

STATEMENT OF CASE

FOR

**ARGYLL AND BUTE COUNCIL
LOCAL REVIEW BODY**

15/0001/LRB

**REFUSAL OF PLANNING PERMISSION 14/01424/PP
FOR THE
CHANGE OF USE OF LAND FOR AGRICULTURAL
AND LANDSCAPING STORAGE SPACE
(RETROSPECTIVE)**

**LAND EAST OF HERON'S REACH
KILCHRENAN
ARGYLL AND BUTE
PA35 1HD**

28/01/2015

STATEMENT OF CASE

The Planning Authority is Argyll and Bute Council (“the Council”). The appellant is Mr Brian Neish (“the appellant”). There is no agent involved in this case.

Planning application 14/01424/PP, which proposed the change of use of land for agricultural and landscaping storage space (retrospective), (“the appeal site”), was refused under delegated powers on 6th January 2015.

The planning decision has been challenged and is subject of review by the Local Review Body.

DESCRIPTION OF SITE

The application site comprises 1.1 hectares is located immediately to the south of the B845 public road and is surrounded by undulating rough grazing land.

SITE HISTORY

12/00642/PP - Change of use of land for the siting of 50 caravans and the erection of associated welfare facilities for a temporary period of 18 months (part retrospective) – granted 9th July 2012, with conditions requiring site restoration following end of temporary consent period.

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 and determination shall be made in accordance with the development plan unless material considerations indicate otherwise. This is the test for this planning application.

STATEMENT OF CASE

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

- Whether the material planning considerations asserted by the appellant are sufficient to outweigh the fact that the planning application is contrary to the current adopted Argyll and Bute Development Plan; or whether in fact the Argyll and Bute Development Plan remains the primary determining factor.

The Report of Handling (please refer to Appendix 1) sets out Planning and Regulatory Services assessment of the planning application in terms of policy within the current adopted Argyll and Bute Development Plan and all other material planning considerations.

REQUIREMENT FOR ADDITIONAL INFORMATION AND A HEARING

The proposal constitutes a Local Development in accordance with the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009, has no complex or challenging issues. It is not considered that a Hearing is required.

COMMENT ON APPELLANT’S SUBMISSION

The appellant’s statement can be summarised as follows:

- The site was used as a temporary compound for the duration of works associated with the construction of a nearby wind farm
- The ground was just a bog and could not be used for stock or any other useful purpose
- 'Terram' was used over the bog so the compound is effectively floating. Removal of the 'terram' would cause considerable damage to the environment and create a 'bigger mess and eyesore'
- The hard standing is currently being used to store landscaping materials and agricultural equipment
- A similar facility in Oban would cost a 'fortune' and would not be economical
- There is therefore a locational need and it makes sense to use an area like this as it suits the operation of the business
- It is bunded from the road

BACKGROUND

This application is the result of an enforcement investigation into the breach of planning condition 2 of planning permission 12/00642/PP (change of use of land for the siting of 50 caravans and the erection of associated welfare facilities for a temporary period of 18 months (part retrospective)), which was granted on 9th July 2012. Condition 2 states that planning permission is for a temporary period and shall lapse on the 23rd October 2013 at which time, the use of the land shall cease and all caravans and associated works including the toilet block, shower block, septic tank, water storage tanks and generators shall be removed from the site. The condition goes on to state that the land shall be fully reinstated to its previous agricultural rough grazing condition by 23rd November 2013 and that the reinstatement works shall include:

- *the spreading of peat and turves currently stockpiled as bunding across the site in a manner that reflects the natural undulation of the surrounding landscape, and*
- *ground cover shall be achieved by natural vegetation growth, with the removal of weeds over the following year.*

The applicant subsequently applied in application 14/01424/PP to retain the site for agricultural and landscaping storage space rather than re-instating the site to its former condition as required by condition 2 of planning permission 12/00642/PP.

Planning application 14/01424/PP was refused on 6th January 2015 for the following reason:

"1) The proposal lies within land allocated as Sensitive Countryside in the adopted Argyll and Bute Local Plan, whereby Structure Plan Policy STRAT DC 5 applies a presumption against development, other than small scale infill, rounding-off, redevelopment or change of use development.

The proposal does not constitute a form of infill, rounding-off, redevelopment, or a change of use development, given that the former planning permission 12/00642/PP was only granted on a short term temporary basis and came with a requirement to entirely reinstate the site once that permission lapsed.

