

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: 11/02115/PPP

Planning Hierarchy: Local Development

Applicant: Mr and Mrs S Bate

Proposal: Site for the erection of croft house

Site Address: Land East of Achara, Oban

DECISION ROUTE

Local Government Scotland Act 1973

(A) THE APPLICATION

(i) Development Requiring Express Planning Permission

- Planning permission in principle for the erection of a dwelling house
- Upgrading of an existing access
- Installation of waste water treatment system
- Engineering (excavations) to form house site

(ii) Other specified operations

- Removal of trees
 - Landscaping and planting
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(B) RECOMMENDATION:

It is recommended that the application is refused for the reasons appended below.

(C) HISTORY:

08/01573/OUT – Site for the erection of dwelling house – Withdrawn
08/01577/OUT – Site for the erection of dwelling house – Withdrawn
09/00094/DET – Site for the erection of 4 dwelling houses – Withdrawn
11/00504/PPP – Site for the erection of 2 chalet letting units – Refused
11/00505/PP – Erection of chalet letting unit (retrospective) – Refused
11/00387/PPP – Site for the erection of croft house - Refused

(D) CONSULTATIONS:

Area Roads Manager - report dated 9/11/11 no objection subject to the following requirements:

- Existing access at junction of public road to be upgraded in accordance with Roads Services drawing SD08/006a
- No walls, hedges, fences etc will be permitted within 2m from the channel line of the public road,
- Visibility splays measuring 53m x 2.4m to be cleared and maintained,
- A system of surface water drainage is required to prevent water from passing onto the public road,
- Parking for vehicles commensurate with dwelling to be provided.

Scottish Water - letter dated 15/11/11 no objection.

Scottish Natural Heritage - email dated 18/11/11 no objection.

Crofters Commission - No response has been received by the time of writing this report. However, a verbal conversation between the case officer and the Crofters Commission confirmed that they have no comment to make on this application.

Local Biodiversity Officer - memo dated 24/11/11 no objection. The applicant has sited bird boxes on almost every tree along the boundary

Please note under the previous application for a croft house (11/00387/PPP) concerns were raised regarding potential impact upon bats, a European Protected Species, and Red Squirrels, a UKLBAP species. The site has since been cleared of more trees. As a result, there is no longer any potential impact on either species as potential habitats have been removed. Given that the trees were not protected and enforcement of any infringement of the protection of European species and other protected species is not a Council responsibility, this is a matter that lies beyond the control of the Planning Authority.

(E) PUBLICITY:

The proposal has been advertised in terms of regulation 20, closing date 8/12/11.

(F) REPRESENTATIONS:

None

(G) SUPPORTING INFORMATION

Has the application been the subject of:

- | | |
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| (i) Environmental Statement: | No |
| (ii) An appropriate assessment under the Conservation (Natural Habitats) Regulations 1994:
(If yes enter below) | No |
| (iii) A design or design/access statement: | No |
| (iv) A report on the impact of the proposed development
e.g. retail impact, transport impact, noise impact, flood risk, | Yes |

drainage impact etc:

General Supporting Statement

Summary of main issues raised by each assessment/report

The document sets out the reasons for the application including the history and the crofting nature of the application, with the land securing croft status in December 2010 following a hearing. It also requests that the Council sets aside the PDA policy covering the site, and requests instead that policy STRAT AC 1 and LP HOU 1 (provision of a croft house on a bareland croft) be given primacy by the Council in order to support the crofting enterprise on the land.

(H) PLANNING OBLIGATIONS

(i) Is a Section 75 agreement required:

No – because the application is recommended for refusal. In the event that Members wished to approve the application, it is considered that a Section 75 to tie the occupancy of the dwelling to the occupancy of the croft to prevent future sub-division of the landholding should be secured prior to granting any planning permission.

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

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

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

Argyll and Bute Structure Plan 2002

STRAT DC 1 – Development within the Settlements
STRAT DC 7 – Nature Conservation and Development Control
STRAT DC 8 – Landscape and Development Control
STRAT AC 1 – Development in Support of Farms, Crofts and Estates
STRAT SI 1 – Sustainable Development

Argyll and Bute Local Plan 2009

LP ENV 1 – Impact on the General Environment
LP ENV 2 – Impact on Biodiversity
LP ENV 6 – Impact on Habitats and Species
LP ENV 7 – Impact on Trees/Woodland
LP ENV 19 – Development Setting, Layout and Design
LP HOU 1 – General Housing Development
LP SERV 1 – Private Sewage Treatment Plants and Wastewater Systems
LP SERV 4 – Water Supply

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
 Appendix C – Access and Parking Standards
 Appendix E – Allocations, Potential Development Area Schedules and Areas for Action Schedules

PDA 5/5 Schedule – Golf course expansion with possible ancillary, low density, high amenity, small scale housing and 25% affordable element.

