

**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**

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**Reference No:** 12/02761/PP

**Planning Hierarchy:** Local application.

**Applicant:** Mr James Paul Daly and Andreena Daly

**Proposal:** Erection of dwellinghouse, formation of car parking and siting of a steel container unit (retrospective)

**Site Address:** 3 Kyle View, Kilcreggan, Helensburgh

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**DECISION ROUTE**

**(i) Local Government (Scotland) Act 1973**

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**(A) THE APPLICATION**

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

- Construction of a dwellinghouse;
- Formation of driveway and parking;
- Erection of deck;
- Siting of steel storage container (all retrospective).

*Differs from previous consent (04/0229/DET) by ~2m platform height and ~1m position as well as minor design alterations*

**(ii) Other specified operations**

- Formation of access and installation of services (pursuant to 05/02413/DET).
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**(B) RECOMMENDATION:**

It is recommended that Planning Permission be granted as a 'minor departure' to development plan policy and subject to the conditions listed in the report.

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**(C) HISTORY:**

The following planning history is of relevance to the current application:

C4335 Erection of 42 Dwellinghouses (outline) granted 29 August 1974. An amended plot layout was approved on 2 October 1975

C4410 Erection of 6 dwellinghouses approved 24 October 1973

C5880/3 Erection of 5 dwellinghouses approved 24 June 1979

C7591 Erection of Residential development (outline) approved 3 February 1986

00/00240/DET – Full planning permission for development of 4 houses, Plots 1 - 4. Applicant HQ Developments. Granted 2/05/2000

03/02423/DET – Full planning permission for erection of dwelling, Plot 4. Applicant Professor A Watson. Granted 10.11.06. Now expired.

04/ 02229/DET – Full planning permission for erection of dwelling. Plot 3 Applicant Mr James Daly Granted 8.06.06. Now expired.

05/02413/DET – Construction of an adoptable estate road. Greenfinch Homes (Kilcreggan) Ltd. Granted 28.04.06. Implemented.

06/02478/DET- Erection of 10 No dwellinghouses with associated roads. Granted 05.06.07. Now expired.

07/02291/DET – Erection of 8 No dwellinghouses (substitution of housetypes) with associated roads. Granted 07.04.08. Live.

12/00170/PP- Erection of dwelling house, formation of a vehicular access and car parking, installation of private drainage and siting of a steel container unit (retrospective). Withdrawn 17.09.12

The application site (Plot 3) forms part of a larger development site of 10 No house plots known as Kyle View. The site has a complex and protracted planning history. There have been several previous planning applications submitted to the Council relevant to the application site as reported below.

Residential planning permission in outline was granted to HQ Developments Ltd for plots 1-4 in 2000. (00/00240/DET).

Mr P Hanley and Mr Quigley then later Greenfinch Homes (Kilcreggan) Ltd acquired plots 2 and 4 and adjoining land now plots 5 -10 while plots 1 and 3 were acquired personally by a Director of this company. The current applicant subsequently purchased Plot 3 for the development of a single dwelling house.

Mr P Hanley and Mr Quigley obtained planning Permission in 2006 (05/02413/DET) for the construction of an estate road and installation of services. Full planning permission was granted in 2007 (06/02478/DET - Greenfinch) for the development of all plots 1-10 and associated internal estate roads and sewers although this has now expired. A further planning permission was granted for the substitution of house types but retaining the access road to adoption standard. (07/02291/DET) for plots 2 and 4 -10 (excluding the privately owned plots) has been started but not wholly in compliance with pre-commencement conditions, so not regarded as lawfully implemented.

Preliminary earthworks have commenced on the construction of the adoptable estate road to from access into the site. Early house construction on Plots 4 and 5

has also commenced, although not all planning conditions appear to have been properly discharged by Greenfinch before the company entered into administration in 2008. Following administration, new developers have recently purchased the land interest formerly owned by Greenfinch. Greenfinch has now been dissolved and the new developer has received a new Road Construction Consent to form the adoptable estate road.

The applicants, Mr and Mrs Daly, obtained full planning permission on 8 June 2006 to build an architect designed two storey detached family home on Plot 3. However, the development has not been implemented in accordance with the planning permission. The dwelling constructed on site is substantially complete and has been occupied by the applicants for over two years.

At present, the dwelling is assessed by the Planning Service to be unauthorised development. Important pre-commencement planning conditions attached to the June 2006 permission was not discharged by the applicants and furthermore the development as constructed does not accord with the planning permission approved drawings.

The applicant has installed infrastructure on land outside his ownership and application boundary. The works comprise formation of a makeshift vehicular access and installation of mains services which are deemed to be unauthorised works. The temporary access works have been constructed within the corridor of the estate road approved under planning permission 07/02291/DET and services installed following approval by Scottish Water and Scottish Power.