The site area is such that the proposal represents medium scale development as defined in the Development Plan, which further confirms that if consideration were being given the supporting the application, such support could only come on the basis of an evidenced locational need for the development and by the proposal being subject to an Area Capacity Evaluation to establish whether the site was a suitable location for the specific development proposed.

No claim of locational need has been made or evidenced and no special case has been identified that would trigger the undertaking of an Area Capacity Evaluation. No locational need or exceptional circumstance has been identified to the Planning Authority that could justify the development. The proposal is contrary to Structure Plan Policy STRAT DC 5 and Local Plan Policy LP BUS 2.”

ISSUES

1. The appellant’s assertion that consent should be granted because the land is poor quality and that it would cause considerable damage to the environment and create a bigger mess and eyesore represents a misunderstanding of policy STRAT DC 5 - Development in Sensitive Countryside (part A) of the approved Argyll and Bute Structure Plan 2002. This states:

“A) Within Sensitive Countryside encouragement shall only be given to small scale infill, rounding-off, redevelopment and change of use of building development...”

The proposal does not constitute a form of small scale infill, rounding off or a change of use of building development nor can it be claimed as redevelopment as the previous approval for a caravan site was based on a temporary need and which required the land to be restored to its former condition before the development took place.

Condition 2 of planning permission 12/00642/PP requires: the spreading of peat and turves currently stockpiled as bunding across the site in a manner that reflects the natural undulation of the surrounding landscape, and ground cover shall be achieved by natural vegetation growth, with the removal of weeds over the following year.

It is considered that this work can be carried out quickly and without harm to the environment. It would not cause a ‘bigger mess’ or an ‘eyesore’ and makes no explicit requirement for the removal of any ‘terram’. It would remove an unauthorised development in sensitive countryside and return the appearance of the land to its former undeveloped state.

2. The appellants’ assertion that the proposal could be considered as a locational need on the basis that a similar facility in Oban ‘would cost a fortune’ and would not be economical represents a misunderstanding of policy STRAT DC 5 - Development in Sensitive Countryside (part B) of the approved Argyll and Bute Structure Plan 2002. This states:

B) In special cases, development in the open countryside...may be supported if this accords with an area capacity evaluation which demonstrates

that the specific development proposed will integrate sympathetically with the landscape and settlement pattern and that the development will entail or result in at least one of the following outcomes...

3. *A development with a location need to be on or in the near vicinity of the proposed site."*

The temporary use of the site to provide caravan accommodation for the work force associated with the erection of the Carraig Gheal wind farm constituted a locational need which has now ceased. No equivalent locational need has been demonstrated with regard to an existing agricultural or landscaping business. The argument that land within Oban would cost a fortune does not demonstrate a locational need for the proposed facility at Kilchrenan in terms of policy STRAT DC 5.

The attached Report of Handling for planning application 14/01424/PP addresses this issue and notes that:

"The applicant has an association with a landscaping business based in Oban, but the planning application does not make it clear whether the intended landscaping storage space would be linked to that operation or function as a stand alone entity. In either case, it requires assessment against LP BUS 2, which sets out thresholds for business developments within the Development Control zones. In Sensitive Countryside, the limitation on schemes is at small scale. LP BUS 2 (Schedule 1) defines small scale as being either a building up to 200m² or a site area of 0.5Ha. This site extends to 1.1Ha and as such represents medium scale development.

No justification has been submitted by the applicant outlining a location need nor has any supporting information been provided detailing the nature of agricultural and landscaping storage to take place. Accordingly and in line with the Council approved protocol for undertaking Area Capacity Evaluations (ACE), with no evidenced locational need, an ACE is not to be undertaken and the application is deemed to run contrary to policy STRAT DC 5. It appears the landowner simply wishes to make use of the facility now that it exists, or avoid the reinstatement costs that were imposed under 12/00642/PP. Neither of these is justification for the development.

The land is within an open landscape generally without development in the immediate vicinity, where there is a presumption against development. Siting a large hardstanding here on a permanent basis for agricultural or landscaping storage space or business would present an alien development that would appear out of place".

CONCLUSION

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

The reason for refusal of planning application 14/01424/PP was:

"1) The proposal lies within land allocated as Sensitive Countryside in the adopted Argyll and Bute Local Plan, whereby Structure Plan Policy STRAT DC 5

applies a presumption against development, other than small scale infill, rounding-off, redevelopment or change of use development.

