

Argyll and Bute Council
Comhairle Earra Gháidheal agus Bhóid

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Dear Redacted

PROPOSED DEVELOPMENT OF 60 AFFORDABLE, 12 MARKET HOMES AND FORMATION OF COMMUNITY WOODLAND ON LAND AT CASTLE WOODS HELENSBURGH. APPLICATION REFERENCE: 06/01319/OUT

I refer to the above application and take this opportunity to update you on the current views of the Council on a range of issues associated with the application. These include:

1. Why the Council considers the current application should be withdrawn
2. Whether a letter of comfort could be provided if the application is withdrawn
3. The condition of the woodland and the studies carried out by Alan Motion
4. A planning policy evaluation of the proposal

I set out more details in respect of each of these matters below.

1. Why the current application should be withdrawn and a new application submitted

Section 8 of the 2006 Act inserted new sub-sections 32A and 32B into the principal Act. These deal with the circumstances in which an application for planning permission may be varied by the applicant.

During the processing of an application whilst negotiating with planning officers and consulting with consultees and the public it is inevitable that proposals will be made or ideas emerge which will modify the original submission. It is clearly in the public interest that proposed developments be improved in this way.

Sub-section 32A(1) provides that an application for planning permission, other than one which has been called-in under section 46 by Scottish Ministers for a decision, may be varied after it is made provided the planning authority agree.

Sub-section 32B(2) provides that a planning authority cannot agree to a variation where they consider the variation to be such that there would be a substantial change in the description of the development for which planning permission is sought. It is not clear how the reference to "a substantial change in the description of the development" squares with past practice, although regulations or a development order made under sub-sections (3) should throw further light on the extent of this restriction.

In *British Telecommunications* Elias J. Noted that the interest of the public must be fully protected when an amendment is under consideration. This meant, he said, that in an appropriate case an amended application must be the subject of another round of consultation and publicity before the decision is made. However, it is only where the changes are far reaching that it would not be sensible or appropriate simply to consult over them and that the right solution was to start again with a fresh application. This is in line with advice in Planning Advice Note (PAN) 40: Development Control

PAN 40, paragraph 71 states that:

If the planning authority considers that the substance of an application has changed, new neighbour notification (and where appropriate owner notification and advertisement) will be required. The main consideration will be the nature and extent of the difference in planning terms between the original and the amended proposal. Where the substance of the proposal has been altered, the application should be withdrawn and a revised application submitted. Planning authorities should be prepared to refuse permission rather than wait indefinitely for amendments

The inability to agree to a variation which would result in a substantial change in the description of the development does not prevent a planning authority, or the Scottish Ministers on appeal, unilaterally imposing a condition on a grant of planning permission which would have the effect of varying the development for which planning permission is granted. The test for such a condition is whether the permission would allow development which was in substance not that for which planning permission had been sought.

The advice in the Scottish Planning Encyclopaedia goes on further to say that one of the criterion for judging whether the substance of an application would be altered is whether the development would be "so changed that to grant it would be to deprive those who should have been consulted on the changed development of the opportunity of consultation".

In the case of application 06/01319/OUT the description is for the proposed development of 60 affordable, 12 market homes and formation of community woodland. The amendment is for 36 affordable and 12 market homes with woodland retention.

It can be argued that as an outline application the substance hasn't changed, albeit that the proposed number of affordable units has been reduced. However, affordable housing is a material consideration. For example, we don't talk about affordable shops or offices etc. At minimum, the 06/01319/OUT application should be re-advertised and new neighbour notification done.

Since the application was submitted we have an amended planning Act and new regulations emphasising and supporting the need for greater community involvement and participation. We have an adopted Local Plan and confirmation of this site as an OSPA. We have further planning history in relation to TPO 16/04 and its constituent parts. And we have proposals for other affordable housing schemes in Helensburgh. Based on the above, I consider that re-advertising and new neighbour notification would not be sufficient. Consequently, the current application should be withdrawn and a fresh application submitted.

I would also wish to add that the introduction of a wholly separate site at Cumberland Avenue becoming an integral and important part of addressing policy requirements cannot be seen as anything else than a substantial and material alteration to the nature and extent of the matters to be considered as part of this application, reinforcing the matters set out above.

