



Decision by Mike Shiel, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-130-2070
- Site address: Barr Bheag, Taynuilt PA35 1HY
- Appeal by Mr Sean Honeyman against the failure of Argyll and Bute Council to determine the application for planning permission no. 18/01786/PP, dated 15 August 2018, within the prescribed period.
- The development proposed: demolition of a dwellinghouse and the erection of a replacement dwellinghouse.
- Application drawings: as listed in the schedule at the end of the decision notice
- Date of site visit by Reporter: 4 February 2019

Date of appeal decision: 14 February 2019

Decision

I allow the appeal and grant planning permission subject to the four conditions listed at the end of the decision notice. Attention is drawn to the three advisory notes at the end of the notice.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Having regard to the provisions of the development plan the main issues in this appeal are:
 - (a) whether the demolition of the existing house on the site and its replacement by a new house would constitute a sustainable form of development, also taking into account relevant provisions of national planning policies and guidance; and
 - (b) whether there are any other matters, including the impact on the tenant of the existing house and his business, which constitute material planning considerations relevant to the determination of the application.

Background

2. The present house on the site is a small, single-storey building. The original part of the house dates back to the 1930s and is clad in corrugated metal sheeting. There is a more recent extension to the rear and side, constructed of rendered blockwork. The roof of the whole building is covered with profiled metal sheeting.



3. There is no dispute that the house is in need of repair. It is owned by a trust, of which the appellant is a trustee, which has been served with a Repairing Standard Enforcement Order (RSEO) issued by the Housing & Property Chamber First Tier Tribunal, requiring certain repairs to be carried out and an architect's report to be undertaken on how to make the house weathertight and cure the problem of dampness throughout. That report, dated 15 August 2017, following a limited inspection of the building, highlighted certain issues, but concluded that the building had reached the end of its useful life and should be replaced with a new house.

4. In response to this, the tenant of the house commissioned a firm of chartered surveyors to value the property and estimate the cost of essential repairs. This estimate amounted to £25,000.

5. The council did not reach a decision on the planning application within the prescribed time. In its submissions, it has explained that this was for a number of reasons including: the number of third party representations received; the need to obtain legal opinion on a number of matters, amongst which was the weighting to be afforded to the complex legal issues associated with the RSEO; the need for the appellant to commission a bat survey and obtain the necessary licence from Scottish Natural Heritage; and the need for the planning authority to determine whether the proposal represented an appropriate form of sustainable development.

6. With regards to this last matter, the council had before it the two reports referred to above and was advised to obtain an independent assessment of the current condition of the building and the estimated cost of essential repairs. Despite putting this work out to tender, with a deadline of 12 December 2018, the council received no expressions of interest. In the absence of clarification on this question, the council's current position is that it is unable to demonstrate whether or not the proposals would constitute an appropriate sustainable development. Consequently, adopting a precautionary principle, the council asserts that planning permission should be refused.

The sustainability of the proposed development

7. The development plan for this area consists of the Argyll and Bute Local Development Plan 2015 (LDP), together with any associated statutory supplementary guidance. The fundamental policy relating to sustainable development is LDP STRAT 1, which states that developers should seek to demonstrate a number of sustainable development principles, which the planning authority will also use in deciding whether or not to grant planning permission. The council's position is, essentially, that this development has failed to demonstrate that it meets the second of these principles; namely, to make efficient use of vacant and/or derelict land including appropriate buildings.

8. The appellant, on the other hand, has drawn support from policy LDP DM1, which concerns development within the Development Management Zones identified in the LDP. The appeal site lies within a Rural Opportunity Area, where the policy states that encouragement will be given to sustainable forms of development of a small scale on appropriate sites, as well as small scale infill, rounding-off, **redevelopment** (*my emphasis*) and changes of use of existing buildings. This policy does not, therefore, preclude the redevelopment of existing buildings.

9. At issue in this case is how the sustainability of a proposal to demolish an existing building and replace it with a new one has to be demonstrated. The council's position seems to be that this requires an assessment of the costs of repairing the existing building so that it can be retained. I am not persuaded that this is the case. Such an assessment is in fact more a consideration of the economic viability of a proposed development rather than its inherent sustainability.

10. I do not think that it can be automatically assumed that the erection of a new house rather than the repair and retention of an existing one is an unsustainable option. Taking a long-term view, a new house with modern methods of construction and insulation may well be a more sustainable development than seeking to repair an unsatisfactory existing building. The difference between the two reports submitted in connection with this proposal could well be characterised as the difference between a long-term (and possibly pessimistic) view and a short-term (and possibly optimistic) approach. Thus the report commissioned by the appellant concludes that, even with repairs, it cannot be guaranteed that the building will be wind and watertight or free of dampness; and therefore fit for human habitation in the long run. In contrast, the report undertaken for the existing tenant concludes that necessary repairs could easily be carried out without undue disruption to the occupants at what appears to be a relatively modest cost.

