

**REQUEST FOR REVIEW OF DECISION TO
REFUSE PLANNING PERMISSION FOR
THE FORMATION OF A NEW
VEHICULAR ACCESS, LAND WEST OF
DALCHON, LOCHARD COTTAGES
ROAD, KINLOCHARD (REFERENCE
2016/0330/DET)**

GROUNDNS FOR REVIEW

Submitted on behalf of Andrew Strang by



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REQUEST FOR REVIEW OF DECISION TO REFUSE PLANNING PERMISSION FOR THE FORMATION OF A NEW VEHICULAR ACCESS, LAND WEST OF DALCHON, LOCHARD COTTAGES ROAD, KINLOCHARD (REFERENCE 2016/0330/DET)

GROUNDS FOR REVIEW

1. Site Description:

- 1.1 The application site is located within the Small Rural Community of Kinlochard, immediately to the west of the dwellinghouse known as 'Dalchon'. The application site comprises an area of land which runs from the road verge of the main road, down to the shoreline of Loch Ard. The land has further residential properties to the east and north, with the aforementioned Loch Ard to the south.
- 1.2 On the application site there is an existing timber building, used by the applicant for the storage of agricultural machinery.

2. The Review Application:

- 2.1 This request for a review relates to the recent refusal of planning application 2016/0330/DET. This application proposed the formation of a new vehicular access into the site, for use by the applicant.
- 2.2 The application was refused, under delegated powers, on 13 January 2017, for the following reasons:
 1. The proposal is contrary to Local Development Plan policies Overarching Policies 1 and 2, and Natural Environment Policy 1 as it would introduce built development that would have a significant negative impact on the openness of the site and harm the special visual amenity and landscape character of this part of Kinlochard for which no or insufficient agricultural locational justification has been provided.
 2. The proposal does not comply in principle with Scottish Planning Policy or the National Park statutory aims because it is not reasonably needed and would not be a sustainable use of land that protects the built and natural environment. As there are no material considerations to justify approving the proposal, refusal of planning permission is considered proportionate and necessary.

3. Grounds for Review

- 3.1 Historically, access to the application site has been gained via a route that runs between two existing properties, numbers 1 and 2 Lochard

Cottages. Originally, these cottages were restricted in terms of their use to holiday accommodation. A recent grant of planning permission (NPA reference 2013/0053/DET), for the 'subdivision of garden ground and amendment to planning permission 2005/0014/DET to remove condition No. 3 thus removing the holiday accommodation restriction on 1 Lochside Cottages, and change of use of land to form garden ground at 2 Lochside Cottages', now allows these properties to both be used as separate private residential dwellinghouses.

- 3.2 Whilst providing vehicular access to the applicant's land, the existing access also provides a historic 'third party right of access' to the shore of Loch Ard, and to a boat house beyond. Implementation of the planning permission to change the use of 1 and 2 Lochard Cottages to permanently occupied dwellings, means that there will no longer be vehicular access to the application site. The formation of a new vehicular access is therefore required in order to provide the applicant with the ability access his land, and the associated machinery stored in the existing building, and also to preserve the historic 'third party right of access'.
- 3.3 The reasons for refusal of the review application refer to two of the 'generic' policies, **Overarching Policy 1** and **Overarching Policy 2**, of the now adopted National Park Local Development Plan, and also to **Natural Environment Policy 1**. These policies state:

Overarching Policy 1 - All development should contribute to the National Park being:

A successful, sustainable place by:

- Contributing to the collective achievements of the 4 aims of the National Parks (Scotland) Act, and giving greater weight to the first aim of the National Park if it appears to be in conflict with the other National Park aims';
- Contributing to sustainable development;
- Supporting the implementation of the National Park Partnership Plan, its Outcomes, Policies and Priorities;
- Ensuring areas of open space are of high quality, appropriate to the needs of the local community, integrated to the development and provide links to the wider green networks; and,
- Being Distinctive, Safe and Pleasant, Easy to move around, Welcoming, Adaptable and Resource efficient.

A low carbon place by:

- Reusing brownfield land or vacant property where possible;
- Reducing greenhouse gas emissions through sustainable design; use of energy efficient materials, passive solar design, landscaping

- and micro renewables, connecting or creating opportunities to a shared heating scheme’;
- Supporting the provision of waste reduction and waste hierarchy principles including prevention, reuse (e.g. composting) or recycling; and
- Connecting well to public transport and safe pedestrian/cycle access where possible.