The proposal does not constitute a form of infill, rounding-off, redevelopment, or a change of use development, given that the former planning permission 12/00642/PP was only granted on a short term temporary basis and came with a requirement to entirely reinstate the site once that permission lapsed.

The site area is such that the proposal represents medium scale development as defined in the Development Plan, which further confirms that if consideration were being given the supporting the application, such support could only come on the basis of an evidenced locational need for the development and by the proposal being subject to an Area Capacity Evaluation to establish whether the site was a suitable location for the specific development proposed.

No claim of locational need has been made or evidenced and no special case has been identified that would trigger the undertaking of an Area Capacity Evaluation. No locational need or exceptional circumstance has been identified to the Planning Authority that could justify the development. The proposal is contrary to Structure Plan Policy STRAT DC 5 and Local Plan Policy LP BUS 2.”

The proposed use of the site as agricultural and landscaping storage space is contrary to the adopted development plan policies with regard to the development control zone. The application is presented with no land related or operational requirements. There are no material considerations identified of sufficient weight that justify the proposal as a departure from the provisions of the development plan and the reason for refusal remains valid.

It is respectfully requested that the review be dismissed and the refusal be upheld.

APPENDIX 1

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: 14/01424/PP

Planning Hierarchy: Local Development

Applicant: Mr Brian Neish

Proposal: Change of use of land for agricultural and landscaping storage space (retrospective)

Site Address: Land east of Herons Reach, Kilchrenan, North Connel, Argyll

DECISION ROUTE

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

(A) THE APPLICATION

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

- Change of use of land for agricultural and landscaping storage space (retrospective)
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(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) HISTORY:

12/00642/PP

Change of use of land for the siting of 50 caravans and the erection of associated welfare facilities for a temporary period of 18 months (part retrospective) – granted 9th July 2012, with requirement to site restoration on completion.

(D) CONSULTATIONS:

Area Roads Manager

No objection subject to conditions – report dated 30th July 2014

(E) PUBLICITY:

None

(F) REPRESENTATIONS:

None received

(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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- | | |
|--|----|
| (l) 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

STRAT DC 5 – Sensitive Countryside

STRAT AC 1 – Development in Support of Farms, Crofts and Estates

Argyll and Bute Local Plan 2009

LP ENV 1 – Impact on the General Environment

LP ENV 10 – Development within Areas of Panoramic Quality

LP ENV 19 – Development Setting, Layout and Density

LP BUS 2 – Business and Industry Proposals in the Countryside Development Control Zones

- (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.**

Scottish Planning Policy (SPP) 2014
Proposed LDP

(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: No

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

Retrospective planning permission is sought for the change of use of land for agricultural and landscaping storage space on land east of Herons Reach, Kilchrenan, Argyll.

This application is a result of an enforcement investigation into the breach of planning condition 2 of planning permission 12/00642/PP (change of use of land for the siting of 50 caravans and the erection of associated welfare facilities for a temporary period of 18 months (part retrospective)), which was granted on 9th July 2012.

Condition 2 of planning permission 12/00642/PP states that:

2. This planning permission is for a temporary period only and shall lapse on 23rd October 2013 (being 18 months from the date of receipt of the valid planning application) at which time, the use of the land shall cease and all caravans and associated works including the toilet block, shower block, septic tank, water storage tanks and generators shall be removed from the site. The land shall be fully reinstated to its previous agricultural rough grazing condition by 23rd November 2013, to the satisfaction of the Planning Authority. The reinstatement works shall include the spreading of peat and turves currently stockpiled as bunding across the site in a manner that reflects the natural undulation of the surrounding landscape and ground cover shall be achieved by natural vegetation growth, with the removal of weeds over the following year to the satisfaction of the Planning Authority.

The applicant has stated that he wishes to retain the site for agricultural and landscaping storage space rather than reinstating the site as per condition 2.

Accordingly, the applicant was advised that a planning application would be necessary to explore this option.

In terms of the approved Argyll and Bute Structure Plan 2002 the site is within Sensitive Countryside and as such Policy STRAT DC 5 is applicable which states:

- A) Within Sensitive Countryside encouragement shall only be given to small scale infill, rounding-off, redevelopment and change of use of building development..."

