

STATEMENT OF CASE

FOR

**ARGYLL AND BUTE COUNCIL
LOCAL REVIEW BODY**

**REFUSAL OF PLANNING PERMISSION FOR THE
ERECTION OF A DWELLINGHOUSE AT LAND
SOUTH EAST OF DUNGRIANACH (PLOT 1),
CRANNAG A' MHINISTEIR, OBAN, ARGYLL,
PA34 4LU**

**PLANNING APPLICATION REFERENCE NUMBER
11/00280/PP**

01 NOVEMBER 2011

STATEMENT OF CASE

The planning authority is Argyll and Bute Council ('the council'). The appellant is MacDougalls Of Oban Ltd ('the appellant').

Planning permission reference number 11/00280/PP for the erection of a dwellinghouse at land south east Of Dungalach (Plot 1) ("the appeal site") was refused planning permission on 14.07.2011.

The reason for refusal was that the proposed development would result in the intensification in vehicular use of a sub-standard public road with no delineation between pedestrian or vehicular use. The improvements which would be required to upgrade the road that serves the proposed site cannot be achieved within the confines of the application site or other land within the applicant's control, and there is no indication that the applicant can complete any improvements remotely from the site. The proposal is therefore contrary to the provisions of Argyll and Bute Local Plan policies LP HOU 1, LP ENV 1 and LP TRAN 4, which resist intensification in the use of sub-standard accesses and junctions, other than in cases where the improvements required can be achieved as part of the overall development. In the absence of such improvements the proposal is considered to be contrary to the interests of highway safety.

DESCRIPTION OF SITE

The site is bound to the north by woodland, to the east by residential garden ground, to the south by a public road and to the west by a residential access track then woodland.

This site is within the Oban settlement zone and includes land within a designated Tree Preservation Order.

SITE HISTORY

The site forms part of a previous application for outline planning permission to build four dwellinghouses (planning reference 09/00519/OUT). The applicant appealed this application as the council had failed to give a decision (deemed refusal). The appeal was dismissed by the Scottish Government on 05.10.2009 on the basis of road safety and impact on trees.

STATUTORY BASIS ON WHICH THE APPEAL SHOULD BE DECIDED

Section 25 of the Town & Country Planning (Scotland) Act 1997 provides that where, in making any determination under the planning Acts, regard is to be had to the development plan, 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

The determining issues in relation to the case are as follows:

Whether or not the Crannaig a' Mhinisteir road is so sub-standard that it is unable to accommodate any additional traffic. And whether or not the road authority's recommendation should outweigh all other material considerations.

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

REQUIREMENT FOR ADDITIONAL INFORMATION AND A HEARING

It is considered that the Local Review Body will 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 substantial public representation, it is not considered that a hearing is required. The Review Body may seek additional information from the Roads Authority if it sees fit.

COMMENT ON APPELLANT'S SUBMISSION

In terms of the other recent planning applications mentioned in the appellant's submission, the planning service responds as follows:

- 07/01748/DET - the roads authority recommended refusal on the grounds that the Crannaig a' Mhinisteir road was sub-standard. The planning officer considered that an additional 6 houses would have a "minimal overall impact" which elected members agreed with and approved as a delegated members report.
- 08/00358/DET – the roads authority recommended no objections subject to conditions for this development, whilst highlighting that the Crannaig a' Mhinisteir road was sub-standard.
- 08/01128/OUT - the roads authority recommended no objections subject to conditions for this development, whilst highlighting that the Crannaig a' Mhinisteir road was sub-standard.
- 08/01135/OUT - the roads authority recommended no objections subject to conditions for this development, whilst highlighting that the Crannaig a' Mhinisteir road was sub-standard.
- 09/00991/DET - The roads authority originally recommended refusal on the ground that the Crannaig a' Mhinisteir road was sub-standard. However, the site already benefited from an extant outline permission which could have been implemented subject to a reserved matters application, and the objection was withdrawn.
- 10/01144/PPP - the roads authority recommended no objections subject to conditions for this development, whilst highlighting that the Crannaig a' Mhinisteir road was sub-standard.

