

15 April 2024

Hazel Kelly MacInnes  
Committee Services Officer  
Legal and Regulatory Support  
Argyll and Bute Council  
Kilmory  
Lochgilphead  
PA31 8RT

Ref MHP: 2022\_0065

Dear Hazel

**REQUEST FOR REVIEW IN RESPECT OF THE REFUSAL OF AN APPLICATION FOR PLANNING PERMISSION IN PRINCIPLE FOR THE ERECTION OF FOUR DWELLINGHOUSES, INCLUDING FORMATION OF ACCESS AND INSTALLATION OF SEPTIC TANK AND SOAKAWAY, LAND AT COULTORSAY FARM, BRUICHLADDICH, ISLE OF ISLAY (LPA REFERENCE 23/01028/PPP)**

I refer to your e-mail dated 2 April 2024 inviting comments regarding the representations received in connection with the above application for review. My response is as follows.

***The Pre-Application Advice Received***

The Planning Officer correctly notes under this heading that pre-application advice was sought from the Council on two separate occasions, and that responses were received on 18 May 2022 and again on 12 April 2024.

The first pre-application submission was made by the applicant directly and proposed two alternative sites for a potential development of four new dwellings. The response received contained the following paragraph:

*“This proposal identifies two approximately 0.5ha rectangular sites either side of the Bruichladdich warehouses access road and around 135m and 375m south of the boundary of the Minor Settlement. Both sites address the A847 and may be accessed from the warehouse road rather than the main road. The northerly site lies mainly in a Rural Opportunity Area (ROA). The southerly in the countryside and additionally partly in a Site of Scientific Interest (SSSI) and a Special Protection Area (SPA) associated with the Rinns of Islay. These designations are defined in the Local Development Plan (adopted 2015)(LDP).*”

*LDP 2 is likely to remove the ROA classification in favour of simply settlement and countryside designations."*

The response concluded by saying that "in this case the more northerly site is likely to be the most suitable, notwithstanding the council's hesitation regarding creating an artificial infill site beside Bruichladdich. It is recommended that the proposals for LDP 2 are reviewed. These are available on the Council's planning web site".

The second pre-application was submitted by me on 4 April 2023. I specifically sought guidance regarding the updated planning policy context, given the adoption of the National Planning Framework on 13 February 2023, and also the advanced stage of the preparation of the Council's Local Development Plan 2 (which was to remove the Rural Opportunity Area designation).

The Planning Officer provided an indication as to how the Council would assess application for new dwellings in the countryside, and concluded by saying:

*"Drawing the above together, the principle of residential development at the site is considered acceptable in principle."*

This response could not have been more unequivocal, and it certainly gave my clients the confidence to spend £5,622 on application and advertisement fees.

Following a change of Planning Officer, the application was then refused based upon an issue of principle, i.e. perceived landscape impact. For the Council to make such a fundamental 'U' turn regarding the principle of the proposed development was extremely disappointing, and renders seeking pre-application advice rather pointless!

With respect to the 'costs decision' submitted with the Grounds of Review the Planning Officer says, "Officers would comment that this decision and/or its content has no jurisdiction or planning weight in the Scottish Planning system".

This is not correct. The decision is very relevant when it comes to the weight that should be attached to pre-application advice and is thus equally applicable in Scotland, notwithstanding that fact that it is an English decision. Attached is a further costs decision that makes the very same point (**Document 5**). In paragraph 12 the Inspector states:

*"I find that this sudden change in position without any reasonable justification, other than a difference of professional opinion between two Council officers, amounts to unreasonable behaviour on behalf of the Council. Such behaviour provides a great deal of uncertainty to the developer, particularly in this instance as the application was submitted with a justifiable expectation that it would be approved."*

## **Planning Policy Context**

The Development Plan relevant to the review application now comprises the National Planning Framework (2023) and the Argyll and Bute Local Development Plan 2 (2024). Section 13 of the Planning (Scotland) Act 2019 is now in force. This altered Section 24 of the 1997 Act to state that in the event of 'any incompatibility' between a provision of the National Planning Framework ('the NPF') and a provision of a Local Development Plan ('the LDP'), whichever of them is the later in date is to prevail.

With respect to the NPF, **Policy 9** indicates that proposals on greenfield sites will not be supported unless the site has been allocated for development or the proposal is explicitly supported by policies in the LDP. **Policy 16** of the NPF seeks to encourage, promote and facilitate the delivery of more high quality, affordable and sustainable homes in the right locations and providing choice of tenure to meet diverse housing needs, and Part (c) of this policy supports development proposals for new homes that improve affordability and choice by being adaptable to changing and diverse needs, and which address identified gaps in provision, including 'self-provided homes'.

