

**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 11/01281/PP**

**REQUEST FOR FURTHER INFORMATION BY WRITTEN  
SUBMISSIONS**

**12 March 2012**

## REQUEST FOR FURTHER INFORMATION BY WRITTEN SUBMISSIONS

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 28<sup>th</sup> October 2011. The planning application has been appealed and is the subject of referral to the Local Review Body.

With reference to the Request for Further Information by Written Submissions Ref. AB7 (Reg 15) dated 1 March 2012, the following information requested under section (8) is provided by Development Management.

- 1. To provide comment on the possibility of a Section 75 Agreement in order to restrict occupation of the property i.e. for occupation by employees of the garage below the property only.***

**Comment:** The original planning report outlines difficulties in applying planning conditions to restrict occupancy to safeguard the amenity of the upper flat. The use of a Section 75 Agreement may however offer a legally binding method of restricting occupancy in perpetuity for an associated residential use connected with the ground floor garage, but this would effectively create a single planning unit of garage with associated flat. A Section 75 Agreement should therefore seek to ensure that the occupant of the upper flat is an employee of Cowal Building and Plumbing Supplies and moreover, employed in a profession directly related to the activities of the ground floor garage. The Section 75 Agreement should also seek to keep these two normally incompatible uses combined where the upper flat could not be disposed of separately as a mainstream unit.

Members should note that a previous application (ref. 10/01434/PP) for alterations to garage to provide 2 flats at upper level and external alterations, refused on 12<sup>th</sup> November 2010 and subsequent appeal to the Local Review Body (ref. 11/00001/LRB) dismissed on 28<sup>th</sup> February 2011 made no mention of any association with the ground floor garage where two mainstream flats were proposed on the upper floor.

The attention of Members is also drawn to a letter from the applicants' agent dated 20 February 2012 which the department have not yet had a chance to respond to. The garage premises are currently in industrial use (Class 5) and were classified as a Bad Neighbour type development due to criteria contained in Schedule 2 of the General Permitted Development (Scotland) Order 1992 under specifically:

*8(a) the use of buildings which will affect residential property by reason of fumes, noise, vibration, smoke, artificial lighting or discharge of any solid or liquid substance; and*

*8(d) cause activity and noise between the hours of 8pm and 8am.*

The department were therefore obliged to classify the garage as a potential Bad Neighbour type development and make an assessment under LP BAD2 'Bad Neighbour Development in Reverse' of the Argyll and Bute Local Plan in terms of likely impact on a residential use on the upper level.

While a Building Warrant (ref. 10/00930/ERD) was previously approved for the refused 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 19<sup>th</sup> September 2011.

However, notwithstanding the use of a Section 75 Agreement to restrict occupancy in terms of the planning unit, there are other issues regarding the shortfall of car parking spaces noted by the Area Roads Manager and noise/odour/fumes concerns raised by the Area Environmental Health Manager that may possibly be addressed by the use of planning conditions recommended below.

## **2. Conditions and reasons if the LRB were minded to uphold the Appeal.**

1. The development shall be implemented in accordance with the details specified on the application form dated 6 July 2011 and the approved drawing reference numbers: SS C 00 03 01; SS-L-003 Rev C; SS-L-004 Rev D; SS/0509/G2; SS/0509/G1, F1 SS 02A 01 RevC, SS 02A 02 RevA and H3 SS 02A 09, unless the prior written approval of the planning authority is obtained for an amendment to the approved details under Section 64 of the Town and Country Planning (Scotland) Act 1997.

**Reason:** *For the purpose of clarity, to ensure that the development is implemented in accordance with the approved details.*

2. Prior to the first occupancy of the flat hereby approved, the rear courtyard enclosed by 22, 24 and 24a Jane Street shall be fully landscaped with an external drying green as shown on approved drawing ref. H3 SS02A09.

**Reason:** *In order to provide suitable external amenity space.*

3. Prior to the first occupancy of the flat hereby approved, 4 off-street car parking spaces shall be provided within Jane Street lane to serve the upper flat and ground floor garage. The actual location of these car parking spaces shall be agreed in writing with the Planning Authority in consultation with the Area Roads Manager and shall be suitably delineated and marked for the use of the flat and garage only and thereafter be retained in perpetuity for such a dedicated purpose.

