

Argyll and Bute Council
Comhairle Earra-Ghàidheal Agus Bhòid

Customer Services
Executive Director: Douglas Hendry



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16 January 2017

SUPPLEMENTARY PACK 1

PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE - COUNCIL
CHAMBERS, KILMORY, LOCHGILPHEAD on WEDNESDAY, 18 JANUARY 2017 at 10:30 AM

I enclose herewith supplementary reports for **items 8 and 10** on the Agenda for the above meeting.

Douglas Hendry
Executive Director of Customer Services

SUPPLEMENTARY REPORTS

- 8. MRS IONA LARG: ERECTION OF BEACH HUT FOR BLACKHOUSE WATERSPORTS (RETROSPECTIVE): LAND NORTH-EAST OF BRAEHEAD, BALEVULLIN BEACH, BALEVULLIN, ISLE OF TIREE (REF: 15/03260/PP)**

Report by Head of Planning and Regulatory Services (Pages 1 – 6)

- 10. MR COLIN FINNIE: ERECTION OF DWELLINGHOUSE: LAND ADJACENT TO 21 VICTORIA ROAD, HELENSBURGH (REF: 16/02515/PP)**

Report by Head of Planning and Regulatory Services (Pages 7 – 10)

Planning, Protective Services and Licensing Committee

Councillor David Kinniburgh (Chair)	Councillor Gordon Blair
Councillor Rory Colville	Councillor Robin Currie
Councillor George Freeman	Councillor Alistair MacDougall
Councillor Neil MacIntyre	Councillor Robert Graham MacIntyre
Councillor Donald MacMillan	Councillor Roderick McCuish
Councillor Alex McNaughton	Councillor James McQueen
Councillor Sandy Taylor	Councillor Richard Trail

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Argyll and Bute Council
Development Services

Delegated or Committee Planning Application Report and Report of Handling as required by Schedule 2 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 relative to applications for Planning Permission or Planning Permission in Principle

Reference No:	15/03260/PP
Planning Hierarchy:	Local Application
Applicant:	Mrs Iona Larg
Proposal:	Erection of beach hut for Blackhouse Watersports (retrospective)
Site Address:	Land north-east of Braehead, Balevullin Beach, Balevullin, Isle of Tiree

SUPPLEMENTARY REPORT No 4**A) INTRODUCTION**

Members will recall that this retrospective planning application was the subject of a discretionary local Hearing which took place at An Talla Community Hall, Crossapol, Tiree on the 28th November 2016. This Hearing was called in order to enable Members to fully consider any and all evidence put forward, both in support of the development and in objection to it and to debate the Planning Authority's recommendation that retrospective planning permission be refused for the reasons previously set out in the main report.

Shortly before this Hearing was to take place, an additional planning application for the retention of a related beach hut development at Gott Bay, Tiree (planning application reference 15/03364/PP) was withdrawn by the applicant. The withdrawal of this planning application was further confirmed by the applicant at the Hearing and a commitment was given by the applicant to remove the unauthorised building at Gott Bay by Friday 6th January 2016. This unauthorised building has subsequently been removed from the site, as confirmed by the Applicant and evidenced by photographs.

In respect of the planning application for the remaining beach hut development at Balevullin Beach, the Council's published minutes state that the following Motion was put forward and accepted:

That the Committee continue consideration of retrospective planning permission to the meeting of the Planning, Protective Services and Licensing Committee on 18 January 2017 to allow Members to seek advice from officers in regard to a competent motion to support approval of the application and to allow for arrangements to be made for any requirement for an Area Capacity Evaluation (ACE).

The consideration of retrospective planning permission has been continued to the meeting of the Planning, Protective Services and Licensing Committee to be held on

Wednesday 18th January 2017. In advance of this Meeting, a senior architect from McKenzie Strickland Associates, acting on behalf of the Applicant, has submitted a somewhat lengthy representation (emailed and dated 10th January 2017) seeking to put forward several 'motions' for the attention of and consideration by Members in advance of any decision in relation to this planning application.