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**(D) CONSULTATIONS:**

**Area Roads Manager** (response dated 27.03.13) – Based on the “spot levels” leading from Meikle Aiden Brae the road rises between 1 in 7 and 1 in 8 to the frontage of Plot 3. Not dissimilar to the surrounding driveways within the area and therefore acceptable.

At present, the temporary means of access which uses the shared driveway to serve plots 1 and 2 has a current gradient of 1 in 6. The continuation to the built house is 1 in 4. Such an arrangement would be unacceptable as a permanent solution.

However the applicant has stated that his sole/permanent access to his plot shall be from the proposed new adoptable estate road, once constructed. Not the shared driveway with plots 1 and 2.

Drawing 4500/63 indicates plot 3 can be accessed at a gradient of 1 in 7 from the line of the adoptable estate road again this would be acceptable however to continue to the front of the dwelling at a gradient of 1-4 is not acceptable as a permanent solution.

A proposal to construct two in-curtilage parking bays at the bottom of the slope, served directly from the proposed public road is a viable alternative. The current approved RCC (HLCC 2007/03) once constructed would permit a 1 in 20 gradient to be achieved over the length of the parking bays. This would be in accordance with the councils’ road development guidelines.

Therefore, I would recommend a condition stating that parking should be provided directly off the new estate road at the front (west) of the plot. The condition should include the provision for drainage at the rear of the service strip or footway to intercept surface run off from the parking area and lead it to drainage out with the road drainage

system. The drain should be suitably trapped. The parking area must be constructed with a sealed surface.

**Scottish Water** – (response dated 28.12.12) No objections.

**Environmental Health** – (response dated 12.03.12) No objections.

**SEPA** — (response dated 20.12.12 ) No objections.

**Building Standards** – (response dated 10.1.12) No objections. A further comment has been provided (3.04.13) stating that due to the Schist rock sub-strata Building Standards do not believe a structural retaining wall would be required between the plots. There is a near vertical rock face to the rear of the property which supports Barbour Road and no structure has been erected to retain this. Recently there have been works carried out to form a new garage workshop on Shore Road, this involved excavating the rockface and once again there was no requirement for a retaining structure.

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**(E) PUBLICITY:**

Regulation 20 (1) advertisement was placed in the Helensburgh Advertiser on 3 January 2013 in accordance with Town and Country Planning Development Management (Scotland) Procedures 2008. Expiry 24.01.13

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**(F) REPRESENTATIONS:**

A single objection has been received in relation to this application from Mr Andrew Watts, 4 Courthill, Roseneath who is a new owner/prospective developer of the adjacent development plots. His objections have been submitted over various emails with latest one (dated 1<sup>st</sup> March ) including topographical drawings and level data. The objections are summarised below:

The construction of the new house on Plot 3 is unauthorised. The development of the adjoining land is prejudiced by the unauthorised development because the ground level of the proposed development is now significantly higher than the development approved under the previous application. The objectors maintain that the altered ground levels will materially affect the development of the adjoining land as retaining walls will be now be required; imposing practical design and cost constraints. The positioning of the application building, the new requirement for retaining wall lateral support and associated plot drainage will require redesign work to the adjacent development plots to achieve acceptable and workable solution. This will unreasonably impose costs and inconvenience to the developer of the adjoining land.

The proposed house access does not comply with Council Standards as it is too steep for vehicular access from the proposed development road.

The applicant has constructed private drainage, made illegal connections and vehicular access without proper regard for the development of the adjoining land and design approval given to the development road and site drainage. The objector has also questioned the applicant's legal entitlement to construct the offsite drainage and maintains that the development road infrastructure may require redesign to accommodate the applicant's operations.

The siting of a steel container on the property is unattractive.

*Comment: The applicant seeks retrospective planning permission for a house build that is now completed in order to regularise the breach of planning control. The current application has to be reassessed afresh and upon its own merits. The applicant has confirmed that the development platform is higher than the previously approved. The applicant has supplied levels data denoting an increase in height of just over 1 metre. The objectors state that the difference in platform height is actually over 2 metres.*

*A site survey has been commissioned by the objectors which appears to confirm that the building is around 2.5 metres higher than the approved dwelling at finished floor level (garage) however spot heights on this survey at locations that have not been altered do not tie with the original approval (the unaltered Barbour Road). The objectors have not furnished the Planning Service with drawings detailing retaining walls and boundary treatment in accordance with their own planning permission. However, indicative sections prepared by consultant engineers acting for the objectors do suggest that retaining walls and additional drainage may now be required.*

