

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING
COMMITTEE held in the AROS HALL, MAIN STREET, TOBERMORY, ISLE OF MULL
on WEDNESDAY, 29 JANUARY 2020**

Present: Councillor David Kinniburgh (Chair)

Councillor Gordon Blair
Councillor Robin Currie
Councillor Mary-Jean Devon
Councillor George Freeman

Councillor Donald MacMillan BEM
Councillor Alastair Redman
Councillor Richard Trail

Attending: Iain Jackson, Governance, Risk and Safety Manager, Argyll and Bute Council
Peter Bain, Development Manager, Argyll and Bute Council
Tim Williams, Area Team Leader, Oban, Lorn and the Isles, Argyll and Bute Council
Calum MacLachlainn, Argyll Properties Ltd, Applicant
Phil McLean, Geddes Consulting, Applicants Agent
Callum Anderson, Kaya Consulting, Applicants Agent
David Cameron, JBA Consulting, Flooding Assessor
John MacDonald, Tobermory Harbour Association, Supporter

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Rory Colville, Lorna Douglas, Audrey Forrest, Graham Archibald Hardie, Roderick McCuish, Jean Moffat and Sandy Taylor.

2. DECLARATIONS OF INTEREST

There were none intimated.

3. ARGYLL PROPERTIES LTD: ERECTION OF RETAIL UNIT, VISITOR CENTRE AND 3 SELF-CATERING UNITS, INCLUDING REALIGNMENT OF ESCAPE STAIRS TO TAIGH SOLAIS AND MACGOCHANS: LAND ADJACENT TO TAIGH SOLAIS, TOBERMORY, ISLE OF MULL (REF: 17/01205/PP)

The Chair welcomed all those present to the meeting and introductions were made. He outlined the procedure and invited the Governance, Risk and Safety Manager to identify all those present who wished to speak.

PLANNING

Tim Williams presented the application on behalf of the Head of Development and Economic Growth. He made the following presentation referring to a number of PowerPoint slides which were displayed to the Committee -

Before commencing my presentation and whilst this matter was drawn to the attention of Members at the October PPSL Meeting, for the benefit of this Hearing and in the interests of ensuring complete transparency, I wish to reiterate two minor errors within the published Report of Handling.

On Page 3 of your Agenda Pack (the first page of Agenda Item 3) the report states that there has been no response from the Council's Environmental Health team. I must inform you that this is not correct. The Environmental Health officer did respond and offered no objection to the proposed development by memo dated 18th September 2017.

In addition, on the next page, Page 4, under the summary of the comments from the Council's flood risk officer it states that he objects to the development as the proposal is contrary to Policy LDP 11 and Supplementary Guidance TRAN 7. That should read Policy LDP 10 and Supplementary Guidance SERV 7; these being the key Local Development Plan policies in this case and those specifically, and correctly, referenced throughout the remainder of the report of handling.

I can only apologise for these errors to this one small section of the text and ask that it be minuted that the report be thus corrected.

In terms of the adopted Local Development Plan, the application site is located within the 'Main Town Centre' of the 'Key Settlement' of Tobermory wherein settlement strategy policy LDP DM 1 of the Local Development Plan gives encouragement to appropriate and sustainable forms of up to large scale development upon suitable sites subject to compliance with other relevant local and national planning policy and guidance.

The proposal is for a mixed use development consisting of a medium scale retail component and a small scale tourism offer which represents an appropriately high quality, well designed and suitable proportioned development within an existing 'gap site' within the Tobermory Harbour waterfront and conservation area. The proposed development has attracted some 51 letters of support. It is considered that the proposed development is wholly compliant with all relevant provisions of both local and national planning policy, with the material and critical exception of flood risk.

Members will have read the report of handling and I am aware that some or all of you have been contacted directly by one of the Applicant's Agents. The recommendation of officers is that this is not an appropriate site for this specific development as it will result in a built development located within the functional coastal floodplain and determined as being categorised as a 'Highly Vulnerable Use' within an area of medium to high flood risk, clearly contrary to Scottish Planning Policy and SEPAs published flood guidance as well as the Council's own flood risk policy and supplementary guidance.

SEPA, as the government's flood risk agency have strenuously maintained an objection to the proposed development and no appropriate compromise position has been found sufficient to allow officers to recommend to Members that the application can be considered acceptable.

It is anticipated and accepted that this stance may not sit comfortably with Members and I must advise that should Members be minded to go against officer's recommendation in this case, they will be required to notify this intention to Scottish Ministers and to explain, in detail, their reasons for wishing to depart from national and local flood risk policy.

I must take this opportunity to express publically my profound disappointment that SEPA have elected not to be represented in person at today's proceedings; this

despite their initial confirmation that they would attend. However, I should stress to Members and to those in attendance today that the absence of SEPA must not be taken as any indication that they have somehow 'backtracked' on their consistent objection to the proposed development.

