

STATEMENT OF CASE

FOR

**ARGYLL AND BUTE COUNCIL
LOCAL REVIEW BODY**

24/0007/LRB

REFUSAL OF PLANNING PERMISSION 23/01067/PP

**USE OF LAND FOR THE SITING OF AN ACCOMMODATION POD FOR
SHORT TERM LETTING USE**

GARDEN GROUND OF FERNLEA, POLVINISTER ROAD, OBAN

22 APRIL 2024

STATEMENT OF CASE

The Planning Authority is Argyll and Bute Council ('the Council'). The appellant is Mr Graham Fielden ('the appellant').

Planning permission 23/01067/PP for the use of land for the siting of an accommodation pod for short term letting use within the garden ground of Fernlea, Polvinister Road, Oban ('the appeal site') was refused by the Planning Service under delegated powers on 24 January 2024.

The planning application has been appealed and is subject of referral to a Local Review Body.

DESCRIPTION OF SITE

The site for the proposed accommodation pod comprises an area of ground within the rear garden ground of the property which is elevated above the level of the dwellinghouse. The site is relatively well enclosed by established tree and shrub cover which the application shows enhanced by hedge planting to the front of the proposed pod which will ensure that it integrates well within the site and wider landscape where it will not give rise to any privacy or amenity issues with neighbouring properties.

Whilst it is accepted that the proposed accommodation pod could be accommodated within the site without any significant adverse visual impact on the site or the wider landscape within which it is proposed, a suitable access regime to serve the proposed development cannot be achieved.

The development constitutes a material intensification of the use of an existing and constrained access regime and would be capable of support only if compliance with various highway safety concerns could be demonstrated through the submission, examination and acceptance of competent detail. The land necessary for the upgrade of the existing private road, if achievable, is located outwith the application site boundary and outwith the land in the control of the Applicant. Consequently, it was considered likely that the proposed development would have a significant adverse impact upon highway safety and therefore planning permission was refused.

STATUTORY BASIS ON WHICH THE APPEAL SHOULD BE DECIDED

Section 25 of the Town and Country Planning (Scotland) Act 1997 provides that where, in making any determination under the Planning Act, regard is to be had to the development plan, and all other material planning considerations and the determination shall be made in accordance with the plan unless material considerations indicate otherwise. This is the test for this application.

STATEMENT OF CASE

Argyll and Bute Council considers the determining issues in relation to the case are as follows:

- *Whether the proposed development constitutes a material intensification of the vehicular use of a sub-standard private road with no delineation between pedestrian or vehicular use and whether the upgrade of the private access can be achieved on land within the ownership/control of the Applicant.*

- *Whether the dwellinghouse the subject of the review is suitable for bed and breakfast purposes permitted under Class 9 of the Town and Country Planning (General Permitted Development and Use Classes) (Scotland) Amendment Order 2020.*

The Report of Handling (Appendix 1) sets out the Council's full assessment of the application in terms of Development Plan policy and other material considerations.

REQUIREMENT FOR ADDITIONAL INFORMATION AND A HEARING

It is not considered that any additional information is required in light of the appellant's submission. The issues raised were assessed in the Report of Handling which is contained in Appendix 1. As such it is considered that Members have all the information they need to determine the case. Given the above and that the proposal is small-scale, has no complex or challenging issues, and has not been the subject of any significant public representation, it is not considered that a Hearing is required.

COMMENT ON APPELLANT'S SUBMISSION

The case from the Planning Service is set out in the Report of Handling appended to this statement.

The Planning Service has no comment to make on the Appellant's submission.

ADOPTED LOCAL DEVELOPMENT PLAN 2

Since planning permission was refused, 'Local Development Plan 2' (LDP2) has been adopted which, along with 'National Planning Framework 4' represent the Development Plan against which planning applications are assessed.

However, the policies contained within LDP2 were considered during the processing of the application and therefore, in this instance, the adoption of LDP2 does not change the assessment previously undertaken by Officers, namely that the development the subject of this review would conflict with NPF4 Policy 13 and Policy 37 of LDP2.

CONCLUSION

Section 25 of the Town and Country Planning Act 1997 requires that all decisions be made in accordance with the development plan unless material considerations indicate otherwise.

As set out above, it remains the view of the Planning Service, as set out in the Report of Handling appended to this statement, that the proposed development constitutes a material intensification of the use of an existing and constrained access regime and would be capable of support only if compliance with various highway safety concerns could be demonstrated through the submission, examination and acceptance of competent detail.

The land necessary for the upgrade of the existing private road, if achievable, does not form part of the planning application site and is not within the acknowledged legal ownership/control of the Applicant.

