurbishment of the bandstand or the drink fountain. Both of these items were discussed when consideration was being given to submitting a Heritage Lottery Application from the "Parks for People" fund.

Following feedback from HLF (that the heritage element was too weak) a formal application was not submitted and therefore the economic/business case was not developed for Kidston Park. The bandstand has worth from a heritage perspective. However, the structure is not a priority from the economic development and regeneration perspective in terms of potential economic impact, nor is it part of the CHORD programme. The refurbishment and enhancement of the play area will have limited direct beneficial impact on economic development

Access Manager 06.09.2011 These three areas are woodlands or land where the public have rights of responsible non motorised access under the Land Reform Scotland Act 2003. None of the claims made to date by the owners have demonstrated that any of the land is outwith the rights of access.

Local Biodiversity Officer 06.09.2011 The site in its current state of complete cover by ground flora with some tree regeneration provides a habitat for birds, insects and some smaller mammals. With the tree regeneration above the height of the brambles, the site has the potential to develop into broadleaved woodland with some

shrub layers in the open spaces not colonised by tree species.

Project Manager 09.08.2011
**Roads and
Amenity Services**

The Department would not want to take responsibility for the bandstand for the foreseeable future

(E) **PUBLICITY:** Local Application Advert (expiry date 08.07.2011)

(F) **REPRESENTATIONS:**

A total of 50 representations have received comprising 2 from elected members, plus 38 objectors and 10 supporters. A list of representations from members of the public is set out in the Appendix at the end of this report.

Representation by Elected Members

Summary of issues raised

Councillor Robb (e-mail dated 22/06/2011) has made representation as follows:

- The site is an OSPA and no alternative sites in the vicinity of the proposed development would provide similar community benefit.
- The scale, character and style of the proposed building are not in keeping with those in the surrounding area.
- The OSPA provides protection for a natural green corridor in that part of town which encourages biodiversity and a balance between open space and development.

Councillor Mulvaney (letter dated 27 July 2011) has expressed support for the application on the following grounds:

- The application site cannot genuinely be considered a valued open space – it is devoid of trees (on which the original TPO and then the OSPA designation were determined); it is overgrown and inaccessible to any member of the public. It has in my view little visible amenity or practical amenity to local residents or even to the wider community and its value, as an open space is negligible.
- The application for three houses, all single storey facing onto Cumberland Avenue, is in keeping with the existing streetscape and as such will naturally integrate into the current built environment; helping to integrate the existing bungalows at the bottom of Cumberland Avenue with the modern ex-MOD housing at the top of the street. The new development being softened by tree and shrub planting, which I understand is on 17% of the site.
- The applicant's have mitigated the policy presumption against development on this site with an imaginative restoration to a bandstand at the nearby public Kidston Park. This is a public park, accessible by all of the community, and the suggested improvements will provide something that is of inherently greater value, use, and amenity than that what it replaces in the inaccessible scrub that is the application site at Cumberland Avenue. This scheme in my view goes far beyond mitigation on a like-for-like basis; it is tangible improvement for the community, and is an enhancement to a genuine and accessible open space. If planners do not favour this particular scheme, I would

suggest that other improvements and enhancements to this accessible and valued open space at Kidston Park, all for the public good, are negotiated with the applicant.

- I would urge members of the PPSL Committee to visit the site and ultimately support the application, recognising the negligible amenity value of the existing site; the integration of the proposed quality development, which accords with existing streetscape and built environment; and finally the genuine enhancement in amenity value for the community in an imaginative scheme of mitigation proposed in the nearby public Kidston Park.

Objectors

Summary of issues raised

- Section 25 of the Town and Country Planning (Scotland) Act 1997 states 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.” Section 37 (2) of the Town and Country Planning (Scotland) Act 1997 further states that “In dealing with such an application the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations.” Under the Argyll and Bute Local Plan, adopted by the Council less than two years ago in August 2009, the site is designated as an Open Space Protection Area. It therefore follows that, without relevant material considerations to the contrary; the application should be refused in accordance with relevant legislation.

Comment: See my assessment.

- In his supporting letter of 26 May 2011, the applicant’s agent identifies three possible material considerations, apart from the development plan:
 - i. Removal of Tree Preservation Order on the site and felling of trees
 - ii. The “derelict and overgrown” nature of the site
 - iii. Local Plan Policy REC 2, and the applicant’s intention to plant 110 trees to the rear of the site and a number of cherry trees to the front
- None of the matters constitutes a relevant material consideration under the Town and Country Planning (Scotland) Act 1997, and that they should each be ignored.