Conversely, however, I would ask that Members bear in mind, particularly during their questions and assessment, that the key determining issue in this case rests solely on a single technical matter; that the Government agency tasked with formulating and operating national planning policy surrounding that issue is not present today and, therefore, the value from today's debate may not entirely meet the high standards normally expected. Having now carried out a site inspection, Members may wish to consider a continuation of these proceedings to a time and place mutually agreeable and in order to secure the attendance of SEPA.

I propose to leave this as a rhetorical matter and move on.

This is the submitted amended ground floor plan which shows a large, open retail unit to the right hand side and a smaller tourist information office to the left hand side. It also shows the recently added 'flood refuge' area to the rear of the building. This consists of an elevated rectangular platform cut into the hillside at the rear of the site and accessed via stairs. This refuge area is open in the main part with a small covered area to the left hand side. It is noted that it affords no level access for the mobility impaired.

This is the proposed first floor plan which consists of three two-bedroomed residential holiday letting units, accessed via an external staircase to a covered but open gallery access landing to the rear.

These are the proposed elevations with a helpful street montage illustration. The proposed development would adjoin the existing harbour building to the left hand side and sit within an existing undeveloped gap between the harbour building and MacGochans bar and restaurant to the right hand side. The proposed building would have a relatively simple form and an attractive design consisting of a mix of traditional and contemporary design elements and a range of external finishes including painted render, sage green timber composite boarding and a standing seam zinc roof. The building would be extensively glazed to its front elevation with small balcony areas to the first floor self-catering accommodation. The proposed building would occupy a relatively flat and level area of land which sits in front of a steep and rocky hillside.

This slide shows the details of the proposed flood refuge area to the rear of the building. It can be seen that this takes the form of a long, narrow platform cut into the steeply sloping ground immediately to the rear of the proposed main building. This would be an open area accessed via an external stair and surrounded by a safety railing. A small area to the eastern end of this platform would be covered by a simple monopitched roof structure.

This is a zoomed-in view of the site taken from the other side of the bay, from the north and looking due south. It clearly shows the existing gap site with the coastguard building and Mull Aquarium to the left and MacGochan's bar and restaurant to the right.

This is looking across the site from within the existing public car parking area looking south east with the temporary visitor centre trailer demarking the approximate central position of the application site and the aquarium and harbour building beyond. This photograph also illustrates the steepness of the rising land at the rear of the site. This is a similar view but this time looking due south.

And this photo and this one: Are taken from the rear of the site, behind the tourist information trailer, and looking in a north-east to north-west arc over the harbour and its car park and with the iconic bay-side settlement beyond.

Members may just make out the clock tower on the opposite side of the bay, as pointed out to them at the site inspection (middle, background – above white camper and to left of tree). This is important because it shows that the existing ground level of the development site is approximately equal to that of the esplanade upon which the clock tower sits. I will refer to this again later.

This is from the site looking due east; and this is looking due west. And this shows the western side wall of the aquarium and harbour building with a bewildered-looking elderly gentleman being supported by a tourist information sign. The proposal is to attach the new building to this side wall, set back slightly from its existing front face and to utilise the existing window opening to provide an internal walk-through between the existing visitor centre and the proposed new tourist information centre within the proposed new building. The existing external stair would be moved to the back of the building.

As previously stated and as outlined in detail in the published report of handling, the sole but fundamental issue for Members is the flood risk vulnerability of the site. This is a screenshot from SEPA's flood risk mapping database with the red arrow marking the approximate position of the proposed development and the green colouring an overlay of the coastal margins in and around Tobermory and showing the extent of the 'medium coastal flood risk zone'.

This means a flood event that is likely to occur in the defined area on average once in every 200 years or a 0.5% chance of it happening in any one year. SEPA point out that the likelihood of flooding remains the same in each year, for instance if a flood were to occur in year one, there would remain the same statistical (0.5%) probability of it occurring again in year two and so on.

SEPA's starting point is that proposed developments should not be located within the functional floodplain or in areas of medium to high risk from fluvial or coastal flooding. This stance is reflected in both national and local planning policy and constitutes a hardline 'precautionary principle' which, at its heart, seeks to protect people and property from flooding. It is this fundamental principle which Members will be required to reconcile should they wish to depart from key planning policy.

That is the key guiding principle. However, planning policy accepts that such a broad brush ban on development within such flood risk zones, whilst desirable in exercise of the precautionary principle, may not be possible in all cases. Therefore planning policy acknowledges that some types of development may be acceptable if they meet the requirements of a detailed 'risk framework' as defined within Scottish Planning Policy and by SEPA's published 'Land Use Vulnerability Guidance'.

This is used to assess and describe the vulnerability classification of proposed developments and to ensure that those developments are suitable for the location and degree of flood risk. – This table is a summary of that vulnerability guidance.

SEPA have assessed the proposed development and have concluded that it falls within the category of 'Highly Vulnerable Uses' because of the proposed first floor residential holiday accommodation. The retail and visitor centre element of the proposed development would, if considered in isolation, fall within the category of 'Least Vulnerable Uses'.

However, if we look at this next table, particularly the row along the bottom which refers to developments within the medium to high flood risk areas, it can be seen that neither the 'Highly Vulnerable Uses' or the 'Least Vulnerable Uses' are acceptable when one applies the necessary risk framework assessment, unless the following circumstances apply:

The proposals constitute a redevelopment of an existing building on either a change of use basis or a redevelopment basis and proposes a use of equal or less vulnerability than the existing use.

