

STATEMENT OF CASE

FOR

**ARGYLL AND BUTE COUNCIL
LOCAL REVIEW BODY**

**REFUSAL OF PLANNING PERMISSION FOR
THE ERECTION OF A BONDED WAREHOUSE –
LAND NE OF CONISBY, BRUICHLADDICH, ISLE
OF ISLAY**

LOCAL REVIEW BODY REF. 11/0010/LRB

**PLANNING PERMISSION APPLICATION
REFERENCE NUMBER 10/00263/PP**

29TH DECEMBER 2011

STATEMENT OF CASE

The planning authority is Argyll and Bute Council ('the Council'). The appellant is Kilchoman Distillery. ('the appellant').

The planning application, reference number 10/00263/PP, for a site for the erection of a ("the appeal site") was refused under delegated powers on the 3rd October 2011. The planning application has been appealed and is subject of referral to a Local Review Body.

DESCRIPTION OF SITE LOCATION

The application site relates to approximately 1.3ha (including access road) with the proposed warehouse located west of the A847 public highway and adjacent to three existing agricultural buildings to the north east of Conisby. The application site occupies an elevated location above the 30m AOD contour and located approximately 300m to the west of a grouping of six dwellings (Lochgorm House – Spring Bank House) which sit adjacent to the A847 and 200m north east respectively of the existing residential properties Tigh Na Torraig and Taigh An Tobair which sit at the eastern edge of the Conisby settlement area.

SITE HISTORY

Other than the application which is subject of this review (10/00263/PP) there is no other relevant planning history in respect of the application site.

It is noted that the adjacent agricultural buildings have been developed over time under the provisions of 'permitted development rights' specifically relating to the provision of buildings necessary for the purposes of agriculture and as such do not have the benefit of express planning permission.

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 proposal is consistent with the Council's 'Settlement Strategy' as set out in the Development Plan, in this instance policies

STRAT DC 4, STRAT DC 5, and LP BUS 2.

The Report of Handling (Appendix 1) sets out the Council's assessment of the application in terms of Development Plan policy and other material considerations. The consultation comments submitted by statutory and other consultees (Appendix 2) are attached for the purpose of clarity.

POLICY BACKGROUND

The appeal relates to a 'large scale' Business and Industry development located on a countryside location within both a 'Rural Opportunity Area' and 'Sensitive Countryside' – the following policy considerations are relevant to the determination of this matter:

Structure Plan Policy STRAT DC 4 – Development in Rural Opportunity Areas

- A) *Within Rural Opportunity Areas encouragement shall be given to small scale developments on suitable sites which, in terms of siting and design, will visually integrate with the landscape and settlement pattern; this may include small scale development in the open countryside as well as small scale infill, rounding-off, re-development and change of use of building development.*
- B) *n/a*
- C) *In special cases, a medium or large scale development may be supported if this accords with an area capacity evaluation which demonstrates that the specific development proposed will integrate sympathetically with the landscape and settlement pattern and will entail or result in at least one of the following outcomes:*
 - 1. *A positive development opportunity yielding significant countryside management or environmental enhancement benefit, or building retention benefit, or local community benefit, or economic benefit;*

OR

 - 2. *A development with a locational need to be on or in the near vicinity of the proposed site.*
- D) *Developments which do not accord with this policy are those outwith categories A), B) and C) above and those with incongruous and unacceptable siting and design characteristics, including development resulting in undesirable forms of ribbon development or settlement coalescence.*
- E) *Developments are also subject to consistency with other policies of the Structure Plan and in the Local Plan.*

Structure Plan Policy DC 5 – Development in Sensitive Countryside

- A) *Within Sensitive Countryside encouragement shall only be given to small scale infill, rounding-off, re-development and change of use building development ...*
- B) *In special cases, development in the open countryside and medium and large scale development may be supported if this accords with an area capacity evaluation which demonstrates that the specific development proposed will integrate sympathetically with the landscape and settlement pattern and that the development will entail or result in at least one of the following outcomes:*
1. *n/a*
 2. *a positive development opportunity yielding significant countryside management or environmental enhancement benefit, or building retention benefit or local community benefit or economic benefit;*
- OR*
3. *a development with a locational need to be on or in the near vicinity of the proposed site.*
- C) *Developments which do not accord with this policy are those outwith categories A) and B) above and those with incongruous siting, scale and design characteristics or resulting in unacceptable forms of ribbon development or settlement coalescence.*
- D) *Developments are also subject to consistency with other policies of the Structure Plan and in the Local Plan.*

Local Plan Policy LP BUS 2 – Business and Industry Proposals in the Countryside Development Control Zones

Proposals for the development of new, or extensions to existing business and industrial development (Use Classes 4, 5, 6 and 7) in the Countryside Development Zones will only be permitted where:

- (A) *The development is of a form, location and scale, consistent with Structure Plan policies STRAT DC 2-6. Of particular note: Development proposals must also comply with policy P/DCZ 4 – Rural Opportunity Areas and Schedule B1 and B3; OR*
- (B) *Proposals are for medium or large-scale development in the rural opportunity areas, or for small scale development in the sensitive countryside where the applicant can demonstrate a clear operational need for a specific location within these countryside zones.*

In all cases the proposals will also require to meet the following criteria:

- (i) Greenfield sites are avoided if brownfield land is available close by;*
- (ii) The proposal is consistent with any other Structure Plan or Local Plan policies;*
- (iii) Technical standards in terms of parking, traffic circulation, vehicular access and servicing and pedestrian access are met in full);*
- (iv) The design scale and siting of the new development respects landscape/townscape character and appearance of the surrounding area;*
- (v) Good quality agricultural land is avoided if poorer quality land is available close by.*

Depending on the scale and type of development proposed, where appropriate, agreements under Section 75 of the Town and Country Planning (Scotland) Act 1997 will be entered into for the purpose of restricting or regulating the development or use of land.

The granting of permission for exploration or appraisals proposals will be without prejudice to any subsequent application to develop that location.

Local Plan Schedule B1 – Business and Industry Scales of Development

- Large Scale -*** *buildings exceeding 600sqm footprint, or gross site area exceeding 2ha.*
- Medium Scale -*** *buildings between 200sqm and 600sqm footprint or, gross site area between 0.5ha and 2ha.*
- Small Scale -*** *buildings not exceeding 200sqm footprint, or gross site area not exceeding 0.5ha.*

Local Plan Schedule B3 – Preferred Locations for Business and Industry

In the Countryside: small scale business and industry development on infill, rounding-off and redevelopment sites in the countryside around settlements and rural opportunity areas; these to be non-residential locations in the case of industry.

The text which accompanies policy LP BUS 2 sets out the following justification in respect of Business and Industry Development in the Countryside Development Control Zones.

With the exception of small scale business and industry development, the preferred location for business/office and industrial proposals is within existing settlements, as this strengthens their viability, reduces transport costs, makes use of existing infrastructure and public investment. However, Argyll and Bute has a number of indigenous and emerging

industries that are not suited to a location within an existing settlement. ... Therefore, where an applicant can clearly demonstrate that their proposal requires a location in the countryside, permission will normally be granted, providing that redundant buildings and brownfield sites are used where possible. Any proposal must also satisfy the criteria listed in the policy and if required ensure that appropriate site restoration proposals are in place.

REQUIREMENT FOR ADDITIONAL INFORMATION AND A HEARING

The issues raised were covered in the Report of Handling which is contained in Appendix 1. As such it is considered that Members have all the information they need to determine the case. Given the above and that the proposal is 'local' development, has no complex or challenging issues and has not been the subject of significant body of conflicting representation, then it is considered that a Hearing is not required.

COMMENT ON APPELLANTS' SUBMISSION

Having regard to part (7) of the appellant's submission the following comments are noted for the record in respect of the specific issues raised:

1. I am unable to provide a detailed comment in respect of verbal pre-application discussions – having discussed this with the officers involved at that time they are unable to accurately recall the extent of the information which was available for their initial comment. It is however not denied that favourable comment was provided by officers having regard to the principle of siting a bonded warehouse within 'rural opportunity area' at Conisby; it is however unclear whether the large scale nature of the proposal or the potential for an incursion of the site area into 'sensitive countryside' would have been clear from the information available at the time of these initial pre-application discussions – in any event the applicant/agent will have been advised that the proposal would require assessment against the provisions of policy LP BUS 2 which clearly sets out the presumptions for and against Business and Industry Development in the Countryside Zones.

It is further noted that informal advice is provided on the basis of the relevant policy provisions and information available at that time; it is however noted that even in the event of incorrect advice being offered, the Council as planning authority cannot be bound by informal advice issued by its officers – this would apply regardless of whether such advice was provided verbally or in writing. The provisions of S37 of the Act set out that in dealing with 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; in this respect a planning application requires to be determined having due regard to the policy provisions of the Development Plan and it is this test, rather than the accuracy of any informal pre-application advice, which

requires to be satisfied in the formal determination of an application or indeed its appeal/review.

2. The appellant argues that the provisions of policies STRAT DC 4 and STRAT DC 5 do allow for medium and large scale development in special cases and seek to make the case that this scale of development on the appeal site should be granted on the basis that the bonded warehouse has a locational requirement to be on or in the near vicinity of the proposed site. The appellant claims that the site at Conisby is the closest available site to the distillery but also confirms that no claim for locational or operational need was made in the submitted application.