On the first of these matters, the status of the site as an Open Space Protection Area is entirely separate from whether or not the site is subject to a Tree Preservation Order. Moreover the Council’s decision in August 2009 to approve the OSPA designation was taken after its decision in January 2008 to remove the TPO, thus confirming the value of the site as an OSPA, irrespective of whether it is subject to a TPO.

Comment: It should be noted that the matters raised by the applicant in his supporting letter are material considerations in the determination of this application and have been the subject of representation as detailed in the comments of objectors below.

- On the second matter, it should first be noted that the site does not meet the Scottish Government’s definition of derelict land, which is defined in the Scottish Vacant and Derelict Land Survey as “land which has been so damaged by development or use that it is incapable of development for beneficial use without rehabilitation and which is not being used for the purpose for which it is held or for use acceptable in the local plan or land which is not being used and where contamination is known or suspected (even if treatment is required only for the buildings thereon)”

Comment: This is noted.

- Until the applicant recently cut back all the natural regeneration taking place on the site, the site was beginning to recover of its own accord from the felling of the larch trees. The use of the term “overgrown” is highly subjective, since from a biodiversity viewpoint, the site, even in its current state, is capable of providing valuable cover for birds and wildlife.

Comment: See my assessment.

- Moreover, even if the local authority were concerned about the state of the site, this would be no grounds to override the development plan. Instead, the correct course of action would be for the Council to exercise its powers under Section 179 (1) of the Town and Country Planning (Scotland) Act 1997, which states that “If it appears to a planning authority that the amenity of any part of their district, or an adjoining district, is adversely affected by the condition of any land in their district they may serve on the owner, lessee and occupier of the land a notice under this section requiring such steps for abating the adverse effect as may be specified in the notice to be taken within such period as may be so specified.”

Comment: The Planning Authority has powers under Section 179 (1) of the Town and Country Planning (Scotland) Act 1997, to take action in respect of the condition of land which has adverse consequences for amenity.

- On the third matter, any reference to Local Plan Policy REC 2 is irrelevant in this case since the applicant has offered no community benefit to compensate for the loss of the Open Space Protection Area. It should be noted that Local Plan Policy REC 2 primarily concerns the protection of open space, with development seen as the exception rather than the rule. No reasonable interpretation of this policy would allow the applicant to claim that planting within the private grounds of dwellings satisfies the requirement to provide equal community benefit for the loss of the Open Space Protection Area. Indeed, were the Council to accept the applicant’s argument here, it would set a very dangerous precedent elsewhere in Argyll and Bute.

Comment: See my assessment.

- Instead, there are three material considerations in particular that point to the importance of upholding the development plan designation -

Planning history: Three previous applications for residential development on the site have been refused: 02/01358/OUT, 05/00512/DET and 06/00361/DET. These applications were the subject of extensive objections within the local community, which should be considered relevant to the current proposal. Moreover, contrary to the inaccurate claim of the applicant’s agent in his supporting letter for the current application, it should be emphasised that the most recent of these refusals on 5 August 2008, was issued by the Council on amenity and policy grounds, after, not before, the removal of the Tree Preservation Order.

Report of the Public Local Inquiry into objections to the Modified Finalised Draft Argyll and Bute Local Plan submitted in 2008. The Reporters noted that “A great deal of evidence was submitted in connection with these objections (to this site and three others owned by the applicant) and we have taken account of all the other relevant matters it raised, including those in the written submissions both in favour and against the proposals, but we find that none of these outweighs the considerations upon which our conclusions are based.” They concluded that “We support the modification to remove the Open Space Protection Area status from objection site W3 (Rhu Road

Higher), but otherwise consider that this designation should remain over the other three objection sites so that no other change to the plan should be effected as a result of these objections.” Since the matter was tested so exhaustively at the public local inquiry, it is contended that any further debate on the future of the site should take place as part of the current Local Development Plan, and should not be pre-empted by a planning application so soon after the Local Plan was adopted.

Comment: A new development plan is being prepared and the public will have the opportunity to influence and debate land use policy including a variety of site designations.

- Helensburgh Community Woodland Group (HCWG) wishes to acquire the application site and has commissioned a professional valuation, with a view to making an offer to purchase it from the applicant, so that it can be retained and enhanced as an Open Space Protection Area. Unless the Council grants planning permission for housing, the value of the land will be based on its current development plan designation and is affordable to the local community. HCWG considers that the retention of open space on this site and its counterpart on the opposite site of Cumberland Avenue is essential for biodiversity purpose to maintain the ring of greenspace south of Duchess Woods.