In the case of this specific application, no such opportunity exists and the proposed development remains fundamentally contrary to both national and local planning policy.

This does not mean, however, that the site is necessarily undevelopable. SEPA's guidance on flood risk policy suggests that a different form of development on this site could be acceptable. It is possible that a different development; one classed either as a 'water compatible' development or a development consisting of 'essential infrastructure' requiring a flood risk location for operational reasons, could be acceptable within the medium to high risk coastal flooding zone provided that it can be demonstrated that any such development within the functional flood plain will not lead to flooding elsewhere.

Otherwise, Scottish Planning Policy indicates support for development of the type currently proposed where such flood risk areas are protected by an appropriate existing or planned flood protection scheme.

Members will have seen that numerous discussions and negotiations have taken place between officers, the developer, his various agents and consultants and with SEPA. There is much discussion within the published report of handling of floor levels, of climate change and of various flood attenuation measures. All of this has been well-intended and useful to inform the wider debate. However, I must advise you that none of the submitted safeguarding measures have been deemed sufficient to overturn the national and local planning policy objection.

SEPA, over the course of 28 months and eight separate consultation responses maintain that the proposed development may place buildings and persons at flood risk contrary to Scottish Planning Policy; that SEPA have a shared duty with Scottish Ministers and other responsible authorities under the Flood Risk Management (Scotland) Act 2009 to reduce overall flood risk and to promote sustainable flood risk management. SEPA point out that the cornerstone of sustainable flood risk management is the avoidance of flood risk in the first instance.

SEPA have reviewed all of the submitted proposed mitigation in detail. SEPA conclude that:

- the site of the proposed development is located within the coastal floodplain;
- the site can and will flood;
- that it is their opinion that this location is not essential for operational reasons, nor would it constitute an exceptional circumstance;
- that the proposed use of mitigation measures to facilitate the development of the site are not considered to be appropriate and;
- that the principle of flood risk avoidance is at the heart of national planning policy with Paragraph 255 of the Scottish Planning Policy stating that, “the planning system should promote flood avoidance by safeguarding flood storage and conveyance capacity and [by] locating development away from functional floodplains and medium to high risk areas. Built development should, therefore, not take place on the functional flood plain.”

SEPA concludes by reiterating that there is, in their considered opinion, no technical solution to managing flood risk at this site which meets with Scottish Planning Policy.

That the site will flood should not be in doubt following recent events.

This is a photograph taken of the clock tower and adjacent esplanade and road at just before 8pm on Monday 13th January, this year. It shows the impact of Storm Brendan.

Members have seen for themselves the relative height of this ground compared to that of the application site on the opposite side of the bay – they are, for all intents and purposes, the same.

SEPA have categorised this flood event as somewhere between the 1 in 10 and 1 in 20 year return period, sufficient to flood the development site though at a level substantially less than that predicted by the 1 in 200 year flood event.

In such a flood event, due primarily to the predicted effect of climate change and flood waters driven ashore by wave action, one might expect the water level shown on this photograph to be increased by almost 1.9 metres.

Whilst I have no wish to appear before you as the world’s oldest Greta Thunburg, I hope you will agree that such an event would be catastrophic for Argyll’s lower lying coastal margins.

We must face this challenge together and we can begin here, today, by supporting our Government’s flood risk strategy and their response to the climate change emergency. We can do this by saying no to inappropriate development on sites subject to flooding where such development will put people and places at risk.

APPLICANT

Phil McLean presented the application on behalf of Argyll Properties Ltd. He made the following presentation –

Good afternoon – I am Phil McLean from Geddes Consulting, planning adviser to the Applicant, Argyll Properties. Some of you may remember me from my time as Planning Officer with the Council, covering Mull. I am joined by Callum Anderson from Kaya Consulting, a flood risk specialist, as well as Calum MacLachlainn of Argyll Properties.

We welcome the Committee's Decision in October to hold this hearing, and we thank you for the opportunity to address you today.

The proposal is for a ground floor convenience retail unit, additional space on the ground floor as a tourist information office for the Harbour Association, and three self-catering apartments above. The proposal supports regeneration and economic investment objectives for Tobermory waterfront. It provides road safety benefits, and will represent a significant visual and streetscape enhancement of a prominent 'gap site' within the Conservation Area.

As you have heard from Council officers, the proposal is fully compliant with all relevant local and national planning policy. The single matter of debate, and the reason we are here today, is about the implications of flood risk.

We welcome the assessment in the Committee Report that the proposal is an appropriately high quality, well-designed, suitably proportioned development and consistent with the aims of the development plan in terms of tourism and economic development.

We are also delighted that the Application has attracted such significant public interest, with over 50 representations of support, including unanimous support from the Community Council. This reflects the benefits of the proposal in terms of economic benefit, road safety, and enhancing the local townscape.