The sub-standard condition of the Crannaig a' Mhinisteir road has been identified for a number of years and has been highlighted as a comment on the roads authority's response in the past. More recently (2011), the roads authority has consistently recommended that any new houses should be refused on the ground that the Crannaig a' Mhinisteir road is sub-standard. This position is supported by the Scottish Government reporter's decision on appeal under reference 09/00519/OUT.

The report of handling shows how the impact on trees has been effectively addressed by the applicant since the 2009 refusal on appeal. However, there is nothing submitted by the applicant to address the road safety issue.

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.

Taking account of the above, it is considered that the review should be dismissed on the basis that commensurate improvements cannot be made to the public road network and therefore the proposal is contrary to Local Plan policy LP TRAN 4 and if approved would exacerbate an existing road safety issue.

Stephen Fair
Area Team Leader
Oban, Lorn & the Isles

APPENDIX 1 – DELEGATED REPORT OF HANDLING

Argyll and Bute Council Development 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

Reference No: 11/00280/PPP

Planning Hierarchy: Local Development

Applicant: MacDougalls of Oban Ltd

Proposal: Site for the erection of a dwellinghouse

Site Address: Land South East Of Dungalriach (Plot 1), Crannag A' Mhinisteir, Oban

DECISION ROUTE (delete as appropriate)

(i) Sect 43 (A) of the Town and Country Planning (Scotland) Act 1997

(A) THE APPLICATION

(i) Development Requiring Express Planning Permission

- Site for the erection of a dwellinghouse
- Upgrade a private access onto a public road

(ii) Other specified operations

- Connect to existing public sewer
 - Connect to existing public mains water supply
-

(B) RECOMMENDATION:

Having due regard to the development plan and all other material considerations, it is recommended that planning permission in principle be refused for the reasons appended to this report.

(C) HISTORY:

09/00519/OUT - Proposed development of 4 dwellinghouses – refused 05.10.2009.

(D) CONSULTATIONS:

Area Roads Manager

Revised report dated 19 April 2011. Refuse on the grounds that the Crannaig a' Mhinisteir road is sub-standard and unable to accommodate any additional traffic

Scottish Water

Letter dated 23 February 2011. No objection

Oban Airport

No response at time of report

Scottish Natural Heritage

Email dated 11 March 2011. No advice or comment

Local Biodiversity Officer (Marina Curran-Colthart)

Email dated 03 May 2011. No objection subject to conditions

Horticultural Service (Alison McIlroy)

Email dated 04 March 2011. No objection

(E) PUBLICITY:

The proposal has been advertised in terms of Regulation 20, closing date 24.03.2011

(F) REPRESENTATIONS:

One representation has been received against this application. The representation was received from Mr Mike Robertson of Dungrianach, Crannag A' Mhinisteir, Oban.

(i) Summary of issues raised

- The title of the site on which the proposal has been made includes the name of his property 'Dungrianach' and this may cause confusion in terms of who is applying for the permission.

Comment: It is recognised that Dungrianach is a separate property in separate ownership, however it is close to the application site and serves to describe the location of the proposal. All applications for new plots are set in their context in this way i.e. a compass direction from a nearby existing property, which is often in different ownership.

The above represents a summary of the issues raised. Full details of the letters of representation can be viewed on the online Council's public access system.

(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:** **Yes**

A design and access statement has been submitted by the applicant's agent. It comments on the planning background, planning appraisal and design proposals. Full details of the document can be viewed online through the Council's website.

(iv) **A report on the impact of the proposed development** **Yes**

Tree Survey and Arboriculture Constraints by Alan Motion, 11 January 2011.