Comment: See my assessment.

- The design of the proposed houses is not in keeping with the area. Three large area two storey houses on rising ground, because of their size, shape and elevation, will dominate the area.

Comment: See my assessment.

- The earlier felling of Larch trees does not amount to a relevant material consideration that should be used to ignore the development plan. The site was beginning to regenerate of its own accord until the applicant cut back new saplings. The applicant has advanced no good reason why this land should be taken out of open space and built on, especially when there is a brownfield site nearby (former Dobbies Garden Centre) that has already been allocated for housing. The development is unnecessary, contrary to the development plan and unwanted by the local community.

Comment: See my assessment.

- Once again these “developers” are seeking to further despoil a site which they have managed to turn from woodland to wasteland. Clearly another 3 kit houses will contribute nothing to the amenity of the area which is already suffering from over-development.

Comment: See my assessment.

- A new development plan is currently being prepared and any further debate on the future of this site should take place as a part of this process as there would appear to be doubts on the requirement/need to develop on this site.

Comment: A new development plan is being prepared and the public will have the opportunity to influence and debate land use policy including a variety of site designations. However, that is still in its initial stages and the current application requires to be assessed on its merits against current development plan policy and other material considerations. The proposed new development plan is not a material consideration at this point in the plan-making process.

- Since the clearance of trees on this site and the one on the other side of the road at Cumberland Avenue there have been concerns about the adverse effect of increased exposure to wind and weather that adjoining properties are subjected to. If the

regeneration of vegetation, including trees, which was recovering on its own accord, were allowed to continue then this site would again afford weather/windbreak coverage for properties on Ardencaple Estate and would also provide cover for birds and other wildlife. For these and other reasons the application should be refused.

Comment: These points are noted.

Supporters

Summary of issues raised

- This land was refused planning permission in the past due to trees. An OSPA was put on this site because of the visual amenity that the trees provided. This amenity has been lost for over three years. The gap site is at best an open space eyesore.

Comment: See my assessment.

- OSPA status does not mean that development cannot be done. Lomond School Sports Hall is a massive building built on OSPA land. Therefore if the developer can justify mitigation, this site should be developed as what we have now is an overgrown pocket of land in a built up area that will not be looked at for the foreseeable future.

Comment: Each application is judged on its merits in terms of development plan policy. See also my assessment.

- The land in question was planted with trees to provide separation between low cost Service married quarters and quality detached houses. Life has moved on and the former married quarters are now providing good quality affordable houses and it is time this area was integrated with the Ardencaple Estate. The proposals will improve the current streetscape and with an amount of landscaping and tree planting detailed will only enhance this area of the town.

Comment: See my assessment.

- This is a minor departure from the Local Plan.

Comment: See my assessment.

- Three houses with their split level design would blend in well with the topography of the ground and ergonomically with the surroundings.

Comment: See my assessment.

- There is most certainly seems to be a vendetta going on over these parcels of land. We live in a democracy not a dictatorship.

Comment: This is not a material planning consideration.

- The Council revoked the TPO in order to grant permission years ago.

Comment: Elected Members agreed to remove the TPO on this site but also agreed to it being an OSPA. The previous application 06/00361/DET was decided after the TPO was removed on this site.

- If the Council refuses this application what chance does the proposed Waitrose Supermarket have? We need flexibility here and commonsense must prevail. This site is as big an eyesore as the old Hermitage Academy.

Comment: Each application is judged on its merits against Development Plan policy and other material considerations.

- Pleased that the trees have been removed on this site and the one across the road as they impacted on my (1 Kidston Gardens) daylight, particularly during the winter months and also my views of the river.

Comment: View is not a material planning consideration.

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

Applicant's Supporting Statement

The site has OSPA status and is controlled by Policy LP REC 2.

It is not a playing field or sports pitch, neither is it a recreational area. It is an area of rough open space between two housing developments adjacent to a road in an area designated for housing development.

It has no other amenity value other than being open space. This is in some way offset by the derelict nature of its present condition.

The exceptions in Policy LP REC 2 allow for just this situation, where the redevelopment of part of the site will enhance the overall area. There will be no compromise of any sporting potential and an enhancement of the negligible amenity value. The current application meets the requirements in this exception.

There are no access rights over this land which has an exception under the Land Reform Act 2003 and there is a clear long term excess of public open space in the area.

The proposed planting of 110 trees and shrubs to the rear and Cherry trees to the front, will greatly enhance the amenity value of the application site.

