



Argyll and Bute Council
Comhairle Earra-Ghàidheal Agus Bhòid

Executive Director: Douglas Hendry

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22 January 2020

NOTICE OF MEETING

A meeting of the **PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE** will be held in the **AROS HALL, MAIN STREET, TOBERMORY, ISLE OF MULL** on **WEDNESDAY, 29 JANUARY 2020** at **1:00 PM**, which you are requested to attend.

Douglas Hendry
Executive Director

BUSINESS

- 1. APOLOGIES FOR ABSENCE**
- 2. DECLARATIONS OF INTEREST**
- 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) (Pages 3 - 28)**

Report by Head of Development and Economic Growth

Planning, Protective Services and Licensing Committee

Councillor Gordon Blair
Councillor Robin Currie
Councillor Lorna Douglas
Councillor George Freeman
Councillor David Kinniburgh (Chair)
Councillor Roderick McCuish
Councillor Alastair Redman
Councillor Richard Trail

Councillor Rory Colville (Vice-Chair)
Councillor Mary-Jean Devon
Councillor Audrey Forrest
Councillor Graham Hardie
Councillor Donald MacMillan BEM
Councillor Jean Moffat
Councillor Sandy Taylor

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**Argyll and Bute Council
Development & 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 2013 relative to applications for Planning Permission or Planning Permission in Principle

Reference No: 17/01205/PP
Planning Hierarchy: Local
Applicant: Argyll Properties Ltd
Proposal: Erection of retail unit, visitor centre and 3 self-catering units, including realignment of escape stairs to Taigh Solais and MacGochans
Site Address: Land Adjacent to Taigh Solais, Tobermory, Isle of Mull, Argyll and Bute

DECISION ROUTE

Local Government Scotland Act 1973

(A) THE APPLICATION

(i) Development Requiring Express Planning Permission

- Erection of retail unit, visitor centre and 3 self-catering units
- Construction of flood-event public refuge area

(ii) Other specified operations

- Connection to public water main
 - Connection to public drainage network
 - Detail of proposed early flood warning and evacuation/refuge procedure
-

(B) RECOMMENDATION:

That planning permission be refused for the reasons appended to this report.

(C) CONSULTATIONS:

Environmental Health

No response at time of report and no request for an extension of time.

Area Roads

No objections subject to conditions. Report dated 10th July 2017.

SEPA

Objects to the proposal in principle as it may place buildings and persons at flood risk contrary to Scottish Planning Policy and SEPA guidance. Note that in the

event that the Planning Authority were minded to grant planning permission contrary to this advice on flood risk that the application should be referred to Scottish Ministers having regard to the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009. Final letter dated 11th September 2019

Flood Risk Officer

Objects to the development as the proposal is contrary to Policy LDP 11 and Supplementary Guidance TRAN 7 of the adopted LDP and no technical solution has been identified. Final report dated 24th September 2019. These comments are summarised in more detail in Appendix A Subsection H below.

Scottish Water

No response at time of report and no request for an extension of time

Core Paths Team

No response at time of report and no request for an extension of time

Community Council

Supports the planning application. E-mail dated 10th October 2018

(D) HISTORY:

12/01496/PP

Siting of mobile trailer and formation of hardstanding (retrospective). 12th October 2012 (Temporary planning permission granted which has long expired).

(E) PUBLICITY:

The proposal has been advertised in terms of Regulation 20 procedures, closing date 15th June 2017.

(F) REPRESENTATIONS:

51 expressions of support have been received regarding the proposed development.

1. Rebecca Martinez, Rose Bank, Tobermory, PA75 6QA (23.10.18)
2. Chermaine Laurie, Bad Daraich, Tobermory, PA75 6PR (24.10.18)
3. Alan Davidson, 23 Morven Drive, Tobermory, PA75 G (no date)
4. Derwyn Hewitt, 2 Fuinary Villa, Erray Road, Tobermory, PA75 6PS (23.10.18)
5. Shaun Braid, Ben Hiant View, Baliscate, Tobermory, P75 6QA (no date)
6. Sarah Braid, Ben Hiant View, Baliscate, Tobermory, P75 6QA (no date)
7. M MacDonald, 20 Breadalbane Street, Tobermory, PA75 6PD (no date)
8. Sally Swingbanks, Drumfin Cottage, Tobermory, PA75 6QB (no date)
9. Calum MacLean, Taigh Bhie, Tobermory, PA75 6QA (no date)
10. Joseph Golledge, Knapdale House, Strongarbh Park, Tobermory, PA75 6RB (23.10.18)
11. Kanye Smith, Castle Croft, Tobermory, PA75 6QA (no date)
12. Jenny Wright, 35 Riverside Court, Tobermory, PA75 6RF (23.10.18)
13. Gillian Ross, 5 Eas Brae Apartments, Tobermory PA75 6QA (no date)
14. Deborah Ellis, Old Port House, Ledaig, Tobermory, PA75 6NR (no date)
15. Grace Lambert, Knapdale House, Strongarbh Park, Tobermory, PA75 6RB (23.10.18)