The Applicant does accept that flood risk is an important issue for this site. As outlined in the Committee Report, we have made a number of changes to the proposal since the Application was originally submitted, including raising proposed floor levels to the maximum practicable level. We have also outlined a range of mitigation measures, which can be secured by planning conditions or Legal Agreement.

The proposed mitigation measures include: firstly, providing a flood refuge area that can also be accessed by patrons of MacGochans pub; secondly, providing an emergency boat fixed to a nearby building; thirdly, including the property in the flood warning scheme operated by the Harbour Association; and finally, using flood resilient construction measures to provide additional protection to the ground floor.

The proposed mitigation measures provide the necessary protection levels for the development to the year 2080 taking account of projected climate change, or to 2065 with an additional allowance for waves.

The objection by SEPA does not address the fact that a strategic and adaptive approach to managing flood risk in Tobermory will be needed in future, whether or not this development is approved. The proposed ground floor level of this development is higher than many other existing shore-front properties in Tobermory.

SEPA's position also does not take local circumstances into account. It does not recognise the site's location within the town centre, and the significant benefits of the development to the local community. It is based on categorising the site as 'undeveloped/sparsely developed functional floodplain', which is not reflective of the actual location of the site. It also does not acknowledge that the more vulnerable residential use is on the first floor rather than the ground floor, and is therefore well above relevant flood levels.

It is important to bear in mind that the proposal does not materially increase the risk of flooding to other properties but the proposed mitigation measures delivered by this proposal will be of benefit to Tobermory overall.

To sum up, we are seeking the Committee's support to approve this Application. We urge you to give weight to local circumstances, to the significant benefits of this development and to the clear wishes of local residents.

There is no 'Plan B' for this prominent gap site – if this development is not approved, the site will remain undeveloped.

As officers have highlighted, if you are minded to approve the Application this will need to be referred to Scottish Ministers due to SEPA's position. This procedure is not unusual. While Ministers have the power to 'call in' the Application for their consideration, they would only do so if they were of the view that the proposal raised issues of national importance. We have reviewed many other such cases and we are confident that Ministers would decide this Application is best dealt with locally and would return it back to the Council to approve.

I thank you again for the opportunity to present to you today, and we will be very happy to respond to questions at the appropriate point on the agenda.

SUPPORTERS

Mr John MacDonald spoke in support of the application, on behalf of Tobermory Harbour Association. He advised that the Harbour Association owned the land and stood to gain advantage from the application. Mr MacDonald gave a history of the Harbour Association advising that it had been founded in the early 80s to ensure the bay remained in local control. He advised that the Association had expanded since then and offered facilities both on shore and off shore, and that the application would enhance these facilities.

Mr MacDonald advised that Tobermory had experienced only 2 significant floods, one in 1973 and one in 2005. The flood in 1973 had been exceptional and there had been nothing like that since. He advised that the flooding was infrequent and that the Harbour Association did not feel that it was of significance to the application. He advised that when flooding did occur, that it was over a short period of time, adding that it seldom lasted more than 2 hours. He advised that the flood water did not

contain any sewerage or foul elements, that it did cause damage, but the damage was not catastrophic.

Mr MacDonald told the Committee that he was aware that there was an ongoing scheme to replace the railings the length of the street along with a low wall and replace the existing slipway which would assist with flooding mitigation. He advised of a problem with a lack of drainage. He advised that the flooding in the car park would be significantly reduced with the proposals for the railings and seawall, and that it was unlikely it would affect the application.

He concluded by saying that the Association was ambitious and that they hoped to attract more people to Tobermory both on shore and off shore. He advised that they would not like to see anything that would stifle suitable development. Having lived and worked there all their lives they thought the risk was worth it and could see no reason to worry about it.

MEMBERS QUESTIONS

Councillor Redman asked the applicant to provide further detail about the flood mitigation measures mentioned in the presentation given. Mr McLean advised that these measures were set out on page 13 of the agenda pack and included an evacuation and rescue area, measures for the building including raising the property floor level and a range of flood protection measures within the shop. He advised that because flood event was predictable these measures could be put in place and secured by planning conditions. He advised that other key measures included a flood management plan which would tie in with flood warnings by the Harbour Association and would cover arrangements for how flood warnings would be communicated, adding that the exact detail would be dealt with through planning conditions. Mr McLean highlighted the starting point of the floor level of the building and advised that the level SEPA were saying would be required would take the floor level of the property in line with the level of the top of door of MacGoghan's bar which would be unacceptable. He advised that the proposed floor level of the application was 1m above the current floor level of MacGoghan's bar.

Councillor Devon highlighted the absence of SEPA, stating that Members were not professional planners or flood experts and were dependent on consultees to provide information to them to make an informed decision on issues that affect communities. She advised that she would be directing the questions she had for SEPA to Mr Cameron of JBA Consulting. Councillor Devon asked Mr Cameron where the designation of Tobermory Bay as a coastal flood zone had come from advising that they had not received copies of the SEPA maps showing Tobermory as high risk. She said that residents were worried about how this designation would affect the insurance of existing properties. Councillor Devon read out SEPA's development management guidance that had been updated in July 2018. She advised that they had considered removing Tobermory from the potential vulnerable area list and if that was the case, then why was the bay designated as a medium to high coastal flood zone. Mr Cameron advised that the designation had come from Scottish Planning Policy, 1 in 200 year flood risk and that SEPA had provided indicative maps that were available on their website. He advised that there were three categories, low, medium and high. He advised that he could not answer her question in terms of removing the potential vulnerable area designation from Tobermory.