The applicant has met with Council officers on two occasions and negotiations have dragged on for over a year and have been a waste of time. The officers did not seem to understand the dynamics of community involvement in their suggestions and due entirely to the inflexibility of negotiating officers we have been unable to agree anything deliverable off site for mitigation under the terms of LP REC 2.

Officers in their recommendation for refusal on previous applications concentrated wholly on the presence of trees and the amenity these trees provided. Trees are no longer present on the application site. The position, ridge height and detail for the proposed three houses has been agreed at recent pre-application meetings and agreement in principle has been reached for three dwellings on this site subject to an agreement on mitigation.

The development of this site rests on the level of mitigation on offer in accordance with LP REC2. Previously, we have offered an area of ground larger than the W1 site on Glenauran Rd and community woodland on the W2 site, neither of these has been acceptable to you. LP REC 2 specifies community benefit and therefore this does not restrict mitigation provision to the immediate neighbour community and we are looking at the wider community. The provision of a bandstand at Kidston which the Council tried a couple of years ago to achieve without success would provide both visitors and the wider community with a substantial heritage item. The Council is trying to enhance Kidston Park and this bandstand would be the perfect addition. Alternatively, we could provide £50,000 to upgrade play equipment or any other item at Kidston.

- (iv) **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
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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 2 – Development Impact on Biodiversity

LP ENV 19 – Development Setting, Layout and Design

LP HOU 1 – General Housing Development

LP REC 2 – Safeguarding of Recreational Land and Important Open Spaces

LP TRAN 1 – Public Access and Rights of Way

LP TRAN 4 – New and Existing Public Roads and Private Access regimes

LP TRAN 6 – Vehicle Parking Provision

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)

(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): Planning permission has been previously refused on this site on three occasions, one of which was the subject of a previous Hearing. However, given the large number of representations it is considered that a discretionary local Hearing is justified in this instance.

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

This application proposes the erection of three dwellings on land within the Helensburgh settlement boundary. The site currently has Open Space Protection Area (OSPA) status afforded to it by Policy LP REC 2 of the 'Argyll and Bute Local Plan'. The merits of this designation were examined as part of the Local Plan Inquiry process with the Reporters concluding that this area, in combination with two others in the locality, constituted a valuable feature in the streetscape; forming important visual open space areas within their residential neighbourhood; and that their semi-wilderness appearance provided a welcome contrast with the level formality of the council's maintained parkland and playing fields nearby. Policy LP REC 2 presumes against development of OSPAS unless there would be no loss of amenity and alternative provision of equal community benefit and accessibility could be made available by way of mitigation.

The site has been the subject of three previous refusals of planning permission for residential development. In 2002, permission was refused on the grounds of inappropriate loss of woodland with an adverse impact upon the setting and character of the immediate locality. A further application was refused in 2005 on similar grounds, and in 2008, following removal of TPO status from the site, but in the light of the imposition of OSPA status, permission was refused on the grounds that the land constituted valued open space with amenity value in the immediate area and in wider context of Helensburgh.

The OSPA status of the land, the Reporters conclusions on its amenity value as an open space, and the previous refusals of permission are all material to the determination of this further application. The planning history to date has demonstrated that the site was not merely of value because of the presence of trees and that even with the trees felled, its value as open space which contributes to the softening of the built environment remains. Indeed, this was recognised in the previous 2008 decision which post-dated the removal of TPO protection from this site.

Similarly, while the use made of an open space (for sport, recreation or other purposes) might be of importance in terms of its value, such use is not decisive in terms of its value as an open space contributing amenity to the locality. Planning Advice Note (PAN) 65 advises that all spaces, regardless of ownership and accessibility (i.e. public and private spaces), contribute to the amenity and character of an area.

This area has value as a green space and buffer between housing and appears valued as such by many of those third parties making representation. It helps to soften the impact of and

integrate existing development. Its replacement with dwellings, accesses, hardstanding, fences and other associated suburban development would clearly compromise its amenity value, and would fail to maintain or enhance the character of the area. In mitigation for the presence of built development, the applicant is proposing a replacement planting scheme located primarily to the rear of the site. However, this will cover only approximately 17% of the site. A financial contribution of £50,000 towards off-site works within Kidston Park is also proposed. It is not considered that this would constitute appropriate alternative provision of equal community benefit and accessibility, as it will not provide the same function as the existing open space, given the specific contribution the site at Cumberland Avenue has locally as a green space, wildlife corridor and a buffer between housing.

The proposal is contrary to development plan policy insofar as it would conflict with policy LP REC 2 by undermining the function of an open space protection area, valued for the function it performs in providing relief to the built environment, and the measures proposed by way of mitigation are insufficient and inappropriate to offset this loss of amenity.