Furthermore, as set out in the Report of Handling, the dwellinghouse the subject of this review is not, and has not, been used as bed and breakfast accommodation and no details have been advanced as to the suitability of the existing dwellinghouse for such purposes.

Taking account of the above, it is respectfully requested that the application for review be dismissed.

APPENDIX 1

Report of Handling Relative to 23/01067/PP

Argyll and Bute Council
Development & Economic Growth

Planning Application Report and Report of Handling as required by Schedule 2 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 relative to applications for Planning Permission or Planning Permission in Principle

Reference No: 23/01067/PP
Planning Hierarchy: Local
Applicant: Mr Graham Fielden
Proposal: Siting of Accommodation Pod for Short Term Letting Use
Site Address: Garden Ground of Fernlea, Polvinister Road, Oban

DECISION ROUTE

- Delegated - Sect 43 (A) of the Town and Country Planning (Scotland) Act 1997
- Committee - Local Government Scotland Act 1973
-

(A) THE APPLICATION

(i) Development Requiring Express Planning Permission

- Siting of accommodation pod for short term letting use

(ii) Other specified operations

- Utilisation of existing vehicular access
 - Connection to public water main
 - Connection to public drainage network
-

(B) RECOMMENDATION:

Having due regard to the Development Plan and all other material considerations, it is recommended that planning permission be REFUSED for the reasons appended to this report.

(C) CONSULTATIONS:

Argyll and Bute Council – Roads Authority

Report dated 16/08/23 recommending refusal of the proposed development maintained in an e-mail dated 22/11/23 after reviewing additional information submitted by the Applicant.

Argyll and Bute Council – Environmental Health Service (EHS)

Memo dated 11/09/23 advising no objection to the proposed development subject to conditions being imposed on the grant of permission to secure a Management Plan for the proposed development and to ensure that external lighting proposed is to an acceptable standard to avoid light nuisance. It should however be noted that a Management Plan has been submitted in support of the proposed development and, should permission be granted, a condition will be imposed to ensure the pod is operated in accordance with the details set out in the Management Plan.

Scottish Water

Letter dated 06/07/23 advising no objection to the proposed development but providing advisory comments for the Applicant.

Representations are published in full on the planning application file and are available to view via the [Public Access](#) section of the Council's website.

(D) HISTORY:

No relevant planning history.

(E) PUBLICITY:

The proposal has been advertised in terms of Regulation 20 and Neighbour Notification procedures, overall closing date 03/08/23.

(F) REPRESENTATIONS:

(i) Representations received from:

Mrs Christine McNab, Touchstone, Polvinister Road, Oban, PA34 5TN (25/07/23)
Mr John Watson, Glen Esk, Polvinister Road, Oban, PA34 5TN (24/07/23)
Mr Douglas Swan, Ronaldsay, Polvinister Road, Oban, PA34 5TN (24/07/23)
Mr Freddy Lockhart, The Oaks, Polvinister Road, Oban, PA34 5TN (24/07/23)
Oban District Access Panel (17/07/23)

Representations are published in full on the planning application file and are available to view via the [Public Access](#) section of the Council's website.

(ii) Summary of issues raised:

- The access road is a narrow, steep, single track road with blind corners and no passing places or pavements. The access road is used regularly by pedestrians, cyclists and horse riders.

There are significant concerns regarding the increase in traffic utilising the private road and the impact that this would have on pedestrian safety.

Officer Comment: *The road safety issues are discussed in more detail in the assessment at Section P below.*

- Concerns over the construction period of the proposed pod which would cause problems for residents.

Officer Comment: *This is not a material planning consideration but a civil matter between affected properties. Should this comment relate to noise from the construction period, this would be dealt with by the Council's EHS.*

- Concerns from noise arising from the proposed accommodation pod.

Officer Comment: *The application is accompanied by a Management Plan which outlines the operation of the proposed pod. Furthermore, the pod is proposed within the garden ground of the donor dwellinghouse where the Applicant can retain effective control of its operation.*

- Concerns that the proposed pod will overlook neighbouring properties and result in a loss of privacy and amenity currently afforded to them.

Officer Comment: *It is considered that the proposed pod is a sufficient distance from neighbouring properties to ensure that no significant privacy or amenity conflict would arise. Furthermore the Applicant has taken on board the comments of third parties and provided details of additional screen planting to the front of the proposed pod.*

- The proposal would result in an adverse visual impact on the surrounding residential area.

Officer Comment: *The pod is proposed within the extensive rear garden of the donor dwellinghouse which benefits from significant tree and shrub cover. Furthermore the Applicant has provided details of additional screen planting to the front of the proposed pod. In this regard it is not considered that the proposed pod would be an overly dominant feature within the site or wider landscape.*

- Whilst the aim of the Oban District Access Panel (ODAP) is to encourage accessible holiday accommodation, it is noted that in this instance, given the constraints of the site levels and the nature of the holiday accommodation, it would be unreasonable, in terms of the Equalities Act, to press for an accessible pod unit.

