

**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**

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**Reference No:** 12/01517/PP

**Planning Hierarchy:** Local Development

**Applicant:** Mr Donald Berry

**Proposal:** Erection of dwelling house

**Site Address:** Land to North West of 4 Ruaig, Ruaig, Isle of Tiree

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**SUPPLEMENTARY REPORT No 1**

**(A) BACKGROUND**

This report summarises additional representations made subsequent to the preparation of the original report and provides further commentary on the reasons why the application has been recommended for approval.

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**(B) FURTHER INFORMATION**

Additional representation has been made by Dr N Wyatt, owner of 4 Ruaig and Mr S Laird, owner of Taigh Uilleam, Brock Tiree, along with a counsel opinion provided to Dr Brock as to the legitimacy of the current permission on the site.

Dr Wyatt has pointed out that he was not neighbour notified as he ought to have been at the time of the original application in 2009, and accordingly he only became aware that permission had been granted previously upon notification in connection with this subsequent application. Had he been aware of the original application he would have objected to it on the grounds that in his view the development was not consistent with the Council's published policies. He has sought legal advice in the matter which concludes that the appropriate course of action for the Council to take in the circumstances would be to continue the current application and to seek to revoke the current permission, in order to be able to proceed to reconsider the merits of the current proposal without encumbrance by a material consideration deriving from a previous application which was procedurally flawed.

Mr Laird points out that on receipt of the current application the case officer contacted the applicant expressed the view in writing to the applicant that he did not consider the proposal to be consistent with the settlement pattern or the design guide and that his view in the matter only appeared to change when it was pointed out to him that a previous permission had been given for the development of this site. However, the weight to be accorded to that previous permission ought to be lessened by the procedural issues associated with that application.

**Comment:** The application site adjoins a single dwelling at 4 Ruaig. The owner/occupier of that property ought to have been neighbour notified upon the submission of the previous application in 2009, although it is clear that no such notification took place. Ostensibly, this appears to be because the applicant's agent at the time described the application site as '4 Ruaig' and as a consequence of that, those handling the application at the time were misdirected into believing that the applicant had an interest in that dwelling, particularly as certification had been given that he was the owner of the land to which the application related. Accordingly no neighbour notification was issued.

This subsequent proposal has been more appropriately described by the applicant as being in respect of 'land at Ruaig', with no suggested association with No. 4. Accordingly, neighbour notification of the current application has been issued to Dr Wyatt, which subsequently has led to him becoming aware of the previous permission.

Procedural irregularity with neighbour notification does not invalidate any permission granted but it does open it up to the prospect of third party legal challenge, so it is generally unwise to seek to implement a permission regarded as being flawed. Our advice in such circumstances would be for an applicant not to rely on such a permission and to seek a further permission in order to avoid any prospect of challenge. It is not considered that there is need to revoke the current permission (due to expire in January 2013 in any event) as the merits of the development of the site can still be properly addressed by Members as part of the adjudication of this application, having regard to the views expressed by Dr Wyatt, Mr Laird and other third parties. The significance of the procedural irregularity is simply that it reduces the weight which would otherwise have been accorded to the existence of the current permission.

The original report to Committee on this application does place significant material weight upon the existence of the previous permission in arriving at the recommendation to grant a further permission. It is now known that the current permission was procedurally flawed at the time, although in the absence of legal challenge by a third party, or revocation by the Council, it does retain the status of an extant permission which in the circumstances ought to be regarded as a material consideration, albeit of lesser weight. The purpose of this supplementary report is therefore to advise that Members should consider the merits of the current application in the round and not to regard the previous permission as being an undue determinant of the outcome of this application.

The merits of the development of this site were considered at the time of original application when the proposal was deemed consistent with the 'rural opportunity area' policy applicable to this locality, the informal guidance provided by the Tiree Landscape Capacity Study 2006 (prepared as guidance for but not formally approved by the Council) and the advice given in the Tiree Design Guide. Circumstances have not changed materially since that permission was granted, other than for the absence of neighbour notification on the original application having come to light.

As Members will be aware, within 'rural opportunity areas' there is a presumption in favour of 'small scale' development including single houses in the countryside provided that there are no environmental constraints in play which would render a site unsuitable and that the established settlement pattern and the landscape character of the area is respected. In this case, the dwelling proposed is suitably offset from the objector's dwelling so that overlooking and overshadowing is avoided and it therefore secures an appropriate relationship with that dwelling in terms of

residential amenity. There are no access or infrastructure constraints in play which would render the site unsuitable for development. It stands adjacent to ruins of a previous building to the rear of 4 Ruaig which indicates the presence of either an earlier dwelling or a substantial outbuilding. Development in crofting areas has been dictated historically by the close association between buildings and the land which has tended to result in a regular field pattern and relatively even spacing between isolated buildings. However, an established idiom of the island is tandem development occasioned by newer and often larger buildings being established in the same landholding often as larger and more modern accommodation to replace that provided by original black houses.

The design guide regards a new dwelling immediately adjacent to an original and usually smaller building to be an example of good siting, provided that close association is achieved, the new building is orientated in the same manner as the existing building and that design elements are incorporated which are appropriate to the Tiree vernacular. These attributes are evident in this case and would avoid the development appearing as an incongruous element in its wider setting. Accordingly, irrespective of the previous decision to grant planning permission, and notwithstanding the views expressed by third parties which were not available at the time of the granting of the previous permission, it is concluded that the dwelling proposed by this application secures an appropriate relationship with the existing building and that its presence will not compromise the character of the landscape within which it is to be situated.

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**(C) RECOMMENDATION**

It is recommended that planning permission be granted subject to the conditions and reasons set out in the original report.

**Author of Report:** Richard Kerr

**Date:** 20/11/12

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