16. Sophie Cattanach, 2 Staffa Cottages, Breadalbane Lane, Tobermory (no date)
17. Stewart Cattanach, 2 Staffa Cottages, Breadalbane Lane, Tobermory (no date)
18. Lewis Brown, Kirk Cottage, Albert Street, Tobermory, PA75 6PJ (no date)
19. Donald MacLean, 14 Riverside Court, Tobermory, PA75 6RF (no date)
20. Robert MacCallum, Sunny Bank, Victoria Street, Tobermory, PA75 6PL (no date)
21. James Campbell, 3 Java Houses, Craignure, PA65 6BE (no date)
22. Caroline MacPhail, 1A Bentalla Crescent, Salen, PA72 6JH (no date)
23. Sarah Scott, Flat 2 Aros View, Breadalbane Street, Tobermory, PA75 6PD (no date)
24. Kara McKee, 17 Breadalbane Street, Tobermory, PA75 6PD (no date)
25. G R Davidson, Oronsay, Raeric Road, Tobermory (no date)
26. T G Nunn, 20 Struan Crescent, Tobermory, PA75 6AD
27. Alan Davidson, 23 Morvern Drive, Tobermory, PA75 6AH
28. Tobermory Harbour, Ledaig, Tobermory, PA75 6NR (18.10.18)
29. Cameron MacLean, The Lianag, Beadoun, Tobermory, PA75 6QA (no date)
30. Mark De'ath, New House, Beadoun, Tobermory, PA75 6QA (no date)
31. Wilma De'ath, New House, Beadoun, Tobermory, PA75 6QA (no date)
32. Lewis Gallagher, Harbour Garage, Ledaig, Tobermory, PA75 6NR (no date)
33. Raymond Deplacido, 2 Eas Brae Apartments, Tobermory, PA75 6QA (no date)
34. Aileen Gallacher, Harbour Garage, Ledaig, Tobermory, PA75 6NR (no date)
35. N Morrison, 9 Erray Road Tobermory Isle Of Mull PA75 6RB (no date)
36. Allan MacLean, Cearcal A Chuain, Beadoun, Tobermory, PA75 6QA (no date)
37. Iain Noble, 14 Glen Iosal, Breadalbane Street, Tobermory, PA75 6PX (no date)
38. Cossar, 5 Eas Brae Apartments, Tobermory, PA75 6QA (no date)
39. Jane MacLean, Cearcal A Chuain, Beadoun, Tobermory, PA75 6QA (no date)
40. Lorraine MacLean, The Lianag, Beadoun, Tobermory, PA75 6QA (no date)
41. Angus Robertson, Sorne House, Glengorm, Tobermory, PA75 6QD (no date)
42. Iain Fraser, Tigh Caol Muile ,Rockhill, Rockfield Road, Tobermory, PA75 6PU (no date)
43. Bruce Chapple, 131 Druimfin Gardens, Tobermory (no date)
44. P Charmichael, Tormhor, Aros, PA22 6JS (no date)
45. J S MacPhail, Little Erray, Raeric Road, Tobermory, PA75 6PR (no date)
46. Owner/Occupier, Glengrant, Raeric Road, Tobermory, PA75 6PU (no date)
47. Owner/Occupier, Spennie Beag House, Salen Road, Tobermory, PA75 6QA (no date)
48. Owner/Occupier, Lochbuie Cottage, Albert Street, Tobermory, PA75 6PS (no date)
49. Owner/Occupier, 31 Bentalla Crescent Salen, Aros, PA72 6JH (no date)
50. Owner/Occupier, Tobermory Fish Co, Tobermory, PA75 6QA (no date)
51. Owner/Occupier, Moss Bank, Salen, PA72 6JL (no date)

Summary of issues raised

- The development of the site with a high quality building will represent a significant enhancement of the waterfront and streetscape in one of the most iconic villages in Scotland.
- The proposal will provide much needed additional visitor accommodation in the heart of Tobermory, strengthening the village's role as a key contributor to the tourism economy of Mull and the wider area.
- It will also deliver a convenience retail unit, which will provide additional choice to residents and visitors alike, providing an alternative to the existing co-op. The location of the retail unit next to the main village car park will help to alleviate traffic congestion on Main Street caused by the existing co-op. This will improve road safety on Main Street and reduce the risk of

accidents.

- The owners of MacGoghans and the Board of Tobermory Harbour have formally agreed exchange of the land site for a room/business space within the new building. Holding up development of the business space within this building is delaying future plans for the harbour. The proposed plan for a visitor centre extension could potentially be used to expand our much loved and well used Mull Aquarium or for Tourist Information site which is very much needed in Tobermory.
- It will provide facilities for the adjacent pontoons. This will strengthen the town's role as a key contributor to the tourism economy of Mull and the wider area through the continued development of the 'Hub Port' of Tobermory Harbour.

The above represents a summary of the issues raised. Full details of the letters of representation are available on the Council's Public Access System by clicking on the following link <http://www.argyll-bute.gov.uk/content/planning/publicaccess>

(G) SUPPORTING INFORMATION

Has the application been the subject of:

- | | | |
|-------|---|-----|
| (i) | Environmental Statement: | No |
| (ii) | An appropriate assessment under the Conservation (Natural Habitats) Regulations 1994: | No |
| (iii) | A design or design/access statement: | Yes |
| (iv) | A report on the impact of the proposed development eg. Retail impact, transport impact, noise impact, flood risk, drainage impact etc: | Yes |

(H) PLANNING OBLIGATIONS

Is a Section 75 agreement required: No

-
- (I) Has a Direction been issued by Scottish Ministers in terms of Regulation 30, 31 or 32:** No

-
- (J) Section 25 of the Act; Development Plan and any other material considerations over and above those listed above which have been taken into account in the assessment of the application**

- (i) List of all Development Plan Policy considerations taken into account in assessment of the application.**

Policy

LDP STRAT 1 – Sustainable Development
 LDP DM 1 – Development within the Development Management Zones
 LDP 3 – Supporting the Protection Conservation and Enhancement of our Environment
 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
 LDP 9 – Development Setting, Layout and Design
 LDP 10 – Maximising our Resources and Reducing Our Consumption
 LDP 11 – Improving our Connectivity and Infrastructure

Supplementary Guidance

SG LDP ENV 14 – Landscape
 SG LDP ENV 17 – Development in Conservation Areas and Special Built Environment Area
 SG LDP CST 1 – Coastal Development
 SG LDP BUS 1 – Business and Industry Proposals in Existing Settlements and Identified Business and Industry Areas
 SG LDP BUS 5 – Economically Fragile Areas
 SG LDP RET 1 – Retail Development in the Main Towns and Key Settlements – the Sequential Approach
 SG LDP TOUR 1 – Tourist Facilities and Accommodation, including Static and Touring Caravans
 SG LDP SERV 2 – Incorporation of Natural Features/Sustainable Drainage Systems (SuDS)
 SG LDP SERV 7 – Flooding and Land Erosion – The Risk Framework for Development
 SG LDP TRAN 3 – Special Needs Access Provision
 SG LDP TRAN 4 – New & Existing Public Roads and Private Access Regimes
 SG LDP TRAN 6 – Vehicle Parking Provision

Sustainable Siting & Design Principles

- (ii) **List of all other material planning considerations taken into account in the assessment of the application, having due regard to Annex A of Circular 4/2009.**

Scottish Planning Policy (SPP) 2014
 SEPA Development Management Guidance: Flood Risk
 SEPA Flood Risk and Land Use Vulnerability Guidance
 Argyll and Bute Sustainable Design Guide 2006
 Consultation responses
 Third party representations

(K) **Is the proposal a Schedule 2 Development not requiring an Environmental Impact Assessment:** No

(L) **Has the application been the subject of statutory pre-application consultation (PAC):** No

(M) Has a sustainability check list been submitted: No

(N) Does the Council have an interest in the site: No

(O) Requirement for a hearing: No – 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. In this case SEPA, as the national agency tasked with the interpretation and enforcement of Scottish Government planning policy has raised, and strenuously maintained, an overriding objection to the development. This objection cannot be set-aside without the prior notification of this application to Scottish Ministers and this report of handling explains to Members why, in the considered opinion of the planning authority, this option should not be followed.