The proposal does not constitute a form of small scale infill, rounding off or a change of use of building development nor can it be claimed as redevelopment as the previous approval for a caravan site was based on a temporary need and which required the land to be restored to its former condition before the development took place.

Policy STRAT DC 5 goes on to state:

- B) In special cases, development in the open countryside...may be supported if this accords with an area capacity evaluation which demonstrates that the specific development proposed will integrate sympathetically with the landscape and settlement pattern and that the development will entail or result in at least one of the following outcomes...

- 3. A development with a location need to be on or in the near vicinity of the proposed site."

Prior to the formation of the caravan site, which was temporarily provided to meet an accommodation demand for construction staff enabling the Carraig Ghale wind farm project, there was no agricultural need for a hardstanding of this size, nor is such a need explained in the application as submitted.

The applicant has an association with a landscaping business based in Oban, but the planning application does not make it clear whether the intended landscaping storage space would be linked to that operation or function as a stand alone entity. In either case, it requires assessment against LP BUS 2, which sets out thresholds for business developments within the Development Control zones. In Sensitive Countryside, the limitation on schemes is at small scale. LP BUS 2 (Schedule 1) defines small scale as being either a building up to 200m² or a site area of 0.5Ha. This site extends to 1.1Ha and as such represents medium scale development.

No justification has been submitted by the applicant outlining a location need nor has any supporting information been provided detailing the nature of agricultural and landscaping storage to take place. Accordingly and in line with the Council approved protocol for undertaking Area Capacity Evaluations (ACE), with no evidenced locational need, an ACE is not to be undertaken and the application is deemed to run contrary to policy STRAT DC 5. It appears the landowner simply wishes to make use of the facility now that it exists, or avoid the reinstatement costs that were imposed under 12/00642/PP. Neither of these is justification for the development.

The land is within an open landscape generally without development in the immediate vicinity, where there is a presumption against development. Siting a large hardstanding here on a permanent basis for agricultural or landscaping storage space or business would present an alien development that would appear out of place.

The site is located immediately to the south of the B845 public road and is surrounded by undulating rough grazing land. The development is partially screened by a pre-existing bund. However, as mentioned above, the proposal does not constitute small scale infill, rounding-off, redevelopment or a change of use of building development. The medium scale nature of the development combined with the lack of locational need for the proposal, means that it is contrary to policy and there is no reason to depart from the adopted development plan. Even if a locational need was established, it is considered unlikely that this specific location would satisfy the rigour of an ACE process and accordingly, the applicant should not be encouraged to invest any more time in this project other than to restore the site as required under the conditions of planning permission 12/00642/PP.

The development of the site for agricultural and landscaping storage as applied for is unjustified, is contrary to Policy STRAT DC 5, and may establish an unhelpful precedent that would seriously undermine the undeveloped nature of the immediately surrounding landscape, leading to further sporadic development along the B845 public road.

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

(R) Reasons why planning permission should be refused:

See full reason for refusal as set out below.

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

N/A – Refusal of the application accords with the Development Plan provisions.

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

Author of Report: Jack McGowan Date: 20/10/14

Reviewing Officer: Stephen Fair Date: 23/12/14

**Angus Gilmour
Head of Planning**

REASONS FOR REFUSAL RELATIVE TO APPLICATION REFERENCE 14/01424/PP

1. The proposal lies within land allocated as Sensitive Countryside in the adopted Argyll and Bute Local Plan, whereby Structure Plan Policy STRAT DC 5 applies a presumption against development, other than small scale infill, rounding-off, redevelopment or change of use development.

The proposal does not constitute a form of infill, rounding-off, redevelopment, or a change of use development, given that the former planning permission 12/00642/PP was only granted on a short term temporary basis and came with a requirement to entirely reinstate the site once that permission lapsed.

The site area is such that the proposal represents medium scale development as defined in the Development Plan, which further confirms that if consideration were being given the supporting the application, such support could only come on the basis of an evidenced locational need for the development and by the proposal being subject to an Area Capacity Evaluation to establish whether the site was a suitable location for the specific development proposed.

No claim of locational need has been made or evidenced and no special case has been identified that would trigger the undertaking of an Area Capacity Evaluation. No locational need or exceptional circumstance has been identified to the Planning Authority that could justify the development. The proposal is contrary to Structure Plan Policy STRAT DC 5 and Local Plan Policy LP BUS 2.