

Argyll and Bute Council  
Development and Infrastructure Services

**Delegated Planning Application Report and Report of handling as required by Schedule 2 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 relative to applications for Planning Permission.**

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**Reference No:** 11/01281/PP  
**Planning Hierarchy:** Local application  
**Applicant:** Cowal Building and Plumbing Supplies  
**Proposal:** Alterations to garage to provide 1 flat at upper level and external alterations  
**Site Address:** 22 Jane Street, Dunoon, Argyll

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## DECISION ROUTE

(i) **Sect 43 (A) of the Town and Country Planning (Scotland) Act 1997**

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### (A) THE APPLICATION

- (i) **Development Requiring Express Planning Permission**  
Alterations to garage to provide an upper storey to accommodate one residential flat;  
External alterations to existing building;
  - (ii) **Other specified operations**  
Allocation of car parking spaces (2 car parking spaces for proposed flat);  
Connections to public water supply and public sewer system.
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### (B) RECOMMENDATION:

It is recommended that planning permission be refused for the reasons set out below.

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### (C) HISTORY

Subject premises were in use recently as a motor repair garage but closed in April 2009. Lawful use is 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 9<sup>th</sup> 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 12<sup>th</sup> November 2010 and a subsequent appeal to the Local Review Body (ref. 11/00001/REFPLA) was dismissed on 28<sup>th</sup> February 2011 by virtue of lack of amenity space for flats, bad neighbour in reverse in terms of the existing garage and loss of car parking spaces.

Associated planning applications ref. 11/01115/PP for alterations and conversion of guest house at 24 Jane Street into 4 flats and ref. 11/01168/PP for alterations and change of use of outbuilding at 24a Jane Street to form 2 flats have been submitted and currently being considered. These proposals intend to share a communal backcourt area with the current proposal.

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**(D) CONSULTATIONS:**

**Public Protection** (response dated 19<sup>th</sup> September 2011): Recommend refusal based on the siting of a dwelling above industrial premises from noise, odours, dust and particulates. Insufficient details regarding ventilation from the garage. Consider that planning conditions cannot control the 'bad neighbour in reverse' to safeguard the dwelling above a lawful garage.

**Area Roads Manager** (response dated 22<sup>nd</sup> September 2011): Recommend refusal due to shortfall of car parking spaces and in particular for the existing garage.

**Scottish Water** (response dated 8<sup>th</sup> August 2011): No objections in principle. Potential wastewater capacity issues and separate surface water drainage system required. Advisory notes recommended.

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**(E) PUBLICITY:** The application was advertised under Regulation 20(1) Advert Statement (publication date 5<sup>th</sup> August 2011, expiry date 26<sup>th</sup> August 2011).

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**(F) REPRESENTATIONS:**

A letter of representation has been received from Steven Baird of West End Furniture, Tom-A-Mhoid Road, Dunoon (letter dated 8<sup>th</sup> August 2011) who comments that part of the ground within the red outlined area is in fact common ground owned by both the applicants and himself. Mr. Baird has taken this matter up with his lawyers and hopes that he can come to an arrangement with C.B.P.S. to allow the development(s) to go ahead.

**Comment** – This is considered to be a civil matter between affected parties.

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**(G) SUPPORTING INFORMATION**

**Has the application been the subject of:**

- (i) **Environmental Statement:** No.
- (ii) **An appropriate assessment under the Conservation (Natural Habitats) Regulations 1994:** No.
- (iii) **A design or design/access statement:** Yes.

Operational Statement submitted 6<sup>th</sup> July 2011 stating that the garage is only to be used by Cowal Building & Plumbing vehicles and will not be a trading garage. The title for this property will be linked with the proposed flat so that neither can be in separate ownership. Operating hours will be flexible but no different to what the previous trading garage (Pearce & McKechnie) used to operate. Operating hours for the garage will be Monday to Friday 7.30am - 8pm, Saturday 7.30am – 6pm, Sunday 10am – 5pm.

A general Design Statement was submitted 5<sup>th</sup> August 2011 for development proposed by applications 11/01281/PP, 11/01115/PP and 11/01168/PP for conversion to flats that will be rented out by the property owner Stewart Shaw Ltd. It is intended that the existing rear courtyard area will be upgraded to provide access to some of these properties, a shared drying area, solid waste hard standing and a communal grassed area of approximately 65sqm. It is proposed to erect low level fencing to allow a reasonable distance away from ground floor windows.

The owner of these properties will also arrange for the general maintenance and upkeep of this area.