(P) Assessment and summary of determining issues and material considerations

This is an application for the erection of a retail unit, visitor centre and three self-catering residential holiday units within a previously undeveloped gap site forming part of Tobermory waterfront development; the proposed development site being located between the existing substantial buildings, Taigh Solais to the immediate east (which contains a visitor's centre, public toilets and showers, a public laundry, the Tobermory maritime and Coastguard Agency rescue centre, plus the Mull Aquarium to the ground floor, the Harbour Office and six rental offices to the first floor, with a board room located within the limited second floor space within the building) and Mac Goghan's Bar and Restaurant to the immediate west.

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 of 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 it also lies within Area for Action (AFA 6/1).

AFA Schedule 6/1 identifies the following main actions:

1. To reinforce the very important role which Tobermory plays within the "tourism development area" as identified in the Structure Plan – "Tourism Infrastructure" diagram (capitalising on the recent marketing opportunities associated with the television programme "Balamory").
2. To consider the potential extension of the pier facilities in Tobermory Bay.
3. To consider the potential extension of marine (yachting) facilities.
4. Consider other harbour interests including Cal-Mac, lifeboat, coastguard, fishermen and fish farmers.
5. To consider traffic management, access and parking issues.
6. To consider town centre and waterfront enhancement potential.
7. To pursue cost/benefit analysis into future options covering the above interests and potential.

The site is also located within Tobermory 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 is wholly compliant with all relevant provisions of both local and national planning policy, with the materially critical exception of flood risk.

The application site is located within the 1 in 200 year coastal flood zone (classified as *Medium to High Risk*), as identified on SEPA's flood mapping and SEPA has objected to the application in principle as it introduces a new built development to a previously undeveloped site and therefore places additional buildings and people at risk from flooding. The Council's own Flood Risk Assessor has also objected to the proposals, following correct interpretation of both local and national flood risk planning policy, although both he and officers have worked in conjunction with the developer to try to achieve a solution that would simultaneously meet planning policy requirement and therefore satisfy SEPA as the Government's environmental management agency. Regretfully, no such solution has been found or is available in this case.

National and local policy requires development in coastal areas to be protected from the 1 in 200 year still water level, plus an allowance for wave action, plus an allowance for climate change, plus 0.6 m freeboard.

Notwithstanding SEPA's objection in principle, the required flood protection level is as follows: 1 in 200 still water level of 3.90m AOD, wave action of 0.2m, an allowance for predicted climate change of 0.56m and a freeboard of 0.6m which yields an overall protection level of 5.27m AOD. The development proposes a ground floor level of 3.92m AOD and a number of secondary flood protection measures in lieu of climate change and freeboard requirements.

The proposed ground floor level of 3.92m AOD therefore remains considerably below the required flood protection level of 5.27m AOD. Notwithstanding SEPA's objection in principle, both SEPA and the Council's Flood Risk Engineer have advised that the site will flood in a design flood event and these secondary elements (refuge area, emergency boat, flood warning scheme and flood resilient construction) are not in themselves sufficient in order to allow them to remove their objection.

In this case it is considered that this is not an appropriate site for the development as it will result in built development within an area identified as being at medium to high risk of flooding contrary to SPP, SEPA's Flood Guidance documents as well as the Council's own flood risk policy and supplementary guidance.

The development complies with the LDP in all other respects and it is recommended that planning permission be refused purely on the single technical ground of flooding.

This application would normally have been determined under the Council's agreed scheme of delegation. In this case, however, a significant body of support (51) has been received for the development and given the proposed recommendation that the application is refused against this wide body of support, it is considered that the proposed development should be determined by Members in this case.

(Q) Is the proposal consistent with the Development Plan: No

(R) Reasons why planning permission in principle should be refused

Scottish Planning Policy, SEPA Flood Guidance and Local Development Plan Policy advocate the avoidance of built development within areas identified as being at medium to high risk of flooding. In limited circumstances it may be appropriate for development to be permitted within these areas however the proposed development does not satisfy the required criteria. The proposed development is not sustainable in terms of flood risk as a new building with a combination of commercial and residential units would be introduced into an area identified as being at medium to high risk of flooding and which increases the land use vulnerability of the site, contrary to the principles of Scottish Planning Policy, the SEPA Development Management Guidance on Flood Risk and the SEPA Flood Risk and Land Use Vulnerability Guidance. Furthermore the development is contrary 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. There are no material considerations which are of sufficient weight meriting the departure from national and local planning policy.

(S) Reasoned justification for a departure to the provisions of the Development Plan

N/A

(T) Need for notification to Scottish Ministers or Historic Scotland: No

Author of Report: Andrew Barrie **Date:** 24th September 2019

Reviewing Officer: Tim Williams **Date:** 2nd October 2019

Fergus Murray
Head of Development and Economic Growth

REASONS FOR REFUSAL RELATIVE TO APPLICATION 17/01205/PP

Scottish Planning Policy, SEPA Flood Guidance and Local Development Plan Policy advocate the avoidance of built development within areas identified as being at medium to high risk of flooding. In limited circumstances it may be appropriate for development to be permitted within these areas however the proposed development does not satisfy the required criteria. The proposed development is not sustainable in terms of flood risk as a new building with a combination of commercial and residential units would be introduced into an area identified as being at medium to high risk of flooding and which increases the land use vulnerability of the site, contrary to the principles of Scottish Planning Policy, the SEPA Development Management Guidance on Flood Risk and the SEPA Flood Risk and Land Use Vulnerability Guidance. Furthermore the development is contrary 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. There are no material considerations which are of sufficient weight meriting the departure from national and local planning policy.

APPENDIX A – RELATIVE TO APPLICATION NUMBER: 17/01205/PP

PLANNING LAND USE AND POLICY ASSESSMENT

A. Settlement Strategy

This is an application for the erection of a retail unit, visitor centre and 3 self-catering units on Land Adjacent to Taigh Solais, Tobermory, Isle of Mull.