A natural, resilient place by:

- Minimising adverse impacts on water, air and soil quality;
- Addressing the impacts of climate change’;
- Avoiding significant flood risk;
- Relating well to the landscape context and setting, be sympathetic to local built forms and materials including historic street pattern, scale, massing and design;
- Respect the important physical/historical/landscape/cultural features of the site and surrounding area; and
- Incorporating appropriate soft and hard landscaping, a planting scheme, and measures to protect existing trees and other landscape features.

A more connected place by:

- Increasing and improving connections to nearby places, paths, streets, bus stops, train stations and open spaces;
- Design streets to consider place – how it looks and feels – before movement; and
- Encouraging developers to explore opportunities for the provision of digital infrastructure to new homes and business premises as an integral part of development.

Overarching Policy 2 - Development proposals should not conflict with nearby land uses and where relevant, and must address the following requirements:

- Landscape & Visual Amenity: safeguard visual amenity and important views, protect and/or enhance rich landscape character, and features and areas specifically designated for their landscape values at any level;
- Amenity and Environmental Effects: avoid any significant adverse impacts of; flooding, noise/vibration, air emissions/ odour/fumes/ dust, light pollution, loss of privacy/sunlight/daylight;
- Historic Environment: protect and/or enhance the character, appearance and setting of the historic environment;
- Natural Environment: protect and/or enhance the biodiversity, geodiversity, water environment, sites and species designated at

- any level (international, national or local) including ancient and semi-natural woodland, green infrastructure and habitat networks;
- Sustainable Travel: support Active Travel choices where possible (prioritise walking, cycling and public transport use over car use) and transport infrastructure;
- Safe Access and Parking: provide safe road access and appropriate parking provision;
- Visitor and Recreational Experience: promote understanding and enjoyment (including recreation) of the special qualities of the area by the public including safeguarding access rights;
- Design & Placemaking: achieve a high quality design and layout, provide a positive sense of place, and compliment local distinctiveness;
- Social Wellbeing and Economic Vitality: adaptable for the changing needs of future users, designing for extreme weather, fulfil disabled requirements, support new businesses, training/jobs for local people and a mix of uses/tenures; and
- Climate Friendly Design: demonstrate how proposed buildings will meet a reduction in greenhouse gas emissions through minimising overall energy requirements through conservation measures, and incorporating on-site low and zero carbon generating technologies to meet 10% of the overall energy requirements of the building rising to 20% by December 2021.

Natural Environment Policy 1 – Development will protect the special landscape qualities of the National Park in accordance with The Special Landscape Qualities of Loch Lomond and The Trossachs National Park (SNH 2010). Development proposals will be required to be sympathetic to their setting and minimise visual impact, including areas of wild land character and wild land areas.

Landscape Impact

- 3.4 In terms of the first reason provided for refusing the application, it suggests that the proposal would not comply with the relevant Local Development Plan policies because it would “introduce built development that would have a significant negative impact on the openness of the site and harm the special visual amenity and landscape character of this part of Kinlochard”.
- 3.5 It is noted in the Officer’s report that reference has been made on a number of occasions to a “constructed track into the field” however at no point during the determination of the review application was this matter discussed in any detail in order to establish precisely how the proposed 3.5m wide track would be constructed and finished. Given this, it is not understood how it was possible to make any reasonable

assumption as to potential landscape impact. It was never the applicant's intention to form formal engineered track, all that was required was a suitable and appropriate means of vehicular access to the existing building, sufficient to ensure that this would be possible in all weathers without damaging the site to any degree.

3.6 If this matter had been raised as a significant cause for concern during the determination of the review application, this matter could have been discussed in further detail, and an agreement to construction methodology and surfacing materials reached. Alternatively, an appropriate planning condition could have been attached to any planning permission granted, requiring that such details were submitted to, and agreed by, the National Park Authority, prior to the commencement of the development.

3.7 It is not therefore considered that this element of the proposal was adequately assessed, and thus it would not have been possible to come to the conclusion that the proposed development would have a "significant negative impact on the openness of the site and harm the special visual amenity and landscape character of this part of Kinlochard".