The flat at 22 Jane Street will have an external balcony of 20sqm.

The applicants agent considers that the amount of external amenity space proposed would be comparable to the new Cloch View flatted development that has virtually no amenity space.

- (iv) **A report on the impact of the proposed development e.g. Retail impact, transport impact, noise impact, flood risk, drainage impact etc:** No.

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**(H) PLANNING OBLIGATIONS**

(i) **Is a Section 75 agreement required:** No.

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**(I) Has a Direction been issued by Scottish Ministers in terms of Regulation 30, 31 or 32:** No.

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**(J) Section 25 of the Act; Development Plan and any other material considerations over and above those listed above which have been taken into account in the assessment of the application**

(i) **List of all Development Plan Policy considerations taken into account in assessment of the application.**

a) **Argyll and Bute Structure Plan 2002:** The following policies are applicable:

STRAT SI 1 - Sustainable Development;  
STRAT DC1 - Development Within the Settlements;

b) **Argyll and Bute Local Plan (August 2009)**

Policy LP ENV 19 Development Setting, Layout and Design (including Appendix A Sustainable Siting and Design Principles) and Sustainable Design Guidance;  
Policy LP HOU 1 General Housing Development;  
Policy LP BAD 2 Bad Neighbour Development in Reverse;  
Policy LP TRAN 6 Vehicle Parking Provision including Appendix C Access and Car Parking Standards.

(ii) **List of all other material planning considerations taken into account in the assessment of the application, having due regard to Annex A of Circular 4/2009.**

Scottish Planning Policy (February 2010);  
Planning Advice Note 67 – 'Housing Quality';  
Planning Advice Note 68 – 'Design Statements';  
Planning Advice Note 1/2011 - 'Planning and Noise';  
'A Policy Statement for Scotland - Designing Places';

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**(K) Is the proposal a Schedule 2 Development not requiring an Environmental Impact Assessment:** No.

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**(L) Has the application been the subject of statutory pre-application consultation (PAC):** No.

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**(M) Has a sustainability check list been submitted:** No.

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**(N) Does the Council have an interest in the site:** No.

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**(O) Requirement for a hearing (PAN41 or other):** No.

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**(P) Assessment and summary of determining issues and material considerations**

Policy Considerations

In the Argyll and Bute Local Plan (August 2009), the premises are situated within the Main Town settlement of Dunoon within an Area For Action AFA 2/1, where policies LP ENV19, LP HOU1, LP BAD2 and LP TRAN6 are all applicable.

### Site and Surroundings

The subject of this application 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 guest house and to the east by lock-ups and commercial businesses and yards. The garage is currently owned and operated by the applicants.

### The Proposal

The proposal is to add an additional storey to the garage building to provide accommodation within the roofspace for a two-bedroom flat. The walls of the existing building will be raised and surmounted by a new pitched and gabled roof of grey concrete tiles. The walls will be finished in white render.

An external staircase is proposed on the side (northern) elevation to the main entrance door serving the flat. An external balcony is proposed on the rear (east) elevation. No windows are proposed on the side (north and south) elevations with windows from habitable rooms on the front (west) and rear (east) elevations. Four rooflights are proposed on each roof slope.

The agent confirms that the garage is only to be used by the applicants for their vehicles and will not be a trading garage as before. The proposed hours of the garage will be flexible but no different to what the previous garage used to operate i.e. Monday to Friday 7.30am-8.00pm, Saturday 7.30am-6.00pm and Sunday 10.00am-5.00pm.

External alterations to the garage involve the installation of a new and enlarged roller door and installation of window.

It is proposed to redevelop the existing derelict courtyard that is enclosed by the garage/former guest house at 24 Jane Street and derelict building at 24a Jane Street into a communal courtyard area to serve the proposed 7 flats (1 flat above garage, 4 flats in guest house and two flats in derelict building). This shared external amenity space would also provide a hardstanding area for bin storage.

The applicants state that they own 12 off-street car parking spaces adjacent to the southern elevation of the premises. Two spaces are allocated for the flats but no provision has been made for the garage.

### Assessment

Policy LP HOU1 'General Housing Development' states a general presumption in favour of housing development unless there is an unacceptable environmental, servicing or access impact. Whilst the proposed flat would now have dedicated car parking spaces and a shared courtyard (proposed with adjacent properties at 24 and 24a Jane Street) for external amenity space in addition to the inclusion of an external balcony, it would be still be located above an existing repair garage within an industrial/commercial area. It is therefore considered that the creation of a residential flat above an industrial garage would be contrary to Policy LP HOU1.

