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Argyll and Bute Council **Comhairle Earra-Ghàidheal Agus Bhòid**

Executive Director: Douglas Hendry



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19 January 2021

SUPPLEMENTARY PACK 1

**PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE - BY SKYPE on
WEDNESDAY, 20 JANUARY 2021 at 11:00 AM**

I enclose herewith a supplementary report for **Item 4** on the Agenda for the above meeting.

Douglas Hendry
Executive Director

SUPPLEMENTARY REPORT

- 4. KEITH AND DENICE PUNLER: REMOVAL OF PLANNING CONDITIONS 2D (PATH IMPROVEMENTS) AND 4 (FOOTPATH LINK) RELATIVE TO PLANNING PERMISSION 17/02052/PP - ERECTION OF 1800MM HIGH DEER FENCE (RETROSPECTIVE): LAND SOUTH-EAST OF CASTLE TOWARD, TOWARD, ARGYLL (REF: 19/00447/PP)**

Report by Head Development and Economic Growth (Pages 3 – 6)

Planning, Protective Services and Licensing Committee

Councillor Gordon Blair	Councillor Rory Colville (Vice-Chair)
Councillor Mary-Jean Devon	Councillor Lorna Douglas
Councillor Audrey Forrest	Councillor George Freeman
Councillor Kieron Green	Councillor Graham Hardie
Councillor David Kinniburgh (Chair)	Councillor Donald MacMillan BEM
Councillor Roderick McCuish	Councillor Jean Moffat
Councillor Alastair Redman	Councillor Sandy Taylor
Councillor Richard Trail	

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Argyll and Bute Council
Development and Economic Growth

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: 19/00447/PP

Planning Hierarchy: Local Application

Applicant: Mr Keith and Denice Punler

Proposal: Removal of planning conditions 2d (path improvements) and 4 (footpath link) relative to planning permission 17/02052/PP - Erection of 1800mm high deer fence (retrospective).

Site Address: Land south-east of Castle Toward, Toward, Argyll

SUPPLEMENTARY REPORT NO. 1

1.0 INTRODUCTION

The attention of Members is drawn to the main Report of Handling dated 5th January 2021 that is currently before them for consideration in respect of the above application.

One late objection and a representation from the applicants' solicitor has been received

2.0 LATE OBJECTION: SUMMARY OF POINTS RAISED

Since the writing of this report, one further objection has been received from the following source:

Mrs Jackie McBurney, 32 Broxwood Place, Sandbank, Dunoon (e-mail received 19th January 2021);

These most recent contribution has resulted in the following figures:

Those **objecting** to the proposal – 18

The main points raised by the most recent contributor can be summarised as follows:

- I would like it logged that I feel I need to object to the removal of planning conditions 2d (path improvements) and 4 (footpath link). The path improvements and footpath link within this development were paramount to the application being accepted by the local community and should remain as conditions.

Comment: These issues have already been raised by other objectors and are addressed in the main Report on Handling that is currently before Members for consideration.

Note: Full details of these expressions of support can be viewed on the Council's website: www.argyll-bute.gov.uk

3.0 Late Representation from Applicants' Solicitor

An email from Mr. Alastair McKie, Anderson Strathern on behalf of Mr. and Mrs. Punler was received 19th January 2021.

"I act for Keith and Denice Punler who are the applicants in relation to planning application 19/00447/PP which is for the removal of planning conditions 2d (path improvements) and 4 (footpath link) relative to planning permission 17/02052/PP.

I note that this application is due to be considered by the Council's Planning, Protective Services and Licensing Committee on Wednesday, 20 January 2021 (tomorrow) and that it has been recommended for refusal for the reasons set out in the Report of Handling.

*Having examined the Report I have **very serious concerns** that it does not fairly present the application to the Committee and is fundamentally flawed.*

It is a fundamental flaw to state that "The determining factor of this application is procedural" when that is plainly not the case. The application must but has not been assessed and determined on its own planning merits.