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).

AFA Schedule 6/1 identifies the following main actions:

1. To reinforce the very important role which Tobermory plays within the “tourism development area” as identified in the Structure Plan – “Tourism Infrastructure” diagram (capitalising on the recent marketing opportunities associated with the television programme “Balamory”).
2. To consider the potential extension of the pier facilities in Tobermory Bay.
3. To consider the potential extension of marine (yachting) facilities.
4. Consider other harbour interests including Cal-Mac, lifeboat, coastguard, fishermen and fish farmers.
5. To consider traffic management, access and parking issues.
6. To consider town centre and waterfront enhancement potential.
7. To pursue cost/benefit analysis into future options covering the above interests and potential.

The site is also located within Tobermory Conservation Area.

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. However, the development is contrary to SPP, SEPA flood guidance and the LDP in terms of flooding as detailed in Section H below, and therefore, it is recommended that planning permission be refused for this sole technical reason.

B. Location, Nature and Design of Proposed Development

The development involves the construction of a new retail unit and visitor centre on the ground floor with three letting flats on the 1st floor.

The building is to be physically attached to Taigh Solais with the principle building line being slightly set-back. It has a duo pitched asymmetrical roof giving the building a lower height than Taigh Solais. The development will fill a gap site within a town centre location and it is considered that the scale and massing of the building is in keeping with the neighbouring properties. Furthermore, the rocky backdrop further helps to integrate the development into its surroundings. A significant amount of glazing is proposed on the main elevation and the larger windows have been broken up using glazing bars to give them more of a vertical emphasis. Given the prominence of the building and its location within the conservation area a palate of high quality finishing materials is required. It is to be finished predominately with white render with the upper principle elevation and rear and side elevations finished in a mountain sage composite boarding with a zinc roof.

Aluminium gutters and down pipes are also proposed. The exact details of the finishing materials can be adequately secured via planning condition.

The proposed development was first submitted in 2017 and has been amended several times through consultation with officers and with the planning authority and the developer attempting to work together to establish a positive outcome. The submitted scheme has recently been amended to provide for an enhanced flood mitigation strategy benefitting both the proposed development and the wider area and is detailed as follows:

- Raise the floor levels of ground floor within the proposed new development to 3.92 m AOD; which the developer has advised is the highest floor level practicable in design and operational terms.
- Provide a constructed evacuation area to the rear of the building at a level of 5.4m AOD. The proposed evacuation refuge will be roofed to one end and open with a protective railing in the main part, and will have a pedestrian access to the town. The applicant's revised flood attenuation scheme will also provide for enhanced flood evacuation measures for the existing buildings in the harbour area, including Macgochan's Bar, immediately adjacent to the proposed development, which can have up to 400 occupants.
- Sign up to an enhanced flood warning protocol with SEPA and with local harbour master. The applicant's consultants have advised that coastal flooding can be predicted in advance with more accuracy than river flooding, with lead times of a number of hours. Therefore the applicant suggests that it is practical to provide warnings that will allow the premises to be evacuated and protected prior to the flood event. The applicant asserts that this will also allow evacuation of other buildings in the harbour.
- Put in place a flood management system for first floor residential accommodation – briefing and guidance for guests on flood risk matters, including emergency access and egress arrangements.
- Provide flood protection measures at the shop. There are a number of providers of such measures which include stop logs, demountable barriers that can be installed prior to flooding, and flood proof doors. These will be provided on site to be activated following receipt of a warning. The applicant's consultant states that these measures will provide protection of up to approximately 0.6 to 0.9 metres depth and can be installed/upgraded as part of an adaptive flood management approach, where changes are made to flood protection as the impacts of climate change become more severe.
- Provision of an emergency boat/dinghy fixed to the wall of a nearby building also within the Applicant's control and accessible during flooding, to provide a further means of egress or rescue for anyone trapped by the flood, whether in the proposed development, in the proposed refuge area, or in another existing building within the harbour area.

The main visual change to the development is the slightly raised level of the building, the front access ramp detail and the flood refuge area. It is considered that the proposal as amended is of an appropriate scale, form and design with appropriate finishing materials which will readily integrate with neighbouring properties and which will not have a negative impact on the appearance of the conservation area. In this respect the development is considered to be in accordance with Policies LDP 3, LDP 9 and Supplementary Guidance SG LDP ENV 14, SG LDP ENV 17, the Sustainable Siting and Design Principles as well as the Argyll and Bute Sustainable Design Guide which seek

to ensure developments are compatible with their setting, are of a suitable scale, design and finish, and which do not have an adverse impact on the privacy and amenity of neighbouring properties.

The applicants advise that regardless of whether or not the proposed development is granted, the properties along Main Street would be subject to the same flooding constraints and these properties have lower ground floor levels than the current proposal. The applicants have stated that these proposals will benefit the wider Tobermory Town Centre area as the evacuation area and emergency boat would be available to other occupiers and residents.

Both SEPA and the Council as flood risk authority have been reconsulted following these amendments and both maintain their objections to the proposed development. Flooding is discussed in more detail in Section H below.

D. Sustainable Economic Development

Policy LDP 4 is supportive of onshore works for sustainable development in our coastal zone. This policy recognises the significant economic potential of the coast and promotes the sustainable development of the coastal zone. The coastal zone continues to provide a focus for economic activity, recreation and tourism.

Policy LDP 5 recognises that the success of our local economy is fundamental to Argyll and Bute's future prosperity, helping to retain population and attract new people to the area.

SG LDP TOUR 1 aims to encourage tourist related development but at the same time protect residential amenity and that of the surrounding environment.

SG LDP RET 1 has a presumption in favour of retail developments within established town centres such as Tobermory.

It is considered that the proposal is consistent with the aims of the development plan in terms of tourism and economic development. The development will provide employment opportunities, convenience retail choice for residents, facilities for tourists as well as generating income for the local economy, thus contributing positively to sustainable economic growth in accordance with Policies LDP 4 and LDP 5 and Supplementary Guidance SG LDP TOUR 1 and SG LDP RET 1 of the LDP.

E. Built Environment

The site is located within the Tobermory Conservation Area and Supplementary Guidance SG LDP ENV 17 states that there is a presumption against development which does not preserve or enhance the character or appearance of an existing or proposed conservation area. In this case the building is appropriately designed and scaled to reflect the local vernacular and which uses a combination of high quality finishing materials. The development is therefore in accordance with Policy LDP 3 and Supplementary Guidance SG LDP 17 of the LDP.