In this instance a wholly separate area of land, not contained within the original application, is being promoted as providing a redress to Policy LP REC 2 and provide the community woodland element, originally described in the application submitted. There will of course be a need to link the two sites through a legally competent planning mechanism for this alternative site to have any planning merit in the determination of the current proposal.

The residents who live next to this new site were never notified of the intention to use this land as mitigation to application 06/01319/OUT, yet this land adjoining their homes is now being promoted as forming an important mitigation against tree loss at Castle Woods. The proper consideration of the amended scheme therefore does not just require a re-notification, but the additional consultation with residents who are now being involved in the promotion of mitigation measures on land adjacent to their homes. It may be that residents in Cumberland Avenue would support the proposed works, however the fact that this important element of the evaluation of the application involves both a new site and new residents who have never previously been notified of the proposals adds to my view that this is a substantial and material alteration to the application which requires to be submitted afresh to meet both the requirements and "spirit" of an inclusive approach to community involvement.

Notwithstanding the above, you should also be aware that there is a live enforcement investigation over possible criminal actions relating to the unauthorised felling of protected trees at the Cumberland Avenue site which the Council's legal department are currently gathering evidence on to clarify whether an offence has taken place. Given that one of the consequences of any illegal felling of trees could be the serving of a replanting notice, which would involve trees which should reflect the scale and type of any trees found to be unlawfully felled, any use of this land as part of a mitigation measure has complexities in potentially undermining a more demanding replanting notice the Council may wish to serve due to loss of protected trees.

Yet another complication in promoting a Community Woodland at Cumberland Avenue is that the Forestry Commission may wish to intervene at Cumberland Avenue as no felling licence appears to have been granted for either the authorised, or potentially unauthorised felling works. They have their own legislative regime which also involves the potential to serve replacement planting notices to rectify any breach they find. If felling licences have been obtained, they appear not to be recorded on the data base of the Forestry Commission and clarification on this point would be welcome as it would be one less issue which requires to be considered. The Council has notified the Forestry Commission of the works at the site and awaits confirmation of what steps the Commission intends to take.

In such circumstance I do not think it would reasonable for the Council to determine the current application with so many significant and material changes as merely alterations to an existing application as it clearly goes far beyond this. As you are no-doubt aware, the Council cannot withdraw a planning application, and in this instance as the application has remained undetermined for more than 8 months there is no opportunity for a non-determination appeal to be lodged.

Given the above, it remains the Council's view that the only mechanism appropriate to promote the new proposals, should this remain your clients' wishes, is to withdraw the current planning application and resubmit a new application drawing together all of the alterations and external sites now forming part of the consideration of the proposals. However, as set out below in addressing the letter of comfort, I do not consider that a favourable officer recommendation is likely

2. Letter of comfort

You have informally, and without prejudice to the formal instructions of your clients', suggested that if some form of pre-application support could be expressed for a new application to provide some comfort to you clients this may assist them in deciding to withdraw the application. Unfortunately this would not be appropriate for the reasons set out below:

Castle Woods is an area of woodland protected by Tree Preservation Order (TPO) 16/04 covering an area of 2.0 Ha. The TPO was confirmed in March 2005. The site is also designated within the Argyll and Bute Local Plan as an Open Space Protection Area where proposals are considered against Policy LP REC 2 of the adopted local plan 2009. The site is also partly designated at its northern end as a Local Nature Conservation Site where proposals are determined against Policy LP ENV 8 of the adopted local Plan 2009.

The value of the site was confirmed by the Inquiry Reporter for the Local Plan and I consider that the policy framework affording protection to the site from inappropriate development is robust. In such circumstances I do not consider that any statement or letter of comfort to your client would be appropriate.

3. The Alan Motion Tree Surveys



The current application was later supplemented by a tree survey (The Alan Motion Study) which was undertaken in 2008 and an update provided on 30.5.12. This survey refers to approximately 864 identified and tagged individual trees at Castle Woods and includes a detailed description of the trees, their condition and also recommended actions/works.

The Alan Motion study refers to the development proposals requiring the loss of 170 trees with an additional 134 trees requiring to be removed for "safety reasons". Drawings "Tree Survey Sheet 2" and "Tree Survey Proposed Layout" both dated January 08 and drawing 2139.62C have also been submitted to indicate the potential footprint of the affordable housing development and also indicate the identity of those trees which would be lost as a direct consequence of development proposals. However as these are only indicative no accurate number of trees to be removed by development proposals can at this time be set.