(ii) List of all other material planning considerations taken into account in the assessment of the application, having due regard to Annex A of Circular 4/2009.

Argyll & Bute Sustainable Design Guidance (2006)
 The Town & Country Planning Act (Scotland) 1997
 The Planning etc. (Scotland) Act, 2006
 Scottish Planning Policy, SPP, 2010

(K)	Is the proposal a Schedule 2 Development not requiring an Environmental Impact Assessment:	No
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(L)	Has the application been the subject of statutory pre-application consultation (PAC):	No
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(M)	Has a sustainability check list been submitted:	No
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(N)	Does the Council have an interest in the site:	No
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(O)	Requirement for a hearing:	No
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(P) Assessment and summary of determining issues and material considerations

The site lies at the fringe of the existing settlement of Oban. It is located within Potential Development Area 5/5 adjacent the Oban ‘settlement’ zone along Glencruitten Road, immediately north-east of the golf course. The site has primarily been designated as a PDA to allow the golf course an opportunity to expand as a result of land which may be lost to facilitate the route of the Oban Development Road. The PDA schedule describes the PDA as *“Golf course expansion with possible ancillary low density high amenity small scale housing development.”* so there is recognition that some limited built development could be appropriate. The PDA Schedule requires a comprehensive masterplanned approach to include 25% affordable housing and address sewage and water supply constraints and road safety issues. The primary catalyst to development on this site is therefore the Oban Development Road and the displacement of part of the golf course. The PDA is adjoined to the south-west by an Open Space Protection Area (golf course) and to the north-east by ‘countryside around settlement’.

The site is located to the north of Oban along Glencruitten Road in an area characterised by low density scattered housing development and undulating natural landscape. The site rises steeply from the public road edge to a significant height at the top of a knoll with a generally flatter top. It is proposed to locate a single dwelling house

on the north eastern corner of the site, to the north of an existing unauthorised chalet. The applicant proposes to retain the chalet for family accommodation until the completion of the proposed croft house.

To the north-east of the site is the remainder of the undeveloped PDA, to the east are open fields and an undulating landscape, south is the golf course whilst west is the public road and a single house known as Achara. Much of the croft is extremely steep and has an existing agricultural access onto the public road that the applicant has recently upgraded under 'permitted development' rights.

The topography of the croft is such that it does not allow for the easy siting of a house consistent with the Council's Sustainable Design Guide. Planning Officers have advised that the most suitable location for a croft house would be at the more contained north-eastern end of the croft, at the site of an existing unauthorised chalet. This has been the subject of enforcement action since 2008 (currently held in abeyance pending determination of the planning application).

Following refusal of a dwelling in an inappropriately elevated location at the southern end of the croft in 2011, the applicant now proposes to locate a house to the north of the chalet, which is in accordance with Planning Officers' assessment of how to best accommodate a house within the confines of the croft. The existing chalet does not form part of this application and regardless of the outcome of this application will still remain unauthorised. However, if planning permission were in place for a house, and a lawful start had been made on such a house, then the chalet could remain on site as temporary accommodation under permitted development rights, for the duration of the house construction on the basis that it is removed following occupation of the new dwelling.

The applicants secured croft status for the land in December 2010, which requires Structure Plan Policy STRAT AC 1 to be assessed. This supports the principle of a single house on a bareland croft on appropriate sites and diversification of crofts. The Policy does, however, include other caveats and it is not considered STRAT AC 1 should override the PDA allocation that requires a comprehensive masterplanned approach and also, importantly, requires the Oban Development Road and golf course expansion to come forward as the stimulus for the development of the PDA.

The Council's Development Plans officers have confirmed the policy position; that the PDA status should take priority over the croft status – i.e. the primary land designation is the principal policy in this instance.

Although the proposal utilises the best site for a croft house, it is not considered that conflict with the principle policy allocation of the site within a PDA has been addressed since the refusal of applications 11/00387/PP, 11/00504/PPP, and 11/00505/PP in 2011.

In summary, it is considered that the proposal addresses reason for refusal 2 of 11/00387/PPP, but does not address reason for refusal 1 of that same decision.