F. Road Network and Parking

Policy LDP 11 supports all development proposals that seek to maintain and improve internal and external connectivity by ensuring that suitable infrastructure is delivered to serve new developments. Supplementary Guidance SG LDP TRAN 4 and SG LDP TRAN 6 expand on this policy seeking to ensure that developments are served by a safe means

of vehicular access and have an adequate on-site parking and turning area. The area roads engineer has been consulted and he has not raised any objections subject to a condition securing adequate parking provision. In this case as the site is located within a town centre the parking requirements for developments are relaxed. There is no parking requirement for retail units up to 1000sqm and 0.5 spaces is required per residential unit. In this case 1 additional space has been provided and this is considered adequate given the presence of an existing car park immediately adjacent to the site and additional on-street car parking on Main Street. The abovementioned policy requirements are therefore satisfied.

G. Infrastructure

Connection is to be made to the public water and drainage network and Scottish Water have not raised any objections to the proposal. However, they have advised that they cannot guarantee capacity and the applicant should contact them direct in this matter. This can be added as a 'note to applicant'. The proposal is considered to be in accordance with Policy LDP 11 of the LDP.

H. Flooding

The site has been identified as having the potential to flood and therefore consultation with SEPA and the Council's flood risk engineer has been carried out.

The proposal is compliant with planning policy with the material exception of flood risk.

The proposed development was first submitted in 2017 and has been amended several times through consultation with officers and with the planning authority and the developer attempting to work together to establish a positive outcome. The summary below relates to an assessment of the development as amended and updated having regard to the most recent consultation responses and planning policy/planning guidance.

The application site is located within the 1 in 200 year coastal flood zone (classified as *Medium to High Risk*), as identified on SEPA's flood maps.

National and local planning policy requires development in coastal areas to be protected from the 1 in 200 year still water level, plus an allowance for wave action, plus an allowance for climate change plus 0.6m freeboard.

The planning application was submitted in 2017 and, following an initial objection from SEPA, it was subsequently supported by a Flood Risk Assessment (FRA) undertaken by Envirocentre. The FRA identified a 1 in 200 year still water flood level of 3.86m AOD and recommended a flood protection level of 4.67m AOD. The proposed finished ground floor level was proposed to be 3.6m AOD with secondary protection measures including emergency access arrangements at a level of 4.07m AOD, flood resilient construction and a flood plan relating to the existing Oban Flood Warning scheme. This was in lieu of an allowance for climate change, wave action and freeboard.

SEPA objected in principle to the development as it is within the functional flood plain contrary to paragraph 255 of Scottish Planning Policy (SPP) and because the proposed ground floor of the development was below the required design flood level.

A detailed Supporting Statement was further submitted by Geddes Consulting on behalf of the applicant in response to initial concerns raised by the planning authority in relation to flood risk and this included raising the ground floor level to 3.9m AOD. Since the original application was submitted and following the submission of the applicant's supporting statement, new climate change scenarios became available in November

2018 (the United Kingdom Climate Projections 2018, UKCP18). It was therefore necessary to consider the proposal in light of this new information. As a result, further supporting information has been submitted by Geddes Consulting and Kaya Consulting and revised and updated consultation responses have been received from SEPA and the Council's Flood Risk Engineer, both of which are maintaining an objection to the planning application on flood risk grounds.

In light of current data, and notwithstanding SEPA's objection in principle, the updated flood protection level is as follows: 1 in 200 still water level of 3.90m AOD, wave action of 0.2m, climate change of 0.56m and freeboard of 0.6m which yields an overall flood protection level of 5.27m AOD.

The applicants have further revised the scheme in an attempt to mitigate flood risk. This includes:

- The provision of a raised ground floor level of 3.92m AOD
- The provision of a flood refuge area at 5.4m AOD
- The provision of an emergency boat
- The inclusion of the building in a local flood warning scheme
- Flood resilient construction

The applicant's proposal recommends that the Council move to approve the application contrary to the recommendations of SEPA and the Council's Flood Risk Engineer. If the Council was minded to approve the application contrary to the advice of SEPA, this would require the application to be referred to Scottish Ministers. The procedure for this is discussed in Section H below. The applicants' supporting documents include various examples of cases where a local authority was minded to approve an application contrary to SEPA's advice and was referred to Scottish Ministers. In only one of these instances was the application called in for determination by Scottish Ministers with the remainder being returned to the local planning authority for determination. It should be noted however that the majority of these examples are not relevant to this particular case as they are not on a like-for-like basis or had different circumstances.

The revised ground floor level of 3.92m AOD remains considerably below the required flood protection level of 5.27m AOD. Notwithstanding SEPA's objection in principle, both SEPA and the Council's Flood Risk Engineer have advised that the site will flood in a design flood event and these secondary elements (refuge area, emergency boat, flood warning scheme and flood resilient construction) are not in themselves sufficient in order to allow them to remove their objection.

In this case it is considered that this is not an appropriate site for the development as it will result in built development within an area identified as being at medium to high risk of flooding contrary to SPP, SEPA's Flood Guidance documents as well as the council's own flood risk policy and supplementary guidance.

The development complies with the LDP in all other respects and it is recommended that planning permission be refused purely on the single technical ground of flooding.

Members should also note that 51 letters of support for the application have also been submitted.

SEPA Recommendation

SEPA have advised that due to the undeveloped nature of the site, any new development which increases the land use vulnerability would normally not be supported as the principle of avoidance is at the heart of sustainable flood risk management as per Scottish

Planning Policy (SPP). This stance is irrespective of a development being designed in such a way as to meet any required minimum floor level criteria.

SEPA's 'Development Management Guidance on Flood Risk (July 2018)' states that,

"Proposed developments should not be located in areas at medium to high risk from fluvial or coastal flooding (or low to medium areas for civil infrastructure). Other most vulnerable uses will only be acceptable in low to medium risk areas if the hazard can be alleviated through appropriate mitigation.