As the proposal involves the creation of an additional residential storey above an existing industrial building, Policy LP BAD 2 'Bad Neighbour Development in Reverse' is crucial in an assessment of the proposal. This policy states a presumption against proposals that will introduce new incompatible development and associated land uses into, or adjacent to areas already containing developments classed as "Bad Neighbour" Developments.

Public Protection recommend refusal on the basis that situating dwellings above industrial premises such as a garage could be subject to nuisance from noise (vehicle engines, banging and grinding from repair work and machinery), odours (exhaust fumes, chemicals such as solvents and fuels) and to a lesser extent dust and particulates (exhaust fumes, repair work debris) unless appropriate safeguarding conditions can be put in place.

While it is noted that the garage is to be 'private use' by CBPS which will reduce disturbance from patron noise, it is assumed that the garage is still to be used for the maintenance of vehicles and repairs rather than purely secure storage. It is also noted that the applicant has submitted proposed hours of use for the garage (which are the same as the previous refused scheme).

PAN 1/2011 'Planning and Noise' advocates "a pragmatic approach to the location of new development within the vicinity of existing noise generating uses, to ensure that quality of life is not unreasonably affected". Public Protection are concerned that allowing new residential construction immediately above an existing industrial premises could not satisfactorily prevent or minimise the consequences of noise as it is unreasonable to restrict the opportunity for natural ventilation through opening windows in a domestic premises.

The garage building shows mechanical extraction for ventilation purposes but Public Protection note that there is insufficient detail provided as to where the ducting will discharge to the outside air. To prevent the possibility of nuisance from odour and fumes, any extraction from the garage should discharge above eaves level and, in addition, above any rooflight windows.

Public Protection considers that the introduction of a dwelling above an existing garage has the potential to create a bad neighbour development under LP BAD2. The commercial activities could affect the amenity of the residents through noise disturbance, odour, waste, and general disturbance (vehicle movements, deliveries, car parking etc.). The reverse applies where the business may require to amend its current operating arrangements to alleviate these issues, thus potentially affecting the viability of the existing garage.

Public Protection conclude that the proposal has the potential to be contrary to LP BAD2 and consider that the use of safeguarding planning conditions could not be applied that would adequately protect domestic occupants of the proposed first floor flat from potential nuisance from the activities of the existing legitimate usage of the garage premises.

It is acknowledged that the planning system cannot tackle existing noise problems directly but has 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 residential unit from the existing lawful use below, it is considered that planning conditions alone could not guarantee a level of amenity expected by future occupants of the flats from the industrial activities below.

The department do not normally encourage schemes close to or part of 'Bad Neighbour' development. This proposal to create a flat above an existing garage could lead to a very poor level of amenity for the future occupants and lead to complaints regarding the existing use and other noisy surrounding uses. Dunoon has sufficient land and buildings for housing development or conversion and poor quality redevelopment proposals such as the current scheme should not be encouraged. Additionally, it has not been suitably demonstrated that the garage below could operate without significant impact to the occupants of flats above in terms of operation and ventilation.

Furthermore, the proposal involves the provision of car parking spaces for the proposed flat (and proposed flats for the associated adjacent applications) but no provision for the existing garage. It is interesting to note that the previous scheme for 2 flats above the garage allocated three spaces for the garage. The current proposal provides no car parking spaces for the garage where the existing off-street car parking spaces on the lane east of Jane Street are exclusively give over to parking for the proposed flats.

Roads recommend refusal based on the shortfall of car parking for the garage and would require three additional spaces to be created for the garage which must be contiguous with that building. All parking bays must be delineated for use by flats/garage only.

Given Roads response, it is considered that the loss of three existing spaces to serve the existing garage could result in parking deficiencies in an area that is already congested and parking is very limited.

One letter of representation has been received from the owner of adjacent commercial premises indicating that part of the red line boundary is in common ownership. This is considered to be a civil matter between affected parties.

#### Conclusion

It should be noted that the proposed development differs little from a previous scheme for two flats above the garage that was refused and a subsequent appeal dismissed by Members on 28<sup>th</sup> February 2011. Following that refusal, the applicants discussed the redevelopment proposals in May 2011 when the department again reinforced its previous concerns of creating a residential flat above an existing garage. It was also suggested that the garage could be demolished to make way for a wholly residential scheme that would avoid potential Bad Neighbour in Reverse issues.

