

Date 14th November 2014
Ref 14/0008/LRB

Committee Services
Local Review Board
Kilmory
Lochgilphead
Argyll
PA31 8RT

FAO: Fiona McCallum

BY POST AND EMAIL

Dear Sir/Madam,

NOTICE OF REVIEW – 14/0008/LRB

Site 2: Land South of BT Mast, Kilnaughton, Port Ellen, Isle of Islay

I write on behalf of my client, Mr Colin Peacock, in response to your letter of 11th September, advising of the Local Review Body's request for further written information.

The request for further information from ourselves is: *"An explanation of what was meant by an 'administrative error' which led to the lapse of the previous planning permission on 26th September 2010"*.

I have outlined below an explanation of the circumstances, and the 'administrative error', which led to the lapse of the previous permission. Having received further information from the applicant in order to provide this response, as explained below, it is now clear that this administrative error was not only by the applicant, but largely as a result of incorrect advice from Council officers with regards to the expiry date of the 2007 consent (in that it did not lapse in September 2010, but rather lapsed in September 2012).

The indicative timeline below is presented as an explanation of circumstances relating to the administrative error:

- Previous Outline Planning Permission (07/01618/OUT) granted permission on **26th September 2007**, with Mr Peacock believing the consent was valid for 5 years (until September 2012);
- Mr Peacock contacted the Council planning officer on **18th September 2012** to discuss renewal of application;
- Council officer advised Mr Peacock on **18th September 2012** that the consent had lapsed in September 2010, and that a completely new application would require to be submitted for Planning Permission in Principle for a new house, but was **advised to delay the submission until early 2013** when the draft Local Development Plan was published to which a representation should be made to seek a change in policy position;
- Mr Peacock wrote to local Members (letter to Cllr Anne Horn attached as example) on **20th September 2012** to seek advice and support;
- Mr Peacock submitted a representation to the proposed Local Development Plan in **April 2013**, following its publication in February 2013;
- Mr Peacock prepared a submitted a fresh PPP application to the Council in **August 2013**;
- PPP application refused by Council in **July 2014**.

As above, this 'administrative error' stemmed from Mr Peacock originally believing that the earlier 2007 consent would not expire until September 2012, only to then be advised by the Council officer that it had actually lapsed in September 2010. Further advice from Council officer led to Mr Peacock

delaying his new application until the summer of 2013, following the publication of the proposed Local Development Plan.

Having now learned of the above advice from officers, I can advise the Local Review Body that it appears that incorrect advice was given to Mr Peacock by officers, and at the time of raising the issue with officers in September 2012, the earlier 2007 consent **had not lapsed in September 2010, but rather was still valid until 26th September 2012**. For ease of reference, I have attached a copy of this consent notice, dated 26th September 2007. Condition 3 of this consent makes quite clear that development required to be begun within **5 years** from the date of the permission – this is the period for which the consent is valid.

Members will be aware that section 42 of the Town and Country Planning (Scotland) Act 1997 (as amended 2006) can be invoked to vary, or not comply with, conditions placed on a consent. At both the time of the original consent in 2007, and the discussions with officers in spring 2012, section 42 could have been invoked to vary a 'reserved matters' time limit even where the date for the submission of the reserved matters application (i.e. the 3 years referred to) has passed. The only limitation upon the exercise of section 42 is that contained within section 42(4), namely that the time limit for the actual commencement of development has not expired. As illustrated in the attached copy of the 2007 consent, this commencement of development period did not expire until **26th September 2012**.

Simply, therefore, this consent was still live until 26th September 2012, and at the time of discussing the position with officers on 18th September, the **consent had not lapsed** and Mr Peacock could have submitted a section 42 application within the next 8 days – which is easily achievable. However, incorrect advice from Council officers regarding the expiry date of the consent, and the advice to delay the further submission, led to the expiry date of the consent on 26th September 2012 passing before any further applications were made.

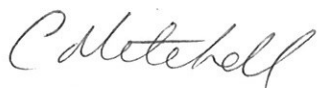
Please note that this issue was not raised in the original submissions to the Local Review Body, as I was not aware of the discussions between Mr Peacock and Council officers in advance of the September 2012 expiry date.

It will also be clear that the communications between Mr Peacock and both Council officers and local Members were clearly before the **actual expiry date** of 26th September 2012 (to which Mr Peacock was adhering to in good faith, given the terms of the 2007 consent and clear reference to 5 years in Condition 3), and the 2007 consent was not "allowed to lapse" as has been suggested by Council planning officers.

Also, please also note that the Circular requested from the Planning Department is actually **6/1990**, and not 9/1990.

I trust all of the above is in order, and will allow the Review by the Local Review Body to be progressed timeously. Should you wish to discuss any of the above, or require any further information, please don't hesitate to contact me.

Yours sincerely,



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Cc Mr Colin Peacock, 26 Paddockdyke, Skelmorlie, PA17 5DA (by email)
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Area Roads – Mid Argyll Kintyre and Islay, Manse Brae, Lochgilphead, PA31 8RD
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