

# Public Document Pack

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

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22 February 2022

### **SUPPLEMENTARY PACK 1**

**PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE - BY MICROSOFT TEAMS on WEDNESDAY, 23 FEBRUARY 2022 at 11:00 AM**

I enclose herewith a supplementary report for **item 8** on the Agenda for the above meeting.

Douglas Hendry  
Executive Director

### **SUPPLEMENTARY REPORT**

- 8. MR JON SEAR - PORT BANNATYNE DEVELOPMENT TRUST: REPLACEMENT OF ROOF COVERING; INSTALLATION OF SOLAR PV PANELS AND FORMATION OF NEW DOOR WITH FLAT ROOF ON SINGLE STOREY PART OF PUBLIC HOUSE; AND CHANGE OF USE OF LAND TO REAR TO FORM OUTDOOR SEATING AREA WITH ASSOCIATED GABION BASKET RETAINING WALL AND FENCE: 33 - 34 MARINE ROAD, PORT BANNATYNE, ISLE OF BUTE (REF: 21/01912/PP) (Pages 3 - 8)**

Report by Head of Development and Economic Growth

### **Planning, Protective Services and Licensing Committee**

Councillor Gordon Blair  
Councillor Mary-Jean Devon  
Councillor George Freeman  
Councillor Graham Hardie  
Councillor Donald MacMillan BEM  
Councillor Jean Moffat  
Councillor Sandy Taylor

Councillor Rory Colville (Vice-Chair)  
Councillor Audrey Forrest  
Councillor Kieron Green  
Councillor David Kinniburgh (Chair)  
Councillor Roderick McCuish  
Councillor Alastair Redman  
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**

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<b>Reference No:</b>	21/01912/PP
<b>Planning Hierarchy:</b>	Local
<b>Applicant:</b>	Mr Jon Sear – Port Bannatyne Development Trust
<b>Proposal:</b>	Replacement of Roof Covering; Installation of Solar PV Panels and Formation of New Door with Flat Roof on Single Storey Part of Public House; and Change of Use of Land to Rear to Form Outdoor Seating Area with Associated Gabion Basket Retaining Wall and Fence
<b>Site Address:</b>	33 – 34 Marine Road, Port Bannatyne, Isle of Bute

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### **SUPPLEMENTARY REPORT NO. 1**

#### **1.0 INTRODUCTION**

The attention of Members is drawn to the main Report of Handling dated 15<sup>th</sup> February 2022 that is currently before them for consideration in respect of the above application.

Since the writing of this report, a letter of representation dated 21<sup>st</sup> February 2022 (received on 22<sup>nd</sup> February 2022) has been submitted by Mr Joe McGoldrick, 18 Castle Street, Port Bannatyne, Isle of Bute.

Note: Mr McGoldrick's letter is published in full on the Council's website: [www.argyll-bute.gov.uk](http://www.argyll-bute.gov.uk)

#### **2.0 SUMMARY OF POINTS RAISED**

Mr McGoldrick has stated that, after careful consideration of the content and narrative set out in the main Report of Handling, he contends that a fully informed assessment and determination cannot be reached by the Planning, Protective Services and Licensing Committee in respect of planning application 21/01912/PP for the following reasons:

- i. The initial and amended proposed drawings are clearly annotated with the term '*dormer*', which depict a new entrance on the south most elevation (rear) of the public house. It is contended that the list of Development Plan Policy considerations referred to in the main Report have not been taken into account in assessing the '*dormer*' aspect of the proposal and that, if they had been properly applied, this element would have been considered unacceptable.

**Comment:** In Appendix A, Section C '*Impact Upon Built Environment*' of the main Report, the incorporation of a new door into the rear roof slope of the building is assessed. The text refers to the change from a pitched roof to a flat roof over the door

during the processing of the application and states that, "*in the context of the position to the rear ground floor of the building, this is considered to be appropriate from a visual perspective.*"

- ii. The applicant's Drawing No. 2107-022 '*Site Block Plan*' fails to identify the addresses of neighbouring properties and land to the south and west which share boundaries and curtilages with the application site. The contributor includes the names of these properties and explains that Argyll and Bute Council has an interest in one of the adjoining pieces of land. No reference is made to the Council's interest in 3, 5, 7 & 9 Quay Street within the Report and the contributor considers this to be a critical omission.

He goes on to describe the position of the proposed '*dormer*' development in relation to the boundary and curtilage of neighbouring residential properties and land and he considers that this issue has not been considered in the Report.

**Comment:** It is considered that a comprehensive assessment of the impact of the proposal on residential privacy and amenity is contained in Appendix A, Section D of the main Report. There is no information to suggest that the Council has an interest in the application site itself and the question in Section (N) of the main Report has, therefore, been answered correctly.