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

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

N/A

(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: Howard Young

Date: 05/10/2011

Reviewing Officer: Richard Kerr

Date: 06/10/2011

Angus Gilmour
Head of Planning & Regulatory Services

GROUNDINGS OF REFUSAL RELATIVE TO APPLICATION REF. NO. 11/00887/PP

1. The application site is a valued open space which has amenity value in the immediate area and is designated an Open Space Protection Area (OSPA). There is a presumption against the development or redevelopment of OSPAs. The retention or enhancement of this OSPA site cannot be best achieved by redeveloping it for housing. The loss of this area, which has value as a green space and buffer between housing, and which helps to soften the impact of and integrate existing development, and its replacement with dwellings, accesses, hardstanding, fences and other associated suburban development will compromise its amenity value and will not maintain or enhance the character of the area. In addition, the applicants' replacement planting scheme located primarily to the rear of the site, will cover only approximately 17% of the site with the rest of the ground being used for development. The proposal is therefore contrary to the terms of parts B and D of Policy LP ENV 1 and part B of Policy LP ENV 19 of the Argyll and Bute Local Plan, which seek to resist development which is not of high quality and does not respect the local environment.
2. The application site is a valued open space which has amenity value in the immediate area and is designated an Open Space Protection Area (OSPA). There is a presumption against the development or redevelopment of OSPAs. The retention or enhancement of this OSPA site cannot be best achieved by redeveloping it for housing. The loss of this area, which has value as a green space and buffer between housing, and which helps to soften the impact of and integrate existing development, and its replacement with dwellings, accesses, hardstanding, fences and other associated suburban development will compromise its amenity value and will not maintain or enhance the character of the area.. Off-site mitigation has been proposed in the form of a sum of £50,000 towards the provision of a bandstand, play equipment or another similar item at Kidston Park, and by way of a planting scheme primarily to the rear of the site. The mitigation proposed is different in kind from the value the site has at the moment as an open space contributing to the amenity of its surroundings, would be invested in a different locale and is not of equal or equivalent value. The loss of this space would not just compromise but remove its amenity value. Kidston Park is not as readily accessible to residents on Cumberland Avenue and surrounding houses as it involves access over the main road and improved facilities within the park will not offset the loss of the existing open space, given the specific contribution the site at Cumberland Avenue has as a green space, wildlife corridor and buffer between housing, helping to soften the impact of and integrate the existing built form in to the wider area. In addition, the applicants replacement planting scheme located primarily to the rear of the site, will cover only approximately 17% of the site with the rest of the ground being used for development. Without the provision of further or enhanced open space then there will be a loss of amenity. As such, it is not considered that a case has been made in terms of mitigation sufficient to satisfy the requirements of Policy LP REC 2. The proposal is therefore contrary to parts B (i) and B (ii) of Policy LP REC2 of the Argyll and Bute Local Plan which, inter alia, presumes against development which compromises the amenity value of Open Space Protection Areas.

APPENDIX A – RELATIVE TO APPLICATION NUMBER: 11/00887/PP

PLANNING LAND USE AND POLICY ASSESSMENT

A. Settlement Strategy

The application site is located within the settlement boundary of Helensburgh. It was formally one of 4 sites within the ownership of the Ministry of Defence (MoD) and part of TPO 16/04 where it had the designation W1. TPO status was subsequently removed from this site. Within such areas there is a presumption in favour of development subject to all development plan policies being complied with.

B. Location, Nature and Design of Proposed Development

The application site is located on the west side of Cumberland Avenue, Helensburgh. The site, which is an Open Space Protection Area (OSPA), measures approximately 0.21ha. The proposal is for 3 detached dwellinghouses accessed from Cumberland Avenue. The proposed houses would be split level with single storey on to Cumberland Avenue and two storeys to the rear facing on to Dalmore Crescent. They would be rendered and have concrete tiles. The design is considered acceptable at this location.

Section 25 of the Town and Country Planning (Scotland) Act 1997 states that 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. The policy background is set out above and assessed below. In terms of material considerations, the site history is a key factor.

In 2002, under the previous ownership of the MoD and before the site had OSPA or TPO designation, planning permission (in outline) for residential development was refused, *inter alia*, on the grounds that the residential development of the site would result in the loss of the majority of the woodland which comprises the application site which will have in an unacceptable detrimental impact upon the setting and character of the immediate locality. This was contrary to a range of Development Plan policies in effect at the time.