Where this is not possible, some types of development may be acceptable if they meet the requirements of the risk framework (SPP, paragraph 263). The risk framework should be applied within the context of the issues listed in paragraph 264 of SPP and our Land Use Vulnerability Guidance should be used to inform the vulnerability classification of the proposed land use and ensure that it is suitable for the location and degree of flood risk. In general, the following types of development may be acceptable in areas that are at risk of fluvial or coastal flooding:

- a) Developments classed as water compatible or that are considered to be essential infrastructure which require a flood risk location for operational reasons. The operational need for the development is for the planning authority to determine.
- b) Redevelopment of an existing building, including changes of use to an equal or less vulnerable use to the existing use.
- c) Redevelopment of a previously developed site where it involves the demolition of existing buildings and/or erection of additional buildings within a development site, and the proposed land use is equal or less vulnerable than the existing land use.
- d) Where the principle of development on the site has been established in an up-to-date, adopted development plan or the National Planning Framework and flood risk issues were given due consideration as part of the plan preparation process and our assessment of risk has not changed in the interim.
- e) Development in built up areas protected by an existing or planned flood protection scheme, where the standard of protection is appropriate for the vulnerability of the land use.

In the case of the currently proposed development, the fundamental starting point for SEPA, and as confirmed within Para. 263 of the SPP, is that development proposals for 'most vulnerable uses' located within the 'medium to high risk' flooding areas (annual probability of coastal or watercourse flooding is greater than 0.5% (1:200 years)) will not be supported. SEPA guidance and the SPP expands upon this to allow for the potential for certain, specific types of development and/or special overriding circumstances to be considered as a potential exception to this fundamental starting point.

In the case of the currently proposed development it is the assessment of officers in close consultation with SEPA that none of these potential exceptions apply:

- The proposed development does not constitute a 'water compatible' land use or involve essential infrastructure requiring a flood risk location;
- The proposed development does not involve the reuse of an existing building to introduce an equal or less vulnerable use;

- The proposed development does not involve the redevelopment of a previously developed site to introduce an equal or less vulnerable use (further detail included below);
- Whilst the development site is located within a confirmed and longstanding 'town centre' site within the settlement zone of the LDP, both officers and SEPA have concluded that this is not a site-specific allocation and has not been given due consideration of current flooding issues, and does not, therefore, constitute a 'principle of development' in this case;
- The proposed development, whilst in a 'built-up' area, is not within a location which is protected by any existing or proposed flood protection scheme sufficient to protect the identified flood risk vulnerability of that area.

As indicated above, the planning authority does not consider the site to be developed.

A small trailer currently sits on the site which is used as a tourist information point. This has planning permission under 12/01496/PP which required the removal of the trailer by the 31st October 2014. The trailer is therefore currently unauthorised. Notwithstanding this, this is a temporary use of the land and it is not considered to be built development. SEPA agree with this assessment. As the site is devoid of built development and is not a previously developed site for the purposes of SPP they are objecting in principle as it is not of a use of equal or less vulnerability to the proposed development. The development will increase the vulnerability of the site placing property and people at risk from flooding.

Notwithstanding their objection in principle, they have advised that a freeboard allowance of 0.6m would be an essential requirement for a development categorised as a Highly Vulnerable Use (development with residential accommodation). Even if SEPAs primary objection in principle could be overcome, a ground floor FFL of 5.27m AOD is required. This is not possible as it would raise the FFL of the development to an unacceptably high level which would be visually discordant with neighbouring properties and contrary to the applicants stated requirements.

Council's Flood Risk Engineer Recommendation

The Council's Flood Risk Engineer has also recommended that the application be refused on flood risk grounds. He concurs with SEPA that the required flood protection level be calculated as: 1 in 200 still water level of 3.90m AOD, wave action of 0.2m, climate change of 0.56m and freeboard of 0.6m which yields an overall flood protection level of 5.27m AOD. However, he has advised that an appropriate finished ground floor level of the development could be a minimum of 4.7m AOD with the shortfall in freeboard allowance of 0.6m achieved instead by flood resilient construction with the proposed emergency access level set at a minimum of 5.3m AOD. As the proposal has a finished ground floor level of 3.92m AOD, it is below the minimum recommended level of 4.7m AOD and therefore he has recommended refusal. Notwithstanding this, even if this level of 4.7m AOD could be achieved, the proposal is still contrary to the principle of flood avoidance in the functional floodplain and SEPA would maintain their objection in principle.

Flood Risk Policy and Guidance

National Flood Risk Policy is contained within Scottish Planning Policy (SPP) and Local Flood Risk Policy is contained within LDP 10 - Maximising Our Resources and Reducing

Consumption Together and Supplementary Guidance SG LDP SERV 7 – Flooding and Land Erosion: The Risk Framework for development. This is supplemented by SEPA's Development Management Guidance: Flood Risk and their Land Use Vulnerability Guidance.

SPP contains a Risk Framework which must be applied by planning authorities when assessing flood risk. This Risk Framework should be applied within the context of the issues listed in paragraph 264 of the SPP as well as SEPA's Land Use Vulnerability Guidance. SEPA have also produced the separate guidance document Development Management Guidance: Flood Risk which details specific requirements and recommendations relating to flood risk that must be addressed through the planning process having regard to SPP.

The main principle of SPP and SEPA guidance is flood avoidance by locating development away from functional flood plains and medium to high risk areas. **The development is within the medium to high risk area of flooding.** SPP states, inter-alia, the planning system should promote a precautionary approach to flood risk from all sources...taking account of the predicted effects of climate change; flood avoidance: by safeguarding flood storage and conveying capacity, and locating development away from functional flood plains and medium to high risk areas. Again in this case, **the development is located within the medium to high risk area.**

SPP states that some types of development may be acceptable if they meet the requirements of the risk framework (SPP, paragraph 263). The risk framework should be applied within the context of the issues listed in paragraph 264 of SPP and SEPA's Land Use Vulnerability Guidance. In this case the proposed development does not meet any of the exemptions contained within SEPA guidance.

To summarise, it is considered that the proposed development is contrary to national and local flooding policy and SEPA guidance in that it introduces built development into an undeveloped site which is at medium to high risk of flooding, increasing the land use vulnerability of the site, and therefore it is recommended that planning permission be refused for this sole technical reason.