Unacceptable weight on has been placed on the decision of the Local Review Body on 28 June 2018, when the applicants lodged an appeal (ref. 18/0005/LRB) against conditions, 2, 3 and 4 of Planning Permission. The application before the Committee tomorrow is a standalone planning application under Section 42 of the Planning Act and must be judged on its own planning merits. The Report repeatedly points Council Members to the earlier decision of the Local Review Body, which was for a different application. The Committee Members are not bound by the decision of the Local Review Body as your Report appears to imply nor does it have particular weight in this determination."

Comment: Section 42 applications must be considered in terms of the (current) development plan and any relevant material considerations. While authorities should consider only the conditions to which any new permission should be granted (section 42(2)) this does not prevent consideration of the overall effect of granting the consent (recognised in Scottish Government Circular 3/2013). In this case the department has considered this Section 42 on its individual merits and focussing on the acceptability of what the applicants have submitted in support of this application and the physical works on the ground. The decision taken by the Local Review Body on 28th June 2018 and planning history is considered to be a significant material consideration in an assessment of the proposal to remove planning conditions previously deemed necessary.

"Access Officer Comment – "The applicants' state that because the estate was previously a residential school the public did not have a right of access to the grounds which in law is correct. However, the school closed in November 2009 and for around seven years until it was purchased in October 2016 the public had a legal right of access to all of the land around what was an unoccupied building." This is factually inaccurate and wrong in law. The property was still being used as an institution in 2013 and there is no basis in law for the Access Officer

stating that until it was purchased, the public had a legal right to access-this contradicts the Council's own legal advisers.

Comment: The Access Officer has been asked to comment. However, this issue does not prevent determination of the application at PPSL Committee.

In the Planning History of the site the Report is also flawed where it states that the "application for the erection of 2 lodges (ref.17/00420/PP) was refused by the Local Review Body on 28th June 2018". Planning Application 17/00420/PP was in fact approved by the Council on 25 Jan 2018."

Comment: This planning application ref. 17/00420/PP (LRB ref. 18/0004/LRB) was originally approved under Delegated Powers on 25th January 2018 but a subsequent appeal concerning condition 11 (occupancy) was refused by the Local Review Body on 28th June 2018

"You also indicate in the Report that:-

"Whilst a Section 42 application could hypothetically allow the Planning Authority the opportunity to attach different conditions to permission ref. 17/02052/PP, it is apparent that the applicant's may not be content with such conditions and therefore would not resolve the current situation."

Having discussed this with the applicants, no discussion has been undertaken with them to suggest alternative or different conditions.

The Report is also inaccurate in relation to its conclusion that agreement was not reached at meetings. At a site meeting on 8th May 2019 attended by Mr Punler, Angus Gilmour, Head of Service and Brian Close, Mr Gilmour confirmed that he was content with Mr Punler's proposals subject to the removal of a pallet from a burn with which Mr Punler complied.

*I am therefore making **a formal request for this application to be continued for a period of at least 4 weeks to enable further discussions on this application and to enable these flaws to be fully addressed.***

I am fulling reserving the rights of the applicants in this matter."

Comment: Whilst Members could give consideration to the request for a time extension to enable further discussions to take place, the department can see no merit in such a request. This application has been with the Council since 4th March 2019 and have spent most of that time in discussion and attempting productive negotiation with the applicants. In the absence of productive discussions recently and no further works to the path systems in question, the applicants have left the department with no other option than to bring the proposal to Members to determine.

3.0 RECOMMENDATION

The points made by the applicants' solicitor and objector do not alter the recommendation contained in the main Report of Handling dated 5th January 2021; namely, that the application be **refused** subject to the conditions, reasons and informative notes contained therein.

Author of Report: Brian Close

Date: 19th January 2021

Reviewing Officer: Howard Young

Date: 19th January 2021

Fergus Murray
Head of Development and Economic Growth