In 2005, planning permission for the erection of 3 dwellinghouses was refused on the grounds that the site had significant amenity value in the immediate area and wider setting of Helensburgh due to its mature tree cover and woodland appearance. The loss of this important woodland area would be visually intrusive, visually discordant and will not maintain or enhance the character of the area. The design of the proposed dwellinghouses was also considered to be unacceptable.

Finally, in 2008, following removal of the TPO, planning permission for the erection of 3 dwellinghouses was refused on the grounds that the application site is a valued open space which has amenity value in the immediate area and wider setting of Helensburgh and is designated as an Open Space Protection Area. The proposed development would result in the loss of this open space. The loss of this space and its replacement with dwellings, accesses, hardstanding, fences and other associated suburban development will be visually intrusive, visually discordant and will not maintain or enhance the character of the area.

One of the determining issues is whether there has been any material change in circumstances since the last refusal in 2008. At that time the TPO had been modified to remove this site. However, it did have OSPA status which was confirmed by the Reporters in the Local Plan Inquiry on what is now the adopted Local Plan. In doing they stated in connection with this and the two remaining parts of the TPO which are also OSPAs, *inter alia*, that:

The open spaces speak for themselves. All three provide a valuable feature in the streetscape; they form important visual open space areas within their residential neighbourhood; and their semi-wilderness appearance provides a welcome contrast with the level formality of the council's maintained parkland and playing fields nearby. In these terms we are entirely satisfied that the value of these areas fulfils the description required in the structure plan as 'important'.

Policy LP REC 2, *inter alia*, presumes against the development or redevelopment of OSPAs. It will only be allowed where:

- (i) The retention or enhancement of the facilities can best be achieved by the redevelopment of part of the site which will not compromise its amenity value;
- (ii) There would be no loss of amenity and alternative provision of equal community benefit and accessibility would be made available.

The application site is not merely valuable because of the trees that were previously growing there. Even with the trees felled, its value as open space which contributed to the softening of the environment remains. Indeed this was recognised in the previous application 06/00361/DET which was decided after the TPO was removed on this site. Similarly, while the use made of it might contribute towards its value, it was not decisive in this respect and its amenity value for the community remains. Planning Advice Note (PAN) 65 advises that all spaces, regardless of ownership and accessibility (i.e. public and private spaces), contribute to the amenity and character of an area. PAN 65 also sets out how areas of open space should not be allowed to deteriorate through inadequate management, nor should poor maintenance regimes provide justification for their disposal for development.

The proposal will neither retain nor enhance the existing function of the site. The area has value as a green space and buffer between housing and helps to soften the impact of and integrate existing development. Its replacement with dwellings, accesses, hardstanding, fences and other associated suburban development will clearly compromise its amenity value, and will fail to maintain or enhance the character of the area. In order to comply with policy, the applicant is proposing a replacement planting scheme located primarily to the rear of the site. However, this will cover only approximately 17% of the site, with the rest of the ground being used for development. The proposal is therefore contrary to the terms of parts B and D of Policy LP ENV 1 and part B of Policy LP ENV 19 of the Argyll and Bute Local Plan which seek to resist development which is not of high quality and does not respect the local environment.

The applicant also proposes the provision of a bandstand at Kidston Park, or £50,000 to upgrade equipment or any other item at Kidston Park.

As indicated above the Reporters in the Local Plan PLI stated *inter alia* that the open spaces speak for themselves. They provide a valuable feature in the streetscape; they form important visual open space areas within their residential neighbourhood; and their semi-wilderness appearance provides a welcome contrast with the level formality of the council's maintained parkland and playing fields nearby. In these terms they were entirely satisfied that the value of these areas fulfils the description required in the structure plan as 'important'.

Policy LP REC 2 supports the retention or enhancement of the facilities if it doesn't compromise its amenity value and there would be no loss of amenity and alternative provision of equal community benefit and accessibility would be made available. A sum of £50,000 for play equipment or another similar item is different in kind from the value the site has at the moment, is in a different locale and is not of equal or equivalent value. The loss of this space would not just compromise but remove its amenity value. As such, it is not considered that a case has been made in terms of this element of proposed mitigation.

The bandstand would require to be the subject of a separate application, which has not yet been submitted. This is a standalone structure whose function is primarily as a decorative feature. It is not as readily accessible to residents on Cumberland Avenue and surrounding houses as it involves access over the main road. Consequently, it is not considered to be an alternative provision of equal community benefit and accessibility as it won't provide the same function as the existing open space, given the specific contribution the site at Cumberland Avenue has as a green space, wildlife corridor and buffer between housing helping to soften the impact of and integrate the existing built form in to the wider area. Without provision of further or enhanced open space, there will be a loss of amenity. The proposal is therefore contrary to parts B (i) and B (ii) of Policy LP REC2 of the Argyll and Bute Local Plan which, presumes against development which compromises the amenity value of Open Space Protection Areas.