This further Supplementary Report appraises Members of the contents of this submission and offers guidance relating to the various matters raised.

B) DETAILS OF THE SUBMISSION

The representation which, it is understood, has been copied directly to Members can be viewed in full at:

https://www.argyll-bute.gov.uk/Planning/lg/GFPlanningDocuments.page?Param=lg.Planning&SDescription=15/03260/PP&org.apache.shale.dialog.DIALOG_NAME=gfplanningsearch&viewdocs=true

In summary, this submission presents Members with 3 proposed 'motions' for their consideration as follows:

1st. Motion: No ACE is required

The submission asks Members to determine the application without reference to any Area Capacity Evaluation (ACE) and argues that an ACE is not necessary or appropriate for a variety of reasons, these being that it is not required under the relevant provisions of the Local Development Plan (LDP); that it serves no useful purpose and that it duplicates existing planning assessments and considerations which have already been reported on in detail in the previously published report of handling and, in evidence, at the local Hearing – a process which also involved a site inspection. It is argued that having an ACE carried out, at this stage, would duplicate material in those prior reports and submissions and provide Members with no substantial new information. Doing so, it is argued, would cause additional expense and delay for the Planning Authority and the applicant. It is further commented that any ACE ought to have been carried out by officers prior to the first Meeting.

In addition, the submission argues that Members could, should they be so minded, support the development as a departure to the LDP and therefore without reference to policy LDP DM 1 or to an ACE.

2nd. Motion: If ACE is required

The submission requests Members to agree that if they should determine that an ACE is indeed required (contrary to the proposed 'Motion 1' above) then the Applicant should be allowed a fair and adequate opportunity to respond to the ACE by agreeing a further continuation of the application in order to require officers to prepare and circulate the ACE; to send a copy of the ACE to the applicant no later than 21 days prior to the subsequent Meeting; to allow the Applicant and/or a landscape architect or other agent acting on her behalf the opportunity to issue a statement responding to the ACE; and to allow the Applicant to appear and be represented before Members at the subsequent Meeting.

The submission argues that the above-summarised terms are required in order to allow the Applicant to have a fair and impartial determination of her application by the Council as a public authority in accordance with her convention rights under the Human Rights Act 1998 and with natural justice and fairness at common law.

3rd. Motion: Next meeting

The submission states that it is understood by the Applicant and those advising her that no ACE has yet been carried out, and that no ACE will be considered in determination her planning application, at the next meeting (on Wednesday 18th January). It is reiterated that should the ACE be considered by Members at the next meeting and without the applicant being afforded an opportunity to respond, then she would be denied a fair and impartial determination of her application in accordance with her rights.

The submission states that if, contrary to the Applicant's understanding, an ACE has, in fact, been carried out then a full copy of the ACE should be provided to the Applicant and her advisors by 1 pm on Wednesday 11th January 2017.

C) COMMENTARY

In consideration of the '1st motion', that no ACE is required, Members were previously advised, both in the main report and in Supplementary Report 3, of the policy background to the proposed development: Planning Policy LDP DM 1 expresses a general lack of support for development in the open countryside other than where it constitutes small scale development closely related to existing buildings as either an 'infill' development of an appropriate gap site between two or more substantial buildings; as a 'rounding off' development of an appropriate gap site between one or more substantial buildings on one side and a substantial landscape feature on the other, or as an appropriate redevelopment or change of use of an existing building.

In this specific case, there can be no reasonable claim that the proposed development is an infill, a rounding-off, a redevelopment or a change of use of an existing building. This stance has been accepted by the applicant in the published supporting statement and confirmed within evidence presented at the Hearing.

Therefore, the proposed development can only comply with the fundamental requirements of key planning policy LDP DM 1 should Members consider that the applicant's claim of an 'exceptional case' as advanced by the application and in evidence at the Hearing can be substantiated and supported. Whilst Officers have presented their detailed and considered arguments as to why, in their opinion, the advanced 'exceptional case' argument fails, Members are entitled to take an opposing view should they decide that the relevant planning considerations would reasonably lead them to that conclusion.