Officer Comment: *The comments of the ODAP are noted.*

(G) SUPPORTING INFORMATION

Has the application been the subject of:

- (i) **Environmental Impact Assessment Report:** Yes No
- (ii) **An Appropriate Assessment under the Conservation (Natural Habitats) Regulations 1994:** Yes No

(iii) A Design or Design/Access statement: Yes No

(iv) A report on the impact of the proposed development e.g. Retail impact, transport impact, noise impact, flood risk, drainage impact etc: Yes No

(H) PLANNING OBLIGATIONS

Is a Section 75 agreement required: Yes No

(I) Has a Direction been issued by Scottish Ministers in terms of Regulation 30, 31 or 32: Yes 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.

[National Planning Framework 4 \(Adopted 13th February 2023\)](#)

Part 2 – National Planning Policy

Sustainable Places

NPF4 Policy 1 – Tackling the Climate and Nature Crises

NPF4 Policy 2 – Climate Mitigation and Adaption

NPF4 Policy 3 – Biodiversity

NPF4 Policy 4 – Natural Places

NPF4 Policy 9 – Brownfield, Vacant and Derelict Land and Empty Buildings
(includes provisions relevant to Greenfield Sites)

NPF4 Policy 12 – Zero Waste

NPF4 Policy 13 – Sustainable Transport

Liveable Places

NPF4 Policy 18 – Infrastructure First

NPF4 Policy 22 – Flood Risk and Water Management

Productive Places

NPF4 Policy 30 – Tourism

[‘Argyll and Bute Local Development Plan’ Adopted March 2015](#)

LDP STRAT 1 – Sustainable Development

LDP DM 1 – Development within the Development Management Zones

LDP 3 – Supporting the Protection Conservation and Enhancement of our Environment

LDP 5 – Supporting the Sustainable Growth of our Economy

LDP 8 – Supporting the Strength of our Communities

LDP 9 – Development Setting, Layout and Design
LDP 10 – Maximising our Resources and Reducing our Consumption
LDP 11 – Improving our Connectivity and Infrastructure

‘Supplementary Guidance to the Argyll and Bute Local Plan 2015’ (Adopted March 2016 & December 2016)

Natural Environment

SG LDP ENV 1 – Impact on Habitats, Species and our Biodiversity
Landscape and Design

SG LDP ENV 14 – Landscape

Support for Business & Industry: Main Potential Growth Sector: Tourism

SG LDP TOUR 1 – Tourist Facilities and Accommodation, including Static and Touring Caravans

Bad Neighbour Development

SG LDP BAD 1 – Bad Neighbour Development

Sustainable Siting and Design

SG LDP Sustainable – Sustainable Siting and Design Principles

Resources and Consumption

SG LDP SERV 2 – Incorporation of Natural Features / SuDS
SG LDP SERV 5(b) – Provision of Waste Storage & Collection Facilities within New Development

Transport (Including Core Paths)

SG LDP TRAN 2 – Development and Public Transport Accessibility
SG LDP TRAN 4 – New & Existing, Public Roads & Private Access Regimes
SG LDP TRAN 6 – Vehicle Parking Provision

(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 3/2013.

- Third Party Representations
- Consultation Responses
- [ABC Technical Note – Biodiversity \(Feb 2017\)](#)

[Argyll and Bute proposed Local Development Plan 2 \(November 2019\)](#) – The Examination by Scottish Government Reporters to the Argyll and Bute Local Development Plan 2 has now concluded and the [Examination Report](#) has been published (13th June 2023). The Examination Report is a material consideration of significant weight and may be used as such until the conclusion of the LDP2 Adoption Process. Consequently, the Proposed Local Development Plan 2 as recommended to be modified by the Examination Report and the published Non

Notifiable Modifications is a material consideration in the determination of all planning and related applications.