It is not disputed that the provisions of STRAT DC 4 or STRAT DC 5 can support the proposed scale of development provided that the applicant can demonstrate that the proposal merits being considered as a “special case” which meets criteria set out in these policies AND where the proposed development accords with an Area Capacity Evaluation. The provisions of policy LP BUS 2 are more prescriptive in that it restricts the criteria for a “special case” to proposals which “can demonstrate a clear operational need for a specific location within these countryside zones”, allowing for medium and large scale development within rural opportunity areas and small scale development in the sensitive countryside.

In this instance, and as has been explained to the appellant since April 2010, it has been the determination of the planning authority that insufficient evidence has been provided in support of the application to demonstrate that such a “special case” exists based upon a locational necessity for the proposed development at Conisby. Planning officers advised as far back as April 2010 that in order to demonstrate such a locational necessity which accords with LP BUS 2 that it would be necessary to undertake a sequential assessment of the availability and suitability of alternative sites, this would either demonstrate the absence of any planned provision for a development of this scale within the provisions of the Local Plan (i.e. a clear demonstration of a “special case” and justification for setting aside the normal provisions of the Settlement Strategy set out in the Structure and Local Plans) or, would result in the identification of an available, alternative location which the appellant could take forward. In the first instance it would be expected that the appellant would seek to investigate the availability of land within Business and Industry Allocations and the ‘settlement area’ and ‘countryside around settlement’ relating to the main towns on the island – these areas being the preferred location for medium and large scale business and industry proposals having regard to the Settlement Strategy set out in the Local Plan. It would also be expected that investigation of land immediately adjoining the existing distillery operation be undertaken as this could potentially be viewed as an extension of the existing industrial operation and would have obvious operational benefits which would be likely to be accepted as a “special

case” in their own right. It is considered that sufficient time was afforded to the appellant prior to the formal determination of the application to submit such further information in support of the proposal.

The appellant has failed to provide the requested sequential assessment in advance of the application being determined by the planning authority; in the absence of a “special case” being clearly demonstrated it is also advised that an Area Capacity Evaluation has not been undertaken for this locality.

The additional details relating to investigation of alternative sites provided by the appellant in their appeal statement (part (7) paras 2 and 7) does not sufficiently meet the requirements of a sequential assessment of alternative locations; such a submission would be expected to clearly identify the boundaries of sites which have been considered in addition to provision of a justification statement and corroborative evidence relating to the availability/suitability/viability (or lack of) for each location.

In addition to the absence of a sequential assessment being submitted in support of the proposal it is also noted that in the information which has been provided, the appellant has omitted a number of key locations from their investigations, these would include the Business and Industry Allocation at Bowmore (Local Plan ref. BI-AL 10/1) and the availability/suitability of land adjoining the existing distillery operation. Details relating to the investigation of the Business and Industry Allocation at Whin Park were submitted prior to determination and have been addressed in detail in the Report of Handling (Appendix A).

It is noted that having regard to the above, the Local Review Board may be minded to consider offering the appellant the opportunity to submit a sequential assessment in support of their application for review. Should Members be so minded then they would respectfully be advised to also consider the provisions of Section 43B of the Act which restricts the introduction of new material in the review process; paragraph 38. of Circular 7/2009 sets out that new material will only be permitted where the party can demonstrate that it could not have been introduced earlier in the process, or that it arises as a result of exceptional consequences. It is the view of the planning authority that any such submission of new evidence which seeks to address the reason for refusal of this proposal procedurally should require to be addressed via the medium of a revised application for planning permission – it is further noted that any such amended application which successfully demonstrates that the proposal is a “special case” having regard to policy LP BUS 2 would require to be determined by the elected Members of the Planning, Protective Services and Licensing Committee having regard to the Council’s Scheme of

Delegation which requires applications which involve an Area Capacity Evaluation to be determined in this manner.

3. Confirm that no third party objections were received to the proposal.
4. The appellant's claim that their operation is of economic benefit to the locality is not disputed; it is however noted that this can only be relied on as an over-riding consideration on the event that a "special case" for the location of the development at Conisby can be demonstrated – it is the determination of the planning authority that this requirement has not been met.
5. See 4. above.
6. Appellant has quoted from Local Plan policy LP BUS 2 and states that proximity of the development to the distillery is a relevant issue. It is not disputed that proximity of the warehouse to the distillery should be a material consideration; however in failing to undertake a sequential assessment of alternative locations for the development the appellant has not demonstrated that there is a clear locational necessity for the development to undertaken specifically at Conisby.

It is confirmed that the proposal complies with the Council's minimum technical standards in respect of access, parking etc.

The appellant states that the design, scale and siting of the development will respect the landscape/townscape character and appearance of the surrounding area as it will be located beside an existing agricultural grouping of buildings. It is however noted that to comply with the provisions of policies STRAT DC 4 and STRAT DC 5 it would be necessary to undertake a formal Area Capacity Evaluation, in accordance with the Council's supplementary planning guidance, prior to being able to support such a conclusion. It is confirmed that the planning authority has not undertaken such an exercise in the determination of the application given the failure of the appellant to clearly demonstrate a locational necessity for the proposal having regard to the provisions of policy LP BUS 2.