However, should Members be minded to draw the opposite conclusion to Officers in their assessment of the 'exceptional case' arguments put forward by the Applicant, policy LDP DM 1 requires that this exceptional case be underpinned by an ACE in order to demonstrate that the proposed development will have no unacceptable physical impact upon an identified area of 'common landscape character'.

The purpose of an ACE is not entirely as described within the submission quoted above. Mr Russell has quoted superseded draft supplementary guidance which has

subsequently been replaced by supplementary guidance formally adopted in March 2016. SG LDP ACE 1 of the adopted guidance explains that an ACE should be used to inform the development management decision making process and that the Local Development Plan establishes that an ACE should be triggered through policy LDP DM 1 in certain circumstances, including, *“Within the Countryside Zone all development proposals which are not small scale infill, rounding off, or redevelopment will require to accord with an ACE subject to an exceptional case being made.”*

The purpose of the ACE, as described in the adopted supplementary guidance, actually reads as follows: *“The aim of the ACE process is simply to comprehensively and methodically assesses the capacity of the landscape to successfully absorb the proposed development. **The aim should not be to identify a definitive quantity or how much development can be accommodated in a landscape but to explore landscape ‘sensitivity’ to the particular development proposal under consideration.**”* (The bold text is contained within the source document).

Whilst it is correct that the impact of the proposed development upon its site and surroundings did form part of the original assessment of the proposed development as reported to Members in the main report of handling, the ACE process provides a significantly greater level of detailed landscape assessment and the scope to carry it out in a more methodical and uniform manner. The ACE process enables a detailed assessment of the degree to which a particular landscape character type or area of common landscape character is able to accommodate change without significant effects on its character, or overall change of landscape character type. This detailed area evaluation would only be required where it had been demonstrated, to the satisfaction of the Planning Authority, that the basic ‘exceptional case’ component of key planning policy LDP DM 1 had been met. There is no requirement to carry out a formal landscape capacity assessment in the manner prescribed unless this exceptional case has been demonstrated and accepted.

The ACE is, therefore, an essential and necessary component of key planning policy LDP DM 1 should Members be inclined to support the proposed development in accordance with the provisions of that policy. The suggestion that this development could be supported by Members under the relevant policy provisions of the Local Development Plan, without their consideration and critique of a relevant ACE is therefore incorrect.

Whilst it might be possible for Members to approve the proposed development as a departure to the LDP, and therefore without reference to policy LDP DM1 or to an ACE, , such a course of action would need to be underpinned by specific, detailed and robust reasoning. It is the opinion of officers that any such course of action would be difficult to substantiate in the context of the current planning application. The LDP is flexible enough to enable this development to be supported without a departure from the Councils key adopted planning policy, should Members decide to do so contrary to the recommendation of their officers and following their evaluation and critique of the ACE attached to the previous Supplementary Report 3.

In consideration of the ‘2nd and 3rd motions’ above, it has been explained why an ACE is required in this case and that it has been produced. This ACE has been prepared by officers in order to assist Members should they decide that they wish to support the development as being in accordance with LDP policy contrary to officer’s recommendation. The ACE is supplementary to the main report of handling and represents, in effect, an expansion to the previously tabled professional view of officers. The ACE, like the report of handling, serves to explain the professional view of officers and acts as an aid to Members in their determination of this planning

application. It is not a planning application in itself and it does not carry any special requirement to circulate it above and beyond what would normally be required for any report of handling. In addition, whilst the previous draft ACE guidance and methodology sought to also identify capacity for further future development within the wider landscape compartment, the current and adopted ACE process removed this requirement and, with it, any need for wider consultation and commentary. In this regard, the ACE merely expands upon the previously published professional recommendation of officers. This recommendation has already been afforded substantial opportunity for debate, consideration and counter-opinion, not least by the applicant in person and with full representation at the discretionary local Hearing held in November.