In the supporting documentation the applicant has submitted details of their croft development plan as supplied to the Crofters Commission. This information details intended polytunnels to grow fruit and vegetables on a commercial basis to sell to local hotels and also to have livestock within the croft. To date, there are some chickens and a pig on site, but no polytunnels and no working of the croft of any significance appears to be being undertaken. Polytunnels would also be best sited near the contained north-eastern end of the croft in order to gain best shelter, and space for their provision would have to be maintained to allow the croft development plan to be implemented. With this in mind the applicant has not demonstrated how the polytunnels and a house can co-exist. The applicant also states that they are keen to have a workshop but no details of this have been provided. The croft allows limited options for suitable sites for a workshop

of any significance and it is not clear how this will fit with the proposed house, polytunnels and chalet. A lack of significant evidence to demonstrate that the croft is being worked, in accordance with the case for designation advanced to the Crofters Commission, and lack of comprehensive proposals for the croft, including identification of land required for the horticultural element of the enterprise, leaves a weakness in any argument of need for a house to support the management of the land as a croft.

It is considered that the principle of development is not acceptable on this site at this time. The application is premature and should be brought forward in a comprehensive manner along with other proposals for the golf course expansion and associated development, as and when the ODR comes to fruition. The applicant should provide a detailed set of proposals that are consistent with his successful submission to the Crofters Commission (which secured the croft status) to demonstrate how the croft can be worked successfully. In the absence of comprehensive and cohesive proposals, the development is considered a piecemeal development that if approved could potentially undermine PDA allocations by failing to address the requirement for a masterplanned approaches in this case.

Although a masterplan of sorts has been submitted, the agent has confirmed it is speculative due to the nature of the PDA, including the different land ownerships and lack of clarity in terms of the ODR being implemented. This is the very reason why the PDA allocation was made – to force applicants to address such issues and encourage them to be resolved.

The agent proposes that the elevated ridge is of a character that does not lend itself to the expansion of the golf course or the provision of the ODR across the site. This argument is accepted in the context of the topography of the wider PDA, but it does not mean that the requirement for comprehensive development can be abandoned as a consequence, nor does it necessarily mean that a precedent argument could not be established by the granting of a piecemeal development within a PDA, in the absence of a robust masterplan. Without full details of the crofts development, in accordance with the details submitted to the Crofters' Commission to secure croft status, it is difficult to rationalise the development with the council's adopted policies.

The current proposal is not considered to be so unique as to set aside the PDA status and compromise the future viability of the PDA. The status of the land as a croft ought not to be given decisive weight against the effect of the PDA, given that there is little evidence of it having been worked since it was first designated in 2010. With this in mind the proposal is recommended for refusal.

(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 - see grounds for refusal below.

(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: David Love

Date: 20/01/12

Reviewing Officer: Stephen Fair

Date: 20/01/12

**Angus Gilmour
Head of Planning and Regulatory Services**

REASON FOR REFUSAL RELATIVE TO APPLICATION REFERENCE 11/02115/PPP

1. The application proposes piecemeal development within the confines of PDA 5/5 identified by the 'Argyll and Bute Local Plan' (2009) for golf course expansion with possible ancillary, low density, high amenity, small scale housing and a 25% affordable element, associated with and prompted by the proposed Oban Development Road, the general route of which is provided for by the plan. There is a presumption that PDA's are not immediately effective and should therefore be planned for on a comprehensive basis in order to address servicing, ownership and other potential development constraints, in order to ensure that the purposes behind their designation are not frustrated or inhibited by premature or piecemeal forms of development, which in turn, could undermine the long term aspirations of the development plan for such sites. The proposal does not constitute part of the required master-planned approach to the PDA designation within which it is situated, and is therefore contrary to the provisions of the 'Argyll & Bute Local Plan' and there are no other material considerations, including croft status, which would warrant the application being determined other than in accordance with the primary designation of the land as delineated in the local plan.
2. The applicant has failed to demonstrate exceptional circumstances based upon operational need which would warrant the development of a dwelling contrary to normal policy considerations in order to support the ongoing management of the croft, and therefore the application should be regarded as being premature. In order to justify the proposed croft house in terms of Policy STRAT AC1 of the Argyll and Bute Structure Plan 2002 the operation should be firmly established to underpin a pre-existing need for a house on the land. The applicant has been resident on the site within an unauthorised chalet since croft status was awarded in December 2010, but since then the croft enterprise detailed in the submitted croft development plan, and also submitted to the Crofters Commission in the successful application to secure croft status, has not been fully implemented on site. To date, despite the land being designated as a croft, there is no demonstrated need for the house at this location at this time, nor clear evidence of when a house will actually be required for such purposes. The applicant should develop the croft enterprise as detailed in the submitted croft development plan and when the enterprise is established, a timescale for needing and providing a house can then be evidenced. The works implemented on site thus far are not considered sufficient to justify a permanent residential presence for croft management purposes and therefore the proposal is not consistent with structure plan policy STRAT AC1.
3. There is insufficient detail in the application to demonstrate how the croft development plan (as submitted to the Crofters' Commission) can be successfully implemented alongside the house that is proposed. It is not clear how the northern part of the site, which due to the topography is the only part of the site considered to be suitable for development, can accommodate the proposed house, polytunnels to produce fruit and vegetables on a commercial basis and a workshop from which to run the crofting enterprise. All of these facets were considered collectively to justify the granting of croft status in 2010, and it follows that the site should be developed in a way that facilitates the implementation of that croft development plan in full. In the absence of such detail, and with concerns that other areas of the site would not prove suitable for polytunnels and a workshop, the proposal fails to safeguard the long term interests of the croft. To grant planning permission for a house in the absence of details of the overall development required to sustain the croft, could prejudice the overall implementation of development required to realise the croft development plan, which in turn, would undermine an exceptional justification for a croft house within an area within which individual houses would not otherwise be supported by development plan policy.