It is not disputed that the application site does not relate to good quality agricultural land.

7. See 2. above.

CONCLUSION

Section 25 of the Town and Country Planning Act 1997 requires that all decisions be made in accordance with the development plan unless material considerations indicate otherwise.

The proposal represents 'large scale' commercial/industrial development in the open countryside, partly within a Rural Opportunity Area (ROA) and partly within an area of Sensitive Countryside. Development Plan policies STRAT DC 4 and LP BUS 2 would not ordinarily support development proposals larger than 'small scale' within the ROA and the gross footprint area of the proposed warehouse building would be some ten times larger than the upper limit of 'small scale' as defined in the Development Plan. Development Plan policies STRAT DC 5 and LP BUS 2 would ordinarily prevent commercial/industrial development of any scale within the Sensitive Countryside unless on appropriate sites as infilling, redevelopment, rounding-off or re-use of existing buildings where, in such cases, no greater than small scale development may be permitted. In this case, there are no infilling, redevelopment, rounding-off or re-use opportunities and, notwithstanding this, the proposed development is substantially larger than 'small scale' and, there has been no clear and persuasive claim of operational necessity to locate the proposed warehouse building at this site some distance from the existing distillery complex, and it is not considered that other options consistent with the provisions of the Development Plan have been adequately explored, namely relocating the proposed development to an established designated area for business/industry within which there is existing sufficient capacity. Taking account of the above, it is respectfully requested that the appeal be dismissed.

Appendix 1 – Report of Handling

Argyll and Bute Council
Development & Infrastructure 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: 10/00263/PP
Planning Hierarchy: Local
Applicant: Mr. Anthony Wills
Proposal: Erection of a Bonded Warehouse including associated security fence, hardstanding and access improvements
Site Address: Land north east of Conisby by Bruichladdich, Isle of Islay

DECISION ROUTE

Sect 43 (A) of the Town and Country Planning (Scotland) Act 1997

(A) THE APPLICATION

(i) **Development Requiring Express Planning Permission**

- Erection of bonded store warehouse building
- Erection of security fencing
- Formation of new access onto a classified road

(ii) **Other specified operations**

- None
-

(B) RECOMMENDATION:

That permission be Refused for the reasons contained in this report.

(C) CONSULTATIONS:

Highlands And Islands Airports Limited	16.03.2010	No objection.
Core Paths	17.02.2010	No objection.
Area Roads Mid Argyll Kintyre And Islay	11.03.2010	No objection subject to conditions.
West Of Scotland	17.03.2010	No objection subject to condition.

(D) HISTORY:

None relevant

(E) PUBLICITY:

ADVERT TYPE:
Regulation 20 Advert Local Application
EXPIRY DATE: 18.03.2010

(F) REPRESENTATIONS:

(i) Representations received from:

No representations received

(ii) Summary of issues raised:

- N/A
-

(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 eg. Retail impact, transport impact, noise impact, flood risk, drainage impact etc: | No |
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(H) PLANNING OBLIGATIONS

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 4 – Development in Rural Opportunity Areas
STRAT DC 5 – Development in Sensitive Countryside
STRAT DC 9 – Historic Environment and Development Control

'Argyll and Bute Local Plan' 2009

LP ENV 1 – Impact on the General Environment
LP ENV 17 – Impact on Sites of Archaeological Importance
LP BUS 2 – Business and Industry Proposals in the Countryside DC Zones
LP TRAN 4 – New and Existing Public Roads and Private Access Regimes
LP TRAN 6 – Vehicle Parking Provision

(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.

- N/A

(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

This application relates to an elevated and exposed site north of Bruichladdich and south east of Conisby, located immediately adjacent to an existing farm

steading and situated partly within a 'rural opportunity area' (ROA) and partly within an area of 'sensitive countryside', with an existing disused farm access trackway leading across open land from the site of the proposed building to the public road some 450 metres to the east.

It is proposed to erect a new bonded warehouse building on this land to serve the Kilchoman Distillery which is located some 3.5 kilometres to the north west. The proposed building would be 40 metres wide and 55 metres long of double-span portal frame construction with rendered concrete blockwork lower walls and profile sheeting above and for the two apex roofs, the maximum height of which would be some 6.1 metres with an eaves height of 3.2 metres. The building itself would be located partly within the ROA and partly within the sensitive countryside and would be surrounded by a wide servicing area with extensive hardstanding and a perimeter security fence of galvanized chainlink mesh with a crooked top section carrying three strands of wire. The maximum height of the proposed fence would be 2.9 metres. The 'apron' area surrounding the building would extend further into the sensitive countryside to the south, east and north east.