Councillor Currie asked the applicant for further detail on the proposal for the provision of a rescue boat. Mr McLean advised that the applicants had other land within their control and had offered to put a rescue boat in place which could be secured through planning conditions. Councillor Currie asked where the rescue boat would be situated and Mr MacLachlainn advised that it would be situated near the distillery and that the net benefit gain would be extraordinary as it would be of use to other properties.

Councillor Currie asked Mr Cameron for his view on the floor levels required by SEPA. Mr Cameron advised that in his view the technical solution would be to raise flood level above 3.92m, as at this level it was only 1cm higher than the 1 in 200 year flood level. He advised that there was also a need to account for climate change and wave action. He advised that the application did not meet the Council Policy in terms of flood risk and in that case should be recommended for refusal.

Councillor Currie asked what weight was given to SEPA's objection and asked if there was an obligation to comply with the guidance given. Mr Bain advised that SEPA were a statutory consultee which meant the Council were required to consult them and obtain comments, take these comments into account and give material weight to them when making a decision. Mr Bain added that there was a provision in the Scottish Government Planning Act advising of the requirement to notify to Scottish Ministers when a Council intends to go against the view of a statutory consultee. Councillor Currie asked if similar action would be taken for other consultees such as roads. Mr Bain advised that that would not be the case as they were internal consultees. He added that in the case of the current application the Scottish Government had set out that flooding was a national issue and wanted oversight of the operation of that Policy.

Councillor Trail asked the applicant if they had negotiated with SEPA in terms of the flood mitigation measures listed in the report. Mr McLean confirmed that the information had been circulated to SEPA and JBA Consulting, that SEPA had objected in principle and were not willing to negotiate. Mr Williams advised that the Planning Authority aim to work with SEPA to achieve a solution. He advised that SEPA had commented in detail on the mitigation strategies and did not support the principle of the application. They had advised that the proposed use of mitigation measures were not appropriate.

Councillor Trail asked Mr Williams if he was of the opinion that SEPA had given serious consideration to the mitigation measures proposed by the applicant. Mr Williams said that he considered that they had, as all their responses had been detailed.

Councillor Trail asked the applicant to explain why the flooding level of 1.9m above the level of the water was not considered by the public to be a reasonable level. Mr McLean advised that he had not seen the survey that had confirmed the level. He referred to the flooding event of 13 January advising that there had been limited flooding of the car park but he had not witnessed it personally. Councillor Trail asked if the clock tower shown on the slide by planning was the same level as the car park. Mr Williams confirmed the level of the clock tower was 3.4m and that the existing level of the site was 3.3m which would mean that the site would have flooded by 10cm. He added that if the water level was to rise to the predicted level of 5.27m, the majority of Tobermory would be under water.

Councillor Redman asked how much economic benefit the proposal would bring to the island. Mr MacDonald advised that the proposal would have a direct advantage to Tobermory itself rather than the island as a whole. He added that they received compliments on the facilities that were currently available but the proposal would allow the existing aquarium to be enlarged, additional accommodation to be provided which there was always a requirement for; and the provision of another retail outlet which would be advantage as the only current food outlet was the coop.

Councillor Blair asked Mr MacDonald what damage had been done to the existing building beside the gap site during previous flooding events. Mr MacDonald advised that the floor of the building had been raised by 1m above the car park as a precautionary measure when it was built, and during the flood event in 2005 there had been no flooding of that building. The building had not been in existence in 1973 and therefore he could not comment on that event.

Councillor Blair referred to the photograph shown by planning of the window of the building which would become the link door to the new property and which Mr Williams stood next to the sign to the aquarium and asked where the floor level suggested by SEPA would be. Mr Williams demonstrated that the level would be around his nose level on the photograph and the existing proposal would take the floor level to the bottom of the existing window.

Councillor Blair referred to flooding in his garden each year and the mitigation measures he had put in place to deal with this. Councillor Blair asked who owned the car park. Mr MacDonald confirmed that the car park was currently owned by the Council but the Association were looking to purchase the car park to lease to the Council. Councillor Blair asked if any of the existing properties had encountered difficulties with insuring their properties. Mr MacLachlainn confirmed that none of the existing properties had received an adverse reaction from insurance companies.

Councillor Freeman requested confirmation on whether the chance of flooding referred to was 0.5% or 5%. Mr Williams confirmed that it was 0.5%. Councillor Freeman asked if the flood water level suggested by SEPA would reach the top of the window. Mr Cameron confirmed this and outlined the different elements that took the predicted flood water level to 5.27m. Councillor Freeman then referred to the photograph on the planning officer's presentation showing the flooding at the clock tower and asked if there were any photographs of the flooding in the car park during that time. Mr MacLachlainn showed the Committee a range of photographs of the car park that he had taken on his mobile phone at the same time as the photograph of the clock tower had been taken on 13 January. The flood water had not reached the level of the existing building.