The trees identified for felling in the Alan Motion studies appear to all be within the woodland and therefore, having regard to the advice contained within the National Tree Safety Group publication "Common sense risk management of trees" published in December 2011 the Council does not accept there is the need for any urgent works in the interests of safety.

The Council's tree officer separately visited the site on 1.6.12 to specifically evaluate the trees identified for felling in Alan Motion's tree survey. It is her professional view that there are no immediate works required in the interests of safety which would necessitate starting felling on the site without first obtaining necessary consents. Should Alan Motion wish to dispute this finding he should contact the Council to discuss matters in detail.

The Council Commissioned Donald McPhillimy Report (February 2012)

In response to the initial Alan Motion survey the council commissioned its own expert to undertake an evaluation of the woods having regard to the information provided by Alan Motion.

Donald McPhillimy prepared a report in February 2012. Under key points Donald McPhillimy states that

- The report recommends that 15% of the trees require works or felling. This would not be required should the site remain undeveloped as a woodland. Only trees next to edges and in danger of causing damage to property would need to be treated. Trees in the middle of a woodland with low visitor pressure and no formal paths can, by and large, be left to grow naturally
- The same applies to the 134 Identified Category R Trees which the report states "require felling irrespective of any development proposals". It isn't clear what the overlap is between the R trees and the former 15%.
- To accommodate the outline development proposals, the report recommends the felling of 170 trees plus some additional trees to accommodate the play space. This would be the bare minimum as the maps show many trees left within the gardens and as close as 4metres from buildings e.g. trees 24, 61, 67,339, 250 and 273.
- In a very short space of time trees will be removed by householders and complaints will start to be made about other trees blocking out the light, threatening buildings and shedding too many leaves. Gradually the surrounding trees will be whittled away until the woodland ecosystem is largely lost.
- The areas identified for woodland edge and understory planting is generally already stocked with trees and opportunities will be limited.

This study identifies no urgently required works and considers that the ecological value of Castle Woods has been underestimated in your clients Ecological Impact report. This report underestimates both the value of the site to wildlife and the potential impact of the proposed housing development.

The report does accept that although urgent safety works are not identified as being required, in terms of good management some works to peripheral trees, particularly along the southern boundary, should be considered. The Council is willing to discuss any sensible tree works requests, subject to proper application procedures and an implementation plan to minimise impacts on the woodland.



4. Planning Evaluation of Proposal

The application site is a valued open space which has amenity value in the immediate area and is designated an Open Space Protection Area (OSPA). There is a presumption against the development or redevelopment of OSPAs. The retention or enhancement of this OSPA site cannot be best achieved by redeveloping it for housing. The loss of this area which has value as a green space and a buffer between housing helps to soften the impact of and integrate existing development, and its replacement with dwellings, accesses, hard standing, fences and other associated suburban development will compromise its amenity value, will be visually intrusive, visually discordant, and will not maintain or enhance the character of the area.

In addition, the proposed development would result in a substantial loss of protected trees contrary to the objective of its designation as a TPO to the detriment of its amenity value and also have undesirable consequences to its ecological value which the Council's consultant considers has not been properly reflected in the submitted ecological reports.

This is ancient semi-natural woodland and is viewed, and functions as, an extension to Duchess Woods. It is partly designated as a Site of Interest for Nature Conservation and, despite having been planted with some non-native species, remains a functioning native woodland Eco-system.

The proposals to provide a community woodland on part of the Cumberland Avenue site merely provides an existing area of OSPA as mitigation for the loss of a significant part of the Castle Woods OSPA. This is not considered to be in accordance with the requirements of Policy LP REC 2 as there is no net gain, and indeed agreeing a replanting scheme at Cumberland Avenue in the context of this application would potentially undermine a more onerous replanting requirement which may be required as part of the on-going enforcement investigation. The Forestry Commission may also have an interest in any replanting scheme as it may be the case that trees have been felled without a license and an offence may have been committed. The Forestry Commission are currently considering this matter. I therefore see little merit in introducing the concept of utilising a replanting scheme at Cumberland Avenue to meet the requirements of Policy LP REC 2 for the current application at Castle Woods.

There are considerable obstacles to be overcome in respect of your clients' proposals, and at the present time I do not foresee that a favourable recommendation of the current planning application would be possible.

Given the above, the Council would continue to advise your clients to withdraw the current planning application.

Yours faithfully

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