*Giving the sloping nature of the whole development site, significant regrading work was always required to implement the approved scheme on the adjacent plots 2 and 4 in order to accommodate the smaller house type at plot 3 and differences in topography / platform level. The variation in level from the approved plan is likely to alter the relationship of the completed house with the adjoining development but the magnitude of this is currently unclear in the absence of the boundary treatment provided by the adjacent developer.*

*Whilst the overall situation is less than ideal, the Planning Department do not consider the outcome to be prohibitively incumbent on the adjacent landowner or shall prejudice his ability to build out the adjacent plots in a similar fashion to that already consented. The impact on the adjacent plots may be mitigated by altering levels on Plots 2 and 4 by securing an amendment or the rock substrate at the site may allow construction to take place without significant retention works. The current developer bought the adjacent land in the knowledge that the house at Plot 3 was there and that the issue of levels would have been evident to him before he committed to buy. As development had not been carried out in conformity with the consent for the plot, development on the land was unauthorised. He was therefore unable to be sure at the point of purchase as to whether the Council might chose to take enforcement action, or alternatively to consent it retrospectively.*

*The original developer going into administration and the actions of the applicant have left a difficult situation for all involved but the principal remedy to rectify the situation, demolishing the built house, would be grossly disproportionate to the breach.*

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**(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 e.g. Retail impact, transport impact, noise impact, flood risk, drainage impact etc: No**
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**(H) PLANNING OBLIGATIONS**

- (i) **Is a Section 75 agreement required: No**
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- (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

Policy STRAT DC1 – Development within Settlements

'Argyll and Bute Local Plan' 2009

Policy LP ENV1- Development Impact on the General Environment;  
Policy LP HOU 1 – General Housing Development;  
Policy LP HOU 3 – Special Needs Access Provision in Housing Developments;  
Policy LP ENV 19 - Development Setting, Layout and Design including  
Appendix A - Sustainable Siting and Design Principles;  
Policy LP TRAN 3 – Special Needs Access provision;  
Policy LP TRAN 4 - New and existing public roads and private access regimes;  
Policy LP TRAN 6 - Vehicle Parking Provision;  
Policy LP ENF 1 - Enforcement Action.

- (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.**

The applicants have provided a written statement in support of the application which offers a history and explanation as to how and why the breach of planning control occurred.

The applicant's decision to proceed with the development in breach of conditions and construct services and provide a means of temporary vehicular access to Meikle Aiden Brae was taken in reaction to the insolvency of the developer responsible for providing access and services to the consented house plot.

The Council also did not call up the road bond at the time which has further complicated matters for the applicant. The applicants maintain that the Planning Service was aware of events but elected not to intervene.

The breach of planning control was not challenged until after the Council had already granted a habitation certificate and the applicant had moved into the

new dwelling with his family. It must be noted this is not a material planning issue but relates to the appropriateness in terms of Building Standards.

*Comment: The applicant was placed in a difficult position when Greenfinch entered into administration and perhaps unadvisedly took the initiative to move forward with the project. However, The Council has no record that the applicant ever reached agreement with the Planning Service to permit development in breach of planning conditions. No formal attempt was made to vary the planning permission until following receipt of a complaint.*

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**(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 (PAN41 or other): No**

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**(P) Assessment and summary of determining issues and material considerations**

The application site falls within the local plan defined 'settlement' zone for Kilcreggan. The dwelling for which retrospective permission is being sought is situated close to existing housing development of similar character and lies within a larger development site for which planning permission was originally granted for 4 dwellings in 2000 and subsequently for 8 dwellings in 2008. Although a meaningful start was made on the latter consent, none of the other consented dwellings have been built, following the insolvency of the original developer.

The dwelling which has been constructed has not been built at the approved level and there are some minor external alterations from the approved design and the access to the property is steeper than the gradient originally approved. Accordingly there are aspects of the development which do not accord with the Local Plan criteria.

The altered building platform inevitably has some physical and visual impact upon the remainder of the consented development and the wider locality beyond that associated with the original consent for the plot. The development as completed is assessed to be partially contrary to local plan policy LP ENV 19 because of some deficiency in siting and orientation (window to gable distances are too close albeit they are largely unaltered from the 2006 consent), but the visual appearance of the development and choice of external finishes is largely consistent with the original approval.

The development is assessed to be consistent with Policy LP HOU 1, however, the proposed access is assessed to be partially contrary to LP TRAN 3 and LP TRAN 4 of the adopted Local Plan due to the makeshift connection to Meikle Aiden Brae and also the steep incline of the house driveway which has not yet been completed.

The existing access arrangement connecting the application site with Meikle Aiden Brae is unsuitable for a housing development numbering 10 dwellings. The Area Roads Engineer has confirmed that as a temporary arrangement serving the one plot it is acceptable as a means of access to a single house pending completion of the estate road, and accordingly he does not object to the application.