Councillor Freeman then asked for confirmation that during that flooding event he could have walked from the high street to MacGochan's without walking through flood waters. Mr Cameron confirmed that he could have. Councillor Freeman asked if there had been an instance of flooding where people had required to be rescued from MacGoghan's. Mr Williams advised that he had no information available on this matter.

Councillor Kinniburgh referred to the mitigation measures and asked why measures such as barriers were not acceptable. He described premises in Helensburgh that were prone to flooding and which had measures in place to fit barriers to doors when they knew there would be flooding. He referred to the concern over residential

properties and asked why this was the case if they were to be on the first floor of the property. Mr Cameron advised that barriers were only suitable for water levels of up to 0.6m which was not high enough.

Councillor Kinniburgh asked when the predicted climate change figures would come into effect. Mr Cameron advised that was dependent on the design life of the proposal. Councillor Kinniburgh asked about the significance of the year 2080. Mr Anderson replied that this was the year that SEPA would look to in terms of climate change and therefore 2080 would be what they would look to for the design life of the property. Councillor Kinniburgh asked if climate change could happen earlier than 2080. Mr Anderson advised that the year 2080 would be a standard design life and that they would not look any further than this. Councillor Kinniburgh asked if the building would last until the year 2080. Mr McLean explained that the climate change allowance would increase over time and the mitigation measures they proposed would take them as far as the year 2080 with climate change, he advised that by the year 2080 flooding would be a bigger issue in Tobermory than just that of the site.

Mr Cameron advised that currently the floor level was just 1cm higher than the 3.92cm level required for a 1 in 200 year event if it occurred in 2020. He advised that the floor level needed to be higher as a door guard would only help up until a certain point in the future and was reliable on flood warning. Councillor Kinniburgh asked if it would be the visitor centre that would be at risk from flooding and referred to the garage in Helensburgh that he worked in which regularly flooded but was designed so that it did not cause any damage. The applicant advised that it would only be the visitor centre that would be at risk of flooding.

Councillor Freeman asked if the visitor centre would be designed in such a way that the electrics would be at a higher level to minimise the damage should it flood. He was told that this would be the case. He asked if the 2080 figure was given because the building had been given a 60 year design life and if the design life was reduced would that also reduce the height required for the floor level. He was told that it would.

Councillor Freeman highlighted his disappointment at SEPA not being present to justify their recommendation and asked for clarification that the officers present were not there to speak on behalf of SEPA. He was advised that the officers present were not there to speak on behalf of SEPA.

Councillor Blair commented that SEPA had regulations in place to prepare for moving forward in a changing society. He asked the applicant if he agreed that there was a need for a common sense approach. Mr McLean advised that SEPA worked on a national perspective but there was a need to take in to account local factors.

SUM UP

Planning

Peter Bain, Development Manager, summed up as follows -

During the course of this afternoon Members have heard a range of arguments seeking both to support and oppose the development, however, it is clear that the fundamental issue in deciding whether or not to grant permission essentially comes

down to the weighting afforded to management of flood risk in the decision making process.

In reaching a decision today, Members are reminded of the requirement placed upon decision makers by Section 25 of the Town and Country Planning (Scotland) Act 1997 to determine all planning applications in accordance with the provisions of the adopted development plan unless material considerations indicate otherwise.

The case before you has been assessed by officers who have reached a view that notwithstanding that the siting, scale, design, finishes, access and servicing arrangements associated with the proposed development are considered to be sufficiently aligned with the relevant provisions of the Local Development Plan, the proposed development is not considered to be sustainable in terms of flood risk as it would result in the introduction of new retail and residential holiday letting units within a functional flood plain which is identified as being at medium to high risk of flooding.

Whilst the determination of the case largely boils down to the consideration to be afforded to flood risk management when weighed against other material matters which are supportive of the development Members are reminded that the relevant provisions of both National and Local policy advocate that a 'precautionary approach' is taken in respect of flood risk management and as such set a high bar to overcome for any decision maker who might be minded to consider setting aside considerations which are identified as being fundamental to the objectives of the Development Plan.

Scottish Planning Policy 2014 clearly identifies that the impacts of rising sea levels and more extreme weather events arising from climate change will increase the risk of flooding and sets out an expectation "that planning will play an important role in reducing the vulnerability of existing and future development to flooding." (*SPP – para 254*) In order to achieve this the planning system is expected "to prevent development which would have a significant probability of being affected by flooding or which would increase the probability of flooding elsewhere." (*SPP – para 256*)

In this instance it is considered that the applicant has not satisfactorily demonstrated any overriding locational or operational necessity to develop the land in order to deliver a key strategy identified in the Development Plan, nor are there any other material considerations that would merit setting aside significant concerns relating to flood risk. Officer's recommendation that planning permission be refused is founded upon technical information provided by the applicant in the form of a Flood Risk Assessment, the expert advice from SEPA, as a statutory consultee to the planning process, and the Council's own Flood Risk Advisor who have not only verified that the proposal is contrary to the National flood risk management framework established by Scottish Planning Policy 2014 and SEPA's Development Management Guidance on Flood Risk and Land Use Vulnerability but have also reaffirmed that the mitigation measures put forward by the applicant do not satisfactorily address the risk to safety of the development's occupants and potential for damage to the property from coastal flooding.