APPENDIX A – RELATIVE TO APPLICATION NUMBER: 11/02115/PPP

PLANNING LAND USE AND POLICY ASSESSMENT

A. Settlement Strategy

The site is within Potential Development Area 5/5 adjacent the Oban settlement zone along Glencruitten Road beside the golf course. The site was designated as a PDA to allow the golf expansion as a result of land due to be lost to the proposed route of the Oban Development Road. The PDA schedule describes the PDA as “*Golf course expansion with possible ancillary low density high amenity small scale housing development.*” The PDA also requires a comprehensive masterplanned approach, identifies sewage and water constraints and road safety issues. Therefore the catalyst to development on this site is the Oban Development Road and the reconfiguration of the golf course as a consequence.

The applicants secured croft status at the land in December 2010. Structure Plan Policy STRAT AC 1 supports the principle of a single house on a bareland croft on appropriate sites and also supports the diversification of crofts. The policy does not however override the PDA status which requires a comprehensive masterplanned approach and also requires the ODR to come forward prior to the development of this site.

An indicative masterplan of sorts has been submitted covering the land within PDA. This shows a possible route of the ODR, golf course expansion and some ‘medium scale’ housing development. However, what has been shown is entirely speculative and it is not understood that consultation has taken place with the other landowners involved, including the golf club. The PDA has been allocated as suitable for the golf course expansion with possible ancillary ‘small scale’ housing development only. The masterplan shows ‘medium scale’ housing development which in any event is not in conformity with the terms of the PDA. Due to the apparent lack of consultation and the inclusion of higher scale housing proposals than envisaged by the PDA it is not considered that the ‘masterplan’ is a sound basis on which to advance piecemeal development of any part of the PDA. The agent has confirmed that the masterplan is speculative due to the different landownership interests and because there is no clarity in terms of the ODR being implemented. The role of the ODR as catalyst for the activation of this PDA and the wider issues to be overcome are the very reason for the land having been identified as part of the local plan process as a PDA, instead of being zoned as ‘settlement’ or identified as a housing or some other allocation.

B. Location, Nature and Design of Proposed Development

The site is located to the north of Oban along Glencruitten Road in an area of low density scattered housing development, located within a natural undulating landscape. The croft land rises steeply from the road edge to a significant height at the top of a knoll with a flat top. It is proposed to locate a single dwelling house on the north eastern corner of the croft to the north of the existing unauthorised chalet. The chalet does not form part of this application and despite permission having been recently refused; the applicant intends to retain it until the completion of the dwelling house.

To the north of the site is the remainder of the undeveloped PDA, to the east are open fields and an undulating landscape, south is the golf course whilst west is the public road and a property known as Achara. The site itself is extremely steep and has an existing agricultural access onto the public road that the applicant has recently upgraded under ‘permitted development’ rights

In this instance the topography of the croft does not allow for the easy siting of a house that would be consistent with the Council’s Sustainable Design Guide. Permission has

recently been refused for a dwelling in an inappropriately elevated location at the southern end of the croft.

Planning Officers have advised that a croft house could best be positioned at the contained north-eastern end of the croft, at the site of existing unauthorised chalet. This vicinity would also be the best position for any croft polytunnels or other structures. Since the croft was designated in 2010, despite the unauthorised residential presence on the site provided by the chalet, there has not been any evidence of the working of a croft in accordance with the case for croft designation advanced to, and accepted by, the Crofters Commission. Accordingly, a justifiable case for a locational need for a house for croft management purposes, as an exception to normal planning policy considerations, has not been made on the basis of the occupation of the land by the applicant to date. Nor has any provision been made in connection with this application for a house for any structures which would need to share this location, in order to fulfil the aspirations set out in the original croft management plan.