The application has attracted objection from the adjoining landowners/prospective developers who are concerned that approval of this development will affect the cohesive and planned implementation of the larger development. The applicant has offered his own explanation of the circumstances of this case.

The situation has been precipitated by the intended developer of the bulk of the site becoming insolvent following works having commenced on Plot 3, which has left the applicant in this case with the need to pursue the development of this plot independently in advance of the remainder, and importantly in the absence of an estate road being in place.

In so doing, he has not constructed the dwelling and its access entirely in accordance with the permission for the development as a whole, nor has he sought permission for amended details either prior to or during construction of the build. Accordingly, it is now necessary to consider the acceptability of the development as built, both in terms of its relationship with the remainder of the consented development and its wider surroundings, and in the context of what was originally approved in 2004.

It is not considered that the dwelling as constructed is so prejudicial to the prospective completion of the remainder of the development as to render it unacceptable. Nor is it considered that the building in situ differs significantly from that approved in 2006. Some adjustment of land levels ground retention and drainage may be necessary adjacent to the plot, but not to the extent of compromising the ability to build out the remainder of the consented plots. The access from Meikle Aiden Brae to the plot is in effect a makeshift arrangement until such time as the public road is constructed. The Roads Engineer has confirmed its acceptability on the basis that it is a temporary measure. The temporary driveway within the plot is excessively steep and is unacceptable. The Road Engineer has recommended that a condition be attached to ensure parking plots are provided within plot 3 located at the front (west) of the plot. Once the estate road is completed an acceptable gradient shall be able to be taken from it into the parking spaces at the front of the plot.

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**(Q) Is the proposal consistent with the Development Plan:**

The proposal is assessed to be partially contrary to the Development Plan.

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**(R) Reasons why Planning Permission should be granted**

As per Section S below

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**(S) Reasoned justification for a departure from the provisions of the Development Plan**

The Development Plan is supportive of the residential development of this site. Although the development, as implemented, does not accord fully with the planning



permission granted for this plot in June 2006 (04/02229/DET), the design, appearance and materials used in the construction of the dwelling are all similar to those which were previously consented. The deviations in terms of orientation, height and external appearance of the dwelling are not incompatible with its surroundings, and would not be prejudicial to the ability to implement the remainder of the development. Whilst the access arrangements do not satisfy development plan guidelines in terms of construction and gradient, they are considered to be acceptable by the Roads Engineer as an interim arrangement to serve a single dwelling pending the completion and adoption of the road to serve the remainder of the development. The Roads Engineer has also sought to condition that parking of vehicles is restricted to the front (west) of the plot to ensure a suitable gradient of private driveway is provided off the adoptable estate road. The topography of the site and level at which the dwelling has been constructed render it impractical to provide a level means of access as required by Policy LP HOU 3. Arrangements regarding aspect and separation distances do not satisfy the requirements of Policy LP ENV 19 and Appendix A in full because the window to gable distance is less than the guidance permits, but do not give rise to amenity issues beyond those associated with the occupation of the application property, so do not pose amenity consequences those adjoining properties which are already consented. The separation of the properties is also broadly similar to the scheme approved in 2006. It is therefore considered that retrospective consent can be justified as a 'minor departure' to development plan policies LP ENV 19, LP HOU 3, LP TRAN 3, LP TRAN 4 and Appendix A of the 'Argyll & Bute Local Plan' (2009).

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**(T) Need for notification to Scottish Ministers or Historic Scotland: No**

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**Author of Report:** Ross McLaughlin / Martin Hannah

**Date:** 27 March 2013

**Reviewing Officer:** Richard Kerr

**Date:** 28 March 2013

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

## CONDITIONS AND REASONS RELATIVE TO APPLICATION 12/02761/PP

1. The development shall be implemented in accordance with the approved drawings: 01:Location/Site Plan; Road Layout-Horizontal Geometry; 03 Floor Plan, Walltypes; Longitudinal E/W Site Section, South Elevation; and 05B Proposed North, East and West elevations, unless the prior written approval of the Planning Authority is obtained for an amendment to the approved details under Section 64 of the Town and Country Planning (Scotland) Act 1997.

*Reason: For the purpose of clarity, to ensure that the development is implemented in accordance with the approved details.*

2. No vehicular access to the site shall be taken from Barbour Road unless variation is agreed in writing with the Planning Authority.

*Reason: In the interests of traffic safety.*

3. Within two months of the date of this permission full details of landscaping proposals detailing intended soft and hard landscaping works including the planting specification shall be submitted for the consideration and written approval of the Planning Authority. The duly approved landscaping scheme shall be completed during the first planting season following approval of the scheme. Any trees or shrubs which fail to become established which die or are removed within five years of the date of this permission shall be replaced in the following planting season by equivalent size and species of trees or shrubs as those originally required to be planted.