The applicants have however submitted three separate applications for conversion of three existing buildings to create 7 flats with shared communal external amenity space. While the proposed flat could benefit from this shared courtyard and balcony to provide an element of external amenity space (an original reason for refusal 1 of 10/01434/PP), there are still other insurmountable reasons in terms of land use compatibility and existing lawful use and operations that cannot be safeguarded by the use of planning conditions and are highlighted above.

It is considered that despite the proposed shared external amenity spaces, balcony, reduction to one flat only and control of the garage by the applicants, that the proposal is still unacceptable and would be contrary to policies LP ENV19, LP HOU 1, LP BAD 2 and LP TRAN 6 of the Argyll and Bute Local Plan (2009) and does not justify the grant of planning permission.

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**(Q) Is the proposal consistent with the Development Plan: No.**

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**(R) Reasons why planning permission or a Planning Permission in Principle should be granted. n/a**

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**(S) Reasoned justification for a departure from the provisions of the Development Plan n/a**

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**(T) Need for notification to Scottish Ministers or Historic Scotland: No.**

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**Author of Report: Brian Close**

**Date: 22<sup>nd</sup> September 2011**

**Reviewing Officer: David Eaglesham**

**Date: 27 October 2011**

**Angus Gilmour  
Head of Planning & Regulatory Services**

## APPENDIX TO DECISION REFUSAL NOTICE

Appendix relative to application 11/01281/PP

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(A) The reasons why planning permission has been refused

1. Given the lawful use of the Class 5 activities within the existing repair garage, the creation of a two-bedroom flat above the garage would result in a poor standard of amenity for future occupants, given the range of uses which could be carried out without the benefit of planning permission, resulting in disturbance generated by noise, odours, dust, particulates and activities associated with such an industrial use.

Furthermore, the introduction of a residential use above the existing garage building with associated window openings and rooflights could result in nuisance from smell, fumes and odours from the garage use below without the benefit of a suitable ventilation system to clear the residential unit.

Accordingly, to introduce a noise sensitive use above an existing industrial building would be 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 and Policy LP BAD 2 'Bad Neighbour Development in Reverse' of the Argyll and Bute Local Plan (August 2009) which state that:

*"The PAN promotes the principles of good acoustic design and a sensitive approach to the location of new development. It promotes.....a pragmatic approach to the location of new development within the vicinity of existing noise generating uses, to ensure that quality of life is not unreasonably affected and that new development continues to support sustainable economic growth."*  
(Planning Advice Note 1/2011: Planning and Noise, para 2)

*"When considering applications for new noise sensitive development close to an existing noise source, the likely level of noise exposure at the time of the application and any increase that may reasonably be expected in the foreseeable future are likely to be relevant, as will the extent to which it is possible to mitigate the adverse effects of noise."*  
(Planning Advice Note 1/2011: Planning and Noise, para 18)

*" In all Development Control Zones there is a presumption against proposals that will introduce new incompatible development and associated land uses into, or adjacent to, areas already containing "Bad Neighbour" Developments. In circumstances of "Bad Neighbour" in reverse, Policy LP BAD2 seeks not to prejudice the operational integrity of safeguarded land use and operations."*  
(Policy LP BAD2 of the Argyll and Bute Local Plan (August 2009).

2. The intensification of the existing industrial building to provide a two-bedroom flat would result in the loss of car parking spaces for the existing garage from the existing off-street car parking area in the lane east of Jane Street. The proposal to create an additional flat, coupled with the loss of car parking provision for the existing garage at 22 Jane Street (where there is a shortfall of 3 off-street car parking spaces) would increase demand on the available unallocated on-street car parking in this part of Jane Street and exacerbate existing parking problems. Accordingly, the proposal would be contrary to Policy LP TRAN 6 Vehicle Parking Provision of the Argyll and Bute Local Plan (2009).

(B) Submitted Drawings

For the purpose of clarity it is advised that this decision notice relates to the following refused drawings:

1:1000 Location Plan SS C 00 03 01;  
1:250 Existing Block Plan SS-L-003 RevC;  
1:250 Proposed Block Plan SS-L-004 RevD;  
1:100 Existing Elevations SS/0509/G1;  
1:50 Proposed Floor Plans and Section F1 SS 02A 01 RevC;  
1:100 Proposed Elevations F1 SS 02A 02 RevA;  
1:100 Proposed Rear Courtyard Layout H3 SS 02A 09.

- (C) Has the application been the subject of any "non-material" amendment in terms of Section 32A of the Town and Country Planning (Scotland) Act 1997 (as amended) to the initial submitted plans during its processing.

Yes. Additional information and plan submitted regarding proposed communal courtyard layout and access to amenity space.