Spatial and Settlement Strategy

Policy 01 – Settlement Areas
Policy 04 – Sustainable Development

High Quality Places

Policy 05 – Design and Placemaking
Policy 08 – Sustainable Siting
Policy 09 – Sustainable Design
Policy 10 – Design – All Development
Policy 14 – Bad Neighbour Development

Diverse and Sustainable Economy

Policy 22 – Economic Development
Policy 23 – Tourism Development, Accommodation, Infrastructure and Facilities

Connected Places

Policy 37 – Development Utilising an Existing Private Access or Existing Private Road
Policy 40 – Vehicle Parking Provision

Sustainable Communities

Policy 61 – Sustainable Urban Drainage Systems (SUDS)
Policy 63 – Waste Related Development and Waste Management

High Quality Environment

Policy 73 – Development Impact on Habitats, Species and Biodiversity

(K) Is the proposal a Schedule 2 Development not requiring an Environmental Impact Assessment: Yes No

(L) Has the application been the subject of statutory pre-application consultation (PAC): Yes No

(M) Has a Sustainability Checklist been submitted: Yes No

(N) Does the Council have an interest in the site: Yes No

(O) Requirement for a pre-determination hearing: Yes No

(P)(i) Key Constraints/Designations Affected by the Development:

- N/A

(P)(ii) Soils

Agricultural Land Classification:

Built Up Area

Peatland/Carbon Rich Soils Classification:

Class 1

Class 2

Class 3

N/A

Peat Depth Classification:

N/A

Does the development relate to croft land?

Yes No

Would the development restrict access to croft or better quality agricultural land?

Yes No N/A

Would the development result in fragmentation of croft / better quality agricultural land?

Yes No N/A

(P)(iii) Woodland

Will the proposal result in loss of trees/woodland?

Yes

No

(If yes, detail in summary assessment)

Does the proposal include any replacement or compensatory planting?

Yes

No details to be secured by condition

N/A

(P)(iv) Land Status / LDP Settlement Strategy

Status of Land within the Application

Brownfield

(tick all relevant boxes)

Brownfield Reclaimed by Nature

Greenfield

ABC LDP 2015 Settlement Strategy

LDP DM 1 (tick all relevant boxes)

Main Town Settlement Area

Key Rural Settlement Area

Village/Minor Settlement Area

Rural Opportunity Area

Countryside Zone

Very Sensitive Countryside Zone

Greenbelt

ABC LDP 2015 Allocations/PDAs/AFAs etc:

N/A

ABC pLDP2 Settlement Strategy

(tick all relevant boxes)

Settlement Area

Countryside Area

Remote Countryside Area

Helensburgh & Lomond Greenbelt

ABC pLDP2 Allocations/PDAs/AFAs etc:

N/A

(P)(v) Summary assessment and summary of determining issues and material considerations

Planning permission is sought for the siting of an accommodation pod within the garden ground of Fernlea, Polvinister Road, Oban.

Fernlea is situated within a small cluster of residential development accessed via a private access track which spurs from the end of the public UC72 Polvinister Road.

The site for the proposed accommodation pod comprises an area of ground within the rear garden ground of the property which is elevated above the level of the dwellinghouse. The site is relatively well enclosed by established tree and shrub cover which the application shows enhanced by hedge planting to the front of the proposed pod which will ensure that it integrates well within the site and wider landscape where it will not give rise to any privacy or amenity issues with neighbouring properties.

The application shows a dedicated parking area to serve the proposed pod sited adjacent to the parking area currently serving the dwellinghouse. Due to the elevated position of the site, a new footpath and steps is proposed from the parking area to serve the accommodation pod.

The proposed accommodation pod comprises a modest, single storey, curved roof structure with finishing materials indicated as horizontal timber cladding. The pod provides open plan living/sleeping accommodation with a separate shower room. The proposed pod has been oriented with its main elevation facing towards the rear of the donor dwellinghouse. Externally the pod opens out onto an area of timber decking with a hot tub positioned to its west elevation.

The natural finishing materials of the proposed pod, together with it being well contained within the garden ground of the dwellinghouse, would ensure that it would not result in an incongruous feature within the site or wider landscape and, due to the distance from neighbouring properties, and existing and proposed landscaping, it is not considered that it would give rise to any adverse privacy or amenity issues should permission be granted.

Water supply and drainage to serve the proposed accommodation pod are via connection to the public water main which are discussed in more detail in the relevant section below.

NPF4 Policy 1 seeks to prioritise the climate and nature crises in all decisions; it requires to be applied together with other policies in NPF4. Guidance from the Scottish Government advises that it is for the decision maker to determine whether the significant weight to be applied tips the balance in favour for, or against a proposal on the basis of its positive or negative contribution to climate and nature crises. In this case, given the small scale nature of the development proposed and its alignment with all other relevant policies in NPF4 and those supporting policies in the adopted LDP, it is considered that the development proposed would be in accordance with the broad aims of NPF4 Policy 1 as underpinned by LDP Policies STRAT 1, LDP DM 1 and the adopted Sustainability Checklist and Policies 01 and 04 of pLDP2.