Members are strongly cautioned against setting aside flood risk considerations in the face of a technical assessment identifying the likelihood of the development being affected by flooding and consultation responses from SEPA and the Council's own Flood Risk Advisor raising objection to the proposal. Members are also reminded that in the event that they were minded to support the proposal as a departure to the

local development plan, there would be a requirement to notify such intention to Scottish Ministers under Section 46 of the Act prior to planning permission being issued as a decision contrary to the objection of a government agency.

Accordingly it is recommended that the application currently before Members be refused as development which is not sustainable as a result of a significant probability of being adversely affected by coastal flooding and is accordingly considered to be contrary to the precautionary principle on such matters set out within Scottish Planning Policy 2014, the SEPA Development Management Guidance on Flood Risk and Land Use Vulnerability Guidance, Policy LDP 10 and SG LDP SERV 7 of the Argyll and Bute Local Development Plan 2015.

Applicant

Mr Anderson referred to the final photograph in the PowerPoint presentation that showed the flooding around the clock tower. He advised that the flooding level on this photo was 3.4m and the 1 in 200 year level was 3.92 which was 0.5m more than that on the photo. He advised that the level of 5.27m recommended by SEPA included an allowance for waves and climate change and included freeboard. He advised that freeboard was a recommendation but not a requirement. In terms of insurance he advised that there was a Government Scheme that ensured that those in flood risk areas could still obtain insurance.

Mr McLean reiterated that SEPAs approach was not recognising the specific needs of the local area as they had taken a hard-line principle and broad brush approach. He advised that it was important for the decision makers to take into consideration to local issues and the wishes of local residents.

Consultees

David Cameron advised that in terms of the content of Argyll and Bute Policy on the 1 in 200 year event, together with freeboard, climate change allowance and wave action, the development proposed did not meet the standard required. He referred to the historical events that had been talked about advising that it was important to remember that these events were of less magnitude of that proposed for the future.

Supporters

Mr MacDonald summed up by saying that Tobermory Bay was sheltered and that there was little or no wave action. He advised that flooding in Tobermory Bay was normally due to high tides and strong southerly winds. He advised that the Harbour Association subscribed to a flood warning system and real time information was then disseminated by social media to those likely to be affected. He said that if permitted the development would fill in an unattractive gap site which would undoubtedly enhance the amenity of the village and in this case he recommended approval to members.

FAIR HEARING

The Chair asked all those present to confirm that they had received a fair hearing, to which they all confirmed they had.

DEBATE

Councillor Redman showed his appreciation to the large attendance from the community which had shown broad local support. He referred to the photograph in the presentation which did not show the flooding to the carpark, the benefit to the local economy and the lack of attendance by SEPA and advised that in this case he did not agree with the recommendation from planning to refuse the application. He advised that he supported the proposal.

Councillor Freeman said that given the fact that SEPA were not present to justify their objection, he found it hard to place the same weighting on their objection than he would have if they had been in attendance. He advised that given the benefits the proposal would bring to Tobermory, both economic and social, he would be placing higher weighing on those when making a decision.

Councillor Devon highlighted that there were two policies which backed up the reason to refuse the application, LDP 10 and SG LDP SERV 7, whereas there were a lot more policies that supported the application; she read them out. She highlighted the 51 letters of support, the fact that there were no objections and said that if they were to refuse the application that they would be going against a number of Council policies that supported the application.

Councillor Trail advised that this had been an unusual application as normally there would have been objectors present whereas they had been faced with unanimous support for this application. He referred to the fact that despite SEPA's guidance, planning officers were advising support for the application. He said that he would have liked to continue the matter to a further meeting and for SEPA to attend.

Councillor Currie referred to the point made by Councillor Trail about continuing the meeting and advised that he would be against it. He said that SEPA had been given the opportunity to attend and that they had known the date of the hearing since the previous year. He advised that he was in support of the application.

Councillor MacMillan advised that he was happy to support the application.

Councillor Blair advised that he was minded not to support the planning officer's recommendation on the basis that this was a fragile rural community and a strong community. He advised that he would be minded to support the application.

The Chair advised that he had been very disappointed that SEPA had not been in attendance. He advised that through the process operated by the Council, SEPA could not attend another meeting without running another pre-determination hearing, and there was the chance that they would not attend again. He advised that having the extra photographs from Mr MacLachlainn had put his mind at ease in respect of flooding as the site was higher than clock tower. He referred to the fact that the building proposed was being built bearing in mind that in the unlikely event it did flood that it would not affect it dramatically.

The Chair ruled and the Committee agreed to adjourn the meeting from 2.45pm to 2.55pm to allow for the preparation of a competent Motion to support the approval of the application.