Reference is made in the representations to an application by Lomond School for the redevelopment of part of their existing pitches for the erection of a new games hall. The application was submitted in 2007 under reference 07/01587/PP and assessed against development plan policy and other material considerations. This included Policy LP REC 2. It was considered that the provision of a new sports hall would enhance the existing facilities, adding to its sporting potential and without a detrimental impact on the amenity of the area.

In terms of B (ii), SportScotland were consulted on the proposal. In their initial response they stated that, based on the initial evidence submitted, the proposal was not considered consistent with NPPG 11. Following this the Council's Playing Fields Development Manager was consulted. In a letter to SportScotland dated 5th December 2007 he stated:

"I have reviewed the Council's position and would confirm that the pitch at Ardencaple is not required to be retained on the basis that there are enough pitches of appropriate quality and accessibility elsewhere in the locality to satisfy current and future community demand."

The area of ground was part of a private school with limited community access. In addition, it was indicated that there would be some community access at the new facility. SportScotland subsequently submitted a second consultee response dated 11 December 2007 withdrawing their objection. On the basis of the above the proposal was considered consistent with Policy LP REC2.

Reference is also made in the representations and applicant's supporting statement to negotiations with Council officers and the community. This relates to potential mitigation in line with Policy LP REC 2 regarding the site directly opposite the current application site. Members will recall that they recently agreed for all the Larch trees to be felled on this site designated W2 in terms of TPO 16/04 and also designated an OSPA.

On site W2 planning permission for first 7 and then 6 houses has been refused under reference numbers 05/00514/DET and 06/01317/DET respectively. The latter application and an application to clear fell under reference 06/02621/TPO was the subject of a conjoined PLI. The Reporter dismissed the appeal. The site was also part of the Local Plan PLI where the Reporters confirmed the OSPA designation.

As indicated above, Policy LP REC 2 supports the retention or enhancement of the facilities if this can be achieved by the redevelopment of part of the site which will not compromise its amenity value. It also supports alternative provision of equal community benefit and accessibility subject to no loss of amenity.

Discussions took place with the owners of the site with a view to allowing development on the W1 site (the current application site) linked to the provision of community woodland on the W2 site. The Planning Authority sought expressions of interest and facilitated a meeting with the Helensburgh Community Woodland Group who were willing to consider taking over responsibility for the W2 site.

It is understood that these negotiations have failed to reach an agreement, although the HCWG has expressed interest in purchasing the W1 site. Whilst, in part, these are civil matters, a potential solution allowing development on the current application site linked to a community woodland on W2 could potentially satisfy the provisions of Policy LP REC 2 with regard to appropriate mitigation. However, in the absence of an agreement it is considered, for the reasons set out above, that the mitigation currently being offered as part of this application fails to satisfy Policy LP REC 2. As such, the proposal will not ensure the retention or enhancement of the facilities, and the development proposed will unacceptably compromise its amenity value.

C. Road Network, Parking and Associated Transport Matters.

The Area Roads Manager has no objections to the proposed access and parking arrangements.

D. Infrastructure

Scottish Water has no objections to the proposal.

E. Access and Biodiversity

The removal of the trees from the site does not have any effect upon access rights to it. Access rights are for responsible, non-motorised, access to land and inland waters for recreation and passage and not to a particular sort of land or water. The site falls within Public Rights of Access under the Land Reform Scotland Act 2003.

The site in its current state of complete cover by ground flora with some tree regeneration provides a habitat for birds, insects and some smaller mammals. With the tree regeneration above the height of the brambles, the site has the potential to develop into broadleaved woodland with some shrub layers in the open spaces not colonised by tree species.

