

**STATEMENT OF CASE
FOR
ARGYLL AND BUTE COUNCIL
LOCAL REVIEW BODY**

**REFUSAL OF PLANNING PERMISSION FOR ALTERATIONS TO
GARAGE TO PROVIDE 1 FLAT AT UPPER LEVEL AND EXTERNAL
ALTERATIONS AT 22 JANE STREET, DUNOON, ARGYLL, PA23 7HX.**

APPEAL REF. NO. 12/00001/REFPLA

LOCAL REVIEW BODY REF. 12/0004/LRB

**PLANNING PERMISSION APPLICATION
REFERENCE NUMBER 11/01281/PP**

WRITTEN SUBMISSIONS

27th January 2012

STATEMENT OF CASE

The planning authority is Argyll and Bute Council ('the Council'). The appellant is Cowal Building and Plumbing Supplies.

An application for planning permission (ref. 11/01281/PP) for alterations to garage to provide 1 flat at upper level and external alterations at 22 Jane Street Dunoon (*the appeal site*) was refused under delegated powers on 28th October 2011. The planning application has been appealed and is the subject of referral to the Local Review Body.

DESCRIPTION OF SITE

The subject of this appeal is a single storey garage repair workshop on Jane Street that is bounded by Cowal Building and Plumbing builder's yard to the south and west, to the north by a two-storey building formerly in use as a guest house and to the east by lock-ups and commercial businesses and yards. The garage is currently owned and operated by the applicants and the former guest house building and derelict building to the rear is also owned by the applicants in addition to other buildings surrounding the site.

The appeal site also includes off-street car parking spaces on a lane east of Jane Street. The applicants have stated that they own 12 off-street car parking spaces.

SITE HISTORY

The subject premises were in use recently as a motor repair garage but closed in April 2009. The premises have been re-opened recently and used intermittently by the applicants to service their vehicle fleet. The lawful use is still a garage repair workshop (Class 5).

Planning permission (ref. 09/00633/DET) for the erection of a pitched roof and external alterations to the garage was granted on 9th June 2009 but has not been implemented.

An application (ref. 10/01434/PP) for alterations to garage to provide 2 flats at upper level and external alterations was refused on 12th November 2010 and a subsequent appeal to the Local Review Body (ref. 11/00001/LRB) was dismissed on 28th February 2011 by virtue of lack of amenity space for flats, bad neighbour in reverse in terms of compatibility with the existing garage below and loss of car parking spaces.

Planning permission (ref. 11/01115/PP) for alterations and conversion of the former guest house at 24 Jane Street into 4 flats was granted on 15th November 2011.

Planning permission (ref. 11/01168/PP) for alterations and change of use of outbuilding at 24a Jane Street to form 2 flats was granted on 18th November 2011.

STATUTORY BASIS ON WHICH THE APPEAL SHOULD BE DECIDED

Section 25 of the Town and Country Planning (Scotland) Act 1997 provides that where, in making any determination under the planning Acts, regard is to be had to the development plan, and the determination shall be made in accordance with the plan unless material considerations indicate otherwise. This is the test for this application.

STATEMENT OF CASE

Argyll and Bute Council considers the determining issues in relation to the case are as follows:-

- Whether the proposed 2-bed flat above the existing garage will be able to enjoy full residential amenities given the scope of potential Class 5 operations that could take place in the premises below;
- Whether the proposed residential use above an existing Class 5 industrial use would result in 'bad neighbour in reverse' complaints from the noise sensitive property above;
- Whether the proposal would result in a loss of car parking spaces.

The Report of Handling (Production 1) sets out the Council's assessment of the application in terms of Development Plan policy and other material considerations. The consultation comments submitted by statutory consultees (Production 2) are attached for the purpose of clarity.

REQUIREMENT FOR ADDITIONAL INFORMATION AND HEARING

It is considered that no new information has been raised in the appellants' submission which would result in the Planning Department coming to a different determination of this proposal. The issues raised were covered in the Report of Handling which is contained in the Appendix. As such, it is considered that Members have all the information they need to determine the case. Given the above and that the proposal is small-scale, has no complex or challenging issues and has not been the subject of significant body of conflicting representation, then it is considered that a Hearing is not required.

COMMENT ON APPELLANT'S SUBMISSION

Having regard to the detailed reasons for requesting the review set out in part (7) of the appellants' submission the following summary points are noted in response to the appellant's comments:

1. *The applicant's agent notes that their client previously obtained planning permission for the erection of a pitched roof (ref. 09/00633/DET) for this property and now looks to include the construction of one flat whilst carrying out these works. The client fully intends to retain the ownership of the garage and flat with the view to renting the flat out to an employee.*

Comment: Planning permission (ref. 09/00633/DET) for the erection of a pitched roof and external alterations to the garage was granted on 9th June 2009 but has not been implemented. That proposal was to retain and improve the garage facilities for the servicing of the applicants' vehicle fleet. The proposal involved the removal of the existing monopitch roof and replacing it with a pitched and gabled roof. This would result in a raising of the wallheads and increasing the roof height. The roof was to be finished in grey metal cladding and walls finished in a wet dash render. The existing garage doorway would be replaced by a metal clad roller door. An existing window in the front (west) elevation would be replaced by a new upvc window. The maximum height of the roof would be approximately 7.5 metres to the apex (where the highest point at present is approximately 3.2 metres). The proposals were considered to be acceptable in terms of scale, design and materials as it related to an improvement to the existing garage

only. The agent appears to be amalgamating the previously approved garage alterations proposal with the refused scheme to build a residential flat above the garage. No residential accommodation was ever proposed for the alterations to the garage approved under permission ref. 09/00633/DET.