11. I am not in a position to make an informed judgement between these two views, put forward by qualified professionals; a position which the council also found itself in. Unlike the council, however, I do not consider that it is necessary to do so. I do not consider that the LDP requires such a detailed assessment in every case. As indicated in paragraph 8 above, policy LDP DM1 allows for the redevelopment of existing buildings in the area in which this site is located. The current proposal is consistent with that policy.

12. The appellant's agent has drawn attention to other applications for the demolition of existing houses in Argyll and Bute, listing 46 that have been approved since 2008. I appreciate that individual cases have to be treated on their merits and, of those listed, a majority were considered before the current LDP was adopted. In addition I have no detailed information on the circumstances and context of most of these approvals. However, details have been submitted of two cases which were considered at about the same time as the application which is the subject of this appeal was being processed. Planning permission was granted for the demolition of an existing house and the erection of a replacement house in Appin in September 2018; and for a similar proposal on the Isle of Tiree in October 2018. The Report of Handling of the former application states that the existing "traditional" dwellinghouse was in a state of neglect and presented a suitable opportunity for redevelopment in accordance with policy LDP DM1. In the second case the Report of Handling contains no discussion about the relative merits of retaining and repairing the existing house. In both reports, under the question of whether a sustainability checklist has been submitted the answer is in the negative, and no issue has been raised with this. The conclusion in both cases is that the development complies with, amongst others, policies LDP STRAT1 and LDP DM1.

13. I acknowledge that this proposal has proved particularly controversial (and I return to some of the issues raised later), and this has no doubt influenced the council's approach. The cases referred to above make clear, however, that that the council does not automatically require an assessment of the costs of repair before agreeing to the demolition

of an existing house or deciding whether such a proposal is compliant with policy LDP STRAT1. Indeed, the available evidence suggests that it is not its normal practice to do so. Notwithstanding the contentious nature of this proposal, in considering the intrinsic planning issues it raises, I find that it is not necessary to make a detailed assessment of the costs of repairing the present house.

14. More pertinent is whether there are any overriding planning reasons that justify the retention of that house. It is not listed as being of special architectural or historic interest; nor is it within a conservation area. I appreciate, however, there will be attractive buildings that are unlisted and outwith conservation areas that, nonetheless, make a significant contribution to the character of an area; and which the planning authority would not wish to see demolished and replaced by a modern structure. The council has stated in this case that the existing house exhibits some degree of local distinctiveness, and that its demolition without being able to demonstrate that it does not represent an opportunity to preserve the local distinctiveness of the area through its conservation and continued use would be contrary to the advice contained within Planning Advice Note (PAN) 72: Housing in the Countryside.

15. I consider that the council's position on this matter is overstated. Whilst the original cottage might be of some interest because of its age and construction, I find that, taken as a whole, the house is of no significant architectural interest or distinction. It is situated at some distance from the village of Taynult in a rural area where there is a scattered pattern of development showing no coherent architectural character. I consider that its demolition would have no adverse impact on the overall character of the local area. This reinforces my finding that there is no requirement to justify that demolition in comparison to the costs of repair.

16. The council has made no comments on the design of the proposed replacement house. This would be a small, single-storey building to be clad in timber with a profiled metal roof. I consider that its size and design are appropriate to the locality and that it would be an acceptable replacement for the present house in design terms. I find that it would be consistent with policy LDP 9 concerning development setting, layout and design. It would also not conflict with policy LDP 3, which seeks to protect, conserve or where possible enhance the established character of the built environment.

17. In terms of other development plan policies that have been mentioned in submissions, policy LDP 10 states that the council will support all development proposals that seek to maximise resources and minimise consumption; and accord with a number of factors including sustainable design principles and minimising waste. The council has made no reference to this policy. As I have indicated in paragraph 9 above, the cost of repairing and retaining a building is not a measure of the sustainability of that option compared to replacing it with a new building. I acknowledge that the demolition of the present house would generate some waste materials that would need to be disposed of but, given the small size of the building, I do not see this to be a serious issue. The construction of the new house would require new materials, the production of which would have some carbon footprint. However, there is no inherent reason why some of these materials, particularly the timber required, cannot come from sustainable sources. As I have also previously stated, a new house with modern construction and insulation standards may well have a lower carbon footprint in the long term than a repaired existing house. The council

has not required a sustainability assessment to be carried out for this proposal. I note that in the cases referred to in paragraph 12 above, the council either made no mention of policy LDP 10 or concluded that the development accorded with it. I am satisfied that the current development does not conflict with that policy.