Objectors

Thomas Grieg, 454 Kilmarnock Road, Newlands, Glasgow (e-mail dated 09/06/2011)
Tom Adam, 19 Cumberland Avenue, Helensburgh (letter dated 11/06/2011)
David Watt, 12 Dalmore Crescent, Helensburgh (e-mail dated 14/06/2011)
Hellen Watt, 12 Dalmore Crescent, Helensburgh (e-mail dated 14/06/2011)
David Adams 12 Cumberland Avenue, Helensburgh (e-mail dated 15/06/2011)
Margaret Scott, 48 Ardencaple Drive, Helensburgh (e-mail dated 17/06/2011)
Helensburgh Community Woodlands Group c/o Rosemary Stevenson, 8 Cumberland Avenue, Helensburgh (e-mails dated 19/04/2011 and 09/08/2011)
J McNeil, 46 Ardencaple Drive, Helensburgh (letter dated 19/06/2011)
Mrs M McNeil, 46 Ardencaple Drive, Helensburgh (letter dated 19/06/2011)
Alistair Quinian, 42 The Hill, Littlebourne, Canterbury (e-mail dated 20/06/2011)
Mrs Catherine Quinian, 3 Strathclyde Court, Helensburgh (e-mail dated 19/06/2011)
Mrs Mary Latimer, 17 Cumberland Avenue, Helensburgh (e-mail dated 18/06/2011)
Stan Latimer, 17 Cumberland Avenue, Helensburgh (e-mail dated 18/06/2011)
Charles Clements, 36 Ardencaple Drive, Helensburgh (e-mail dated 18/06/2011)
Rosemary Lawson, 92 East King Street, Helensburgh (e-mail dated 18/06/2011)
Mrs Pat Reed, 16 Frazer Avenue, Helensburgh (e-mail dated 17/06/2011)
Robert Teale, 34 James Street, Helensburgh (e-mail dated 20/06/2011)
David Tipple, 4 Frazer Avenue, Helensburgh (e-mail dated 19/06/2011)
Angus MacInnes, 19 Upper Glenfinlas Street, Helensburgh (e-mail dated 19/06/2011)
Mrs Mary MacInnes, 19 Upper Glenfinlas Street, Helensburgh (e-mail dated 19/06/2011)
Mrs Catherine Grout, 18a Upper Glenfinlas Street, Helensburgh (e-mail dated 19/06/2011)
Ian Reed, 16 Frazer Avenue, Helensburgh (e-mail dated 20/06/2011)
Melville Matheson, 7 Larchfield, Colquhoun Street, Helensburgh (e-mail dated 21/06/2011)
Mrs Isabel Stirling, 15 Duchess Avenue, Helensburgh (e-mail dated 21/06/2011)
Catriona Mallan, 36a James Street, Helensburgh (letter dated 21/06/2011)
Ms April Wylie, Scotstoun Street, Glasgow (e-mail dated 22/06/2011)
Mrs E H Campbell, Flat 5, Dalmore House, Dalmore Crescent, Helensburgh (letter dated 21/06/2011)
Craig MacPhee, 39 Ardencaple Drive, Helensburgh (e-mail dated 23/06/2011)
M J Board, 1 Empress Drive, Helensburgh (letter received 27/06/2011)
John Christie, 10 Cumberland Avenue, Helensburgh (e-mail dated 27/06/2011)
Stuart Latimer, 5 Machrie Drive, Helensburgh (e-mail dated 27/06/2011)
Andrew Armitage, 21F Baird Avenue, Helensburgh (e-mail dated 29/06/2011)
Mrs Judith Adams, 12 Cumberland Avenue, Helensburgh (e-mail dated 30/06/2011)
Mrs Sheila Mathers, 145 West King Street, Helensburgh (e-mail dated 04/07/2011)
Morag and Alan Joffrey, (no address) (e-mail dated 03/07/2011)
Rosemary Stevenson, 8 Cumberland Avenue, Helensburgh (e-mail dated 07/07/2011)
Ms Amanda Stevenson, 8 Cumberland Avenue, Helensburgh (e-mail dated 07/07/2011)
Elizabeth G. Dow, 15 Cumberland Avenue, Helensburgh (letter dated 14/07/2011)

Supporters

Colin Gordon, 43 Loch Drive, Helensburgh (letter dated 19/06/2011)
D Dougan, 16 Townhead Road, Helensburgh (letter dated 22/06/2011)
J Blair, 59 Buchanan Road, Helensburgh (letter dated 22/06/2011)
C Conkie, 24 Normanhurst Court, Helensburgh (letter dated 21/06/2011)
T Stewart Aitken, 4 Sutherland Gate, 24 Sutherland Street, Helensburgh (letter dated 22/06/2011)
D McKell, 19a Baird Avenue, Helensburgh (letter dated 21/06/2011)
Donald Cameron, 158/7 West King Street, Helensburgh (letter dated 21/06/2011)
Mr C Aranci, 2 Kidston Gardens, Helensburgh (letter dated 27/06/2011)
Graham Hill, 1 Kidston Gardens, Rhu Road Higher, Helensburgh (letter dated 04/07/2011)
Mr S Nawrocki, 38 Lomond Street, Helensburgh (letter dated 26/07/2011)