*Reason: Insufficient detail has been provided by the applicant.*

4. Within six months of the date of this permission boundary fences shall be erected as follows:
  - i) at 1.0m in height for the full length of the boundary with Barbour Road;
  - ii) at 1.8m in height along the full length of the northern boundary of the site between Barbour Road and the boundary with the footway to the estate road;
  - iii) at 1.8m in height along the southern boundary between Barbour Road and a point 2.0m from the boundary with the footway to the estate road, at which point the height of the fence shall reduce to 1.0m in order to secure visibility at the egress point of the driveway.
  - iv) At 1.0m in height along the western boundary along the private driveway accessing plots 1 and 2

This fencing shall be retained at these locations at the height prescribed thereafter unless any variation thereof is agreed in writing in advance by the Planning Authority.

*Reason: In the interests of privacy and residential amenity.*

5. Vehicular access shall only be taken off the principal estate road between Meikle Aiden Brae and Kyle View. The private vehicular driveway serving the development hereby approved shall be formed to comply with the specification and general design requirements as set out in the Council's standard detail drawing SD 08/005A, unless variation to this specification and design is agreed in writing with the Planning Authority, and shall be constructed and drained in a manner to prevent discharge of surface water onto the footpath and carriageway approved under permission 05/02413/DET and the private shared driveway serving the development plots 1 and 2 immediately to the north of the development.

*Reason: In the interests of vehicular and pedestrian safety.*

6. Notwithstanding the details of the driveway shown in the approved plans, within two months of the estate road being constructed to base course level, the driveway shall be modified to provide a gradient not exceeding 5% for the first 5 metres back from the boundary of the site with the road, and two car parking spaces shall be constructed and made available for use at the foot of the drive (west), accessed from that first 5 metre section. These spaces shall remain available thereafter for the parking of vehicles within the site.

*Reason: In order to provide a safe means of access to the public road and to provide useable parking space in circumstances where the driveway gradient would not facilitate access in all conditions.*

7. Surface water from the car parking area shall be intercepted at the back of the footway/service strip and led via a silt trap to in-curtilage drainage provision.

*Reason: In order to control surface water run off*

## **NOTES TO APPLICANT**

1. In order to comply with Section 27B(1) of the Town and Country Planning (Scotland) Act 1997 it is the responsibility of the developer to submit the attached 'Notice of Completion' to the Planning Authority specifying the date upon which the development was completed.
2. Full implementation of this planning permission will regularise a breach of planning control. Failure to implement this planning permission or abide by the planning conditions attached to the planning permission may result in Enforcement action by the Council as Planning Authority.

## **APPENDIX A – RELATIVE TO APPLICATION NUMBER: 12/00170/PP**

### **PLANNING LAND USE AND POLICY ASSESSMENT**

#### **A. Settlement Strategy**

In the 'Argyll and Bute Local Plan', the application site is located within the small town and village settlement zone of Kilcreggan. Policy STRAT DC1 of the 'Argyll and Bute Structure Plan' supports development in the small towns and villages serving a local community on appropriate infill, rounding-off and redevelopment sites. The application site is part of a previously allocated housing development opportunity.

Policy LP ENV 1 of the 'Argyll and Bute Local Plan' sets out general safeguarding criteria for all development.

As the application is in respect of a house on a previously consented and allocated housing site, the development is judged to be acceptable in terms of settlement strategy.

The proposal is consistent with policy STRAT DC1 of the 'Argyll and Bute Structure Plan' 2002 and generally compliant with the policy LP ENV 1 and LP HOU 1 of the 'Argyll and Bute Local Plan'.

#### **B. Location, Nature and Design of Proposed Development**

##### *(i) Development Setting*

The site is steeply sloping and benefits from elevated views towards the Clyde. The elevated and sloping character of the land is not well suited to an off the shelf house design. A bespoke designed solution would be preferable to adapt the building form to suit site topography and conditions

##### *(ii) Proposal*

The application site forms part of a wider scheme to develop a small estate of 10 detached homes. The plot is in separate ownership to the majority of the site and has been developed in advance of the development of other plots following the insolvency of the original estate developer.

The application under consideration seeks permission for the erection of a two-storey split level detached dwellinghouse (retrospective), driveway and also the siting of a steel storage container (retrospective) in order to regularise a breach of planning control.

##### *(iii) Assessment*

The house design is broadly the same as that approved for Plot 3 under a previous planning permission (04/02229/DET) granted in June 2006. There is a general presumption in favour of the residential development of the application site under Policy LP HOU 1 providing the development abides by the other Housing, Transport and Development Management policies of the Development Plan. The application seeks to regularise retrospectively development which has already been carried out. The development has been assessed against these policies below:

**Location:**

The application site is located at 3 Kyle View, Kilcreggan. The development plot bounds Barbour Rd which is a public carriageway. However, principal access is to be taken via Meikle Aiden Brae, currently a private road. The plot is bounded to the east by Barbour Road. The northern, western and southern boundaries are presently undefined. The house plot is steeply sloping falling from East to West from Barbour Rd towards Meikle Aiden Brae.