- iii. It is contended that the Environmental Health Officer (EHO) has failed to grasp and understand the proposal description. The term '*beer garden*' does not appear anywhere within the application as being the '*proposed use*'; however, the EHO's comments that appear in the main Report make mention of a request "*that a suitable Noise Management Plan (NMP) be formulated for the proposed use of the beer garden*".

For this reason, the EHO's memoranda are flawed and cannot be relied upon, or considered in the determination of the '*change of use of land to rear*' aspect of the application.

**Comment:** The drawings associated with the application identify the creation of an external seating area that could be accessed from the interior of a Public House via the proposed formation of a door. In addition, the majority of the objections that were submitted mention the change of use of residential garden ground to Public House and express concern that the proposal would have a detrimental impact upon the established residential amenity of the area.

In these circumstances, it has been considered reasonable to undertake an assessment of the potential impact upon the privacy and amenity of neighbouring residential properties on the basis that the external seating area would be used in association with the Public House. A Noise Management Plan (NMP) has been submitted, which has been "*designed to manage potential noise nuisance arising from the proposed development whether or not the garden is used for the consumption of alcohol*".

In this sense, the assessment is based upon the '*beer garden*' scenario although it is recognised that the seating area might not ultimately be used in conjunction with the Public House. It is considered that the conditions that are recommended in terms of

the NMP and the provision of fencing along the easternmost boundary of the seating area have arisen from an appropriate consideration of the proposal.

- iv. Based on the applicant's statements and admissions, it is contended that the applicant will have no influence in the day-to-day management of the proposed '*change of use of land to rear*' aspect of the application, or indeed the Public House as a community pub, as it will clearly be operated and managed by members of the community (third party) at a future date.

**Comment:** Should there be a requirement to check compliance with any of the conditions that are recommended in the main Report, the Council would investigate accordingly based upon the circumstances at that time. It is normal practice for approaches to be made to the person(s) who is carrying out (or has carried out) the development or the person(s) having control of the land.

- v. The contributor refers to comments from Jon Sear and Gary Charnock of the Port Bannatyne Development Trust Limited (PBDTL) relating to the proposed use of the land to the immediate rear of the public house. These comments expressed the intent to tidy up the space and plant some suitable shrubs or flowers as opposed to the creation of a licensed beer garden. He refers to a statement from Mr Charnock that PBDTL could not withdraw the change of use aspect of the current application because it was a condition of their application for funding from the Scottish Land Fund.

The conclusion is that, based upon the applicant's statements and admissions, it is abundantly clear that he has no intention of implementing any of the 13 mitigating procedures set out in its NMP.

**Comment:** Should Planning Permission be granted, it will relate, *inter alia*, to the formation of the outdoor seating area identified on the approved drawings and shall be undertaken in accordance with the conditions on the Decision Notice. Any intention to change the proposal for this area of land would be examined at the time in terms of whether the works and/or use constituted development and the manner in which they related to the approved development.

- vi. The contributor draws attention to comments made by the EHO where there is initial mention of the rear area being enclosed by fencing to 1.8 metres and, in a later memorandum, reference to close boarded fencing to a height of 1.8 metres along the eastern boundary. It is contended that the fencing proposed by the applicant does not enclose the space with fencing up to 1.8m as claimed initially by the EHO and that the proposed fencing will not attenuate noise escaping from the proposed '*change of use of land to rear*' and proposed '*dormer*' aspects of the application nor will it protect the privacy of the established residential amenity enjoyed by neighbouring and surrounding properties and land.

**Comment:** The proposed fencing is one element of the Noise Management Plan (NMP) and the EHO, in his e-mail of 1<sup>st</sup> February 2022, makes mention of the provision of "*close boarded fencing 1.8m height above ground level along the eastern boundary*". It is contended that the EHO was aware of where the fencing would be and was content with its inclusion as part of the NMP.

- vii. Based on the most recent proposals submitted by the applicant on the 31<sup>st</sup> January 2022, it is contended that access for disabled people has been made more difficult by the applicant.

**Comment:** Whilst not within the boundaries of the current application site, Mr Jon Sear has previously advised that there is a shared access path from Quay Street to the proposed garden. He has intimated that the surface of this path may be improved but that would be subject to agreement with the other owners in the tenement. Depending on their nature, improvement works to this path may require Planning Permission but there is the possibility that this route might afford the opportunity for access to the seating area for disabled persons.