Summary of main issues raised by each assessment/report

The report records and details 142 trees present within the area of land owned by the applicants. The report details the type, size, condition, age and offers recommendations for each tree. Following this, the report plots each of the 142 trees in plan form and superimposes the proposed house plots onto the plan. The report identifies twelve trees which will require to be felled to accommodate the development. The report also gives best practice guidance for ensuring that remaining trees are adequately protected during the construction phase.

(H) PLANNING OBLIGATIONS

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

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

Argyll and Bute Structure Plan 2002

STRAT DC 1 – Development within the Settlements
STRAT FW 2 – Development impact on Woodland

Argyll and Bute Local Plan 2009

LP ENV 1 – Impact on the General Environment
LP ENV 2 Development Impact on Biodiversity
LP ENV 7 – Impact on Tree/Woodland
LP ENV 19 – Development Setting, Layout and Design

LP HOU 1 – General Housing Development
 LP SERV 1 – Private Sewage Treatment Plants and Wastewater Systems
 LP SERV 4 – Water Supply
 LP TRAN 4 – New and Existing Public Roads and Private Access Regimes
 LP TRAN 6 – Vehicle Parking Provision
 Appendix A – Sustainable Siting and Design Principles

(ii) List of other material planning considerations taken into account in the assessment of the application, having due regard to Annex A of Circular 4/2009.

Argyll & Bute Sustainable Design Guidance (2006)

Scottish Planning Series: Planning Circular 1/2011: Tree Preservation Orders

The Town & Country Planning Act (Scotland) 1997

The Planning etc. (Scotland) Act, 2006

SPP, Scottish Planning Policy, 2010

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

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

(M) Has a sustainability check list been submitted: No

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

(O) Requirement for a hearing (PAN41 or other): No

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

Planning permission in principle is sought for the erection of a dwellinghouse at Land South East of Dungrianach (Plot 1), Crannag A' Mhinisteir, Oban. The site is bound to the north by woodland, to the east by residential garden ground, to the south by a public road and to the west by a residential access track then woodland.

A previous planning application – reference 09/00519/OUT – for outline permission for the erection of four houses on and around this site was dismissed on appeal. The Reporter's main reasons for dismissing the appeal were 1) impact on protected woodland – both to facilitate development and pressure from future property owners

(i.e. increased natural light/garden ground); and 2) access restrictions – where the Roads Authority recommended refusal on the grounds that the public road to Crannag A' Mhinisteir was sub-standard and could not accept additional traffic for four houses. The current application is for one of the previous four plots as applied for.

Trees

The woodland in which the site lies is covered by a tree preservation order (Argyll and Bute Council reference 01/10 'Land at Crannag-a-Mhinisteir'). Alison McIlroy (Argyll and Bute Council arborist) confirmed following a site visit, that the woodland is of varying quality dominated by generally commercially planted species such as sitka spruce with deciduous species including birch and beech. The understorey, whilst generally not covered by the tree preservation order, suffers from non-native species such as laurel and rhododendron ponticum which, from a forest management perspective, should be removed and treated to allow a more indigenous forest to establish itself. The impact of the proposal on the TPO is further discussed later in the report.

Since the dismissal on appeal of the previous application, a joint site visit has been undertaken with the land owner, their arborist, their architect, representatives from the Planning Service and the Council's arborist. At that meeting it was suggested that a reduced scheme, with a reduced impact on the woodland setting with any loss of trees offset with an appropriate woodland management plan, may be viewed favourably by the Planning Service. The two sites on the east and south east would require fewer significant trees to be removed, and benefit from existing natural light as they are on the edge of the woodland, and are more readily accessible compared to the north west of the site which is nearer residential properties and contains denser areas of mature trees.