NPF4 Policy 2 seeks to ensure that new development proposals will be sited to minimise lifecycle greenhouse gas emissions as far as possible, and that proposals will be sited and designed to adapt to current and future risks from climate change. Guidance from the Scottish Government confirms that at present there is no single accepted methodology for calculating and / or minimising emissions. The emphasis is on minimising emissions as far as possible, rather than eliminating emissions. It

is noted that the provisions of the Settlement Strategy set out within Policy LDP DM 1 of the LDP promotes sustainable levels of growth by steering significant development to our Main Towns and Settlements, rural growth is supported through identification of Key Rural Settlements and safeguards more sensitive and vulnerable areas within its various countryside designations. It is considered that the proposed development would be consistent with Policy 2 of NPF4 having had due regard to the specifics of the development proposed and to the overarching planning policy strategy outlined within the adopted LDP, notably policies STRAT 1, LDP DM 1, LDP DM 10 and the adopted Sustainability Checklist and Policies 01 and 04 of pLDP2.

NPF4 Policy 3 seeks to protect biodiversity, reverse biodiversity loss and deliver positive effects from development and strengthen nature networks.

In the case of the development proposed by this application, it is considered that there are no issues of compliance with Policy 3. No material biodiversity impacts have been identified in the assessment of this application by the Planning Authority and whilst no specific proposals for biodiversity improvements have been submitted it is considered that, in the event that planning permission were to be granted, adequate and proportionate measures for biodiversity enhancement and protection could be delivered by planning condition. Such measures would be in compliance with NPF4 Policy 3 as underpinned by LDP Policy LDP 3 and SG LDP ENV 1 and Policy 73 of pLDP2.

NPF4 Policy 4 seeks to protect, restore and enhance natural assets making best use of nature-based solutions.

The development proposed by the current planning application is considered appropriate in terms of its type, location and scale such that it will have no unacceptable impact on the natural environment. The proposed development is not within any designated European site of natural environment conservation or protection, it is not located within a National Park, a National Scenic Area a SSSI or RAMSAR site, or a National Nature Reserve nor is it within an area identified as Wild Land. The proposal is considered to be in accordance with NPF4 Policy 4 as underpinned by LDP Policies LDP 3 and SG LDP ENV 1 and Policy 73 of pLDP2.

NPF4 Policy 9 seeks to encourage, promote and facilitate the reuse of brownfield, vacant and derelict land and empty buildings, and to help reduce the need for greenfield development.

The development proposed by this application is considered to be on a brownfield site by virtue of the fact that it is within the established residential curtilage of the property representing the sustainable reuse of brownfield land supported by NPF4 Policy 9(a) and underpinned by LDP policies STRAT 1, LDP DM 1 and SG LDP TOUR 1 and Policies 22 and 23 of pLDP2.

NPF4 Policy 12 seeks to encourage, promote and facilitate development that is consistent with the waste hierarchy as defined within the policy document.

The development the subject of this planning application seeks to secure permission for the siting of an accommodation pod for holiday letting use. Whilst this is a development likely to generate waste when operational, it would benefit from regular waste uplifts by the Council and would be expected to comply with our adopted and enforced recycling and reuse strategy. Policy 12(b) of NPF4 aligns with LDP Policies LDP 10 and SG LDP SERV 5 and 5(b) and Policy 63 of pLDP2

and the current development proposal would raise no issue of conflict should permission be granted.

NPF4 Policy 13 seeks to encourage, promote and facilitate developments that prioritise walking, wheeling, cycling and public transport for everyday travel and reduce the need to travel unsustainably.

The application proposes to utilise a private road spurring from the public UC72 Polvinister Road to serve the proposed development.

Part (b) of Policy 13 sets out that development proposals will be supported where it can be demonstrated that the transport requirements generated have been considered in line with the sustainable travel and investment hierarchies and where appropriate they:

- i. Provide direct, easy, segregated and safe links to local facilities via walking, wheeling and cycling networks before occupation;
- ii. Will be accessible by public transport, ideally supporting the use of existing services;
- iii. Integrate transport modes;
- iv. Provide low or zero-emission vehicle and cycle charging points in safe and convenient locations, in alignment with building standards;
- v. Supply safe, secure and convenient cycle parking to meet the needs of users and which is more conveniently located than car parking;
- vi. Are designed to incorporate safety measures including safe crossings for walking and wheeling and reducing the number and speed of vehicles;
- vii. Have taken into account, at the earliest stage of design, the transport needs of diverse groups including users with protected characteristics to ensure the safety, ease and needs of all users; and
- viii. Adequately mitigate any impact on local public access routes.

