

Responses to representations from interested parties. 5 pages

1. Planning Authority

“STATEMENT OF CASE”

Our Pre Application Advice Report was dated 17 August 2021.

Our Application for Planning Consent was dated 3 February 2022.

Our Decision of Refusal was dated 2 February 2024.

In the two years between application and refusal we were never afforded the opportunity to revise plans or work with the Council to address issues now being held up as reasons for refusal. We were told in December 2023 that our application had “timed out”, admittedly the fault of the Council due to delays in responses from statutory consultees. Roads hardly responded at all during those two years to our requests and submission of information via Steven Gove, our Planning Officer.

We believed that issues were not insurmountable and could be addressed by conditions but we were told that this was not now open to us.

For example, regarding parking we own the entire site so it is not inconceivable that parking could be provided downhill on the main garage forecourt which would have improved access sightlines, for example.

Kirsty Sweeney, Area Team Leader has been helpful giving us guidance on what options were open to us, one of which was the request for a Review.

“DESCRIPTION OF SITE”

The site currently has an established use as vehicle parking and storage.

There has been intensive use of the site access as used for “parking and storage” for all of Andrew Sim’s recovery vehicles, as evidenced in the Sales Particulars – see Consultee statement Anthony Carson’s Appendix 1. which shows relevant right hand smaller shed on site empty and 5 interior shots – 4 of the larger garage downhill and one of the relevant smaller garage (top right of sales particulars) with a recovered motorbike sitting on one of the recovery trailers.

“STATEMENT OF CASE”

We took cues from surrounding buildings as detailed in our submission and associated documents.

Issues over siting, design, etc should have been dealt with by revision/negotiation or consent conditions, but through no fault of ours we were denied this.

There are several 3 – storey buildings on Main Street in the village centre. Namely, Albert Building, Bute View and Royal Buildings each of which contain two storeys of individual residences above commercial ground floor units.

With a S and W facing garden area and a large E, S and W facing balcony there is ample outdoor and amenity space. Indoors the proposed house has a high standard of residential amenity and space for modern living.

We should have been afforded the opportunity to address and revise the question of access and parking between submission of our application 3 Feb 2022 and subsequent refusal 2 Feb 2024 but were not. The site we own is much larger than the proposed house site in question so it was not outwith the realms of possibility for us to alter the site boundary to include a more acceptable area for access and parking.

In our “reasons for requesting the review” page 10 - 12 we believe that two consultants have produced comprehensive reports which adequately addressed the question of whether or not the site could be deemed to be “contaminated land” -

- i) Site Investigation and Environmental Report 24.06.2022 (Council portal 15.07.22) see Table 1 Conceptual Site Model and
- ii) Environmental Assessment Report Crossfield Consulting Ltd (Council portal 10.07.23)

Fundamentally for land to be identified as contaminated there **must** be all three elements of a pollutant linkage present – a contaminant (e.g. hydrocarbon), a pathway (e.g. an aquifer) and a receptor (e.g. fish or humans)

Sampling of the site showed no presence of contaminants.
The site geology shows it to be underlain by non-permeable rock with no underlying aquifer.
There is wildlife present and humans on a temporary basis currently.
So in simple terms the land cannot be identified as “contaminated” and the Council does have a Strategy on contaminated land which supports this view.

The proposed garden area has much established vegetation growing as can be seen in images in our submitted documents.

“REQUIREMENT FOR ADDITIONAL INFORMATION AND A HEARING”

We have raised much new information, supported by evidence, in our submission challenging the Council’s assessment of our site, surroundings, daylight in the proposed garden/amenity space, massing of the building, etc where we have demonstrated that it will be mainly hidden by the larger shed remaining on the overall site and that it will not “break the skyline when viewed from the village shops”.

We contend that the proposal, albeit small scale, has had complex and challenging issues and our submission highlights conflicting, evidence-based disagreement with the Council’s assessment. Also, we have been denied the opportunity to revise/amend the proposal through no fault of our own which, admittedly, is wholly due to the Council representing a loss of 2 years of our time.

“COMMENT ON APPELLANTS’ SUBMISSION”

It should be noted that the Report of Handling was published with Refusal on 2 Feb 22 and that all issues referred to in the Council’s Statement of Case were only seen by us then. At no point during the preceding 2 years were we afforded the opportunity to discuss these issues in detail with any Council official. So the RoH is lengthy as it refers to our “first shot” at applying for planning consent, not any subsequent revisions which are absent for the reasons above. And we were open to revision!

In response we would comment that, of course, we have set out our own case with regard to the Council's Reasons for Refusal since many of them are misleading, incorrect and not evidence based. Particularly, where the Council's Roads department has overseen development at a Council owned facility in the village which does not comply with the standards of access and sightlines being imposed on us – reference our Schedule of documents No. 9 the sightlines of the Council owned village coach and car park which has recently been subject of development encouraging intensification of use. It cannot be one rule for the Council and one for the public and where this has impacted on our application.

We understand that where contaminated land is alleged, as in this case, a pollutant linkage must be established between three components, i.e. a contaminant, a pathway and a receptor. Our consultants did not identify, through surveying, testing and sampling, that all three of those prerequisites were present on our site and, therefore, the site could not be identified as contaminated land. One of our consultants is regularly called as an expert witness in court proceedings and has almost 4 decades of experience in his field, reference pages 10 – 12 of our submission for review.

It has been proven that there were indeed malign forces at work whereby false allegations have been made in response to our planning application. In one case even an objection to our planning subsequently proven to be a completely falsified set of circumstances alleging our removal of contaminated soil by an excavator parked there overnight, unbeknown to us, which was actually working on a Council contract on Village Brae.

“CONCLUSION”

We recognise that the Council makes decisions based on the LDP, now LDP2. However, it also makes decisions taking into account all the terms of Council Policy for different areas within the local authority area. Tighnabruaich has never managed to shake the yoke of being identified as an economically fragile area.

Given that the proposed house is intended as a permanent dwelling for us directly associated with our proposed reinstatement of Susy's Tearoom with STL properties above, overall what we are proposing is investment in this "fragile" economy and, we would say, currently a failing one – Tam's Tool Store closed and empty, Raj considering closing the Premier Store and the Tighnabruaich Gallery also rumoured to be closing unless a new tenant can be found. The only retail shops left on the village Main Street will be a charity shop, a second hand shop and the seasonal RNLI shop.

Both applications, submitted together, cost us almost £ 5K in Jan/Feb 2022.

We believe that all the issues we discussed with Kirsty Sweeney and Steven Gove during our meeting on 30 January in Dunoon, following being told that both our applications were going to be refused, are not insurmountable and could be made subject of conditions. We have no objection to revising the design of the building away from Art Deco by tweaking external appearance and changing the flat roof to mono-pitch as discussed similar to the Old Fire Station, our nearest neighbour.