At the site meeting it was highlighted that there would likely be issues from the Roads Authority concerning the Crannag A' Mhinisteir road, however the applicant/agent felt that this position was challengeable due to recent development in the vicinity and contradictory roads responses in the past. This current application, in conjunction with another plot to the north of the site (reference 11/00286/PPP), represents a 50% reduction of development impacts on the woodland setting and the Crannag A' Mhinisteir road, from the previous refusal of four house plots under 09/00519/OUT.

The Council's Arborist has confirmed the condition of the trees on site is largely poor when they are assessed individually and that without proper management, including felling and pruning, this situation will not improve. She considers that the removal of some trees will benefit the site overall and that replanting will enhance the site and make the area a more sustainable woodland.

The Council's biodiversity officer advises that given the established nature of the woodland there may be protected species (bats and red squirrels) on the site. Consequently, appropriate survey work would be required prior to any development being supported on the site. She has also commented that no tree felling works should be undertaken during the bird nesting season i.e. between 1st March - 1st September and that trees to be retained need to be adequately protected during the development phase.

It is considered that on balance, the loss of trees for the two plots currently proposed could be accepted, provided there are no protected species using the site, or their presence can be suitably mitigated, and provided the remaining woodland is subject

to a pro-active woodland management plan, such that the quality of the remaining woodland is enhanced.

Road network

The Roads Authority initially (mistakenly) recommended that the current application be approved subject to conditions in response dated 04 March 2011. However, on identification of the error, a revised recommendation of refusal has been submitted. The revised recommendation for refusal is due to the sub-standard Crannaig a' Mhinisteir public road being unable to accommodate any additional traffic as it is poorly aligned and lacks footways. This is similar to the response to the previous application 09/00519/OUT. There is no indication that the applicant has the ability or necessary consents to undertake any improvements to the wider road network and accordingly, the proposal generates an unacceptable adverse impact on road safety and would increase pedestrian/vehicular conflict on the existing public road.

Policy

The site is subject to Structure Plan policy STRAT DC 1 which encourages development of small, medium and large within the settlement boundaries on suitable sites. The proposal for a small scale housing development within Oban settlement zone complies with the ethos of this policy provided the detailed layout, density, access and environmental impacts are acceptable.

Whilst the acceptability of the principle of infill development within this area of Oban has been established by current policy, this is qualified by the requirement to ensure developments do not result in an unacceptable environmental, servicing or access impact.

Structure Plan policy STRAT FW 2 seeks to ensure that development will not damage nor undermine the key environmental features of protected woodlands. It is acknowledged that 12 trees will have to be removed from the site to accommodate the proposed dwellinghouse however the removal of these trees will be offset by the implementation of a pro-active woodland management plan which will in time lead to a healthier and more sustainable woodland area on the rest of the woodland setting. Following two site visits, The Council's Arborist is satisfied that the trees to be felled for this proposal are generally of poor quality or are non-native species and their loss will not undermine the key environmental features of the woodland area. Having assessed the visual amenity value of the woodland it is considered that the loss of the trees to accommodate the proposal will not have a significant detrimental impact on the level of amenity preserved by the tree preservation order.

The proposal generally accords with Local Plan policy LP ENV 1 as it does not have an unacceptable impact on either the natural, human or built environment. The proposal would reflect the established low density residential character of the area and, subject to an appropriate design being submitted, contribute to the overall built environment. However, given the recommendation from the Roads Authority, the application is deemed contrary to LP ENV 1, because it does not take sufficient account of the standard of the existing roads network.

Local Plan policy LP ENV 7 seeks to protect the integrity, appearance and prized features of woodlands from the impact of development. With the benefit of a detailed tree report, as submitted by the applicants, it is possible to examine what trees will be removed to accommodate the proposal and in turn assess their removal against the key features of the woodland area. In order to implement this proposal seven trees

will require to be felled on the site and five trees will require to be felled at the access and along the access road. Of these twelve trees four are non-native species. Of the seven trees on the site, one is of poor condition, one is fair condition and five are of good condition. Of the five trees at the access and along the access road, two are of fair condition and three are of good condition. The loss of the trees will have an impact on the tree preservation order however their loss is unlikely to undermine its key environmental features. The submission of a woodland management scheme for the remainder of the site would result in a net gain for the remainder of the woodland covered by the tree preservation order which will in time allow for a better managed and healthier woodland area in accordance with the aims of Local Plan policy LP ENV 7. The limited tree loss is considered acceptable in this instance.