- viii. It is contended that Class A carcinogen (tobacco smoke) pollution escaping from the proposed '*beer garden*' will affect the health of the occupants of neighbouring and surrounding residential properties, and their enjoyment of established residential garden space. In terms of health, article 8 of the Universal Declaration of Human Rights provides for the right to a private life. This is referred to as a '*qualified right*', meaning it does not override the protection of the health and freedom of others.

**Comment:** The grant of Planning Permission would not necessarily result in the seating area being used by persons who smoke.

- ix. The contributor expresses concern that inaccurate and ambiguous terms have deliberately been used to describe the proposed '*dormer*' aspect of the development and that this has been designed to confuse and deceive.

**Comment:** It is contended that there is sufficiently clear information within the application for a proper decision to be made by Members.

- x. The contributor contends that the report contains an apparent bias which favours the business activities of the applicant over the interests of the owners and occupiers of neighbouring residential properties and land and that the applicant's use of inaccurate and deceptive terminology is the primary cause of this apparent bias.

The contributor uses the example of the assessment of SEPA Flood Maps where the report does not concur with the flood risk information produced by SEPA, that the application site is in fact at '*High Risk*' of flooding caused by Coastal water and that the address is at '*High Risk*' of flooding caused by Surface Water.

**Comment:** The assessment in the main Report is based upon the terms of the Development Plan and all other relevant material Planning considerations.

In terms of the SEPA Flood Maps, it is acknowledged that the page in SEPA's website headed '*Flood Hazard and Flood Risk Information*' states that there is a '*High Risk*' of coastal and surface water flooding within a 50 metre radius of 33 Marine Road, Port Bannatyne.

However, if one proceeds to the actual map of this part of Port Bannatyne, one can see that no part of the application site is physically located within the '*High Likelihood*' category with only a minor section being categorised as at '*low likelihood*' from coastal flooding and this is part of the Anchor Tavern Public House.

- xi. The contributor writes that “*It is contended that the Applicant bullied, harassed and intimidated certain members of the community that hold or express valid concerns in relation to the Application*”. The contributor states that he wrote to the applicant in October 2021 “*expressing (his) concerns at the conduct of certain members of the Port Bannatyne Development Trust Limited*”. The contributor states that “*on the 31<sup>st</sup> January 2022, the Applicant submitted representations to Argyll and Bute Council in the matter of the Application which are false, misleading and defamatory*”.

**Comment:** These issues that the contributor has raised are not considered to have a material bearing upon the Planning aspects of the case.

- xii. The contributor wishes to remind the Committee that the application has attracted 17 letters of objection and that, despite the applicant’s unsubstantiated claim that its project is ‘*Community led*’, it is surprising to note that no representations supporting the application have been received.

**Comment:** This is noted.

- xiii. It is contended that, in their present formats, both the application and the Report are open to legal challenge. Furthermore, the contributor considers that defamatory statements made by the applicant which appear on Argyll and Bute Council’s Public Access System are also open to legal challenge.

**Comment:** It is considered that both the application and main Report contain sufficiently proper information for Members to make a decision. The second issue that the contributor has raised is not considered to have a material bearing upon the Planning aspects of the case.

- xiv. The contributor respectfully requests a postponement of the determination by the Committee to allow the following:

- A thorough investigation into the inaccurate, false and misleading information, drawings and representations submitted by the applicant and appropriate action taken where necessary
- An assessment by Planning and Environmental Officers into the determining issues and material conditions relating to the ‘*dormer*’ development and proposed Noise Management Plan aspects of the application

**Comment:** It is for Members to decide whether they wish to continue consideration of this application but the Department is of the opinion that there is sufficiently clear information within the application for a proper decision to be made by the Committee.

- xv. The contributor considers that a very significant planning consideration has been overlooked in the Report with the consequence that it would be unconstitutional for any member of the Committee to formulate conclusions relating to the application until all available information is to hand in relation to the ‘*dormer*’ development’ aspect of the application.

**Comment:** See response on (xiv) above.

- xvi. The contributor concludes with a request to be heard in the matter of planning application 21/01912/PP.

**Comment:** The requirement for a hearing at which contributors can participate is addressed in Section (O) of the main Report and the conclusion is that, having regard to the approved guidelines, it is considered that a hearing would not add value to this assessment.

### **3.0 RECOMMENDATION**

It is considered that the points that have been made by Mr McGoldrick are addressed appropriately above and they do not alter the recommendation contained in the main Report of Handling dated 15<sup>th</sup> February 2022; namely, that the application be **granted** subject to the conditions, reasons and informative notes contained therein.

**Author of Report:** Steven Gove

**Date:** 22<sup>nd</sup> February 2022

**Reviewing Officer:** Sandra Davies

**Date:** 22<sup>nd</sup> February 2022

**Fergus Murray**  
**Head of Development and Economic Growth**