NPF4 Policy 13 is underpinned by LDP Policy LDP 11 which sets out a requirement that an appropriate standard of access is delivered to serve new developments, including off-site highway improvements where appropriate. This requirement is specified in more detail within LDP Policy SG LDP TRAN 4 (2) and Policy 37 of pLDP2 which sets out that further development that utilises an existing private access or private road will only be accepted if:

- i) The access is capable of commensurate improvements considered by the Roads Authority to be appropriate to the scale and nature of the proposed new development and that takes into account the current access issues (informed by an assessment of useage); AND the applicant can;
- ii) Secure ownership of the private road or access to allow for commensurate improvements to be made to the satisfaction of the Planning Authority; OR,
- iii) Demonstrate that an appropriate agreement has been concluded with the existing owner to allow for commensurate improvements to be made to the satisfaction of the Planning Authority.

The current application has been subject to objection from the Roads Authority who advised that the existing private road, which also forms part of the Longsdale Footpath, is narrow with poor geometry, serves numerous properties and has limited passing opportunities. The private road has narrow verges and provides limited step off areas for pedestrians.

The Roads Authority concluded by stating that the private road is unsuitable for further development or intensification of use.

The Applicant submitted a response challenging the Roads Authority consultation response which is summarised as follows.

“The vast majority of the road length has step-off verges of greater than 1 metre in width.

The applicant indicates that he is willing to maintain the verges along its length in order that they do not become overgrown and are accessible to those accessing the track.

The access road already forms part of the core path network in the area and regular users of the path already use the current verges to step off the road when vehicles use the route.

The proposal should not be considered, as it seems to be, as a new dwelling but as a pod ancillary to the existing dwelling which already uses the un-adopted access road.

The proposal will not result in a significant increase in traffic and is no different to any of the properties accessed by the un-adopted road operating a B&B operation from their home or a home having 2 or 3 cars neither of which would be subject to planning or roads department consultation and would have a more substantial impact than that of the submitted proposal”.

The Applicant also submitted a statement countering the comments of the Roads Authority on a point by point basis.

The Roads Authority considered the further information submitted by the Applicant but confirmed that their recommendation of refusal was their final position on the matter.

In the meantime, it was agreed with the Applicant that a decision on the current application would be deferred until such time as a Local Review Body (LRB) decision had been reached on planning application 22/01001/PP which was refused by the Planning Authority for similar reasons to those being advanced by the Roads Authority to the current proposal.

Whilst the LRB upheld the appeal and granted planning permission for the pod refused by the Planning Authority under 22/01001/PP, there are material differences in the cases. The property the subject of planning application 22/01001/PP had previously been used as bed and breakfast accommodation (under permitted development rights) with two large en-suite letting bedrooms and it was the intention of the Applicant to install the proposed glamping pod to replace the bed and breakfast use within the main dwellinghouse and thereby resulting in a claimed reduction of potential traffic using the road. This argument was accepted by the LRB panel against the advice of officers. The current applicant is claiming that this sets a material precedent.

However, the dwellinghouse the subject of the current application is not, and has not, been used as bed and breakfast accommodation and the Applicant has not advanced details as to the suitability of the existing dwellinghouse for such

purposes. The indication is that this is a four bedroom dwellinghouse currently occupied by the applicant and his wife and three children.

It has to be acknowledged that on two previous occasions, and against the advice of officers, the LRB panel has accepted an argument that an existing or proposed lawful incidental use of part of an existing dwellinghouse as bed and breakfast accommodation could be forfeited and replaced by development consisting of self-contained tourism accommodation within a 'pod' or 'pods' within the garden ground of the property and that this would somehow result in no net increase in vehicle movements associated with the dwellinghouse plus the new 'pod' development. Officers continue to question this approach but accept that Members are entitled to arrive at such decisions.

However, the argument accepted previously only works if the dwellinghouse is either currently in use as incidental bed and breakfast accommodation or that there is a reasonable prospect that it could be. In the case of the current application it is clear that the dwellinghouse is not being used to provide any incidental bed and breakfast accommodation and neither is it proposed to be. Added to this is the existing occupancy of the dwellinghouse which would appear to leave no spare rooms suitable for bed and breakfast accommodation.

Accordingly, in this instance, the proposed development of an additional building to be used for tourism accommodation must, therefore, represent an intensification in the residential occupancy of the site and, therefore, an intensification of the use of the existing constrained access regime.

The development constitutes a material intensification of the use of an existing and constrained access regime and would be capable of support only if compliance with various highway safety concerns could be demonstrated through the submission, examination and acceptance of competent detail. The land necessary for the upgrade of the existing private road, if achievable, is located outwith the application site boundary and outwith the land in the control of the Applicant. The proposed development is consequently, in view of the above, considered likely to have a significant adverse impact upon highway safety. The proposal is considered to be contrary to the NPF4 Policy 13(g) as underpinned by LDP Policies LDP 11 and SG LDP TRAN 4(2) and Policy 37 of pLDP2.