Having regards to Part (f) of **Policy 16** an agreed timescale for build-out can be secured via the imposition of a an appropriately worded planning condition. Whilst the development proposed is not on land actively allocated for housing in the LDP, it would however wholly accord with the adopted settlement strategy and the principles of 'local living' and '20 minute neighbourhoods', as set out in **Policy 15** of the NPF. This policy seeks to encourage, promote and facilitate the application of the 'Place Principle' and create connected and compact neighbourhoods where people can meet the majority of their daily needs within a reasonable distance of their home, preferably by walking, wheeling or cycling or using sustainable transport options.

In terms of the Council's adopted settlement strategy, the site of the proposed dwellinghouse is in an area identified as being outwith a settlement area where **Policy 02** of the LDP promotes a more flexible approach to development, with Part A of the policy providing a presumption in favour of sustainable development where it is of an appropriate scale, design, siting and use for its countryside location, as detailed in the relevant sustainable siting and design policies. In this instance, it is considered that the relatively small scale of the proposed development, and its rural location, would comply with **Policy 15** of the NPF given the existing dispersed geographical scale of the environment within which the development is to be located, and its close proximity to Bruichladdich, which is just 1km from the application site.

In addition to the above, **Policy 17** of the NPF seeks to encourage, promote and facilitate the delivery of more high quality, affordable and sustainable rural homes in the right locations. Part (a) of this policy supports development proposals for new

homes in rural areas where the development is suitably scaled, sited and designed to be in keeping with the character of the area, and Part (b) requires proposals for new homes in rural areas to consider how the development will contribute towards local living and take into account identified local housing needs. It has already been noted above that the proposed development is consistent with the Council's adopted strategic housing policies. Part (c) then offers support for new homes in rural areas where such proposals (i) support and sustain existing fragile communities, (ii) support identified local housing outcomes and (iii) are suitable in terms of location, access and environmental impact.

Turning now to the very recently adopted LDP, the application site is within a Countryside Area. **Policy 02** of the LDP states that there is a presumption in favour of sustainable development where this is of an appropriate scale, design, siting and use for its countryside location, as detailed in the relevant subject policies. All developments will require a Landscape and Visual Impact Assessment demonstrating to the satisfaction of the Planning Authority, that the proposal can be successfully integrated into its landscape setting unless they are infill, rounding off, redevelopment opportunities of clusters or previously developed sites.

Pulling all of the above together, the submitted application, if approved, would provide for four new houses which would accord with the Council's key planning policy aim of supporting and sustaining fragile rural communities by contributing to actions to reverse falling populations and support the local economy. The application proposal therefore fulfils the broad aims of Policy 17 of the NPF, and does not conflict with any of the relevant policies of the LDP.

In addition to the above, as Councillors know, a **Housing Emergency** has recently been declared, and on Islay in particular it has been evidenced that the lack of accommodation on the island is stifling employment, and thus economic growth, and that the majority of employers surveyed have experienced difficulties recruiting staff due to a lack of housing.

As was noted in the Grounds for Review, there were potential purchasers for all four of the plots applied for. All of these purchasers, so it is understood, were people who live and work on the island. In the light of this, as has previously been advised, the applicants would have no objection to the following occupancy condition being imposed:

**“Primary Residence:** The dwelling houses that are the subject of this permission must only be occupied as a primary residence (i.e. the dwelling must be the main residence of the occupier and the dwelling where the occupier usually lives).”

Such a condition would prevent any of the proposed new dwellings being occupied as second or holiday homes.

## **Conclusion**

In conclusion the submitted application is merely for planning permission in principle, and prior to the submission of the application the Council's Planning Officer confirmed in writing that "the principle of residential development at the site is considered acceptable in principle".

Furthermore, when the review application was submitted the application site was mainly within a Rural Opportunity Area (ROA). Whilst these are no more, they were originally mapped specifically with a view to identifying areas within which there is a general capacity to successfully absorb small scale housing development. They included open countryside locations where appropriate forms of small- scale housing development would be in tune with landscape character and development pattern. Consequently, there was always a strong presumption in favour of small-scale housing development within the ROAs.

It is therefore considered that any potential landscape impact, which would not in any event be significant, should easily be able to outweighed by the acute need for new housing for local people who live and work on Islay.

I trust that this is sufficient for your needs however please do not hesitate to let me know if you wish me to provide more information on any point.

Yours sincerely

A handwritten signature in black ink that reads "Michael Hyde." The signature is written in a cursive, slightly slanted style.

Michael Hyde MRTPI  
**MH Planning Associates**