In regard to the 'Third Motion: Next Meeting', Members are advised that the ACE and its accompanying Supplementary Report 3 were published on the Council's website on 11th January 2017 and have since been available for public inspection. . The applicant's agent was sent an email on 11th January, one week before the Meeting of the Planning, Protective Services and Licencing Committee on 18th January, advising of the date and time of the meeting and that all papers pertaining to the hearing could be viewed by clicking on the link to the Council's website. The applicant was separately sent a letter containing the same information on 11th January 2017. Although the ACE was not submitted to the Applicant and her advisers by 1pm on 11 January as requested (the email to the Applicant's agent was not sent until that evening in accordance with the Council's usual practice) it is considered by officers that the Applicant has received intimation of the ACE in a timescale that is sufficient to afford the Applicant the opportunity to consider the ACE and to respond prior to the meeting of the Committee.

Members are advised that there is no statutory requirement to further continue the determination of this application in order to allow the applicant to review and respond to the supplementary ACE, although the Applicant is, of course, entitled to make further written representation before the Meeting should she so wish. Similarly, this application raises no special circumstances which would entitle the Applicant (or her representatives) to address Members during the forthcoming PPSL meeting. The suggestion that this approach would prejudice the Applicant's convention rights under the Human Rights Act 1998 and with natural justice and fairness at common law is a matter for the Council's head of Governance and Law to respond to. This opinion has been obtained. It is advised as follows;

The Court is permitted to insist on standards of procedural fairness beyond what is expressly required by statute and a challenge may be raised on the ground that the required standards of procedural fairness have not been met. Such a challenge would not relate to the content of the decision reached by Members but rather to the manner in which it was reached. The degree of procedural fairness required will vary depending upon the circumstances of each decision. For example an oral hearing cannot be demanded in every circumstance. Natural justice forms a procedural code implied by the common law. A breach of natural justice will fall under the head of 'procedural impropriety'. The right to be heard is a limb of natural justice. This includes the Applicants right to have the opportunity to present its case and know the basis of the case presented by the other side, as well as the right to a fair hearing. In determining a planning application the planning authority must assess, at each stage in the progress of the application, whether it has acted fairly in respect of all parties. As advised above the ACE has been published on the Council's website and correspondence has been sent to the Applicant and her agent proving details of the location at which the papers pertaining to the hearing can be found. The Applicant is aware of the case presented by officers. The ACE has been made available for the consideration of Members following the completion of the evidential part of the

Hearing. The Applicant has therefore not been afforded the opportunity to present her case in respect of it. Should Members consider that they wish to place reliance on the ACE in reaching a determination on the planning application, and the Applicant not yet have submitted a written response to the ACE by 18 January when the PPSL will next meet, it is advised that Members may wish to continue the hearing to afford the Applicant the opportunity to respond to it by way of a written submission. It is considered that such a course of action by Members would limit exposure to a risk of challenge on the grounds of procedural impropriety. It is not considered that Members would require to allow the Applicant to appear and be represented before Members to ensure compliance with natural justice and fairness at common law.

The actions of a planning authority will be considered with reference to the European Convention on Human rights (ECHR). This affects the decision making process and in particular the need to comply with the ECHR right to a 'fair trial' under ECHR Article 6. It has been held by the Courts that the statutory right of appeal to the courts, or potential for non-statutory judicial review, within the planning system satisfies the Article 6 requirement for an independent and impartial tribunal. Should Members determine that the planning permission be refused in accordance with officers recommendations the Applicant will have a right of appeal to the Scottish Ministers. It is considered that it will not be necessary for Members to afford the Applicant the right to make further representations in respect of the ACE or appear and be represented at the meeting of the PPSL at which the ACE will be considered in order to allow the Applicant to have a fair and impartial determination of her application in accordance with her convention rights under the Human Rights Act 1998.

C) RECOMMENDATION

It is recommended that Members note the representation contained herein together with the relevant commentary and conclusions. These submissions do not alter the previous recommendation to refuse the application for the reasons set out in the main report and as advanced as evidence at the Hearing.