The proposed building would have a footprint area of 2,200 square metres which would have the appearance of a very large agricultural shed and would be located immediately adjacent to an existing farm steading, although the proposed building would be considerably larger than all of the existing adjacent agricultural buildings combined. However, the site is reasonably well screened from nearby views from the public road by virtue of the rising landform and the location of the building set back from the foreground ridge. Although distant views of the proposed building would be available from Bridgend and beyond, it is considered that the proposed development could be visually accommodated within the wider landscape if settlement strategy policy considerations did not fundamentally prevent a building of this scale in this location.

It is understood from discussion with the applicant that the proposed building would provide storage capacity for approximately 8 years production from Kilchoman Distillery based upon production estimates of approximately 1000 casks per year.

The proposed development straddles two adjacent countryside development zones. Settlement strategy policy STRAT DC 4 (Development in Rural Opportunity Areas) encourages small scale developments on suitable sites which, in terms of siting and design, will visually integrate with the landscape and settlement pattern. Policy STRAT DC 5 (Development in Sensitive Countryside) would only permit small scale development on suitable infill, rounding-off or redevelopment sites or an appropriate change of use to an existing building.

The application site is an open, exposed and undeveloped parcel of land adjacent to an existing farm steading but not constituting an infill, rounding-off or redevelopment opportunity. The proposed development is not a change of use of an existing building and it is therefore considered that the significant portion of the proposed development that falls within the sensitive countryside would be clearly contrary to settlement strategy policy STRAT DC 5.

Similarly, Local Plan policy LP BUS 2 states that proposals for business and industrial development in the countryside development zones will only be

permitted where the development proposed is of a form, location and scale consistent with Structure Plan policies STRAT DC 2 to 6.

‘Small scale’ business and industry development is defined in the Development Plan as buildings with a gross footprint area not exceeding 200 square metres and/or with a gross site area not exceeding 0.5 hectares. In the case of the proposed development, the site area (including the proposed access road) is some 1.29 hectares and the proposed building would have a gross footprint area of approximately 2,040 square metres; thus over ten times larger than the small scale developments that policy STRAT DC 4 would normally permit.

All three policies, STRAT DC 4, STRAT DC 5 and LP BUS 2 include a provision for allowing, in special cases, medium and large scale development within the countryside where the proposals would result in either a positive development opportunity yielding significant countryside management or environmental enhancement benefit, or building retention benefit, or local community benefit, or economic benefit, or where the applicant can demonstrate a clear operational need for a specific location on or in the near vicinity of the application site.

In this case the proposal is a private commercial development, not for any specific countryside management or environmental enhancement benefit for the site or its surroundings. The proposed development would not facilitate the retention of a building and is not for any specific positive community or economic benefit sufficient to outweigh the strong presumption against the development that exists in this case.

It is not considered that there is any overriding operational need to locate the proposed bonded warehouse on this specific site, partly within a rural opportunity area and partly in the sensitive countryside. This is a large scale development, defined by the Development Plan as buildings exceeding a 600 square metre footprint, and the preferred location for such a large scale commercial development is within an existing allocated business and industry site.

The main business allocation on Islay is at Whin Park, approximately 6 kilometres to the north east of the proposed access point to the Conisby site. Whin Park has sufficient capacity to accommodate the scale of building proposed and a development here would be wholly in accordance with the provisions of the Development Plan.

In addition to the above it is noted that officers have informally sought advice from Highlands and Islands Enterprise and the Council’s Business Gateway team with a view to ascertaining whether they were aware of any alternative locations on Islay which would present an opportunity for this scale of development. Other than the obvious business and industry allocations and settlement area identified in the Local Plan and potential for a development adjacent to the distillery buildings at Kilchoman justified on a locational basis this exercise has proven unfruitful.

The applicant and his agent have submitted various statements regarding the proposed development and the choice to locate the building within the open countryside rather than at an existing allocated business site or on a previously developed site. The various statements are summarised below:

- Significant effort has been made to attempt to identify an alternative location and sites at Port Charlotte, Octofad, Glenegeedale, Whin Park and Port Ellen were identified and pursued. However, none of these sites were found to be suitable or commercially viable. The proposed site at Conisby is adjacent to existing large scale agricultural sheds, is in poor quality agricultural land and partially brown field, and is sited with minimum visual impact and in a rural opportunity area. It is also sited moderately closely to existing bonded warehouses associated with Bruichladdich Distillery. I therefore submit that the application site, while partially contrary to the local plan, is an ideal location for this proposal and that no suitable alternative has been found.
- In the Summer of 2009 we identified a piece of land [at Conisby] to erect a bonded warehouse. The plot is adjacent to an existing agricultural engineering works. When we submitted this application to the planners the initial feedback we received was that planning was likely to be turned down as it did not conform to the recently adopted Local Plan policy. In the Summer of 2010 my Agent and I met with planning officers and various alternative plots were suggested that would be suitable for our requirements. The most suitable being Whin Park and Glenegeedale. A further plot at the disused warehouse in Port Charlotte was subsequently discounted as the present owner was seeking residential planning. Both the Whin Park and Glenegeedale sites were investigated over many months. The Glenegeedale site was ruled out completely when it was discovered the owner didn't own some of the land he was trying to sell us. We had long protracted discussions with Islay Estates about either leasing a plot or for them to erect and rent us a warehouse. Both were eventually discounted due to the totally unreasonable terms sought by Islay Estates. The ground rent proposal failed due to the building reverting to the landlord at the end of the initial term. The proposal was for them to put up a building and lease it to Kilchoman for an initial term of 10 years. However, through the discussions they demanded a 15 year lease rather than 10; Three yearly rent reviews based on retail price index which meant that the rent by the third or fourth review could be way ahead of the property market; Guarantees for the full lease obligation from the directors regardless of how well the business was doing and regardless of the strength of Kilchoman Distillery's balance sheet; The lease might have been such that we would have had no security of tenure at the site beyond year 15. Islay Estates moved the goal posts quite substantially on several occasions on the basis that they had to be sure that they were going to get their 90/100% finance repaid come what may. This gave us no room to manoeuvre and we therefore withdrew from the negotiations.
- Kilchoman is a small but developing business that now employs 12 full time and 3 part time staff. Our visitor centre and cafe have become popular destinations for the many tourists who visit Islay. We have been seeking alternative warehousing on Islay for 2 years and it is becoming increasingly worrying that a decision hasn't been made. We have been fortunate that we have been able to store our maturing whisky at Bruichladdich, Bowmore and latterly Port Ellen but this will all come to an end in the next few months. Unless we are able to secure a

site in the near future we may be forced to send our casks to the mainland at vast expense, or worse, stop production. It is very difficult to secure land for commercial use on Islay as most landlords are either unwilling to sell plots or they are holding out for residential planning and better value for themselves, or the land isn't zoned for industrial use. The malt whisky business is vital to the economy of Islay and I urge you to support our application to erect a warehouse at the Conisby site.

Comment: There are a few minor factual inconsistencies in the above.- The application site is not wholly within a 'rural opportunity area'; a significant part of it is within an area of sensitive countryside; including part of the proposed footprint area of the building itself, a substantial part of the surrounding servicing 'apron', a significant part of the proposed security fencing, and almost all of the proposed access road. The existing farm steading has no planning permission for operation as an 'engineering works'. Although negotiations might have been ongoing for 2 years, the current planning application was valid from February 2010 and was being held in abeyance at the request of the applicant for a significant length of time. Nevertheless, the Local Planning Authority are conscious of the time taken to progress this application.

Comment: Islay Estates have commented on the above with respect of the negotiations concerning the provision of an alternative site within the allocated Whin Park site. They state that:

- *In general, the points made by the applicant are correct. Any ground rent proposal that we would have come up with would mean that the building would become the property of the landlord after the expiry of the lease. It is true that we altered our negotiating position during the discussions. This is largely based on the fact that we would have to borrow 100% of the finance required to build a purpose-built warehouse that we would have no use for and it is unlikely that there would be a market for such a building as the other distilleries have their own storage. As discussions went on, the cost of borrowing increased and thus our exposure to risk increased. The three year reviews based on retail price index and the demand for guarantees reflects the financial risk that the Company would have to take. There is no Landlord and Tenant Act in Scotland so the security of tenure that exists in England would not be applicable to the sitting tenant.*

Whilst the need for bonded warehouse storage is appreciated, it is not considered that the proposed site could be supported as a departure to adopted Development Plan policies in this case. The scale of the proposed development is greater than the Development Plan would normally accommodate by a factor of ten or above. In addition, a significant part of the site, including part of the proposed footprint area of the building itself, a substantial part of the surrounding servicing 'apron', a significant part of the proposed security fencing, and almost all of the proposed access road is within an area of sensitive countryside within which development of the nature proposed would not usually be supported regardless of scale. There exist other sites for commercial development on Islay, notably at Whin Park, where land of suitable size is available and where planning policy would support the development proposed. The commercial negotiations to secure a suitable site within an allocated business and industry area are not material planning

considerations and there is no stated operational reason either why the building has to be located on the proposed site at Conisby or why it couldn't be located at Whin Park. It may be convenient or financially advantageous to locate the building within the open countryside rather than at a designated employment site but this is not considered sufficient to set aside established planning policy in this case. It is considered that to do so would be to set a substantial and materially harmful precedent for other inappropriately sited development which would run wholly contrary to the provisions of the Development Plan and to the established settlement strategy contained within it.