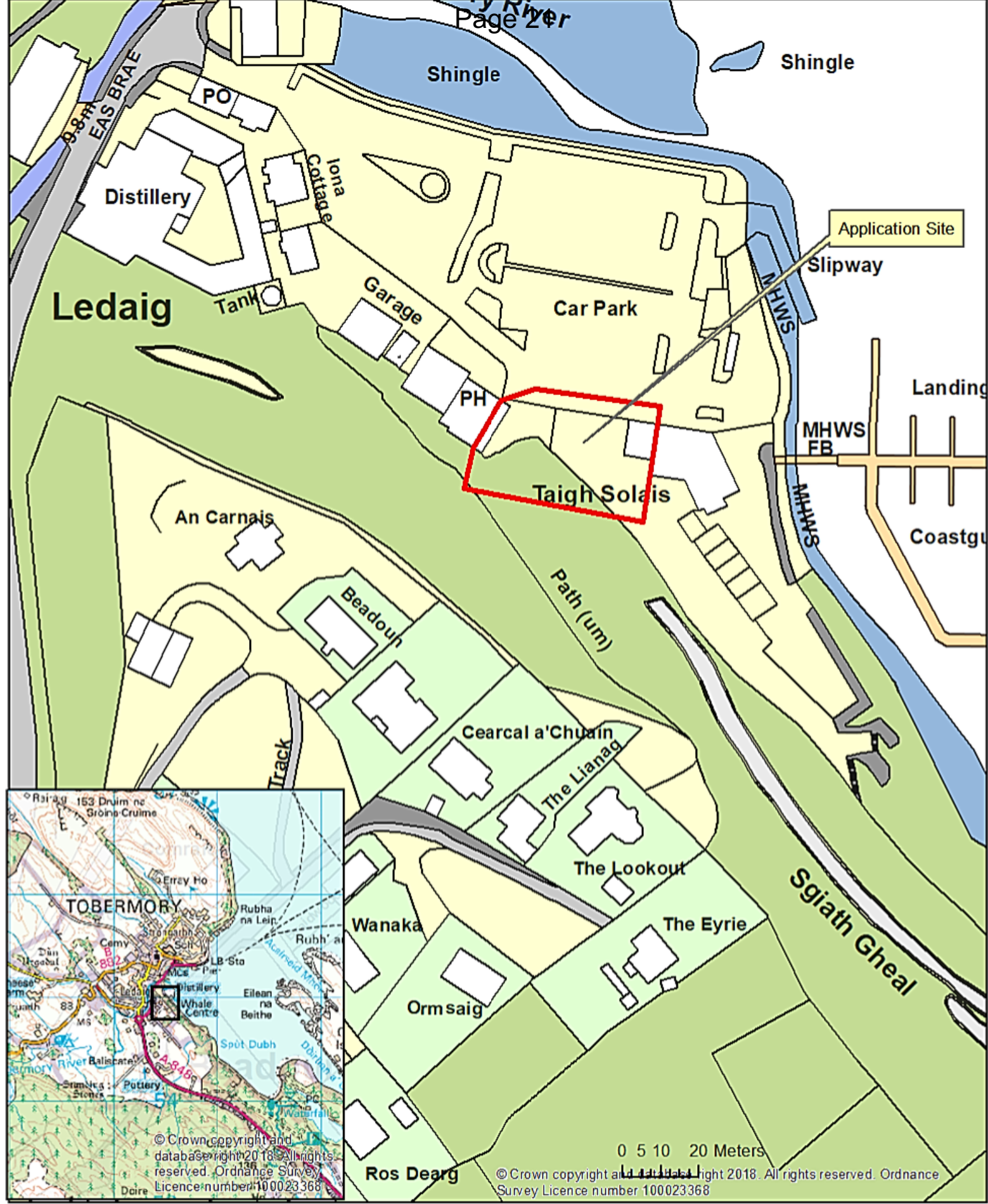
H. Requirement to Notify Scottish Ministers

In the event that members are minded to approve the application contrary to the advice of officers and consultees having regard National and Local Planning Policy with an outstanding objection from SEPA, this must be notified to Scottish Ministers. This requirement is set out in the *Town and Country Planning (Notification of Applications) (Scotland) Direction 2009* ('the Direction').

Planning Circular 3/2009: *Notification of Planning Applications* sets out the process that will be followed in such notification cases under the Direction:

"Where a planning authority notifies Scottish Ministers of its intention to grant planning permission, Ministers consider whether to call in the application or clear it back to the authority to decide the matter as it thinks fit. Scottish Government officials should usually be able to tell the authority within the 28-day period set out in the direction whether Ministers propose to take any action. Scottish Ministers do not need to wait until the end of that 28-day period, and will issue their decision as soon as they are ready to do so. The Scottish Government is committed to efficient decision-making, but in exceptional circumstances it may take a little longer to reach a conclusion, in which case Ministers will issue a further direction, extending the period for their consideration of the matter."

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ARGYLL AND BUTE COUNCIL
PROCEDURE NOTE FOR USE AT

- | | |
|--|--|
| (1) Statutory Pre Determination Hearing | <input type="checkbox"/>
<input type="checkbox"/> |
| (2) Council Interest Application | |
| (3) Discretionary Hearing | X |

HELD BY THE PLANNING, PROTECTIVE SERVICES & LICENSING COMMITTEE

1. The Director of Customer Services will notify the applicant, all representees and objectors of the Council's decision to hold a Hearing and to indicate the date on which the hearing will take place. The hearing will proceed on that day, unless the Council otherwise decides, whether or not some or all of the parties are represented or not. Statutory consultees (including Community Councils) will be invited to attend the meeting to provide an oral presentation on their written submissions to the Committee, if they so wish.
2. The Director of Customer Services will give a minimum of 7 days notice of the date, time and venue for the proposed Hearing to all parties.
3. The hearing will proceed in the following order and as follows.
4. The Chair will introduce the Members of the Panel, ascertain the parties present who wish to speak and outline the procedure which will be followed.
5. The Director of Development and Infrastructure's representative will present their report and recommendations to the Committee on how the matter should be disposed of.
6. The applicant will be given an opportunity to present their case for approval of the proposal and may include in their submission any relevant points made by representees supporting the application or in relation to points contained in the written representations of objectors.
7. The consultees, supporters and objectors in that order (see notes 1 and 2), will be given the opportunity to state their case to the Council.
8. All parties to the proceedings will be given a period of time to state their case (see note 3). In exceptional circumstances and on good case shown the Panel may extend the time for a presentation by any of the parties at their sole discretion.