Local Plan policy LP ENV 19 advocates good setting, layout and design of developments. In terms of setting, layout and density, the proposal is in keeping with the built context of the area i.e. low density housing with ample amenity space. Specific building design details have not been submitted however it is likely, largely due to the positioning of existing trees, that the current indicative footprints (both size and position) will be similar on any subsequent application.

Local Plan policy LP HOU1 states that there is a general presumption in favour of housing except where there is an unacceptable environmental, servicing or access impact. The roads department have recommended refusal on the grounds that the Crannaig a' Mhinisteir road is sub-standard and unable to accommodate any additional traffic. As a result of this objection it is considered that the proposal is unacceptable on road safety/access grounds and therefore contrary to this policy.

Local Plan policies LP SERV 1 and LP SERV 4 concern water supply and waste water treatment. The proposal will connect to existing public water supply and public sewer system and therefore complies with these policies.

Local Plan policies LP TRAN 4 and LP TRAN 6 concern existing private accesses and parking provision. The proposal indicates that an existing access will be upgraded in accordance with the roads department requirements. The proposal will benefit from parking and turning space for at least two cars. In this case, the adjacent public road is deemed to be at capacity and cannot readily be ungraded with commensurate improvements. The development is deemed to conflict with LP TRAN 4.

Notwithstanding that the settlement strategy and woodland impacts could be considered acceptable (subject to protected species surveys and mitigation), it is recommended that the application be refused on the grounds that the Crannaig a' Mhinisteir road is sub-standard and unable to accommodate additional traffic. There is no indication that the applicant can secure commensurate improvements to the public road and as such, the matter is decisive. Adverse impacts on road safety render the application contrary to LP ENV 1, LP HOU 1 and LP TRAN 4.

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

(R) Reasons why planning permission in principle should be refused

The development will result in an increased level of traffic on the Crannaig a' Mhinisteir public road which has been deemed sub-standard and unable to accommodate any additional traffic by the Roads Authority, due to its alignment and

lack of pedestrian footpaths. The development will therefore have an unacceptable impact on road safety and increase pedestrian/vehicular conflict and is therefore contrary to local plan policy LP HOU 1, LP TRAN 4 and LP ENV 1.

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

N/A

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

Author of Report: Daniel Addis

Date: 07 June 2011

Reviewing Officer: Stephen Fair

Date: 14 July 2011

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

GROUNDINGS OF REFUSAL RELATIVE TO APPLICATION REF. NO. 11/00280/PPP

1. The proposed development would result in the intensification in vehicular use of a sub standard public road with no delineation between pedestrian or vehicular use. The improvements which would be required to upgrade the road that serves the proposed site cannot be achieved within the confines of the application site or other land within the applicant's control, and there is no indication that the applicant can complete any improvements remotely from the site. The proposal is therefore contrary to the provisions of Argyll and Bute Local Plan policies LP HOU 1, LP ENV 1 and LP TRAN 4, which resist intensification in the use of sub-standard accesses and junctions, other than in cases where the improvements required can be achieved as part of the overall development. In the absence of such improvements the proposal is considered to be contrary to the interests of highway safety.

APPENDIX TO DECISION REFUSAL NOTICE

Appendix relative to application **11/00280/PPP**

- (A)** Has the application been the subject of a 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?