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

(R) Reasons why Planning Permission or Planning Permission in Principle Should be Refused:

The proposal represents 'large scale' commercial/industrial development in the open countryside, partly within a Rural Opportunity Area (ROA) and partly within an area of Sensitive Countryside. Development Plan policies STRAT DC 4 and LP BUS 2 would not support development proposals larger than 'small scale' within the ROA and the gross footprint area of the proposed warehouse building would be some ten times larger than the upper limit of 'small scale' as defined in the Development Plan. Development Plan policies STRAT DC 5 and LP BUS 2 would prevent commercial/industrial development of any scale within the Sensitive Countryside unless on appropriate sites as infilling, redevelopment, rounding-off or re-use of existing buildings where, in such cases, no greater than small scale development may be permitted. In this case, there are no infilling, redevelopment, rounding-off or re-use opportunities and, notwithstanding this, the proposed development is substantially larger than 'small scale'. There has been no persuasive claim of operational need to locate the proposed warehouse building at this site some distance from the existing distillery complex, and it is not considered that other options consistent with the provisions of the Development Plan have been adequately explored, namely relocating the proposed development to an established designated area for business/industry within which there is existing sufficient capacity.

(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: Tim Williams

Date: 14th September 2011

Reviewing Officer:

Date: 30th September 2011

A handwritten signature in black ink, appearing to read 'A. Gilmour', written in a cursive style.

Angus Gilmour
Head of Planning & Regulatory Services

REFUSAL REASONS RELATIVE TO APPLICATION REF. NO. 10/00263/PP

1. The proposal represents 'large scale' commercial/industrial development in the open countryside, partly within a Rural Opportunity Area (ROA) and partly within an area of Sensitive Countryside. Development Plan policies STRAT DC 4 and LP BUS 2 would not support development proposals larger than 'small scale' within the ROA and the gross footprint area of the proposed warehouse building would be some ten times larger than the upper limit of 'small scale' as defined in the Development Plan. Development Plan policies STRAT DC 5 and LP BUS 2 would prevent commercial/industrial development of any scale within the Sensitive Countryside unless on appropriate sites as infilling, redevelopment, rounding-off or re-use of existing buildings where, in such cases, no greater than small scale development may be permitted. In this case, there are no infilling, redevelopment, rounding-off or re-use opportunities and, notwithstanding this, the proposed development is substantially larger than 'small scale'. There has been no persuasive claim of operational need to locate the proposed warehouse building at this site some distance from the existing distillery complex, and it is not considered that other options consistent with the provisions of the Development Plan have been adequately explored, namely relocating the proposed development to an established designated area for business/industry within which there is existing sufficient capacity.

Appendix 2 – Statutory and other Consultee Comments

Other Consultees:

- **Argyll and Bute Council – Area Roads 11th March 2010**

Operational Services - Roads and Amenity Services
OBSERVATIONS ON PLANNING APPLICATION

Grid Reference 102000 604000 Dated

Applicant Mr Antony Willis
Proposed Development Erection of a Bonded Warehouse
Location Land North East of Conisby Bruichladdich, Isle of Islay
Type of consent Detailed Permission
Drawing Refs.

Application No. **10 00263 PP**
Contact James Ross
Tel. 01546-604655
Received 16/02/2010
Return By Date 08/03/2010
Call By Date

District Islay
Recommendation
No objection subject to conditions

Comments:

Conditions/Reasons for refusal/deferment

- 1. Connection to public road, 42 x 2.40 x 1.05 metres.**
- 2. Connection to public road to be constructed as per standard detail drawing ref SD 08/001 Rev a.**
- 3. Turning and parking for an articulated lorry within application site.**

Notes for Intimation to Applicant

(i) Construction Consent(S21)*	Not Required
(ii) Road Bond (S17)*	Not Required
(iii) Road Opening Permit (S56)*	Required
(iv) No surface water discharge*	Required

*Relevant Section of the Roads(Scotland) Act 1984

Signed:	J. Ross	Date	11/03/2010	ID	2909
		Actual Return Date	11/03/2010	Replied	

• **West of Scotland Archaeology – 17th March 2010**

Our ref: 7/3/2/10/00263
Your ref: 10/00263/PP
WoSASdoc: 10_00263
Date: 17 March 2010
Contact: P Robins
Direct dial: 0141 287 8335

**WEST of SCOTLAND
ARCHAEOLOGY
SERVICE**



Development Services
Argyll & Bute Council
Lorn House
Albany Street
Oban
PA34 4AR

20 India Street, Glasgow G2 4PF
Tel: 0141 287 8332-5
Fax: 0141 287 9529
enquiries@wosas.glasgow.gov.uk



Dear Sir/Madam,

Erection of bonded warehouse, hardstanding, fencing and access, Land NE of Conisby, Bruichladdich, Islay. Archaeology.

I refer to the above planning application sent to me to assess any archaeological issues raised by the proposals. I have checked the area concerned against the information held in the Sites and Monuments Record (SMR) and produced the following advice.