The agent's comments regarding renting the flat out to an employee was however considered and assessed in the report of handling in consultation with Public Protection. It was acknowledged that the planning system could not tackle existing noise problems directly but did have the task of guiding development to the most suitable locations and in regulating the layout and design of new development. The noise implications of development however are considered to be a material consideration in determining applications for planning permission. Given the requirements to safeguard the proposed residential unit from the existing lawful industrial use below, it was considered that planning conditions alone could not guarantee a level of amenity expected by future occupants of the flats from the range of industrial activities carried out below without any requirement for planning permission.

Members previously agreed with this recommendation for a similar scheme for two flats above the garage (application ref. 10/01434/PP & appeal ref. 11/00001/LRB) at the Local Review Body on 28th February 2011 (Production 4) where the previous proposal was unanimously refused on grounds of poor level of residential amenity, introducing a noise sensitive use and 'Bad Neighbour in Reverse' and loss of car parking spaces. The circumstances surrounding the mix of industrial and residential have not changed.

2. *The agent states that the existing garage will only be used for servicing their clients own business vehicles and will not be opened to the public.*

Comment: This aspect was considered and assessed in the report of handling in consultation with Public Protection and found to be unsupportable due to existing lawful use rights and powers available to address noise issues in a single unit containing an existing industrial unit on the ground floor and a proposed residential unit above.

3. *The agent advises that any concerns regarding noise have been dealt with during the building warrant approval (ref. 10/00930/ERD) received for the previous proposal for two flats.*

Comment: While a Building Warrant (ref. 10/00930/ERD) was previously approved for the two-flat scheme (ref. 10/01434/PP), Building Control confirm that the proposal was only assessed against a 'non-domestic' rating in the Building Regulations which is a very general category and not assessed against any specific noisy industrial uses that would have a significant impact on the proposed noise sensitive flats above. For this reason, approval of the Building Warrant does not address the comments made by Public Protection in their response dated 19th September 2011.

4. *The agent notes that his clients also owns the neighbouring builders merchants yard and nos. 24 & 24A Jane Street which have recently received planning permission to be converted into four and two flat properties.*

Comment: Ownership is noted and the department confirms that planning permissions have been granted recently for adjacent properties at 24 and 24a Jane Street (ref. 11/01115/PP & 11/01168/PP respectively). Unclear what point the agent is trying to make. The buildings that have approval could readily be converted and refurbished and served by a communal backcourt area without any need for the garage/residential proposal. The presence of the garage although not of great appearance would have no significant impact on the potential to convert the buildings to the north of the garage for residential purposes. A residential use on the garage site would however be preferable in terms of the overall streetscape and development of the street block.

It should also be noted that the applicant and his agent were advised at pre-application stage that it might be better to either demolish the garage and build a wholly residential development on the site or retain and improve the garage facility (email dated 16 May 2011) (Production 5).

CONCLUSION

Section 25 of the Town and Country Planning Act 1997 requires that all decisions be made in accordance with the development plan unless material considerations indicate otherwise.

The attached Report of Handling clearly details why planning permission could not be supported due to the proposed residential use above an existing Class 5 industrial use due to related noise and activities,

For clarification, in a pre-application meeting and correspondence with the agent and his client, the department informed that planning permission may be likely to be supported for the conversion of buildings at 24 and 24 a Jane Street but not at 22 Jane Street over the existing garage. This was the subject of a previous application that was refused then dismissed on appeal by the LRB where the circumstance have not altered significantly since the appeal was turned down due to concerns relating to residential amenity, introducing a noise sensitive use and 'Bad Neighbour in Reverse' and loss of car parking spaces.

Both Roads and Public Protection recommended refusal to the loss of car parking spaces and incompatible mix of residential and industrial uses within one building.

On the basis of the above, the department considers that the applicant and his agent were offered factual and practicable planning advice at a pre-application stage that went unheeded. The submission of a similar scheme to one that was previously dismissed by the LRB (and within one year of that scheme being refused) has not altered either the department's views or that of Roads and Public Protection.

The department therefore feels that it was correct to recommend refusal a second time around as the proposal is still contrary to PAN 1/2011 "*Planning and Noise*", Policy LP ENV 19 'Development Setting, Layout and Design' including Appendix A Sustainable Siting and Design Principles, Policy LP BAD 2 'Bad Neighbour Development in Reverse' and LP TRAN 6 Vehicle Parking Provision of the Argyll and Bute Local Plan (August 2009).

Taking account of all of the above, it is respectfully requested that the appeal be dismissed.

APPENDIX

- Production No.1** Report of Handling dated 27th October 2011;
- Production No. 2** Consultation comments submitted by statutory consultees;
- Roads and Public Protection;
- Production No.3** Photographs of the appeal site and car parking court taken 18th April 2011, 9th August 2011 and 17th August 2011;
- Production No. 4** Extract from LRB Agenda and Minutes 28th February 2011 for refused scheme at 22 Jane Street ref.10/01434/PP;
- Production No. 5** Pre-application enquiry e-mail to agent dated 16 May 2011.

DC/BCL/27.01.2012