**Reason:** *In order to provide the requisite number of off-street car parking spaces for existing and proposed uses.*

4. Notwithstanding the submitted hours of operation, the ground floor garage shall only operate within the following hours :

Monday to Friday 08:00 to 6.00pm; Saturday 08:00 to 17:00 pm, and not at all on Sundays.

**Reason:** *In order to safeguard the amenity of the upper floor flat.*

5. To control noise from the motor vehicle repair garage, a competent person shall advise on the method of construction and choice of materials for the shared floor/ceiling to ensure that the construction is capable of maintaining 40Db for a living room in the day and 35Db for a

bedroom between 23:00 and 07:00. The method of construction and materials chosen should meet the requirements of the Building Standards Department. The choice of materials used for doors and windows for the garage must also be chosen to contain noise within the building during noisier operations to avoid disturbance to the neighbourhood.

**Reason:** *In order to safeguard the amenity of the upper floor flat.*

6. Ventilation ducting from the garage should discharge above eaves level and away from any velux windows to prevent odour/fume nuisance.

**Reason:** *In order to safeguard the amenity of the upper floor flat.*

## **ADVISORY NOTES TO APPLICANT**

3. This planning permission will last only for 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).]
4. In order to comply with Section 27A(1) of the Town and Country Planning (Scotland) Act 1997, prior to works commencing on site it is the responsibility of the developer to complete and submit the attached 'Notice of Initiation of Development' to the Planning Authority specifying the date on which the development will start.
5. In order to comply with Section 27B(1) of the Town and Country Planning (Scotland) Act 1997 it is the responsibility of the developer to submit the attached 'Notice of Completion' to the Planning Authority specifying the date upon which the development was completed.
6. The applicant is advised by Scottish Water that:
  - In terms of planning consent, Scottish Water has no objections to this planning application. Please note that although Scottish Water has given approval at this stage, this does not guarantee a connection to Scottish Water's infrastructure. Approval for connection can only be given by Scottish Water when the appropriate application and technical details have been received;
  - Loch Eck Water Treatment Works currently has capacity to service this proposed development;
  - The water network that serves the proposed development is currently able to supply the new demand;
  - Dunoon Wastewater Treatment Works – at present there is limited capacity to serve this new demand. The Developer should discuss their development directly with Scottish Water;
  - Wastewater Network – Our initial investigations have highlighted that there may be a requirement for the Developer to carry out works on the local network to ensure there is no loss of service to existing customers. The Developer should discuss the implications directly with Scottish Water;
  - In some circumstances it may be necessary for the developer to fund works on existing infrastructure to enable the development to connect. Should we become aware of any

issues such as flooding, low pressure etc. the Developer will require to fund works to mitigate the effect of the development on existing customers. Scottish Water can make a contribution to these costs through Reasonable Cost funding rules;

- A totally separate drainage system will be required with the surface water discharging to a suitable outlet. Scottish Water requires a sustainable urban drainage system (SUDS) as detailed in Sewers for Scotland 2 if the system is to be considered for adoption;
  - Scottish Water's current minimum level of service for water pressure is 1.0 bar or 10m head at the customer's boundary. Any property which cannot be adequately serviced from the available pressure may require private pumping arrangements installed, subject to compliance with the current water byelaws. If the developer wishes to enquire about Scottish Water's procedure for checking at the water pressure in the area then they should write to the Customer Connections department;
  - If the connection to public sewer and/or water main requires to be laid through land out-with public ownership, the developer must provide evidence of formal approval from the affected landowner(s). This should be done through a deed of servitude;
  - Should the developer require information regarding the location of Scottish Water infrastructure they should contact their Property Searches Department, Bullion House, Dundee, DD2 5BB, tel. 0845 601 8855;
  - For the advisory notes above, the applicant/developer is advised to contact Scottish Water directly (Planning and Development Services, 419 Balmore Road, Glasgow G22 6NU; Morven Henderson, Customer Connection, Planning and Development, Tel. 0141 355 5511 or at [www.scottishwater.co.uk](http://www.scottishwater.co.uk)).
7. The applicants are advised that during the course of this application correspondence has been received from West End Furniture (letter dated 8<sup>th</sup> August 2011) to the effect that this company may own part of the land within the application site. Additionally, it has not been fully demonstrated that the entire car parking area within the red line boundary is owned by the applicants. Prior to the commencement of the development, the applicants should satisfy themselves that they have sufficient control over all of the land within the application site to enable the development to be constructed in accordance with the approved plans and in compliance with Conditions 1-3 above.