Ref: ABH1/2009

9. Members of the Panel only will have the opportunity to put questions to the Director of Development and Infrastructure's representative, the applicant, the consultees, the supporters and the objectors in that order.
10. At the conclusion of the question session the Director of Development and Infrastructure's representative, the applicant, any consultees present, the supporters and the objectors (in that order) will each be given an opportunity to comment on any particular information given by any other party after they had made their original submission and sum up their case.
11. The Chair will ascertain from the parties present that they have had a reasonable opportunity to state their case.
12. The Panel will then debate the merits of the application and will reach a decision on it. No new information can be introduced at this stage.
13. The Chair or the Committee Services Officer on his/her behalf will announce the decision.
14. A summary of the proceedings will be recorded by the Committee Services Officer.
15. If at any stage it appears to the Chair that any of the parties is speaking for an excessive length of time he will be entitled to invite them to conclude their presentation forthwith.

NOTE

- (1) Objectors who intend to be present and speak at a hearing are encouraged to appoint one or a small number of spokespersons to present their views to concentrate on the matters of main concern to them and to avoid repetition. To assist this process the Council will provide a full list of the names and addresses of all objectors.
- (2) Supporters who intend to be present and speak at a hearing are encouraged to appoint one or a small number of spokespersons to present their views to concentrate on the matters of main concern to them and to avoid repetition. To assist this process the Council will provide a full list of the names and addresses of all supporters.
- (3) Councillors (other than those on the Panel) who have made written representations and who wish to speak at the hearing will do so under category (1) or (2) above according to their representations but will be heard by the Panel individually.
- (4) Recognising the level of representation the following time periods have been allocated to the parties involved in the Hearing.

Ref: ABH1/2009

The Director of Development and Infrastructure Services'
representative – not more than half an hour
The Applicant - not more than half an hour.
The Consultees - not more than half an hour.
The Supporters - not more than half an hour.
The Objectors - not more than half an hour.

- (4) The purpose of the meeting is to ensure that all relevant information is before the Panel and this is best achieved when people with similar views co-operate in making their submissions.
- (4) Everyone properly qualified as a representee recorded on the application report who wishes to be given an opportunity to speak will be given such opportunity.
- (6) The Council has developed guidance for Councillors on the need to compose a competent motion if they consider that they do not support the recommendation from the Director of Development and Infrastructure Services which is attached hereto.

I:data/typing/planning/procedure note

COMPETENT MOTIONS

- Why is there a need for a competent motion?
 - Need to avoid challenge by “third party” to local authority decision which may result in award of expenses and/or decision being overturned.
 - Challenges may arise from: judicial review, planning appeal, ombudsman (maladministration) referral. All appeal/review processes have rights to award expenses against unreasonable/unlawful behaviour.
- Member/Officer protocol for agreeing competent motion:
 - The process that should be followed should Members be minded to go against an officer’s recommendation is set out below.
- The key elements involved in formulating a competent motion:
 - It is preferable to have discussed the component parts of a competent motion with the relevant Member in advance of the Committee (role of professional officers). This does not mean that a Member has prejudged the matter but rather will reflect discussions on whether opinions contrary to that of professional officers have a sound basis as material planning considerations.
 - A motion should relate to material considerations only.
 - A motion must address the issue as to whether proposals are considered consistent with Adopted Policy of justified as a departure to the Development Plan. Departure must be determined as being major or minor.
 - If a motion for approval is on the basis of being consistent with policy reasoned justification for considering why it is consistent with policy contrary to the Head of Development and Economic Growth’s recommendation must be clearly stated and minuted.
 - If a motion for approval is on the basis of a departure reasoned justification for that departure must be clearly stated and minuted. Consideration should be given to holding a PAN 41 Hearing (determined by policy grounds for objection, how up to date development plan policies are, volume and strength of representation/contention)
 - A motion should also address planning conditions and the need for a Section 75 Agreement.
 - Advice from the Scottish Government on what are material planning considerations is attached herewith. However, interested parties should always seek their own advice on matters relating to legal or planning considerations as the Council cannot be held liable for any error or omission in the said guidance.

DEFINING A MATERIAL CONSIDERATION

1. Legislation requires decisions on planning applications to be made in accordance with the development plan (and, in the case of national developments, any statement in the National Planning Framework made under section 3A(5) of the 1997 Act) unless material considerations indicate otherwise. The House of Lord's judgement on *City of Edinburgh Council v the Secretary of State for Scotland* (1998) provided the following interpretation. If a proposal accords with the development plan and there are no material considerations indicating that it should be refused, permission should be granted. If the proposal does not accord with the development plan, it should be refused unless there are material considerations indicating that it should be granted.
2. The House of Lord's judgement also set out the following approach to deciding an application:
 - Identify any provisions of the development plan which are relevant to the decision,
 - Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies,
 - Consider whether or not the proposal accords with the development plan.
 - Identify and consider relevant material considerations for and against the proposal, and
 - Assess whether these considerations warrant a departure from the development plan.
3. There are two main tests in deciding whether a consideration is material and relevant:
 - It should serve or be related to the purpose of planning. It should therefore relate to the development and use of land, and
 - It should fairly and reasonably relate to the particular application.
4. It is for the decision maker to decide if a consideration is material and to assess both the weight to be attached to each material consideration and whether individually or together they are sufficient to outweigh the development plan. Where development plan policies are not directly relevant to the development proposal, material considerations will be of particular importance.
5. The range of considerations which might be considered material in planning terms is very wide and can only be determined in the context of each case. Examples of possible material considerations include:
 - Scottish Government policy, and UK Government policy on reserved matters
 - The National Planning Framework
 - Scottish planning policy, advice and circulars
 - European policy
 - A proposed strategic development plan, a proposed local development plan, or proposed supplementary guidance

Ref: ABH1/2009

- Guidance adopted by a Strategic Development Plan Authority or a planning authority that is not supplementary guidance adopted under section 22(1) of the 1997 Act
 - A National Park Plan
 - The National Waste Management Plan
 - Community plans
 - The Environmental impact of the proposal
 - The design of the proposed development and its relationship to its surroundings
 - Access, provision of infrastructure and planning history of the site
 - Views of statutory and other consultees
 - Legitimate public concern or support expressed on relevant planning matters
6. The planning system operates in the long term public interest. It does not exist to protect the interests of one person or business against the activities of another. In distinguishing between public and private interest, the basic question is whether the proposal would unacceptably affect the amenity and existing use of land and buildings which ought to be protected in the public interest, not whether owners or occupiers of neighbouring or other existing properties would experience financial or other loss from a particular development.