NPF4 Policy 18 seeks to encourage, promote and facilitate an infrastructure first approach to land use planning, which puts infrastructure considerations at the heart of placemaking.

The development the subject of this planning application proposes connection to the public water supply and drainage infrastructure in the control of Scottish Water. In their response to the application Scottish Water raised no objection to the proposed development which would be serviced by the Tullich Water Treatment Works and Oban Waste Water Treatment Works. Policy 18 aligns with LDP Policy LDP DM 11 and Policies 05 and 08 of pLDP2 which seek to ensure suitable infrastructure is available to serve proposed developments and the current proposal would raise no issue of conflict should permission be granted.

NPF4 Policy 22 seeks to strengthen resilience to flood risk and to ensure that water resources are used efficiently and sustainably.

As detailed above the development proposes connection to the public water supply to which Scottish Water has not objected to. With regards to the management of

rain and surface water at the site, this could be controlled through a condition to secure a suitable sustainable drainage system for the site should permission be granted.

The proposal is considered to be consistent with NPF4 Policy 22 as underpinned by LDP Policies LDP 10 and SG LDP SERV 2 and Policy 61 of pLDP2.

NPF4 Policy 30 seeks to encourage, promote and facilitate sustainable tourism development which benefits local people, is consistent with our net zero and nature commitments, and inspires people to visit Scotland.

Policy 30(a) supports tourism development in locations identified in the LDP with a requirement in Part (b) of this policy for developments to take into account various criteria.

A brief statement in support of Policy 30(b) has been submitted with the application as follows:

i) The contribution made to the local economy

“The proposal shall make a positive contribution to the local economy by providing accommodation for visitors to the area and allow them to enjoy the services offered in the local area”.

ii) Compatibility with the surrounding area in terms of the nature and scale of the activity and impacts of increased visitors

“The proposal fits in with similar tourism related activities in the general locality”.

iii) Impacts on communities, for example by hindering the provision of homes and services for local people

“The provision of homes for local people would not be impacted by this development as it does not take an existing home out of the market”.

iv) Opportunities for sustainable travel and appropriate management of parking and traffic generation and scope for sustaining public transport services particularly in rural areas

“The applicant intends to provide an electric car charging point on the site which will encourage more users sustainable transport to make use of the accommodation”.

v) Accessibility for disabled people

“With the elevation of the site wheelchair access would be difficult however careful planning of the access would allow ambulant disabled users to make use of the accommodation”.

vi) Measures taken to minimise carbon emissions

“ The buildings are formed from sustainable timber sources and contribute to net zero targets. Heating will be from non-carbon-based sources”.

vii) Opportunities to provide access to the natural environment

“The site is on the fringes of the natural environment and access to this is encouraged by the applicants. The proposal also looks to work around the natural environment on site and take advantage of existing ecology and landscape”.

This small-scale tourism proposal is considered to be consistent with the provisions of NPF4 Policy 30 as underpinned by LDP Policies LDP 5 and SG LDP TOUR 1 and Policies 22 and 23 of pLDP2.

Accordingly, notwithstanding the above assessment that the proposed accommodation pod could be accommodated within the site without any significant adverse visual impact on the site or the wider landscape within which it is proposed, a suitable access regime to serve the proposed development cannot be achieved.

The proposed development constitutes a material intensification of the use of an existing and constrained access regime and would be capable of support only if compliance with various highway safety concerns could be demonstrated through the submission, examination and acceptance of competent detail. The land necessary for the upgrade of the existing private road, if achievable, is located outwith the application site boundary and the land in the control of the Applicant as submitted and the proposed development is consequently, in view of the above, considered likely to have a significant adverse impact upon highway safety contrary to the provisions of NPF4 Policy 13(f) as underpinned by LDP Policies LDP 11 as underpinned by SG LDP TRAN 4(2) and Policy 37 of pLDP2 and it is recommended that planning permission is refused.

(Q) Is the proposal consistent with the Development Plan: Yes No

(R) Reasons why Planning Permission Should be Refused:

See reasons 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 Environment Scotland:
Yes No

Author of Report: Fiona Scott **Date:** 23/01/24

Reviewing Officer: Tim Williams **Date:** 24/01/24

Fergus Murray
Head of Development & Economic Growth

REASONS FOR REFUSAL RELATIVE TO APPLICATION REF. NO. 23/01067/PP

1. The proposed development conflicts with NPF4 Policy 13, and Policies LDP 11 and SG LDP TRAN 4 of the adopted 'Argyll and Bute Local Plan' 2015 and Policy 37 of emerging proposed 'Local Development Plan 2' as the proposed development would result in the intensification in vehicular use of a sub-standard private road with no delineation between pedestrian or vehicular use.