3.8 In assessing whether the proposed development would have a "significant negative impact" it is considered that this must be viewed in the context of the prevailing character of the surrounding area. In the Officer's report, it was concluded that:

"The development is inappropriate in principle because there is no justification in land-use terms and because it would significantly change the openness of the site and harm the special landscape and built environment qualities of this locale. The planning Act requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case the information provided as justification for the development does not outweigh the loss of openness and encroachment into the field that would erode the distinct settlement pattern and harm the visual and scenic qualities of the landscape and quality of landscape experience in this area."

3.9 It is not considered that this conclusion can be substantiated. The application site is accessed via a minor road from the B829. It is accepted that initially there is a long stretch of open land between the road and the west shoreline of Loch Ard, and that this does have a particular landscape character and sense of place (Photograph 1 below).



Photograph 1: Initial open views once leaving B829 (© Google)

3.10 However, the landscape character then changes with the introduction of a number of residential properties on the south side of the road, and then again to the north of the road, before the application site is reached. Once at the boundary of the application site, there is a section of fence enclosing this (approximately 30m), before further residential dwellings again line the south side of the road. As a result of this pattern of built development, it is clear that the landscape character changes significantly when the first properties appear on the south side of the road. The open views that previously characterised the landscape making way to a landscape characterised by built development immediately adjacent to both sides of the public road.

3.11 This change in the landscape character is illustrated in Photographs 2 – 5 below;



Photograph 2: Change in landscape character with loss of open views (© Google)



Photograph 3: Approaching the application site (© Google)



Photograph 4: Application site (on left) and residential properties beyond (© Google)



Photograph 5: Landscape character beyond application site (© Google)

3.12 The above images clearly demonstrate the landscape character in the vicinity of the application site. Given this, it cannot reasonably be concluded that the proposal would *'introduce built development that*

would have a significant negative impact on the openness of the site and harm the special visual amenity and landscape character of this part of Kinlochard', as was stated in the first reason for refusal.

- 3.13 Furthermore, the proposed access would be of a design and appearance very much in keeping with that which can be found in many other similar rural locations within the National Park. It would simply comprise a small relocation of the existing fence, the installation of a new agricultural field gate, no higher than the existing fence, and the formation of a short length of track (see paragraphs 3.5 – 3.7 above), and would have no significant landscape impact. The Officer's report refers to the landscape character of this part of Kinlochard, stating;

"The settlement pattern with small building clusters interspersed with natural landscapes and open views of the loch and surrounding area is described in the adopted plan as 'in keeping with the natural rural character of the area, with landscape as the dominant local character."

- 3.14 The proposal would not alter the landscape character or settlement pattern of the area to such a significant degree that the refusal of planning permission, on the grounds of negative impact on 'the special visual amenity and landscape character of this part of Kinlochard', can be justified.
- 3.15 Photographs 6-10 below show a number similar access formations within the area;



Photograph 6: Access example within the locale (© Google)



Photograph 7: Access example within the locale (© Google)



Photograph 8: Access example within the locale (© Google)



Photograph 9: Access example within the locale (© Google)



Photograph 10: Access example within the locale (© Google)

- 3.16 In terms of the reference made to there being “*no or insufficient agricultural locational justification provided*”, none of the Local Development Plan policies referred to in the reasons for refusal require this, nor do any of the relevant Supplementary Planning Guidance documents. On the basis that it is not considered that the proposal conflicts with the requirements of these policies, giving this as part of any reason for refusal is not considered relevant or justified in this instance.

Road Safety

- 3.17 Whilst the initial response from the Roads Authority indicated that the proposal would not be likely to meet the normally required visibility splays, it is noted that this was a ‘holding response’, and no formal objection to the application was subsequently made. Furthermore, highway safety does not form a reason for refusal of the review application.
- 3.18 The applicant was in any event advised by the National Park Authority that that the installation of a traditional field gate would be ‘permitted development’ under the provision of Class 7 of the General Permitted Development Order (GPDO), subject to compliance with the relevant height limitation. In order to provide the required vehicular access into the application site, the applicant has now installed such a gate, as shown in Photographs 11-13 below.



Photograph 11: New field gate (permitted development)



Photograph 12: New field gate (permitted development)



Photograph 13: New field gate (permitted development)

3.19 As this same design of gate is what was proposed as part of the review application, albeit set back to allow safer access into the site, this clearly demonstrates that there is no significant impact on the open aspect of the application site, or the views to Loch Ard from the road. It is simply an

agricultural gate into a field, of the kind that can be seen throughout the National Park.