**Siting and Layout:**

The house has been constructed parallel with the other detached houses planned for the development. The application site is bounded by development plots 2 and 4. The adjoining plots benefit from planning permission for a three storey split level design. The application site is accessed via an individual private driveway access.

The objectors have alleged that the setting out of the dwelling has encroached upon adjoining development land. The applicant disputes this and has exhibited a land certificate plan to confirm the actual title position as registered. The house is situated 1 metre from the mutual boundary with Plot 2. As the previous permission detailed a distance of 2 metres to boundary, this separation distance is reduced, but as far as can be ascertained there is no evidence of development encroachment. Any on-going dispute regarding the location of ownership boundaries would be a civil legal matter rather than a planning consideration.

The main public rooms are situated on the upper floor, designed to benefit from aspects westwards towards the Clyde. The bedroom accommodation is located on the ground floor. Due to the split-level design built into the hillside, most of the bedroom accommodation faces north.

The applicant has confirmed that the development platform is higher than that previously approved in 2006. The applicant has supplied levels data suggesting an increase in height of 1.2 metres. The objectors have stated that the difference in platform height is actually around 2.5 metres. A full site survey has been commissioned by the objectors, but it does not appear to tie with the 2006 approval as the unaltered Barbour Road levels vary. The variation in height from the approved scheme must be considered to be in the order of 2m. In circumstances such as this where there is conflicting evidence regarding levels the Council may commission its own independent survey. In this scenario the extent of the variation in level claimed by the objector and the applicant (1.3m) is somewhat immaterial, as it is accepted there is an inconstancy with the approved plan to a degree a new application is required. The potential of just over 1m difference in a house that is already built in the context of adjacent vacant plots has not merited an independent review in this case. If the conflicting measurements were greater or the site was in a more sensitive location a review may have assisted the process.

The developers of the land adjoining the application site have not yet furnished the Planning Service with design drawings fully detailing the dimensions, construction or appearance of boundary treatment, retaining walls or other lateral support structures. This information is still required in order to comply with the planning conditions of their own consent. However, an indicative section prepared by consultant engineers has been provided and this drawing suggests that retaining walls of between 2.0 - 2.5 metres in height may now be required to provide lateral support to the application site. Given relatively limited working room available between the plots the design of the lateral support necessary is likely to be in the form of a wall or proprietary retaining

system. As the approved design platform of Plots 2 (84.8m) and 4 (85.0m) is significantly below the proposed finished ground level of Plot 3 (87.6m) additional drainage may also be necessary to accept run-off from the higher ground.

The indicative section that forms part of the objector's submissions illustrates the difference in relative ground levels between plots 2, 3 and 4 as viewed from the internal development road. The sections also helpfully show the difference in roof ridge levels between the proposed houses and also relative to Barbour Road. Although still indicative and not yet approved, the visual relationship achievable between the plots 2, 3 and 4 is assessed to be acceptable although the design and appearance of any retention required will require careful consideration.

Although the finished ground and ridge levels are higher than previously approved (of the order of +2m) the finished ridge height of the building is actually not materially higher than the houses with planning permission situated either side of the application site, given that they are approved at three storey. The height of the roof ridge relative to Barbour Road presents no real difficulties in planning terms, and can be accepted.

The platform of the applicant's house was always intended to be at a higher level than the adjacent plots and was previously approved with such an arrangement in place. Because of the differentials between the approved plans and actual platform level of the house, the adjacent landowner may require some adjustment within the adjacent as yet unimplemented development to suit. However, these will not be such as to prejudice the ability to implement the remainder of the consented development. Solid rock substrate at the site may also assist assimilation without significant retaining work.

It is not therefore considered that the positioning of the dwelling relative to that previously consented is unacceptable, either in terms of the relationship it would have with other consented dwellings, the practicalities of implementing those consents, nor with the relationship between the dwelling and the wider locality.

#### **Access:**

The development is currently accessed via a temporary (hardcore) means of vehicular access connecting the application site with Meikle Aiden Brae. The dwelling is accessed by a relatively steep and incomplete block paved private driveway that connects with a temporary shared access for plots 1 and 2. When the new estate road is completed, the plot driveway access would directly connect to the new public road (i.e. it will no longer use the shared access that serves plots 1 and 2).

