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ARGYLL & BUTE COUNCIL

PLANNING PROTECTIVE SERVICES  
AND LICENCING COMMITTEE

DEVELOPMENT MANAGEMENT

MEETING DATE: 21<sup>st</sup> MARCH 2012

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## OCCUPANCY RESTRICTIONS AND RURAL HOUSING

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### 1. INTRODUCTION

This report is a response to a letter from Scotland's Chief Planner, James Mackinnon, which was issued to all Planning Authorities (dated 4<sup>th</sup> November 2011) and clarifies the Council's procedure for dealing with rural housing and occupancy conditions.

### 2. RECOMMENDATION

It is recommended that:

- i) Members note the content of the letter from the Government's Chief Planner and confirm that the current use of occupancy restrictions in certain specific situations (Green Belt & Open Sensitive Countryside) currently applied in Argyll and Bute is necessary, proportionate and is in accordance with Scottish Planning and Local Plan Policy as well as spirit of said letter;
- ii) Members respond to the Chief Planners letter through issuing the minute of this report / meeting to him;

### 3. DETAIL

#### **Synopsis of Letter from Chief Planner**

The Scottish Government Chief Planner sent a letter to all planning authorities in November 2011 (Appendix). The letter expresses concern that the use of occupancy restrictions (both via planning condition or Section 75 legal agreements) on housing required to support agricultural employment and other rural businesses in certain instances is causing practical difficulties in the delivery of rural housing. It is understood that this is principally an issue with certain mortgage lenders being unwilling to lend due to the occupancy burden hindering their re-sale prospects should a default situation arise.

The letter goes on to state that Scottish Planning Policy (SPP) promotes a positive approach to rural housing and Local Planning Authorities should support this through development plans. It confirms that the use of occupancy restrictions is not promoted within national policy as a management tool for rural housing and ends the first section concluding that **"The Scottish Government believes that occupancy restrictions are rarely appropriate and so should generally be avoided"**.

Notwithstanding this, the letter does, however, go on to state that “**where, due to commuter or other pressure, there is a danger of suburbanisation of the countryside or an unsustainable growth in long distance car based commuting, there is a sound case for a more restrictive approach**”.

This implies that a restrictive approach can be considered appropriate where there are significant pressures for housing or unsustainable patterns of housing may arise.

### **Council's Current Practice**

The policy framework for determining planning applications for housing in rural locations is primarily set out by Structure Plan *Strat DC3 – Development within Greenbelt, Strat DC 4 – Development in Rural Opportunity Areas, Strat DC 5 – Development in Sensitive Countryside, Strat DC 6 – Development in Very Sensitive Countryside* and Local Plan Policy *LP Hou 1 – General Housing Development*.

In essence the suite of aforementioned policies provides a very positive prospect for housing and a presumption to approve up to 5 dwelling units even in many rural areas providing there are acceptable environmental, servicing and access conditions. The exception to this positive presumption is within our most sensitive or pressured open countryside locations namely the areas designated within the Local Plan as *Greenbelt, Sensitive Countryside / Countryside Around Settlements* (that is not infill, redevelopment or rounding off) and *Very Sensitive Countryside*.

Within these sensitive landscapes in order to allow new housing to be built, even on a small scale, an applicant must demonstrate a locational/operational need to be based in this location as well as satisfying the usual environmental, servicing and access criteria. Frequent cases of locational or operational need include agricultural workers requiring to be within proximity of livestock, business owners requiring to be on site to secure or run their operation. If the normal criteria can be met including Area Capacity Evaluation Assessment and a locational need demonstrated then the proposal would comply with the provisions of the Development Plan in our most sensitive landscapes and would achieve officer support. However, to ensure the provisions of the Local Plan are adhered to in perpetuity a Section 75 legal agreement is regularly used to ensure that only the proprietors / occupants of the new house are those who it was originally intended for. Additionally we tie the applicant and / or business to the property by virtue of a legal agreement.

The concern and necessity of restricting the occupancy to the original applicant or subsequent owner of the business is that in its absence the system may be subject to abuse / violation insofar as operational need dwellings would simply be sold off for profit after construction or short period of occupation. This would be to the detriment of the rural business but also increase the pressure on the sensitive landscape location that may reach capacity. In such a case future operational need cases may have to be refused as there is simply no more scope for development within a locale if excessive housing is constructed. Such a scenario is also likely to drive up house prices and may price the prospective business owners out of the market as land values increase. We consider that spurious cases for operational need would also increase.

Notwithstanding our current usage of Section 75 legal agreements, we are conscious of the burden that a mortgage lender may encounter should they reposes an occupancy restricted

property. To this extent, we operate a system whereby the occupancy restriction is automatically removed if the property defaults and is reverted to the bank / lender. This approach has found favor with all mortgage lenders and applicants that we have ever dealt with. We have never had issue with a genuine applicant for an operational need house struggling to receive a mortgage as outlined by the Chief Planner.

To this, extent whilst we acknowledge the concerns of the Chief Planner we must report that our current procedures, to our knowledge, have never raised difficulties with mortgage lenders and that it is only in a small number of very sensitive / pressured landscape locations that we actually seek to restrict occupancy. This is also set against a backdrop of a positive rural housing strategy.

### **Conclusions**

The letter from the Chief Planner is in the form of planning advice (can be considered a material consideration) but has to be set against S25 of the Act and primacy of formal planning policy which we consider is already reflected within our Local Plan and its application. On the basis that our current approach is generally working well, that there are procedures in place to deal with default scenarios and we only seek to restrict occupancy in our most sensitive / pressured landscapes we do not propose any alteration to our procedures.

It is considered that the Argyll and Bute approach is a reasonable and proportionate one, based on Local Plan policy that has been through an inquiry and is part of a positive rural housing package of policies seeking the same objective as outlined in the Scottish Government letter, i.e. a vibrant populated countryside, whilst taking account of authorities pressured and sensitive development areas.

## **4. IMPLICATIONS**

PERSONNEL	None
FINANCIAL	None
EQUALITY	None
LEGAL	None – Business as usual in terms of preparation of S75s

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