Author of Report: Tim Williams

Date: 13th January 2017

Angus Gilmour
Head of Planning and Regulatory Services

**Argyll and Bute Council
Development and Infrastructure Services**

Delegated or Committee 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 or Planning Permission in Principle

Reference No: 16/02515/PP

Planning Hierarchy: Local Application

Applicant: Mr Colin Finnie

Proposal: Erection of dwellinghouse

Site Address: Land Adjacent To 21 Victoria Road, Helensburgh

SUPPLEMENTARY REPORT NO. 1

1.0 INTRODUCTION

The purpose of this report is to advise Members that a further letter of representation has been received from Robert Hepburn, 33 Charlotte Street, Helensburgh (email dated 13/01/2017). This representation was written in response to the Officer's report which was published on the Council's website.

This application has been recommended for approval and is under consideration at this Committee

This Supplementary Report is to advise Members of the contents of the email and offers comments relating to the various matters raised.

2.0 OBJECTIONS RAISED

Flood Risk

Mr Hepburn considers that the Officer's report is factually incorrect when it states that SEPA has no objections to the application.

Comment: The opening paragraph of SEPA's consultation response states that that they 'have no objection to the planning application on flood grounds'. This is a no objection response. The remainder of the letter is advice to the Planning Authority and the applicant. The advice given by SEPA is included in the decision notice.

Mr Hepburn feels that the potential flood risk has not been adequately assessed. He quotes SEPA's response, specifically that it was strongly recommended that;

- (a) Additional information is sought from the applicant, which could take the form of a FRA;
- (b) Contact is made with your Flood Prevention Authority to ascertain any information/local knowledge that they may possess.

Comment: The Council's Flood Risk Assessor was consulted regarding the application. Had he felt that a Flood Risk Assessment was required, we would have asked the applicant to provide one. However, he was satisfied that the proposal will not raise any flooding issues. It was considered that tree removal may pose a risk regarding the possible destabilisation of the banks of the burn. A condition has already been attached to deal with this issue.

It was also pointed out that it is a regulatory requirement that any proposed engineering works within the water environment will require authorisation under The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended).

Comment: This is a matter for SEPA under separate legislation.

Damage to Trees

The issue has been raised again regarding the Arboricultural report which states that; 'Oil, bitumen, cement or other material injurious to a tree should not be stacked or discharged within 10 metres of a bole', and it is pointed out that several of the retained trees are well within 10 metres of the concrete foundations of the proposed dwelling.'

Comment: This guidance note is standard and relates to work going on above ground that could potentially damage the tree boles. The bole of the tree is the main wooden axis of a tree which is more commonly known as the trunk. Separate conditions have been attached to protect the tree roots, in accordance with BS 5837:2012 Trees in relation to design, demolition and construction.

Concerns about the applicant

Mr Hepburn received an allegedly 'abusive' letter from Mr Finnie. It is alleged that similar letters were also sent to other objectors to the planning application. He suggests that the applicant cannot be trusted to fully implement any conditions should the application be approved. It is suggested that the Council should take extraordinary measures to make sure any planning conditions are adhered to.

Comment: This is not a material planning consideration. The assessment of the application, including the recommendation, is made on land use planning grounds. The character of the applicant does not form any part of the decision making process. Should permission be granted, the site will be monitored in line with our standard procedures. With specific regard to the letter, the applicant was advised that it was considered vexatious and would not be scanned on to the Council's public system. It is understood that Members may have been sent a copy. As indicated above, it raises no material planning considerations and does not form part of the assessment of the proposal.

3.0 RECOMMENDATION:

- 3.1 It is recommended that Members note the additional representation and the comments on them. They do not alter the original recommendation which is to grant planning permission subject to the conditions and reasons set out in the report of handling.

Author of Report:
Contact Point:

Stephanie Spreng 16/01/2017
Howard Young 16/01/2017

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