18. In the submissions for the tenant, reference is made to supplementary guidance policy SG LDP ENV 21. This policy is within supplementary guidance on the historic built environment and archaeology. It provides additional detail to policy LDP 3 and states that opportunities for the enhancement and re-use of existing buildings will be sought, through proposals for re-building, re-use or change of use, to maintain the fabric of the building and its value to the community. I have concluded above that the present house is of no historic or architectural significance, and that its replacement with the proposed new house would not conflict with policy LDP 3. I therefore find it would also not conflict with policy SG LDP ENV 21.

19. Supplementary guidance policy SG LDP BUS3 seeks to safeguard existing businesses. Although I consider the effect of this development on the tenant's business in due course, the current proposal has no direct impact on the building in which that business is located, which lies outwith the appeal site. I therefore consider policy SG LDP BUS3 is of no direct relevance in this case.

20. I conclude that the proposed development complies with policies LDP DM1 and LDP 9 and does not conflict with policies LDP STRAT1, LDP 3 and LDP 10. Despite references to the vision and objectives of the LDP in the submissions made on behalf of the tenant, I do not consider that the development would in any way affect the achievement of those objectives. I therefore find that, taken overall, the proposal accords with the relevant provisions of the development plan.

21. It therefore remains to consider whether there are any material planning considerations which would, nevertheless, warrant the refusal of planning permission.

National planning policies and guidance

22. Scottish Planning Policy (SPP) contains a presumption in favour of development that contributes towards sustainable development. Paragraph 29 states that policies and decisions should be guided by a number of principles, including making efficient use of existing capacities of land, buildings and infrastructure. As with policy LDP STRAT 1 I do not believe that this requires that every existing building must be retained, and it is clear from some of its previous decisions involving the demolition of existing houses that the council also accepts this. I have concluded that there is no overriding reason in terms of preserving the character of the area to retain the existing house, and therefore no overriding reason to prevent its demolition.

23. I therefore find that there is no overall conflict between this development and SPP. Similarly, there is no conflict with PAN 72 which, whilst it refers to the opportunity provided by the sympathetic restoration of existing buildings to maintain the character and distinctiveness of places, contains no implication, in my view, that all existing rural houses need to be retained. I have concluded that the demolition of the present house would not

have an adverse effect on the character or distinctiveness of the area. The erection of a new house on its site would ensure no overall loss of rural housing.

Other considerations

24. There is no doubt that the controversy generated by this proposal arises to a large extent because of the concerns raised by and on behalf of the tenant of the existing house; and particularly the implication that he may become homeless and also be unable to continue to run his bicycle hire business (the Rusty Cycle Shed) as a result. Some 130 email objections have been lodged, all with a similar wording, and most from people living a considerable distance from the site. The tenant's submission states that many of these objectors are regular visitors to the area and/or clients of his business

25. It is suggested that demolition of the present house may contravene the tenant's rights under Article 8 of the European Convention on Human Rights, which provides for respect for private and family life, home and correspondence. However, I consider that the tenant's rights in respect of his occupation of the house are safeguarded through other legislation. I note that proceedings are pending regarding the landlord's attempt to obtain possession of the house and they are an entirely separate matter. The details of the tenancy agreement, including the tenant's rights and the landlord's obligation, are not a matter for me to consider. Granting planning permission for the demolition of the house does not override any decision made by the courts. It is therefore conceivable that, even if planning permission were to be granted, the appellant would be unable to implement it because of other legal requirements. The landlord would still need to obtain possession of the house, which would be a matter for the courts to decide. If the tenant were to be rendered homeless as a result, the council as housing authority may have obligations to address that fact.

26. Related to this matter is the claim made in the objections that the appellant is only seeking to demolish the house to avoid compliance with the RSEO. The motivation of a person in applying for planning permission is rarely a material planning consideration, and I see no reason to make an exception to that general view in this case. Again, I note that there are ongoing proceedings regarding the enforcement of the RSEO, the outcome of which might affect whether the appellant can implement any planning permission granted. I do not accept, however, the council's contention that consideration of the RSEO has any material bearing on whether such permission should be granted. Rather it is a parallel process to be determined in accordance with its own relevant legislation and procedures. Enforcement of the RSEO, which would require certain repairs to the house to be undertaken, is not, in my view, directly relevant to the issue of the sustainability or otherwise of the current proposal; which is, as I have indicated above, more than simply a comparison of respective costs.