The proposed development constitutes a material intensification of the use of an existing and constrained access regime and would be capable of support only if compliance with various highway safety concerns could be demonstrated through the submission, examination and acceptance of competent detail.

The land necessary for the upgrade of the existing private road, if achievable, does not form part of the planning application site and is not within the acknowledged legal ownership/control of the Applicant.

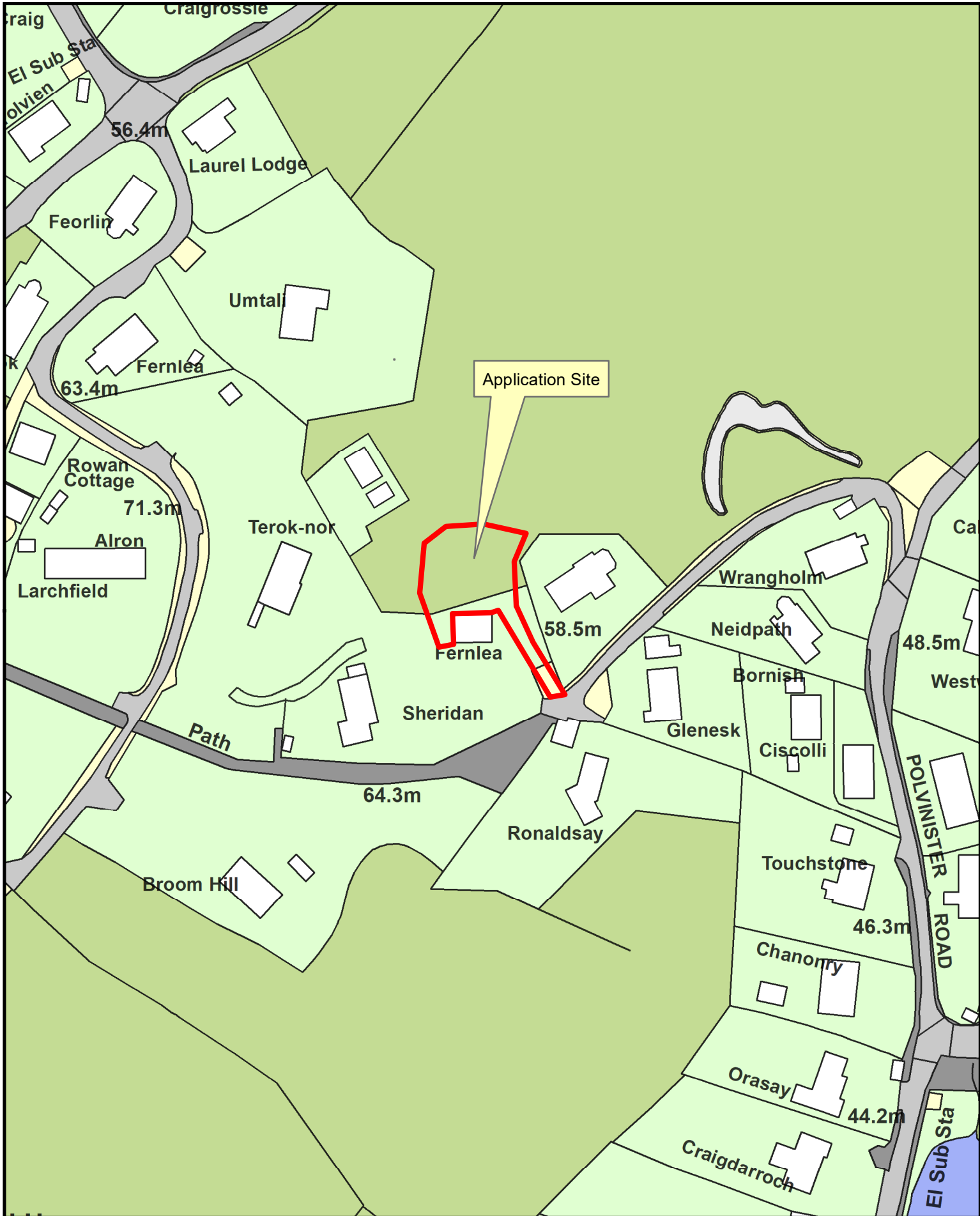
APPENDIX TO DECISION REFUSAL NOTICE

Appendix relative to application **23/01067/PP**

(A) Has the application been the subject of any “non-material” amendment in terms of Section 32A of the Town and Country Planning (Scotland) Act 1997 (as amended) to the initial submitted plans during its processing. Yes No

(B) The reason why planning permission has been refused:

See reasons for refusal above.



Location Plan Relative to: 24/00007/LRB



1:1,250