- 3.20 This new gate, which was installed as 'permitted development', will however have adverse road safety implications, and would therefore not comply with the requirements of **Transport Policy 3** of the Local Development Plan which states that:

"All development proposals (including minor and small scale householder developments and developments requiring access off private roads) will require to be of a design and specification that is in conformity with the design standards required by the Roads Authority and/or Transport Scotland, and be serviced by roads infrastructure to the specification of and in consultation with the Roads and Transportation Authority and with Transport Scotland as appropriate."

- 3.21 This policy is aimed at assessing the impact of new development on the existing road network, and ensuring that relevant design specifications and standards are achieved. It seeks to ensure that any new development will not adversely affect traffic flows on the existing road network.
- 3.22 This form of access confirmed to be 'permitted development' requires someone having to stop their car on the public road, exiting their car directly onto the road in order to open the gate, before returning to their car before accessing the review site. It is considered that this could create a significant road safety issue, which could easily be overcome by the formation of the proposed access, in full compliance with the relevant Roads Authority standards. Were the formation of the access to have been approved, it would almost certainly have been a condition of the approval that the access gates be set back by 4.5m, in order that a vehicle could safely pull off the public road whilst the gates into the field were being opened and closed.
- 3.23 Furthermore, once through the gate, vehicular access to the existing building is gained via the field. Without a surfaced track, the field is however becoming 'churned up' because of the passage of vehicles.

4. Conclusions:

- 4.1 In conclusion, the main reason for refusing the planning application was based on the Authority's opinion that the proposal to install a new vehicular access, and informal track leading to the existing building on the site, would;

“introduce built development that would have a *significant negative impact* on the openness of the site and harm the special visual amenity and landscape character of this part of Kinlochard”.

- 4.2 It is considered that this concern has been exaggerated; this is simply an application for an agricultural access, into an agricultural field, to be used for land management purposes, and to ensure that a historic ‘third party right of access’ can be preserved without there being any adverse impact on the residential amenities of the occupiers of numbers 1 and 2 Lochard Cottages.
- 4.3 It has been demonstrated in paragraphs 3.9 – 3.12 of this submission that the landscape character changes on approaching the review site, with the previous open view aspect towards Loch Ard giving way to built environment, where views towards the loch are therefore no longer the principal characteristic of the landscape. While the application site does still allow for some view towards Loch Ard, these are more ‘fleeting’, and it is not considered that the proposed new access would in any way significantly change “*the openness of the site*” or “*harm the special landscape and built environment qualities of this locale*”.
- 4.4 The objections received in respect of the review application appear to question the need for the new access, and speculate that it is in some way being proposed in respect of a potential future residential development. However, as the Officer’s report acknowledges, this is not a ‘material consideration’. The only reason for the current application is that the historic vehicular access into the field, between the numbers 1 and 2 Lochard Cottages, now only allows for pedestrian access, and as a result there is now no longer any vehicular access into the review site.
- 4.5 While the newly installed field gate is classed as ‘permitted development’, this has the potential to result in adverse road safety implications. Providing the amended access the subject of this review, in accordance with the requirements of the Road’s Authority standards, would prevent a potentially dangerous situation from occurring. Without a surfaced track, the field is furthermore becoming ‘churned up’ because of the passage of vehicles.
- 4.6 It is therefore considered that the proposal for a new vehicular access into the review site represents, on balance, the most appropriate standard of development in this instance, when assessed against the relevant Local Development Plan policies. Should the Local Review Body be minded to grant planning permission for the formation of the new vehicular access, it is confirmed that there would be no objection to the imposition of the following condition:

Details of Access Track: Prior to the construction of the access hereby permitted, details of its formation and surfacing shall be submitted to, and approved in writing by, the Local Planning Authority. Thereafter, the access shall not be constructed otherwise than in complete conformity with the submitted and approved details.

Reason: To secure a satisfactory standard of development having regard to the requirements of Natural Environment Policy 1 of the adopted National Park Local Development Plan.

Submitted Documents:

- 1 Application Form
- 2 Submitted Drawings (2016_0071/00 and 2016_0071/01)
- 3 Report of Handling
- 4 Decision Notice