Mr Paul Paterson

2 Manor Way

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PA21 2BF

Lynsey Innis

David Logan

Head of Legal and Regulatory Support

Legal and Regulatory Support

Kilmory,

Lochgilphead,

Argyll,

PA31 8RT

Local Review Body,

Committee Services,

Argyll and Bute Council,

Kilmory,

Lochgilphead, PA31 8RT

Friday, 29th February 2024.

Dear Lynsey Innis & David Logan,

LOCAL REVIEW BODY REFERENCE: 24/0003/LRB

PLANNING APPLICATION REFERENCE: 22/00221/PP

ANDREWS GARAGE, TIGHNABRUAICH, PA21 2DS

Find herewith the following added representation as requested and before no later than 13th March 2024. As per email sent to me from Lynsey Innis on 28th February

2024. This added representation is with regards to the added material from the applicants engineers report – Mr Whittle on the 26th February 2024.

The following representation from me, Paul Paterson of 2 Manor Way, Tighnabruaich, PA21 2BF is as follows:

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The only areas I wish to bring attention to with relation to Mr Whittle's added memorandum is:

"It is acknowledged that our January 2023 report does not refer to policy in NPF4 (February 2023), as pre-publication data was not available to permit this."

"that Policy 82 of the Proposed Local Development Plan (October 2023)"

Publication for NPF4 for adoption came into force on 13th February 2023 and prior to that all local authorities and its NGO's / subsidiaries and all stakeholders were made aware of NPF4 on 16th January 2023, prior to this it was well acknowledged and advertised that NPF4 was going ahead and all stakeholders were given ample time to adjust their own polices and working practices.

[Chief Planner Letter: NPF4 stakeholder update - January 2023]

Policy 82 also came into force, with the Planning (Scotland) Act 2019 the National Planning Framework (NPF4) now contains the detailed policy framework that was previously set out in old style local development plans. Most recently the Court of Session has set out its legal opinions on NPF4 through various cases, judicial reviews on NPF4 Policy 3(b)(iii). Furthermore, there was no Environmental Impact Assessment ("EIA") from the applicant that could be relied upon within the correct legal framework of that policy.

It is seen that Argyll and Bute Council Planning Department have made correct decisions with this planning application and may I point out the following which ends my representation within this matter.

If this was to go further the following should be noted:

The legal principles to be applied when determining an appeal against a decision of a reporter or the Scottish Ministers might be summarised as follows (per Lindblom LJ in St Modwen Developments v Secretary of State for Communities and Local Government [2017]

EWCA Civ 1643, [2018] PTSR 746 at [6]:

"(1) Decisions of the Secretary of State and his inspectors in appeals against the refusal of planning permission are to be construed in a reasonably flexible way. Decision letters are written principally for parties who know what the issues between them are and what evidence and argument has been deployed on those issues. An inspector does not need to "rehearse every argument relating to each matter in every paragraph" (see the judgment of Forbes J. in Seddon Properties v Secretary of State for the Environment (1981) 42 P & CR 26, at p.28).

(2) The reasons for an appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the "principal important controversial issues". An inspector's reasoning must not give rise to a substantial doubt as to whether he went wrong in law, for

example by misunderstanding a relevant Policy or by failing to reach a rational decision on relevant grounds. But the reasons need refer only to the main issues in the dispute, not to every material consideration (see the speech of Lord Brown of Eaton-under-Heywood in South Bucks District Council and another v Porter (No. 2) [2004] 1 WLR 1953, at p.1964B-G).

(3) The weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision-maker. They are not for the court. A local planning authority determining an application for planning permission is free, 'provided that it does not lapse into Wednesbury irrationality' to give material considerations 'whatever weight [it] thinks fit or no

6 weight at all' (see the speech of Lord Hoffmann in Tesco Stores Limited v Secretary of State for the Environment [1995] 1 WLR 759, at p.780F-H). And, essentially for that reason, an application under section 288 of the 1990 Act does not afford an opportunity for a review of the planning merits of an inspector's decision (see the judgment of Sullivan J, as he then was, in Newsmith v Secretary of State for

Environment, Transport and the Regions [2001] EWHC Admin 74, at Paragraph 6).

(4) Planning policies are not statutory or contractual provisions and should not be construed as if they were. The proper interpretation of planning Policy is ultimately a matter of law for the court. The application of relevant Policy is for the decisionmaker. But statements of policy are to be interpreted objectively by the court in accordance with the language used and in its proper context. A failure properly to understand and apply relevant policy will constitute a failure to have regard to a material consideration, or will amount to having regard to an immaterial consideration (see the judgment of Lord Reed in Tesco Stores v Dundee City Council [2012] PTSR 983, at paragraphs 17 to 22).

(5) When it is suggested that an inspector has failed to grasp a relevant policy one must look at what he thought the important planning issues were and decide whether it appears from the way he dealt with them that he must have misunderstood the Policy in question (see the judgment of Hoffmann LJ, as he then

was, South Somerset District Council v The Secretary of State for the Environment (1993) 66 P & CR 80, at p.83EH).

(6) Because it is reasonable to assume that national planning policy is familiar to the Secretary of State and his inspectors, the fact that a particular policy is not mentioned in the decision letter does not necessarily mean that it has been ignored (see, for example, the judgment of Lang J. in Sea Land Power & Energy Limited v Secretary of State for Communities and Local Government [2012] EWHC 1419 (QB), at Paragraph 58)

The amount of information that a planning decision-maker required in order to assess and decide upon the relevant planning application was a question of planning judgment: Simson v Aberdeenshire Council 2007 SC 366 at 379.

Kind regards

Paul Paterson

Freelance Press Photojournalist & Photographer

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