No

APPENDIX 2 – SCOTTISH GOVERNMENT DISMISSAL REFERENCE 09/00519/OUT

Directorate for Planning and Environmental Appeals

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Andrew Swain
Planning and Building Control
Argyll and Bute Council
Lorne House
Albany Street
OBAN

Our ref: PPA-130-241

5 October 2009

Dear Mr Swain

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
PLANNING APPEAL: SITE SOUTH EAST OF DUNGRIANACH, CRANNAG A'
MHNISTER, OBAN, ARGYLL AND BUTE PA34 4LU**

I enclose for your information a copy of the decision letter on this appeal.

The Reporter's decision is final, subject to the right of any aggrieved person to apply to the Court of Session within six weeks from the date of the decision conferred by Sections 237 and 239 of the Town and Country Planning (Scotland) Act 1997; on any such application, the Court may quash the decision if satisfied that it is not within the powers of the Act or that the applicant's interests have been substantially prejudiced by a failure to comply with any requirement of the Act, or of the Tribunals and Inquiries Act 1992, or of any orders, regulations or rules made under these Acts.

Yours sincerely



EMMA BROWN

Enc.

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www.scotland.gov.uk/Topics/Planning/Appeals



Directorate for Planning and Environmental Appeals

Appeal Decision Notice

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Decision by Ronald W Jackson, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: P/PPA/130/241
- Site address: Site south east of Dungrianach, Crannag a' Mhinisteir, Oban PA34 4LU
- Appeal by McDougalls of Oban against the decision by Argyll and Bute Council
- Application for outline planning permission ref. 09/00519/OUT dated 8 April 2009 and not determined
- The development proposed: 4 dwelling houses
- Date of site visit by Reporter: 24 September 2009

Date of appeal decision: 5 October 2009

Decision

I dismiss the appeal and refuse outline planning permission.


Reasoning

1. The determining issues in this appeal are whether the proposal is consistent with policy ENV 7 of the Modified Argyll and Bute Local Plan and, if not, whether other material considerations justify a development plan departure. The foregoing policy states, in summary, that the council will protect trees, groups of trees and areas of woodland by making Tree Preservation Orders where this appears necessary in the interests of amenity. In addition the council will resist development likely to have an adverse impact on trees and will ensure that adequate provision is made for the preservation of woodland/trees.
2. The proposed development comprises the erection of 4 dwelling houses, with associated parking and turning areas, within a relatively dense woodland area in the Pulpit Hill area of Oban. The woodland contains, among others, Sitka Spruce, Silver Fir, Western Red Cedar, Scots Pine, Silver Birch, and Beech. The application is supported by a detailed tree survey that has assessed the condition of all trees on the site and recommended remedial works including tree surgery and felling where appropriate. The proposed development would necessitate the removal of a number of good quality, mature trees as shown on the drawings and schedule accompanying the application. It follows that the proposal offends Policy ENV 7.

4 The Courtyard, Callendar Business Park, Falkirk, FK1 1XR
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3. I accept that the number of trees identified by the appellant for removal would be sufficient to permit the construction of the dwellings. However, from the submitted plans and based on my observations on site, I agree with the council that the remaining trees would seriously restrict the amount of daylight and sunlight that would reach the properties. That would almost inevitably lead to pressure for further tree removal in order to allow light into the dwellings and garden areas. In my view the cumulative effect would be an unacceptable adverse impact upon the woodland and the character of the surrounding area.
4. Turning to the issue of material considerations, the site is accessed from the UC55 Crannag a' Mhinisteir which is a narrow, poorly aligned road with passing places and no footpaths. Although the Pulpit Hill area accommodates a considerable number of residential properties and planning permission exists for a small residential development of 6 houses in Pulpit Rock, immediately to the south of the site, I agree with the council that further development would be undesirable without significant road improvements.
5. From my site visit I accept that because of the topography of the site the impact of the proposal on views from Oban and the west would be very limited but that is insufficient to overcome the various other tensions. I have taken account of all other matters raised in the submissions but find none that outweigh the considerations on which my decision is based.


R W JACKSON
Reporter