There is therefore uncertainty over the intended management of the croft and a lack of certainty as to the locational need for any residential presence. Given the policy position that the PDA status should take priority over the croft status – i.e. the primary land designation is the principal policy in this instance, there is no overriding case for the establishment of a dwelling on crofting grounds regardless of the effect of the PDA. Whilst the location chosen is the most suitable for built development on the croft, the application is premature both in terms of the activation of the PDA and in terms of the management of the land as a croft requiring a residential presence.

C. Natural Environment

In terms of natural heritage, the Council's Biodiversity Officer has not objected to the proposal. It should be noted however that the applicant's own submissions during the previous application (11/00387/PPP), indicated the presence of Pipistrelle Bats, a European Protected Species, and Red Squirrels, a UK LBAP Priority Species. The site has since been cleared of vegetation and there is now little habitat for these protected species on the site. The applicant has however erected bird boxes around the site on almost every tree along the boundary. As the trees removed were not protected, and the enforcement of any infringement of the protection of European species and other protected species is not a Council responsibility, this is a matter that lies beyond the control of the Planning Authority.

D. Built Environment

The area around the site is characterised as open, largely undeveloped countryside with the golf course to the south and a scattering of houses of different styles and sizes within 500 metres of the site. The applicant has indicated that he would like to provide a 3 bedroom bungalow.

E. Impact on Woodland/Access to Countryside.

The applicant, under agricultural 'permitted development' rights, has carried out works to open up various access routes into to the site. In conjunction with this work, several mature trees were removed from the site. Those trees could have housed protected species and would have formed part of any habitat survey, but they were removed prior to such a survey being undertaken. Although the Planning Authority had no direct power to prevent the tree felling, the loss of these trees has opened parts of the croft up to wider views which were not previously available.

F. Road Network, Parking and Associated Transport Matters

The Council's Area Roads Manager has responded with no objections subject to conditions addressing junction and visibility requirements, drainage and parking.

G. Infrastructure

The applicant intends to provide a private waste water treatment system and connect to the public water main. The PDA schedule states that these are two issues that need to be overcome for any comprehensive development. The applicant has been operating one unauthorised chalet on the site as a full time residence for some time and has not reported any issues with water or waste water drainage.

(Lawfulness is not established for the chalet and an enforcement notice was issued requiring its removal. Although that notice has been withdrawn due to a technical deficiency in its wording, retrospective permission has been refused for the chalet and it remains open to secure its removal. Service of a subsequent notice has been held in abeyance in order to allow this current application to be determined)

H. Other Key Policy Matters

The applicants were awarded croft status on the land in December 2010 following a hearing by the Crofters Commission in November 2010. The supporting documentation provides details of the meeting when this was granted; "Note of Decision – Create a New Croft" states that it was the applicants intention to grow fruit and vegetables on the croft but there are no details within any of the applications made thus far, including the current application, of the referred to polytunnels or the workshop which were identified to the Crofters Commission as being required in connection with the enterprise. The supporting documentation refers to a polytunnel being sited on land adjacent to the proposed house site, although it is unclear how the applicant would achieve all such aspirations within the confined area available.

Despite the site being granted croft status and the effect of Structure Plan Policy STRAT AC1, it is considered that this should not override the land designation of the site within a wider PDA. The applicant has not evidenced thus far any activities on site which would warrant the provision of a dwelling to support management of the croft land, nor have any comprehensive proposals been advanced which make provision for the polytunnels and workshop accommodation which were envisaged at the time of croft designation. It is not considered the applicant has provided a credible case to demonstrate the uniqueness of the proposal, in policy terms, sufficient to set aside the requirements of the PDA.

I. Conclusion

In conclusion, it is considered that the principle of development within this PDA is not acceptable at this time. Development proposals should be brought forward when the land take associated with the ODR and the consequences for the golf course reconfiguration are known, and when the acceptability of associated development can be determined in the light of that. The masterplan advanced in support of the application is speculative, does not take into account the aspirations of other landowners and in any event provides for a scale of development in excess of that envisaged by PDA designation. The case for departing from normal policy considerations on the basis of a locational need to support the management of a croft has not been made persuasively, either on the basis of activities on the croft to date, or in terms of future proposals. Accordingly there is no justifiable case at the present time for setting aside the wider

interests of the future development of the PDA on the basis of the croft status of the land.