The adjoining development land has recently been purchased and a new application for road construction consent (RCC) has been submitted to the Council but has not yet been approved. It is anticipated that the RCC will be granted in time and there is therefore prospect that the development of the adjoining plots will proceed. In these circumstances, there remains reasonable expectation that the application site and the adjoining house plots will, in time, be served by a means of access commensurate with the scale of development and consistent with Local Plan Policy LP TRAN 3 and LP TRAN 4.

The previous permissions have been subject to conditions drafted to restrict occupation of the approved houses until the estate road has been completed, reflecting the overall presumption that an appropriate means of access should precede the completion of the various plots. The planning condition still applies to the adjoining development plots and fulfils a proper planning purpose. Without the

use of such planning conditions there would be the prospect of a number of houses being built and occupied without an acceptable means of vehicular access, leading to a chaotic implementation which would be undesirable and unsafe.

The owner of this plot has been prompted to devise an independent makeshift form of access by the insolvency of the original estate developer. The means of access which has been formed to serve Plot 3 has therefore to be regarded as being sub-standard in terms of gradient and surface finish and not in compliance with the access standards required to be met in order satisfy to Local Plan Policies LP ENV 19, LP TRAN 3 and LP TRAN 4. However, in the circumstances it can be regarded as a temporary means of access pending completion of the internal development road as part of the implementation of the other plots within the estate. As a means of access to this single plot the Roads Engineer considers that, as an interim arrangement, it is satisfactory.

Notwithstanding this, the steep internal driveway arrangement that is currently taken from the shared access of Plots 1 and 2 is not suitable as a permanent solution. Parts of the current driveway exceed a gradient of 1 in 4 and the steepness of the drive would be exacerbated once the estate road has been constructed. The applicant has confirmed in his drawings and supporting statement that the sole access shall be taken from the adoptable estate road serving the whole estate. In order to control this permanent solution the Road Engineer has recommended a condition be attached to fence off the current access with the driveway of plots 1 and 2 and to install 2 parking spaces at the front (west) of the plot.

The current approved RCC (HLCC 2007/03) once constructed would permit a 1 in 20 gradient to be achieved over a 5m length of the plot to the parking bays. This would be in accordance with the Council's road development guidelines. The Roads Engineer has also commented that both the temporary and permanent access arrangements are consistent with other driveways in the local area due to sloping topography.

It is assessed that the development does not prejudice the ability to implement the adjoining development. A means of access satisfactory to serve one dwelling pending the implementation of further development is in place to the Roads Engineer's satisfaction. Whilst this does not satisfy normal standards and local plan policy, in the circumstance of the case it may be accepted as a minor 'departure' to the provisions of the development plan. A condition to ensure that an acceptable driveway is formed and that the current shared access with plots 1 and 2 is fenced off has also been proposed by the Roads Engineer. This shall include parking spaces at the front (west) of the plot and suitable drainage arrangements.

#### **Density:**

The development has private open space of 176m<sup>2</sup> and the footprint of the dwelling occupies 24% of the curtilage. As such it meets development plan requirements.

#### **Services / Infrastructure**

The applicant's entitlement to enter onto the adjoining property for the purposes of laying-out and constructing this means of temporary access and to lay services has been disputed by the objector. Implementation of the planning permission for the internal development road was commenced by Greenfinch (now in liquidation). Although the current landowners and applicant are locked in dispute, this is considered to be a civil matter and is not a valid planning consideration. However, the application can only be considered acceptable in planning terms if it is determined that a suitable means of access and servicing has been provided.

The mains services to the development are situated under the route of the internal development road. The site benefits from Scottish Water Technical Approval and the applicant states that the drainage and water supply services have been installed in accordance with planning permission for the access road and the technical approval. The applicant has also made connection to an electricity supply but no further information has been provided.

The objectors have also expressed concerns about the applicant's drainage arrangements but no objections have been lodged by Scottish Water or other service providers in this case.

As the development appears to be adequately serviced the application is assessed to as being acceptable in this regard.

### **Design:**

The proposed dwelling house has a different design appearance to the other houses previously approved under the Greenfinch planning permissions, but is very similar to the dwelling approved on this plot in 2006 under 04/02229/DET.

The roof is pitched and clad in slate. Exterior walls are finished in a mixture of buff facing brick and white roughcast. Windows, fascia and rainwater goods and external doors are finished in white UPVC. This mirrors the previous permission. The roof of the house incorporates solar panels and a large external flue is attached to the north elevation to serve a solid fuel heating system. These aspects are judged to be acceptable.

Because the application site is steeply sloping, the use of a split level house design is supported as being appropriate to the characteristics of the site. Local Plan Policy LP HOU 3 requires that consideration is given *inter alia* to the access requirements of disabled and special needs groups when new housing development is assessed at the planning stages. Due to site topography, compounded by the level at which the dwelling has been constructed, the development does not comply fully with policy LP HOU 3 as the permanent car parking spaces are to be formed at a lower level within the plot than the house itself. It is acknowledged that site topography does not always make it practicable to provide parking spaces immediately adjacent to a building on a sloping site. To this extent the design conflicts with Policy LP HOU3.

