

**PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE**  
**21 SEPTEMBER 2011**

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**UPDATE ON RECENT SCOTTISH GOVERNMENT PLANNING DECISIONS**

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**A) INTRODUCTION**

This report advises of recent appeal decisions by the Scottish Government Directorate for Planning and Environmental Appeals relative to the cases set out below.

**B) RECOMMENDATION**

Members are asked to note the contents of the report.

**C) DETAILS OF APPEAL DECISIONS**

**PLANNING APPEAL DECISION – LBA-130-10– Dismissed**  
**Installation of replacement timber windows**  
**Braehome, 27 Crichton Road, Rothesay PA20 9JR**

Listed building consent 10/00383/LIB was refused on 31 March 2011 under officer delegated powers on the following grounds:

1. The proposed replacement windows on the subject property, by virtue of their inappropriate double swing method of opening, would have an unacceptable impact upon the architectural and historic interest of this Category C(S) Listed Building located in a visually prominent position within the Rothesay Conservation Area. As a consequence, the development is contrary to STRAT DC 9 of the Argyll and Bute Structure Plan 2002; Policy LP ENV 14 of the Argyll and Bute Local Plan 2009; the Council's non-statutory Rothesay Window Policy Statement and Design Guide E 'Replacement of Windows'; and the advice contained within Historic Scotland's Scottish Historic Environmental Policy 2008.

An appeal against the refusal was submitted to Scottish Ministers on 16 June 2011. The Reporter concluded that the proposal would fail to preserve either the listed building or the character and appearance of the Rothesay Conservation Area. He therefore dismissed the appeal against the refusal of listed building consent.

**PLANNING APPEAL DECISION – CLUD-130-2001– Allowed**  
**Use of car park (extended)**  
**Poppies Garden Centre, Land east of Tigh Na Mara Dunstaffnage by Oban**  
**PA37 1PX**

Application for Certificate of lawfulness 11/00171/CLAWU was refused on 6 April 2011 under officer delegated powers on the following grounds:

1. It is not considered that the ten year period to establish a lawful use of this land has been proven. The supporting statements and recollection of the writers of the sworn affidavits are countered by dated photographic evidence sourced by the Planning Authority showing the land was covered by well established grass/vegetation during the relevant time period. The area of land may have been used sporadically for parking and turning of vehicles and/or the storage of materials, but the land has, as far as can be ascertained, remained principally as undeveloped marsh habitat. Accordingly, it is not appropriate for the Planning Authority to grant the certificate of lawfulness as applied for.

An appeal against the refusal was submitted to Scottish Ministers on 7 June 2011. The Reporter considered affidavits in support of the appellants claim that the land had been used for the parking and turning of vehicles over many years and accorded these more weight than the Council's evidence based upon aerial photography which he found less conclusive in terms of regularity of use of the land. He concluded that on the balance of probability, he was satisfied that the extended car park had been in existence for more than ten years. He therefore allowed the appeal and granted the certificate of lawfulness.

#### **D) IMPLICATIONS**

Policy: None Financial: None Personnel: None Equal Opportunities: None

**Authors and contact officers: David Eaglesham (01369 708608) and  
Stephen Fair (01631 567951)**

**Angus J Gilmour**  
**Head of Planning & Regulatory Services** 13<sup>TH</sup> September 2011