Councillor Devon proposed the following Motion which was seconded by Councillor David Kinniburgh –

Chair I intend to move a motion that it is appropriate to grant the application and in doing so I am taking a different view to that expressed by SEPA and the Council's Flood Risk officer. While I fully respect the professional judgements advanced by them I believe, on this occasion, that I should follow my own opinion in regard to the weight of consideration to be given in balancing the various material planning considerations.

The proposed development is located within the Key Settlement of Tobermory where Policy LDP DM 1 of the Local Development Plan (LDP) gives encouragement to sustainable forms of development up to large scale subject to compliance with other relevant policies and supplementary guidance. The site is located within the defined Main Town Centre and also lies within Area for Action (AFA 6/1). The development is of an appropriate use and design for this town centre location which has an appropriate massing, form, scale and orientation which will readily integrate into the landscape and with neighbouring properties without having an adverse impact on the setting of the conservation area. The proposal represents an appropriately high quality, well-designed, suitably proportioned development within this existing 'gap site' within the Tobermory Harbour waterfront and conservation area and, with the exception of flood risk, is otherwise wholly compliant with all relevant provisions of both local and national planning policy.

While the development is contrary to Scottish Planning Policy 2014, and to Policy LDP 10 and Supplementary Guidance SG LDP SERV 7 of the Local Development Plan which require development to be located out with areas of significant flood risk, the development complies with the LDP in all other respects. In this particular instance there are material considerations which are considered to be of sufficient weight meriting the departure from national and local planning policy, the consultation comments of a statutory consultee which all set out their requirement that the Council will take a 'precautionary approach' to flood risk in the determination of planning applications. The determining factor in the assessment of this planning application rests on a single technical issue and a matter of national and local planning policy with respect of flood risk.

I move that the application is notified to Scottish Ministers for approval contrary to the provisions of Scottish Planning Policy 2014, the advice of SEPA as a statutory consultee to the planning process, and as a 'minor departure' to Policy LDP 10 and Supplementary Guidance SG LDP SERV 7 of the Argyll and Bute Local Development Plan 2015 on the basis that;

Tobermory is listed as one of the top ten visitor destination in the UK, Despite this there is no longer any form of Visitor Centre/Tourist Office, in the town. Visit Scotland removed their busy office in Tobermory many years ago. This application will reinforce the very important role which Tobermory plays within the "Tourism Development Area. "as identified in the Structure Plan . It would also consider and improve town centre and waterfront enhancement potential.

TOUR 1 Tourist Facilities and Accommodation There is a presumption in favour of new or improved tourist facilities and accommodation provided. Tobermory's economy relies on tourism and as the capital town of the island it is vital to have this focal point for tourists to obtain information. Its existence would provide a much needed highly visible welcome to the harbour town whereas at present tourists pull into a large impersonal car park and wander around not knowing where to go. The current visitor information facility is a caravan and is only temporarily on site. In a fragile rural economy the tourism industry offers the prospect for real growth. It is something that everyone can benefit from and participate in. More specifically it will offer full time year round employment and relive pressure that is on existing businesses to employ staff at the height of the season.

A refusal would be contrary to LDP TOUR 1.

TOUR 3 promoting tourism development Areas. The identification of Tourism Development Areas throughout A&B highlights the potential for this industry to expand in a sustainable way close to major tourist centres.

A refusal would be contrary to LDP TOUR 3.

Both these LDP policies support this application and are in line with
LDP 4 – Supporting the Sustainable Development of Our Coastal Zone
LDP 5 – Supporting the Sustainable Growth of Our Economy
LDP 7 – Supporting Our Town Centres and Retailing
LDP 8 – Supporting the Strength of Our Communities

I consider there is an exceptional case for the approval of this development. The reasons for that are –

1. It is an existing gap site that is visually harmful and harmful to the character and appearance of the conservation area.
2. It is the only remaining development opportunity within the Harbour front and without development here, the harbour front remains incomplete and as such is a unique opportunity to complete the harbour front development.
3. The development includes an opportunity to include permanent tourist information provision, currently lacking in Tobermory and development is vital to secure the tourism growth strategy of the council.

The above represents a clear and overriding locational and operational need for the development sufficient to warrant departure from national and local flood risk policy.

The applicant has confirmed the mitigation measures they will put in place to combat the flood risk. In my view these are reasonable and proportionate and provided these are secured by planning conditions and reasons, which require to be determined by the Head of Development and Economic Growth in consultation with the Chair of the Planning Protective Services and Licensing Committee and will be included within the notification to Scottish Ministers.

There have been 51 expressions of support regarding the proposed development. The considerations that have been brought forward by those who support the application are material considerations which, in my view, carry considerable weight in their nature and are in accordance with the various material policy considerations

in the LDP with which the application is compliant so that they should outweigh the weight that has been given to the concerns that have been raised by planning services and by SEPA with regard to flood risk.

Confirmation was given from both Mr Jackson and Mr Williams that the Motion was competent.

Decision

The Planning, Protective Services and Licensing Committee unanimously agreed the terms of the Motion.

(Reference: Report by Head of Development and Economic Growth dated 2 October 2019, submitted)