The objectors have stated that the positioning and height of the house has created other difficulties. In particular, objection is made on grounds that retaining walls will now be required between the application site and the adjoining plots 2 and 4 imposing a design, practical and cost constraint upon the developer of these subsequent plots. The construction of retaining walls and other forms of lateral support is to be expected on a steeply sloping site. The siting, design and appearance of retaining walls is also considered to be a material consideration, but the cost and responsibility for construction are not considered to be planning matters. The responsibility for construction and on-going maintenance of any retaining walls is a matter that would best be resolved by the respective landowners/developers through dialogue and agreement.

If the adjoining development is to proceed in a manner requiring construction of retaining structures, the design will require the approval of the Planning Service under the terms of existing permissions.

### **Under-building, excavation and storage container**

Due to the split level design and additional excavation to the rear elevation of the



house, the underbuilding is exposed rather than backfilled. There is now a sizeable void between the house and excavated slope that has been spanned by an elevated timber deck. The space beneath the decking is now occupied by the steel shipping container which is now being used for the storage of biomass wood fuel.

The Local Plan design guidance discourages large un-fenestrated under-building and states that this can be detrimental to the appearance of buildings and inappropriate in most settings. The Planning Service would also normally express misgivings about the permanent siting of a steel shipping container in a residential environment.

However, in this case the underbuilding and container are very well screened by the topography, re-grading works and the deck above and will become further screened when the required boundary fencing is erected. Although an unconventional use of an otherwise dead space, it is assessed that the siting of the container in this location is unlikely to be harmful to the residential amenity of the wider development. The container is recessed below the deck and the top of the container is level with the top of the under-build to the dwelling. Only the doors are visible at close quarters and these are not dissimilar to the appearance of garage doors. The rear garden ground is steeply sloping and is not well suited to a more conventional wood or garden shed.

Accordingly, in the particular circumstances of the case the siting of the underbuilding and container is considered acceptable in terms of policies LP ENV 1 and LP ENV 19.

#### **Orientation:**

The development has to be assessed in terms of the acceptability of its relationship to the consented housing on the adjoining land. The house has most of the bedroom accommodation on the ground floor. Bedrooms 1, 2 and 3 have north facing aspects which will be towards the gable of the dwelling proposed for Plot 2, at a distance of around 5 metres which fails to meet the current Development Plan standard of 12 metres between habitable rooms and elevations without facing windows. However, the approved scheme (2006) had near identical separation distances.

Although this relationship is unlikely to give rise to any consequences in terms of loss of privacy, it is assessed that the day lighting of the bedroom accommodation will be compromised.

The development in this respect would not fully satisfy Local Plan Policy LP ENV 19 and Appendix A of the Local Plan. Although the extent of overshadowing and poor aspect involved is undesirable, it is the applicant who will be required to live with a lesser standard of amenity than would have been achieved had separation met with normal development plan requirements. It is also near identical separation distance to that consented by the 2006 scheme (prior to the current local plan separation standards coming into effect). Since there would be no loss of privacy to development which has yet to take place on the adjacent plot, this aspect of the development can be accepted as it would not compromise the amenity of future development. Any adverse implications of this shortfall in separation are restricted solely to the occupiers of the subject property.

#### **C. Conclusion**

Whilst some aspects of this retrospective application do not satisfy development plan policy in full, their consequences, other than for the occupiers of the property in question, are limited and importantly they do not prejudice the ability to develop the remainder of the estate either in conformity with the previous permission or with some minor adjustment having regard to the circumstances of this completed plot. It

is important to bear in mind that the development of this single dwelling is now substantially completed and the applicant and his family now reside in the property. Adherence with the consented development could not be secured in full other than by demolition and rebuilding, and such a prospect is not reasonably proportionate to the extent of the deviations from the approval.

The siting, layout and design of the building is assessed to be on the whole acceptable. There have been no objections received from Scottish Water or Building Standards. The Roads Department have also raised no objections on the basis the current access arrangements are acceptable as a temporary solution until the adoptable estate road is built. New parking places are to be created at the front of the plot once the road is in place to ensure a satisfactory access and parking arrangement. Although currently deficient in respect of site access and driveway gradient, most of the problems identified will be capable of being overcome eventually when the internal development road is constructed.

Having regard to the circumstances of the case, the extent to which the development plan requirements are not satisfied in full, and the other material considerations it is recommended that Planning Permission be granted as a 'minor departure' and subject to the conditions detailed.