The application lies within an area of some archaeological sensitivity and potential based on the presence of recorded sites, including settlement, burial and ritual activity, recorded in the surrounding landscape which we consider has the potential to produce buried remains of any period. The proposal is reasonably large in scale and in a Greenfield area. It will presumably involve machine stripping of overburden at the site and along the access as a first stage in construction. This will open up a large area of ground only previously disturbed by agricultural use and may reveal buried archaeological remains.

Government policy as set out in Scottish Planning Policy is that planning authorities should ensure that prospective developers arrange for the archaeological issues raised by their proposals to be adequately addressed. Where the degree of archaeological significance or survival is uncertain the West of Scotland Archaeology Service would advise planning authorities to consider attaching an archaeological watching brief condition to any consent they may be minded to grant.

A model condition is given in paragraph 35, page 13, of Planning Advice Note 42 (PAN 42), although experience has shown that the wording given in this model is confusing to most applicants and their agents. I would recommend the following draft in its place:-

"The developer shall secure the implementation of an archaeological watching brief, to be carried out by an archaeological organisation acceptable to the Planning Authority, during all ground disturbance. The retained archaeological organisation shall be afforded access at all reasonable times and allowed to record, recover and report items of interest and finds. A method statement for the watching brief will be submitted by the applicant, agreed by the West of Scotland Archaeology Service, and approved by the Planning Authority prior to commencement of the watching brief. The name of the archaeological organisation retained by the developer shall be given to the Planning Authority and to the West of Scotland Archaeology Service in writing not less than 14 days before development commences."

The Archaeology Service of the Councils of Argyll & Bute, East Ayrshire, East Renfrewshire, Glasgow City, Inverclyde, North Ayrshire, Renfrewshire, South Ayrshire, South Lanarkshire and West Dunbartonshire.

This condition would ensure that if any sensitive archaeological remains or features were encountered during any initial or subsequent ground excavation works associated with the development, they could be adequately recorded by the archaeologist retained by the developer, before their destruction. It is important to inform the applicant that the watching brief will be required on all ground disturbance including any removal of turf, topsoil or other site clearance/preparation works and that the archaeologist must be on site *during* these works and not called in afterwards to inspect the disturbed area.

I enclose an informal list of archaeological contractors who may be able to carry out such a watching brief. You may wish to pass this to the applicant for their information.

Yours faithfully

West of Scotland Archaeology Service

• **Argyll and Bute Council – Access Technician – 17th February 2010**

Argyll and Bute Council
Comhairle Earra Ghàidheal agus Bhòid



Development Services
Director: George Harper

Beth Connelly
Senior Technician
Dalriada House
Lochnell Street
Lochgilphead
PA31 8ST

Planning Services

Kilmory, Lochgilphead, Argyll, PA31 8RT
Tel: 01546 604119 Fax: 01546 604250
e.mail – david.garner@argyll-bute.gov.uk
www.argyll-bute.gov.uk

Direct Line: 01546 604119
Ask For: David Garner
Our Ref:
Your Ref: 10/00263/PP
Date: 17 February 2010

Dear Beth,

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
LAND REFORM (SCOTLAND) ACT 2003
PROPOSAL: ERECTON OF BONDED WAREHOUSE ETC.
SITE ADDRESS: LAND NE OF CONISBY, BRUICHLADDICH, ISLAY

Thank you for your consultation regarding the above and in relation to the Land Reform (Scotland) Act 2003.

I confirm that I have no comments on the above application.

Yours Sincerely

A handwritten signature in black ink that reads 'David Garner'.

David Garner, Access Technician



- **Highlands and Islands Airports – Access Technician – 16th March 2010**

Clark, Catherine

From: maki, planning [planning.maki@argyll-bute.gov.uk]
Sent: 16 March 2010 12:18
To: Clark, Catherine; MacDonald, Rory
Subject: FW: Planning App 10/00263/PP - Erection of Bonded Warehouse, Land NE of Conisby, Bruichladdich, Islay



From: Anne Phillips[SMTP:APHILLIPS@HIAL.CO.UK]
Sent: Tuesday, March 16, 2010 12:16:26 PM
To: maki, planning
Subject: Planning App 10/00263/PP - Erection of Bonded Warehouse, Land NE of Conisby, Bruichladdich, Islay
Auto forwarded by a Rule

Your Ref: 10/00263/PP
HIA Ref: 2010/0048/SYY

Dear Ms Leary,

PROPOSAL: Erection of Bonded Warehouse
SITE ADDRESS: Land North East of Conisby, Bruichladdich, Islay

With reference to the above proposed development, it is confirmed that our calculations show that, at the given position and height, this development would not infringe the safeguarding surfaces for **Islay Airport**.

Therefore, Highlands and Islands Airports have no objections to the proposal.

Anne Phillips
Operations Manager

Highlands and Islands Airports
Head Office
Inverness Airport
Inverness
IV2 7JB

Tel 01667 464244