27. A second issue raised by the objectors concerns the future of the tenant's business if he is unable to live in the house. This business is operated from a shed situated to the west of the house and outwith the boundaries of the current appeal site. Access to the shed, however, runs through the site. I understand that this shed is held under a separate legal arrangement with the trust, which is also seeking its re-possession. That is a separate legal matter. I accept that, if the tenant is unable to remain living in the vicinity, there would be practical difficulties, including access, in continuing to run his bicycle hire business from

its present premises. However, that is not a direct consequence of the demolition of the present house and its replacement with a new one. Rather, it arises from the tenant's legal relationship with his landlord. It is conceivable, for example, that if the lease of the shed was terminated, the business would have to cease in any event.

28. I appreciate that the bicycle hire business may provide a useful facility supporting tourism in the area, and it obviously commands a degree of loyalty from its customers. There is no evidence before me, however, as to whether or not alternative premises, either in the immediate locality or in Taynuilt itself, could be found from which to operate the business. The council, in its submissions, makes no reference to the business, which may reflect its view that it is not a material planning consideration in this appeal. If that is its position, I consider that it is correct. The future of the business is not a material consideration in assessing the planning issues raised by the current proposal to demolish the existing house and build a new one on its site.

29. I understand that this development, if implemented, would cause difficulties for the present tenant of the house. However, I do not consider that his personal circumstances, including the relationship with his landlord, represent a material planning consideration in this case. The purpose of the planning system is generally taken as to manage development and land use in the broader public interest, rather than to protect individual private interests. I have concluded above that this proposal accords with the relevant policies of the development plan and does not conflict with national planning policies. I do not believe that the issues raised by the tenant concerning his occupation of the house and the operation of his business override that conclusion or indicate that the appeal should be determined other than in accordance with the development plan.

30. During the course of the consideration of the original application by the council, the potential presence of bats, which are European Protected Species, using the existing house was raised. Consequently a bat survey was undertaken, which confirmed that there was evidence of a single summer, non-breeding, long-eared bat roost in the roof, which would be destroyed if the building was demolished. There was no evidence of other bat species using the building. Mitigation measures were recommended, including on the timing and supervision of demolition works, and the erection of two bat boxes on a nearby tree. Subsequently the necessary licence for disturbing the bat roost was obtained from Scottish Natural Heritage. I am therefore satisfied that the protection of any bats using this site can be adequately covered through a planning condition requiring the necessary mitigation measures to be implemented.

Conclusion

31. I therefore conclude, for the reasons set out above, that the proposed development accords overall with the relevant provisions of the development plan and that there are no material considerations which would justify refusing to grant planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

32. The council has recommended five conditions to be imposed if planning permission were to be granted. The first of these is unnecessary, as the developer is obliged to carry

out the developer in accordance with the approved plans, as listed below. I have imposed the remaining conditions with minor modification as necessary.

M D Shiel

Reporter

Application drawings

Location plan at 1:10,000 scale

Location plan at 1:2500 scale

Drawing A1 showing site plan, plan and elevations of new house

Drawing A2 showing plan and elevations of existing house

Conditions

1. No development shall commence until written details of the type and colour, including any proposed staining and/or painting, of the timber boarding and metal sheeting to be used to clad the external walls and roof of the dwellinghouse hereby approved have been submitted to and approved in writing by the planning authority. The development shall thereafter be completed using the approved materials or such alternatives as may be agreed in writing with the planning authority.

Reason: to help integrate the new development into its surroundings.

2. No demolition works shall commence until details of the proposed means of boundary and surface treatment to be applied to the cleared site have been submitted to and approved in writing by the planning authority. Upon completion of the demolition works all waste materials shall be removed from the site, and the duly approved scheme of boundary and surface treatment implemented in full within a period of one month from the completion of the works unless otherwise agreed in writing with the planning authority.

Reason: to protect the amenity of the locale.

3. The existing dwellinghouse, Barr Bheag, shall be demolished solely in accordance with the mitigation strategy for bat species contained in the European Protected Species Licence issued by Scottish Natural Heritage (licence number 131346, currently held by Mr Ross Preston of Middle Cottage, 2 East Kames, Lochgair, Argyll) or any subsequent European Protected Species Licence that might be issued. No demolition of this building shall be carried out without an extant European Protected Species Licence issued by Scottish Natural Heritage, or else following written confirmation from Scottish Natural Heritage that such a licence is no longer required.

Reason: in order to ensure the protection of bats and appropriately mitigate for the loss of potential or actual bat roosts.

4. The development shall incorporate a surface water drainage system which is consistent with the principles of Sustainable Drainage Systems (SuDS) compliant with the guidance set out in CIRIA's SuDS Manual C753. Details of the requisite surface

water drainage shall be submitted to and approved in writing by the planning authority before development commences on the site, and shall be operational prior to the development being brought into use and shall be maintained as such thereafter.

Reason: to ensure the provision of an adequate surface water drainage system and to prevent flooding.

Advisory notes

- 1. The length of the permission:** This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development has been started within that period (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
- 2. Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
- 3. Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).